

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission Permanent No: R043-19

Permanent Regulation R043-19:

Nevada Revised Statute (NRS) 445A.425 establishes the authority of the State Environmental Commission (SEC) to adopt regulations to carry out provisions of NRS 445A.300-445A.730, including standards of water quality and the amounts of waste that may be discharged into waters of the State. NDEP amended Nevada Administrative Code (NAC) 445A.1236 to align with the most current recommended numeric criteria published by the U.S. Environmental Protection Agency (EPA) for selenium to protect the aquatic life beneficial use.

SPECIFIC CHANGES:

The revisions include changes to the toxics table in NAC 445A.1236 and addition of a footnote to the table. A new section has also been added describing the complex criterion for selenium which was published by EPA in June 2016.

1. Need for Regulation:

EPA's regulations for water quality standards at 40 CFR 131.11(a)(1) require states to adopt protective criteria that are based on sound scientific rationale. Nevada's existing water quality criteria for selenium to protect the aquatic life beneficial use are based on EPA criteria published in 1987. Since 1987, EPA identified nearly 30 years of studies with toxicity data related to acute and chronic exposures of aquatic life to selenium, especially related to bioaccumulation of selenium in the food chain. EPA compiled these data to derive the updated 4-part criterion for selenium in 2016 (EPA 2016). Nevada's current criteria for selenium were adopted in 1990, based on EPA's 1987 criteria values. The updated criterion (EPA 2016) accounts for bioaccumulation of selenium in fish tissues and incorporates numeric criterion values for both fish tissue and the water column.

2. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

On June 6, 2019, June 7, 2019, & June 10, 2019 NDEP conducted public workshops on regulation R036-19.

Thursday, June 6, 2019 9:00 - 11:00 AM Bryan Building, 3 rd Floor Humboldt Room 901 S. Stewart Street Carson City, Nevada 89701	Friday, June 7, 2019 9:15 - 11:00 AM Elko County Library 720 Court Street Elko, NV 89801	Monday, June 10, 2019 1:00 - 3:00 PM Wetlands Park 7050 E. Wetlands Park Lane Las Vegas, NV 89122
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A total of twenty-one (21) members of the public attended the workshops, in total.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at: <https://sec.nv.gov/meetings/sec-regulatory-meeting-december-4-2019>.

Following the workshop, the SEC held a formal regulatory hearing on December 4, 2019 at the Bryan Building, 2nd Floor (Tahoe Room), 901 South Stewart Street, Carson City, NV and video-conferenced to the Las Vegas NDEP Office (Red Rock Conf Room), 2030 East Flamingo Rd., Suite 230. A public notice for the regulatory meeting and a copy of the proposed regulation were posted at the State Library in Carson City, at NDEP offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and provided to the SEC email distribution list. The public notice was also posted at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website, and on the SEC website.

The agenda and information where supporting documents could be located were posted at NDEP offices located in both Carson City and Las Vegas, at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website, on the SEC website, and provided to the SEC email distribution list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: <https://sec.nv.gov/meetings/sec-regulatory-meeting-december-4-2019>.

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended December 4, 2019 hearing: 13 (approximately)
- (b) Testified on this Petition at the hearing: 3

Larry Bazel
Attorney representing:
Clark County Regional Flood Control District

600 South Grand Central PKWY #300, Las Vegas, NV 89106
(702) 685-0000
lbazel@briscoelaw.net

Daniel Fischer
Clark County Water Reclamation District
5857 East Flamingo Road, Las Vegas, NV 89122
(702) 668-8888
dfischer@cleanwaterteam.com

John Tennert
Clark County Regional Flood Control District
600 South Grand Central PKWY #300, Las Vegas, NV 89106
(702) 685-0000
jtennert@regionalflood.org

(c) Submitted to the agency written comments: 0

4. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses through e-mail, three public workshops and at the December 4, 2019 SEC hearing as noted in number 2 above.

5. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted with changes based upon public input.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry. The proposed amendments may have an economic impact on dischargers because the selenium standard will become more restrictive; however, it is less stringent than national recommended values. States are required to review water quality standards at least once every three years and, if appropriate, revise or adopt new standards. If NDEP does not maintain appropriate water quality standards EPA may revoke NDEP's delegation of the Clean Water Act and enforce the program itself, which is not in Nevada's best interest.

Public. The regulation will have no economic impact on the public.

7. The estimated cost to the agency for enforcement of the adopted regulation.

Enforcing Agency. There will be no additional costs to the agency.

8. 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.

The adopted amendments do not overlap, duplicate or conflict with any regulations of other government agencies.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is no more stringent than what is established by federal law.

10. 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.

The regulation does not address fees.