

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R038-13

Effective October 24, 2014

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

AUTHORITY: §1, NRS 459.485, 459.500 and 459.520; §2, NRS 459.485 and 459.500; §3, NRS 459.485, 459.500 and 459.510.

A REGULATION relating to hazardous waste; revising provisions governing the regulation of facilities for the management of hazardous waste; and providing other matters properly relating thereto.

Legislative Counsel's Digest

Existing law provides for the regulation of facilities for the management of hazardous waste. (NAC 444.842-444.8482) **Sections 1, 2 and 3** of this regulation revise provisions governing certain fees which must be paid to the Division of Environmental Protection of the State Department of Conservation and Natural Resources by the owner or operator of a facility for the management of hazardous waste for the permitting and operation of such a facility in this State.

Section 1. NAC 444.8448 is hereby amended to read as follows:

444.8448 1. An owner or operator of a facility for the management of hazardous waste who applies for a modification ~~{or-termination,}~~ or a ~~{revocation}~~ *renewal* and reissuance ~~{}~~ of an existing permit issued by the Division shall, before the Administrator may modify ~~{~~ terminate~~}~~ or *renew and* reissue the existing permit, pay to the Division the following fees to offset the cost to process and review the application:

(a) ~~{A minimum fee of \$25; and}~~ *For the renewal and reissuance of an existing permit, \$15,000.*

(b) ~~{An additional amount of \$50 for each hour of staff time devoted to processing and reviewing the application and the amount paid to consultants by the Division in connection with the application, not to exceed the maximum fee for an application pursuant to NAC 444.8446.~~

~~2. If the facility contains more than one type of regulated unit, the operator is not required to pay more for each application than the maximum fee for the regulated unit to which the highest fee is applicable, unless the modification or termination, or revocation and reissuance, affect both a landfill and an incinerator. If the modification or termination, or revocation and reissuance, affect both a landfill and an incinerator, the operator is not required to pay more than \$100,000 for the application.}~~ *For the class 1 modification of an existing permit that requires prior approval, \$500.*

(c) *For the class 2 modification of an existing permit, \$1,500.*

(d) *For the class 3 modification of an existing permit, \$5,000.*

2. For the purposes of this section:

(a) *“Class 1 modification” has the meaning ascribed to it in Appendix I of 40 C.F.R. §270.42, as adopted by reference in NAC 444.8632.*

(b) *“Class 2 modification” has the meaning ascribed to it in Appendix I of 40 C.F.R. §270.42, as adopted by reference in NAC 444.8632.*

Sec. 2. NAC 444.845 is hereby amended to read as follows:

444.845 1. The owner or operator of a facility for the management of hazardous waste shall, on or before March 1 of each year, pay the following annual operating fee to the Division to offset partially the cost of inspection and other regulation of the facility:

Regulated Unit	Annual Operating Fee
Landfills, incinerators, boilers, industrial furnaces.....	\$5,000
Surface impounds, facilities for treatment of land, facilities for thermal destruction.....	1,000
Tanks, portable containers, waste piles, facilities for treatment or storage.....	500

<i>Permitted Activity or Regulated Unit</i>	<i>Annual Permit Fee</i>
<i>Land disposal, or incineration or burning in a boiler or industrial furnace</i>	<i>\$50,000</i>
<i>Treatment of hazardous waste.....</i>	<i>\$10,000</i>
<i>Thermal treatment of waste munitions of the Armed Forces of the United States or its contractor, including, without limitation, detonation.....</i>	<i>\$7,500</i>

Storage of hazardous waste \$2,500

2. If the facility contains more than one type of regulated unit ~~+~~ *or engages in more than one type of permitted activity*, the operator is not required to pay more than the annual ~~operating~~ *permit* fee for the regulated unit *or permitted activity* to which the highest fee is applicable.

3. The Division may assess a penalty of 2 percent of the unpaid balance for each month, or portion thereof, that the fee remains unpaid.

4. As used in this section, “owner or operator of a facility for the management of hazardous waste” means a person who:

(a) Qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G; ~~or~~

(b) Has been issued a permit pursuant to 40 C.F.R. Part 124, Subparts A and B, and Part 270, Subparts A to F, inclusive ~~+~~; *or*

(c) Has been issued a permit to carry out a remedial action plan pursuant to 40 C.F.R. Part 270, Subpart H, if the facility is constructed and the permit issued after October 24, 2014.

Sec. 3. NAC 444.8452 is hereby amended to read as follows:

444.8452 1. The owner or operator of a facility for the management of hazardous waste shall, in addition to any other applicable fees, pay the following fees to the Division to offset partially the cost of inspection and other regulation of the facility:

(a) For the disposal, open burn, open detonation or incineration of hazardous waste by a unit or for the burning of hazardous waste in a boiler or industrial furnace for the recovery of energy by a facility:

(1) ~~Eighteen~~ *Nineteen* dollars ~~and fifty cents~~ per ton of the volume that is hazardous waste pursuant to paragraph (a) of subsection 2 of NAC 444.843; and

(2) Three dollars *and fifty cents* per ton of the volume that is hazardous waste pursuant to paragraph (b) or (c) of subsection 2 of NAC 444.843 but is not hazardous waste pursuant to paragraph (a) of that subsection.

(b) For the treatment or storage of a volume of hazardous waste by a unit without:

(1) Subsequent disposal, open burn, open detonation or incineration of the hazardous waste by the facility; or

(2) Subsequent burning of the hazardous waste in a boiler or industrial furnace for the recovery of energy by the facility,

↪ \$5 per ton ~~[, not to exceed a maximum fee of \$10,000 per calendar year]~~ if the waste that is stored or treated is waste generated at that facility.

(c) For the treatment of a volume of hazardous waste by a unit so that it is no longer hazardous waste pursuant to NAC 444.843 and subsequent disposal of the treated waste by the facility, ~~[\$3]~~ *\$4* per ton.

2. The owner or operator of such a facility shall:

(a) Calculate the amount of hazardous waste subject to the fees on a quarterly basis based on the volume of the hazardous waste that is newly managed by a unit during the quarter of the year for which the fees are calculated;

(b) Pay the fees provided in this section within 30 days after the end of each quarter; and

(c) Submit, with each payment, a detailed accounting of the volume of waste, which corresponds to the fee paid.

3. The Division may assess a penalty of 2 percent of the unpaid balance for each month, or portion thereof, that a fee remains unpaid.

4. The Division may waive any part of the fees specified in subsection 1 for waste brought to a state-owned facility if the waste is generated:

(a) By an agency of this State; or

(b) In compliance with an order issued by the Division to clean up a spill or deposit.

5. As used in this section:

(a) "Owner or operator of a facility for the management of hazardous waste" means a person who:

(1) Qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G; or

(2) Has been issued a permit pursuant to 40 C.F.R. Part 124, Subparts A and B, and Part 270, Subparts A to F, inclusive.

(b) "Unit" means a unit for the management of hazardous waste that is:

(1) Operated by a facility for the management of hazardous waste; and

(2) Subject to the permitting requirements of 40 C.F.R. Part 270.

Permanent Regulation - Informational Statement

A Regulation Relating to Hazardous Waste

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066 & 233B.0603.10(f)

State Environmental Commission (SEC) LCB File No: R038-13

Regulation R038-13:

On October 8, 2014, the SEC adopted a regulation modification related to the NDEP Bureau of Waste Management's Hazardous Waste program. The proposed regulation revises existing fees applicable to facilities that treat, store or dispose of hazardous waste. Hourly review fees related to renewal or modification of an existing permit are replaced with a flat fee structure. The structure of annual permit fees is revised and fees are increased. The regulation is clarified to indicate that annual permit fees are applicable to facilities where a remedial action plan has been permitted pursuant to 40 CFR Part 270 Subpart H. Various fees applicable to the volume of hazardous waste disposed or treated by a permitted facility are revised.

1. Need for Regulation:

The Hazardous Waste Management Fund has experienced significant revenue shortfalls over the past several years. While the Fund balance is sufficient to support expenses in the near term, these steep declines are not sustainable and jeopardize the State's ability to regulate hazardous waste and respond to releases of hazardous substances in the future.

The Hazardous Waste Fund, established by NRS 459.530, supports the regulation of hazardous waste management, hazardous materials training, investigation of contaminant releases and cleanup of soil and groundwater where responsible parties are unable to respond. Sources of revenue to the fund include fees, cost reimbursement, penalties and treasurer's interest. As a result of the recession, interest on the Fund has declined from \$759,183 in FY08 to just \$16,090 in FY12. Other contributing factors to net losses from the Fund include: slight declines in fee revenue, though disposal fees are market-driven and variable; a one-time Legislative sweep of projected interest earnings on the Fund of \$382,000 in FY10; an increase in the amount of unreimbursed clean-up expenses, due in part to the diminished financial health of private companies that would otherwise be responsible; and a gradual erosion of the value of federal grant funds that have remained flat over time, requiring a gradual shift of costs toward fees.

To address these revenue shortfalls NDEP has reduced expenditures through vacancy savings, reductions in contract support and shifting of costs to other revenue sources. However, program cuts alone are insufficient to bridge the gap. Consequently, NDEP also proposed increases in program fees. The hazardous waste program fee increases only affect four permitted facilities in the State, including the Beatty Facility, operated by US Ecology, Hawthorne Weapons and Ammunition Depot, 21st Century EMI treatment facility in Fernley, and the Safety Kleen storage facility in North Las Vegas.

2. 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.

NDEP conducted a public workshop on LCB's Proposed Draft Regulation R038-13. The workshop was held in Carson City and video conferenced to Las Vegas. The meeting location was Carson City at the Bryan Building located at 901 S. Stewart Street (Great Basin Conference Room). In Las Vegas the meeting location was the Nevada Division of Environmental Protection, 2030 E. Flamingo Rd. Suite 230.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at: http://sec.nv.gov/docs/R038_13_SolidWaste_Wrkshp_Minutes.pdf .

Following the workshop, the SEC held a formal regulatory hearing on October 8, 2014 at the Nevada Department of Conservation and Natural Resources, 901 South Stewart Street, Carson City, Nevada. A public notice and agenda for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of the Division of Environmental Protection in Las Vegas, at the Division of Minerals in Carson City, at the Division of Wildlife, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed permanent regulation R038-13 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_1014.htm .

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended October 8, 2014 hearing: 16 (approximately)
- (b) Testified on this Petition at the hearing: 0

(c) Submitted to the agency written comments: 0

4. 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 through e-mail, telephone, a public workshop and at the October 8, 2014 SEC hearing as noted in number 2 above. In addition, NDEP directly contacted each of the affected facility owners regarding the impact of the proposed fees. All of the facility owners were supportive of the proposed fees after discussion and negotiation.

5. 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 without change because the public was satisfied with the proposed amendments.

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

(a) Regulated Business/Industry. Each of the affected facility owners was contacted individually regarding the impact and their acceptance of the proposed fee increases. All of the facility owners were accepting of the proposed fee increases and none indicated adverse impacts on their business or operations. The benefit of the proposed fee increases is that it ensures adequate revenue to maintain a robust regulatory and cleanup program that protects public health and the environment and prevents the need for federal intervention by EPA.

(b) Public. There would be no significant economic impact on the public if the proposed fees were adopted.

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

There will be no additional cost to the agency for implementing the proposed fee schedule.

8. 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.

This regulation does not duplicate any other federal, state or local regulation.

9. 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 federal regulation or guidance.

10. 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.

It is anticipated that the proposed fee increases will generate an additional \$186,000 per year. Additional revenue may be available if new permit applications or requests to modify permits are received; however, the amount cannot be predicted. This revenue would be used to offset the Division's costs for regulating hazardous waste management facilities and oversight of investigation and cleanup of releases of contaminants to the environment.