

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION (NDEP)
Public Workshop on Proposed Amendments to Nevada's
Operating Permit Program, NAC 445B

MINUTES
November 16, 2010

PEBP Board Room,
First Floor, Room 1002
901 South Stewart Street
Carson City, Nevada

ATTENDEES:

Workshop Chair: Adele Malone, Supervisor, BAQP, NDEP

NDEP Staff:

Greg Remer, Chief, Bureau of Air Quality Planning, BAQP
Paul Williams, Planning and Modeling Branch, BAQP

Public:

David Cook, Moltan Company LP
Larry Flike, Moltan Company LP
Chris Hopf, Baker Hughes
Mark Hebert, Baker Hughes
Jonathan Brown, Telesto Nevada, Inc.

Wayne Thompson, American Buildings
Company
Tony Norris, American Buildings Company
Patrick Rucker, Granite Construction
Company

CALL TO ORDER:

Ms. Malone called the Workshop to order at 10:03 a.m. and explained that the purpose of the Workshop was to present proposed amendments to the operating permit provisions in NAC 445B and to receive any public comments regarding the changes. She introduced herself then asked each person in the audience to state their name and affiliation.

Ms. Malone reviewed the agenda and pointed out that the proposed amendment modified only one section of the NAC. There were no questions regarding the agenda.

She noted that NAC 445B.3457 was being amended, which deals with the application processing timeline and public noticing for Class II sources. Further, Ms. Malone indicated that this is a temporary regulation and proceeded to describe the reason for temporary regulations and the process for adopting the proposed revisions to the NAC, including the scheduled public hearing before the State Environmental Commission (SEC) on December 7th. If the SEC adopts the regulation, the Legislative Commission has an opportunity to request that it be presented to them

for approval. Because the proposal is a temporary regulation, it does not routinely go to them. If they do not want to review the regulation, it will become effective 35 days after adoption, or sometime in January 2011, and will remain in effect until November 1, 2011. She noted that NDEP would go through the process to make this revision a permanent regulation after June 30, 2011, and one should expect to see another public notice about it at that time.

Air Operating Permit Program, P2010-11 (T011-10):

Ms. Malone stated that this NAC section deals with the Director's action on Class II applications and the public notice requirements. She noted that the NDEP submitted a major update of Nevada's state implementation plan (SIP) to EPA in 2005. Some pieces of the update have been approved, but NDEP is still trying to get approval of the permitting program update. This amendment addresses EPA comments on the approvability of NAC 445B.3457 into the Nevada SIP.

Ms. Malone proceeded to present the proposed changes to NAC 445B.3457. There are no changes to the first two subsections. The revision to subsection 3 would put all Class II applications on the same 60-day processing timeline. Mr. Remer pointed out that the 60-day timeline is also the current timeline for applications that do not require public notice. So, this revision would not change that timeline. What the amendment does is streamline the processing of an application that requires public notice.

Ms. Malone stated that in order to accomplish this change, in paragraph (a) of subsection 4, the time period for making a preliminary determination to issue or deny the is being revised from 60 days to 15 days after the official date of submittal. The revisions to paragraph (b) just involve renumbering of sections. In paragraph (c), the reference to subsection 8 that described a different timeline for applications that were going to public notice is being removed, and some of the requirements from subsection 8 regarding what the Director will consider in making his decision to approve or deny an application are being moved up to this paragraph. She indicated that the latter was not a change in content, but simply a reorganization.

Subsection 5 describes when public notice is required. Ms. Malone noted that EPA felt that the current public notice provision could not be approved into Nevada's SIP. EPA needs more definitive criteria for determining when applications go to public notice. The proposed revisions respond to EPA's comments. The proposed regulation requires that every application for a new Class II operating permit or any revision/modification to an existing Class II operating permit that results in an increase in emissions above the stipulated thresholds go to public notice. Ms. Malone described the proposed thresholds. Paragraph (c) defines the term "new Class II operating permit" as used in subsection 5.

Ms. Malone stated that subsection 6 contains the actual public notice procedures to be followed once the Director makes a determination to approve or deny an application that is subject to the public notice provisions. The procedures include publishing the determination on the NDEP website, mailing it to persons on a mailing list developed by the Director, posting it along with a copy of the application at a local library in the area in which the Class II source is located, and sending it with a copy of the application to EPA and any local air pollution control agency

having jurisdiction within the area in which the Class II source is located. She stated that these procedures adhere to the federal requirements.

Ms. Malone noted that the changes in subsection 7 streamlined the content of the public notice. She said that the revisions in subsection 8 also included some streamlining, as well as the deletion of the separate timeline for applications subject to public notice, as discussed previously. She concluded the review of the actual revisions in the proposed regulation by asking the audience if there were any questions.

Mr. Remer explained that this regulation is the culmination of a lengthy dialogue with EPA on the public notice requirements for minor source permit applications. EPA considered Nevada's existing public notice process lax and could not approve it into the SIP. Mr. Remer said that the NDEP was committed to keeping the existing Class II application processing timeline pretty much the same for all of the types of applications that we process. Under the current regulation, he indicated that historically only a handful of Class II applications had gone to public notice. He felt that maintaining the existing timeline was a commitment the NDEP made to industry early on and has been able to keep. But, the balance of that commitment he stressed is that any application submitted by industry needs to be complete from the onset. Under the proposed timeline, once the application is deemed complete, the agency has 15 days to make a preliminary determination to issue or deny the permit. The preliminary determination triggers the 30 day public notice period. Once the public review period is complete the agency has a 15 day window to process any comments received and to make any changes to the permit. Mr. Remer stressed that the source's application and the agency's preliminary determination to issue or deny the permit will go to public notice, not the permit itself. He concluded by stressing that this process will only work if the applications are complete when they are submitted.

Mr. Brown asked if he were to submit an application for a modification to a Class II permit, how long might it take for someone to let him know whether it was complete. Mr. Remer said this was the crux of the issue and suggested that under the new system all of the discussion between the agency and the applicant will have to occur either before the application is formally submitted or during the completeness determination. Unlike in the past, under the new system once the application is deemed complete, the agency has only 15 days to evaluate the application and make a preliminary determination to issue or deny the permit, based on the application contents. He pointed out the availability of pre-screening meetings prior to the formal submittal of an application to help with the process. He felt that while this resource has not been used much in the past, that may change if the more rigid application processing timeline is adopted. He went on to say that the existing 10-day window to determine whether an application is complete in advance of the start of the 60-day timeline will continue to be used.

Mr. Thompson asked if it would be adequate to apply for a renewal of their permit 70 days before expiration to make certain that it stays in effect. Mr. Remer noted that the proposed regulation doesn't change the renewal process; renewals would not be subject to the public notice requirement. He also pointed out that the public notice provisions do not apply to the situation where an existing permit expires before the renewal application is submitted. Even if the renewal deadline is missed, the facility is still the same and the emissions are the same. Further, he indicated that a facility applying for a Class II permit which had previously held a

Class I permit would not be subject to the public notice requirements. This is because as a part of obtaining a Class I permit the facility went through the public noticing process, and now they qualify for a Class II permit because their emissions have been reduced as a result of modifying their process.

Ms. Malone commented on Mr. Thompson's question regarding the timeline for processing a renewal. She cautioned that the completeness review may take more than 10 days, if additional information is required, so one should allow extra time in case of such a circumstance. Mr. Remer confirmed that the regulation does say 70 days before expiration, but it is safer to allow additional time for the initial review.

Mr. Brown asked if the threshold values for modifications were the expected change in emissions as opposed to absolute emissions values. Mr. Remer confirmed that and gave examples of how the thresholds would work. For example, the public notice threshold for NO₂ is 40 tons per year (TPY). If a facility emitted 60 tons of NO₂ per year, and they wanted to do a modification that would increase the NO₂ emissions to 80 tpy (an increase of 20 tpy), it would not have to go to public notice. But, if a facility that emitted NO₂ at 30 tpy wanted to do a modification that would increase it to 80 tpy (an increase of 50 tpy), then the application would have to go to public notice.

Mr. Remer said that Nevada's public notice provisions for minor sources have been an issue with EPA for more than 10 years. What is being proposed basically mirrors federal regulations as best as we can. It is his hope that this proposed regulation will resolve the issue.

Mr. Brown wondered if he submitted a modification that did not exceed the stated thresholds would it still take the full 60 days to process the application. Mr. Remer said that without the necessity of a 30-day noticing period, it is possible that the permit could be issued in a shorter period of time. Mr. Brown asked about the situation where a modification is submitted that is under the threshold and a year later another modification is submitted that is under the threshold, but cumulatively they exceed the threshold. Mr. Remer said that there is a federal regulation called circumvention that relates to the PSD permit process. He said EPA has a series of tests that they apply on a case-by-case basis to try to determine the intent of the company in submitting the separate applications. In theory, he felt that those tests could apply to the circumstance Mr. Brown described. Typically, however, they are not applied to the determination of whether a project was subject to public notice or not, but rather as a part of determining the class of permit that would be applicable to the proposed modification.

Mr. Cook asked what the agency would like to see in these kinds of applications – drawings, calculations, modeling and the like. Mr. Remer said the required information is specified in the printed application forms and has pretty much been the same for over two decades. What will probably change in order to keep the application processing timeline as short as possible, we expect that a lot of attention will be put on the up front process, the initial application completeness review. He again stressed the availability of the pre-screening opportunity.

Mr. Cook indicated that his company was looking at a modification that would result in a new product and would also capture emissions that are now just escaping into the air. He wondered if

that would be taken into consideration during the review process. Mr. Remer responded: absolutely. While the modification would not have to go to public notice because the emissions were being reduced, Mr. Remer stated that they would still need to process a revision application.

There being no other questions, Ms. Malone adjourned the workshop.

ADJOURNMENT: The Workshop was adjourned at 10:48 am.

Respectfully submitted,

Paul A. Williams, Recording Secretary