

**NEVADA DEPARTMENT OF  
CONSERVATION & NATURAL RESOURCES**

**STATE ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVES FOR**

**REGULATORY PETITIONS**

**COMMISSION PETITION NO. 95006**

**LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-028-95**

**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

### Nevada State Environmental Commission

Classification [ ] Proposed [ ] Adopted By Agency [xx] Temporary [ ] Emergency [ ]

**Brief description of action:** **Petition 95006** permanently amends NAC 445A.243 and 445A.244 of the water pollution control regulations to make existing regulations consistent with current federal EPA regulations. NAC 445A.243 was amended by deletion of the requirement that effluent limitations be expressed by weight in discharge permits. NAC 445A.244 was amended to provide specific authority for the water pollution discharge permits to include compliance schedules. NAC 445A.297(b) was amended to delete the requirement that U.S. EPA's Regional Administrator provide prior approval of point source discharge mixing zones.

**Authority citation other than 233B:** NRS 445.201

**Notice date:** August 31, September 6, and September 12, 1995

**Hearing date:** October 3, 1995

**Date of Adoption of Agency:** October 3, 1995

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED  
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
PETITION 95006  
LCB FILE R-028-95**

The following statement is submitted for adopted permanent amendments to Nevada Administrative Code (NAC) 445A.

**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 95006 (R-025-95) was noticed three (3) times: August 31, September 6, 1995 and September 12, 1995 in the Las Vegas Review and Reno Gazette-Journal newspapers as a permanent petition. This petition was previously noticed as a temporary petition. No public comment was received. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670, or writing in to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

**2. The number persons who:**

- (a) **Attended each hearing;** 23
- (b) **Testified at each hearing;** 14
- (c) **Submitted to the agency written comments:** No comments were submitted for this petition. Overall, six comments were submitted to the Commission at the hearing when this petition was adopted. Also see petitions 95003, 96001 and 96002 for a discussion on the comments received.

**3. A description of how comment was solicited from affected businesses, a summary of their response, and a 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. No comment was received from affected businesses. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing in to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

**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 at the State Environmental Commission hearing on October 3, 1995 without proposed amendments made by the agency, the public or businesses.

**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.
  - a. The only economic effect upon the regulated community is that the compliance schedule allows the permittee a period of time to come into compliance with permit conditions. This, could possible eliminate the need for enforcement actions which could include fines.
  - b. There is no estimated economic effect on the public, either adverse or beneficial, nor immediate or long-term.

**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.**

There are no other state or government agency regulations which the proposed amendments duplicate.

**8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

This regulation is consistent with federal regulations, but they are not more stringent than the federal regulation.

**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 provide for a new fee, and hence since no fee is involved there is not a total amount expected to be collected or used.

# ADOPTED PERMANENT REGULATION OF THE NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R028-95

Explanation: Matter in *italics* is new; matter in [ ] is material to be omitted.

AUTHORITY: NRS 445.201

**Section 1:** NAC 445A.243 is hereby amended to read as follows:

445A.243 In establishing an effluent limitation, consideration must be given to, but is not limited by, the following **:[so that the policy of the state, as declared in subsection 2 of NRS 445.132, is effectively carried out]:**

1. The effect of the discharge on the receiving waters and its beneficial use.
2. The need for standards that specify by chemical, physical, biological or other characteristics the extent to which pollution by various substances will not be tolerated.
3. **[Any requirements for establishing standards]** *Standards* for water quality promulgated from time to time by the United States Environmental Protection Agency, including the following:
  - (a) Effluent limitations under §§ 301 and 302 of the Act.
  - (b) Standards of performance for new sources under § 306 of the Act.
  - (c) Effluent standards, effluent prohibitions and pretreatment standards under § 307 of the Act.
  - (d) Any more stringent limitations, including those:
    - (1) Necessary to meet standards for water quality and treatment or schedules of compliance, established pursuant to any state law or regulation ; **[(under authority preserved by § 510 of the Act)]**
    - (2) Necessary to meet any other federal law or regulation; or
    - (3) Required to carry out any applicable standards for water quality. Such limitations must include any legally applicable requirements necessary to carry out total maximum daily loads established pursuant to § 303(d) of the Act and incorporated in the continuing planning process approved under § 303(e) of the Act and any regulations and

guidelines issued thereunder.

(e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to § 208(b) of the Act.

**[(f) Prior to promulgation by the administrator of applicable effluent standards and limitations pursuant to §§ 301, 302, 306 and 307 of the Act such conditions as the director determines are necessary to carry out the provisions of the Act.]**

4. In the application of water quality standards and limitations and other legally applicable requirements pursuant to subsection 3, the director shall, for each issued permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge. **[in terms of weight (except pH, temperature, radiation and any other pollutants not appropriately expressed by weight).]**

**Sec. 2.** NAC 445A.244 is hereby amended to read as follows:

445A.244 **1.** In addition to the application of the water quality standards and limitations and other legally applicable requirements pursuant to subsection 3 of NAC 445A.243, the director shall adhere to the following procedures in **[setting schedules and limitations and other legally applicable requirements:**

**1. With respect to] *establishing schedules of compliance:***

**(a) A permit issued for** any discharge not in compliance with the requirements listed in subsection 3 of NAC 445A.243 **[, the holder of the permit must be required to take specific steps to achieve compliance with the following:**

**(a) Any legally applicable schedule of compliance contained in water quality standards and limitations or if more stringent, legally applicable requirements listed in paragraphs (d) and (e) of subsection 3 of NAC 445A.243; or**

**(b) In the absence of any legally applicable schedule of compliance, the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.**

**2. In any case where the period of time for compliance specified in subsection 1 exceeds 9 months, a schedule of compliance must be specified in the permit setting forth interim requirements and the dates for their achievement in no event may more**

than 9 months elapse between interim dates. Where the time for compliance is less than 9 months, a schedule with interim requirements and dates may be specified. If the time necessary for completion of the interim requirements (such as the construction of a treatment facility) is more than 9 months and cannot be readily divided into stages for completion, interim dates must be specified for the submission of reports of progress towards completion of the interim requirement. For each permit, interim dates and the final date for compliance must, to the extent practicable, fall on the last day of the months of March, June, September and December.

*3.] must contain a schedule to reach compliance with those requirements. The schedule must set forth interim requirements and the dates for their achievement.*

*(b)* Not later than 14 days following each interim date and the final date [of compliance,] *for compliance contained in the schedule,* the holder of the permit shall provide the director with written notice of the holder's compliance or noncompliance with the interim or final requirement.

**[4. On the last day of the month of February, May, August and November, the director shall transmit to the regional administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a holder of a permit to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement as required pursuant to subsection 3. The list must be available to the public for inspection and copying and must contain at least the following information with respect to each instance of noncompliance:**

**(a) The name and address of each noncomplying holder of a permit;**

**(b) A short description of each instance of noncompliance (for example, failure to submit preliminary plans, a two-week delay in commencement of construction of a treatment facility; or failure to notify the director of compliance with an interim requirement to complete construction by June 30);**

**(c) A short description of any actions or proposed actions by the holder of the permit to comply or the director to enforce compliance with the interim or final requirement; and**

(d) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (for example, construction delayed due to materials shortage or plan approval delayed by objections from the state fish and wildlife agency).

5.] (c) If a holder of a permit fails or refuses to comply with an interim or final requirement in a permit, such noncompliance constitutes a violation of the permit for which the director may suspend or revoke the permit or take direct enforcement action.

*2. A compliance schedule to bring an existing point source into compliance with a discharge limitation based on a water quality standard may be established in a permit for the point source if:*

*(a) The schedule requires compliance with the discharge limitation as soon as practicable; and*

*(b) The owner or operator of the point source demonstrates that the requirements of §§ 301(b) and 306 of the Act have been satisfied and that the point source cannot comply immediately with the discharge limitation through the application of existing water pollution control technology or operational changes.*

**Sec. 3.** NAC 445A.297 is hereby amended to read as follows:

1. Each application for a zone of mixing must be reviewed in light of the descriptions, statements, plans, histories and other supporting information.

2. The review must result in a determination by the director concerning the appropriateness of a zone of mixing for each water quality parameter, by discharge, identified in the application.

3. Zones of mixing must not be granted by the director unless [:

**(a) The] *the*** applicant and supporting information clearly demonstrate that the discharge occurring or proposed to occur:

**[(1)] (a)** Does not substantially endanger human health or safety;

**[(2)] (b)** Will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on that body of water; **and**

**[(3)] (c)** Will not cause a violation of water quality standards at any point designated by the director **]; and**

**(b) The regional administrator concurs in writing with the proposed zone of mixing].**

END OF LCB FILE NO. R028-95