

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

September 5, 2019
9:00 AM

Great Basin Conference Room
4th Floor
901 South Stewart Street
Carson City

Video Conference to
NDEP Red Rock Conference Room
2030 E. Flamingo Road, Ste. 230
Las Vegas

The workshop was also available through a webinar via <https://call.lifesizecloud.com/300783>

MEETING NOTES

ATTENDEES:

Workshop Chair:

Jeffrey Kinder, Deputy Administrator, NDEP
Danilo Dragoni, Chief, Bureau of Air Quality Planning (BAQP)
Lisa Kremer, Chief, Bureau of Air Pollution Control (BAPC)

NDEP Staff:

Patricia Bobo, Environmental Scientist, Planning and Modeling Branch, BAQP
Joseph Perreira, Staff Associate Engineer, Planning and Modeling Branch, BAQP

Public:

Carson City:

Colten Hiatt, A&K Earthmovers
Rick Cooley, Carson City Public Works
Julie Roth, Baker Hughes GE
RJ Wright, Ormat
Keshab Simkhada, Nevada Gold Mines
Joe Beetler, NGM/NvMA
Lisa Duncan, Trex
Bryan Winter, Trex
Ryan Mitchell, Trex
Tawnya Watson, Kennametal
Jeremy Anthony, Basalite
Alexis Motarex, NV AGC
Brian Crane, Enel Green Power
Jennifer Schumacher, NDEP
Ashley Taylor, NDEP
Travis Osterhout, NDEP

Pat Anderson, NDEP
Josh Martinez, NDEP

Las Vegas:

John Wong, MSTS/NNSA – DOE
Derek Muaina – Bedroc SSG
Richard Beckstead, Clark County Department of Air Quality

Webinar Attendees: 11

CALL TO ORDER:

Mr. Dragoni called the meeting to order at 9:04 a.m. Staff and attendees introduced themselves. Mr. Dragoni discussed the sign-in process, handouts and other housekeeping items. Mr. Dragoni reviewed the workshop agenda. There were no questions or changes to the agenda.

Mr. Dragoni explained the regulatory adoption timeline. Once the petitions have been presented at the workshop, the Nevada Division of Environmental Protection (NDEP) will consider comments received at the workshop, make any appropriate revisions and submit the petitions to the State Environmental Commission (SEC). The SEC will forward them to the Legislative Counsel Bureau (LCB), which reviews the petitions for clarity and conformity to other state regulations. After the LCB review the SEC will hold a hearing on October 2, 2019 at 10 a.m. in Carson City where they will consider the petitions. There will be a 30-day public comment period prior to the SEC hearing and another opportunity for comment at the hearing. If the regulations are adopted by the SEC, they are submitted to the Legislative Commission. If the Legislative Commission approves the regulations, they are sent to the Secretary of State where they are filed and become effective. There is not a certain date for when the petitions may become effective because the Legislative Commission does not meet on a regular basis. The NDEP anticipates the amendments will be approved by the end of October or November 2019.

Mr. Dragoni explained the question/answer process. All lines were muted for the webinar and Red Rock room in Las Vegas. If questions cannot be answered during the presentation, they would be addressed at the end of the presentation when all lines would be unmuted. Questions could also be emailed to aircomments@ndep.nv.gov.

Mr. Dragoni moved on to present the petition.

P2019-04 SUMMARY

Mr. Kinder began the presentation of P2019-04. The amendments presented at the workshop took almost a year of planning. Changes to initial drafts are based on feedback from the regulated community. Mr. Kinder explained the outline of the presentation and who would be talking about which aspects of the fee regulation amendments. The purpose of the fee change is to match up the NDEP's revenue with expenditures. An expansion of the Air Program or changes to the Nevada Mercury Program are not being proposed. Per NRS 445B.300(2)(a), the SEC has the authority to set fees so on October 2nd the NDEP will be proposing the air fee amendments to

the SEC. The changes are primarily to NAC 445B.327 but the changes will affect several other NAC's. The last fee increase was in 2006, which put a lot of focus on emission fees and facilities with large emissions. With the shutdown of the Mojave and Reid Gardner coal power plants and with Valmy now getting ready to shut down there has been a significant reduction in revenue. An emission based fee structure is now problematic because facilities have state of the art controls and there are tighter National Ambient Air Quality Standards (NAAQS) so we will not see facilities with large emission profiles. The NDEP is proposing to increase fees because of stagnant and declining Federal grants and increasing personnel costs. The NDEP tries very hard not to have unfunded mandates applied to the Air Program which would pass the costs on to stationary sources. The NDEP reviews the budget every biennium and after the 2017 review, the NDEP believes it takes 60 fulltime employees to run the Air Program. The Title V Program must be self-funded, which is another reason for the proposed fee increase. The Legislature requires the NDEP to maintain an appropriate level of budget reserves and a declining reserve prompted the discussion of a fee increase. The proposed fee increase is to both application fees and maintenance fees.

Ms. Kremer continued the presentation and explained what application fees pay for. Each application comes in and is accepted or rejected. If accepted, the application then goes through emissions inventory processing, increment modeling, draft operating permit processing then a technical review. After being processed there is a 30-day public comment period, then a 45-day EPA review and an optional public hearing. A permit is then issued. Some of the new fees are based on the time it takes to perform tasks that previously were done for free. There is also a new administrative completeness review fee, which means the NDEP keeps 10% of the application fee if the application is deemed incomplete. This will not apply to all application fees. The application fees will now be based on emission units, including insignificant activities. Every unit is considered one, there is no grouping anymore. Working hours correlate linearly with the number of emission units and insignificant activities. Under certain conditions an administrative renewal category is being proposed. Major stationary sources and major sources will have a large increase. There is a moderate increase for surface area disturbance (SAD) permits. Operating permits to construct and temporary general permits will see a small increase. Stationary general permits will not see any fee changes. Ms. Kremer then explained the differences between the current application fees and the proposed application fees for each permit type.

Mr. Dragoni continued by explaining what maintenance fees are. Because the Air Program is a delegated program the NDEP implements most of the Clean Air Act (CAA) provisions for Nevada instead of the EPA. Some activities for the maintenance of a permit include inspections, stack testing, investigating complaints, etc. Planning and modeling are all required by the CAA to keep the NDEP's delegation. Ms. Kremer added that the NDEP focuses on compliance and not enforcement. The NDEP does a lot of outreach and provides assistance to facilities. Mr. Dragoni then explained that the areas under the NDEP's jurisdiction are in attainment. The NDEP's ambient monitoring network, required under the CAA, gives us that information and is funded by the maintenance fees. The databases that are maintained for the transfer of information between the regulated community, the NDEP and the EPA are also used to maintain the Air Program and are funded by the maintenance fees. Class III and Class IV permits were eliminated, which covered many small businesses. They are still regulated but they don't require a permit. The University of Nevada, Reno Business Environmental Program (UNR BEP) does a

lot of outreach work for small businesses that do not require permits. Mr. Dragoni explained the key components of the proposed maintenance fee amendments. Annual maintenance emissions fees for Class I permittees will be eliminated. There will be an increase in annual maintenance fees for major stationary sources and major sources. Sources with a Class I and Class II operating permit will pay major source maintenance fees. Maintenance fees for Class II permits will be based on potential to emit (PTE), SAD acreage and the number of permitted emission units. There will be no change for general permits. There will be an adjustment to SAD categories which will result in a slight increase in maintenance fees. Mr. Dragoni then explained the differences between the current maintenance fees and the proposed maintenance fees for each permit type. There will also be a phase in of the maintenance fees for Class I stationary sources, with the full fee due in fiscal year 2022 and thereafter. Mr. Dragoni went through an example of how to calculate the maintenance fees for a Class II stationary source. The PET will be based on the highest regulated air pollutant that is in the permit with the exclusion of carbon monoxide and carbon dioxide. Ms. Kremer added that when it comes to minor source permits, a lot of time is spent on synthetic minor permits. The table reflects the time spent on these permits. Mr. Dragoni continued explaining the proposed fee tables. There is also a proposed phase in of the maintenance fees for Class II and standalone SAD permits.

Mr. Kinder explained workload considerations and staffing levels. The permitting staff performed a two week study which included hours each permit writer spent on various steps to get a permit, number of emission units in each action, type of permit and the amount of actions per year. The results for Class I were 340 hours to issue a permitting action, with an average of 60 emission units per action and an average of 35 actions per year, which requires six permitting staff. For Class II the results came to thirteen permitting staff required. The Air Program does not have 19 permit writers so we are more efficient than what was reported. The NDEP believes 60 fulltime staff is sufficient to run the Air Program. This is what the fee increase is based on. Every biennium the program is reevaluated as well as staffing but right now this fee increase reflects 60 fulltime positions.

Mr. Kinder explained that the job of the Air Program is to maintain compliance with the National Ambient Air Quality Standards (NAAQS) but the biggest job is to get applications and issue permits so businesses can operate. The NDEP has focused on customer service and regular communication. Applications and templates have been updated. Guidance documents, FAQs and checklists have been made available. Completeness checks, modeling and guidance have all been centralized for consistency. The public notice and EPA review time has been improved. The General Permit Program has been expanded because they are easier on facilities and the Air Program. Annual emission reporting online was made available this year for Class I facilities and will soon be available for Class II facilities. It makes reporting online easier and the data goes directly into the database. The NDEP is always working on streamlining and lean events to reduce steps and to get permits completed. UNR BEP is always available for outreach and assistance. As a result of improved efficiencies and available assistance for facilities, the Air Program has reduced the permitting backlog by about 26% in the past year.

Mr. Kinder moved on to explain how the Air Program compares to other states. He explained that it is nearly impossible to compare programs because the structure is often very different. Nevada does not have a construction permit like many states. The Air Program just issues

operating permits, not construction permits. Because the areas under the NDEP's jurisdiction are in attainment, getting permits is a lot easier. Being in nonattainment creates challenges for other states. Other states have prescriptive emission controls and control strategies so permittees are told what emission factors they'll get and what controls will be used. In Nevada, the permittees are allowed to choose what's right for their facility and the NDEP models every permitting action to ensure Nevada is not violating the NAAQS. There are also regional challenges that are unique to the West. The NDEP focuses on compliance, not enforcement. The NDEP walks permittees through what is expected of the facility so enforcement is not necessary. The National Association of Clean Air Agencies (NACAA) did a Title V survey in 2018. 27 states and 17 local air agencies responded. The results showed that staffing levels for the NDEP's Title V program are in line with staffing levels at other state agencies. The survey also showed that the NDEP has the lowest emission fees among the agencies who responded to the survey. The Western States Air Resources Council (WESTAR) also did a survey comparing air program budgets with other western states and the NDEP pays staff the same as most other western states and has relatively the same amount of staff.

Mr. Dragoni explained that the NDEP has been doing outreach activities for the last several months and comments and suggestions have been received during those activities. The most significant comment received was that this proposed fee increase is large and that budgets have already been established. The NDEP is proposing to delay application fees to July 1, 2020 and a phase in of certain maintenance fees. Another suggestion was to index the fee increase based on inflation or the Consumer Price Index (CPI). The NDEP will reevaluate this option in the next biennium. Ms. Kremer added that there were a lot of comments that facilities need predictability and knowing what the annual increase is will help. There is an annual 2% increase in the NDEP's regulations. That 2% increase has not been enacted in a very long time. Mr. Kinder explained that Arizona just recently made their air fee index with the CPI. The NDEP will follow their progress and might make a recommendation to do the same.

Ms. Kremer summarized the presentation. If complete applications are received before the proposed amendments go into effect, they will be processed with the existing fee schedule. FAQs are currently being developed in anticipation of questions and should be available before the October 2nd SEC hearing.

Mr. Dragoni reviewed the regulatory timeline again. The goal is to have the proposed new fee schedule effective January 1, 2020 for maintenance fees and July 1, 2020 for application fees. Comments are welcome using the aircomments@ndep.nv.gov email. Mr. Dragoni requested that webinar participants send an email with their name and affiliation for records.

COMMENTS AND QUESTIONS

Julie Roth: I just want to make sure we'll still be receiving our invoice telling us what fees are due and when so we don't miss something with the new changes.

Mr. Dragoni: The process will be exactly the same.

Pat Anderson: Currently we have a 2% inflationary adjustment that we apply to maintenance

fees. My understanding through our last meeting is we will retain that fee. We now have crafted a regulation with prescribed maintenance fees amounts over the next three years. Does that mean we will be suspending that 2% inflationary adjustment and just bill for those prescribed amounts as specified in the regulation over the next three year period and then applying the 2% once we've reached 100% of the fee or are the prescribed amounts still subject to the 2% adjustment?

Mr. Dragoni: As the regulation is written now, the 2% for the phase in will not be applicable but it will need to be discussed internally.

Jeremy Anthony: Just to clarify on the proposed fee schedule, specifically the phase in for SAD permits, does the phase in apply for standalone SAD permits or if it's part of a Class II operating permit?

Mr. Dragoni: If it's part of a Class II operating permit. That is correct.

Jeremy Anthony: In the example that was given, there is an increase of three times. Basalite is such a small facility but the increase will be about ten times what was paid. I understand balancing revenue with expenditures but that's a big increase. That's why I asked if the proposal was to look at all SAD portions or just the standalone permits.

Ms. Kremer: You would only qualify for a phase in if your Class II maintenance fee was over \$10,000.

Joe Beetler: The NvMA understands the need for adequate revenues to fund the Air Program and appreciates the outreach that the Air Program has made to industry and business. Early engagement allows for constructive dialog and the ability to craft a regulatory package that addresses our concerns as the payer of the fees as well as meet the objectives of the agency. Thank you. We have previously provided the NDEP with the concerns of our industry on the regulatory package and we continue to look for solutions and compromises. I would like to go on record for what some of the major ones are. First, the time between fee increases has been a lot time, that's what's resulting in these significant increases. We would propose a system of more frequent but smaller increases perhaps indexed to inflation so we can predict a little better for budgeting purposes. Secondly, because this significant fee increase is within a short period of time that makes the internal budgeting process difficult because you're going to typically already budget for next year. But we do appreciate the phased in approach the agency has put into place for most of these fees and suggest similar actions be taken for the remainder of the fee structure, including the low end. Third, the agency has taken a look at the internal workings of the Air Program and has evaluated staffing workload and permit backlog. We applaud the Air Program for the progress made over the last few years on the backlog reduction and the streamlining and engagement. We also appreciate the clarification of the fees to be charged to permit applications submitted prior to the passage of this regulatory package. This provides budget certainty. Finally, a very positive aspect of the regulatory package is the removal of the requirements for remodeling emissions at renewal providing the facility has no modifications. This will save time and money and will have no impact public health or the environment. We look forward to continued cooperative working relationship with the NDEP on these issues and a regulatory fee package that meets the needs of the agency, business and industry.

Mr. Kinder: I would like to add one thing regarding indexing. We will be evaluating that. When we're ready to propose something we will go back through this process and make sure everyone gets a chance to understand what we see might work going forward to prevent these large increases and get feedback going forward.

John Wong: We're a Class II permittee and we have two standalone SAD permits. Does that mean our new maintenance fee, assuming everything passes, will be the additional two components, the PTE and the number of emission units and then we have a separate one for the standalones?

Mr. Kinder: Your new maintenance fee for the Class II will be adding the three categories together and if that's over \$10,000 you will be phased in.

John Wong: So we would no longer get separate invoices for the SAD standalones?

Mr. Kinder: If you have standalones permits you would also get invoices for those as well. So you would get three invoices because you have three permits.

John Wong: Ok, if we have two standalones and we get the invoices for those then the other invoice should just cover the PTE and number of emission units.

Mr. Kinder: It would depend on if you have SAD acreage in your Class II as well.

Mr. Dragoni: The way we understand your situation is that you have a Class II permit that has emission units, PTEs and SAD and you have two different permits in two different locations that are just SAD. So those are three different permits subject to three different maintenance fees.

John Wong: My second and last question is someone indicated that if this passes in November the new effective date for these fees would be January 1, 2020, is that correct?

Mr. Dragoni: For the maintenance fees, the effective date would be January 1, 2020. The maintenance fees are billed in the spring of 2020 and the deadline to pay those fees is July 1, 2020.

Derek Muaina: Did I understand you right when you said you will not be adding staff positions with this increased fee revenue?

Mr. Dragoni: That's correct.

Derek Muaina: But you believe with your current staff levels you'll be able to get through the backlog in a reasonable amount of time?

Ms. Kremer: We are chipping away at the backlog. We got 26% of it done over the last twelve months.

Derek Muaina: The reason I ask is because we work with the Solid Waste Bureau, the Bureau of Water Pollution Control and even DAQ here and your department is by far the slowest. I'm just wondering if there's a way that some of this money can be put towards new positions to help move things along. It takes eight full weeks of fulltime activity for a permitting action. It seems like a long time. Have you looked and compared your functions to other bureaus at the NDEP and seen whether you're on par or looked at efficiencies that can be gained? It's frustrating working with your department.

Ms. Kremer: I'm not sure of the details of the other NDEP permits that go out the door. I've worked in one other bureau in this building and I did not work on permitting. I don't know if their permits are just a few pages. Our permits are very detailed and there's a lot of work and calculations that go into it. We're not producing a simple document. All of the specifics in order to be in compliance are written into the document which we feel helps the facility. It's hard for us to figure out applicability, we wouldn't want to leave that up to facilities. We do a lot of work and calculations and it's more detailed than what others are doing.

Mr. Kinder: I would like to add that it's hard to compare to other programs because we issue permits based on the CAA. It's all predicated on the Federal act that creates the program. We are looking at our steps all the time. We're doing lean events all the time. Our goal is to get permits out the door as fast and as efficient as possible. If your facility needs something faster than what the regulatory timeline is you need to reach out. We are very receptive to your needs and we don't want our permit to be the critical path. We'd like to meet with you see what your challenges have been and to understand why that's happening.

John Wong: In the guidelines you define timeframes for what you review for certain types of permit applications and revisions and such. If you exceed that, do you make an effort to reach out to the permittee to provide status and tell us how late you're going to be with a particular review?

Mr. Kinder: We don't normally initiate that conversation. We could look into it. If facilities have particular needs we're already talking to them. I appreciate that comment and we can look at working with our permit supervisors if we're approaching our regulatory deadline. They can reach out to the facility and let them know why and steps we can take to make that deadline. I would like to go back to the backlog discussion. We work hard to get the new and revisions out of the backlog because that's what you need to do business so that's been a priority. There may be some left but we're trying to postpone renewals at this time to get the new and revisions out. We appreciate the feedback.

Derek Muaina: Possibly some of the frustration is we'll send things up and not hear anything. Maybe you can look at that type of proactive communication to give us an idea of what's going on.

Ms. Kremer: We can do that.

Mr. Dragoni: Hearing no further comments or questions from Carson City or Las Vegas, the attendees on the Webinar will be unmuted to ask questions or provide comments.

Mr. Kinder: We appreciate everybody taking the time to participate. Our program is only as good as the feedback we get. We appreciate the thoughts and comments we've gotten through this process. Please reach out using the aircomments@ndep.nv.gov email.

There were no further comments or questions from the public on P2019-04.

ADJOURNMENT

The Workshop was adjourned at 10:30 a.m.