

**FORM FOR PETITIONING THE STATE ENVIRONMENTAL COMMISSION FOR
ADOPTION, FILING AMENDMENTS OR REPEAL OF COMMISSION
REGULATIONS.**

Form #1

- 1. Name, Address, telephone number, date of petition, representative capacity and signature of petitioner, authorized individual, officer or attorney.**

April 7, 2010
Nevada Division of Environmental Protection
Bureau of Safe Drinking Water
901 South Stewart Street, Suite 4001
Carson City, NV 89701

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- 2. Specific type of petitioner (individual, partnership, corporation, government agency, or other) and the exact occupation or business, including a description of the occupation or business if necessary.**

Nevada Division of Environmental Protection (NDEP), Bureau of Safe Drinking Water, a government agency.

- 3. Exact and specific nature of changes sought, including delineation of the regulations, statutory provisions of Commission decisions involved. May include a statement of the written term or substance of the proposed regulatory action, or a description of the subjects and issues involved.**

The NDEP is requesting adoption of these regulatory amendments governing Public Water Systems (PWS) found in Chapter 445A of the Nevada Administrative Code (NAC). Statutory authority to adopt these amendments is contained in NRS 445A.855, 445A.860 and 445A.863. Proposed amendments to NAC 445A serve several functions:

- 1) The proposed amendments to NAC 445A.4525 include an update to our adoption of federal regulations by reference, from regulations as they existed on July 1, 2006 to those as they existed on July 1, 2009. During this period, the United States Environmental Protection Agency (U.S. EPA) codified federal regulations for the new Ground Water Rule (GWR) (*November 8, 2006, 71 FR 65574- 65660*) and Lead and Copper Rule Short-Term Revisions and Clarifications (*October 10, 2007, 72 FR 57782-57820*). Adoption of these federal rules is necessary for the NDEP to apply for continued and revised Primary Enforcement Responsibility (primacy). Primacy revision applications for the Ground Water Rule and the Lead and Copper Rule Short-Term Revisions will be prepared and submitted to the U.S. EPA by November 8, 2010 and December 10, 2011, respectively.

- 2) The proposed amendments include related changes to the Water Quality; and Design, Construction, Operation and Maintenance (DCO&M) regulations necessary for overall implementation of the new GWR.
- 3) Additional federal regulatory changes adopted by the US EPA between July 1, 2006 and July 1, 2009 include:
 - a. modifying testing procedures approved for analysis under the SDWA (March 12, 2007, 72 FR 11200 – 11249);
 - b. the addition of Appendix A to Subpart C of Part 141 establishing alternative testing methods approved for analyses under the SDWA (June 3, 2008, 73 FR 31616 – 31633); and
 - c. a minor correction related to the Stage 2 Disinfectant and Disinfection Byproducts Rules (Stage 2 DBPR), which requires ground water systems serving 500-9,999 people to monitor for both total trihalomethanes (TTHM) and haloacetic acids (HAA5) at two locations. The 2006 Stage 2 DBPR promulgation unintentionally excluded this requirement from the final rule, which required these systems to monitor for either TTHM or HAA5 at two locations. Additionally, minor, unrelated, changes were made in analytical references associated with the list of methods approved under the Expedited Approval Process (June 29, 2009, 74 FR 30953 – 30959).
- 4) The proposed amendment to the DCO&M regulations NAC 445A.6569 changes the definition of “Certified backflow prevention assembly tester” to include additional credentialing associations. This change was prompted by comments and requests from the regulated community of public water systems to allow for additional credentialing services that meet or exceed the current qualifications of the listed organization.
- 5) A review of the Water Quality and DCO&M regulations resulted in additional proposed amendments to:
 - a. delete duplicative federal references regarding the requirements for Disinfection Byproducts in the Water Quality, Treatment of Water: Groundwater, Standards for disinfection section NAC 445A.54042;
 - b. appropriately reference the Water Quality, Treatment of Water: Groundwater NAC 445A.54022 – 445A.5405 sections in the DCO&M, Development and treatment of sources of water: General requirements section NAC 445A.6676; and,
 - c. ensure compliance with disinfectants utilized for groundwater treatment do not have to follow the same procedures as surface water and groundwater under the direct influence of surface water in the DCO&M, Disinfection of Water: General requirements section NAC 445A.66825.

4. A statement of the need for and purpose of the proposed regulations.

Nevada’s Safe Drinking Water Program regulates public water systems using a combination of State regulations and the National Primary Drinking Water Regulations (NPDWR) adopted by reference. The U.S. EPA has granted the NDEP primary enforcement responsibility for the NPDWR. In order to maintain primary enforcement responsibility, the NDEP must adopt regulations that are at least as stringent as new or amended federal regulations. In part, the proposed amendments adopt the new federal Ground Water Rule and the Lead and Copper Rule Short-Term Revisions and Clarifications. The Lead and Copper Rule is a current regulation implemented by the NDEP. These amendments are considered necessary to maintain Primary

Enforcement Responsibility for the Bureau of Safe Drinking Water program's federal program elements.

Additionally, changes are proposed to enhance a BSDW safe drinking water program element, and provide "cleanup" and clarification of existing regulations.

5. A statement of the:

- (a) Estimated economic effect of the regulation on the business which it is to regulate;**
 - (1) Both adverse and beneficial effects; and**
 - (2) Both immediate and long-term effects; and**
- (b) Estimated economic effect on the public;**
 - (1) Both adverse and beneficial effects; and**
 - (2) Both immediate and long-term effects; and**
- (c) Estimated cost by the agency for enforcement of the proposed regulation.**

(a)(1) and (a)(2):

The GWR is a federal regulation that became effective December 1, 2009 and is currently being implemented by staff of the BSDW under an agreement with the U.S. EPA; adoption of this Rule into Nevada Administrative Code is not expected to result in a significant additional financial burden. In general, the economic provisions of the GWR may have the following economic impacts but the overall financial burden related to individual systems cannot be quantified:

Background - The GWR establishes a risk-targeted approach to identifying groundwater systems (GWS) at risk to microbial contamination. The Rule builds upon current BSDW drinking water programs – the Total Coliform Rule (TCR) and the Sanitary Survey Program – to identify systems at risk to fecal contamination.

- 1) If a routine TCR sample tests "present" for total coliform bacteria, the affected public water system must collect repeat samples in accordance with the TCR and a source water sample(s) in accordance with the GWR to determine if their source(s) contains *E.coli* contamination. If a source(s) is *E.coli* "present" the system may be required to collect 5 additional source water samples. If any of these samples are *E.coli* "present", the system must take corrective actions to protect public health.
- 2) If a significant deficiency is identified during a sanitary survey, the deficiency must be corrected.

The regulation amendment associated with the adoption of the GWR will have a monetary impact on "targeted" systems as discussed in the *Background* above.

- 1) PWSs that must collect source water samples will bear the cost of the analysis and staff time to collect the sample(s). The cost of analysis ranges from approximately \$12.00 to \$25.00 per sample. Water systems have from 1 to approximately 63 active sources. Systems with multiple sources can reduce the number of sources to be sampled by submitting a *Triggered Representative Source Water Monitoring Plan*; this plan allows systems to target sources for sampling and reduce the costs associated with sample collection and analysis. Systems wanting to take advantage of the *Triggered Representative Source Water Monitoring Plan* provision of the Rule have already submitted a plan in advance of the effective date or have made substantial

progress in the Plan's development. Additionally, small water systems serving 1,000 persons or fewer can reduce monitoring cost by using a TCR repeat sample to satisfy the GWR source water monitoring requirement and incur no additional monitoring costs unless the sample is *E.coli* "present".

- 2) PWSs who must initiate a corrective action to mitigate a source(s) identified as fecally contaminated and systems required to correct significant deficiencies will bear the cost of infrastructure or other system improvements. Improvements such as these are already subject to NAC 445A regulation, so adopting the GWR will not increase a systems financial responsibility in this regard.

The regulation amendment associated with adoption of the Lead and Copper Rule (LCR) Short-Term Revisions and Clarifications will not have a substantial economic impact on PWS covered by the LCR. The regulatory amendments will require non-transient non-community and community public water systems covered by the LCR, who must test for lead at targeted consumer taps, to provide a consumer notice to each customer targeted for monitoring. The notice is to include results of lead tap monitoring, health effects, actions to reduce exposure and the maximum contaminant level goals and action level. These systems currently collect from 5 to 50 samples every three years. System serving 3,300 or fewer persons may qualify to sample 5 samples every nine years. Therefore, a public water system will be required to prepare and distribute from 5 – 50 notices every 3 years (or less for some systems serving 3,300 or fewer persons).

The amendment to include additional credentialing associations for certifying backflow prevention assembly testers will provide additional market competition for this service. This change was requested by the regulated community and is expected to reduce costs to individuals who hold this certification, as required by regulation.

The updated adoptions by reference modifying testing procedures approved for analysis and the addition of Appendix A to Subpart C of Part 141 establishing alternative testing methods approved for analyses provide increased flexibility to the regulated community and laboratories in the selection of analytical methods and may reduce analytical costs associated with compliance.

(b)(1) and (b)(2):

The economic effect on the public of the regulations for GWR and LCR Short-Term Revisions cannot be directly quantified. The regulations will provide for better protection of the health and safety of the public and may result in decreased medical costs that might be incurred as a direct result of waterborne disease or lead exposure. An unquantifiable increase in costs to public water system customers who are served by systems needing infrastructure or other system improvements related to the GWR is anticipated, but these improvements would be required by current regulations governing public water systems.

(c):

The GWR and LCR program adoptions/revisions increase the responsibilities of the NDEP, but the programs will be implemented through existing programs and by existing staff. The overall workload of the Bureau is under ongoing evaluation. Additional personnel resources to ensure

adequate oversight of regulated public water systems for public health protection may be sought when appropriate.

- 6. 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 amendment will not duplicate any State regulation. In order to avoid overlap of Title 40 of the US Environmental Protection Agency's CFR, these regulations adopt portions by reference.

- 7. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions. The statement must include the specific citation of the federal statute or regulation requiring such adoption.**

This regulation amendment will not be more stringent than federal regulations.

- 8. 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.**

This regulation amendment does not propose new or increased fees.

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