

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 97007

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-201-97

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 [xx] Temporary [] Emergency []

Brief description of action: **Petition 97007 (LCB R-201-97)** amends Nevada Administrative Code (NAC) 445C to add regulations pertaining to allowing individuals and companies to conduct environmental audits in cooperation with regulatory agencies. The regulations provide for the consideration of reductions in penalties for criminal violations and the elimination of sanctions for civil and administrative actions. The proposed regulations define the audit agreement contents, scope and post audit reporting requirements.

Authority citation other than 233B: NRS 445C.120

Notice date: December 23, 1997, December 30, 1997, January 6, 1998

Hearing date: January 22, 1998

Date of Adoption of Agency: January 22, 1998

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 97007 (LCB R-201-97)**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445C. This regulation dealt with establishing rules for environmental audits.

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 97007 (LCB R-201-97), was noticed three (3) times: December 23, 1997, December 30, 1997 and January 6, 1998 as a permanent regulation in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. The public was also mailed the public notice through the Environmental Commission's mailing list. The Division of Environmental Protection also did a direct mailing to affected public agencies and businesses. A regulatory workshop was held on November 12, 1997 in Carson City and November 12, 1997 in Las Vegas. These workshops were publicly noticed on November 6, 1997 in the two aforementioned newspapers. At the hearing of January 22, 1998 the Nevada Environmental Coalition spoke and provided written comments (Exhibit 1) opposing the audits, in protest of the Clark County Air Pollution Control District being given allowed any additional authority. Of note, the comments were not applicable to the proposed environmental audit regulations. Citizen Alert was supportive of the amendments, but questioned the long term utility of the audit legislation and regulations. The regulations were also supported by the Nevada Manufacturers Association and the Nevada Mining Association at the aforementioned workshops. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 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; | 38 |
| (b) | Testified at each hearing: | 25 |
| (c) | Submitted to the agency written comments: | 8 |

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. See above statement for dates and locations of workshops and notices. No comments were received from affected businesses regarding the regulations. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 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 with one amendment at the January 22, 1998 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.

The proposed regulation is not expected to have an adverse economic impact to the regulated community since environmental audits are voluntary. A company entering into an audit does so to evaluate their environmental compliance status and to receive certain benefits for reporting audit results. An entity entering into such an audit must balance the economic benefits of performing the audit with the effect of environmental compliance. The short and long term benefit will increase compliance and reduce fines and penalties. There is no anticipated adverse or beneficial economic impacts to the public. No immediate or long term economic effects on the public are anticipated.

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

There will be no increased cost to the Division of Environmental Protection for enforcement of 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.

There are no other state or government agencies which the proposed regulation overlaps or duplicates.

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

There are no federal regulations concerning environmental audits.

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.

**ADOPTED REGULATION OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION**

LCB File No. R201-97

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

AUTHORITY: §§2-14, NRS 445C.120.

Section 1. Chapter 445C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *"Division" means the division of environmental protection of the state department of conservation and natural resources.*

Sec. 4. *"Environmental audit" has the meaning ascribed to it in NRS 445C.020.*

Sec. 5. *"Environmental audit agreement" means a written agreement between a regulatory agency and a regulated person that:*

- 1. Allows the regulated person to conduct an environmental audit; and*
- 2. Complies with the provisions of this chapter and chapter 445C of NRS.*

Sec. 6. *"Environmental requirement" has the meaning ascribed to it in NRS 445C.030.*

Sec. 7. *"Regulated facility" has the meaning ascribed to it in NRS 445C.040.*

Sec. 8. *"Regulated person" has the meaning ascribed to it in NRS 445C.050.*

Sec. 9. *"Regulatory agency" has the meaning ascribed to it in NRS 445C.060.*

Sec. 10. *1. A regulatory agency shall not enter into an environmental audit agreement with a regulated person for a particular environmental requirement if the regulated person:*

(a) Has been cited for a violation of that particular environmental requirement in the immediately preceding 3 years; or

(b) Is specifically required to comply with that particular environmental requirement pursuant to:

- (1) The general or specific conditions or limitations contained in a permit; or*
- (2) The terms of a judicial order, administrative order, consent order, consent agreement or any other agreement between the regulated person and a regulatory agency.*

2. The provisions of this section do not limit the authority of the regulatory agency to enter into an environmental audit agreement with the regulated person for any other environmental requirement

that is not subject to the provisions of subsection 1.

Sec. 11. *In addition to the requirement set forth in NRS 445C.070 and 445C.080, an environmental audit agreement must include, but is not limited to:*

- 1. The name of each regulated facility that is subject to the agreement.*
- 2. The name of each regulated person who is subject to the agreement.*
- 3. The statutory and regulatory scope of the environmental audit.*
- 4. An enforceable commitment by the regulated person to disclose voluntarily any violation of an environmental requirement that is discovered as a result of the environmental audit.*
- 5. The methods, processes and procedures that are to be used to conduct the environmental audit and to evaluate compliance with environmental requirements.*
- 6. The identity of each person who will be conducting the environmental audit, including, but not limited to, any consultant or contractor.*
- 7. The period within which the environmental audit must be conducted, including, but not limited to, the date for submitting a final report for the environmental audit.*
- 8. The period within which any violation of an environmental requirement that is discovered as a result of the environmental audit must be reported.*
- 9. The procedures for modifying the environmental audit agreement if the regulated person and the regulatory agency specifically agree to a modification.*
- 10. The procedures for terminating the environmental audit agreement if the regulated person does not comply with the terms of the agreement.*
- 11. A provision informing the regulated person that the provisions of this chapter and chapter 445C of NRS:*
 - (a) Apply to state and local environmental requirements only; and*
 - (b) Do not create any rights, privileges or immunities with regard to any actions taken by the federal government pursuant to a federal law or regulation, unless the federal law or regulation provides otherwise.*

Sec. 12. *1. A consultant who is hired by a regulated person to conduct an environmental audit must be certified by the division pursuant to NAC 459.970 to 459.9729, inclusive.*

2. As used in this section, "consultant" has the meaning ascribed to it in NAC 459.9701.

Sec. 13. *If a violation of an environmental requirement is discovered as a result of an environmental audit, the regulated person shall enter into an enforceable agreement with the regulatory agency. The enforceable agreement must include, but is not limited to:*

- 1. A list of each specific violation of an environmental requirement that was discovered as a result of the environmental audit.*
- 2. The actions that are to be taken by the regulated person to bring the regulated facility into compliance and the dates by which those actions are to be completed.*
- 3. The actions that are to be taken by the regulated person to remedy any damage or other harm caused by each violation and the dates by which those actions are to be completed.*
- 4. The actions that are to be taken by the regulated person to prevent similar violations in the future and the dates by which those actions are to be completed.*

Sec. 14. 1. A regulatory agency shall consider the following to be public records that are open to inspection and copying pursuant to the provisions of chapter 239 of NRS:

(a) All environmental audit agreements.

(b) All information relating to an environmental audit that is obtained by a regulatory agency, whether or not such information is privileged and inadmissible in an administrative proceeding or civil action against a regulated person pursuant to NRS 445C.110. The information described in this paragraph includes, but is not limited to, all data, documents, reports, results or schedules relating to an environmental audit that are submitted by a regulated person to a regulatory agency.

2. The division shall maintain a public registry that contains:

(a) A listing of each regulated person who has entered into an environmental audit agreement and each environmental requirement that is covered by each such agreement;

and

(b) Any other information relating to environmental audits and environmental audit agreements that the division determines is appropriate for inclusion in the public registry.

END OF PETITION LCB File No. R201-97