

Form #1

Petition to Adopt, Amend, or Repeal Commission Regulations

Approved 10-3-1995



NEVADA
**STATE ENVIRONMENTAL
COMMISSION**

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

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Date of Petition: 2/13/2024

Representative capacity and signature of petitioner, authorized individual, officer or attorney:

Jason Kuchnicki

Digitally signed by Jason Kuchnicki
Date: 2024.02.13 15:47:39 -08'00'

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:

The Nevada Division of Environmental Protection (NDEP) is a Division of the Department of Conservation and Natural Resources of the State of Nevada. NDEP is a regulatory agency tasked with protecting human health and the environment. The Bureau of Water Quality Planning (BWQP) within NDEP is tasked with implementing Federal requirements of the Clean Water Act for the State of Nevada.

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:

Nevada Revised Statute (NRS) 445A.425 established the authority of the State Environmental Commission 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. NRS 445A.565 requires that any surface waters of the State whose quality is higher than the applicable standards of water quality as of the date when those standards become effective must be maintained in their higher quality. This maintenance of water quality is referred to as antidegradation. The proposed statewide antidegradation policy describes procedures to be implemented during the point-source discharge permitting process to protect against the degradation of surface water quality. The proposed regulation establishes four tiers of antidegradation protection with specific provisions for each category. Tier 1 protects water quality for beneficial uses of the water on a parameter-by-parameter basis. Tier 2 protects high-quality waters where data show the quality is better than levels needed to protect beneficial uses. Absent data, a waterbody is assumed to merit Tier 2 protection while data are collected to confirm whether this level of antidegradation protection is warranted. Processes are described to allow: (1) project permitting to proceed during the interim of assessing if water quality warrants Tier 2 protection; and (2) degradation of a Tier 2 water if the project/discharge is deemed by the Commission as socioeconomically important and necessary. Tier 2.5 and Tier 3 protect water quality and the special characteristics of waterbodies designated with the beneficial use of "extraordinary ecological, aesthetic, or recreational value" (NAC 445A.122). While new non-degrading discharges are allowable in Tier 2.5 waters, Tier 3 prohibits any new discharges.

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

NRS 445A.565 requires that any surface waters of the State whose quality is higher than the applicable standards of water quality as of the date when those standards become effective must be maintained in their higher quality. This maintenance of water quality is referred to as antidegradation. Furthermore, the Federal Clean Water Act regulations requires states to develop and adopt a statewide antidegradation policy and implementation methods consistent with specifications contained in Title 40 in the Code of Federal Regulations (CFR) 131.12. NDEP is proposing to amend the Nevada Administrative Code to include regulatory language to implement the antidegradation requirements set forth in NRS 445A.565 and comply with CWA 40 CFR 131.12 requirements.

5. A statement of the:

(a) Estimated economic effect of the regulation on the business which it is to regulate:

Existing discharges and renewals without changes to the quantity, quality, or location of the discharge will not be affected. The proposed amendments will have an economic impact for new or expanded discharges in locations where data is insufficient to determine baseline water quality. The cost associated with developing and implementing an approved Sampling and Analysis Plan can not be determined as it is dependent on the parameters of concern in the discharge and whether and what amount of data exists for the receiving waters for these parameters. The proposed regulation does allow for consideration of socioeconomic factors in setting less restrictive limits in discharge permits for Tier 2 parameters. The economic impacts associated with classifying a surface water as Tier 2.5 or Tier 3 water body would be evaluated on a case-by-case basis during the rulemaking process.

(1) Both adverse and beneficial effects:

Adverse economic effects may include costs for water quality sampling and analyses to determine baseline water quality of for parameters of concern. If baseline water quality is determined to be of higher quality, there could be additional costs associated with treatment of a point-source discharge if a viable treatment alternative is identified, but the additional costs will depend on the types and levels of parameters to be treated and the identified treatment alternative. Beneficial effects include the protection of in-stream water quality and associated beneficial uses, and preservation of the unique water quality attributes or the special ecological, aesthetic, and/or recreational values that may be associated with these higher-quality waters.

(2) Both immediate and long-term effects:

Immediate and long-term effects include protection of high quality surface waters in Nevada, and preservation of the unique attributes and special water quality characteristics that may be impossible to fully restore if degradation is allowed to occur.

(b) Estimated economic effect on the public:

No significant economic effect on the general public is anticipated.

(1) Both adverse and beneficial effects:

Not applicable

(2) Both immediate and long-term effects:

Not applicable

(c) Estimated cost by the agency for enforcement of the proposed regulation:

Although agency workload will increase, it is not possible to assign a cost as this is dependent on the number of new discharge permits proposed in waters where no data exists to establish baseline water quality.

6. A description of any regulations for 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 proposed regulation does not duplicate or overlap with any other State regulations.

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:

The proposed regulation is not more stringent than federal regulations. This regulation meets the statutory requirements of Nevada's water pollution control regulations NRS 445A.565 and parallels federal antidegradation policy found at Title 40 in the Code of Federal Regulations (CFR) 131.12.

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:

The proposed regulation does not provide for increases in fees.

Supporting Documents



When submitting this form, attach a second document to your email with your proposed regulatory language. Include other supporting documents as needed.