

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
State Environmental Commission

HEARING ARCHIVE

FOR THE HEARING OF: **October 04, 2005, Reno Nevada**

TYPE OF HEARING:

Regulatory

RECORDS CONTAINED IN THIS FILE INCLUDE:

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- (1) Regulation R097-05: Mining Reclamation Permit Modification and Fee Adjustments.

Air Quality Planning /Air Pollution Control

- (2) Regulation R035-05: Vehicle Emission Testing - Inspection & Maintenance Program:
- (3) Regulation R037-05: Adoption By Reference of Federal Regulations:
- (4) Regulation R036-05: Visible Emissions:
- (5) Regulation R096-05: Revisions to Meet Federal Planning Requirements
- (6) Regulation R106-05: Vehicle Emission Control Program - Servicing Fuel Injection Systems:

Corrective Actions

- (7) Regulation R083-05: Regulation of Marina Storage Tanks, adoption of International Fire Code, revised procedures for petroleum contaminate soil, and monitoring of MTBE and other contaminants.

Safe Drinking Water

- (8) Regulation R126-05: Public Water System, Water Quality and Treatment of Water:
- (9)** Regulation R129-05: Revises Certification of Operators of Public Water Systems:



Department of Conservation & Natural Resources State Environmental Commission



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Executive Secretary

Nan Paulson
Recording Secretary

Notice Of Intent To Act Upon Regulations — October 4th 2005

The State Environmental Commission (SEC) will hold a public hearing at 10:00 a.m. on Tuesday October 4th at the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions and related SEC business. If a person that may be directly affected by a proposed action does not appear and request time to make an oral presentation at the above referenced hearing, the SEC may proceed immediately to act upon any of the following regulatory petitions or other written submissions described in this notice.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

- ▶ [Acknowledgement of newly appointed Commissioner](#)
- ▶ [Public Notice](#)
- ▶ [Meeting Agenda](#)
- ▶ [Approval of minutes from the June 10, 2005 hearing](#) * ACTION
- ▶ [Settlement Agreements, Air Quality Violations](#) * ACTION By Consent Calendar
- ▶ [Regulatory Petitions](#) * ACTION
- ▶ Briefing to/from the Commission and the Deputy Attorney
- ▶ [Additional Information about the meeting process](#)

Mining Reclamation

(1) Regulation R097-05: Mining Reclamation Permit Modification and Fee Adjustments. (Note: the SEC approved this regulation as a temporary regulation on June 10, 2005. The regulation remains unchanged and is now proposed as a permanent regulation.) This regulation amends the Nevada Administrative Code (NAC) 519A mining reclamation. Changes include a revision to the current fee structure for a permit modification and the definition of minor permit modifications. The proposed revision also defines a major modification. The revision to the current fee structure will reduce the fees charged for simple changes to the permit that require minimal staff time to review and process. The other proposed revisions set clearer parameters to define minor and major modification.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law. As noted above, a revision to the current fee structure is proposed and would reduce fees charged for simple permit changes. (SEC Petition 2005-01)

- ▶ [Public Meeting & Workshop Notice](#) 
- ▶ [Approved Temporary Regulation](#) 
- ▶ [Proposed Permanent Regulation](#) 
- ▶ [Final Permanent Regulation](#) 

[As per NRS 233B.066](#)

- ▶ [SEC Informational Statement \(Temp Reg\)](#) 
- ▶ [SEC Informational Statement \(Permanent Reg\)](#) 

Air Quality Planning — Air Pollution Control

(2) Regulation R035-05: Vehicle Emission Testing - Inspection & Maintenance

Program: (Note: the SEC approved this regulation as a temporary regulation on November 30, 2004, The intent of the regulation remains unchanged and is now proposed as a permanent regulation.) The proposed regulation clarifies and updates the Inspection & Maintenance (I/M) provisions of NAC 445B and brings them into alignment with the NRS. The amendments bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000 pounds into the I/M program as per AB 36. It also aligns the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan and clarifies which areas are included in the Washoe County I/M program and which are exempt.

This regulation has an economic effect on selected diesel vehicle owners and fleets. In the emissions testing areas of Washoe and Clark Counties, diesel-powered vehicles with a GVWR noted above require an annual test before registering. Each year, Nevada Department of Motor Vehicles (DMV) sets a maximum fee for emissions tests; in 2004, it was \$39.00 in Clark and \$36.00 in Washoe Counties respectively.

There are no additional costs to the agency (DMV) for enforcement of the proposed regulation, the regulation does not overlap or duplicate any regulations of other state, federal or local agencies, and the regulation is no more stringent than what is established by federal law. Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830. (SEC Petition #2004-27)

- ▶ [Public Meeting & Workshop Notice](#) 
- ▶ [Approved Temporary Regulation](#) 
- ▶ [Proposed Permanent Regulation](#) 
- ▶ [Final Permanent Regulation](#) 

[As per NRS 233B.066](#)

- ▶ [SEC Informational Statement \(Temp Reg\) - As per NAC 233B.066](#) 
- ▶ [SEC Informational Statement \(Permenant Reg\) - As per NAC 233B.066](#) 

Air Quality Planning (continued)

(3) Regulation R037-05: Adoption By Reference of Federal Regulations: (Note: the SEC approved this regulation as a temporary regulation on November 30, 2004. Minor technical corrections were made to the temporary regulation and it is now proposed as a permanent regulation.) The Nevada Division of Environmental Protection (NDEP) is delegated implementation and enforcement of those federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules requested by Nevada. However, it is necessary to keep the State's *"adoption by reference of provisions of*

"federal law and regulations" regulation (NAC 445B.221) up to date so that EPA can continue to delegate new rules to the State.

The temporary amendments adopted last fall updated the State's adoption of federal regulations through November 2004. The technical corrections to the temporary regulation are necessary to avoid confusion regarding NDEP's delegation authority. The corrections remove two rules that are not delegated from the State list of adopted federal rules. The rules that are being removed are Title 40 C.F.R. Part 60 Subpart AAA, New Residential Wood Heaters, and Title 40 C.F.R. Part 61 Subpart M, Asbestos.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state or local agencies, however it does adopt federal regulations from Title 40 of the Code of Federal Regulations, Parts 60 and 61 by reference. The amended regulation is no more stringent than what is established by federal law and it will not increase fees. (SEC Petition #2004-29)

[Public Meeting & Workshop Notice](#) 

[Approved Temporary Regulation](#) 

[Proposed Permanent Regulation](#) 

[Final Permanent Regulation](#) 

As per NRS 233B.066

[SEC Informational Statement \(Temp Reg\)](#) 

[SEC Informational Statement \(Permanent Reg\)](#) 

Air Quality Planning (continued)

(4) Regulation R036-05: Visible Emissions: (Note: the SEC approved this regulation as a temporary regulation on November 30, 2004. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation proposes to repeal NAC 445B.22023, "**Visible emissions: Coal-fired steam generating facilities**," contingent upon the requirements of a federal consent decree. The amendment is needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and maintained. This amended regulation is necessary as part of the ASIP update that was submitted to U.S. EPA in February 2005 with a supplement in June 2005.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees. (SEC Petition #2004-28)

[Public Meeting & Workshop Notice](#) 

[Approved Temporary Regulation](#) 

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[Final Permanent Regulation](#) 

As per NRS 233B.066

[SEC Informational Statement \(Temp Reg\)](#) 

[SEC Informational Statement \(Permanent Reg\)](#) 

Air Quality Planning (continued)

(5) Regulation R096-05: Revisions to Meet Federal Planning Requirements. (Note: the SEC approved this regulation as a temporary regulation on June 10, 2005. The intent of the regulation remains unchanged and is now proposed as a permanent regulation.) The regulatory changes are necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

The proposed regulation revises several sections in the permitting provisions of NAC 445B. It adds provisions to ensure good engineering practice regarding stack height and emission limitations, requires Prevention of Significant Deterioration review when relocating certain fossil-fueled power generating units, and updates and clarifies environmental evaluation information requirements. Additionally, the regulation removes Director's discretion for dealing with the handling of organic solvents and other volatile compounds, adds a timeframe for the State's response to requests for technical advise regarding plans for construction or modification of a facility, and increases the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation modifies the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

This regulation does not have an immediate or long-term adverse effect on business or the public. There is no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law. (SEC Petition #2005-02)

[Public Meeting & Workshop Notice](#) 

[Approved Temporary Regulation](#) 

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[Final Permanent Regulation](#) 

As per NRS 233B.066

[SEC Informational Statement \(Temp Reg\)](#) 

[SEC Informational Statement \(Permanent\)](#) 

Air Quality Planning (continued)

(6) Regulation R106-05: Vehicle Emission Control Program - Servicing Fuel Injection Systems: This new proposed regulation will modify NAC 445B.460 by defining a method for servicing motor vehicle fuel injection systems by facilities licensed as authorized inspection stations or class 1 fleet stations. The regulatory change is being proposed in response to Assembly Bill 239, which was passed by the 2005 Nevada Legislative Session. The proposed amendment will update the Inspection and Maintenance provisions of the NAC and bring them into alignment with the Nevada Revised Statutes.

The proposed amendment will have no adverse economic effects on the regulated industry or on the public. There will be no additional costs to the agency (DMV) for implementing this amendment.

The amended regulation does not overlap or duplicate any regulations of other state, federal or local agencies; the amended regulation is no more stringent than what is established by federal law, and the proposed amendment does not address fees. (SEC Petition #2005-05)

[Public Meeting & Workshop Notice](#) 

▶ [Public Meeting -- Summary of Comments](#) 

▶ [Proposed Permanent Regulation](#) 

▶ [Final Permanent Regulation](#) 

[As per NRS 233B.066](#)

▶ [SEC Informational Statement \(Permanent\)](#) 

Corrective Actions

(7) Regulation R083-05: Regulation of Marina Storage Tanks, adoption of International Fire Code, revised procedures for petroleum contaminate soil, and monitoring of MTBE and other contaminants. This regulation amends NAC 459.9921 to 459.999 by establishing certain requirements for leak detection, prevention, and operation of above ground marina storage tank systems. It adopts by reference the International Fire Code (IFC 2003) for the construction, design, and location of marina tanks, and it provides for an annual registration fee of \$50 for each above ground marina storage tank compartment. The regulation also modifies the handling of petroleum-contaminated soils and it requires monitoring for MTBE and any other contaminant in the groundwater as directed by the Nevada Division of Environmental Protection (NDEP).

The regulation will not have an immediate or long-term adverse effect on the public. The economic impact to a business could be substantial, however, if replacement of an existing tank system is required. Information received from attendees at the workshops held by NDEP indicates that the majority of existing facilities would not require tank replacement. There will be a marginal cost to the agency for enforcement of the proposed regulation, which will be recovered by the annual tank registration fee mentioned above.

To a certain extent, the proposed regulation does overlap certain existing regulatory requirements. Specifically, the International Fire Code 2003 (IFC 2003), adopted by the State of Nevada, has requirements for the location and placing of above ground petroleum storage tanks but does not require advanced systems for leak detection and prevention. The proposed regulation expands on the requirements of IFC 2003 and adds certain other requirements similar to those already existing for aboveground storage tanks. Finally, the annual tank registration fee noted above is proposed to recover costs for implementing the regulations. (SEC Petition #2005-03)

▶ [Public Meeting & Workshop Notice](#) 

▶ [Proposed Permanent Regulation](#) 

▶ [Final Permanent Regulation](#) 

[As per NRS 233B.066](#)

▶ [SEC Informational Statement \(Permanent\)](#) 

Safe Drinking Water

(8) Regulation R126-05: Public Water System, Water Quality and Treatment of Water: (Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation amends NAC 445A.450 through 445A.540. The amendment allows Nevada to adopt new federal primary drinking water regulations already in effect under the Safe Drinking Water Act (SDWA) in the following areas: arsenic rule; long term 1 surface water treatment rule; lead and copper rule revisions; radionuclides; filter backwash rule; public notification rule; and variances and exemptions.

The amended regulation also provides criteria for projects that propose treatment facilities for groundwater. Of note, USEPA requires states with regulatory jurisdiction to assure design and construction of new water treatment facilities are compliant with primary drinking water regulations. The remaining amendments add definitions, seek to provide clarity, change authority from the Division of Environmental Protection to the health authority, where health districts would have authority, and provide only enforceable (and delete more stringent) secondary standards for water quality.

The estimated beneficial economic effect of the proposed regulation on the business community and the public would be decreased medical costs that otherwise might be incurred as a result of exposure to contaminants in drinking water.

There is likely a significant adverse economic effect on small business although such impacts would not be borne evenly among privately owned public water systems such as mobile home parks. The impact borne by any particular water system will be dependent on the source of water quality and the quality as well as the availability and cost of alternative water sources. **The likely significant impact will be associated with costs to comply with the new arsenic concentration standard of 10 parts per billion (ppb), reduced from 50 ppb, which becomes effective in January 2006.** This standard will apply to all public water systems except transient, non-community systems, which are defined as non-community water systems, which do not regularly serve at least 25 of the same persons over six months of the year. Costs impacts might include developing an arsenic compliance plan, finding and developing new water sources, purchasing water from another water system, blending water from two or more sources, or implementing treatment to reduce arsenic levels.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-06)

▶ [Public Meeting & Workshop Notice](#) 

▶ [Proposed Permanent Regulation](#) 

▶ [Final Permanent Regulation](#) 

[As per NRS 233B.066](#)

▶ [SEC Informational Statement \(Permanent\)](#) 

Safe Drinking Water (continued)

(9) Regulation R129-05: Revises Certification of Operators of Public Water Systems:

(Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation amends NAC 445A.617 through 445A.652. The amendment proposes changes to Nevada's Operator Certification Program for small water systems. Increased skills and knowledge would be required to operate public water systems for individuals certified through the Operator Certification Program. The program is managed by the Division of Environmental Protection - Bureau of Safe Drinking Water. The amendment is needed in light of more stringent water quality requirements. Ultimately, the goal of the operator certification program is the protection of public health.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other

state or government agencies.

This amended regulation would have a beneficial economic effect by increasing the knowledge base of operators of small water systems; such increased knowledge of water system operations will result in both immediate and long-term protection of public health.

The estimated indirect adverse economic effects of the proposed revisions on the small businesses would apply to public water systems that require a Grade III or Grade IV Certified Operator. This indirect economic effect would be from new, higher requirement for post-secondary education required to qualify for new Grade III and Grade IV certifications. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-07)

▶ [Public Meeting & Workshop Notice](#) 

▶ [Proposed Permanent Regulation](#) 

▶ [Final Permanent Regulation](#) 

[As per NRS 233B.066](#)

▶ [SEC Informational Statement \(Permanent\)](#) 

Additional Information - about the meeting process

Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to: State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. The SEC must receive written submissions at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

Members of the public can inspect copies of the regulations to be adopted at the State Library and Archives in Carson City (100 Stewart Street), and at the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Carson City office is located at 901 South Stewart Street, Suite 4001 and the Las Vegas office is located at 1771 E. Flamingo, Suite 121-A.

In addition, copies of this public notices have been deposited electronically at major library branches in each county in Nevada. This notice and the text of the proposed regulations are available on this website as well as on [Legislative Counsel Bureau's website](#)

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on September 27, 2005.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: The Nevada Department of Wildlife building in Reno, the Washoe County Library in Reno, the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, and the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the SEC, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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COUNSEL
David Newton

STAFF
[Nan Paulson](#)
Recording Secretary

[John B. Walker](#)
Executive Secretary

Meeting Agenda

October 04, 2005

The State Environmental Commission (SEC) will hold a public hearing at 10:00 a.m. on Tuesday October 4th at the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada.

This agenda has been posted at the Nevada Department of Wildlife building in Reno, the Washoe County Library in Reno, the Clark County Public Library, and the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Public Notice for this hearing was published on September 05, 19 and 26 in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

I. Acknowledgement of newly appointed Commissioner

II. Approval of minutes from the June 10 hearing * ACTION

III. Settlement Agreements on Air Quality Violations *ACTION by Consent Calendar

- A. Bald Mountain Mine – Violation #1963
- B. Caithness Dixie Valley, LLC – Violations #1956-1960
- C. Harvey's Resort Hotel/Casino – Violation #1961
- D. H.E. Hunewill Construction – Violation #1962
- E. Southern California Edison Mohave – Violations #1952-1955

IV. Regulatory Petitions * ACTION

- (1) Regulation R097-05: Mining Reclamation Permit Modification and Fee Adjustments
- (2) Regulation R035-05: Vehicle Emission Testing - Inspection & Maintenance Program
- (3) Regulation R037-05: Adoption By Reference of Federal Regulations
- (4) Regulation R036-05: Visible Emissions
- (5) Regulation R096-05: Revisions to Meet Federal Planning Requirements

- (6) Regulation R106-05: Vehicle Emission Control Program - Servicing Fuel Injection Systems
- (7) Regulation R083-05: Regulation of Marina Storage Tanks, adoption of International Fire Code, revised procedures for petroleum contaminate soil, and monitoring of MTBE and other contaminants
- (8) Regulation R126-05: Public Water System, Water Quality and Treatment of Water
- (9) Regulation R129-05: Revises Certification of Operators of Public Water Systems

V. Briefing to/from the Commission and the Deputy Attorney

VI. General Public Comment – In consideration of others, who may also wish to provide public comment, please avoid repetition and limit your comments to no more than five (5) minutes.

Meeting Information: Copies of the proposed regulations may be obtained by calling the Executive Secretary, John Walker at (775) 687-9308. The public notice and the text of the proposed regulations are also available on the State Environmental Commission website at: sec.nv.gov and the Legislative Counsel Bureau's website at: <http://www.leg.state.nv.us/Register/>

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on September 27, 2005.

Notice Of Intent To Act Upon Regulations

Notice of Hearing for the Adoption of Regulations of the State Environmental Commission

The State Environmental Commission (SEC) will hold a public hearing at 10:00 a.m. on Tuesday October 4th at the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions and related SEC business. If a person that may be directly affected by a proposed action does not appear and request time to make an oral presentation at the above referenced hearing, the SEC may proceed immediately to act upon any of the following regulatory petitions or other written submissions described in this notice.

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Air Quality Planning, Air Pollution Control

(2) Regulation R035- 05: Vehicle Emission Testing - Inspection & Maintenance Program: (Note: the SEC approved this regulation as a temporary regulation on November 30, 2004, The intent of the regulation remains unchanged and is now proposed as a permanent regulation.) The proposed regulation clarifies and updates the Inspection & Maintenance (I/M) provisions of NAC 445B and brings them into alignment with the NRS. The amendments bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000 pounds into the I/M program as per AB 36. It also aligns the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan and clarifies which areas are included in the Washoe County I/M program and which are exempt.

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require an annual test before registering. Each year, Nevada Department of Motor Vehicles (DMV) sets a maximum fee for emissions tests; in 2004, it was \$39.00 in Clark and \$36.00 in Washoe Counties respectively.

There are no additional costs to the agency (DMV) for enforcement of the proposed regulation, the regulation does not overlap or duplicate any regulations of other state, federal or local agencies, and the regulation is no more stringent than what is established by federal law. Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830. (SEC Petition #2004-27)

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necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

The proposed regulation revises several sections in the permitting provisions of NAC 445B. It adds provisions to ensure good engineering practice regarding stack height and emission limitations, requires Prevention of Significant Deterioration review when relocating certain fossil-fueled power generating units, and updates and clarifies environmental evaluation information requirements. Additionally, the regulation removes Director's discretion for dealing with the handling of organic solvents and other volatile compounds, adds a timeframe for the State's response to requests for technical advice regarding plans for construction or modification of a facility, and increases the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation modifies the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

This regulation does not have an immediate or long-term adverse effect on business or the public. There is no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law. (SEC Petition #2005-02)

(6) Regulation R106-05: Vehicle Emission Control Program - Servicing Fuel Injection Systems:

This new proposed regulation will modify NAC 445B.460 by defining a method for servicing motor vehicle fuel injection systems by facilities licensed as authorized inspection stations or class 1 fleet stations. The regulatory change is being proposed in response to Assembly Bill 239, which was passed by the 2005 Nevada Legislative Session. The proposed amendment will update the Inspection and Maintenance provisions of the NAC and bring them into alignment with the Nevada Revised Statutes.

The proposed amendment will have no adverse economic effects on the regulated industry or on the public. There will be no additional costs to the agency (DMV) for implementing this amendment.

The amended regulation does not overlap or duplicate any regulations of other state, federal or local agencies; the amended regulation is no more stringent than what is established by federal law, and the proposed amendment does not address fees. (SEC Petition #2005-05)

Corrective Actions

(7) Regulation R083-05: Regulation of Marina Storage Tanks, adoption of International Fire Code, revised procedures for petroleum contaminate soil, and monitoring of MTBE and other contaminants. This regulation amends NAC 459.9921 to 459.999 by establishing certain requirements for leak detection, prevention, and operation of above ground marina storage tank systems. It adopts by reference the International Fire Code (IFC 2003) for the construction, design, and location of marina tanks, and it provides for an annual registration fee of \$50 for each above ground marina storage tank compartment. The regulation also modifies the handling of petroleum-contaminated soils and it requires monitoring for MTBE and any other contaminant in the groundwater as directed by the Nevada Division of Environmental Protection (NDEP).

The regulation will not have an immediate or long-term adverse effect on the public. The economic impact to a business could be substantial, however, if replacement of an existing tank system is required. Information received from attendees at the workshops held by NDEP indicates that the majority of existing facilities would not require tank replacement. There will be a marginal cost to the

agency for enforcement of the proposed regulation, which will be recovered by the annual tank registration fee mentioned above.

To a certain extent, the proposed regulation does overlap certain existing regulatory requirements. Specifically, the International Fire Code 2003 (IFC 2003), adopted by the State of Nevada, has requirements for the location and placing of above ground petroleum storage tanks but does not require advanced systems for leak detection and prevention. The proposed regulation expands on the requirements of IFC 2003 and adds certain other requirements similar to those already existing for aboveground storage tanks. Finally, the annual tank registration fee noted above is proposed to recover costs for implementing the regulations. (SEC Petition #2005-03)

Safe Drinking Water

(8) Regulation R126-05: Public Water System, Water Quality and Treatment of Water: (Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation amends NAC 445A.450 through 445A.540. The amendment allows Nevada to adopt new federal primary drinking water regulations already in effect under the Safe Drinking Water Act (SDWA) in the following areas: arsenic rule; long term 1 surface water treatment rule; lead and copper rule revisions; radionuclides; filter backwash rule; public notification rule; and variances and exemptions.

The amended regulation also provides criteria for projects that propose treatment facilities for groundwater. Of note, USEPA requires states with regulatory jurisdiction to assure design and construction of new water treatment facilities are compliant with primary drinking water regulations. The remaining amendments add definitions, seek to provide clarity, change authority from the Division of Environmental Protection to the health authority, where health districts would have authority, and provide only enforceable (and delete more stringent) secondary standards for water quality.

The estimated beneficial economic effect of the proposed regulation on the business community and the public would decreased medical costs that otherwise might be incurred as a result of exposure to contaminants in drinking water.

There is likely a significant adverse economic effect on small business although such impacts would not be borne evenly among privately owned public water systems such as mobile home parks. The impact borne by any particular water system will be dependent on the source of water quality and the quality as well as the availability and cost of alternative water sources. The likely significant impact will be associated with costs to comply with the new arsenic concentration standard of 10 parts per billion (ppb), reduced from 50 ppb, which becomes effective in January 2006. This standard will apply to all public water systems except transient, non-community systems, which are defined as non-community water systems, which do not regularly serve at least 25 of the same persons over six months of the year. Costs impacts might include developing an arsenic compliance plan, finding and developing new water sources, purchasing water from another water system, blending water from two or more sources, or implementing treatment to reduce arsenic levels.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-06)

(9) Regulation R129-05: Revises Certification of Operators of Public Water Systems: (Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation amends NAC 445A.617 through 445A.652. The amendment proposes changes to Nevada's Operator Certification Program for small water systems. Increased skills and knowledge would be required to operate public water systems for individuals certified through the Operator Certification Program. The program is managed by the Division of Environmental Protection – Bureau of Safe Drinking Water. The amendment is needed in light of more stringent water quality requirements. Ultimately, the goal of the operator certification program is the protection of public health.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies.

This amended regulation would have a beneficial economic effect by increasing the knowledge base of operators of small water systems; such increased knowledge of water system operations will result in both immediate and long-term protection of public health.

The estimated indirect adverse economic effects of the proposed revisions on the small businesses would apply to public water systems that require a Grade III or Grade IV Certified Operator. This indirect economic effect would be from new, higher requirement for post-secondary education required to qualify for new Grade III and Grade IV certifications. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-07)

Additional Information: Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to: State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. The SEC must receive written submissions at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

Members of the public can inspect copies of the regulations to be adopted at the State Library and Archives in Carson City (100 Stewart Street), and at the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Carson City office is located at 901 South Stewart Street, Suite 4001 and the Las Vegas office is located at 1771 E. Flamingo, Suite 121-A.

In addition, copies of this public notices have been deposited electronically at major library branches in each county in Nevada. This notice and the text of the proposed regulations are available on the [State Environmental Commission's](http://www.sec.nv.gov) website at ([SEC.nv.gov](http://www.sec.nv.gov)) as well as on Legislative Counsel Bureau's website at <http://www.leg.state.nv.us/Register/>.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on September 27, 2005.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: The Nevada Department of Wildlife building in Reno, the Washoe County Library in Reno, the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, and the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the SEC, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

STATE ENVIRONMENTAL COMMISSION (SEC)
Meeting of October 4, 2005
Department of Conservation & Natural Resources
Carson City, Nevada

MEMBERS PRESENT:

Alan Coyner, Vice Chairman
Terry Crawforth
Don Henderson
Ira Rackley
Hugh Ricci
Harry Shull
Stephanne Zimmerman

MEMBERS ABSENT:

Melvin Close, Chairman
Lewis Dodgion
Pete Anderson
M. Francis Sponer

Staff Present:

David Newton, Deputy Attorney General
John Walker, Executive Secretary
Nan Paulson, Recording Secretary

Vice Chairman Coyner called the meeting to order at 10:00 a.m. He acknowledged that the meeting had been properly noticed.

READER's NOTE: These are summary minutes of the above references meeting of the State Environmental Commission (SEC). Please contact the SEC Recording Secretary for a copy of the verbatim minutes of the proceedings (i.e., available in audio format only, analog cassette magnetic tape).

Vice Chairman Coyner introduced new Commissioner Stephanne Zimmerman from Henderson and asked her to tell everyone a little about herself.

Commissioner Zimmerman said she was born and raised in Las Vegas, graduated from UNLV, became a CPA and worked in a public accounting firm for five years. She is now employed by Basic Management, Inc. (BMI) in Henderson NV and has been with them for 13 years. Basic Management, Inc. is a land development company. They have their own private water system and power distribution system. They are also involved in a large remediation/clean-up action at their facility in Las Vegas.

On the SEC, Ms. Zimmerman represents the public at large.

I. Approval of Minutes from the June 10, 2005 SEC Meeting

Vice Chairman Coyner asked for approval of the minutes from the last meeting. Commissioner Henderson made a motion, and Commission Crawforth seconded it.

Vice Chairman Coyner said he had a two spelling corrections in the Public Notice section of the minutes and asked if anyone else had suggestions; there were no other corrections so Vice Chairman Coyner asked for a motion.

All members were in favor of approval of the minutes, with no objections.

II. SETTLEMENT AGREEMENTS ON AIR QUALITY VIOLATIONS

Vice Chairman Coyner asked the Division to approach the podium with a brief summary of the five Settlement Agreements that are under consideration today.

Mike Yamada, Compliance & Enforcement Supervisor for the Nevada Division of Environmental Protection's (NDEP) Bureau of Air Quality (BAQ), spoke about the settlement agreements for Air Pollution Control violations by the following five companies:

- A.** Bald Mountain Mine – Violation #1963
- B.** Caithness Dixie Valley, LLC – Violations #1956-1960
- C.** Harvey's Resort Hotel/Casino – Violation #1962
- D.** H.E. Hunewill Construction – Violation #1961
- E.** Southern California Edison Mohave – Violations #1952-1955

Mr. Yamada's discussed each of the BAQ Settlement Agreements. They are attached as Appendix # A. Vice Chairman Coyner asked if there were any questions from the members.

Regarding Bald Mountain, Commissioner Henderson asked if there was a problem with the permit. Mr. Yamada explained that whoever filled out the permit for the company did not put in the correct emission numbers for their altitude. It was not an operational problem with the kiln.

There were no comments from the public so Vice Chairman Coyner asked for a motion. Commissioner Ricci made a motion; Commissioner Crawford seconded the motion. All were in favor; no one was opposed.

Caithness Dixie Valley was the next NOAV Mr. Yamada talked about. After the discussion, Vice Chairman Coyner asked for questions or comments from the members.

Commissioner Henderson asked if the failure to file their reports was due to a change in personnel. Mr. Yamada said there was a purchase of this facility and it may have been overlooked. Commissioner Ricci asked if there was a notification from the Division to advise them to notify. Mike Yamada explained that the permit holders are responsible to file their permits, and that there is no notification process from the Division. Reporting is a federal requirement.

Mr. Yamada told the Commission that Caithness Dixie Valley is not a poorly run facility, and the Division inspections have not come up with any violations except this one.

Vice Chairman Coyner asked for a motion to approve NOAV # 1956-1960. Commissioner Crawford made a motion; Commissioner Shull seconded the motion, when asked if all were in favor, Commission Henderson asked for a discussion.

Commissioner Henderson voiced his concern over the amount of money Caithness will have pay for misunderstanding the requirement to apply for the permit. Mike Yamada explained that there is a penalty matrix involved, and the Division did lower the penalty fee from the amount the matrix showed because this company does not have other violations. Mr.

Yamada continued explaining that the Division must be careful to not put the fines so low that the federal government would overfile the Division's decision. The federal government has their penalties set up to be over \$25,000 per day and if they think the Division fees are too low, they can penalize with higher fines. The federal government considers failure to file as a serious violation, they call them High Priority Violations and they have a separate category for them.

Mr. Yamada said the Division lowered the fine by approximately \$4,000.00.

Vice Chairman Coyner wanted to know if Caithness is the only Class I permit holder of the 30 geothermal plants in the State. Chief Mike Elges, Bureau of Air Pollution Control (BAPC), approached the podium. He believes Caithness is the only Class I. He further mentioned that there were similar violations with Sierra Pacific about 6 months ago and these fines are similar. The Division is using the same philosophy with Caithness as they did with Sierra Pacific. It was not because of non-compliance, it was a record keeping issue for both companies.

When the discussion was over, Vice Chairman Coyner called for a vote, all were in favor, and none were opposed.

Regarding Harvey's Resort Hotel/Casino, BAPC Permitting Supervisor Greg Remer said there is a permit expiration notification procedure in place for all permittees. They get a notification four to five months before the permit is due.

There was no more discussion, no members of the public approached the podium, and so Vice Chairman Coyner asked for a motion. Commissioner Crawford made a motion and Commissioner Shull seconded the motion. All were in favor; no one was opposed.

H. E. Hunewill Construction Company- there were no questions from the public. Vice Chairman Coyner asked for a motion. Commissioner Crawford made a motion and Commissioner Shull seconded the motion, all were in favor, no one opposed.

The only change made was an error in the violation numbers for Harvey's and Hunewill, as they were switched. Harvey's was printed as NOAV # 1961, when it should have read 1962. Hunewill was printed as NOAV # 1962, when it should have read 1961.

The final settlement was Southern California Edison (SCE). After Mike Yamada was finished with his introduction of the violations, Commissioner Crawford expressed his concern over a company such as Caithness that pays a large fine for a procedural error, yet this company pays less for emitting substances into the atmosphere. Especially since SCE has had a lot of violations in the past and paid the fines because it was cheaper to pay than to fix the problem.

Vice Chairman Coyner asked why SCE had not been seen for approximately five years; what happened to change the amount of times they were being seen? Mike Elges approached the podium to explain. Mr. Elges said the evolution of the Title V permit has put companies on the mark for compliance or potentially be sued by a third party group. The Division has worked hard to help this plant to be in compliance. The company staff worked hard to correct the problems, even knowing the plant was going to be shut down.

Mr. Elges continued by saying the federal government has pushed self-compliance and there are violations in both areas; emissions and paperwork. He added that Mike Yamada is putting together a proposed package for a revised penalty matrix to address some of these issues. They hope to get this to the Commission in the near future.

Vice Chairman Coyner asked if there were any questions from the public. There were none so he asked for a motion. Commissioner Crawforth made a motion to accept NOAV #s 1952-1955. Commissioner Shull seconded the motion. All were in favor; no one was opposed.

Vice Chairman Coyner then moved to the next item on the agenda (the regulatory petitions):

Bureau of Mining Regulation & Reclamation

(1) Regulation R097-05: Mining Reclamation Permit Modification and Fee Adjustments.

(Note: the SEC approved this regulation as a temporary regulation on June 10, 2005. The regulation remains unchanged and is now proposed as a permanent regulation.) This regulation amends the Nevada Administrative Code (NAC) 519A mining reclamation. Changes include a revision to the current fee structure for a permit modification and the definition of minor permit modifications. The proposed revision also defines a major modification. The revision to the current fee structure will reduce the fees charged for simple changes to the permit that require minimal staff time to review and process. The other proposed revisions set clearer parameters to define minor and major modification.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law. As noted above, a revision to the current fee structure is proposed and would reduce fees charged for simple permit changes. (SEC Petition 2005-01)

Discussion:

Dave Gaskin, Chief of the Bureau of Mining Regulation and Reclamation, introduced Connie Davis, Reclamation Branch Supervisor.

NOTE: A copy of the outline of Connie Davis' presentation is included as appendix # 1.

Public Comments / SEC Discussions & Staff Responses

Regarding reclamation permits for mining operations, Commissioner Ricci asked about the definition of Major Modification. Mrs. Davis explained that the previous definition was too vague. This regulation will help industry to know what is expected from them and will give a clearer understanding of the requirements to the Division and to the public.

SEC Action

Vice Chairman Coyner asked if there were any other comments from the Commission or Public. There were none so he asked for a motion to accept Petition 1, LCB File number

R097-05. Commissioner Crawforth made a motion; Commissioner Ricci seconded the motion. All were in favor; no one was opposed.

Vice Chairman Coyner moved to the second regulatory petition on the agenda:

(2) Regulation R035-05: Vehicle Emission Testing - Inspection & Maintenance Program:

(Note: the SEC approved this regulation as a temporary regulation on November 30, 2004, The intent of the regulation remains unchanged and is now proposed as a permanent regulation.) The proposed regulation clarifies and updates the Inspection & Maintenance (I/M) provisions of NAC 445B and brings them into alignment with the NRS. The amendments bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000 pounds into the I/M program as per AB 36. It also aligns the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan and clarifies which areas are included in the Washoe County I/M program and which are exempt.

This regulation has an economic effect on selected diesel vehicle owners and fleets. In the emissions testing areas of Washoe and Clark Counties, diesel-powered vehicles with a GVWR noted above require an annual test before registering. Each year, Nevada Department of Motor Vehicles (DMV) sets a maximum fee for emissions tests; in 2004, it was \$39.00 in Clark County and \$36.00 in Washoe County.

There are no additional costs to the agency (DMV) for enforcement of the proposed regulation, the regulation does not overlap or duplicate any regulations of other state, federal or local agencies, and the regulation is no more stringent than what is established by federal law. Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830. (SEC Petition #2004-27)

Discussion:

Sig Jaunarajs, Environmental Scientist with the Bureau of Air Quality Planning, presented the above regulation to the Commission.

NOTE: A copy of the outline of Mr. Jaunarajs' presentation is included as appendix # 2.

Public Comments / SEC Discussions & Staff Responses

Commissioner Zimmerman asked for clarification about the specific geographic areas in Washoe and Clark counties that would be covered by the regulation; she specifically asked how the areas were defined. Mr Jaunarajs explained that the areas were determined through the use of geographic basin maps. He presented the map to the Commission (See appendix #2).

There were no public comments.

SEC Action

Vice Chairman Coyner asked for a motion to approve Petition R035-05. Commissioner Shull made a motion; Commissioner Henderson seconded the motion. Commissioner Crawford opposed the petition, and all other Commissioners approved it.

Vice Chairman Coyner moved to the third regulatory petition on the agenda:

(3) Regulation R037-05: Adoption By Reference of Federal Regulations: *(Note: the SEC approved this regulation as a temporary regulation on November 30, 2004. Minor technical corrections were made to the temporary regulation and it is now proposed as a permanent regulation.)* The Nevada Division of Environmental Protection (NDEP) is delegated implementation and enforcement of those federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules requested by Nevada. However, it is necessary to keep the State's "adoption by reference of provisions of federal law and regulations" regulation (NAC 445B.221) up to date so that EPA can continue to delegate new rules to the State.

The temporary amendments adopted last fall updated the State's adoption of federal regulations through November 2004. The technical corrections to the temporary regulation are necessary to avoid confusion regarding NDEP's delegation authority. The corrections remove two rules that are not delegated from the State list of adopted federal rules. The rules that are being removed are Title 40 C.F.R. Part 60 Subpart AAA, New Residential Wood Heaters, and Title 40 C.F.R. Part 61 Subpart M, Asbestos.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state or local agencies; however it does adopt federal regulations from Title 40 of the Code of Federal Regulations, Parts 60 and 61 by reference. The amended regulation is no more stringent than what is established by federal law and it will not increase fees. (SEC Petition #2004-29)

SEC Discussions & Staff Responses

Greg Remer, Supervisor of the Bureau of Air Pollution Control, presented the regulation to the Commission. Vice Chairman Coyner expressed his discontentment with the need to put prices into the regulations, as it forces the Division to return to the Commission if the prices change. In response to Mr. Coyner's concern, NDEP Bureau of Corrective Actions Supervisor Gil Cerruti shared with the Commission information stating that NRS 233B requires these price listings.

NOTE: A copy of the outline of Mr. Remer's presentation is included as appendix # 3.

PUBLIC COMMENTS

There were no public comments.

SEC ACTION

Commissioner Crawford made a motion to accept this regulation and Commissioner Rackley seconded the motion. All were in favor; none were opposed.

Vice Chairman Coyner moved to the fourth regulatory petition on the agenda:

(4) Regulation R036-05: Visible Emissions: *(Note: the SEC approved this regulation as a temporary regulation on November 30, 2004. The regulation has been slightly altered and is now proposed as a permanent regulation.)* This regulation proposes to repeal NAC 445B.22023, "Visible emissions: Coal-fired steam generating facilities," contingent upon the requirements of a federal consent decree. The amendment is needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and maintained. This amended regulation is necessary as part of the ASIP update that was submitted to U.S. EPA in February 2005 with a supplement in June 2005.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees. (SEC Petition #2004-28)

NOTE: A copy of the outline of Mr. Remer's presentation is included as appendix # 4.

SEC Discussions & Staff Responses

Greg Remer, Supervisor of the Bureau of Air Pollution Control, also presented this regulation to the Commission. Vice Chairman Coyner asked Mr. Remer to explain the repealed section. Greg said that in section 5 of the regulation, there were changes made in May of 2004 but the Legislative Council Bureau (LCB) has not codified these changes yet. When the Division put in other amendments for these sections, LCB was struggling with future effective dates on previously adopted permanent regulations to these 3 provisions. LCB decided to repeal the temporary date as of the effective date of the filing, which would make this permanent rule effective to replace it. This would do away with any conflict between permanent and temporary status.

PUBLIC COMMENTS

There were no public comments.

SEC ACTION

Vice Chairman Coyner asked for a motion. Commissioner Ricci made a motion; Commissioner Shull seconded the motion. All were in favor; no one was opposed.

Vice Chairman Coyner moved to the fifth regulatory petition on the agenda:

(5) Regulation R096-05: Revisions to Meet Federal Planning Requirements. *(Note: the SEC approved this regulation as a temporary regulation on June 10, 2005. The intent of the regulation remains unchanged and is now proposed as a permanent regulation.)* The regulatory changes are necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

The proposed regulation revises several sections in the permitting provisions of NAC 445B. It adds provisions to ensure good engineering practice regarding stack height and emission limitations, requires Prevention of Significant Deterioration review when relocating certain fossil-fueled power generating units, and updates and clarifies environmental evaluation information requirements. Additionally, the regulation removes Director's discretion for dealing with the handling of organic solvents and other volatile compounds, adds a timeframe for the State's response to requests for technical advise regarding plans for construction or modification of a facility, and increases the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation modifies the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

This regulation does not have an immediate or long-term adverse effect on business or the public. There is no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law. (SEC Petition #2005-02)

NOTE: A copy of the outline of Mr. Remer's presentation is included as appendix # 5.

SEC Discussions & Staff Responses

Greg Remer, Supervisor of the Bureau of Air Pollution Control, also presented this regulation to the Commission. Commissioner Crawforth asked if the Division submitted a draft to the LCB, it was just returned, and was substantially different? Mr. Remer said the Division submitted the document that the Commission had adopted, a couple of months went by in the drafting process, the Division had some comments, and the LCB provided a final that had some errors. The draft looked different than the original, and they had replace language and moved some things around. It was an untenable version of what the Division had originally intended and what the Commission adopted as temporary regulation. The Division contacted LCB, explained what happened, and the LCB put it back together but some places were not put together correctly. This time when the Division contacted the LCB to have it put together again, they said fine but they could not get it back to the Division in time for this meeting. So, the Division told the LCB what corrections they were going to make, the LCB agreed.

The Division provided the Commission with a new document to help avoid confusion with the changes.

PUBLIC COMMENTS

There were no public comments.

SEC ACTION

Vice Chairman Coyner asked for a motion for LCB file R096-05. Commissioner Crawford made a motion; Commissioner Shull seconded the motion. All were in favor; no one was opposed.

Vice Chairman Coyner moved to the sixth regulatory petition on the agenda:

(6) Regulation R106-05: Vehicle Emission Control Program - Servicing Fuel Injection Systems: This new proposed regulation will modify NAC 445B.460 by defining a method for servicing motor vehicle fuel injection systems by facilities licensed as authorized inspection stations or class 1 fleet stations. The regulatory change is being proposed in response to Assembly Bill 239, which was passed by the 2005 Nevada Legislative Session. The proposed amendment will update the Inspection and Maintenance provisions of the NAC and bring them into alignment with the Nevada Revised Statutes.

The proposed amendment will have no adverse economic effects on the regulated industry or on the public. There will be no additional costs to the agency (DMV) for implementing this amendment.

The amended regulation does not overlap or duplicate any regulations of other state, federal or local agencies; the amended regulation is no more stringent than what is established by federal law, and the proposed amendment does not address fees. (SEC Petition #2005-05)

NOTE: A copy of the outline of Sig Juanarajs' presentation is included as appendix #6.

SEC Discussions & Staff Responses

Sig Jaunarajs, Environmental Scientist with the Bureau of Air Quality Planning, presented the above regulation to the Commission. Vice Chairman Coyner asked if there were any complaints and how the public was notified. Mr. Juanarajs stated that the Division sent out notices to everyone on a list who wanted to receive information regarding automotive emissions and air quality issues. The Dept. of Motor Vehicles (DMV) has a screen on their emission analyzers on which they flashed an announcement that these workshops were going to be held in Reno and Las Vegas.

Vice Chairman Coyner wanted to know how the Class I stations would know they are not allowed to perform certain services. Mr. Juanarajs said he believes the DMV will talk about updated regulations and inform the stations of the updates. DMV will also check the stations to ensure they are complying.

PUBLIC COMMENTS

There were no public comments.

SEC ACTION

Commissioner Henderson made a motion to adopt this petition. Commissioner Crawford seconded the motion. There were no other comments or questions so Vice Chairman Coyner called for a vote. All were in favor; no one was opposed.

Vice Chairman Coyner moved to the seventh regulatory petition on the agenda:

(7) Regulation R083-05: Regulation of Marina Storage Tanks, adoption of International Fire Code, revised procedures for petroleum contaminate soil, and monitoring of MTBE and other contaminants. This regulation amends NAC 459.9921 to 459.999 by establishing certain requirements for leak detection, prevention, and operation of above ground marina storage tank systems. It adopts by reference the International Fire Code (IFC 2003) for the construction, design, and location of marina tanks, and it provides for an annual registration fee of \$50 for each above ground marina storage tank compartment. The regulation also modifies the handling of petroleum-contaminated soils and it requires monitoring for MTBE and any other contaminant in the groundwater as directed by the Nevada Division of Environmental Protection (NDEP).

The regulation will not have an immediate or long-term adverse effect on the public. The economic impact to a business could be substantial, however, if replacement of an existing tank system is required. Information received from attendees at the workshops held by NDEP indicates that the majority of existing facilities would not require tank replacement. There will be a marginal cost to the agency for enforcement of the proposed regulation, which will be recovered by the annual tank registration fee mentioned above.

To a certain extent, the proposed regulation does overlap certain existing regulatory requirements. Specifically, the International Fire Code 2003 (IFC 2003), adopted by the State of Nevada, has requirements for the location and placing of above ground petroleum storage tanks but does not require advanced systems for leak detection and prevention. The proposed regulation expands on the requirements of IFC 2003 and adds certain other requirements similar to those already existing for aboveground storage tanks. Finally, the annual tank registration fee noted above is proposed to recover costs for implementing the regulations. (SEC Petition #2005-03)

NOTE: A copy of the outline of Gil Cerruti's presentation is included as appendix #7.

SEC Discussions & Staff Responses

Mr. Gil Cerruti, Petroleum Fund Supervisor, presented the regulation to the Commission. Vice Chairman Coyner mentioned that the daily requirement for checking the dispenser hoses in Section 11, they get an exemption when in the off-season. He continued with stating that the daily basis inspection, which would have fallen as number 6 in section 10, should also have an exemption to conform with the next two. Mr. Cerruti said he would bring this up with the LCB.

Vice Chairman Coyner asked if there had been any instances of spills. Mr. Cerruti said yes, the petroleum releases reimbursed by the State of Nevada Petroleum Fund (he only has records of these) occurred in 1992, 1996, 1998, and 2004 at Echo Bay Marina at a cost of

\$614,700; in 1996 and 1999 at Lake Mead Marina at a cost of \$175,300. Additionally, the Petroleum Fund rented the National Park Service a piece of equipment that is used in petroleum remediation for a sum of \$80,000 or \$3,000/month for a clean up.

Mr. Cerruti continued by stating it is opportunistic to have this equipment that can be quickly moved to a site near a lake or a water body for immediate use on a remediation, rather than upon discovery of a remediation, trying to locate a contractor who can build a machine, who may or may not have inventory, and experience a large lag time, during which time that spill may migrate into the lake.

Vice Chairman Coyner noted a letter from a Mr. Stevens complimenting Mr. Cerruti and the way the regulated community was kept involved in this regulation.

PUBLIC COMMENTS

There were no public comments.

SEC ACTION

Vice Chairman Coyner asked for a motion for LCB R083-05, with three amendments. Commissioner Henderson made a motion to approve with the three amendments proposed in sections 9, 11, and 18. Commissioner Shull seconded the motion.

Vice Chairman Coyner asked for discussion. All were in favor; no one was opposed.

The Commission stopped the meeting at 11:58 a.m. to take a lunch break for approximately one hour. The Commission reconvened at 1:17 p.m.

Vice Chairman Coyner moved to the eighth regulatory petition on the agenda. Doug Zimmerman from the Bureau of Safe Drinking Water presented the regulation to the Commission.

(8) Regulation R126-05: Public Water System, Water Quality and Treatment of Water:

(Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation amends NAC 445A.450 through 445A.540. The amendment allows Nevada to adopt new federal primary drinking water regulations already in effect under the Safe Drinking Water Act (SDWA) in the following areas: arsenic rule; long term 1 surface water treatment rule; lead and copper rule revisions; radionuclides; filter backwash rule; public notification rule; and variances and exemptions.

The amended regulation also provides criteria for projects that propose treatment facilities for groundwater. Of note, USEPA requires states with regulatory jurisdiction to assure design and construction of new water treatment facilities are compliant with primary drinking water regulations. The remaining amendments add definitions, seek to provide clarity, change authority from the Division of Environmental Protection to the health authority, where health districts would have authority, and provide only enforceable (and delete more stringent) secondary standards for water quality.

The estimated beneficial economic effect of the proposed regulation on the business community and the public would be decreased medical costs that otherwise might be incurred as a result of exposure to contaminants in drinking water.

There is likely a significant adverse economic effect on small business although such impacts would not be borne evenly among privately owned public water systems such as mobile home parks. The impact borne by any particular water system will be dependent on the source of water quality and the quality as well as the availability and cost of alternative water sources. The likely significant impact will be associated with costs to comply with the new arsenic concentration standard of 10 parts per billion (ppb), reduced from 50 ppb, which becomes effective in January 2006. This standard will apply to all public water systems except transient, non-community systems, which are defined as non-community water systems that do not regularly serve at least 25 of the same persons over six months of the year. Cost impacts might include developing an arsenic compliance plan, finding and developing new water sources, purchasing water from another water system, blending water from two or more sources, or implementing treatment to reduce arsenic levels.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-06)

NOTE: A copy of the outline of Doug Zimmerman's presentation is included as appendix #8.

SEC Discussions & Staff Responses

Commissioner Crawford was concerned that the Health Division's regulation will expire on November 1st. John Walker, S E C Executive Secretary, explained that SB 395 allows the regulations that existed previously to be enacted if this regulation does not pass.

Commissioner Ricci wondered if NDEP would have authority, if the regulation did not pass. Mr. Zimmerman assured the Commission that NDEP would be in place with the authority.

Commissioner Henderson asked how the drinking water standards drive the water quality standards across the State, for example, like surface water. Tom Porta, Deputy Administrator for NDEP, said the Division considered this question as well to see if there was a link with establishing drinking water standards and surface water standards. There was no simple way to do this so it was decided to leave the water quality standards as they are now, which is 50 in regards to arsenic. The rule states that the surface water that has been designated for drinking water, with conventional treatment, must be able to make it drinking water. The conventional treatment today is much better than it was 20 years ago, so the Division will leave the water quality standards as they are currently.

Vice Chairman Coyner requested Mr. Zimmerman explain the relationship between the Division and the appropriate District Board of Health, as it appears repeatedly in the regulation in terms of approvals, process, who reports to whom, etc. Doug Zimmerman proceeded with explaining that Washoe and Clark Counties are the only counties where a District Board of Health exists. These District Boards of Health have authority to enforce certain provisions and are the lead regulatory agencies for certain programs within those counties. The Division has contracts with those Counties to implement portions of the drinking water programs.

Mr. Zimmerman continued by stating that when there is reference to the appropriate District Board of Health, it is the Board of Health that is taking the lead and replacing NDEP as the lead regulatory agency within their jurisdiction areas.

Andrea Seifert, Safe Drinking Water, explained that if a design for a facility were to be reviewed, Washoe County would do the reviewing of plans, field work, and approving plans, but NDEP would retain primacy over issuing the permits and overseeing what Washoe County does.

Commissioner Rackley asked if section 2 in the regulation would require a sanitary survey on all public water systems, including ground and surface water. Ms. Seifert explained that the recent regulations would require more frequent sanitary surveys in the federal language so NDEP had to make sure their regulations were as stringent. The minimum frequency for these surveys is three to five years; however these are conducted more frequently.

Doug Zimmerman further explained there are many varied different classes of water systems within the regulations. The classes vary depending on how many people they serve during a year, how many connections for year round use they have, transient and non-transient community systems which would be a restaurant or bar.

Commissioner Crawford wanted to know if this is self-funded. Mr. Zimmerman said there are a number of sources, with the primary being the Safe Drinking Water Grant from the US EPA. Other sources that fund the program include permit fees and operator certification fees, a small general fund allocation, and fund transfers from the State Drinking Water Revolving program.

Commissioner Rackley questioned if the 601 systems in the State had assessed how the local government would absorb the costs of reducing the arsenic level from 50 to 10. Burt Bellows, Bureau of Safe Drinking Water, Arsenic Compliance Officer for the State, approached the podium to discuss this question. He said this will be an impact on the smaller systems, some of whom have arsenic levels of 35 ppb to excess of 200 ppb. They will have no way to fund the treatment to lower the arsenic levels to the new standards.

Mr. Zimmerman added they are anticipating about 100 variances to come in. The Bureau staff is helping the water systems with variance packages. It looks like the cost for the treatment systems is up around \$350 million for these small communities. The variance extension process may extend this process out to the year 2015.

There are some other alternatives, continued Mr. Zimmerman, referring to a Point of Use treatment, which is the use of a reverse osmosis system at the tap. This might be a viable alternative.

There are about 30 systems that will fall under a bilateral compliance agreement. Their arsenic levels are high enough above 35 ppb that they can't qualify for an exemption. Under the compliance agreement, these systems will be under an enforceable document by which they will have to put in treatment/point of use. They will be the priorities because they have the highest risk to public health.

Private system or individual/home-owner wells are not subject to this. Public water systems are what this is for. Patty Lechler, Environmental Health Specialist, explained the three different classes of water systems: community, which is broken down to include the non-community. This non-community group is further broken down to include the transient and the non-transient non-community (this includes a business where people go at least six months out of the year but do not stay; i.e., day care).

Commissioner Crawford expressed his concern regarding the Commission dealing with the variances because of the time restraints needed and the Commission's qualification, even with good qualified staff reporting to them. He asked if a process could be established with a set of rules for variances that the Division implements and the Commission deals with extreme exceptions or appeals, and can the Commission use the Advisory Board for assistance. He can foresee a lot of meetings, especially in the beginning for variances.

Doug Zimmerman explained that the Advisory Board would most likely not be a resource for this, as they work on the operator certifications. He added that when variances would be brought to the Commission, the requests would fall into certain groups. The idea is to package water systems that have certain conditions associated with them and present those in a bundle as opposed to individually. There are guidelines at the federal level that will be used to determine what systems qualify, so it should not be as burdensome a process since they will be grouped together. Staff will be presenting the variances to the Commission with a recommendation for approval or denial.

There is assistance available such as the Nevada Rural Water Association, and others that will help these systems to comply. There are time limits for applications (January 23, 2006) that are driven by federal regulations. There are also time limits for the exemptions that are given and they are based on the population of the system and its historic arsenic level. Those with lower levels could get the original exemption of three years and then they can apply for an extension of that exemption of two years, up to three times, for a maximum of nine years. But, they must have low levels of a mcl of 10 ppb of arsenic.

Those systems that are higher, of 10-35 ppb, will have only three years and will have to be compliant in 2009. The systems in the middle will have to be compliant by 2011, 2013, and 2015. The guidelines are given by the US EPA in the Arsenic Guidance Manual, and each application will be processed according to these guidelines.

Doug Zimmerman continued. The exemptions are extensions of time to come into compliance. Variances are, after going through the best technology possible, you still cannot get into compliance. The variance would allow a system to continue to operate under specific

conditions, so long as public health is not at risk and the system would still seek ways to become compliant.

Commissioner Crawford expressed his concerns about accomplishing the requirements. NDEP Administrator Leo Drozdoff said he believes a subcommittee or a smaller member panel would work, but that the Commission could not delegate everything to the Division. Mr. Drozdoff continued by stating that everyone seems to be going into this with their eyes wide open and that they will be able to have the bundles of packages for the Commission or subset of the Commission in advance of the regulation date.

Commissioner Crawford agreed but would like to find a way for this to be dealt with outside of the Commission. Vice Chairman Coyner asked Attorney David Newton to look into the possibility of having a panel to grant variances or if only a full Commission can.

Commissioner Zimmerman stated that it appears the regulation clearly defines who can receive exemptions and those can be packaged together to simplify it. NDEP Administrator Leo Drozdoff agreed, and said he believes there are other tools available to deal with adversarial issues. The non-adversarial will meet the specific criteria. He feels the Division will be bringing to the Commission, the communities that meet the requirements for the exemption and are not adversarial.

Commissioner Rackley asked about the systems that are over 35 ppb and if they would have to approach the Commission. Doug Zimmerman said they would be out of compliance with the Safe Drinking Water Act and would be subject to enforcement action.

Commissioner Stephanie Zimmerman said she sits on the Board that is working on AB 198 program and they are trying to figure out how to distribute the grant funds because there are so many small systems that need help. The exemptions will help the small systems to see what others have done, what was more cost effective, and what worked best. It will help the smaller systems to keep from wasting money on programs or equipment that doesn't work.

Doug Zimmerman added that the small systems would have to hire a certified operator to operate them at an additional expense, so the point of use devices that can be used just at the kitchen sink could be the resolution. If the systems over 35 ppb don't meet the January 23rd date, the enforcement agreements will become enforcement actions, although their water will not be turned off.

Vice Chairman had the Commission move forward onto Section 5 of the regulations.

Phil Walsack, Far West Engineering, technical assistance provider for the rural communities in Nevada through the State Revolving Loan Fund Technical Assistance Program approached the podium. The 1.5% median household income is derived from Housing and Urban Development (HUD). This percentage is a water rate that should be appropriate for a community based on 22,000 gallons of water used per month.

Vice Chairman Coyner continued the discussion to Section 6. Vice Chairman Coyner talked about requests coming in from systems who will say they have absolutely no money and would like a variance. If they don't meet the affordability criteria, they can still come before the Commission and say they need a variance. He continued with his agreement to help the small water systems who will take a financial hit from this. The Vice Chairman said

the easier the Commission and Division can make it for them to get a variance, it is ok with him.

Commissioner Ricci asked about the substantial property right. Deputy Attorney General (DAG) David Newton explained that it could refer to someone who is trying to sell their property and there is an enforcement action against the water authority that supplies water to the property. This could affect the sale of the home.

Vice Chairman Coyner asked if there was any more discussion for Sections 6 or 7. There were no further comments so he moved the meeting on to Section 8. Doug Zimmerman spoke about sections 8-22 regarding the treatment and blending of ground water that is required to meet primary or secondary standards.

Commissioner Rackley asked about the pilot study in section 11. Andrea Seifert, Engineer for the Bureau of Safe Drinking Water, approached the podium. She stated that every water system will have different water quality characteristics that could pose a different condition for the treatment of that water. She said that if systems have water with similar water quality characteristics, the Division may be able to look at that in lieu of a pilot study at their facility. But, if their water quality characteristics are unique then they would have to do a pilot study, it would ensure they do not build a treatment plant and spend millions of dollars without really knowing if the treatment process they are installing is going to work.

Vice Chairman Coyner expressed his difficulty in seeing how sections 9 & 10 fit/work together. He felt it would be easier to understand if there were headers, a diagram box or something to help differentiate them.

Vice Chairman Coyner continued the discussion to Section 11, 12, 13, etc.

Commissioner Crawford asked about the portion of 14-1d that states it must be designed to mitigate the effects of such events that are “reasonably foreseeable.” He asked for clarification of who decides what is considered “reasonably.” Andrea Seifert answered by stating that on certain maps that are provided, the Division and Commission would know where seismic zones someone would fall into, if they are subject to flooding by the location of the 100 year flood level mark would be. This is a set standard the Division would go by.

Vice Chairman Coyner continued the discussion to Section 15, etc. Doug Zimmerman talked about the time limit between the approval time and the beginning and completion of construction. Commission Rackley was concerned about the one year limit on the construction with the possibility of getting one year extensions for it, as that might lead to a company doing minimal work, then just continuing to get extensions. Ms. Seifert said their plans would have to be reviewed again to see if their plans are in compliance with any new regulations that may be in effect.

Commissioner Rackley wanted to know if there should be a limit, such as five years, for the completion of the construction. Andrea Seifert said she would be more concerned with whether or not the original person who signed off on the plans was currently a professional engineer in Nevada.

Vice Chairman Coyner continued the discussion to Section 16-22. Doug Zimmerman gave a brief explanation of items 16-22. Vice Chairman Coyner said the sections they just went through were for Ground Water and that the Surface Water regulations already exist. Andrea Seifert said the next few sections discuss some treatments for Surface Water. Ms. Seifert added that the Ground Water systems are considered like a Surface Water system so all the regulations that apply to Surface Water systems apply to Ground Water systems under the direct influence.

Doug Zimmerman continued with Section 23. Vice Chairman Coyner clarified with Mr. Zimmerman that Primary Standards affect Health, and Secondary Maximum Contaminant Levels are aesthetic (taste, odor, staining, etc.).

Vice Chairman Coyner continued the meeting with Section 23-50. Vice Chairman Coyner spoke about item # 3 where it says the Division or the appropriate District Board of Health may require a higher degree of treatment. He wanted to know if they could over-rule the Division, and who would be primary. Andrea Seifert said whoever was more strict would be primary. Patty Lechler said that the area where the Washoe County District Health has enforcement authority, then they would make the decision. As for the rest of the state in our authority, the Division would have the final say.

Vice Chairman Coyner asked why # 4 says we will not grant a variance. Andrea Seifert explained it was because this was applying to surface water systems which have acute contaminants and the Division will not grant a variance if people could get sick from viruses, giardia, e-coli, etc.

Vice Chairman Coyner continued the meeting with Section 51. He asked about the wording for this section. Ms. Seifert expounded on the reasons for wording that appears redundant. She said that surface water systems have had treatment regulations since about 1995. When they noticed that there were more ground water systems that would have to treat water due to this arsenic rule, they felt there should be comparable regulations for ground water systems. There are subtle differences between the two types of treatment regulations.

Commissioner Crawford spoke regarding section 48 – 2, asking if listing a price was necessary because it would require a meeting with the Commission each time the price changes. An answer was given that NRS 233 requires said prices to be listed. Commissioner Crawford felt the price and addresses should not be listed in the regulations, but maybe it could be put on the website instead. Doug Zimmerman asked the Executive Secretary, John Walker, if he would approach the LCB with this idea.

Vice Chairman Coyner continued the meeting with the Sections. Commissioner Ricci asked about Radon and if there were any regulations being worked on for its treatment. Patty Lechler said the Radon issue is complex and the EPA is trying to implement the rule by combining it with air exposure.

PUBLIC COMMENTS

Vice Chairman Coyner asked for public comments regarding petition 8. Debby Kaye, Operations and Maintenance Manager for the Truckee Meadows Water Authority (TMWA) in

Reno, approached the podium. Ms. Kaye said that during this meeting she noticed the desire of the Commission to learn more about the drinking water regulations and what is going on with arsenic.

Ms. Kaye shared that she will be stepping in as the Chair of the California/Nevada section of the American Water Works Association (CA NV AWWA) next week. She extended an offer to the Commission to attend a conference the next week in Reno on October 12, 13, & 14. Allen Biaggi will be speaking and doing the opening session. Alexis Strauss from the EPA will be speaking at the Keynote lunch. There will be a whole track on arsenic, and one of the tours will be going out to look at the Fallon Arsenic Treatment Facility. She said they would comp the tickets for anyone who would like to attend. She will leave a list of names at the registration area.

Vice Chairman Coyner asked Debby Kaye how she felt about the regulation. She said TMWA has known for some time that the arsenic allowable levels would be changing but they did not know what number for ppb it would end up at. They have a compliance plan in place and were able to apply for some of the State Revolving Fund loan.

They are fortunate, as they have surface water and their plan calls for some blending, using some surface water and they have some treatment technologies that they are going to be doing. She feels that the fight was strong in the beginning, and now they ask where they go from here. One of the things she feels there is an opportunity for is improved treatment technologies, and there have already been big improvements in this area. Eventually, the treatment technologies will be more affordable, as there are some very bright people in the industry that are working on coming up with solutions. Ms. Kaye added that it is not just Nevada, Arizona and California are all resolved to help find a way to make this work.

Commissioner Henderson asked if there was a website available to get more information regarding the conference. Ms. Kaye said there was at ca-nv-awwa.org and this conference has several tracks dedicated to arsenic.

Vice Chairman Coyner asked if there were any other comments. There were none so he asked for a motion.

SEC ACTION

Commissioner Henderson made a motion to adopt LCB R126-05, with the understanding that this is a new responsibility to the Division and to this Commission. He feels the Commission has to rely on staff to get it under way. It will be a process of refinement and updates as new requirements come down the road. Commissioner Henderson added that he is impressed with how closely staff has worked with the water purveyors to pull this together. Commissioner Shull seconded the motion. All were in favor; no one was opposed. The petition was adopted with the typographical correction in item # 24.

Vice Chairman Coyner paused the meeting for a 10 minute break at 3:25 p.m. and resumed the meeting at 3:39 p.m.

Safe Drinking Water (continued)

(9) Regulation R129-05: Revises Certification of Operators of Public Water Systems:

(Note: the State Health Division filed a previous version of this regulation as a temporary regulation on March 28, 2005. The regulation has been slightly altered and is now proposed as a permanent regulation.) This regulation amends NAC 445A.617 through 445A.652. The amendment proposes changes to Nevada's Operator Certification Program for small water systems. Increased skills and knowledge would be required to operate public water systems for individuals certified through the Operator Certification Program. The program is managed by the Division of Environmental Protection - Bureau of Safe Drinking Water. The amendment is needed in light of more stringent water quality requirements. Ultimately, the goal of the operator certification program is the protection of public health.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies.

This amended regulation would have a beneficial economic effect by increasing the knowledge base of operators of small water systems; such increased knowledge of water system operations will result in both immediate and long-term protection of public health.

The estimated indirect adverse economic effects of the proposed revisions on the small businesses would apply to public water systems that require a Grade III or Grade IV Certified Operator. This indirect economic effect would be from new, higher requirement for post-secondary education required to qualify for new Grade III and Grade IV certifications. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not address fees. (SEC Petition #2005-07)

NOTE: Doug Zimmerman, Chief of the Safe Drinking Water Bureau presented the petition to the Commission. A copy of Mr. Zimmerman's presentation is included as appendix #9.

DISCUSSION:

Doug Zimmerman introduced Phil Walsack, Farwest Engineering, representing the Operator Certification Working Group in the capacity of a subcontractor to the Division. Mr. Walsack complimented Doug Zimmerman's knowledge for the length of time he has worked in the Safe Drinking Water Program.

Mr. Walsack continued by stating that four years ago, the regulations for operator certification were discussed at a public hearing before the State Board of Health. During the public comment period, many utilities had major issues with the regulations. The Bureau of Health Protection Services at that time realized it was probably out-gunned as far as their staffing levels went. They only had 17 staff members and there were hundreds of certified operators and managers. They needed help so they had the water professionals within the State of Nevada write them.

The Advisory Board was tasked by the State Board of Health to look at the regulations. They developed a seven member sub-committee with the working group, five of whom are at the meeting today. They developed these regulations from scratch after reviewing many states west of the Rockies. This regulation is very different from other regulations as it was written by water professionals in the field.

Phil Walsack added that they kept in process with the Advisory Board quarterly, and asked them how they felt about their ideas, what they should add, and how they should build it. There was a lot of public input, approximately 20-25 public workshops, meetings, presentations, AWA events, and field trips to discuss the regulations with operators. It is a very different set of regulations than they had previously.

Mr. Walsack told the Commission that he or any of the people who came to the meeting would be happy to answer any questions the Commission may have. On a positive note, the regulations are shorter than the previous regulations. There were no questions from the Commission.

Doug Zimmerman introduced Darrin Price, Public Works Director for the Sun Valley General Improvement District. Mr. Price is the Chairman of the Advisory Board on Operator Certification.

Darrin Price said they did report to the Bureau of Health Protection Services. He has been on the Board for about six years, during that time he has reported and worked with approximately four people in Doug Zimmerman's position.

Mr. Price said that at some point in time, other Advisory Board members will attend the Commission meetings and introduce themselves to establish a relationship with the Commission because water is our life. Everything they do revolves around operator certification and water in the State of Nevada.

Many small systems (serving 500 people or less) are not affected by these regulation changes. Those that are affected, the larger systems, at some point in time will be affected either by population or something else. It will be based on complexity. The Board make-up is of water professionals of varying sized systems from all over the State.

Mr. Price ended his presentation by stating they are asking the Commission to approve these regulations, and if anyone had questions, he would be happy to answer them.

Doug Zimmerman returned to the podium to discuss two amendments for the Commission to consider. The first amendment, pg. 14 section 16 of the regulation, on the distribution side of classification of the water system.

An Incline GID (General Improvement District) provided much of the comment on this because they found they were ranked as complex a distribution system a Las Vegas. They are smaller system but there are issues of complexity because they are a mountainous community and the number of pressure zones they have effects how the system is ranked. There are eight or nine criteria by which a system is ranked.

The sub-committee worked with Incline and there were various proposals presented back and forth. The differences in pressure zones and what to cap the points at were discussed. The resolution to this ended up being a ripple effect. This was to increase the points that change the minimum point score from a class IV Distribution System (from 41 to 42 points).

Doug Zimmerman wanted to read a letter from Dan St. John from the Incline GID, who was at the meeting earlier but could not stay. The letter stated, "We support the proposed rules with the minor changes to the distribution and treatment point system. We believe the minor tweaks better address specific circumstances of systems, which rely on exemption of filtration or surface water. Overall, we applaud your efforts to strengthen the NAC and provide a more logical nexus between the technical challenges presented by a water system and the level of technical competency and experience needed to operate it responsibly and safely."

Mr. Zimmerman continued on to the second amendment. This came out of the workshops and is an Incline GID issue. It is found on the next page of the regulations. This is more for the treatment side of the matrix. If a system has ozone, it is given eight points and if ultra violet light were used, then they would get eight points. If both were used, then they could get 16 points.

Las Vegas was used as an example and it was pointed out that a complete filtration system only got a score of 10 points. A general consensus was that if a system has two levels of treatment, then this scoring system of giving them a 10 instead of the 16, they could continue to remain in a Class III treatment system. This would work for Incline GID as well.

SEC Discussions & Staff Responses

Vice Chairman Coyner asked if there were any questions from the Commission. There were none.

PUBLIC COMMENTS

Darcy Burke, Executive Director for the California-Nevada section of the American Water Works Association, approached the podium. She said this is the 19th or 20th revision and it used to be in colors so it was easy to tell the old version from the new. There is also a linkage to the classification of the system, of the complexity, to the range of knowledge expected for that level of operator. It is called an Occupational Analysis.

It is something that the Advisory Board requires the California-Nevada section, as Administrators of the program, to do. When the Commission was talking about ozone, UV, conventional treatment, pigging, and emergency response, all of those elements tie in to the level of the system as well as the minimum level of competency of the operator. That is what certification is, it is not expertise, it is a minimum level of competency. It was a long process to make sure that public health is ensured at the basic level, so the operator maintains the minimum level of competency to ensure the health of the customers he/she serves by maintaining that system in that complexity. The system classification and the treatment classification are found in this part of the regulations, and not in the section that was just covered.

Vice Chairman Coyner asked Ms. Burke how well she feels rural Nevada is equipped to meet these standards. Ms. Burke said she thinks we are better off than most states. She sits on a board that would be equivalent to the Op Cert Advisory Board in the State of California and Nevada is ahead of the game, compared to CA. They developed a special classification for the small system operator and required more of that individual with less training opportunities. Nevada has the Nevada Training Coalition, Comprehensive Circuit Writers System, and Nevada Rural Water that has fewer systems to cover than California Rural Water, so Nevada is better equipped than most states. Nevada also has exemptions and variances for the small system operators that a lot of other states don't have.

Darcy Burke added that part of the Safe Drinking Water Act the authorization required was that certain elements be met in the Operators Certification Program. One of them was limited grandparenting. This has not changed so the people who have been operating a system for the last 20 years, who weren't certified through an exam, if they are still around, they can still operate the system. But, there will be a crunch to fill vacancies when these people retire.

Commissioner Ricci asked about the certification. Ms. Burke said the California-Nevada certification test is different than the Nevada test. To be a Grade 4, the California-Nevada requirements are eight college level courses but in Nevada, the requirement is only four.

Commissioner Henderson asked about the fee establishment for the State of Nevada. Ms. Burke said she does not have the answer to that.

Steve Brockway with the Bureau of Safe Drinking Water approached the podium. He said he was not personally involved when the fees were established. He added that much of the fees were based on staff time. The exams we give are purchased through the American Water Works Association. Previously, the fee for taking the exam was \$40 but the cost was \$40 for the exam. There were also part-time secretarial costs involved.

Commissioner Henderson asked for Mr. Brockway's best guess at when the Division would have to renew and update the tests. Steve Brockway said the \$40 fee was established in 1992, and was just changed this year to \$84, when some states charge over \$100.

Vice Chairman Coyner asked if there were any other public comments. There were none.

SEC ACTION

Vice Chairman Coyner asked if there were any questions or comments from the Commission. There were none so he asked for a motion. Commissioner Shull made a motion with the proposed amendments. Commissioner Rackley seconded the motion.

Commissioner Henderson asked if the proposed amendments include changing on page 14 from distribution 3 from 31 to 41. Vice Chairman Coyner said it includes the amendments from 41 and 42, and the ozone and the ultraviolet light.

Vice Chairman Coyner asked for a vote. All were in favor; none were opposed.

Leo Drozdoff, Administrator for Nevada Division of Environmental Protection (NDEP) approached the podium for a briefing.

Deputy Attorney General (DAG) David Newton stated for the record that the briefing from Leo Drozdoff was not listed in the Agenda. He does not see it as a compliance problem but he did want it on the record. Vice Chairman Coyner voiced his interpretation from reading a section that said “briefing to/from the Commission and the DAG,” was that someone was briefing the Commission and the DAG, and that person was Mr. Drozdoff.

Leo Drozdoff gave his appreciation to the Commission for setting aside time to make the meeting, as the temporary regulation clock is ticking, so the Division was getting concerned.

Mr. Drozdoff explained a dramatic change in senior management at NDEP, starting with himself as Administrator. He added that there are two relatively new Deputy Administrators

Tom Porta, who spoke earlier, was the Bureau Chief of the Bureau of Water Quality Planning, and before that had over a decade of experience in the Air programs. Tom Porta oversees the water programs, such as the Bureaus of: Water Quality Planning, Water Pollution Control, Safe Drinking Water, Mining Regulation & Reclamation, and Corrective Actions.

The second Deputy Administrator is Doctor Colleen Cripps. She has extensive experience in the Bureau of Waste Management, and most recently was the Chief of Air Quality Planning.

As everyone changed roles, it created vacancies in their previous positions. Dr. Cripps' position was filled by Jennifer Carr, who was a supervisor in the Bureau of Corrective Actions and also had a number of years in the Bureau of Water Pollution Control writing permits.

The other Bureau Chief hired was Kathy Sertic. She worked for Mr. Porta for a number of years in the Bureau of Water Quality Planning. Mr. Drozdoff said she is the Division's resident expert in that program.

Mr. Drozdoff continued with the Bureau of Safe Drinking Water that recently joined NDEP. A few weeks later that Bureau's Chief position became vacant and Doug Zimmerman expressed an interest in moving to that Bureau.

Leo Drozdoff said he and Mr. Porta were thrilled when Doug Zimmerman asked for the transfer because bringing over a series of new programs and new employees is an integration. Although the staff is impressive, Doug Zimmerman will provide a good transition point. He will be able to build on the number of programs he has managed in the past and will make the transition as seamless as possible.

When Doug Zimmerman left his post in the Bureau of Waste Management, Mr. Eric Noack was promoted into the position. Mr. Noack has a great deal of experience outside of the Agency setting up offices, worked for the Agency for a number of years in the Federal Facilities Program and the Bureau of Corrective Actions.

Mr. Drozdoff mentioned that he feels quite fortunate to have the senior staff with Mr. Porta and Dr. Cripps, and the Bureau Chiefs. He believes they will serve the State, himself, and the Commission well.

Administrator Drozdoff extended an invitation to the Commissioners to see the new building that houses NDEP. Overall, he feels the building will serve NDEP well.

Leo Drozdoff talked about Legislative updates. Three bills that the Division was proposing came to fruition.

The first is SB16. This allowed some of the gas taxes that are used to fund some of the Underground Storage Tank programs to be used in the Environmental Response Program. The Division will be able to hire a contractor with some of the money, as well as add a new staff person.

Regarding SB395 and the transfer from the Health Division. Mr. Drozdoff said the Division worked well with the State Health Division and the budget process was seamless.

SB396 was a clean-up of the Waste regulations. It dealt a little with the problems the Division had with Western Elite issues. They are now permitted.

Another issue was a variance that had allowed hazardous waste facilities to build a facility without a liner. The Division worked through the Legislature to have that exemption removed. It is a positive step.

In regards to workload, the Air programs have three powerplants in various stages of consideration. They are: Sempra in Northern Washoe County, LS Power in White Pine County, and Sithe Global just above the Clark County border in Lincoln County. Having three of these going at one time is unprecedented.

Mr. Drozdoff discussed the Division's Mercury Control Program. A few years ago, there was a voluntary Mercury Control Program and the current Program is a natural progression from the first. There is tremendous support and the plan is to move forward with a full-fledged permitting program to address mercury air emissions associated with precious metal mining activities in Nevada.

Mr. Drozdoff noted that the Mohave Generating Station in southern Nevada is scheduled to shut down this year. The only way any part of it will continue to operate will be to do "peaking" with natural gas. They will continue to maintain their permit while in "temporary closure."

Administrator Drozdoff moved the subject matter to some Mining programs. The Mining group is working on the Gold Quarry site. The Division formed a panel of experts to determine if there is a systemic problem going on and there should be a report made public by early November.

Dave Gaskin, Chief of the Bureau of Mining Regulation & Reclamation (BMRR), has been overseeing a several year effort the Division refers to as, "The Standardized Unit Cost." Mining Companies spend a lot of time developing bond estimates and the Division spends a lot of time reviewing them. The Standardized Unit Cost effort will allow each facility to come up with a dollar amount based on the quantities of earth being moved by putting the numbers into a spreadsheet. This will save the Mining Companies and the Division a lot of time.

In closing, Mr. Drozdoff commented on SB17, a new law that requires all regulatory actions be reviewed by a legislative panel. The Division does not oppose the reasoning behind this law but has opposed this based on the tremendous burden and time it will put on the processing of regulatory actions. This extra panel overview could add delays, and this may cause difficulties with temporary regulations, sunset calendar, etc. As a result of the Division's testimony, an allowance was added for the Governor to call for an Emergency Hearing.

Commissioner Ricci wanted to know the reasoning for this law because it seems the riggers that the Division and the Commission go through should be sufficient. Mr. Drozdoff explained that a number of governing agencies don't have a board or commission to ensure due process. A lot of regulations get written by the agencies and the agencies become the judge and jury, which results in a lot of frustration. He added that with the number of regulatory bodies and oversight commissions that actually do perform well, he doesn't see the value added.

Commissioner Henderson asked if the Legislative Body had been appointed yet. Mr. Drozdoff said he had not heard of it yet. No one on the Commission had heard of it either.

Vice Chairman Coyner asked if there were any questions or comments for Administrator Drozdoff. Commissioner Henderson added that he was really impressed with the two regulations that came from the Health Division, and how they involved the industry. It was a lot of work and they did a good job.

Vice Chairman Coyner asked for a motion to close the meeting. Commissioner Ricci made a motion; Commissioner Shull seconded the motion. The meeting closed at 4:40 p.m.

APPENDIX

APPENDIX A) Air Pollution Control Notices of Alleged Violations

BALD MOUNTAIN MINE operates an open pit mine and a gold ore processing plant located 60 miles SSE of Elko, in Huntington Valley, White Pine County, Nevada. The facility operates a Carbon Regeneration Kiln, a Mercury Retort and a Bullion Furnace.

On December 9, 2003, the Nevada Division of Environmental Protection – Bureau of Air Pollution Control issued Air Quality Operating Permit AP1041-1362 to Bald Mountain Mine. AP1041-1362 requires that Bald Mountain Mine complete source testing and Demonstration of Initial Compliance testing for Systems 01 and 03 within 180 days after the permit's date of issuance.

On May 2 – 3, 2005, Bald Mountain Mine conducted the required testing. Source test results demonstrated the System 01 Carbon Combustion Kiln (S2.001b) exceeded the permitted emissions limits for Carbon Monoxide (CO).

Because any emissions in excess of permit limits violate the permit, NDEP/BAPC issued Bald Mountain Mine Notice of Alleged Violation (NOAV) No. 1963.

Bald Mountain Mine has agreed to pay the administrative penalty of Six hundred dollars (\$600.00) for the above named violation.

Bald Mountain Mine has no previous history of non-compliance with the NDEP/BAPC.

CAITHNESS DIXIE VALLEY, LLC

Caithness Dixie Valley, LLC (Caithness) operates a geothermal power plant located approximately 68 miles northeast of Fallon, NV in Churchill County. A Class II Air Quality Operating Permit AP4911-0756 was issued on February 11, 2002.

Caithness failed to submit Annual Compliance Certifications for the years 2000 through 2004.

Caithness was in violation of Nevada Administrative Code (NAC) Section 445B.275
“Violations: Acts constituting; notice.”

NDEP assessed an administrative fine of eight thousand one hundred dollars (\$8,100.00) for the alleged violation. Caithness’ has agreed to pay an administrative penalty of eight thousand one hundred dollars (\$8,100.00) for the above named violations

At present, Caithness is in compliance with all applicable air quality regulations. Caithness has had no violations in the last five years.

HARVEY’S RESORT HOTEL/CASINO

Harvey’s Resort Hotel/Casino (Harvey’s) operates four boilers to provide heat and hot water to their resort located at Stateline Avenue and Highway 50, Stateline, Nevada (Douglas County). A Class II Air Quality Operating permit was issued on May 15, 2000.

The Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP) contacted Harvey’s and informed them that their Air Quality Operating Permit AP7011-0115.01 would expire on Sunday May 15, 2005.

Harvey’s was in violation of Nevada Administrative Code (NAC) Section 445B.275
“Violations: Acts constituting; notice.” Harvey’s operated 25 days without a valid operating permit.

NDEP assessed an administrative fine of Two Thousand Seven Hundred dollars (\$2,700.00) for the alleged violation using the NDEP penalty matrix. Harvey’s has agreed to pay an administrative penalty of Two Thousand Seven Hundred dollars (\$2,700.00) for the above named violations

At present, Harvey’s is in compliance with all applicable air quality regulations.

H.E. HUNEWILL CONSTRUCTION COMPANY

H.E. Hunewill Construction Company (Hunewill) operates portable crushing, screening, concrete, and asphalt plants throughout northern Nevada. A Change of Location Approval (COLA) No. 2021 was issued on May 24, 2005 for the temporary operation of a crushing and

screening facility located at the Nevada Department of Transportation pit EL 16-3, Elko County, Nevada. .

During a routine compliance inspection of the facility on June 15, 2005, it was noted that Hunewill was not utilizing the emission controls for the equipment as required by Air its permit.

Hunewill was in violation of Nevada Administrative Code (NAC) Section 445B.275 "Violations: Acts constituting; notice Hunewill was not operating with the required emissions controls.

Hunewill has agreed to pay the administrative penalty of six hundred dollars (\$600.00).

At present, Hunewill is in compliance with all applicable air quality regulations.

SOUTHERN CALIFORNIA EDISON COMPANY

Southern California Edison Company (SCE) was issued a Class I air quality operating permit for the Mohave Generating Station (Mohave) in Laughlin, Nevada on February 28, 2003. The facility is an existing major stationary source and consists, generally, of two 790-megawatt coal fueled boilers with ancillary support equipment.

On February 28, 2005, Mohave submitted reports detailing throughput deviations and excess emissions for Unit S2.006 (lime silo); Unit S2.007 (lime silo); Unit S2.008 (soda ash silo) and Unit S2.009 (soda ash silo). Exceedances of the maximum permitted throughput limits are violations of the Nevada Administrative Code (NAC) 445B.275 "Violations: Acts constituting; notice"

NDEP/BAPC assessed an administrative penalty of Six Thousand Seven Hundred Twenty dollars (\$6,720.00) for the exceedances.

Mohave has agreed to pay an administrative penalty of Six Thousand Seven Hundred Twenty dollars (\$6,720.00) for the above named violations.

These were the first such violations within a 60 - consecutive month period.

APPENDIX 1) Connie Davis' presentation for LCB R097-05 Mining Reclamation Permit Modification and Fee Adjustments

Chairman and members of the Commission, thank you for your time and the opportunity to make this presentation.

In April 2002, the Bureau modified the 519A regulations to include fees for a permit modification. Since then, industry has provided input that the fee structure did not consider simple permit changes. The Bureau worked with industry to develop changes that included: a modification to the fee structure for a permit modification, changes to the definition of minor modification, and added a definition for 'major modification.'

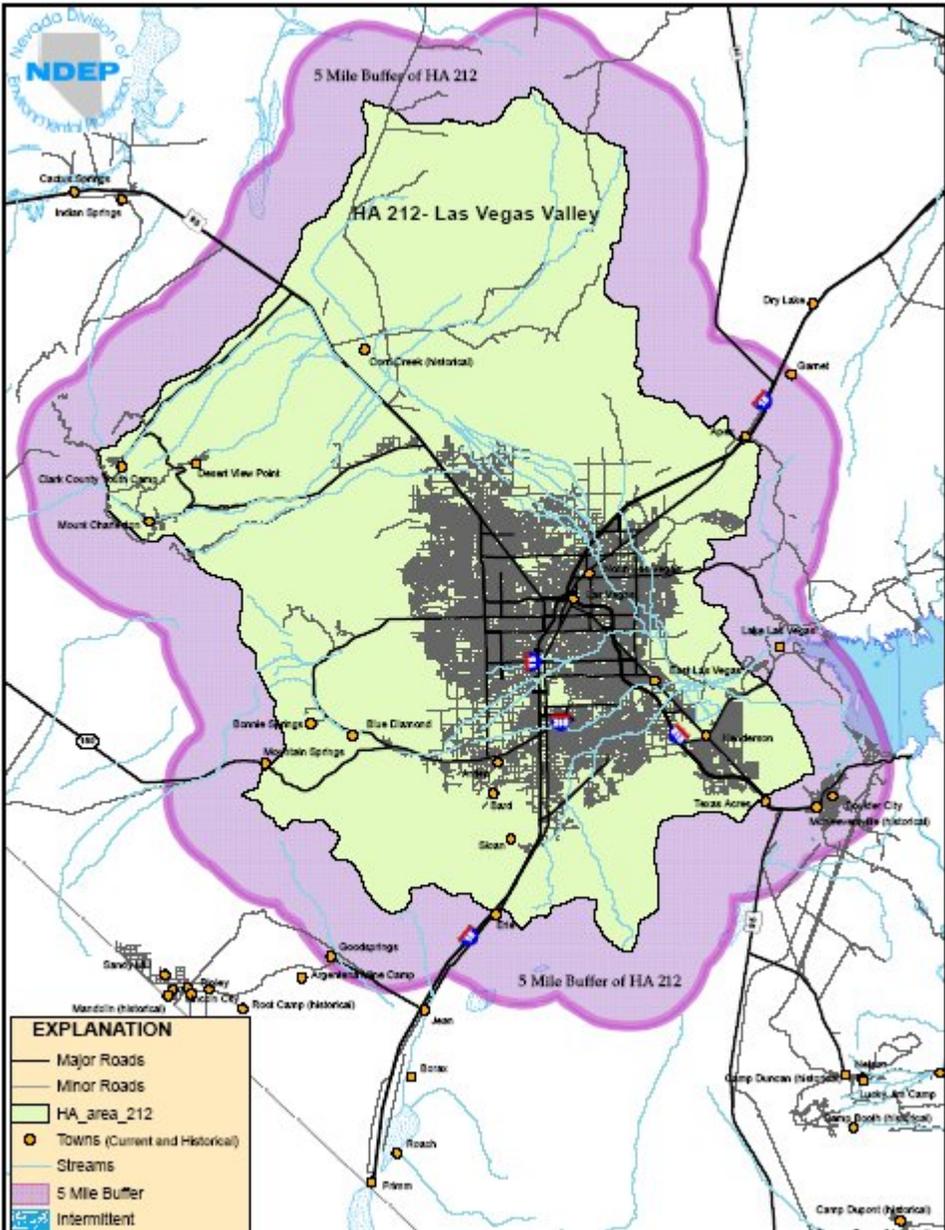
On June 10, the Commission reviewed and approved these changes as temporary regulations. We are now asking the Commission to adopt these temporary regulations as

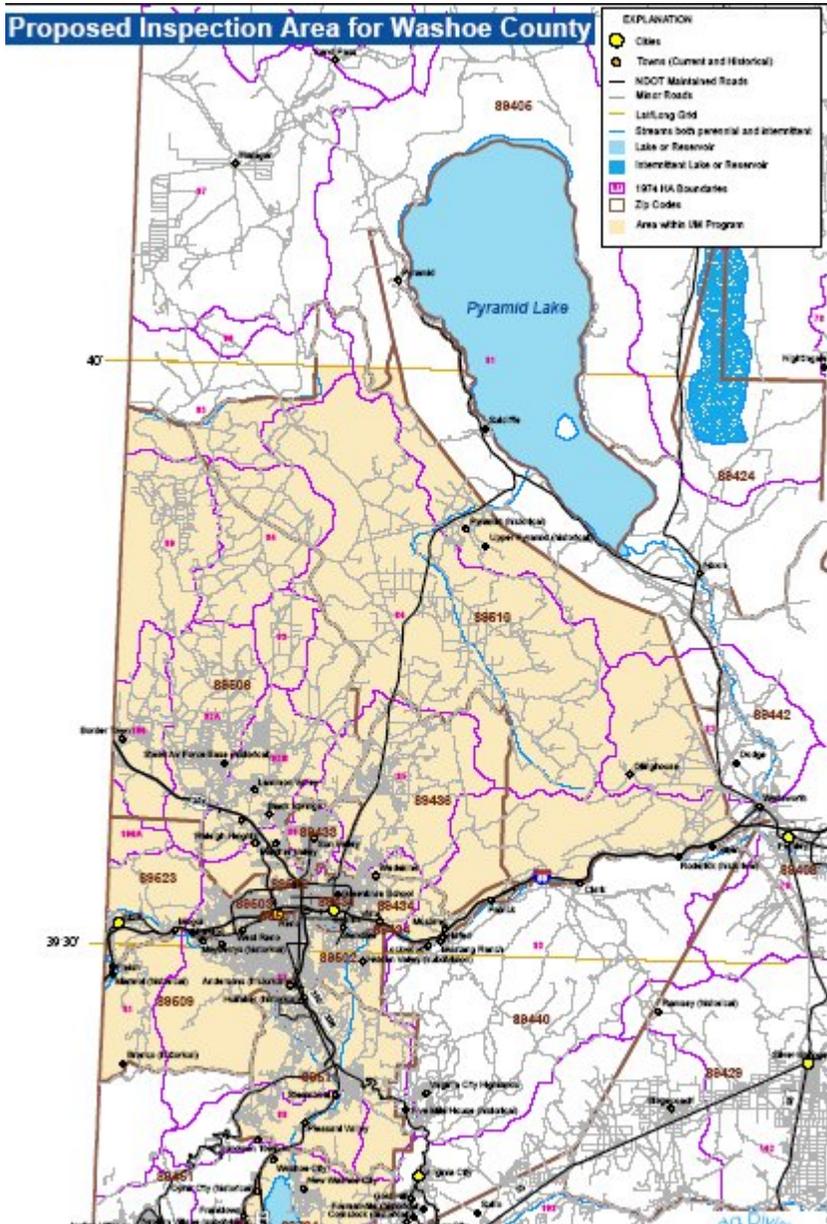
permanent regulations. The Bureau is not proposing any changes to the regulations that were presented in June. Everyone seems okay with the proposed regulations, as we have not received any comments.

APPENDIX 2) Sig Juanarajs talk for LCB File No. R035-05, I/M Program, Temporary Regulation Change to Permanent Regulation

- These temporary regulations were adopted late last year and resulted in two changes to that portion of the regulations covering the vehicle emissions inspection and maintenance program (smog check).
 - Bring diesel vehicles from 8500 lbs to 10000 lbs into the I/M program
 - Aligns the boundaries of the Clark Co I/M area with what is in the SIP and clarifies which areas in Washoe Co are in the program
- The regulation change did not change the size or scope of the program, however it provided the DMV (the implementing agency) with a tool by which they can decide with greater regulatory certainty if a registered vehicle on the rural fringes of the program areas are in the program
- Prior to this change, some vehicle owners in the rural areas of the county were receiving notices to have their vehicles smog checked because they share the same zip code with city dwellers.
- DMV would typically grant a waiver to these vehicle owner, but was doing so without specific regulatory authority
- In the few months that this temporary regulation has been in place, the DMV reports it has been an effective tool to help with making those decisions.
- LCB review resulted in no substantive changes

See geographic basin maps on the following pages:





APPENDIX 3) Petition R037-05

Good morning Mr. Chairman, members of the Commission, my name is Greg Remer. I'm a permitting supervisor with the Bureau of Air Pollution Control. I'm here this morning to present Petition R037-05 (Item 3 on the Commission's agenda). This petition makes permanent the changes to the air quality regulations previously adopted in temporary form as Petition 2005-02 at the Commission's hearing in June, 2005.

Section 1

This petition consists of an amendment to section 445B.221 of the code. This section lists updates to the Federal Regulations that the Commission adopts by reference. Although the Legislative Council Bureau subtly modified the language from that originally adopted in the temporary petition 2005-02 in June, no substantive changes were made from the

Commission's. However, we would like to point out that two previously included provisions were removed as technical corrections by LCB. The two provisions are in Subsection 3(b) (the reference to Subpart AAA for residential wood heaters is being removed) and Subsection 5 (the reference to Subpart M for Asbestos removal and clean-up is being removed). We wanted bring these to the Commission's attention. However, because these are technical corrections by LCB, no action is required by the Commission.

With that, we recommend that the Commission approve the changes as proposed in Petition #R037-05. I'd be happy to answer any questions at this time. Thank you.

APPENDIX 4) State Environmental Commission, Petition R036-05-

Good morning Mr. Chairman, members of the Commission, my name is Greg Remer. I'm a permitting supervisor with the Bureau of Air Pollution Control. I'm here this morning to present Petition R036-05 (Item 4 on the Commission's agenda). This petition is to make permanent the temporary regulation R2004-28 the Commission previously adopted in November of 2004.

Sections 1 and 2

This petition consists of amendments to sections 445B.22017, B.2202 and B.22023 of the code. These sections present requirements for visible emissions from stationary sources in general, exceptions to the opacity provisions, and opacity provisions for specifically identified sources. The purpose of the changes to these three sections is to provide technical corrections to regulatory references, which will allow EPA to approve these sections in our SIP.

Another purpose is to provide a future-effective sunset provision for the special opacity allowance in B.22023, which is a 30% opacity limitation. This regulation has historically been applicable only to Southern California Edison's Mohave Generating Station. This special opacity provision has been an impediment to EPA's full approval of our SIP. LCB views this sunset provision as a technical correction issue and we have confirmation of Southern Californian Edison's support of the change. Of note, the LCB drafted language includes a requirement that the Chairman of the Commission provide a notice of the date that the sunset provision becomes effective. However, the meaning and intent has not changed from that proposed by the Agency.

With that, we recommend that the Commission approve the changes as proposed in Petition #R036-05. I'd be happy to answer any questions at this time. Thank you.

APPENDIX 5) Petition R096-05 Talking presentation:

Good morning Mr. Chairman, members of the Commission, my name is Greg Remer. I'm a permitting supervisor with the Bureau of Air Pollution Control. I'm here this morning to present Petition R096-05 (Item 5 on the Commission's agenda). This petition is to make permanent the temporary regulation R2005-02 the Commission previously adopted in June of 2005.

Before I begin, in front of you there should be a document entitled "Item 5, Exhibit 1". The Division is providing this replacement due to errors in LCB's draft that could not be corrected prior to the Commission's package being mailed. I apologize that the corrections could not have been provided in your original package. If you would, I would ask that you please replace all of Item 5 in your package with Exhibit 1.

As indicated at the top of Exhibit 1, the matter which has been changed from the LCB draft is indicated in green and basically consists of changes to references that pointed to federal regulations instead of the NAC equivalent provisions. These changes are in Section 3 (lead-in sentence adding the reference to subsection 1(c) of Section 4; and sub-section 1 deleting the reference to federal regulation Part 52.21 and adding the reference to the Nevada Air Quality regulations) and Section 21 subsection 3 (by deleting the reference to federal regulation part 51.100 and adding the reference to paragraphs (a) and (b) of subsection 1 of Section 4. There are also two other minor technical corrections in Sections 4 (by adding the subscript g to H in subsections 1 and 2) and Section 12 (by deleting the term "kg/10" and adding the phrase "kilograms per million"). LCB is aware of these changes and has indicated that they concur that they are minor technical corrections. Other than these changes, the remainder of the proposed regulations in Exhibit 1 are consistent with those adopted by the Commission in June of 2005, with no substantive changes.

With that, we recommend that the Commission make permanent the temporary provisions adopted R2005-02 by approving Exhibit 1 in its entirety. I'd be happy to answer any questions at this time. Thank you.

APPENDIX 6) Talking Points for SEC Presentation, Petition 2005-05, LCB File No. R106-05

- Greeting and Introduction
- Petition 2005-05 proposes changes to the regulations covering the vehicle emissions inspection and maintenance program (NAC 445B.044).
- Petition was drafted in response to AB239; passed during the last legislative session.
- Paraphrase the change to NRS 445B.775 in AB239
- Explain what an "Inspection" and "Maintenance" (i.e. Test and Repair) program is and make the connection that Class I stations perform inspections and Class II perform maintenance
- State that the cleaning method must not violate the statutory requirement prohibiting Class I stations from performing the installation, repair, diagnosis or adjustment of any system of a motor vehicle that affects exhaust emissions.
- In developing the proposed regulation, NDEP sought out the advice of DMV Emissions, Automotive Technician Schools, Smog Check Industry Trade Organization, the Clark County Department of Air Quality and Environmental Management and the Washoe County Division of Air Quality Management
- Read the three line regulation change (or direct SEC's attention to the three lines)
- Workshops held on Aug 23rd in Reno and Aug 30th in Las Vegas; no objections were made; statements of support were received from a TMCC instructor, President of the Nevada Emission Testers Council, and the two counties
- Questions

APPENDIX 7 - Regulation for Above-Ground Marina Petroleum Storage Tank Systems
Regulation R083-05 – SEC 10/04/05 Regulatory Hearing

Background: In 2003, Senate Bill (SB) 58 was introduced to the Legislature. SB 58 was a bill to provide for certification of analytical laboratories. During the legislative session it was recognized that there ought to be regulations for unregulated aboveground petroleum storage tanks located near water. Consequently, to give the Nevada Division of Environmental Protection (NDEP) the authority to regulate marina petroleum storage tanks, an amendment supported by both NDEP and the Nevada Petroleum Marketers & Convenience Store Assoc, was added to SB 58.

Sec. 15 of SB 58 defines storage tank as follows:

“Sec. 15. NRS 459.820 is hereby amended to read as follows:

459.820 “Storage tank” means any one or combination of stationary tanks, including pipes connected thereto, used to contain and accumulate regulated substances. The term includes only [those]:

1. Underground storage tanks that are regulated pursuant to the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; and
2. Aboveground storage tanks that have a storage capacity of at least 110 gallons but not more than 30,000 gallons, including, without limitation, aboveground storage tanks located over water and used to supply fuel at a marina or other facility.”

(The proposed NAC’s limit the capacity to 12,000 gallons to conform to the International Fire Code, 2003, adopted by the State of Nevada.)

The passage of SB 58 with the amendment to add aboveground tanks to the definition of storage tanks now requires the Nevada Division of Environmental Protection to propose regulations for aboveground marina petroleum storage tanks under NAC 459.

These proposed aboveground marina storage tank regulations were drafted using input from other states that have marina tank regulations, from technical literature, from the recently Nevada adopted 2003 International Fire Code, and from Nevada marina petroleum tank owner/operators.

The proposed regulations will require leak detection and prevention systems, and specify operational requirements for aboveground marina tanks as well as piping systems similar to what is required for regulated underground storage tank systems.

Owner/operators will have to register each aboveground marina petroleum tank and annually remit to NDEP a \$50 fee for each storage tank compartment.

Presently, there are 7 aboveground marina petroleum storage tanks in Nevada that would be required to come into full compliance with NAC 459 by September 30, 2006.

This regulation also amends NAC 459.9974, which deals with petroleum impacted soil. In addition to the presently regulated constituents benzene, ethylbenzene, toluene and xylene, MTBE (methyl tert-butyl ether), a known contaminant of petroleum impacted soil has been added.

NDEP regulates the disposition of petroleum-impacted soils on a case-by-case basis, giving consideration to among other things, the contaminants present, their concentrations, and the presence or absence of nearby receptors. The proposed modification to NAC 459 will allow NDEP more flexibility in the management of soils impacted by a petroleum release.

Public Notifications:

Workshop notices of the proposed changes to NAC 459 were placed in the Reno Gazette Journal, the Elko Daily Free Press, and the Las Vegas Review-Journal, on February 9, 2005, as well as on NDEP's website.

A Reno and Las Vegas teleconferenced workshop was held March 10, 2005. Each item in proposed NAC 459 was reviewed with the attendees. The public concerns ranged from strong objection to requirements specifying the physical location of aboveground tanks to minor concern regarding the requirements for fuel filtration at the dispensing nozzle.

The comments and suggestions received were integrated into proposed NAC 459, which was then returned to the owner/operators and commenters for final review. The proposed regulation has also been reviewed by the Clark County Fire Dept. and Clark County Health District.

Adoption of the proposed regulations for aboveground marina storage tank systems will facilitate prevention and early detection of petroleum releases and prevent contamination of Nevada lakes and shoreline.

[The technical standards and operating requirements for underground storage tank systems are federally regulated under the Code of Federal Regulations, 40 CFR 280 which was established in 1986. 40 CFR 280 was adopted by this Commission in NAC 459.993. Above-ground storage tank systems, on the other hand, are not federally regulated but are regulated under the International or Uniform Fire, Building, Plumbing, and Electrical codes as well as requirements imposed by local authority. These codes deal mainly with location, construction, and fire prevention of above-ground storage tank systems.

While underground storage tank regulations provide extensively for leak detection and prevention mechanisms, the above-ground storage tank codes mentioned above have minimal leak detection and leak prevention requirements. For example, existing codes for above-ground systems do not require corrosion protection for buried unprotected steel fuel pipes nor do they require secondary containment on fuel supply lines leading to marina dock-mounted dispensers.

Recent events have increased the possibility for a release of petroleum from marina storage tank systems. Due to reduced runoff Nevada's southern lakes are at lower than normal levels. Operators of marina fueling facilities have had to extend their fuel supply lines thousands of feet from permanently located above-ground tank(s) to the marina dock-dispenser(s). They do this by adding sections of pipe to existing fuel supply lines with

numerous connectors, each of which is a potential leak source. As the lake level rises and falls, these pipe extensions are added and/or removed. In some cases, the above-ground fuel storage tank itself is relocated.

Petroleum releases reimbursed by the State of Nevada Petroleum Fund occurred in 1992, 1996, 1998, and 2004 at Echo Bay marina (UST - \$614,700), and in 1996 and 1999 at Lake Meade marina (AST - \$175,300). Additionally, NDEP rented (\$84,000) Petroleum Fund remediation equipment (CatOx) to the Lake Meade National Recreation Area from January 1999 thru January 2002 for a non-Petroleum Fund covered release (8,000 gallons), the total cleanup cost of which is unknown.

APPENDIX 8 - Regulation R126-05: Public Water System, Water Quality and Treatment of Water

Good afternoon Mr. Chairman, Members of the Commission. For the record my name is Doug Zimmerman, Chief of the Bureau of Safe Drinking Water with NDEP.

I will be presenting two petitions to you this afternoon but would like to start with a very brief overview of the Bureau since this is new program to the Division and the Commission. A briefing document was included in your packets and touches on most of this information. In the last legislative session Senate Bill 395 was passed and it resulted in the movement of the drinking water program from the Division of Health to the Division of Environmental Protection. This legislative action completed the movement of drinking water programs from Health to NDEP. Previously legislation had resulted in the movement of the Laboratory Certification program and the Drinking water State Revolving Fund from Health to NDEP.

As the name of the Bureau implies, the Bureau of Safe Drinking water has responsibilities for assuring drinking water meets all health based standards and that is done primarily through the provisions of the federal safe drinking water act which is delegated to the State of Nevada. The transfer of the program from Health occurred in July of this year and included the movement of 17 staff. In early August the Bureau Chief of the program departed for the private sector and I moved into the vacant position near the end of August.

Shortly after moving into the position, I ran into Allen Biaggi, Director of the Department of Conservation and told him of my move and he said I have a great quote I use in all my presentations on safe drinking water – I will email:

I want to share this with you because it really captures the significance of the program and the responsibility that the Division and the Commission have to protect public health. I don't believe there is another program within the Division that has as direct a connection between our actions and the effects on public health.

"The moment a person opens a drinking water tap in Nevada represents perhaps the most intimate connection between public trust and the government's duty to protect public health."

Through the safe drinking water program we assure that we meet that public trust and we do it through a series of activities which include review of facility designs and permitting, inspections which we refer to as sanitary surveys, monitoring of water quality and certification of operators of public water systems. We have responsibilities that include 600 water

systems and nearly 1,000 certified operators. As you would expect the requirements vary with respect to the complexity and number of people served by a system.

That completes my overview and I would be happy to answer any questions, I should also mention that a number of staff from the Bureau are here today they have many years of experience in the program and can help answer any questions the commission may have.

Petition #8

Regulation R126-05: Public water system, water quality and treatment of water.

While this petition is new to the Commission this regulatory package was previously adopted by the Board of Health on February 18, 2005 as temporary regulations. Prior to adoption the Health Div, conducted a workshop on November 12, 2004 to collect comments. As you may be aware, the Board of Health's function is essentially equivalent to the SEC's role and the relationship between the SEC and NDEP was equivalent to the relationship between the Board of Health and the Health Division. As a result of Senate Bill 395 NDEP is here today to have these temporary regulations adopted as permanent.

Since these regulations are new to both NDEP and the Commission, NDEP elected to conduct a second workshop to solicit public comments. That workshop was held on September 22 and we had about twenty participants between our Carson City and Las Vegas location. We didn't receive any comments on this set of regulations however we did have several hours of discussion on the second set of regulations that I will present today.

Mr. Chairman – I like to start with an overview of the regulations, the significance of the amendments and then if you would like I can give a brief overview of the sections but starting with a general overview:

The most significant reason for these proposed amendments is to adopt new and amended federal primary drinking water regulations already in effect under the federal Safe Drinking Water Act. For Nevada to maintain its primacy for drinking water programs we must adopt regulations that are at least as stringent as the federal standards. New standards and rules have been put in place by the federal government for a number of constituents and programs; they were listed in the briefing paper. While these are all important and affect all sizes of systems through out Nevada the new arsenic standard and the variance and exemption rule are very significant in terms of the number of systems and size of systems impacted.

The standard for arsenic was lowered from 50 ppb to 10 ppb and this will require a number of systems in Nevada to add treatment to meet the new standard. Again, if we do not adopt these standards as a State then the federal government will enforce them. Along with these new standards and again using Arsenic as an example the amendments to the regulations provide for a process by which the commission can provide variances and exemptions to water systems under certain conditions. This again is very important to communities facing the requirement to put what may be very expensive treatment systems in place for Arsenic. The variance and exemption process would allow these communities, and we expect about 100 water systems to apply, additional time to meet the new standard. In addition to these 100 systems, we have another 35 water systems that we anticipate entering into bilateral compliance agreements with. These agreements will establish an enforceable process and time frame for these systems to come into compliance. Key to the variances and bilateral compliance agreements is a demonstration by these systems that they will ensure adequate

protection of public health during the process. The regulations in front of you today adopt these new standards and provisions for the issuance of variances and exemptions. Another significant portion of the amendments address processes for treatment and blending of ground water to meet primary or secondary standard – again arsenic being one of the key constituents driving the need for these amendments. Many water systems will be installing some type of treatment system to meet the new standard.

Section 2 and 3 addresses the frequency of sanitary surveys and the meaning of significant deficiency.

Section 4 – requires a PWS to deliver to its customers on an annual basis a consumer confidence report on water quality

Sections 5 – 7 address the variance process

Sections 8 – 22 address treatment or blending of groundwater required of a public water system to meet a primary or secondary drinking water standard.

Section 23 adds new modified definitions including the Commission and the Division

Section 24 adds the word production to judge if a facility is subject to the regulations. If production they are in.

Section 25 – adopts the new primary drinking water standards

Section 26 – adds a reference to the new sections 2- 22 of the proposed regs and requires compliance

Section 27 – adds references to new monitoring requirements of the federal 40 cfr regulations pertaining to primary drinking water standards, requirements to use a certified lab and adds a provision for determining compliance by a running annual average method.

Section 28 – removes unenforceable lower limits for secondary drinking water standards and reduces this section to just the enforceable limits for secondary constituents – these are not health based standards taste, odor, staining, aesthetics. Removes the variance – addressed by other sections

Section 29- address monitoring of secondary constituents and procedures if exceedences are found for notification and plans to return the system to compliance.

Section 30 and 31 – addresses the use of the appropriate method for analysis of drinking water and the use of certified labs.

Section 32 – address various requirements of public notification including exceedences of standards, failure to monitor, failure of treatment techniques and conditions of variances or exemptions

Sections 33 – 36 - addresses the conditions under which the commission can grant a variance or exemption, and the conditions of that variance or exemption, including establish an alternative water supply.

Section 37 – setsforth process for a water system or the public to appeal a decision of the Division to the Commission

Section 38 – address adoption of publications by reference

Section 39 – 58 contain numerous corrections of regulatory references, spelling, additions of reference to the Division of Environmental Protection and the appropriate board of health rather than the Health Division and corrected references to certain treatment standards.

Section 59 – 3 repealed sections one being the definition of Health Division

APPENDIX 9 - Petition # 9

LCB File # 129-05Revises Certification of Operators of Public Water Systems

Mr. Chairman, again these regulations were previously adopted by the State Board of Health – it was at their same meeting on 2/18/05 and the regulations were presented at the same health div workshop on 11/12/04. As I mentioned previously we conducted a second workshop on 9/22/05 during which we had several hours of discussion. As a result of the workshops we do have two amendments that I will be presenting at today's meeting. One of the comments we heard at the workshop was a recommendation that the drinking water operator certification program and the waste water operator certification program which is also the responsibility of NDEP should be evaluated concurrently and differences between levels of experience/education and training should all be examined. We agree with this concept, the programs are now under one agency, NDEP, and we are committed to moving forward with this effort and we have begun that process to compare the two programs.

The enabling legislation for the Operator Certification Program includes the option of appointment by the Commission or previously the Board of health of an Advisory Board to the Commission for the Certification of Operators of Public Water systems. The Board of Health had appointed an advisory Board and by statute that Board continues to function and now is considered an advisory Board to the commission. This set of regulations we are presenting today represents a four-year effort by that Board to update and improve these regulations. A Subcommittee was appointed by the Board to work on these regulations and a very substantial effort has gone into this package of regulations. We have representative of the board and subcommittee here today and the chairman of the Advisory board, Mr. Darrin Price plans on providing comment to the commission.

Mr. Chairman – again I will start with an overview of these regulations.

The regulations cover two primary activities, the certification of operators and the classification of water systems. The way the process works is that we start with the classification of a water system in two areas – their distribution system and their treatment system. The system classification is based on a point system that basically reflects the complexity of the system. There are four classes of distribution systems and four classes of

treatment systems. Based on this classification of the water system – the system must then employee operators who certified at the appropriate level – like the water system classification - there are four levels of certification for distribution and four levels for treatment.

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R097-05

Effective October 31, 2005

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

AUTHORITY: §§1-5, NRS 519A.160.

A REGULATION relating to mining reclamation; revising provisions governing the modification of a plan for reclamation of a mining operation or an exploration project; revising the fees for certain permits; and providing other matters properly relating thereto.

Section 1. Chapter 519A of NAC is hereby amended by adding thereto a new section to read as follows:

“Major Modification” means:

- 1. A change in the postmining land use which requires reclamation techniques which are significantly different from the techniques included in the approved plan for reclamation;*
- 2. The addition of a type of disturbance which was not previously included in the approved plan and which cannot be reclaimed in a manner that is substantially similar to the reclamation techniques included in the approved plan;*
- 3. The proposed disturbance is equal to 25 percent or more of the acreage in the approved plan; or*
- 4. A change in the visual appearance of the reclaimed areas that is substantially different from the visual appearance which was discussed or commented upon during the public comment period.*

Sec. 2. NAC 519A.010 is hereby amended to read as follows:

519A.010 As used in NAC 519A.010 to 519A.415, inclusive, unless the context otherwise requires, the words and terms defined in NAC 519A.015 to 519A.095, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

Sec. 3. NAC 519A.050 is hereby amended to read as follows:

519A.050 “Minor modification” means:

1. ~~[An increase in the acreage affected by an active exploration project or active mining operation]~~ *A change involving more than 10 acres but less than 25 percent of the acreage included in the approved plan for reclamation* if:

(a) The types of disturbances are included in the approved plan; or

(b) The ~~[affected land can be reclaimed in a manner which is substantially similar to the manner of reclamation included]~~ *change, including, but not limited to the postmining land use, does not require reclamation techniques significantly different from those included* in the approved plan ; ~~[]~~

2. Changes in the ~~[specific techniques for reclamation, including, but not limited to the equipment which is used and the mixes of seeds.]~~ *equipment used for reclamation; or*

3. Changes to the final contours.

~~[4. Changes to the schedule for completing reclamation necessitated by changes in:
—(a) The mining operation or exploration project; or
—(b) Changes to the approved plan for reclamation.]~~

Sec. 4. NAC 519A.227 is hereby amended to read as follows:

519A.227 1. The fee for a minor modification to a permit for an exploration project or a permit for a mining operation is ~~[one half the amount of the applicable annual fee for the~~

~~permit.] \$500 plus \$20 per acre or part of an acre, not to exceed one-half the annual fee assessed pursuant to NAC 519A.230 and 519A.235.~~

2. The fee for a major modification to a permit for an exploration project or a permit for a mining operation is equal to the amount of the applicable annual fee ~~[for the permit.~~

~~—3. For the purpose of this section, the following are not modifications:~~

~~—(a) An increase or decrease in the amount of surety necessary to cover the cost of reclamation as determined by the 3-year periodic review of the amount of surety required by NAC 519A.380;~~

~~or~~

~~—(b) Changes to the proposed seed mix for reclamation.] assessed pursuant to NAC 519A.230 and 519A.235.~~

3. *For a modification that does not constitute a major modification or a minor modification and involves a disturbance of 10 acres or less, a transfer of the permit or a change to the schedule for completion of reclamation, the fee is the lesser of \$250 or one-half the annual fee assessed pursuant to NAC 519A.230 and 519A.235.*

4. *Fees paid pursuant to this section are nonrefundable.*

Sec. 5. NAC 519A.305 is hereby amended to read as follows:

519A.305 1. The Division shall, at least 30 days before making a major modification to a plan for reclamation of a mining operation:

(a) Circulate a public notice of the intent to modify the plan in a manner intended to inform interested persons;

(b) Cause to be published in a newspaper of general circulation within the geographic area of an exploration project or mining operation, a notice of the intent to modify the plan; and

(c) Mail to the operator, the landowner, members of the board of county commissioners of the county in which the project or operation is located, the Division of Minerals *of the Commission on Mineral Resources* and any other person who so requests, written notice of the intent to modify the plan.

2. Notice given pursuant to subsection 1 must include:

- (a) The name, address and telephone number of the Division;
- (b) The name and address of the operator;
- (c) The location of the project or operation;
- (d) A description of the procedure which the Division will use to make a final decision to modify a plan;
- (e) The specific location where interested persons may obtain further information or inspect and copy relevant forms and documents; and
- (f) A statement that interested persons must submit to the Division written comments on the tentative decision of the Division within 30 days after the date on which the notice is published.

3. The Division:

- (a) Shall allow written comments and information and a public hearing as provided in NAC 519A.185 to 519A.210, inclusive, before making a major modification to a plan for reclamation.
- (b) Is not required to allow written comments and a public hearing as provided in NAC 519A.185 to 519A.210, inclusive, before making a minor modification to a plan for reclamation.

~~[4. As used in this section, "major modification" includes only:~~

~~—(a) A change in the postmining land use that requires reclamation techniques which are significantly different from the techniques in the approved plan;~~

- ~~—(b) The addition of a type of disturbance not previously included in the approved plan and which cannot be reclaimed in a manner which is substantially similar to the reclamation techniques included in the approved plan;~~
- ~~—(c) Other modifications to the approved reclamation activities which significantly increase the amount of surety required and are not a minor modification; or~~
- ~~—(d) A change in the visual appearance of the reclaimed areas which is substantially different than the visual appearance which was discussed or commented upon during the public comment period.]~~

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R097-05

The State Environmental Commission adopted regulations assigned LCB File No. R097-05 which pertain to chapter 519A of the Nevada Administrative Code on October 4, 2005.

Notice date: 8/30/2005
Hearing date: 10/14/2005

Date of adoption by agency: 10/4/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

This is a permanent regulation proposed by the Nevada Division of Environmental Protections - Bureau of Mining Regulation and Reclamation. The State Environmental Commission approved the permanent regulation on October 04, 2005.

The regulation provides for changes to the NAC 519A mining reclamation regulations. Under the regulation, changes include a revision to the current fee structure for a permit modification and definition of minor modification. The revision also defines a major modification. The revision to the current fee structure reduced the fees charged for simple changes to the permit that require minimal staff time to review and process. The other revisions set clearer parameters to define minor and major modification.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Nevada Division of Environmental Protection (NDEP), Bureau of Mining Regulation & Reclamation held workshops on the above referenced temporary regulation at the following locations.

Carson City February 7, 2005 2:00 p.m. - 3:00 p.m Department of Conservation & Natural Resources 123 West Nye Lane, Room 217 Carson City, Nevada 89706	Elko February 8, 2005 3:00 p.m. - 4:00 p.m Elko BLM Field Office 3900 East Idaho Street Elko, Nevada 89801	Winnemucca February 9, 2005 11:00 a.m. - 12:00 p.m. Winnemucca Public Library 85 East Fifth Street Winnemucca, Nevada 89445
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Notification of the proposed changes was sent out to all parties included on NDEP's mailing list. Notification was published in the Carson Appeal, Humboldt Sun, Elko Daily Free Press, and on NDEP website. In addition the Nevada Mining Association was given notification to distribute directly to its members. No written comments were received; verbal comments received showed support for the proposed changes.

2. The proposed regulation was also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the

following dates (September 05, 19, 26, 2005). The public was subsequently mailed a public notice and meeting agenda for the SEC regulatory hearing, which was held in Reno on October 04, 2005; the SEC mailing list was used for both mailings.

At the SEC hearing, there were no public comments received by the Commission during the adoption of the referenced regulation.

3. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

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 State Environmental Commission adopted the regulation on October 04, 2005 without any changes.

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

No anticipated economic effects will result from adoption of this regulation.

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

7. 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.

The regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

8. 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.

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.

This regulation makes small decrease and other nominal adjustments to fees.

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R035-05

Effective October 31, 2005

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

AUTHORITY: §1, NRS 445B.210, 445B.760, 445B.770 and 445B.825; §§2 and 3, NRS 445B.210 and 445B.770.

A REGULATION relating to air pollution; exempting certain heavy-duty vehicles from certain provisions concerning engine emissions; revising the provisions requiring inspections of the engine emissions of certain motor vehicles which are based at addresses located within Clark County and Washoe County; and providing other matters properly relating thereto.

Section 1. NAC 445B.592 is hereby amended to read as follows:

445B.592 The provisions of subsection 3 of NAC 445B.576 and NAC 445B.593 to 445B.596, inclusive, do not apply to any:

1. Motorcycle or moped.
2. Motor vehicle which is subject to prorated registration pursuant to NRS 706.801 to 706.861, inclusive, and is not based in this State.
3. New motor vehicle until the third registration of the vehicle.
4. Motor vehicle permanently converted from gasoline to propane, compressed natural gas (CNG), methane or butane as a fuel.
5. Motor vehicle with a model year before 1968.
6. Heavy-duty motor vehicle *that has a manufacturer's gross vehicle weight rating of more than 10,000 pounds and that is* powered by a diesel engine.

Sec. 2. NAC 445B.593 is hereby amended to read as follows:

445B.593 1. ~~[On or after October 1, 1983,]~~ *Except as otherwise provided in subsection 2,* persons who are registering or reregistering a used motor vehicle in Clark County must provide evidence of compliance *with NAC 445B.400 to 445B.735, inclusive,* for those vehicles ~~[except for any]~~ which are based at ~~[addresses serviced by one of the following post offices:~~

~~—(a) Bunkerville;~~

~~—(b) Indian Springs;~~

~~—(c) Jean;~~

~~—(d) Goodsprings;~~

~~—(e) Logandale;~~

~~—(f) Mesquite; or~~

~~—(g) Moapa.] :~~

an address:

(a) Within the boundaries of Hydrographic Area 212, as established by the State

Implementation Plan;

(b) Within 5 miles of the boundaries of Hydrographic Area 212, as established by the State

Implementation Plan; or

(c) Within the city limits of Boulder City.

2. *A person who is registering or reregistering a used motor vehicle in Clark County is not required to provide evidence of compliance with NAC 445B.400 to 445B.735, inclusive, for the vehicle if the vehicle is based at an address within the community of Goodsprings.*

3. The Department will establish and maintain a list by zip code of the addresses ~~[which]~~ *in Clark County that are subject to the requirements of this section and the addresses in Clark County that* are exempted from *the requirements of* this section.

4. *As used in this section, “State Implementation Plan” means the plan adopted by the State of Nevada pursuant to 42 U.S.C. §§ 7410 and 7502.*

Sec. 3. NAC 445B.594 is hereby amended to read as follows:

445B.594 1. ~~[On or after October 1, 1983,]~~ *Except as otherwise provided in subsection 2,* persons who are registering or reregistering used motor vehicles in Washoe County must provide evidence of compliance *with NAC 445B.400 to 445B.735, inclusive,* for those vehicles ~~[except for any]~~ which are *based at an address that is south of the 40th degree of north latitude.*

2. *A person who is registering or reregistering a used motor vehicle in Washoe County is not required to provide evidence of compliance with NAC 445B.400 to 445B.735, inclusive, for the vehicle if the vehicle is* based at ~~[addresses serviced by one of the following post offices:~~

~~—(a)]~~ *an address:*

(a) Within the community of:

(1) Crystal Bay;

~~[(b)]~~ *(2) Empire;*

~~[(c) Gerlach;~~

~~—(d)]~~ *(3) Incline Village;*

(4) Nixon;

~~[(e) Wadsworth; or~~

~~—(f) Incline Village.~~

~~—2.]~~ *(5) Sutcliffe; or*

(6) Wadsworth; or

(b) Which is serviced by a post office for any of the communities listed in paragraph (a).

3. The Department will establish and maintain a list by zip code of the addresses ~~[which]~~ *in Washoe County that are subject to the requirements of this section and the addresses in Washoe County that* are exempted from *the requirements of* this section.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R035-05**

The State Environmental Commission adopted regulations assigned LCB File No. R035-05 which pertain to chapter 445B of the Nevada Administrative Code on October 14, 2005.

Notice date: 8/30/2005
Hearing date: 10/4/2005

Date of adoption by agency: 10/14/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

This permanent regulation clarifies and updates the Inspection & Maintenance (I/M) provisions of Nevada Administrative Code (NAC) 445B and brings them into alignment with the Nevada Revised Statutes (NRS). The amendments bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000 pounds into the I/M program as per Assembly Bill 36. It also aligns the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan as well as clarifies which areas are included in the Washoe County I/M program and which are exempt.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Nevada Division of Environmental Protection (NDEP), Bureau of Air Quality Planning (BAQP) held workshops on the above referenced temporary regulation at the following locations.

Reno Friday, November 5, 2004 South Valleys Library Conference Room 18100 Wedge Parkway Reno, NV 2:00 – 3:00 PM	Las Vegas Wednesday, November 3, 2004 The Community College of S. Nevada Conference Room A, Phase 5 Bldg 3200 E Cheyenne Ave North Las Vegas, NV 4:00 – 5:00 PM
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The proposed regulation was also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates (September 05, 19, 26, 2005). The public was subsequently mailed a public notice and meeting agenda for the SEC regulatory hearing, which was held in Reno on October 04, 2005; the SEC mailing list was used for both mailings. At the SEC hearing, there were no public comments received by the Commission during the adoption of the referenced regulation.

2. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

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.

Public workshops were held to explain the proposed changes and solicit opinion from the affected businesses, primarily large public fleets that operate diesel-powered pickup trucks in the 8500 to 10000 pound weight class. No public comments either oral or written were made at the workshops.

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.

No changes were proposed at the State Environmental Commission Hearing, either by NDEP staff, the public or the Commission. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

(a) Regulated Business/Industry. The proposed amendments will affect some government, business and industry fleets in areas that require emissions testing. In those parts of Washoe and Clark Counties that are subject to the emissions testing program, diesel-powered vehicles with a GVWR from 8,500 up to and including 10,000 pounds will be required to have an annual emissions test before registering. Affected fleets can choose to test their own vehicles or use an emissions testing station. Each year, DMV sets a maximum fee that stations can charge for an emissions test; the 2004 limits are \$39.00 in Clark County and \$36.00 in Washoe County.

(b) Public. The proposed amendments will affect certain vehicle owners in areas that require emissions testing. In those parts of Washoe and Clark Counties that are subject to the emissions testing program, diesel-powered vehicles with a GVWR from 8,500 up to and including 10,000 pounds will be required to have an annual emissions test before registering. Each year, DMV sets a maximum fee that industry can charge for an emissions test; the 2004 limits are \$39.00 in Clark County and \$36.00 in Washoe County.

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

The Department of Motor Vehicles (DMV) implements the inspection and testing program for motor vehicles. There will be no additional costs to DMV for implementing this regulation.

7. 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 regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

8. 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.

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.

Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830.

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R037-05

Effective October 31, 2005

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

AUTHORITY: §1, NRS 445B.210.

A REGULATION relating to the State Environmental Commission; revising the provisions governing the adoption by reference of certain federal regulations by the Commission; and providing other matters properly relating thereto.

Section 1. NAC 445B.221 is hereby amended to read as follows:

445B.221 1. Title 40 C.F.R. §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165, and Appendix S and Appendix W of Title 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2002.

2. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 1, 2003.

3. ~~[The]~~ *Except as otherwise provided in subsection 4, the* following subparts of Title 40 C.F.R. Part 60 are hereby adopted by reference as they existed on July 1, ~~[2003:]~~ **2004:**

(a) Subpart A, except §§ 60.4, 60.8(b)(3) and 60.11(e) ~~[:]~~; *and*

(b) Subparts C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, ~~[AAA:]~~ BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW and AAAA.

4. *The amendments to subpart GG of Title 40 C.F.R. Part 60 set forth in Volume 69 of the Federal Register at pages 41346 et seq., July 8, 2004, are hereby adopted by reference.*

5. Subparts A, B, C, D, E, F, H, I, J, K, L, ~~[M,]~~ N, O, P, Q, R, T, V, W, Y, BB and FF of Title 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, 2003.

~~[5.—Subparts]~~

6. *Except as otherwise provided in subsection 7, the following subparts of Title 40 C.F.R. Part 63 are hereby adopted by reference:*

(a) A, B, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, **EEEE**, GGGG, HHHH, JJJJ, **KKKK**, **MMMM**, NNNN, OOOO, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, **YYYY**, **ZZZZ**, **AAAAA**, BBBBB, CCCCC, FFFFF, JJJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ and SSSSS, ~~[of Title 40 C.F.R. Part 63 are hereby adopted by reference]~~ as they existed on July 1, ~~[2003.~~

~~6.] 2004; and~~

(b) *Subpart DDDDD as set forth in Volume 69 of the Federal Register at pages 55218 et seq., September 13, 2004.*

7. *The amendments to subpart YYYY of Title 40 C.F.R. Part 63 set forth in Volume 69 of the Federal Register at pages 51184 et seq., August 18, 2004, are hereby adopted by reference.*

8. Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, 2003. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, the provisions of 40 C.F.R. Part 72 apply.

~~[7.]~~ 9. Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, 2003. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, the provisions of 40 C.F.R. Part 76 apply.

~~18.1~~ **10.** Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, and the amendments to section 7412 contained in 40 C.F.R. Part 63, Subpart C, are hereby adopted by reference as they existed on July 1, 2003.

~~19.1~~ **11.** The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$40.

~~10.1~~ **12.** A copy of the publications which contain these provisions may be obtained from the:

- (a) Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954.

The price is:

(1) For the volume containing §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165 and Appendices S and W of Part 51	44 \$10
(2) For § 52.21	58
(3) For Part 60 (Sections 60.1 to end)	58
(4) For Part 60 (Appendices).....	51 57
(5) For Parts 61 - 62	43
(6) For Part 63 (Sections 63.1 to 63.599).....	58
(7) For Part 63 (Sections 63.600 to 63.1199).....	50
(8) For Part 63 (Sections 63.1200 to 63.1439).....	50
(9) For Part 63 (Sections 63.1440 to end) 63.8830	64
(10) For Part 63 (Sections 63.8980 to end)	35
(11) For the volume containing Parts 72 and 76	61

(b) Division of State Library and Archives of the Department of Cultural Affairs for ~~15~~ 10 cents per page.

(c) Internet at the following website: <<http://www.gpoaccess.gov/nara/index.html>>.

~~11~~ 13. For the purposes of the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

~~12~~ 14. Except as otherwise provided in subsections ~~6 and 7~~ 8 and 9, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3497, inclusive, for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

~~13~~ 15. For the purposes of this section, “administrator” as used in the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section means the Director.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R037-05**

The State Environmental Commission adopted regulations assigned LCB File No. R037-05 which pertain to chapter 445B of the Nevada Administrative Code on October 14, 2005.

Notice date: 8/30/2005
Hearing date: 10/4/2005

Date of adoption by agency: 10/14/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

The Nevada Division of Environmental Protection (NDEP) is delegated implementation and enforcement of those federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules requested by Nevada. This regulation is necessary to keep the State's "**adoption by reference of provisions of federal law and regulations**" (NAC 445B.221) up to date so that EPA can continue to delegate new rules to the State of Nevada.

This regulation remove two rules that are not delegated from the State list of adopted federal rules. The rules that are being removed are Title 40 C.F.R. Part 60 Subpart AAA, New Residential Wood Heaters, and Title 40 C.F.R. Part 61 Subpart M, Asbestos.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Nevada Division of Environmental Protection (NDEP), Bureau of Air Quality Planning (BAQP) held a workshop on the above referenced regulation at the following location. Workshop announcements were mailed to all air quality permit holders in Nevada.

Carson City

Wednesday, November 3, 2004
9:30 am - 11:00 am
Western Nevada Community College
Room 103, Reynolds Building
2201 West College Parkway
Carson City NV

The proposed regulation was also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates (September 05, 19, 26, 2005). The public was subsequently mailed a public notice and meeting agenda for the SEC regulatory hearing, which was held in Reno on October 04, 2005; the SEC mailing list was used for both mailings.

At the SEC hearing, there were no public comments received by the Commission during the adoption of the referenced regulation.

2. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

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 the notice in the newspapers, as outlined in #1 above and by direct mail to interested persons subscribing to the SEC electronic mailing list. The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The regulation, public notice and meeting agenda were also made available on SEC Website

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.

No changes were proposed at the State Environmental Commission Hearing, either by NDEP staff, the public or the Commission. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

No anticipated economic effects will result from adoption of this regulation.

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

7. 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 regulation does not overlap or duplicate any regulations of other state, federal or local agencies. The proposed amendments adopt by reference federal regulations from 40 CFR Parts 60 and 63.

8. 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.

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.

This regulation does not address fees changes.

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R036-05

§§1, 2 and 4 effective April 1, 2006, or, under certain circumstances, upon the expiration of an
extended deadline for complying with certain emission limitations

§§3 and 5 effective October 31, 2005

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

AUTHORITY: §§1-5, NRS 445B.210.

A REGULATION relating to air pollution; prospectively repealing the provisions relating to the control of certain emissions of air pollutants by certain coal-fired steam generating facilities; and providing other matters properly relating thereto.

Section 1. NAC 445B.22017 is hereby amended to read as follows:

445B.22017 1. Except as otherwise provided in this section and NAC 445B.2202, ~~and 445B.22023,~~ no owner or operator may cause or permit the discharge into the atmosphere from any emission unit which is of an opacity equal to or greater than 20 percent. Opacity must be determined by one of the following methods:

(a) If opacity is determined by a visual measurement, it must be determined as set forth in Reference Method 9 in Appendix A of 40 C.F.R. Part 60.

(b) If a source uses a continuous monitoring system for the measurement of opacity, the data must be reduced to 6-minute averages as set forth in 40 C.F.R. § 60.13(h).

2. The provisions of this section and NAC 445B.2202 ~~and 445B.22023~~ do not apply to that part of the opacity that consists of uncombined water. The burden of proof to establish the application of this exemption is upon the person seeking to come within the exemption.

3. If the provisions of 40 C.F.R. Part 60, Subpart D or Da apply to an emission unit, the emission unit must be allowed one 6-minute period per hour of not more than 27 percent opacity as set forth in 40 C.F.R. § 60.42(a)(2) and 40 C.F.R. § 60.42a(b).

4. The continuous monitoring system for monitoring opacity at a facility must be operated and maintained by the owner or operator specified in the permit for the facility in accordance with NAC 445B.256 to 445B.267, inclusive.

SECOND
PARALLEL
SECTION

Sec. 2. NAC 445B.2202 is hereby amended to read as follows:

445B.2202 *The provisions of* NAC 445B.22017 ~~[and 445B.22023]~~ do not apply to:

1. Smoke from the open burning described in NAC 445B.22067;
2. Smoke discharged in the course of training air pollution control inspectors to observe visible emissions, if the facility has written approval of the Commission;
3. Emissions from an incinerator as set forth in NAC 445B.2207; or
4. Emissions of stationary diesel-powered engines during warm-up for not longer than 15 minutes to achieve operating temperatures.

Sec. 3. Sections 1 to 4, inclusive, of LCB File No. T003-05 are hereby repealed.

Sec. 4. NAC 445B.22023 is hereby repealed.

Sec. 5. 1. This section and section 3 of this regulation become effective on the date on which the regulation is filed by the Legislative Counsel with the Secretary of State.

2. Sections 1, 2 and 4 of this regulation become effective:

(a) On April 1, 2006;

(b) Upon the expiration of an extended deadline for complying with the emission limitations in the consent decree set forth in *Grand Canyon Trust, Inc. v. Southern California Edison Co.*, No. CV-S-98-00305-LDG (RJJ) (D. Nev. filed Dec. 17, 1999) if the extended deadline is:

(1) Either provided pursuant to the consent decree or provided in a judicial amendment of the consent decree; and

(2) Set for a date that is later than April 1, 2006; or

(c) Upon the date on which this regulation is filed by the Legislative Counsel with the Secretary of State,

↳ whichever occurs later. As soon as practicable after sections 1, 2 and 4 of this regulation become effective, the Chairman of the State Environmental Commission will publish a notice indicating that those sections have become effective and will file a copy of the notice with the Legislative Counsel and the Secretary of State.

TEXT OF REPEALED SECTION

445B.22023 Visible emissions: Coal-fired steam generating facilities. (NRS 445B.210)

1. The provisions of this section and NAC 445B.22017 and 445B.2202 apply to any coal-fired steam generating facility used to produce electricity with an equipment manufacturer's guarantee or demonstrated capability of more than 7,936 x 10⁶ Btu (2,000 x 10⁶ kg-cal) per hour of heat input which existed before 1972.

2. Each coal-fired steam generating unit at a facility must not discharge any particulate matter which exceeds an average opacity of 30 percent for any 6-minute period contained in any hour as measured in the emissions stack of the facility in the manner described in subsection 3.

3. The opacity of the particulate matter must be averaged over each 6-minute period and recorded 10 times per hour. The initial 6-minute period for each hour must begin on the hour. The average opacity for each 6-minute period must be recorded after the expiration of that period.

4. During the interim compliance period specified in 40 C.F.R. § 52.1488(d), each coal-fired steam generating unit at a facility must comply with the opacity provisions of 40 C.F.R. § 52.1488(d).

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R036-05**

The State Environmental Commission adopted regulations assigned LCB File No. R036-05 which pertain to chapter 445B of the Nevada Administrative Code on October 14, 2005.

Notice date: 8/30/2005
Hearing date: 10/4/2005

Date of adoption by agency: 10/14/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

This regulation repeals NAC 445B.22023, "Visible emissions: Coal-fired steam generating facilities," contingent upon the requirements of a federal consent decree. The amendment is needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and maintained. This amended regulation is necessary as part of the ASIP update that was submitted to U.S. EPA in February 2005 with a supplement in June 2005.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Nevada Division of Environmental Protection (NDEP), Bureau of Air Quality Planning (BAQP) held a workshop on the above referenced temporary regulation at the following location. Workshop announcements were mailed to all air quality permit holders in Nevada.

Carson City

Wednesday, November 3, 2004
9:30 am - 11:00 am
Western Nevada Community College
Room 103, Reynolds Building
2201 West College Parkway
Carson City NV

The proposed regulation was also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates (September 05, 19, 26, 2005). The public was subsequently mailed a public notice and meeting agenda for the SEC regulatory hearing, which was held in Reno on October 04, 2005; the SEC mailing list was used for both mailings.

At the SEC hearing, there were no public comments received by the Commission during the adoption of the referenced regulation.

2. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

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 the notice in the newspapers, as outlined in #1 above and by direct mail to interested persons subscribing to the SEC electronic mailing list. The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The regulation, public notice and meeting agenda were also made available on SEC Website at: <http://www.sec.nv.gov/main/hearing1005.htm>

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.

No changes were proposed at the State Environmental Commission Hearing, either by NDEP staff, the public or the Commission. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

No anticipated economic effects will result from adoption of this regulation.

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

7. 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 regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

8. 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.

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.

This regulation does not address fees changes.

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R096-05

Effective October 31, 2005

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

AUTHORITY: §§1-17 and 24, NRS 445B.210; §§18-23, NRS 445B.210 and 445B.300.

A REGULATION relating to air quality; revising provisions governing allowable emissions of regulated air pollutants; revising provisions governing the construction or modification of a stationary source or affected facility; revising provisions governing operating permits; revising provisions governing environmental evaluations; and providing other matters properly relating thereto.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *“Dispersion technique” means any technique that attempts to affect the concentration of a pollutant in the ambient air by:*

- (a) Using that portion of a stack which exceeds good engineering practice stack height;*
- (b) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or*
- (c) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters or stack parameters, combining exhaust gases from several existing stacks into one stack or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.*

2. *The term does not include:*

(a) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.

(b) The merging of exhaust gas streams where:

(1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of “dispersion techniques” applies only to the emission limitation for the pollutant affected by such a change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence before the merging, an increase in the quantity of pollutants actually emitted before the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such an intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source.

(c) Smoke management in agricultural or silvicultural prescribed burning programs.

(d) Episodic restrictions on residential woodburning and open burning.

(e) Techniques under paragraph (c) of subsection 1 which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

Sec. 3. *“Excessive concentration” means, for the purpose of determining good engineering practice stack height:*

1. For sources seeking credit for stack height exceeding that established under paragraph (b) of subsection 1 of section 4 of this regulation, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to 40 C.F.R. § 52.21, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 5, inclusive, of this regulation, must be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate must be established in consultation with the source owner or operator.

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under paragraph (b) of subsection 1 of section 4 of this regulation, either:

(a) A maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subsection 1, except that the emission rate specified by any applicable state limit or, in the absence of such a limit, the actual emission rate, must be used;
or

(b) The actual presence of a local nuisance caused by the existing stack, as determined by the Director.

3. For sources seeking credit after January 12, 1979, for a stack height determined under paragraph (b) of subsection 1 of section 4 of this regulation, where the Director requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in paragraph (b) of subsection 1 of section 4 of this regulation, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes or eddy effects.

Sec. 4. 1. “Good engineering practice stack height” means the stack height that is the greater of:

(a) Two hundred thirteen feet, measured from the ground-level elevation at the base of the stack;

(b) A height determined as follows:

(1) For stacks that commenced construction on or before January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required pursuant to 40 C.F.R. Parts 51 and 52 and NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 5, inclusive, of this regulation, the height determined by use of the equation $H_g = 2.5H$, so long as the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation; and

(2) For all other stacks, the height determined by use of the equation $H_g = H + 1.5L$, except that the Director may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or

(c) The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes or eddy effects created by the source itself, nearby structures or nearby terrain features.

2. For the purposes of this section:

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack;

H = height of nearby structures measured from the ground-level elevation at the base of the stack; and

L = lesser dimension, height or projected width, of nearby structures.

Sec. 5. *“Nearby” means, as used in sections 3 and 4 of this regulation, with respect to a specific structure or terrain feature:*

1. For the purpose of using the equations set forth in paragraph (b) of subsection 1 of section 4 of this regulation, that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than one-half mile; and

2. For the purpose of conducting demonstrations under paragraph (c) of subsection 1 of section 4 of this regulation, not greater than one-half mile, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height of the feature, not to exceed 2 miles if the feature achieves a height one-half mile from the stack that is at least 40 percent of the good engineering practice stack height determined by using the equation set forth in subparagraph (2) of paragraph (b) of subsection 1 of section 4 of this regulation or 85 feet, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

Sec. 6. NAC 445B.001 is hereby amended to read as follows:

445B.001 As used in NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 5, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445B.002 to 445B.211, inclusive, *and sections 2 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. NAC 445B.013 is hereby amended to read as follows:

445B.013 “Allowable emissions” means the emissions from a stationary source at its designed maximum capacity or at its actual maximum capacity, whichever is greater, except as reduced by any federally enforceable limitations on its emissions which are established:

1. By Nevada laws or regulations;
2. By any applicable requirement; or

3. By conditions of the stationary source's operating permit, imposed on the emission rate, the type or amount of materials combusted or processed, the operating rates, the hours of operation, or any other factor limiting production or emission, whichever is most stringent.

~~[→ For Class II sources that are not subject to federal requirements, emission limitations need not be federally enforceable.]~~

Sec. 8. NAC 445B.044 is hereby amended to read as follows:

445B.044 "Construction" means *any physical change or change in the method of operation of an emission unit, including, without limitation, the fabrication, erection, ~~[or]~~ installation or modification* of an emission unit.

Sec. 9. NAC 445B.063 is hereby amended to read as follows:

445B.063 "Excess emissions" means any emission which exceeds any applicable emission limitation prescribed by NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 5, inclusive, of this regulation*, or that is contained in an operating permit ~~[.]~~, *except that this does not preclude the use, including the exclusive use, of any credible evidence or information relevant to the determination of whether a source would have been in compliance with the applicable requirements if the appropriate performance or compliance test or procedure had been performed to determine excess emissions.*

Sec. 10. NAC 445B.153 is hereby amended to read as follows:

445B.153 "Regulated air pollutant" means:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant subject to:

(a) A national ambient air quality standard ~~[H]~~ *and any constituents or precursors for such pollutants identified by the Administrator;*

(b) A standard or requirement adopted pursuant to 42 U.S.C. § 7411 ; or ~~[7412; or]~~

(c) A standard established pursuant to NAC 445B.22097; ~~[or]~~

3. Any Class I or Class II substance subject to a standard adopted pursuant to 42 U.S.C. §§ 7671 to 7671q, inclusive ~~[H]~~ ; *or*

4. Any pollutant that otherwise is subject to regulation under the Act, except that any hazardous air pollutant regulated under 42 U.S.C. § 7412 is not a regulated air pollutant unless the hazardous air pollutant is also regulated as a constituent or precursor of an air pollutant listed pursuant to 42 U.S.C. § 7408.

Sec. 11. NAC 445B.22057 is hereby amended to read as follows:

445B.22057 The allowable emission of sulfur from fossil fuel-fired power generating units ~~[Number]~~ *Numbers* 1, 2 and 3 of Nevada Power Company's Reid Gardner Station, located in Air Quality Control Region 13, Basin 218, California Wash, must not be greater than 0.275 pounds per million Btu's (0.504 *(0.495)* kilograms per million kg-cal).

Sec. 12. NAC 445B.2206 is hereby amended to read as follows:

445B.2206 The allowable emission of sulfur from fossil fuel-fired power generating unit Number 4 of Nevada Power Company's Reid Gardner Station, located in Air Quality Control Region 13, Basin 218, California Wash, must not be greater than 0.145 ~~[lb/10 Btu (0.09 kg/10)]~~ *pounds per million Btu's (0.261 kilograms per million kg-cal)*. The efficiency of the capture of sulfur must be maintained at a minimum of 85 percent, based on a 30-day rolling average.

Sec. 13. NAC 445B.22063 is hereby amended to read as follows:

445B.22063 The allowable emission of sulfur from fossil fuel-fired power generating unit Number 2 Sierra Pacific Power Company's North Valmy Station, located in Air Quality Control Region 147, Basin 64, Clovers Area, must not be greater than 0.3 ~~[lb/10⁶ Btu (0.135 kg/10⁶)~~ *pounds per million Btu's (0.540 kilograms per million kg-cal)*. The efficiency of the capture of sulfur must be maintained at a minimum of 70 percent, based on a 30-day rolling average.

Sec. 14. NAC 445B.22083 is hereby amended to read as follows:

445B.22083 1. Except as otherwise provided in subsections 2 and 3, a person shall not make a major modification to an existing plant or construct a new plant to generate electricity using steam produced by the burning of fossil fuels within:

- (a) The Las Vegas Valley, Hydrographic Area 212;
- (b) The El Dorado Valley, Hydrographic Area 167;
- (c) The Ivanpah Valley, Hydrographic Areas 164 a and 164 b; or
- (d) The city limits of Boulder City.

2. Fossil fuel-fired power generating units Numbers 1, 2 and 3 at Clark Station and fossil fuel-fired power generating unit Number 1 at Sunrise Station may be relocated to the Ivanpah Valley and ~~[retain their operating permits if the emission units that are relocated use the best available control technology.]~~ *must comply with the provisions of NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 5, inclusive, of this regulation.*

3. If an emission unit is relocated to Ivanpah Valley:

(a) The previously used emission unit must be deactivated and removed from the previous site when the relocated unit begins operation.

(b) Any credit for reduced emission is not available as an offset credit.

4. As used in this section, “major modification” has the meaning ascribed to it in 40 C.F.R. § 51.165, as ~~incorporated~~ *adopted* by reference in NAC 445B.221.

Sec. 15. NAC 445B.22093 is hereby amended to read as follows:

445B.22093 1. Solvents or other volatile compounds such as paints, acids, alkalies, pesticides, fertilizers and manure must be processed, stored, used and transported in such a manner and by such means as to minimize the tendency to evaporate, leak, escape or be otherwise discharged into the ambient air causing or contributing to air pollution. If methods of control are available and feasible effectively to reduce the contribution to air pollution from evaporation, leakage or discharge, as determined by the Director, the installation and use of such methods, devices or equipment for control is mandatory.

2. No person may place, store or hold in any new reservoir, stationary tank or other container with a capacity equal to or greater than 40,000 gallons (150 kiloliters) any gasoline, petroleum distillate, or volatile organic compound having a vapor pressure of 1.5 lb/square inch absolute (1,055 kg/square meter) or greater under actual storage conditions unless the tank, reservoir or other container is a pressure tank maintaining working pressure sufficient at all times to prevent loss of vapor or gas to the atmosphere or is equipped with one of the following devices properly installed, in good working order, and in operation:

(a) A floating roof which consists of a pontoon type or double-deck roof which rests on the surface of the liquid contents and is equipped with a seal to close the space between the roof eave and tank wall or a vapor balloon or a vapor dome designed in accordance with accepted standards of the petroleum industry. This control equipment is not permitted if the gasoline or petroleum distillate has a vapor pressure of 11 lb/square inch absolute (7,734 kg/square meter) or

greater under actual conditions. All gauging and sampling devices for tanks must be gastight except when gauging or sampling is taking place.

(b) Other equipment proven to be of equal efficiency for preventing discharge of gases and vapors to the atmosphere.

3. Any tank for the storage of any other petroleum or volatile organic compound which is constructed or extensively remodeled on or after November 7, 1975, must be equipped with a submerged fill pipe ~~for the equivalent, as approved by the Director,~~ for the control of emissions.

4. All facilities for dock loading of products consisting of petroleum or other volatile organic compounds having a vapor pressure of 1.5 lb/square inch absolute (1,055 kg/square meter) or greater at loading pressure must have facilities for submerged filling by a submerged fill pipe ~~for an acceptable equivalent,~~ for the control of emissions.

Sec. 16. NAC 445B.235 is hereby amended to read as follows:

445B.235 1. When requested to do so by an owner or operator, the Director will make a determination of whether action taken or intended to be taken by the owner or operator constitutes construction, including reconstruction, or modification or the commencement thereof within the meaning of NAC 445B.236.

2. The Director will respond to any request for a determination under subsection 1 within ~~30~~ 60 days after receipt of the request.

Sec. 17. NAC 445B.236 is hereby amended to read as follows:

445B.236 1. When requested to do so by an owner or operator, the Director will review plans for construction or modification to provide technical advice to the owner or operator. A separate request must be submitted for each construction or modification project. Each request must identify the location of such projects and be accompanied by technical information

describing the proposed nature, size, design and method of operation of each affected facility involved in the project, including information on any equipment to be used for measurement or control of emissions.

2. *The Director shall respond to any request for review of plans under subsection 1 within 60 days after receipt of the request.*

3. Neither a request for a review of plans nor advice furnished by the Director in response to such request:

(a) Relieves an owner or operator of legal responsibility for compliance with any provision of *this section or* NAC 445B.235 , ~~for this section,~~ or of any applicable state or local requirement; or

(b) Prevents the Director from carrying out or enforcing any provision of *this section or* NAC 445B.235 , ~~for this section,~~ or taking any other action authorized by the Act.

Sec. 18. NAC 445B.250 is hereby amended to read as follows:

445B.250 Any owner or operator subject to the provisions of NAC ~~445B.235 to 445B.250,~~ *445B.001 to 445B.3497*, inclusive, *and sections 2 to 5, inclusive, of this regulation* shall furnish the Director written notification of:

1. The date that construction ~~[,]~~ or reconstruction ~~[as defined under NAC 445B.247,]~~ of an affected facility is commenced, postmarked no later than 30 days after such date. This requirement does not apply in the case of mass-produced facilities which are purchased in completed form.

2. The anticipated date of initial start-up of an affected facility, postmarked not more than 60 days ~~[nor]~~ *and not* less than 30 days before such date.

3. The actual date of initial start-up of an affected facility, postmarked within 15 days after such date.

4. ~~Any physical or operational change to an existing facility which may increase the emission rate of any regulated air pollutant to which a standard applies, unless that change is specifically exempted under an applicable section or in NAC 445B.239 or 445B.242 and the exemption is not denied under those sections. The notice must be postmarked 60 days or as soon as practicable before the change is commenced and must include information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change. The Director may request additional relevant information subsequent to this notice.~~

~~5.]~~ The date upon which demonstration of the continuous monitoring system performance commences in accordance with NAC 445B.256 to 445B.267, inclusive. Notification must be postmarked not less than 30 days before such date.

Sec. 19. NAC 445B.308 is hereby amended to read as follows:

445B.308 1. ~~Before~~ *In any area designated as attainment or unclassifiable for a regulated air pollutant, before* an operating permit or a revision of an operating permit may be issued:

- (a) For a new or modified stationary source;
- (b) For a pollution control project;
- (c) For a plantwide applicability limitation; or
- (d) To allow a plantwide applicability limitation to expire and not be renewed,

↳ in accordance with NAC 445B.308 to 445B.314, inclusive, the applicant must submit to the Director an environmental evaluation and any other information the Director determines is necessary to make an independent air quality impact assessment.

2. The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the environmental evaluation submitted by the applicant shows, or if the Director determines, in accordance with the provisions of this section, that the stationary source:

(a) Will prevent the attainment and maintenance of the state or national ambient air quality standards. For the purposes of this paragraph, only those ambient air quality standards that have been established in NAC 445B.22097 need to be considered in the environmental evaluation.

(b) Will cause a violation of the applicable control strategy contained in the approved air quality plan.

(c) Will cause a violation of any applicable requirement.

(d) Will not comply with subsection ~~[3.]~~ 4.

3. *The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the Director determines that the degree of emission limitation required for control of an air pollutant under this section is affected by that amount of the stack height of any source as exceeds good engineering practice stack height, or any other dispersion technique.*

4. Except as otherwise provided in subsection ~~[4.]~~ 5, to be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification, as those terms are defined in 40 C.F.R. § 51.165, who proposes to construct in an area designated nonattainment for the regulated air pollutant or pollutants for which the stationary source or modification is major must:

(a) Comply with the provisions of 40 C.F.R. § 51.165, as ~~incorporated~~ *adopted* by reference in NAC 445B.221.

(b) Adopt as an emission limitation for the stationary source the lowest achievable emission rate for each nonattainment regulated air pollutant from the stationary source.

(c) Demonstrate that all other stationary sources within this State which are owned, operated or controlled by the applicant are in compliance or on a schedule of compliance with NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 5, inclusive, of this regulation*, and all other applicable requirements and conditions of the permit.

(d) Conduct an analysis of any anticipated impact on visibility in any federal Class I area which may be caused by emissions from the stationary source.

(e) Conduct an analysis of alternative sites, sizes, processes of production and techniques for environmental control for the proposed stationary source. Except as otherwise provided in this paragraph, the analysis must demonstrate that the benefits of the proposed stationary source significantly outweigh the detrimental environmental and social effects that will result from its location, construction or modification. If the major stationary source or major modification proposes to locate in an area designated as marginal nonattainment for ozone, the analysis must demonstrate an offset ratio of 1.2 to 1 for volatile organic compounds and nitrogen oxides. For the purposes of this paragraph, a stationary source which is major for volatile organic compounds or nitrogen oxides shall be deemed major for ozone if the proposed location of the major stationary source or major modification is in an area designated as nonattainment for ozone.

(f) Comply with one of the following:

(1) Sufficient offsets in emissions must be obtained by the time the proposed stationary source begins operation to ensure that the total allowable emissions of each nonattainment regulated air pollutant from the existing stationary sources in the area, those stationary sources in the area which have received their respective permits and the proposed stationary source will be sufficiently less than the total emissions from the existing stationary sources and those stationary sources in the area which have received their respective permits before the proposed stationary source applies for its operating permit or a revision of an operating permit, in order to achieve reasonable further progress; or

(2) If the major stationary source or major modification is located in a zone identified by the Administrator as one to be targeted for economic development, the owner or operator must demonstrate that the emission from the stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for a regulated air pollutant for the nonattainment area.

↪ For the purposes of this paragraph, offsets must comply with the provisions of Appendix S of 40 C.F.R. Part 51, as ~~incorporated~~ *adopted* by reference in NAC 445B.221, and be coordinated with the appropriate local agency for the control of air pollution.

~~4.~~ 5. To be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification, as those terms are defined in 40 C.F.R. § 51.165, *as adopted by reference in NAC 445B.221*, who proposes to construct in an area designated as basic nonattainment for ozone must:

(a) Comply with the provisions of 40 C.F.R. § 51.165, as ~~incorporated~~ *adopted* by reference in NAC 445B.221.

(b) Adopt as an emission limitation for the stationary source the best available control technology for volatile organic compounds and nitrogen oxides from the stationary source.

(c) Demonstrate that all other stationary sources within this State that are owned, operated or controlled by the applicant are in compliance or on a schedule of compliance with NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 5, inclusive, of this regulation*, and all other applicable requirements and conditions of the permit.

(d) Demonstrate an offset ratio of 1 to 1 for volatile organic compounds and nitrogen oxides. For the purposes of this paragraph, a stationary source that is major for volatile organic compounds or nitrogen oxides shall be deemed major for ozone if the proposed location of the major stationary source or major modification is located in an area designated as basic nonattainment for ozone.

(e) Comply with one of the following:

(1) Sufficient offsets in emissions must be obtained by the time the proposed stationary source begins operation to ensure that the total allowable emissions of each nonattainment regulated air pollutant from the existing stationary sources in the area, those stationary sources in the area that have received their respective permits and the proposed stationary source will be sufficiently less than the total emissions from the existing stationary sources and those stationary sources in the area that received their respective permits before the proposed stationary source applies for its operating permit or a revision of an operating permit, in order to achieve reasonable further progress; or

(2) If the major stationary source or major modification is located in a zone identified by the Administrator as one to be targeted for economic development, the owner or operator must demonstrate that the emissions from the stationary source will not cause or contribute to

emissions levels which exceed the allowance permitted for a regulated air pollutant for the nonattainment area.

↪ For the purposes of this paragraph, offsets must comply with the provisions of Appendix S of 40 C.F.R. Part 51, as ~~incorporated~~ *adopted* by reference in NAC 445B.221, and be coordinated with the appropriate local agency for the control of air pollution.

~~5.1~~ **6.** To be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification who proposes to construct in any area designated as attainment or unclassifiable under 42 U.S.C. § 7407(d) must comply with the provisions of 40 C.F.R. § 52.21, as ~~incorporated~~ *adopted* by reference in NAC 445B.221.

~~6.1~~ **7.** The Director may impose any reasonable conditions on his approval, including conditions requiring the owner or operator of the stationary source to:

(a) Conduct monitoring of the quality of the ambient air at the facility site for a reasonable period before the commencement of construction or modification and for any specified period after operation has begun at the stationary source; and

(b) Meet standards for emissions that are more stringent than those found in NAC 445B.001 to 445B.3497, inclusive ~~7.~~

~~7.1~~, *and sections 2 to 5, inclusive, of this regulation.*

8. Where a proposed stationary source located on contiguous property is constructed or modified in phases which individually are not subject to review as provided in NAC 445B.308 to 445B.314, inclusive, all phases occurring since November 7, 1975, must be added together for determining the applicability of those sections.

~~[8.]~~ **9.** Approval and issuance of an operating permit or a revision of an operating permit for any stationary source does not affect the responsibilities of the owner or owners to comply with any other portion of the control strategy.

~~[9.—An owner or operator of a Class II source may request an exemption from the requirement to submit an environmental evaluation. Within 30 days after receipt of a written request for an exemption, the Director shall grant or deny the request and notify the owner or operator in writing of his determination.]~~

10. As used in this section:

(a) “Lowest achievable emission rate” has the meaning ascribed to it in 40 C.F.R. § 51.165, as ~~incorporated~~ *adopted* by reference in NAC 445B.221.

(b) “Offset ratio” means the percentage by which a reduction in an emission must exceed the corresponding increase in that emission.

(c) “Reasonable further progress” means the annual incremental reductions in emissions of the relevant regulated air pollutant that are required by 42 U.S.C. §§ 7501 to 7515, inclusive, or are required by the Administrator to ensure attainment of the applicable standard for national ambient air quality by the applicable date.

Sec. 20. NAC 445B.310 is hereby amended to read as follows:

445B.310 **1.** An applicant for an operating permit, a revision to an operating permit or a request for a change of location, which is not subject to the provisions of 40 C.F.R. § 52.21, as adopted by reference in NAC 445B.221, must submit with the application an environmental evaluation for:

~~[1.]~~ **(a)** A new stationary source which emits, or has the potential to emit, greater than 25 tons of a regulated air pollutant per year;

~~{2.}~~ (b) A modification to an existing stationary source that meets the following criteria:

~~{(a)}~~ (1) The existing stationary source has the potential to emit greater than 25 tons of a regulated air pollutant per year; and

~~{(b)}~~ (2) The proposed modification has the potential to emit greater than 10 tons of a regulated air pollutant per year;

~~{3.}~~ (c) The approval of a pollution control project, the approval of a plantwide applicability limitation or the approval to allow a plantwide applicability limitation to expire and not be renewed; or

~~{4.}~~ (d) Upon written notice from the Director, any other source or combination of sources.

2. An owner or operator of a Class II source may request an exemption from the requirement to submit an environmental evaluation with the application. Within 30 days after receipt of a written request for an exemption, the Director shall grant or deny the request and notify the owner or operator in writing of his determination. If such an exemption is granted, the Director shall perform the environmental evaluation.

Sec. 21. NAC 445B.311 is hereby amended to read as follows:

445B.311 *Except as otherwise provided in paragraph (c) of subsection 4:*

1. An environmental evaluation which is required for a new or modified stationary source pursuant to NAC 445B.308 to 445B.314, inclusive, or as required by the Director must contain a careful and detailed assessment of the environmental aspects of the proposed stationary source and must also contain:

(a) The name and address of the applicant;

(b) The name, address and location of the stationary source;

(c) A description of the proposed stationary source, including the normal hours of operation of the facility and the general types of activities to be performed;

(d) A map showing the location of the stationary source and the topography of the area, including existing principal streets, roads and highways within 3 miles of the stationary source;

(e) A site plan showing the location and height of buildings on the site; ~~and~~

(f) Any additional information or documentation which the Director deems necessary to determine the effect of the stationary source on the quality of the ambient air, including measured data on the quality of the ambient air *and meteorological conditions* at the proposed site before construction or modification ~~and~~; *and*

(g) A dispersion analysis of each regulated air pollutant.

2. Where approval is sought for stationary sources to be constructed in phases, the information required by subsection 1 must be submitted for each phase of the construction project.

3. An environmental evaluation must also ~~contain adequate environmental safeguards to be put into operation by the applicant to provide for the maintenance of acceptable air quality and must consider:~~

~~—(a) Concentrations in the ambient air before, during and after construction, empirically calculated with recognized methods as approved by the Director. Existing concentrations in the ambient air may be measured with approved methods at approved site locations for not less than 1 year. Estimates must be empirically determined for concentrations in the ambient air immediately adjacent to the facility and at the predicted point of maximum concentration within the surrounding region.~~

~~—(b) Alternate proposals which could be put into effect as conditions of approval.~~

~~—(c) In the narrative portion of the evaluation, other probable environmental effects before, during and after construction.~~

~~4. Diffusion models]~~ *consider good engineering practice stack height. If the Director considers an analysis of a source based on a good engineering practice stack height that exceeds the height specified in paragraph (a) or (b) of subsection 1 of section 4 of this regulation, the Director shall:*

(a) Notify the public of the availability of the demonstration study performed pursuant to paragraph (c) of subsection 1 of section 4 of this regulation; and

(b) Provide an opportunity for a public hearing on the demonstration study in accordance with the requirements for a Class I operating permit set forth in subsections 7, 9 and 10 of NAC 445B.3395.

4. A dispersion analysis used to determine the location and estimated value of *the* highest concentration of *each* regulated air ~~[pollutants must contain:~~

~~—(a) Assumptions]~~ *pollutant must include:*

(a) A dispersion model based on the applicable models, bases and other requirements specified in the “Guideline on Air Quality Models,” which is Appendix W of 40 C.F.R. Part 51, as adopted by reference in NAC 445B.221, except that the Director may authorize the modification of a model specified in the “Guideline on Air Quality Models” or the use of a model not included in the “Guideline on Air Quality Models” if the Director determines that the modification or use is appropriate;

(b) A narrative report describing:

(1) If applicable, assumptions and premises [;

~~—(b) Evaluation at the most adverse meteorological conditions recorded in the last 10 years;~~

- ~~—(c) Evaluation at the most adverse meteorological conditions recorded in the last year;~~
- ~~—(d) A description of the geographic area considered in the evaluation;~~
- ~~—(e) Dispersion equations;~~
- ~~—(f) The predicted buildup of regulated air pollutants;~~
- ~~—(g) Location, type and amount of emissions; and~~
- ~~—(h) Meteorological information.] used in the analysis, including, without limitation:~~

- (I) Model options chosen;*
- (II) Urban versus rural selection;*
- (III) Background concentrations;*
- (IV) Characterization of emission sources as point, area or volume;*
- (V) Emission discharge points; and*
- (VI) Rate of emission from each emission unit; and*

(2) The geographic area considered in the analysis, including, without limitation, information concerning:

- (I) The nearest significant terrain features;*
- (II) The receptor grid or grids; and*
- (III) Restrictions on public access to the stationary source; and*

(c) Valid meteorological information pursuant to the provisions of Appendix W of 40 C.F.R. Part 51, as adopted by reference in NAC 445B.221, which:

(1) For sources that are not subject to the permitting requirements of 40 C.F.R. § 52.21, as adopted by reference in NAC 445B.221:

(I) Is site specific, if the information exists pursuant to subsection 1 of this section or subsection 7 of NAC 445B.308, and which covers a period of not less than 1 year;

(II) Has been obtained from an off-site location representative of the proposed site and which covers a period of not less than 1 year;

(III) Represents the worst-case meteorological conditions, as approved by the Director for synthetic data; or

(IV) Has been obtained over the last 5 years at the nearest National Weather Service site; or

(2) For sources that are subject to the permitting requirements of 40 C.F.R. § 52.21, as adopted by reference in NAC 445B.221, is representative of the source site location and source emissions and which covers a period of not less than 1 year.

Sec. 22. NAC 445B.342 is hereby amended to read as follows:

445B.342 1. The owner or operator of a stationary source operating in compliance with an operating permit may make changes which contravene an express term of the operating permit without a revision of the operating permit if the changes do not:

(a) Constitute modifications pursuant to any provision of 42 U.S.C. §§ 7401 to 7515, inclusive, or constitute a modification as that term is defined in NAC 445B.099;

(b) Violate any provision of NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 5, inclusive, of this regulation*, or any other applicable requirement; or

(c) Exceed the allowable emissions set forth in the operating permit for any emissions unit.

2. Any conditions of an operating permit that are requirements for monitoring, methods of testing, recordkeeping, reporting or compliance certification may not be changed pursuant to this section.

3. For each change made pursuant to this section, the holder of the operating permit shall provide a written notification to the Director and the Administrator at least 7 days before making the change. This notification must include:

(a) A detailed description of the change;

(b) The date on which the change will occur;

(c) Any change in emissions, as determined in accordance with NAC ~~445B.239;~~ ***445B.001 to 445B.3497, inclusive, and sections 2 to 5, inclusive, of this regulation;***

(d) Any condition of the operating permit which will no longer apply because of the change;
and

(e) For a change that includes the trading of emissions made pursuant to paragraph (h) of subsection 1 of NAC 445B.3405, a detailed description of how the increase or decrease in emissions, or both, resulting from the change complies with the terms and conditions of the operating permit.

4. The holder of the operating permit, the Director and the Administrator, as appropriate, shall attach a copy of the written notification to his respective copy of the permit.

Sec. 23. NAC 445B.3465 is hereby amended to read as follows:

445B.3465 1. The owner or operator of a stationary source with a Class II operating permit may request, on an application form provided by the Director, a revision of the operating permit to allow for a modification to the stationary source.

2. An application for a revision of a Class II operating permit must include:

(a) The name and address of the owner or operator of the stationary source;

(b) The location of the stationary source;

(c) A description of:

- (1) The existing emission units undergoing the modification and the applicable control systems; and
- (2) The proposed modification to such emission units;
- (d) The ~~allowable~~ emission rates from the existing emission units of each regulated air pollutant to which a standard applies ~~[, as determined in accordance with NAC 445B.239,]~~ which exist at the time of the application before the modification and which would exist after the modification takes place;
- (e) A description of any proposed new emission units and applicable control systems;
- (f) The potential to emit of the proposed new emission units for each regulated air pollutant to which a standard applies;
- (g) A description of the procedures and methods used to determine the emission rates;
- (h) A discussion of all applicable requirements to which the new or modified operations will be subject;
- (i) An explanation of any proposed exemption from any applicable requirement;
- (j) An environmental evaluation conducted in accordance with NAC 445B.308, 445B.310, 445B.311 and 445B.3135; and
- (k) Any other information that the Director determines is necessary to process the application and issue a Class II operating permit pursuant to ~~[this section and]~~ NAC 445B.001 to 445B.3497, inclusive ~~[,]~~, *and sections 2 to 5, inclusive, of this regulation.*

Sec. 24. NAC 445B.010 is hereby repealed.

TEXT OF REPEALED SECTION

445B.010 “Air contaminant” defined. (NRS 445B.210) “Air contaminant” has the meaning ascribed to it in NRS 445B.110.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R096-05**

The State Environmental Commission adopted regulations assigned LCB File No. R096-05 which pertain to chapter 445B of the Nevada Administrative Code on October 4, 2005.

Notice date: 8/30/2005
Hearing date: 10/14/2005

Date of adoption by agency: 10/4/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

The permanent regulation is necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

The regulation revises several sections in the permitting provisions of NAC 445B. It adds provisions to ensure good engineering practice regarding stack height and emission limitations, requires "Prevention of Significant Deterioration" review when relocating certain fossil-fueled power generating units, and updates and clarifies environmental evaluation information requirements.

Additionally, the regulation removes Director's discretion for dealing with the handling of organic solvents and other volatile compounds, adds a timeframe for the State's response to requests for technical advise regarding plans for construction or modification of a facility, and increases the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification.

Finally, the proposed regulation modifies the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

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.

The Nevada Division of Environmental Protection (NDEP), Bureaus of Air Pollution Control and Air Quality Planning held workshops on the above referenced regulation at the following locations.

<p>Reno Thursday, May 12, 2005 1:00 pm - 3:00 pm South Valleys Library, Olympic Room 15650A Wedge Parkway Reno, Nevada</p>

Notification of the proposed changes was sent out to all interested parties included on NDEP's mailing list. Notification was posted at the Nevada Division of Environmental Protection offices in Carson City and Las Vegas, at the State Library in Carson City, and in county or community

libraries in Austin, Battle Mountain, Elko, Ely, Fallon, Fernley, Las Vegas, Lovelock, Pahrump, Reno, Wells, and Winnemucca.

The proposed regulation was also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates (September 05, 19, 26, 2005). The public was subsequently mailed a public notice and meeting agenda for the SEC regulatory hearing, which was held in Reno on October 04, 2005; the SEC mailing list was used for both mailings.

At the SEC hearing, there were no public comments received by the Commission during the adoption of the referenced regulation.

2. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

3. 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 State Environmental Commission adopted the regulation on October 4, 2005. Several changes were made to the regulation that were non-substantive and reflected only technical corrections.

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

No anticipated economic effects will result from adoption of this regulation.

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

6. 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.

The regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

7. 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.

8. 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.

This regulation does not address fees changes.

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.

This regulation does not address fees changes.

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R106-05

Effective October 31, 2005

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

AUTHORITY: §1, NRS 445B.210 and 445B.770.

A REGULATION relating to vehicle emissions; revising the provisions governing the operation of certain test stations; and providing other matters properly relating thereto.

Section 1. NAC 445B.460 is hereby amended to read as follows:

445B.460 1. No person may engage in the business of issuing evidence of compliance unless he holds a current license to operate a test station at an established place of business and holds one or both of the ratings set forth in subsection 3.

2. A license that:

(a) Was issued for a test station before September 25, 1998, expires on September 30 of each calendar year.

(b) Is issued on or after September 25, 1998, expires 1 year after the last day of the month in which the license was originally issued.

3. A test station ~~[shall]~~ *must* obtain from the Department:

(a) A “G” rating if it will be testing the exhaust emissions of gasoline-powered motor vehicles. A test station with a “G” rating shall, when conducting inspections of motor vehicles subject to the provisions of NAC 445B.580, use an exhaust gas analyzer that complies with the

equipment specifications published by the Department for this rating and at least one approved inspector who has a “G” rating to perform the exhaust emissions tests.

(b) A “D” rating if it will be testing the exhaust emissions of light-duty diesel motor vehicles. A test station with a “D” rating shall, when conducting inspections of motor vehicles subject to the provisions of NAC 445B.589, use an exhaust gas analyzer that complies with the requirements of NAC 445B.587 and at least one approved inspector who has a “D” rating to perform the exhaust emissions tests.

4. A facility which holds a license as an authorized inspection station or class 1 fleet station may test exhaust emissions but shall not perform any installation, repair, diagnosis or adjustment to devices that affect exhaust emissions, except:

- (a) The changing of oil;
- (b) The replacement of an oil filter, air filter, fuel filter, belt or hose; and
- (c) With regard to a vehicle with a model year of 1980 or older which has not failed its most recent exhaust emissions test administered in this State:

(1) The replacement of the spark plugs, secondary cables for the spark plugs, distributor cap, rotor, points or condenser of the vehicle; and

(2) The adjustment of the dwell and initial ignition timing of the engine of the vehicle, and the settings for idle speed if those settings are accessible.

5. An authorized inspection station shall not advertise any services which it provides for the testing of exhaust emissions with any services described in paragraph (c) of subsection 4 that the authorized inspection station also provides.

6. A person licensed to operate a test station shall not own or hold any ownership interest whatsoever in any business which manufactures, sells, repairs, rents or leases any exhaust gas analyzers approved by the Department for the testing of exhaust emissions.

7. A person or business which manufactures, sells, repairs, rents or leases any exhaust gas analyzers approved by the Department for the testing of exhaust emissions shall not own or hold any ownership interest whatsoever in any business licensed to operate a test station.

8. An authorized inspection station or class 1 fleet station must not be located immediately adjacent to any business which services or repairs motor vehicles unless:

(a) The facility for the station is physically separated from the adjacent facility;

(b) The facility for the station and the adjacent facility have separate entrances for customers and do not share any common doors or entries between the facilities;

(c) The adjacent facility has no access to the physical space in which testing occurs at the facility for the station;

(d) No employee of the adjacent facility is employed by the station; and

(e) The facility for the station and the adjacent facility have separate mailing addresses.

9. A facility that holds a license as an authorized inspection station or class 1 fleet station may perform the servicing of a fuel injection system only by using a method that:

(a) Utilizes a cleaning solvent for the fuel system that is registered as a fuel additive with the United States Environmental Protection Agency in accordance with the requirements of 40 C.F.R. Part 79;

(b) Introduces the cleaning solvent into the fuel tank and no other portion of the vehicle's fuel system or air intake system; and

(c) Does not involve the dismantling, removal or adjustment of any portion of the fuel system or air intake system other than the fuel inlet cap.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R106-05**

The Division of Environmental Protection of the State Department of Conservation and Natural Resources adopted regulations assigned LCB File No. R106-05 which pertain to chapter 445B of the Nevada Administrative Code on October 4, 2005.

Notice date: 8/30/2005
Hearing date: 10/4/2005

Date of adoption by agency: 10/4/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

This permanent regulation will modify NAC 445B.460 by defining a method for servicing motor vehicle fuel injection systems by facilities licensed as authorized inspection stations or class 1 fleet stations. The regulatory change is being proposed in response to Assembly Bill 239, which was passed by the 2005 Nevada Legislative Session. The proposed amendment will update the Inspection and Maintenance provisions of the NAC and bring them into alignment with the Nevada Revised Statutes.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Nevada Division of Environmental Protection (NDEP), Bureau of Air Quality Planning (BAQP) held a workshop on the above referenced regulation at the following location.

<p>Reno Workshop Tuesday, August 23, 2005 South Valleys Library Conference Room 18100 Wedge Parkway Reno, NV 3:30 pm – 5:00 pm</p>	<p>Las Vegas Workshop Tuesday, August 30, 2005 Spring Valley Library Conference Room 4280 S. Jones Blvd. Las Vegas, NV 10:30 am – 12:00 Noon</p>
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At the workshop held in Reno on August 23, 2005, two attendees made oral comments. Speaking in support of the proposed regulation changes was Andrew Goodrich, Director of the Washoe County Division of Air Quality Management. Dennis Ransel, Planning Manager with the Clark County Department of Air Quality and Environmental Management, also supported the proposal because the regulation changes would bolster Clark County's efforts to address air quality non-attainment issues on several fronts. These included compliance with terms of the existing State Implementation Plan, current efforts to receive attainment redesignation from the USEPA for carbon monoxide, and future plans to address ozone non-attainment. No oral comments were made at the Las Vegas workshop. Written comments were received by NDEP via email from two individuals. Writing on behalf of the Nevada Emission Testers Council, President Brian Keraly

expressed the Council's full support for the proposed language in Petition 2005-05. Scott Allen, Instructor in the Automotive Technology Program at the Truckee Meadows Community College in Reno, offered his endorsement of the fuel injection system cleaning method proposed in the petition. Mr. Allen, who teaches the automotive emissions training courses that prospective emissions inspectors take prior to being certified, has been working closely with the NV DMV to find an acceptable cleaning method that does not violate statutory prohibitions that prevent Class I stations from performing services that affect exhaust emissions.

Regarding the regulatory hearing, the regulation was noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates (September 05, 19, 26, 2005). Members of the public subscribing to the SEC electronic and ground-based mailing lists were subsequently mailed a public notice and meeting agenda for the SEC regulatory hearing; the hearing was held in Reno on October 04, 2005.

At the SEC hearing, there were no public comments received by the Commission during the adoption of the referenced regulation.

2. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

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 as indicated in number 1 above. Comments were also solicited by State Environmental Commission (SEC) in the SEC notice in the newspapers, by direct mail to interested persons subscribing to the SEC electronic and ground-based mailing list.

The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The workshop notice, summary of comments received at the workshop, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at:
<http://www.sec.nv.gov/main/hearing1005.htm>

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.

No changes were proposed at the State Environmental Commission Hearing, either by NDEP staff, the public or the Commission. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

No anticipated economic effects will result from adoption of this regulation.

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

7. 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 regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

8. 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.

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.

This regulation does not address fees changes.

**ADOPTED REGULATION OF
THE STATE ENVIRONMENTAL COMMISSION**

LCB File No. R083-05

Effective October 31, 2005

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

AUTHORITY: §§1-11, NRS 459.826 and 459.830; §§12, 13, 15 and 19, NRS 459.826; §14, NRS 459.830; §§16 and 18, NRS 459.826 and 459.834; §17, NRS 459.826 and 459.832.

A REGULATION relating to aboveground marina storage tanks; providing that marina storage tanks must meet certain requirements; requiring the monitoring and inspection of marina storage tanks to detect leaks; requiring the construction and maintenance of containment areas around marina storage tanks; and providing other matters properly relating thereto.

Section 1. Chapter 459 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Listed” has the meaning ascribed to it in section 202 of the International Fire Code, 2003 edition.*

Sec. 3. *“Marina storage tank” means a petroleum storage tank used to provide fuel to water vessels, at least 90 percent of which is either above ground level or in or over water and which has a capacity of at least 110 gallons but not more than 12,000 gallons. The term includes all piping connected to the tank, except piping, valves, hoses, filters and nozzles associated with the fuel dispenser.*

Sec. 4. *“Petroleum” has the meaning ascribed to it in NRS 590.790.*

Sec. 5. *The State Environmental Commission hereby adopts by reference chapters 2, 22 and 34 of the International Fire Code, 2003 edition. A copy of the volume containing these*

provisions may be obtained at the cost of \$70 from the International Code Council at the Internet address <<http://www.iccsafe.org>>.

Sec. 6. 1. *On or before January 31, 2006, and each year thereafter, the owner or operator of a marina storage tank shall register each marina storage tank compartment with the Division on a prescribed form and pay a fee of \$50 for each marina storage tank compartment.*

2. Marina storage tanks must be in compliance with this chapter not later than September 30, 2006. The Division may require compliance before September 30, 2006, for any part of an existing system that poses a current threat to nearby property, human health or the environment.

Sec. 7. 1. *A marina storage tank must meet the requirements of chapters 2, 22 and 34 of the International Fire Code, 2003 edition, with regard to construction, design, location and overfill prevention.*

2. A marina storage tank that supplies marina service stations and pumps not integral to the dispensing device must be onshore, except that a double-walled tank not exceeding a capacity of 1,100 gallons may be located on a pier of the solid-fill type if spacing, containment and piping comply with the provisions of chapters 2, 22 and 34 of the International Fire Code, 2003 edition.

3. Any metallic portion of a marina storage tank or its piping system that is in contact with the soil or water and is subject to corrosion must be protected from corrosion by a continuously operating cathodic protection system that is properly engineered, installed and maintained in accordance with 40 C.F.R. § 280.20(b)(2). A metal tank sitting on a concrete

slab will be considered in contact with the soil unless it is insulated from the concrete by a dielectric material. Anchoring hardware is not considered part of the tank.

Sec. 8. 1. *A marina storage tank must have a secondary containment area for the fuel stored in the tank.*

2. Multiple products stored within the same containment area must be compatible with each other.

3. If the secondary containment area is open to precipitation, it must be capable of containing 110 percent of the capacity of the largest tank plus the volume displaced by the other tanks within the containment area.

4. The secondary containment area must be made of concrete or steel and be compatible with and impermeable to the products stored in the tank.

5. Liquid discharges to the environment from the secondary containment area are prohibited if contamination of the liquid by a regulated substance is suspected or detected.

6. The secondary containment area must not include any uncapped drain that extends outside of the containment area.

7. A double-walled tank does not require additional containment if:

(a) All piping connections to the tank are made above the normal maximum liquid level;

(b) A mechanism is provided to prevent the release of liquid from the tank by siphon flow;

(c) A mechanism, accessible to a delivery operator, is provided for determining the level of liquid in the tank;

(d) A mechanism which does not restrict or interfere with the proper functioning of the normal vent or emergency vent is provided to prevent overfilling by sounding an alarm when

the liquid level in the tank reaches 90 percent of capacity and by automatically stopping the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity;

(e) The interstitial space is enclosed and the space has emergency venting; and

(f) A means is provided to verify the integrity of the double wall.

Sec. 9. 1. *If, on a marina storage tank:*

(a) A submersible pump is used, a listed emergency shutoff valve must be installed at each dispensing device.

(b) A suction pump-type dispensing device is used, a listed vacuum-actuated shutoff valve with a shear section or equivalent-type valve must be installed directly under each dispensing device.

2. Piping and valves subject to pressure extremes caused by thermal expansion of the contents must be equipped with a pressure-relieving device that has secondary containment.

3. Aboveground piping runs must be enclosed in protective containment leading to a catch basin equipped with an operating automatic leak-detection audible alarm and shutoff device.

4. Except as otherwise provided in subsection 5, any new or replacement underground piping installed after October 31, 2005, must be:

(a) Constructed of nonmetallic components;

(b) Double-walled and integral with a listed leak sensor; and

(c) Installed with a tracer locator wire installed in all buried piping trenches.

5. Existing facilities which have metallic or single-walled nonmetallic piping and which are permanently relocated to a fuel island must install dispenser sumps with leak sensors. Any additions to the metallic piping must be nonmetallic single- or double-walled piping.

6. For piping used at floating marinas:

- (a) Suitable lengths of oil-, weather- and UV-resistant flexible hose, UL-approved for use at marinas, must be used between the onshore piping and the piping on the floating structure.*
- (b) Piping at all hinge locations must be connected with UL-approved listed flexible piping.*
- (c) All docks and pier installations must have double-walled piping.*
- (d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed in a spill containment box monitored with a leak sensor on each line serving the dock and anchored at the onshore end of the piping.*

Sec. 10. 1. A control must be installed that will permit the fuel delivery pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on the dispensing device is manually actuated. The control must also stop the pump when all nozzles have been returned either to their brackets or to the normal nondispensing position.

2. Dispensers not integral with the tank must have sumps with operating leak-monitoring sensors that automatically shut off the electricity to the pumping device.

3. Dispenser hoses must be checked and a record kept on a daily basis for evidence of blistering, carcass saturation or separation, for cuts, nicks or abrasions that expose reinforced material, and for slippage, misalignment or leaks at couplings. Defective hoses must be removed from service within 48 hours after evidence of failure.

4. At least once each month, each dispenser hose must be completely extended and inspected as follows:

(a) The hose couplings and the first 12 inches of hose adjacent to the couplings must be examined.

(b) The dispenser hose must be checked for structural weakness evidenced by soft spots by pressing the hose in the area around its entire circumference. Any hose that shows evidence of soft spots must be removed from service.

5. Any dispensing nozzle used at a marina service station must be equipped with a nondrip check valve.

6. Daily and monthly inspections of dispenser hoses are not required when a marina is closed during the off-season.

Sec. 11. 1. *Except for tanks not exceeding a capacity of 1,100 gallons or tanks not equipped to accept a tight-fill that are instead filled from a delivery nozzle on a delivery vehicle:*

(a) All aboveground marina storage tanks must be filled through a liquid-tight connection enclosed in a grounded fill pipe spill-containment box that is located at least 3 feet above the ground and at least 20 feet away from a body of water and is capable of containing a minimum of 5 gallons.

(b) All marina storage tanks filled by means of remote piping must have installed in the piping at a point where connection and disconnection is made between the tank and a delivery vehicle either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling. The check valve device must be protected from tampering and physical damage.

2. Except for double-walled, aboveground marina storage tanks which are exempt from weekly monitoring requirements and except as otherwise provided in subsection 4, aboveground marina storage tanks must be visually inspected weekly for leaks. The results of the weekly visual inspections must be dated and recorded.

3. *Except as otherwise provided in subsection 4, aboveground marina storage tanks must be inspected monthly in accordance with the provisions of subsection 2 of NAC 590.740 and must be inspected for release detection in accordance with 40 C.F.R. § 280.43(a)-(d) and (g).*

4. *Weekly and monthly monitoring of an aboveground marina storage tank is not required when a marina is closed during the off-season if the tank contains only a de minimis quantity of fuel.*

5. *All underground or underwater piping that is not double-walled with interstitial leak sensors must be tightness-tested for leaks in accordance with the requirements of 40 C.F.R. § 280.41(b).*

6. *All electronic and mechanical equipment used for release detection, monitoring or warning must be tested for proper operation and calibration annually or pursuant to the manufacturer's recommendation, whichever is more frequent.*

7. *If, because of the nature of the aboveground marina storage tank or its secondary containment, visual inspections are not adequate for the purpose of determining whether a leak has occurred, an owner or operator of an aboveground storage tank shall keep daily inventory records. Daily inventory records for the most recent 3 years must be kept on the premises or made available for inspection upon 24 hours' notice. Daily inventory records are not required when a marina is closed during the off-season if the tank contains only a de minimis quantity of fuel.*

Sec. 12. NAC 459.9921 is hereby amended to read as follows:

459.9921 As used in NAC 459.9921 to 459.999, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC

459.9922 to 459.9929, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 13. NAC 459.9929 is hereby amended to read as follows:

459.9929 ~~["Storage]~~ *“Underground storage tank”* has the meaning ascribed to ~~["underground storage tank"]~~ *it* in 40 C.F.R. § 280.12.

Sec. 14. NAC 459.993 is hereby amended to read as follows:

459.993 1. The State Environmental Commission hereby adopts by reference the provisions of 40 C.F.R. §§ 280.10 to 280.116, inclusive, as they existed on July 1, 1995. A copy of the volume containing these provisions may be obtained at a cost of ~~[\$40]~~ *\$50* from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. ~~[20402.]~~ *20401.*

2. Each owner and operator of ~~[a]~~ *an underground* storage tank shall comply with the requirements of 40 C.F.R. §§ 280.10 to 280.116, inclusive.

3. For the purposes of this section, any reference to “implementing agency” in 40 C.F.R. §§ 280.10 to 280.116, inclusive, shall be deemed to mean the Division.

Sec. 15. NAC 459.994 is hereby amended to read as follows:

459.994 1. Except as otherwise provided in this section, each owner or operator of ~~[a]~~ *an underground* storage tank shall perform or cause to be performed a test of the tank for tightness in accordance with the schedule contained in subsection (c) of 40 C.F.R. § 280.40.

2. The test must be performed by a contractor ~~[who is]~~ certified by the Division.

3. The owner or operator shall retain a certificate from the person performing the test showing that the test has been performed. The certificate must be made on a form approved by the Division.

4. In lieu of a test for tightness, each owner or operator may conduct any release detection methods prescribed in 40 C.F.R. §§ 280.43 and 280.44 as an acceptable means of release detection.

5. An operator of ~~an~~ *an underground* storage tank that is not empty but is temporarily closed in accordance with 40 C.F.R. § 280.70 shall perform or cause to be performed a test of the storage tank for tightness in accordance with 40 C.F.R. §§ 280.40 to 280.45, inclusive.

6. Except as otherwise provided in this subsection, an abandoned storage tank must be tested for tightness in accordance with subsection (c) of 40 C.F.R. § 280.43 before it is returned to service. If a test of the abandoned storage tank will cause a threat to human health or the environment, as determined by the Division, the Division may waive the test for tightness or require any other method of testing in accordance with the provisions of subsection (h) of 40 C.F.R. 280.43 and subsection (c) of 40 C.F.R. 280.44. The allocation of costs pursuant to NRS 590.880 or 590.890 will be applied if there is a discharge from the storage tank.

7. A test for tightness is not required before ~~an~~ *an underground* storage tank is closed pursuant to subsection (b) of 40 C.F.R. § 280.71 if the Division:

- (a) Has no record of the storage tank being installed, operated ~~an~~ or closed; and
- (b) Is unable to locate the owner of the storage tank.

8. As used in subsection 6, “abandoned storage tank” means ~~an~~ *an underground* storage tank that:

- (a) Is not maintained and whose owner or operator has not provided the Division with a written statement of his intention to close the storage tank; or
- (b) Is not in service and does not comply with 40 C.F.R. § 280.70 or 280.71.

Sec. 16. NAC 459.997 is hereby amended to read as follows:

459.997 If a release occurs from ~~[a]~~ *an underground* storage tank, the Administrator of the Division may, at such times as are reasonably required:

1. Question the owner or operator of the tank, under oath, about any matter relating to the release;

2. Examine the books and records of the owner or operator; and

3. Waive any of the provisions of subsections 1, 2, and 6 of NAC 459.9973 and require corrective action to be taken immediately based on:

(a) Any actual or imminent impacts to *bodies of water or* groundwater; and

(b) Any hazards to human health and safety.

Sec. 17. NAC 459.9972 is hereby amended to read as follows:

459.9972 1. The owner or operator of a storage tank shall provide an assessment to the Division before a storage tank is permanently closed.

2. The assessment must be conducted:

(a) Using analytical test method 8015 of the Environmental Protection Agency that is modified for petroleum hydrocarbons and other constituents as required by the Division; and

(b) On two soil samples that are obtained from native soil less than 2 feet below the bottom of the excavation, from opposite sides or ends of the excavation in an area where contamination is most likely to be present.

3. The analysis must be conducted by a laboratory that is approved by the Division.

4. The owner or operator of ~~[a]~~ *an underground* storage tank that is removed from the ground shall:

(a) Dispose of or reuse the tank in accordance with the provisions of NRS 459.800 to 459.856, inclusive; and

(b) Maintain a record of the disposal or reuse.

Sec. 18. NAC 459.9974 is hereby amended to read as follows:

459.9974 1. Soil that is ~~contaminated:~~

~~(a) By a] removed through a corrective action and:~~

(a) Is contaminated at or above the soil action level by:

(1) A petroleum hydrocarbon substance only ~~[, and is removed through a corrective action,]~~ must be ~~[disposed of:~~

~~(1) In] managed:~~

(1) In a municipal solid waste landfill unit or a Class III site, after obtaining written approval from the holder of the permit to operate the landfill unit or site, and the solid waste management authority; or

~~(2)] (II)~~ At a disposal or treatment facility that is approved by the Division.

~~[(b) By a]~~

(2) A petroleum hydrocarbon substance and any other hazardous substance must be evaluated by the responsible person, who is certified pursuant to NAC 459.970 to 459.9729, inclusive, to determine if the soil is a hazardous waste.

(b) Is below the soil action level must be managed in a manner approved by the Division after obtaining written approval from the Division.

2. As used in this section:

(a) “Hazardous substance” has the meaning ascribed to it in NRS 459.429.

(b) “Hazardous waste” has the meaning ascribed to it in NAC 445A.826.

(c) “Soil action level” has the meaning ascribed to it in NAC 459.9973.

Sec. 19. NAC 459.9975 is hereby amended to read as follows:

459.9975 1. If a regulated substance is detected in or is suspected to have contaminated groundwater, the owner or operator shall, with the approval of the Division, install at least one monitoring well. The number of wells and the location, design ~~§~~ and installation of each well must be approved by the Division of Water Resources of the Department and the Division.

2. Monitoring of groundwater must be conducted for:

(a) Benzene, toluene, xylene, and ethylbenzene ~~§~~ (*BTEX*), by test method ~~§624~~ 8260 of the Environmental Protection Agency or an equivalent method that is approved by the Division;

(b) ~~§Total petroleum hydrocarbons, by analytical test method 8015 modified for petroleum hydrocarbons; and~~ *If suspected or detected, methyl tertiary-butyl ether (MTBE), by test method 8260 of the Environmental Protection Agency or an equivalent method that is approved by the Division;*

(c) Any other pollutant that is present in the groundwater as a result of the action of the owner or operator ~~§~~; *and*

(d) Any other constituent as directed by the Division.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R083-05**

The State Environmental Commission adopted regulations assigned LCB File No. R083-05 which pertain to chapter 459 of the Nevada Administrative Code on October 4, 2005

Notice date: 8/30/2005
Hearing date: 10/4/2005

Date of adoption by agency: 10/4/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

This permanent regulation amends NAC 459.9921 to 459.999 by establishing certain requirements for leak detection, prevention, and operation of above ground marina storage tank systems. It adopts by reference the International Fire Code (IFC 2003) for the construction, design, and location of marina tanks, and it provides for an annual registration fee of \$50 for each above ground marina storage tank compartment. The regulation also modifies the handling of petroleum-contaminated soils and it requires monitoring for MTBE and any other contaminant in the groundwater as directed by the Nevada Division of Environmental Protection (NDEP)

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Nevada Division of Environmental Protection held a public workshop via video conferencing on Thursday, March 10, 2005, at the Washoe County District Health Dept., 1001 East 9th St., Conference Room B, Reno, Nevada -- and at the Early Intervention Services, 3811 West Charleston Blvd., Room #209, Las Vegas, Nevada.

Copies of this public notice for the above referenced workshop were posted at the Legislative Building in Carson City and at the Legislative Counsel Bureau in Las Vegas, all county libraries in Nevada, the State Library in Carson City, the Clark County Commission Chambers in Las Vegas, the Washoe County Commission Chambers in Reno, and at the offices of the Department of Conservation and Natural Resources in Carson City and Las Vegas.

Information received from attendees at the workshops indicated that existing marina above ground storage tank systems would not require replacement. Attendees also noted that the cost to comply with the regulations would be passed through to the public. As a result of the regulation, it was noted that the public would be the beneficiary of cleaner and more protected waterways for recreation, agriculture, and other beneficial uses.

Regarding the regulatory hearing held by the State Environmental Commission (SEC), the regulation was noticed by SEC in the Las Vegas Review Journal and Reno Gazette Journal newspapers on the following dates (September 05, 19, 26, 2005). Members of the public subscribing to the SEC electronic and ground-based mailing lists were subsequently mailed a public notice and meeting agenda for the SEC regulatory hearing; the hearing was held in Reno on October 04, 2005.

At the SEC hearing, there were no public comments received by the Commission during the adoption of the referenced regulation.

2. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

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 as indicated in number 1 above. Comments were also solicited by State Environmental Commission (SEC) in the SEC notice in the newspapers, by direct mail to interested persons subscribing to the SEC electronic and ground-based mailing list.

The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The workshop notice, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at: <http://www.sec.nv.gov/main/hearing1005.htm>

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 State Environmental Commission adopted the regulation on October 04, 2005. Four technical corrections were made to the regulation.

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

The economic impact to a business could be substantial if replacement of an existing tank system is required. Information received from attendees at the workshops held by NDEP indicated that the majority of existing facilities would not require tank replacement.

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

There will be a marginal cost to the agency for enforcement of the proposed regulation, which will be recovered by the annual tank registration fee of \$50.

7. 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, indicate the name of the regulating federal agency.

To a certain extent, the proposed regulation does overlap certain existing regulatory requirements. Specifically, the International Fire Code 2003 (IFC 2003), adopted by the State of Nevada, has requirements for the location and placing of above ground petroleum storage tanks but does not require advanced systems for leak detection and prevention. The proposed regulation expands on the requirements of IFC 2003 and adds certain other requirements similar to those already existing for aboveground storage tanks.

8. 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.

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 regulation provides for an annual registration fee of \$50 for each above ground marina storage tank compartment. The agency could collect as much as \$400.00 per year in registration fees.

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R126-05

Effective October 31, 2005

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

AUTHORITY: §§1-4, 8, 25, 28 and 59, NRS 445A.855; §§5-7, 9-16, 18-21 and 40-58, NRS 445A.860; §17, NRS 445A.860 and 445A.880; §§22, 24, 26, 29, 30 and 32-39, NRS 445A.855 and 445A.860; §23, NRS 445A.855, 445A.860 and 445A.863; §§27 and 31, NRS 445A.855 and 445A.863.

A REGULATION relating to public water systems; transferring regulatory authority for drinking water standards and community and public water systems to the State Environmental Commission; providing for a sanitary survey on all public water systems at specified times; providing for the reporting of any significant deficiency in a sanitary survey; providing that community public water systems shall deliver consumer confidence reports to their customers on an annual basis; providing that the State Environmental Commission may grant variances under certain circumstances; establishing certain prerequisites to the commencement of a water project to treat groundwater; providing for the submission of a preliminary engineering report before a public water system may construct a new facility or make additions to or modify an existing facility; providing that the design of a groundwater treatment facility must be based upon a pilot plant study under certain circumstances; specifying the contents of an application for approval of a groundwater treatment or blending facility; providing that an engineer must prepare all plans, specifications and design reports for a facility to treat groundwater; specifying certain standards for the design of a facility to treat groundwater; providing that an approval of a water project is effective for 1 year and may be extended or revoked under certain circumstances; providing the standards for disinfection for a facility to treat groundwater; requiring the inclusion of certain features in the design and construction of a facility to treat groundwater; requiring operating certificates for persons who operate facilities to treat groundwater; requiring certain equipment to be kept at a facility for the disinfection of groundwater; providing that a facility to treat groundwater must submit a plan of operations for each facility that treats groundwater; requiring a facility that treats groundwater to maintain certain records; providing that a public water system must submit sampling reports on a regular basis to the Division of Environmental Protection of the State Department of Conservation and Natural Resources or the appropriate district board of health; providing for the adoption by reference of certain provisions of the National Primary Drinking Water Regulations; specifying the methods to be used in conducting an analysis to determine compliance with the primary standards; providing that certain

water systems must determine compliance with maximum contaminant levels for certain elements during normal operating conditions by a running annual average at any sampling point; setting forth the secondary maximum contaminant levels; specifying the monitoring frequency for secondary maximum contaminant levels and reporting thereof; specifying the method for conducting an analysis to determine compliance with secondary maximum contaminant levels; providing that certain analyses must be performed by a laboratory certified pursuant to NAC 445A.542 to 445A.54296, inclusive; providing for public notice of violations of primary drinking water regulations and other situations with potential adverse health effects; providing that the State Environmental Commission may grant a variance from a primary or secondary drinking water regulation under certain circumstances for certain lengths of time; revising the factors under which the State Environmental Commission may grant an exemption from a requirement respecting a maximum contaminant level or treatment technique of a primary drinking water regulation; revising the requirements that a public water system must establish in order to be granted an exemption by the State Environmental Commission; and providing other matters properly relating thereto.

Section 1. Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

Sec. 2. 1. *The Division or the appropriate district board of health shall conduct a sanitary survey on all public water systems.*

2. All public water systems using surface water or groundwater under the direct influence of surface water will be subject to a sanitary survey at a minimum of once every 3 years or on a more frequent basis as determined by the Division.

3. All public water systems using solely groundwater will be subject to a sanitary survey at a minimum of once every 5 years or on a more frequent basis as determined by the Division.

Sec. 3. 1. *Any significant deficiency noted in a sanitary survey must be addressed in writing to the Division or to the appropriate district board of health and must include a proposed implementation plan and schedule for correction of the deficiency within 45 days after the receipt of the sanitary survey report by the public water system.*

2. *As used in this section, “significant deficiency” means any deficiency found at a public water system during a sanitary survey that is a violation of any provision of NAC 445A.450 to 445A.6731, inclusive, and sections 2 to 22, inclusive, of this regulation, which may have the potential to cause a risk to public health. A significant deficiency includes, without limitation, unsanitary source conditions, treatment plant deficiencies, inadequate disinfectant contact time, cross connections, endangerment of sources, unsanitary storage and distribution of water, inadequate pressure, inadequate staff and any other deficiency of comparable significance.*

Sec. 4. *Each community public water system shall deliver to its customers on an annual basis consumer confidence reports which contain information on the quality of the water delivered by the system in accordance with the requirements of 40 C.F.R. §§ 141.151 to 141.155, inclusive, as adopted by reference in NAC 445A.4525.*

Sec. 5. *1. The Commission may grant a variance, subject to the provisions of subsection 2, for compliance with a requirement specifying a maximum contaminant level or treatment technique to:*

(a) Public water systems serving 3,300 or fewer persons; or

(b) With approval from the Federal Government, public water systems serving more than 3,300 persons but fewer than 10,000 persons,

↪ if the variance meets the requirements of this section.

2. A variance is available under subsection 1 if:

(a) The Federal Government has identified a variance technology under 42 U.S.C. 300g-1(b)(15) of the Federal Act that is applicable to the size and quality conditions of the source water of the public water system;

(b) The public water system installs, operates and maintains, in accordance with guidance or regulations issued by the Federal Government, such treatment technology, treatment technique or other means; and

(c) The Division determines the conditions of subsection 3 are met.

3. A variance under this section is only available to a public water system that cannot afford, in accordance with affordability criteria, to comply with a national drinking water regulation, including compliance through:

(a) Treatment;

(b) Alternative source water supply; or

(c) Restructuring or consolidation, unless the Division makes a determination that restructuring or consolidation is not practicable.

4. The Commission must determine that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the public water system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

5. As used in this section, “affordability criteria” includes the public water system being in an area in which the average income per household is less than 80 percent of the median household income of the county in which the system is located, and the public water system has water rates equal to or exceeding 1.5 percent of water system median household income upon implementation of a project to achieve compliance with the regulation from which a variance is sought. For the purposes of this subsection:

(a) The median household income of the county in which the system is located must be taken from the latest data available from the Bureau of the Census of the United States Department of Commerce.

(b) The water system median household income must be taken from the latest data available from the Bureau of the Census for the subject tract, unless a site specific survey is conducted using methodologies approved by the Division or the appropriate district board of health.

Sec. 6. 1. *A person who, because of unique circumstances, is unduly burdened by a regulation of the Commission and thereby suffers a hardship and the abridgment of a substantial property right may apply for a variance from the regulation.*

2. An application for such a variance must be made to the Commission.

Sec. 7. 1. *A person seeking a variance from the provisions of NAC 445A.450 to 445A.492, inclusive, and sections 2 to 7, inclusive, of this regulation must:*

(a) Submit an application for the variance to the Secretary of the Commission; and

(b) Submit a payment of \$150 to cover the costs of:

(1) Publication of notice of the application and notice of the date of the public hearing;

(2) A review and analysis of the application conducted by a member of the staff; and

(3) Printing and clerical services required to prepare the requested variance for submission to the Commission.

2. The Commission may waive the requirement that the applicant pay the costs set forth in subsection 1 upon a showing of extreme economic hardship.

Sec. 8. *The provisions of sections 8 to 22, inclusive, of this regulation apply to any public water system that uses a source of groundwater that must be treated to remove or blend a*

constituent that exceeds primary drinking water maximum contaminant levels as adopted by reference in NAC 445A.4525 or the secondary drinking water maximum contaminant levels specified in NAC 445A.455.

Sec. 9. *A public water system which relies on a source of groundwater must, before commencing a water project to treat or blend groundwater:*

- 1. Submit to the Division or to the appropriate district board of health, pursuant to section 10 of this regulation, a preliminary engineering report for review and preliminary approval;*
- 2. Upon preliminary approval of the preliminary engineering report, submit to the Division or to the appropriate district board of health, with the appropriate fees, an application for approval of the water project to treat groundwater that complies with the requirements of section 12 of this regulation;*
- 3. Obtain written approval from the Division or the appropriate district board of health for the water project to treat groundwater; and*
- 4. Submit to the Division or the appropriate district board of health a copy of a manual of operations and maintenance for the facility to treat groundwater.*

Sec. 10. *1. Except as otherwise provided in NRS 445A.920, a public water system proposing to:*

- (a) Construct a new facility for treatment or blending of groundwater; or*
 - (b) Make additions to or modify an existing facility to treat or blend groundwater,*
- ↪ must submit a preliminary engineering report to the Division or to the appropriate district board of health. The report must be reviewed by the Division or the appropriate district board of health before the supplier begins design of a facility to treat or blend groundwater.*
- 2. A preliminary engineering report must:*

(a) Describe the needs of the public water system, identify the purpose of the water project, analyze alternatives and propose a preferred course of action, from an engineering and economic perspective;

(b) Identify design alternatives that were considered and associated design parameters; and

(c) Identify a recommendation by an engineer for the final design.

Sec. 11. *1. Except as otherwise provided in subsection 2, the design of a groundwater treatment facility must be based upon a pilot plant study. The pilot plant study must identify:*

(a) Hydraulic characteristics such as the optimum process loading rate or the proper blending rates; and

(b) The unit process performance such as the optimum chemical feed and the most effective chemicals to use for adequate removal.

2. If the treatment technology recommended in the preliminary engineering report required pursuant to section 9 or 10 of this regulation has been tested on water with similar characteristics, the treatment technology may be approved without a pilot study.

Documentation must be provided to verify that the treatment technology has been proven to treat the drinking water to the minimum requirements set forth in NAC 445A.453.

Sec. 12. *An application for approval of a groundwater treatment or blending facility must contain:*

1. Complete plans for the treatment or blending facility, including, without limitation, the details of any improvements to be made and all work to be performed on site.

2. Complete specifications to supplement the plans for the facility.

3. A design report that:

(a) Describes the basis for the selection and design of the water project;

(b) Provides the criteria for design, data and other pertinent information defining the water project; and

(c) Establishes the adequacy of the proposed water project to meet the needs of the public water system.

4. Verification of the requirements for fire flow and fire demand.

5. Any other pertinent information required by the Division or the appropriate district board of health for review and approval of the water project application.

Sec. 13. *All initial and final plans, specifications and design reports for a facility to treat groundwater must be prepared by, or under the direct supervision of, an engineer. The engineer shall affix his signature, the applicable date and his wet seal or stamp to each sheet of those plans and to each title page for those specifications and design reports in accordance with NAC 625.610, 625.611 and 625.612.*

Sec. 14. 1. *The design for a new facility to treat groundwater must:*

(a) Be free of structural and sanitary hazards.

(b) Provide for protection against pollution and contamination by backflow.

(c) Provide equipment for measuring and recording flow.

(d) Be designed to mitigate the effects of events such as earthquakes, fires, floods, freezing and sabotage that are reasonably foreseeable.

(e) Provide access for inspection, maintenance and monitoring of all unit processes.

(f) Provide, if required by the selected treatment process, for a coagulation process that includes rapid chemical mixing and is based on pilot plant or laboratory scale or equivalent results that demonstrate the effectiveness of the coagulant chemicals over the full range of water quality conditions expected.

(g) Provide, if filtration is required:

(1) For filter-to-waste for each filter unit;

(2) Backwash rates and facilities for surface or subsurface wash using air, water or a combination of these to clean the filter; and

(3) Treatment for the removal of solids from filter backwash water if the water is recycled into the treatment process. Recycled backwash water must be returned to the headworks of the treatment plant.

(h) Provide equipment for disinfection which is of proper size for the full range of expected conditions of flow and which is capable of automatic feeding accurately at all rates of flow.

(i) Provide for operation of the treatment plant without frequent shutdowns and start-ups.

2. As used in this section, “filter-to-waste” means a provision in the filtration process to allow the water that was filtered first to be wasted or reclaimed.

Sec. 15. 1. *The Division or the appropriate district board of health shall not approve a project for a facility to treat groundwater unless the application for approval of the water project demonstrates that the water project will comply with the applicable provisions of sections 8 to 22, inclusive, of this regulation.*

2. Approval of a water project is effective for 1 year, except that the Division or the appropriate district board of health may extend this period in 1 year increments if:

(a) Work is being performed on the water project; and

(b) The Division or the appropriate district board of health receives a schedule of work and periodic updates on the progress of the water project.

3. The Division or the appropriate district board of health shall revoke its approval of a water project if work on the water project:

(a) Does not commence within 1 year after the approval of the water project becomes effective; or

(b) Ceases for a continuous period of 1 year.

Sec. 16. *Each public water system to which the disinfection requirements of NAC 445A.66825 applies shall provide disinfection treatment in accordance with the provisions of NAC 445A.66825 to 445A.6685, inclusive, and 40 C.F.R. §§ 141.131, 141.132, 141.133 and 141.135, as adopted by reference in NAC 445A.4525.*

Sec. 17. *The following features for reliability or alternatives acceptable to the Division or the appropriate district board of health must be included in the design and construction of any facility to treat groundwater:*

1. If required, alarm devices to indicate failures in the coagulation, filtration and disinfection processes. The alarm must notify the person designated by the public water system as responsible for taking corrective action or, if the facility is unmanned, have the capability to shut the plant down until corrective action can be taken.

2. If required, standby replacement equipment to ensure continuous operation and control of unit processes for coagulation, filtration and disinfection.

3. Unless it is otherwise justified by an engineer and approved by the Division or the appropriate district board of health, multiple filter units are required to provide redundant capacity if filters are out of service for backwash or maintenance.

Sec. 18. *A public water system shall, not later than 6 months after receiving notification from the Division or the appropriate district board of health that it is operating a facility to treat groundwater, ensure that the persons who operate the facility to treat groundwater have been issued appropriate operating certificates as required by NAC 445A.626.*

Sec. 19. *A facility for disinfection of groundwater must be equipped with:*

- 1. A reserve supply of chemicals and backup available parts for the equipment; and*
- 2. An emergency plan to be put into effect if there is a failure in the disinfection process.*

The object of the plan must be to prevent delivery to the distribution system of any water that has not been disinfected or that has been disinfected inadequately. The plan must be posted in the treatment plant or in any other place that is accessible to the operator of the plant.

Sec. 20. *1. A public water system shall submit a plan of operations for each facility that treats groundwater to the Division or the appropriate district board of health for review and approval. The plan must be designed to produce the optimal quality of water from the treatment process. The supplier shall operate the facility in accordance with the approved plan.*

2. The plan must include a description of:

- (a) The program for monitoring the performance of the treatment facility;*
- (b) The program for maintaining unit process equipment;*
- (c) The persons who operate the facility, including the number of staff and the level of their training;*
- (d) The operation of each unit process;*
- (e) The procedures used in the laboratory, if applicable;*
- (f) The procedures used to determine chemical dose rates;*
- (g) Recordkeeping protocol;*
- (h) The procedure for responding to an emergency at the facility or within the watershed that could conceivably affect the treatment facility; and*
- (i) Any other features that contribute to the reliable operation of the facility.*

Sec. 21. 1. *Each public water system shall maintain accurate and complete records of the operation of each facility to treat groundwater. The records must include:*

- (a) The results of all monitoring conducted in accordance with NAC 445A.454 and 445A.456;*
- (b) The date of any maintenance or inspection of a filter and the results of the inspection;*
- (c) The quantity of water produced;*
- (d) The quality of water produced;*
- (e) The hours of operation;*
- (f) The rates of flow at the plant;*
- (g) The rates of filtration;*
- (h) The rates of backwash; and*
- (i) The dates and description of failures of major equipment or unit processes and the action taken to correct these failures.*

2. *The records of a facility to treat groundwater must be retained for a period of not less than 2 years, unless the Division or the appropriate district board of health has determined otherwise.*

Sec. 22. *A public water system operating a facility to treat or blend groundwater shall submit a sampling log every 3 months to the Division or the appropriate district board of health that verifies the facility is properly treating or blending the water in accordance with NAC 445A.450 to 445A.492, inclusive and sections 2 to 7, inclusive, of this regulation. The Division or the appropriate district board of health may reduce the frequency for submittal of the sampling log information after the facility provides sampling information verifying that the facility is providing treated or blended water that is consistent with the minimum*

requirements of NAC 445A.450 to 445A.492, inclusive, and sections 2 to 7, inclusive, of this regulation.

Sec. 23. NAC 445A.450 is hereby amended to read as follows:

445A.450 As used in NAC 445A.450 to ~~445A.492,~~ *445A.540*, inclusive, *and sections 2 to 22, inclusive, of this regulation*, unless the context otherwise requires:

1. ~~“Health authority” means the officers and agents of the Health Division or the officers and agents of the local boards of health.~~

~~—2. “Health Division” means the Health Division of the Department of Human Resources.]~~

“Commission” has the meaning ascribed to it in section 3 of chapter 171, Statutes of Nevada 2005, at page 551 (NRS 445A.8075).

2. *“District board of health” has the meaning ascribed to it in section 4 of chapter 171, Statutes of Nevada 2005, at page 551 (NRS 445A.8075).*

3. *“Division” has the meaning ascribed to it in section 5 of chapter 171, Statutes of Nevada 2005, at page 551 (NRS 445A.8075).*

4. *“Monitoring program” means a program developed by a public water system and approved by the Division or the appropriate district board of health to sample water quality from a sampling point for compliance purposes.*

5. “Primary standard” means a standard which specifies a maximum contaminant level for any constituent found in a public water supply which, if exceeded, may adversely affect the health of persons.

~~4. “Properly certified laboratory” means a laboratory, including a mobile laboratory, that is certified as acceptable by the Nevada laboratory certification officer pursuant to a certification~~

~~program approved by the Environmental Protection Agency and the regulations and procedures adopted by the State Board of Health.~~

~~5.]~~ 6. “Public water system” has the meaning ascribed to it in NRS 445A.840 and includes a water authority in a county whose population is 400,000 or more.

~~[6.]~~ 7. *“Sampling point” means a location where water samples are taken for compliance purposes in accordance with the requirements for the specific contaminant or water quality parameters being monitored.*

8. *“Sanitary survey” means an onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purposes of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.*

9. *“Secondary maximum contaminant levels” means a maximum contaminant level adopted by the Commission for a constituent found in a public water supply that, if exceeded, may cause aesthetic concerns to a consumer.*

10. *“Supplier of water” has the meaning ascribed to it in NRS 445A.845.*

11. *“Treatment technique” means an enforceable water treatment process or procedure, required to be operated at a specified effectiveness for removal of a measurable surrogate contaminant, that public water systems must employ to ensure effective removal of other contaminants for which there is not a reliable, economical, technically feasible method to measure at levels of concern.*

12. “Water authority” has the meaning ascribed to it in NRS 377B.040.

~~[7.]~~ 13. The words and terms defined in 40 C.F.R. § 141.2 have the meanings ascribed to them in that section.

Sec. 24. NAC 445A.451 is hereby amended to read as follows:

445A.451 The provisions of NAC 445A.450 to 445A.492, inclusive, *and sections 2 to 7, inclusive, of this regulation* apply to all public water systems unless a public water system:

1. Consists only of distribution and storage facilities and does not have any *production, collection or treatment facilities*;
2. Obtains all of its water from, but is not owned or operated by, a public water system to which NAC 445A.450 to 445A.492, inclusive, *and sections 2 to 7, inclusive, of this regulation* apply.
3. Does not sell water to any person; and
4. Is not a carrier which conveys passengers in interstate commerce.

Sec. 25. NAC 445A.4525 is hereby amended to read as follows:

445A.4525 The provisions of 40 C.F.R. §§ 141.1, 141.2, 141.4 ~~[, 141.5 141.11 to 141.16, inclusive, 141.21 to 141.30, inclusive, 141.31 to 141.35, inclusive, 141.40, 141.41, 141.42, 141.61 to 141.65, inclusive, 141.74, 141.80 to 141.91, inclusive, 141.100, 141.101, 141.110, 141.111, 141.130 to 141.135, inclusive, and 141.151 to 141.155, inclusive,]~~ *to 141.42, inclusive, subsections (a) and (d) of 141.43, 141.60 to 141.571, inclusive* of the “National Primary Drinking Water Regulations,” as those provisions existed on ~~[February 16, 1999,]~~ *July 1, 2003,* are hereby adopted by reference ~~[,]~~ *, unless the Commission gives notice that the requirements are not suitable for this State pursuant to NAC 445A.4915.* A copy of a publication containing those provisions is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, or by telephone at (202) 512-1800, for the price of ~~[\$47.]~~ *\$61.* Copies of those regulations are also available, free of charge, ~~[from the Environmental Protection Agency]~~ at the Internet address

~~[<<http://www.epa.gov/safewater/mcl.html>>.]~~

~~<http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr141_02.html>.~~

Sec. 26. NAC 445A.453 is hereby amended to read as follows:

445A.453 All public water systems must meet the requirements of NAC 445A.450 to ~~[445A.492,]~~ *445A.540*, inclusive, *and sections 2 to 22, inclusive, of this regulation* and of the “National Primary Drinking Water Regulations,” ~~[as set forth in 40 C.F.R. §§ 141.1, 141.4, 141.5, 141.11 to 141.16, inclusive, 141.61 to 141.65, inclusive, 141.80 to 141.91, inclusive, 141.100, 141.101, 141.110, 141.111, 141.130 and 141.135,]~~ as adopted by reference in NAC 445A.4525 . ~~[, unless the State Board of Health gives notice that the requirements are not suitable for this State pursuant to NAC 445A.4915.]~~

Sec. 27. NAC 445A.454 is hereby amended to read as follows:

445A.454 *1.* The monitoring requirements for the primary standards set forth in NAC 445A.453 must be performed as required by 40 C.F.R. §§ 141.21 to 141.30, inclusive, 141.40, 141.41, 141.42, *141.74, 141.86 to 141.89, inclusive,* 141.131, 141.132 , ~~[and]~~ 141.133, *141.172 141.173, 141.174, 141.521, 141.530 to 141.536, inclusive, 141.541, 141.542, 141.543, 141.550 to 141.553, inclusive, and 141.560 to 141.564, inclusive,* as adopted by reference in NAC 445A.4525 . ~~[, unless the State Board of Health gives notice that the requirements are not suitable for this State pursuant to NAC 445A.4915. Each analysis of the primary standards must be performed in compliance with NAC 445A.458 and in]~~

2. Any analysis conducted to determine compliance with the primary standards referenced in NAC 445A.453 must be performed by a laboratory that is certified pursuant to the provisions of NAC 445A.542 to 445A.54296, inclusive ~~[,]~~ *, in accordance with:*

(a) The method or methods listed in, or approved pursuant to, the provisions of NAC 445A.542 to 445A.54296, inclusive, for the selected contaminant or contaminants in the drinking water; or

(b) Any method for the selected contaminant or contaminants in the drinking water approved by the United States Environmental Protection Agency as an acceptable alternative test procedure for drinking water.

3. For water systems which are conducting water quality monitoring at a frequency greater than annually, compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium must be determined during normal operating conditions by a running annual average at any sampling point. A monitoring program identifying the sampling points must be submitted to the Division or the appropriate district board of health for review and approval. The monitoring program must demonstrate that the average quality of the water served to each customer in the distribution system is below the maximum contaminant level. The Division or the appropriate district board of health shall establish the number of samples the public water system must take for calculating the running annual average. The public water systems may not monitor more frequently than specified in the monitoring program by the Division or the appropriate district board of health to determine compliance unless approved in writing by the Division or the appropriate district board of health.

4. As used in this section:

(a) "Normal operating conditions" means the conditions that are achieved when the water system operates wells or treatment plants to supply water for seasonal demands.

(b) "Running Annual Average" means the sum of the consecutive 12-month contaminant sample values divided by the total number of samples taken at one sample point. (Example: $(\sum x_1 + x_2 + x_n)/n = \text{Running Annual Average}$)

Sec. 28. NAC 445A.455 is hereby amended to read as follows:

~~445A.455 [1. Whenever any of the following chemical substances, as measured at representative points in the distribution system, is present in a public water supply in excess of the listed levels, and the health authority determines that there is another more suitable supply of water which is economically feasible, available in a sufficient quantity, and of a significantly higher quality, the supplier of water shall give notice to the public:~~

Substance	Level, Milligrams —Per Liter
Chloride	250.0
Color	15.0 color units
Copper	1.0
Foaming Agents	0.5
Iron	0.3
Magnesium	125.0
Manganese	0.05
Odor	3.0 threshold odor number
pH	6.5-8.5

Substance	Level, Milligrams Per Liter
Sulfate.....	250.0
TDS (total dissolved solids dried at 180°C).....	500.0
Zinc.....	5.0

~~2. The following chemical substances, as measured at representative points in the distribution system, must not be present in a public water supply in excess of the listed levels:~~

Substance	Level, Milligrams Per Liter
Chloride.....	400.0
Iron.....	0.6
Magnesium.....	150.0
Manganese.....	0.1
Sulfate.....	500.0
TDS (total dissolved solids dried at 180°C).....	1000.0

~~3.1~~ 1. *Secondary maximum contaminant levels, which apply to public water systems, are listed in the following table:*

<i>Constituent or Indicator</i>	<i>Secondary Contaminant (milligrams/Liter or mg/L)</i>	<i>Maximum Level</i>
<i>Aluminum</i>	<i>0.2 mg/L</i>	
<i>Chloride</i>	<i>400 mg/L</i>	
<i>Copper</i>	<i>1.0 mg/L</i>	
<i>Foaming Agents</i>	<i>0.5 mg/L</i>	
<i>Iron</i>	<i>0.6 mg/L</i>	
<i>Magnesium</i>	<i>150 mg/L</i>	
<i>Manganese</i>	<i>0.1 mg/L</i>	
<i>Silver</i>	<i>0.1 mg/L</i>	
<i>Sulfate</i>	<i>500 mg/L</i>	
<i>Total Dissolved Solids (TDS)</i>	<i>1,000 mg/L</i>	
<i>Zinc</i>	<i>5.0 mg/L</i>	
	<i>Other units or indicators</i>	
<i>Color</i>	<i>15 color units</i>	
<i>Odor</i>	<i>3.0 threshold odor number</i>	
<i>pH</i>	<i>6.5 to 8.5</i>	

2. Except as otherwise provided in NAC 445A.6682, the standard for fluoride in community and nontransient, noncommunity water systems is 2.0 milligrams per liter.

~~[4.— If a public water system exceeds one of the standards set by subsection 2 or 3 or the State Board of Health grants a variance from the requirement concerning that contaminant level, the supplier of water shall give notice to the public.~~

~~—5.— The notices required by subsections 1 and 4 must be:~~

- ~~—(a) Published in a newspaper of general circulation in the area served by the system not more than 30 days after the standard is exceeded;~~
- ~~—(b) Delivered personally or by mail to each person served by the system not more than 45 days after the standard is exceeded; and~~
- ~~—(c) Published and delivered annually thereafter as provided in this section if the standard continues to be exceeded.]~~

Sec. 29. NAC 445A.456 is hereby amended to read as follows:

445A.456 1. ~~[Analysis for all public water systems must be completed by June 24, 1979. Analysis must be repeated]~~ *The secondary maximum contaminant levels must be monitored annually for public water systems which have surface water sources or groundwater sources under the direct influence of surface water, and at least once during every 3-year ~~[intervals or at lesser intervals if required by the health authority.]~~ compliance period for systems with groundwater sources, unless otherwise required by the Division or the appropriate district board of health. Samples must be collected at sample points which are representative of each source after any treatment.*

2. If the result of an analysis made pursuant to subsection 1 indicates that ~~[the level of]~~ any *secondary maximum* contaminant *level* listed in NAC 445A.455 ~~[exceeds the maximum level,]~~ *is exceeded*, the supplier of water must report *that result* to the *Division or the appropriate district board of* health ~~[authority]~~ within 30 days and initiate ~~[3]~~ *three* additional analyses at the same sampling point within 90 days. When the average of four analyses made pursuant to this subsection exceeds the *secondary* maximum *contaminant* level, the supplier of water must notify the *Division or the appropriate district board of* health ~~[authority]~~ and give notice to the public ~~[. Notice to the public must be in such form and manner as prescribed by the health~~

~~authority and must ensure that the public using the system is adequately informed.] pursuant to subsection 3 of NAC 445A.485.~~

3. Monitoring after public notification must be at a frequency designated by the *Division or the appropriate district board of health* ~~[authority]~~ and must continue until the level has not been exceeded ~~[in two successive samples]~~ *during two successive quarterly periods* or until a monitoring schedule as a condition to a variance or enforcement action *to achieve compliance* becomes effective.

4. A supplier of water is not required to report results to the *Division or the appropriate district board of health* ~~[authority]~~ where a state laboratory performs the analysis and reports the results to the *Division or the appropriate district board of health* . ~~[authority.]~~ *Except as otherwise provided in this subsection, the public water system shall provide the results of any analysis performed pursuant to this section to the Division or to the appropriate district board of health by the 10th day of the month following receipt of the results.*

5. *The public water system shall, within 6 months after giving the notice required by subsection 2, develop a plan to return the water system to compliance. This plan must be submitted to, and be approved by, the Division or the appropriate district board of health and may include:*

(a) Acquisition of another suitable supply of water which is economically feasible to obtain, available in sufficient quantity, and of significantly higher or acceptable quality;

(b) Consolidation with an adjacent public water system that provides water of sufficient quantity and quality;

(c) Treatment of the source water; or

(d) Any other action sufficient to return the water system to compliance.

Sec. 30. NAC 445A.457 is hereby amended to read as follows:

445A.457 Any analysis conducted to determine compliance with NAC 445A.455 must be made in accordance with : ~~one of the following methods:~~

~~—1.— Any]~~

1. The method for the selected contaminant or contaminants in the drinking water listed in ~~[40 C.F.R. Part 143. A copy of Part 143 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at a cost of \$41.]~~

~~[2.— Any method listed in 40 C.F.R. Part 136. A copy of Part 136 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, for the price of \$41.~~

~~—3.] NAC 445A.542 to 445A.54296, inclusive; or~~

2. Any method for the selected contaminant or contaminants in the drinking water approved by the United States Environmental Protection Agency as an accepted alternative test procedure for drinking water.

Sec. 31. NAC 445A.458 is hereby amended to read as follows:

445A.458 1. Except as otherwise provided in this section, each analysis required by NAC 445A.4525 to 445A.457, inclusive, must be performed by a ~~[properly certified laboratory.]~~

laboratory certified pursuant to NAC 445A.542 to 445A.54296, inclusive.

2. Turbidity measurements may be made by a ~~[certified]~~ laboratory *certified pursuant to NAC 445A.542 to 445A.54296, inclusive,* or by *public* water ~~[supply]~~ *system* personnel utilizing an instrument capable of meeting the requirements of 40 C.F.R. § 141.22(a), as adopted by reference pursuant to NAC 445A.4525.

3. Chlorine residual measurements ~~[when authorized as a substitute for coliform bacteria monitoring may]~~ **must** be made by ~~[the water supplier]~~ **public water system personnel** utilizing an instrument and methods capable of meeting the requirements of 40 C.F.R. § ~~[141.74,]~~ **141.74(a)(2)**, as adopted by reference in NAC 445A.4525.

4. Temperature and pH measurements must be made by the public water system utilizing an instrument and methods capable of meeting the requirements of 40 CFR § 141.23(k)(1), as adopted by reference in NAC 445A.4525.

5. Public water systems may direct the laboratory which analyzes water samples to submit the results of the sample to the Division or the appropriate district board of health.

Sec. 32. NAC 445A.485 is hereby amended to read as follows:

445A.485 1. The owner or operator of a public water system ~~[who fails to perform monitoring as required by 40 C.F.R. § 141.21, as adopted by reference in NAC 445A.4525, shall notify all persons served by the system within 45 days after the violation or failure. All other activities of reporting, public notification and recordkeeping must be performed as required by 40 C.F.R. §§ 141.31 to 141.35, inclusive, 141.134 and 141.151 to 141.155, inclusive, as adopted by reference in NAC 445A.4525, and by NAC 445A.450 to 445A.492, inclusive.~~

~~2. Daily turbidity measurements must be compiled on a monthly basis and analyzed as required by 40 C.F.R. § 141.22, as adopted by reference in NAC 445A.4525. The compiled results must be sent to the Health Division before the 10th day of the following month. Water suppliers located in Clark County or Washoe County shall report to the applicable district health department.]~~ **must provide notice to the Division or the appropriate district board of health of the occurrence of any of the events listed in NAC 445A.538, in accordance with the provisions of that section.**

2. Public notice of violations of primary drinking water regulations, and other circumstances with potential adverse health effects, is required pursuant to NRS 445A.940 and as follows:

(a) The owner or operator of a public water system must provide notice to persons served by the system for all violations of the primary standards, treatment techniques, monitoring requirements, testing procedures and other circumstances set forth in NAC 445A.450 to 445A.540, inclusive, and sections 2 to 22, inclusive, of this regulation, pursuant to the requirements of this section and 40 C.F.R. §§ 141.201 to 141.210, inclusive, as adopted by reference in NAC 445A.4525, including, without limitation:

- (1) Failing to comply with an applicable primary standard;*
- (2) Failing to comply with a prescribed treatment technique;*
- (3) Failing to perform water quality monitoring;*
- (4) Failing to comply with testing procedures as prescribed by a drinking water regulation;*
- (5) Operating under a variance or exemption;*
- (6) Failing to comply with the requirements of any schedule that has been set under a variance or exemption;*
- (7) The occurrence of a waterborne disease outbreak or other waterborne emergency;*
- (8) Exceeding the nitrate MCL by a noncommunity water system when granted permission by the primacy agency under 40 C.F.R. § 141.11(d);*
- (9) Exceeding the secondary maximum contaminant level for fluoride, set forth in subsection 2 of NAC 445A.455;*
- (10) Making available unregulated contaminant monitoring data; or*

(11) Other violations as determined by the Division or the appropriate district board of health to require a public notice, not already listed in Appendix A to 40 C.F.R. §§ 141.201 to 141.210, inclusive, as adopted by reference in NAC 445A.4525.

(b) Public notices are divided into three tiers to take into account the seriousness of the violation or situation and any potential adverse health effects that may be involved. The public notice requirements for each violation or situation listed in paragraph (a) of subsection 2 are determined by the tier to which the violation or situation is assigned. The federal public notification regulations, 40 C.F.R. §§ 141.201 to 141.210, inclusive, including Appendices A, B and C, adopted by reference pursuant to NAC 445A.4525, provide the criteria for the tier assignment for each specific violation or situation, and the requirements for the content, form, manner and frequency of the notice.

(c) Each public water system must provide public notice to persons served by the water system in accordance with this section. Public water systems that sell or otherwise provide drinking water to other public water systems are required to give notice to the owners or operators of those systems, who are then responsible for providing public notice to the persons they serve. If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the Division or the appropriate district board of health may allow the system to limit distribution of the public notice to only those persons served by that portion of the system which is out of compliance. Permission by the Division or the appropriate district board of health for limiting distribution of the notice must be granted in writing.

(d) A copy of the notice must also be sent to the Division or the appropriate district board of health in accordance with the requirements of 40 C.F.R. § 141.31(d), adopted by reference pursuant to NAC 445A.4525.

3. Public notice of a violation of NAC 445A.455 is required pursuant to NRS 445A.940 and as follows:

(a) When a secondary maximum contaminant level exceeds the levels or units specified in subsection 1 of NAC 445A.455, the public water system must, within 90 days, collect and analyze three additional samples from the same sample point, but not more than one sample per month. If the average contaminant level of the four samples exceeds the secondary maximum contaminant level, the public water system must notify the Division or the appropriate district board of health and must provide notice to the public. The notice must be:

(1) For community public water systems:

(I) Published in a newspaper of general circulation in the area served by a system not more than 30 days after the standard is exceeded; or

(II) Delivered personally or by mail to each person served by the system not more than 30 days after the standard is exceeded; and

(III) Published and delivered annually thereafter as provided in the annual consumer confidence report prepared pursuant to section 4 of this regulation if the standard continues to be exceeded.

(2) For noncommunity water systems:

(I) Delivered personally or by mail to each person served by the system not more than 30 days after the standard is exceeded; or

(II) Posted, within 30 days after the standard is exceeded, in a prominent location for consumers of the water system to read; and

(III) Posted, or delivered annually thereafter if the standard continues to be exceeded.

(b) If the Commission grants a variance pursuant to NAC 445A.487, 445A.488 or section 5 of this regulation from the requirement concerning a secondary maximum contaminant level, the public water system shall give notice to the public pursuant to subparagraph (1) or (2) of paragraph (a) of subsection 3, as required by the type of system.

(c) In a fluoridated public water system, if the concentration for fluoride does not meet the concentrations specified in subsection 6 of NAC 445A.6682, the public water system must report the incident to the Division or the appropriate district board of health as required in paragraph (j) of subsection 12 of NAC 445A.6682.

(d) Notice to the public must be in such form and manner as prescribed by the Division or the appropriate district board of health and must ensure that the public using the system is adequately informed.

4. The Commission may not grant a variance from the provisions of public notification required by this regulation.

Sec. 33. NAC 445A.487 is hereby amended to read as follows:

445A.487 1. The ~~[State Board of Health]~~ *Commission* may grant a variance from a primary drinking water regulation to a public water system which cannot meet a requirement respecting a maximum contaminant level specified in such drinking water regulation because of characteristics of the raw water source or sources which are reasonably available to the system . ~~[despite application of]~~ *A variance may be issued to a system on the condition that the public*

water system install the best *available* technology, treatment techniques or other means which the ~~{Board}~~ *Commission* finds are reasonably available after taking costs into consideration ~~{,}~~ *and based on an evaluation satisfactory to the Commission that indicates that alternative sources of water are not reasonably available to the public water system.* Before such a variance may be granted, the ~~{Board}~~ *Commission* must find that the variance will not result in an unreasonable risk to health.

2. The ~~{State Board of Health}~~ *Commission* may grant a variance to a public water system from any provision of a primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant. Prior to the issuance of such a variance, the public water system must demonstrate to the satisfaction of the ~~{Board}~~ *Commission* that the treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of the system.

3. The ~~{State Board of Health}~~ *Commission* may grant a variance from a secondary drinking water regulation to a public water system in accordance with the procedures for seeking variances from the ~~{State Board of Health set forth in chapter 439 of NAC.}~~ *Commission.*

4. Public hearings and other procedures for consideration of requests for variances from NAC 445A.450 to 445A.492, inclusive, *and sections 2 to 7, inclusive, of this regulation* must be conducted in accordance with the procedures for seeking variances from the ~~{State Board of Health as set forth in chapter 439 of NAC.}~~ *Commission. The Commission will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:*

(a) There are circumstances or conditions which:

(1) Are unique to the applicant;

(2) Do not generally affect other persons subject to the regulation;

(3) Make compliance with the regulation unduly burdensome; and

(4) Cause a hardship to and abridge a substantial property right of the applicant; and

(b) Granting the variance:

(1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property right; and

(2) Will not be detrimental or pose a danger to public health and safety.

↪ Whenever an applicant for a variance alleges that he suffers or will suffer economic hardship by complying with the regulation, he must submit evidence demonstrating the costs of his compliance with the regulation. The Commission will consider the evidence and determine whether those costs are unreasonable.

Sec. 34. NAC 445A.488 is hereby amended to read as follows:

445A.488 1. The ~~[State Board of Health]~~ *Commission* will, when it grants a variance to a public water system ~~[]~~ *pursuant to NAC 445A.487, 445A.488 or section 5 of this regulation,* prescribe:

(a) A schedule for compliance, including increments of progress, with the contaminant level requirement with respect to which the variance was granted.

(b) Such additional control measures as it may require for the contaminant during the period ending on the date compliance with the requirement is required.

2. *The Commission will require, when it grants a variance to a public water system pursuant to NAC 445A.487, 445A.488 or section 5 of this regulation, unless an exemption is granted to a public water system pursuant to NAC 445A.489 or 445A.490, compliance with the conditions of the variance not later than 3 years after the date on which the variance was granted, except that a public system may be granted up to 2 additional years to comply with a*

variance technology, to secure an additional source of water, restructure or consolidate if the Division or the appropriate district board of health determines that additional time is necessary for capital improvements or to allow for financial or technical assistance from any other federal or state program.

3. No such schedule for compliance or effectuation may take effect until the ~~[state]~~ *Division* or *the appropriate* district board *of health* has approved, or approved with modifications, the schedule after notice and a public hearing held in the same manner as the variance hearing.

~~[3.]~~ 4. A schedule approved by the ~~[state or district board]~~ *Commission* must require compliance by the *public* water system with each contaminant level requirement for which the variance was granted, as expeditiously as the ~~[Board]~~ *Commission* determines to be practicable.

Sec. 35. NAC 445A.489 is hereby amended to read as follows:

445A.489 1. The ~~[State Board of Health]~~ *Commission* may grant an exemption from any requirement respecting a maximum contaminant level or treatment technique of an applicable primary drinking water regulation to:

(a) A public water system which was in operation on the effective date of the requirement if:

(1) Because of compelling factors, including economic considerations, *such as qualification of the public water system as serving a disadvantaged community*, the public water system is unable to comply ~~[; and]~~ *or to implement measures to develop an alternative source of supply;*

(2) The granting of the exemption will not result in an unreasonable risk to health; ~~[or]~~ *and*

(3) Management or restructuring changes, or both, cannot reasonably be made that will result in compliance with the primary drinking water standards or, if compliance cannot be achieved, improve the quality of the drinking water; or

(b) A public water system which was not in operation on the effective date of the requirement if:

(1) Because of compelling factors, including economic considerations, *such as qualification of the public water system as serving a disadvantaged community*, the public water system is unable to comply ~~[]~~ *or to implement measures to develop an alternative source of supply;*

(2) There is no reasonable alternative source of drinking water available to the public water system; ~~[and]~~

(3) The granting of the exemption will not result in an unreasonable risk to health ~~[]~~; *and*

(4) Management or restructuring changes, or both, cannot reasonably be made that will result in compliance with the primary drinking water standards or, if compliance cannot be achieved, improve the quality of the drinking water.

2. Public hearings and other procedures for consideration of requests for exemptions from NAC 445A.450 to 445A.540, inclusive, *and sections 2 to 22, inclusive, of this regulation* must be conducted in accordance with the procedures for seeking variances from the ~~[State Board of Health set forth in chapter 439 of NAC.]~~ *Commission.*

3. *As used in this section, “disadvantaged community” means an area served by a public water system in which the average income per household is less than 80 percent of the median household income of the county.*

Sec. 36. NAC 445A.490 is hereby amended to read as follows:

445A.490 1. The ~~[State Board of Health]~~ *Commission* will, when it grants an exemption to a public water system, prescribe:

(a) A schedule for compliance, including increments of progress ~~[;]~~ *or measures to develop an alternative source of water supply*, with the contaminant level or treatment technique requirement with respect to which the exemption was granted.

(b) Such control measures as it may require for the contaminant during the period ending on the date compliance with the requirement is required.

2. No such schedule for compliance or effectuation may take effect until the ~~[state]~~ *Commission* or *the appropriate* district board *of health* has approved, or approved with modifications, the schedule after notice and a public hearing held in the same manner as the exemption hearing.

3. A schedule approved by the ~~[state]~~ *Commission* or *the appropriate* district board *of health* must require compliance by the *public* water system with each contaminant level requirement for which the exemption was granted as expeditiously as the *Commission or the appropriate district* board *of health* determines to be practicable except ~~[-]~~

~~—(a) In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the “National Primary Drinking Water Regulations” adopted pursuant to § 300g-1(a) of the Federal Act, not later than June 19, 1987;~~

~~—(b) In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the “National Primary Drinking Water Regulations,” other than for a regulation adopted pursuant to § 300g-1(a) of the Federal Act, not later than 12 months after the date of the issuance of the exemption; or~~

~~—(c) As] *as* otherwise provided by the Federal Act.~~

4. An exemption may not be granted unless the public water system establishes that:

(a) The public water system cannot meet the standard without the capital improvements which cannot be completed prior to the date established by the Federal Act;

(b) In the case of a public water system which needs financial assistance for the necessary improvements, the public water system has entered into an agreement to obtain such financial assistance from any other state or federal program or any such assistance is reasonably likely to be available within the period of the exemption; or

(c) The public water system has entered into an enforceable agreement to become part of a regional public water system and the public water system is taking all practicable steps to meet the standard.

5. In the case of a public water system that does not serve a population of more than 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under subsection 4 may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the public water system establishes that it is taking all practicable steps to meet the requirements of subsection 4.

6. A public water system may not receive an exemption under this section if the system was granted a variance under NAC 445A.487, 445A.488 or section 5 of this regulation.

Sec. 37. NAC 445A.491 is hereby amended to read as follows:

445A.491 1. Any supplier of water who feels himself aggrieved by the action of the *Division or the appropriate* district board of health in approving or approving with modifications any schedule for compliance or effectuation submitted pursuant to a variance or an exemption may appeal the action to the ~~[State Board of Health]~~ *Commission or the appropriate district*

board of health by filing a written notice of appeal ~~[with the district health department]~~ within 30 days of the written decision on the schedule.

2. ~~[The district health department must forward to the Secretary of the State Board of Health the full record of the proceedings, including all exhibits, the original application and the written decision within 10 days of the filing of the notice of appeal.~~

~~—3.]~~ Users of the *public* water ~~[supply]~~ *system* who feel themselves aggrieved by the action of the *Division or the appropriate* district board of health may appeal in the same manner as the ~~[supplier of water.]~~ *public water system*. Such an appeal must be supported by a minimum of 10 percent of the users of the *public water* system for *public water* systems serving a population of less than 5,000 and by a minimum of 5 percent for ~~[larger systems—~~

~~4.—The State Board of Health]~~ *public water systems serving a population of 5,000 or greater.*

3. *The Commission or the appropriate district board of health* will consider all such appeals at regularly scheduled public hearings, ~~[no later than 60 days]~~ after receipt of the record on appeal.

~~[5.]~~ 4. Evidence presented to the ~~[State Board of Health]~~ *Commission* on appeal is limited to that introduced before the *Division or the appropriate* district board of health.

~~[6.]~~ 5. At the conclusion of the hearing, the matter stands submitted and the ~~[State Board of Health]~~ *Commission or the appropriate district board of health* will enter a written decision, including findings of fact, within 14 days of the hearing date.

Sec. 38. NAC 445A.4915 is hereby amended to read as follows:

445A.4915 If any publication adopted by reference pursuant to NAC 445A.450 to ~~[445A.492,]~~ *445A.540*, inclusive, *and sections 2 to 22, inclusive, of this regulation* is revised,

the ~~[State Board of Health]~~ *Commission* will review the revision to determine its suitability for this State. If the ~~[Board]~~ *Commission* determines that the revision is not suitable for this State, it will hold a public hearing to review its determination and give notice of that hearing within 6 months after the date of the publication of the revision. If, after the hearing, the ~~[Board]~~ *Commission* does not revise its determination, the ~~[Board]~~ *Commission* will give notice that the revision is not suitable for this State within 30 days after the hearing. If the ~~[Board]~~ *Commission* does not give such notice, the revision becomes part of the publication adopted by reference pursuant to NAC 445A.450 to ~~[445A.492, inclusive.]~~ *445A.540, inclusive, and sections 2 to 22, inclusive, of this regulation.*

Sec. 39. NAC 445A.492 is hereby amended to read as follows:

445A.492 If any of the provisions of NAC 445A.450 to ~~[445A.492,]~~ *445A.540, inclusive, and sections 2 to 22, inclusive, of this regulation,* or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

Sec. 40. NAC 445A.495 is hereby amended to read as follows:

445A.495 As used in NAC 445A.495 to 445A.540, inclusive, *and sections 8 to 22, inclusive, of this regulation,* unless the context otherwise requires:

1. The words and terms defined in NAC 445A.497 to 445A.516, inclusive, have the meanings ascribed to them in those sections; and
2. The words and terms defined in 40 C.F.R. § 141.2, as adopted by reference pursuant to ~~[NAC 445A.5175,]~~ *NAC 445A.4525,* have the meanings ascribed to them in that section.

Sec. 41. NAC 445A.510 is hereby amended to read as follows:

445A.510 “Outbreak of ~~[water-borne]~~ *waterborne* disease” means the significant occurrence of acute infectious illness, associated epidemiologically with the ingestion of water from a public water system that has been determined by the ~~[Health]~~ Division *or the appropriate district board of health* to be deficient in treatment.

Sec. 42. NAC 445A.517 is hereby amended to read as follows:

445A.517 The provisions of NAC 445A.495 to 445A.540, inclusive, *and sections 8 to 22, inclusive, of this regulation* apply to:

1. Any public water system using surface water or ~~[ground-water]~~ *groundwater* under the direct influence of surface water; and
2. Any supplier of water who owns, controls or operates such a *public water* system.

Sec. 43. NAC 445A.518 is hereby amended to read as follows:

445A.518 1. A supplier of water who is notified by the ~~[Health]~~ Division *or the appropriate district board of health* that the public water system is not meeting any of the requirements for treatment set forth in *the federal regulations adopted pursuant to* NAC ~~[445A.5175,]~~ *445A.4525*, 445A.520, 445A.521 or 445A.526 to 445A.540, inclusive, shall submit a detailed plan to the ~~[Health-Division,]~~ *Division or the appropriate district board of health*, not less than 120 days after the date of notification, containing a feasible timetable for bringing the system into compliance with these sections.

2. The date for final compliance must not be later than June 29, 1993, or 18 months after notification by the ~~[Health]~~ Division *or the appropriate district board of health* that ~~[ground water]~~ *groundwater* is under the direct influence of surface water, whichever is later, unless an extension is granted by the ~~[Health-Division,]~~ *Division or the appropriate district board of health*.

Sec. 44. NAC 445A.520 is hereby amended to read as follows:

445A.520 1. Except as otherwise provided in this section, each supplier of water shall treat the water in accordance with NAC 445A.521 and 445A.526, and 40 C.F.R. §§ 141.70 ~~[and]~~ , 141.76, 141.170, *and 141.500 to 141.503, inclusive*, as adopted by reference in NAC ~~[445A.5175.]~~ *445A.4525*.

2. A supplier of water who meets the standards of performance set forth in this section and NAC 445A.521 and 445A.526 and meets the operating criteria set forth in NAC 445A.533 will be considered to be in compliance with the requirements of subsection 1.

3. The ~~[Health]~~ Division *or the appropriate district board of health* may require a higher degree of treatment than required by subsection 1, depending on the degree of contamination within the source water.

4. The ~~[State Board of Health]~~ *Commission* will not grant a variance from the provisions of this section.

Sec. 45. NAC 445A.521 is hereby amended to read as follows:

445A.521 1. Each supplier of water shall treat the water in accordance with 40 C.F.R. §§ 141.73 , ~~[and]~~ 141.173, *and 141.550 to 141.553, inclusive*, as adopted by reference in NAC ~~[445A.5175.]~~ *445A.4525*.

2. The ~~[State Board of Health]~~ *Commission* will not grant a variance from the provisions of this section.

Sec. 46. NAC 445A.522 is hereby amended to read as follows:

445A.522 1. For the purposes of meeting the levels of treatment set forth in NAC 445A.520:

(a) Conventional filtration treatment is presumed to be capable of achieving at least 99.7 percent or ~~{2.5-log}~~ **2.5-log** removal of Giardia cysts and 99 percent or 2-log removal of viruses if the process is in compliance with the operating criteria set forth in NAC 445A.533 and the standards of performance set forth in NAC 445A.521; and

(b) Treatment by direct filtration, diatomaceous earth filtration and slow sand filtration is presumed capable of achieving at least a 99 percent or 2-log removal of Giardia cysts and a 90 percent or 1-log removal of viruses if the process is in compliance with the criteria and standards set forth in paragraph (a).

2. The ~~{Health}~~ Division ***or the appropriate district board of health*** may grant higher efficiencies for removal than those specified in this section if the supplier of water demonstrates to the Division that the higher efficiency for removal can be obtained reliably.

Sec. 47. NAC 445A.524 is hereby amended to read as follows:

445A.524 1. The use of an alternative filtration technology, including packaged treatment plants, may be approved by the ~~{Health}~~ Division ***or the appropriate district board of health*** if the following requirements are met:

(a) The supplier of water demonstrates that the technology proposed provides a minimum of 99 percent or 2-log removal of Giardia cysts and a ~~{90 percent or 1-log removal of viruses.}~~ ***99 percent or 2-log removal of Cryptosporidium oocysts.*** The process must meet the standards of performance established in NAC 445A.521.

(b) An engineering report is submitted to the ~~{Health}~~ Division ***or the appropriate district board of health*** documenting the results of experiments done at pilot plants or tests completed on a full-scale installation that is treating water with similar characteristics and exposed to similar hazards as the water proposed for treatment.

2. If the use of an alternative filtration technology is approved by the ~~[Health Division,]~~ *Division or the appropriate district board of health*, the supplier of water shall submit an engineering report, not less than 6 months after the system becomes operational, verifying that the alternative technology meets the standards established for performance under actual conditions of operation.

3. If the supplier of water does not meet these standards, he shall submit to the ~~[Health]~~ Division *or the appropriate district board of health* a timetable for the correction of the deficiencies.

Sec. 48. NAC 445A.525 is hereby amended to read as follows:

445A.525 1. A supplier of water may apply to the ~~[Health]~~ Division to operate without installing a system for filtration. The ~~[Health]~~ Division *or the appropriate district board of health* may grant this request if the supplier of water, not later than December 30, 1991, or 18 months after notification by the ~~[Health]~~ Division *or the appropriate district board of health* that a ~~[ground-water]~~ *groundwater* system is under the direct influence of surface water, whichever is later, meets the requirements set forth in 40 C.F.R. §§ 141.71 , ~~[and]~~ 141.171, *141.520, 141.521 and 141.522*, as adopted by reference in NAC ~~[445A.5175, except that, for]~~ *445A.4525. For* systems located at Lake Tahoe, the supplier of water must demonstrate that a level of protection ~~[, which is equivalent to watershed control,]~~ *which minimizes the potential for contamination by Giardia lamblia cysts, viruses and Cryptosporidium oocysts* is provided by the location of the intake structure ~~[.]~~ *and a watershed control program. The watershed control program must include the periodic performance of a watershed survey as required by NAC 445A.539, and the water system must be subject to annual on-site inspections to assess the watershed control program.*

2. To avoid the requirements for filtration, a supplier of water must comply with the provisions that are set forth in 40 C.F.R. §§ 141.74(b) and 141.75(a), as adopted by reference in NAC ~~[445A.5175.]~~ **445A.4525**. Additional information on obtaining approval to operate without filtration is outlined in the *Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources*, 1991 edition (#PB93-222933INZ). This document is available at a cost of ~~[\$101]~~ **\$117** from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Sec. 49. NAC 445A.526 is hereby amended to read as follows:

445A.526 1. Each supplier of water shall provide disinfection treatment in accordance with 40 C.F.R. §§ 141.72 , ~~[and]~~ 141.172, **and 141.530 to 141.544, inclusive**, as adopted by reference in NAC ~~[445A.5175.]~~ **445A.4525**.

2. The ~~[State Board of Health]~~ **Commission** will not grant a variance or an exemption from the provisions of this section.

Sec. 50. NAC 445A.527 is hereby amended to read as follows:

445A.527 1. Except as otherwise provided in this section, each supplier of water shall, on or after June 29, 1993, or on the date the system for filtration is installed, whichever is later, meet the requirements set forth in 40 C.F.R. §§ 141.74 , ~~[and]~~ 141.174, **and 141.560 to 141.564, inclusive**, as adopted by reference in NAC ~~[445A.5175.]~~ **445A.4525**.

2. A supplier of water shall measure and record the parameters that are needed to determine compliance with the requirements for concentration times time, including, but not limited to:

- (a) The temperature of the disinfected water;
- (b) The pH of the disinfected water, if chlorine is used as a disinfectant;
- (c) The disinfectant contact time; and

(d) The concentration of the residual disinfectant before or at the point the water reaches the first customer.

3. A supplier of water shall measure the concentration of residual disinfectant or heterotrophic plate count within the distribution system at the same frequency and at the same time and location as total coliforms are measured. A supplier of water that uses both a source of surface water or ~~ground water~~ *groundwater* under the direct influence of surface water, and a source of ~~ground water~~ *groundwater* that is not under the direct influence of surface water, may petition the ~~Health~~ Division *or the appropriate district board of health* for alternate sampling locations if he demonstrates that these sampling points are more representative of the disinfected surface water or ~~ground water~~ *groundwater* under the direct influence of surface water in the distribution system.

Sec. 51. NAC 445A.529 is hereby amended to read as follows:

445A.529 A supplier of water that has installed a system for treatment before November 29, 1990, which does not consist of technologies pursuant to which the supplier of water shall treat water in compliance with NAC 445A.521 or which was not designed to comply with the operating criteria in NAC 445A.531 and 445A.533, shall submit to the ~~Health~~ Division *or the appropriate district board of health* an engineering report which demonstrates that the plant can be operated to supply water meeting the requirements for performance contained in NAC 445A.521 and 445A.526. This report must include an analysis of the previous 12 months of operating data and any special studies conducted to test the performance of the plant under conditions of adverse water quality.

Sec. 52. NAC 445A.530 is hereby amended to read as follows:

445A.530 1. A supplier of water proposing to:

- (a) Construct a new facility for filtration and disinfection; or
- (b) Make additions to or modify significantly an existing facility for treatment,

↪ must submit an engineering report to the ~~[Health Division.]~~ *Division or the appropriate district board of health*. The report must be approved by the Division *or the appropriate district board of health* before the supplier begins construction. The report must also describe how the facility will be designed to ensure that it complies with this section and NAC 445A.531.

2. A new facility for filtration and disinfection must:

(a) Be designed to attain an average daily effluent turbidity goal of 0.2 units of nephelometric turbidity when using conventional, direct, and diatomaceous earth filtration plants.

(b) Be free of structural and sanitary hazards.

(c) Provide for protection against contamination by backflow.

(d) Provide equipment for measuring and recording flow.

(e) Be designed to mitigate the effects of events such as earthquakes, fires, floods, freezing and sabotage that are reasonably foreseeable.

(f) Provide reasonable access for inspection, maintenance ~~[.]~~ and monitoring of all unit processes.

(g) Provide for a coagulation process that includes rapid chemical mixing and is based on pilot plant or laboratory scale or equivalent results that demonstrate effectiveness of the coagulant chemicals over the full range of water quality conditions expected.

(h) Provide for filter-to-waste for each filter unit or addition of coagulant chemicals or organic polymers to the water used for backwashing.

(i) Provide backwash rates and facilities for surface or subsurface wash using air, water or a combination of these to clean the filter.

(j) Provide treatment for the removal of solids from filter backwash water if the water is recycled into the treatment process. Recycled backwash water must be returned to the headworks of the treatment plant.

(k) Make provision for facilities for pretreatment in the design of direct filtration, slow sand filtration ~~[]~~ or diatomaceous earth filtration plants.

(l) Provide equipment for disinfection that is of proper size for the full range of expected conditions of flow and capable of feeding accurately at all rates of flow.

(m) Provide for operation of the treatment plant without frequent shutdowns and start-ups.

3. As used in this section, “filter-to-waste” means a provision in the filtration process to allow the water that was filtered first to be wasted or reclaimed.

Sec. 53. NAC 445A.531 is hereby amended to read as follows:

445A.531 The following features for reliability or alternatives acceptable to the ~~[Health]~~ Division *or the appropriate district board of health* must be included in the design and construction of any plant that treats surface water or ~~[ground-water]~~ *groundwater* under the direct influence of surface water:

1. Alarm devices to indicate failures in the coagulation, filtration ~~[]~~ and disinfection processes. The alarm must notify the person designated by the public water system as responsible for taking corrective action ~~[or]~~ *and*, if the facility is unmanned, have the capability to shut the plant down until corrective action can be taken.

2. Standby replacement equipment to ensure continuous operation and control of unit processes for coagulation, filtration and disinfection.

3. Multiple filter units to provide redundant capacity if filters are out of service for backwash or maintenance.

Sec. 54. NAC 445A.533 is hereby amended to read as follows:

445A.533 A facility for filtration must be operated in accordance with the following requirements:

1. A plant for conventional and direct filtration must be operated at a rate of flow not to exceed 3 gallons per minute per square foot for single media filters and 6 gallons per minute per square foot for deep bed, dual or mixed media filters under conditions of gravity flow. For pressure filters, the rates of filtration must not exceed 2 gallons per minute per square foot for single media filters and 3 gallons per minute per square foot for dual, mixed media ~~or~~ or deep bed filters.
2. A slow sand filter must be operated at a rate of filtration not to exceed 0.1 gallons per minute per square foot. The filter bed must not be dewatered except for cleaning and maintenance.
3. A diatomaceous earth filter must be operated at a rate not to exceed 1 gallon per minute per square foot.
4. During normal operating conditions, any filter removed from service must be backwashed upon start-up.
5. Rates of filtration must be increased gradually when placing filters back into service after backwashing or any other interruption in the operation of the filter.
6. In a plant using conventional and direct filtration, the turbidity of filtered water from any individual filter after backwashing or any other interruption must be less than 0.5 units of nephelometric turbidity after 4 hours of the initial operation of the filter, and the individual turbidity of the filter effluent must be less than or equal to 1 unit of nephelometric turbidity in at least 90 percent of interruption events during any consecutive 12-month period. The level of

turbidity must never exceed 2 units of nephelometric turbidity before placing the filter back into operation. Compliance with this requirement will be determined by using data from the previous 12 months.

7. A pressure filter must be inspected physically and evaluated annually for occurrences such as media condition, formation of balls of mud and short circuiting. A written record of the inspection must be maintained at the treatment plant.

8. Coagulation and flocculation unit processes must be in use at all times when a plant using conventional and direct filtration is in operation. The effectiveness and optimization of these processes must be demonstrated by jar testing, pilot filter column testing or other means acceptable to the ~~[Health Division.]~~ *Division or the appropriate district board of health.*

9. The level of turbidity of filtered water from each filter unit must be monitored with a continuous turbidity meter and recorder, or with a sampling program approved by the ~~[Health]~~ Division. If this monitoring indicates that any filter unit is not performing as required by subsection 6, the filter must be taken out of service and inspected to determine the cause of its inadequate performance. The filter unit must not be returned to service until its deficiencies have been corrected and tests have been made to ensure that the filter unit meets these requirements.

10. To obtain approval for rates higher than those specified in subsections 1, 2 and 3 of this section, a supplier of water must demonstrate to the ~~[Health]~~ Division that his filters can ensure the same water quality at the increased rates of flow.

Sec. 55. NAC 445A.535 is hereby amended to read as follows:

445A.535 1. A supplier of water shall submit a plan of operations for each facility that treats surface water or ~~[ground water]~~ *groundwater* under the direct influence of surface water to the ~~[Health]~~ Division *or the appropriate district board of health* for review and approval. The

plan must be designed to produce the optimal quality of water from the treatment process. The supplier shall operate the facility in accordance with the approved plan.

2. The plan must include a description of:

(a) The program for monitoring the performance of the treatment plant;

(b) The program for maintaining unit process equipment;

(c) The persons who operate the facility, including the number of the staff and the level of their training;

(d) The operation of each unit process;

(e) The procedures used in the laboratory, if applicable;

(f) The procedures used to determine chemical dose rates;

(g) The records of the facility;

(h) The procedure for responding to an emergency at the plant or involving the watershed;

and

(i) Any other features that contribute to the reliable operation of the plant.

Sec. 56. NAC 445A.536 is hereby amended to read as follows:

445A.536 1. Each supplier of water must maintain accurate and complete records of the operation of each treatment plant using surface water or ~~ground water~~ *groundwater* under the direct influence of surface water. The records must include:

(a) The results of all monitoring conducted in accordance with NAC 445A.527;

(b) The date of any maintenance or inspection of a filter and the results of the inspection, including any evaluation of a pressure filter required by subsection 7 of NAC 445A.533;

(c) The quantity of water produced;

(d) The hours of operation;

- (e) The rates of flow at the plant;
- (f) The rates of filtration;
- (g) The rates of backwash; and
- (h) The dates and description of failures of major equipment or unit processes and the action taken to correct these failures.

2. The records of a treatment plant must be retained for not less than 2 years, unless the ~~Health~~ Division *or the appropriate district board of health* has determined otherwise.

Sec. 57. NAC 445A.537 is hereby amended to read as follows:

445A.537 1. Each supplier of water shall submit to the ~~Health Division,~~ *Division or the appropriate district board of health*, on or after June 29, 1993, or on the date the system for filtration is installed, whichever is later, a monthly report on the operation of each facility not later than the 10th day of the following month.

2. The monthly report must include:

- (a) A written explanation of the cause of any violation of the standards of performance set forth in NAC 445A.521 and 445A.526 and the operating criteria set forth in NAC 445A.533; and
- (b) The information required by 40 C.F.R. §§ 141.75 , ~~and~~ 141.175, *141.570 and 141.571*, as adopted by reference in NAC ~~[445A.5175.]~~ *445A.4525*.

Sec. 58. NAC 445A.538 is hereby amended to read as follows:

445A.538 Beginning on or after June 29, 1993, or on the date the system for filtration is installed, whichever is later, each supplier of water shall notify the ~~Health~~ Division *or the appropriate district board of health* by telephone as soon as possible, but not later than the end of the next business day, whenever:

- 1. The turbidity of the filter effluent exceeds ~~[5-units]~~ :

(a) For conventional, direct filtration and absorption clarifier filtration systems, 1 unit of nephelometric turbidity.

(b) For diatomaceous earth and slow sand filtration and systems which have filtration avoidance status, 5 units of nephelometric turbidity.

(c) For alternative technologies, the turbidity level specified upon approval.

2. More than two consecutive samples of the turbidity of the combined filter effluent taken every 4 hours exceed 1 unit of nephelometric turbidity.

3. There is a failure to maintain at least 0.2 milligrams per liter of residual disinfectant in the water being delivered to the distribution system, regardless of whether the residual level of disinfectant was restored to at least 0.2 milligrams per liter within 4 hours.

4. An event occurs which may affect the ability of the treatment plant to produce safe, potable water , including, but not limited to, spills of hazardous materials in the watershed and failures of the unit treatment process.

5. An outbreak of ~~[water borne]~~ *waterborne* disease that is potentially attributable to the water system occurs.

6. There is a failure to meet the minimum concentration times time for any given day.

Sec. 59. NAC 445A.486, 445A.507 and 445A.5175 are hereby repealed.

TEXT OF REPEALED SECTIONS

445A.486 Obtaining results of analyses of water supplies. A copy of the results of the analysis of water supplies throughout Nevada may be obtained from the Department of Human Resources, Health Division, Office of the State Health Officer, 505 E. King Street, Carson City, Nevada 89710.

445A.507 “Health Division” defined. “Health Division” means the Health Division of the Department of Human Resources.

445A.5175 Adoption by reference of certain provisions of “National Primary Drinking Water Regulations.” The provisions of 40 C.F.R. §§ 141.2, 141.70 to 141.75, inclusive, and 141.170 to 141.175, inclusive, of the “National Primary Drinking Water Regulations,” as those provisions existed on February 16, 1999, are hereby adopted by reference. A copy of a publication containing those provisions is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, or by telephone at (202) 512-1800, for the price of \$47. Copies of those regulations are also available, free of charge, from the Environmental Protection Agency at the Internet address <http://www.epa.gov/safewater/mcl.html>.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R126-05**

The State Environmental Commission adopted regulations assigned LCB File No. R126-05 which pertain to chapter 445A of the Nevada Administrative Code on October 4, 2005.

Notice date: 8/30/2005
Hearing date: 10/4/2005

Date of adoption by agency: 10/4/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

This regulation amends NAC 445A.450 through 445A.540. The regulation was drafted in response to Senate Bill 395 (SB 395), which was passed during the 2005 Legislative Session. SB 395 allowed the transfer of responsibilities for certain drinking water programs from the State Health Division to the Nevada Division of Environmental Protection (NDEP).

This amended regulation allows Nevada to adopt new federal primary drinking water regulations already in effect under the federal Safe Drinking Water Act (SDWA) in the following areas: arsenic rule; long term 1 surface water treatment rule; lead and copper rule revisions; radionuclides; filter backwash rule; public notification rule; and variances and exemptions.

The regulation also provides criteria for projects that propose treatment facilities for groundwater. Of note, US EPA requires states with regulatory jurisdiction to assure design and construction of new water treatment facilities are compliant with primary drinking water regulations. The regulation further add definitions, seek to provide clarity, change authority from the Division of Environmental Protection to the health authority (i.e. health districts in Clark and Washoe Counties), and provide only enforceable secondary standards for water quality.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

To solicit public comments on the first version of this regulation, the State Health Division conducted a public workshop on November 12, 2004. A public hearing was then held on February 18, 2005 by the State Health Board. At that hearing the regulation was adopted as a temporary regulation and subsequently filed with the Legislative Counsel Bureau on March 28, 2005. (See: LCB temporary regulations #T031-05A)

The drinking water program was then transitioned to NDEP (by SB 395) and the regulation (which is now proposed as a permanent regulation) was slightly altered by NDEP to reflect changes in authority from the State Board of Health to the State Environmental Commission. NDEP conducted another workshop to solicited public comments on the revised permanent regulation; the workshop was held at the following locations:

Thursday September 22, 2005 at 9:00 AM 401 S. Carson St. Legislative Building, Room 2134 Carson City, Nevada	Video conference in Las Vegas at the following location: Grant Sawyer Building, Room 4406 555 E Washington St Las Vegas, Nevada
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A public hearing was then held by the State Environmental Commission (SEC) to consider the regulation. The SEC hearing was noticed in the Las Vegas Review Journal and the Reno Gazette Journal newspapers on the following dates (September 05, 19, 26, 2005). Members of the public subscribing to the SEC electronic and ground-based mailing lists were subsequently mailed a public notice and meeting agenda for the SEC hearing; the hearing was held in Reno on October 04, 2005.

At the SEC hearing, there were no public comments received by the Commission during the adoption of the regulation.

2. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

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.

A comment response document was prepared following the public workshop on the original temporary regulation that was managed by the State Health Division.

Comments received at the workshop held by NDEP were generally supportive of the revised regulation. It was widely acknowledge by attendees that in order to retain Nevada’s primacy under the Safe Drinking Water Act (Act), Nevada had little choice regarding adoptions of federal requirements prescribed under the Act.

Comments on the regulation were also solicited by State Environmental Commission (SEC) in the SEC notice in the newspapers, by direct mail to interested persons subscribing to the SEC electronic and ground-based mailing list.

The public notice for the referenced SEC hearing was also sent to county libraries throughout the state and the regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas.

The workshop notice, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at:

<http://www.sec.nv.gov/main/hearing1005.htm>

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 State Environmental Commission adopted the regulation on October 04, 2005. Two technical corrections were made to the regulation. These corrections are noted below as well as in the cover letter to this document.

Page 15, Section 24. Strike the words “~~in interstate commerce.~~” at the end of subsection 2 and replace with “**apply;**”.

Subsections 3 and 4 of NAC445A.451 were missing in LCB File No. R126-05 and need to be added to the final copy.

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

The estimated beneficial economic effect of the proposed regulation on the business community and the public would be to decrease medical costs that otherwise might be incurred as a result of exposure to contaminants in drinking water.

There is likely a significant adverse economic effect on small business although such impacts would not be borne evenly among privately owned public water systems such as mobile home parks. The impact borne by any particular water system will be dependent on the source of water quality and the quality as well as the availability and cost of alternative water sources. **The likely significant impact will be associated with costs to comply with the new arsenic concentration standard of 10 parts per billion (ppb), reduced from 50 ppb, which becomes effective in January 2006.** The arsenic standard will apply to all public water systems except transient, non-community systems, which are defined as noncommunity water systems, i.e. system the do not regularly serve at least 25 of the same persons over six months of the year.

Cost impacts to water systems might include developing an arsenic compliance plan, finding and developing new water sources, purchasing water from another water systems, blending water from two or more sources, or implementing treatment to reduce arsenic levels.

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

The regulation will not significantly affect existing staff support and operational costs of NDEP's Bureau of Safe Drinking Water.

7. 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, indicate the name of the regulating federal agency.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies.

8. 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.

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 regulation does not address fees.

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R129-05

Effective October 31, 2005

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

AUTHORITY: §§1-31, NRS 445A.860 and 445A.880.

A REGULATION relating to water systems; establishing minimum qualifications for certain positions at water treatment facilities and water distribution systems; requiring certain public water systems to have a person in responsible charge or on call at all times; requiring the Division of Environmental Protection of the State Department of Conservation and Natural Resources to consider certain information in approving conditional staffing at a public water system; revising certain requirements relating to obtaining a certificate to operate a public water system; and providing other matters properly relating thereto.

Section 1. Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. *“Division” means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.*

Sec. 3. *“Operator experience” means the daily performance of activities that consist of the control or oversight of any process or operation at a water treatment facility or in a water distribution system that may affect the quality or quantity of water.*

Sec. 4. *“Postsecondary course of instruction” means a successfully completed college level course which is at least 36 hours and which is related to drinking water.*

Sec. 5. *“Postsecondary course provider” means an organization which provides instruction and which is an accredited academic institution or which is accredited by or is an authorized provider of the International Association for Continuing Education and Training.*

Sec. 6. *“Shift operator” means a person who is in direct charge of the operation of a water treatment facility or distribution system for a specified period of the day and who reports to the person in responsible charge of the facility or system.*

Sec. 7. *“Supervisor or foreperson” means a person who has the overall responsibility for the daily operation of a water treatment facility or a distribution system and who reports to the person in responsible charge of the facility or system.*

Sec. 8. 1. *The staff of a water treatment facility must have a minimum certification as follows:*

(a) For a Treatment-1 facility:

- (1) A person in responsible charge must have at least Treatment-1 certification;*
- (2) A supervisor or foreperson must have at least Treatment-1 certification; and*
- (3) A shift operator must have at least Treatment-1 certification;*

(b) For a Treatment-2 facility:

- (1) A person in responsible charge must have at least Treatment-2 certification;*
- (2) A supervisor or foreperson must have at least Treatment-2 certification; and*
- (3) A shift operator must have at least Treatment-1 certification;*

(c) For a Treatment-3 facility:

- (1) A person in responsible charge must have at least Treatment-3 certification;*
- (2) A supervisor or foreperson must have at least Treatment-3 certification; and*
- (3) A shift operator must have at least Treatment-2 certification; and*

(d) For a Treatment-4 facility:

- (1) A person in responsible charge must have at least Treatment-4 certification;*
- (2) A supervisor or foreperson must have at least Treatment-3 certification; and*
- (3) A shift operator must have at least Treatment-2 certification.*

2. The staff of a water distribution system must have a minimum certification as follows:

(a) For a Distribution-1 facility:

- (1) A person in responsible charge must have at least Distribution-1 certification;*
- (2) A supervisor or foreperson must have at least Distribution-1 certification; and*
- (3) A shift operator must have at least Distribution-1 certification;*

(b) For a Distribution-2 facility:

- (1) A person in responsible charge must have at least Distribution-2 certification;*
- (2) A supervisor or foreperson must have at least Distribution-2 certification; and*
- (3) A shift operator must have at least Distribution-1 certification;*

(c) For a Distribution-3 facility:

- (1) A person in responsible charge must have at least Distribution-3 certification;*
- (2) A supervisor or foreperson must have at least Distribution-3 certification; and*
- (3) A shift operator must have at least Distribution-2 certification; and*

(d) For a Distribution-4 facility:

- (1) A person in responsible charge must have at least Distribution-4 certification;*
- (2) A supervisor or foreperson must have at least Distribution-3 certification; and*
- (3) A shift operator must have at least Distribution-2 certification.*

3. Each public water system shall ensure that all decisions concerning distribution process control and system integrity that may affect public health or the environment are made by a certified water distribution operator. Such decisions include, but are not limited to:

(a) Installing, tapping, relining, disinfecting, testing and connecting of water mains and appurtenances;

(b) Shutdown, repair, disinfection and testing of broken water mains;

(c) Flushing, cleaning and pigging of existing water mains;

(d) Pulling, resetting, rehabilitating, disinfecting and testing of water wells;

(e) Standby emergency response duties for after hour emergencies of the operation of a distribution system;

(f) Draining, cleaning, disinfecting and maintenance of distribution reservoirs;

(g) Operation of pumps and related flow and pressure control and storage facilities manually or through a system control and data acquisition system; and

(h) Maintenance and adjustment of system flow and pressure requirements to meet consumer demands including fire flow demands and minimum pressure requirements.

4. Public water systems must use certified water distribution operators or water treatment operators to make decisions concerning:

(a) The determination and control of appropriate rates of chemical dosage for wellhead disinfection and residual maintenance; and

(b) Any investigation of problems relating to water quality in the distribution system.

Sec. 9. 1. A public water system which is:

(a) Classified as a community water system or a nontransient, noncommunity water system; or

(b) Designated by the Division or the appropriate district board of health as being supplied by surface water or groundwater under the direct influence of surface water,

↳ must have a person in responsible charge at the facility or on call at all times. Except as otherwise provided in section 10 of this regulation, the person in responsible charge of the public water system must hold a full certificate in the same classification as, or a higher classification than, the classification of the public water system pursuant to NAC 445A.629.

2. If a public water system serves more than 10,000 persons, the Division may require the public water system to have, in addition to the person in responsible charge, additional persons in responsible charge at the same time, including, without limitation, a person in responsible charge for the treatment of water and a person in responsible charge for the distribution of water. If the Division requires additional persons in responsible charge, the Division shall:

(a) Deliver a written notification of the requirement to the public water system on or before December 31 of the year in which the Division imposes the requirement;

(b) Review the requirement at least once every 3 years to determine if any changes are required regarding any additional person;

(c) Require a public water system that is subject to a requirement of additional persons to employ any additional person not later than 1 year after the public water system receives the written notification of the requirement to employ the additional person; and

(d) Require any additional person in responsible charge to be certified in the same classification as, or a higher classification than, the classification of the public water system pursuant to NAC 445A.629.

3. If a person in responsible charge is on call, he must be able to:

(a) Be contacted immediately; and

(b) Respond at the site within 4 hours.

4. If at any time a public water system is not in compliance with this section, the supplier of water for the public water system shall notify the Division or the appropriate district board of health within 72 hours or 2 working days, whichever is earlier.

Sec. 10. 1. *The Division shall consider the following in making a decision to approve conditional staffing for a public water system:*

(a) The results of an inspection of the public water system;

(b) A review of the experience in operating and training of the person holding the certificate as an operator-in-training; and

(c) Any other reasonably available and relevant information.

2. Upon the request of the owner of a public water system serving less than 10,000 persons and the approval of the Division, a person holding a certificate as an operator-in-training may be the person in responsible charge of the public water system for not more than 6 months. The Division shall not grant approval unless it makes a finding that:

(a) The person has the minimum amount of knowledge required to operate the public water system;

(b) The health and safety of the public will be protected; and

(c) The owner of the public water system can demonstrate that the public water system is unable to employ a person who holds a full certificate.

3. Not more than 30 days after approval is granted pursuant to subsection 2, the Division shall review the status of the public water system to determine whether an extension may be granted. Any decision regarding an extension must be provided to the public water system at

least 60 days before the expiration of the period specified in the approval granted pursuant to subsection 2.

4. If an emergency occurs concerning a public water system, the Division may approve any qualified person as the person in responsible charge of the public water system for a period of not more than 6 months.

5. Upon request from a public water system, the Division may approve a certified operator at one classification lower than the person in responsible charge of a public water system to accommodate for vacation and temporary relief of the person in responsible charge during a 12-month period. Not more than 90 days after approval is granted pursuant to this subsection, the Division shall review the status of the public water system to determine whether an extension may be granted. Any decision regarding an extension must be provided to the public water system at least 120 days before the end of the period specified in the approval granted by the Division.

Sec. 11. 1. *All certificates must indicate the discipline for which they were issued as follows:*

- (a) Water treatment operator, full;*
- (b) Water treatment operator, operator-in-training;*
- (c) Water treatment operator, provisional;*
- (d) Water distribution operator, full;*
- (e) Water distribution operator, operator-in-training; and*
- (f) Water distribution operator, provisional.*

2. To qualify for a full certificate, a person must:

(a) Pass the written examination for the appropriate level and meet all requirements for certification for the discipline and grade level;

(b) Be certified as an operator-in-training and meet the requirement for experience in operating set forth in NAC 445A.633; or

(c) Be an operator who holds a current certification by the California-Nevada Section of the American Water Works Association or by reciprocity be certified in another state at full classification if the Division determines, upon review of the application and supporting material required by section 14 of this regulation that the applicant has:

(1) Passed an examination that is equivalent to the examination administered pursuant to NAC 445A.631; and

(2) Obtained the experience in operating required by NAC 445A.633.

3. A person qualifies for a certificate as an operator-in-training if the person:

(a) Passes the written examination for certification; and

(b) Does not have the experience required for a full certificate.

4. To qualify for a provisional certificate, a person must:

(a) Be an owner and operator of a public water system or be employed by a public water system that is not designated by the Division as being supplied by surface water or groundwater under the direct influence of surface water;

(b) Provide a written statement to the Division from the governing board or owner of the public water system that the applicant was in a position of responsible charge of the public water system on January 1, 2000;

(c) Have been in a position of responsible charge of the public water system before January 1, 2000, and not required to obtain a full certificate before that date;

(d) Have completed at least 2 days of training that is designed to provide the applicant with basic information on the operation of a public water system, including, without limitation:

- (1) Well design;*
- (2) Safety;*
- (3) Water quality;*
- (4) Monitoring;*
- (5) Reporting;*
- (6) The Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.;*
- (7) Drinking water standards;*
- (8) Health effects of chemical and bacterial contamination; and*
- (9) The Total Coliform Rule; and*

(e) Have submitted the initial application not later than December 31, 2000.

5. Except as otherwise provided in subsection 6, a provisional certificate is only valid:

(a) During the period that the operator remains in the position of responsible charge for which the operator received the provisional certificate; and

(b) At the public water system where the operator was employed on January 1, 2000.

6. A provisional certificate is not valid if the classification of the treatment facility or distribution system changes to a level which is higher than the level for which the certificate was issued.

7. All certificates expire on December 31 of each year.

8. A certificate may be renewed if:

(a) The fee for renewal has been submitted pursuant to NAC 455A.651;

(b) An application for renewal was made on the forms supplied by the Division; and

(c) The applicant submits evidence of compliance with the requirements of continuing education set forth in NAC 445A.639.

Sec. 12. *1. At the time of application, each applicant must be at least 18 years of age and meet the following minimum education requirements:*

(a) For Grade I or Grade II, a high school diploma, general educational development certificate or equivalent;

(b) For Grade III, two postsecondary courses of instruction; and

(c) For Grade IV, four postsecondary courses of instruction.

2. An applicant must submit an application at least 45 days before the date scheduled for the examination. The Division shall provide notice of the examination to the applicant at least 14 days before the date of the examination. The Division shall provide the result of the examination to the applicant not more than 30 days after the date of the examination.

3. If an applicant passes the examination, the Division shall provide a certificate to the applicant not more than 45 days after the date of the examination. The Division shall notify an operator concerning renewal of a certificate at least 90 days before the certificate will expire and, if the certificate is renewed, provide a renewal wallet card not more than 30 days after the expiration of the certificate.

Sec. 13. *If an applicant has a disability that restricts his ability to take an examination under standard conditions, the applicant may request special arrangements for taking the examination at the time of application. Such a request must be submitted in writing by a recognized health care or mental health care provider and must state the nature of the disability, the special testing arrangements that are requested and the contact information of the health care provider and the applicant.*

Sec. 14. 1. *A certificate may be issued by the Division, without examination, on a case-by-case basis to a person in a comparable classification who has passed an adequate written examination and who holds a valid certificate in another state, territory or possession of the United States or another country if the requirements for the certification of operators are consistent with and not of a lower standard than the provisions of this chapter.*

2. Consideration of reciprocity will be given upon request. For a request to be considered, the applicant for reciprocity must submit to the Division:

(a) A letter setting forth the specific type and level of certification being requested for consideration for reciprocity;

(b) A resume describing the work history, education and experience of the applicant supporting the certification that is requested;

(c) A copy of the valid, unexpired certificate for which reciprocity is requested, including the date of issuance and expiration and the type and level of certification;

(d) A copy of the applicable regulations or references to the regulations which describe the experience and education requirements for certification where the applicant was certified, including the levels of certification and guidelines for reciprocity;

(e) A copy of the applicable regulations or references to the regulations which describe the facility classification system that correlates with the type and level of certification indicated on the certificate of the applicant;

(f) A brief description of the examination taken for the certification including whether the examination was multiple-choice, essay, true-false, other type of questions or a combination of types, the approximate number of questions and the general topics covered; and

(g) Contact information for the agency that issued the certificate of the applicant.

3. An incomplete application or an application that includes an expired certificate will not be considered. The Division shall review an application for completeness and applicability and shall respond to the applicant not more than 60 days after the receipt of the request with a written decision. If reciprocity is granted, the applicant must pay the fee as required pursuant to NAC 445A.651.

Sec. 15. NAC 445A.532 is hereby amended to read as follows:

445A.532 A supplier of water shall, not later than 6 months after receiving notification from the ~~[Health]~~ Division that its public water system is using surface water or groundwater under the direct influence of surface water, ensure that the persons who operate the facility for treatment have received a certificate to operate the facility as required by ~~[NAC 445A.626.]~~ *section 11 of this regulation.*

Sec. 16. NAC 445A.617 is hereby amended to read as follows:

445A.617 As used in NAC 445A.617 to 445A.652, inclusive, *and sections 2 to 14, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445A.618 to 445A.625, inclusive, *and sections 2 to 7, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 17. NAC 445A.621 is hereby amended to read as follows:

445A.621 “Groundwater under the direct influence of surface water” means any water beneath the surface of the ground that the ~~[Health]~~ Division has determined to have:

1. A significant occurrence of insects or other macroorganisms;
2. Algae or large-diameter pathogens such as *Giardia lamblia*; or
3. Significant and rapid shifts in water characteristics such as turbidity, temperature, conductivity or pH which closely parallel climatological or surface water conditions.

Sec. 18. NAC 445A.629 is hereby amended to read as follows:

445A.629 1. The ~~Health~~ Division shall classify all public water systems in this State pursuant to subsections 2 and 3.

2. A public water system which:

(a) Uses only groundwater or water provided by another public water system; and

(b) Does not provide treatment of the water or groundwater or provides only disinfection by chlorination,

↪ must be classified ~~[based only on the population it serves]~~ *on a point system* as follows:

<i>ITEMS FOR DISTRIBUTION CLASSIFICATION</i>	<i>POINTS</i>
<i>Average daily population served</i>	
<i>25 - 500.....</i>	<i>5</i>
<i>501 - 3,300.....</i>	<i>10</i>
<i>3,301 - 10,000.....</i>	<i>15</i>
<i>10,001 - 100,000.....</i>	<i>20</i>
<i>100,001 or more</i>	<i>35</i>
<i>Pressure zones (1 point per zone, maximum of 5 points).....</i>	<i>1</i>
<i>Storage reservoirs (1 point per reservoir, maximum of 5 points)</i>	<i>1</i>
<i>Hydropneumatic tank systems</i>	<i>1</i>
<i>Pumping stations, including wells and boosters (1 point per station, maximum of 3 points).....</i>	<i>1</i>
<i>Disinfection to maintain system residual</i>	<i>5</i>

ITEMS FOR DISTRIBUTION CLASSIFICATION

POINTS

<i>System control and data acquisition or other similar instrumentation to provide data or process control</i>	3
<i>Existence of recycled or reclaimed water distribution system within drinking water service area</i>	5

DISTRIBUTION CLASSIFICATION	[AVERAGE DAILY POPULATION SERVED]	
		TOTAL POINTS

[Class] Distribution-1	[25—500]	5-19
[Class] Distribution-2	[501—3,300]	20-30
[Class] Distribution-3	[3,301—	10,000] 31-41
[Class] Distribution-4	[10,001]	42 or more

3. A public water system which:

(a) Uses surface water or groundwater under the direct influence of surface water; or

(b) Uses groundwater and provides treatment of the groundwater, other than disinfection by

chlorination,

↪ must be classified on a point system as follows:

ITEMS FOR TREATMENT CLASSIFICATION

POINTS

Average daily population served

25 - 500.....	5
501 - 3,300.....	10
3,301 - 10,000.....	15
10,001 - 100,000.....	20
100,001 or more.....	25

Source for public water system

Groundwater.....	3
Groundwater under the direct influence of surface water.....	4
Surface water.....	5

Air stripping..... 4

Ozone..... ~~7~~ 8

Ultraviolet light..... 8

Combination of ozone and ultraviolet light..... 10

Chemical addition for adjustments of pH ~~[adjustment or corrosion control]~~..... 4

Iron and manganese removal..... 5

Iron and manganese ~~[removal/sequestering]~~ *sequestering*..... 2

Softening ~~[(ion-exchange)]~~ *- ion exchange, lime or lime soda ash process*..... ~~5~~ 10

Granular activated carbon for organic contamination..... 7

Coagulation *for pretreatment only*..... 5

ITEMS FOR TREATMENT CLASSIFICATION	POINTS
Taste and odor control.....	4
Chlorination	5
Fluoridation	5
Chlorine-ammonia treatment.....	8
Chlorine dioxide	8
Bacteriological or chemical laboratory (<i>other than process control</i>)	2
Blending, aesthetic	5
Blending, health effects.....	8
Arsenic removal	8
<i>Chlorine gas or hypochlorite</i>	<i>5</i>
<i>Chlorine gas or hypochlorite generated on-site</i>	<i>6</i>
<i>Chemical addition (1 point for each chemical added)</i>	<i>1</i>
<i>Primary inorganic chemical treatment.....</i>	<i>8</i>
<i>Point-of-use treatment.....</i>	<i>5</i>
Nitrate <i>or nitrite</i> removal	8
<i>Adsorption process for aesthetics.....</i>	<i>3</i>
<i>Recycle filter backwash water to process.....</i>	<i>3</i>
<i>Recycle supernatant from sludge removal and sedimentation process.....</i>	<i>2</i>
<i>Recycle water from any mechanical dewatering process.....</i>	<i>2</i>
<i>System control and data acquisition or other similar instrumentation to provide data</i>	<i>3</i>
<i>or process control</i>	

ITEMS FOR TREATMENT CLASSIFICATION	POINTS
Filtration	3
Conventional <i>filtration-coagulation, flocculation, sedimentation</i>	10
Direct <i>filtration-coagulation, flocculation, sedimentation</i>	10
Rapid <i>sand</i>	7
Diatomaceous earth	7
Slow sand.....	5
Bag, ceramic, microfiltration, nanofiltration, reverse osmosis, membrane, <i>electro dialysis</i>	5

TREATMENT CLASSIFICATION	TOTAL POINTS
{Class} Treatment-1	5 - 19
{Class} Treatment-2	20 - 35
{Class} Treatment-3	36 - 45
{Class} Treatment-4	46 or more

4. The ~~{Health}~~ Division shall review the classification of every public water system not less than once every ~~{5}~~ **3** years to determine whether the public water system continues to meet the criteria for that classification pursuant to this section. Upon a determination that the public water system no longer meets the criteria for the classification, the ~~{Health}~~ Division shall:

- (a) Reclassify the public water system in accordance with the criteria for classification pursuant to this section;
- (b) Deliver a written notification of the reclassification to the public water system on or before December 31 of the year in which the determination is made; and
- (c) Require the public water system to comply with the requirements of the new classification within ~~[2 years]~~ *18 months* after the date the public water system receives the written notification of the determination by the ~~[Health]~~ Division.

5. As used in this section, “filtration” means a process for removing particulate matter from water by passing the water through porous media.

Sec. 19. NAC 445A.630 is hereby amended to read as follows:

445A.630 1. An application to take an examination for certification as an operator must be made on a form provided by the ~~[Health]~~ Division and must be submitted to the ~~[Health]~~ *Carson City Office of the* Division not less than ~~[30]~~ *45* days before the date of the examination. The application must be complete and must be accompanied by the fee for the certification for which the examination is being administered as set forth in NAC 445A.651.

2. The fee accompanying the application for examination entitles an applicant who passes the examination and meets ~~[any]~~ *all* other qualifications for certification to be certified until December 31 of the first calendar year after the calendar year in which the certification is issued.

3. An applicant who fails an examination is eligible for reexamination at the next scheduled examination if the applicant satisfies the requirements set forth in subsection 1.

4. Examinations for certification must be given at least twice annually . ~~[at locations and times designated by the Health Division.~~

~~—5. Except as otherwise provided in this subsection, an]~~

5. *An applicant must take the examinations for certification in ascending order beginning with the examination for a certificate as a class distribution-1 or class treatment-1 operator, as applicable. ~~[An applicant who holds or has held within the year immediately preceding the date of the examination a certificate to operate a public water system in another state that is equivalent to such a certificate in this State may take an examination for certification in a class higher than class distribution-1 or class treatment-1 if the Health Division determines that the applicant qualifies to take an examination for a higher certification.]~~*

6. *An applicant may postpone his examination if the applicant submits a written notice to the Carson City Office of the Division at least 7 days before the date of the examination. The examination may only be postponed for one test cycle. Emergency situations must be considered by the Division on a case-by-case basis.*

7. *An applicant who fails to appear for an examination or fails to postpone an examination pursuant to subsection 6 forfeits the application and the application fee.*

Sec. 20. NAC 445A.631 is hereby amended to read as follows:

445A.631 1. The ~~[Health]~~ Division, or its designee, shall offer separate examinations for certification in the four classifications in water treatment and separate examinations for certification in the four classifications in water distribution. The ~~[Health]~~ Division shall validate the areas of knowledge tested in an examination pursuant to this subsection before offering ~~[such] the~~ examination to the applicant. ~~[The areas in which the examination must test the knowledge of the applicant include, but are not limited to:~~

~~—(a) General water supply;~~

~~—(b) Control processes in the treatment or distribution of water;~~

~~—(c) Operation, maintenance and emergency procedures in the treatment and distribution of water;~~

~~—(d) Proper recordkeeping relating to the operation of a public water system;~~

~~—(e) Laws and regulations relevant to the operation of a public water system; and~~

~~—(f) Water quality standards.]~~

2. Examinations must not be returned to examinees.

3. The ~~[Health]~~ Division shall maintain an analysis of each examination administered in the offices of the ~~[Health]~~ Division for not less than 1 year after the date on which the examination was administered.

Sec. 21. NAC 445A.632 is hereby amended to read as follows:

445A.632 1. The ~~[Health]~~ Division shall proctor, review and grade, or enter into a contract with a person, organization or agency to proctor, review and grade, the examinations for certification. A score of not less than 70 percent is required to pass the examination.

2. The ~~[Health]~~ Division shall review, or enter into a contract with a person, organization or agency to review, the qualifications of each applicant for a full certificate to determine whether the minimum requirements for experience in operating set forth in NAC 445A.633 have been satisfied.

Sec. 22. NAC 445A.633 is hereby amended to read as follows:

445A.633 1. The ~~[Health]~~ Division shall issue a full certificate to an applicant who qualifies for a full certificate. Except as otherwise provided in this section, to qualify for a full certificate, an applicant must, in addition to passing the examination for certification for his specific classification, have a high school diploma or a general equivalency diploma and have the following experience in operating a public water system of that classification:

Classification	Years Experience
{Class} Distribution-1	6 months
{Class} Distribution-2	1 year
{Class} Distribution-3	2 years
{Class} Distribution-4	{3} 4 years
{Class} Treatment-1	6 months
{Class} Treatment-2	1 year
{Class} Treatment-3	2 years
{Class} Treatment-4	{3} 4 years

2. Except as otherwise provided in this subsection, the ~~{Health}~~ Division may credit experience in operating gained in the field of wastewater treatment or in a related field toward the experience in operating required pursuant to subsection 1. Not more than one-half of the experience in operating required pursuant to subsection 1 may come from credit issued pursuant to this subsection.

3. The ~~{Health}~~ Division may credit all or a portion of the experience in operating gained at a lower classified facility toward the experience in operating required at a higher classified facility if:

(a) The higher classified facility is not more than one classification higher than the highest classified facility for which the applicant is currently certified; and

(b) The ~~[Health]~~ Division determines that experience in operating gained at the lower classified facility is equivalent to or is a satisfactory substitute for experience in operating at the higher classified facility.

4. ~~[Except as otherwise provided in this subsection, 2 days of education in engineering at the college level, or the equivalent thereof in a related field at a vocational school or as determined by the Health Division, may be substituted for each day of experience in operating required pursuant to subsection 1.]~~ Not more than one-half of the required experience in operating may be satisfied by ~~[such substitution.]~~ *the successful completion of college level courses in engineering or in physical, chemical or biological sciences.*

5. Experience in operating or relevant training may be substituted for a high school diploma or general equivalency diploma upon approval of the ~~[Health]~~ Division. Education, training or experience in operating that is substituted for a high school diploma or general equivalency diploma may not be counted toward the experience in operating required in subsection 1.

Sec. 23. NAC 445A.639 is hereby amended to read as follows:

445A.639 1. The holder of a full certificate, provisional certificate or certificate as an operator-in-training must comply with the requirements of continuing education set forth in this section to qualify for renewal of the certificate.

2. ~~[The]~~ *Every 2 years, the* holder of a ~~[certificate for certification in the classification of class distribution 1, class distribution 2, class treatment 1 or class treatment 2, must earn one-half credit of continuing education during the 2 years immediately preceding the date of application for renewal.]~~

~~—3. The holder of a certificate for certification in the classification of class distribution 3, class distribution 4, class treatment 3 or class treatment 4, must earn one credit of continuing education during the 2 years immediately preceding the date of application for renewal.~~

~~—4. As used in this section:~~

~~—(a) “One credit of continuing education” means] *Treatment-3, Treatment-4, Distribution-3 or Distribution-4 certificate must earn at least 10 contact* hours of participation in a course of training approved by the [Health] Division pursuant to NAC 445A.641 or 445A.643.~~

~~[(b) “One-half credit of continuing education” means]~~

3. Every 2 years, the holder of a Treatment-1, Treatment-2, Distribution 1 or Distribution-2 certificate must earn at least 5 contact hours of participation in a course of training approved by the [Health] Division pursuant to NAC 445A.641 or 445A.643.

Sec. 24. NAC 445A.641 is hereby amended to read as follows:

445A.641 The [Health] Division shall not grant any credit of continuing education to the holder of a certificate for participation in training unless:

1. The course of training is approved by the [Health] Division.
2. The course of training is relevant to the subject matter of the particular certificate held by him.
3. The subject matter of the training is relevant to the operation or maintenance of a water treatment plant or a water distribution system. The subject matter may include, but is not limited to, state and federal regulations concerning drinking water, the mechanics for the operation and maintenance of a water treatment plant or water distribution system and the machinery of a water treatment plant or water distribution system, including the electrical systems of a water treatment plant or water distribution system, the hydraulics of a water treatment plant or water distribution

system, the chemical treatment of water, the biological testing of water, the disinfection of water and any relevant applications of mathematics and chemistry to the operation or maintenance of a public water system.

Sec. 25. NAC 445A.643 is hereby amended to read as follows:

445A.643 1. A public water system may request the written approval of the ~~Health~~ Division for the public water system to provide a course of training for its employees which is intended to comply with any part of the requirement of continuing education. The ~~Health~~ Division must approve the request in writing before an employee will be credited with continuing education for the course.

2. The ~~Health~~ Division shall not approve a course of training pursuant to subsection 1 unless the request meets the following criteria:

(a) An outline of the course of training must be submitted with the request for written approval and must state the subjects to be included in the instruction and the time to be allotted for each subject of instruction.

(b) A list of the objectives of the instructor must be submitted with the request for written approval and must specify the essential points of the instruction and the methods of instruction to be used to illustrate these points.

Sec. 26. NAC 445A.644 is hereby amended to read as follows:

445A.644 1. Except as otherwise provided in subsections 3 and 4, a holder of an expired full certificate may request, within 6 months after its date of expiration, that the full certificate be reinstated and renewed by payment of the reinstatement fee set forth in NAC 445A.651 and verification that all requirements of continuing education have been satisfied. To obtain a full certificate, an operator who has not requested reinstatement and renewal of his full certificate

within 6 months after the date of its expiration must file a new application for a full certificate accompanied by the required fee set forth in NAC 445A.651.

2. The ~~Health~~ Division shall not reinstate a provisional certificate or a certificate as an operator-in-training.

3. If the holder of an expired full certificate provides documentation of health problems that made the holder unable to meet the requirements of continuing education for renewal of his full certificate in the time provided pursuant to NAC 445A.639, the holder of the expired full certificate may request, within 2 years after its date of expiration, that the full certificate be reinstated and renewed by payment of the reinstatement fee set forth in NAC 445A.651 and verification that all requirements of continuing education have been satisfied. To obtain a full certificate, an operator who has not requested reinstatement and renewal of his full certificate within 2 years after the date of its expiration must file a new application for a full certificate and comply with the requirements set forth in NAC 445A.630 to 445A.633, inclusive, and pay the fee for the issuance of a full certificate set forth in NAC 445A.651.

4. If the holder of a full certificate provides documentation of military duty that made the holder unable to meet the requirements of continuing education for renewal of his full certificate in the time provided pursuant to NAC 445A.639, the holder of the expired full certificate may request, within 4 years after its date of expiration, that the full certificate be reinstated and renewed by payment of the reinstatement fee set forth in NAC 445A.651 and verification that all requirements of continuing education have been satisfied. To obtain a full certificate, an operator who has not requested reinstatement and renewal of his full certificate within 4 years after the date of its expiration must file a new application for a full certificate and comply with the

requirements set forth in NAC 445A.630 to 445A.633, inclusive, and pay the fee for the issuance of a full certificate set forth in NAC 445A.651.

Sec. 27. NAC 445A.646 is hereby amended to read as follows:

445A.646 The ~~Health~~ Division may deny an application for a certificate or suspend or revoke an operator's full certificate, provisional certificate or certificate as an operator-in-training if he:

1. In applying for or obtaining a certificate, has submitted to the ~~Health~~ Division any application, document, record, report or affidavit, or any information in support thereof, which is false or fraudulent;
2. Is grossly negligent, incompetent or has committed misconduct in the performance of his duties as an operator of a public water system;
3. Has demonstrated disregard for the health and safety of the public;
4. Has acted outside the rights and privileges of his classification for which he holds a certificate;
5. Has been convicted of a violation of any federal law or law of any state relating to water quality, including, but not limited to, the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.;
6. Has been convicted of a felony or other crime involving moral turpitude, dishonesty or corruption;
7. Has willfully made to an employee of the ~~Health~~ Division or any health authority any false statement which is material to the administration or enforcement of any provision of this chapter or chapter 445A of NRS;
8. Has failed to renew his certification; or

9. Has violated, attempted to violate, assisted or abetted in the violation of, or conspired to violate any provision of chapter 445A of NRS or this chapter.

Sec. 28. NAC 445A.647 is hereby amended to read as follows:

445A.647 The ~~Health~~ Division shall send written notice of the denial of an application for or the suspension or revocation of a certificate pursuant to the requirements set forth in NAC 439.300 to 439.395, inclusive.

Sec. 29. NAC 445A.651 is hereby amended to read as follows:

445A.651 The ~~Health~~ Division shall charge and collect the following fees:

For the issuance of a full certificate	\$84
For a certificate issued pursuant to <i>paragraph (c) of</i> subsection 1 of NAC 445A.634 <i>2 of section 11 of this regulation</i>	57
For a certificate issued pursuant to subsection 2 of NAC 445A.634	57
For the issuance of a certificate as an operator-in-training.....	57
For conversion of a certificate as an operator-in-training to a full certificate....	30
For the issuance of a provisional certificate	30
For the renewal of a full certificate	30
For the renewal of a provisional certificate.....	30
For the renewal of a certificate as an operator-in-training.....	30
For the reinstatement and renewal of a full certificate	100

Sec. 30. NAC 445A.652 is hereby amended to read as follows:

445A.652 1. Any person who has reason to believe that an action taken by the ~~[Health]~~ Division pursuant to NAC 445A.617 to 445A.652, inclusive, *and sections 2 to 14, inclusive, of this regulation* has been incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.

2. If the informal discussion does not resolve the problem, the aggrieved person may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the ~~[Bureau]~~ *Administrator of the Division or his designee* for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the aggrieved person and the ~~[Bureau]~~ *Administrator or his designee*, except that the informal conference must be held no later than 60 days after the date on which the ~~[Bureau]~~ *Administrator or his designee* receives the written request.

3. ~~[Except as otherwise provided in subsection 4, the]~~ *The* determination of the ~~[Bureau]~~ *Administrator of the Division or his designee* resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved person.

~~[4.— An applicant for or holder of a certificate issued pursuant to NAC 445A.617 to 445A.652, inclusive, who is aggrieved by an action of the Health Division relating to the denial of an application for or renewal of such a certificate or the suspension or revocation of such a certificate may appeal that action in accordance with NAC 439.300 to 439.395, inclusive, after exhausting the informal procedures set forth in this section, except that the Bureau may waive the informal procedures, or any portion thereof, by giving written notice to the aggrieved person.]~~

~~—5.— As used in this section, “Bureau” means the Bureau of Health Protection Services of the Health Division of the Department of Human Resources or its successor.]~~

Sec. 31. NAC 445A.622, 445A.6265, 445A.627, 445A.628, 445A.634, 445A.635, 445A.636, 445A.637 and 445A.638 are hereby repealed.

TEXT OF REPEALED SECTIONS

445A.622 “Health Division” defined. (NRS 445A.860, 445A.880) “Health Division” means the Health Division of the Department of Human Resources.

445A.6265 Type of certificate required. (NRS 445A.860, 445A.880)

1. An operator who works only on the operations of a distribution system or distribution facility of a public water system is required to hold a valid certificate only in class distribution at the appropriate level of classification pursuant to NAC 445A.629 as determined by the public water system.

2. An operator who works only on operations of treatment or the operations of a treatment facility of a public water system is required to hold a valid certificate only in class treatment at the appropriate level of classification pursuant to NAC 445A.629 as determined by the public water system.

3. An operator who works on the operations of a distribution system or distribution facility and the operations of treatment or the operations of a treatment facility of a public water system is required to hold valid certificates in class distribution and class treatment at the appropriate level of classification pursuant to NAC 445A.629 as determined by the public water system.

445A.627 Requirements for persons in responsible charge; certification and supervision of supervisors and certain operators. (NRS 445A.860, 445A.880)

1. A public water system which:

(a) Is classified as a community water system or a nontransient, noncommunity water system;

or

(b) Is designated by the Health Division as being supplied by:

(1) Surface water; or

(2) Groundwater under the direct influence of surface water,

↪ shall have a person in responsible charge at the site of the facility or on call at all times.

Except as otherwise provided in NAC 445A.628, the person in responsible charge of the public water system must be the holder of a full certificate in the same classification or a higher classification than the classification of the public water system pursuant to NAC 445A.629.

2. If the person in responsible charge is on call, he must be able to:

(a) Be contacted immediately; and

(b) Respond at the site within 4 hours.

3. A supplier of water shall notify the Health Division within 72 hours or 2 working days, whichever is earlier, of any time that the public water system is not in compliance with the provisions of this section.

4. If a public water system serves more than 10,000 persons, the Health Division may require the public water system to have, in addition to the person in responsible charge of the public water system, an additional person or persons in responsible charge at the same time, including, without limitation, a person in responsible charge for the treatment of water or a person in responsible charge for the distribution of water. If the Health Division requires an

additional person or persons in responsible charge pursuant to this subsection, the Health Division must:

- (a) Deliver a written notification of the requirement to the public water system on or before December 31 of the year in which the requirement is made;
- (b) Review the requirement not less than once every 5 years to determine whether any changes need to be made regarding the additional person or persons;
- (c) Require a public water system that is subject to the requirement of an additional person or persons pursuant to this subsection to employ the additional person or persons within 2 years after the date the public water system receives the written notification of the requirement by the Health Division to employ the additional person or persons; and
- (d) Require the additional person or persons in responsible charge to be certified in the same level of classification or a higher level of classification as the classification of the public water system pursuant to NAC 445A.629.

5. A supervisor employed by a supplier of water must be:

- (a) Certified at no less than one class lower than the classification of the public water system pursuant to NAC 445A.629; and
- (b) Supervised by a person in responsible charge.

6. An operator employed by a supplier of water to make decisions regarding process control, quality of water, quantity of water or system integrity must be:

- (a) Certified at the appropriate level of classification as determined by the public water system; and
- (b) Supervised by a person in responsible charge.

7. As used in this section:

(a) “Community water system” has the meaning ascribed to it in NRS 445A.808.

(b) “Nontransient, noncommunity water system” means a nontransient water system as defined in NRS 445A.829.

(c) “Supervisor” does not include a person in responsible charge.

445A.628 Persons in responsible charge: Approval of person holding certificate as operator-in-training; approval of other qualified person in emergency or for relief. (NRS 445A.860, 445A.880)

1. Upon the request of the owner of a public water system and the approval of the Health Division, a person holding a certificate as an operator-in-training may be the person in responsible charge of the public water system for not more than 6 months. The Health Division shall not grant approval unless it makes a finding that:

(a) The person holding the certificate as an operator-in-training has the basic knowledge necessary to operate the public water system;

(b) The health and safety of the public will be protected; and

(c) The owner has demonstrated that the public water system is unable to employ a person who holds a full certificate.

2. The Health Division shall consider the following in making its decision of whether to grant approval pursuant to subsection 1:

(a) The results of an inspection of the site of the public water system;

(b) A review of the plans and specifications of the public water system;

(c) A review of the personnel records that pertain to the operation of a public water system, experience in operating and training of the person holding the certificate as an operator-in-training; and

(d) A review of any other reasonably available and relevant information.

3. Upon the occurrence of circumstances of an emergency nature, the Health Division may approve any other qualified person as the person in responsible charge of a public water system for not more than 6 months.

4. The Health Division shall consider the following in making its decision of whether to grant approval pursuant to subsection 3:

(a) The results of an inspection of the site of the public water system;

(b) A review of the plans and specifications of the public water system;

(c) A review of the personnel records that pertain to the operation of a public water system, experience in operating and training of the person being considered; and

(d) A review of any other reasonably available and relevant information.

5. Upon request from a public water system, the Health Division may approve a qualified person as the person in responsible charge of a public water system for not more than 15 months to provide vacation and temporary relief of the designated person in responsible charge.

6. The Health Division shall consider the following in making its decision of whether to grant approval pursuant to subsection 5:

(a) The results of an inspection of the site of the public water system;

(b) A review of the plans and specifications of the public water system;

(c) A review of the personnel records that pertain to the operation of a public water system, experience in operating and training of the person being considered; and

(d) A review of any other reasonably available and relevant information.

7. Within 4 months after an approval is granted pursuant to subsection 1 or 3 or within 12 months after an approval is granted pursuant to subsection 5, the Health Division shall review the

status of the public water system to determine whether the approval should be extended past the limit of approval provided pursuant to subsection 1, 3 or 5. Any determination made by the Health Division pursuant to this review must be received by the public water system no less than 15 days before the end of the period specified in the approval granted by the Health Division.

445A.634 Certification of operator certified in another state or by California/Nevada section of American Water Works Association. (NRS 445A.860, 445A.880)

1. The Health Division shall issue a full certificate in the same classification to an operator who has obtained certification in another state if the Health Division determines, upon review of his application for certification and supporting material, that the applicant has:

(a) Passed an examination that is equivalent to the examination administered by the Health Division pursuant to NAC 445A.631; and

(b) The experience in operating required by NAC 445A.633.

2. The Health Division shall issue a full certificate in the same classification to an operator who holds a current certification by the California/Nevada section of the American Water Works Association if the Health Division determines, upon review of his application for certification and supporting material, that the applicant has:

(a) Passed an examination that is equivalent to the examination administered by the Health Division pursuant to NAC 445A.631; and

(b) The experience in operating required by NAC 445A.633.

445A.635 Certificate as operator-in-training: Issuance; subsequent issuance and expiration of full certificate. (NRS 445A.860, 445A.880)

1. The Health Division shall issue a certificate as an operator-in-training to a person who:

(a) Has passed the examination for certification; and

(b) Does not have the experience in operating required for a full certificate pursuant to NAC 445A.633.

2. Upon payment of the fee set forth in NAC 445A.651, the Health Division shall issue a full certificate to an operator who, after being issued a certificate as an operator-in-training, has fulfilled the requirement for experience in operating set forth in NAC 445A.633. The full certificate expires on December 31 of the first calendar year after the calendar year in which it is issued.

445A.636 Provisional certification. (NRS 445A.860, 445A.880)

1. Upon payment of the fee set forth in NAC 445A.651, the Health Division shall issue to an applicant a provisional certificate if:

(a) The applicant is an owner and operator of a public water system or is employed by a public water system that is not designated by the Health Division as being supplied by surface water or groundwater under the direct influence of surface water;

(b) A statement is submitted to the Health Division from the governing board or owner of the public water system that the applicant was in a position of responsible charge of the public water system on January 1, 2000;

(c) The applicant was in a position of responsible charge of the public water system before January 1, 2000, and was not required to obtain a full certificate before that date;

(d) The applicant has completed at least 2 days of training that is designed to provide the applicant with basic information on the operation of a public water system; and

(e) The application is submitted not later than December 31, 2000.

2. Except as otherwise provided in subsection 3, a provisional certificate issued pursuant to subsection 1:

(a) Expires on December 31 of the first calendar year after the calendar year in which the certification is issued.

(b) May be renewed for 2 years if the applicant completes the process for renewal as set forth in NAC 445A.638.

3. Except as otherwise provided in subsection 4, a provisional certificate is only valid:

(a) During the period that the operator remains employed in that position of responsible charge of the public water system for which the operator received the provisional certificate; and

(b) At the public water system where the operator is employed on January 1, 2000.

4. A provisional certificate is not valid if the classification of the treatment plant or distribution system changes to a level which is higher than the level for which the certificate was issued.

5. The Health Division shall sponsor and pay for the training required pursuant to paragraph (d) of subsection 1. Such training must include, without limitation, training in well design, safety, water quality, monitoring, reporting, the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., drinking water standards, health effects of chemical and bacterial contamination, and the Total Coliform Rule.

445A.637 Contents and expiration of certificate. (NRS 445A.860, 445A.880)

1. A certificate issued pursuant to NAC 445A.617 to 445A.652, inclusive, must indicate the classification for which it is issued and specify if it is a full certificate, provisional certificate or certificate as an operator-in-training.

2. Except as otherwise provided in subsection 3 of NAC 445A.636, a full certificate, a provisional certificate and a certificate as an operator-in-training expires on December 31 of the first calendar year after the calendar year in which it is issued, renewed or reinstated.

445A.638 Renewal of certificate: Prerequisites; compliance with requirements for continuing education. (NRS 445A.860, 445A.880)

1. A full certificate, a provisional certificate and a certificate as an operator-in-training may be renewed by payment of the fee for renewal and submission to the Health Division of evidence of compliance with the requirements of continuing education set forth in NAC 445A.639. An application for renewal of a certificate must be made on forms supplied by the Health Division.

2. The applicant shall indicate on the application for renewal of a certificate evidence of compliance with the requirements of continuing education set forth in NAC 445A.639. The Health Division shall review the evidence of compliance with the requirements of continuing education to ensure:

(a) The course of training was approved by the Health Division pursuant to NAC 445A.641 or 445A.643; and

(b) The applicant successfully completed the course of training.

3. The Health Division shall maintain records of continuing education.

4. Failure to remain active in the operation of a public water system during the period a certificate is valid is cause for denial of an application for renewal of the certificate unless the applicant has met the continuing education requirements of NAC 445A.639.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R129-05

The State Environmental Commission adopted regulations assigned LCB File No. R129-05 which pertain to chapter 445A of the Nevada Administrative Code on October 4, 2005.

Notice date: 8/30/2005
Hearing date: 10/4/2005

Date of adoption by agency: 10/4/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

The regulation addressed in this filing statement was drafted in response to Senate Bill 395 (SB 395), which was passed during the 2005 Legislative Session. SB 395 allowed the transfer of responsibilities for certain drinking water programs, including "Operator Certification" from the State Health Division to the Nevada Division of Environmental Protection (NDEP).

This regulation amends NAC 445A.617 through 445A.652. Drafting of the amendments represented a significant effort by the Operator Certification Advisory Board, a group that was appointed by the State Board of Health pursuant to NRS 445A.870.

The amended regulation makes changes to Nevada's Operator Certification Program for small water systems. The regulation requires increased skills and knowledge to operate public water systems for individuals certified through the Operator Certification Program. The Division of Environmental Protection - Bureau of Safe Drinking Water, is now managing the program. The regulation is needed in light of more stringent water quality requirements. Ultimately, the goal of the Operator Certification Program is the protection of public health.

As way of background, the State of Nevada has, under an agreement with the United States Environmental Protection Agency (US EPA), primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act (Act). The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Accordingly, this amended regulation will have a beneficial economic effect by increasing the knowledge base of operators of small water systems; such increased knowledge of water system operations will result in both immediate and long-term protection of public health.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

To solicit public comments on the first version of this regulation, the State Health Division conducted a public workshop on November 12, 2004. A public hearing was then held on February 18, 2005 by the State Health Board. At that hearing the regulation was adopted as a temporary regulation and subsequently filed with the Legislative Counsel Bureau on March 28, 2005. (See: LCB temporary regulations #T032-05)

The drinking water program was then transitioned to NDEP (by SB 395) and the regulation (which is now proposed as a permanent regulation) was slightly altered by NDEP to reflect changes in authority from the State Board of Health to the State Environmental Commission. NDEP conducted another workshop to solicit public comments on the revised permanent regulation; the workshop was held at the following locations:

Thursday September 22, 2005 at 9:00 AM 401 S. Carson Street St. Legislative Building, Room 2134 Carson City, Nevada	Video conference in Las Vegas at the following location: Grant Sawyer Building, Room 4406 555 E Washington St Las Vegas, Nevada
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Comments received at the workshop held by NDEP were generally supportive of the revised regulation.

A public hearing was then held by the State Environmental Commission (SEC) to consider the regulation. The SEC hearing was noticed in the Las Vegas Review Journal and the Reno Gazette Journal newspapers on the following dates: September 05, 19, 26, 2005. Members of the public subscribing to the SEC electronic and ground-based mailing lists were subsequently mailed a public notice and meeting agenda for the SEC hearing; the hearing was held in Reno on October 04, 2005.

The public notice for the referenced SEC hearing was also sent to county libraries throughout the state and the regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas.

The workshop notice, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at:
<http://www.sec.nv.gov/main/hearing1005.htm>

At the SEC hearing, there were three (3) oral comments presented to the Commission during the adoption of the regulation. The comments were all positive. One written "positive" comment (from the Incline Village Public Works Department) was also presented to the commission; the comment is attached.

2. The number of persons who attended the SEC hearing:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 3
- (c) Submitted to the agency written comments: 1

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

With regard to business that could be affected by the regulation, a comment response document was prepared following the public workshop on the original temporary regulation that was managed by the State Health Division. That comment response document is attached.

As noted above, comments received at the workshop held by NDEP were generally supportive of the revised regulation along with comments received at the SEC hearing held on October 4, 2005.

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 State Environmental Commission adopted the regulation on October 04, 2005. Two technical corrections were made to the regulation. These corrections are noted below as well as in the cover letter to this document.

Page 14, Section 16. Change the Total Points for: Distribution-3 from 31-40 to **31- 41**.
Change the Total Points for: Distribution-4 from 41 or more to **42 or more**.

Page 15, section 16. Add a new line after "Ultraviolet light.....8"
Combination of ozone and ultraviolet light.....10

5. The estimated economic effect of the adopted regulation on the business that it is to regulate, and on the public.

The estimated economic effect of the proposed revisions on the small businesses would apply to public water systems that require Grade III or Grade IV Certified Operators. This indirect economic effect would be from new, higher requirements for post-secondary education required to qualify for new Grade III and Grade IV certifications.

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

There will be no additional cost to the agency for enforcement of the proposed regulation.

7. 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, indicate the name of the regulating federal agency.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain

current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies.

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

The regulation is no more stringent than what is established by federal law.

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 regulation does not address fees.