BRIAN SANDOVAL Governor



STATE OF NEVADA STATE ENVIRONMENTAL COMMISSION

Leo Drozdoff, P.E.

Director



901 South Stewart Street, Suite 4001 Carson City, Nevada 89701-5249 Telephone (775) 687-9308 Fax (775) 687-5856 www.sec.nv.gov

February 24, 2012

CHAIRMAN: Eugene Gans Las Vegas, NV

VICE CHAIRMAN: Alan Coyner Administrator Division of Minerals Commission on Mineral Resources

MEMBERS

Pete Anderson State Forester Division of Forestry

Frances Barron State Board of Health Las Vegas, NV

Jason King State Engineer Division of Water Resources

Kathryn Landreth Reno, NV

Jim Barbee Director, Department of Agriculture

Ken Mayer, Director Department of Wildlife

Tom Porta Reno, NV

Mark Turner Carson City, NV

Cary Richardson Carson City, NV

COUNSEL Rose Marie Reynolds

STAFF
John B. Walker
Executive Secretary

Ms. Brenda Erdoes, Legislative Counsel

c/o Debra. Corp Legislative Counsel Bureau (LCB), Legal Division 401 South Carson Street Carson City, Nevada 89701-4747

RE: Filing of Permanent Regulation R135-11: Rules of Practice, State Environmental Commission

Dear Ms. Corp:

Enclosed is a permanent regulation referenced above that was adopted by the State Environmental Commission (SEC) on February 15, 2012. Also enclosed is the filing statement required by NRS 233B.066 and the SEC form for filing administrative regulations with the Secretary of State.

On February 7, 2012 the Commission's staff conducted a public workshop on LCB's Proposed Draft Regulation R135-11 through a video-conferenced workshop conducted in Carson City and Las Vegas. As a result of the workshop, several non-substantive changes to LCB Draft R135-11 were made and adopted by the Commission. These changes are outlined below and are presented in the enclosed regulations in green text with select strikeouts in blue text.

Section by Section Analysis of Proposed Changes:

Sec. 2 -- The concept of discovery was included by LCB and was not proposed by the SEC in its draft regulations submitted on December 16, 2011. The SEC does not typically allow discovery, as that term is used in the Nevada Rules of Civil Procedure, in the appeal process. Other methods pursuant to NRS 445B.350 are used and so the phrase "or the completion of discovery" has been deleted from Section 2, subsection 1(f).

Sec.3 - In subsection 1, LCB changed the draft regulation to require the parties to file hearing exhibits and lists of witnesses with the Commission prior to the hearing. The requirement to file exhibits and lists of witnesses with the Commission has been deleted. This change reflects the practice preferred by the Commission, where parties exchange information with each other and the Commission does not receive exhibits until the appeal hearing. This information exchange process promotes efficiency for all parties involved in an appeal.

In subsection 5, two changes were made. First, the section applies only to appeal hearings of permit decisions, not to appeal hearings of enforcement actions. The Department makes a public comment period available prior to issuing a permit, which is not the case for enforcement actions. Second, an exception was added if reasonable cause for failure to submit the evidence.

In subsection 7, the language was changed from a double negative to a positive statement defining what is relevant.

Sec. 5 - In subsection 1, the proposed change clarifies that appeals address final decisions of the Department. In subsection 2, the proposed change spells out the standard of review rather than refer to NRS 233B.135. This necessitated a change to the reference to NRS 233B.135 in subsection 3(b). In addition, the requirement for a statement of factual matters was added in subsection 3(c) since that information is required for the notice of appeal in NAC 445B.891.

Sec. 6 - Because of the change in Section 5, subsection 2, changes were made to subsection 2(b).

Sec. 7. - The length of the reply brief in subsection 2(c) was changed from 5 to 10 pages and the method of service was clarified in subsections 5(f) and 6.

Sec. 8 - The Commission changed "will" dismiss an appeal to "may" in subsection 4.

Sec. 9 - The Commission inserted 445B in subsection 5.

The contact person for this regulation is Mr. John B. Walker (775) 687-9308. Additional support documentation for this regulations is posted on the SEC Website at: http://sec.nv.gov/main/hearing_0212.htm

Sincerely,

John B Walker Executive Secretary

JBW
Enclosure
ecc: Rose Marie Reynolds, SEC/DAG
SEC Commissioners
Colleen Cripps, Ph.D., NDEP Administrator
Mike Elges, NDEP/Deputy Administrator
Dave Emme, NDEP/Deputy Administrator
Lina Tanner, SDAG/NDEP
Jasmine Mehta, DAG/NDEP