

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R153-08

Effective April 23, 2009

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

AUTHORITY: §§1-9 and 11-14, NRS 459.485; §10, NRS 459.485 and 459.550.

A REGULATION relating to hazardous waste; amending provisions governing the generation, transportation, treatment, storage, disposal and management of hazardous waste to provide that the references to sections of the Code of Federal Regulations contained in those provisions are references to the sections of the Code of Federal Regulations as they exist on July 1, 2008; adopting other provisions by reference; and providing other matters properly relating thereto.

Section 1. 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, ~~2007.~~ *2008.*

Sec. 2. 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, ~~2007,~~ 2008.

Sec. 3. 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, ~~2007,~~ 2008, have the meanings ascribed to them in that section.

Sec. 4. 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, ~~2007,~~ 2008, 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 those sections and parts.

2. The volumes containing those parts may be obtained *by mail* from the Superintendent of Documents, *U.S. Government Printing Office*, P.O. Box ~~371954, Pittsburgh, Pennsylvania~~

~~15250-7954,~~ 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, for the following prices:

- (a) Volume 40 C.F.R. ~~[Part 2]~~ *Parts 1 to 49, inclusive* \$60
- (b) Volume 40 C.F.R. ~~[Part 124]~~ *Parts 100 to 135, inclusive* ~~[45]~~ 48
- (c) Volume 40 C.F.R. Parts 260 to 265, inclusive ~~[50]~~ 53
- (d) Volume 40 C.F.R. Parts 266 to 299, inclusive 50

Sec. 5. NAC 444.86325 is hereby amended to read as follows:

444.86325 1. The following sections and parts of Title 40 of the Code of Federal Regulations, and any reference to those sections and parts, are not adopted by reference:

- (a) Section 2.101(a)(1)-(10);
- (b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;
- (c) Sections 260.1(b)(4)-(6) and 260.20, 260.21 and 260.22;
- (d) Section 261.5(j);
- (e) Part 262, Subpart H;
- (f) Sections 264.1(d), 264.1(f), 264.149, 264.150, 264.301(1), 264.1050(h), 265.1(c)(4), 265.149, 265.150, 265.430 and 265.1050(g);
- (g) Section 266.111;
- (h) Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) and 268.44;
- (i) Sections 270.1(c)(1)(i), 270.60(b) and 270.64; ~~[and]~~
- (j) *Part 278; and*

(k) Sections 279.10(b)(2), 279.10(b)(3), 279.10(c), 279.10(d)(1), 279.42(b)(2), 279.51(b)(2), 279.62(b)(2) and 279.73(b)(2).

2. The following parts and sections of Title 40 of the Code of Federal Regulations are adopted by reference, as revised in this subsection:

(a) Part 124 is adopted with the following exceptions:

(1) Delete all references to appeals to the Administrator in section 124.5(b);

(2) Delete all references to “EPA-issued permits” and insert in its place “permits issued by the Department,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);

(3) Delete all references to “when EPA is the permitting issuing authority” and insert in its place “when the Department is authorized to issue a permit,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);

(4) Subpart A is adopted solely for the purpose of establishing procedures for permits for the management of hazardous waste, except that all references to “UIC,” “PSD” and “NPDES” are deleted;

(5) Delete all references to “RCRA part B,” “part B RCRA” and “part B” and insert in their place “NRS 459.400 to 459.600, inclusive,” in sections 124.31 and 124.32; and

(6) Delete from sections 124.31(a), 124.32(a) and 124.33(a) the following sentence: “For the purposes of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 C.F.R. part 271.”

(b) Section 260.2(a) is adopted except that the Freedom of Information Act, 5 U.S.C. § 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act

and section 3007(b) must be replaced with “NRS 459.555 and any regulations adopted pursuant thereto.”

(c) *Section 260.11(a) is adopted except that “and 278” is deleted.*

(d) *Section 260.11(c)(3)(vii) is adopted except that “and § 278.3(b)(1)” is deleted.*

(e) Section 260.33(b) is adopted except that “in the locality where the recycler is located” is deleted.

~~(d)~~ (f) Section 260.41(a) is adopted except that “or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal” is deleted.

~~(e)~~ (g) Section 261.4(e)(3)(iii) is adopted except that “in the Region where the sample is collected” is deleted.

~~(f)~~ (h) Section 262.11(c)(1) is adopted except that “, or according to an equivalent method approved by the Administrator under 40 C.F.R. Part 260.21” is deleted.

~~(g)~~ (i) Sections 262.42(a)(2) and 262.42(b) are adopted except that “for the Region in which the generator is located” is deleted.

~~(h)~~ (j) Sections 264.18(c) and 265.18 are adopted except that “except for the Department of Energy Waste Isolation Pilot Project in New Mexico” is deleted.

~~(i)~~ (k) Sections 264.143(h), 264.145(h), 265.143(g) and 265.145(g) are adopted except that “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions” is deleted.

~~(j)~~ (l) Sections 264.147(a)(1)(i), 264.147(b)(1)(i) and 265.147(a)(1)(i) are adopted except that “or Regional Administrators if the facilities are located in more than one Region” is deleted.

~~[(k)]~~ (m) Section 264.151 is adopted with the following exceptions:

- (1) Delete all references to “(of/for) the Regions in which the facilities are located”; and
- (2) Delete “an agency of the United States Government” from the second paragraph of the trust agreement.

~~[(h)]~~ (n) Part 270 is adopted except that all references to “interim authorization” are deleted.

~~[(m)]~~ (o) Section 279.40(c) is adopted except that “unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste” is deleted.

Sec. 6. NAC 444.8688 is hereby amended to read as follows:

444.8688 1. A person shall not transfer hazardous waste from a transport vehicle directly to a boiler or industrial furnace 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, ~~[(2007)]~~ 2008.

Sec. 7. NAC 444.8871 is hereby amended to read as follows:

444.8871 1. The provisions of NAC 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 July 1, ~~[(2007)]~~ 2008; or

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

2. The provisions of NAC 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. 8. 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 July 1, ~~2007.~~ 2008.

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

Sec. 9. 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 July 1, ~~2007.~~ 2008.

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. 10. 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 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 July 1, ~~2007,~~ 2008, 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. 11. 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 July 1, ~~2007,~~ 2008, before he transports the used antifreeze.

Sec. 12. 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 July 1, ~~2007,~~ 2008.

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 set forth in 40 C.F.R. § 265.310, as that section existed on July 1, ~~2007.~~ **2008.**

Sec. 13. 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 July 1, ~~2007.~~ **2008.**

Sec. 14. 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 those sections, subparts and parts existed on July 1, ~~2007.~~ **2008.**

2. The volumes containing those sections, subparts and parts may be obtained *by mail* from the Superintendent of Documents, *U.S. Government Printing Office*, P.O. Box ~~371954, Pittsburgh, Pennsylvania 15250-7954,~~ **979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800**, for the following prices:

- (a) The volume containing 40 C.F.R. Parts 260 to 265, inclusive~~[\$50]~~ **\$53**
- (b) The volume containing 40 C.F.R. Parts 266 to 299, inclusive..... 50
- (c) The volume containing 40 C.F.R. ~~[Part 761]~~ **Parts 700 to 789, inclusive**~~[61]~~ **64**

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R153-08**

The State Environmental Commission adopted regulations assigned LCB File No. R153-08 which pertain to chapter 444 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

Regulation R153-08: Adopt by Reference Changes to the Federal Hazardous Waste

Regulations: This regulation amends NAC 444. The proposed regulation adopts by reference changes to the federal hazardous waste regulations through July 1, 2008. Changes include the revision to an existing exclusion from the definition of solid waste (and thus from regulation as hazardous waste) for recycled oil bearing hazardous secondary materials and clarifications to previously approved air pollution regulations.

1. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary. The Nevada Division of Environmental Protection (NDEP) Bureau of Waste Management held a regulatory workshop on the above referenced regulation on September 30, 2009. The workshop was held at 10:00 am as a simulcast (i.e. video conference) between NDEP's Carson and Las Vegas Offices.

The purpose of the workshop was to inform the public and regulated community about the proposed regulatory changes and solicit comments from interested persons. As noted in the workshop notice, NDEP proposed to modify its state regulations by incorporating certain federal [Hazardous Waste] revisions into state regulations by adopting the applicable sections of the Federal Register as it existed on July 1, 2008. Once adopted, the proposed state regulations would modify existing state regulations to make them consistent with existing federal requirements.

Following this workshop, the State Environmental Commission (SEC) held a public hearing to consider the regulation on February 11, 2009. The hearing was conducted as a video conference in Carson City and Las Vegas. The hearing location in Carson City was the Bryan Building located at 901 South Stewart Street. In Las Vegas the hearing location was at the offices of the Nevada Division of Environmental Protection, 2030 E. Flamingo Rd. Suite 230.

The SEC hearing agenda was posted at the meeting locations, at the State Library in Carson City, at the Offices of the Division of Environmental Protection in Carson City and Las Vegas and at the Department of Wildlife in Reno. Copies of the agenda, the public notice, and the proposed regulation were also made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the regulation was published on January 26th, February 2nd and February 9th 2009 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at:
http://sec.nv.gov/main/hearing_021109.htm

2. The number persons who attended the SEC Regulatory Hearing:

- (a) Attended February 11, 2009 hearing; 30 (approx.)
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses and responded to through e-mail and telephone exchanges, working meetings and the public workshop indicated in number 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.

The LCB draft of the regulation was not amended by the agency. The draft of the regulation was posted on the SEC web site during the public participation process. The SEC adopted the amended draft of the regulation without any changes.

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

None.

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

There will be no additional cost to the agency for enforcement of the proposed 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.

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.

The regulation is not more stringent than any local or federal laws and 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.

The proposed regulation does not address any fees.