



State of Nevada
 Dept. of Conservation & Natural Resources - DCNR
State Environmental Commission
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The State Environmental Commission (SEC) will hold a regulatory hearing on Wednesday, June 17, 2009 at 9:30 am. The hearing location is the Nevada Department of Wildlife's Conference Room A, [1100 Valley Road, Reno, Nevada](#). The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions and related SEC business. The following information is being made available in support of the hearing.

▶ [Public Notice](#)

▶ [Meeting Agenda](#)

1) Written Draft Summary Meeting Minutes 02/11/09 * ACTION

[Verbatim Draft Meeting Minutes 02/11/09 — Audio File](#)

2) Settlement Agreements, Air Quality Violations *ACTION By Consent Calendar

The Division of Environmental Protection has negotiated **3** Settlement Agreements for Air Pollution Control violations. The SEC is being asked to approve, deny, or modify each agreement for the companies listed on down-loadable file below.

[Read/Download — List of Companies](#)

Corrective Action Regulation * ACTION ITEM

3) Regulation R189-08: Leaking Underground Storage Tank and Corrective

Action Regulations: This regulatory petition revises the Underground Storage Tank regulations and the Corrective Action regulations that address environmental site cleanups. These regulations are contained in the Nevada Administrative Code at NAC 459.9921 to 459.999 and NAC 445A.226 to 445A.22755 respectively.

The proposed regulations consolidates cleanup requirements for hazardous substance, hazardous waste, or regulated substance released from underground storage tanks and all other release sources. The regulations also make revisions to site assessment procedures to accommodate all types of releases from minor incidents to large sites with long operational histories of potential releases. The regulations better define abatement actions and they refine soil action levels to include consideration of all potential exposure pathways. Detail has been added in the regulations to address requests for exemptions from groundwater corrective actions. The regulations also seek to clarify the transition from Underground Storage Tank compliance requirements, to the initiation of a Leaking Underground Storage Tank cleanup case.

The regulations will not have an immediate or long-term adverse economic impact on the public or the business community. There is no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap, duplicate or conflict with any regulations of other government agencies. The regulation does not address fees. ([SEC Reference P2008-19](#))

[Documents in Adobe PDF File Format](#)

- **October 02, 2008** — LCB Transmittal Letter
- **October 23, 2008** — LCB Proposed Draft Regulation
- **April 01, 2009** — SEC Form 1
- **April 01, 2009** — SEC Form 4
- **April 14, 2009** — Workshop Notice

- [May 15, 2009 — Workshop Presentation \[Slides\]](#)
- [May 29, 2009 — SEC Presentation \[Slides\]](#)
- [May 29, 2009 — Changes to R189-08 \[Errata\]](#)
- [June 08, 2009 — Summary of Public Comments \[PDF, 14 Pages\]](#)

Air Pollution Control / Air Quality Planning Regulation * ACTION ITEM

4) Temporary Regulation T036-09: The Nevada Division of Environmental Protection (NDEP) is proposing to update NAC 445B.221, "Adoption by reference and applicability of certain provisions of federal law and regulations." NDEP is proposing to adopt into state regulation sections of the federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules that have been adopted by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register since the NAC was last updated, as well as certain test methods.

These proposed amendments are necessary so that Nevada can request delegation for the implementation of new and revised federal NSPS and NESHAP rules that became effective after March 2008. This update will allow the regulated industry to continue to work with the state as opposed to the EPA. Additionally, adopting the test methods will allow the NDEP to use methods approved by EPA and recognized by the scientific community to measure emissions from sources.

The regulations will not have an immediate or long-term adverse economic impact on the public or the business community. There is no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap, duplicate or conflict with any regulations of other government agencies. The regulation does not address fees. ([SEC Reference P2009-01](#))

Documents in Adobe PDF File Format 

- [May 08, 2009 — LCB Transmittal Letter](#)
- [May 08, 2009 — NDEP Proposed Draft Regulation](#)
- [May 08, 2009 — SEC Form 1](#)
- [May 08, 2009 — SEC Form 4](#)
- [May 08, 2009 — Workshop Notice](#)
- [May 28, 2009 — Common Language Explanation of T036-09](#)

5) Update by the Division of Environmental Protection on Nevada Wood Preserving Plant concerning odors * Non Action Item

6) Mining Industry Mercury Petition: * ACTION ITEM

The Nevada Mining Association (NvMA) has submitted a petition under NAC 445B.886 requesting the State Environmental Commission (SEC) to direct the Nevada Division of Environmental Protection (NDEP) to initiate rulemaking to evaluate the Nevada Mercury Air Emissions Control Program codified under [NAC 445B.3611 to NAC 445B.3689](#).

Specifically, NvMA requests that NDEP be directed to (1) evaluate the implications of EPA's decision to promulgate a federal MACT (Maximum Achievable Control Technology) for the gold mining industry on the Nevada Mercury Control Program (NMCP), including evaluation of the need for a stay of Nevada Maximum Achievable Control Technology (NvMACT) determinations; and (2) report back to the SEC at its next regularly scheduled meeting in October 2009 with recommendations on a path forward.

The basis for the request stems from recent actions taken by the U.S. Environmental Protection Agency (EPA) to promulgate separate federal mercury emissions control standards that may conflict with NDEP's mercury emissions control program. The EPA's intent is to publish its final rule in September 2010.

- [June 08, 2009 — Nevada Mining Association Petition](#) 
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7) Petition: Declaratory Order regarding definition of sewage in NAC 445A.107 * ACTION ITEM

On January 08, 2009 a non-profit organization named Amargosa Citizens for the Environment's (ACE) petitioned the State Environmental Commission (SEC) for a declaratory order and advisory opinion on four issues as allowed under NAC 445B.888. This regulation allows any member of the public to petition the SEC for a declaratory order or an advisory opinion as to "the applicability of any statutory provision, Commission regulation or decision."

The SEC considered [ACE's petition](#) on February 11, 2009 and issued a "partial decision" on three of the four issues on March 9, 2009. Petition Issue 3(c), which was deferred at the February 09, 2009 SEC hearing, is now being considered. Petition Issue 3(c) pertains to the definition of sewage as contained in [NAC 445A.107](#). ACE's petition requests the Commission to issue a declaratory order that sewage as defined in NAC 445A.107 includes dairy feedlots.

8) Proposed Policy to improve Adjudication of Appeals Filed with the State Environmental Commission (SEC): * ACTION ITEM

To advance disposition of appeals of final decisions, such as enforcement actions and permits issued by the Nevada Division of Environmental Protection (NDEP), SEC counsel and staff are recommending that a Position Statement be required. The Position Statement is proposed in part to augment information now provided on [SEC form 3](#), which is currently used to request an appeal hearing before the SEC by parties initiating appeals (appellants).

The SEC currently has the option pursuant to [NAC 445B.8925](#) to order that briefs be filed before or after an appeal hearing. Formal briefs, however, can be viewed as onerous for individuals who elect not to be represented by counsel during the appeal hearing process. A Position Statement should be not as onerous. A Position Statement would assist all parties prepare their cases for the hearing. Requiring Position Statements under the authority of NAC 445B.8925 is proposed as a policy option to be exercised by the chairman of an appeals panel.

In addition to Form 3 noted above, a Position Statement would at a minimum include (1) a statement of issues to be raised, (2) a list of witnesses and a brief summary of their proposed testimony, (3) the specific legal authority involved in the appeal, and (4) all documents to be introduced as evidence at the appeal hearing. A Position Statement would be filed by the appellants at least 14 days before the scheduled hearing and by the intervening parties and NDEP at least 7 days before the scheduled hearing. The chairman of an appeals panel could modify this schedule. It is further proposed that the concept of the "Position Statement" be incorporated in the next revision to SEC's Rules of Practice ([NAC 445B.875](#)).

9) Administrator's Briefing to the Commission: NDEP's Administrator will provide the Commission with an informational update about recent legislation of interest to NDEP enacted by the Nevada Legislature. [Non Action Item](#)

10) Public Comment: [Non Action Item](#) (Public comment may be limited to ten minutes per person at the discretion of the chairperson; [See AG Reference @ Pages 58 & 81](#))

Additional Information about the meeting process

Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to: State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. The SEC must receive written submissions at least five days before the scheduled public

hearing.

If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

Members of the public can inspect copies of the regulations to be adopted at the State Library and Archives in Carson City (100 Stewart Street), and at the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Carson City office is located at 901 South Stewart Street, Suite 4001 and the Las Vegas office is located at 2030 E. Flamingo Rd. Suite 230.

As required by the provisions of chapters [233B](#) and [241](#) of Nevada Revised Statutes, the public notice for this hearing was posted at the following locations: the Bryan Building (901 South Stewart Street, Carson City, Nevada); the offices of the Division of Environmental Protection in Las Vegas (2030 E. Flamingo Rd. Suite 230) and at the Nevada Department of Wildlife (1100 Valley Road, Reno, Nevada).

In addition, copies of this notice have been deposited electronically at major library branches in each county in Nevada. This notice and the text of the proposed regulations are also available on the State Environmental Commission's website at: SEC.NV.GOV. All of the proposed regulations denoted in this notice, including previous drafts, are also posted on the [Legislative Counsel Bureau's website](#)

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on June 09, 2009.

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