



# Meeting Minutes

Thursday, November 1, 2018, 1:00 p.m.-1:40 p.m.

**Location:** University of Nevada Cooperative Extension, Carson City  
Classroom 2621 Northgate Lane, Suite #12  
Carson City, NV 89706

**Video Conference:** University of Nevada Cooperative Extension, Clark County  
Life Long Learning Center (LLLC) Room A  
8050 S. Paradise Road  
Las Vegas, NV 89123

University of Nevada Cooperative Extension, Washoe County  
Classroom A  
4955 Energy Way  
Reno, NV 89502

*Note: Additional locations listed on the agenda had 0 participants*

## 1) Call to order and introductions (Val King)

The meeting is called to order at 1:00 p.m.

The following individuals introduce themselves:

**Carson City location:** Val King (NDEP), Katrina Pascual (NDEP), Andrew Dixon (NDEP), Evan Chambers (NDEP), Daren Winkelman (NDEP), Doug Hensen (KCA), Amanda Dimmick (NDEP), Stephanie Simpson (NDEP), Rebecca Zimmerman (NDEP), Erik Ringle (NDEP), Jason Cooper (NDEP), Joe Sawyer (NDEP), Greg Lovato (NDEP), Shane Johnson (GRC Nevada), Bob Forester (NVRWA), Jeff Kinder (NDEP), and Allen Bibyyl (NVMA)

**Las Vegas location:** Mike Nelson (Clark County), Carol Akin (SNHD), Denie Rasenssen (NV Energy), Troy Belka (MSTS), Brian (SNHD), Sonnia Lewandoski (CCWRD) and Rene Roldes (Nellis AFB)

**Reno location:** Rick Duran (VDM Metals) and Anthony Miller (Law Office of J Craig Demetras)

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## 2) Public comment

None

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## 3) Presentation and discussion of proposed regulatory petition R186-18 (Greg Lovato)

**Greg:** “Good afternoon everybody. I’m going to be giving a brief presentation of the proposed changes to our public noticing requirements that’ll affect several of our programs. Our main purpose today is to hear questions, to take comments, and to have a chance to consider those before we present these regulations before the State Environmental Commission on December

12<sup>th</sup>. We may not have all the answers to questions or comments that folks may have and [may not]<sup>1</sup> be able to address them today, but we will be taking time to sort through those and [will present] all of the responses to the State Environmental Commission at the meeting for these regulations to be heard.

“NDEP has several programs [that] have public notice requirements for proposed decisions or determinations. The goal for the public notice requirement is really to make sure [that] those who may be affected, have an interest, or [are part of] the general public can have awareness and an opportunity to provide input into a proposed agency determination or decision. The main goal is [that] a function and a service is provided to make folks aware of NDEP’s decision[s] and determinations before we actually make the decision so that we have an opportunity to consider any relevant input that folks may have and to provide awareness for the decisions we are making.

“So in the past couple of years since our website has been up and functioning, we’ve had a number of other practices in terms of notifying our community. We started to look at how well [our program was] working. We started off by looking at our air program. Our air program does a lot of public noticing [because of] a high volume of proposed permit decisions. [Our] chemical accident prevention program also does public notice postings for certain decisions.

“We looked at that and said, “Well how can we enhance, how can we improve public outreach?” And we saw some opportunities, and Jeff will talk about some of those. As we looked at the air program, we saw how well it was working and started looking more broadly at the rest of NDEP’s programs. We want to be doing things consistently across the programs, and we want to make sure we are effective on how we are communicating with both.

“So I’ll describe the programs [that] this will affect at the end, but before that I’d like to discuss two topics. One is what will be involved with moving from a newspaper notice requirement to an electronic notice requirement: what does that mean, and what does that involve? Secondly, I’ll [talk] about some of the practices we’re already engaging in [with] our air programs and some of our other programs to enhance awareness and communication.

“First, I’d like to talk about some of the aspects of moving from a newspaper publication. Everyone knows all of the small, legal ads [in many newspapers] that some people read. [We’d be] moving from that to an e-notice, which we are already doing in some cases. Just to compare and contrast between those two modes of communication, I’m going to run through some examples. E-notices allow us to broadcast notifications on our website for a long period of time compared to just one day in the newspaper. We can also include additional descriptions and links [as well as] pictures [and] summary information about the proposed decision or determination. One of the things we are seeing is [that] NDEP is operating a number of programs that are delegated on behalf of the Environmental Protection Agency with a lot of federal statutes. A number of federal programs have already [transitioned] from public noticing [in newspapers] — from when they were first put into place in the 70s and 80s — to electronic noticing. So that’s another aspect.

“Another aspect of moving from newspaper to electronic noticing is that there is really less cost and resources to the public in terms of being able to receive the information without buying a [news]paper. It’s also cheaper for the agencies because we spend the public’s dollar in terms of spending time trying to get things out into a newspaper notice.

“Another comparison between the two is that, depending on where it’s at in the state that we are dealing with, [there are] publication time frame constraints in order to get them published on a certain day. It has to be notified and submitted to the newspaper by a certain day. And sometimes

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<sup>1</sup> Brackets indicate minor corrections to the original transcript in order to adapt the minutes for print.

those days change. We just had one very recently in the mining program with a reclamation permit. We thought the day was Wednesday, and it changed to Friday (or vice versa) and we actually missed a week. [That] timing uncertainty is what we are seeing for newspaper public noticing that we aren't seeing with electronic noticing. Those are just some of the comparisons.

“[There are] other practices we are using to enhance communication, a number [of which] we are already using. We will be using them uniformly across the agency as a part of moving to electronic noticing if this passes both the State Environmental Commission and the legislative commission. [We] have a prominent, searchable portion of our website that's customizable in terms of what public notices you can view. You can view them for a certain county; you can view them for a certain city; and you can sort them by program. So that customizable part of our website we think is helpful. You can also see which public notices are up for comments and how much more time you have. And actually they stay up there after the time[frame] for public comments has passed, so it provides quite a bit more information.

“Another thing [that] a lot of our programs have [is] what is called a ListServ. This is an email mailing list for folks who want to know about certain actions. [They] can be added to these different ListServes. We are already using these and expanding the programs that will use these email mailing lists. Mailing list hard copies are [also] still available. Some people don't want to read the paper or receive emails. They want to get a mailing. That will still be available. We are [also] going to keep a practice of publishing things in the newspaper where it's considered an essential part of communicating in some areas. We are going to be [requiring], as part of our criteria in administration for the program, that if you have certain conditions, [a notice still has to] be published in the newspaper. It just won't be a requirement for all public notices. They will also still be posted in places such as libraries and other public places. One thing we've [also] started [to do] is create press releases for each public notice and release it to [the] press in the affected areas. It's then up to the local news outlets to decide if it should be put into the newspaper. If it's deemed newsworthy, the newspapers can certainly publish them.”

Greg pauses for a moment to take questions or comments.

**Allen:** “You outlined a number of steps for public outreach that are greater in expanse [and] scope than what you've included in the language of the regulation. I don't think it would be a bad idea to include additional language, and I don't think it exceeds the notion of a substantial change that would require you to go back to LCB<sup>2</sup>. But something to the effect of: “The common language is on the internet website designed to give the public notice.” And then add something such as: “and other outreach efforts as deemed appropriate by the administrator.” That will get the other [outreach] avenues — such as newspapers, libraries, courthouses, and mailing lists and that sort of thing — [in the regulation]. The current language is pretty narrow and doesn't explain what will still be done in terms of physical postings.”

Greg thanks Allen for his suggestion and continues with the presentation.

**Greg:** “One of [the] things I did want folks to be aware of is how our air program has been doing this over the past year. As I mentioned before, we started experimenting and deciding how this should be done with the air programs. These regulations were revised to incorporate these types of changes. I'm going to let Jeff Kinder, deputy administrator over the air bureaus, explain how that's been work[ing].”

**Jeff:** “Thank you, Greg. To start, I'm just going to give everyone a little bit of a background. As Greg mentioned, there have been changes at the federal level regarding public notices. Beginning in 2016, EPA started to look at some programs such as the Clean Air Act. They were looking at

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<sup>2</sup> Legislative Council Bureau

the change in technology and the lack of participation from the public that was occurring, and they decided [to start] using e-noticing and e-access. Beginning in 2017, they began to allow e-notice and e-access, allowing them to be published on the internet and websites. Recognizing the opportunity for change, NDEP started evaluating the zero public participation for permit changes and decisions with the air programs.

“We started [with] the problems with newspaper publications and the logistics involved with that. These problems were starting to cause delays in the issuing of permits due to the limitations of the newspapers. We contacted the SEC on May 3<sup>rd</sup>, 2017, asking [for the authority] to do e-notice. It was approved under the assumption that it was a temporary change. We launched a successful four-month pilot program and returned to the SEC in September 2017, asking for a permanent change. We then went to the LCB and again got it approved [as] a permanent change. Prior to this, we received one public comment in five years for a project that was on the front page of a paper. We looked for ways to move forward. That is when we began to implement e-notices and Listserv — plus the [physical] mailing lists. Since then, we’ve had two stories make [their] way to front page papers. We also post the notices on the website for 30 days, opposed to one day in the newspaper. We have seen it [as] a big success for the air program.”

**Greg:** “Basically, unless otherwise required by federal law, all public notices will be published by e-noticing [under our proposed change]. All of the NDPES<sup>3</sup> permits and anything under the Clean Water Act will still be published in newspapers and in libraries. I would like to go over the programs that this regulation change would affect: all of the discharge permits distributed from the Bureau of Water Pollution Control, permit renewals and modifications, the mine program, [and] solid waste disposal permits issued by the Bureau of Sustainable Materials Management. [I will now review] the NACs and the NRSs<sup>4</sup> that will be affected by these [changes]. For [the Bureau of] Sustainable Materials Management, those NRSs are 444 and 449. For water and part of mining, [the authority] is 445A, and for mining[’s] reclamation bonds, it is in 519A. Those are the sections, and this is a uniform change to move from newspaper general circulation to website circulation to inform the general public. Again those will include permit issuances, permit renewals and modifications, proposed permit decisions, permit applications, and workshops. The reason I asked for a lot of these programs to attend today is because they are pretty familiar with how public noticing works for their permits and decisions. If anyone has any questions for how it works for their programs, you can ask them now.”

No questions are asked.

**Greg:** “Those are the proposed permit decisions of [the] three bureaus that will be affected by this proposed change. We also make a number of decisions and actions for our water infrastructure funding. So these are not part of [NDEP’s] permits and decisions, but they are proposed determinations that [require] public notices that will be moved over to e-notices. These include workshops we hold to prioritize water infrastructure projects [in order to] provide financial assistance. These also include programs that are required to go through National Environment Policy Act review, [which] could range from [a] categorical exemption to environmental assessments. The reviews that our offices conduct on those determinations — on whether or not they are adequate enough and complete, from our perspective — are also subject to these changes. This will be across the board for all programs with one exception for the NPDES permits issued through the Bureau of Water Pollution Control.”

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<sup>3</sup> National Pollutant Discharge Elimination System

<sup>4</sup> Nevada Administrative Code and Nevada Revised Statutes

#### 4) Question and answer period

**Allen:** “I would like to thank the division and these bureaus for being here today. I just want to let you know that the Nevada Mining Association strongly supports these provisions. We believe it eliminates uncertainty with the newspapers for these permits and the delays it causes with the issuance of permits. This is a good proposal going forward. One thing I’ve noticed with the SEC [is] that it highly depends on the division’s presentation of the provision. I’ve shown great interest in this topic and have attended many hearings about this, and I think you’ve done a great job. I think the success of the air program shows that this is a good proposal going forward. I do have a few suggestions that I think will help moving forward.

“One thing that I’d like to suggest is to present the cost of newspaper subscription. The Reno Gazette Journal is now \$60 a month to receive. It’s an incredible cost that many people cannot afford. They don’t have any access to these public notices. That makes this change a necessity. There are many statistics that show only older people read the paper anymore. Another paper is the one here in Carson — only published twice a week now. This is something you can see across the state: that many newspapers may only publish once or twice a week. Because of this, it’s causing delays in the permits. I think Jeff’s comments on the success of the air program is critical to the success of this provision. I think look[ing] at other state agencies and outlin[ing] the success of their change will also be very helpful. You’ve outlined how the federal government has moved to this methodology with public notices. One of the comments made in the last SEC meeting was the difference between [the] Division of Water Resources and NDEP. DWR is dealing with water rights, which is a property right. Sometimes, by court, they are required to do different levels of notification that NDEP does for permit modifications or permit actions. I think that Jeff and the air programs have outlined a lot of different methodologies that you’re undertaking to get the word out. I think it’s going to be really important to highlight those types of activities, such as posting in libraries, to the SEC. I think the suggestive language will explain [that] you will be going above and beyond just putting it on the website.”

**Greg:** “Those are some great suggestions that will help us craft a presentation that will speak to the concerns, but goes beyond going through the motions of public noticing. It will explain how this is going to be much more effective. I think that having a unified program for the entire division is also helpful. We really wanted to make sure [we address] any lingering concerns or questions that may be echoed throughout the commission. We wanted to make sure we [came] out to address all of those questions and concerns so that those are addressed in our presentation.”

Greg asks if there are any other questions or comments.

**Bob:** “I just wanted to be here to hear the discussion. I wanted to let you know that NVRWA<sup>5</sup> supports this decision and likes to see NDEP moving with the times.”

Greg asks if there are any other questions or comments.

**Mike Nelson:** “Will this affect any current or existing permits or projects?”

**Greg:** “I think it will affect future, proposed decisions. Each time we are proposing to make a permit decision or determination, such as a water infrastructure program, it may affect the program that exists, but it more affects the decision that NDEP is trying to [make]. So it will affect current permits in that any future permit modifications will be changed in how the public notice is sent out.”

**Mike Nelson:** “The answer is maybe. Got it.”

**Brian:** “I just wanted to add [that] the Southern Nevada Health District is in support of this. We

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<sup>5</sup> Nevada Rural Water Association

understand that these notices can be time sensitive and shouldn't be inconvenienced due to the papers cutting down on how often they publish the paper.”

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**5) Public comment**

Val King asks for any last comments. There are none.

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**6) Adjournment**

The meeting ends at 1:40.