

Filing Statement
Nevada Division of Environmental Protection
Bureau of Safe Drinking Water

Adoption By Reference of Federal Regulations

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

State Environmental Commission (SEC)
Petition 2005-06 – LCB File R126-05

This regulation amends NAC 445A.450 through 445A.540. The regulation was drafted in response to Senate Bill 395 (SB 395), which was passed during the 2005 Legislative Session. SB 395 allowed the transfer of responsibilities for certain drinking water programs from the State Health Division to the Nevada Division of Environmental Protection (NDEP).

This amended regulation allows Nevada to adopt new federal primary drinking water regulations already in effect under the federal Safe Drinking Water Act (SDWA) in the following areas: arsenic rule; long term 1 surface water treatment rule; lead and copper rule revisions; radionuclides; filter backwash rule; public notification rule; and variances and exemptions.

The regulation also provides criteria for projects that propose treatment facilities for groundwater. Of note, US EPA requires states with regulatory jurisdiction to assure design and construction of new water treatment facilities are compliant with primary drinking water regulations. The regulation further add definitions, seek to provide clarity, change authority from the Division of Environmental Protection to the health authority (i.e. health districts in Clark and Washoe Counties), and provide only enforceable secondary standards for water quality.

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.

To solicit public comments on the first version of this regulation, the State Health Division conducted a public workshop on November 12, 2004. A public hearing was then held on February 18, 2005 by the State Health Board. At that hearing the regulation was adopted as a temporary regulation and subsequently filed with the Legislative Counsel Bureau on March 28, 2005. (See: LCB temporary regulations #T031-05A)

The drinking water program was then transitioned to NDEP (by SB 395) and the regulation (which is now proposed as a permanent regulation) was slightly altered by NDEP to reflect changes in authority from the State Board of Health to

the State Environmental Commission. NDEP conducted another workshop to solicit public comments on the revised permanent regulation; the workshop was held at the following locations:

Thursday September 22, 2005 at 9:00 AM 401 S. Carson St. Legislative Building, Room 2134 Carson City, Nevada	Video conference in Las Vegas at the following location: Grant Sawyer Building, Room 4406 555 E Washington St Las Vegas, Nevada
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A public hearing was then held by the State Environmental Commission (SEC) to consider the regulation. The SEC hearing was noticed in the Las Vegas Review Journal and the Reno Gazette Journal newspapers on the following dates (September 05, 19, 26, 2005). Members of the public subscribing to the SEC electronic and ground-based mailing lists were subsequently mailed a public notice and meeting agenda for the SEC hearing; the hearing was held in Reno on October 04, 2005.

At the SEC hearing, there were no public comments received by the Commission during the adoption of the regulation.

2. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

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.

A comment response document was prepared following the public workshop on the original temporary regulation that was managed by the State Health Division. That document is attached.

Comments received at the workshop held by NDEP were generally supportive of the revised regulation. It was widely acknowledge by attendees that in order to retain Nevada's primacy under the Safe Drinking Water Act (Act), Nevada had little choice regarding adoptions of federal requirements prescribed under the Act.

Comments on the regulation were also solicited by State Environmental Commission (SEC) in the SEC notice in the newspapers, by direct mail to interested persons subscribing to the SEC electronic and ground-based mailing list.

The public notice for the referenced SEC hearing was also sent to county libraries throughout the state and the 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 workshop notice, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at:
<http://www.sec.nv.gov/main/hearing1005.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 State Environmental Commission adopted the regulation on October 04, 2005. Two technical corrections were made to the regulation. These corrections are noted below as well as in the cover letter to this document.

Page 15, Section 24. Strike the words “~~in interstate commerce.~~” at the end of subsection 2 and replace with “**apply**”.

Subsections 3 and 4 of NAC445A.451 were missing in LCB File No. R126-05 and need to be added to the final copy.

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

The estimated beneficial economic effect of the proposed regulation on the business community and the public would be to decrease medical costs that otherwise might be incurred as a result of exposure to contaminants in drinking water.

There is likely a significant adverse economic effect on small business although such impacts would not be borne evenly among privately owned public water systems such as mobile home parks. The impact borne by any particular water system will be dependent on the source of water quality and the quality as well as the availability and cost of alternative water sources. **The likely significant impact will be associated with costs to comply with the new arsenic concentration standard of 10 parts per billion (ppb), reduced from 50 ppb, which becomes effective in January 2006.** The arsenic standard will apply to all public water systems except transient, non-community systems, which are defined as non-community water systems, i.e. system the do not regularly serve at least 25 of the same persons over six months of the year.

Cost impacts to water systems might include developing an arsenic compliance plan, finding and developing new water sources, purchasing water from another water systems, blending water from two or more sources, or implementing treatment to reduce arsenic levels.

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

The regulation will not significantly affect existing staff support and operational costs of NDEP's Bureau of Safe Drinking Water.

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, indicate the name of the regulating federal agency.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies.

8. 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 no more stringent than what is established by federal law.

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 does not address fees.

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**Summary of Comments Received and Responses
for the
Public Workshop held November 12, 2004
on the subject of
Temporary Revisions to the Regulations
Regarding Water Quality and Treatment of Water for Public Water Systems**

Notes: The subject workshop was held to simultaneously receive comments on proposed temporary revisions to the Nevada Administrative Code (NAC) regulating Public Water Systems, including: (1) Water Quality and Treatment of Water; and (2) Certification of Operators. The workshop transcript includes the comments and responses for both categories. In the numbered list below, the second number, which appears in parentheses, is the number which corresponds to the comment number in the actual transcript of the workshop. This is provided to assist the reader in finding the full comment and response given at the time of the workshop. The numbering of the comments was added to the transcript for this purpose.

The summarizing and paraphrasing of the comments, and responses to the extent they were provided at the time of the workshop, were done by Bureau of Health Protection Services staff. The responses are not strictly limited to the response given at the workshop, but also include considerations made afterward. The actual transcript of the workshop will be made available upon request.

1. (1) Is it going to be a problem if a water system's monitoring plan includes monitoring frequencies more frequent than the minimum required by federal mandate?
Response: The health authority will have to approve monitoring plans for any inorganics which will have maximum contaminant level (MCL) compliance based on running annual average. The frequency, location, and weighting associated with each sample will have to be approved. Parameters requiring annual or less frequent monitoring for MCL compliance can be monitored more frequently than the minimum federal mandate.

2. (2) Isn't the requirement for a professional engineer's stamp on plans, specifications, and design reports for facilities to treat groundwater redundant with NAC requirements regulating the practice of professional engineers?
Response: Yes, but we do see a value in including it here. We will leave it in for the temporary regulation revision, and also add reference to NAC 625.610 through 625.612 which govern professional engineering. We will consider eliminating this requirement when permanent revisions are proposed.

3. (3) The appeal process specified in the proposed Section 5 isn't consistent with the appeal process other places in the NAC.
Response: Section 5 was proposed to replace existing NAC 445A.519 (which in turn was proposed to be deleted by Section 59). No change in the process

was proposed, the only change being to increase the applicability of the process from the health division's use to the health authority's use, which would include the local health districts as well as the state health division. We have removed Sections 5 and 59 from the proposed revisions, since including them appears to attempt to establish detailed procedures for local boards of health.

4. (4.) a.) Why is federal government approval required for granting a variance to a small water system for MCL or treatment technique compliance?

Response: It is a requirement of the federal regulations, 40 CFR Part 142, Subpart K.

- b.) Regarding small system variance affordability criteria, is reference to average median household income intended to mean State of Nevada or United States income?

Response: ~~The term average median household income is changed to median household income in Section 4.~~ This refers to United States Census data unless data from an approved income survey is available. This clarification is added to Section 4.

5. (5.) There needs to be clarification of what is meant by sanitary survey of a public water system, as opposed to sanitary survey of a watershed as required by NAC 445A.539 and also by filtration avoidance criteria under NAC 445A.525. It was suggested that a sanitary survey of a watershed be called a source water assessment for clarification.

Response: There is staff agreement that there is a potential for confusion since the term sanitary survey is used for an overall inspection and assessment of all aspects of a public water system, and it is also used for the more specific inspection and assessment of conditions on a watershed. The watershed is one component of the public water system.

The more specific watershed inspection and assessment is sometimes called a watershed survey, and has the most significance and required elements for surface water supplies with filtration avoidance waivers. Since the term source water assessment already refers to a specific analysis and published report, we do not want to adopt that term. We propose to continue current use of the term sanitary survey, for which a definition has been added in Section 21 (now Section 20); that definition specifies review of the water source, facilities, equipment, and operation and maintenance. When permanent regulation revisions are proposed, we will consider adding the term watershed survey or another appropriate term to specifically identify the portion of a public water system sanitary survey which assesses the watershed.

6. (6.) Filtration avoidance waivers include specific requirements for sanitary surveys of watersheds.

Response: We have adopted these requirements in Section 45 (now Section 44), which revises NAC 445A.525.

7. (10.) Concern was expressed over the new definition of sampling point in Section 21 (now Section 20). Reference was made to sampling point requirements in 40CFR 141.23.

Response: The requirements cited in 40CFR 141.23 are specific to a certain group of contaminants - inorganics. Sampling point requirements vary for various categories of contaminants, such as disinfection byproducts, disinfection residuals, lead and copper, turbidity, inorganics, etc. The new definition acknowledges that compliance samples are taken at different locations for different parameters.

8. (14.) In Section 29 (now Section 28), a requirement was added that public water systems must require the laboratory which analyzes water samples to submit the results to the health authority. This will require considerable additional work, particularly for large systems. There could also be problems tracking the source and water system for which the submittal is made if the labs directly make the submittal.

Response: The requirement is removed and is made voluntary. The words "must require" are changed to "may direct".

9. (21.) Why are we looking at temporary regulations?

Response: Temporary regulations are necessary because permanent regulations cannot be adopted until July 2005 due to the legislative session. For the water quality and treatment of water regulations, the reason we must adopt regulations now is our primacy agreement with USEPA to enforce provisions of the federal Safe Drinking Water Act (SDWA), including certain amendments to that Act, within a specified time after their enactment. We have already been granted time extensions for adopting regulations pertaining to some SDWA amendments. If we do not adopt and enforce regulations which are at least as strict as those in the SDWA, within specified time frames, USEPA can rescind our primacy. The revisions to the operator certification regulations are being proposed now because the Operator Certification Advisory Board, which has done most of the work on these revisions, has completed its work, and we felt there was some efficiency in adopting these through the same process of workshops and hearings along with the other Public Water Supply regulation revisions.

10. (22.) The new definition of "supplier of water" in Section 21 (now Section 20) is not the same as in the NRS.

Response: The definition used was that in 40CFR 141.2. It has been changed to that in NRS 445A.845.

11. (23.) In the water quality secondary standards, Section 26 (now Section 25), all of the constituents and MCL's are listed in a table except fluoride, which has its own subsection. It should be included in the table.

Response: Fluoride is not included in the table because it has a unique pre-qualifier, and all of the other constituents have straight forward MCL's. The

pre-qualifier has to do with systems which fluoridate for therapeutic reasons to an optimal dose which is elsewhere required to be between 0.7 and 1.2 mg/l, whereas the actual MCL (most likely for naturally occurring fluoride) is 2.0 mg/l. To make this clear, we do not think it should be in the table.

12. (33.) The requirement for approval by the health authority of a compliance plan for correction of an exceedance of a secondary MCL in Section 27 (now Section 26), subsection 5, is in conflict with NAC 439.280. NAC 439.280 requires approval of the plan by the state or district board of health if the system cannot be in compliance within 30 days.

Response: The requirement for approval of the specified plan by the health authority does not preclude the requirement for approval of a compliance agreement by the state or district board of health when the system cannot be in compliance within 30 days. Bilateral compliance agreements approved by the board of health are normally used in these cases. Subsection 5 provides for the water system to have a reasonable, but limited period of time to investigate compliance alternatives and develop an actual plan which they can implement; it would appear that the requirements of this subsection should be incorporated into a compliance agreement, and in practice it is. When permanent regulations are proposed, inclusion of reference to the requirements of NAC 439.280 will be included as recommended by legal staff.

13. (36.) Section 27 (now Section 26), subsection 4, refers to a state laboratory. What is a state laboratory, and could we change that to a certified laboratory?

Response: State laboratory means the laboratory now located at the University of Nevada at Reno. Comment number 7 and the response (above), provide clarification on submittal of laboratory results by laboratories directly to the health authority.

14. (37.) Announcement was made by BHPS staff that Small Business Impact Statements were available at the workshop sites for (1) Water Quality and Treatment of Water Regulation revisions, and (2) Operator Certification Regulation revisions. Small Business Impact Questionnaires were provided with the mailing of the Notice of Workshop and the revised regulations to all public water systems and all certified operators, as well as other concerned parties including laboratories and consulting engineers.