

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION (NDEP)
Public Workshop on Proposed Amendments to
Nevada Administrative Code 445B.001 – 445B.3689,
AIR CONTROLS: AIR POLLUTION

MINUTES
June 1, 2011

Nevada Department of Transportation,
1263 S. Stewart St., Room 302
Carson City

ATTENDEES:

Workshop Chair: Adele Malone, Supervisor, Bureau of Air Quality Planning (BAQP), NDEP

NDEP Staff:

Mike Elges, Deputy Director, NDEP
Rob Bamford, Chief, BAQP
Greg Remer, Supervisor, BAQP
Sig Jaunarajs, Supervisor, BAQP
Paul Williams, Planning and Modeling Branch, BAQP

Public:

Thomas Burt, Inter-Tribal Council of Nevada
Tansey Smith, Inter-Tribal Council of Nevada
Kevin Lewis, Air Sciences
Tara Hess McGeown, Washoe Tribe of NV and CA
John Sande III, Jones Vargas &
Western States Petroleum Association
Nancy Long, Jones Vargas
Frank Martinez, Barrett Paint Supply
Frank Horn, VCM Collision & Nevada
Collision Industries Association

Teresa Hayes, Waste Management
Gary M. Worsman, Sherwin-Williams
Russ Densmore, American Avk Co.
Gavin Patzer, Nevada Cement Co.
Larry Kondik, Betra Mfg.
Barbara Coruna, PPG Industries Inc.
Charlene Albee, Washoe Co. AQM
Jose Ontivecos, Mid-Ad Inc.

CALL TO ORDER:

Ms. Malone called the Workshop to order at 9:10 a.m. and indicated that the purpose of the workshop is to consider two proposed regulations. She stated that they are both temporary regulations, which means they expire on November 1 of this year. They will be presented to the State Environmental Commission (SEC) at their October Hearing for adoption as permanent regulations.

The first regulation will update the adoption of federal regulations by reference, including the revisions effective August 2010 to 40 CFR 52.21, US EPA's "prevention of significant deterioration (PSD) of air quality" rule. As part of the update to the PSD rule, two definitions in the Nevada Administrative Code (NAC) are being revised. The second regulation proposes to establish a new Class IV permitting program for area sources to assist Nevada businesses in complying with new federal regulations. In addition, the second regulation includes the removal of an unnecessary Class II requirement.

Ms. Malone indicated that there is a second Workshop in Las Vegas on Friday, which will cover only the proposed new Class IV permitting program. Both regulations will be presented at the SEC Hearing on June 16 at 9:30 am at the Nevada Department of Wildlife. If adopted, the NDEP will file the regulations with the Secretary of State 35 days after the Hearing, unless the Legislative Commission or Subcommittee to Review Regulations puts them on their agenda for review. She anticipates that they will be effective July 21, 2011. She noted that the Workshop was being recorded as required by State law and that summary minutes would be prepared which would be placed on the SEC website.

Ms. Malone introduced herself and asked all of the attendees to state their name and affiliation. Upon conclusion, she asked if there were any questions regarding the agenda. Mr. Sande asked if these were temporary regulations, because the Legislature is in session. Ms. Malone confirmed the reason. She again covered the reason for the regulations being temporary and the timelines for their adoption first as temporary and later as permanent regulations. She pointed out that before these regulations can become permanent, they have to be reviewed and approved by the Legislative Counsel Bureau (LCB). If the LCB makes substantial changes, additional workshops would be held before the permanent regulations are presented to the SEC in October.

Ms. Malone began the review of the proposed petitions. She said attendees should feel free to ask questions at any time and asked that they state their name for the record.

Petition P2011-01; LCB File No. T009-11

Ms. Malone said that the NDEP is updating its adoption of US EPA's PSD, NESHAP (National Emission Standards for Hazardous Air Pollutants) and NSPS (New Source Performance Standards) rules. Starting with the update of the PSD rule adoption, she noted that Nevada is delegated implementation of the federal PSD program and in order to retain full delegation NDEP must adopt revisions made to the federal rules. In May 2010, greenhouse gases (GHGs) became subject to regulation by the US EPA. In June 2010, US EPA issued the *PSD and Title V GHG Tailoring Rule* (tailoring rule), which raises the emissions threshold for determining when a source is regulated for GHGs in the PSD and Title V permitting programs. T009-11 will update the NDEP's adoption-by-reference of 40 CFR 52.21 to include the tailoring rule, which implements the higher applicability thresholds for GHGs. Ms. Malone pointed out that to ensure that the higher thresholds apply to Nevada's PSD and Title V permitting programs, it is necessary also to revise two definitions in the NAC: major source and regulated air pollutant.

- Definition of “major source.” Ms. Malone indicated that the threshold for GHGs is much higher than the present 100 tpy level for major sources, i.e., 100,000 tpy. Therefore, the definition needs to be revised to reflect the higher limit.
- Definition of “regulated air pollutant.” The current definition says that any pollutant otherwise subject to regulation under the CAA is a regulated air pollutant in Nevada. The NDEP is proposing to add new language that will adopt the federal definition of “subject to regulation” which has been revised to include the higher emissions thresholds for both PSD and Title V.

Next, she reviewed the proposed update of the NSPS and NESHAP rules (40 CFR Parts 60 and 63), describing the specific standards that were being adopted by reference. Finally, she noted that the proposed regulation exempts GHG emissions from the annual emissions-based Class I stationary source fee.

Ms. Hayes asked how the GHG regulations would affect new enterprise in Nevada, like waste-to-energy facilities. Mr. Remer responded that since waste-to-energy plants are basically combustion sources, they would be treated just like any other combustion source. If they are above a certain emission threshold, they would become a major stationary source subject to the PSD provisions, and possibility Title V provisions. He indicated that existing sources above the applicable threshold would have to add GHG provisions to their permit within a given time period.

Ms. Hayes asked if the 245 ton cap would apply. Mr. Remer said that the 245 ton cap that your facility may have relates to a specific pollutant, like NO_x for instance. What the tailoring rule does is fold the GHG requirements into the PSD and Title V permitting programs. GHGs have not been previously regulated. After adoption of these regulations, the owner of such facility will have to evaluate their potential GHG emissions to determine if the facility is subject to the GHG permit requirements.

Mr. Sande asked if it was accurate that GHGs were not previously regulated, and now they are going to be. Mr. Remer responded, yes, the federal government is requiring GHGs to be regulated. Mr. Sande thought that only a few facilities like NV Energy would be subject these provisions. Mr. Remer said that the power plants are certainly subject to the GHG regulations; they are already subject to the PSD and Title V provisions. What is unclear is how many other sources will be subject to them, because there is no inventory of GHG emissions. We have some indication that as many as 100 additional facilities may be subject, but we are not certain. However, this is part of the federal PSD program that has been delegated to us. Nevada requested delegation, so that the State has greater control over implementation of the program. US EPA would implement this program, if the State did not accept delegation. Generally, the NDEP has heard from industry that they prefer working with the State, rather than directly with US EPA.

Ms. Hayes asked if the decision to regulate would be based on individual facilities, or whole air basins. Mr. Remer stated that it is by facility.

Mr. Elges explained that US EPA passed the GHG regulations about a year ago. There was a lot of contention about whether GHGs should be regulated; therefore, Nevada decided to wait for the outcome of the lawsuits challenging the rules. However, because implementation deadlines are now imminent, the State has an obligation to implement the rules; if we don't, US EPA would be responsible for implementing them. He believes that getting a permit from US EPA is very difficult to do. In addition, US EPA established GHG applicability thresholds well above the levels that were historically used to determine whether a facility is a major source or not. It is important to industries in Nevada to adopt the higher GHG permitting thresholds, so that they are not regulated at significantly lower levels. At this point it is difficult to answer questions about the impacts on a specific facility, largely because we don't know yet. He felt that nationally we are entering into territory that is really uncharted waters. He noted that this is the first step, and it targets large major sources. He concluded that as we implement the regulation, we will gather more information as to who else it may affect.

Ms. McGeown asked how these regulations would affect tribal lands since the State has no jurisdiction over tribal lands. She said that she knew that the Washoe tribe was not affected much by these large facilities, but our neighboring sister tribes, the Shoshone and Paiute are. Mr. Elges said that the State has no jurisdiction over tribal lands. Ms. McGeown pointed out that the temporary regulations really don't talk about that. Mr. Remer responded that NDEP does not have any authority on tribal lands; this is addressed elsewhere in State law or regulation. We regulate in all areas of the State except in Washoe and Clark Counties, except for boilers at certain kinds of utility operations. US EPA retains the jurisdiction and authority to issue PSD permits on tribal lands.

Petition P2011-02; LCB File No. T008-11

Ms. Malone said that this petition would establish a new area source permitting program: the Class IV Operating Permit program. US EPA has recently issued a series of new federal air quality requirements that apply to smaller businesses and industries that have not previously been regulated under the Clean Air Act. US EPA calls these area sources: sources that emit less than 10 tons annually of a single hazardous air pollutant (HAP) or less than 25 tons annually of a combination of HAPs. At least 16 of the new rules may impact sources in Nevada and require them to have air quality permits.

As the NDEP's regulations are currently drafted, these newly regulated sources would have to obtain Class II permits, which are designed for more complex operations, with multiple emission units, and which are commonly subject to several different types of air quality standards. The fee for a Class II permit is \$3,000 and this type of permit has a processing timeline of 70 days. Class II permit holders are also required to pay annual fees that range from \$1,000 to \$5,000, depending on amount of emissions the source is allowed to release.

Instead of subjecting the newly regulated small sources to the Class II requirements, Ms. Malone explained that the NDEP is proposing a new, streamlined permitting program (Class IV) designed specifically for those sources. As drafted, the Class IV program provides for reduced application and annual fees of \$50 each, and a shorter permit processing timeline of 40 days.

The NDEP did a survey and estimates that the new federal rules may require between 1,000 and 1,500 Nevada sources to obtain a Class IV permit. This will include gasoline dispensing facilities, metal fabrication and finishing operations, paint stripping and surface coating operations, just to name the main ones. The proposed regulation will ensure compliance with the new federal rules, but minimize the impact to the regulated community by streamlining the process and reducing associated costs.

Ms. Malone reviewed the petition section by section. She either read or paraphrased the proposed regulation and expounded on its intended meaning. During the review, the following questions and answers occurred:

Mr. Sande asked where the NDEP's definition of area source came from. Ms. Malone stated that it is a US EPA term. Mr. Remer explained that US EPA distinguishes between major sources of HAPs and area sources. US EPA's area source rules are designed to regulate small sources for HAPs; there is a list of about 128 of them. Further, HAPs are distinguished from criteria air pollutants, such as NO_x, PM₁₀, etc., which US EPA also regulates by setting ambient air quality standards. Until now, NDEP has only regulated major sources of HAPs, sources that emit more than 10 tons of a single HAP or 25 tons per year of a combination of HAPs. Recently, US EPA has started issuing what they call MACT standards for these smaller sources under 40 C.F.R. Part 63.

Mr. Sande, representing the oil industry, asked if gasoline dispensing stations are presently regulated by US EPA. Mr. Remer said this is the first time that gasoline stations are being regulated as area sources. First, US EPA established two size categories for HAPs, major and area sources; then they identified the major source categories to regulate. Next, they were required under the Clean Air Act to identify the smaller sources of the HAPS, or area sources. They were to group these in a logical way to address 90 percent of the emissions of the 30 air toxics that pose the greatest potential health threat in urban areas. States may let US EPA implement the area source rules, in which case sources would have to deal directly with US EPA, or States may either implement their own programs or simply adopt the US EPA program by reference. NDEP has elected to do the latter. Mr. Sande asked if service stations presently pay a permit fee to the State. Mr. Remer responded that historically NDEP has not regulated service stations, because we haven't had any air quality problems with them. He could not say whether that is the case in Washoe and Clark Counties. He thought that service stations were regulated in those counties, but he did not know to what extent.

Ms. Hayes inquired if these provisions include the additional vapor recovery systems on gasoline, but not on diesel. Mr. Remer said that there is a phase I vapor recovery on the tank side under certain conditions. Ms. Malone stated that what these regulations do is to simply implement the federal requirements. There are no additional requirements that the State is putting in the regulations. You can look on US EPA's website and see the federal requirements. We can provide the link to those provisions.

Referring to the permitting requirements for body shops, Mr. Horn asked if a source is already meeting the federal requirements and has a permit, are the State requirements in addition to the federal permit or will the State permit replace the federal one. Mr. Remer said right now US EPA

has not delegated the authority for these programs to us, so US EPA is the permitting authority. Once the State receives the delegation, permitting will shift to the State. At that time, sources would have to obtain a State permit. Mr. Worsman asked if an existing federal permit has 2 or 3 years left, would it become null and void when the State gets delegation. Mr. Remer said there will be a phase in period for implementation. Once NDEP receives delegation, permitting, annual reporting and the like will be through the State.

Ms. Albee said Washoe County received delegation about a year and half ago and has been implementing the area source rules. Washoe County implements the US EPA rules with no additional County requirements.

Mr. Lewis commented that he thought the Class IV permitting program is a great idea. But, he did have a question about the definition of Class IV source, which says a facility cannot be a Class IV source if it is subject to 40 CFR Part 60, and the applicability of the Class IV program to internal combustion engines. He was concerned with the situation where a facility might have, e.g., an emergency generator subject to Part 63 subpart ZZZZ and another subject to Part 60 subpart IIII or JJJJ. He asked if the Class IV program could be written so that the facility could get a Class IV permit for both generators. Mr. Remer explained that the Class IV program was developed to address US EPA's recent area source rules in as simple a fashion as possible. It is not meant to accommodate a number of different federal requirements, such as Mr. Lewis was describing. After much discussion, Mr. Remer concluded that such situations would fall under the Class III provisions, not Class IV.

Ms. Shaw asked whether the Class IV regulations would apply in a situation where the area source is at a facility that already has a Title V permit. Mr. Remer said if an area source is at a facility that already has a permit, when the permit is renewed or modified, the area source provisions would be folded into that permit. A facility that already holds a Class I, II or III permit could not obtain a Class IV permit.

Mr. Lewis raised a question regarding two potentially conflicting provisions in the adopt-by-reference regulation (NAC 445B.221). The NDEP is proposing to adopt the federal gold MACT (Part 63 subpart EEEEEEE) by reference. This MACT provides for the use of alternative test methods, however, another provision of NAC 445B.221 prohibits the NDEP from approving alternative test methods. Mr. Remer explained that since the federal rule already had approved alternative methods in it, use of those methods is acceptable; the NDEP is not using its discretion to approve new methods.

Ms. Malone concluded the review of the petition by noting that the last section of the petition is not part of the Class IV OP program. It proposes to remove the requirement for Class II permits to contain a compliance certification. Federal air quality regulations require only Title V permits to contain compliance certifications, and NDEP's Class II permits don't use a certification for determining compliance. They use other mechanisms like routine facility inspections and requirements to keep process records. So, this subsection of the NAC is unnecessary and should be removed.

Ms. Malone asked if there were any other questions.

Ms. Coruna asked if a facility emits HAPS and particulate matter, could it still fall under the Class IV program. Mr. Remer thought that such a situation would be extremely remote, but in theory the facility would fall into both worlds. Neither NDEP nor US EPA has decided how to address that.

Mr. Lewis asked if there was a reason the word toxic rather than hazardous was used in the definition of area source. Ms. Malone responded that the definition came from the US EPA's area source website. Mr. Lewis said US EPA's major source definition uses the term hazardous. Mr. Remer said we would take a look at that.

Ms. Smith asked whether Valmy and Reid Gardner were subject to county or state regulations. Mr. Remer explained that the NDEP is responsible for regulating air pollution in every county except Washoe and Clark; however, in Clark and Washoe Counties the NDEP is responsible for regulating fossil-fuel fired electric generating units. But, the Valmy and Reid Gardner power plants are already Title V and PSD permitted, so these regulations will not affect them at all.

Adjourn

There being no more questions, Ms. Malone adjourned the meeting at 10:36 am.

Respectfully submitted on June 20, 2011,

Paul A. Williams, Recording Secretary