

# **PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION**

## **LCB File No. R098-16**

### **Notice of Regulatory Hearing Adoption of Regulations and Other Matters Before the State Environmental Commission**

The State Environmental Commission (SEC) will hold a meeting on Wednesday, October 12, 2016 at 10:00 am in Carson City. The meeting location is the Bryan Building, located at 901 South Stewart Street (2nd floor, Tahoe Room). The purpose of the meeting is to receive comments from all interested persons regarding the information listed on this notice and the meeting agenda. The following information is provided pursuant to the requirements of NRS 233B.0603.

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#### **R084-16: Bureau of Air Quality Planning & Bureau of Air Pollution Control – Adoption by Reference**

The Nevada Division of Environmental Protection (NDEP) is delegated to implement certain federal standards of performance for new stationary sources (NSPS) and National emission standards for hazardous air pollutants for source categories (NESHAP) rules that apply in Nevada. The proposed amendments update the State’s “adoption by reference” regulation, so that Nevada can request delegation for the implementation of new and revised NSPS and NESHAP promulgated since the last update. This will allow the regulated industry to continue to work with the State rather than the USEPA. In addition, this amendment will update the Agency’s adoption of federal PSD rules, as well as revisions to federal test methods.

The NSPS, NESHAP and other rule amendments proposed for adoption are federal rules, and the regulated business/industry must comply with them regardless of whether USEPA or the NDEP implements them. Therefore, there will be no added economic impacts on the regulated industry due to the NDEP’s proposed adopt-by-reference regulation update. Because the NDEP has an effective, cooperative working relationship with industry in Nevada, industry prefers that the NDEP implement the federal rules. The PSD amendments will have a beneficial impact on industry because they alleviate certain permit requirements for greenhouse gases and the 2015 ozone national ambient air quality standards.

The proposed amendments will have no economic effect on the public or the NDEP.

The proposed amendments adopt federal regulations from 40 CFR Parts 51, 52, 60 and 63 in order to allow the NDEP to implement them in Nevada. The proposed amendments are no more stringent than what is established by federal law and they do not address fees.

### **R085-16: Bureau of Air Quality Planning & Bureau of Air Pollution Control – Operating Permit Program Reform**

In an effort to streamline the NDEP’s air quality operating permit programs and align the resources spent on permit applications with the benefit to air quality, the NDEP is proposing to reform the Class II, Class III and Class IV provisions as they exist in NAC 445B.001 to 445B.3689, inclusive.

The amendments propose to:

- Eliminate the permit requirement for Class III and Class IV sources and redefine a Class II source. Existing Class III and Class IV sources will either not require a permit or will become a Class II source.
- Amend the public notice requirements for Class II permits to (1) add a requirement for public notice if the source is/will be located near a sensitive population, (2) add a threshold for PM<sub>2.5</sub> emissions, and (3) develop a timeline for acting on an application for a Class II permit that requires public notice.
- Housekeeping: Combine the current definitions for “Class I-A application” and “Class I-B application” into “Class I application.”

The NDEP will develop additional Class II general permits for appropriate categories of sources/activities. Additionally, the NDEP will work with area sources through outreach and education programs to assist them in compliance with federal requirements.

The proposed amendments will streamline the NDEP air quality permitting process to further the timely processing of permit applications and better align the resources being spent by the NDEP on processing applications with the consequent benefit to air quality. With the elimination of the Class III and Class IV permit programs, NDEP staff will be able to concentrate on the larger stationary sources that emit more pollutants. Currently, the NDEP often invests as much time to process a Class III application as a Class II, and the air quality benefit is often substantially less.

Within the Class II category of sources, appropriate “general” permits will be developed by the NDEP to cover certain operations or activities that are substantially similar in nature and are performed by multiple stationary sources, reducing both cost and time required for such sources to obtain a permit.

The proposed regulation will have an economic impact on existing Class III and Class IV permit holders. Of the current Class IV permits, it is anticipated that about 90 percent will be rescinded,

and of the current Class III permits, it is anticipated that about 70 percent will be rescinded, eliminating all annual maintenance fees and any future permit-associated costs for those sources. Regarding the sources that are anticipated to transition into the Class II program, more than 25 percent are expected to qualify for a general permit, which costs less.

The proposed regulation will have no economic impact on the public. There may be a small increase or decrease in income to the agency with the transition of some Class III and Class IV sources to Class II. Any additional income will be used to supplement the cost of outreach and education to assist sources subject to federal requirements but are no longer required to have an NDEP operating permit.

The proposed amendments do not overlap any other State or federal regulations. They are no more stringent than what is established by federal law and do not impose a new fee. They do; however, eliminate the Class III and Class IV permitting programs and therefore eliminate associated application and annual maintenance fees.

### **R091-16: Bureau of Waste Management**

The proposed amendments pertain to NAC Chapter 444. For NDEP to administer the federal hazardous waste program at the State level, the NDEP must ensure its regulations are consistent with federal regulations. Because the federal hazardous waste regulations are occasionally modified, the NDEP must also update its corresponding regulations. In 2007, 2008, and 2009, the SEC adopted State regulations to reflect the current federal regulations through July 1, 2008. Following each SEC adoption, NDEP submitted an amended program authorization application to USEPA reflecting the regulatory changes.

In 2015, USEPA examined the three state program revision applications, as mentioned above, in conjunction with conducting a comprehensive review of the Nevada Hazardous Waste program regulations. As a result, the NDEP agreed to address specific federal regulations and, in addition, is proposing amendments that streamline the “adoption by reference” process.

The proposed regulation will have no economic impact on the public. There may be a small decrease in economic impact to businesses due to the amendments simplifying compliance by correcting and clarifying the existing regulations. There will be no economic impact to the NDEP to enforce the regulatory changes. The proposed amendments do not overlap any other State or federal regulations and are not more stringent than what is established by federal law. The proposed amendments do not impose a new fee.

## **R098-16: Bureau of Air Quality Planning – Alternative Fuels**

The NDEP is proposing to update and modernize the alternative fuels in fleets program (NAC 486A) to reflect changes in alternative and conventional fuels, and in new clean vehicle technologies available to regulated fleets.

The amendments propose to:

- Eliminate the requirement that gasoline-powered vehicles acquired before 2017 run reformulated gasoline (RFG). A change in federal fuel standards that takes effect in 2017 will require all gasoline sold in Nevada to meet the same standards as California Phase 3 reformulated gasoline, which along with the similar Arizona Cleaner Burning Gasoline formulation is the only RFG available in this region. In effect, the conventional gasoline that will be required to be sold in every state will equal the highest emission-reduction standards in the world by federal mandate; there will be no cleaner alternative for gasoline-powered engines.
- Eliminate California Phase 3 reformulated gasoline and Arizona Cleaner Burning Gasoline from the list of Alternative Fuels because the same formulation will become conventional gasoline nationwide.
- Lower the percentage of new vehicles acquired by regulated fleets that must be alternative fuel vehicles from the current 90% to 20%. This change will serve as a “reset” to the program. It aligns the acquisition percentage requirement to reflect the percentage of vehicles some fleets in the program typically purchase that are gasoline-powered (up to 80%). It constitutes a fresh benchmark that can be strengthened as new low-emission technologies are developed by the automotive industry and adopted by fleets, such as battery electric and plug-in electric vehicles. It is particularly important for these technologies to be given time to be developed for the types of vehicles that state and local agency fleets usually purchase (pickups, vans, SUVs, and all-wheel drive vehicles).
- Incentivize the acquisition of battery electric and plug-in hybrid electric vehicles by allowing for the acquisition of a non-qualifying vehicle for every battery electric and plug-in hybrid electric vehicle acquired.
- Amend the definition of “Clean Vehicle” to include hybrid electric, plug-in hybrid electric, battery electric vehicles, and SmartWay and SmartWay Elite vehicles. This definition change is needed so that new low emission vehicle technologies are recognized and accounted for under the program.
- Amend the definition of “Clean Vehicle” to also include vehicles that are equipped with and utilize a vehicle telematics system. This telemetry device and associated software allows fleet managers to monitor vehicle systems and usage in a manner that reduces emissions. For example, it alerts the fleet manager when a vehicle’s emission system is not functioning correctly and needs to be repaired or can be used to flag excessive idling.

- Add two alternative formulations of diesel fuel to the list of allowable alternative fuels. GDiesel is a Nevada-refined product that has been an allowable alternative fuel by action of the Administrator under NAC 486A.140 since 2012; Renewable Diesel is a low carbon diesel fuel that has recently become available in our region.
- Simplify fleet reporting requirements by removing unnecessary information and certification, but still retaining the enforcement authority necessary to fulfill the mission of the program.

These amendments will realign the program with changes in alternative and conventional fuels and in new clean vehicle technologies available to regulated fleets in a manner that will permit the fleets to adopt these technologies and have viable options for compliance, while assuring that fuel and vehicles with lower emissions are being used.

This regulatory petition does not regulate private businesses or industry so will not have an economic impact on them. It may have a positive economic impact on the public due to the reduction of costs for public fleet agencies who are currently importing RFG at premium prices and there will be no economic impact to the NDEP for enforcement. The proposed amendments do not overlap any other State or federal regulations and are not more stringent than federal law. The proposed amendments do not address fees.

#### **R106-16: Bureau of Corrective Actions – Underground Storage Tanks**

The proposed amendments pertain to NAC 459.9921 through NAC 459.999, inclusive. The NDEP proposes to adopt, by reference, the provisions of 40 CFR 280.10 to 280.116 and 280.240 to 280.252, as they existed on July 15, 2015. This is in response to the USEPA, through the federal Office of Underground Storage Tanks (OUST), which recently updated the federal code of regulations 40 CFR 280 for the first time in 30 years, when the first UST regulations were promulgated. The proposed amendments also include the addition of a delivery prohibition requirement that more accurately reflects USEPA requirements in the 2005 Energy Policy Guidance documentation regarding operation and maintenance of underground storage tanks. The proposed amendments are also intended to eliminate any duplication and inconsistencies in State regulations that may have been present upon the effective date of the updated federal UST regulations.

The proposed amendments are “adopt by reference” of federal rules. The regulated business/industry must comply with them regardless of whether USEPA or the NDEP implements them. Therefore, there will be no added economic impacts on the regulated industry due to the proposed adopt-by-reference regulation update. Industry prefers that the NDEP, rather than USEPA, implements the federal rules. The proposed amendments will have no economic impact on either the public or the NDEP. The proposed amendments adopt federal regulations from 40 CFR 280 to allow the NDEP to implement them in Nevada through delegation under

State Program Approval by the federal government. The proposed amendments are no more stringent than what is established by federal law and do not address fees.

### **R123-16: Bureau of Corrective Actions – Certification Program**

The proposed amendments pertain to NAC Chapter 459. The amendments propose to:

- Remove reciprocity as a mechanism for certification.
- Remove the “specialist in the management of hazardous waste” designation.
- Comply with the updated underground storage tank code of federal regulations (40 CFR 280.245) by including the certification of persons providing approved training programs for underground storage tank operators.
- Require certification renewal within one year of the certificate expiration date.

The proposed changes are needed to keep Nevada’s environmental certification program effective and responsive to current standards of practice and federal requirements.

The proposed regulation will have no economic impact on the public. There will not be a negative economic impact to businesses or industry because the associated fee is voluntary; however, for those who choose to participate in the program, there may be a positive economic impact due to potential profit made from certifying other individuals. There may be a nominal economic impact to NDEP which the voluntary fees will balance. The proposed amendments do not overlap any other State or federal regulations and are not more stringent than what is established by federal law. The proposed amendments do impose a new fee; however, the fee is voluntary for those who choose to participate in the program.

**Additional Information:** Persons wishing to comment on the proposed actions of the SEC may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to: State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. The SEC must receive written submissions 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.

Members of the public can inspect copies of the regulations to be adopted at the State Library and Archives in Carson City (100 Stewart Street), and at the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Carson City office is located at 901 South Stewart Street, Suite 4001 and the Las Vegas office is located at 2030 E. Flamingo Rd. Suite 230.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, the public notice for this hearing was posted at the following locations: the Bryan Building (901 South Stewart Street, Carson City, Nevada); the offices of the Division of Environmental Protection in Las Vegas (2030 E. Flamingo Rd. Suite 230), at the State Library and Archives building in Carson City (100 Stewart Street), the Nevada Division of Minerals, 400 W. King Street, Carson City, NV and the Department of Agriculture, 405 South 21<sup>st</sup> Street, Sparks, NV.

In addition, copies of this notice have been deposited electronically at major library branches in each county in Nevada as specified below. This notice and the text of the proposed regulations are also available on the SEC's website at: [http://sec.nv.gov/main/hearing\\_1016.htm](http://sec.nv.gov/main/hearing_1016.htm) . The proposed regulations denoted in this notice, including previous drafts, are, or will be, posted on the Legislative Counsel Bureau's website at <http://www.leg.state.nv.us/register/> and also the Department of Administration's website at <https://notice.nv.gov/>

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 Valerie King, Executive Secretary, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249, facsimile (775) 687-5856, or by calling (775) 687-9374, no later than 4:00 p.m. on October 6, 2016.

This Notice was provided to or posted at the following Nevada county locations:

Carson City Library  
900 North Roop Street  
Carson City, Nevada 89701-3101

Lincoln County Library  
63 Main Street  
Pioche, Nevada 89043

Churchill County Library  
553 South Main Street  
Fallon, Nevada 89406-3306

Lyon County Library System  
20 Nevin Way  
Yerington, Nevada 89447-2399

Las Vegas-Clark County Library District  
Headquarters  
833 Las Vegas Boulevard North  
Las Vegas, Nevada 89101-2062

Mineral County Public Library  
P.O. Box 1390  
Hawthorne, Nevada 89415

Douglas County Public Library  
1625 Library Lane  
Minden, Nevada 89423-0337

Pershing County Library  
1125 Central Avenue  
Lovelock, Nevada 89419

Elko County Library  
720 Court Street  
Elko, Nevada 89801-3397

Storey County Library - Closed  
Posted at Clerk's Office  
Address below:

Esmeralda County Library  
Corner of Crook & 4th Street  
P.O. Box 430  
Goldfield, Nevada 89013-0430

Storey County Treasurer and Clerk's Office  
Drawer D  
Virginia City, Nevada 89440

Eureka County Library  
10190 Monroe Street  
Eureka, Nevada 89316

Tonopah Public Library (Nye County)  
P.O. Box 449  
Tonopah, Nevada 89049

Humboldt County Library  
85 East 5th Street  
Winnemucca, Nevada 89445-3095

Washoe County Library System  
301 South Center Street  
Reno, Nevada 89501-2102

Battle Mountain Branch Library (Lander County)  
625 South Broad Street  
Battle Mountain, Nevada 89820

White Pine County Library  
950 Campton Street  
Ely, Nevada 89301