



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission

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



## Public Notice

### Hearing for the Adoption of Regulations and Other Matters Before the State Environmental Commission

The State Environmental Commission (SEC) has scheduled a regulatory hearing for Friday, September 7<sup>th</sup>, 2007 beginning at 9:00 am. The hearing will be held in Carson City and Las Vegas through a videoconference at the Legislative Counsel Bureau Chambers in the State Legislative Building (Room 2135), 401 South Carson Street, Carson City, Nevada and the Legislative Counsel Bureau in the Grant Sawyer Building (Room 4412), 555 E. Washington St., Las Vegas, 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 05/24/07 SEC hearing \* Action Item
- 2) Settlement Agreements, Air Quality Violations \*ACTION by Consent Calendar
- 3) Arsenic Rule Exemptions \* ACTION by Consent Calendar

---

## Regulatory Petitions

### Mining Regulation & Reclamation

4) Regulation R141-06: Revises Provision Governing the Stabilization of Spent Ore: This regulation would amend NAC 445A.430 by focusing stabilization of spent ore on effluent chemistry levels rather than dictating a particular stabilization action or method (e.g., rinsing). The existing language in the regulation does not reflect the changes and advancements in spent ore stabilization methods and technologies that have occurred since the regulation was first promulgated. The proposed changes are designed to broaden spent ore stabilization options for spent ore that has been left on pads, or which will be removed from pads. The amended regulation will continue to require that spent ore effluent demonstrate Cyanide and pH stability levels in accordance with existing regulatory limits.

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 materially alter fees. (SEC reference # P2006-12)

## **Bureau of Waste Management**

**5) 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 NAC 444.688. 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.

By 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 (Division) 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 continuously “working the face” of the landfill.

An immediate and long-term adverse financial effect would impact certain operators. Such costs could also increase disposal fees for the public. There would, however, be no additional cost to the Division 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 would also not increase fees levied by the Division (SEC reference # P2005-10).

## Bureau of Air Pollution Control

**6) Regulation R019-07: Mercury Storage:** This regulation was originally adopted by the State Environmental Commission (SEC) as a temporary regulation in September 2006. Following this action, the 2007 session of the Nevada Legislature enacted Senate Bill 118; this legislation directs the SEC to permanently adopt a regulation for the handling and storage of mercury, when present in a quantity of 200,000 pounds (100 tons) or more. This is the identical threshold quantity defined in the temporary regulation.

Accordingly, this permanent regulation will amend the Chemical Accident Prevention Program (CAPP) regulations NAC 459.9533. The regulation will permanently establish measures for the prevention of an accidental release to the environment from the storage and handling of mercury at storage facilities in Nevada, i.e., the Hawthorne Army Depot. The purpose of the regulation is to protect the health, safety and welfare of the residents of the State. Mercury will be added to the list of highly hazardous substances in NAC 459.9533 at the threshold level noted above.

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 and it would result in nominal new fees for facilities storing "large quantities" of mercury (SEC reference # P2006-19).

**7) Regulation R057-07: Adopt by Reference:** This regulation updates NAC 445B.221, "Adoption by reference and applicability of certain provisions of federal law and regulations." The regulation would 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 July 6, 2006.

The Nevada Division of Environmental Protection is delegated the implementation of the federal NSPS and NESHAP rules that apply in Nevada. Because of this delegation, it is necessary to keep the State's "adoption by reference" regulation up to date so that EPA can continue to delegate the implementation of new rules and revisions to existing rules to the State. NAC 445B.221 currently adopts the applicable NSPS and NESHAP rules, as they existed on July 6, 2006. These proposed amendments are necessary so that Nevada can request delegation for the implementation of new and revised federal NSPS and NESHAP rules promulgated after July 6, 2006. This will allow the regulated industry to continue to work with the State as opposed to the EPA.

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 # P2007-02)

**8) Regulation R056-07: Nevada Mercury Air Emissions Control Program Fees:** This regulation amends the Nevada Mercury Air Emissions Control Program (NMCP) NAC 445B.3611 to 445B.3689. This program governs the precious metal mining industry in Nevada. For state fiscal year 2008, the regulation will increase annual maintenance fees for all thermal units that emit mercury by an amount sufficient to support two full-time state employees for 6 months (i.e., \$125,000) and fund start-up equipment costs of \$32,500. For fiscal year 2009, and each year thereafter, the collective annual maintenance fee will be increased by \$250,000 to cover the continuing cost of the two employees. These employees will be responsible for ensuring compliance with the NMCP. An inflationary adjustment factor of 2 percent, compounded annually, is also added. All fee increases will be divided among the number of thermal units that emit mercury from precious metal mining operations in Nevada.

This proposed regulation implements Assembly Bill 115 which was passed by the 2007 Nevada Legislature. The legislation requires the State Environmental Commission to “adopt regulations prescribing the appropriate fee to be imposed on the operator of a mine with the potential to emit mercury . . .” in order to hire staff to ensure compliance with the NMCP. The inflation factor was added to make the mercury maintenance fee procedures consistent with fee procedures for other stationary sources permitted by the Division of Environmental Protection.

This regulation will have both an immediate and a long-term adverse effect on businesses [stationary sources] that conduct precious metal mining in Nevada and operate one or more thermal units that emit mercury. The public will not be affected by this regulation; however, there will be additional cost to the agency [as noted above] for compliance and enforcement activities. The regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. (SEC reference # P2007-01)

## **Public Petitions**

**9) Petition P2007-03: Western Resource Advocates:** This petition requests that the State Environmental Commission (SEC) suspend Nevada’s air pollution control permitting process for proposed new coal-fired electric generating plants. The suspension would remain until such time as the Nevada Division of Environmental Protection (NDEP) promulgates regulations enacting a Green House Gas (GHG) emission standard. The petition was submitted to the SEC pursuant to NRS 233B.100 and/or NAC 445B.886.

The petition further requests that before a utility constructs, operates, acquires, or makes a long-term purchase from a new electricity generating facility, it must first obtain a certification from NDEP that such facilities are designed and will be operated to emit into the atmosphere “no more than 1,100 pounds of carbon dioxide pollution per megawatt-hour.” This is the proposed GHG emission standard contained in the petition.

According to the petition, an electricity generating facility using traditional pulverized coal as a fuel source would be unable to meet this emission standard. Hence, the petition would have an adverse effect on any new coal fired power plants proposed in Nevada. The petition notes this would not be the case for power plants using natural gas [combined cycle] and/or other renewable energy sources to produce electricity [e.g. wind and solar]. The petition further notes that rate payers would experience a slight increase in their bills in the short term, as the utilities invest in new, cleaner technologies; however long term costs for power would decrease through avoidance of possible future carbon regulation and/or the rising, and often unstable, prices of fuels.

There would be additional costs to NDEP for incorporating a GHG emission standard into the agency's regulatory framework; according to the petition the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies and it does not materially alter fees. (SEC reference # P2007-03)

10) Administrator's Briefing to the Commission \*Non Action Item

11) Public Comments \*Non Action Item

**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 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 30, 2007. As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: State Legislative Building, 401 South Carson Street in Carson City, 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.

---