

**NEVADA DIVISION OF ENVIRONMENTAL PROTECTION**  
**Workshop to Solicit Comments on Proposed Amendments to**  
**NAC 445B: Air Controls**

July 31, 2024

1:30 PM

Bonnie B. Bryan Boardroom  
1st Floor  
901 South Stewart Street  
Carson City, NV 89701

Red Rock Conference Room  
Suite 200  
375 East Warm Springs Road  
Las Vegas, NV 89119

The workshop was also held virtually and was publicly accessible by video conference and phone

**MEETING NOTES**

**ATTENDEES:**

**Workshop Chair:**

Ken McIntyre, Supervisor, BAQP

**NDEP Staff:**

Jeff Kinder, Deputy Administrator

Andrew Tucker, Chief, BAQP

Jennifer Schumacher, Chief, BAPC

Tanya Soleta, Supervisor, BAPC

Chad Myers, Supervisor, BAPC

Patricia Bobo, Environmental Scientist, BAQP

Nicholas Schlafer, Environmental Scientist, BAQP

**Public:**

*Carson City:*

No Attendees

*Las Vegas:*

No Attendees

*Virtual*<sup>1</sup>:

John Hadder, Great Basin Resource Watch

Haley Brown

John Bellendir Jr.

Alex Hinshaw

Rebecca Choi

Matthew McCarthy

Tray Abney

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<sup>1</sup> Participants are listed using their online registration. Last name and/or affiliation may not have been provided.

## **CALL TO ORDER**

Mr. McIntyre called the meeting to order at 1:31 PM, explained the purpose of the Public Workshop, and introduced the staff present. Mr. McIntyre explained that the names of attendees would be collected for the record and that the meeting was being recorded. Mr. McIntyre reviewed the workshop agenda. There were no questions or changes to the agenda. Ms. Bobo explained that virtual attendees would be muted by the moderator and how they could signal to the moderator that they had a question or comment so they could be unmuted. Ms. Bobo explained that a copy of the proposed regulations, and State Environmental Commission Forms 1 and 4, could be found on NDEP's website.

Mr. McIntyre explained how the regulation adoption process works. The regulation adoption timeline was explained, specifying that there would be a 30-day public comment period prior to the State Environmental Commission (SEC) hearing for each set of proposed amendments. Mr. McIntyre stated that unless there are substantive changes based on feedback from this workshop, permanent regulations R077-24 and R119-24 are expected to be heard before the December SEC hearing and R120-24 is expected to be heard before the September 5th SEC hearing. Any information about the hearing can be found on the SEC website. If the regulations are adopted by the SEC, they are submitted to the Legislative Commission. If the Legislative Commission approves the regulations, they are filed with the Secretary of State and become effective. Mr. McIntyre paused and asked if there were any questions about the regulation adoption process.

Mr. McIntyre moved on to present the petitions.

## **R077-24 SUMMARY**

Mr. McIntyre presented R077-24, proposed repeal of NAC 445B.22087, 445B.3621, 445B.3639, 445B.3645, 445B.3651, 445B.3653, 445B.3669 and 445B.3673 and amendments to NAC 445B.281, 445B.3633, 445B.3647, 445B.3659, 445B.3663, 445B.3667, 445B.3671, 445B.3675, 445B.3677 and 445B.3679. These regulations repeal and amend portions of the Nevada Mercury Control Program and repeal all the odor regulations identified as part of the regulatory review pursuant to Executive Order 2023-03.

Mr. McIntyre first reviewed odor regulations and the penalty fines proposed for repeal. The first regulation states that no person may discharge or cause to be discharged any material or pollutant which tends to be offensive to the senses, injurious or detrimental to health and safety, or which interferes with or prevents the comfortable enjoyment of life or property. The second regulation states that the compliance team investigates an odor when 30% or more of a sample of people are exposed. The sample must consist of at least 20 people or 75% of those exposed if fewer than 20 people are exposed. The third regulation states that an odor will be deemed a violation which includes two odor measurements within 1 hour. They must be 15 minutes apart. The odor measurement consists of a detectable odor after 8 or more volumes of odor-free air.

Obstacles to enforcement as the current regulations are written were discussed including:

- Odors usually only last for a short period of time.

- Odors can be sporadic (irregular times and different locations). Wind direction can change.
- Difficult for NDEP to confirm, especially when the complaint is in a distant county. The public can't take a picture or video of an odor.
- Odors are most often not detectable after odorous air has been diluted with eight or more volumes of odor-free air.
- The regulation requires two odor measurements, 15 minutes apart, within a period of 1 hour. Odor may not be present at the time of second measurement.
- In general, odors are not regulated by the Clean Air Act or the US EPA.
- NDEP's primary focus and authority is attainment with the National and Nevada Ambient Air Quality Standards (or criteria pollutants) and industry specific hazardous air pollutants.

P2024-06 will remove state enforcement of odor regulations, NDEP is currently researching what local governments and other states are doing to investigate and resolve odor complaints. In 2021, counties around Nevada were contacted for odor concerns. Of the responses received and outside of Washoe and Clark Counties, there were no recent issues and would work with NDEP on complaints. Recently, one county shared support in removing the regulation.

Mr. McIntyre paused and asked if there were any questions specific to the repeal of the odor regulations.

### **COMMENTS AND QUESTIONS (Odor)**

**John Hadder:** Is there a replacement or other plan for addressing this issue in Nevada? If someone has a complaint there is there would be no action that could be motivated, is that right?

**Jennifer Schumacher:** We are doing research with other States and other counties to see if they have something that is more enforceable for us to use right now. If we did receive an odor complaint, and even if this were to be removed, we would still go investigate at the facility or at the individual's complaint area to determine if the Clean Air Act was being violated or a permit requirement was being violated as well.

**John Hadder:** Why not find out what would be a good replacement and then just amend the regulation at that time instead of repealing it and then having to add something later?

**Jennifer Schumacher:** We've been doing some research for a few years, and we haven't found that yet. If you know of anything, please share that with us. We're very open to hearing those ideas.

**John Hadder:** Is there an additional expense to the agency for the use of personnel if you still investigate odors, how does it change the cost and human resources?

**Jennifer Schumacher:** We are currently investigating those odors and we will continue to do so. So, it would be the same cost as we are currently incurring.

**Andrew Tucker:** The repeal of the odor regulation would not prevent any enforcement of odor related issues at the county or local level. So, there may still be remedies through that pathway as well.

**John Hadder:** Is the impetus to repeal this portion of regulation coming from inside the agency that you guys just feel like it's not useful or was it prompted by somebody from outside the agency?

**Jennifer Schumacher:** This has come up for many years within our agency. We've been looking into this to try to see how we can make it enforceable, and it's been something we've had many challenges within our agency. When the executive order came out a little over a year ago, we had identified this as something that we may look into removing. Many facilities and individuals have reached out to us to complain about the regulation not being enforceable as well. So it's a combination of multiple things.

### **R077-24 SUMMARY (Continued)**

Mr. McIntyre reviewed the proposed repeal and amendment of regulations pertaining to the Mercury Program. The Voluntary Mercury Reduction Program (VMRP) began in June of 2002 where specific facilities added mercury controls to specific thermal units. In 2006, this program was superseded by the Nevada Mercury Control Program which uses a more standard approach for all thermal units with the potential to emit mercury at precious metal mining facilities within NDEP's jurisdiction. The VMRP is not part of regulations by direct reference but was included as part of the Tier 1 thermal units.

Terms and regulations tied to the VMRP are proposed to be removed. Some of these terms are Tier 1, presumptive NvMACT, and Phase 1.

- Tier – 1 Thermal units were part of the VMRP. They were given a different date to submit NMCP applications than other thermal units and were listed regulations. All Tier -1 units have submitted NMCP applications and received the associated permits.
- Presumptive NvMACT (Maximum Achievable Control Technology) were existing mercury controls and practices associated with the Tier -1 thermal units.
- “Phase-1” aspect of the NMCP, a snapshot of the existing thermal units, controls, and work practice standards that existed within the mining industry on October 31, 2006.

It was explained that all existing facilities have submitted Phase – 2 applications and regulations and references pertaining to Phase – 1 application and Tier –1 is being removed as they are no longer relevant to the NMCP program.

The regulations and references pertaining to the Mercury Early Reduction Credit were reviewed. The deadline to submit Phase 1 applications was October 31, 2006, therefore these regulations are no longer relevant to the NMCP program.

Mr. McIntyre paused and asked if there were any comments or questions pertaining to R077-24 regarding either the odor or mercury regulations.

#### **COMMENTS AND QUESTIONS (R077-24)**

**John Hadder:** Is essentially all the facilities that were tier one would all fall into the Tier 2 category now anyway is that correct

**Ken McIntyre:** The phase two category, yes, that that's where they are.

**John Hadder:** I was looking at the amendments and said something about that phase that Tier 2 would be defined as anything that is as a potential to emit above Dominus, is that correct?

**Ken McIntyre:** None of the definitions of Tier 2 are changing. Tier one no longer exists, that was credit given for credit due part of being part of the VMRP. So now they have to undergo phase two aspects of the NMCP processes where we require the mercury controls and strict work practice standards and emission limits. Every facility is operating under a phase two permit at this time with applicable mercury controls for their system.

There being no other questions or comments, Mr. McIntyre moved on to present R119-24.

#### **R119-24 SUMMARY**

Mr. McIntyre presented R119-24, the proposal to amend NAC 445B.221 to adopt applicable federal rules promulgated since the State regulation was last updated as of March 2022. This is a routine activity commonly referred to as “adopt by reference”. The proposed amendments and the adoption by reference of the federal regulations will allow NDEP to request delegated authority for the compliance and enforcement of air regulations from the U.S. EPA. NDEP will implement the federal regulations once the authority has been delegated. The proposed regulation is to adopt new and amended subparts under the Code of Federal Regulations Parts 51, 60, 61, and 63. The proposed regulation includes adoptions relating to National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS).

Mr. McIntyre paused and asked if there were any questions.

#### **COMMENTS AND QUESTIONS**

There were no comments or questions pertaining to R119-24.

There being no other questions or comments, Mr. McIntyre moved on to present R120-24.

#### **R1220-24 SUMMARY**

Mr. McIntyre presented R120-24 the proposal to amend Nevada Administrative Code 445B.592(3). This regulation will reduce the need to inspect new motor vehicles until the fourth

registration of vehicles, instead of the third registration. This amendment is part of the regulatory review pursuant to Executive Order (EO) 2023-03. On June 4th, 2021, Assembly Bill 349 revised NRS 445B.825 to extend the period of time new vehicles are exempt from requirements specified in NRS 445B.798 and NRS 445B.770 to 55B.815, inclusive, until the fourth registration. The proposed amendment would make NAC 445B.592(3) consistent with the revised language of NRS 445B.825.

Mr. McIntyre paused and asked if there were any questions or comments on R120-24.

### **COMMENTS AND QUESTIONS**

There were no questions or comments regarding R120-24.

### **CLOSING REMARKS AND ADJOURMENT**

Mr. McIntyre asked if there were any other comments or questions.

### **COMMENTS AND QUESTIONS**

**John Hadder:** We will send a brief letter regarding the odor regulation. We don't think it should be repealed until there's a replacement. It doesn't seem to be onerous or burdensome to the agency, so it seems as though it doesn't really need to be repealed. So, we'll submit a short letter on this, but that's about the only comment we have at this time. It does make sense to clean up the mercury regulations.

**Ken McIntyre:** Thank you, John.

**Ken McIntyre:** If there are no further questions or comments this meeting is adjourned at 1:57 PM. Thank you everyone for your time and participation in this public workshop. We'll see you next time.