

Arsenic Exemptions Before the State Environmental Commission (SEC)

Water systems in Nevada with arsenic concentrations greater than 10 parts per billion (ppb) but below 50 ppb may apply for an exemption from the State Environmental Commission (SEC). The Nevada Division of Environmental Protection (NDEP) has received exemption applications from 83 water systems and is recommending the SEC approve 2 of those requests (see list below). 36 systems' requests were approved at the September 2006 SEC meeting; and an additional 17 were approved at the May 2007 meeting.

Background: An exemption is an administrative tool allowed under the federal Safe Drinking Water Act (and Nevada law). Exemptions can be used to grant water systems additional time to acquire financial and technical assistance to meet new or revised federal drinking water standards, such as the newly adopted arsenic standard.

Of note, the revised arsenic standard of 10 ppb became effective on January 23, 2006. The old standard of 50 ppb had been in place for more than 60 years. If the list of 2 exemptions are approved by the SEC, then the respective water systems listed below would be granted additional time (until January 23, 2009) to comply with the new arsenic standard.

It's worth mentioning that water systems serving less than 3,300 persons may also be eligible for up to 3 exemption extensions of 2 years each, allowing up to 9 total years (January 23, 2015) to comply with the new arsenic standard.

A "boiler plate" Arsenic Exemption document for the requested 2 water system exemptions is presented below. The exemption document contains standard language that addresses compliance schedule and reporting requirements.

Public Notification Requirements: By statute, each water system seeking an exemption was required to notify their customers of their intent to obtain an exemption along with the date, time, and location of the SEC hearing. Upon receiving an exemption, statutory requirements mandate that a water system notify their customers that they have been granted an exemption. NRS 445A.950 further provides for civil penalties and administrative fines if a water system fails to comply with the conditions of an exemption approved by the Commission.

List of Water Systems applying for the Arsenic Rule Exemptions: Pursuant to the federal Safe Drinking Water Act and Nevada Revised Statute (NRS) 445A.935, the State Environmental Commission may grant exemptions from the regulations of the Commission. The following public water systems have submitted arsenic exemption applications. These applications have been reviewed and are being recommended for approval by the Nevada Division of Environmental Protection.

<u>WATER SYSTEM ID #</u>	<u>SYSTEM NAME</u>
NV0000903	CMC STEEL FABRICATORS dba CMC JOIST
NV0000206	PIONEER HILLS MHP

ARSENIC EXEMPTION
NEVADA STATE ENVIRONMENTAL COMMISSION

IN THE MATTER OF THE REQUEST)
OF THE)
<< PWS NAME >>)
FOR AN EXEMPTION FROM)
REGULATIONS GOVERNING PUBLIC)
WATER SYSTEMS, ARSENIC)

FINDINGS OF FACT

The above entitled matter came before the Nevada State Environmental Commission, hereafter known as the Commission, at a duly noticed public hearing on September 07, 2007. The Commission, having heard the presentation from staff of the Nevada Division of Environmental Protection (NDEP) recommending approval of the request and having extended an opportunity to the public to be heard, finds as follows:

The <<PWS NAME>> public water system, hereafter known as the System, was in operation prior to January 23, 2006, the effective date of the revised arsenic standard of 10 parts per billion (ppb). The System has a source or sources of drinking water that exceed the revised standard but is below the previous standard of 50 ppb. The federal Safe Drinking Water Act and the regulations of the Commission provide for the granting of exemptions if the following conditions exist:

1. Because of compelling factors, including economic considerations, the public water system is unable to comply or to implement measures to develop an alternative source of supply;
2. The granting of the exemption will not result in an unreasonable risk to health; and
3. Management or restructuring changes, or both, cannot reasonably be made that will result in compliance with the primary drinking water standards or, if compliance cannot be achieved, improve the quality of the drinking water.

Review of the exemption request by NDEP staff has found the system meets the above stated conditions. Furthermore, NDEP staff has found that the System has established that it needs financial resources to comply with the maximum contaminant level and has either entered into a financial assistance agreement to make capital improvements or has shown that financial assistance or resources are reasonably likely to be available within the period of time that the exemption will be in effect. In consideration of the above, the System is seeking an exemption to comply, by January 23, 2009.

CONCLUSIONS

This matter is properly before the Commission pursuant to Nevada Administrative Code (NAC) 445A.489, and the determination of this matter is properly within the subject matter jurisdiction of the Commission.

The Commission specifically finds that the System was in operation prior to January 23, 2006, is unable to comply with the regulation due to compelling factors and no unreasonable risk to public health will result if the exemption is granted. The Commission, having considered the relative interests of first, the public and second, the System, being fully advised and by vote, does grant the exemption until January 23, 2009.

DECISION

It is the decision of the Commission to grant the requested exemption, effective through January 23, 2009, subject to the following schedule of compliance:

1. The System shall investigate and secure, to the extent that funds are available, all sources of financial assistance by January 23, 2008;
2. The System shall complete an evaluation of compliance alternatives, including retaining the services of an engineer and conducting pilot testing as needed and select a final compliance option by June 23, 2008;
3. The System shall install, test and have in full operation a treatment system or other compliance option capable of producing drinking water that meets the arsenic standard of 10 ppb by January 23, 2009; and
4. The System shall provide semi-annual progress reports to NDEP by January 1st and July 1st of each year of the exemption period.

Systems serving a population less than 3,300 may qualify for up to three, two-year extensions to this exemption if the system demonstrates significant progress during this exemption period; and the extension is approved by the State Environmental Commission.

Date: _____

Lew Dodgion, Chairman
Nevada State Environmental
Commission