

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 2000-02

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-173-99

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

**For Filing Administrative
Regulations**

For Emergency
Regulations Only

Effective Date

Expiration Date

Governor's Signature

State Environmental Commission

Classification Proposed Adopted By Agency Temporary Emergency

Brief description of action: Petition 2000-02 (LCB R-173-99) permanently amends NAC 444.570 to 444.7499, the solid waste and recycling regulations. The amendment establishes standards for the design, operation, closure and financial assurance of solid waste materials recovery facilities. The regulations are proposed to address issues related to the waste segregation process and the storage of waste residue and recovered materials. The proposed standards do not apply to facilities which only accept recyclable materials that have been separated at the source.

Authority citation other than 233B: NRS 444.560

Notice date: November 16, 1999, November 17, 1999, November 24, 1999 and December 2, 1999

Hearing date: December 16, 1999

Date of Adoption of Agency: December 16, 1999

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PERMANENT PETITION 2000-02 (R-173-99)
STATE ENVIRONMENTAL COMMISSION**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 444. This permanent regulation deals with amendments to the solid waste program by inclusion of provisions for waste material recovery facilities.

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.

Petition 2000-02 (R-173-99), was noticed four (4) times: November 16, November 17, November 24 and December 2, 1999 as a permanent regulation in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. Regulatory workshops were held on March 16, 1999 in Las Vegas, March 22, 1999 in Reno, and December 6, 1999 in Las Vegas. The regulation was adopted by the State Environmental Commission on December 16, 1999. Public testimony was received regarding this permanent regulation. The Clark County Health District and the Nevada Recyclers Association testified in support of the regulation, stating that the adopted petition would provide a clear framework to regulate waste material recovery facilities. A written comment from the Washoe County Health District was received supporting this adopted permanent regulation. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

(a)	Attended each hearing;	44	
(b)	Testified at each hearing:		10
(c)	Submitted to the agency written comments:	1	

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 notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates of the public notices. Oral testimony was varied and supportive the permanent regulation. Numerous small business waste material recyclers from the Las Vegas area testified and agreed to the need to establish a regulatory framework to govern waste material recyclers. Those in support of the regulation stated a stable framework would allow for investment in recycling infrastructure. One written comment and oral comment from Republic Silver State Disposal was received relating to the permanent regulation. They were generally opposed to the regulation, citing the need for a higher recycling content, that existing regulations governing transfer stations could be utilized, the need for local ordinances and regulations to be constructed to overrule state regulations adopted by the Commission, for recyclers to notify the solid waste management facility of whether the regulations are applicable to their facility, limiting storage of materials to one week, and the destination of solid waste disposed or removed from the materials recycling facility. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

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 permanent regulation was adopted by the State Environmental Commission on December 16, 1999 with changes requested at workshops held prior to the Commission hearing.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.

In regards to the material recovery facility regulations most regulated businesses would incur some short and long term costs in meeting the standards. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public

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

There is no additional cost to the agency for enforcement.

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 regulations do not overlap or duplicate any regulations of another state or local governmental agency.

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 regulations are no more stringent than federal regulations.

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.

There will be no additional fees, nor will there be an increase in fees associated with this regulation.

END OF FILING STATEMENT FOR 2000-02 (R-173-99)

**FILED PERMANENT REGULATION OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION**

LCB File No. R173-99

Effective February 9, 2000

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

AUTHORITY: §§1-17, NRS 444.560.

Section 1. Chapter 444 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, “materials recovery facility” means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of those materials. The term does not include:*

- 1. A facility that receives only recyclable materials that have been separated at the source of waste generation if further processing of the materials generates less than 10 percent waste residue by weight on an annual average;*
- 2. A salvage yard for the recovery of used motor vehicle parts;*
- 3. A facility that receives, processes or stores only concrete, masonry waste, asphalt pavement, brick, uncontaminated soil or stone for the recovery of recyclable materials; and*
- 4. A facility that recovers less than 10 percent by weight of the recyclable material from the solid waste received on an annual average.*

Sec. 3. 1. *A person shall not operate a materials recovery facility unless the location, design and operating plans of the facility have been approved by the solid waste management authority.*

2. An application to operate a materials recovery facility must be submitted to the solid waste management authority before construction of the facility begins.

Sec. 4. 1. *An application to operate a materials recovery facility must include:*

- (a) The name, location and mailing address of:*
- (1) The materials recovery facility;*
 - (2) The owner of the materials recovery facility;*
 - (3) The operator of the materials recovery facility; and*
 - (4) The authorized agent of the owner.*

(b) Proof of ownership of the land on which the materials recovery facility will be located.

(c) A report of the design of the materials recovery facility that complies with the provisions of section 5 of this regulation.

(d) A plan for operating the materials recovery facility that complies with the provisions of section 6 of this regulation.

(e) A plan for the closure of the materials recovery facility that identifies the procedures required to close the facility and describes the manner in which the facility will comply with the provisions for closure set forth in section 10 of this regulation. The plan must include a detailed written estimate, in current dollars, of the cost to hire a person to close the materials recovery facility in accordance with the plan.

(f) Proof of financial assurance that complies with the provisions of section 11 of this regulation.

(g) A list of the recyclable materials that will be recovered at the materials recovery facility.

(h) A description of the final use, or the available markets, for the materials identified for recovery.

(i) Any other information that the solid waste management authority requires to evaluate the proposed operation of the facility.

2. A materials recovery facility that has been approved by the solid waste management authority may not modify:

(a) The storage or processing capacity of the facility;

(b) The types of waste that a facility may accept; or

(c) The design or method of operation of the facility,

unless the facility obtains the prior approval of the solid waste management authority for those modifications. An application to modify a materials recovery facility must be submitted on a form prescribed by the solid waste management authority.

Sec. 5. The report of the design of the materials recovery facility required by section 4 of this regulation must:

1. Include a detailed description of the site of the facility, a diagram indicating the manner in which the materials are processed at the facility and the design capacity and environmental controls for the facility.

2. Be prepared under the direction of and signed and stamped by a professional engineer who is licensed in this state.

3. Include a general location map that indicates land use and zoning within 1 mile of the materials recovery facility.

4. Include plans and specifications of the materials recovery facility in sufficient detail to demonstrate compliance with the standards for the design of the facility set forth in section 7 of this regulation. The plans must:

(a) Be drawn to a scale of not more than 200 feet per inch;

(b) Indicate existing and proposed contours;

(c) Indicate access roads and traffic routes around and within the materials recovery facility;

(d) Include provisions for the control of surface water to minimize the contact of storm water with waste materials and to prevent pollutants or other contaminants from entering the waters of the state;

(e) Indicate fencing, areas for storing equipment, facilities for employees, areas for receiving and handling waste, maintenance areas and any other appurtenances

;

- (f) Include the maximum processing rate of the facility and the maximum storage capacity, in cubic yards, for processed and unprocessed waste and recovered materials;*
- (g) Include provisions for controlling odors and dust to prevent a public nuisance;*
- (h) Define the population and area that will be served by the materials recovery facility; and*
- (i) List the anticipated types, quantities and sources of solid waste that will be received at the materials recovery facility.*

Sec. 6. *The plan for operating the materials recovery facility required by section 4 of this regulation must provide a detailed description of the proposed operating procedures and include, without limitation:*

- 1. The provisions for controlling access to the materials recovery facility;*
- 2. The number of persons who will be employed at the materials recovery facility during operating hours;*
- 3. A list of the equipment and machinery that will be required to operate the materials recovery facility;*
- 4. The procedures to control vehicular traffic within the materials recovery facility;*
- 5. The types of wastes that the materials recovery facility will not accept and a list of the facilities where such waste will be directed;*
- 6. A program to detect and reject regulated hazardous waste, polychlorinated biphenyl wastes or any other unacceptable wastes identified in the application;*
- 7. The procedures for measuring or weighing solid waste that is accepted by the materials recovery facility;*
- 8. The frequency and method for transferring solid waste to a disposal site;*
- 9. The location of storage areas for processed and unprocessed solid wastes and recovered materials at the materials recovery facility;*
- 10. A plan for the disposal of processed and unprocessed solid wastes and recovered materials;*
- 11. The proposed operating hours of the materials recovery facility;*
- 12. A contingency plan that describes the procedures for emergencies and identifies alternate solid waste management systems;*
- 13. A description of the manner in which the materials recovery facility will comply with the provisions set forth in section 8 of this regulation; and*
- 14. The safety procedures and protective equipment required for persons who handle solid waste at the materials recovery facility.*

Sec. 7. 1. *A materials recovery facility must be constructed with:*

- (a) Barriers and appurtenances necessary to control access to the facility;*
- (b) A road that provides access to the facility in all kinds of weather;*
- (c) Appurtenances to control litter;*
- (d) Provisions that screen the facility from the view of members of the general public;*
- (e) In areas where putrescible wastes will be received, processed or stored, a covered enclosure with at least three sides, and a floor with a durable surface that contains drainage controls to control runoff and prevent runon or the accumulation of standing water; and*
- (f) In areas where solid wastes from the construction, refurbishment or demolition of buildings or other structures will be received, processed or stored, a floor with a durable surface that contains drainage controls to control runoff and prevent runon or the accumulation of standing water.*

2. A materials recovery facility that is open to the public must comply with the provisions relating to signs set forth in NAC 444.690.

3. The design and location of a materials recovery facility must comply with applicable local ordinances.

Sec. 8. 1. Solid waste that is accepted by a materials recovery facility must be:

(a) Transferred to a disposal site that has been issued a permit by the solid waste management authority;

or

(b) Recovered for reuse or recycling.

2. Unless the owner or operator is unable to do so because of an emergency, putrescible solid waste or solid waste that is mixed with putrescible solid waste must be removed from a materials recovery facility not more than 72 hours after acceptance by the facility.

3. Nonputrescible solid waste may be stored at the materials recovery facility for not more than 1 week. Not more than 3,000 cubic yards of solid waste may be stored at the facility at one time, unless otherwise approved by the solid waste management authority.

4. Recovered materials may not be stored at the facility for more than 1 year. At least 75 percent of the materials recovered at the facility must be sold and removed from the facility in a 12-month period. Any recovered materials stored for more than 1 year shall be considered waste and must be properly disposed of at a disposal site that has been issued a permit by the solid waste management authority or a facility approved by the solid waste management authority.

5. Solid waste or recovered materials may not be stored in piles which are more than 15 feet in height or have an area at the base which is more than 5,000 square feet. A distance of at least 12 feet must be maintained between adjacent piles of material and at least 10 feet between any pile of materials and the boundary of the facility.

6. The acceptance, handling and transportation of asbestos must be conducted in the manner prescribed by NAC 444.965 to 444.976, inclusive.

7. The owner or operator of a materials recovery facility shall:

(a) Inspect the area of the facility daily and collect, and properly dispose of, all scattered paper and lightweight debris; and

(b) Comply, in accordance with the provisions of NAC 444.660, with any local ordinances concerning the storage, collection or transportation of solid waste.

Sec. 9. 1. The operator of a materials recovery facility shall maintain accurate operating records at the facility. The records must be furnished upon request to the solid waste management authority or made available for inspection by the solid waste management authority during the regular business hours of the facility. The records must include:

(a) A daily record of:

(1) The quantity of solid waste received at the facility.

(2) The quantity of solid waste transported to disposal sites and the name and location of each such disposal site.

(3) The quantity of recovered materials removed from the facility and the name and location of each facility that receives the recovered materials.

(b) The receipt or rejection of prohibited wastes.

(c) Any emergencies or unusual events.

2. The operator of the facility may request that certain information included in the records be classified as a trade secret. If the solid waste management authority determines that such information is a trade secret, it shall not disclose that information unless ordered to do so pursuant to a court order.

3. The owner or operator of a materials recovery facility shall comply with the requirements of NAC 444A.135 concerning the reporting of recycled material.

Sec. 10. *1. The owner or operator of a materials recovery facility shall notify the solid waste management authority in writing at least 90 days before the date the facility is expected to close. The facility may not accept any solid waste after the expected closing date.*

2. The owner or operator shall, within 30 days after receiving the final shipment of solid waste, remove all remaining solid waste, litter, recovered materials and inoperable equipment in accordance with the plan for closure of the facility required by section 4 of this regulation, except that all putrescible waste must be removed within 72 hours after receipt.

Sec. 11. *1. The owner or operator of a materials recovery facility shall obtain a surety bond, or any other mechanism of financial assurance approved by the solid waste management authority, to cover the cost to close the facility, including the removal and proper disposal of the maximum inventory of waste and recovered materials for which the facility is designed. The owner or operator shall provide financial assurance for the closure of the facility until the facility is closed and the closure has been approved by the solid waste management authority.*

2. The surety bond must be issued by a corporation licensed to do business in this state and include an indemnity agreement that guarantees payment to a trust fund or to the solid waste management authority.

3. If payment is guaranteed to a trust fund, the trustee of the trust fund must be an entity which is authorized to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

4. The owner or operator of the materials recovery facility or any other person who is authorized to conduct activities for the closure of the facility may request reimbursement from the trustee for any cost incurred to close the facility. The trustee may provide reimbursement for that cost only if there is sufficient money in the trust fund to pay the remaining costs to close the facility, and proof and justification of the cost is placed in the operating records of the facility. The owner or operator shall notify the solid waste management authority that the proof and justification for the reimbursement of the cost was placed in the operating records of the facility and that he has received the reimbursement.

5. The owner or operator of the facility shall review annually the estimate of the cost to close the facility upon which the bond or other mechanism of financial assurance is based and submit the estimate to the solid waste management authority for its review and approval.

Sec. 12. *1. A materials recovery facility must comply with the plans for the design and operation of the facility approved by the solid waste management authority. A materials recovery facility must not:*

(a) Contribute to the pollution of the air or waters of the state;

(b) Cause an impairment of the environment;

(c) Cause a health or safety hazard to employees of the facility or the general public; or

(d) Cause a public nuisance.

(2) The solid waste management authority may suspend or revoke its approval to operate a materials recovery facility if the owner or operator of the facility fails to comply with the provisions of sections 2 to 12, inclusive of this regulation.

Sec. 13. NAC 444.570 is hereby amended to read as follows:

444.570 As used in NAC 444.570 to 444.7499, inclusive, ***and sections 2 to 12, inclusive, of this regulation,*** unless the context otherwise requires, the words and terms defined in NAC 444.5701 to 444.631, inclusive, have the meanings ascribed to them in those sections.

Sec. 14. NAC 444.634 is hereby amended to read as follows:

444.634 If any of the provisions of NAC 444.570 to 444.7499, inclusive, ***and sections 2 to 12, 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. 15. NAC 444.638 is hereby amended to read as follows:

444.638 1. The provisions of NAC 444.570 to 444.7499, inclusive, ***and sections 2 to 12, inclusive, of this regulation*** may not be interpreted to circumvent any of those provisions to make them less effective.

2. If more than one interpretation exists for a provision, the more restrictive interpretation applies.

Sec. 16. NAC 444.639 is hereby amended to read as follows:

444.639 The provisions of NAC 444.570 to 444.7499, inclusive, ***and sections 2 to 12, inclusive, of this regulation*** do not waive or circumvent the provisions of NRS 445A.300 to 445A.730, inclusive, 445B.100 to 445B.640, inclusive, 459.400 to 459.600, inclusive, and 459.800 to 459.856, inclusive. Each owner and operator shall comply with all other laws and regulations adopted and orders issued pursuant to those sections governing the disposal of solid waste.

Sec. 17. The owner or operator of a materials recovery facility that is operating on February 9, 2000 shall:

1. Submit an application to operate the facility in accordance with the provisions of section 4 of this regulation and comply with the provisions of sections 5, 6, subsections 2 and 3 of section 7, sections 8, 9, 10, 11 and 12 of this regulation not later than August 7, 2000.

2. Comply with the provisions of subsection 1 of section 7 of this regulation not later than February 9, 2002.

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