



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 Tuesday, December 4th, 2007 beginning at 9:30 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 09/07/07 SEC hearing * Action Item
http://www.sec.nv.gov/main/hearing_120407.htm
- 2) Settlement Agreements, Air Quality Violations *Action, Consent Calendar
http://www.sec.nv.gov/main/hearing_120407.htm
- 3) Arsenic Rule Exemptions * ACTION by Consent Calendar
http://www.sec.nv.gov/main/hearing_120407.htm
- 4) Nevada State Solid Waste Management Plan *Action
<http://ndep.nv.gov/bwm/swmp/index.htm>

Regulatory Petitions -- *Action Items

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 (Las Vegas & Reno) administer the landfill regulations 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).

Waste Management (continued)

6) **Regulation R137-07: Adoption by Reference, Hazardous Waste:** This petition will amend regulations governing hazardous waste management found in Chapter 444 of the Nevada Administrative Code (NAC). The proposed amendments will update Nevada’s adoption of federal regulations by reference. This will include federal regulatory changes adopted by US EPA between July 1, 2005 and July 1, 2006. The proposed amendments will allow the State to implement the “RCRA” Hazardous Waste program in lieu of the federal government.

The regulatory changes comprise the addition of mercury containing equipment to the list of universal wastes, revisions to the hazardous waste program to allow for a standardized permit, revisions of wastewater treatment exemptions for hazardous waste mixtures, the RCRA portions of national emissions standards for hazardous air pollutants from hazardous waste combustors, and changes to hazardous waste regulatory requirements to reduce the paperwork burden.

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 # P2007-04).

Corrective Actions

7) Regulation R125-07: Release Reporting Regulations of Hazardous Substances or Petroleum Products in Excess of Reportable Quantities: The proposed regulation would amend the Nevada Division of Environmental Protection's (NDEP) existing release reporting regulations that are contained in Nevada Administrative Code 445A.345 to 445A.348. Release reporting regulations require facilities to notify NDEP after the release of hazardous substances or petroleum products in excess of reportable quantities. The proposed regulation makes the following changes and clarifications to the existing regulations:

- The proposed regulation creates a category of releases that will be subject to more immediate notification requirements than what the existing regulations mandate. The existing regulations allow for notification of any incident, regardless of severity or impact, within one working day, which is not supportive of agency functions during significant events.
- Reportable triggers based on environmental media have been added for "listed" hazardous substances taken from federal regulations. This brings hazardous substances in line with the handling of petroleum products and "unlisted" pollutants and contaminants, which all have media-specific reporting requirements.
- A "discovery event" trigger has been added for the reporting of hazardous substance contamination discovered in soil or groundwater as a result of historic or prior releases. The "discovery event" trigger will be based on the existing framework for petroleum product releases.
- A clarifying definition has been added for "other surfaces of land," which was previously undefined.

- A minimum reportable quantity for “listed” hazardous substances has been adopted to be consistent with existing reportable quantities for petroleum products.
- A specific reportable trigger for releases from underground storage tanks has been added in coordination with the State’s UST program.

The changes and clarifications in the proposed regulation are intended to support the Division’s function as the State agency responsible for the implementation of the Nevada Water Pollution Control Law and those statutes and regulations adopted for the management of hazardous wastes, hazardous substances, and underground storage tanks. The changes and clarifications eliminate inconsistencies in the existing regulations and rely on standards of practice that already exist within most sections of the regulated community.

This regulation will not have an immediate or long-term adverse effect on business or the public, and there is no additional cost to the agency for enforcement of the proposed regulation. There are two other State agencies that have reporting provisions that may capture the same incidents as NDEP reporting requirements; they are the Nevada Department of Transportation, which is involved with hazardous material releases on the roadways, and the Nevada Department of Emergency Management, which is responsible for coordinating the State’s response to any significant incident. These different release reporting requirements do not necessarily overlap each other because the State agencies may have different authorities and jurisdictions and the notification requirements may be built on entirely different reporting triggers.

The Federal government is also required to be notified after a release of a reportable quantity of hazardous substances. These reporting functions have been consolidated in the National Response Center operated by the US Coast Guard. The release of a reportable quantity of hazardous substances is felt to be a significant event that may require response under the National Contingency Plan, (SEC reference # P2007-05).

Air Pollution Control / Air Quality Planning

8) Regulation R142-07: Greenhouse Gas Reporting, Minor Violation Fine Increase 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 mandate the reporting of greenhouse gases (GHG) emitted by certain generators of electricity for inclusion in a registry of GHG emissions, and require the Nevada Division of Environmental Protection (NDEP) to issue, at least every 4 years, a statewide inventory of GHGs released in the State. The data collection and reporting of GHG emissions is a requirement of Senate Bill 422 enacted by the 2007 Nevada Legislature (see: http://www.leg.state.nv.us/74th/Bills/SB/SB422_EN.pdf)

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 (http://www.leg.state.nv.us/74th/Bills/AB/AB67_EN.pdf). The last increase in the maximum allowable fine was 20 years ago. With this new authority, 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.

Finally 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.

Regulatory Effects: There will be added costs to electric power generating companies that operate electric generating units with a maximum design output capacity of 5 megawatts or more and emit GHGs. In carrying out the intent of new legislation, the regulation requires these companies to participate in a registry of GHGs and begin reporting emissions of six GHGs in 2009.

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.

There will be additional costs to the agency for administering the new GHG program, which will require one full-time employee. These additional costs will be covered by a settlement agreement; no new fees are required. 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, (SEC reference # P2007-06).

Air Pollution Control / Air Quality Planning (continued)

9) **Regulation R143-07: Nevada Clean Air Mercury Rule Program:** This petition will amend NAC 445B.3711 to 445B.3791 of the State "Air Pollution" regulations. The amendment is needed to address certain technical changes to the regulations governing Nevada's Clean Air Mercury Rule Program (CAMR) including public participation requirements defined in Assembly Bill 67; AB 67 was recently enacted by the 2007 session of the Nevada Legislature (See, http://www.leg.state.nv.us/74th/Bills/AB/AB67_EN.pdf). Among other requirements, AB 67 calls for the adoption of regulations to address public participation in the determination of the amount of mercury allowances [air emissions] available for sale or auction by the Department, i.e., the Nevada Division of Environmental Protection. The amendment complies with this requirement.

Other changes to the regulation respond to US EPA's review of Nevada's CAMR State Plan, which was submitted to EPA November 15, 2006 in compliance with the Federal Clean Air Mercury Rule. The amendments are necessary to clarify Nevada's Plan, align it more closely with the Federal CAMR and, thereby, make Nevada's Plan more approvable by EPA.

This regulation will not have an immediate or long-term adverse economic 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 # P2007-07).

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

11) **Public Comment** *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 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 November 27, 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: The Nevada Department of Wildlife in Reno, Nevada, 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.