

# **Nevada State Environmental Commission Notice of Public Hearing & Notice of Intent To Act Upon Regulations**

The Nevada State Environmental Commission (SEC) will conduct a **public hearing commencing at 9:30 a.m. on Thursday, February 26, 2004, at 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 regulations. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Environmental Commission may proceed immediately to act upon any written submission.

**1) Petition 2003-06 LCB File No. R-126-03:** The proposed amendment is to the Nevada Hazardous Waste Regulations. The State of Nevada is authorized by the United States Environmental Protection Agency (US EPA) to enforce federal hazardous waste regulations. Between July 1, 2002, and July 1, 2003, the EPA approved revisions to existing federal hazardous waste regulations and published them in the Federal Register. The State of Nevada is required to modify its state regulations accordingly. The Nevada Division of Environmental Protection (NDEP) is proposing to incorporate these federal revisions into state regulations by adopting the applicable sections of the Federal Register as it existed on July 1, 2003. This regulatory petition affects NAC 444 and 445. Updating these regulations will allow NDEP to continue to implement the RCRA program in lieu of the federal government.

The proposed regulations are not anticipated to have any significant economic impact on Nevada businesses, but conversely should make it easier for affected business to comply by simplifying the requirements. The regulations are not expected to have any economic effect on the public; they will not duplicate or overlap existing federal regulations; and they do not include any new provisions which are more stringent than federal regulations. The regulations will not provide for a new fee nor increase an existing fee.

**2) Petition 2003-07 LCB File No. R-198-03:** The proposed amendments will change several sections in the permitting provisions of NAC 445B – Air Pollution Control. The amendments will remove the ambiguity concerning implementation of regulations covering incinerator burning and schedules for compliance as well as add an opacity limit and reduce the time allowed for exceptions to visible emissions from steam generating units. The amendments will also remove the state visibility standard; make violations of the fugitive dust regulations a major violation; and revise the procedures for determining when an application for a Class I/PSD operating permit are considered complete. These amendments are necessary for the following reasons: Alignment of the NAC with the Applicable State Implementation Plan will allow USEPA to approve the updated Plan. Reassigning fugitive dust into the major violations category will allow NDEP to assess fines that are at least equal to the cost of controlling dust. This will trigger an incentive for industry to control dust. Revising the process for determining the completeness of a permit application for a source subject to PSD requirements will prevent an automatic triggering of the PSD increment. And removal of the state visibility standard is now appropriate given recent adoption of the national regional haze rule.

The proposed regulations will not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

**3) Petition 2003-08 LCB File No. R-208-03:** The proposed amendment is to the hazardous waste regulations, NAC Chapter 444. The Division is seeking specific limited changes to the state's definition of hazardous waste as defined at NAC 444.843. These changes establish and define two (2) subcategories of waste that are generated outside the state and will provide for more uniform regulatory treatment and equitable assignment of fees when such wastes are managed in Nevada. The two subcategories identified are remediation wastes and federally delisted wastes. The proposed amendments pertain to NAC 444.842

to 444.960, inclusive. The proposed amendments are needed to mitigate the effects of unequal regulatory treatment of some types of "hazardous waste" as currently defined and regulated by other states (namely, California) when compared to Nevada. The proposed regulatory action will allow Nevada to adjust (i.e., reduce) or amend the current fee structure, as it applies to wastes that are no longer hazardous wastes, such that hazardous waste disposal facilities in Nevada can more evenly compete for wastes in these categories.

The proposed regulations will not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. These regulations are more stringent than the federal regulation in that the federal regulations do not provide for, or establish, fees for the disposal of waste. The proposed regulations are less stringent than current state regulations defining a hazardous waste, but are at least as stringent as the federal definition of hazardous waste.

All fees collected pursuant to NAC 444.8452 regardless of the impact of the proposed change to the state's definition of hazardous waste, will continue to be deposited in the hazardous waste management fund and used for the purposes established by NRS 459.535. Although the Public Service Commission and Division of Emergency Management will not receive funds from fees paid on the new proposed waste subcategories, these changes should prolong the expected life and productive capacity of hazardous waste disposal facilities in Nevada. Additionally, continued operation of these facilities is a benefit to businesses that are located in Nevada and generate hazardous waste requiring disposal.

**4) Petition 2003-09 LCB File No. R- 226-03:** This petition addresses proposed changes to the water quality standards for the Class Waters contained in the Nevada Administrative Code (NAC) 445A.124 through 445A.127. Under section 303 of the Clean Water Act and 40 CFR 131, States have responsibility for setting, reviewing and revising water quality standards. Proposed revisions include changes to existing formats for listing water quality standards in the NAC's. Proposed changes will make the tables contained in the NAC's easier to read and understand. NDEP is also proposing a revision of the existing pH criteria, and total phosphorus criteria for various Class Waters throughout the state. Other revisions include corrections for names and locations of certain water bodies including clarification of the extent of the "reaches" as well as revisions based on the need to clarify the appropriate trout or nontrout standards for various water bodies.

**5) Petition 2003-10 LCB File No. R- 227-03:** This Petition is an amendment to the State Environmental Commission's (SEC's) Rules of Practice; NAC 445B.875 to 445B.899. The new amendments allow the following provisions. The SEC can order briefs to be filed before or after a hearing; it can allow a party to intervene in a proceeding by filing a written petition, along with specifying time periods and minimum content of such petitions. The SEC can further allow interveners to appear in proceedings and/or be dismissed from proceedings, where no substantial direct interest or public interest is apparent. The amendments also allow the SEC to consolidate a proceeding, where issues are substantially the same and rights of parties are not prejudice; in such proceeding, moreover, the SEC may determine the order in which the parties introduce evidence and present testimony as well as limit redundant testimony. The amendments further allow the SEC to take any action to maintain order during a hearing, require hearings to be recorded electronically, and where a court reporter is requested by a party, the cost for such services are paid for by the requesting party.

The proposed regulations (Petition 2003-09 & -10) will not have an economic impacts, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

**6) Petition 2003-11 LCB File No. R-232-03:** This Petition proposes changes to NAC 486A: Fleets Use of Alternative Fuels. The amendment reflects changes made to NRS 486A made during the 2003 legislative session (AB 237). The changes include removal of low-sulfur diesel fuel from the list of designated alternative fuels and replacement with three diesel fuel variants; at the end of 2006 ultra low-sulfur diesel and California diesel sunset. Also, the petition removes the definition of "certified vehicle" and all

references to certified vehicles in NAC 486A. The definition of “dedicated alternative fuel motor vehicle” was amended in statute to include vehicles certified by the EPA as being in compliance with ultra low-emission vehicle standards regardless of the type of fuel they use. By reference to the amended NRS (486A.060), a “certified vehicle” is now included in the NAC definition of “alternative fuel vehicle,” making a separate definition of “certified vehicle” in the NAC unnecessary.

While regulated business and industry are unaffected by these changes, the proposed amendments will have a small economic effect (related to fuel costs) on State and local government fleets that acquire diesel fueled vehicles to comply with this regulation beginning with State Fiscal Year 2004. The regulations will otherwise not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

**7) Petition 2003-12 LCB File No. R-233-03:** This Petition proposes changes to the permitting provisions of NAC 445B – Air Pollution Control. The amendments will require public notification of certain minor revisions to Class I operating permits as well as certain Class II operating permit applications and revisions to allow public comment pursuant to Clean Air Act Title I. The amendment will increase fees for processing Class I and II operating permits revisions and renewals; fees will cover the costs of implementing the public notification requirements. The amendment will also increase timelines for issuance of such permits and revisions. Federal regulation requires public notice of permitting actions for minor sources of air pollutants and minor revisions to Class I operating permits. The amendments will better align the NAC with the Applicable State Implementation Plan (ASIP) and thus allow EPA to approve an updated ASIP.

While the proposed amendments will have no measurable economic effects on the public, the proposed changes will affect both major and minor stationary sources of air pollution. Since there will be additional costs to the agency for implementing these public notification requirements, fees will increase by \$500 if the public notice includes publication in statewide newspapers and mailing to interested parties and \$350 if the public notice can be sent electronically. The amendments being proposed will not restrict the formation, operation, or expansion of the regulated industry, nor does it overlap or duplicate any regulations of other state or government agencies; the amendment is also no more stringent than what is established by federal law.

**8) Petition 2003-13 LCB File No. R- 237-03:** This Petition proposes changes to NAC 445B.22067, Open Burning. The amendments would prohibit the burning of household trash at single-family residences within 10 miles of trash disposal, collection or transfer sites, or in areas with trash collection services. Open burning of yard waste and untreated wood waste would continue to be allowed in these areas. The amendments would also prohibit the burning of rubbish by agricultural operations within 10 miles of trash disposal, collection or transfer sites, or in areas with trash collection services. The amendments would further prohibit residents of certain towns and cities from obtaining a variance from the NDEP to burn waste, if local authorities do not authorize it. Burning of yard waste and untreated wood waste is allowed in these areas if authorized by an officer of the state or its political subdivisions and concurred with by the director. The amendments are necessary to protect human health from the harmful effects of toxic pollutants such as dioxin that are produced when household waste or rubbish is burned. Removing NDEP’s authority to issue open burning variances is necessary to ensure consistency with open burning decisions made by local authorities.

These amendments will have an economic impact on agricultural operations that use open burning to dispose of waste. Costs will vary depending on the volume of trash created by individual operations and the rates charged by the local collection and disposal service. Cost impacts will be similar for single-family residences. There will be no additional costs to the agency for enforcement of these amendments, the regulations do not overlap or duplicate other state requirements, and the amendments do not address fees.

**9) Petition 2003-14 LCB File No. R- 238-03:** This Petition proposes changes to permitting provisions of NAC 445B dealing with Class II and Class III operating permit renewal timelines. The amendments will require Class II sources to submit an application for renewal of an operating permit at least 70 to 140

days before the permit expires, depending on the public notification timeline. It will also require Class III sources to submit an application for renewal of an operating permit at least 40 days before the permit expires. These amendments are necessary to make the renewal timeline for Class II operating permits consistent with revisions to NAC 445B.3457. The proposed changes will also ensure that Class III renewals are submitted with sufficient time for processing before they expire.

These proposed regulations will have no economic effects on the regulated industry or the public; there will be no additional costs to the agency for implementation, and the amended regulations do not overlap or duplicate any regulations of other state or government agencies. The regulations are no more stringent than what is established by federal law and they do not address fees.

#### **Public Hearing Process & Information:**

"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption."

Persons wishing to comment on the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least five days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library and Archives, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 1771 E. Flamingo, Suite 121-A, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notices have been deposited electronically at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>. In addition, the State Environmental Commission maintains an Internet site at <http://www.sec.nv.gov/index.htm>. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

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, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on February 19, 2004.

This public notice has been posted at the following locations: the Department of Wildlife and the Washoe County Library in Reno, the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, and the Division of Environmental Protection and Department of Museums, Library and Arts in Carson City. (These notice requirements comply with NRS 233B.0603 and NRS 233B.064.)

January, 23, 2004

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