

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R125-07

November 2, 2007

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

AUTHORITY: §§1-11, 14-16 and 19, NRS 445A.425; §§12, 13 and 18, NRS 445A.425, 445A.660 and 459.485; §17, NRS 445A.425 and 445A.660.

A REGULATION relating to hazardous substances; revising provisions relating to the notification of the Director of the State Department of Conservation and Natural Resources of certain releases of hazardous substances; 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 13, inclusive, of this regulation.

Sec. 2. *“Confirmed release from an underground storage tank” means an actual or presumed underground release that is discovered by:*

1. A test to determine the tightness of an underground storage tank or line that is conducted in accordance with the provisions of 40 C.F.R. § 280.43(c) or 40 C.F.R. § 280.44(b), respectively;

2. A visual or laboratory confirmation of a hazardous substance in soil surrounding the underground storage tank or in groundwater in the area of an underground storage tank which indicates that a release from the underground storage tank has occurred; or

3. Any unexplained rapid loss of a hazardous substance from an underground storage tank.

Sec. 3. *“Facility” means any:*

1. Building, structure, installation, equipment, pipe, including the pipe into a sanitary or storm sewer or publicly owned treatment works, pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, container for storage, tank or underground tank for storage;

2. Site or area where a hazardous substance, pollutant or contaminant has been deposited, stored, disposed of, placed or otherwise located; or

3. Motor vehicle, rolling stock or aircraft or any vessel used as a means of transportation on water.

Sec. 4. *“Groundwater” means all subsurface water comprising the zone of saturation, including perched water.*

Sec. 5. *“Hazardous substance” includes, without limitation:*

1. A contaminant as defined in NRS 445A.325;

2. A hazardous material as defined in NRS 459.7024;

3. A hazardous substance as defined in 40 C.F.R. Part 302;

4. A pollutant as defined in NRS 445A.400; and

5. A regulated substance as defined in NRS 459.448.

Sec. 6. *“Other surfaces of land” means rock, gravel, road base, compacted soil, asphalt, pavement or concrete. The term does not include a surface that is engineered to prevent a release of a hazardous substance into the environment.*

Sec. 7. *“Public water system” has the meaning ascribed to it in NRS 445A.235.*

Sec. 8. *“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into the environment.*

Sec. 9. *“Surface water” means all water open to the atmosphere and subject to surface runoff.*

Sec. 10. *“Underground storage tank” means a tank or tanks which are used to contain a hazardous substance and which are at least 10 percent below the surface of the ground. The term includes any underground pipes connected to an underground storage tank.*

Sec. 11. *“Vulnerable resource” means:*

1. Any building or other structure that is used primarily to house or provide services to children, elderly persons or sick persons, including, without limitation, a school, day care center, senior citizen center and hospital;

2. An area that is located within 150 feet of a wellhead of a public water system; or

3. A storm drain.

Sec. 12. *1. Any person who owns or operates a facility, or his designated agent, shall notify the Director as soon as practicable after he notifies any emergency response agencies, if required, and initiates any action required to prevent or abate any imminent danger to the environment or the health or safety of persons after he has knowledge of a release of a hazardous substance that involves the facility if the release:*

(a) Is in a quantity equal to or greater than that which is required to be reported to the National Response Center pursuant to 40 C.F.R. Part 302;

(b) Involves any amount of a hazardous substance that is released to surface water; or

(c) Threatens a vulnerable resource.

2. A release which is required to be reported to the Director pursuant to this section is not required to be reported to the Director pursuant to NAC 445A.347.

Sec. 13. *Any notice of a release of a hazardous substance required to be provided to the Director pursuant to NAC 445A.347 or section 12 of this regulation must be provided by telephone at (888) 331-6337, for in-state telephone calls, or (775) 687-9485, for in-state or out-of-state telephone calls.*

Sec. 14. NAC 445A.2267 is hereby amended to read as follows:

445A.2267 “Release” has the meaning ascribed to it in ~~NAC 445A.345.~~ *section 8 of this regulation.*

Sec. 15. NAC 445A.2269 is hereby amended to read as follows:

445A.2269 1. Except as otherwise provided in this section, if the owner or operator of a facility, or his designated agent, is required to give notice of a release pursuant to NAC 445A.345 to 445A.348, inclusive, *and sections 2 to 13, inclusive, of this regulation*, the Division shall require the owner or operator to conduct an assessment of the conditions at the site of the facility, including an assessment of the condition of the soil or water, or both, to determine the extent and magnitude of the contamination.

2. The Division shall not require an owner or operator to conduct an assessment of the soil required by subsection 1 if the level of contamination of the soil does not exceed the action level established for that soil pursuant to NAC 445A.2272 because of the actions taken by the owner or operator of the facility pursuant to NAC 445A.22695.

3. An assessment conducted pursuant to subsection 1 must:

(a) Identify the relevant pathways specifically related to the site that affect public health and the environment; and

(b) Be approved by the Division.

Sec. 16. NAC 445A.345 is hereby amended to read as follows:

445A.345 As used in NAC 445A.345 to 445A.348, inclusive, *and sections 2 to 13, inclusive, of this regulation*, unless the context otherwise requires ~~§~~:

~~—1. “Facility” means any:~~

~~—(a) Building, structure, installation, equipment, pipe, including the pipe into a sanitary or storm sewer or publicly owned treatment works, pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, container for storage, tank or underground tank for storage;~~

~~—(b) Site or area where a hazardous substance, pollutant or contaminant has been deposited, stored, disposed of, placed or otherwise located; or~~

~~—(c) Motor vehicle, rolling stock or aircraft or any vessel used as a means of transportation on water.~~

~~—2. “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into the environment.],~~ *the words and terms defined in sections 2 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 17. NAC 445A.346 is hereby amended to read as follows:

445A.346 NAC 445A.345 to 445A.348, inclusive, *and sections 2 to 13, inclusive, of this regulation* do not apply to:

1. Any release resulting in exposure to an employee solely within an indoor place of employment for which the employee may assert a claim against his employer.
2. Emissions from the exhaust of the engine of a motor vehicle, the rolling stock of a railroad, an aircraft, a vessel or pipeline pumping station.
3. Release of source, by-product or special nuclear material resulting from the operation of a production or utilization facility as defined in the Atomic Energy Act of 1954, and which is subject to the regulatory authority of the Nuclear Regulatory Commission.
4. Any activity or substance which is subject to regulation pursuant to NRS 459.010 to 459.290, inclusive.
5. The normal application of fertilizers or pesticides.
6. Any release that complies with the limits or conditions of a permit issued by the State or the Federal Government.

Sec. 18. NAC 445A.347 is hereby amended to read as follows:

445A.347 ~~[1-]~~ Any person who owns or operates a facility , or his designated agent , shall ~~[, as soon as possible]~~ *notify the Director not later than the first working day* after he has knowledge of a release ~~[described in subsection 2]~~ *of a hazardous substance* that involves ~~[his facility, but not later than the end of the first working day after the release, provide notice of the release to the Director by telephone at (888) 331-6337 or (775) 687-9485.~~

~~—2.— The following are subject to the notice requirements of subsection 1:~~

~~—(a) A release in a quantity equal to or greater than that which is required to be reported to the National Response Center pursuant to 40 C.F.R. Part 302.~~

~~—(b) A release consisting of any quantity of pollutants, hazardous waste, as defined in NRS 459.430, or contaminants, as defined in NRS 445A.325, and the pollutant, hazardous waste or contaminant is not listed in 40 C.F.R. § 302.4.~~

~~—(c) A release consisting of a petroleum product:~~

~~—(1) Which is released] *the facility if the hazardous substance is:*~~

1. Released to the soil or other surfaces of land in a quantity greater than 25 gallons ~~[; or~~

~~—(2) Discovered on or in the groundwater or] *or 200 pounds;*~~

2. Discovered in at least 3 cubic yards of soil during excavation of soil, subsurface exploration ~~[, monitoring of groundwater]~~ or any other subsurface activity ~~[,];~~

3. Discovered in or on the groundwater during subsurface exploration, monitoring of groundwater or any other subsurface activity; or

4. A confirmed release from an underground storage tank.

Sec. 19. NAC 445A.348 is hereby amended to read as follows:

445A.348 Any notice received pursuant to NAC 445A.347 *or section 12 of this regulation* or any information obtained from the investigation of the release reported in the notice ~~[shall]~~ *must* not be used against the person giving the notice in any criminal prosecution, unless he is prosecuted for perjury, gross negligence or the giving of a false statement related to the reported release.