

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
NEVADA ENVIRONMENTAL COMMISSION**

HEARING ARCHIVE

FOR THE HEARING OF: June 10, 2005, Reno Nevada

TYPE OF HEARING:

Regulatory

RECORDS CONTAINED IN THIS FILE INCLUDE:

Meeting Web Page

Agenda

Public Notice

Minutes Of The Hearing

REGULATIONS - 2 Temporary Regulations

(1) Petition 2005-01 – Mining Reclamation Permit Modification and Fee Adjustments.

- Public Meeting & Workshop Notice
- Regulatory Petitions
- Final SEC Informational Statement

(2) Petition 2005-02 — Revised Air Pollution Control Regulations To Meet Federal Planning Requirements

- Public Meeting & Workshop Notice
- Regulatory Petitions
- Final SEC Informational Statement



Department of Conservation & Natural Resources State Environmental Commission



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Las Vegas, Nevada

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Commission on Mineral
Resources

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Harry Shull
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Hugh Ricci
State Engineer
Division of Water
Resources

Frances Sponer
State Health Board
Las Vegas, Nevada

COUNSEL

David Newton
Deputy Attorney General

STAFF

[John B. Walker](#)
Executive Secretary

[Nan Paulson](#)
Recording Secretary

Notice Of Intent To Act Upon Regulations — June 10th 2005

The State Environmental Commission (SEC) will hold a public hearing at 10:30 a.m. on Friday June 10, 2005, at the Nevada Department of Conservation & Natural Resources, 123 W. Nye Lane, Conference Room 217, Carson City, Nevada.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions and related SEC business. If a person that may be directly affected by a proposed action does not appear and request time to make an oral presentation at the above referenced hearing, the SEC may proceed immediately to act upon any of the following regulatory petitions or other written submissions described in this notice.

- ▶ [Meeting Agenda & Public Notice](#)
- ▶ [Approval of minutes from the August 19, 2004 hearing](#) * ACTION
- ▶ [Regulatory Petitions](#) * ACTION
- ▶ Settlement Agreements, Air Quality Violations * ACTION By Consent Calendar
- ▶ [Public Comment – Additional Information](#)

Note - All files On Page Open in New Browser Window

Mining Reclamation

(1) **Petition 2005-01 – Mining Reclamation Permit Modification and Fee**

Adjustments. This is a temporary regulation proposed by the Bureau of Mining Regulation and Reclamation of the Nevada Division of Environmental Protection. The proposed temporary regulation provides for changes to the NAC 519A mining reclamation regulations. Under the proposed regulation, changes include a revision to the current fee structure for a permit modification and definition of minor modification. The proposed revision also defines a major modification. The revision to the current fee structure will reduce the fees charged for simple changes to the permit that require minimal staff time to review and process. The other proposed revisions set clearer parameters to define minor and major modification.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law. As noted above, a revision to the current fee structure is proposed and would reduce fees charged for simple permit changes.

▶ [Public Meeting & Workshop Notice](#) 

▶ [Regulatory Petition](#) 

▶ [Draft SEC Informational Statement](#) - As per NAC 233B.066

Air Pollution Control

(2) Petition 2005-02 — Revised Air Pollution Control Regulations To Meet Federal Planning Requirements. — The regulatory changes are necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

The proposed regulation will revise several sections in the permitting provisions of NAC 445B. It will add provisions to ensure good engineering practice regarding stack height and emission limitations, require Prevention of Significant Deterioration review when relocating certain fossil-fueled power generating units, and update and clarify environmental evaluation information requirements. Additionally, the regulation will remove director's discretion for dealing with the handling of organic solvents and other volatile compounds, add a timeframe for the State's response to requests for technical advice regarding plans for construction or modification of a facility, and increase the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation will modify the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

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▶ [Public Meeting & Workshop Notice](#) 

▶ [Regulatory Petition](#) 

▶ SEC Informational Statement - As per NAC 233B.066

Public Comment & Additional Information

Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to: State Environmental Commission 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851. Written submissions must be received by the SEC at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

A copy of the regulations to be adopted or amended will be on file at the State Library and Archives, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 1771 E. Flamingo, Suite 121-A, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notices have been deposited electronically at major library branches in each county in Nevada.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on June 1, 2005.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: The Nevada Department of Wildlife building in Reno, the Washoe County Library in Reno, the Clark County Public Library and

Grant Sawyer Office Building in Las Vegas, and the Division of Environmental Protection in Carson City. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the SEC, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

[▶ Print Meeting Agenda](#) 

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Nevada State Environmental Commission – SEC
Meeting Agenda
June 10, 2005

The State Environmental Commission (SEC) will hold a public hearing at 10:30 a.m. on Friday June 10, 2005, at the Nevada Department of Conservation & Natural Resources, 123 W. Nye Lane, Conference Room 217, Carson City, Nevada.

This agenda has been posted at the Nevada Department of Wildlife building in Reno, the Washoe County Library in Reno, the Clark County Public Library, and the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Public Notice for this hearing was published on May 10, 24 and June 7th in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

- I. Acknowledgement of newly appointed Commissioner**
- II. Approval of minutes from the November 30 hearing * ACTION**
- III. Settlement Agreements on Air Quality Violations *ACTION by Consent Calendar**
 - A. Brown Brothers - Notice of Alleged Air Pollution Control violation No. #1859**
 - B. Reno Sparks Ready Mix - Notice of Alleged Air Pollution Control violation # 1908**
 - C. RMC Nevada - All-lite Aggregates - Notice of Alleged Air Pollution Control violation #1961**
 - D. W.E.S. Construction Company - Notice of Alleged Air Pollution Control violation # 1915**
 - E. Royal Sierra Extrusions, Inc. - Notice of Alleged Air Pollution Control violation # 1919**

IV. Regulatory Petitions * ACTION

Air Pollution Control

Petition 2005-02 - Revised Air Pollution Control Regulations To Meet Federal Planning Requirements. The regulatory changes are necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

The proposed regulation will revise several sections in the permitting provisions of NAC 445B. It will add provisions to ensure good engineering practice regarding stack height and emission limitations, require Prevention of Significant Deterioration review when relocating certain fossil-fueled power generating units, and update and clarify environmental evaluation information requirements. Additionally, the regulation will remove Director's discretion for dealing with the handling of organic solvents and other volatile compounds, add a timeframe for the State's response to requests for technical advise regarding plans for construction or modification of a facility, and increase the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation will modify the requirements for a Class II application for revision of an operating

permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

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Mining Reclamation

Petition 2005-01 - Mining Reclamation Permit Modification and Fee Adjustments. This is a temporary regulation proposed by the Bureau of Mining Regulation and Reclamation of the Nevada Division of Environmental Protection. The proposed temporary regulation provides for changes to the NAC 519A mining reclamation regulations. Under the proposed regulation, changes include a revision to the current fee structure for a permit modification and definition of minor modification. The proposed revision also defines a major modification. The revision to the current fee structure will reduce the fees charged for simple changes to the permit that require minimal staff time to review and process. The other proposed revisions set clearer parameters to define minor and major modification.

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V. Public Comments

Meeting Information: Copies of the proposed regulations may be obtained by calling the Executive Secretary, John Walker at (775) 687-9308. The public notice and the text of the proposed regulations are also available on the State Environmental Commission website at: <http://www.sec.nv.gov/main/hearing0605.htm>

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on June 03, 2005.

Notice Of Intent To Act Upon Regulations

Notice of Hearing for the Adoption of Regulations of the State Environmental Commission

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STATE ENVIRONMENTAL COMMISSION (SEC)
Meeting of June 10, 2005
Department of Conservation & Natural Resources
Carson City, Nevada

MEMBERS PRESENT:

Alan Coyner, Vice Chairman
Terry Crawford
Lewis Dodgion
M. Francis Sponer
Don Henderson
Ira Rackley
Hugh Ricci
Harry Shull

MEMBERS ABSENT:

Melvin Close, Chairman
Demar Dahl
Pete Anderson

Staff Present:

David Newton, Deputy Attorney General
John Walker, Executive Secretary
Nan Paulson, Recording Secretary

Chairman Mel Close was absent, so Vice Chairman Coyner called the meeting to order at 10:00 a.m.

READER'S NOTE: These are summary minutes of the above references meeting of the State Environmental Commission (SEC). Please contact the SEC [Recording Secretary](#) for a copy of the verbatim minutes of the proceedings (i.e., available in audio format only, analog cassette magnetic tape).

Vice Chairman Coyner introduced new Commissioner M. Frances Sponer from Las Vegas and asked her to tell everyone a little about herself. Commissioner Sponer said she is originally from a location near Morgantown, West Virginia. She is a registered nurse, has a Bachelor's and Master's Degree in Business Administration. She is a business person, entrepreneur, and has had several businesses over the years. At this time she has an insurance company, a third party administrator, a warranty business, and a pharmacy benefit management company. She moved to Las Vegas in 1985, is on the Board of Health, the AIDS taskforce, is on the board of a local bank and on the library commission. Regarding SEC membership, Ms. Sponer represents the State Board of Health.

Vice Chairman Coyner also introduced David Newton as the new Deputy Attorney General.

I. Approval of Minutes from the November 30, 2004 SEC Meeting

Vice Chairman Coyner said he had some corrections for the minutes and asked if anyone else had suggestions. Commissioner Sponer had a couple of questions but they will be answered later in the meeting.

Vice Chairman Coyner had one correction on page 10, on the 4th paragraph, the name Ormat is spelled with two t's, instead of one. And in the next paragraph, Miss Morris was referred to as Ms. Ricci.

Commissioner Rackley commented on page 3, the first paragraph under Staff Discussions, the minutes read, "it is not made for vehicles that are over with dual wheels." A slight discussion amongst the Commissioners resulted in an acknowledgement that the minutes should read, "it is not made for vehicles that are over width or with dual wheels."

Vice Chairman Coyner asked for a motion to accept the November 2004 minutes with the corrections. Commissioner Rackley made a motion, Commissioner Sponer seconded the motion, and all were in favor.

II. SETTLEMENT AGREEMENTS ON AIR QUALITY VIOLATIONS

Vice Chairman Coyner asked if there were any members of the public that wished to address the NOAVs. There were none so he asked the Division to continue with a brief summary of the five settlements that are under consideration today.

Mike Yamada, Enforcement Supervisor for the Nevada Division of Environmental Protection's (NDEP) Bureau of Air Quality (BAQ) approached the podium. Mr. Yamada spoke about the settlement agreements for Air Pollution Control violations by the following five companies:

- A. Brown Brothers Construction – Notice of Alleged Violation No. 1859**
- B. RMC Nevada - Reno Sparks Ready Mix – Notice of Alleged Violation Nos. 1908**
- C. RMC Nevada - All-Lite Aggregates– Notice of Alleged Violation No. 1961**
- D. W. E. S. Construction – Notice of Alleged Violation No. 1915**
- E. Royal Sierra Extrusions. – Notice of Alleged Violation No. 1919**

Vice Chairman Coyner asked if there were any questions. Commissioner Dodgion stated he thought the fine of \$600.00 for Brown Brothers Construction was pretty light, as they have a history of non-compliance, and failed to cease and desist when issued a Stop Work Order. Commissioner Dodgion expressed concern over Royal Sierra Extrusions, who does not have the history of non-compliance or previous penalties in comparison with Brown Brothers Construction, yet Royal Sierra Extrusions is fined more than twice as much as Brown Brothers Construction.

Mr. Yamada said the Brown Brothers Construction was having some communication problems between the owner and the people running the operation. Mr. Yamada added that if they had purposely decided to not comply with the regulations, they would have been fined higher. Mike Yamada stated that this company's permitting is done through an environmental permitting firm.

Commissioner Sponer asked if staff has authority to vary the penalties or if there are set penalties. Mr. Yamada explained that only major violations appear before the Commission and they have a Penalty Matrix that is patented after the EPA's Penalty Matrix. He offered to go over the variables with Commissioner Sponer.

Mr. Yamada further stated that the Commission can disagree with the Division's fees and can change them. Commissioner Sponer asked about the base penalty amount. Mike Yamada explained that the fees can start at \$600.00 per day and can be raised or lowered from that point, based on past violations from the company or if they have shown and effort to comply.

Commissioner Crawford stated his frustration with the Commission's inability to raise the fine amounts if the Division has already made an agreement with the company and without the defendant being made aware that an increase is possible. He further commented that Brown Brothers Construction and WES Construction are not paying attention to the NOAVs, and they need to comply in the future or they may have larger penalties. He added that Brown Brothers should not have any violations since they have an environmental permitting firm.

Vice Chairman Coyner said the Commission could withhold the settlement and remand it back to the Division for re-negotiation.

Commissioner Dodgion added that the Commission has the authority to reject the settlement and require the violator to appear before the Commission and to hold an Evidentiary Hearing to establish a penalty. The Commission has the authority in Statute to establish the penalty. This is delegated to the Division to negotiate and is subject to the Commission's approval of it.

Commissioner Henderson asked where the fines go. Mike Yamada said the fines go to the school district in which the violation was committed. The fines do not go to the Division.

Vice Chairman Coyner asked new Commissioner Sponer if she would have difficulty voting on the issues since she was not familiar with the Fugitive Dust definition. She said she would but she will have the definition soon.

Vice Chairman Coyner asked for a motion to accept any or all of the issues. Commissioner Crawford recommended acceptance of staff recommendations for violation numbers 1859, 1908, 1961, 1915, and 1919, with a special note that Brown Brother's Construction and WES Construction be advised that they must be in compliance or face higher penalties.

Commissioner Dodgion seconded the motion. Commissioner Ricci asked how the Division would let these two companies know they are on notice with the Commission. Mike Yamada said they would send a letter to the companies. Mike Elges, Chief of the Bureau of Air Pollution Control, entered into the discussion, as did Commissioner Crawford.

NOTE: Letters to the construction companies can be viewed in Appendix 1.

Vice Chairman Coyner reiterated the final agreement amongst the Commission and the Division regarding WES Construction and Brown Brothers Construction. That agreement is that the Division will give them a written letter that the Commission will require them to appear in person for at least the next violation. When asked for a vote to proceed with this agreement, all members agreed.

Air Pollution Control

Petition 2005-02 - Revised Air Pollution Control Regulations To Meet Federal Planning Requirements. The regulatory changes are necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

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fueled power generating units, and update and clarify environmental evaluation information requirements. Additionally, the regulation will remove Director's discretion for dealing with the handling of organic solvents and other volatile compounds, add a timeframe for the State's response to requests for technical advise regarding plans for construction or modification of a facility, and increase the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation will modify the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

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Discussion:

Greg Remer, Acting Supervisor with the Bureau of Air Pollution Control Permitting Program spoke about this petition.

NOTE: A copy of the outline of Greg Remer's presentation is included as appendix # 1.

Commissioner Crawford asked why the Division was choosing to make this a temporary regulation instead of making it a permanent regulation. Greg Remer explained that the EPA was reviewing the SIP (State Implementation Plan) and making this a temporary would allow for any changes from the EPA to be made before making the regulations permanent. This regulation would have to be made permanent by November 3, 2005.

Public Comments / SEC Discussions & Staff Responses

Commissioner Sponer asked about the air quality jurisdiction for Clark and Washoe Counties. Greg Remer said this is described in State Statute where it says any county with a specified population size has to have their own air quality program. There is an exception to the jurisdiction in the counties where the State maintains primacy and that is for fossil fuel fired steam generating units regardless of the county they are in.

Commissioner Sponer asked how staff communicated with the counties regarding air quality. Mike Elges commented that the programs that are established by that Statute have to be approved by the SEC. This approval process happens prior to adoption by the counties.

Mike Elges added that the difficulty comes in when the Federal EPA says that a state must develop a SIP; a plan by which air quality is managed, and there are subsets of authority within the State that actually carry out that function. The Division refers to Nevada's SIP as "Nevada SIP," and the "State SIP" is the State component that the Division deals with verses the other components of the SIP that Washoe and Clark Counties deal with. When the EPA talks about the "Nevada SIP," they are referring to a compilation of everything. The State role/obligation is to administer air quality requirements, driven primarily by statute. Then there is a separate clean air act requirement under the federal government that requires a plan to maintain the ambient air quality standards.

Colleen Cripps, recently promoted to Deputy Administrator, added that the counties do play a role and they do adopt county ordinances related to bringing non-attainment areas back into compliance. The ordinances the counties adopt do become a part of the Nevada SIP, they have their own control measures to bring areas back into compliance. From the State perspective, the counties have been delegated that authority and they do that through their county commissions. If the counties fail in that authority, then it falls back to the State, who would be responsible for ensuring compliance in the county. If the State fails, then it would go back to the federal government, ie- US EPA.

Colleen Cripps continued by saying when the county adopts the State ordinances, they must be at least as strict as the State requirements that are adopted. Ms. Sponer asked how the Division would know if a county fails in this. Ms. Cripps said they communicate with the counties, look at the monitoring they do, and the compliance within the county. All of the non-attainment SIPs that are developed through the county come through the State. The Division reviews them and forwards them to the EPA.

The counties also report directly to the EPA. If the EPA feels the counties are not fulfilling their responsibilities, then the authority can be removed from the county and given to the State.

Commissioner Henderson wanted to know what the differences are between the federal and State statutes. Deputy Administrator Cripps responded by explaining that once regulations get incorporated into the State Implementation Plan they become federally enforceable. This makes it very difficult if changes need to be made because it has to go back through this whole federal process.

PUBLIC COMMENT

Russell Fields, President of Nevada Mining Association, complimented the Division staff for their assistance and willingness to interpret regulations for them. Mr. Fields recommends this regulation and is very thankful for the Bureau of Air Quality for their hard work.

Vice Chairman Coyner asked if there were any other public comments. There were none.

SEC ACTION

Vice Chairman Coyner asked if there were any questions from the Commission. When there were none, Mr. Coyner asked for a motion. Commissioner Dodgion made a motion to adopt petition 2005-02 as presented, Commissioner Ricci seconded the motion, and all were in favor.

Mining Reclamation

Petition 2005-01 - Mining Reclamation Permit Modification and Fee Adjustments. This is a temporary regulation proposed by the Bureau of Mining Regulation and Reclamation of the Nevada Division of Environmental Protection. The proposed temporary regulation provides for changes to the NAC 519A mining reclamation regulations. Under the proposed regulation, changes include a revision to the current fee structure for a permit modification and definition of minor modification. The proposed revision also defines a major modification. The revision to the current fee structure will reduce the fees charged for simple changes to the permit that require

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Discussions

Dave Gaskin, Chief of the Bureau of Mining Regulation & Reclamation, spoke about Petition 2005-01. He explained that they would like to get this implemented quickly as industry is holding back on their proposed modifications to their permits, and their work season is during the summer.

Mr. Gaskin addressed Commissioner Crawford's previous question about the benefit of making regulations temporary versus permanent. He said in this case the Division is attempting to move quickly because some companies are holding back on submitting their proposed modifications to their permits until this goes through. This is the construction season for these companies.

Mr. Gaskin said they have been working with the Nevada Mining Association for over a year and have precise wording for this regulatory revision. There have been workshops, beginning in early February, in Elko, Carson City, and Winnemucca. There have been a lot of positive comments and no negative comments.

There are 3 major parts to this petition, and the main impetus for this revision is that industry was looking for a parallel in the reclamation branch to an option we have in the regulation branch for water pollution control permits. In this option, there is a major and minor modification, and an engineering design change, which is less than a minor modification. It is a small fee category for small changes. And the reclamation branch did not have this third option, which this change will incorporate.

Also, the definition for major modification did not exist in the definition section but the criteria was in one of the regulations. Mr. Gaskin noted that this Commission had previously requested a formal definition for major modification. At the same time, clarification for minor modification will be added to assist with distinction between the two. The Bureau did work closely with industry in determining the criteria.

Mr. Gaskin said there is an acreage threshold. Ten acres is the threshold for putting a change in as a minor modification category and that would go up to 25% of the total acreage for the approved plan, and if it exceeds that, it would implement a major modification of the permit.

Another change under the regulation was to specify that a change to post mining land use would be considered a minor modification. In the past, it was considered a major modification but we do have a lot of operators coming in that would benefit from a positive post mining land use, be it alternative energy or waste disposal.

After Chief Gaskin finished talking about the proposed changes, he offered to answer any questions.

SEC Discussions & Staff Responses

Vice Chairman Coyner asked if there were any questions, to which Commissioner Crawford responded by asking about the language that mentions visual appearance. Mr. Gaskin said it was in the statutory language and has not been an issue, therefore it was decided to remove it.

Commissioner Crawford asked about the fees and if there was a difference in fees for exploration. Mr. Gaskin explained the fees in relation to size of acreage, and there is no difference for exploration.

Commissioner Henderson requested confirmation that the federal government also permits exploration, as does the State, and if the requirements are similar. Mr. Gaskin described the difference, that the federal government does not charge fees so they do not have categories. The federal government looks to see if there is a need for an environmental assessment or environmental impact statement.

When there were no more questions, Vice Chairman Coyner asked for Public Comments.

PUBLIC COMMENTS

Russ Fields, President of the Nevada Mining Association, said they have been working with the Mining Bureau for about a year on some of the changes in this petition. Mr. Fields complimented the Mining Bureau and said The Nevada Mining Association supports this petition.

After no other public comments, Vice Chairman Coyner asked for a motion from the Commission.

SEC ACTION

Commissioner Sponer made a motion to accept Petition 2005-01 as submitted by staff. Commissioner Crawford seconded the motion. The motion was unanimous; all were in favor.

Vice Chairman Coyner asked Mr. Elges to give Commissioner Sponer an explanation she had previously requested. Mr. Elges stated the explanation is in NAC 445B.075 and described Fugitive Dust.

Another question from Commissioner Sponer was regarding the SIP, and whether or not it was on the EPA's website. Mr. Elges and Deputy Administrator Cripps gave a brief overview of the SIPs, that each state may have many, and that the age of the SIP causes some difficulty in having the SIP available on-line. Nevada SIP is for rural areas, and this would be for the vast majority.

Regarding other counties, State statute does not allow the counties to regulate steam-electric facilities, and the county SIPs are not on the EPA website either.

Colleen Cripps stated that the EPA was going to wait until the SIPs are approved, then put them on their website. The EPA does have a name for people to contact to get copies of SIPs.

Commissioner Sponer was concerned about SIPs in Clark County that pertain to fugitive dust, which is difficult on citizens with lung problems. Deputy Administrator Cripps stated that the Division does have a copy of the PM10 SIP, which is related to the fugitive dust, and this SIP was approved last year. These SIPs are also on the County website.

Commissioner Sponer suggested that every 2 years or so, Washoe and Clark Counties come to a meeting and let the Commission know of the non-attainment variances in their counties.

Before continuing the discussions with NDEP Administration, Vice Chairman Coyner asked if anyone had public comments to be heard. With no response, Mr. Coyner opened the meeting for discussion with the Administration.

NDEP Administrator Leo Drozdoff, Deputy Administrators Tom Porta and Colleen Cripps spoke with the Commission. Regarding Commissioner Sponer's interest in the Air regulations, Mr. Drozdoff said the Division is working on a positive relationship with Washoe and Clark counties. He wants to ensure they know they are not being looked at negatively, just as a way for the Commission to gain knowledge of their programs.

Commissioner Crawford agreed with Commissioner Sponer regarding meeting with Washoe and Clark counties.

NDEP Administrator Drozdoff talked about the duties of the two Deputy Administrators. Tom Porta oversees the Bureaus of Water Pollution Control, Water Quality Planning, Mining, Corrective Actions, and Safe Drinking Water. Colleen Cripps is responsible for Air Pollution Control, Air Quality Planning, Federal Facilities, and Waste Management.

Mr. Drozdoff also talked about regulations that will be new because the Safe Drinking Water Program recently became a part of NDEP. There will be a lot of temporary regulations that will need to be approved. There are a lot of small communities water systems and private water systems that do not meet the Safe Drinking Water Standards. Leo Drozdoff explained several regulations that may come up in the near future.

Vice-Chairman Coyner asked for a motion to close the meeting. A motion was made by Commissioner Crawford, and seconded by Commissioner Shull. The meeting closed at 12:50 p.m.

APPENDIX

- 1) Letters to Brown Brother's Construction and W. E. S. Construction
- 2) Greg Remer's Presentation

Leo Drozdoff, Administrator
(775) 687-4670
Administration
Facsimile 687-5856

Water Quality Planning
Water Pollution Control
Facsimile 687-4684

Safe Drinking Water
Facsimile 687-5699

Mining Regulations & Reclamation
Facsimile 684-5259

State of Nevada
KENNY C. GUINN
Governor



ALLEN BAGGI,
Director

Air Pollution Control
Air Quality Planning
Facsimile 687-6396

Waste Management
Federal Facilities

Corrective Actions
Facsimile 687-8335

NDEP.nv.gov

**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION**

901 South Stewart Street, Suite 4001

Carson City, Nevada 89701

September 7, 2005

Mr. Ben Maddox
Brown Brothers Construction
5990 Morgan Mill Road
Carson City, Nevada 89701

RE: Notice of Alleged Violations – State Environmental Commission Hearing of June 10, 2005
Air Quality Operating Permit No. AP 1442-1354

Dear Mr. Maddox:

On June 10, 2005, the Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP/BAPC) presented negotiated settlement for the Brown Brothers Construction's Notice of Alleged Violation (NOAV) No. 1859 to the State Environmental Commission (SEC). The SEC adopted the negotiated settlement for NOAV No. 1859 but further instructed NDEP/BAPC to inform Brown Brothers Construction that any further violations of its permit or the Nevada Administrative Code (NAC) would require an appearance of Brown Brothers before the SEC.

The SEC is concerned about the number of violations assessed against Brown Brother Construction for violations of the NAC.

This letter is to formally inform you that the SEC will require that a representative of Brown Brothers Construction appear before the SEC for any future violations of Air Quality Operating Permit AP1442-1354 or the Nevada Administrative Code (NAC 445B.001 – NAC 445B.3495).

If you have any questions regarding this issue, please contact me at 687-9342.

Brown Brothers Construction
September 7, 2005
Page 2

Sincerely,

Michael Yamada, P.E.
Supervisor, Compliance and Enforcement Branch
Bureau of Air Pollution Control

MY

cc: Larry Kennedy, NDEP
John Walker, SEC
Carson City Board of Supervisors

Route to: Michael Elges, NDEP
Greg Remer, NDEP

Certified Mail # 7003 2260 0003 2621 5867

Leo Drozdoff, Administrator

(775) 687-4670
Administration
Facsimile 687-5856

Water Quality Planning
Water Pollution Control
Facsimile 687-4684
Safe Drinking Water
Facsimile 687-5699

Mining Regulations & Reclamation
Facsimile 684-5259

State of Nevada
KENNY C. GUINN
Governor



ALLEN BIAGGI, Director

Air Pollution Control
Air Quality Planning
Facsimile 687-6396

Waste Management
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Facsimile 687-8335

NDEP.nv.gov

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

901 South Stewart Street, Suite 4001

Carson City, Nevada 89701

September 7, 2005

Mr. Roy Walker
W.E.S. Construction, Inc.
445 Parr Circle
Reno, NV 89641

RE: Notice of Alleged Violations – State Environmental Commission Hearing of June 10, 2005
Air Quality Operating Permit AP1442-1415

Dear Mr. Walker

On June 10, 2005, the Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP/BAPC) presented negotiated settlement for W.E.S. Construction, Inc.'s Notice of Alleged Violation (NOAV) No. 1915 to the State Environmental Commission (SEC). The SEC adopted the negotiated settlement for NOAV No. 1915 but further instructed NDEP/BAPC to inform W.E.S. Construction, Inc. that any further violations of its permit or the Nevada Administrative Code (NAC) would require an appearance before the SEC.

The SEC is concerned about the number of violations assessed against W.E.S. Construction, Inc. for violations of the NAC.

This letter is to formally inform you that the SEC will require that a representative of W.E.S. Construction, Inc. appear before the SEC for any future violations of Air Quality Operating Permit AP1442-1415 or the Nevada Administrative Code (NAC 445B.001 – NAC 445B.3495).

If you have any further questions about the violation, please contact me at (775) 687-9342.

Mr. Walker
September 7, 2005
Page 2

Sincerely,

Michael Yamada, P.E.
Supervisor, Compliance and Enforcement Branch
Bureau of Air Pollution Control

MY

cc: Jason Dunphy, NDEP
John Walker, SEC
Storey County Board of Commissioners

Route to: Michael Elges, NDEP
Greg Remer, NDEP

Certified Mail # 7003 2260 0003 2621 5874

APPENDIX 2

Greg Remer's presentation

State Environmental Commission Mtg.

June 10, 2005

Good morning Mr. Chairman, members of the commission, my name is Greg Remer. I'm acting permitting supervisor with the Bureau of Air Pollution Control. I'm here this morning to present proposed changes to the air quality regulations contained in Petition 2005-02 (Item IV on the Commission's agenda). The basis for the proposed changes relate primarily to Nevada's SIP. Any amendments adopted under this petition will be temporary.

Before I go into the petition, I would like to provide the members with a brief overview of the SIP.

As you may know, over the past several years, NDEP has been working closely with USEPA Region IX and representatives of Nevada's various industries to update Nevada's SIP. The SIP is required by the federal Clean Air Act and is essentially a document by which the EPA and the State agree to preserve, protect and, if necessary, bring into compliance all areas of the state with the air quality standards. A significant portion of the SIP consists of Nevada's (as well as Clark and Washoe Counties') air quality regulations. The most recent significant regulation update for Nevada's portion of the SIP occurred in 1982. Because the Nevada air quality regulations have changed since 1982, the major focus of the recent SIP update process has been to bring Nevada's SIP consistent with the current Nevada Administrative Code. This on-going effort has resulted in a number of previous changes to the NAC.

I'm here today to present proposed regulation changes related to our near-final efforts in the SIP update process. The changes proposed today represent responses to a few out-standing deficiencies identified by EPA. I would also like to point out that NDEP did submit a SIP update package to EPA in February for their review and approval. The SIP submission was also included as an information item at November 2004 commission hearing. The proposed changes in Petition 2005-02 will, when submitted to EPA, make the SIP package more approvable by EPA.

The agency held a workshop in Reno on May 12th, to solicit comments and input on the proposed revisions. Approximately, 10 people attended the workshop. No adverse comments were received at the workshop.

Sections 1 through 5

Sections 1 through 5 of the Petition request addition of new definitions related Good Engineering Practice Stack Height (or GEP). This is a federal term and it ensures that if a source builds a stack taller than GEP allows, only the part of the stack that is equal to (or less than) GEP is allowed to be considered in the dispersion modeling analysis to determine compliance with the ambient standards.

Sections 6 through 9

Sections 6 through 9 involve proposed changes to existing definitions. All of these definitions were identified by EPA as containing impediments to EPA SIP approval. Section 6 proposes to strike language from the definition of "Allowable Emissions".

Section 7 proposes changes to the definition of “Construction”. The changes make the language more consistent with EPA’s definition and thereby approvable by EPA.

Section 8 proposes changes to the “Excess Emissions” definition. The change relates to the addition of what EPA calls credible evidence. Credible evidence allows the consideration of alternative methods of determining compliance with the air regulations other than a standard stack emission test.

Section 9 proposes changes to the “Regulated Air Pollutant” definition. The current definition was not consistent with EPA’s definition and the proposed change would make this definition consistent.

Sections 10 through 12

Sections 10 through 12 propose technical corrections to the metric form of the emission standards. It appears that the conversion from English to metric units was flawed, so we are proposing to correct that mistake.

Sections 13 and 14

Section 13 is a regulation that prohibits construction of new power plants or modification of existing power plants in the Las Vegas area. The correction to the rule involves ensuring that any existing steam unit at Clark or Sunrise stations that might be relocated elsewhere, must meet the Nevada air regulations to do so.

The changes to Section 14 are related to striking Director’s discretion, which is also an EPA SIP approval issue.

Sections 15 and 16

Sections 15 and 16 allow sources to request the agency for determination of construction and review of plans. The current regulation specified no time frames for the determination or review. The proposed regulation change specifies 60 days for the agency to respond.

Section 17

There are two distinct proposed changes to Section 17. First, we are proposing to remove specific regulation section references. Section 17 is included in the SIP submittal, but the referenced regulation sections within Section 17 were not submitted with SIP. As a result, they created hanging references, which cause problems with EPA’s review of the SIP. Removing the references or replacing them with general references to the entire set of air regulations will allow EPA to approve Section 17 into the SIP.

Second, subsection 4 of this regulation has a potential to conflict with the procedures contained in other parts of the air quality regulations pertaining to permitting and the processing of modifications. As a result, we propose to strike subsection 4 and allow the permitting procedures for modification to take priority.

Sections 18 and 19

Section 18 contains three proposed changes. First, we are proposing to clarify that the requirements of subsection 1 only apply in attainment areas.

Second, we are proposing to add a subsection 3 that ties with the new GEP definitions from

Sections 2 through 5 earlier. This change will not allow the Director to issue a permit or a revision to a permit if the modeling considers stack heights above the GEP stack height. Federal regulations require this for SIP's, as well.

Third we are proposing to strike re-numbered subsection 10 and move it a more appropriate place in Section 19. This is to make clear that in all cases, an environmental evaluation is performed prior to issuance of the operating permit. Moving subsection 10 to Section 19 just relates to who will do the analysis, not whether one is done or not.

Section 20

Section 20 relates to the content of the environmental evaluation. The changes to this section primarily relate to the information the Director considers in an air quality analysis that supports the issuance of an operating permit. There is also a GEP related requirement here as well. The remainder of Section 20 amends existing language to clarify the EPA modeling methods allowed and bring up-to-date the information considered in a modeling analysis, including meteorological data required to support the analysis.

Section 21

Section 21 is proposed to be revised to remove another hanging reference which would, again, be problematic for EPA in the SIP approval process.

Section 22

Section 22 proposes to remove another hanging reference. In addition, the term "allowable" is proposed to be deleted from the language. Since this section has been submitted to EPA as part of the SIP submittal, EPA indicated that federal requirements dictate that determinations of modification cannot be made using allowable (or permitted) emissions rates. Striking the term "allowable" will remove an impediment for EPA to fully approve this section.

Section 23

Section 23 is the final proposed amendment section and deletes the definition of "air contaminant". This definition is no longer used in the air quality regulations.

With that, we recommend that the Commission approve the changes as proposed in Petition #2005-02. I'd be happy to answer any questions. Thank you.

LEO DROZDOFF, *Administrator*

State of Nevada
KENNY C. GUINN
Governor

ALLEN BIAGGI, *Director*

(775) 687-4670
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NDEP.nv.gov

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

333 W. Nye Lane, Room 138
Carson City, Nevada 89706

January 05, 2005

Notice of Public Workshops

The Bureau of Mining Regulation and Reclamation of the Nevada Division of Environmental Protection is proposing changes to the NAC 519A mining reclamation regulations. Workshops will be held February 7 to February 9, 2005.

Under the proposed revisions, changes include a revision to the current fee structure for a permit modification and definition of minor modification. The proposed revisions also define other types of modifications.

The workshops will consist of a brief presentation of the proposal by the Division followed by a question and answer period. Workshops will be held at the following locations and times:

Carson City

February 7, 2005
2:00 p.m. – 3:00 p.m.
Department of Conservation &
Natural Resources
123 West Nye Lane, Room 217
Carson City, Nevada 89706

Elko

February 8, 2005
3:00 p.m. – 4:00 p.m.
Elko BLM Field Office
3900 East Idaho Street
Elko, Nevada 89801

Winnemucca

February 9, 2005
11:00 a.m. - 12:00 p.m.
Winnemucca Public Library
85 East Fifth Street
Winnemucca, Nevada 89445

Persons with disabilities requiring special accommodations or assistance, or persons unable to attend these workshops, but desiring information on the regulation changes are requested to notify David Gaskin, Bureau Chief, Bureau of Mining Regulation and Reclamation in writing at NDEP, 333 W. Nye Lane, Carson City, Nevada 89706-0851, or by calling (775) 687-9397, or by E-mail at dgaskin@ndep.nv.gov, no later than 4:00 p.m., February 4, 2005.

This notice is for electronic distribution

**Proposed Temporary Regulation Of The
Nevada State Environmental Commission**

**Petition 2005-01
March 17, 2005**

Explanation: Matter in *bold italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

=====

AUTHORITY: NRS 519A

NAC 519A.050 “Minor modification” defined. “Minor modification” means:

~~[1. An increase in the acreage affected by an active exploration project or active mining operation if:]~~

1. A change involving more than 10 acres but less than 25% of the acreage included in the approved plan if:

(a) The types of disturbances are included in the approved plan; or

~~[(b) The affected land can be reclaimed in a manner which is substantially similar to the manner of reclamation included in the approved plan.]~~

(b) The change (including but not limited to a change to the post mining land use) does not require reclamation techniques significantly different than in the approved plan.

~~[2. Changes in the specific techniques for reclamation, including, but not limited to the equipment which is used and the mixes of seeds.]~~

2. Changes in the equipment used for reclamation.

3. Changes to the final contours.

~~[4. Changes to the schedule for completing reclamation necessitated by changes in:~~

~~—(a) The mining operation or exploration project; or~~

~~—(b) Changes to the approved plan for reclamation.]~~

NAC 519A.052 “Major modification” defined. “Major modification” means:

1. A change in the post-mining land use that requires reclamation techniques significantly different than the techniques in the approved plan;

2. The addition of a type of disturbance not previously included in the approved plan and which cannot be reclaimed in a manner that is substantially similar to the reclamation techniques included in the approved plan;

3. The proposed disturbance is equal to 25% or more of the acreage in the approved plan; or

4. A change in the visual appearance of the reclaimed areas, which is substantially different than the visual appearance, which was discussed or commented upon during the public comment period.

NAC 519A.227 Fee for modification to permit. (NRS 519A.160)

1. The fee for a minor modification to a permit for an exploration project or a permit for a mining operation is ~~[one-half the amount of the applicable annual fee for the permit.]~~ *\$500, plus \$20 per acre or part of an acre, not to exceed one-half of the annual fee pursuant to NAC 519A.230 and 519A.235.*

2. The fee for a major modification to a permit for an exploration project or a permit for a mining operation is equal to the amount of the applicable annual fee ~~[for the permit.]~~ *pursuant to NAC 519A.230 and 519A.235.*

~~[3. For the purpose of this section, the following are not modifications:~~

~~—(a) An increase or decrease in the amount of surety necessary to cover the cost of reclamation as determined by the 3-year periodic review of the amount of surety required by NAC 519A.380; or~~

~~—(b) Changes to the proposed seed mix for reclamation.]~~

3. For a modification that does not constitute a major modification or a minor modification and involves disturbance of ten acres or less, transfer of the permit, or a change to the schedule for completion of reclamation, the fee is the lesser of \$250 or one-half of the annual fee pursuant to NAC 519A.230 and 519A.235.

4. Fees paid pursuant to this section are nonrefundable.

NAC 519A.305 Requirements for notice and public comment before modifying plan for reclamation.

1. The division shall, at least 30 days before making a major modification to a plan for reclamation of a mining operation:

(a) Circulate a public notice of the intent to modify the plan in a manner intended to inform interested persons;

(b) Cause to be published in a newspaper of general circulation within the geographic area of an exploration project or mining operation, a notice of the intent to modify the plan; and

(c) Mail to the operator, the landowner, members of the board of county commissioners of the county in which the project or operation is located, the division of minerals and any other person who so requests, written notice of the intent to modify the plan.

2. Notice given pursuant to subsection 1 must include:

(a) The name, address and telephone number of the division;

(b) The name and address of the operator;

(c) The location of the project or operation;

(d) A description of the procedure which the division will use to make a final decision to modify a plan;

(e) The specific location where interested persons may obtain further information or inspect and copy relevant forms and documents; and

(f) A statement that interested persons must submit to the division written comments on the tentative decision of the division within 30 days after the date on which the notice is published.

3. The division:

(a) Shall allow written comments and information and a public hearing as provided in NAC 519A.185 to 519A.210, inclusive, before making a major modification to a plan for reclamation.

(b) Is not required to allow written comments and a public hearing as provided in NAC 519A.185 to 519A.210, inclusive, before making a minor modification to a plan for reclamation.

~~[4. As used in this section, "major modification" includes only:~~

~~—(a) A change in the post-mining land use that requires reclamation techniques which are significantly different from the techniques in the approved plan;~~

~~—(b) The addition of a type of disturbance not previously included in the approved plan and which cannot be reclaimed in a manner which is substantially similar to the reclamation techniques included in the approved plan;~~

~~—(c) Other modifications to the approved reclamation activities which significantly increase the amount of surety required and are not a minor modification; or~~

~~—(d) A change in the visual appearance of the reclaimed areas which is substantially different than the visual appearance which was discussed or commented upon during the public comment period.]~~

Revised Regulatory Language, incorporating proposed revisions

=====

NAC 519A.050 “Minor modification” defined. “Minor modification” means:

1. A change involving more than 10 acres but less than 25% of the acreage included in the approved plan if:
 - (a) The types of disturbances are included in the approved plan; or
 - (b) The change (including but not limited to a change to the post mining land use) does not require reclamation techniques significantly different than in the approved plan.
2. Changes in the equipment used for reclamation.
3. Changes to the final contours.

NAC 519A.052 “Major modification” defined. “Major modification” means:

1. A change in the post-mining land use that requires reclamation techniques significantly different than the techniques in the approved plan;
2. The addition of a type of disturbance not previously included in the approved plan and which cannot be reclaimed in a manner that is substantially similar to the reclamation techniques included in the approved plan;
3. The proposed disturbance is equal to 25% or more of the acreage in the approved plan; or
4. A change in the visual appearance of the reclaimed areas, which is substantially different than the visual appearance, which was discussed or commented upon during the public comment period.

NAC 519A.227 Fee for modification to permit. (NRS 519A.160)

1. The fee for a minor modification to a permit for an exploration project or a permit for a mining operation is \$500, plus \$20 per acre or part of an acre, not to exceed one-half of the annual fee pursuant to NAC 519A.230 and 519A.235.
2. The fee for a major modification to a permit for an exploration project or a permit for a mining operation is equal to the amount of the applicable annual fee pursuant to NAC 519A.230 and 519A.235.
3. For a modification that does not constitute a major modification or a minor modification and involves disturbance of ten acres or less, transfer of the permit, or a change to the schedule for completion of reclamation, the fee is the lesser of \$250 or one-half of the annual fee pursuant to NAC 519A.230 and 519A.235.
4. Fees paid pursuant to this section are nonrefundable.

NAC 519A.305 Requirements for notice and public comment before modifying plan for reclamation.

1. The division shall, at least 30 days before making a major modification to a plan for reclamation of a mining operation:
 - (a) Circulate a public notice of the intent to modify the plan in a manner intended to inform interested persons;
 - (b) Cause to be published in a newspaper of general circulation within the geographic area of an exploration project or mining operation, a notice of the intent to modify the plan; and
 - (c) Mail to the operator, the landowner, members of the board of county commissioners of the county in which the project or operation is located, the division of

minerals and any other person who so requests, written notice of the intent to modify the plan.

2. Notice given pursuant to subsection 1 must include:

- (a) The name, address and telephone number of the division;
- (b) The name and address of the operator;
- (c) The location of the project or operation;
- (d) A description of the procedure which the division will use to make a final decision to modify a plan;
- (e) The specific location where interested persons may obtain further information or inspect and copy relevant forms and documents; and
- (f) A statement that interested persons must submit to the division written comments on the tentative decision of the division within 30 days after the date on which the notice is published.

3. The division:

(a) Shall allow written comments and information and a public hearing as provided in NAC 519A.185 to 519A.210, inclusive, before making a major modification to a plan for reclamation.

(b) Is not required to allow written comments and a public hearing as provided in NAC 519A.185 to 519A.210, inclusive, before making a minor modification to a plan for reclamation.

Temporary Regulation - Filing Statement

Nevada Division of Environmental Protection
Bureau of Mining Regulation & Reclamation

Revision to Fee Structure for Permit Modification & Definition of Minor
Modification

Legislative Review Of Adopted Regulations As Required
By Administrative Procedures Act, NRS 233B.066
Petition 2005-01 (Temporary Regulation)
State Environmental Commission (SEC)

This is a temporary regulation proposed by the Bureau of Mining Regulation and Reclamation of the Nevada Division of Environmental Protection. The proposed temporary regulation provides for changes to the NAC 519A mining reclamation regulations. Under the proposed regulation, changes include a revision to the current fee structure for a permit modification and definition of minor modification. The proposed revision also defines a major modification. The revision to the current fee structure will reduce the fees charged for simple changes to the permit that require minimal staff time to review and process. The other proposed revisions set clearer parameters to define minor and major modification.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Nevada Division of Environmental Protection (NDEP), Bureau of Mining Regulation & Reclamation held workshops on the above referenced temporary regulation at the following locations.

Carson City	Elko	Winnemucca
February 7, 2005 2:00 p.m. - 3:00 p.m. Department of Conservation & Natural Resources 123 West Nye Lane, Room 217 Carson City, Nevada 89706	February 8, 2005 3:00 p.m. - 4:00 p.m. Elko BLM Field Office 3900 East Idaho Street Elko, Nevada 89801	February 9, 2005 11:00 a.m. - 12:00 p.m. Winnemucca Public Library 85 East Fifth Street Winnemucca, Nevada 89445

Notification of the proposed changes was sent out to all parties included on NDEP's mailing list. Notification was published in the Carson Appeal, Humboldt Sun, Elko Daily Free Press, and on NDEP website. In addition the Nevada Mining Association was given notification to distribute directly to its members. No

written comments were received; verbal comments received showed support for the proposed changes.

2. The proposed regulation was also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates (May 10th, 24th and June 7th). The public was subsequently mailed a public notice and meeting agenda for the SEC hearing; the SEC mailing list was used for both mailings.

At the SEC hearing, there was one (1) public oral comments received by the Commission during the adoption of the referenced regulation.

3. The number persons who:

- (a) Attended June 10th, 2005 hearing; 20
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

4. 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 State Environmental Commission adopted the regulation on June 10th 2005 without any changes.

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

No anticipated economic effects will result from adoption of this regulation.

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

7. 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.

The regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is no more stringent than what is established by federal law.

9. 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.

This regulation makes small decrease and other nominal adjustments to fees.

LEO DROZDOFF, *Administrator*

(775) 687-4670
Administration
Facsimile 687-5856

Water Quality Planning
Water Pollution Control
Facsimile 687-4684

Mining Regulation & Reclamation
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State of Nevada
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Facsimile 687-8335
NDEP.nv.gov

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

333 W. Nye Lane, Room 138
Carson City, Nevada 89706

April 26, 2005

**Notice of Public Workshop
to Solicit Comments on Proposed Amendments
to NAC 445B.001-3497
AIR CONTROLS: AIR POLLUTION**

The Nevada Division of Environmental Protection (NDEP) is proposing changes to certain sections of Nevada Administrative Code (NAC) 445B that deal with the State's stationary source operating permits program. The regulatory changes are necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) update to EPA, allowing EPA to approve the updated ASIP.

A public workshop has been scheduled in Reno to solicit comments on the proposed amendments from interested persons.

Thursday, May 12, 2005
1:00 pm - 3:00 pm
South Valleys Library, Olympic Room
15650A Wedge Parkway
Reno, Nevada

The proposed regulation will add provisions to ensure good engineering practice regarding stack height and emission limitations, require Prevention of Significant Deterioration review when relocating certain fossil-fueled power generating units, and update and clarify environmental evaluation information requirements. Additionally, the regulation will remove director's discretion for dealing with the handling of organic solvents and other volatile compounds, add a timeframe for the State's response to requests for technical advice regarding plans for construction or modification of a facility, and increase the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation will modify the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

A copy of the workshop materials may be obtained at the workshop or by contacting Adele Malone by telephone at (775) 687-9356; or e-mail, at amalone@ndep.nv.gov. You may also visit the NDEP website at <http://ndep.nv.gov/baqp/index.htm> for copies of the proposed amendments (under "Navigation" select "What is New," then see "Currently Proposed Amendments to NAC 445B," "ASIP Supplement").

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify Adele Malone no later than 5 business days before the workshop.

This notice has been posted at the Nevada Division of Environmental Protection offices in Carson City and Las Vegas, at the State Library in Carson City, and in county or community libraries in Austin, Battle Mountain, Elko, Ely, Fallon, Fernley, Las Vegas, Lovelock, Pahrump, Reno, Wells, and Winnemucca.

**PROPOSED TEMPORARY REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION
Petition 2005-02**

May 3, 2005, revised May 12, 2005 pursuant to public comments

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: NRS 445B.210 and 445B.300.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 5, inclusive, of this regulation.

Sec. 2. 1. *“Dispersion technique” means any technique that attempts to affect the concentration of a pollutant in the ambient air by:*

- (a) Using that portion of a stack which exceeds good engineering practice stack height;*
- (b) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or*
- (c) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.*

2. The term “dispersion technique” does not include:

(a) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(b) The merging of exhaust gas streams where:

(1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985 such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion techniques shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(c) Smoke management in agricultural or silvicultural prescribed burning programs;

(d) Episodic restrictions on residential woodburning and open burning; or

(e) Techniques under paragraph (c) of subsection 1 which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed

5,000 tons per year.

Sec. 3. *“Excessive concentration” is defined for the purpose of determining good engineering practice stack height under subsection 3 of section 4 of this regulation and means:*

1. For sources seeking credit for stack height exceeding that established under subsection 2 of section 4 of this regulation, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to 40 C.F.R. § 52.21, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator.

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subsection 2 of section 4 of this regulation, either:

(a) A maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subsection 1, except that the emission rate specified by any applicable State limit (or, in the absence of such a limit, the actual emission rate) shall be used, or

(b) The actual presence of a local nuisance caused by the existing stack, as determined by the Director; and

3. For sources seeking credit after January 12, 1979 for a stack height determined under subsection 2 of section 4 of this regulation, where the Director requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the equations in subsection 2 of section 4 of this regulation, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

Sec. 4. *“Good engineering practice stack height” means the stack height that is the greater of:*

1. Two-hundred thirteen feet, measured from the ground level elevation at the base of the stack;

2. A height determined as follows:

(a) For stacks that commenced construction on or before January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required pursuant to 40 C.F.R. §§ 51 and 52, and NAC 445B.001 to 445B.3497,

$$H_g = 2.5H,$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

(b) For all other stacks, $H_g = H + 1.5L$;

↪ where:

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack, and

L = lesser dimension, height or projected width, of nearby structure(s),

provided that the Director may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwashes, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

Sec 5. *“Nearby” as used in sections 3 and 4 of this regulation is defined with respect to a specific structure or terrain feature and means:*

(a) For purposes of applying the formulae in subsection 2 of section 4 of this regulation, that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 1/2 mile, and

(b) For conducting demonstrations under subsection 3 of section 4 of this regulation, not greater than 1/2 mile, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height of the feature, not to exceed 2 miles if such feature achieves a height 1/2 mile from the stack that is at least 40 percent of the good engineering practice stack height determined by the formulae provided in paragraph (b) of subsection 2 of section 4 of this regulation or 85 feet, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

Sec. 6. NAC 445B.013 is hereby amended to read as follows:

NAC 445B.013 “Allowable emissions” defined. “Allowable emissions” means the emissions from a stationary source at its designed maximum capacity or at its actual maximum capacity, whichever is greater, except as reduced by any federally enforceable limitations on its emissions which are established:

1. By Nevada laws or regulations;
2. By any applicable requirement; or
3. By conditions of the stationary source’s operating permit, imposed on the emission rate, the type or amount of materials combusted or processed, the operating rates, the hours of operation, or any other factor limiting production or emission, whichever is most stringent.

~~[For Class II sources that are not subject to federal requirements, emission limitations need not be federally enforceable.]~~

Sec. 7. NAC 445B.044 is hereby amended to read as follows:

NAC 445B.044 “Construction” defined. “Construction” means *any physical change or change in the method of operation (including fabrication, erection, ~~or~~ installation or modification)* of an emission unit.

Sec. 8. NAC 445B.063 is hereby amended to read as follows:

NAC 445B.063 “Excess emissions” defined. “Excess emissions” means any emission which exceeds any applicable emission limitation prescribed by NAC 445B.001 to 445B.3497, inclusive, or that is contained in an operating permit. The averaging time and test procedures for determining excess emissions must be as specified in the relevant condition or conditions of the operating permit. *This does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed, to determine excess emissions.*

Sec. 9. NAC 445B.153 is hereby amended to read as follows:

NAC 445B.153 “Regulated air pollutant” defined. “Regulated air pollutant” means:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant subject to:

(a) A national ambient air quality standard *and any constituents or precursors for such pollutants identified by the Administrator* ;

(b) A standard or requirement adopted pursuant to 42 U.S.C. § 7411 ; ~~[or 7412]~~ ; or

(c) A standard established pursuant to NAC 445B.22097; ~~[or]~~

3. Any Class I or Class II substance subject to a standard adopted pursuant to 42 U.S.C. §§ 7671 to 7671q, inclusive ~~[;]~~ ; *or*

4. Any pollutant that otherwise is subject to regulation under the Act, except that any or all hazardous air pollutants regulated under 42 U.S.C. 7412 are not regulated air pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.

Sec. 10. NAC 445B.22057 is hereby amended to read as follows:

NAC 445B.22057 Allowable emissions of sulfur from specific sources: Units

Number 1, 2 and 3 of Reid Gardner Power Station. The allowable emission of sulfur from fossil fuel-fired power generating units Number 1, 2 and 3 of Nevada Power Company’s Reid Gardner Station, located in Air Quality Control Region 13, Basin 218, California Wash, must not be greater than 0.275 pounds per million Btu’s (~~[0.504]~~ *0.495* kilograms per million kg-cal).

Sec. 11. NAC 445B.2206 is hereby amended to read as follows:

NAC 445B.2206 Allowable emissions of sulfur from specific sources: Unit Number 4 of

Reid Gardner Power Station. The allowable emission of sulfur from fossil fuel-fired power generating unit Number 4 of Nevada Power Company’s Reid Gardner Station, located in Air Quality Control Region 13, Basin 218, California Wash, must not be greater than 0.145 ~~[lb/10]~~ *pounds per million* Btu (~~[0.09 kg/10]~~ *0.261 kilograms per million* kg-cal). The efficiency of the capture of sulfur must be maintained at a minimum of 85 percent, based on a 30-day rolling average.

Sec. 12. NAC 445B.22063 is hereby amended to read as follows:

NAC 445B.22063 Allowable emissions of sulfur from specific sources: North

Valmy Power Station. The allowable emission of sulfur from fossil fuel-fired power generating unit Number 2 Sierra Pacific Power Company’s North Valmy Station, located in Air Quality Control Region 147, Basin 64, Clovers Area, must not be greater than 0.3 ~~[lb/10⁶]~~ *pounds per*

million Btu (~~0.135 kg/10⁶~~) *0.540 kilograms per million* kg-cal). The efficiency of the capture of sulfur must be maintained at a minimum of 70 percent, based on a 30-day rolling average.

Sec. 13. NAC 445B.22083 is hereby amended to read as follows:

NAC 445B.22083 Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.

1. Except as otherwise provided in subsections 2 and 3, a person shall not make a major modification to an existing plant or construct a new plant to generate electricity using steam produced by the burning of fossil fuels within:

- (a) The Las Vegas Valley, Hydrographic Area 212;
- (b) The El Dorado Valley, Hydrographic Area 167;
- (c) The Ivanpah Valley, Hydrographic Areas 164 a and 164 b; or
- (d) The city limits of Boulder City.

2. Fossil fuel-fired power generating units Numbers 1, 2 and 3 at Clark Station and fossil fuel-fired power generating unit Number 1 at Sunrise Station may be relocated to the Ivanpah Valley ~~[and retain their operating permits if the emission units that are relocated use the best available control technology]~~ *and must comply with the provisions of NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 5, inclusive, of this regulation.*

3. If an emission unit is relocated to Ivanpah Valley:

(a) The previously used emission unit must be deactivated and removed from the previous site when the relocated unit begins operation.

(b) Any credit for reduced emission is not available as an offset credit.

4. As used in this section, "major modification" has the meaning ascribed to it in 40 C.F.R. § 51.165, as incorporated by reference in NAC 445B.221.

Sec. 14. NAC 445B.22093 is hereby amended to read as follows:

NAC 445B.22093 Organic solvents and other volatile compounds.

1. Solvents or other volatile compounds such as paints, acids, alkalies, pesticides, fertilizers and manure must be processed, stored, used and transported in such a manner and by such means as to minimize the tendency to evaporate, leak, escape or be otherwise discharged into the ambient air causing or contributing to air pollution. If methods of control are available and feasible effectively to reduce the contribution to air pollution from evaporation, leakage or discharge, as determined by the director, the installation and use of such methods, devices or equipment for control is mandatory.

2. No person may place, store or hold in any new reservoir, stationary tank or other container with a capacity equal to or greater than 40,000 gallons (150 kiloliters) any gasoline, petroleum distillate, or volatile organic compound having a vapor pressure of 1.5 lb/square inch absolute (1,055 kg/square meter) or greater under actual storage conditions unless the tank, reservoir or other container is a pressure tank maintaining working pressure sufficient at all times to prevent loss of vapor or gas to the atmosphere or is equipped with one of the following devices properly installed, in good working order, and in operation:

(a) A floating roof which consists of a pontoon type or double-deck roof which rests on the surface of the liquid contents and is equipped with a seal to close the space between the roof eave and tank wall or a vapor balloon or a vapor dome designed in accordance with accepted standards of the petroleum industry. This control equipment is not permitted if the gasoline or petroleum distillate has a vapor pressure of 11 lb/square inch absolute (7,734 kg/square meter) or greater under actual conditions. All gauging and sampling devices for tanks must be gastight except when gauging or sampling is taking place.

(b) Other equipment proven to be of equal efficiency for preventing discharge of gases and vapors to the atmosphere.

3. Any tank for the storage of any other petroleum or volatile organic compound which is constructed or extensively remodeled on or after November 7, 1975, must be equipped with a submerged fill pipe ~~[or the equivalent, as approved by the director,]~~ for the control of emissions.

4. All facilities for dock loading of products consisting of petroleum or other volatile organic compounds having a vapor pressure of 1.5 lb/square inch absolute (1,055 kg/square meter) or greater at loading pressure must have facilities for submerged filling by a submerged fill pipe ~~[or an acceptable equivalent,]~~ for the control of emissions.

Sec. 15. NAC 445B.235 is hereby amended to read as follows:

NAC 445B.235 Construction or modification: Determination by director.

1. When requested to do so by an owner or operator, the director will make a determination of whether action taken or intended to be taken by the owner or operator constitutes construction, including reconstruction, or modification or the commencement thereof within the meaning of NAC 445B.236.

2. The director will respond to any request for a determination under subsection 1 within ~~[30]~~ **60** days after receipt of the request.

Sec. 16. NAC 445B.236 is hereby amended to read as follows:

NAC 445B.236 Construction or modification: Review of plans.

1. When requested to do so by an owner or operator, the director will review plans for construction or modification to provide technical advice to the owner or operator. A separate request must be submitted for each construction or modification project. Each request must identify the location of such projects and be accompanied by technical information describing the proposed nature, size, design and method of operation of each affected facility involved in the project, including information on any equipment to be used for measurement or control of emissions.

2. *The director will respond to any request for review under subsection 1 within 60 days after receipt of the request.*

3. Neither a request for a review of plans nor advice furnished by the director in response to such request:

(a) Relieves an owner or operator of legal responsibility for compliance with any provision of NAC 445B.235 or this section, or of any applicable state or local requirement; or

(b) Prevents the director from carrying out or enforcing any provision of NAC 445B.235 or this section, or taking any other action authorized by the Act.

Sec. 17. NAC 445B.250 is hereby amended to read as follows:

NAC 445B.250 Notification of planned construction or reconstruction. Any owner or operator subject to the provisions of ~~[NAC 445B.235 to 445B.250]~~ **NAC 445B.001 to 445B.3497**, inclusive, *and sections 2 to 5, inclusive of this regulation*, shall furnish the director written notification of:

1. The date that construction ~~[,]~~ or reconstruction ~~[as defined under NAC 445B.247,]~~ of an affected facility is commenced, postmarked no later than 30 days after such date. This requirement does not apply in the case of mass-produced facilities which are purchased in completed form.

2. The anticipated date of initial start-up of an affected facility, postmarked not more than 60 days nor less than 30 days before such date.

3. The actual date of initial start-up of an affected facility, postmarked within 15 days after such date.

4. ~~[Any physical or operational change to an existing facility which may increase the emission rate of any regulated air pollutant to which a standard applies, unless that change is specifically exempted under an applicable section or in NAC 445B.239 or 445B.242 and the exemption is not denied under those sections. The notice must be postmarked 60 days or as soon as practicable before the change is commenced and must include information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change. The director may request additional relevant information subsequent to this notice.~~

5.] The date upon which demonstration of the continuous monitoring system performance commences in accordance with NAC 445B.256 to 445B.267, inclusive. Notification must be postmarked not less than 30 days before such date.

Sec. 18. NAC 445B.308 is hereby amended to read as follows:

NAC 445B.308 Prerequisites and conditions for issuance of operating permits: Environmental evaluation; compliance with control strategy; exemption from environmental evaluation.

1. *In any area designated attainment or unclassifiable for any regulated air pollutant or pollutants, [B]* before an operating permit or a revision of an operating permit may be issued:

- (a) For a new or modified stationary source;
- (b) For a pollution control project;
- (c) For a plantwide applicability limitation; or
- (d) To allow a plantwide applicability limitation to expire and not be renewed,

↪ in accordance with NAC 445B.308 to 445B.314, inclusive, the applicant must submit to the Director an environmental evaluation and any other information the Director determines necessary to make an independent air quality impact assessment.

2. The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the environmental evaluation submitted by the applicant shows, or if the Director determines, in accordance with the provisions of this section, that the stationary source:

(a) Will prevent the attainment and maintenance of the state or national ambient air quality standards. For the purposes of this paragraph, only those ambient air quality standards that have been established in NAC 445B.22097 need to be considered in the environmental evaluation.

(b) Will cause a violation of the applicable control strategy contained in the approved air quality plan.

(c) Will cause a violation of any applicable requirement.

(d) Will not comply with subsection [3] 4.

3. *The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the Director determines that the degree of emission limitation required for control of any air pollutant under this section is affected by so much of the stack height of any source as exceeds good engineering practice, or any other dispersion technique.*

[3-] 4. Except as otherwise provided for in subsection [4] 5, to be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification, as those terms are defined in 40 C.F.R. § 51.165, who proposes to construct in an area designated nonattainment for the regulated air pollutant or pollutants for which the stationary source or modification is major must:

(a) Comply with the provisions of 40 C.F.R. § 51.165, as incorporated by reference in NAC 445B.221.

(b) Adopt as an emission limitation for the stationary source the lowest achievable emission rate for each nonattainment regulated air pollutant from the stationary source.

(c) Demonstrate that all other stationary sources within this state which are owned, operated or controlled by the applicant are in compliance or on a schedule of compliance with NAC 445B.001 to 445B.3497, inclusive, and all other applicable requirements and conditions of the permit.

(d) Conduct an analysis of any anticipated impact on visibility in any federal Class I area which may be caused by emissions from the stationary source.

(e) Conduct an analysis of alternative sites, sizes, processes of production and techniques for environmental control for the proposed stationary source. Except as otherwise provided in this paragraph, the analysis must demonstrate that the benefits of the proposed stationary source significantly outweigh the detrimental environmental and social effects that will result from its location, construction or modification. If the major stationary source or major modification proposes to locate in an area designated as marginal nonattainment for ozone, the analysis must demonstrate an offset ratio of 1.2 to 1 for volatile organic compounds and nitrogen oxides. For the purposes of this paragraph, a stationary source which is major for volatile organic compounds or nitrogen oxides shall be deemed major for ozone if the proposed location of the major stationary source or major modification is in an area designated as nonattainment for ozone.

(f) Comply with one of the following:

(1) Sufficient offsets in emissions must be obtained by the time the proposed stationary source begins operation to ensure that the total allowable emissions of each nonattainment regulated air pollutant from the existing stationary sources in the area, those stationary sources in the area which have received their respective permits and the proposed stationary source will be sufficiently less than the total emissions from the existing stationary sources and those stationary sources in the area which have received their respective permits before the proposed stationary source applies for its operating permit or a revision of an operating permit, in order to achieve reasonable further progress; or

(2) If the major stationary source or major modification is located in a zone identified by the Administrator as one to be targeted for economic development, the owner or operator must demonstrate that the emission from the stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for a regulated air pollutant for the nonattainment area.

➤ For the purposes of this paragraph, offsets must comply with the provisions of Appendix S of 40 C.F.R. Part 51, as incorporated by reference in NAC 445B.221, and be coordinated with the appropriate local agency for the control of air pollution.

[4.] 5. To be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification, as those terms are defined in 40 C.F.R. Part 51.165, who proposes to construct in an area designated basic nonattainment for ozone must:

(a) Comply with the provisions of 40 C.F.R. Part 51.165, as incorporated by reference in NAC 445B.221.

(b) Adopt as an emission limitation for the stationary source the best available control technology for volatile organic compounds and nitrogen oxides from the stationary source.

(c) Demonstrate that all other stationary sources within this state that are owned, operated or controlled by the applicant are in compliance or on a schedule of compliance with NAC 445B.001 to 445B.3497, inclusive, and all other applicable requirements and conditions of the permit.

(d) Demonstrate an offset ratio of 1 to 1 for volatile organic compounds and nitrogen oxides. For the purposes of this paragraph, a stationary source that is major for volatile organic compounds or nitrogen oxides shall be deemed major for ozone if the proposed location of the major stationary source or major modification is located in an area designated as basic nonattainment for ozone.

(e) Comply with one of the following:

(1) Sufficient offsets in emissions must be obtained by the time the proposed stationary source begins operation to ensure that the total allowable emissions of each nonattainment regulated air pollutant from the existing stationary sources in the area, those stationary sources in the area that have received their respective permits and the proposed stationary source will be sufficiently less than the total emissions from the existing stationary sources and those stationary sources in the area that received their respective permits before the proposed stationary source applies for its operating permit or a revision of an operating permit, in order to achieve reasonable further progress; or

(2) If the major stationary source or major modification is located in a zone identified by the Administrator as one to be targeted for economic development, the owner or operator must demonstrate that the emissions from the stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for a regulated air pollutant for the nonattainment area.

↪ For the purposes of this paragraph, offsets must comply with the provisions of Appendix S of 40 C.F.R. Part 51, as incorporated by reference in NAC 445B.221, and be coordinated with the appropriate local agency for the control of air pollution.

~~[5-]~~ 6. To be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification who proposes to construct in any area designated as attainment or unclassifiable under 42 U.S.C. § 7407(d) must comply with the provisions of 40 C.F.R. § 52.21, as incorporated by reference in NAC 445B.221.

~~[6-]~~ 7. The director may impose any reasonable conditions on his approval, including conditions requiring the owner or operator of the stationary source to:

(a) Conduct monitoring of the quality of the ambient air at the facility site for a reasonable period before the commencement of construction or modification and for any specified period after operation has begun at the stationary source; and

(b) Meet standards for emissions that are more stringent than those found in NAC 445B.001 to 445B.3497, inclusive.

~~[7-]~~ 8. Where a proposed stationary source located on contiguous property is constructed or modified in phases which individually are not subject to review as provided in NAC 445B.308 to 445B.314, inclusive, all phases occurring since November 7, 1975, must be added together for determining the applicability of those sections.

~~[8-]~~ 9. Approval and issuance of an operating permit or a revision of an operating permit for any stationary source does not affect the responsibilities of the owner or owners to comply with any other portion of the control strategy.

~~[9-]~~ 10. An owner or operator of a Class II source may request an exemption from the requirement to submit an environmental evaluation. Within 30 days after receipt of a written request for an exemption, the director shall grant or deny the request and notify the owner or operator in writing of his determination.

10. As used in this section:

(a) "Lowest achievable emission rate" has the meaning ascribed to it in 40 C.F.R. § 51.165, as incorporated by reference in NAC 445B.221.

(b) "Offset ratio" means the percentage by which a reduction in an emission must exceed the corresponding increase in that emission.

(c) "Reasonable further progress" means the annual incremental reductions in emissions of the relevant regulated air pollutant that are required by 42 U.S.C. §§ 7501 to 7515, inclusive, or are required by the Administrator to ensure attainment of the applicable standard for national ambient air quality by the applicable date.

Sec. 19. NAC 445B.310 is hereby amended to read as follows:

NAC 445B.310 Environmental evaluation: Applicable sources. An applicant for an operating permit, a revision to an operating permit or a request for a change of location, which is not subject to the provisions of 40 C.F.R. § 52.21, as adopted by reference in NAC 445B.221, must submit with the application an environmental evaluation for:

1. A new stationary source which emits, or has the potential to emit, greater than 25 tons of a regulated air pollutant per year;
2. A modification to an existing stationary source that meets the following criteria:
 - (a) The existing stationary source has the potential to emit greater than 25 tons of a regulated air pollutant per year; and
 - (b) The proposed modification has the potential to emit greater than 10 tons of a regulated air pollutant per year;
3. The approval of a pollution control project, the approval of a plantwide applicability limitation or the approval to allow a plantwide applicability limitation to expire and not be renewed; or
4. Upon written notice from the director, any other source or combination of sources.

5. An owner or operator of a Class II source may request an exemption from the requirement to submit an environmental evaluation. Within 30 days after receipt of a written request for an exemption, the director shall grant or deny the request and notify the owner or operator in writing of his determination. If such an exemption is granted, the Director will perform the environmental evaluation.

Sec. 20. NAC 445B.311 is hereby amended to read as follows:

NAC 445B.311 Environmental evaluation: Required information. *Except as provided in paragraph (c) of subsection 4,*

1. An environmental evaluation which is required for a new or modified stationary source pursuant to NAC 445B.308 to 445B.314, inclusive, or as required by the director must contain a careful and detailed assessment of the environmental aspects of the proposed stationary source and must also contain:

- (a) The name and address of the applicant;
- (b) The name, address and location of the stationary source;
- (c) A description of the proposed stationary source, including the normal hours of operation of the facility and the general types of activities to be performed;
- (d) A map showing the location of the stationary source and the topography of the area, including existing principal streets, roads and highways within 3 miles of the stationary source;
- (e) A site plan showing the location and height of buildings on the site; ~~and~~
- (f) Any additional information or documentation which the director deems necessary to determine the effect of the stationary source on the quality of the ambient air, including measured data on the quality of the ambient air *and meteorological conditions* at the proposed site before construction or modification ; *and*
- (g) *A dispersion analysis of each regulated air pollutant.*

2. Where approval is sought for stationary sources to be constructed in phases, the information required by subsection 1 must be submitted for each phase of the construction project.

3. An environmental evaluation must also ~~[contain adequate environmental safeguards to be put into operation by the applicant to provide for the maintenance of acceptable air quality and must]~~ consider[:

~~—(a) Concentrations in the ambient air before, during and after construction, empirically calculated with recognized methods as approved by the director. Existing concentrations in the ambient air may be measured with approved methods at approved site locations for not less than 1 year. Estimates must be empirically determined for concentrations in the ambient air immediately adjacent to the facility and at the predicted point of maximum concentration within the surrounding region.~~

~~(b) Alternate proposals which could be put into effect as conditions of approval.~~

~~(c) In the narrative portion of the evaluation, other probable environmental effects before, during and after construction]~~ *good engineering practice stack height. When the Director considers an analysis of a source based on a good engineering practice stack height that exceeds the height allowed by subsection 1 or 2 of section 4 of this regulation, the Director shall notify the public of the availability of the demonstration study performed pursuant to subsection 3 of section 4 of this regulation and provide an opportunity for public hearing on such demonstration study, using the public notice and participation procedures in subsections 7, 9 and 10, inclusive, of NAC 445B.3395.*

4. ~~[Diffusion models]~~ *A dispersion analysis* used to determine the location and estimated value of highest concentration of *each* regulated air pollutant[s] must ~~[contain]~~ *include:*

(a) *A dispersion model based on the applicable models, bases and other requirements specified in 40 C.F.R. § 51, Appendix W, Guideline on Air Quality Models, adopted by reference pursuant to NAC 445B.221, except that the Director may authorize the modification of a model specified in the Guideline on Air Quality Models or the use of a model not included in the Guideline on Air Quality Models if the Director determines that such modification or use is appropriate;*

(b) *A narrative report describing:*

(1) *Assumptions and premises used in the analysis, including, if applicable, but not limited to:*

(I) Model options chosen;

(II) Urban versus rural selection;

(III) Background concentrations; and

(IV) Characterization of emission sources as point, area or volume;

(V) Emission discharge point or points; and

(VI) Rate of emission for each emission unit.

(2) *The geographic area considered in the analysis, including, but not limited to information on:*

(I) The nearest significant terrain features;

(II) The receptor grid or grids; and

(III) Restrictions on public access to the stationary source.

~~(b) Evaluation at the most adverse meteorological conditions recorded in the last 10 years;~~

~~(c) Evaluation at the most adverse meteorological conditions recorded in the last year;~~

~~(d) A description of the geographic area considered in the evaluation;~~

~~(e) Dispersion equations;~~

~~(f) The predicted buildup of regulated air pollutants;]~~

~~(g) Location, type and amount of emissions; and]~~

~~[(h)]~~ (c) *Valid [M]eteorological information , as described in 40 C.F.R. § 51, Appendix W:*

(1) For sources that are not subject to the permitting requirements of 40 C.F.R. § 52.21,

(I) Which is site-specific, if such information exists pursuant to subsection 1 of this section or subsection 7 of NAC 445B.308, for one year;

(II) Which has been obtained from an off-site location representative of the proposed site for one year;

(III) Which represents the worst case meteorological conditions, as approved by the Director for synthetic data; or

(IV) Which has been obtained over the last 5 years at the nearest National Weather Service site.

(2) For sources that are subject to the permitting requirements of 40 C.F.R. § 52.21, which is representative of the source site location and source emissions, for a period of not less than one year.

Sec. 21. NAC 445B.342 is hereby amended to read as follows:

NAC 445B.342 Revision of permit: Exception when making certain changes; notification of changes.

1. The owner or operator of a stationary source operating in compliance with an operating permit may make changes which contravene an express term of the operating permit without a revision of the operating permit if the changes do not:

(a) Constitute modifications pursuant to any provision of 42 U.S.C. §§ 7401 to 7515, inclusive, or constitute a modification as that term is defined in NAC 445B.099;

(b) Violate any provision of NAC 445B.001 to 445B.3497, inclusive, or any other applicable requirement; or

(c) Exceed the allowable emissions set forth in the operating permit for any emissions unit.

2. Any conditions of an operating permit that are requirements for monitoring, methods of testing, recordkeeping, reporting or compliance certification may not be changed pursuant to this section.

3. For each change made pursuant to this section, the holder of the operating permit shall provide a written notification to the director and the Administrator at least 7 days before making the change. This notification must include:

(a) A detailed description of the change;

(b) The date on which the change will occur;

(c) Any change in emissions, as determined in accordance with NAC ~~[445B.239]~~ **445B.001 to 445B.3497, inclusive, and sections 2 to 5, inclusive, of this regulation;**

(d) Any condition of the operating permit which will no longer apply because of the change; and

(e) For a change that includes the trading of emissions made pursuant to paragraph (h) of subsection 1 of NAC 445B.3405, a detailed description of how the increase or decrease in emissions, or both, resulting from the change complies with the terms and conditions of the operating permit.

4. The holder of the operating permit, the director and the Administrator, as appropriate, shall attach a copy of the written notification to his respective copy of the permit.

Sec. 22. NAC 445B.3465 is hereby amended to read as follows:

NAC 445B.3465 Application for revision.

1. The owner or operator of a stationary source with a Class II operating permit may request, on an application form provided by the director, a revision of the operating permit to allow for a modification to the stationary source.

2. An application for a revision of a Class II operating permit must include:
- (a) The name and address of the owner or operator of the stationary source;
 - (b) The location of the stationary source;
 - (c) A description of:
 - (1) The existing emission units undergoing the modification and the applicable control systems; and
 - (2) The proposed modification to such emission units;
 - (d) The [allowable] emission rates from the existing emission units of each regulated air pollutant to which a standard applies, [~~as determined in accordance with NAC 445B.239;~~] which exist at the time of the application before the modification and which would exist after the modification takes place;
 - (e) A description of any proposed new emission units and applicable control systems;
 - (f) The potential to emit of the proposed new emission units for each regulated air pollutant to which a standard applies;
 - (g) A description of the procedures and methods used to determine the emission rates;
 - (h) A discussion of all applicable requirements to which the new or modified operations will be subject;
 - (i) An explanation of any proposed exemption from any applicable requirement;
 - (j) An environmental evaluation conducted in accordance with NAC 445B.308, 445B.310, 445B.311 and 445B.3135; and
 - (k) Any other information that the director determines is necessary to process the application and issue a Class II operating permit pursuant to this section and NAC 445B.001 to 445B.3497, inclusive.

Sec. 23. NAC 445B.010 is hereby repealed.

TEXT OF REPEALED LANGUAGE

NAC 445B.010 “Air contaminant” defined. “Air contaminant” has the meaning ascribed to it in NRS 445B.110.

Temporary Regulation - Filing Statement

Nevada Division of Environmental Protection
Bureaus of Air Pollution Control
and Air Quality Planning

Revised Air Pollution Control Regulations To Meet Federal Planning
Requirements

Legislative Review Of Adopted Regulations As Required
By Administrative Procedures Act, NRS 233B.066
Petition 2005-02 (Temporary Regulation)
State Environmental Commission (SEC)

The State Environmental Commission adopted this temporary regulation on June 10, 2005. The regulation revises several sections in the permitting provisions of NAC 445B. It adds provisions to ensure good engineering practice regarding stack height and emission limitations, it requires Prevention of Significant Deterioration review when relocating certain fossil-fueled power generating units, and it updates and clarifies environmental evaluation information requirements.

Additionally, the regulation removes the director's discretion for dealing with the handling of organic solvents and other volatile compounds, it adds a timeframe for the State's response to requests for technical advise regarding plans for construction or modification of a facility, and it increases the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification.

Finally, the proposed regulation modifies the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other adopted changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

Overall this regulation is needed to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to the Environmental Protection Agency (EPA), allowing EPA to approve the updated ASIP.

1. 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 Nevada Division of Environmental Protection (NDEP), Bureaus of Air Pollution Control and Air Quality Planning held workshops on the above referenced temporary regulation at the following locations.

Reno

Thursday, May 12, 2005 1:00 pm - 3:00 pm South Valleys Library,
Olympic Room 15650A Wedge Parkway Reno, Nevada

Notification of the proposed changes was sent out to all interested parties included on NDEP's mailing list. Notification was posted at the Nevada Division of Environmental Protection offices in Carson City and Las Vegas, at the State Library in Carson City, and in county or community libraries in Austin, Battle Mountain, Elko, Ely, Fallon, Fernley, Las Vegas, Lovelock, Pahrump, Reno, Wells, and Winnemucca.

2. The proposed regulation was also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal and Reno Gazette Journal newspapers on the following dates (May 10th, 24th and June 7th). Individuals on the SEC mailing list were subsequently mailed a public notice and meeting agenda for the SEC hearing.

At the SEC hearing, there was one (1) public oral comment received by the Commission during the adoption of the referenced regulation.

3. The number persons who:
(a) Attended June 10th, 2005 hearing: 20
(b) Testified on this Petition at the hearing: 2 (NDEP Staff), 1 public
(c) Submitted to the agency written comments: 0

4. 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 State Environmental Commission adopted the regulation on June 10th 2005 without any changes.

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

No anticipated economic effects will result from adoption of this regulation.

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

7. 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.

The regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is no more stringent than what is established by federal law.

9. 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.

This regulation does not address fees changes.