

Public Comment to the Nevada State Environmental Commission
Request to return the draft Air Regulatory Enforcement Practice to NDEP for correction

Dear Commissioners:

Thank you for accepting our public comment. We appreciate and support the Nevada Division of Environmental Protection's efforts to make its internal enforcement practices transparent. Clear guidance helps businesses understand their responsibilities, residents understand how the agency protects the community, and staff apply the law consistently.

For this reason, we urge the Commission to withhold adoption of the draft as written and return it to NDEP for correction. In the brief time we've had to review the document, we have found it contains 108 errors of law, fact, or reliance and it omits important exemptions, changes the meaning of regulatory provisions, relies on inaccurate or incomplete factual statements, and gives conflicting penalty instructions. These problems affect what readers understand the law to require and how penalties may be calculated.

Nevada law addresses how agencies present regulatory text. Under NRS 233B.070(8), an agency referencing NAC regulations *must reproduce their exact text, including section headings and numbers. It must clearly distinguish accompanying explanations from the regulations.* Instead, the draft's language mixes paraphrased regulatory definitions with altered descriptions and agency explanations. To avoid confusion and animosity between landowners, NDEP should identify which passages reproduce regulations faithfully and which summarize them, then check each accordingly. Calling a passage a summary does not cure the requirement to preserve a rule's meaning. [NRS 233B.070\(8\)](#)

This distinction matters. Readers should be able to tell whether a sentence states an existing legal requirement, explains that requirement, or describes an agency's current policy choice. An enforcement guide should always preserve the conditions and exemptions that determine when a rule applies.

EXAMPLES ERRORS AND INCONSISTENCIES

As part of our public comment, we have submitted a register that compares the draft language with the NRS and NAC. (*See attached.*) We've performed a public-document quality audit and reviewed the penalty examples given in detail. Here are several examples from the attached register demonstrating why correction should come before adoption:

- **Under the draft, agricultural activities are no longer exempt.** For instance, the dust and permitting discussions on pages 30 and 36 omit the exemption for agricultural activities occurring on agricultural land. NAC 445B.22037(4)(a) exempts those activities from the dust-program and surface-disturbance permit requirements in subsections 2 and 3. The missing exemption makes lawful farming appear unlawful. Neighbors could mistakenly believe an exempt farmer needs a dust-control program or disturbance permit, prompting complaints and conflict. The draft could lead a farmer or enforcement employee to believe that an exempt activity requires a program or permit. [NAC 445B.22037](#)
- **The draft makes any airborne dust a potential violation by leaving out the word that determines whether an airborne dust violation has occurred.** The Commission's regulation addresses *controllable* particulate matter becoming airborne during material handling, transportation, or storage. The draft omits "controllable." For instance, dust appearing while a haul truck unloads aggregate does not, by itself, establish that this requirement was violated. Leaving out "controllable" makes the rule appear broader than the Commission wrote it.
- **The draft combines requirements that apply to different activities.** Material handling and the use of unpaved areas are addressed in separate subsections. A loader that's dumping material has different obligations than a loader driving across an unpaved road. The draft ignores the distinction and merges the material handling rule with requirements for an ongoing dust-control program. Although both activities occur in a construction operation, blending the rules obscures when each duty applies and it imposes new obligations the regulation does not require.
- **NDEP's explanation conflicts with its own compliance methods.** Page 30 says the agency cannot verify compliance when fugitive dust becomes airborne because those emissions are not included in permit modeling. Yet NDEP already uses EPA's AP-42 emission factors, including Section 13.2.4 for handling and storage, to estimate dust emissions; AERMOD to predict pollutant concentrations in surrounding air; and EPA Method 9 observations to assess visible-emission opacity. NDEP's modeling guidance for mining operations expressly includes process fugitive emissions. NDEP's Painted Rock handout documents these methods and includes process fugitive emissions in its modeling. These established practices undermine the draft's blanket explanation. If particular emissions prevent a specific compliance determination, the draft should explain why these available methods are insufficient and what additional information is needed. [NDEP Painted Rock handout](#)
- **The draft's Penalty instructions point in opposite directions.** Fourteen paragraphs say that mitigating factors increase a penalty, but the main formula subtracts them. The recordkeeping example also counts prior violations when increasing the penalty, then

applies the \$40,000 cap assigned to a case with no prior instances, without explaining that choice. The example arithmetic is correct for the inputs used, but the inputs and cap conflict with the draft language.

- **The draft does not explain how to count missing records.** For instance, Pages 19 and 26 calculate recordkeeping penalties by “event.” The statute sets a maximum of \$10,000 per day per offense and makes each day of violation a separate offense. Although the draft defines “event” and gives some counting guidance, it does not explain how each recordkeeping event corresponds to a separate legal offense or how to determine the days the offense continued. Staff and landowners need these instructions to calculate potential penalties consistently. [NRS 445B.640\(1\)](#)

ARTIFICIAL INTELLIGENCE USE

The AI-generated hydrogen-sulfide passage on page 8 is not accurate and does not meet the NRS standard for clear and concise language. Terms such as “low,” “slightly higher,” and “moderate” do not tell readers what concentrations or exposure periods support the stated health effects. The draft document says olfactory damage may occur at “slightly higher” levels, but the ATSDR toxicological profile notes this effect begins at 100,000 times the ambient concentration. Such distinctions matter when explaining health risks. NDEP should revise the passage to reflect the evidence and its limits. [ATSDR toxicological profile](#)

Nevada’s statewide Artificial Intelligence policy calls for “accurate outputs and human oversight.” The Commission should ask NDEP to document how the hydrogen-sulfide passage was checked and corrected under that policy. Our concern is limited to this passage since it was identified by AI signature; we note the presence of this section does not establish that required AI approval or review was missing. [Nevada executive-branch AI policy, pp. 2–5](#)

SUMMARY

If accepted, the defects in this document could create confusion in our community. A business might spend money meeting a requirement from which it is exempt. A resident could misunderstand the evidence supporting a health claim or believe a local farmer is in violation when he is not. Different employees could recommend different penalties from the same facts. The draft includes a qualifying statement that the Enforcement Practices document should not be relied upon and may change at any time. But Commission acceptance will give readers added reason to rely on the final version of the document.

We therefore ask the Commission to return the draft to NDEP with instructions to:

1. Correct the documented errors and preserve every applicable condition, exemption, and limitation within the NRS and NAC.
2. Clearly separate legal requirements from agency explanations and policy choices.
3. Reconcile the penalty instructions, counting rules, worksheets, and examples.
4. Publish a corrected draft, a version showing the changes, and a response to the substantive findings, with adequate time for public review before reconsideration.

We support NDEP's and the Commission's effort to make enforcement understandable and consistent. Completing these corrections before adoption will help that effort succeed.

Thank you for considering our comments.