

ADOPTED REGULATION OF THE STATE
ENVIRONMENTAL COMMISSION

LCB File No. R208-03

Effective April 16, 2004

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

AUTHORITY: §§1-5, NRS 459.485, 459.490 and 459.500.

A REGULATION relating to hazardous waste; providing a definition of delisted waste;
providing a definition of remediation waste; revising the definition of hazardous
waste; and providing other matters properly relating thereto.

Section 1. Chapter 444 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Delisted waste” means waste that the EPA removed from the list of hazardous wastes located in 40 C.F.R. Part 261, Subpart D, as a result of a successful petition for a regulatory amendment pursuant to 40 C.F.R. § 260.20 or 40 C.F.R. § 260.22.*

Sec. 3. *“Remediation waste” has the meaning ascribed to it in 40 C.F.R. § 260.10.*

Sec. 4. NAC 444.842 is hereby amended to read as follows:

444.842 As used in NAC 444.842 to 444.8482, inclusive, unless the context otherwise requires, the words and terms defined in NAC 444.8422 to 444.8444, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 444.843 is hereby amended to read as follows:

444.843 1. “Hazardous waste” has the meaning ascribed to it in NRS 459.430.

2. The term includes any:

(a) Hazardous waste or constituent of hazardous waste which is subject to regulation under 40 C.F.R. Part 261;

(b) Waste containing polychlorinated biphenyl; and

(c) Waste brought into this state which is designated as hazardous waste in the state of its origin ~~H~~ *unless the waste:*

(1) Is remediation waste or delisted waste;

(2) Does not meet the requirements of paragraph (a) of subsection 2; and

(3) Is disposed of at a facility for the management of hazardous waste.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R208-03**

The State Environmental Commission adopted regulations assigned LCB File No. R208-03 which pertain to chapter 444 of the Nevada Administrative Code.

Notice date: 1/23/2004

Hearing date: 2/26/2004

Filing date: 4/16/2004

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code NAC 444.843 Hazardous waste" defined. NAC 444.843: This regulation makes limited changes to the state's definition of hazardous waste as defined at NAC 444.843. These changes establish and define two (2) sub categories of waste (remediation and delisted) and provide a conditional exclusion for out of state remediation and delisted wastes from designation as a hazardous waste in Nevada provided they are not federal hazardous waste and they are disposed at a hazardous waste management facility. This revision will provide for more uniform regulatory treatment and equitable assignment of fees when such wastes are managed in Nevada. Implementing this regulation will allow Nevada to adjust (i.e., reduce) the current fee structure, as it applies to wastes that are no longer hazardous wastes, such that hazardous waste disposal facilities in Nevada can more evenly compete for wastes in these categories. The regulations pertain to NAC 444.842 to 444.960, inclusive.

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.

The Nevada Division of Environmental Protection (NDEP), Bureau of Waste Management (BWM) solicited comments from the public and the business community at a workshop held in Carson City on January 06, 2004. At the workshop questions were posed and answered by BWM staff; the minutes of the workshop were subsequently posted on NDEP's (see: http://www.sec.nv.gov/docs/2003-08_minutes.pdf)

In addition to oral comments presented at the referenced workshop, numerous written comments (i.e. formal letters and Emails) were submitted by a variety of public and private entities such as county governments, federal agencies, state elected officials, businesses and business associations. Because the written comments and subsequent responses prepared by BWM staff were voluminous, BWM staff included a compendium "Comments / Responses document as a Exhibit #4 at the SEC hearing held on February 26, 2004. A paper copy of Exhibit#4 is available upon request from the SEC administrative record. The proposed regulation was also noticed by the State Environmental Commission 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. The public was subsequently mailed a public notice and meeting agenda for the SEC hearing; the SEC mailing list was used for both mailings.

At the SEC hearing public comments were received by the Commission during the adoption hearing for the referenced regulation (see below).

2. The number persons who:

- (a) Attended February 26, 2004 hearing; 40**
- (b) Testified on this Petition at the hearing: 7**
- (c) Submitted to the agency written comments: 4**

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 above and by direct mail to interested persons subscribing to the Commission's mailing list. For additional details see #1 above.

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.

After the solicitation of public comments was concluded, changes to the regulation were made and subsequently agreed to by staff of the Legislature Counsel Bureau. Although public testimony in support of, and against the regulations, was presented at the February 26, 2004, SEC hearing, the regulations were adopted by the SEC as presented.

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

Because the amendment will only affect wastes that originate from outside the state of Nevada, there is no immediate economic effect to waste generating businesses in Nevada, as a result of the proposed changes. The changes will benefit hazardous waste disposal companies operating in Nevada that receive wastes in these subcategories. The estimated economic effect on the public is determined to be beneficial due to the continued availability of hazardous waste disposal capacity in Nevada. The public also benefits from added state revenue collected from the disposal of all wastes at the hazardous waste disposal facility.

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

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 does not overlap or duplicate any regulations of other state or government agencies.

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

These regulations are more stringent than the federal regulation in that the federal regulations do not provide for, or establish, fees for the disposal of waste. The proposed regulations are less stringent than current state regulations defining a hazardous waste, but are at least as stringent as the federal definition of hazardous waste.

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.

All fees collected pursuant to NAC 444.8452 regardless of the impact of the proposed change to the state's definition of hazardous waste, will continue to be deposited in the hazardous waste management fund and used for the purposes established by NRS 459.535. Although the Public Service Commission and Division of Emergency Management will not receive funds from fees paid on the new proposed waste sub categories, these changes should prolong the expected life and productive capacity of hazardous waste disposal facilities in Nevada. Additionally, continued operation of these facilities is a benefit to businesses that are located in Nevada and generate hazardous waste requiring disposal.