Nevada State Environmental Commission Information Packet 2015

http://sec.nv.gov

State of Nevada
Department of Conservation and Natural Resources

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------A MESSAGE FROM THE STATE ENVIRONMENTAL COMMISSION CHAIRMAN-----

My appointment to the State Environmental Commission (SEC) brought excitement and honor. Having previously been a member on other boards and committees in Clark County, I believed I had a good idea of what this new membership was all about. What a naïve assumption. Wanting to do a good job, it became clear that there was a lot to learn before I could fully contribute. I asked other SEC commissioners to recommend written material which would provide background, perspective or any other information that could help answer the questions which were growing in my mind. While no one could give me specific reference material, each would encourage me by saying "don't worry, you will pick it up." So I proceeded by listening carefully and contributing only when I was on familiar ground. It was like the old adage, "it's better to be thought incompetent then to open one's mouth and remove all doubt."

What follows in this packet will hopefully address the above challenge and assist SEC commissioners, and anyone else interested in this State quasi-judicial organization, with a summary of the what, why and how it functions. The responsibilities and authorities of the SEC are defined by State law; however, like many governmental agencies, there is a myriad of details regarding how the SEC actually functions. Not only will this packet provide a good overview, but it will also serve as a reference to answer basic questions which often arise.

This document has been prepared through the efforts of the SEC's executive secretary with the help of the Nevada Division of Environmental Protection and the Attorney General's Office. Since this is the first edition of this packet, there may be areas that are not adequately addressed and still others that need to be addressed. Your patience is therefore requested and you are asked to bring comments or suggestions for future revisions to the attention of the SEC's executive secretary.

Jim Gans

PURPOSE

This information packet is intended to provide members of the State Environmental Commission (SEC) with information regarding their roles and responsibilities. This packet also includes the statutory and regulatory authorities to which the SEC is subject, as well as other helpful information that can be used for reference.

The SEC works independently, but in coordination with the Nevada Division of Environmental Protection (NDEP) to achieve the mission of preserving and enhancing Nevada's environment to protect public health, sustain healthy ecosystems and contribute to a vibrant economy.

NDEP is statutorily required to implement specific regulatory programs. The SEC is responsible for facilitating that effort by adopting regulations, conducting appeal hearings, establishing air penalties, approving variances and, on extremely rare occasions, establishing a declaratory order or an advisory opinion.

GENERAL OVERVIEW

Pursuant to the Nevada Attorney General's "Nevada Board and Commission Manual," pages 4 and 5 (please see Attachment 1), members of a board or commission are part of the executive branch of Nevada's state government. In general, the function of the executive branch of government is to carry out or enforce laws enacted by the state legislature that pertain to its particular jurisdiction. The SEC's jurisdiction is limited to that which is set forth in the statutes and regulations associated with the following NDEP programs: air, water, safe drinking water, mining, hazardous waste and solid waste. See Attachment 2 for the Legislative Declaration of public policy for each NDEP program. Although mining is a separate program from the water program, it shares the same public policy. A general overview of the NDEP programs is provided below; however, more detailed information may be found on the NDEP website located at http://ndep.nv.gov. Also, see Attachment 3 for a NDEP Organizational Chart.

Air Program

Air program functions are organized into two bureaus: a regulatory bureau and a planning bureau.

The Bureau of Air Pollution Control is the regulatory bureau that issues air pollution control permits, conducts inspections and, when necessary, pursues enforcement actions to compel compliance. The Bureau also implements the Chemical Accident Prevention program, which is a chemical process safety program.

The planning bureau, the Bureau of Air Quality Planning, develops regulations, standards and State Implementation Plans (SIPs) necessary to ensure that federal authorization is maintained at the State level for implementation of the Clean Air Act, as opposed to the United States Environmental Protection Agency (EPA) implementing the program in Nevada. The bureau also monitors ambient air quality in the State, conducts annual inventories of air emissions, conducts air modeling and increment tracking to support permit functions, implements a smoke

management program to minimize the impacts from controlled burns and implements alternative fuels and mobile sources programs in coordination with Motor Pool, DMV and other agencies.
Statutory Authority: NRS 445B.100 to 445B.845, NRS 486A.010 to 486A.250 and NRS 459.380 to 459.658.

Water Program

Water program functions are also organized into two bureaus: a regulatory bureau and a planning bureau.

The Bureau of Water Pollution Control is the regulatory bureau that issues permits for discharges to surface and/or ground water and ensures compliance with water pollution control laws. The bureau conducts inspections to ensure compliance and takes enforcement actions when necessary. This bureau reviews the design of wastewater treatment plants and infrastructure. The bureau also reviews subdivision plans to ensure that adequate systems and system capacities will be present to treat the anticipated wastewater flows. In addition, the bureau implements the Underground Injection Control program and the Source Water Protection program, both of which are groundwater protection programs. The bureau implements federal Clean Water Act provisions at the State level, as opposed to EPA implementing the Clean Water Act in Nevada.
Statutory authority: NRS 445A.300 to 445A.730.

The planning bureau, the Bureau of Water Quality Planning, protects Nevada's surface waters. This bureau establishes water quality standards, conducts monitoring, provides public education and provides funding of water quality improvement projects. The bureau develops local, regional and statewide plans to ensure that water quality standards are maintained and that impaired surface waters are restored where possible. This bureau is responsible for implementing various provisions of the federal Clean Water Act, which maintains implementation of this program at the State level.
Statutory authority: NRS 445A.420 to 445A.450.

Drinking Water Program
The Bureau of Safe Drinking Water implements the Public Water System Supervision Program (PWSSP) authorized under the federal Safe Drinking Water Act (SDWA) and maintains primacy for implementation of this program in Nevada. State implementation of the PWSSP ensures Nevada's public water systems comply with state and federal drinking water standards. The bureau enforces sampling and monitoring requirements for water quality, enforces surface water treatment requirements and enforces required corrosion control. The program assesses water sources, including identification of potential contaminant sources, conducts annual sanitary surveys, certifies the qualifications of public water system operators and requires public notification when systems are out of compliance. The bureau reviews engineering plans for public water systems and the subdivision of land. Additionally, the bureau administers a laboratory certification program to ensure laboratories performing water analysis are adhering to prescribed methods and procedures pursuant to Safe Drinking Water, RCRA and/or Clean Water Act.
Statutory authority: NRS 445A.800 to 445A.955.

Mining Program
The Bureau of Mining Regulation and Reclamation is responsible for regulating fluid management, mine closures and reclamation at mining operations. It is the mission of the bureau to ensure that Nevada's waters are not degraded by mining operations and that lands disturbed by mining operations are reclaimed to safe and stable conditions to ensure a productive post-mining land use.
Statutory authority: NRS 445A.300 to 445A.730 and NRS 519A.010 to 519A.280.

Waste Management Program
The Bureau of Waste Management is responsible for ensuring safe management of hazardous waste by regulating its handling, transportation, treatment, storage and disposal. The bureau also ensures safe collection and disposal of solid waste. The bureau encourages businesses, institutions and individuals to reduce the amount of waste generated and to also participate in recycling programs and conserve natural resources. The Bureau implements provisions of the federal RCRA law related to hazardous and solid waste management in lieu of EPA.
Statutory authority: NRS 444.440 to 444.645; NRS 444A.010 to 444A.110; and NRS 459.400 to 459.600.

SEC STRUCTURE
The SEC was originally created by the legislature in 1973 and consisted of nine commissioners; five were statutorily assigned and four were appointed by the Governor. In 1977 the SEC was increased by one commissioner, a licensed general contractor or builder. In 1983, the administrator of the Division of Minerals was added to the commission. Since that time, the structure has remained the same. Today, pursuant to NRS 445B.200, the SEC consists of the following members:

Six Statutory Members:
- Director of the Department of Wildlife
- State Forester Fire Warden
- State Engineer
- Director of the State Department of Agriculture
- Administrator of the Division of Minerals of the Commission on Mineral Resources
- Member of the State Board of Health to be designated by that Board.

Five Governor Appointed Members:
- Person who is either a licensed general engineering contractor or a licensed general building contractor
- Person with expertise in performing mining reclamation
- Person with experience and expertise in advocating issues relating to conservation
- Two members of the general public.

The Governor-appointed SEC members serve a term of three years and those members may be reappointed. The Governor appoints the Chairman (please See Attachment 1, pages 40 - 42,

duties of President or Chair) and the SEC members nominate and vote on the Vice-Chairman position.

Executive Secretary

Pursuant to NRS 445B.200 (7), NDEP provides technical advice, support and assistance to the SEC. An executive secretary is assigned by NDEP to coordinate meetings and appeal hearings, prepare regulatory petitions for SEC adoption, coordinate with the legislative Counsel Bureau (LCB), coordinate with NDEP and the public on SEC matters and manage the SEC website.

The executive secretary ensures all meetings and hearings conform to the Open Meeting Law (NRS 241) and that all regulatory petitions are adopted consistent with the Nevada Administrative Procedure Act (NRS 233B).

Recording Secretary

NDEP also assigns a recording secretary to the SEC. The recording secretary assists the executive secretary. Some of the duties are to prepare meeting minutes, manage travel, track the budget, prepare correspondence, prepare SEC meeting packets and manage meeting records and files.

SEC Deputy Attorney General

The Attorney General assigns a deputy attorney general (DAG) to represent and advise the SEC. The DAG attends all meetings and appeal hearings to ensure legal counsel is available to the SEC. In addition, the DAG provides legal counsel outside of meetings and appeal hearings as SEC issues arise.

SEC COMPENSATION AND REIMBURSEMENT

Each Governor-appointed SEC member is entitled to receive $80.00 for each day's attendance at a meeting or hearing. All SEC members are entitled to receive per diem and travel expenses for meetings or hearings. Per Diem is established at the current State rates, which are subject to change. Please visit the following website to find Nevada's current Per Diem rates: http://www.gsa.gov/portal/content/104877. Travel arrangements are made by SEC staff. This includes airplane reservations, vehicle transportation, hotel reservations and subsequent reimbursement paperwork. Each member must provide all parking and hotel receipts and sign the reimbursement paperwork.

Rates as of December 2014 are listed below:

Primary Destination		Max lodging (excluding taxes)	Meals & Inc. Exp.*
Standard Rate	Applies for all locations without specified rates	83	46
Incline Village / Reno / Sparks	Washoe	95	51
Las Vegas	Clark	96	71
Stateline / Carson City	Douglas / Carson City	87	61

*Meals and incidental expenses include breakfast, lunch, dinner and $5.00 for incidental expenses such as tips

Each member must complete a direct deposit card, provided by SEC staff, and a voided check to receive direct deposit. The amount claimed each meeting/hearing will be deposited into the member's account within 7 to 10 days.

SEC MEETINGS

SEC Meetings are typically held to adopt regulations, determine penalties for violations of air quality regulations, approve variances and to address items of interest as requested by the SEC. Although extremely rare, the SEC also has the authority to issue declaratory orders and advisory opinions.

The SEC meets three to four times a year. Meetings are typically scheduled in advance but may also be held as needed. An agenda is developed for each meeting by the executive secretary based upon input from NDEP and SEC members. Agendas include both items that are before the SEC for a vote and items that are before the SEC for discussion only. Each agenda will contain two opportunities for public comment.

All SEC meetings are subject to the Open Meeting Law (NRS 241) and the meeting agenda must be noticed in accordance with NRS 241.020 (2) to (4), inclusive. The meeting agenda must be posted at least 3 working days before a meeting and no additions can be made to the agenda during this time. Each item in the agenda must be identified either "FOR DISCUSSION" or "FOR POSSIBLE ACTION." An agenda item may be voted on only if the item has been identified "FOR POSSIBLE ACTION."

Before each meeting the executive secretary provides each SEC member with a packet that contains the agenda, the draft minutes from the previous meeting, all matters before the SEC and supportive information.

The SEC must have a quorum of at least six members present to vote on any item. A SEC member may recuse himself or herself from voting on an agenda item if he or she believes there is a direct personal or financial interest which is not common to the other SEC members. If the SEC member chooses to do this, the conflict should be disclosed at the beginning of the agenda item and he or she may not participate in either the discussion or the vote for that agenda item. Alternatively, a SEC member may disclose any relevant information associated with an agenda item that may appear to be a conflict but indicate it will not influence his or her vote and participate in both the discussion and the vote.

The meetings are conducted consistent with "Roberts Rules of Order." A summary of Roberts Rules of Order is attached (please see Attachment 4) and may also be found on the internet at http://www.asce.org/pplcontent.aspx?id=2147489901.

SEC Meeting – Adoption of Regulations

One of the primary functions of the SEC is to adopt the environmental regulations implemented by NDEP and, in cases related to vehicle emissions, the Department of Motor Vehicles (DMV). Regulations can be adopted as permanent, temporary or in some cases, as emergency regulations. An overview of the rule making process is delineated below.

NDEP first drafts the regulatory petition, completes SEC Form 1 "Petition to adopt, file, amend or repeal regulations," and SEC Form 4 "Small Business Impact Statement." (please see Attachment 5 for all SEC Forms.) NDEP submits the drafted regulatory petition and the two forms to the SEC executive secretary. The executive secretary posts the three documents on the SEC website and submits NDEP's draft regulatory petition to the Legislative Counsel Bureau (LCB) where it is assigned a petition number. LCB redrafts the petition to ensure it is clear, concise, consistent with statute and suitable for incorporation into the Nevada Administrative Code. LCB has 30 days to complete its redrafting of the NDEP regulatory petition.

NDEP must hold a public workshop on the proposed regulation. The workshop must be publicly noticed by NDEP no less than 15 days prior to the workshop date. The notice must be physically located in various public areas and sent out to an electronic mailing list. It must also be posted on the SEC website, the LCB website and Department of Administration website. If there is an expected impact to small businesses, the completed SEC Form 4, "Small Business Impact Statement," must be posted along with the notice of the pending workshop.

No less than thirty days prior to the SEC meeting date, the executive secretary must publish the regulatory petition in both a southern and northern Nevada newspaper and notice the regulatory petition on the SEC website, LCB website, Department of Administration website, in the State library, the NDEP buildings (Carson City and Las Vegas), the DCNR office and in one other selected location such as the Department of Wildlife. The notice must also be emailed to an electronic mailing list maintained by the SEC executive secretary. The SEC members are included on the list.

During the SEC meeting, NDEP presents the regulatory petition to the SEC members for consideration and adoption. The SEC may choose not to adopt the regulatory petition if sufficient concerns are raised. In this case, the SEC may direct NDEP to address the concerns and resubmit the regulatory petition for adoption at a future meeting. If the SEC votes in favor of the regulatory

petition, the newly adopted regulation will be transmitted by the executive secretary to the Legislative Commission for final approval and filing with the Secretary of State. The date the regulation is filed with the Secretary of State is the date the regulation becomes effective. An abbreviated summary of the rule-making process can be found in Attachment 6.

The LCB only accepts regulatory petitions for drafting between July 1 of an odd-numbered year and June 30 of the succeeding even-numbered year. Outside of this time period the LCB is focused on the legislative session and does not draft regulations.

Permanent Regulation

A regulation adopted by the SEC becomes a permanent regulation if the petition is submitted to LCB for drafting between July 1 of an odd-numbered year and June 30 of the succeeding even-numbered year.

After the SEC adopts a NDEP regulation, the executive secretary prepares a regulation package to submit to the Legislative Commission for final approval. This package includes, in part, the adopted regulation, an Informational Statement and a Small Business Impact Statement. The Informational Statement is generated from the information NDEP provides in the SEC Form I and the Small Business Impact Statement is the SEC Form 4. When the Legislative Commission approves the adopted regulation it becomes effective. The LCB files the active regulation with the Secretary of State's office and a copy is also provided to the State Library and Archives.

Temporary Regulation

The LCB will not accept an agency's regulatory petitions between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year due to its workload associated with each legislative session. A regulation is temporary if the regulatory petition is not submitted to LCB during the above referenced "Permanent Regulation" timeframe and the SEC adopts the regulation between the timeframe of August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year.

If the SEC adopts the temporary regulation, the executive secretary files the adopted regulation directly with the Secretary of State <u>no sooner</u> than 35 days after it was adopted. An Informational Statement and a Small Business Impact Statement must be included with the submittal.

Upon request of a Legislator, the Legislative Commission may examine a temporary regulation adopted by the SEC to ensure it conforms to statutory authority and meets the Legislative intent. A temporary regulation expires on the following November 1st of the odd-numbered year and must be processed again as a permanent regulation, which includes a SEC hearing, to maintain effectiveness.

Emergency Regulation

If NDEP determines an emergency exists, NDEP will submit to the Governor a written statement that describes the emergency and outlines the reasons for the determination. If the Governor endorses the emergency regulation, for it to become effective, the SEC must adopt it and file it with the Secretary of State. An emergency regulation is effective for no longer than 120 days.

SEC Meeting - Establish Air Penalties

By statute, the Bureau of Air Pollution Control (BAPC) is the only NDEP bureau for which the SEC establishes monetary penalties for violations of statutes and regulations. When the BAPC determines that a violation has occurred and issues a notice of violation and order, it will present the violation and a recommended penalty amount to the SEC at the meeting. After the owner or operator of the facility has an opportunity to address the commission, the commission will set the final penalty amount.

As is true of most regulatory programs administered by NDEP, the air program is primarily a federal program implemented by NDEP in lieu of EPA but with broad federal oversight. The air program, and any penalties assessed in association with that program, must be implemented consistently by BAPC and the SEC to ensure that the air program maintains its federal delegation. Maintaining program delegation by NDEP is important because implementation of these programs by that EPA is significantly more onerous, time-consuming and expensive for Nevada businesses.

EPA has established national ambient air quality standards for specific pollutants that have been determined to be protective of human health and the environment. Those standards are converted into industry emission limits and operational requirements, which are prescribed in each air quality permit issued by the BAPC. Other Clean Air Act requirements are also contained in the air quality operation permit. See Attachment 7 for overview of permit types and air quality standards.

Consistent with all NDEP regulatory programs, the BAPC is responsible for determining compliance at all of the facilities it regulates. If a facility is determined to be in noncompliance, a Notice of Alleged Violation and Order (NOAV & Order) is issued that describes the violation(s) that occurred and an order that directs the facility to take specific actions that will result in compliance. BAPC holds an enforcement conference with the owner or operator of a facility to discuss the violation and the recommended penalty. This provides an opportunity for the facility representative to provide additional or mitigating information regarding the alleged violation. The recommended penalty amount is provided verbally during the enforcement conference and in writing in the final issuance of the NOAV.

Minor violations are not brought before the SEC. Instead, minor violations are subject to an administrative regulatory fine schedule pursuant to NAC 445B.281; see Figure 1 below.

Figure 1 MINOR VIOLATION SCHEDULE

	First Offense	Second Offense	Third Offense
NAC 445B.22037, fugitive dust.....	$500	$1,000	$2,000
NAC 445B.22067, open burning.....	250	500	1,000
NAC 445B.2207, incinerator burning.....	250	500	1,000
NAC 445B.22087, odors.....	250	500	1,000
Subsection 3 or 4 of NAC 445B.232, reporting of excess emissions.....	250	500	1,000
Subsection 8 of NAC 445B.252, testing and sampling reporting.....	250	500	1,000
Subsection 2 of NAC 445B.265, reporting of monitoring systems.....	250	500	1,000
Paragraph (e) of subsection 1 of NAC 445B.275, recordkeeping, monitoring, reporting or compliance certification.....	250	500	1,000
NAC 445B.331, change of location.....	250	500	1,000

The penalties for major violations are determined through the use of a penalty matrix that NDEP uses to calculate the recommended penalty amount. (Please see Attachment 8). This amount is then presented to the SEC for a final determination.

The penalty matrix and worksheet were developed by NDEP and the SEC pursuant to EPA guidelines. By establishing an unbiased and consistent approach to establishing penalties, the process was designed to ensure an adequate level of deterrence and to create a level playing field for all facilities. The penalty matrix establishes a base penalty for each violation type by permit class, with smaller base penalties for sources with fewer emissions and higher base penalties for higher emitting sources. The base penalty is then subject to a penalty worksheet (Please see Attachment 9) that takes into consideration the gravity of the violation for various components such as, opacity, toxicity, or public health risk. Each component is associated with a specific multiplier. The multipliers are applied to the base penalty, adjusting the final penalty amount that BAPC recommends to the SEC.

During the SEC meeting, the BAPC provides the SEC an overview of the violation(s) and a detailed breakdown of how the Penalty Matrix and Penalty Worksheets were applied to determine the

recommended penalty amount. The SEC has the authority to adjust the recommended penalty amount; however, any adjustment made should take into consideration the SEC's original intent regarding an unbiased and consistent approach in assessing penalties as well as the federal oversight component, on which the BAPC's program authority hinges. Should the EPA determine that a fine levied by the SEC is inadequate; the EPA has authority to assess additional penalties against a violator.

The BAPC may also resolve certain violations outside of issuing a NOAV & Order. Compliance may be achieved, in some cases, via warning letters, an Administrative Order on Consent, a Consent Decree issued by the court or through the use of a Supplementary Environmental Project (SEP). A SEP is an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action, but which the respondent is not otherwise legally required to perform. When a SEP is used to settle a violation, the NDEP SEP policy (see Attachment 10) is applied. SEPs are typically used only in situations where NDEP is confident the respondent will be accountable for the successful completion of the SEP. Typically, SEP agreements are part of the Consent Decree process with judicial oversight and the monetary cost of performing the SEP must be 25% above the matrix and worksheet calculated penalty value.

When a NOAV & Order is issued, the respondent has 10 days to appeal that action to the SEC. The basis of the appeal must only address the alleged violation(s) and Order, not the recommended penalty information included in the NOAV & Order transmittal letter. This is because only final NDEP decisions may be appealed and the penalty recommendation is not a final NDEP decision; it is only a NDEP recommendation that the SEC must make the final determination on.

If a NOAV & Order is not appealed within the prescribed 10 days, the NOAV & Order's alleged violation(s) permanently stand. If the NOAV & Order is appealed and the appeal hearing results in the SEC upholding the NOAV & Order's alleged violations, the next step is to establish the penalty amount during a regularly scheduled SEC meeting.

When a penalty is presented to the SEC during its regularly scheduled meeting, the violation(s) associated with the penalty are final and cannot be modified or reversed. The SEC's responsibility is to ensure that BAPC's penalty recommendation is fair and consistent with the historical use of the penalty matrix and worksheet.

All penalties established by the SEC are paid to the school district in the county where the violation occurred.

SEC Meeting – Grant Variances (NRS 445B.400, NRS 459.546, and NRS 445A.935)

Although variances are not common, a number of statutes allow for owners or operators to apply to the SEC for specific variances or exemptions from the regulations of the SEC. A request for a variance must be noticed for 30 days prior to the SEC meeting. See Attachment 11 for the statutes which provide for variances. Examples of past SEC variances which have been granted include alternative fueled vehicles (See Attachment 5 for SEC Form 6) and public water suppliers' schedules for compliance with the federal arsenic rule.

SEC Meeting – Grant Declaratory Orders and Advisory Opinions (NAC 445B.888)

Although extremely rare, the SEC may be petitioned by any member of the public for a declaratory order or an advisory opinion regarding the applicability of any statutory provision, SEC regulation or decision of the agency. A SEC Form 2 (see Attachment 5) must be completed. The SEC has 30 days to issue the order or opinion. The order or opinion must be in writing and must include the justification.

SEC Meeting – Informational Items

During each SEC meeting, the NDEP administrator typically briefs the SEC on current issues or new developments within NDEP. If the SEC wants to be informed about a specific environmental issue, it may request an informational presentation to be included on the next SEC meeting agenda. A SEC member may make this request during a SEC meeting or at a later date by simply contacting the executive secretary or the NDEP administrator. The request must be approved by the chairman prior to scheduling.

Examples of informational presentations previously requested by the SEC include topics related to hydraulic fracturing, Nevada's Mercury Control Program and specific federal regulations such as "Waters of the United States."

APPEAL HEARINGS

The SEC conducts all business at either a SEC Meeting or at a SEC Appeal Hearing. An appeal hearing is held when a person is aggrieved by a final NDEP decision and submits a "SEC Form 3" to the SEC within 10 days of the of NDEP decision (30 days for Water programs). Examples of final NDEP decisions are the issuance, denial, renewal, suspension or revocation of a permit or certification, as well as the issuance, modification or rescission of any other order. In 2012, the SEC updated its regulations associated with the SEC's Rules of Practice which are also identified as "Practice before the SEC." The regulations can be found at NAC 445B.875-899 (see Attachment 12). This body of regulations provides direction for the appeal process.

Appeal Hearing – Request for an Appeal

To appeal a NDEP final decision, the appellant must complete a SEC Form 3, "Request for an Appeal Hearing" (see Attachment 5). As a NDEP matter of practice, all enforcement actions are issued with a SEC Form 3 attached and all permits are issued with a transmittal letter, which clearly states the permit may be appealed. The timeframe to submit an appeal is 10 days after notice of the NDEP action (NAC 445B.890.1). An exception is the NDEP Water Programs, which allow an appeal to be submitted 30 days after notice [NRS 445A.690 (2)].

An appeal must be based upon one or more of the following grounds regarding NDEP's final decision [NAC 445B.890(2)]:

1. It was in violation of any constitutional or statutory provision;
2. It was in excess of the statutory authority of the Department;

3. It was made upon unlawful procedure;
4. It was affected by other error of law;
5. It was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
6. It was arbitrary or capricious or characterized by abuse of discretion.

Pursuant to NAC 445B.890(3), the appeal must include the following: a statement of the legal authority and jurisdiction under which the hearing is to be held, a reference to each of the specified grounds the appeal is identified to be based upon with a reference of the law allegedly violated, and a brief and concise statement of the facts that provide the basis for the appeal.

Appeal Hearing – SEC Procedure Prior to Appeal Hearing

An SEC Panel consists of at least three SEC members. The SEC executive secretary selects the panel by giving the chairman, if available, attendance priority and then randomly selecting the other available members needed to complete the panel. If the chairman is not available, he or she will assign one of the three panel members to preside as the chairman.

The appeal hearing must be held within 20 days of the appeal request submittal unless both parties agree to waive the 20 days (NAC 445B.891). A letter or motion must be filed with the SEC that is signed by all parties. The executive secretary will notice the hearing to comply with the Open Meeting Law.

The SEC may, upon its own motion or a motion made by another party, order briefs to be filed. The SEC will provide a schedule for brief submittals. The party which requested the hearing shall file an opening brief which does not exceed 20 pages. NDEP and any other intervening party shall file a response brief which does not exceed 20 pages (each). The party which requested the hearing shall file a reply brief which does not exceed 10 pages. In the reply brief, the SEC will consider only those portions which directly address matters provided in the response brief submitted by NDEP and the intervener(s).

Prior to an appeal hearing, the SEC may also, upon its own motion or a motion made by a party, conduct a prehearing conference. A prehearing conference is useful to address issues that may expedite the orderly conduct and disposition of the proceedings or a settlement of the matter. Issues addressed at a prehearing conference may include:

- Formulation, simplification or limitation of issues involved in a hearing;
- Admissions of fact or any stipulation of the parties which will avoid unnecessary proof;
- Arrangement for the exchange of proposed exhibits or prepared expert testimony;
- Identification of witnesses and the subject matter of their expected testimony and, if necessary, limitation of the number of witnesses or the scope of their testimony;
- Rulings on any pending prehearing motions or matters;
- Establishment of a schedule for the filing of motions or the submission of briefs; and
- Consider any other action or procedure which may expedite the orderly conduct and disposition of the proceedings or a settlement of the matter.

If a prehearing conference is held, notice of the prehearing must be provided to each party. Failure to attend the conference without good cause constitutes a waiver of any objection to any agreement reached or ruling made at the prehearing conference.

The SEC may also issue subpoenas to compel attendance of a person at a hearing or to require the production of books, records or other documents.

The SEC may elect to dismiss an appeal if it does not meet the criteria outlined in NAC 445B.890 (2), which are the six itemized grounds for an appeal.

In addition, if one of the parties files a motion to dismiss an appeal, the opposing party will have an opportunity to reply. The SEC will hold a hearing to consider and rule on the motions prior to the commencement of a hearing.

Lastly, the SEC may also dismiss an appeal for want of prosecution on the motion of any party or on the motion of the SEC if the party filing the appeal has failed to bring the appeal to hearing within one year after filing the appeal, unless the parties have stipulated, in writing, to extend the period during which the hearing must take place [NAC 445B.894(4)].

Appeal Hearing – SEC Authority – Affirm, Modify or Reverse

The SEC, by statute, has authority to affirm, modify or reverse a NDEP final decision (NRS 444.570, NRS 445A.606, and NRS 445B.360)

The SEC will affirm a NDEP decision if it determines NDEP applied all pertinent laws and regulations and did not exceed its authority.

Although the statutes allow for the SEC to directly modify a NDEP decision, members must be cognizant of negative impacts that may be realized by the program(s) affected by a SEC modification. Specifically, NDEP implements many federal programs that contain detailed planning, permitting and monitoring requirements. Plans and permits issued by NDEP under these programs are developed under federal oversight and designed to meet all federal requirements and provide consistency among regulated parties. A direct modification made by the SEC has the potential to jeopardize that consistency and ultimately Nevada's delegated authority. If the SEC determines NDEP's action should be amended, the most effective way to proceed is to remand the decision back to NDEP so the agency may address the SEC's concern.

The SEC will reverse a NDEP decision if it determines NDEP exceeded its authority or the action did not follow applicable statutes or regulations. In this case, an alternative is to remand the decision back to NDEP with direction to apply the identified authority. If the applicable regulation, itself, is in question, the SEC may also direct NDEP to review the regulation in question for a potential modification.

Again, during the proceedings of an appeal hearing, the SEC may elect to dismiss the appeal if it is determined to not meet the criteria outlined in NAC 445B.890(2). These criteria are the six itemized grounds for an appeal, enumerated above in the "Request for an Appeal" section.

Appeal Hearing – SEC Procedure during an Appeal Hearing

A SEC appeal hearing is conducted in a quasi-judicial proceeding [NRS 223B.121(6)]. This means the SEC must develop a full record, including all pleadings, motions and intermediate rulings, and must provide both the appellant and NDEP a fair opportunity to present their cases. SEC members must not have ex-parte communication with any of the parties or conduct their own research into cases.

Pursuant to NAC 445B.8914 (5), during a hearing to affirm, modify or reverse a NDEP action, the SEC will not consider evidence that was not submitted to NDEP before the issuance of the final decision or order that is the subject of the appeal unless **BOTH** of the following occur: 1) NDEP allowed a period for public comment before the action; and 2) The SEC determines that reasonable cause exists for the failure of a party to submit the evidence.

The SEC may, if the basis of an appeal is an alleged irregularity in procedure by NDEP and is not reflected in the record, consider evidence concerning the alleged irregularity in procedure. NAC 445B.8914(6).

The SEC will not consider any evidence, including, without limitation, the testimony of a witness, which does not have the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. The SEC will also not consider any evidence that is not directly related to the subject matter of the proceeding. NAC 445B.8914(7).

The record must contain statements of matters officially noticed.

It is important to remember that everything said, including all SEC discussion and deliberation and all testimony from witnesses, will be part of the public record. The record contains questions, offers of proof, objections and rulings thereon. The chairman makes the rulings of objections. The chairman will either sustain the objection, meaning he or she agrees with the objection and the evidence will not be admitted, or will overrule the objection, meaning he or she disagrees with the objection and the evidence will be admitted.

The record must also contain all proposed findings and exceptions. It must contain any decision, opinion or report by the hearing officer presiding at the hearing and must have marked and identified exhibits in addition to all rulings on the admission of each exhibit (NAC 445B.8914).

Every appeal hearing will have a court reporter present who will produce a verbatim record of all proceedings.

The SEC must provide both the appellant and NDEP a fair opportunity to present their cases. The process is generally as follows:

1. The SEC chairman begins the appeal hearing by making opening statements.
2. The parties then make opening statements. The appellant is first, NDEP is second, and if an intervener is present, the intervener is last.

3. The appellant presents his or her case by calling witnesses and introducing exhibits. The opposing parties may cross-examine the witnesses. The SEC then has the opportunity to ask questions of the witnesses.
4. NDEP then presents its case by calling witnesses and introducing exhibits. The appellant may cross-examine the witnesses. The SEC then has the opportunity to ask questions of the witnesses.
5. When a permit is being appealed, the permit holder commonly participates in the appeal hearing as an intervener. When an intervener is present, that party then presents its case by calling witnesses and introducing exhibits. The appellant may cross-examine the witnesses. The SEC then has the opportunity to ask questions of the intervener's witnesses.
6. Lastly, the parties make closing statements. The appellant is first, NDEP is second, and if an intervener is present, the intervener is last.
7. The SEC panel then begins its deliberations regarding the evidence submitted. The SEC decision must be based only upon the evidence provided during the appeal hearing. The chairman will call for a motion and the SEC panel will vote, providing the ruling on the appeal. The SEC will notify all parties of its findings and all recommendations in writing within 30 days after the date of the hearing [NAC 445B.896(1)].

Appeal Hearing – SEC Decision May be Petitioned for Reconsideration or Rehearing

Pursuant to NAC 445B.899, a petition for reconsideration shall be served upon all parties of record within 15 days after the effective date of the SEC decision. The petition shall identify each portion of the challenged decision that the petitioner deems to be unlawful, unreasonable or based on erroneous conclusions of law or mistaken facts. The reconsideration petition must also cite those portions of the record, the law or the rules of the SEC which support the allegations in the petition but may not include additional evidentiary matter or require the submission or taking of evidence.

An answer to a petition for reconsideration may be filed with the SEC by any party of record within 5 days after the reconsideration petition is filed. The SEC will grant or deny a petition for reconsideration or rehearing within 10 days after the filing date of the petition. If reconsideration is granted, the SEC will re-examine the record and decision and issue a modified final decision or affirm its original decision. If a rehearing is granted, the SEC will conduct the hearing within 20 days, allowing the parties to present additional evidence. The regulations are silent on the make-up of the SEC panel reconsidering the case; therefore, it may be the same panel as the original hearing or a different panel, depending upon availability of the SEC members. The SEC will issue a modified final decision or affirm its original decision. A modified final decision issued by the SEC upon reconsideration or rehearing, will incorporate those portions of the original decision for the purposes of judicial review.

Petitions for Judicial Review – SEC Decision may be subject to a Petition for Judicial Review

Pursuant to NRS 233B.130, a party who is aggrieved by an SEC final decision may file a petition for judicial review within 30 days after service of the SEC's final decision. Under NRS 233B.135, the court may remand or affirm the final decision or set it aside in whole or in part if substantial rights have been prejudiced because the final decision of the SEC is: (a) In violation of constitutional or

statutory provisions; (b) In excess of the statutory authority of the SEC; (c) made upon unlawful procedure; (d) affected by other error or law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole of the record; or (f) arbitrary or capricious or characterized by abuse of discretion.

Attachment 1

OFFICE OF THE
ATTORNEY GENERAL

NEVADA
BOARD AND COMMISSION
MANUAL

CATHERINE CORTEZ MASTO
Attorney General

State of Nevada
August 2013

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A MESSAGE FROM THE ATTORNEY GENERAL

The purpose of this manual is to provide an orientation to individuals who are appointed to serve on a state regulatory licensing board or commission. I believe it is important to help familiarize you with state government, the laws and other matters that relate to the functioning of boards and commissions and the guidelines under which board members should operate.

This manual is not intended to answer every question or address every matter that you may face as a board or commission member. It is intended to give you basic knowledge regarding operation of most boards and commissions. Based on your experience as a member of a board or commission, you may very well have comments or suggestions to improve the manual for future editions. This office welcomes your input.

As is made clear throughout the manual, boards and commissions do have a variety of resources available to them. For example, the State Budget Division may be able to provide assistance with regard to financial or budgetary matters. Board and commission members should never hesitate to rely on such resources or their legal counsel whenever the prospect presents itself. Additionally, please visit the Attorney General's website at http://ag.nv.gov/ for additional manuals to assist you in your position.

Catherine Cortez Masto
Attorney General of Nevada

I. BOARD AND COMMISSION FUNCTIONS

As a member of a board or commission, you are part of the executive branch of Nevada's state government. In general, the function of the executive branch of government is to carry out or enforce laws enacted by the State Legislature that pertain to its particular jurisdiction. Jurisdiction means the power and authority. A board or commission only has the jurisdiction to determine issues over which it is given responsibility by statute. *See Moore v. Bd. of Trustees of Carson-Tahoe Hosp.,* 88 Nev. 207, 210, 495 P.2d 605 (1972).

In general, boards and commissions administer licensing examinations, issue licenses, and regulate activity within an area of law by enforcing the specific statutes and regulations governing that profession. The purpose of professional licensing is to protect the health, safety, and welfare of the public by assessing minimum educational and experience requirements for initial entry into a profession, and by enforcing laws and regulations to ensure continued competence and ethical behavior on the part of professional practitioners. Other regulatory bodies, such as the Nevada Tax Commission and Labor Commissioner, do not issue professional licenses. The purpose of those boards and commissions is to protect the public by enforcing the laws over which they specifically have jurisdiction.

Generally, the statutes and regulations which are enforced by boards and commissions are enacted by the State Legislature to protect the general public or some specific identifiable sector of the public. Therefore, as you conduct your duties as a member of a board of commission, it is important for you to remember that ***the primary purpose of your board or commission is to protect the public,*** particularly in light of the fact that this purpose may sometimes be at odds with the interests of the industry or profession in which you earn your livelihood. Being a board member may often be a difficult job, and you may be called upon to make difficult decisions.

To better understand the purpose and function of your board or commission, you should be familiar with the statutes and regulations establishing your authority. Virtually every board and commission is governed by a specific chapter of the Nevada Revised Statutes (NRS). Typically, the statutes and regulations pertaining to a board or commission contain the following:

A. Provisions identifying the purpose of the board or commission and establishing its general powers, membership selection, tenure, and operation. (These provisions are generally found at the beginning of your board's or commission's NRS Chapter.)

B. Provisions defining the profession, business, trade or subject matter under the board's or commission's jurisdiction.

C. If a professional licensing board, provisions governing the licensing and disciplinary functions of the board or commission.

D. If a general regulatory body, provisions governing the authority and scope

of the board or commission to take action on the matters within its jurisdiction.

It is important to remember that, as a legislatively-created agency, the power of a board or commission is limited. It may ***only*** do that which is set forth in, or can be reasonably implied from, the pertinent statute and regulations.

For professional licensing boards and commissions, the combination of the NRS and Nevada Administrative Code (NAC) chapters governing the board or commission is commonly referred to as a "practice act." Generally, in the NRS, the board or commission has the authority to adopt administrative regulations governing the profession. Such regulations may not conflict with the NRS and are added to the NAC after they are adopted by the board or commission and approved by the appropriate committee at the legislature. Like the NRS, the NAC is organized by numbered chapters. NAC Chapter numbers will correspond to the appropriate NRS Chapter number. For example, NRS Chapter 644 creates the Nevada State Board of Cosmetology. Accordingly, regulations regarding cosmetology are found in NAC Chapter 644. Regulations contained in the NAC apply with the same force of law as the statutes and, thus, must be followed.

II. THE ROLE OF THE BOARD OR COMMISSION MEMBER

A. Board and commission members are normally appointed by the Governor, although in a few instances they may be appointed by another state official, such as the head of a state agency.

The primary function of a board or commission member is to ensure that the public health, safety, and welfare are protected. All decisions that are made by the board or commission must derive from that purpose, whether on a matter of registration, examination, licensure, competence, or alleged misconduct by a licensed professional. ***As you perform your duties as a board or commission member, you must remember that the interests of the profession and the professional are subordinate to the interests of the public.***

A. If you are appointed to a board or commission, you will receive five items from the appointing official along with instructions for handling these items:

- A document, often called a Commission, declaring your appointment and your tenure;
- An Oath of Office which you must sign before a notary and return to the **Governor's Office** for filing;
- Information regarding financial disclosures which you must complete and file electronically with the **Secretary of State**, if you are entitled to annual compensation of $6,000 or more from your board or commission appointment;
- An Acknowledgment of Statutory Ethical Standards (ACK), which you must sign and return to the **Commission on Ethics***; and
- A biographical questionnaire which you will be requested to complete and return to your board or commission staff, unless otherwise directed.

*Please note that by signing the ACK you are acknowledging that you have received, read, and understood the provisions of NRS Chapter 281A. The ACK must be signed and returned at the beginning of your term, and, to ensure that you are familiar with changes enacted during legislative sessions, every even-numbered year thereafter. For more information about the ACK, please contact the Nevada Commission on Ethics (NCOE) or visit the NCOE's website at http://ethics.nv.gov/.

B. Board and commission members have responsibilities to the following groups:

- The General Public.

The public has an expectation of fair dealing with the profession as a whole and trusts that the regulated individuals and/or entities will be qualified to perform properly and safely. It anticipates that a fair method will be utilized to investigate and resolve complaints filed by consumers regarding their dealings with the profession. Under the Open Meeting Law, the public has a right to be informed about the date, time, and location of board or commission meetings and to a justification for actions the board or commission takes.

- Potential Licensees or Other Regulated Individuals/Entities.

A person who wishes to earn his or her living in an occupation that requires licensure should not be kept out unreasonably. That person should also have easy access to all information about entering the profession, including testing, transferring a license to or from another state, and all other application requirements instituted by the board or commission.

- Other Board or Commission Members.

Each board or commission member has the responsibility to listen to other members and to consider their views and opinions. Each member should also voice his or her thoughts on the issues presented and within the jurisdiction of the board or commission.

C. Criteria for Board or Commission Membership:

The criteria for membership are generally contained in the NRS provision that creates the board or commission. In addition, most board and commission members must meet a six-month residency requirement. *See* NRS 232A.020(1).

The public members on a board or commission are there to ensure that the public interest is represented. Public members are not expected to be technically expert or experienced in the profession or subject area which they oversee. Furthermore, public members may not have a financial interest in any matter within the board or commission's jurisdiction. *See* NRS 232A.020(5).

Characteristics of an effective board or commission member:

- Demonstrated interest in public service.

- Common sense regarding policies and procedures, i.e., do the decisions of the board or commission seem sensible? If not, the board of commission member should ask for clarification.

- Willingness to ask questions.

- Commitment to attendance. Consistent attendance is essential to keep informed about what is going on and to give continuing direction and support. An individual who accepts appointment to a board or commission and does not take seriously the duty to be there regularly and actively does a disservice to the board or commission and to the public.

- Consideration. Respect each member's viewpoints and opinions and be courteous and fair to all persons appearing before the board or commission. Keep your facial expressions and other non-verbal cues neutral when hearing public comments or testimony in a hearing or other proceeding.

- Preparation. Reviewing your meeting packet prior to each meeting is essential to an effective board or commission meeting. Furthermore, it is important to be familiar with the statutes and regulations governing your profession or subject area. However, when preparing for disciplinary matters, it is imperative that you restrict your preparation and review solely to the materials presented to you in the meeting packet. Board or commission members may not conduct their own investigations regarding disciplinary cases pending before the board or commission. ***Engaging in your own investigation of a disciplinary matter outside of a board or commission meeting may violate the due process rights of the individual and result in your disqualification from participating and voting in the proceeding.***

Important reminders for all board or commission members:

- A board or commission member should not use his or her position outside of a board or commission meeting to represent that he or she has any decision-making powers, because decisions are made only by the board or commission as a whole.

- A board or commission member may only speak on behalf of the board or commission if delegated by the whole board or commission at a public meeting. Outside of a meeting, it is crucial that board or commission members ensure that they are clear to those with whom they are speaking that any thoughts or positions voiced are their own and not the board's or commission's. In other words, a board or commission member may be thought to have two different "hats." One hat is that of a board or commission member and the other is that of a private citizen. Unless authorized by the full board or commission, outside of a public meeting, the board or commission member must wear only his or her private citizen hat.

- All inquiries within the jurisdiction of the board or commission should be directed to the board or commission office so they can be answered by staff and/or brought to the attention of the board or commission at a duly-noticed public meeting. Nevada is a fairly small state, as a board or commission member, individuals from the public and/or the news media will likely contact you regarding standards of conduct for the profession and/or board or commission decisions, policies, or procedures. When this happens, you should ***always*** direct the person to the board or commission office. This minimizes the risk that you will provide misinformation, legal advice, and/or speak without authorization on behalf of the board or commission.

- Details of board or commission activity should not be disclosed by a board or commission member unless and until the matter is decided by the board or commission at a public meeting and becomes part of the public record. Some investigative procedures which may conclude in formal hearings or conferences may be confidential and not a part of the public records. Thus, any disclosure of such information should be made only after consultation with legal counsel to the board or commission.

- Board or commission members are prohibited from participation in *ex parte* discussions concerning quasi-judicial proceedings before the board or commission. This means they cannot participate in private discussions with one party in the absence of the other parties to the dispute. Any board or commission member who participates in an investigation is unable to sit on the board or commission in a decision-making capacity concerning the subject of the investigation.

D. Public Board or Commission Members.

Most boards or commission require appointment of a public member who is not a member of the occupation or profession that is being regulated.

Several strategies may be used to increase public member effectiveness. These strategies will help public members feel comfortable in their role, maintain a positive attitude, and ensure fulfillment of their public trust:

- Ask questions. As the public member, you are not expected to know everything the other members of the board or commission know about the particular subject or profession. When policy is discussed or decisions made, these are key moments for public members to ask questions to facilitate their learning.

- Sub-Committees. Boards or commissions may have sub-committees to facilitate the work of the board or commission. Sub-committees are created at a public meeting by the full board or commission to perform a designated function. Volunteering to serve on a sub-committee may enable a public member to develop expertise in important areas of the board or commission.

- Attitude. A public member's contribution is significant and important. His or her viewpoints are crucial to the effective functioning of the board or commission and will affect the deliberations and decisions rendered by the board or commission.

- Active Participation. A public member is encouraged to actively participate in board or commission meetings. This means that he or she should ask questions, share opinions, and otherwise contribute to the board or commission discussions at the meeting.

III. BOARD AND COMMISSION STRUCTURE AND OPERATION

A. General.

Boards and commissions are normally required by statute to meet a minimum number of times per year. Commonly, a board or commission must meet a minimum of four times per year. However, this requirement varies with the purpose and type of business conducted by the board or commission. Please review the statutes governing your board or commission for more information. As discussed more fully in the Open Meeting Law section, as well as the Open Meeting Law Manual, proper notice of such meetings must be given. *See also* NRS Chapter 241.

Each statute sets out quorum requirements for the board or commission. As required by the Open Meeting Law, a quorum must be present before the board or commission may hold meeting and conduct board or commission business. In most cases, the presence of the majority of the appointed board or commission members constitutes a quorum. For example, if the board or commission consists of seven members, a quorum is generally four members. Please review the statutes for your board or commission to determine the required quorum.

Although boards and commissions are generally not required to do so, they may establish sub-committees to research, review, and/or make recommendations on certain matters such as personnel, finance, and continuing education. Remember, though, that typically there is no statutory authority for a board or commission to delegate its responsibility for making fundamental decisions to a sub-committee. In other words, a licensing board generally may not delegate its disciplinary proceedings to a sub-committee of the board. If a question arises concerning whether a particular matter can be delegated to a sub-committee by the board as whole, legal counsel should be consulted. In addition, the formation of sub-committees as well as sub-committee meetings are subject to the Opening Meeting Law.

B. Board or Commission Meeting Locations.

First, the board or commission must announce the date, time, and place of the meeting[1] to the public well in advance. Members and interested persons who have requested notice must also receive notice of the board or commission meeting. *See* NRS Chapter 241 and Section IV of this manual.

[1] Note: All meetings which are subject to the Open Meeting Law must be held within the State of Nevada. *See* NRS Chapter 241.

When making meeting arrangements, it is recommended that a comfortable, noise-free room or space be scheduled for the meeting. The room size should be sufficient to easily accommodate the board or commission members, the board or commission's staff, and members of the public who will be present for the board or commission meeting. The room should have proper ventilation and temperature control. The room should have proper acoustics and no visual barriers. The president or chair of the meeting should have a seat that is easily seen and heard by everyone attending the meeting. In a large or more formal meeting, proper sound equipment should be utilized. Other matters of importance may include proximity to restroom facilities, the availability of restaurants or other meal opportunities, adequate parking facilities, elevators, access for disabled individuals, and audio- or video-conference capabilities.

Remember that the meeting must always be accessible to the general public. This means that meeting in a private home or other private location is not advised. Further, the meeting door must remain unlocked.

C. Board or Commission Staff.

Depending on the availability of resources, as well as statutory authority, a board or commission may have a staff of full- and/or part-time employees. It may therefore, be advisable to follow the State Administrative Manual (SAM) or to have a written personnel policy that clearly defines duties of each position and spells out the board or commission's policy with respect to matters such as leave, terminations, performance reviews, and other related matters. In doing so, it should be kept in mind that such policies which impose duties and responsibilities on employees will often impose reciprocal duties and obligations on the board or commission as an employer. In other words, do not promulgate employment policies unless you intend to follow them. If you do not follow established policies, you may be confronted with confused and disgruntled employees, or even with the possibility of a lawsuit. For questions and concerns regarding board or commission staff and/or employment responsibilities and obligations, please contact your board or commission's legal counsel.

D. Financial Management.

The board or commission's finances and budget must be managed competently, honestly, and in compliance with state law. If you have any uncertainty regarding how to proceed in the area of budget and finances, you should not hesitate to seek assistance from your legal counsel or the analyst within the Budget Division of the Department of Administration who is assigned to your board or commission.

Your board or commission may not be a state general fund agency, which means that the revenue supporting your board or commission is not appropriated by the legislature from the state's general fund but instead is derived from an alternate source, such as licensing fees. If your board or commission is not a state general fund agency, it is a non-general fund board or commission. Non-general fund boards or commissions must submit a quarterly report of revenues and expenditures to the Budget Division of the Department of Administration. At the end of each biennium, non-general fund boards or commissions must also submit an unaudited statement containing the same information to the Budget Division. In addition, non-general fund boards and commissions must have an independent audit conducted each fiscal year by a public accounting firm. This audit report must then be submitted to the Legislative Counsel Bureau auditor and the Budget Division.

As a board or commission member, you should have a basic knowledge of the state's general requirements and guidelines regarding financial and budgetary matters and be satisfied that your staff is complying with these requirements. In general, all expenditures and revenues must be recorded, and all monetary receipts deposited in accordance with the applicable statutory requirements. For example, some boards or commissions have statutes that require all money received by that board or commission be deposited in a Nevada bank. Further, the Office of the Attorney General advises that, absent a specific statute to the contrary, all fines received by a board or commission must be given to the State Treasurer for deposit to the state general fund. Every board and commission must also adhere to the financial and budget-related requirements set forth in the State Administrative Manual (SAM). The SAM is available at:
http://budget.nv.gov/uploadedFiles/budgetnvgov/content/Documents/State%20Administrative%20Manual.pdf
If you have any questions or concerns about the finances and/or budget of your board or commission, please talk to your board or commission's administrator or executive director and/or your board or commission's legal counsel.

Each board or commission should have a defined set of written controls for handling cash. If your board or commission handles incoming cash (for example, licensing application or renewal fees), a written procedure should require that the cash or check received be processed immediately. If possible, two individuals should handle incoming revenue with one person opening the mail containing the cash and another person depositing it in the board or commission's account. Finally, a written record should be kept stating the amount received and its purpose. For example, a check sent to pay for a license application fee should be so indicated in the board or commission's written record. Petty cash funds

must be authorized by the State Board of Examiners and may not exceed $500. *See* NRS 353.252.

Your board or commission must stay within the budget established by the board or commission and approved by the Budget Division. If during the biennium, the need arises to deviate from the budget in any manner whatsoever, permission must be given by the Budget Division or the Interim Finance Committee. The procedure involving submission of a written request must be followed to secure such permission. If you have further questions in this regard, please contact the Budget Division or your board or commission's legal counsel.

E. Licensing Examinations.

Boards or commissions may have the responsibility for administering a licensing examination which accurately measures the knowledge, skills, and abilities of applicants for licensure. This examination should be gauged to assess the applicant's ability to perform at a minimum level of competency so as to ensure that the public is not at risk when the applicant is admitted to the profession as a licensed practitioner. The examination should also not be unreasonably hard or difficult such that skilled and safe practitioners will not be able to pass the examination.

A good licensing examination measures an applicant's knowledge of essential aspects of the profession. Devising a good test is a sophisticated skill. Unfortunately, goodwill and knowledge of the field are not enough. Extensive study and experience are also crucial. Licensing examinations must be fair and straight-forward. Examinations should test the applicant's ability to safely practice within the profession and not his or her proficiency in English.

Boards or commissions should be sensitive to applicants who may have learning disabilities or for whom English is not their first language. In some fields, an applicant who does not read or speak English may be provided with an interpreter. In fact, some boards or commissions are required to offer licensing examinations in languages other than English by statute. For those applicants with learning disabilities, reasonable accommodations should be made to allow those applicants a fair opportunity to take and pass the licensing examination. For example, the applicant may be given more time to take the examination or questions might be read aloud and answers written down or recorded on tape. However, some professions may require proficiency in English as a necessary skill in safely performing the profession. Legal counsel should be consulted if there are questions in this area.

Boards and commission and their staff must also be sensitive to applicants who fail the licensing examination. Boards or commissions should inform applicants whether or not they passed the examination according to the board or commission's policy and procedure, and while ensuring that the applicant's examination score remain confidential. Allowing unsuccessful applicants to retake the licensing examination is generally a good idea and adds to the fairness of the testing process. How many times an applicant may sit for an examination may be addressed by the NRS/NAC. Legal counsel may also be consulted on this issue.

F. Licensing.

Most boards and commissions have developed policies regarding review and approval of applications for initial licensure. Some boards and commissions delegate to administrative staff the authority to issue a license in accordance with those policies. The staff then brings only an exception or questionable application to the board or commission for consideration. Other boards or commissions instead insist on board or commission member review of all applications.

Once it has been determined that applicants have met their prerequisites for licensure, the board or commission office then should print and issue the license to the applicant. The board or commission should keep a record of all licenses issued that includes, at a minimum, the licensee's name, the licensee's license number, the licensee's mailing address, and the licensee's telephone number. Please review the statutes and regulations governing your board or commission for more requirements about the licensing records that the board or commission must maintain. Applications for the renewal of a license generally follow the same procedures.

G. Travel, Per Diem, and Salary.

In general, board and commission members, as well as staff, are entitled to receive a per diem allowance and travel expenses when they are engaged in board or commission business. Most board and commission members are also entitled to receive a modest daily salary while engaged in board or commission business. Staff should be paid according to his or her employment agreement with the board or commission while traveling on board or commission business. Please review the statutes governing your particular board or commission for more information about this or contact your board or commission's legal counsel.

Board and commission members will generally be entitled to reimbursement for lodging, food, and travel expenses incurred in connection with meetings and other legitimate business of the board or commission, such as attendance at a national conference as a representative of the board or commission. Under state law, the reimbursement for these items must be as specified in the State Administrative Manual (SAM) and cannot be increased to cover actual expenses, if actual expenses do exceed the amount specified.

In order to obtain reimbursement for expenses, board and commission members must fill out a standard claim form and include all required receipts. Following the required procedures under state law will ensure that you will be fully and properly reimbursed for your expenses and avoid any ethical impropriety. The general rules applicable to travel and per diem reimbursements are found in the SAM.

H. Purchasing.

Your board or commission office will need equipment, supplies, and services. Equipment such as photocopying machines or computer systems and office supplies should typically be purchased through the Purchasing Division of the Department of Administration. If the board or commission wishes to acquire a specific type of product that is not available through the Purchasing Division, it may be possible to do so, but the Purchasing Division should be contacted beforehand.

I. Independent Contractor Agreements.

Boards and commissions often use services of independent contractors such as accountants, lobbyists, private attorneys, and other professionals. Before attempting to procure such services, your board or commission should review its governing statutes to determine whether it has the authority to retain independent contractors. Any questions should be directed to the board's legal counsel. Some boards and commissions are required by law to use the Office of the Attorney General, while others have the option of hiring private legal counsel.

There is a standard practice for obtaining the services of an independent contractor. The Board of Examiners' rules require that all contracts shall conform to the Model Contract Form Book published by the Office of the Attorney General. When a contract is negotiated by a board or commission, it must be submitted to the Budget Division and the Office of the Attorney General for approval by the Board of Examiners or its clerk.

J. Public Relations and Ethics.

Board and commission members are public officers under Nevada law and, therefore, must conduct themselves in accordance with the Nevada Ethics in Government Law set forth in NRS Chapter 281.

When you are first appointed to a board or commission, you must submit a financial disclosure statement to the Secretary of State if you are entitled to total annual compensation from your position of $6,000 or more. You must also submit subsequent financial disclosure statements each year afterward during your tenure as a board or commission member. Details relating to financial disclosure requirements are contained in NRS Chapter 281. *See* NRS 281.559.

Ethics provisions prohibit board and commission members from soliciting or accepting anything of value if doing so might influence a reasonable person to depart from the faithful and impartial discharge of his or her public duties. Similarly, a board or commission member may not use his position in government, or information obtained by virtue of such position, to secure any unwarranted benefit including a benefit for himself or another person, or undertake any act that could be construed to only benefit the profession of which you are a member.

As a board or commission member, you must disclose any gift or loan, commitment to a private party, or significant pecuniary interest you have in any matter that is to be acted upon by your board or commission. You must make such a disclosure at the same time the matter is being considered. Disclosure must be made even if you abstain or do not participate in the vote or action. The fact that a board or commission member has an interest in a matter does not necessarily mean that he or she must abstain from voting or participating in the matter. *See* NRS 281A.420. Questions regarding disclosure and abstention should be addressed to the board or commission's legal counsel or to the Commission on Ethics, as time permits.

In states with a relatively small population, such as Nevada, situations may arise in which a member of a board or commission that has licensing authority may be reasonably well acquainted with an individual seeking a license from the board or commission. When this situation arises, the board or commission member should consult the board's legal counsel to consider how to approach the application.

Conflicts of interest and ethical questions involve a case-by-case inquiry. Depending on the circumstances, it may or may not be appropriate for the member to abstain from participating in the matter. It is likely that as a board or commission member, you will at some time be faced with

situations that involve ethical considerations and the related legal requirements. If this happens, it is appropriate to consult with the board's legal counsel without delay. Further, disclosure in all situations, whether or not you abstain from deciding the matter, should be standard practice.

Unfortunately, some citizens, members of the media, legislators, and other governmental bodies perceive boards and commissions as agencies that serve specific private interests rather than the public interest. This perception may be based on the fact that a board or commission usually consists of individuals who are engaged in the very business or profession under its jurisdiction. Always remember that as a board or commission member, that you represent a government entity that exists to serve and protect the public.

In addition, the board or commission consists of the full board or the full commission and any statements that you make to the public are only yours given as a private citizen unless and until the full board or full commission authorizes you to take a public position on an issue. This means that it is inappropriate and unethical for you to speak on any issue as a member of the board or commission, unless the full board or commission has voted on and approved you to do so. For example, a licensed psychologist who is also a member of the Board of Psychological Examiners may speak at a conference regarding the practice of psychology in his or her capacity as a licensed and experienced professional. However, he or she should not indicate that any statements made are on behalf of the Board or constitute the Board's position unless the Board has previously authorized him or her to do so at a duly-noticed, public meeting of the Board. If you have any questions about this, please contact your legal counsel.

As a result, with the exception of areas in which there is a special need for confidentiality, it is advisable for your board or commission to act in forthright manner with individuals and entities from the private sector, as well as other governmental agencies.

In order to comply with the Open Meeting Law and the Public Records Law, the board or commission must follow not only the letter but also the spirit of those laws. For example, a board or commission might consider furnishing copies of its meeting agendas to the news media, even though the Open Meeting Law does not require doing so unless requested.

Similarly, providing a prompt response to a request for information is important. If resources permit, the board or commission might even consider publishing a periodic newsletter reporting its current activities and other pertinent matters.

K. Executive Director and/or Executive Secretary.

Many boards and commissions have the authority and resources to hire a part- or full-time executive director or executive secretary. Usually the board or commission hires this individual to manage its office and to carry out its policies on a day-to-day basis. The executive director or executive secretary is a key representative of the board or commission.

On review of your governing statutes, you will generally find that many functions of your board or commission are not expressly delegated to the executive director or executive secretary. Yet, your board or commission may, as a practical matter, wish to have such functions performed by such person. If performing a particular function (for example, the issuance of licenses) is not expressly delegated by statute, it may, in some cases, be proper to delegate it to the executive director or executive secretary. However, to the extent that a function involves fundamental policy of the board or commission, requires exercise of judgment and discretion, or substantially affects an individual's legal rights, it should not be delegated to the executive director or executive secretary. If the executive director or executive secretary nevertheless improperly performs a function such as revoking a license, the board or commission may be subject to liability. For this reason, it is important to consult with legal counsel regarding proper delegation of board functions.

It is also important for a board or commission to give some direction to its executive director or executive secretary regarding areas of authority. Methods commonly used to give such direction are a written job description, administrative regulations, and board or commission policies.

Although the executive director or executive secretary is often crucially important to the smooth operation of a board or commission, it is the board or commission itself that is ultimately responsible for enforcing statutes and regulations under its jurisdiction and for setting policy. This is a point that may be easily forgotten, because the executive director or executive secretary is often a full-time employee, and the board or commission may only be required to meet four times a year. Thus, it is recommended that the board or commission select its executive director or executive secretary with care, and continually oversee his or her activities.

L. Legal Services.

Every board or commission should secure legal representation to ensure that the board or commission has a legal advisor available when needed.

Depending on a number of factors, including availability of resources and specific needs of the board or commission, arrangements should be made for legal representation. Some boards and commissions are required by statute to be represented by the Office of the Attorney General. If this is the case, the Attorney General will assign a specific deputy attorney general to advise and represent your board or commission. Keep in mind that the board is responsible for payment for the services of the deputy attorney general if the board or commission is a non-general fund agency. To the extent that resources permit and circumstances warrant, the deputy attorney general should attend board meetings. The deputy attorney general may also be utilized to prepare and present disciplinary cases before the board or commission and to represent the board or commission in litigation. In addition, the deputy attorney general may provide legal advice and guidance on a day-to-day basis as the need arises. You should encourage your executive director or executive secretary and other staff to seek legal assistance whenever appropriate.

Depending on the statutes pertaining to the board, you may have the option of retaining private legal counsel in lieu of, or in addition to, utilizing the Office of the Attorney General. If you have this option, you may choose to retain private counsel to perform any or all of the services described above.

One function that can be performed ***only*** by the Office of the Attorney General is rendering Attorney General Opinions. Although not binding on the courts, an Attorney General Opinion may be given more weight by a court than a legal opinion rendered by private counsel. *See Cannon v. Taylor*, 88 Nev. 89, 91, 493 P.2d 1313 (1972). Further, when a board or commission relies on an Attorney General Opinion in good faith, the board or commission is protected from liability for damages if the Opinion is later found to be incorrect. *Id.* All state agencies, including the head of any board or commission, may request an Attorney General Opinion from the Office of the Attorney General. NRS 228.150. Private citizens may not request Attorney General Opinions. *Id.* *See also* NRS 228.070; NRS 228.080.

IV. OPEN MEETING LAW

Nevada's Open Meeting Law, NRS Chapter 241, governs the meetings of all boards and commissions. The Office of the Attorney General publishes an Open Meeting Law Manual which is a good reference for board and commission members. This manual may be found on the Office of the Attorney General Website by clicking the following link:
http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_Portal/omlmanual.pdf

The Open Meeting Law requires that all boards and commissions hold public meetings, post and mail adequate notice of meetings at least three working days in advance, record or transcribe both open and closed meeting sessions, take all action in open session, keep written minutes of each meeting and, with certain exceptions, allow public comment. The board or commission meeting notice should comply with statutory requirements and legal counsel should review it for accuracy and compliance with the Open Meeting Law before posting.

Meetings of the board or commission must be opened to the public. This means that the meeting room for the board or commission must be accessible and available to the public so that the public may attend the board or commission's meetings.

Written minutes must be kept for both open and closed sessions of the board or commission's meeting. Written minutes of the open sessions of the board or commission meeting must be available to the public for inspection within thirty (30) working days after the board or commission meeting. Written minutes of the closed session of the board or commission meeting must also be available for review by the Office of the Attorney General within thirty (30) working days after the board or commission meeting.[2] Further a recording or transcription must be made for both open and closed sessions of the board or commission's meeting. The recording or transcription of the closed session should be kept separate from the recording or transcription of the open session.

[2] Please note that closed meeting minutes may not always be deemed confidential. It may be appropriate, in some situations, for the closed session minutes to be available for public inspection at some future time.

Under the Open Meeting Law, a board or commission may ***only*** close its public meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person[3] or to prepare, revise, administer or grade examinations that are conducted by or on behalf of the board or commission, or to consider the appeal of the results of such examination. Pursuant to NRS 241.030, a person is entitled to written notice twenty-one (21) working days prior to the meeting if served by mail or five (5) working days if by personal service if the board or commission is going to consider his or her character, alleged misconduct, professional competence, or physical or mental health, and the board or commission must receive proof of service of the written notice upon the person. Such person may attend any portion of the meeting pertaining to him or her, whether open or closed, have an attorney or other representative present, and present written evidence, provide testimony and present witnesses. Further, the board or commission may only receive information during closed session—all action taken by the board or commission must still be taken in an open session. A person may waive the closure of the meeting and request that the meeting or relevant portion of the meeting be open to the public.

As a member of a board or commission, you should be aware that the Open Meeting Law applies any time a quorum (a majority of the membership of the board or commission) meets to discuss board or commission business, even in a casual or informal setting such as a meal or a golf tournament. If you engage in discussion and/or deliberation with other members about board or commission business without having followed the notice and other requirements of the Open Meeting Law, you may be in violation of the law. Please note that the Nevada Supreme Court has recognized that e-mail communications, in addition to face-to-face communications may violate the Open Meeting Law. Further, the Court has recognized that in some situations serial communications (where multiple gatherings or communications occur, none of which individually involves a quorum) may also violate the Open Meeting Law. Therefore, this Office recommends that board or commission members never discuss pending board or commission business with each other at any time outside of a duly-noticed public meeting.

Any violation of the Open Meeting Law can have serious consequences, including criminal prosecution, fines, or a court ruling declaring void all actions taken at the meeting where the violation occurred. *See* NRS 241.040. This applies to even small or seemingly minor violations of the Open Meeting Law.

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[3] For a licensing board or commission, this would generally involve disciplinary proceedings against licensees or decisions regarding a person's application for licensure. Such person must receive adequate notice that the board or commission will consider his or her alleged conduct and/or his or her application for licensure at the meeting and that the meeting may be closed. However, any deliberations or decisions involving an applicant or a licensee must occur in an open meeting.

Furthermore, individual board or commission members may also be assessed a civil penalty of $500 for knowing violations of the Open Meeting Law. *Id.* Given the potential expense and inconvenience involved for not only the board or commission but also the private parties attending the tainted meeting, all board or commission members are urged to become familiar with and scrupulously follow the Open Meeting Law, as well as to seek the advice of legal counsel when the need arises in this area.

V. PUBLIC RECORDS LAW

Nevada's Public Records Law, NRS Chapter 239, requires that all board or commission records must be open to inspection and copying by the public unless otherwise made confidential by law. In some instances, there will be a specific statute that declares a record to be confidential. For example, in many cases, a consumer complaint filed against a licensee and the subsequent investigation are confidential unless and until the board or commission initiates disciplinary action against the licensee. In addition, personally identifying information such as social security numbers and financial information, i.e., credit card numbers or bank account numbers, are confidential and should be redacted from records before providing them to the public. *See* NRS 603A.040. Further, some statutes allow a board or commission to share a record or information with another licensing board or state agency in certain situations but not with the general public. *See generally* NRS 637.085; NRS 641.090; NRS 644.130. If a statute specifically states that a requested record is confidential, the board or commission may not disclose that record pursuant to a public records request. If your board or commission receives a subpoena or court order requesting that record be made available, please contact your legal counsel.

Board and commission members should use their common sense and be cautious about disclosing records that they receive that may contain personal or sensitive information. Please remember that board and commission members may sometimes require access to a record or other information that may not be available to the general public, and it is important that board and commission members handle those records appropriately. For example, a person's medical records may be admitted in a disciplinary proceeding against a licensee and viewed by board or commission members, but these records are still confidential by law and exempt from disclosure to the general public pursuant to NRS 622.310. It is a good approach to presume, at all time, that the public has access to the contents of board or commission files and records, and to treat the contents in a professional manner for that reason.

Destruction of official records is governed by state records retention schedules. Members of boards or commissions and staff should be familiar with the board's or commission's record retention schedule. These schedules set out a minimum time for preservation of official records in the custody of the board or commission, and provide a mechanism for preserving records with archival value. For more information, please contact the Department of Administration's State Library and Archives Division.

Once a board or commission ceases to exist, the Department of Administration's State Library and Archives Division must be contacted for proper disposal or transfer of official records.

VI. LEGISLATIVE PROCESS

A law or statute is legislation that has been passed by the legislature and signed by the governor. These laws are called the Nevada Revised Statutes (NRS). Most boards or commission have been created by such a law.[4] The board or commission's regulations, in contrast, are formulated by the board or commission itself, not by the legislature. The board or commissions regulations are codified into the Nevada Administrative Code (NAC). The board or commission's authority to adopt regulations was, however, granted to it by statute. Most enabling statutes authorize the board or commission to formulate necessary rules and regulations within the limits of its governing statutes for proper conduct of the business or profession and as may be deemed necessary or proper to safeguard the interest of the public and to uphold or codify generally accepted standards of the profession.

A. Statutory Process

The statutory authority of boards and commissions is derived from the legislature. Similarly, the law that governs a profession, business, or trade (its substantive law) is also primarily determined by the legislature. Accordingly, if a board or commission wishes to amend its authority in a particular area or believes that the substantive law under its jurisdiction should be updated, clarified or otherwise changed, the board or commission may bring a bill to the State Legislature addressing those changes.

Boards and commissions are not permitted to submit bills directly to the legislature. Instead, the board or commission must submit its legislative proposal to the Governor in the form of a Bill Draft Request (BDR). As a rule, BDRs must be submitted to the Department of Administration in the late spring (approximately June 1) of the year preceding the legislative session, i.e. approximately June 1 of every even-numbered year. BDR forms may be obtained from the Department of Administration. The Governor then chooses and submits 100 BDRs to the legislature on or before September 1 in every even-numbered year. These 100 bills must be drafted and pre-filed before December 20th in every even-numbered year. If the BDR submitted by the board or commission is not selected by the Governor, the board or commission must then find an individual legislator to sponsor the bill on the board's or commission's behalf during the legislative session.

[4] Some boards and commissions are created by the Nevada Constitution or by Executive Order.

The Nevada Legislature convenes in February of every odd-numbered year for 120 days. Once the legislative session has convened, BDRs are introduced, assigned a bill number, and referred to the legislative committee having jurisdiction over the subject matter. The committee may choose to hear the bill or it may not. If the committee holds a hearing on the bill, a board or commission should plan to have one or more representatives attend the committee hearings. If authorized by statute and if resources permit, a board or commission may be able to retain a lobbyist to speak on its behalf at committee hearings and represent it during the legislative session.

After a bill has had a hearing, the chair of the committee may place the bill on a work session at which time members of the committee will vote to pass the bill out of the committee with or without any amendments. The bill then goes to the floor of the house where it is originating for a second and third reading and final passage. If the bill is passed out of the house in which it originates from, it then moves to the other house where this process is repeated.

It is possible that an individual member may disagree with some aspect of the board's position regarding a matter before the legislature. This individual may even wish to make his position known to the legislature. For this reason as well as others, the board or commission should add the matter to the agenda of a public board or commission meeting, determine its position on the matter by discussion and a majority vote at the meeting, and then designate to one or more members the authority to speak on the board or commission's behalf regarding the matter. An individual board or commission member who may disagree with the position of the board or commission and/or who is not authorized by the full board or commission to speak on the matter may voice their disagreement only as private citizens and may not speak on behalf of the full board or commission, except as to state the position of the full board or commission.

The representative of the board or commission appearing before a legislative committee to provide testimony on a bill which concerns or impacts the board or commission should be fully prepared to articulate the reasons for or against the bill. If there is written documentation containing statistics or other information which supports a bill, such documentation should be made available to the committee members not less than twenty-four (24) hours before the bill is scheduled to be heard in the committee.

The committee hearing is the critical forum in which bills are considered. Bills must be passed through committee before the full legislature votes on them. Presentation of testimony and documentation to legislative committee is critical. It should not be assumed that legislators have specific knowledge about a bill's subject matter or a board's or

commission's area of jurisdiction. Consequently, the board's or commission's representative should be prepared to educate as well as persuade the legislative committee members. The representative should also be available to legislators for consultation.

It may be prudent to point out to the legislative committee potential negative aspects of a bill, particularly with respect to a controversial bill. Additionally, a board attempting to secure new legislation should never assume that need for the legislation will be obvious and, therefore, take it for granted that the bill will be passed. Consequently, your board or commission should be fully prepared to support its proposed legislation and anticipate possible criticisms. If it appears that the legislature may not accept the legislation, the board or commission may want to consider amending the bill to address the concerns of the legislators or others.

Aside from the board or commission's own proposed legislation, there may be legislative bills sponsored by others that affect its official activities or jurisdiction. Your board or commission may wish to take a position in favor or against such bills, taking into account each bill's potential effect on public health, safety, and welfare.

General information concerning the legislative process is available from the Legislative Counsel Bureau. In particular, a board or commission should consult the Legislative Counsel Bureau for information on how to track or monitor the progress of its bills and other relevant bills through the legislative process using the NELIS system. Tracking one's own bills is important, since it is not uncommon for bills to fail in the course of a session. It may be appropriate to appoint a member of the board or commission or another representative to undertake this responsibility.

B. Regulatory Process

One of the most important and time consuming tasks of any board or commission is drafting regulations and enacting those regulations. To understand this process, it is necessary first to understand the difference between a statute and a regulation. It is important also to understand that the regulation-making authority granted to the board or commission by the legislature is strictly limited in two ways. First, the board or commission's regulation must be consistent with the NRS. Second, the regulations must effectuate a provision of NRS. Consequently, the board or commission cannot regulate outside the scope of the underlying statutory authority in the NRS.

A board or commission must identify regulations needed to carry out the purpose of the NRS and then draft, fine-tune, and redraft proposed regulations. The process of developing regulations at the board or

commission level is painstaking and time-consuming. The process of government review of the board or commission's proposed regulations can be equally exhaustive.

The Nevada Legislature created the Administrative Procedure Act (APA), Chapter 233B of NRS, to establish minimum procedural requirements for the regulation-making process for all agencies of the executive department, except those expressly exempted from the chapter. Boards and commissions are subject to the APA.

A regulation will typically describe the organization, procedure, or licensure requirements of a board or commission. Regulations may also effectuate or interpret law or policy. Any action a board or commission intends to take that will address any of these issues will be subject to the APA.

A board or commission must hold a least one public workshop to discuss the general topics to be addressed in a regulation with interested persons. The workshops may be held before or after the language of the proposed rule has been drafted by the board or commission, but before a public hearing is held on the proposed regulation. The board or commission must provide written notice of the workshop not less than fifteen (15) days prior to the workshop. Such notice must be provided to every person on the board or commission's mailing list for receipt of notice of proposed regulations and such additional notice as will inform the general public and any business that may be affected by the proposed regulation.

Once a board or commission has determined the need for a proposed regulation and/or drafted proposed language, the proposed regulation must be submitted to the Legislative Counsel Bureau for drafting. A board or commission should be aware that the draft submitted to the legislative counsel may not be returned in the same form or language. It is wise for the board or commission to review the approved text retuned by the legislative counsel to make sure the meaning or effect of the proposed rule has not been changed. Your board or commission should contact the legislative counsel to clear up any misunderstanding or confusion.

The board or commission must also hold at least one public hearing on the proposed regulation after the draft of the proposed regulation is returned to the board or commission by legislative counsel. Notice of the public hearing must be provided to the public using the form specified in NAC 233B.010. This form is titled and often referred to as the "Notice of Intent to Act Upon a Regulation." This Notice along with instructions for obtaining the full text of the proposed regulation must be sent to every person on the board or commission's mailing list for receipt of notice of proposed regulations and such additional notice as will inform the general

public and any affected business at least thirty (30) days prior to holding the public hearing. Details of notice requirements are contained in the APA. Before a board or commission takes action to consider an issue, publish a notice, or adopt a rule, legal counsel should be consulted.

The Nevada Constitution was amended by the passage of Ballot Question 5 in the 1996 general election to authorize legislative review of administrative regulations and rejection of regulations which exceed an agency's authority. Therefore, no adopted regulation is effective until it is affirmatively approved by the Legislative Commission or the Subcommittee to Review Regulations. The Legislative Commission, or the Subcommittee to Review Regulations if the regulation was referred to the Subcommittee, may suspend the filing of a permanent regulation after its adoption if it determines that: (1) in the case of a regulation purportedly required by federal law, the regulation is not required by federal law; (2) the regulation does not conform to statutory authority; or (3) the regulation does not conform to legislative intent. If the Legislative Commission, or the Subcommittee to Review Regulations, objects to a regulation on one of these grounds, the agency shall, within sixty (60) days, revise and return the regulation. Thereafter, the Commission, or the Subcommittee to Review Regulations, may withdraw its objection and the legislative counsel shall file the regulation with the Secretary of State and notify the agency of the filing. NR 233B.0675. If the Legislative Commission or Subcommittee objects to the revised regulation, notice of the objection will be provided to the agency, which must continue to revise the regulation and resubmit it within thirty (30) days after receipt until the objection is removed.

At the Legislative Commission or Subcommittee to Review Regulations meeting, many regulations are voted on and approved by the Commission or Subcommittee without issue as part of the "consent agenda" for the meeting. However, any legislator may pull a regulation from the consent agenda if the legislator believes a discussion on the regulation is necessary. The regulations that are approved as part of the consent agenda are generally effective that day and sent over to the Secretary of State for filing. The regulations that are pulled from the consent agenda are then discussed at the meeting. If the concerns of the legislator have been addressed at the meeting, the Commission or Subcommittee will vote to approve the regulation at the meeting. If not, the Commission or Subcommittee may vote to defer it to the next meeting of the Commission or Subcommittee or to reject the regulation. If the regulation is deferred, the board or commission should work with the legislator to redraft the regulation to address his or her concerns. If the regulation is rejected and the board or commission still wants to amend or repeal regulations, the board or commission must restart the process, including noticing and holding a new workshop, sending a new proposed regulation to legislative

counsel for drafting, and scheduling and holding a new public hearing.

If the regulation is regarding the standards for the issuance or renewal of licenses or permits of certain boards, *see* NRS 439B.225, the regulation must also be heard by the Legislative Committee on Healthcare before it can be adopted.

For additional and more detailed information about the rulemaking process, *see* Administrative Rulemaking—A Procedural Guide, published by the Office of the Attorney General. This manual is available at: http://ag.nv.gov/uploadedFiles/agnvgov/Content/Publications/RulemakingManualComplete.pdf

VII. INVESTIGATIONS, ADMINISTRATIVE HEARINGS, AND THE COURTS

A. Investigations and Disciplinary Procedures.

A board or commission generally has authority to investigate actions of persons who are licensed or otherwise permitted to engage in a particular profession, business, trade, or practice by the board or commission. If an investigation reveals a violation of the law that pertains to the jurisdiction of a board or commission, the board or commission also typically has authority to take administrative action against the licensee or, in the case of an unlicensed person, the person violating the law. In certain cases, a board or commission may have the power to revoke a licensee's license or otherwise limit the person's ability to practice in the profession, business, or trade.

Investigation and the possible resulting disciplinary action against a licensee or regulated individual or entity is an important area, since it involves the interests of the state in protecting the public from unsafe, incompetent, or unscrupulous participants in regulated or licensed activities compared with the individual's property interest in his or her professional license and/or the privilege of an individual in practicing his trade or profession and earning a livelihood without undue interference by the state.

Disciplinary procedures for licensing boards typically include these steps:

- Consumer complaint received or complaint received from another source, or board or commission initiated administrative complaint
- Investigation
- Report of Investigation

Once a report of the investigation is drafted, it should be reviewed by the board or commission's executive director or executive secretary, in conjunction with legal counsel, if necessary, to determine whether there is sufficient evidence to proceed to a hearing before the board or commission in the case.

Options if there is insufficient evidence to go to hearing:

- ✓ Dismiss case
  If, after the conclusion of the investigation there is insufficient evidence to go to hearing, the file should be closed with notice sent to the complainant and licensee.
  For many boards and commissions, a recommendation for dismissal must be brought by staff before the board or commission.
- ✓ Continue investigation

Options if sufficient evidence to go to hearing:

- ✓ Settlement agreement
- ✓ Formal disciplinary hearing

The interest in safeguarding public health, safety, and welfare is the primary purpose of a board or commission and the basis of its existence. It is imperative that boards and commissions vigorously enforce statutes and regulations governing conduct of licensees or regulated individuals and entities under their jurisdiction. At the same time, however, boards and commissions must be conscientious in following due process standards established for conducting investigations and taking administrative actions.

These standards are embodied in statutes, regulations, and state and federal constitutions, and are designed to protect the interest of the licensed or regulated party. The licensed or regulated party must be afforded due process by the board or commission before administrative action can be taken or discipline can be imposed.

In the area of investigations and regulatory actions, board and commission members should scrupulously follow statutes and regulations. Those who carry out investigations and administrative actions on behalf of boards and commissions should always work closely with legal counsel during all phases of the investigatory and administrative process.

Boards or commissions may vary by statute and/or procedure regarding who is responsible for conducting investigations. Some statutes provide that one or more members of the board or commission may conduct investigations and act as an "investigating board or commission member." Others place this responsibility with trained board staff or investigators hired or retained by the board or commission.

Board or commission members who conduct investigations as "investigating board or commission members" must abstain from deciding the matter when it is later presented to the full board or commission for decision, though they may be asked to participate as witnesses. NRS 233B.122.

It is possible that you may inadvertently learn facts about a case before it is brought before the board or commission. This could occur, for example, if the person under investigation is a close friend, or if the person under investigation contacted you as a board or commission member, or if someone contacted you to complain about the conduct of the person under investigation. If this occurs, you should promptly consult legal counsel in order to determine whether this information should lead you to abstain from participating in the case. Further, any information about a

pending case that you learn inadvertently should be kept confidential and not shared with any other board or commission member or any other person aside from legal counsel.

It is possible that you may at some point need to file a complaint against a licensee or other person who may be violating the law over which your board or commission has jurisdiction. If that happens, please keep the fact that you have filed the complaint and any information you have obtained confidential from all other board or commission members and speak only about the matter to appropriate board or commission staff, investigators, and/or legal counsel until the matter is presented to the full board or commission. As the complainant, you will need to abstain from deciding the matter, but you may be called as a witness in the proceeding.

B. Administrative Hearings.

If a substantiated complaint is not resolved by a settlement agreement, it may proceed to a disciplinary hearing.

One of a board or commission member's more serious responsibilities is to conduct a disciplinary hearing which may impact a person's life and/or ability to practice in his or her profession.

To initiate a disciplinary hearing, an administrative complaint and notice of hearing is filed against the licensee. This complaint and notice of hearing contains allegations of both fact and law and provides a date and time for the hearing on the complaint. This case is then heard on the designated date and time by the board or commission or by hearing officers with the assistance of legal counsel. Generally one deputy attorney general will sit as board counsel and offer legal advice relating to procedure to the board or commission, while another deputy attorney general or private counsel prosecutes the matter. The board may consider witness testimony (including testimony made by the licensee or person named in the case), documentary evidence, and argument by both the attorney prosecuting the case and the licensee or counsel for the licensee. The board or commission then the votes on whether the allegations in the administrative complaint have been proven by the evidence presented. If the licensee is found guilty of any alleged violation, the board or commission will move from the guilt phase of the case to the penalty phase to determine the appropriate disciplinary action.

It is crucial that all board and commission members keep facial expressions and non-verbal communication neutral in a hearing. It is also crucial that all board and commission members listen carefully and thoughtfully weigh all testimony and evidence presented in a hearing.

All board and commission members should review NRS Chapters 233B, 622, and 622A with regard to the administrative hearing process, as well as the board or commission's governing NRS and NAC chapters. Legal counsel assigned to the board or commission can answer specific questions or inquiries regarding these statutes.

C. Evidence

Evidence makes clear the truth of fact, persuades a finder-of-fact of the existence of fact, or produces a just conviction of truth. It also is any species of proof legally presented at a hearing through witnesses, records, documents, exhibits, and tangible objects for the purpose of inducing belief in the mind of the finder-of-fact. The board or commission sits as the finder-of-fact in a hearing.

The word "evidence" includes all means by which any fact in dispute at a hearing is established or disproved. Any circumstance which affords an inference whether the matter alleged is true or false is evidence, and is commonly understood to be within the meaning of that term.

The object of evidence is to inform the finder-of-fact of the material facts which have bearing upon the issue in order that the truth may be elicited and that a fair determination of the controversy may be reached. The federal government and individual states have adopted rules of evidence to ensure that the truth be ascertained and proceedings justly determined.

Rules of evidence in Nevada are codified in Title 4 of NRS. Although rules of evidence are relaxed in administrative hearings, *see* NRS 233B.123, having some familiarity with them may help ensure that hearings are conducted fairly. The word evidence is comprehensive, and encompasses both testimony and physical evidence. Legal evidence is not limited to oral testimony of witnesses, but includes documentary evidence such as public records, private writings, photographs, books of account, objects, and other documents or tangible items.

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *See* NRS 48.015.

Evidence is classified according to whether it is circumstantial or direct.

- Circumstantial evidence is evidence of a series of facts other than the fact at issue, which leads to a permissible inference concerning the existence of the fact at issue.
    - Example: An inspector testified that, on January 12th, he observed that John's beauty salon was open, his expired license was posted on the wall behind his workstation, a person was in his waiting room, and another person was giving John money. Even though the inspector did not actually see John perform any cosmetology services, this evidence, if believed, may permit an inference that John was performing cosmetology services on January 12th. If the allegations are that John's license expired on January 10th and he continued working on clients after that date, this evidence would be circumstantial evidence of that fact.

- Direct evidence is evidence which, if believed, proves the existence of the fact at issue without inference or presumption. It is evidence which comes from one who speaks directly of his or her own knowledge on the main or ultimate fact to be proven.
    - Example: Sally testifies that John cut her hair after the date when his licensee expired. If Sally's testimony is believed, it is direct evidence that John worked with an expired license.

An "offer of proof" is a method by which evidence that is objected to may be shown to the finder-of-fact in order to assist in the decision on the objection. An offer of proof also allows the proponent to preserve the item offered for the record on appeal, if the evidence is excluded.

"Judicial notice" is a substitute for formal proof of a matter by evidence. The phrase judicial notice refers to the method by which a finder-of-fact informs itself of a particular fact. The facts subject to judicial notice are facts in issue or facts from which they may be inferred. A judicially noticed fact must be:

- Generally known within the territorial jurisdiction of the board or commission; or
- Capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.
  See NRS 47.130.
    - Example: A ruling in a recent court case regarding the board or commission may be subject to judicial notice by the board or commission in a subsequent case. An amendment to a statute or regulation may also be subject to judicial notice by a board or commission.

Documentary and physical proof is usually regarded as prima facie evidence, that is, a fact presumed to be true unless disproved by evidence to the contrary.

Evidence in a hearing must be admitted before it can be relied upon by the finder-of-fact. Documentary evidence or other tangible types of evidence is often numbered (i.e., 1, 2, 3) or lettered (i.e., A, B, C) and referred to as an exhibit. Generally, the prosecutor's exhibits will be denoted by number, that is "State's Exhibit 1, State's Exhibit 2, State's Exhibit 3," and so on, and the licensee or respondent's exhibits will be denoted by letter, that is, "Respondent's Exhibit A, Respondent's Exhibit B, Respondent's Exhibit C," and so on. Before the members of the board or commission can view these exhibits, they must be admitted. This is accomplished by stating "State's Exhibit 1 is admitted" or "Respondent's Exhibit A is admitted." The record of the hearing should include true and correct copies of all exhibits admitted at the hearing and a list of all exhibits admitted by the parties by letter or number designation. The minutes of the hearing should also include this information.

Authentication or identification of evidence is required before it can be admitted in a hearing. This means that the proponent must satisfy the finder-of-fact that the evidence in question is what it claims to be. Generally, before asking that an exhibit be admitted, the proponent will elicit testimony from a witness regarding the exhibit to authenticate or identify it. A copy of an official record or report or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, is presumed to be authenticated if it is certified as correct by the custodian or other person authorized to make the certification.

D. Witnesses

The term "witness" refers to one who, by being present, personally sees or perceives a thing; a beholder, spectator, or eyewitness. It is one who testifies to what he or she has seen, heard, or otherwise observed.

A witness may not testify to a matter unless:

- Evidence is introduced sufficient to support a finding that he or she has personal knowledge of the matter; or
- He or she states his or her opinion or inference as an expert. *See* NRS 50.025.

Before testifying, every witness shall be required to declare that he or she will testify truthfully, by oath or affirmation administered in a form calculated to awaken his or her conscience and impress his or her mind with the duty to do so. *See* NRS 50.035(1).

An affirmation or oath is sufficient when the witness is generally admonished to tell the truth. For example:

"You do solemnly affirm that the testimony you shall give in this issue (or matter) before the board (or commission) shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer "I do." *See* NRS 50.035(2).

Often, witnesses are instructed to raise their right hand when taking the affirmation or oath. After the oath or affirmation, the witness is often referred to as being "sworn" or "sworn in." Generally, a witness may be sworn in by the board or commission chair, a court reporter, or board counsel.

If the witness is not testifying as an expert, his or her testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness; and (2) helpful to clear understanding of his or her testimony or the determination of a fact in issue. *See* NRS 50.265.

Testimony by experts is permitted in administrative hearings. If scientific, technical, or other specialized knowledge will assist the finder-of-fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training, or education, may testify to matters within the scope of such knowledge. *See* NRS 50.275. Also, the experience, technical competence and specialized knowledge of a board or commission member may be utilized in the evaluation of the evidence. NRS 233B.123(5).

Witnesses in administrative proceedings with communications disabilities and/or who are non-English speakers should be provided an interpreter. *See* NRS 50.050–NRS 50.054.

The board or commission sits as the finder-of-fact in its adjudicative capacity, and determining the credibility of witnesses is an essential function of the finder-of-fact. Often in a hearing, the board or commission will hear testimony from more than one witness, including the licensee or respondent, and often the testimony of these witnesses will conflict. For this reason, during the board or commission's deliberation on the matter, a discussion of the credibility of the witnesses should always be included. Credibility is the quality that makes something worthy of belief.

The board or commission must carefully consider all the evidence and the credibility of that evidence, including witness testimony, it receives in a hearing. To do this, the individual board or commission members always

should consider clearly stating on the record what evidence and witness testimony he or she found credible and why and what evidence and witness testimony he or she did not find credible and why. It is crucial that both elements be included in this discussion. For example, it may be not enough to say, "I found John's testimony credible, and I did not find Sally's testimony credible." Instead, you might say, "I did not find Sally's testimony credible because she seemed unsure about the events that occurred. She also contradicted her testimony several times. I thought John's testimony was more credible because he did not change his story and what he said matched what was recorded on Respondent's Exhibit C."

It may sometimes feel uncomfortable to state aloud that you did not find a witness's testimony credible, particularly if the witness is still in the hearing room, but this is necessary to ensure that the board or commission's decision is strong and sound and easy to protect if it is later appealed.

When determining credibility of a witness's testimony, the following may prove helpful:

- Was the witness able to see or hear or know the things about which the witness testified?

- How well was the witness able to recall and describe those things?

- What was the witness's demeanor while testifying?

- Did the witness have an interest in the outcome of this case or any bias or prejudice concerning any party or any matter involved in the case?

- How reasonable was the witness's testimony considered in light of all the other evidence (including other testimony) in the case?

- Was the witness's testimony contradicted by what that witness has said or done at any other time or by the testimony of other witnesses or by other evidence?

Remember that, if the respondent or licensee (person being charged) addresses the board or commission or provides any statement to the board or commission, that statement is also witness testimony, and the respondent or licensee's testimony should be assessed for credibility by each board or commission member in the same way that witness testimony from any other source is assessed.

In determining credibility of a witness, remember that people tend to forget things, particularly as time passes, and a contradiction may be an innocent lapse of memory instead of an intentional falsehood. Also, keep in mind that two individuals may see or hear the same incident and remember it slightly differently. How you assess credibility of witnesses may also be affected by whether the contradictions you note are relating to important facts or small details.

The credibility of the evidence presented by each side does not necessarily depend on the number of witnesses testifying on one side or the other. All evidence received must be carefully considered and testimony from a smaller number of witnesses on one side may still be more credible than the testimony offered by a larger number of witnesses on the other.

Remember that in most hearing proceedings all board or commission members will be given the opportunity to ask each witness, including the respondent or licensee, questions about his or her testimony. Therefore, if questions occur to you while a witness is testifying, please write those down so that you can ask them during the appropriate time.

E. Findings of Fact and Conclusions of Law.

At the close of the hearing, the board or commission must issue a decision. This decision must include both findings of fact and conclusions of law, and it must be in writing or stated on the record. The findings of fact should be clear and should set forth the factual basis which supports the violations of law determined by the board or commission. Generally, the board or commission's decision is reduced to writing after the board or commission discusses and deliberates regarding the allegations in the Complaint and Notice of Hearing and takes a public vote. The written decision is then subsequently prepared by the board or commission's legal counsel. *See* NRS 233B.125.

F. Judicial Review.

If the board or commission's decision is adverse to the regulated party's interest, he or she may to file a petition for judicial review with the district court within thirty (30) days after issuance of the order. Essentially, judicial review allows the party to "appeal" the board or commission's decision to the district court. The district court will give deference to the board or commission's findings of fact determinations as to the weight or credibility of evidence. Once rendered, the district court's decision can then be appealed by either party to the Supreme Court of Nevada. *See* NRS 233B.130–NRS 233B.150 for provisions relating to judicial review.

VIII. DUTIES OF PRESIDENT OR CHAIR

The president or chair of the board or commission is not the primary decision-maker. Instead, he or she is the group leader. A president or chair's duties include calling the meeting to order, leading and conducting the meeting, helping to ensure compliance with the Open Meeting Law, calling for recesses or breaks during the meeting, and determining if a quorum is present before calling the meeting to order.

The president or chair is the meeting leader. He or she calls out each agenda item before it is discussed and keeps the other board and commission members focused on the meeting agenda. During a meeting, the president or chair attempts to draw all board or commission members into the discussion, particularly when important issues are involved and/or the board or commission is deliberating in a hearing. The president or chair also generally has discretion to limit time for speakers during public comment and rules on the admission of exhibits or objections in a hearing.

The president or chair ensures that board or commission decisions are clearly and orderly made by asking for motions, asking for seconds to motions, prompting discussion on the motion, and calling for a vote upon the motion. The president or chair should also keep other board or commission members on task and does not allow them to stray from the topics specifically noted on the agenda.

The president or chair should help to encourage that a good record of the meeting is made. That means that he or she will prompt board or commission members to verbalize their thoughts in lieu of head nods or shakes or other non-verbal communication. The president or chair will also prompt speakers during public comment to identify himself or herself for the record. During a hearing, the president or chair should ensure that the board or commission's credibility of evidence determinations, findings of fact, conclusions of law, and penalty assessed be clearly and accurately stated on the record.

In order to control the prolific talker or takeover type of person who may sit as a member of a board or commission, the president or chair may find the following techniques helpful:

- Be firm in order to give others a chance to participate and contribute. Say "I appreciate your comments and would like to hear from others. I will ask for their viewpoints now."

- When a conflict occurs, suggest that conflicting ideas help to ensure that all viewpoints are presented and then help in resolving the conflict. Insist and state that the conflict is between ideas and not between persons.

- Keep the discussion on the subject. If persons stray from the subject or make inappropriate comments, be forthright and firm and rule them out of order. If necessary, remind them of the topic being discussed and insist that the discussion remain directly on that matter.

If ideas or problems are complicated and involved, the president or chair may:

- Suggest that the full board or commission create a sub-committee to study, discuss, and research the issue. The sub-committee can then develop recommendations to bring back to the full board or commission for further action. A sub-committee should be given a timeline during which to complete its tasks.

- Suggest that the board or commission schedule a panel discussion on the issue at a future meeting. This provides an opportunity for presentation by those on the panel of different points of view. It can be made up of four to six persons who are experts on the matter or who knowingly have different viewpoints. The president or chair can act as the moderator for the panel discussion and facilitate the presentations, allow for questions to panel members by board or commission members, and, if time permits, allow for questions to panel members from members of the public who may be present at the meeting.

A good president or chair should have the following characteristics:

- Punctual.

- Knowledge of basic parliamentary procedure.

- Leadership ability.

- Capability of being personable, yet at the same time being firm and orderly without endeavoring to be merely popular.

- Ability to handle critical and controversial issues.

- Control of his or her emotions and convictions.

- Impartiality while sitting as the president or chair with exercise of common sense and good judgment. The president or chair should keep facial expressions neutral and not appear to favor any one board or commission member or any one party in a hearing setting.

- Ability to not express ill will or negative thoughts about any other board or commission member openly.

- Prepared for the topics on the agenda.
- Knowledgeable about the statutes and regulations the board or commission is charged with enforcing.

IX. LIABILITY AND LITIGATION

A board or commission and/or its individual members may be subject to liability in a wide variety of situations ranging from a traffic accident in which a board or commission employee negligently injures a third person, to a landlord-tenant or contract dispute, to an investigation or disciplinary proceeding in which the licensee or regulated individual and/or entity alleges that the board or its representatives have violated his or her civil rights. Litigation against a board or commission and its members or employees is governed by NRS Chapter 41.

Actions not taken in good faith may subject a board or commission, and even individual members, to liability. As board or commission members, you should at all times attempt to maintain your objectivity.

In order for a member or employee of a board or commission to avoid personal liability and legal expenses as the result of one's action, the individual must act within the scope of his or her duties and in good faith. Initiating investigation of an individual without an adequate factual basis and/or without complying with statutory and legal procedural requirements on the basis of a personal grudge against the individual is a stark example of behavior that would be characterized as conduct in bad faith and outside the scope of one's duties.

If a board or commission member or a board or commission employee has acted in good faith and within the scope of his duties, but is nevertheless found liable in a lawsuit, he or she is entitled to be indemnified by the State. Additionally, if these criteria are met, the individual is entitled to receive legal representation from the State. In order to be entitled to indemnification and legal representation, the board member or employee must follow certain procedural requirements and cooperate with the State in his or her defense.

It is, of course, possible for a board member or employee to engage in negligent conduct while acting in good faith and in the course of his official duties. In this situation, as explained above, the member or employee may be immune from liability and legal expenses, and the State or the board or commission itself may be responsible for payment of monetary damages to the injured party. Thus, in order to protect the board or commission, all board or commission members and staff must act with "due care." In general, you should always strive to carry out your duties in a reasonable and diligent manner. When faced with novel or difficult matters, you should consult legal counsel or seek other appropriate assistance. Consulting legal counsel prior to taking a particular action is especially advisable in light of court decisions which have held that

reliance on the advice of legal counsel may, to some extent, insulate a board or commission from liability.

As a board or commission member, you need to be particularly aware of certain areas of potential liability. Boards and commissions are frequently the target of civil rights litigation. Civil rights claims often stem from disciplinary proceedings and typically consist of allegations that the board or commission, in taking disciplinary action, has in some way violated a licensee's or regulated individual or entity's right to a fair hearing.

An area of potential liability that can easily be overlooked by boards and commissions involves actions taken outside the scope of their authority and which are designed to limit competition in the profession or industry. These actions include decisions which focus on limiting competition within the profession rather than on protecting the public's health, safety, and welfare. Under some circumstance, such actions can expose boards or commissions to anti-trust liability.

No action may be brought against an occupational licensing board or commission which is based upon an investigation performed within the scope of the duties of the occupational licensing board or commission, unless bad faith and malicious intent are proven by the claimant. Persons who furnish information or assist an occupational licensing board or commissions as part of an investigation, or file a complaint of professional misconduct with the licensing board or commission against a person regulated by such a board or commission, or a person who has applied for licensure, are immune from liability, unless it is proven that he or she acted in bad faith or with malicious intent. *See* NRS 622A.150.

Attachment 2

LEGISLATIVE DECLARATION OF PUBLIC POLICY AND LEGISLATIVE INTENT/PURPOSE

Air Pollution Control: NRS 445B.100 Declaration of Public Policy

1. It is the public policy of the State of Nevada and the purpose of NRS 445B.100 to 445B.640, inclusive, to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the State.
2. It is the intent of NRS 445B.100 to 445B.640, inclusive, to:
(a) Require the use of reasonably available methods to prevent, reduce or control air pollution throughout the State of Nevada;
(b) Maintain cooperative programs between the State and its local governments; and
(c) Facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within a single jurisdiction.
3. The quality of air is declared to be affected with the public interest, and NRS 445B.100to 445B.640, inclusive, are enacted in the exercise of the police power of this State to protect the health, peace, safety and general welfare of its people.
4. It is also the public policy of this State:
(a) To provide for the integration of all programs for the prevention of accidents in this State involving chemicals, including, without limitation, accidents involving hazardous air pollutants, highly hazardous chemicals, highly hazardous substances and extremely hazardous substances; and
(b) Periodically to retire a portion of the emission credits or allocations specified in NRS 445B.235 that may otherwise be available for banking or for sale pursuant to that section.

Water Pollution: NRS 445A.305 Legislative Declaration

1. The Legislature finds that pollution of water in this State:
(a) Adversely affects public health and welfare;
(b) Is harmful to wildlife, fish and other aquatic life; and
(c) Impairs domestic, agricultural, industrial, recreational and other beneficial uses of water.
2. The Legislature declares that it is the policy of this State and the purpose of NRS 445A.300 to 445A.730, inclusive:
(a) To maintain the quality of the waters of the State consistent with the public health and enjoyment, the propagation and

protection of terrestrial and aquatic life, the operation of existing industries, the pursuit of agriculture, and the economic development of the State; and
(b) To encourage and promote the use of methods of waste collection and pollution control for all significant sources of water pollution (including point and diffuse sources).

Drinking Water: NRS 445A.800 Declaration of State Policy

It is the policy of this State to provide for water which is safe for drinking and other domestic purposes and thereby promote the public health and welfare.

Hazardous Waste Disposal: NRS 459.400 Purpose

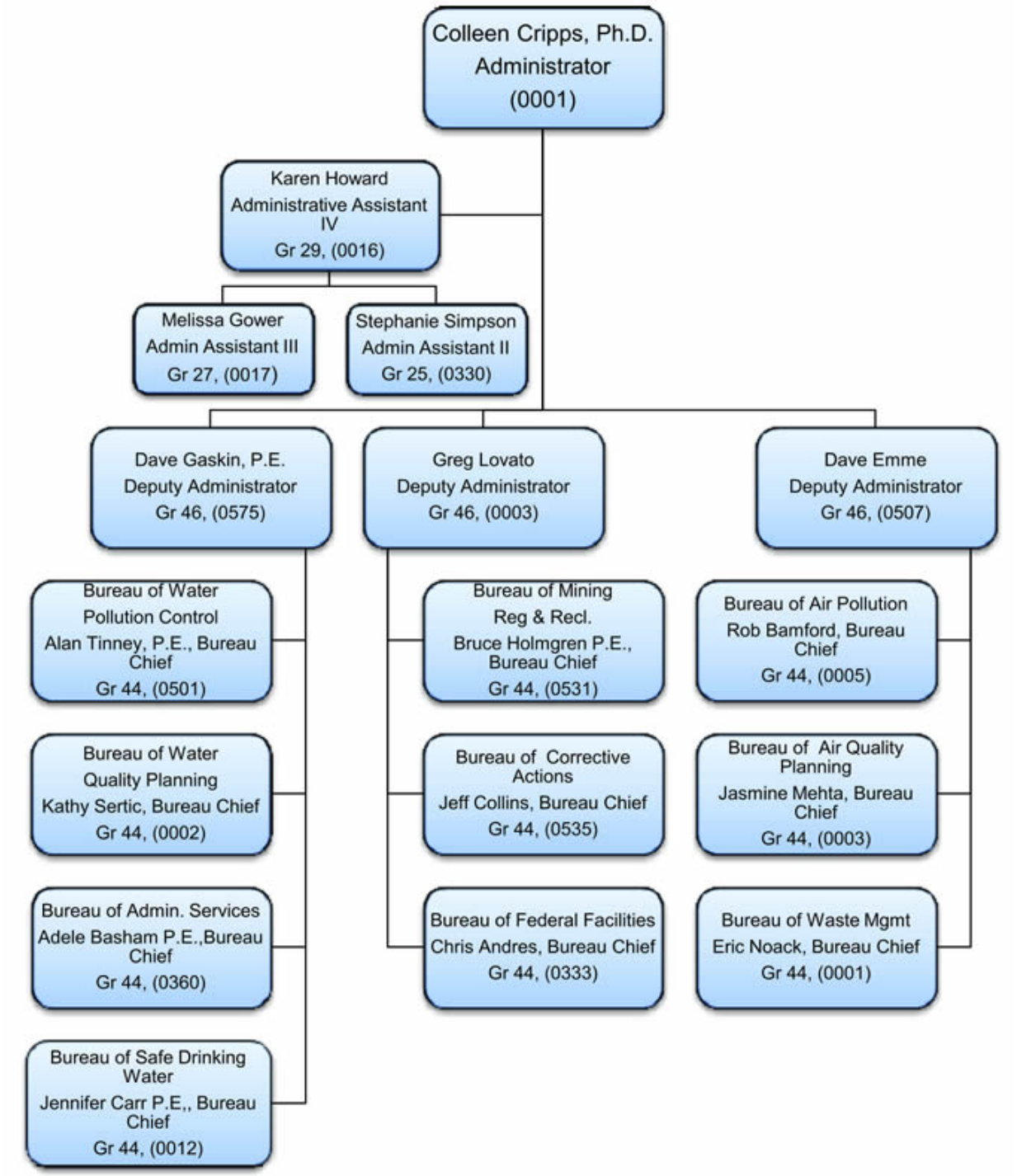
1. Protect human health, public safety and the environment from the effects of improper, inadequate or unsound management of hazardous waste;
2. Establish a program for regulation of the storage, generation, transportation, treatment and disposal of hazardous waste; and
3. Ensure safe and adequate management of hazardous waste.

Collection and Disposal of Solid Waste: NRS 444.440 Declaration of State Policy

1. Protect public health and welfare.
2. Prevent water or air pollution.
3. Prevent the spread of disease and the creation of nuisances.
4. Conserve natural resources.
5. Enhance the beauty and quality of the environment.

Attachment 3

NDEP Organizational Chart



Attachment 4

Roberts Rules of Order - *Cheat Sheet*

Robert's Rules of Order (1915) is the oldest and most commonly used guide to parliamentary procedure, a set of rules for conduct at meetings that allows everyone to be heard and to make decisions without confusion. Because of its age, the book has been adapted many times and has specific rules about meeting processes, making it confusing to many. The following guide serves as a cheat sheet for running effective meetings.

MEETING STRUCTURE

The following outlines the structure of a typical meeting using this method.

- Call to order.
- Roll call of members present (voting delegate to respond).
- Reading of the minutes of the last meeting.
  - Meeting leader typically will ask if there are any additions or changes to the minutes.
  - This typically will be followed by a vote to approve the minutes.
- Officers' reports -
  - These are simply updates and do not include votes.
- Committee reports
  - These also are updates and do not include votes.
- Old business
  - This is important business previously planned for discussion at the current meeting.
  - This can include items that were discussed at the last meeting, but more information was needed or they weren't on the agenda for a vote.
  - Old business can include votes.
- Regular business
  - This is any item listed on the agenda as regular business for the body to discuss.
  - The body can vote on each issue listed on the agenda.
  - The body cannot vote on any item not listed on the agenda.
  - The body also can vote to table discussion of any item until a later meeting, but they must either set a date for more discussion or postpone indefinitely.
- New business
  - Any new business or resolutions before the body that requires a vote.
  - This must also include a description on the agenda.
- Announcements
  - These are announcements from the body, but do not include votes.
- Adjournment
  - The meeting leader will move for adjournment, signifying the end of the meeting.

TYPES OF MOTIONS

Motions are typical methods used by members of a body to express themselves during a meeting. A motion is a proposal that the entire membership can take action on. There are six basic types of motions:

- Main Motions:
  - Introduces items to the membership for their consideration.
  - They cannot be made when any other motion is on the floor.
- Subsidiary Motions:
  - Change or affect how a main motion is handled, and is voted on before a main motion.
- Privileged Motions:
  - Bring up items that are urgent about special or important matters unrelated to pending business.
- Incidental Motions:
  - Provide a means of questioning procedure concerning other motions and must be considered before the other motion.
- Motion to Table:
  - Used in the attempt to "kill" a motion.
- Motion to Postpone:

- This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken.
- Also, debate is once again open on the main motion.
- This can be a postponement until a set date or indefinitely.

HOW TO PRESENT A MOTION

Motions are presented by:

- Obtaining the floor
  - Wait until the last speaker has finished.
  - Rise and address the Chairman by saying, "Mr. (or Ms.) Chairman"
  - Wait until the Chairman recognizes you.
- Make Your Motion using “I move that we…”
- Wait for Someone to Second Your Motion
  - Another member can second your motion or the Chairman will call for a second.
- If there is no second to your motion, it is lost.

Parliamentary Procedure At A Glance - *your guide of what to say and when to say it…*

TO DO THIS:	YOU SAY THIS	May you interrupt the speaker?	Do you need a second ?	Is it debatable ?	Can it be amended ?	What vote is needed?	Can it be reconsidered ?
Adjourn Meeting	“I move to adjourn.”	NO	YES	NO	NO	Majority	NO
Call an Intermission	“I move to recess for…”	NO	YES	NO	YES	Majority	NO
Complain about heat, noise, etc.	“I rise to a question of privilege.”	YES	NO	NO	NO	No Vote	NO
Temporarily suspend considering an issue	“I move to lay the motion on the table.”	NO	YES	NO	NO	Majority	NO
End debate and amendments	“I move the previous question.”	NO	YES	NO	NO	2/3	NO
Postpone discussion for a certain time	“I move to postpone discussion until…”	NO	YES	YES	YES	Majority	YES
Give closer study of something	“I move to refer the matter to committee.”	NO	YES	YES	YES	Majority	YES

Amend a Motion	“I move to amend the motion by…”	NO	YES	YES	YES	Majority	YES
Introduce Business	“I move that…”	NO	YES	YES	YES	Majority	YES
THE MOTIONS LISTED ABOVE ARE IN ORDER OF PRECEDANCE… BELOW, THERE IS NO ORDER…							
Protest breach of conduct or rules	“I rise to a point of order.”	YES	NO	NO	NO	No Vote	NO
Vote on a ruling of the chair	“I appeal from the chair’s decision.”	YES	YES	YES	NO	Majority	YES
Suspend rules temporarily	“I move to suspend the rules so that…”	NO	YES	NO	NO	2/3	NO
Avoid considering an improper matter	“I object to consideratio n of this motion.”	YES	NO	NO	NO	2/3	YES 2
Verify a voice vote by having members stand	“I call for a division,” or “Division!”	YES	NO	NO	NO	No Vote	NO
Request Information	“Point of information …”	YES	NO	NO	NO	No Vote	NO
Take up a matter previously tabled	“I move to take from the table…”	NO	YES	NO	NO	Majority	NO
Reconsider a hasty action	“I move to reconsider vote on…”	YES	YES	YES	NO	Majority	NO

Attachment 5

FORM FOR PETITIONING THE STATE ENVIRONMENTAL COMMISSION FOR ADOPTION, FILING AMENDMENTS OR REPEAL OF COMMISSION REGULATIONS.
Form #1

1. Name, Address, telephone number, date of petition, representative capacity and signature of petitioner, authorized individual, officer or attorney.

2. Specific type of petitioner (individual, partnership, corporation, government agency, or other) and the exact occupation or business, including a description of the occupation or business if necessary.

3. Exact and specific nature of changes sought, including delineation of the regulations, statutory provisions of Commission decisions involved. May include a statement of the written term or substance of the proposed regulatory action, or a description of the subjects and issues involved.

4. A statement of the need for and purpose of the proposed regulations.

5. A statement of the:
   (a) Estimated economic effect of the regulation on the business which it is to regulate;
      (1) Both adverse and beneficial effects; and
      (2) Both immediate and long-term effects; and
   (b) Estimated economic effect on the public;
      (1) Both adverse and beneficial effects; and
      (2) Both immediate and long-term effects; and
   (c) Estimated cost by the agency for enforcement of the proposed regulation.

6. 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.

7. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions. The statement must include the specific citation of the federal statute or regulation requiring such adoption.

8. 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.

# # # #

Revision Approved by SEC 10-3-95

FORM FOR PETITIONING THE NEVADA STATE ENVIRONMENTAL COMMISSION FOR A DECLARATORY ORDER OR ADVISORY OPINION
Form #2

1. Name, Address, telephone number, and signature of petitioner. Also their representative capacity if applicable.

2. Specific type of petitioner (individual, partnership, corporation or other) and the exact business or occupation including a description of the business or occupation if necessary.

3. Exact and specific nature of order or opinion sought, including delineation of the regulations, statutory provision, or Commission decision involved.

4. Petitioner's reason for requesting the declaratory order and/or advisory opinion including whether in behalf of self interest, the public interest, or any other legal entity's or individual's interest.

5. An expression of what particular group(s) of people would be most affected, either positively or negatively, by declaratory order, and/or advisory opinion.

6. Date of petition.

# # # #

State of Nevada
Dept. of Conservation & Natural Resources
State Environmental Commission SEC.nv.gov
901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

FORM 3: FORM FOR REQUESTING AN APPEAL HEARING
(Provide attachments as needed)

1. Name, address, telephone number, and signature of appellant:

Name: _____

Physical Address: _____

E-mail Address: _____

Telephone Number: _____

Signature: _____

Representative capacity (if applicable): _____

2. Attach copy of Nevada Division of Environmental Protection final decision, such as permit or notice of alleged violation, being appealed.

3. Specify grounds of appeal: (check all that apply)

- ☐ Final decision in violation of constitutional or statutory provision;
- ☐ Final decision made upon unlawful procedure;
- ☐ Final decision was affected by other error of law;
- ☐ Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- ☐ Final decision was arbitrary or capricious or characterized by abuse of discretion;

4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. **Also list the statutes and/or or regulations that give the State Environmental Commission jurisdiction to hear the appeal**.

_____

_____

_____

_____

_____

5. For each ground of appeal checked above, provide a brief and concise statement of the facts which provide the basis for the appeal.

_____

_____

_____

_____

_____

_____

_____

_____

Date of Request: _____.

Send Form to: Executive Secretary, State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, NV 89701

FORM #4

NEVADA STATE ENVIRONMENTAL COMMISSION
SMALL BUSINESS IMPACT DISCLOSURE PROCESS
PURSUANT TO 233B "Nevada Administrative Procedures Act"

The purpose of this Form is to provide a framework pursuant to NRS 233B.0608 for drafting and submitting a Small Business Impact Statement (SBIS) to the State Environmental Commission (SEC) and to determine whether a SBIS is required to be noticed and available at the public workshop. A SBIS must be completed and submitted to the Legislative Counsel Bureau for ALL adopted regulations.

Note: Small Business is defined as a "business conducted for profit which employs fewer than 150 full-time or part-time employees" (NRS 233B.0382).

To determine whether a SBIS must be noticed and available at the public workshop, answer the following questions:

1. Does this proposed regulation impose a direct and significant economic burden upon a small business? *(state yes or no. If no, please explain and submit the applicable documentation, which can also be addressed in #8 on the SBIS and simply referred to; and if yes, reference the attached SBIS)*

2. Does this proposed regulation restrict the formation, operation or expansion of a small business? *(state yes or no. If no, please explain and submit the applicable documentation, which can also be addressed in #8 on the SBIS and simply referred to; and if yes, reference the attached SBIS)*

If **Yes** to either of questions 1 & 2, a SBIS must be noticed and available at the public workshop.

FORM #4
SMALL BUSINESS IMPACT STATEMENT
(NRS 233B.0609)

1. Describe the manner in which comment was solicited from affected small businesses, a summary of the response from small businesses and an explanation of the manner in which other interested persons may obtain a copy of the summary. *(Attach copies of the comments received and copies of any workshop attendance sheets, noting which are identified as a small business.)*

2. The manner in which the analysis was conducted (if an impact was determined).

3. The estimated economic effect of the proposed regulation on small businesses:

   a. Both adverse and beneficial effects
   b. Both direct and indirect effects

4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of the methods. *(Include a discussion of any considerations of the methods listed below.)*

   A. Simplification of the proposed regulation
   B. Establishment of different standards of compliance for a small business
   C. Modification of fees or fines so that a small business is authorized to pay a lower fee or fine.

5. The estimated cost to the agency for enforcement of the proposed regulation. *(Include a discussion of the methods used to estimate those costs.)*

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

7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, provide an explanation of why such duplicative or more stringent provisions are necessary.

8. The reasons for the conclusions regarding the impact of a regulation on small businesses.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on a small business and that the information contained in this statement is accurate.

_____ _____
Administrator, NDEP Date

http://www.leg.state.nv.us/Statutes/77th2013/Stats201314.html#Stats201314page2304

NEVADA STATE ENVIRONMENTAL COMMISSION
SMALL BUSINESS IMPACT AGGRIEVEMENT PETITION
FORM # 5

The purpose of this petition is to provide small businesses due process in responding to regulations adopted by the State Environmental Commission. This petition is to be used pursuant to N.R.S. 233B.105, by a small business that believes that it is aggrieved by the adoption of a regulation by the State Environmental Commission.

Please state both the Environmental Commission petition number and the Legislative Counsel Bureaus file number of the regulation adopted *(contact the Executive Secretary of the Environmental Commission if the numbers are not available)*:

_____

Please state the date on which the Environmental Commission adopted the aforementioned proposed regulation:

_____
_____

Please state the section or sections of the adopted regulation being objected to:

_____
_____
_____

Please indicate the grounds on which the adopted regulation is being objected to:

A. The proposing agency failed to prepare a small business impact statement as required by subsection 2 of NRS 233B.0608. *(Please explain.)*

_____
_____
_____

B. The small business impact statement as prepared did not consider or significantly underestimated the economic effect of the regulation on small business. *(Please state how the economic effect has been underestimated)*

_____
_____
_____
_____

C. Other relevant information regarding the Commission's decision.

_____
_____

END OF FORM #5

State of Nevada
Dept. of Conservation & Natural Resources
State Environmental Commission SEC.nv.gov
901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

Nevada State Environmental Commission (SEC)
Procedure to Petition for a Variance to NRS/NAC Chapter 486A
SEC Form #6

Discussion

Generally, NRS Chapter 486A and NAC Chapter 486A relate to the requirements for the state and political subdivisions to purchase alternative fueled vehicles and use alternative fuels in government fleets. **NRS 486A.150** (amended by the Legislature in 2009 through SB 332), effective July 1, 2009, requires the State Environmental Commission (Commission) to establish a procedure for approving variances to the provisions of NRS 486A. In approving variances, the Commission may consider whether compliance with NRS 486A (or the provisions of NAC 486A) would:

- Void or reduce the coverage under a manufacturer's warranty for any vehicle or vehicle component;
- Result in financial hardship to the owner or operator of a fleet;
- Be impractical because of the lack of availability of clean vehicles, alternative fuel or motor vehicles that use alternative fuel; or
- Any other reason which the Commission determines is appropriate.

Any agency requesting a variance from the requirements of the alternative fuels program must submit the following information to the State Environmental Commission for their review. The petition for variance must be received at least 30 days prior to the Commission hearing in order to be heard as an action item. The Division of Environmental Protection will review the request for completeness, request additional information, as necessary, and make a recommendation to the Commission on each variance request.

Procedure for Variance to Requirements of NRS/NAC 486A

Provide a response to Sections A-C, as applicable.

A. For requests being made **due to voiding a manufacture's warranty,** the request must include the following:

- The length of time requested for the variance.

- The specific vehicle(s) for which the variance is being requested, including the year, make, model and VIN for each vehicle and the portion of the warranty that would be affected.

- Documentation from the vehicle or engine manufacturer or the manufacturer's dealer that complying with the alternative fuel requirements of NRS/NAC 486A will void the vehicle's warranty.

- A discussion of any alternatives considered (i.e. the purchase of other alternative fuel vehicles or the use of other compliant fuels) that would mitigate the need for the variance.

B. For requests being made **due to financial hardship,** the request must include the following:

- The length of time requested for the variance.

- The portion of the fleet to which the request applies:

    - If the request applies to acquisitions of new alternative fuel vehicles (exemption from NAC 486A.160), the request should state which alternative fuel vehicles purchases are affected and the type of vehicle(s) proposed to be purchased in its place.
    - If the request applies to the use of an alternative fuel, state specific fuel(s) to which the request applies (exemption from NAC 486A.180).

- A description of the nature and extent of the financial hardship being experienced by the agency and the financial impact that would be experienced by the agency as a result of compliance with the alternative fuels program. Also indicate what has changed to bring about this financial hardship (e.g. loss of revenue, change in market prices for alternative fuels, etc.)

- The budgetary savings that the fleet expects to realize if the variance is granted. Savings should be broken down by fuel expenditure savings, vehicle acquisition savings, maintenance savings, or any other savings expected.

- Documentation showing that the applicable local air pollution control agency agrees that granting of the variance would not cause a significant adverse impact to a State Implementation Plan (SIP) control strategy.

- A discussion of any alternatives considered that would mitigate the need for the variance.

- A description of how and to what degree financial conditions would have to change before the variance would no longer be needed and the expected time frame for such changes to occur.

C. For requests being made **due to unavailability of alternative fuel vehicles or fuels,** the request must include the following:

- An explanation of the circumstances surrounding the unavailability of the alternative fuel vehicles or alternative fuels. This explanation should include the types of vehicles and fuels being sought; the agency's unsuccessful attempts to acquire the alternative vehicles or alternative fuels; or, if applicable, the economic impracticality of providing a facility to dispense alternative fuel.

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- Documentation showing that the applicable local air pollution control agency agrees that granting of the variance would not cause a significant adverse impact to a State Implementation Plan (SIP) control strategy.

- Discuss any alternatives considered that would mitigate the need for the variance.

- Describe the logistical conditions for the acquisition of alternative fuel vehicles and use of alternative fuels that would have to exist before the exemption would no longer be needed and the expected time frame for such changes to occur.

Agencies requesting a variance from the provisions of NAC 486A must submit a written request to the State Environmental Commission at the following address:

State Environmental Commission
901 South Stewart Street, Suite 4001
Carson City, NV 89701

Attachment 6

Administrative Rulemaking Process – 2014

Regulation Process:

- ✓ Complete the drafting of the regulatory petition (proposed regulation)
  - Include citation to the NRS authority authorizing NDEP to make the regulation
- ✓ Prepare a Form 4 - Small Business Impact Statement (SBIS) - **Regardless if there is an impact or not, Form 4 must be completed**
  - If there is an impact, conduct an analysis of the likely impact of the regulation
  - If there is not an impact, the SBIS response to questions will mostly be "Not Applicable;" however, #8 will ALWAYS require a response and the certification statement at the bottom of the form must be signed by the Administrator
- ✓ Prepare a Form 1 – Informational Statement Support Data
- ✓ SEC submits NDEP's draft to LCB for legal drafting
  - LCB ensures draft language is clear, concise and suitable for incorporation in the NAC
  - LCB has 30 days to complete drafting

Public Workshop:

- ✓ Workshops must be noticed no less than 15 days before the date of the workshop. It must include an agenda unless agenda is sent out separately no less than 3 days before the workshop
- ✓ If an impact to small businesses is anticipated, the SBIS **MUST** be posted with every posting of the workshop notice and made available during the workshop
- ✓ Workshop Notices must be posted at the following locations:
  - LCB's website
  - Department of Administration's website
  - NDEP (Both Carson City and Las Vegas offices)
  - DCNR
  - Two other physical locations outside of NDEP (ie. State Library, NDOM, NDOW etc.)
  - Electronic Mailing List
  - SEC Website

Regulatory Petition Notice:

- ✓ Notice to Act on a Regulation must be posted no later than 30 days before SEC meeting at the following locations (Notice may not be given until **AFTER** the approved or revised text of the proposed regulation is received from LCB):
  - Newspapers "throughout the state" once a week for 3 weeks within the 30 days (NRS 445B.215)
  - LCB Website
  - Department of Administration's Website
  - Deb Corp, (in Word format) for posting to the Register
  - SEC Website
  - SEC Electronic Mailing List (include draft regulation)
  - State Library (include draft regulation)
  - NDEP Offices - Carson City and Las Vegas (attach draft regulation)
  - DCNR
  - Main Public Library in each County (attach draft regulation)
  - Two other physical locations outside of NDEP (ie. NDOM, NDOW etc.)

SEC Regulatory Hearing Agenda Notice:

- ✓ Agenda for Regulatory Hearing (SEC meeting) must be posted no later than 3 days before the meeting date at the following locations:

- Department of Administration Website
- LCB Website (Only if Agenda contains Regulations for Adoption)
- NDEP (Both Carson City and Las Vegas offices)
- DCNR
- Two other physical locations outside of NDEP (ie.State Library, NDOM, NDOW etc.)
- Electronic Mailing List
- SEC Website

Submittal of Adopted Regulation to LCB for Legislative Commission Approval:

- ✓ Adopted Regulation
- ✓ Informational Statement which includes the need for regulation (in Word format)
- ✓ SBIS (Form 4) - Regardless whether an impact to small businesses has been determined
- ✓ Form for Filing Administrative Regulation
- ✓ Notice of Adoption of Regulation form

LCB files the regulation with the Secretary of State after Legislative Commission approval and that filing date marks the effective date of the regulation

SEC staff delivers the regulation with the Secretary of State's stamp to the State Library and Archives Administrator, including any material adopted by reference which is not already filed

General Information

Permanent Regulation:

- ✓ NDEP Draft Regulation submitted to LCB between July 1, odd years and June 30, even years
- ✓ Workshop
- ✓ LCB Review
- ✓ Adoption Hearing (SEC)
- ✓ Resubmitted to LCB
- ✓ Legislative Commission Approval
- ✓ LCB files with Secretary of State
- ✓ SEC staff files SoS-stamped regulation with State Library and Archives Administrator

Temporary Regulation:

- ✓ NDEP Draft Regulation submitted to LCB between August 1, even years and July 1, odd years
- ✓ Workshop
- ✓ No LCB Review
- ✓ Adoption Hearing (SEC)
- ✓ No Legislative Commission, unless requested by a legislator
- ✓ File with SoS, **no sooner than 35 days** after the date the temporary regulation was adopted
    - Adopted Regulation
    - Informational Statement
    - Small Business Impact Statement
- ✓ Expires November 1 of following odd year

LCB Website: http://www.leg.state.nv.us/

Attachment 7

Reference: BAPC Permit Classes

The BAPC addresses Federal and State air quality permitting requirements by grouping them into permit "Classes." Permit Classes range from 1-4, with Class 1 sources emitting the largest quantity of pollutants (>100 tons), Class 2 a moderate amount (<100 tons), Class 3 (<5 tons) and Class 4 the lowest amount.

- **Class 1** - Typically for facilities that emit more than 100 tons per year for any one regulated pollutant or
  emit more than 25 tons per year total HAPs or
  emit more than 10 tons per year of any one HAP or
  is a PSD source or
  major MACT source.

  - For "major" stationary sources
  - Class 1 Air Quality Operating Permit (AQOP) is also a "Title V" and "PSD" federal permit. Permit for construction and operation.
  - Class 1 Operating Permit to Construct (OPTC) is for construction (only) and after 12 months must convert into a Class 1 AQOP for operation. State permit.
  - Class 1 Mercury Operating Permit to Construct (MOPTC). Permit for gold and silver facilities that emit mercury. Permit under the State's Nevada Mercury Control Program. State permit.

- **Class 2** - Typically for facilities that emit less than 100 tons per year for any one regulated pollutant and emit less than 25 tons per year total HAP and emit less than 10 tons per year of any one HAP. State permits.
  - For "minor" sources
  - Class 2 Air Quality Operating Permit (AQOP). Allows for the construction and operation of stationary minor sources.
  - Class 2 General permit. Allows for the operation and re-location of temporary, portable road and highway equipment.
  - "COLA" – Change of Location Approval allows re-location of equipment.
    - Temporary is < 12 months at one location
  - Class 2 Surface Area Disturbance (SAD) – a permit required for a Surface Area Disturbance of >5 acres.

- **Class 3** - Typically for facilities that emit 5 tons per year or less in total of regulated air pollutants and emit less than one-half ton of lead per year, and must not have any emission units subject to Federal Emission Standards (ie: NSPS, NESHAPS, MACT, etc.) State permits.
  - For "minor" sources
  - Class 3 Air Quality Operating Permit (AQOP). Allows for the construction and operation of minor stationary sources.

- **Class 4** - For a facility with a single emission unit subject to 40CFR Part 63 "*National Emission Standards for Hazardous Air Pollutants*" that is not also subject to a Class 1, 2 or 3 permit. State permit.
  - For minor or "area" sources of Hazardous Air Pollutants (HAPs).

Reference: Criteria Pollutants & Health Risk Overview

The Clean Air Act requires EPA to set national ambient air quality standards (NNAQS) for "criteria pollutants." These include: carbon monoxide, ozone, lead, sulfur oxides, nitrogen oxides, and particulate matter. The law also requires EPA to review the standards periodically and revise them if appropriate to ensure that they provide the requisite amount of health and environmental protection and to update those standards as necessary. **BAPC performs pollutant air dispersion modeling for criteria pollutants to demonstrate compliance with the NAAQS.**

The pollutant overview below is taken directly from EPA's website at http://www.epa.gov/airquality/urbanair/.

Ozone (O_3)

Ground level or "bad" ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO_x) and volatile organic compounds (VOC) in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOC.

About 25 million people, including 7 million children, have asthma and over 12 million people report having an asthma attack in the past year. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. It can worsen bronchitis, emphysema, and asthma. Ground level ozone also can reduce lung function and inflame the linings of the lungs. Repeated exposure may permanently scar lung tissue.

Ground level ozone can have harmful effects on sensitive vegetation and ecosystems. Plant species that are sensitive to ozone and potentially at an increased risk from exposure include trees such as black cherry, quaking aspen, ponderosa pine and cottonwood. These trees are found in many areas of the country. These effects can also have adverse impacts on ecosystems, including loss of species diversity and changes to habitat quality and water and nutrient cycles.

Particulate Matter (PM)

Particle pollution (also called particulate matter or PM) is the term for a mixture of solid particles and liquid droplets found in the air. Some particles, such as dust, dirt, soot, or smoke, are large or dark enough to be seen with the naked eye. Others are so small they can only be detected using an electron microscope.

The size of particles is directly linked to their potential for causing health problems. Small particles less than 10 micrometers in diameter pose the greatest problems, because they can get deep into your lungs, and some may even get into your bloodstream. Exposure to such particles can affect both your lungs and your heart. Small particles of concern include "inhalable coarse particles" (such as those found near roadways and dusty industries), which are larger than 2.5 micrometers and smaller than 10 micrometers in diameter; and "fine particles" (such as those found in smoke and haze), which are 2.5 micrometers in diameter and smaller.

Numerous scientific studies have linked particle pollution exposure to a variety of problems, including: premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.

Environmental impacts include: visibility impairment, environmental damage and aesthetic damage. Fine particles ($PM_{2.5}$) are the main cause of haze in parts of the United States. Particles can be carried over long distances by wind and then settle on ground or water. The effects of this settling include: making lakes and streams acidic; changing the nutrient balance in coastal waters and large river basins; depleting the nutrients in soil; damaging sensitive forests and farm crops; and affecting the diversity of ecosystems. Particle pollution can stain and damage stone and other materials, including culturally important objects such as statues and monuments.

Carbon Monoxide (CO)

Carbon monoxide (CO) is a colorless, odorless gas emitted from combustion processes. Nationally and, particularly in urban areas, the majority of CO emissions to ambient air come from mobile sources. CO can cause harmful health effects by reducing oxygen delivery to the body's organs (like the heart and brain) and tissues. At extremely high levels, CO can cause death.

Exposure to CO can reduce the oxygen-carrying capacity of the blood. People with several types of heart disease already have a reduced capacity for pumping oxygenated blood to the heart, which can cause them to experience myocardial ischemia (reduced oxygen to the heart), often accompanied by chest pain (angina), when exercising or under increased stress. For these people, short-term CO exposure further affects their body's already compromised ability to respond to the increased oxygen demands of exercise or exertion.

Nitrogen Oxides (NO_x)

Nitrogen dioxide (NO_2) is one of a group of highly reactive gasses known as "oxides of nitrogen," or "nitrogen oxides (NO_x)." Other nitrogen oxides include nitrous acid and nitric acid. EPA's National Ambient Air Quality Standard uses NO_2as the indicator for the larger group of nitrogen oxides. NO_2 forms quickly from emissions from cars, trucks and buses, power plants, and off-road equipment. In addition to contributing to the formation of ground-level ozone, and fine particle pollution, NO_2 is linked with a number of adverse effects on the respiratory system.

Current scientific evidence links short-term NO_2 exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Also, studies show a connection between breathing elevated short-term NO_2 concentrations, and increased visits to emergency departments and hospital admissions for respiratory issues, especially asthma.

NO_x react with ammonia, moisture, and other compounds to form small particles. These small particles penetrate deeply into sensitive parts of the lungs and can cause or worsen respiratory disease, such as emphysema and bronchitis, and can aggravate existing heart disease, leading to increased hospital admissions and premature death.

Sulfur Dioxide (SO_2)

Sulfur dioxide (SO_2) is one of a group of highly reactive gasses known as "oxides of sulfur." The largest sources of SO_2 emissions are from fossil fuel combustion at power plants (73%) and other industrial facilities (20%). Smaller sources of SO_2 emissions include industrial processes such as extracting metal from ore, and the burning of high sulfur containing fuels by locomotives, large ships, and non-road equipment. SO_2 is linked with a number of adverse effects on the respiratory system.

Current scientific evidence links short-term exposures to SO_2, ranging from 5 minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms. These effects are particularly important for asthmatics at elevated ventilation rates (e.g., while exercising or playing.) Studies also show a connection between short-term exposure and increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk populations including children, the elderly, and asthmatics.

EPA's National Ambient Air Quality Standard for SO_2 is designed to protect against exposure to the entire group of sulfur oxides (SO_x). SO_2 is the component of greatest concern and is used as the indicator for the larger group of gaseous sulfur oxides (SO_x). SO_x can react with other compounds in the atmosphere to form small particles. These particles penetrate deeply into sensitive parts of the lungs and can cause or worsen respiratory disease, such as emphysema and bronchitis, and can aggravate existing heart disease, leading to increased hospital admissions and premature death. EPA's NAAQS for particulate matter (PM) are designed to provide protection against these health effects.

Lead (Pb)

Lead is a metal found naturally in the environment as well as in manufactured products. The major sources of lead emissions have historically been from fuels in on-road motor vehicles (such as cars and trucks) and industrial sources. Today, the highest levels of lead in air are usually found near lead smelters. The major sources of lead emissions to the air today are ore and metals processing and piston-engine aircraft operating on leaded aviation gasoline.

In addition to exposure to lead in air, other major exposure pathways include ingestion of lead in drinking water and lead-contaminated food as well as incidental ingestion of lead-contaminated soil and dust. Lead-based paint remains a major exposure pathway in older homes.

Once taken into the body, lead distributes throughout the body in the blood and is accumulated in the bones. Depending on the level of exposure, lead can adversely affect the nervous system, kidney function, immune system, reproductive and developmental systems and the cardiovascular system. Lead exposure also affects the oxygen carrying capacity of the blood. The lead effects most commonly encountered in current populations are neurological effects in children and cardiovascular effects (e.g., high blood pressure and heart disease) in adults. Infants and young children are especially sensitive to even low levels of lead, which may contribute to behavioral problems, learning deficits and lowered IQ.

Lead is persistent in the environment and accumulates in soils and sediments through deposition from air sources, direct discharge of waste streams to water bodies, mining, and erosion. Ecosystems near point sources of lead demonstrate a wide range of adverse effects including losses in biodiversity, changes in community composition, decreased growth and reproductive rates in plants and animals, and neurological effects in vertebrates.

Other Permitted Pollutants: Non-Criteria

There are pollutants besides criteria pollutants that are (State and federally) regulated and have permit requirements. Non-criteria pollutants are not typically modeled with a pollutant air dispersion model.

Volatile Organic Compounds (VOC). Organic compounds are chemicals composed of carbon. Volatile organic compounds (VOCs) produce vapors readily. At room temperature and normal atmospheric pressure, vapors escape easily from volatile liquid chemicals. VOCs are the leading cause of ground-level ozone (air pollution, also

known as "smog"). Common sources which may emit VOC into the air include housekeeping and maintenance products; paints, coatings, and inks; and building and furnishing materials. In sufficient quantities, VOC can cause eye, nose, and throat irritations, headaches, dizziness, visual disorders, memory impairment; some are known to cause cancer in animals; some are suspected of causing, or are known to cause, cancer in humans. Volatile organic compounds include a variety of chemicals such as gasoline, benzene, toluene, xylene, formaldehyde, tetrachloroethylene, and perchloroethylene.

Hazardous Air Pollutants (HAP). Defined under the Clean Air Act as pollutants that cause or may cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental and ecological effects. Currently, the Clean Air Act regulates 188 chemicals and chemical categories as HAPs.

Dioxins and Furans - Dioxins and furans is the abbreviated or short name for a family of toxic substances that all share a similar chemical structure. Dioxins, in their purest form, look like crystals or a colorless solid. Most dioxins and furans are not man-made or produced intentionally, but are created when other chemicals or products are made.

Reference: National Ambient Air Quality Standards

At a minimum, every Air Quality Operating Permit issued must be protective of the standards, below. BAPC must affirm prior to issuing a permit that the permit requirements (monitoring, recordkeeping, testing and reporting) are adequate to demonstrate compliance with the standards. To perform this analysis, the BAPC "models" against the standards using EPA-approved pollutant air dispersion modeling.

The excerpt below is copied from EPA's website at http://www.epa.gov/air/criteria.html.

National Ambient Air Quality Standards (NAAQS)

The Clean Air Act, which was last amended in 1990, requires EPA to set National Ambient Air Quality Standards (40 CFR part 50) for pollutants considered harmful to public health and the environment. The Clean Air Act identifies two types of national ambient air quality standards. ***Primary standards*** provide public health protection, including protecting the health of "sensitive" populations such as asthmatics, children, and the elderly. ***Secondary standards*** provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings.

EPA has set National Ambient Air Quality Standards for six principal pollutants, which are called "criteria" pollutants. They are listed below. Units of measure for the standards are parts per million (ppm) by volume, parts per billion (ppb) by volume, and micrograms per cubic meter of air (µg/m^3).

Pollutant [final rule cite]		Primary/ Secondary	Averaging Time	Level	Form
Carbon Monoxide [76 FR 54294, Aug 31, 2011]		primary	8-hour	9 ppm	Not to be exceeded more than once per year
			1-hour	35 ppm	
Lead [73 FR 66964, Nov 12, 2008]		primary and secondary	Rolling 3 month average	0.15 µg/m^3 (1)	Not to be exceeded
Nitrogen Dioxide [75 FR 6474, Feb 9, 2010] [61 FR 52852, Oct 8, 1996]		primary	1-hour	100 ppb	98th percentile, averaged over 3 years
		primary and secondary	Annual	53 ppb (2)	Annual Mean
Ozone [73 FR 16436, Mar 27, 2008]		primary and secondary	8-hour	0.075 ppm (3)	Annual fourth-highest daily maximum 8-hr concentration, averaged over 3 years
Particle Pollution Dec 14, 2012	$PM_{2.5}$	primary	Annual	12 µg/m^3	annual mean, averaged over 3 years
		secondary	Annual	15 µg/m^3	annual mean, averaged over 3 years
		primary and secondary	24-hour	35 µg/m^3	98th percentile, averaged over 3 years
	PM_{10}	primary and secondary	24-hour	150 µg/m^3	Not to be exceeded more than once per year on average over 3 years
Sulfur Dioxide [75 FR 35520, Jun 22, 2010] [38 FR 25678, Sept 14, 1973]		primary	1-hour	75 ppb (4)	99th percentile of 1-hour daily maximum concentrations, averaged over 3 years
		secondary	3-hour	0.5 ppm	Not to be exceeded more than once per year

Attachment 8

Table 1
ADMINISTRATIVE PENALTY MATRIX - Non-Emissions Air Quality Violations
(Note that the Penalty Worksheet is used to augment or adjust some penalties)

Permit Class	**Constructing or Operating without a Permit** (per major processing system or unit)	Failure to **Install required Air Pollution Control Equipment** (per emission unit)	Failure to **Maintain Process or Air Pollution Control Equipment** [The Penalty Matrix is used to assess the severity of any resulting Excess Emissions]	Failure to **Comply with a Permitted Operating Parameter**	Failure to **Conduct Required Monitoring, Recordkeeping, or Reporting** including incomplete or inadequate source test reports (per reporting period or per unit-day)	Failure to **Comply with a Stop Order or any provision in a Schedule of Compliance**
1	**$10,000**	**$5,000**	**$1,000**	**$1,000**	ACC: **$2,000** SAMR: **$1,000** AER: **$1,000** Other: **$600**	**$10,000**
2	**$3,000**	**$1,000**	**$600**	**$600**	**$600** [for major violations, as identified by NAC 445B.281.4]	**up to $10,000**
2 - General	**$1,000**	**$1,000**	**$600**	**$600**	**$600** [for major violations, as identified by NAC 445B.281.4]	**up to $10,000**
SAD	**$500** plus $50 per acre of planned disturbance	**N/A**	**$600**	**$600**	**$600** [for major violations, as identified by NAC 445B.281.4]	**up to $5,000**
3	**800** (per facility)	**$600**	**$600**	**$600**	**$600** [for major violations, as identified by NAC 445B.281.4]	**up to $5,000**
Time Basis (Guideline)	**Minimum; weekly to monthly (discretionary)**	**Daily**	**Event**	**Per standard or basis of operating parameter**	**Event**	**Daily**

Table 1 Continued
ADMINISTRATIVE PENALTY MATRIX - Violations Related to Source Tests & CEMS Audits
(Note that the Penalty Worksheet is used to augment or adjust some penalties)

Permit Class	Failure to **Provide adequate (30-day) Notification**	**Failed Source Test** exceedance of permitted emissions limit (minimum; penalty matrix used to assess gravity component)	**Late Test** or **Failure to Test**	Failure to **Conduct IOCD's**	Failure to **Conduct Quarterly or Semi-annual audit** (per pollutant)	Failure to **Conduct RATA** (per pollutant)
1	**$1,000**	**$7,500** per "major" pollutant*, PSD, BACT or NSPS violation; **$5,000** per "SM trigger* pollutants; **$4,000** per other pollutant(s)	**$1,000** per system per month, up to a maximum of **$15,000** per system	**$200** per system per month, up to a maximum of **$2,000** per system	**$10,000 to $20,000**	**$30,000**
					above based on $2,500 - $3,000/month penalty for delays in conducting the required audit	
Synthetic Minors	**$1,000**	**$5,000** per "SM trigger* pollutants; **$3,000** per other pollutant(s)	**$1,000** per system per month, up to a maximum of **$15,000** per system	**$200** per system per month, up to a maximum of **$2,000** per system	**$5,000**	**$15,000**
					above based on $2,500 - $3,000/month penalty for delays in conducting the required audit	
2	**$1,000**	**$4,000** per NSPS violation**,** **$2,500** other pollutant	**$600** per system per month, up to a maximum of **$10,000 per system**	**$200** per system per month, up to a maximum of **$2,000** per system	**$5,000**	**$15,000**
					above based on $2,500 - $3,000/month penalty for delays in conducting the required audit	
2 - General	**$500**	**$4,000** per NSPS violation**,** **$2,500** other pollutant	**$600** per system per month, up to a maximum of **$10,000 per system**	**$200** per system per month, up to a maximum of **$2,000** per system		
3	**$500**	**$1,000**	**$250** per system per month, up to a maximum of **$2,500** per system	**$100** per system per month, up to a maximum of **$1,000** per system		
Time Basis (Guideline)	**Each Test**	**Also requires retest to verify compliance**	**Each Test**	**Each Test**	**Requires Re-certification RATA**	

Note: A failed Method 9 Visible Emissions Observation carries a base penalty of <u>$1,000</u> as described in the Penalty Worksheet.

Attachment 9

PENALTY WORKSHEET

For:

Violation:

NOAV:

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = _____

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty =

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =

D. Multiple Emission Unit Violations or Recurring Events:

_____	X	_____	=	_____
Dollar Amount		Number of **years** and **Units**		**Total Gravity Fine**

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = X = _____

Total Penalty Adjustment Factors **- Sum of A & B:** _____%_____

IV. Total Penalty

_____	X	_____	=	_____
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**

_____	+	_____	=	_____
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Attachment 10

SUPPLEMENTAL ENVIRONMENTAL PROJECTS 2906.0

1. Supplemental Environmental Projects (SEPs) are defined by US EPA as "environmentally beneficial projects which a defendant/respondent agrees to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform." The Division's approach to SEPs is intended to be similar to US EPA's Revised SEP Policy, May 1995.

2. The Division has discretion to settle enforcement cases out of court, including the discretion to include a SEP as part of the settlement.

3. The Bureau Chief, under the guidance of the Administrator, shall determine the acceptability of a proposed SEP. In general, the following types of projects may qualify, provided all other requirements of this policy are met:

a. Public Health. A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation.

b. Pollution Prevention. A pollution prevention project is one which reduces the generation of pollution through "source reduction", ie. prior to generation of the pollutant or waste.

c. Pollution Reduction. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment.

d. Environmental Restoration and Protection. An environmental restoration project is one which goes beyond repairing damage caused by the violation to enhance the condition of the ecosystem or immediate geographic area adversely affected.

e. Assessments and Audits. This category includes pollution prevention assessments, site assessments, environmental management system audits and, where the defendant/respondent is a small business, compliance audits. The resulting recommendations from the assessment/audit must be implemented to qualify as an acceptable SEP.

f. Environmental Compliance Promotion. An environmental compliance promotion project provides training or technical support to other members of the regulated community. The project must be focused on the same regulatory requirements which were violated.

4. Environmental Justice. The Division encourages SEPs that benefit low-income and/or minority populations.

5. The following are types of projects that are not acceptable as SEPs:

a. A project which is unrelated to environmental protection;

b. A project which the defendant/respondent is already legally required to perform;

c. A project for corrective or preventive measures that would otherwise be required to prevent recurrence of the violation;

d. A project that provides the Division with additional resources to perform an activity for which the Legislature has specifically appropriated funds;

6. The value of the SEP shall equal at least 125% of the penalty to be mitigated. For example, if the calculated penalty is $10,000, then a SEP with a value of at least $12,500 is required for 100% mitigation of the penalty.

7. To implement the SEP, a settlement agreement shall be established between the Division and the defendant. The scope of work, associated cost estimate and schedule of performance must be specified. Criteria to determine successful completion of the SEP and consequences for failure to comply with the settlement agreement shall also be included.

a. The Division will determine what costs are allowed in assessing the value of the SEP. Only costs directly related to accomplishment of the SEP will be considered.

b. The Division should not directly manage or control funds that are set aside or escrowed for performance of a SEP.
c. The Division should provide oversight to ensure that the SEP is implemented in accordance with the settlement agreement.
8. There are two ways for the defendant to demonstrate that the full value of the SEP has been achieved. The method to be used shall be described in the settlement agreement. The defendant may either:

a. Demonstrate satisfactory completion of the scope of work as described in the approved settlement agreement without regard to actual cost; or
b. Submit invoices for qualified expenses after completion of the SEP that add up to the SEP amount or greater.
9. The defendant/respondent should agree that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement or an enforcement action.

DCNR SUPPLEMENTAL ENVIRONMENTAL PROJECT FUND 2908.0
1. A SEP fund has been created within DCNR.

2. A defendant may opt to contribute to the DCNR SEP Fund in lieu of developing a specific SEP.

3. DCNR has a created a list of superior projects. If provided for in the settlement agreement, a defendant can pay into the DCNR SEP Fund. If a defendant negotiates to settle an enforcement case by paying into the DCNR fund, the amount shall be equal to at least 100% of the penalty to be mitigated.

4. If the DCNR SEP Fund is utilized, the DCNR SEP Policy shall be followed.

Attachment 11

Variance Statutes

AIR

NRS 445B.400 Conditions and criteria for granting variance; power to revoke.

1. The owner or operator of a source of air contaminant or a person who desires to establish such a source may apply to the Commission for a variance from its applicable regulations. The Commission may grant a variance only if, after public hearing on due notice, it finds from a preponderance of the evidence that:
   (a) The emissions occurring or proposed do not endanger or tend to endanger human health or safety; and
   (b) Compliance with the regulations would produce serious hardship without equal or greater benefits to the public.
2. A variance shall not be granted unless the Commission has considered the relative interests of first, the public; second, other owners of property likely to be affected by the emissions; and last, the applicant.
3. The Commission may in granting a variance impose appropriate conditions upon an applicant, and may revoke the variance for failure to comply.

(Added to NRS by 1971, 1197)—(Substituted in revision for NRS 445.506)

WASTE

NRS 459.546 Variances: Conditions and criteria for granting; revocation.

1. Except as otherwise provided in subsection 4, the owner or operator of a facility for the treatment, storage or disposal of hazardous waste or a person who wishes to construct such a facility may apply to the Commission for a variance from its applicable regulations. The Commission may grant a variance only if, after a public hearing on due notice, it finds from a preponderance of the evidence that:

(a) The facility or proposed facility, under the worst adverse conditions, does not or will not endanger or tend to endanger the environment and human health or safety; and

(b) Compliance with the regulations would produce serious hardship without equal or greater benefits to the environment or public.

2. The Commission shall not grant a variance unless it has considered in the following order of priority the interests of:
   (a) The public;
   (b) Other owners of property likely to be affected by the emissions or discharge; and
   (c) The applicant.
3. The Commission may:
   (a) Upon granting a variance, impose certain conditions upon the applicant; or
   (b) Revoke the variance if the applicant fails to comply with those conditions.
4. The Commission shall not grant a variance from its applicable regulations that would allow a facility for the disposal of hazardous waste to construct or operate a landfill in a manner that fails to comply with the requirements of subsection 7 of NRS 459.520.

(Added to NRS by 1989, 1455; A 2005, 1505)

DRINKING WATER

NRS 445A.935 Variance or exemption from regulation of Commission: Application; notice and hearing; participation of Public Utilities Commission of Nevada.

1. A supplier of water may apply to the Commission for a variance or exemption from the regulations of the Commission. The Commission may grant variances or exemptions after notice and public hearing.
2. A supplier of water shall notify all users of the water system as soon as the Commission has scheduled a time and place for the public hearing on the application for a variance or exemption.
3. The Public Utilities Commission of Nevada may participate in the hearing.

(Added to NRS by 1977, 444; A 1981, 1900; 1997, 1998; 2005, 556)

Attachment 12

PRACTICE BEFORE THE STATE ENVIRONMENTAL COMMISSION

NAC 445B.875 Definitions. (NRS 233B.050)

1. As used in NAC 445B.875 to 445B.899, inclusive, unless the context otherwise requires, the words and terms defined in NAC 445B.877 to 445B.884, inclusive, have the meanings ascribed to them in those sections.

2. The meanings ascribed to words not included in NAC 445B.877 to 445B.884, inclusive, are in accordance with applicable sections of NAC governing air quality, water pollution or solid waste management and of chapters 444, 445A, 445B and 459 of NRS.

[Environmental Comm'n, Practice Rule 1 § B, eff. 1-7-73; A and renumbered as § 1.2, 1-9-76]—(NAC A 11-9-95; R227-03, 4-20-2004; R135-11, 5-30-2012)

NAC 445B.877 "Appellant" defined. (NRS 233B.050) "Appellant" means any person:

1. Who requests a hearing before the Commission, pursuant to chapter 278, 444, 444A, 445A, 445B, 459, 486A or 519A of NRS or the Commission's regulations concerning the control of air or water pollution or the management of solid waste; or

2. Whose appearance before the Commission is required by:

(a) The Director;

(b) An authorized representative of the Director; or

(c) A person who is designated by or pursuant to a county or city ordinance or a regional agreement or regulation to enforce local ordinances or regulations for the control of air pollution.

[Environmental Comm'n, Practice Rule 1 § A par. (1), eff. 1-7-73; A 4-3-74; A and renumbered as § 1.1.1, 1-9-76]—(NAC A 10-29-93)—(Substituted in revision for NAC 445.981)

NAC 445B.879 "Commission" defined. (NRS 233B.050) "Commission" means the State Environmental Commission or a panel of three or more members of the State Environmental Commission in accordance with NRS 445A.610 and 445B.350, where appropriate.

[Environmental Comm'n, Practice Rule 1 § A par. (2), eff. 4-3-74; A and renumbered as § 1.1.2, 1-9-76]—(Substituted in revision for NAC 445.982)

NAC 445B.881 "Department" defined. "Department" means the State Department of Conservation and Natural Resources.

(Supplied in codification)—(Substituted in revision for NAC 445.983)

NAC 445B.882 "Director" defined. (NRS 233B.050) "Director" means the Director of the Department.

[Environmental Comm'n, Practice Rule 1 § A par. (3), eff. 4-3-74; renumbered as § 1.1.3, 1-9-76]—(Substituted in revision for NAC 445.984)

NAC 445B.884 "Person" defined. (NRS 233B.050) "Person" has the meaning ascribed to it in NRS 445B.150.

[Environmental Comm'n, Practice Rule 1 § A par. (4), eff. 1-7-73; A 4-3-74; renumbered as § 1.1.4, 1-9-76]—(Substituted in revision for NAC 445.985)

NAC 445B.886 Petitions to adopt, file, amend or repeal regulations. (NRS 233B.050)

1. Any interested person may petition the Commission in writing for the adoption, filing, amendment or repeal of any regulation and shall accompany his or her petition with relevant data, views and arguments as required by form 1.*

2. Upon submission of a petition, the Commission will within 30 days either deny the petition in writing stating its reasons or initiate regulation-making proceedings in accordance with NRS 444.560, 445A.435 or 445B.215, whichever is applicable.
*(See adopting agency for form.)
[Environmental Comm'n, Practice Rule 3, eff. 1-9-76]—(Substituted in revision for NAC 445.986)

NAC 445B.888 Declaratory orders, advisory opinions. (NRS 233B.050)
1. Any member of the public may petition the Commission for a declaratory order or an advisory opinion as to the applicability of any statutory provision, Commission regulation or decision as required by form 2.*
2. Upon submission of a petition, the Commission will within 30 days issue a declaratory order or an advisory opinion in writing stating reasons for its action.
*(See adopting agency for form.)
[Environmental Comm'n, Practice Rule 6, eff. 1-9-76]—(Substituted in revision for NAC 445.987)

NAC 445B.890 Appeal of final decision of Department: Request for hearing; basis for appeal. (NRS 233B.050)
1. Any person aggrieved by a final decision of the Department may, not later than 10 days after notice of the action of the Department, appeal the decision by filing a request for a hearing before the Commission on a form 3* with the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.
2. An appeal of a final decision of the Department must be based upon one or more of the following grounds:
(a) The final decision was in violation of any constitutional or statutory provision;
(b) The final decision was in excess of the statutory authority of the Department;
(c) The final decision was made upon unlawful procedure;
(d) The final decision was affected by other error of law;
(e) The final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
(f) The final decision was arbitrary or capricious or characterized by abuse of discretion.
3. A form 3* which is submitted to the Commission pursuant to subsection 1 must include, without limitation:
(a) A statement of the legal authority and jurisdiction under which the hearing is to be held;
(b) A reference to each paragraph of subsection 2 which provides a basis for the appeal and a reference to each provision of law allegedly violated; and
(c) A brief and concise statement of the facts which provide the basis for the appeal.
4. The Commission may dismiss any request for a hearing to appeal a final decision of the Department if the person requesting the hearing fails to submit a completed form 3* with his or her request.
*(See adopting agency for form.)
[Environmental Comm'n, Practice Rule 2, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 8, 1-9-76]—(NAC A 10-29-93; R063-98, 8-4-98; R227-03, 4-20-2004; R135-11, 5-30-2012)

NAC 445B.891 Notice of hearing. (NRS 233B.050)
1. The Secretary of the Commission will schedule a hearing to be held within 20 days after receipt of the request for a hearing or an order to appear before the Commission unless each party to the hearing

waives the right to a hearing within the 20-day period in writing or on the record before the Commission.
2. All of the parties must be notified by registered or certified mail of the date of the hearing which must be no less than 5 days after the date of notification. The notice must include:
(a) A statement of the time, place and nature of the hearing;
(b) A statement of the legal authority and jurisdiction under which the hearing is to be held;
(c) A reference to each paragraph of subsection 2 of NAC 445B.890 which provides a basis for the appeal and a reference to each provision of law allegedly violated; and
(d) A brief and concise statement of the facts which provide the basis for the appeal.
[Environmental Comm'n, Practice Rule 4, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 9, 1-9-76]—(NAC A by R135-11, 5-30-2012)—(Substituted in revision for NAC 445.989)

NAC 445B.8913 Prehearing conference. (NRS 233B.050)
1. The Commission may, upon its own motion or a motion made by a party, conduct a prehearing conference to:
(a) Formulate, simplify or limit the issues involved in a hearing;
(b) Obtain admissions of fact or any stipulation of the parties which will avoid unnecessary proof;
(c) Arrange for the exchange of proposed exhibits or prepared expert testimony;
(d) Identify the witnesses and the subject matter of their expected testimony and, if necessary, limit the number of witnesses or the scope of their testimony;
(e) Rule on any pending prehearing motions or matters;
(f) Establish a schedule for the filing of motions or the submission of briefs; or
(g) Consider any other action or procedure which may expedite the orderly conduct and disposition of the proceedings or a settlement of the matter.
2. Notice of a prehearing conference conducted pursuant to this section must be provided to each party. Unless otherwise ordered and for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to any agreement reached or ruling made at the conference.
3. Any action taken or agreement reached at a prehearing conference:
(a) Must be made a part of the record;
(b) Controls the course of subsequent proceedings, unless otherwise stipulated by each party with the consent of the Commission; and
(c) Except as otherwise provided pursuant to a stipulation entered pursuant to paragraph (b), is binding upon all parties, including, without limitation, any person that subsequently becomes a party to the proceedings.
(Added to NAC by Environmental Comm'n by R135-11, eff. 5-30-2012)

NAC 445B.8914 Identification of witnesses; identification, exchange and admissibility of exhibits; admissibility and relevancy of evidence. (NRS 233B.050)
1. Except as otherwise provided by an order of the Commission, each party to a hearing before the Commission shall, not later than 5 days before the hearing, provide to every other party:
(a) Notice of the identity of each person who intends to offer direct oral testimony at the hearing; and
(b) A copy of each exhibit which the party intends to offer as evidence in support of the party's position.
2. The Commission will not require any party to provide notice of the identity of any person who intends to offer rebuttal testimony at a hearing before the Commission.
3. If a party fails to provide:
(a) Notice of the identity of a witness pursuant to paragraph (a) of subsection 1 and such failure results in prejudice to an opposing party, the Commission may:

(1) Refuse to allow the witness to testify; or
(2) Disregard any portion of the testimony of the witness.
(b) A copy of an exhibit pursuant to paragraph (b) of subsection 1 and such failure results in prejudice to an opposing party, the Commission may:
(1) Refuse to admit the exhibit into evidence; or
(2) Disregard the exhibit.
4. The Commission will not admit into evidence at a hearing any exhibit offered as evidence until each party at the hearing is provided the opportunity to examine the exhibit.
5. The Commission will not, at a hearing to affirm, modify or reverse an action of the Director pursuant to NRS 444.570, 445A.605 or 445B.360, consider evidence which was not submitted to the Department before the issuance of the decision or order which is the subject of the appeal unless:
(a) The Department allowed a period for public comment before the Director took the action; and
(b) The Commission determines that reasonable cause exists for the failure of a party to submit the evidence.
6. The Commission may, if the basis of an appeal is an alleged irregularity in procedure by the Department which is not reflected in the record, consider evidence concerning the alleged irregularity in procedure.
7. The Commission will not consider any evidence, including, without limitation, the testimony of a witness, which:
(a) Does not have the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence; and
(b) Is not directly related to the subject matter of the proceeding.
(Added to NAC by Environmental Comm'n by R135-11, eff. 5-30-2012)

NAC 445B.8915 Intervention in certain proceedings. (NRS 233B.050, 445B.210)
1. A person, other than a party to a proceeding, who believes that he or she may be directly and substantially affected by the proceeding may request an order to intervene in the proceeding by filing a written petition for leave to intervene with the Commission.
2. Except as otherwise provided in this subsection, a petition for leave to intervene must be filed with the Commission not later than 10 calendar days after the notice of appeal related to the proceeding in which the intervention is sought is filed with the Commission pursuant to the provisions of NRS 445B.340. The petitioner shall serve a notice of a petition for leave to intervene upon each party to the proceeding. A party may file a response to the petition within 5 calendar days after receipt of the petition. If a petitioner files a petition for leave to intervene with the Commission after the period prescribed in this subsection, the petition must set forth the reason for the delay in filing the petition. The petition for leave to intervene must:
(a) Identify the proceeding in which the petitioner requests leave to intervene;
(b) Set forth the name and address of the petitioner and, if the petitioner is represented by an attorney or other authorized person, the name, address and telephone number of the attorney or other authorized person;
(c) Contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding;
(d) Set forth the manner in which the petitioner will be affected by the proceeding; and
(e) Include a statement indicating whether or not the petitioner intends to present evidence in the proceeding.
3. If a petition for leave to intervene demonstrates a direct and substantial interest in the subject matter of the proceeding or any part of the proceeding and does not unreasonably broaden the issues

or prejudice any party to the proceeding, the Commission may grant leave to intervene or otherwise appear and participate in the proceeding with respect to the matters set forth in the petition.
4. If it appears during a proceeding that an intervener has no direct or substantial interest in the proceeding or that the public interest does not require the intervener's participation in the proceeding, the Commission may dismiss the intervener from the proceeding.
(Added to NAC by Environmental Comm'n by R227-03, eff. 4-20-2004)

NAC 445B.892 Subpoenas. (NRS 233B.050)
1. Subpoenas to compel attendance of any person at a hearing or to require the production of books, records or other documents may be issued by the Commission.
2. Requests for the issuance of subpoenas must be made to the Commission in writing no less than 5 days prior to the hearing date, setting forth the reason and necessity for the subpoenas. Upon good cause shown, subpoenas may be issued at the request of any party to the hearing at any time. The Commission may issue any subpoenas on its own initiative without request.
3. All costs incident to subpoenas issued at the request of appellant must be borne by the appellant. The Commission may demand payment of those costs prior to the issuance of the subpoenas.
[Environmental Comm'n, Practice Rule 5, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 10, 1-9-76]—(Substituted in revision for NAC 445.990)

NAC 445B.8925 Briefs. (NRS 233B.050)
1. The Commission may, upon its motion or a motion by a party, order the parties to a hearing to file an opening brief, a response brief and a reply brief.
2. Except as otherwise provided by an order of the Commission, if the Commission orders the parties to a hearing to file briefs pursuant to subsection 1:
(a) The party which requested the hearing shall file an opening brief which does not exceed 20 pages in length.
(b) The Department and any other intervening party shall file a response brief which does not exceed 20 pages in length.
(c) The party which requested the hearing shall file a reply brief which does not exceed 10 pages in length. The Commission will consider only those portions of the reply brief which address directly matters or issues set forth in the response brief filed pursuant to paragraph (b).
3. The Commission may, upon its own motion or a motion by another party, order briefs to be filed before or after a hearing in addition to any briefs which the Commission orders pursuant to subsection 1.
4. The Commission will, for each brief which is ordered pursuant to this section, prescribe the period by which the briefs must be filed with the Commission and served on all parties.
5. Except as otherwise provided by subsection 6, each brief which is filed and served pursuant to an order of the Commission must be:
(a) Presented on white paper of standard quality and 8 1/2 inches by 11 inches in size;
(b) Typewritten or prepared in a manner that produces clear and permanent copies equivalent in legibility to printing;
(c) In 12-point font;
(d) Double-spaced, except that descriptions of real property may be single-spaced and quotations of more than 50 words must be indented and single-spaced;
(e) Paginated sequentially at the bottom of each page; and
(f) Accompanied by a certificate or acknowledgment of service or a certificate of mailing for all parties.
6. A brief which is ordered by the Commission pursuant to this section may be served on any other party by United States mail, electronic mail or facsimile.

(Added to NAC by Environmental Comm'n by R227-03, eff. 4-20-2004; A by R135-11, 5-30-2012)

NAC 445B.893 Panels to conduct certain hearings; decision of panel. (NRS 233B.050) Three or more members of the Commission constitute a proper panel, where appropriate, in accordance with NRS 445A.610 and 445B.350, and a majority of those present must concur in any decision. The decision will be in writing and is a public record.
[Environmental Comm'n, Practice Rule 6, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 11, 1-9-76]—(Substituted in revision for NAC 445.991)

NAC 445B.894 Change in time or place of hearing; informal disposition of matter; dismissal. (NRS 233B.050)
1. Upon good cause shown, the Commission may vacate and reset the time of hearing.
2. Upon good cause shown, the Commission may transfer the place of hearing to a more appropriate location, taking into consideration the convenience and fairness to the witnesses and the parties.
3. Unless otherwise provided by law, informal disposition may be made by all involved parties at any time of any contested case or matter.
4. The Commission may, after providing notice to each party, dismiss an appeal for want of prosecution on the motion of any party or on the motion of the Commission if the party filing the appeal has failed to bring the appeal to hearing within 1 year after filing the appeal with the Commission unless the parties have stipulated in writing to extend the period during which the hearing must take place.
[Environmental Comm'n, Practice Rule 7, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 12, 1-9-76]—(NAC A by R135-11, 5-30-2012)—(Substituted in revision for NAC 445.992)

NAC 445B.895 Appearance of parties; procedure at hearing. (NRS 233B.050)
1. The parties may appear in person and may be represented by an attorney.
2. An attorney who represents a party before the Commission in a contested case must be an active member of and in good standing with the State Bar of Nevada or associated with such a member.
3. All testimony must be given under oath and recorded verbatim pursuant to the provisions of NAC 445B.897.
4. The Commission:
(a) Will determine the order of the presentation of evidence; and
(b) May limit the time and scope of the examination of witnesses and disallow repetitive testimony.
5. Hearings are open to the public until such time as confidential information, within the meaning of chapter 445A, 445B or 459 of NRS or applicable sections of this chapter or chapter 445A or 459 of NAC, is admitted to the record, at which time the hearing will be closed.
[Environmental Comm'n, Practice Rule 8, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 13, 1-9-76]—(NAC A by R227-03, 4-20-2004; R135-11, 5-30-2012)

NAC 445B.8953 Conduct at hearing; maintenance of order. (NRS 233B.050)
1. A person who appears in a proceeding shall conform to the recognized standards of ethical and courteous conduct as determined by the Commission. All parties to a hearing, their counsel and the spectators shall conduct themselves in a respectful manner.
2. The Commission may take any action which it determines is necessary to maintain order during a hearing, including, without limitation:
(a) Excluding a party or the party's attorney or authorized representative from the hearing;
(b) Excluding a witness from the hearing; and
(c) Limiting the taking of testimony and presentation of evidence during the hearing.

(Added to NAC by Environmental Comm'n by R227-03, eff. 4-20-2004)

NAC 445B.8957 Consolidation of proceedings. (NRS 233B.050)

1. The Commission may consolidate two or more proceedings if it appears that the issues are substantially the same and the rights of the parties will not be prejudiced by the consolidation.
2. At a consolidated hearing, the Commission will determine the order in which the parties introduce evidence and present testimony.
3. If two or more parties have substantially similar interests and positions, the Commission may, at any time during the hearing, limit the number of witnesses who will be allowed to testify.

(Added to NAC by Environmental Comm'n by R227-03, eff. 4-20-2004)

NAC 445B.896 Findings of Commission. (NRS 233B.050)

1. At the conclusion of the hearing, the Commission may take the case under submission and will notify the appellant and any other party to the hearing of its findings and recommendations in writing within 30 days after the date of the hearing.
2. Final recommendations will be in writing and will separately state findings of fact and conclusions of law. Findings of fact and recommendations will be based upon substantial evidence. Findings of fact will include a concise statement of the evidentiary facts supporting the findings.

[Environmental Comm'n, Practice Rule 10, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 15, 1-9-76]—(NAC A by R227-03, 4-20-2004)

NAC 445B.897 Record of hearing. (NRS 233B.050)

1. Each hearing must be recorded electronically. An electronic recording of the hearing must be made available for inspection or copying. A party who requests a copy of an electronic recording must pay the cost to copy the recording.
2. In addition to the provisions of subsection 1, a party may request that a hearing be recorded by a court reporter who is certified pursuant to chapter 656 of NRS. A party who requests that a hearing be recorded by a court reporter must pay the costs relating to the services of the court reporter, including the cost charged by the court reporter for providing a transcript of the hearing.

[Environmental Comm'n, Practice Rule 12, eff. 1-7-73; A and renumbered as Rule 11, 4-3-74; renumbered as Rule 16, 1-9-76]—(NAC A by R227-03, 4-20-2004)

NAC 445B.899 Petitions for reconsideration or rehearing. (NRS 233B.050)

1. A petition for reconsideration must specifically:

(a) Identify each portion of the challenged decision which the petitioner deems to be unlawful, unreasonable, or based on erroneous conclusions of law or mistaken facts; and

(b) Cite those portions of the record, the law or the rules of the Commission which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence.

2. A petition for rehearing must:

(a) Allege that a decision is in error because of an incomplete or inaccurate record;

(b) Specifically set forth the nature and purpose of any additional evidence to be introduced; and

(c) Show that such evidence is not merely cumulative and could not have been introduced at the hearing.

3. A petition for reconsideration or rehearing of a decision must be served upon all parties of record within 15 days after the effective date of the decision.
4. An answer to a petition for reconsideration or rehearing may be filed with the Commission by any party of record in the proceeding within 5 days after the filing of the petition. The answer must be

confined to the issues contained in the petition and served upon all parties of record. Proof of service must be attached to the answer.

5. The Commission will grant or deny a petition for reconsideration or rehearing within 10 days after the date of the filing of the petition. The denial of a petition may be on the record without a separate decision.

6. Unless otherwise ordered by the Commission, the filing of a petition for reconsideration or rehearing or the granting of such a petition does not excuse compliance with, or suspend the effectiveness of, the challenged decision.

7. If the Commission grants a petition for reconsideration, it will reexamine the record and decision with regard to the issues on which reconsideration was granted and issue a modified final decision or affirm its original decision within 20 days after the petition is granted.

8. If the Commission grants a petition for rehearing, it will, within 20 days thereafter, conduct a hearing to allow the parties to present additional evidence and will issue a modified final decision or affirm its original decision.

9. A modified final decision of the Commission issued upon reconsideration or rehearing will incorporate those portions of the original decision which are not changed by the modified final decision.

10. A modified final decision of the Commission or the affirmation of an original decision of the Commission is a final decision for the purposes of judicial review.

(Added to NAC by Environmental Comm'n, eff. 11-9-95)