

Notice Of Intent To Act Upon Regulations

Notice of Hearing for the Adoption of Regulations of the State Environmental Commission

The State Environmental Commission (SEC) will hold a public hearing at 9:30 am. on Tuesday, November 30, 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 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.

Air Pollution Control & Air Quality Planning

(1) Petition 2004-27 - Vehicle Emission Testing - Inspection & Maintenance Program: The proposed regulation will clarify and update the Inspection & Maintenance (I/M) provisions of NAC 445B and bring them into alignment with the NRS. The amendments will bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000 pounds into the I/M program as per AB 36. It will also align the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan as well as clarify which areas are included in the Washoe County I/M program and which are exempt.

This regulation will have an economic effect on selected diesel vehicle owners and fleets. In the emissions testing areas of Washoe and Clark Counties, diesel-powered vehicles with a GVWR noted above will require an annual test before registering. Each year, Nevada Department of Motor Vehicles (DMV) sets a maximum fee for emissions tests; in 2004, it was \$39.00 in Clark and \$36.00 in Washoe Counties respectively.

There will be no additional costs to the agency (DMV) for enforcement of the proposed regulation, the regulation does not overlap or duplicate any regulations of other state, federal or local agencies, and the regulation is no more stringent than what is established by federal law. Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830.

(2) Petition 2004-29 - Adoption By Reference of Federal Regulations: The Nevada Division of Environmental Protection (NDEP) is proposing to update Nevada Administrative Code (NAC) 445B.221, "Adoption by reference of provisions of federal law and regulations." NDEP is proposing to adopt into State regulation sections of Title 40 of the Code of Federal Regulations (CFR) Part 60, New Source Performance Standards (NSPS), and Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPs), that have been adopted by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register since July 1, 2003.

The NDEP is delegated the implementation of the federal NSPS and NESHAPs programs relevant in Nevada, however, 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 to the State. NAC 445B.221 currently adopts the appropriate sections of 40 CFR Parts 60 and 63, as they existed on July 1, 2003. These proposed amendments are necessary so that Nevada can request delegation for the implementation of federal NSPS and NESHAPs rules promulgated after July 1, 2003.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be 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 or local agencies, however it does adopt federal regulations from Title 40 of the Code of Federal Regulations, Parts 60 and 63 by reference. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

(3) Petition 2004-28 - Visible Emissions - Technical Correction: This regulation proposes certain technical corrections to eliminate cross-references in the Air Pollution Control regulations, i.e., NAC 445B.22017 and 445B.2202 to NAC 445B.22023. These technical corrections will have no substantive effect on the regulated community. The technical changes are needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and maintained. This amended regulation is necessary as part of the preparation for submitting an updated ASIP to the U.S. EPA by December 31, 2004.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be 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 amended regulation is no more stringent than what is established by federal law and it will not increase fees.

(4) Information Item -- State Implementation Plan (ASIP): Under the federal Clean Air Act of 1970, each state was required to develop an Applicable State Implementation Plan (ASIP) which contained the state regulations necessary to ensure that the National Ambient Air Quality Standards are attained and maintained. The Nevada ASIP was last updated in 1984. The NDEP is proposing to update the existing Nevada ASIP by replacing the outdated state regulations in that ASIP with current state regulations, bringing the ASIP into alignment with Nevada's current air pollution control program. The update will be submitted to the U.S. Environmental Protection Agency for approval and adoption into Nevada's ASIP. Although no formal action is needed by the SEC, we will take public comment during this meeting.

Water Quality Planning

(5) Petition 2004-24 – LCB File No. R136-04: Water Quality Standards, Change in Sampling Locations – Lake Mead & Las Vegas Bay: This proposed regulation will revise NAC445A.195 through NAC445A.197 by redefining the sample station locations and adjusting the reach description for the inner Las Vegas Bay. The proposed regulation would also update the ammonia standards for Lake Mead and the inner Las Vegas Bay.

The current water quality sampling locations for Las Vegas Bay and Lake Mead put station 2 and 3 at a specified depth. Hence, the station moves out when the lake level falls and in when the lake level rises. However, stations LM4 and LM5 are at fixed locations. Because the lake level has dropped substantially, station 3 has moved out past station LM4 and is approaching LM5. As a result, stations

LM4 and LM5 are no longer representative of the part of the lake they were intended to characterize. The relative positions of the stations are best defined by locating them a fixed distance from the confluence between Las Vegas Wash and Lake Mead. The proposed regulation will allow for this adjustment.

In addition, this regulatory revision addresses ammonia criteria. In 1999, USEPA updated the ammonia freshwater aquatic life criteria. The new criteria reflect new research and changes the criteria from unionized ammonia to total ammonia. This regulation will update the ammonia standard to conform with the recommended EPA criteria.

This regulatory amendment will not have a negative economic impact, either immediate or long term, on the regulated industry or the public. There will not be any additional costs to the agency for enforcement of the proposed regulation and the amendments will not overlap or duplicate any regulations of other state federal or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Water Pollution Control

(6) Petition 2004-17 – LCB File No. R103-04: Underground Injection Control (UIC): This regulation proposes changes to the permitting provisions of NAC 445A.825 through 445A.910 – Underground Injection Control (UIC). The Underground Injection Control Program is designed to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The proposed amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition, the regulations are needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

Specifically, the revised regulations will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual permits. The regulations will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

While the proposed regulation generates new fees and increases existing fees, these fee increases will have little significant economic impact, either immediate or long term, on the regulated industry and/or the small businesses sector. There will be no additional costs to the agency for enforcement of these regulations, they are not more stringent than federal regulations, nor do they overlap or duplicate any regulations of other state or government agencies.

(7) Petition 2004-23 – LCB File No. R128-04: Drinking Water State Revolving Fund (DWSRF) - Transfer of Authority. The 2003 Nevada State Legislature transferred the Drinking Water State Revolving Fund from the Health Division to the Division of Environmental Protection (NDEP). This proposed regulation addresses regulatory changes needed to reflect administration of the program by the NDEP. The proposed regulation also includes minor changes that streamline administration of the program.

This regulation will not have an immediate or long-term adverse effect on business or the public. The proposed changes may well result in some minor cost savings to business and the public through streamlining the loan application process. There will be no additional cost to the agency for enforcement of the proposed regulation and it does not overlap or duplicate any regulations of other

state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

(8) Petition 2004-26 – LCB File No. R092-04: Wastewater Pretreatment Program - Publicly Owned Treatment Works: This regulation amends NAC 445A.257. The regulation address's the control of water pollution by making it optional, rather than mandatory, for the Division of Environmental Protection (Division) to administer a pretreatment program for a publicly owned treatment works that does not have a pretreatment program in place. Specifically, the regulation would strike the requirement for the Division to administer a pretreatment program for municipalities and industrial users that do not have an approved pretreatment program, and the revision would allow NDEP the option to administer a pretreatment program in cases where a municipality does not have an approved pretreatment program. At this time, the Division does not have a delegated program to operate the pretreatment program from the U.S. EPA. Therefore, the necessary resource funding from the U.S. EPA has not been awarded to the Division in order to effectively staff a pretreatment oversight program. This revision will provide the Division the flexibility to administer a pretreatment program in the future on a case-by-case basis.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be 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 amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Waste Management

(9) Petition 3004-25 – LCB File No. R137-04: Chemical Action Prevention (CAPP): This regulation proposes amendments to the section of Chapter 459 of the Nevada Administrative Code related to the Regulation of Highly Hazardous Substances and Explosives. These regulatory amendments are being proposed primarily to enact amendments made to the program's enabling statute by the 2003 Legislature (i.e., NRS 459.380 to 459.3874, as amended by Senate Bill 127). Substantive changes include identifying in the regulation, as opposed to in the statute, the list of highly hazardous substances; this will allow flexibility for adopting newly recognized hazards and developing specific lists of regulated explosives. The proposed regulation will specify the procedure for issuing cease and desist orders in cases where danger to employees or the public is imminent. The proposed regulation will also allow NDEP to conduct investigations of accidents. Additionally, program structure will be significantly revised to enable more thorough and efficient implementation of accident prevention program requirements.

The proposed CAPP regulation will have an overall positive economic effect on regulated businesses. There is no anticipated economic impact on the public. Businesses will see an increase in program fees, however, this increase will enable continued oversight by NDEP thereby providing continued incentive for program compliance. Having compliant accident prevention programs will reduce risks of catastrophic accidents, and help better structure business operation. In essence, the immediate effect of increased fees will increase operating cost, however, the long-term effects will manifest in improved employee and public safety by way of lower accident rates. Better safety performance will lower overall operating costs to the regulated community.

The CAPP regulation is somewhat similar to the federal OSHA regulations administered by the State Division of Industrial Relations and federal EPA. However, the CAPP regulations and permitting

requirements are unique to the State and are the only regulations that mandate in-plant inspections and provide a funding mechanism for such inspections.

As noted, the regulation will increase fees to support program oversight activities. Fee increases are necessary to offset salary adjustment to the engineering series as enacted by the Nevada legislature; fee increases will also cover some program supervisory oversight. Fees will be collected from 45 facilities annually, starting in July 2005. The estimated cost to the agency for enforcement of the proposed regulation will be covered by the revised fee structure.

Public Comment & 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 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851. Written submissions must be received by the SEC 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.

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 texts of the proposed regulations are 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](#). Also, the [State Environmental Commission](#) maintains a website ([SEC.nv.gov](#)) that contains this public notice, the meeting agenda and the proposed regulations pending before the SEC.

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 November 23, 2004.

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 Washoe County Library in Reno, the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, and the Division of Environmental Protection in Carson City. Copies of this notice and the proposed regulation 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.