

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: R113-22P

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

1. Need for Regulation

NRS 445A.565 requires that any surface waters of the State whose quality is higher than the applicable standards of water quality as of the date when those standards become effective must be maintained in their higher quality. This maintenance of water quality is referred to as antidegradation. Furthermore, the Federal Clean Water Act regulations requires states to develop and adopt a statewide antidegradation policy and implementation methods consistent with specifications contained in Title 40 in the Code of Federal Regulations (CFR) 131.12. NDEP is proposing to amend the Nevada Administrative Code to include regulatory language to implement the antidegradation requirements set forth in NRS 445A.565 and comply with CWA 40 CFR 131.12 requirements.

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 the current iteration of R113-22P on January 25, 2024. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada. The workshop was held to present the substance of, and receive public comment on, the proposed regulation. Approximately fifty-three members of the public and regulated industry attended the workshop either in-person or virtually.

The Legislative Counsel Bureau published its initial draft, R113-22P, in the Nevada Register on July 26, 2023, and a revised draft, R113-22RP1, on February 12, 2024. The Division accepted written comments on R113-22I and R113-22P through February 2, 2024. The Division received thirteen written comments concerning R113-22I and/or R113-22P (comments and Division responses attached). In addition, the Division received several verbal questions/comments from the public during the public workshop (workshop summary attached)

The SEC held a hybrid regulatory hearing on March 21, 2024, to consider possible action on R113-22RP1. The SEC posted its public notice, which included a link¹ and instructions to access R113-22RP1 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 per week for three consecutive weeks prior to the SEC regulatory meeting.

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

(a) Attended March 21, 2024, hearing: 70 (approximately)

(b) Testified on this Petition at the hearing: 4

1. Jason Kuchnicki, on behalf of the Nevada Division of Environmental Protection
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2. Zachary Blumberg, on behalf of the Nevada Division of Environmental Protection
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3. Andrew Dixon, on behalf of the Nevada Division of Environmental Protection
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4. Lawrence Bazel, on behalf of the Clark County Regional Flood Control District
lbazel@briscoelaw.net

(c) Submitted to the agency written comments: 2 (included) from

¹ <https://sec.nv.gov/meetings/sec-regulatory-meeting-march-21-2024>

- a. Michael Drinkwater, representing the City of Sparks; Nate Allen, representing the Truckee Meadows Water Authority; Tina Magoon, representing the City of Reno; and Dwayne Smith, representing Washoe County (no contact information provided)
- b. Lisa A. Kirschner, representing Nevada Gold Mines
(801) 536-6649
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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 one public workshop and at the March 21, 2024, 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 R113-22RP1 with one minor change to correct a typographical error in section 13. The public and the SEC were satisfied with the revised proposed regulation.

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 proposed amendments will have an economic impact for new or expanded discharges in locations where data is insufficient to determine baseline water quality; however, the magnitude of the impact cannot be determined as there are too many variables to consider. The proposed regulation does allow for consideration of socioeconomic factors in setting less restrictive limits in discharge permits for Tier 2 parameters. The economic impacts associated with classifying a surface water as Tier 2.5 or Tier 3 water body would be evaluated on a case-by-case basis during the rulemaking process.

Adverse economic effects may include the need for additional treatment of point-source discharges, but the additional costs will depend on local conditions and the types and levels of parameters to be treated. Beneficial effects will include the protection of in-stream water quality and associated beneficial uses for all waterbodies, and preservation of the unique water quality attributes or the special ecological, aesthetic, and/or recreational values associated with Tier 2.5 or Tier 3 water bodies.

Immediate and long-term effects include protection of high-quality surface waters in Nevada, and preservation of the unique attributes and special water quality characteristics that may be impossible to fully restore if degradation is allowed to occur.

Public. No significant economic effect on the general public is anticipated.

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

Enforcing Agency. Although agency workload will increase, it is not possible to assign a cost as this is dependent on the number of new discharge permits proposed in waters where no data exists to establish baseline water quality.

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 R113-22RP1 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 R113-22RP1 are 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.

Not applicable; the proposed amendments do not provide for any new fees or increases to existing fees.