

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R031-11

September 15, 2011

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

AUTHORITY: § 1, NRS 459.485.

A REGULATION relating to hazardous materials; repealing provisions governing the award of grants for the reduction of hazardous or industrial waste; and providing other matters properly relating thereto.

Section 1. NAC 444.8752, 444.8754, 444.8756, 444.8758, 444.8762, 444.8764, 444.8766, 444.8768, 444.8776, 444.8778, 444.8782, 444.8784, 444.8786 and 444.8788 are hereby repealed.

TEXT OF REPEALED SECTIONS

444.8752 Definitions. (NRS 459.485) As used in NAC 444.8752 to 444.8788, inclusive, unless the context otherwise requires, the words and terms defined in NAC 444.8754 to 444.8768, inclusive, have the meanings ascribed to them in those sections.

444.8754 “Disposal” defined. (NRS 459.485) “Disposal” has the meaning ascribed to it in NRS 459.425.

444.8756 “Division” defined. (NRS 459.485) “Division” means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

444.8758 “Facility for the management of hazardous waste” defined. (NRS 459.485) “Facility for the management of hazardous waste” has the meaning ascribed to it in NAC 444.8428.

444.8762 “Generator” defined. (NRS 459.485) “Generator” means any natural person, any form of business or social organization or any other legal entity, including, but not limited to, a corporation, partnership, association, trust or unincorporated organization, or a state or local government, governmental agency or political subdivision of a state or local government, that produces hazardous or industrial waste in Nevada. The term does not include the Federal Government or any agency or political subdivision of the Federal Government.

444.8764 “Hazardous waste” defined. (NRS 459.485)

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.

444.8766 “Industrial waste” defined. (NRS 459.485) “Industrial waste” means a solid, semi-solid or liquid waste that:

1. Results from an industrial, manufacturing, service or commercial activity; and
2. Is managed as a waste stream independent of municipal solid waste.

444.8768 “Reduction” defined. (NRS 459.485)

1. “Reduction” means action by a generator that:
 - (a) Decreases the total quantity of hazardous or industrial waste generated through abatement, minimization, reuse or recycling; or
 - (b) Decreases the quantity of one or more types of hazardous or industrial waste that results in a decrease in the risk to the public health and safety or to the environment, but does not decrease the total quantity of hazardous or industrial waste generated.
2. As used in this section:
 - (a) “Abatement” means the elimination or reduction of the quantity of hazardous or industrial waste produced through an industrial process by the addition or substitution of a substance or piece of equipment.
 - (b) “Minimization” means a decrease in the quantity of hazardous or industrial waste as a result of the internal practices of a generator or technology that increases the concentration of waste.
 - (c) “Recycling” means any process which uses hazardous or industrial waste to produce products or energy or to recover materials.
 - (d) “Reuse” means reutilization of hazardous or industrial waste by the generator as the waste was generated or with minor modification.

444.8776 Applications for grants: Solicitation; submission; contents. (NRS 459.485)

1. The Division may solicit applications for grants for the reduction of hazardous or industrial waste and establish deadlines for applications by giving public notice of the availability of grants and the deadlines. An application received after 4:30 p.m. on the last business day of the application period will be returned to the applicant.

2. An application for a grant for the reduction of hazardous or industrial waste may be submitted to the Division by:

(a) A generator; or

(b) An association that consists of or represents two or more generators that generate similar hazardous or industrial wastes in this State.

3. An application for a grant for the reduction of hazardous or industrial waste must be accompanied by:

(a) A description of the managerial and technical ability of the applicant to study the feasibility of a reduction of hazardous or industrial waste and any assistance by a consultant that is anticipated;

(b) A description of the method or technology to be studied or used by the applicant and a statement explaining:

(1) Whether the method or technology to be used or studied is in existence; and

(2) Whether the study involves original or continuing research to determine the feasibility of the method or technology;

(c) A description of the hazardous or industrial waste affected by the method or technology to be studied or used by the applicant, including:

- (1) The amount of waste generated by the applicant in previous calendar years;
 - (2) An estimate of the amount of waste that will be reduced by the method or technology;
- and
- (3) A description of the method currently used to manage the hazardous or industrial waste generated by the applicant and any change in management that is anticipated after the reduction;
- (d) A statement of financial feasibility, which must include:
 - (1) The amount of grant requested;
 - (2) An estimate of the total amount of money needed to complete the project; and
 - (3) A description of any financial support that might be available to the applicant from external and internal sources; and
 - (e) Any other information deemed necessary by the Division.

444.8778 Applications for grants: Determination of eligibility and adequacy; action by Division; correction of deficiencies. (NRS 459.485)

- 1. The Division shall review each application to determine:
 - (a) The eligibility of the applicant;
 - (b) The eligibility of the proposal specified in the application;
 - (c) The eligibility of the costs specified in the application; and
 - (d) The adequacy of the supporting documentation.
- 2. Proposals designed to:
 - (a) Use a method or technology; or
 - (b) Study the feasibility of a method or technology,

↳ to reduce the amount of hazardous or industrial waste that is generated, are eligible for the grant program. These proposals may include, but are not limited to, a study of the feasibility of a method or technology that is in existence.

3. Only the costs of using or studying the feasibility of a method or technology, as described in subsection 2, are eligible for the grant program.

4. Documentation is considered adequate if it enables the Division to:

(a) Determine whether the proposal appears to be feasible;

(b) Determine whether the applicant has the managerial and technical ability and experience to carry out the proposal; and

(c) Evaluate the proposal pursuant to NAC 444.8782.

5. If the Division determines that the documentation in an application is complete, the application is considered final and the Division shall:

(a) Notify the applicant that the application is final;

(b) Evaluate the application pursuant to NAC 444.8782; and

(c) Set a date for action.

6. If the Division determines that:

(a) Any of the costs of the proposal are ineligible;

(b) Any part of the proposal is ineligible; or

(c) The documentation in the application is inadequate,

↳ the applicant may correct the application within 30 days after receiving notice of the deficiencies.

444.8782 Applications for grants: Evaluation of application that is final. (NRS 459.485)

1. In evaluating an application that is final, the Division shall consider:

(a) The goals and policies of the Bureau of Waste Management of the Division of Environmental Protection of the State Department of Conservation and Natural Resources;

(b) The significance of the reduction of hazardous or industrial waste proposed by the applicant, measured by:

(1) The potential decrease in the quantity of hazardous or industrial waste generated in this State from:

(I) The reduction proposed by the applicant; and

(II) The use of other methods of reduction by other generators; and

(2) The decrease in risk to the public health and safety and to the environment from the waste reduction, including:

(I) The decrease in the quantity of waste with a high degree of intrinsic hazard;

(II) The decrease in the quantity of waste that is untreatable and disposed on land; and

(III) The effect of the reduction proposed by the applicant on the subsequent management of the waste that will not be eliminated, including the need for further processing and steps for disposal to manage the waste properly;

(c) The merits of the specific method or technology proposed by the applicant, based upon:

(1) The decrease in the percentage of hazardous or industrial waste affected by the reduction;

(2) The increase or decrease in the percentage of hazardous or industrial waste generated by the applicant;

(3) The general applicability of the reduction proposed by the applicant to other generators in this State;

(4) The likelihood that the method or technology will successfully reduce hazardous or industrial waste;

(5) The estimated reliability of the method or technology; and

(6) The capital needed for the use of the method or technology and the costs of operating and maintaining the method or technology once it is in place;

(d) Whether the application was submitted by an association of two or more generators;

(e) The recommendations of the Division's plan for the management of hazardous waste;

(f) An evaluation of the feasibility of the proposal by an independent consultant if the Division requests such an evaluation;

(g) Whether alternative sources of financial and technical support are available to the applicant; and

(h) Whether the method or technology will be developed without the financial assistance of the Division.

2. As used in this section, "intrinsic hazard" means:

(a) The propensity of hazardous or industrial waste to migrate in the environment and result in exposure to the public; and

(b) The significance of the damage to natural resources or harm to the public that is likely, ↪ as a result of inherent or induced attributes of the waste such as its chemical and physical stability, solubility, bioconcentratability, toxicity, flammability and corrosivity.

444.8784 Awarding of grants. (NRS 459.485)

1. The Division shall award grants to those proposals, which in the judgment of the Division, best meet the factors set forth in NAC 444.8782.
2. The Division may give preference to an application filed by association of two or more generators, if the Division determines that the association significantly contributes to cooperation among generators in reducing the amount of hazardous or industrial waste generated.
3. The Division shall determine the amount of a grant based on a review of the factors set forth in NAC 444.8782 and the amount of money available for grants. Grants are limited to a maximum amount of \$30,000 per agreement. The Division may grant multiple awards to a single applicant.

444.8786 Grant agreements: Entry; contents. (NRS 459.485) The Division and the recipient of a grant shall enter into a grant agreement, which must:

1. Establish the term of the grant, which may not exceed 1 year, unless otherwise determined by the Division;
2. Establish a schedule for the payment of the grant;
3. Provide that the recipient is authorized to enter into contracts to complete the work specified in the agreement;
4. Identify the method or technology to be studied or used by the recipient;
5. Provide that the recipient shall submit the results of all studies and analyses performed under the agreement to the Division; and
6. Establish the procedure for determining the amount of money to be returned to the Division upon completion of the project, cancellation of the grant or termination of the project.

444.8788 Grants: Cancellation and termination; disbursement; examination of recipient; reimbursement of ineligible costs; return of money not spent. (NRS 459.485)

1. Unless the Division determines that a variance is justified, the Division shall cancel a grant for the reduction of hazardous or industrial waste that is not completed in accordance with its terms and conditions, including time schedules.

2. If the Division determines that a project is no longer feasible, it may, upon its own initiative or at the request of a recipient of a grant, terminate the grant 30 days after giving notice of the termination to the recipient. The Division may order a recipient to stop spending money received as a grant, effective the date the notice of termination is issued.

3. The Division shall disburse the money for grants in accordance with the schedule for payments set forth in the grant agreement.

4. If the books, records, documents and accounting procedures and practices of a recipient of a grant are relevant to the grant, they are subject to examination at any time by Division and other appropriate state officers. The recipient shall reimburse the Division for any costs that have been paid which, in the opinion of the Division, are ineligible.

5. Upon completion of the project, cancellation of the grant or termination of a project, the applicant shall, pursuant to the procedure set forth in the grant agreement, return to the Division the money that has not been spent.