

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 Permanent No: R114-22P

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

EPA's regulations for water quality standards at 40 CFR 131.11(a)(1) require states to adopt protective criteria that are based on scientific rationale to protect beneficial uses. Nevada's existing water quality criterion (NAC 445A.1236) to protect the beneficial use of "municipal or domestic supply" (MDS) is 0 micrograms per liter (ug/L), which is based on EPA's 1980 criteria. NDEP proposes to update beryllium to the current drinking water standard of 4 ug/L. The revision in R114-22 to the current standard will eliminate "impairments" based on any detection of beryllium between the current standard of 0 ug/L and the proposed standard of 4 ug/L. Based on Nevada's 2020-2022 assessment of water quality, this revision will eliminate beryllium "impairments" on 73 waterbodies.

R114-22 proposes to change in language under NAC 445A.1236(1)(c) from "detection limit of a method" to "reporting limit of a method;" this will align the regulatory language with how laboratories typically report data. Unless requested by a client, most laboratories censor data at the reporting limit (RL), which is typically a quantitation limit. However, a client can request that the laboratory report data censored at the method detection limit (MDL), with appropriate qualifiers for results detected above the MDL, but below the RL.

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.

The Division held one hybrid (in-person and virtual) public workshop for R114-22P on October 19, 2022. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada and in the NDEP offices in Las Vegas at 375 East Warm Springs Road. NDEP also provided the option to attend the workshop virtually. The workshop was held to present the substance of, and receive public

comment on, the proposed regulation. There were approximately 14 members of the public that attended the workshop, either in-person or virtually.

The Legislative Counsel Bureau published its draft, R114-22P, in the Nevada Register on July 25, 2022. The Division accepted written comments on R114-22P up to October 24, 2022. The Division received one written comment regarding R114-22P (attached). The Division also received one verbal positive comment during the public workshop regarding R114-22P (see workshop summary, attached).

The SEC held a hybrid regulatory hearing on December 14, 2022, to consider possible action on R114-22P. The SEC posted its public notice, which included a link¹ and instructions to access R114-22P and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice 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 SEC also published the public notice in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting.

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

- (a) Attended December 14, 2022, hearing: 57 (approximately)
- (b) Testified on this Petition at the hearing: 2

- 1. Dave Simpson, on behalf of the Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
(775) 687-9548
dsimpson@ndep.nv.gov
- 2. Mary Siders, consultant to the Nevada Division of Environmental Protection
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- (c) Submitted to the agency written comments: 1

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.

¹ <https://sec.nv.gov/meetings/sec-regulatory-meeting-december-14-2022>

Comments were solicited from affected businesses through one public workshop and at the December 14, 2022, 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 Commissioners unanimously adopted R114-22P without any changes. The regulation was adopted without changes because the public and the SEC were satisfied with the proposed amendments.

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 regulatory amendments in R114-22P are not expected to have any economic effect on business.

Public. The regulatory amendments in R114-22P are not expected to have any economic effect on the public.

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

Enforcing Agency. The regulatory amendments proposed in R114-22P are not expected to result in any additional costs to the Division.

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 proposed amendments in R114-22P do not overlap or duplicate other state or 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 regulatory amendments in R114-22P are not more stringent than existing federal regulations.

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.

R114-22 does not address fees.

From: [Faulstich, John \(Reno\)](#)
To: [Dave Simpson](#)
Cc: cwood@ssalabs.com
Subject: R114-22P wording
Date: Thursday, September 15, 2022 10:52:33 AM
Attachments: [image001.png](#)

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Hi Dave,

I saw the revised wording replacing “detection” with “reporting” limit, and “at a quantifiable level”, that is going to make things much more workable for the labs, and hopefully the regulators too.

Thanks,

John Faulstich
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QC Officer / Principal Chemist

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**Public Workshop R114-22, R115-22 and R116-22
October 19, 2022**

Workshop Summary

The workshop was held in person and virtually over Microsoft TEAMS.

R114-22: NDEP staff (Weston) gave a PowerPoint presentation of the beryllium petition.

- One comment, given by Larry Bazel, was that Weston did a good job describing the difference between detection and reporting levels.

R116-22: NDEP staff (Weston) gave a PowerPoint presentation of the site-specific selenium petition before handing off the presentation to Ben Latham of Arcadis and Barry Fulton of Benchmark Environmental who went over how the site-specific criteria were developed and showing how the proposed criteria is protective of the aquatic life in the Las Vegas Wash. Following Ben and Barry's presentation, Weston showed what changes the petition makes to the NAC.

- Mary Sidors noted that any water body can have site specific selenium values using the EPA's selenium criteria guidelines.

R115-22: NDEP staff (Weston) gave a PowerPoint presentation explaining why the flood-conveyance channels need their own water quality standards before handing off the presentation to Ben Latham who went through the Arcadis and Benchmark Environmental report titled "Evaluation of existing and attainable uses for the tributaries to the lower Las Vegas Wash."

- Daniel Fischer – great presentation, I do have a question on beneficial use standards for the tributaries. The coliform standard might be exceeded. There is flow monitoring by MS4. Are we okay to meet Water Quality Standards?
 - NDEP will assess the new standards prior to the SEC hearing.
- Daniel – it was unbelievable how many people camp in those channels, though they try to keep them out.