

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

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

State Environmental Commission (SEC) Permanent No: R046-19

Permanent Regulation R046-19:

Nevada Revised Statutes (NRS) 445B.210 establishes the authority of the State Environmental Commission (SEC) to adopt regulations to prevent, abate and control air pollution. NRS 445B.300 establishes specific authority of the SEC regarding the ability to charge appropriate fees to pay the expenses of administering NAC Chapter 445B.

SPECIFIC CHANGES:

The NDEP is proposing a comprehensive amendment to the fee structure in NAC 445B.327 for the Bureaus of Air Pollution Control and Air Quality Planning (Air Program). The amendment seeks to update the Air Program's approach to how fees are assessed to: a) align the revenue generated by the operating permits program to the increasing costs associated with the implementation of the Air Program, and b) redistribute the fee load across the regulated industry to reflect workload and resources required to implement the Air Program.

Specifically, the amendments will:

For fees in general,

- Eliminate annual maintenance fees based on emissions for Class I sources
- Increase application and maintenance fees for most category of permits; and
- Add definitions for terms used to describe engineering and administrative services provided in the processing of permit applications where appropriate.

To alleviate the impact of the proposed fees and provide enough time for the regulated community to adjust to the new schedule: a) the application fees will be delayed by six months, becoming effective on July 1, 2020; b) annual maintenance fees will follow a three-year phase-in approach.

For permit application fees,

- Increase the fees for new applications, revisions, and renewals of Class I Operating Permits to Construct and Operating Permits with a Prevention of Significant Deterioration (PSD) action;
- Create a tiered fee structure for new applications, revisions, and renewals of Class I

Operating Permits to Construct and Operating Permits without a PSD action based on the number of emission units associated with the application;

- Create a tiered fee structure for new applications, revisions, and renewals of Class II Operating Permits based on the number of emission units associated with the application;
- Create a tiered fee structure for a Class II Surface Area Disturbance Permits based on the number of acres disturbed; and
- In certain instances create new fees where a fee was not previously charged for engineering and administrative services provided in conjunction with processing permit applications.

For annual maintenance fees,

- Increase the fee for all Class I permits;
- Create a tiered fee structure for Class II Operating Permits based on the potential to emit pollutants, the acreage of surface area disturbances, and the number of emission units; and
- Increase the fees for Class II Surface Area Disturbance Permits.

1. Need for Regulation:

The basic fee structure for the operating permits program has not been altered or amended since 2006. In that time, the state has grown and the size and scope of the air pollution control program has increased. The program is predominantly a fee based program, receiving no general fund revenue to support its mission. Revenues have declined steadily in recent years; for instance, maintenance fees collected from major emission sources, particularly coal-fired power plants, have been significantly reduced as some of those sources have ceased operations. There has not been any significant increase in federal grant funding that NDEP relies on to support the Air Program. At the same time, program operating expenses have steadily increased. Finally, it was recognized that preparation and maintenance of both Class I and Class II permits requires engineering analysis and staff time resulting in costs well in excess of the fee currently being charged. The Air Program has been supplementing the increasing difference between revenues and expenses through their reserve funds. However, as also noted by the Legislative Financial Committee during the 80th Legislative Session, the significant and consistent decline in reserve funds represent an issue that the Air Program must address. Therefore, it is necessary to realign the fee structure and increase operating permit fees to better reflect the expenses of administering the program.

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 5, 2019 NDEP conducted a public workshop on regulation R046-19. The workshop was held in Carson City, video conferenced to Las Vegas, and provided online as a webinar. The Carson City location was at NDEP office at 901 South Stewart Street in the Great Basin Conference Room. The Las Vegas location was at the NDEP office at 2030 East Flamingo Road, Suite 230.

A total of sixteen (16) 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_1019.htm.

Outreach was also provided via webcasts on August 6 and August 21, 2019.

Following the outreach efforts, the SEC held a formal regulatory hearing on October 2, 2019 at the Nevada Legislative Building, room 3138, located at 401 South Carson Street and video-conferenced in Las Vegas at the Grant Sawyer Building, Room 4401, located at 555 East Washington Ave. A public notice for the regulatory meeting and a copy of the proposed regulation were posted at the State Library in Carson City, at NDEP offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and provided to the SEC email distribution list. The public notice was also posted 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.

The agenda and information where supporting documents could be located were posted at NDEP offices located in both Carson City and 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, on the SEC website, and provided to the SEC email distribution list.

The public notice for the proposed 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_1019.htm.

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

- (a) Attended October 2, 2019 hearing: 21 (approximately)
- (b) Testified on this Petition at the hearing: 1

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(c) Submitted to the agency written comments: 8

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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 October 2, 2019 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 changes as a result of public comment by industry requesting NDEP to implement the fee increases with greater flexibility regarding the timing of implementation.

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

(a) Regulated Business/Industry. These amendments will have an economic effect on the regulated industry, though it is difficult to gauge the degree. Much of the fee structure associated with the air pollution control operating permit program is being revised. Care was taken to limit fee increases on permits and services affecting small businesses.

(b) Public. The regulation will have no direct economic impact on the public.

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

(a) Enforcing Agency. There will be no additional costs to the agency.

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 adopted amendments do not overlap, duplicate or conflict with any regulations of other government agencies.

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 regulations propose increased fees and a revised fee structure. The total Air Program budget is estimated at \$8,500,000, with total revenue from fees estimated at \$4,500,000 with the proposed fee structure.

The revenue collected will be used to both administer the current air pollution permit program and air quality planning functions, and to build back a budget reserve that meets Nevada Department of Administration, Budget Division guidelines. Revenue will be used to help fully fund existing staff positions that have at times been left unfilled to help with budget savings, to purchase necessary equipment, and to maintain acceptable levels of staff training and certification. The current air program budget reserve is approximately 20% of annual budget expenditures. An additional goal of the regulation amendment is to build a budget reserve of 100% of annual budget expenditures in a 6 to 7-year time frame.