

ADOPTED REGULATION OF THE STATE
ENVIRONMENTAL COMMISSION

LCB File No. R227-03

Effective April 20, 2004

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

AUTHORITY: §§1-10, NRS 233B.050 and 445B.210.

A REGULATION relating to the State Environmental Commission; revising the rules for practice before the Commission; and providing other matters properly relating thereto.

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

Sec. 2. 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. 3. 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. 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. 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 calendar days after the notice of appeal related to the proceeding in which the intervention is sought is filed with the Commission pursuant to the provisions of NRS 445B.340. 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 calendar 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 indicating 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. 6. 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 5, 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. 7. NAC 445B.890 is hereby amended to read as follows:

445B.890 Any person requesting a hearing before the Commission concerning a final decision of the Department ~~[pursuant to chapter 445B of NRS]~~ may do so by filing a request, within 10 days after notice of the action of the Department, on form 3* with the State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada 89706-0851.

*(See adopting agency for form.)

Sec. 8. 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 be heard in the following manner:~~

~~—(a) Prior to 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.]~~
pursuant to the provisions of NAC 445B.897.

2. *The Commission:*

(a) *Will determine the order of the presentation of evidence; and*

(b) *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. 9. NAC 445B.896 is hereby amended to read as follows:

445B.896 1. At the conclusion of the hearing, the Commission ~~{will}~~ *may* 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. 10. 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 must pay the cost to copy the recording.

2. In addition to the provisions of subsection 1, a party may request that a hearing be recorded by a court reporter who is certified pursuant to chapter 656 of NRS. A party who requests that a hearing be recorded by a court reporter must 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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R227-03**

The State Environmental Commission adopted regulations assigned LCB File No. R227-03 which pertain to chapter 445B of the Nevada Administrative Code.

Notice date: 1/23/2004

Hearing date: 2/26/2004

Filing date: 4/20/2004

INFORMATIONAL STATEMENT

The regulation allow the following provisions: The SEC can order briefs to be filed before or after a hearing; it can allow a party to intervene in a proceeding by filing a written petition, along with specifying time periods and minimum content of such petitions. The SEC can further allow interveners to appear in proceedings and/or be dismissed from proceedings, where no substantial direct interest or public interest is apparent.

The regulation also allow the SEC to consolidate a proceeding, where issues are substantially the same and rights of parties are not prejudice; in such proceeding, moreover, the SEC may determine the order in which the parties introduce evidence and present testimony as well as limit redundant testimony .

The amendments further allow the SEC to take any action to maintain order during a hearing, require hearings to be recorded electronically, and where a court reporter is requested by a party, the cost for such services are paid for by the requesting party.

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 proposed regulation was noticed by the SEC in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates – January 28, February 4, and February 11, 2004. The public was subsequently mailed a public notice and meeting agenda for the SEC hearing; the SEC mailing list was used for both mailings. The proposed regulation was also posted on the SEC web site at the following address:
<http://www.sec.nv.gov/main/hearing0204.htm>

At the SEC hearing a specific time period for public comment was announced, however no comments were offered. The SEC Deputy Attorney General, Susan Gray presented the proposed regulation at the hearing.

2. The number persons who:

- | | |
|---|----|
| (a) Attended February 26, 2004 hearing; | 40 |
| (b) Testified on this Petition at the hearing; | 1 |
| (c) Submitted to the agency written comments: | 0 |

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

See # 1 outlined above

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.

A minor change to the above referenced regulation was approved by the SEC at the February 26, 2004 public hearing held at the Department of Wildlife in Reno, Nevada. The change adopted is not substantive and was actually contained in the original draft regulation that was submitted to the Legislative Counsel Bureau (LCB) for drafting. The SEC Deputy Attorney General Susan Gray drafted the original SEC regulation in cooperation with the LCB drafters.

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

The proposed regulation will not have an economic impact, either immediate or long term, on the regulated industry.

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

There will not be additional costs to the State Environmental Commission for enforcement of 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. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulation does not overlap or duplicate any regulations of other state or government 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.

Not applicable

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.

Not applicable