

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

**LCB File No. R126-03**

Effective April 13, 2004

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

AUTHORITY: §§1-25, NRS 459.485, 459.490 and 459.500.

A REGULATION relating to controls over sanitation and water pollution; making various changes to provisions governing facilities for management of hazardous waste, disposal of hazardous waste, recycling of used antifreeze, polychlorinated biphenyl and water pollution controls to comply with federal law; and providing other matters properly relating thereto.

**Section 1.** NAC 444.84225 is hereby amended to read as follows:

444.84225 “Class 3 modification” has the meaning ascribed to it in Appendix I of 40 C.F.R. § 270.42 ~~[pursuant to the provisions of]~~, *as adopted by reference in* NAC 444.8632.

**Sec. 2.** 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, ~~[2002.]~~ *2003.*

**Sec. 3.** 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, ~~2002.~~ **2003.**

**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, ~~2002.~~ **2003,** have the meanings ascribed to them in that section.

**Sec. 5.** NAC 444.8618 is hereby amended to read as follows:

444.8618 A generator, transporter or facility owner or operator who is required to obtain an EPA identification number pursuant to 40 C.F.R. § 262.12, 263.11, 264.1(j)(1), 264.11 or 265.11 may obtain information relating to the procedure to obtain the identification number and an application by submitting a ~~written~~ request *in writing* to the Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, Nevada 89706-0851 ~~[-],~~ *or by telephone at 775.687.9481.*

**Sec. 6.** 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, ~~2002,~~ **2003**, 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 these sections and parts.

2. The volumes containing these 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 ~~[\$54]~~ **\$60**
- (b) Volume 40 C.F.R. Part 124 ~~[38]~~ **43**
- (c) Volume 40 C.F.R. Parts 260 to 265, inclusive ~~[45]~~ **50**
- (d) Volume 40 C.F.R. Parts 266 to 299, inclusive ~~[45]~~ **47**

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

444.8688 1. A person ~~[who desires to]~~ ***shall not*** transfer hazardous waste from a transport vehicle directly to a boiler or industrial furnace ~~[shall first obtain]~~ ***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, 2003.***

**Sec. 8.** NAC 444.8693 is hereby amended to read as follows:

444.8693 An owner or operator of a facility for the management of hazardous waste may seek a variance from the requirements of 40 C.F.R. Parts 260, 264 and 268, as adopted  ~~pursuant~~  *by reference in* NAC 444.8632, by submitting an application for the variance to the Commission.

**Sec. 9.** NAC 444.8846 is hereby amended to read as follows:

444.8846 “Identification number” means an identification number issued by the Environmental Protection Agency  ~~]~~  *or by an agency of a state authorized by the Environmental Protection Agency to issue such numbers.*

**Sec. 10.** NAC 444.8871 is hereby amended to read as follows:

444.8871 1. The provisions of NAC  ~~[444.8806]~~  *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  ~~[October 3, 1996;]~~  *July 1, 2003;* or

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

2. The provisions of NAC  ~~[444.8806]~~  *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. 11.** 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  ~~[October 3, 1996;]~~  *July 1, 2003.*

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

**Sec. 12.** NAC 444.8896 is hereby amended to read as follows:

444.8896 If used antifreeze which is not governed by the requirements of 40 C.F.R. Part 280, Subpart F, ~~[as that subpart existed on October 3, 1996,]~~ is released into the environment, a person, center or facility that is governed by the provisions of NAC 444.8911 to 444.8931, inclusive, 444.8936 to 444.8986, inclusive, or 444.8991 to 444.9046, inclusive, shall, as soon as the release is discovered:

1. Immediately stop the release of used antifreeze into the environment;
2. Immediately contain, if possible, the used antifreeze which was released;
3. Clean up and properly manage the used antifreeze which was released and any other materials that were released; and
4. If necessary to prevent future releases of used antifreeze, repair or replace any storage tanks or containers.

**Sec. 13.** NAC 444.8901 is hereby amended to read as follows:

444.8901 In addition to the requirements of NAC 444.8896, a person, center, point for aggregation or facility that is governed by *the* provisions of NAC 444.8911 to 444.8931, inclusive, 444.8936 to 444.8986, inclusive, or 444.8991 to 444.9046, inclusive, shall, not more than 24 hours after a release, report the release by telephone ~~[pursuant to the requirements for reporting set forth in 40 C.F.R. Part 302, as that part existed on October 3, 1996,]~~ to:

1. The National Response Center, in accordance with 40 C.F.R. Part 302, ~~[as that part existed on October 3, 1996,]~~ at 800.424.8802 or ~~[202.462.2675;]~~ **202.267.2675**; and

2. The Director of the State Department of Conservation and Natural Resources at ~~[800.992.0900 extension 4670, or 775.687.4670.]~~ **888.331.6337 or 775.687.9485.**

**Sec. 14.** NAC 444.8906 is hereby amended to read as follows:

444.8906 If used antifreeze is released into a body of water in this state, a person, center, point for aggregation or facility that is governed by the provisions of NAC 444.8911 to 444.8931, inclusive, 444.8936 to 444.8986, inclusive, or 444.8991 to 444.9046, inclusive, shall, not more than 24 hours after a release, report the release by telephone to the Director of the State Department of Conservation and Natural Resources at ~~[800.992.0900 extension 4670, or 775.687.4670.]~~ **888.331.6337 or 775.687.9485.**

**Sec. 15.** NAC 444.8911 is hereby amended to read as follows:

444.8911 1. The provisions of NAC 444.8911 to 444.8931, inclusive, apply to:

(a) Generators of used antifreeze, except for persons who generate used antifreeze from their households.

(b) Centers for the collection of used antifreeze.

(c) Points for aggregation.

2. The provisions of NAC 444.8911 to 444.8931, inclusive, do not apply to wastewater which contains a small amount of used antifreeze, if the discharge of antifreeze is governed by paragraph (b) of section 307 of the Clean Water Act, ~~[§ 33 U.S.C. § 1317, ], as that section existed on October 3, 1996,~~ or section 402 of the Clean Water Act, ~~[§ 33 U.S.C. § 1342 . ], as that section existed on October 3, 1996.]~~ For the purposes of this subsection, wastewater contains a small amount of used antifreeze if the antifreeze is discharged as a result of small spills, leaks or drips from pumps, machinery, pipes and other equipment which occur during normal operations of the facility or discharged into a system for the treatment of wastewater during the

washing or draining operations of the system. Wastewater contains more than a small amount of used antifreeze if the antifreeze is discharged as a result of substantial leaks, spills or other releases which occur during abnormal operations of the facility, or if the used antifreeze is recaptured from the wastewater.

**Sec. 16.** 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 ~~October 3, 1996.~~ *July 1, 2003.*

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. 17.** 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 ~~subsection 2~~ *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 ~~October 3, 1996,~~ *July 1, 2003*, 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. 18.** 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 ~~October 3, 1996,~~ *July 1, 2003*, before he transports the used antifreeze.

**Sec. 19.** NAC 444.8951 is hereby amended to read as follows:

444.8951 1. Except as otherwise provided in subsection 2 of NAC 444.8931, a transporter of used antifreeze must hold an identification number. ~~An identification number may be obtained from the Environmental Protection Agency by submitting to the Administrator a completed EPA Form 8700-12. This form is available, upon request, by telephone at 800.882.3233.~~ *A person may obtain information relating to the procedure to obtain the identification number and an application by submitting a request in writing to the Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, Nevada 89706-0851, or by telephone at 775.687.9481.*

2. A transporter of used antifreeze shall comply with all applicable provisions of 49 C.F.R. Parts 173, 178 and 179, ~~as those parts existed on October 3, 1996,~~ which govern the packaging, labeling and placarding of hazardous waste.

**Sec. 20.** NAC 444.8976 is hereby amended to read as follows:

444.8976 If used antifreeze is released during transportation into a body of water which is located in this state, the person who transports the used antifreeze shall:

1. Comply with the ~~requirements of notice set forth in NAC 444.8896;~~ *provisions of NAC 444.8906;*

2. If required by 40 C.F.R. Part 302 ~~[, as that part existed on October 3, 1996,]~~ or 49 C.F.R. § 171.15, ~~[as that section existed on October 3, 1996,]~~ report the release to the National Response Center at 800.424.8802 or ~~[202.426.2675;]~~ *202.267.2675;* and

3. ~~[In accordance with]~~ *If required by* 49 C.F.R. § 171.16, ~~[as that section existed on October 3, 1996,]~~ provide a written report of the release to the Information Systems Manager, *DHM-63*, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20509-0001.

**Sec. 21.** NAC 444.8996 is hereby amended to read as follows:

444.8996 1. An owner or operator of a facility for the recycling of used antifreeze shall obtain a written determination from the Administrator pursuant to NAC 444.8455 and 444.84555.

2. An owner or operator of a facility for the recycling of used antifreeze shall obtain an identification number. ~~[An identification number may be obtained from the Environmental Protection Agency by submitting to the Administrator a completed Form # 8700-12. This form is available, upon request, by telephone at 800.882.3233.]~~ *A person may obtain information relating to the procedure to obtain the identification number and an application by submitting a request in writing to the Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, Nevada 89706-0851, or by telephone at 775.687.9481.*

**Sec. 22.** 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 ~~October 3, 1996.~~ *July 1, 2003.*

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 which are set forth in 40 C.F.R. § 265.310, as that section existed on ~~October 3, 1996.~~ *July 1, 2003.*

**Sec. 23.** 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 ~~October 3, 1996.~~ *July 1, 2003.*

**Sec. 24.** 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 they existed on July 1, ~~2002.~~ *2003.*

2. The volumes containing these 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 ~~[\$45]~~ \$50
- (b) The volume containing 40 C.F.R. Parts 266 to 299, inclusive ~~[45]~~ 47
- (c) The volume containing 40 C.F.R. Part 761 ~~[\$5]~~ 61

**Sec. 25.** 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 , ~~[notify the Director]~~ as soon as possible after he has knowledge of a release described in subsection 2 that involves his facility, but not later than the end of the first working day after the release ~~[-The notice must be]~~ , *provide notice of the release to the Director* by telephone at ~~[800.992.0900, extension 4670 or 775.687.4670.]~~ *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 to the soil or other surfaces of land in a quantity greater than 25 gallons; or

(2) Discovered on or in the ground water or in at least 3 cubic yards of soil during excavation of soil, subsurface exploration, monitoring of ground water or any other subsurface activity.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R126-03**

The State Environmental Commission adopted regulations assigned LCB File No. R126-03 which pertain to chapters 444 & 445A of the Nevada Administrative Code on February 26, 2004.

**Notice date:** 1/23/2004  
**Hearing date:** 2/26/2004

**Date of adoption by agency:** 2/26/2004  
**Filing date:** 4/13/2004

**INFORMATIONAL STATEMENT**

The following statement is submitted for adopted amendments to Nevada Administrative Code Chapter NAC 444 and 445 – Hazardous Waste Regulations: The State of Nevada is authorized by the United States Environmental Protection Agency (US EPA) to enforce federal hazardous waste regulations. Between July 1, 2002, and July 1, 2003, the EPA approved revisions to existing federal hazardous waste regulations and published them in the Federal Register. The State of Nevada is required to modify its state regulations accordingly. The Nevada Division of Environmental Protection (NDEP) is proposing to incorporate these federal revisions into state regulations by adopting the applicable sections of the Federal Register as it existed on July 1, 2003. Updating these regulations will allow NDEP to continue to implement the RCRA program in lieu of the federal government. The petition also includes state initiated minor corrections and updates to existing hazardous waste regulations in NAC 444 and 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 2003-16 (Permanent)** was noticed Notice in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates – January 28, February 4, and February 11, 2004. A regulatory workshop was conducted by the Bureau of Waste Management October 1<sup>st</sup> at the Nevada Division of Environmental Protection, Conference Room 217, 123 West Nye Lane, Carson City, Nevada. The regulation (Permanent) was subsequently adopted by the State Environmental Commission (SEC) on February 26, 2003.

There was no public oral and/or written comments received by the Commission during adoption. The public was mailed a public notices and meeting agendas for the SEC meetings.

**2. The number of persons who:**

(a)	<b>Attended February 26, 2004 hearing;</b>	40
(b)	<b>Testified on this Petition at the hearing:</b>	1
(c)	<b>Submitted to the agency written comments:</b>	0

**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. In addition the workshop notices were posted on Division of Environmental Protections website (see: <http://ndep.nv.gov/admin/public.htm> ). The proposed regulations (Petition) was also posted on the website hosted by the State Environmental Commission at (<http://www.sec.nv.gov/main/hearing0204.htm>). For this petition no written or oral comment was received from affected businesses or members of the public.

**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 regulation was adopted by the State Environmental Commission on February 26, 2004 without request for amendment by staff of the Nevada Division of Environmental Protection.

**5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.**

The proposed regulation is not anticipated to have any significant economic impact on Nevada businesses, but conversely should make it easier for affected business to comply by simplifying the requirements.

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

There will be no additional costs to the agency for enforcement of these amendments and the regulations.

**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 regulation will not duplicate or overlap existing federal regulations and will not include any new provisions which are more stringent than federal regulations.

**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 what is established by federal law.

**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.**

The regulation will not provide for a new fee nor increase an existing fee.