

PROPOSED REGULATION OF THE STATE
ENVIRONMENTAL COMMISSION

LCB File No. R037-03

July 31, 2003

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

AUTHORITY: §§1-17, NRS 233B.050 and 445B.210.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. 1. *The Commission may consolidate two or more proceedings if it appears that the issues are substantially the same and the rights of the parties will not be prejudiced by the consolidation.*

2. At a consolidated hearing, the Commission will determine the order in which the parties introduce evidence and present testimony.

3. If two or more parties have substantially similar interests and positions, the Commission may, at any time during the hearing, limit the number of witnesses who will be allowed to testify.

Sec. 3. 1. *The Commission may allow any pleading or motion to be amended or corrected, or any omission in the pleading, motion or other papers to be supplied.*

2. Pleadings, motions and any other papers will be liberally construed, and any defects which do not affect the substantial rights of a party may be disregarded by the Commission.

3. Each pleading must be verified by the party who submits the pleading.

4. Each amendment to a pleading must be served on all parties.

5. Each document which is required to be served must contain an acknowledgment of service or certificate of mailing.

Sec. 4. 1. The Commission may, upon its motion or a motion by a party, order briefs to be filed before or after a hearing and shall prescribe the period during which the briefs must be filed.

2. Each brief must be accompanied by an acknowledgment of service or a certificate of mailing for all parties.

Sec. 5. At any hearing, each party may enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the hearing.

Sec. 6. 1. If the Commission has reason to believe that many witnesses will appear at a hearing or that a substantial amount of technical testimony will be necessary, the Commission may require parties and witnesses to submit their testimony in writing before the hearing.

2. If written testimony is submitted, the witness shall appear at the hearing to:

(a) Affirm that his written testimony is true and correct and that he personally prepared or directed its preparation; and

(b) Submit to cross-examination.

3. Written testimony may not be read into the record, but must be entered into evidence as an exhibit. The Commission may require a witness who has submitted written testimony to summarize the testimony at the hearing.

4. If written testimony is required, the Commission will notify the parties of that requirement in the manner determined by the Commission. The notice will include a statement that the parties will be required to appear at the hearing.

Sec. 7. *Each notice, document, finding of fact, order or opinion issued by the Commission or any document which a party is required to serve must be served upon each party to the proceeding by personal service or certified mail. If the service is by certified mail, the service is complete when a true copy of the document, properly addressed and stamped, is deposited with the United States Postal Service.*

Sec. 8. 1. *There may be no ex parte communication between the Commission and any party or intervener concerning the merits of any case which has not been decided.*

2. *If an ex parte communication occurs, the Commission may make any orders or take any action fairness requires. Upon notice and a hearing, the Commission may take appropriate disciplinary action against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.*

Sec. 9. 1. *With the approval of the Commission, the parties may stipulate as to any fact in issue, by written stipulation introduced in evidence as an exhibit or by an oral statement made upon the record. The stipulation is binding only upon the parties so stipulating and is not binding upon the Commission.*

2. *The Commission may require independent proof of any stipulated fact.*

Sec. 10. 1. *A person who appears in a proceeding shall conform to the recognized standards of ethical and courteous conduct as determined by the Commission. All parties to a hearing, their counsel and the spectators shall conduct themselves in a respectful manner.*

2. *The Commission may take any action which it determines is necessary to maintain order during a hearing, including, without limitation:*

(a) Excluding a party or his attorney or authorized representative from the hearing;

(b) Excluding a witness from the hearing; and

(c) Limiting the taking of testimony and presentation of evidence during the hearing.

Sec. 11. 1. *A person, other than a party to a proceeding, who believes that he may be directly and substantially affected by the proceeding may request an order to intervene in the proceeding by filing a written petition for leave to intervene with the Commission.*

2. Except as otherwise provided in this subsection, a petition for leave to intervene must be filed with the Commission not later than 10 days after the Department issues its notice of action pursuant to NRS 445B.330. The petitioner shall serve a notice of a petition for leave to intervene upon each party to the proceeding. A party may file a response to the petition within 5 days after receipt of the petition. If a petitioner files a petition for leave to intervene with the Commission after the period prescribed in this subsection, the petition must set forth the reason for the delay in filing the petition. The petition for leave to intervene must:

(a) Identify the proceeding in which the petitioner requests leave to intervene;

(b) Set forth the name and address of the petitioner and, if the petitioner is represented by an attorney or other authorized person, the name, address and telephone number of the attorney or other authorized person;

(c) Contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding;

(d) Set forth the manner in which the petitioner will be affected by the proceeding; and

(e) Include a statement whether or not the petitioner intends to present evidence in the proceeding.

3. If a petition for leave to intervene demonstrates a direct and substantial interest in the subject matter of the proceeding or any part of the proceeding and does not unreasonably broaden the issues or prejudice any party to the proceeding, the Commission may grant leave

to intervene or otherwise appear and participate in the proceeding with respect to the matters set forth in the petition.

4. If it appears during a proceeding that an intervener has no direct or substantial interest in the proceeding or that the public interest does not require his participation in the proceeding, the Commission may dismiss the intervener from the proceeding.

Sec. 12. *The Commission, or any party to a proceeding before the Commission, may cause the depositions of witnesses to be taken in the manner prescribed in the Nevada Rules of Civil Procedure.*

Sec. 13. NAC 445B.875 is hereby amended to read as follows:

445B.875 1. As used in NAC 445B.875 to 445B.899, inclusive, *and sections 2 to 12, inclusive, of this regulation*, unless the context otherwise requires, the *words and* terms defined in NAC 445B.877 to 445B.884, inclusive, have the meanings ascribed to them in those sections.

2. The meanings ascribed to words not included in NAC 445B.877 to 445B.884, inclusive, are in accordance with applicable sections of NAC governing air quality, water pollution or solid waste management and of chapters 444, 445A and 445B of NRS.

Sec. 14. NAC 445B.892 is hereby amended to read as follows:

445B.892 1. ~~{Subpoenas}~~ *A subpoena* to compel attendance of any person at a hearing or to require the production of books, records or other documents may be issued by the Commission.

2. ~~{Requests}~~ *A request* for the issuance of ~~{subpoenas}~~ *a subpoena* must be made to the Commission in writing ~~{no}~~ *not* less than ~~{5 days prior to}~~ *10 days before* the hearing date, setting forth the reason and necessity for the ~~{subpoenas.}~~ *subpoena. The request for the issuance of a subpoena must be accompanied by an original and two copies of the proposed*

subpoena. Upon good cause shown, ~~[subpoenas]~~ *a subpoena* may be issued at the request of any party to the hearing at any time. The Commission may issue ~~[any subpoenas]~~ *a subpoena* on its own initiative without request.

3. *The Commission, upon a motion made promptly or at or before the time specified in the subpoena for compliance, may:*

(a) *Quash the subpoena if the subpoena is unreasonable or oppressive; or*

(b) *Condition the denial of the motion upon the payment of the costs of the subpoena.*

4. All costs incident to ~~[subpoenas]~~ *a subpoena* issued at the request of ~~[appellant]~~ *a party* must be borne by the ~~[appellant. The Commission may demand payment of those costs prior to the issuance of the subpoenas.]~~ *party. The party shall prepare the subpoena and cause service of the subpoena to be carried out.*

Sec. 15. NAC 445B.895 is hereby amended to read as follows:

445B.895 1. The parties may appear in person and may be represented by counsel. All testimony must be given under oath and recorded verbatim by human or electronic means. The matter ~~[must then]~~ *may* be heard in the following manner:

(a) ~~[Prior to]~~ *Before* testifying, the witness must state his name, address ~~[,]~~ and business, employment ~~[,]~~ or position . ~~[- Subsequent comments and testimony may be preceded by name only;]~~

(b) Opening statement and presentation of the State's evidence followed by cross-examination by appellant . ~~[,]~~

(c) Opening statement and presentation of evidence by appellant followed by cross-examination by the State . ~~[,]~~

(d) The parties may then respectively offer rebutting testimony only, unless the Commission, in its discretion, permits additional evidence. In the exercise of its discretion, the Commission will consider the relevance and necessity of the new matter expected to be brought out by the additional testimony . ~~[; and]~~

(e) Closing argument of the State, closing argument of appellant and rebuttal by the State.

2. *The Commission may limit the time and scope of the examination of witnesses and disallow repetitive testimony.*

3. Hearings are open to the public until such time as confidential information, within the meaning of chapter 445B of NRS or applicable sections of this chapter or chapter 445A of NAC, is admitted to the record, at which time the hearing will be closed.

Sec. 16. NAC 445B.896 is hereby amended to read as follows:

445B.896 1. At the conclusion of the hearing, the Commission will take the case under submission and will notify the appellant ~~[by certified mail]~~ *and any other party to the hearing* of its findings and recommendations in writing within 30 days after the date of the hearing.

2. Final recommendations will be in writing and will separately state findings of fact and conclusions of law. Findings of fact and recommendations will be based upon substantial evidence. Findings of fact will include a concise statement of the evidentiary facts supporting the findings.

Sec. 17. NAC 445B.897 is hereby amended to read as follows:

445B.897 ~~[Transcripts will be furnished to any party upon payment of the fees prescribed by the Commission.]~~

1. Each hearing must be recorded electronically. An electronic recording of the hearing must be made available for inspection or copying. A party who requests a copy of an electronic recording shall pay the cost to copy the recording.

2. A party may request that a hearing be recorded by a court reporter who is certified pursuant to chapter 656 of NRS. The party shall pay the costs relating to the services of the court reporter, including the cost charged by the court reporter for providing a transcript of the hearing.