

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: R077-24P

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

The purpose of the proposed amendments is to repeal regulations that no longer serve a purpose for achieving the intents and purposes of NRS 4458.110 to NRS 4458.640, inclusive. It is necessary to repeal these regulations to improve efficiency in administering Nevada's Air Program and minimize the resources needed to understand the regulatory requirements that may affect businesses and the public.

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.

The Legislative Counsel Bureau published its draft, R077-24P, in the Nevada Register on July 1, 2024.

The NDEP held two hybrid (in-person and virtual) public workshops for R077-24P: one on May 23, 2024, and one on July 31, 2024. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada, as well as at the NDEP offices at 375 East Warm Springs Road in Las Vegas, Nevada. The workshop was held to present the substance of, and receive public comment on, the proposed regulation. Seven members of the public and regulated industry attended the workshop either in person or virtually. During and after the second public workshop, the Division received several verbal questions. Regarding the mercury portion of the regulation:

- 1) One commenter asked about the reasoning for the removal of these provisions of the Nevada Mercury Control Program. NDEP explained that the removal of these regulations is based on Executive Order 2023-003, and that these regulations referencing Tier 1 thermal units, Phase-1 and the Early Mercury Reduction Credit no longer had any applicability, as the timeframe for the need for those regulations has been superseded by the issuance of Phase-2 Mercury Operating Permits for all facilities regulated by the Nevada Mercury Control Program.

- 2) Another commenter asked for confirmation that facilities previously classified as Tier 1 would be classified as Tier 2 as a result of these amendments. The participant also asked for clarification regarding the definition of Tier 2.
- 3) Another commenter was originally concerned that annual mercury tests were proposed to be removed from regulations. NDEP clarified that only regulations that did not apply anymore were being removed, and that annual testing was still occurring under the Phase-2 MOPTC's. This commenter also asked NDEP to look into the following (comment followed by agency response):
 - a. Are the facilities that were in Tier 1 moving into Tier 2 category?
 - i. For all intents and purpose those facilities would move into the Tier 2 category
 - b. Can conditions be added about mercury collection, storing, and transportation?
 - i. This is outside the scope of this action and outside the bureau's jurisdiction.
 - c. The effectiveness of carbamate chemical mercury precipitants when added to process solutions.
 - i. This comment is also outside the scope of the proposed regulatory action.
 - d. Requested annual Hg reporting numbers be shown on the NDEP website.
 - i. NDEP is preparing to upgrade the website in the near future, which will include updated annual mercury emission reporting for all years since the inception of the NMCP by facility.

Regarding the odor portion of the regulation:

- 4) One commenter had multiple questions concerning the lack of replacement or amended regulations to handle odor complaints, as well as what prompted the proposed repeal.
 - a. NDEP reiterated its commitment to continuing to receive and investigate odor complaints to determine if there are Clean Air Act violations or permit violations. NDEP also stated that removal of the odor regulations would not prevent any enforcement-related issues from a local jurisdiction. NDEP stated the repeal was prompted by Executive Order EO2023-003, along with ongoing research by the program regarding the effectiveness and enforceability of the regulation.
- 5) Another commenter stated they did not see any harm in keeping the regulation even though there are difficulties with enforcement and it is something to use if a facility is not cooperating.
 - a. NDEP's position remains that the regulation is not enforceable, creates false expectations for the public, resulting in frustration, and has not resulted in a successful outcome.

A summary of the workshop, including all public comment and bureau response, is included on the NDEP website as well as the SEC website.

The proposed regulations were also distributed to the Bureau of Air Quality Planning's email distribution list. The Division accepted written comments on R077-24I and R077-24P for 15 days ending on July 31, 2024.

The SEC held a hybrid regulatory hearing on May 28, 2025, to consider possible action on R077-24P. The SEC posted its public notice, which included a link¹ and instructions to access R077-24P and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice 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 public notice was also published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once per week for three consecutive weeks prior to the SEC regulatory meeting.

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

- (a) Attended May 28, 2025, hearing: 34 (approximately)
- (b) Testified on this Petition at the hearing: 3

1. Jeff Kinder, on behalf of the Nevada Division of Environmental Protection
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¹ <https://sec.nv.gov/meetings/sec-meeting-may-28-2025>

(c) Submitted to the agency written comments: None

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 one public workshop and at the May 28, 2025, SEC hearing as noted in number 2 above. Three members of the public provided verbal comments in opposition to the regulatory amendments during the May 28, 2025, SEC meeting:

1. Glenn Miller, retired University of Nevada, Reno professor (opposed odor amendment; generally supported mercury amendment)
2. Ray Johnson, resident of Silver Springs, Nevada
3. Brian Bass, Environmental Engineer

A recording of these comments is available on the SEC website.

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 Commissioners unanimously adopted R077-24P without change because the SEC was satisfied with the proposed regulation.

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

Regulated Business/Industry: There are no economic impacts to businesses associated with this action in the short- or long-term.

Public: There are no adverse or economic impacts on the public associated with this action in the short- or long-term.

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

Enforcing Agency. The proposed amendments will have no economic effect on 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.

Not applicable; the proposed amendments are only to repeal and amend existing regulations to remove unnecessary requirements.

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 proposed amendments do not include requirements that are more stringent than the regulations of other state or federal agencies.

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.

R07-24P does not provide for any new fees or increases to existing fees.