

Temporary Regulation - Filing Statement

Nevada Division of Environmental Protection
Bureau of Air Pollution Control

Chemical Accident Prevention Program

Legislative Review of Adopted Regulations as Required
By Administrative Procedures Act, NRS 233B.066

State Environmental Commission (SEC) Petition 2006-19 – LCB File No. T007-06

This temporary regulation amends the list of highly hazardous substances found in the Chemical Accident Prevention Program (CAPP) regulations (NAC 459.952-95528). Specifically, NDEP is adding elemental mercury to the list with a threshold quantity of 100 tons (200,000 pounds).

These amendments are necessary as part of the NDEP's overall effort to control potential mercury emissions throughout Nevada. Recently, several major efforts have been undertaken to establish air pollution control requirements for emissions of mercury. Regulations were adopted in March 2006 to require mercury air emission controls at precious metal mining facilities through a new mercury permitting program. Provisions to regulate emissions of mercury from coal-fired power plants are currently being developed. Consistent with these ongoing developments, the Bureau of Air Pollution Control is proposing these amendments to the CAPP regulations. The proposed amendments are intended to establish measures for the prevention of an accidental release to the environment from the handling and storage of mercury at mercury storage facilities.

1. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

NDEP's Bureau of Air Pollution Control held two public workshops on the above referenced regulation at the following locations.

Hawthorne
Friday, July 28, 2006
10:00 am to 1:00 pm
Mineral County Library
First and A Street

Carson City
Tuesday, August 1, 2006
1:30 to 3:30 pm
Legislative Counsel Bureau
401 South Carson Street

The workshop notice was sent by direct mail to every permitted facility in Nevada – over 600 – to all persons on the CAPP mailing list and to all interested persons on the Air

Quality ground-based and electronic mailing lists. The workshop in Hawthorne was unattended; the Carson City workshop was attended by two persons. One person requested several clarifications; no adverse comments were received.

The State Environmental Commission (SEC) held a public hearing to consider this regulation on September 6, 2006 at the Nevada Division of Wildlife in Reno, Nevada. The hearing agenda was posted at the following locations: the Nevada Department of Wildlife building in Reno, the Grant Sawyer Office Building in Las Vegas, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of the agenda, the public notice, and the proposed regulation noted above were made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the hearing was published on August 15, 2006, August 22, 2006 and August 29, 2006 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at http://sec.nv.gov/main/hearing_0906.htm.

2. The number persons who attended the SEC Regulatory Hearing:

- (a) Attended September 6, 2006 hearing; 70
- (b) Testified on this Petition at the hearing: 2 (1 NDEP Staff, 1 Public)
- (c) Submitted to the agency written comments: -0-

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses as indicated in number 1 above. In addition to the public workshop and the SEC regulatory hearing, the NDEP held numerous meetings with representatives from the affected industry during regulation development and incorporated stakeholder comments into the regulation as it was drafted.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The State Environmental Commission adopted the regulation without change on September 6, 2006. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry. The new regulation will have an economic impact on facilities that handle or store 100 tons or more of elemental mercury. NAC 459.95334 requires that facilities which handle or store a highly hazardous substance pay an annual fee consisting of a base fee of \$5,600 plus a per unit fee of \$39. The unit size for mercury is 100 tons. Thus, a minimum annual fee of \$5,639 will be charged to qualifying facilities. So far, the only affected facility identified is the Hawthorne Army Depot in Hawthorne, Nevada.

Public. These proposed amendments will have no economic effect on the public.

6. The estimated cost to the agency for enforcement of the adopted regulation.

Additional costs to the agency will be minimal. There will be some costs associated with enforcement, including a nominal increase in inspection time and possibly some extra in-state travel.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulations do not overlap or duplicate any regulations of other state or government agencies.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

There are no federal programs that regulate the handling and storage of mercury.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed amendments do address fees; see number 5 above. Any fees collected will be used to support the CAPP program.