

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES, AGRICULTURE,
AND MINING**

**Eightieth Session
May 22, 2019**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 4:02 p.m. on Wednesday, May 22, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Heidi Swank, Chair
Assemblywoman Shannon Bilbray-Axelrod, Vice Chair
Assemblyman Alex Assefa
Assemblyman John Ellison
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Sarah Peters
Assemblyman Greg Smith
Assemblywoman Robin L. Titus
Assemblyman Howard Watts
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblywoman Maggie Carlton (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jann Stinnesbeck, Committee Policy Analyst
Allan Amburn, Committee Counsel
Nancy Davis, Committee Secretary
Alejandra Medina, Committee Assistant



OTHERS PRESENT:

Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Jennifer L. Carr, P.E., Deputy Administrator, Administrative Services, Water Programs, and Mining Regulation and Reclamation, Division of Environmental Protection, State Department of Conservation and Natural Resources
Jaina Moan, External Affairs Director, The Nature Conservancy
Leo M. Drozdoff, Private Citizen, Henderson, Nevada
Ray Bacon, representing Nevada Manufacturers Association
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation

Chair Swank:

[Roll was called. Rules and protocol of the Committee were reviewed.] Today we will hear Assembly Bill 537.

Assembly Bill 537: Revises provisions relating to certain penalties imposed by the State Department of Conservation and Natural Resources. (BDR 40-1270)

Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:

The joint Assembly Committee on Ways and Means and Senate Committee on Finance Subcommittees on Public Safety, Natural Resources, and Transportation requested Assembly Bill 537 to clarify the authority of the Division of Environmental Protection (NDEP), State Department of Conservation and Natural Resources, to settle violations of certain environmental statutes through appropriate remedies in addition to civil penalties. This authority is already explicit in the air pollution control law, which is *Nevada Revised Statutes* (NRS) Chapter 445B. Although NDEP's deputy attorney general has indicated that NDEP's authority to settle violations for other environmental statutes in addition to the air pollution control law through appropriate remedies is inherent in its ability to prosecute violations, it was the recommendation of the joint subcommittee that this authority be made explicit. This was during the May 9, 2019, hearing on the State Department of Conservation and Natural Resources budget closing.

Assembly Bill 537 aligns the other Nevada environmental statutes with the air pollution control law, including the statutes governing water pollution control, safe drinking water, hazardous waste management, and mine reclamation. Assembly Bill 537 proposes the same text for each of these statutes, explicitly providing NDEP the authority to compel compliance by "other appropriate remedy," which includes settlements. Settlements of environmental violations can include monetary penalties and schedules of compliance to rectify violations or remedy harm with additional stipulated penalties for failure to perform. Additionally, settlements may provide for the alleged violator to help fund or undertake a supplemental environmental project.

Supplemental environmental projects have been around for many years. There was a program started by the U.S. Environmental Protection Agency (EPA) in the 1990s. These projects are defined as environmentally beneficial projects that an alleged violator agrees to undertake in settlement of an enforcement action, but which the violator is not otherwise legally required to perform. There are a variety of projects that qualify, including those that reduce overall risk or impact to public health and the environment, involve habitat or surface water stabilization or restoration, and others that contribute to pollution prevention or emergency planning and preparedness. The primary purpose for these projects is to encourage and obtain environmental and public health protection benefits that may not otherwise have occurred.

Alleged violators can propose and implement these projects as part of a settlement or contribute to an account maintained by the State Department of Conservation and Natural Resources to fund a list of projects eligible for supplemental environmental project funds. The ability to enter settlement agreements, including provisions for supplemental environmental projects, truly incentivizes alleged violators to resolve environmental violations more expeditiously, at times, than pursuit of civil penalties alone. This provides options for both NDEP and the alleged violator to rectify environmental violations in what can be creative and beneficial ways.

We appreciate your consideration of A.B. 537, and I am available for any questions the committee may have.

Assemblyman Watts:

I would like to focus on section 1 of the bill which deals with water pollution. Subsection 2 has an exception for diffuse source pollution. That is also included in the proposed additions in subsection 4. I see that under existing NRS there is a complete carve-out for that from any civil penalties [NRS 445A.700]. It seems that there can be a corrective action plan. If the corrective action plan is not followed, there can be civil action outside of penalties to get injunctive relief. Will you explain what is contemplated in this bill and why there would be an exemption for diffuse source polluters from entering into some form of settlement that might include these supplemental environmental projects?

Greg Lovato:

The reason it is in the bill is because it was exempted in the original legislation which would subject potential diffuse sources to enforcement. Because they are not subject to enforcement under existing statute, this statute is not changing anything about what entities or violations are subject to enforcement. To talk about why diffuse sources are exempt from enforcement in general, originally, when this was set up, the Clean Water Act and Nevada Water Pollution Control Law targeted point sources of pollution because of the logistics associated with trying to regulate diffuse sources, whether they be forest lands, agriculture, or dirt roads. There was a policy judgment made at the time by the Nevada Legislature as well as many others to try to obtain reductions in pollution from diffuse sources through voluntary means. Because that was the decision made at that time, they decided not to enact enforcement. Some of those diffuse sources, such as some roads and mining projects, have

come under stormwater regulations. There may be some sources that have qualified as a diffuse source before but have been redefined since then to actually be regulated while some maintain that diffuse source status. Jennifer Carr, Deputy Administrator, may be able to add to that answer.

Jennifer L. Carr, P.E., Deputy Administrator, Administrative Services, Water Programs, and Mining Regulation and Reclamation, Division of Environmental Protection, State Department of Conservation and Natural Resources:

I would add that since these statutes and the program were initiated in 1979, it was essentially a voluntary-type program for municipalities, cities, and counties to seek administration of a diffuse source program from the director. I am not aware of any programs that are actually doing that at the local level. The agency does have programs for our stormwater program. We also have federal grants from the EPA for nonpoint source projects that we grant out and help to improve best management practices around the state for nonpoint source runoff controls to improve water quality. I am not aware of anyone actually using those regulations that are available.

Assemblyman Watts:

As a quick follow-up, again seeing that there is, at least in theory, some civil action that is possible under existing statute, do you see any benefit to having the additional options that you are talking about making clear in statute under this bill available as well? What if there were a case to come up where there was a source of this pollution that you were then trying to work on voluntarily to come up with a corrective action plan, but then decided to move toward civil action and having the opportunity to pursue some of these projects in a settlement?

Greg Lovato:

I think it is case-specific, depending on the means and the ability of the alleged violator, the magnitude of the violation, and the amount of the penalties. It comes down to whether there are available projects or other actions that are commensurate with the violation. In most instances, it is helpful for both parties to have the flexibility to enter into a settlement. That is routinely practiced by administrative agencies, including environmental agencies, rather than pursuing penalties. Making this authority explicit was the preference of the subcommittee and the Legislative Counsel Bureau's recommendation. Our deputy attorney general's review was that it was inherent in our ability to prosecute environmental violations and pursue penalties. We are agreeable to the change; it might help clarify that we do have that ability.

Assemblywoman Titus:

You already have authority to regulate and impose civil penalties for violations. You stated that this bill attempts to match what the federal regulations have. Is that what you said in your opening remarks?

Greg Lovato:

This makes the authority to settle environmental violations rather than pursue penalties explicit. That is an authority that the EPA has, but that is not really why we are pursuing it. It is because it is a better means to resolve environmental violations. It is already in the air pollution control statute [NRS Chapter 445B], it is just not explicit in the other statutes.

Assemblywoman Titus:

The specific paragraph that is repeated throughout the bill is definitely the same wording for different chapters. I would like to address the wording itself. It says, "In addition to any other remedy provided by this chapter, the Division may compel compliance with any provision . . . inclusive, or of any permit, certificate, standard, regulation or final order adopted or issued thereto" Does this mean that you can demand that someone does something to be compliant? Do they have any way to protest or negotiate that? This bill does not show the rest of the statute, it just shows me multiple paragraphs. I cannot see if there are any other options.

Greg Lovato:

All of our environmental statutes include provisions for appeal of any order issued, permit issued, or decision made. All of those are reviewable by the State Environmental Commission and subject to judicial review after the Commission makes a decision.

Assemblywoman Titus:

The very last line says [section 6, subsection 3], "The Division may institute and maintain in the name of the State of Nevada any such enforcement proceedings." By using "institute and maintain," is that forcing someone to comply with what you want for an indefinite amount of time?

Greg Lovato:

That might be a legal question. I do believe this was drafted very quickly right after the Assembly Ways and Means and Senate Finance Subcommittee pointed it out. My interpretation to this is that it allows NDEP to settle and to act on behalf of the State of Nevada in such enforcement proceedings so there is not separate action allowed later by a separate entity of the State of Nevada for that specific enforcement or violation.

Allan Amburn, Committee Counsel:

Your interpretation is fairly on point. Essentially it is compelling compliance with those specific provisions. The way it is compelling compliance is by either an injunction or other appropriate remedies, including the settlement option. The NDEP further has the authority to institute and maintain those enforcement proceedings.

Assemblywoman Titus:

You testified earlier that in other areas you have this authority—you are just moving it over to be consistent in other areas, correct?

Allan Amburn:

That would be NRS 445B.835, subsection 3, essentially the language there was copied and brought over to these other provisions.

Assemblywoman Titus:

It is established in statute, you are just mirroring that. I wanted assurance that this is standard language.

Chair Swank:

Are there any further questions? Seeing none, I would like to recess [at 4:19 p.m.].

We will reconvene [at 4:22 p.m.]. I will now go to those who are here wishing to testify in support of A.B. 537.

Jaina Moan, External Affairs Director, The Nature Conservancy:

The Nature Conservancy's (TNC) mission is to preserve the lands and waters on which all life depends. The Nature Conservancy supports A.B. 537. Supplemental environmental projects required by this statute could provide a direct on-the-ground benefit to the environment. They are a positive and expedient way to restore and enhance a degraded ecosystem or to prevent the release of future pollution. Additionally, TNC feels these projects can enhance public-private partnerships in a way that produces tangible results. The violator's money is spent directly on the fix to the problem. We encourage the Committee to vote yes on A.B. 537.

Leo M. Drozdoff, Private Citizen, Henderson, Nevada:

While I do represent TNC on energy and climate issues, I am here on my own behalf. I am speaking as a former administrator of NDEP, from 2002 to 2010. I would simply like to advise the Committee that supplemental environmental projects are another tool that the agency has available to help rectify a problem. They have been very useful in the past, and as Mr. Lovato stated, the development of that approach was modeled after the federal program and what was developed at EPA.

Chair Swank:

Is there anyone else in support? [There was no one.] Is there anyone who wishes to testify in opposition?

Ray Bacon, representing Nevada Manufacturers Association:

In the early 1980s, the company that I was working for was involved in an environmental spill that was about 11 years in the process of cleanup. That happened while negotiation was taking place within the company with no external assistance whatsoever. It was one of the few cleanups that started on time, finished on time, and was handled completely internally. I do not see where external groups add any value to this operation if you have a cooperating company. I do not see this as necessary legislation unless you have someone who is in a noncooperative mode, and then NDEP has the power to do extended litigation.

Chair Swank:

Is there anyone else who wishes to testify in opposition? [There was no one.] Is there anyone who would like to testify in neutral?

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:

I was neutral throughout the entire testimony until I heard the conversation brought up about the possibility of looking at a diffuse source. I do not know what the process is that you will be working on as far as an amendment, but I do have concerns if we were to cross into the area of trying to regulate a nonpoint source type of situation and changing the nature of that makeup. If we were to cross that line, Nevada Farm Bureau Federation would have some problems.

Chair Swank:

Mr. Lovato, do you have any closing remarks? [He did not.] I will now close the hearing on A.B. 537. It is my intent to pass this bill today. I will now open a work session on A.B. 537. Assemblyman Watts will make the motion including the amendment.

Assemblyman Watts:

I would like to move that we amend and do pass Assembly Bill 537 with the amendment that on line 25 of page 2 of the bill we strike the language saying "except a provision concerning a diffuse source."

ASSEMBLYMAN WATTS MADE A MOTION TO AMEND AND DO
PASS ASSEMBLY BILL 537.

ASSEMBLYWOMAN PETERS SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Watts:

I want to make it clear that this is not modifying any of the existing statutes—there are provisions in statute that exempt diffuse sources from any civil penalties. There is in existing law a pathway that can lead to civil action and injunctive relief if a corrective action plan is issued and then not followed. The intent of the amendment is simply to allow supplemental environmental projects to be part of the remedy.

Chair Swank:

Is there any further discussion? Seeing none, we will vote.

THE MOTION PASSED. [ASSEMBLYMEN ELLISON, HANSEN, AND
TITUS VOTED NO. ASSEMBLYWOMAN CARLTON WAS ABSENT
FOR THE VOTE.]

I will assign the floor statement to Assemblyman Watts. I will now move to public
comment. Seeing no one, we are adjourned [at 4:30 p.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblywoman Heidi Swank, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.