



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission

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



Public Notice of Hearing for the Adoption of Regulations

The State Environmental Commission (SEC) has scheduled a regulatory hearing for Wednesday September 06, 2006. The hearing will be held at 9:30 a.m. 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.

Water Quality Planning

(1) Regulation R158-06: Standards for toxic materials applicable to designated waters: This regulation proposes certain revisions to the water quality standards related to the aquatic life beneficial use for the inorganic chemicals contained in NAC 445A.144, "Standards for Toxic Materials Applicable to Designated Waters". Water quality standards contained in NAC 445A.144, which are referred to as the Toxics Standards, were last amended in 1995. This regulation presents the proposed revisions to update only the aquatic life water quality standards for just the inorganic chemicals prescribed in NAC 445A.144. These proposed revisions are based on new or revised water quality criteria that have been recommended by the U.S. Environmental Protection Agency (EPA) for protection of aquatic life. No changes to the other water quality standards contained in NAC 445A.144 are proposed at this time. The Division of Environmental Protection will update the inorganic chemicals standards for municipal and domestic supply, irrigation, and watering of livestock beneficial uses, and the organic chemicals standards at a later date.

During the public review process of proposed regulation changes, stakeholders and entities who may be affected by the proposed changes are afforded the opportunity to address their individual concerns and participate in the regulatory adoption process. Proposed changes to the aquatic life water quality standards would not be effective until acted upon by the State Environmental Commission (SEC) and EPA approval. Any changes are then added to the Nevada Administrative Code (NAC). Any new or revised standards for the toxic chemicals would not be incorporated as permit effluent limits until the proposed standards are incorporated into the NAC regulations. The NDEP Director can require existing effluent permit limits to be updated when the standards limits

become effective; however, past practice has been to adjust the effluent limits at the time of permit renewal.

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. The regulation is also no more stringent than what is established by federal law and it does not address fees. (SEC reference # P2006-14)

(2) Regulation R159-06: Colorado River Salinity Standards: Under section 303 of the Clean Water Act and 40 CFR 131, States have responsibility for setting, reviewing and revising water quality standards. This regulation proposes changes to the Nevada Administrative Code (NAC) referencing the Colorado Salinity Standards, contained in the NAC 445A.143, and changes to the footnotes for Lake Mead, NAC 445A.195 and Inner Las Vegas Bay NAC 445A.197. No changes to the salinity criteria are proposed; only administrative changes would be made to NAC 445A.143, 195, and 197.

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. The regulation is also no more stringent than what is established by federal law and it does not address fees. (SEC reference # P2006-13)

Mining Regulation & Reclamation

(3) Regulation R138-06: Clarification of Certain Fee Categories for Mining Facility Permits: This regulation amends NAC 445A.232. The regulation provides clarification in the description for several fee categories of mining facility permits. As way of background, Nevada Revised Statutes (NRS) 445A.425 establishes authority to adopt regulations to maintain the quality of the waters of the State pursuant to the State Water Pollution Control Law and NRS 445A.430 establishes specific authority regarding fees for water pollution control permits. Water Pollution Control Permits for mining operations are categorized by the specific type of operation and the capacity of the submitted facility designs. The current fee categories describe dewatering of a mine by the gallons of process water discharged or by the tonnage the mine facilities chemically process.

This proposed regulation changes the language from discharge of process water to discharge of dewatering water; it also clarifies the tonnage categories by the tonnage the facility is designed to process.

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 material alter fees. (SEC reference # P2006-15)

Bureau of Waste Management

(4) Regulation R179-05: Waste Landfill Cover Requirements: This regulation addresses “cover requirements” of compacted solid waste at certain landfills in Nevada. The regulation would amend section 444.688 of the Nevada Administrative Code (NAC). The requested change will reverse an existing requirement that allows certain landfills in Nevada to operate for up to six days without applying cover soil to exposed waste.

As way of background, Nevada has received approval from the Environmental Protection Agency (US EPA) to administer federal municipal solid waste landfill (MSWLF) regulations contained in 40 CFR Part 258. Under the approved program, the Clark and Washoe County Health Districts administer the landfill regulation within their areas of jurisdiction, while the Nevada Division of Environmental Protection does so in all other areas of the State.

The federal MSWLF regulations require municipal landfills to cover disposed solid waste at the end of each operating day ([40 CFR § 258.21](#)). Certain MSWLFs in Nevada have claimed to operate “around the clock”, suggesting that for them there is no “end of each operating day” that would trigger the daily cover requirement.

In recognition of the potential need to receive waste around the clock at landfills that serve the “24-hour” urban areas of Las Vegas and Reno, in 1998 the State Environmental Commission adopted revisions to NAC 444.688 that allowed such landfills to operate for up to 6 days prior to applying cover material. To make this allowance, the term “operating day” at such landfills was defined to include a period of time up to six days long. The US EPA has since notified the Division that this language is not consistent with the federal criteria.

This regulation would therefore restore conformance with the federal landfill criteria while retaining flexibility for landfills to operate continuously. This regulation would allow landfills to avoid the requirement of a daily cover if they have equipment “working the face” 24 hours a day.

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 the regulations does not address fees (SEC reference # P2005-10).

Bureaus of Air Quality Planning & Air Pollution Control

(5) Regulation R139-06: Air Quality Reforms - New Source Review: This regulation would amend NAC 445B.001-.3497 to comply with decisions by the U.S. Court of Appeals for the District of Columbia Circuit (the Court) to vacate certain revisions made to the federal New Source Review and Prevention of Significant Deterioration rule in 2002 (NSR Reforms).

NDEP integrated those federal revisions into State regulation in 2004. In 2005, the Court ruled that EPA had misinterpreted the Clean Air Act in promulgating the “Clean Unit” (CU) and “Pollution Control Project” (PCP) provisions of the 2002 NSR Reforms. Accordingly, this proposed regulation would remove:

- 1) Application requirements for CUs and PCPs;
- 2) Application processing timelines for CUs and PCPs;
- 3) Permit content requirements for CUs and PCPs; and
- 4) The fee structure that covered the administrative costs for CUs and PCPs.

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. The regulation is also no more stringent than what is established by federal law and it does not address fees. (SEC reference # P2006-09)

(5) Regulation R151-06: Air Pollution Control Permitting Provisions:

The NDEP is proposing to amend several sections in the permitting provisions of NAC 445B. Most of the amendments are in response to U.S. EPA comments on the approvability of the agency’s air pollution control permitting provisions into the applicable State Implementation Plan (ASIP). The amendments clarify and streamline the permitting regulations; add expiration dates for Class II and Class III construction permits; and make several technical corrections. They also update NAC 445B.221, which adopts federal rules by reference.

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. The regulation is also no more stringent than what is established by federal law and it will not increase fees. (SEC reference # P2006-16)

(7) Regulation R154-06: Air Pollution Control Permitting Fees: This regulation proposes to amend the fee structure in NAC 445B.327 to make the revenue generated more commensurate with the expense of administering the Division of Environmental Protection’s air quality control program.

As way of background, the air pollution control program is predominantly a fee based program, receiving no general fund support. The operating permits program fees have not been significantly increased in ten years, whereas the size and scope of program responsibilities have markedly expanded. Furthermore, the Southern California Edison’s Mohave Generating Station (Mohave), which was a significant source of revenue in the past, has shut down, and this has been compounded by a steady decline in federal grant funding from US. EPA. Accordingly, it is necessary to increase operating permit fees to pay the expenses of implementing the Division’s air quality control program. The specific fee increases proposed in this regulation include the following elements.

The regulation would increase the application fee for a Class II general permit and a surface area disturbance from \$400 to \$500; and clarify that the first year's annual maintenance fee for a "new source" is included in the application fee.

For annual fees based on emissions, the regulation would increase the fee for Class I sources to \$16 per ton for each regulated pollutant; repeal the fee for Class II sources, and add an inflationary adjustment factor of 2 percent compounded annually.

For annual fees based on maintenance, the regulation would increase the fee for all Class I sources, adding a tiered structure; adding a 4th tier to the Class II fee structure; increasing the fee from \$250 to \$500 for Class II sources with a potential to emit less than 25 tons per year; increasing the fee for surface area disturbances, (adding a tiered structure based on acreage permitted); and adding an inflationary adjustment factor of 2 percent compounded annually. In addition to these changes the regulation would provide "sources" with an opportunity to request a pre-application review by the agency for a fee.

This regulation will have an economic effect on the regulated industry; however it will not have an immediate or long-term adverse effect on 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. The regulation is also no more stringent than what is established by federal law.

As noted above, the regulation would increase fees. The air permitting program's existing fee structure has been generating approximately \$1,350,000 to 1,400,000, annually. The closure of the Mohave station (as notice above) will create an annual loss to the agency of approximately \$366,000, and the anticipated cutback in federal funding will further reduce annual income by approximately \$120,000. The proposed fee structure in the regulation is projected to generate approximately \$1,927,000. Together with application fees, which are basically being left unchanged, total revenue from fees under the new structure will be approximately \$2,377,000 annually. The revenue collected will be used to administer the growing air pollution permit program and to help fund an Emissions Review and Auditing Branch in the Division's Bureau of Air Pollution Control. (SEC reference # P2006-10)

(8) Regulation R162-06: Clean Air Mercury Rule (CAMR): This regulation would amend NAC 445B.001 to 445B.3497 by adding a new program to control air emissions of mercury from coal-fired electric utility steam generating units (EGUs). This action is in response to a federal requirement for states to control annual mercury emissions from coal-fired power plants.

In May 2005, the U.S. Environmental Protection Agency (EPA) issued the Clean Air Mercury Rule (CAMR). Under CAMR each state received an annual "mercury emissions" budget from coal-fired EGUs; a nationwide cap was set as well. Nevada was allocated a budget of 570 pounds of mercury per year from 2010 to 2017. From 2018 on, Nevada's budget is 224 pounds per year.

The program developed by the Nevada Division of Environmental Protection (NDEP) that is embodied in this regulation proposes to modify the EPA "Cap and Trade"

program from CAMR and tailor it to the unique needs of the state. The Nevada CAMR Program will require power plants with coal-fired EGUs to obtain a mercury operating permit to construct. Through the permitting process and beginning in 2010, NDEP will allocate annual mercury emission allowances to existing power plants based on projected actual emissions. Remaining annual allowances from the state budget will be maintained in a pool to be administered by NDEP. The pool will be used for new power plants, for incentive programs and by NDEP to support program needs or allowances that may be retired.

The major objective of Nevada's CAMR Program is to encourage mercury reductions at existing facilities and encourage new facilities to install "Low Emitting Units" or "Integrated Gasification Combined Cycle" units. This is accomplished by offering bonus emission allowances to facilities that install equipment or systems that reduce emissions below their allowance.

This new regulation will have an economic impact on industry. The regulation will affect new and existing coal-fired electric utility steam generating units (EGUs) at power plants in Nevada. Power plants with coal-fired EGUs will be required to install and operate continuous emissions monitoring systems, and if their EGUs do not meet their mercury emission allowance, they may be required to put on additional controls. These companies will also be subject to the Nevada CAMR permitting program and applicable fees. The proposed regulation may also have an economic effect on electricity customers (i.e. the public) if the affected industry elects to pass on the costs of monitoring and installing additional emissions control systems.

The proposed regulation does not overlap or duplicate any regulations of other state or government agencies and it is no more stringent than what is established by federal law. The regulation does address fees for a new or revised CAMR operating permit to construct in the amount of \$2000; an annual maintenance fee is also proposed for each coal-fired EGU; all fees collected will be used to support the program. (SEC reference # P2006-18)

(9) Regulation P2006-19: Mercury Storage: This temporary regulatory petition would amend the Chemical Accident Prevention Program (CAPP) regulations NAC 459.9533. The proposed amendment would establish measures for the prevention of an accidental release to the environment from the storage and handling of mercury at storage facilities in Nevada. Mercury would be added to the list of highly hazardous substances in NAC 459.9533 at a threshold quantity of 200,000 pounds or 100 tons.

While this regulation would not have an immediate or long-term adverse effect on business or the public, there would be a minimal additional cost to the agency for enforcement of the regulation. The regulation would not overlap or duplicate any regulations of other state, federal, or local agencies. The regulation is more stringent than federal law, however, and it would result in nominal new fees for facilities storing "large quantities" of mercury (SEC reference # P2006-19).

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 1771 E. Flamingo, Suite 121-A.

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/> . All of the proposed regulations denoted in this notice, including previous drafts are posted on 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 August 28, 2006.

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 building in Reno, the Grant Sawyer Office Building in Las Vegas, 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.