

**JIM. GIBBONS**  
Governor



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**STATE ENVIRONMENTAL COMMISSION**

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January 10, 2008

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C/o Debra. Corp  
Legislative Counsel Bureau (LCB), Legal Division  
401 South Carson Street  
Carson City, Nevada 89701-4747

**Re: Regulation P2008-06: Adoption of federal regulations by reference  
US Safe Drinking Water Act:**

Dear Ms. Corp:

Enclosed for "drafting" by the LCB Legal Division is a proposed permanent regulation that would amend NAC 445A. The regulation is needed to remove problems in several areas containing adoption by reference citations. The regulation is also necessary to update the adopted version of the Code of Federal Regulations (CFR) as well as "cleanup" of certain language in existing NAC provisions. These amendments are necessary to acquire primacy approval from USEPA for Nevada's Safe Drinking Water program.

A detailed **background and justification statement** for this proposed regulation is attached to this letter as SEC Form 1. If you have any questions about this regulation please contact Ms. Jennifer Carr at 687-9515.

Sincerely,

[John B Walker](#)

John B. Walker  
Executive Secretary

JBW  
Enclosure  
ecc: Rose Marie Reynolds, Deputy Attorney General  
Tom Porta, NDEP  
Jennifer Carr, NDEP - BSDW

**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.

January 8, 2008  
Nevada Division of Environmental Protection  
Bureau of Safe Drinking Water  
901 South Stewart Street, Suite 4001  
Carson City, NV 89701

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Jennifer L. Carr, P.E., C.E.M.  
Chief, Bureau of Safe Drinking Water  
(775) 687-9515

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 found in Chapter 445A of the Nevada Administrative Code (NAC). Statutory authority to adopt these amendments is contained in NRS 445A.855 and 445A.860.

Proposed amendments to NAC 445A.450 add a specific date to the US Safe Drinking Water Act *as amended on August 6, 1996* and a specific adoption reference for certain federally-defined terms. Amendments will resolve problems with prospective adoption by reference.

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, 2003 to those as they existed on July 1, 2005. According to the US EPA, certain 2001 amendments to the Arsenic Rule became effective January 22, 2004 but were not codified until July 1, 2004. Additional federal regulatory changes adopted by the US EPA between July 1, 2003 and July 1, 2005 include: the addition of an approved method for detection of coliforms and E. Coli in drinking water

(2/13/2004, 69 FR 7156-7161); the addition of three approved methods for detection of uranium in drinking water (8/24/2004, 69 FR 52176-52181); and various typographical clarifications and additions to the Long Term 1 Enhanced Surface Water Treatment Rule, the Surface Water Treatment Rule and other rules, a detection limit for uranium methods and reinstatement of language in the Lead and Copper Rule that was inadvertently dropped in 2001 (6/29/2004, 69 FR 38850-38857). The addition of language for “including all table and appendices therein” in NAC 445A.4525 will provide additional clarity and will not alter current regulatory requirements.

The proposal to strike NAC 445A.4915 will remove future problems with prospective adoption by reference. This regulation requires the State Environmental Commission (SEC) review any “publications” that are adopted by reference through this section of the NAC’s and then hold a public hearing if the SEC concludes that a revised publication is *not* suitable for Nevada. Even though NAC 445A.4525 currently includes an adoption date, such “publications” could be interpreted to include changes to adopted portions of the Code of Federal Regulations (CFR) detailing the National Primary Drinking Water Regulations. This would be of particular concern if the specific adoption date was removed in the future for some reason. The NDEP believes that maintaining this regulation is not good public policy and the US EPA has also stated that they cannot approve our primacy package with it included. It does not allow adequate time for NDEP evaluation of new or amended federal publications or a proper public process for deliberate adoption of future regulations, regulatory programs or guidance. Furthermore, significant potential for confusion exists for the regulated community in that it could be unclear as to which regulations, or the water sampling Handbook, that must be adhered to.

As a result of the proposal to strike 445A.4915, this package includes a proposal to strike the associated references in NAC 445A.4525 and NAC 445A.459.

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

Nevada’s Safe Drinking Water Program regulates public drinking water systems using a combination of State regulations and Federal regulations adopted by reference. In order to obtain primary enforcement responsibility for desired federal drinking water programs, the NDEP submits “primacy package” applications for EPA approval. On September 6, 2007, the NDEP submitted primacy packages for “Arsenic” and “Variances and Exemptions”.

During EPA Region 9’s review of these packages, they identified several items in the NAC’s that needed amendment prior to primacy approval. The NDEP views these amendments as (1) efforts to remove problems in several regulations with prospective adoption by reference; (2) a necessary update to the adopted version of the Code of Federal Regulations (CFR); and (3) “cleanup” of certain language in existing provisions. These amendments are necessary to achieve primacy.

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 amendments are not anticipated to have any significant economic impact on Nevada businesses. Conversely, the updated adoptions by reference add analytical options for certain drinking water analyses and may reduce analytical costs for compliance. The reinstatement of language in the Lead and Copper Rule may result in a minor increase for select systems exceeding the standards; however, Nevada had adopted the previous codification of this federal regulation before the language was inadvertently dropped.

(b)(1) and (b)(2). The amendments are not anticipated to have a direct impact on the public.

(c). The amendments are not anticipated to cause an additional cost to the agency.

- 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 address fees.

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