

Permanent Regulation - Informational Statement

A Permanent Regulation Relating to Water Quality

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission (SEC) LCB File No: R102-16

Permanent Regulation R102-16:

Nevada Revised Statutes (NRS) 445A.425 establishes the authority of the State Environmental Commission (SEC) to adopt regulations to carry out provisions of NRS 445A.300 - 445A.730, including standards of water quality and amounts of waste which may be discharged into waters of the State.

SPECIFIC CHANGES:

The NDEP is proposing to amend Nevada Administration Code ((NAC) 445A.070 - 445A.2234), *Standards for Water Quality*, to align with the most current recommended numeric criteria published by the federal Environmental Protection Agency (EPA) for *Escherichia coli* (*E. coli*) bacteria to protect the water contact recreation beneficial use. The proposed revisions include: (1) change the existing reference period from annual geometric mean (AGM) to geometric mean (GM) for all waters that have an existing AGM to protect the water contact recreation beneficial use; (2) change the unit of measurement from most probable number (MPN) per 100 mL to colony-forming-units (CFU) per 100 mL; (3) remove existing single value (SV) criteria of 235 MPN, 298 MPN and 576 MPN and replace with a SV of 410 CFU; (4) add a footnote that explains frequency and duration limits of the GM and SV criteria; and (5) add a definition of colony-forming-units.

1. Need for Regulation:

EPA's water quality standards regulations at 40 CFR 131.11(a)(1) require states to adopt protective criteria that are based on sound scientific rationale. Nevada's existing *E. coli* bacteria standards for the protection of the water contact recreation beneficial use are based on EPA criteria published in 1986. EPA published updated *E. coli* bacteria criteria in 2012. The 2012 criteria reflect significant research and new scientific developments that have occurred since 1986.

The new criteria comprise a more defined duration and frequency. The current AGM is changed to a GM that must be met in any 30-day interval. The existing *E. coli* standards

include single value criteria for different levels of use (Beach—SV 235; Moderate—SV 298; Light—SV 410; and Infrequent—SV 576). The new criteria contain one single value, 410, that must not be exceeded more than ten percent of the time in any 30-day interval. This criterion has been determined to be protective of all levels of use. The method used to estimate colony-forming-units has been determined to be less variable than the method used to estimate the most probable number and therefore CFU estimates better reflect the true bacteria levels in a given sample.

To maintain a more restrictive standard to protect the Lake Tahoe designation of a Water of Extraordinary Aesthetic or Ecological Value, the existing S.V. 126 standard is being retained and a GM is not being proposed for Lake Tahoe and its tributaries. The units are being changed from MPN to CFU and a footnote indicating that the S.V. must not be exceeded more than ten percent of the time in any 30-day interval is being added.

Adoption of EPA's 2012 criteria ensures the most appropriate protection for recreational users of Nevada's surface waters.

2. 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.

On September 21, 2017, a workshop was conducted in Las Vegas at the Wetlands Park, 7050 E. Wetlands Park Lane. On September 25, 2017 a workshop was conducted in Carson City at the Bryan Building, 901 S. Stewart Street and on September 28, 2017 a workshop was conducted in Elko at the Elko County Library, 720 Court Street.

A total of fifteen (15) members of the public attended the workshops.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at: http://sec.nv.gov/main/hearing_1217.htm .

Following the workshop, the SEC held a formal regulatory hearing on December 5, 2017 at the Legislative Building, Room 4100, located at 401 South Carson Street and video-conferenced in Las Vegas at the Grant Sawyer Building, Room 4412E, located at 555 East Washington Ave. A public notice for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at NDEP in Las Vegas, at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed permanent regulation R102-16 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list.

The public notice for the proposed temporary regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_1217.htm .

3. The number of persons who attended the SEC Regulatory Hearing:

(a) Attended December 5, 2017 hearing: 2 (approximately)

(b) Testified on this Petition at the hearing: 0

(c) Submitted to the agency written comments: 1

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

Comments were solicited from affected businesses through e-mail, a public workshop and at the December 5, 2017 SEC hearing as noted in number 2 above.

5. 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 regulation was adopted with non-substantive changes as a result of the written comment.

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

Regulated Business/Industry. The regulation will have no impact on regulated business/industry.

Public. The regulation will have no economic impact on the public.

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

Enforcing Agency. The regulation will have no economic impact on NDEP.

8. 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 amendments do not duplicate any other State regulations.

9. 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.

10. 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.

The regulation does not address new fees.