

LCB File No. T025-02

ADOPTED TEMPORARY REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION

Filed with the Secretary of State on 11/20/2002

As adopted on November 19, 2002
Petition 2003-01

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1(a), NRS 233B.050, §§7, 445B.210

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive of this regulation.

Sec 2. 1. *The Chairman of the hearing may consolidate two or more proceedings in any appeal hearing when it appears that the issues are substantially similar and that the rights of the parties will not be prejudiced by the hearing. At a consolidated hearing, the Chairman of the hearing shall determine the order in which all the parties introduce their evidence and present testimony.*

2. Where two or more interested parties have substantially like interests and positions, the Chairman of the hearing may at any time during the hearing, if he deems it advisable in order to expedite the hearing, limit the number of witnesses presented by each interested party who will be permitted to testify.

3. Every pleading must be verified by the party submitting it.

4. Each document which is required to be served must contain an acknowledgment of service or certificate of mailing.

5. The Chairman of the hearing may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed and defects which do not affect a substantial right of a party will be disregarded. Any amendments to a pleading shall be served on all parties.

Sec 3. 1. *The Chairman of the hearing may order pre-hearing or post hearing briefs to be filed upon the request of any party or sua sponte, and specify a time limit for their filing.*

2. Each brief must be accompanied by an acknowledgment of service or a certificate of mailing to other parties of record.

Sec 4. 1. *Orders of the Commission or hearing panel will be served by mailing a copy to each party of record or his representative or by personal service.*

2. Notices, findings of fact, opinions and orders of the Commission or hearing panel, and any document filed by a party, may be served by certified mail. Service will be deemed to be

complete when a true copy of the document, properly addressed and with postage paid, is deposited in the United States mail. Service must be made on all parties of record.

Sec 5. 1. *When the particular facts of an appeal indicate that many witnesses will appear at the hearing or that a considerable amount of technical testimony will be necessary, the Chairman of the hearing may require parties and witnesses to submit their testimony in written form before the hearing date.*

2. If written testimony is submitted, the witness shall appear at the hearing to:

(a) Affirm that his written testimony is true and correct and that he personally prepared it or directed its preparation; and

(b) Submit to cross-examination.

3. Written testimony will not be read into the record, but must be entered into evidence as an exhibit. The Chairman of the hearing may, however, require a witness who has submitted written testimony to summarize it at the hearing.

4. If written testimony is required, the Chairman of the hearing will inform the parties of this requirement in such manner determined by the Commission to give the parties notice of this requirement. The notice will also inform the parties and witnesses of their obligation to appear at the hearing.

Sec 6. 1. *With the approval of the Chairman of the hearing, the parties may stipulate to any fact in issue, either by a written stipulation introduced into evidence as an exhibit or by an oral statement entered in the record.*

2. Such a stipulation is binding only upon the parties to the stipulation and is not binding on the Commission or the hearing panel.

3. The Commission or the hearing panel may require proof by independent evidence of any stipulated fact.

Sec 7. 1. *Any person who claims to have a direct and substantial interest in a proceeding and desires to participate in it as an intervener must file a petition with the Commission requesting an order permitting the intervention.*

2. The Petition to Intervene must be filed with the Executive Secretary of the Commission within 10 days of the date of service of the notice of appeal. If filed thereafter, the Petition must state a substantial reason for the delay; otherwise the Petition will not be considered. Notice of the Petition to Intervene shall be served on all parties who shall be given the opportunity to respond.

3. If a Petition to Intervene shows direct and substantial interest in the subject matter of the proceeding or any part thereof and does not unduly broaden the issues, or prejudice any party the Chairman of the hearing may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the Petition. If it appears during the course of a proceeding that an intervener has no direct or substantial interest or the public interest does not require his participation therein, the Chairman of the hearing may dismiss him from the proceeding.

4. A Petition to Intervene must be in writing and set forth the following:

a. The proceeding in which leave to intervene is sought;

b. The name and address of the petitioner and, if represented, the name, address and telephone number of his attorney or other authorized representative;

- c. A clear and concise statement of the direct and substantial interest of the petitioner in the proceedings;*
- d. The manner in which the petitioner will be affected by the proceedings;*
- e. A statement as to whether the petitioner intends to present evidence in the proceeding*

Sec 8. *At any proceeding each party of record is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, argue motions and generally participate in the proceeding.*

Sec 9. 1. *A person appearing in a proceeding shall conform to the reasonable standards of ethical and courteous conduct as determined by the Chairman of the hearing. All parties to hearings, their counsel and spectators will conduct themselves in a respectful manner.*

2. The Commission may take any action that it determines is necessary to maintain order during a hearing, including, without limitation:

- (a) Excluding the petitioner or his attorney from the hearing;*
- (b) Excluding a witness from the hearing; and*
- (c) Limiting the taking of testimony and presentation of evidence during the hearing.*

Sec 10. 1. *Subpoenas requiring the attendance of a witness from any place in the state to any designated place of hearing for the purpose of taking testimony of the witness orally before the Commission or hearing panel, may be issued by the Chairman of the Commission or the Vice Chairman of the Commission upon application in writing. Subpoenas for the production of books, records or other documents, unless directed to issue by the Commission on its own motion, will be issued only upon application in writing, which application must clearly specify, the books records or other documents requested. The Chairman or Vice Chairman of the Commission, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance may:*

- (a) Quash the subpoena if it is unreasonable or oppressive; or*
- (b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, records or other documents desired.*

2. The Commission, hearing panel or any party to any proceeding before them may cause the depositions of witnesses to be taken in the manner prescribed by law and rule of court for depositions in civil actions.

Sec 11. 1. *There may be no ex parte communication, with respect to the merits of any contested case not decided, between the hearing panel of the Commission, and any of the parties or interveners.*

2. If an ex parte communication occurs, the hearing panel of the Commission may make any orders or take any action fairness requires. Upon notice and hearing, the Commission may take any disciplinary action appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

Sec 12. NAC 445B.892 is hereby amended to read as follows:

445B.892 1. Subpoenas to compel attendance of any person at a hearing or to require the production of books, records or other documents may be issued by the commission.

2. Requests for the issuance of subpoenas must be made to the commission in writing no less than ~~[5]~~ **10** days prior to the hearing date, setting forth the reason and necessity for the subpoenas *and shall be accompanied by the subpoenas sought to be issued*. Upon good cause shown, subpoenas may be issued at the request of any party to the hearing at any time. The commission may issue any subpoenas on its own initiative without request.

3. All costs incident to subpoenas issued at the request of a ~~[appellant]~~ party must be borne by the ~~[appellant]~~ party. ~~[The commission may demand payment of those costs prior to the issuance of the subpoenas.]~~

4. The party requesting the subpoena shall be responsible for preparing and effectuating service of the subpoena.

Sec 13. NAC 445B.895 is hereby amended to read as follows:

445B.895 1. The parties may appear in person and may be represented by counsel. All testimony must be given under oath and recorded verbatim by human or electronic means. The matter must then be heard in the following manner:

(a) Prior to testifying, the witness must state his name, address, and business, employment, or position. ~~[Subsequent comments and testimony may be preceded by name only];~~

(b) Opening statement and presentation of the state's evidence followed by cross-examination by appellant;

(c) Opening statement and presentation of evidence by appellant followed by cross-examination by the state;

(d) The parties may then respectively offer rebutting testimony only, unless the commission, in its discretion, permits additional evidence. In the exercise of its discretion, the commission will consider the relevance and necessity of the new matter expected to be brought out by the additional testimony; and

(e) Closing argument of the state, closing argument of appellant and rebuttal by the state.

2. Hearings are open to the public until such time as confidential information, within the meaning of chapter 445B of NRS or applicable sections of this chapter or chapter 445A of NAC, is admitted to the record, at which time the hearing will be closed.

3. The Chairman of the hearing may limit the time and scope of the examination of witnesses; repetitive testimony may be disallowed by the Chairman of the hearing.

Sec 14. NAC 445B.897 is hereby amended to read as follows:

~~[1. Transcripts will be furnished to any party upon payment of the fees prescribed by the commission.]~~

1. Hearings shall be recorded electronically.

2. A party may request that the hearing be recorded by a certified court reporter. The party requesting a court reporter is responsible for all the costs charged by the court reporter, including the cost of transcripts of the hearing charged by the court reporter.

3. Electronic recordings will be made available for inspection or copying. The cost of copying the recording shall be paid by the person requesting the copy of the recording.

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T025-02**

INFORMATIONAL STATEMENT

1. 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.

Petition 2003-01 (Temporary), was noticed on October 17, October 22, October 23, October 29 and October 30, 2002 as a temporary regulation in the Las Vegas Review Journal and the Reno-Gazette-Journal newspapers. Regulatory workshops were conducted by the Environmental Commission on September 11, 2002. The regulation was adopted by the State Environmental Commission as a temporary regulation on November 19, 2002. There was one public oral and no written comments received by the Commission during adoption. The Great Basin Mine Watch expressed support for the regulation but expressed concern regarding the time frames for submitting pleadings and briefs. Great Basin Mine Watch requested this be revisited when the regulations come forward for final adoption. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-9308, or writing to the Commission at 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851.

2. The number of persons who:

(a) Attended the hearing:	25
(b) Testified at the hearing:	1
(c) Submitted to the agency written comments:	0

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

Comments were solicited from affected businesses by notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. No written or oral comment was received from affected businesses. See above statement for dates of the public notices and public workshops. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-9308 or writing to the Commission at 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851.

4. 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 by the State Environmental Commission on November 19, 2002 without request for amendment.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Estimated economic effect of the regulation on the business which it is to regulate;

The proposed amendments are not expected to have any economic short or long-term adverse impact upon the public.

(b) Estimated economic effect on the public;

The proposed amendments are not expected to have any economic short or long-term adverse impact upon the public.

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

The implementation of the adopted regulation is not expected to result in any additional cost by the Environmental Commission.

7. A description of any regulations of other state or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulations do not overlap or duplicate any regulations of another state or local governmental agency.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

This regulation is no more restrictive or stringent than federal requirements.

9. 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 do not provide a new fee nor increase an existing fee.