

Permanent Regulation - Filing Statement

Nevada Division of Environmental Protection
Bureau of Corrective Actions

Legislative Review of Adopted Regulations as Required
By Administrative Procedures Act, NRS 233B.066

State Environmental Commission (SEC)

LCB File No. R125 - 07

SEC # P2007-05

Regulation R125-07: Release Reporting Regulations of Hazardous Substances or Petroleum Products in Excess of Reportable Quantities: The proposed regulation amends the Nevada Division of Environmental Protection's (NDEP) existing release reporting regulations that are contained in Nevada Administrative Code 445A.345 to 445A.348. Release reporting regulations require facilities to notify NDEP after the release of hazardous substances or petroleum products in excess of reportable quantities.

The regulation creates a category of releases that will be subject to more immediate notification requirements than what the existing regulations mandate. The existing regulations allow for notification of any incident, regardless of severity or impact, within one working day, which is not supportive of agency functions during significant events.

Reportable triggers based on environmental media have been added for "listed" hazardous substances taken from federal regulations. This brings hazardous substances in line with the handling of petroleum products and "unlisted" pollutants and contaminants, which all have media-specific reporting requirements.

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.

NDEP's Bureau of Corrective Actions held three (3) public workshops on the above referenced regulation at the following locations. A total of 46 people attend these workshops.

Elko October 23rd, 2007 3:00pm Great Basin College 1500 College Parkway Community Center	Reno October 24th, 2007 3:00pm Washoe County Health Department 1001 E Ninth Street, Building	Las Vegas October 25th, 2007 3:00pm Las Vegas Public Library 833 Las Vegas Boulevard,
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The State Environmental Commission (SEC) held a public hearing to consider this regulation on December 04, 2007. The hearing was held in Reno at the Nevada Department of Wildlife (1100 Valley Road).

The hearing agenda was posted at the following locations: the Nevada Dept. of Wildlife in Reno, the Grant Sawyer Office Building in Las Vegas, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of the agenda, the public notice, and the proposed regulation noted above were 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 regulations was published on November 12, 19, and 26, 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_120407.htm

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

- (a) Attended December 04, 2007 hearing; 30 (approx.)
- (b) Testified on this Petition at the hearing: 1 (1 NDEP Staff)
- (c) Submitted to the agency written comments: 0

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 as indicated in number 1 above. To facilitate the regulatory workshop process, NDEP staff prepared and distributed a "Q&A comment response document. The document contains specific responses to 11 comments raised during the workshops. In addition these comments, the US Dept. of Energy provided written comments on the regulations; NDEP provided specific responses to these comments. NDEP's "Q&A" document is posted on the SEC website at: http://www.sec.nv.gov/docs/workshop_r125-07_qa.pdf

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 State Environmental Commission adopted the regulation without change on December 04, 2007. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

The proposed changes to the release reporting regulations are not believed to have an economic effect on the regulated community. Release reporting regulations apply to any facility at which hazardous substances and petroleum products are handled and may be released to the environment, but the changes do not substantially alter the existing requirements with the exception of the inclusion of immediate notification.

Immediate notification will be required in response to significant events that involve large amounts of hazardous substances or impact surface water resources. Most facilities that handle large amounts of hazardous substance or are located near surface water have already established emergency response plans that include immediate notification to the regulatory agencies after a significant release event.

The proposed changes to the release reporting regulations do not have an economic effect on the public.

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

The inclusion of immediate notification requirements necessitates the use of on-call staff within the Division to field release reports after hours and on the weekends. An off-hour duty officer program has already been established by the Division using funds from federal grants. The funding required is minimal, and the funding source is stable.

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 Division has established release reporting regulations to support its authorities for the oversight of applicable environmental laws and regulations. Other state agencies that have regulatory oversight of hazardous materials or involvement in significant release incidents may have separate reporting requirements. The two State agencies that have reporting provisions that may capture the same incidents as the Division's reporting requirements includes the Nevada Department of Transportation, which is involved with hazardous material releases on the roadways, and the Nevada Department of Emergency Management, which is responsible for coordinating the State's response to any significant incident.

These different release reporting requirements do not necessarily overlap each other because the State agencies may have different authorities and jurisdictions and the notification requirements may be built on entirely different reporting triggers.

The Federal government is also required to be notified after a release of a reportable quantity of hazardous substances. These reporting functions have been consolidated in the National Response Center operated by the US Coast Guard. The release of a reportable quantity of hazardous substances is felt to be a significant event that may require response under the National Contingency Plan.

While the various state and federal agencies that might be involved in the response to an incident involving hazardous substances may coordinate authorities and responsibilities, it is vital that a facility owner separately notifies each agency within the appropriate timeframe as established by each agency. Language has been added to the proposed regulation to clarify that notification made to the Division does not satisfy any other separate reporting requirements.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

State reportable quantities for hazardous substances have been adopted from federal regulations. These federal reportable quantities provide an amount in pounds for known, individual hazardous chemicals that would represent a significant release event if discharged to the environment.

Because the Division's release reporting regulations are meant to cover both significant incidents and the more routine releases that may require regulatory response, the proposed regulation provides for a more stringent minimum reportable quantity for a number of these hazardous substances.

Specifically, reportable quantities for a number of chemical hazards have been set in the federal regulations at a quantity of 1,000 or 5,000 pounds. While these reportable quantities have been retained as a trigger representing a significant event requiring immediate notification, the Division is adopting a default minimum reportable quantity for hazardous substances. Under the proposed framework, notification must be made to the Division within one working day for any release of a hazardous substance in excess of 25 gallons or 200 pounds. This change is intended to eliminate the discrepancy in the handling of releases of petroleum products and chemical hazards.

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 address any fees.