

Permanent Regulation - Filing Statement

A Regulation Relating to Air Pollution Control

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066 & 233B.0603.10(f)

State Environmental Commission (SEC) LCB File No: R042-13

Regulation R042-13: This regulation revises NAC 445B.22097, “Standards of quality for ambient air;” 445B.308, “Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan;” and 445B.311, “Environmental evaluation: Contents; consideration of good engineering practice stack height.” The regulation amends the ambient air quality standards table in NAC 445B.22097 to update the federal ozone standard and align the Nevada ozone and lead standards with the current federal standards.

The regulation removes an obsolete subsection from NAC 445B.308. Subsection 5 of NAC 445B.308 contained requirements for obtaining an operating permit in a basic ozone nonattainment area for the 1997 ozone national ambient air quality standards (NAAQS). The U.S. Environmental Protection Agency (USEPA) has withdrawn the “basic” category of ozone nonattainment area classifications; thus, subsection 5 of NAC 445B.308 is unnecessary. The revision to NAC 445B.311 reflects the renumbering caused by removing subsection 5 from NAC 445B.308.

1. Need for Regulation: The NDEP amended the ambient air quality standards table in response to a rulemaking by the USEPA. On September 27, 2012, USEPA identified deficiencies in Nevada’s state implementation plan with respect to Nevada’s minor sources permitting program. USEPA’s rulemaking triggered an obligation for it “to promulgate a Federal Implementation Plan unless the State of Nevada corrects the deficiencies, and EPA approves the related plan revisions within two years” of the rulemaking. 77 FR 59321. Thus, these amendments are necessary in order to avoid a federal plan being imposed upon the State.

The proposed deletion of outdated material from NAC 445B.308 lies in accordance with the President’s and Governor Sandoval’s directives to agencies to streamline regulations, use clear and concise language, and remove unnecessary requirements.

2. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

On July 25, 2013, staff from NDEP conducted a public workshop on LCB's Proposed Draft Regulation R042-13. The workshop was held in Carson City and video conferenced to Las Vegas. The meeting location in Carson City was the Public Employees' Benefits Program Boardroom, 901 S. Stewart Street (Room 1002). In Las Vegas the meeting location was the Nevada Division of Environmental Protection, 2030 E. Flamingo Rd. Suite 230.

Two (2) members of the public commented at the workshop. They were:

Mr. Jeanne Thames, representing the Paiute Tribe Environmental Office
Mr. John Allen, Enel Green Power

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at:

http://sec.nv.gov/docs/r041-13_workshop_minutes.pdf

Following the workshop, the SEC held a formal regulatory hearing on October 9, 2013 at the Nevada Department of Conservation and Natural Resources, 901 South Stewart Street, Carson City, Nevada. A public notice and agenda for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of the Division of Environmental Protection in Las Vegas, at the Division of Minerals in Carson City, and on the LCB website.

Copies of the agenda, the public notice, and the proposed permanent regulation R042-13 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_1013.htm

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended October 9, 2013 hearing: 20 (approx.)
- (b) Testified on this Petition at the hearing: 1
- (c) Submitted to the agency written comments: 0

4. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses through e-mail, the public workshop, and at the October 9th Commission hearing as noted in number 1 above.

5. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted with two technical amendments and one additional amendment, as approved by the State Environmental Commission. The technical amendments are reflected in the revised version of the LCB draft. The first change strikes the phrase “Nevada: Quarterly arithmetic mean” from the standards table found in section 445B.22097 in order to align it with the federal standard and address one of the deficiencies that USEPA had identified in Nevada’s minor source permitting program. The second technical change to Note D reflects that more than one reference method for the measurement of air quality may be available. The third amendment, made at the SEC hearing, is to strike the new language in Note I. Upon review of the NDEP’s proposed regulation, USEPA raised issues with the content of Note I that require further discussion with regulated industry, USEPA, and other stakeholders. Therefore, the NDEP requested that Note I be stricken in its entirety until consensus can be reached on a more appropriate solution. At that time, the NDEP will submit a revised proposal to the SEC. The removal of the proposed new language in Note I returns the regulation to its original un-amended form.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

There will be no economic effect on the regulated business/industry or the public as a result of this regulation amendment.

7. The estimated cost to the agency for enforcement of the adopted regulation.

There will be no additional costs to the agency for enforcement of the proposed regulation.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

This regulation does not duplicate any other federal, state or local regulation.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is not more stringent than any federal regulation or guidance.

10. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation does not address fees.