

# 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 10:00 a.m. on Tuesday October 4<sup>th</sup> 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.

### Mining Reclamation

**(1) Regulation R097-05 – Mining Reclamation Permit Modification and Fee Adjustments.** (Note: the SEC approved this regulation as a temporary regulation on June 10, 2005. The regulation remains unchanged and is now proposed as a permanent regulation.) This regulation amends the Nevada Administrative Code (NAC) 519A mining reclamation. Changes include a revision to the current fee structure for a permit modification and the definition of minor permit modifications. The proposed revision also defines a major modification. The revision to the current fee structure will reduce the fees charged for simple changes to the permit that require minimal staff time to review and process. The other proposed revisions set clearer parameters to define minor and major modification.

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. As noted above, a revision to the current fee structure is proposed and would reduce fees charged for simple permit changes. (SEC Petition #2005-01)

### Air Quality Planning, Air Pollution Control

**(2) Regulation R035- 05: Vehicle Emission Testing - Inspection & Maintenance Program:** (Note: the SEC approved this regulation as a temporary regulation on November 30, 2004, The intent of the regulation remains unchanged and is now proposed as a permanent regulation.) The proposed regulation clarifies and updates the Inspection & Maintenance (I/M) provisions of NAC 445B and brings them into alignment with the NRS. The amendments 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 also aligns the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan and clarifies which areas are included in the Washoe County I/M program and which are exempt.

This regulation has 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

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 are 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. (SEC Petition #2004-27)

**(3) Regulation R037- 05: Adoption By Reference of Federal Regulations:** (Note: the SEC approved this regulation as a temporary regulation on November 30, 2004. Minor technical corrections were made to the temporary regulation and it is now proposed as a permanent regulation.) The Nevada Division of Environmental Protection (NDEP) is delegated implementation and enforcement of those federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules requested by Nevada. However, it is necessary to keep the State's "**adoption by reference of provisions of federal law and regulations**" regulation (NAC 445B.221) up to date so that EPA can continue to delegate new rules to the State.

The temporary amendments adopted last fall updated the State's adoption of federal regulations through November 2004. The technical corrections to the temporary regulation are necessary to avoid confusion regarding NDEP's delegation authority. The corrections remove two rules that are not delegated from the State list of adopted federal rules. The rules that are being removed are Title 40 C.F.R. Part 60 Subpart AAA, New Residential Wood Heaters, and Title 40 C.F.R. Part 61 Subpart M, Asbestos.

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 61 by reference. The amended regulation is no more stringent than what is established by federal law and it will not increase fees. (SEC Petition #2004-29)

**(4) Regulation R036-05: Visible Emissions:** (Note: the SEC approved this regulation as a temporary regulation on November 30, 2004. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation proposes to repeal NAC 445B.22023, "**Visible emissions: Coal-fired steam generating facilities,**" contingent upon the requirements of a federal consent decree. The amendment is 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 ASIP update that was submitted to U.S. EPA in February 2005 with a supplement in June 2005.

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. (SEC Petition #2004-28)

**(5) Regulation R096- 05: Revisions to Meet Federal Planning Requirements.** (Note: the SEC approved this regulation as a temporary regulation on June 10, 2005. The intent of the regulation remains unchanged and is now proposed as a permanent regulation.) The regulatory changes are

necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

The proposed regulation revises several sections in the permitting provisions of NAC 445B. It adds provisions to ensure good engineering practice regarding stack height and emission limitations, requires Prevention of Significant Deterioration review when relocating certain fossil-fueled power generating units, and updates and clarifies environmental evaluation information requirements. Additionally, the regulation removes Director's discretion for dealing with the handling of organic solvents and other volatile compounds, adds a timeframe for the State's response to requests for technical advice regarding plans for construction or modification of a facility, and increases the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation modifies the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

This regulation does 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 amended regulation is no more stringent than what is established by federal law. (SEC Petition #2005-02)

**(6) Regulation R106-05: Vehicle Emission Control Program - Servicing Fuel Injection Systems:**

This new proposed regulation will modify NAC 445B.460 by defining a method for servicing motor vehicle fuel injection systems by facilities licensed as authorized inspection stations or class 1 fleet stations. The regulatory change is being proposed in response to Assembly Bill 239, which was passed by the 2005 Nevada Legislative Session. The proposed amendment will update the Inspection and Maintenance provisions of the NAC and bring them into alignment with the Nevada Revised Statutes.

The proposed amendment will have no adverse economic effects on the regulated industry or on the public. There will be no additional costs to the agency (DMV) for implementing this amendment.

The amended 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 the proposed amendment does not address fees. (SEC Petition #2005-05)

**Corrective Actions**

**(7) Regulation R083-05: Regulation of Marina Storage Tanks, adoption of International Fire Code, revised procedures for petroleum contaminate soil, and monitoring of MTBE and other contaminants.** This regulation amends NAC 459.9921 to 459.999 by establishing certain requirements for leak detection, prevention, and operation of above ground marina storage tank systems. It adopts by reference the International Fire Code (IFC 2003) for the construction, design, and location of marina tanks, and it provides for an annual registration fee of \$50 for each above ground marina storage tank compartment. The regulation also modifies the handling of petroleum-contaminated soils and it requires monitoring for MTBE and any other contaminant in the groundwater as directed by the Nevada Division of Environmental Protection (NDEP).

The regulation will not have an immediate or long-term adverse effect on the public. The economic impact to a business could be substantial, however, if replacement of an existing tank system is required. Information received from attendees at the workshops held by NDEP indicates that the majority of existing facilities would not require tank replacement. There will be a marginal cost to the

agency for enforcement of the proposed regulation, which will be recovered by the annual tank registration fee mentioned above.

To a certain extent, the proposed regulation does overlap certain existing regulatory requirements. Specifically, the International Fire Code 2003 (IFC 2003), adopted by the State of Nevada, has requirements for the location and placing of above ground petroleum storage tanks but does not require advanced systems for leak detection and prevention. The proposed regulation expands on the requirements of IFC 2003 and adds certain other requirements similar to those already existing for aboveground storage tanks. Finally, the annual tank registration fee noted above is proposed to recover costs for implementing the regulations. (SEC Petition #2005-03)

### **Safe Drinking Water**

**(8) Regulation R126-05: Public Water System, Water Quality and Treatment of Water:** (Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation amends NAC 445A.450 through 445A.540. The amendment allows Nevada to adopt new federal primary drinking water regulations already in effect under the Safe Drinking Water Act (SDWA) in the following areas: arsenic rule; long term 1 surface water treatment rule; lead and copper rule revisions; radionuclides; filter backwash rule; public notification rule; and variances and exemptions.

The amended regulation also provides criteria for projects that propose treatment facilities for groundwater. Of note, USEPA requires states with regulatory jurisdiction to assure design and construction of new water treatment facilities are compliant with primary drinking water regulations. The remaining amendments add definitions, seek to provide clarity, change authority from the Division of Environmental Protection to the health authority, where health districts would have authority, and provide only enforceable (and delete more stringent) secondary standards for water quality.

The estimated beneficial economic effect of the proposed regulation on the business community and the public would decreased medical costs that otherwise might be incurred as a result of exposure to contaminants in drinking water.

There is likely a significant adverse economic effect on small business although such impacts would not be borne evenly among privately owned public water systems such as mobile home parks. The impact borne by any particular water system will be dependent on the source of water quality and the quality as well as the availability and cost of alternative water sources. The likely significant impact will be associated with costs to comply with the new arsenic concentration standard of 10 parts per billion (ppb), reduced from 50 ppb, which becomes effective in January 2006. This standard will apply to all public water systems except transient, non-community systems, which are defined as non-community water systems, which do not regularly serve at least 25 of the same persons over six months of the year. Costs impacts might include developing an arsenic compliance plan, finding and developing new water sources, purchasing water from another water system, blending water from two or more sources, or implementing treatment to reduce arsenic levels.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-06)

**(9) Regulation R129-05: Revises Certification of Operators of Public Water Systems:** (Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation amends NAC 445A.617 through 445A.652. The amendment proposes changes to Nevada's Operator Certification Program for small water systems. Increased skills and knowledge would be required to operate public water systems for individuals certified through the Operator Certification Program. The program is managed by the Division of Environmental Protection – Bureau of Safe Drinking Water. The amendment is needed in light of more stringent water quality requirements. Ultimately, the goal of the operator certification program is the protection of public health.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies.

This amended regulation would have a beneficial economic effect by increasing the knowledge base of operators of small water systems; such increased knowledge of water system operations will result in both immediate and long-term protection of public health.

The estimated indirect adverse economic effects of the proposed revisions on the small businesses would apply to public water systems that require a Grade III or Grade IV Certified Operator. This indirect economic effect would be from new, higher requirement for post-secondary education required to qualify for new Grade III and Grade IV certifications. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-07)

**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 notices 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](http://www.sec.nv.gov) website at ([SEC.nv.gov](http://www.sec.nv.gov)) as well as 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 September 27, 2005.

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 Offices of the Division of Environmental Protection in Carson City and Las Vegas. 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.