

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: R109-16

Permanent Regulation R109-16:

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*, by making numerous numeric criteria and formatting changes to provide clarity and consistency throughout the water quality standards (WQS) tables. The proposed revisions include: (1) remove references to “natural conditions” or “no adverse effects” and establish numeric criteria for alkalinity, color and turbidity based on the most current U.S. Environmental Protection Agency (EPA) criteria; (2) remove references to the 95th percentile for the total dissolved solids beneficial use numeric criteria; (3) remove Xs in the Beneficial Use columns that refer to secondary uses; (4) reformat how the nitrogen species are presented in the WQS tables; (5) add a footnote that specifies the NAC criteria for Toxic Materials; (6) move the ammonia standards tables so they occur after standards applicability discussions and beneficial uses; and (7) make other minor formatting changes for clarity and consistency of parameter names and units throughout all the WQS tables.

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. Many waterbodies contained in the NAC have criteria that reference “natural conditions” or “no adverse effects” for alkalinity, color and turbidity; however it is difficult to determine natural baseline conditions making it problematic to assess if the standards are being met and to establish discharge permit limits. Numeric criteria based on the

most recent EPA recommended criteria are proposed for alkalinity (single value (S.V.) \geq 20 mg/L), color (S.V. \leq 75 PCU), and turbidity (\leq 10 NTU).

The existing total dissolved solids (TDS) numeric criteria for many streams is “S.V. \leq 500 mg/l or the 95th percentile (whichever is less).” All references to the 95th percentile value will be removed as this is inappropriate as a beneficial use standard. Higher water quality is protected through antidegradation requirements.

The numeric criteria shown in the Water Quality to Protect Beneficial Uses column in the WQS tables are designed to protect the most restrictive use which is indicated in the Beneficial Uses columns by an asterisk. Inconsistencies throughout the WQS tables as to the most restrictive use protected by a given parameter are being corrected. The current practice of indicating secondary uses with an X is confusing and is inconsistent throughout the WQS tables. Since it is assumed that any secondary uses associated with a particular parameter are protected under the most restrictive use, the Xs indicating secondary uses are not necessary. Removing the Xs simplifies the Beneficial Uses columns and makes it easier to see the most restrictive use.

The nitrogen species are currently placed in one row in the WQS tables. For clarification, each species (total nitrogen, nitrate and nitrite) will be placed in separate rows. No changes to the numeric criteria are being proposed at this time.

Water quality criteria for toxic materials applicable to all named waters are contained in NAC 445A.1236. For clarification a footnote specifying the NAC reference is being added to each WQS table.

Definitions for BOD (biochemical oxygen demand), Log Mean, Mean, Median, MF (Membrane Filtration), and $\mu\text{g/L}$ will be added to NAC 445A.11704. Other revisions include adjusting a reach on the Humboldt Rive that overlaps the reach below, adjusting the TDS standard on the lower Humboldt River, and refining the footnote on the Dissolved Oxygen standard for Topaz Lake to apply when the Lake is stratified.

Other revisions for clarification, correctness and consistency include: (1) changing mg/l to mg/L; (2) changing Total Phosphates to Total Phosphorus; (3) changing Suspended Solids to Total Suspended Solids and (4) updating the reference to the Colorado River Salinity Standards to 2014.

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 R109-16 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: 0

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.

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.