

**PROPOSED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R015-08**

February 8, 2008

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

AUTHORITY: §§1-7, 9-11 and 13-16, NRS 459.485; §8, NRS 459.485 and 459.500; §12, NRS 459.485 and 459.550, §17, NRS 233B.050, 444.560 and 459.485.

A REGULATION relating to hazardous waste; revising the date on which certain regulations are adopted by reference; revising the addresses of the office of the State Environmental Commission and the Division of Environmental Protection of the State Department of Conservation and Natural Resources; and providing other matters properly relating thereto.

**Section 1.** NAC 444.8427 is hereby amended to read as follows:

444.8427 “Facility for community recycling” means a facility for recycling hazardous waste which has a yearly capacity that is not more than twice the amount of the type of hazardous waste proposed to be recycled that is generated within the region in this State in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July 1, ~~2006.~~ 2007.

**Sec. 2.** NAC 444.84275 is hereby amended to read as follows:

444.84275 “Facility for community storage” means a facility for the storage and consolidation of hazardous waste which has a yearly capacity that is not more than twice the amount of hazardous waste that is generated within the county in which the facility is or is

proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July 1, ~~2006.~~ 2007.

**Sec. 3.** NAC 444.84555 is hereby amended to read as follows:

444.84555 1. An application for a written determination that a proposed facility or mobile unit will operate as a facility for the recycling of hazardous waste or mobile unit for the recycling of hazardous waste must be accompanied by:

- (a) The name and address of the owner and operator of the facility or mobile unit;
- (b) The name and address of the property owner of the location at which a facility is proposed to be constructed;
- (c) A detailed description of the type of recycling which is proposed, including:
  - (1) The manufacturer of the equipment to be used at the facility or mobile unit;
  - (2) The nature of the recycling; and
  - (3) An explanation evidencing that the:
    - (I) Facility is a facility for the recycling of hazardous waste; or
    - (II) Mobile unit is a mobile unit for the recycling of hazardous waste;
- (d) A description of the source and estimated amount of hazardous waste to be recycled on an average day and on a peak day;
- (e) A physical and chemical description of the type of hazardous waste to be accepted by the facility or processed by the mobile unit;
- (f) A detailed economic analysis of the recycling process to be used at the facility or by the mobile unit, including:
  - (1) The projected costs to operate the facility or mobile unit;

(2) The fees that would be charged per unit of volume to process waste transported to the facility or processed by the mobile unit;

(3) The projected value that would be recovered per unit of volume; and

(4) The projected costs otherwise to manage, recycle, treat or dispose of the material as a hazardous waste;

(g) A description of the markets and the uses for the products to be produced and the materials and energy to be recovered;

(h) A comparison of the economic and environmental impact of the proposed recycling process to a process which uses material that is not considered waste when producing the same product; and

(i) An operating plan if the facility is a stationary facility and will recycle hazardous waste other than used antifreeze governed by NAC 444.8801 to 444.9071, inclusive, or precious metals governed by 40 C.F.R. Part 266. Such an operating plan must, without limitation, include a description of the procedures that will ensure safe operation and demonstrate compliance with:

(1) The requirements for emergency preparedness and a contingency plan specified in 40 C.F.R. Part 264, Subparts C and D;

(2) The standards for containers and tanks specified in 40 C.F.R. Part 264, Subparts I, J, AA, BB and CC; and

(3) The applicable requirements for closure and financial assurance for closure specified in 40 C.F.R. Part 264, Subparts G and H.

2. The Administrator may require the applicant to submit additional information before issuing a written determination.

3. The Administrator shall not issue a written determination unless he determines, based upon the application, that all the following requirements are satisfied:

(a) The facility or mobile unit will be operated as a facility or mobile unit for the recycling of hazardous waste.

(b) The recycling process has economic value. A recycling process has economic value if:

(1) The applicant shows that the material recovered from or the products or energy produced as a result of the process have value in the marketplace; and

(2) The fees that the applicant charges per unit of volume to process the material are less than or equal to the cost otherwise to recycle, manage, treat or dispose of the material as a hazardous waste, except that the fees that the applicant charges per unit of volume may be offset by the recovered unit value of the material recovered from or the products or energy produced as a result of the process.

(c) The probable beneficial environmental effect of the facility or mobile unit to the State outweighs the probable adverse environmental effect.

4. Before issuing a written determination for a facility, the Administrator shall provide for a period of public notice and comment of not less than 45 days. The request for public comment must be noticed in a local newspaper of general circulation that is published daily or weekly and must be sent to all persons on a mailing list developed and maintained by the Administrator. A person may request to be placed on the mailing list by contacting the Administrator. The Administrator shall respond to all comments he receives during the period provided for comments before making his determination to issue or not to issue a written determination.

5. The Administrator may revoke, suspend or modify a written determination if, at any time, he determines that:

- (a) A facility or mobile unit no longer satisfies the conditions stated in the application upon which the Administrator issued the written determination;
- (b) An applicant misrepresented or failed to disclose fully a relevant fact on his application;
- (c) The Administrator receives information that was not available at the time he issued the written determination which would have justified the imposition of different conditions at the time the determination was issued; or
- (d) The standards or regulations on which the Administrator based the written determination have been changed.

6. A person may request a hearing before the State Environmental Commission concerning a final decision of the Administrator to issue, deny, revoke, suspend or modify a written determination by filing a request, not more than 10 days after receiving notice from the Administrator of his decision, on form 3 with the State Environmental Commission, ~~[333 West Nye Lane, Carson City, Nevada 89706-0851.]~~ *Bryan State Office Building, 901 South Stewart Street, Carson City, Nevada 89701-5249.* The provisions of NAC 445B.875 to 445B.899, inclusive, apply to a hearing of the State Environmental Commission requested pursuant to this section.

**Sec. 4.** NAC 444.850 is hereby amended to read as follows:

444.850 As used in NAC 444.850 to 444.8746, inclusive, unless the context otherwise requires:

- 1. The words and terms defined in NAC 444.8505 to 444.861, inclusive, have the meanings ascribed to them in those sections.

2. Except for the words and terms otherwise defined in NAC 444.8505 to 444.861, inclusive, the words and terms defined in 40 C.F.R. § 260.10, as that section existed on July 1, ~~2006,~~ 2007, have the meanings ascribed to them in that section.

**Sec. 5.** NAC 444.8632 is hereby amended to read as follows:

444.8632 1. In addition to the requirements of NAC 444.850 to 444.8746, inclusive, a person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil shall comply with all applicable requirements of, and may rely upon applicable exclusions or exemptions under, 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, Part 273 and Part 279, as those provisions existed on July 1, ~~2006,~~ 2007, which, except as otherwise modified by NAC 444.86325, 444.8633 and 444.8634, are hereby adopted by reference. The Commission may use federal statutes and regulations that are cited in 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, Part 273 and Part 279 to interpret those sections and parts.

2. The volumes containing those parts may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the following prices:

(a) Volume 40 C.F.R. Part 2 .....	\$60
(b) Volume 40 C.F.R. Part 124 .....	45
(c) Volume 40 C.F.R. Parts 260 to 265, inclusive .....	50
(d) Volume 40 C.F.R. Parts 266 to 299, inclusive .....	50

**Sec. 6.** NAC 444.8633 is hereby amended to read as follows:

444.8633 Except as otherwise provided in NAC 444.8634:

1. Any references in any part of Title 40 of the Code of Federal Regulations to the U.S. Environmental Protection Agency, “United States Environmental Protection Agency,”

“Agency,” “EPA Headquarters,” “EPA Region(s)” or “EPA” which have been adopted by reference shall be deemed to mean the “Department” with the following exceptions:

- (a) Any reference to “EPA” identification numbers;
- (b) Any reference to “EPA” hazardous waste numbers;
- (c) Any reference to “EPA” test methods;
- (d) Any reference to “EPA” forms;
- (e) Any reference to “EPA” publications or manuals;
- (f) Any reference to “EPA” guidance;
- (g) Any reference to “EPA” Acknowledgment of Consent;
- (h) Any reference to “EPA” or “Agency” in:
  - (1) Sections 124.1(f), 124.2(b), 124.6(e) and 124.10(c)(1)(ii);
  - (2) The provisions of section 124.2(a) defining “Administrator,” “Director,” “EPA,” “permit,” “person” and “Regional Administrator”;
  - (3) The provisions of section 260.10 defining “Administrator,” “EPA Region,” “federal agency,” “person” and “Regional Administrator”;
  - (4) Part 260, Appendix I;
  - (5) *Section 261.39(a)(5) and* Part 261, Appendix IX;
  - (6) Section 262.32(b), Part 262, Subparts E and F, and the Appendix to Part 262;
  - (7) The Note following section 263.10(a);
  - (8) Sections 264.11, 264.71, 265.11 and 265.71;
  - (9) Section 268.1(e)(3);
  - (10) Sections 270.1(a)(1), 270.1(b), 270.3, 270.5, 270.10(e)(1)-(2), 270.11(a)(3), 270.32(a), 270.32(c), 270.51, 270.72(a)(5) and 270.72(b)(5); and

(11) The provisions of section 270.2 defining “Administrator,” “approved program or approved State,” “Director,” “Environmental Protection Agency,” “EPA,” “final authorization,” “permit,” “person,” “Regional Administrator” and “state/EPA agreement”; and

(i) Any reference to “EPA,” “Agency” or “EPA Director of the Office of Solid Waste” in section 262.21 and any subsequent reference to EPA’s oversight of the manifest registry process in Part 262, Subparts C and E.

2. Any references in any part of Title 40 of the Code of Federal Regulations to the “Regional Administrator” or “Administrator” which have been adopted by reference shall be deemed to mean the “Director” with the following exceptions:

(a) The provisions of section 124.2(a) defining “Administrator,” “Director,” “interstate agency,” “major facility” and “Regional Administrator”;

(b) Sections 124.2(b), 124.5(d), 124.6(e) and 124.10(b);

(c) The provisions of section 260.10 defining “Administrator,” “Regional Administrator” and “hazardous waste constituent”;

(d) Section 261.30(b), *Section 261.4* and Part 261, Appendix IX;

(e) Section 262.12, Part 262, Subpart E and the Appendix to Part 262;

(f) Sections 263.11 and 264.1(j)(1);

(g) Sections 264.12(a) and 265.12(a);

(h) The provisions of section 270.2 defining “Administrator,” “Director,” “major facility,” “Regional Administrator” and “state/EPA agreement”; and

(i) Sections 270.3, 270.5, 270.10(e)(1)-(2), 270.10(e)(4), 270.10(f)-(g), 270.11(a)(3), 270.14(b)(20), 270.32(b)(2) and 270.51.

3. Any references in any part of Title 40 of the Code of Federal Regulations to the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C” which have been adopted by reference shall be deemed to mean “NRS 459.400 to 459.600, inclusive,” when referring to an operating permit or to the federal hazardous waste program, with the following exceptions:

- (a) Any references to a specific provision of the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C”;
- (b) The provisions of section 124.2 defining “appropriate act and regulations” and “RCRA”;
- (c) The provisions of section 260.10 defining “Act or RCRA”;
- (d) Part 260, Appendix I;
- (e) Part 261, Appendix IX;
- (f) The Appendix to Part 262;
- (g) Section 270.1(a)(2); and
- (h) The provisions of section 270.2 defining “RCRA” and the provision of section 270.51 defining “RCRA permit.”

4. Following any references in any part of Title 40 of the Code of Federal Regulations to a specific provision of the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C,” which have been adopted by reference, the phrase “or any comparable provisions of NRS 459.400 to 459.600, inclusive, and any regulations adopted pursuant thereto” shall be deemed to be added with the following exceptions:

- (a) Section 270.1(a)(2);
- (b) Section 270.72(a)(5); and
- (c) Section 270.72(b)(5).

5. Any references in any part of Title 40 of the Code of Federal Regulations to the “Department of Transportation” or “DOT” which have been adopted by reference shall be deemed to mean “the Department of Transportation of the United States.”

6. Any references in any part of Title 40 of the Code of Federal Regulations to “state(s),” “authorized state,” “approved state” or “approved program” which have been adopted by reference shall be deemed to mean “Nevada” with the following exceptions:

(a) The provisions of section 124.2(a) defining “Director,” “interstate agency,” “person” and “state”;

(b) The provisions of section 260.10 defining “person,” “state” and “United States”;

(c) Part 262;

(d) Sections 264.143(e)(1), 264.145(e)(1), 264.147(a)(1)(ii), 264.147(b)(1)(ii), 264.147(g)(2) and 264.147(i)(4);

(e) Sections 265.143(d)(1), 265.145(d)(1), 265.147(a)(1)(ii), 265.147(g)(2) and 265.147(i)(4); and

(f) The provisions of section 270.2 defining “approved program or approved State,” “Director,” “final authorization,” “person” and “state.”

**Sec. 7.** NAC 444.8688 is hereby amended to read as follows:

444.8688 1. A person shall not transfer hazardous waste from a transport vehicle directly to a boiler or industrial furnace without the use of a storage unit.

2. An owner or operator of a boiler or industrial furnace may transfer hazardous waste from a transport vehicle to the boiler or furnace using a storage unit if he first obtains a permit for the storage of hazardous waste in the manner prescribed by 40 C.F.R. Part 270, as that part existed on July 1, ~~2006~~ 2007.

**Sec. 8.** NAC 444.8741 is hereby amended to read as follows:

444.8741 Any delivery required by NAC 444.8706 to 444.8746, inclusive, to be made to:

1. The Division must be made to the office of the Division at ~~[123 West Nye Lane, Capitol Complex, Carson City, Nevada 89710.]~~ *Bryan State Office Building, 901 South Stewart Street, Carson City, Nevada 89701-5249.*

2. The person cited must be made to him at the address set forth in the citation or, if he has made a request for hearing, at the address set forth in the request.

**Sec. 9.** NAC 444.8871 is hereby amended to read as follows:

444.8871 1. The provisions of NAC 444.8801 to 444.9071, inclusive, apply to used antifreeze that is recycled and is determined to be a hazardous waste because:

(a) It exhibits a characteristic of hazardous waste which is identified in 40 C.F.R. Part 261, Subpart C, as that part existed on July 1, ~~[2006;]~~ *2007*; or

(b) It was designated as a hazardous waste in the state of its origin.

2. The provisions of NAC 444.8801 to 444.9071, inclusive, do not apply to used antifreeze which will be disposed of and not recycled, or to mixtures of used antifreeze and hazardous waste. The used antifreeze described in this subsection is governed by the provisions of NAC 444.850 to 444.8746, inclusive.

**Sec. 10.** NAC 444.8881 is hereby amended to read as follows:

444.8881 1. Each storage tank that is underground which stores used antifreeze must comply with the requirements of 40 C.F.R. Part 265, Subpart J, as that subpart existed on July 1, ~~[2006;]~~ *2007*.

2. Each pipe that transfers used antifreeze to storage tanks that are underground must be clearly marked with the words “Used Antifreeze.”

**Sec. 11.** NAC 444.8926 is hereby amended to read as follows:

444.8926 1. A generator of used antifreeze may recycle his used antifreeze for his own use if the recycling:

(a) Is performed by the generator at a site which is located where the used antifreeze was generated; or

(b) Is performed pursuant to a written contract by a mobile unit for the recycling of used antifreeze which is located where the used antifreeze was generated.

2. Used antifreeze which is recycled pursuant to this section will not be calculated in the determination of the status of the generator of used antifreeze as a generator of hazardous waste pursuant to 40 C.F.R. Part 262, as that part existed on July 1, ~~2006.~~ 2007.

3. A person who performs recycling pursuant to this section shall manage any waste which is generated during the recycling process pursuant to the provisions of NAC 444.850 to 444.8746, inclusive.

4. A generator who recycles his used antifreeze pursuant to paragraph (a) of subsection 1 is not required to obtain a written determination pursuant to NAC 444.8455 and 444.84555.

**Sec. 12.** NAC 444.8931 is hereby amended to read as follows:

444.8931 1. Except as otherwise provided in this section, a generator of used antifreeze shall ensure that his used antifreeze is transported by persons who hold an identification number.

2. A generator may transport, without an identification number, used antifreeze generated at a site which is owned by the generator or collected from a person who generated the used antifreeze from his household if:

(a) The used antifreeze is transported in a motor vehicle which is owned by the generator or an employee of the generator;

(b) Not more than 350 gallons of used antifreeze is transported at one time; and

(c) The used antifreeze is transported to a point for aggregation or a center for the collection of used antifreeze which is registered pursuant to NAC 444.8921.

3. Used antifreeze which is transported pursuant to this section will not be calculated in the determination of the status of the generator of used antifreeze as a generator of hazardous waste pursuant to 40 C.F.R. Part 262, as that part existed on July 1, ~~2006~~ 2007, if he maintains records which describe the disposition of the used antifreeze. The records must be maintained for at least 3 years and be made available, upon request, for inspection by a representative of the Division or the Commission. The records may be in the form of a log, copies of contractual agreements, invoices, bills of lading or other documents relating to shipping which show each shipment of used antifreeze that is transported for recycling. The records must include:

(a) The name and address of the generator;

(b) The identification number of the generator, if he has an identification number;

(c) The name and address of the center for the collection of used antifreeze or the facility for the recycling of used antifreeze with whom the generator has contracted to recycle the used antifreeze;

(d) The identification number of the center or facility, if it has an identification number;

(e) The amount of used antifreeze that is transported for recycling; and

(f) The signature and date of acceptance of the representative of the center or facility.

**Sec. 13.** NAC 444.8941 is hereby amended to read as follows:

444.8941 If a transporter of used antifreeze transports used antifreeze in a truck which was used to transport hazardous waste, he shall manage the used antifreeze as a hazardous waste pursuant to the provisions of NAC 444.850 to 444.8746, inclusive, unless he removes the

hazardous waste from the truck in accordance with 40 C.F.R. § 261.7, as that section existed on July 1, ~~2006,~~ 2007, before he transports the used antifreeze.

**Sec. 14.** NAC 444.9006 is hereby amended to read as follows:

444.9006 1. Except as otherwise provided in subsection 2, if a storage tank that is above the ground is no longer used at a facility for the recycling of used antifreeze, the owner or operator of the facility shall ensure that the used antifreeze, including its residue, is decontaminated or removed from the storage tank, system for containment, soil and other structures or equipment which are contaminated with used antifreeze. The owner or operator shall manage the used antifreeze as a hazardous waste unless it does not exhibit a characteristic of hazardous waste identified in 40 C.F.R. Part 261, as that part existed on July 1, ~~2006,~~ 2007.

2. If the owner or operator demonstrates to the satisfaction of the Division that the used antifreeze cannot be removed or decontaminated as required by subsection 1, he must follow the procedures for closure and postclosure set forth in 40 C.F.R. § 265.310, as that section existed on July 1, ~~2006,~~ 2007.

**Sec. 15.** NAC 444.9011 is hereby amended to read as follows:

444.9011 If a facility for the recycling of used antifreeze is closed, the owner or operator of the facility shall ensure that containers which are used to store used antifreeze, including its residue, are removed from the facility and that systems for containment, soil and other structures or equipment which are contaminated with used antifreeze are decontaminated or removed. Material that is removed must be managed as a hazardous waste unless it does not exhibit a characteristic of hazardous waste which is identified in 40 C.F.R. Part 261, as that part existed on July 1, ~~2006,~~ 2007.

**Sec. 16.** NAC 444.9452 is hereby amended to read as follows:

444.9452 1. All sections, subparts and parts of Title 40 of the Code of Federal Regulations referred to in NAC 444.940 to 444.9555, inclusive, as modified by NAC 444.9453, are hereby adopted by reference as those sections, subparts and parts existed on July 1, ~~2006.~~ *2007.*

2. The volumes containing those sections, subparts and parts may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the following prices:

- (a) The volume containing 40 C.F.R. Parts 260 to 265, inclusive .....\$50
- (b) The volume containing 40 C.F.R. Parts 266 to 299, inclusive .....50
- (c) The volume containing 40 C.F.R. Part 761 .....61

**Sec. 17.** NAC 444.980 is hereby amended to read as follows:

444.980 1. Except as otherwise provided in subsection 2, any person who requests a hearing before the State Environmental Commission concerning a final decision of the State Department of Conservation and Natural Resources pursuant to chapter 444 of NRS may do so by filing a request, within 10 days of notice of the action of the Department on Form 3\* with the State Environmental Commission, ~~333 West Nye Lane, Capitol Complex, Carson City, Nevada 89710.~~ *Bryan State Office Building, 901 South Stewart Street, Carson City, Nevada 89701-5249.*

2. A decision of the Department issued pursuant to NAC 444.8701 to 444.8746, inclusive, is a final decision for the purposes of judicial review.

3. The provisions of NAC 445B.875 to 445B.899, inclusive, apply to a hearing of the State Environmental Commission requested pursuant to subsection 1.

\*(See adopting agency for form.)