



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of December 5, 2012, 10:30 AM

Video Conference
Bryan Building Carson City
901 South Stewart Street
And
Nevada Division of Environmental Protection
Las Vegas Office
2030 E. Flamingo Rd.

Members Present:

E. Jim Gans, Chairman
Kathryn Landreth
Cary Richardson
Pete Anderson
Jason King
Tom Porta
Mark Turner

Members Absent:

Frances Barron
Ken Mayer
Jim Barbee
Alan Coyner

SEC Staff Present:

Rose Marie Reynolds, SEC/DAG
John Walker, Executive Secretary
Misti Gower, Recording Secretary

BEGIN SUMMARY MINUTES

The meeting was called to order at 10:30 am by Chairman Jim Gans who stated the hearing was properly noticed and there was a quorum.

1) Public Comments (Action Item): Chairman Gans called for public comment; hearing none he moved to agenda item number 2.

2) Approval of Agenda (Action Item): Chairman Gans requested comments on the agenda; hearing none he asked for a motion to adopt the agenda. Commissioner Landreth moved to approve the agenda and Commissioner Richardson seconded; the agenda was approved as written.

3) Approval of the minutes for the October 11, 2012 SEC meetings (Action Item): Chairman Gans requested comments from the Commission on the October meeting minutes; hearing none he asked for a motion to approve the minutes. Commissioner

Anderson moved to approve the minutes and Commissioner King seconded; motion passed unanimously.

4) Arsenic Rule Extensions - (Action Item): Ms. Jennifer Carr, Bureau Chief for the Nevada Division of Environmental Protection's (NDEP) Bureau of Safe Drinking Water presented a request for water systems that need more time to comply with the Arsenic Rule. For Ms. Carr's full statement, see Attachment I.

Ms. Carr provided the Commission with some background explaining the revised arsenic standard of 10 parts per billion (ppb) became enforceable January 23, 2006. At that time the SEC granted a three year exemption to sixty-four qualifying water systems. Extension criteria are based on public health protection as well as economically challenged systems. The Bureau's recommendations have been based on a formula derived by the US EPA that considers the total time of exposure to an arsenic concentration that is in excess of the current drinking water standard.

US EPA established guidance and various arsenic concentration ranges with recommendations for the total number of years that systems should have to comply with the 10 ppb rule. Out of the sixty-four water systems given extensions in 2006, only ten systems now need and qualify for a third and final extension. Ms. Carr answered a variety of questions from the Commission regarding water system sizes, exposure concentrations and the health risks associated to arsenic. She also explained exemption times, extension agreements and the steps the Bureau has taken with the water systems.

The ten systems needing an exemption have arsenic concentration less than 20 ppb. NDEP has worked with each system to gauge their progress in taking all practicable steps to meet the requirements. The water systems were also required to notify all users of the water system of the time and place for this hearing on their proposed exemption for drinking water regulations.

Ms. Carr briefed the Commission on the ten systems listed for extension, explaining what steps each system is taking to reach the required ppb and funding available to the systems. She also explained that two of the systems will be closing.

Based on the information the Bureau gathered and presented to the Commission, NDEP recommends the Commission consider a motion that these water systems be approved for a final 2 year extension.

The Commission expressed some concern on whether or not all 10 systems would be able to meet the final extension deadline. Commissioners also asked about the different treatment and water blending procedures as well as availability of funds for which the water systems can apply. Ms. Carr answered all the Commissioners questions and

explained that if these systems don't make the deadline, NDEP can issue penalties and fines. She stated that NDEP does have the resources to track the remaining systems to insure water system operators understand the importance of meeting the extension requirements.

Chairman Gans asked for public comments, hearing none, he asked if the Commission had any further questions.

Again the Commission expressed concern and wanted to make clear that the water systems would not receive any further extensions under this rule. The Commission also thought it would be good to get a status report in a year as to where the systems are in the process and have a representative from the system appear before the Commission if needed.

Motion: Chairman Gans asked for a motion from the Commission. Commissioner Anderson moved that the Commission accept the arsenic rule extension as discussed. Ms. Carr asked that clarification of the Commissioners' concerns be in the ruling or a cover letter. The Commission decided to state those in the cover letter. Commissioner Turner seconded the motion; motion passed unanimously.

5) Administrator's Briefing to the Commission: NDEP Administrator Dr. Colleen Cripps briefed the Commission about recent personnel changes. Jo Ann Kittrell was introduced as the new Department of Conservation and Natural Resources PIO and she will assist the Division until an NDEP replacement is found. Larry Kennedy, Bureau Chief of Air Pollution Control, left the Division and the position won't be filled before the next SEC Hearing. Rob Bamford will be managing the Air program with support from Deputy Mike Elges until a replacement is chosen.

Dr. Cripps' next topic was Federal Regulations that will need to be adopted through the Commission. She said that most of these regulations are court order driven and include modification to all of the Division's bureaus. These regulations will include new laws to industry and NDEP is working with businesses so they will know what to expect.

Regarding legislation, Dr. Cripps said NDEP's budget has been submitted and included several new positions. Most of these positions will be in the Air Bureaus but also includes Safe Drinking Water and Corrective Actions. Dr. Cripps shared that the Division is also finalizing reports required by the Legislation, which include greenhouse gas, air quality trends and waste reduction. Copies of these reports will be available to the Commission. The division is tracking different bills that will affect NDEP and will provide an internet link to the Commissioners so that they may see the progress of these bills.

Dr. Cripps thanked the Commission for all their service and commitment to the Division over the past year.

6) Public Comment: Chairman Gans asked all present for any public comments; hearing none he asked when the next SEC meeting would be held. The next meeting will be held February 13, 2013 at the Bryan Building.

7) Meeting was adjourned.

Attachment I

December 5, 2012 -- Jennifer L. Carr, Chief, BSDW

Prepared Testimony for the State Environmental Commission

Arsenic Rule Exemption Extensions

Prepared Testimony for the State Environmental Commission

Arsenic Rule Exemption Extensions

Good Morning, Mr. Chairman, Members of the Commission.

For the Record, I am Jennifer Carr, Chief of the Bureau of Safe Drinking Water.

I'm here this morning to present and discuss a set of systems that need more time to comply with the Arsenic Rule. As is permitted by State Statute, and the Federal Safe Drinking Water Act, these systems sought and obtained Exemptions that were originally issued by the Commission in 2006 and 2007, and received 2-year extensions in 2008 and 2010.

Since it may have been a while since you've thought about arsenic in drinking water, I'll provide a little background, discuss guiding statutes, regulations, US EPA Guidance, and how the Bureau came to the recommendations we are asking you to consider today.

First of all, an exemption is an administrative tool that can be used to grant water systems additional time to acquire financial and technical assistance to meet drinking water standards, *if* they meet certain requirements and an exemption won't result in an unreasonable risk to health.

The revised arsenic standard of 10 parts per billion (ppb) was enacted on January 22, 2001 and became enforceable (five years later) on January 23, 2006. You may know that the old standard was 50 ppb. When the new drinking water standard became enforceable, it affected 105 water systems in Nevada out of 326 subject to the rule at that time. In 2006 and 2007 the SEC granted exemptions to 64 qualifying water systems; which provided them three extra years - until January 23, 2009 to comply. These systems served a total of 150,636 Nevadans.

Health-Based Approach to Regulating Exemptions and Extensions:

The concentration-based extension criterion originates in public health protection. While the overall intent of granting exemptions is to address the needs of economically challenged systems (by providing additional time to achieve compliance) State Regulation [NAC 445A.489] requires a determination that an exemption “will not result in an unreasonable risk to health”. To aid in this determination relative to extensions, the NDEP utilized the U.S. EPA Implementation Guidance for the Arsenic Rule.

The approach the US EPA took in their Guidance document was to determine what likely does *not* constitute an unreasonable risk to health, rather than what *does*. The approach bases the total length of an exemption (with extensions) on the exposure concentration of arsenic delivered to the consumer. The Bureau’s recommendations have likewise been based on a formula derived by the US EPA that considers the total time of exposure to an arsenic concentration that is in excess of the current drinking water standard.

In your packet, you have a background document. On Page 2 of that document, there is a table that will help with this discussion. Table 1 was adapted from the U.S. EPA guidance and depicts various arsenic concentration ranges with recommendations for the *total number of years* that systems should have to comply.

The first two groups indicate all systems (regardless of population) that properly sought an exemption, and had concentrations less than the old standard of 50 ppb, were granted an exemption, giving them 8 total years to comply before a violation of the Arsenic Rule was assessed. The third group indicates that small systems with a concentration less than 30 ppb were considered eligible for their 1st Extension, with a new compliance timeline ending January 23, 2011. The SDWA and Nevada Regulation require that extensions only be granted to small systems serving a population less than 3,300. The systems we are asking you to act on today, for a 3rd and Final Extension, fall into the category indicated by bold italics at the bottom of the table. These systems have historical average concentrations of less than 20 ppb.

Table 1: Exemption & Extension Eligibility Recommendations ⁽¹⁾

System Population Served	Total Time to Comply After Rule Revision- Jan 22, 2001	Exemption Periods Available	Recommended arsenic concentration criteria for granting an exemption or an extension			
			>30 ppb ≤50 ppb ⁽²⁾	>25 ppb ≤30 ppb	>20 ppb ≤25 ppb	>10 ppb ≤20 ppb
>3,300 persons	8 years	3 year Exemption (to Jan 23, 2009)	Granted	Granted	Granted	Granted
<3,300 persons	8 years	3 year Exemption (to Jan 23, 2009)	Granted	Granted	Granted	Granted
	10 years	1 st Extension (to Jan 23, 2011)	Not Elig.	Eligible	Eligible	Eligible
	12 years	2 nd Extension (to Jan 23, 2013)	Not Elig.	Not Elig.	Eligible	Eligible
	14 years	3rd Extension (to Jan 23, 2015)	Not Elig.	Not Elig.	Not Elig.	Eligible

(1) Adapted from U.S. EPA Implementation Guidance for the Arsenic Rule, Appendix G-15, August 2002

(2) U.S. EPA's recommendation was 35 ppb, Nevada chose the old standard of 50 ppb.

The timeframes and recommendations in Table 1 reveal an intent to address the systems with the highest exposure concentrations (and highest increased risk to health) first.

Likewise, the NDEP has followed EPA Guidance in this case and has selected the concentration threshold of 20 ppb as the final qualifying tier for extensions. State Regulation [445A.490] aligns with the SDWA in that it only allows Exemption Extensions to be granted for one or more 2-year periods, not to exceed a total 6 years beyond the original Exemption.

That completes my background discussion on the health-based thinking that forms the foundation for the exemption process. Unless there are any questions, I'll move on to review the SEC's prior actions under this Exemption and Extension construct.

SEC Historical Information on Issuance of Arsenic Rule Exemptions:

In the fall of 2008, and as guided by the NAC's, the Commission decided that further extensions would be considered 2 years at a time. Out of the original 64 systems with exemptions, the first round of 2-year extensions were granted to 34 qualifying systems in 2008, and 26 systems continued on with exemption extensions in 2010.

Each time, Exemptions and Extension Agreements, signed by the Chairman, included a list of milestones that intended to put each system on a path to compliance. The Bureau

has been working with, and tracking the progress of, each water system during this time. This past summer, the Bureau reached out to the systems on your list today to get any additional information we needed to aid our determinations on recommendations for one final extension. Outreach included: a letter outlining their compliance status, with the NDEP's intended recommendation for an extension; notice of the date of this hearing so that they may be present today; and the requirements for *their* subsequent notice of today's event, to water system customers, so that any person may also be present today if interested.

The systems that have been continuing to operate under an exemption are on the summary list that is in your packet on the last page. You will see in the top section of the table that, out of these 26 water systems, 15 more systems have become compliant since the 2010 SEC hearing. Although any of the systems with concentrations less than 20 ppb could have requested more time, the Bureau of Safe Drinking Water appreciates their diligence in bringing the systems into compliance.

According to NAC 445A, water systems that have exemptions, but have *not* achieved compliance yet, *may* receive an extension of time if certain criteria are met. The NDEP carefully considered these materials in 2008 to establish and present screening criteria to the SEC as part of the first extension process. The same criteria were used in 2010, and current extension recommendations continue to follow that work.

The Agency's current recommendations to the SEC reflect the following:

- ◆ Systems recommended for extensions in December 2010 have an arsenic concentration less than, or equal to, 20 ppb.
- ◆ Secondly, NAC 445A.490.5 also allows that, "...an exemption ... may be renewed ... if the public water system establishes that it is taking all practicable steps to meet the requirements ...". The NDEP has worked with each exempted public water system to gauge their progress in taking "all practicable steps" and has used this information in its recommendations for exemption extensions to the SEC.

- ◆ Finally, the third screening criteria comes from Nevada Revised Statute (NRS) 445A.935 which requires that a supplier of water notify all users of the water system of the time and place for the hearing on their proposed exemption from the drinking water regulations. This step was a clear requirement for all 64 systems who received original exemptions in 2006 and 2007. The NDEP believes that the intent of this Statute is to provide appropriate public notice to water system customers of the quality of their water supply and other circumstances surrounding their water system's regulatory compliance status; as well as provide customers with an opportunity to participate in the public process. Likewise, for each round of Extensions, the NDEP required public notice be sent to the customers regarding the NDEP recommendation for their system, and the fact that the SEC will contemplate granting exemption extensions for an additional two years.

To move on to the actions we are recommending today, systems with historical average concentrations less than, or equal to, 20 ppb are included in lines 16 through 25 on the list. The NDEP recommends that the Commission grant a final extension of 2 years to all 10 systems.

I mentioned in my opening that the original 64 exemptions served a total of 150,636 Nevadans. The remaining 10 represent service to 4,896 residents.

Since a couple of you have expressed interest in the status of the 10 systems on the list, I'll review them each for you: *{Summarize each system's plans and progress}*

If one of the 10 systems does not come into compliance with the Running Annual Average of 10 ppb, the Bureau will take appropriate steps to bring them into compliance. "Appropriate steps" may include issuance of a Finding of Alleged Violation and a mutually negotiated Administrative Order on *Consent*, or if the system is simply non-cooperative after all these years, an FOAV and *unilateral* Administrative Order that can result in fines and penalties.

Before we finish, I thought I'd give you an overall picture of the Good News we have to share with respect to arsenic compliance.

- In 2001, 326 systems were subject to the Rule (Community and NTNC).
- Of those 326 systems (in 2001), 105 exceeded the standard of 10 ppb and needed to start an approach to compliance with the new standard.
- Since the original compliance determinations were made, another 6 systems have been determined to be out of compliance due to new data, new wells, or other circumstances. So that brings us to a total of 111 water systems addressing arsenic issues.
- Out of those 111 systems, approximately 80% are now compliant!
- An additional 10% are under Order or are in negotiation with the Bureau on their path to compliance.
- The final 10% are the list of extensions before you today. We're almost done!

In conclusion, I would suggest that the Commission consider a motion that water systems, with numbers 16 through 25 on your list, be approved for a final two-year extension and be issued the Arsenic Exemption Extension document included in your packet.

That concludes my testimony and I would be happy to answer any questions you may have. Thank you