



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

**Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)**

Meeting of December 14, 2022. 9:00 AM

Bryan Building, Tahoe Room, 2nd Floor
901 South Stewart Street
Carson City, NV

Video Conference
375 East Warm Springs Rd., Ste. 200
Las Vegas, NV

Members Present:

Tom Porta, Chairman
Jason King, Vice Chairman
Kasey KC*
Kathryn Landreth *
Tom Smith*
Adam Sullivan
Jocelyn Torres*
Mike Visher
Tony Wasley*
*participated remotely

Members Absent:

Jennifer Ott

SEC Staff Present:

Rosalie Bordelove, SEC/DAG (*acting*)
Sheryl Fontaine, Executive Secretary
Loren Borst, Recording Secretary

Members of the Public Present:

John Tennert, Clark County Regional
Flood Control District
John Solvie, Clark County Water Quality
Larry Bazel, Clark Community & Regional
Flood Control District
Barry Fulton, Benchmark Environmental,
LLC
Ben Latham, Arcadis U.S., Inc. Clark
County Regional Flood Control District

BEGIN SUMMARY MINUTES

1) Call to order, Roll Call, Establish Quorum: (Discussion)

The meeting was called to order at 9:07 am by Chairman Tom Porta. Ms. Fontaine, the Executive Secretary, confirmed that the hearing was properly noticed and that a quorum was present.

2) Public Comment: (Discussion)

Chairman Porta called for public comment on non-agendized items. Hearing none, he recognized Mark Turner's twelve years of service on the Commission. Chairman Porta proceeded to the next agenda item.

3) Approval of the minutes for the September 20, 2022, SEC meetings: (Action Item)

Chairman Porta requested comments from the Commission regarding the September meeting minutes. Chairman Porta, hearing none proceeded to list his corrections to the minutes. Ms. Fontaine read the noted the corrections and indicated that those corrections would be made. Mr. Porta asked for any additional changes to the minutes. Hearing none, Chairman Porta asked for a motion.

Motion: Commissioner Visher moved to approve the minutes and Commissioner Kacey seconded. The minutes were unanimously approved. Commissioner Landreth abstained due to not being present at the last meeting.

4) Sustainable Materials Management Plan Update Presentation: (For Possible Action)

Mr. Jeffrey Kinder, Deputy Administrator of NDEP, introduced the Bureau of Sustainable Materials Management (BSMM) and their expanded focus on recycling and sustainability. Mr. Kinder introduced Daren Winkelman, Bureau Chief, Kayla Alm, supervisor of the Sustainability Branch, and Breanna Case, the Sustainable Materials Management Coordinator. Ms. Case presented the proposed updates to the Sustainable Materials Management Plan (Plan) to the Commission.

Chairman Porta asked if there were any questions from the Commissioners. Questions from Commissioners Visher and Landreth and Chairman Porta were addressed by Ms. Case, Mr. Winkelman, and Mr. Kinder.

Chairman Porta called for public comment; there was none. Chairman Porta asked whether this was an action item or informational only. Mr. Kinder said that the NRS cited by Ms. Case states that the Plan must be approved by the Commission. Chairman Porta then asked for a motion, Commissioner Landreth moved to approve the updated Plan and Tom Smith seconded. Commissioner King asked for clarification whether the Plan needs to be approved or approved as amended. Chairman Porta referred to acting Attorney General Rosalie Bordelove. Ms. Bordelove clarified that if it is required by an NRS the Commission should refer to the statute and approve the entire Plan to maintain statutory requirements. Chairman Porta asked Commissioner Landreth to revise her motion to adopt and approve the Plan.

Motion: Commissioner Landreth moved to adopt and approve the Sustainable Materials Management Plan. Commissioner Smith seconded the motion and it passed unanimously.

5) Regulatory Petition - LCB File No Regulatory Petition - LCB File No R109-22 - Bureau of Administrative Services - Office of Financial Assistance: (For Possible Action)

Office of Financial Assistance (OFA) Program Manager Jason Cooper summarized

R109-22, which proposes the following regulatory changes to Nevada Administrative Code (NAC) 445A.255:

- (a) Define the term “disadvantaged,”
- (b) Streamline the process for funding drinking water systems under emergency situations,
- (c) Amend the environmental review process,
- (d) Add an administrative fee for loans,
- (e) Align state regulations with federal changes and direction, and
- (f) Make a few housekeeping amendments.

The proposed changes are expected to have minimal economic impact on community water systems and the communities that they serve. This impact may be greater if the water system does not have an updated or sustainable rate structure in place. These changes will not have an economic impact on the Division.

Chairman Porta asked if there were any questions for Mr. Cooper. Commissioner King had a few clarifying questions including whether the Board for Financing Water Projects had seen the proposed changes. Mr. Cooper stated that the changes had been discussed with the Board on at least two prior occasions, and there were no comments received from the Board or the public. Commissioner King asked how much revenue the new fees would generate and suggested that the Commission receive an annual update. Chairman Porta agreed that an annual report would be beneficial. Mr. Cooper agreed and explained the process for evaluating the fee. Commissioner King asked for clarification about what was meant by “water rights.” Mr. Cooper clarified that the sale of water rights may be eligible for funding if the water rights are needed to provide a reliable drinking water source. This was previously prohibited as it was considered “growth;” however, this can now be considered an alternative to building a completely new system. Applications including a water rights component will be evaluated on a case-by-case basis but are currently prohibited in regulation.

Chairman Porta asked for any additional questions. Mr. Cooper and NDEP Deputy Administrator Ms. Jennifer Carr answered clarifying questions from Commissioners Visher and Torres.

Chairman Porta asked if there were any other questions from the Commissioners or the public. There were none. Chairman Porta asked for motion.

Motion: Commissioner King moved to approve regulation R109-22 with the stipulation that OFA provides an annual update to the Commission to reevaluate the new fees. Commissioner Sullivan seconded. The motion passed unanimously.

6) Regulatory Petition - LCB File No R112-22- Bureau of Water Pollution Control: (For Possible Action)

Deputy Administrator Jennifer Carr said that the new Bureau Chief of Water Pollution Control is now Andrew Dixon and the previous chief, Elizabeth Kingsland, has moved to the Office of Financial Assistance. Ms. Kingsland will be presenting the regulation with Brandon Beach. Ms. Kingsland presented the green-lined version of the proposed regulations, establishing fees pursuant to this section. The green-line edits reestablish the ability for the Director to round fees to the nearest dollar. The proposed changes also include a fee increase to fund personnel costs. Fees have not been increased since 2010 and some positions have been added since then; however, the budget has not been increased. Eighty-five percent of the budget comes from fees and the rest is federal funding. The fee increase will cover staff and cost of living increases and will allow for the ability to accommodate shortfalls in the budget by providing a buffer. The

funding will also provide for new staffing positions to address the current permit backlog. The fee increase will take place in 2024. Impacts to small businesses are not expected. BWPC held a workshop on October 13; one person attended in person and 46 attended online, and there were no comments other than requests for clarification. One comment on October 20th from Clark County supported and understood the need for a fee increase.

Chairman Porta asked for any Commissioner questions. Ms. Kingsland, Mr. Beach, and Ms. Carr answered questions from Commissioners King, Visher, Sullivan, and Torres, as well as Chairman Porta. Commissioner King acknowledged that the bureau's ListServ contains over 4,000 recipients and that the effort put into making people aware of the change was commendable.

Chairman Porta asked for public comment; there was none. The public comment period was closed, and discussion was brought back to the Commission. Chairman Porta recognized that the Division has legal mandates that are not fully funded by Congress, making fee increases understandable and necessary. Commissioner Sullivan acknowledged the work put into the program. Chairman Porta called for motion.

Motion: Commissioner Landreth moved to adopt regulation R112-22. Commissioner Visher seconded the motion, and it passed unanimously.

7) Regulatory Petition - LCB File No R155-22- Bureau of Safe Drinking Water: (For Possible Action)

Chief of the Bureau of Safe Drinking Water, Andrea Seifert, presented with engineering branch supervisor Brendon Grant. Mr. Grant stated that the bureau has been in contact with the community through a ListServ and that a public workshop was held on October 14, both in person and virtually; 14 people attended. Ms. Seifert described the proposed fee increase and explained that the last time engineering fees were increased was in January 2004. Since then, BSDW has relied on federal grants to support the program's needs; approximately 80% of the program is funded by federal grants, but the program is not sustainable on grants alone. Mr. Grant and Ms. Seifert reviewed the proposed fees. The bureau expects the fees to have a minimal impact on small businesses. The bureau received comments in support of the fee increase as well as some expressing concern over the three percent annual increase.

Chairman Porta asked for questions from the commissioners. There were none, and Chairman Porta asked for public comment. There was no public comment or discussion. Chairman Porta called for a motion.

Motion: Commissioner King moved to adopt R155-22 and Commissioner Smith seconded the motion. The motion to adopt R155-22 passed unanimously.

8) Regulatory Petition - LCB File No. R114-22 - Bureau of Water Quality Planning - Beryllium: (For Possible Action)

The supervisor of the standards and monitoring branch, Dave Simpson, introduced Dr. Mary Siders, who presented the proposed regulation to the Commission on behalf of NDEP: Section 1 replaces the term "detection limit" to "reporting limit" and Section 2 updates the standard for beryllium in municipal or domestic supply from zero micrograms per liter to four micrograms per liter to align with the federal standard.

Commissioner King asked how many municipal or public water ways were above the detection level. Dr. Siders responded that there may have been one detection of beryllium over that time; however, the data has not shown any exceedances. Mr. Simpson clarified that they do not anticipate any exceedances at the new standard level.

There was no public comment or discussion from the Commissioners, and Chairman Porta called for a motion.

Motion: Commissioner Sullivan moved to adopt R114-22. Commissioner Smith seconded the motion and it passed unanimously.

9) Regulatory Petition - LCB File No. R116-22 - Bureau of Water Quality Planning - Selenium: (For Possible Action)

The supervisor of the standards and monitoring branch, Dave Simpson, introduced Dr. Mary Siders, who presented the proposed regulatory changes to the Commission on behalf of NDEP. Subject matter expert Barry Fulton (Benchmark Environmental, LLC.) also testified.

R116-22 proposes to adopt protective criteria for selenium that are based on scientific rationale to protect aquatic life beneficial use in the Las Vegas Wash. These site-specific standards are based on a rigorous scientific study, conducted following EPA guidance. The site-specific values for selenium were needed to establish water quality standards for selenium that are appropriately protective of aquatic life (fish are the most sensitive aquatic species to selenium), based on site-specific conditions in the Las Vegas Wash.

The proposed regulation is not expected to have an economic impact on the regulated community, the agency, or the public.

Mr. Fulton and Dr. Siders answered several questions about the study from Commissioners King and Wasley as well as Chairman Porta. Chairman Porta called for public comment. John Tennert (Clark County Regional Flood Control District), John Solvie (Clark County Water Quality District), Larry Bazel (counsel for Clark County Water Quality District), and Todd Tietjen (Southern Nevada Water Authority) spoke in support of the regulation.

Chairman Porta asked for discussion from the commission. Commissioner Sullivan asked whether R116-22 can stand on its own or if it would be affected by the passage of R115-22. Acting SEC DAG Bordelove indicated that it is at the discretion of the Commission. Paul Comba, Bureau Chief of Water Quality Planning, clarified that the two regulations are not contingent on one other and can each stand alone. Chairman Porta called for motion.

Motion: Commissioner King moved to adopt R116-22. Commissioner Torres seconded the motion and it passed unanimously.

10) Regulatory Petition - LCB File No. R115-22 - Bureau of Water Quality Planning - Channels Tributary to the Las Vegas Wash: (For Possible Action)

The supervisor of the standards and monitoring branch Dave Simpson again introduced Dr. Mary Siders, who presented the proposed regulations to the Commission on behalf of NDEP along with Ben Latham (Arcadis, consultant to Clark County Flood Control District).

R115-22 proposes to apply a realistic and appropriate set of beneficial use and associated water quality criteria to the stormwater channels that flow into to the Las Vegas Wash. These waterways do not have a designated water quality standards table in the NAC. Water quality in these tributary channels has been assessed via the "tributary rule" (NAC 445A.1239), wherein the standards from the Las Vegas Wash (NAC 445A.2156) are applied to these waterways. However, these waterways have been greatly modified by the Clark County Regional Flood Control District (CCRFCD) to act as stormwater and flood-conveyance structures, and do not offer suitable habitat for aquatic life, nor are the channels safe for water contact recreation.

The proposed regulation may have a slight beneficial effect on business and local government. The proposed regulation is not expected to have an impact on the agency or the public.

Mr. Simpson answered several questions from Chairman Porta, and Chairman Porta called for public comment.

John Tennert (Clark County Regional Flood Control District), John Solvie (Clark County Water Quality District), and Todd Tietjen (Southern Nevada Water Authority) all spoke in favor of the petition.

There was no discussion from the Commission, and Chairman Porta called for a motion.

Motion: Commissioner King moved to adopt R115-22. Commissioner Smith seconded the motion and it passed unanimously.

11) Administrator's Briefing to the Commission: (Discussion) Ms. Jennifer Carr, Deputy Administrator, spoke in place of Administrator Greg Lovato. Ms. Carr introduced Andrew Dixon as the new Bureau Chief of Water Pollution Control

Ms. Carr also explained that NDEP has two bills that will be discussed in the upcoming legislature session in February. Assembly Bill 20 allows the increase in funding secured by OFA's regulation for a fee increase to be utilized in the most efficient way possible. Items passed this morning related to Safe Drinking Water State Revolving Fund (SRF) program will help the regulated community take more advantage of the program. However, on the clean water side for the SRF program some statutory changes will have to be applied for systems that want to take advantage of the Clean Water SRF and so the funding secured by OFA will be used toward expanding that program. The federal program has more allowances than the state program and NDEP needs to align with the federal program to align with EPA. Assembly Bill 198 (the Capital Improvements Grant Program) allows for septic to sewer conversions. The agency hopes to expand that, making the funds more accessible.

Ms. Carr also advised the Commission on the other upcoming Legislature Bill, Senate Bill 49, which will provide cleanup and oversight for the Nevada Vehicle Emissions Programs. The Nevada Department of Motor Vehicles (DMV) is currently the appointing authority for enforcement of vehicle emissions standards per the Clean Cars Act passed in September of 2021. However, DMV and NDEP have agreed it would be more efficient to consolidate that enforcement. The authority for enforcement would shift from DMV to NDEP under this bill. NDEP also anticipates potential bills concerning polyfluoroalkyl substances (PFAS), vehicle emissions relative to environmental justice efforts, and water quality. NDEP will analyze the bills as they are proposed for their applicability to the Division.

Chairman Porta asked whether NDEP will be ensuring compliance by vehicle manufacturers. Ms. Carr responded that she will have either Deputy Administrator Jeffrey Kinder or Administrator Greg Lovato follow up on that aspect of the program. Chairman Porta asked whether newer vehicles could have a lower testing frequency and Ms. Carr acknowledged the request.

Chairman Porta indicated that he would like to hold at least one SEC meeting in the Las Vegas area next year, potentially part two of the Clean Cars Act. Ms. Carr explained that Clean Cars II may be postponed, but acknowledged the request.

Ms. Carr noted that the next meeting at the end of January 2023 would include an anti-degradation regulation and one more fee petition for lab certification fees.

Chairman Porta called for other questions for Ms. Carr before adjournment. Commissioner King asked Ms. Carr about staffing levels. Ms. Carr responded that NDEP's vacancy rate is consistently about 17-19 percent.

12) Public Comment: (Discussion) Chairman Porta asked for public comments. There were none.

13) Adjournment: (Discussion) Chairman Porta asked for a motion to adjourn.

Motion: Commissioner Visher moved to adjourn. Commissioner King seconded the motion. Meeting was adjourned at 1:48 pm.

The audio recording of this meeting is available at https://sec.nv.gov/uploads/mtg_1222/SEC-121422.mp3