

Permanent Regulation Filing Statement

Legislative Review Of Adopted Regulations As Required
By Administrative Procedures Act, NRS 233B.066

State Environmental Commission
Nevada Division of Environmental Protection
Bureau of Waste Management

Chemical Accident Prevention (CAPP) LCB File No. R137-04

This regulation makes amendments to the section of Chapter 459 of the Nevada Administrative Code related to Highly Hazardous Substances and Explosives. The regulation conforms to amendments made to the Chemical Accident Prevention Program's (CAPP) enabling statute that was enacted by the 2003 Legislature (i.e., NRS 459.380 to 459.3874, as amended by Senate Bill 127).

Substantive changes include identifying in the regulation, as opposed to in the statute, the list of highly hazardous substances; this will allow flexibility for adopting newly recognized hazards and developing specific lists of regulated explosives. The regulation further specifies the procedure for issuing cease and desist orders in cases where danger to employees or the public is imminent. The regulation also allows the Nevada Division of Environmental Protection (NDEP) to conduct investigations of accidents and to increase fees.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

NDEP's Bureau of Waste Management held public workshop at the following location to solicit comments from interested parties about the proposed changes in the regulation referenced above.

Henderson

Thursday, May 20
10:00 am - 12:00 noon
Henderson Fire Training
Center
Classrooms 1 and 2
401 Parkson Road

Battle Mountain

Tuesday, May 25
1:00 pm - 3:00 pm
DOI –BLM
Main Conference Room
50 Bastian Road

Carson City

Friday, May 28
10:00 am - 12:00 noon
NDEP Office Complex
Conference Room #217
123 West Nye Lane

Proposed changes to these regulations were also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates – November 8, 15, and 22, 2004. The public was subsequently mailed a public notice and meeting agenda for the SEC hearing; the SEC mailing lists were used for both mailings.

At the SEC hearing, there was one public comment received by the Commission during the adoption of the referenced regulation.

2. The number persons who:

- (a) **Attended August 19, 2004 hearing;** 30
- (b) **Testified on this Petition at the hearing:** 2
- (c) **Submitted to the agency written comments:** (See #3 below)

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Prior to drafting regulation in the third quarter of 2003, the regulated community was queried to obtain suggestions on how to incorporate the recently adopted statutory amendments into regulation. Comments on issues related to matters outside the statutory amendments were also welcomed. There was minimal response to this query and the comments were subsequently addressed. A proposed regulation was drafted in late 2003 and early 2004. The draft regulation was completed by May 2004 and workshops were held.

The following parties were mailed notice of regulatory workshops, directions for obtaining copies of proposed regulation via the Internet and mail, and were invited to comment. Hard copy notices were sent on May 6, 2004 to: Public Libraries, Academic Libraries, CAPP regulated facilities (most of which are small businesses), and numerous persons on an interested parties list. Email notice was also provided to over half of the regulated community on May 5, 2004. The notice was also posted on the Division of Environmental Protection's website on May 5, 2004 and on the CAPP website on May 6, 2004.

Verbal comments were accepted during the meetings and meeting minutes were documented. Written comments were accepted through June 11, 2004.

Written comments were received from ten regulated facilities, three fire departments, and one trade organization representative. Six out of the ten facilities that provided comment qualify as small business (Note that out of 45 facilities regulated under CAPP, 36 qualify as a small business).

A summary of comments received from the public and from regulated business interests is available from the Division of Environmental Protection's CAPP staff.

After the regulation was drafted by the Legislative Counsel Bureau, it was made available for comments; comments were solicited from affected businesses by the notice in the newspapers, as outlined in #1 above and by direct mail to interested persons subscribing to the SEC electronic mailing lists. The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The regulation, public notice and meeting agenda were also made available on SEC Website at: <http://www.sec.nv.gov/main/hearing113004.htm>

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 Commission adopted the above referenced regulation with the following changes: **The commission did not concur with the fee increases that were scheduled to become effective on July 1, 2007 and July 1, 2009.** In order to appropriately reflect the adopted regulatory language, the sections related to fee increases in those years must be deleted from the attached petition as drafted by LCB. (i.e., LCB File No. R137-04 dated October 5, 2004)

Accordingly, the SEC is requesting that the following sections of the petition be deleted: 78 through 85, inclusive, AND section 91. Also, and since all sections of the regulation will now become effective upon filing with the secretary of state, it is assumed that the language provided in subsection 1 of section 91 is no longer required.

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

The proposed CAPP regulation will have an overall positive economic effect on regulated businesses. There is no anticipated economic impact on the public. Businesses will see an increase in program fees; however, this increase will enable continued oversight by NDEP thereby providing continued incentive for program compliance. Having compliant accident prevention programs will reduce risks of catastrophic accidents, and help better structure business operation. In essence, the immediate effect of increased fees will increase operating cost, however, the long-term effects will manifest in improved employee and public safety by way of lower accident rates. Better safety performance will lower overall operating costs to the regulated community.

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

There will be marginal additional cost to the agency for enforcement of this regulation. Marginal cost increases will be covered by increases in fees as described in #9 below.

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 CAPP regulation is somewhat similar to the federal OSHA regulations administered by the State Division of Industrial Relations and federal EPA. However, the CAPP regulations and permitting requirements are unique to the State and are the only regulations that mandate in-plant inspections and provide a funding mechanism for such inspections.

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

In terms of the accident prevention and emergency response preparedness provisions of CAPP (section 54 to 67 of the regulations), there are only subtle differences with the similar OSHA and EPA programs mentioned above.

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 regulation will increase fees to support program oversight activities. Fee increases are necessary to offset salary adjustment to the engineering series as enacted by the Nevada legislature; fee increases will also cover some program supervisory oversight. It is currently anticipated that approximately \$395,000 will be collected from 45 facilities annually, starting in July, 2005. The fees will be used to provide revenue for the CAPP program. The projected annual budget for CAPP in State Fiscal Year 2006 is \$360,000. Of that amount, 94% is salaries, fringe benefits and indirect with the balance going to travel for in-state inspections, training and general overhead & operating expenses.

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