



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission

901 South Stewart Street, Suite 4001 -- Carson City, Nevada 89701-5249



Notice of Regulatory Hearing Adoption of Regulations and Other Matters Before the State Environmental Commission

The State Environmental Commission (SEC) has scheduled a regulatory hearing for Tuesday, March 18, 2008 beginning at 9:00 am. The hearing will be held 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 the following regulatory petitions and related SEC business. If a person that may be directly affected by a proposed action does not appear and request time to make an oral presentation at the above referenced hearing, the SEC may proceed immediately to act upon any of the following regulatory petitions or other written submissions described in this notice.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

- 1) Approval of minutes 12/04/07 SEC hearing * **Action Item**
http://www.sec.nv.gov/main/hearing_031808.htm

Regulatory Petitions -- *Action Items

Air Pollution Control / Air Quality Planning

- 2) Regulation R142-07: Minor Violation Fine Increase; Revising the Definition of a Class III Source; and Permitting Corrections/Clarifications: This regulation will amend NAC 445B.001 to 445B.3497 of the State "Air Pollution" regulations, by adding the following requirements: The regulation will revise fines for minor violations. Of note, Assembly Bill 67 was passed by the 2007 Legislature, increasing the maximum allowable fine for a minor violation to \$2000. The last increase in the maximum allowable fine was 20 years ago. With this new authority, the Nevada Division of Environmental Protection (NDEP) proposes to change the fine structure for minor violations to

make the amounts more commensurate with today's economy. The higher fine amounts will provide a greater deterrent to violating state regulations.

The regulation will also revise the operating permits regulations in response to the U.S. Environmental Protection Agency's review of NDEP's proposed update to the Nevada State Implementation Plan. The revisions are minor, including clarifications; aligning the state definition of "federally enforceable" with the federal definition, and adding public participation requirements for Class II general permits.

The regulation will revise the definition of a "Class III source" to allow a stationary compression ignition internal combustion engine (CI-ICE) that is subject to 40 CFR 60 Subpart IIII and does not exceed 750 horsepower to qualify as a Class III source. If the regulation is not adopted, businesses with stand-alone emergency or backup generators must now obtain a Class II permit.

The time and cost required in obtaining a Class II permit for stationary CI-ICEs that do not exceed 750 horsepower would impose undue hardship on business/industry. Hence, the proposed regulation alleviates this hardship.

The regulatory changes will have a beneficial economic effect on businesses or industries that would otherwise have been required to obtain a Class II operating permit for operations of stationary compression ignition internal combustion engine.

The regulatory changes will impose no additional costs to the agency. The proposed regulations do not overlap or duplicate any regulations of other state or government agencies and they are no more stringent than what is established by federal law. The proposed amendments do not address fees. (See SEC reference # P2007-06)

Air Pollution Control / Air Quality Planning (continued)

3) Regulation R171-07: Waivers from Emissions Standards for certain Motor Vehicles: The Nevada Division of Environmental Protection is proposing to amend NAC 445B to make it consistent with NRS 445B.825. The proposed amendment will grant an application for a waiver from emissions standards for all light-duty gasoline powered motor vehicles with a model year 1996 or newer after a sufficient attempt has been made to correct deficiencies that have caused a failure of an emissions inspection.

This regulation will not have an immediate or long-term adverse effect on business or the public, there is no additional cost to the agency for enforcement of the proposed regulation, and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies and it does not alter fees. (SEC Reference P2008-05)

Safe Drinking Water

4) Regulation R014-08: Adoption of federal regulations by reference - US Safe Drinking Water Act: This proposed regulation governs public water systems found in Chapter 445A of the Nevada Administrative Code (NAC). Statutory authority to adopt these amendments is contained in NRS 445A.855 and 445A.860.

Nevada's Safe Drinking Water Program regulates public drinking water systems using a combination of State regulations and Federal regulations adopted by reference. In order to obtain primary enforcement responsibility for desired federal drinking water programs, NDEP submits "primacy package" applications for EPA approval.

On September 6, 2007, NDEP submitted primacy packages for "Arsenic" and "Variances and Exemptions". During USEPA review of these packages, they identified several items in Nevada's regulations that needed amendment prior to primacy approval. The NDEP views these amendments as (1) efforts to remove problems in several regulations with prospective adoption by reference; (2) a necessary update to the adopted version of the Code of Federal Regulations (CFR); and (3) "cleanup" of certain language in existing provisions. These amendments are necessary to achieve primacy.

This regulation will not have an immediate or long-term adverse effect on business or the public, there is no additional cost to the agency for enforcement of the proposed regulation, and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies and it does not alter fees (SEC Reference P2008-06).

Corrective Actions

5) Regulation R004-08: Delivery Prohibition - Underground Storage Tanks: This proposed regulation amends the existing underground storage tank regulations contained in Nevada Administrative Code 459.9921 to 459.999 by instituting a delivery prohibition component of underground storage tank regulation. The proposed regulation implements the delivery prohibition provisions from Section 9012 of the federal Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005 enacted on August 8, 2005. In order to continue to receive federal funds under Subtitle I of the SWDA, an implementing agency (in this case the Nevada Division of Environmental Protection) is required to enact program changes to institute a delivery prohibition element as part of its program.

Delivery prohibition is a mechanism of identifying underground storage tanks that are not operating in accordance with program requirements and marking them as ineligible for the acceptance or delivery of a regulated substance.

Delivery prohibition consists of the following elements:

- Criteria for determining ineligible underground storage tanks;
- Mechanisms for identifying ineligible underground storage tanks;
- Processes for reclassifying ineligible underground storage tanks as eligible;
- Processes for providing adequate notice to underground storage tank owners/operator and product deliverers; and,
- Processes for determining the specified geographic areas subject to the rural and remote areas consideration

The State of Nevada has chosen to employ a “red-tag” method for identifying underground storage tanks that are ineligible for delivery. The regulations make it unlawful to either accept or deliver a regulated substance to a tank that has been properly and physically marked with a visible “red-tag”. The Division will have control over the placement and removal of the red-tag, though mechanisms are provided for the Division to authorize a facility owner or operator to place and remove a red-tag.

This regulation will not have an immediate or long-term adverse effect on business or the public, there is no additional cost to the agency for enforcement of the proposed regulation, and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies and it does not alter fees. (SEC Reference P2008-03)

Corrective Actions (continued)

6) Regulation R005-08: Secondary Containment for Underground Storage Tanks: The proposed regulation amends existing provisions governing storage tanks in Nevada Administrative Code 459.9921 to 459.999. The regulation requires the use of secondary containment with leak detection on all new or replaced underground storage tanks and piping regulated under Subtitle I of the Resource Conservation and Recovery Act and Nevada Revised Statutes 459.800 to 459.856. The regulations are based on requirements developed by the US Congress in the Energy Policy Act of 2005.

Secondary containment means a release prevention and detection system that consists of an inner (primary) and outer (secondary) barrier with a method for monitoring the space in between that meets the release detection requirements in 40 CFR 280.43(g). Secondary containment is required on all newly installed regulated underground storage tanks and any installed piping. Additionally, secondary containment is required on all replaced tanks and piping, though in the case of replacement, the requirement only applies to the specific underground tank or piping that is replaced and not to other underground tanks and connected pipes comprising the system that remain in place.

The proposed regulation also creates a requirement for under-dispenser containment at motor vehicle fuel dispensers connected to a regulated underground storage tank. This requirement applies only to dispensers of motor vehicle fuel. Under-dispenser containment must be liquid-tight, be compatible with the substance conveyed by the piping, and allow for visual inspection or monitoring. The requirement for under-dispenser containment applies to newly installed and replaced dispensers.

The new requirements for containment do not apply to repairs that are meant to restore an underground tank, pipe, or dispenser to operating condition. The regulation also contains an exemption from secondary containment for systems that are not within 1,000 feet of any existing community water system or any existing potable drinking water well.

This regulation will not have an immediate or long-term adverse effect on business or the public, there is no additional cost to the agency for enforcement of the proposed regulation, and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies and it does not alter fees. (SEC Reference P2008-04)

Waste Management

7) Regulation R015-08: Adopt by Reference, Hazardous Waste Regulation: This regulation would amend chapter 444 of the Nevada Administrative Code. The proposed amendment is necessary to incorporate changes to the federal hazardous waste regulations that are currently in conflict with existing state regulations.

Federal regulatory changes adopted by US EPA between July 1, 2006 and July 1, 2007, include a rule with corrections of errors in the hazardous waste and used oil regulations as a result of printing omissions, typographical errors, obsolete citations etc. The state's proposed regulation also adopts by reference the federal Cathode Ray Tubes (CRT) Rule which streamlines management requirements for recycling of used CRTs (e.g. televisions and computers) and glass removed from CRTs. The rule excludes these materials from the federal definition of solid waste (and thus from regulation as hazardous waste) if certain conditions are met. The federal rule (and now the proposed state regulation) is intended to encourage recycling and reuse of used CRTs and CRT glass. This rule does not change the requirements for CRTs sent for disposal.

This regulation will not have an immediate or long-term adverse effect on business or the public, there is no additional cost to the agency for enforcement of the proposed regulation, and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies and it does not alter fees (SEC Reference P2008-07).

Other SEC Business

8) Briefing to the Commission: Updates from the Bureau of Waste Management: ***Non Action Items**

- Us Ecology Hazardous Waste Disposal Site
 - Western Elite disposal services
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9) Administrator's Briefing to the Commission

- Resolution regarding unfunded federal mandates & state program priorities -- ***Action Item**
 - Program Updates, Air permitting activities, other -- ***Non Action Items**
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10) Public Comment -- ***Non Action Items**

(Public comment may be limited to ten minutes per person at the discretion of the chairperson; See AG Reference @ Pages 58 & 81) at <http://ag.state.nv.us/publications/manuals/omlmanual.pdf>

Additional Information:

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. In addition, copies of this public notice and the accompanying regulations have been deposited electronically at major library branches in each county in Nevada.

This notice and the text of the proposed regulations are available on the State Environmental Commission's website at <http://www.sec.nv.gov/index.htm>

All of the proposed regulations denoted in this notice, including past drafts, are posted on the Legislative Counsel Bureau's website at <http://www.leg.state.nv.us/Register/>

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 March 11, 2008.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: The Nevada Department of Wildlife in Reno and the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary. Upon adoption of any regulation, the SEC, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.