

# 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. R189-08**  
SEC # P200019

**Regulation R189-08: Leaking Underground Storage Tank and Corrective Action Regulation:** This regulation revises the Underground Storage Tank regulations and the Corrective Action regulations that address environmental site cleanups. These regulations are contained in the Nevada Administrative Code at NAC 459.9921 to 459.999 and NAC 445A.226 to 445A.22755 respectively. More specifically, the proposed regulation consolidates cleanup requirements for hazardous substance, hazardous waste, or regulated substance released from underground storage tanks and all other release sources. The regulations also make revisions to site assessment procedures to accommodate all types of releases from minor incidents to large sites with long operational histories of potential releases. The regulations better define abatement actions and they refine soil action levels to include consideration of all potential exposure pathways. Detail has been added in the regulations to address requests for exemptions from groundwater corrective actions. The regulations also seek to clarify the transition from Underground Storage Tank compliance requirements, to the initiation of a Leaking Underground Storage Tank cleanup case.

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. The Nevada Division of Environmental Protection, Bureau of Corrective Actions held two public workshops on the above referenced regulation at the locations noted below.

Las Vegas May 13, 2009 9:00am - 12:00pm Las Vegas Readiness Center auditorium 4500 W. Silverado Ranch Blvd.	Carson City May 14, 2009 9:00am - 12:00pm NV Army National Guard 2444 Fairview Drive
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Approximately 50 people combined attended the workshops, largely representing the regulated community and the environmental consulting industry. In addition to the public workshops, targeted outreach was made to agencies responsible for resource management, local governments, and large facility owners who could be impacted by the propose regulations.

Specific "outreach" was made to the following entities': American Council of Engineering Companies; Resource management agencies; Truckee Meadows Water Authority; Southern Nevada Water Authority; Las Vegas Valley Watershed Advisory Council; Department of Defense (Hawthorne Army Depot, Nellis AFB, NAS Fallon); Kinder Morgan; and the Boeing company.

Official comments were solicited through public announcement, targeted outreach, and public workshops. The Nevada Division of Environmental Protection fielded numerous clarifying questions and informal comments that help to involve language changes being suggested by the Division in the errata sheet attached to R189-08. Official comment letters were received from the American Council of Engineering Companies, Kinder Morgan, and a certified environmental manager. Responses to comments were prepared for all formal comments received. Response to comments for Kinder Morgan and Ms. Tamara Pelham were made available to the State Environmental Commission because they encapsulated the major issues discussed in public workshops and related outreach efforts.

Following this workshop, the State Environmental Commission (SEC) held a public hearing to consider the regulation on June 17, 2009. The hearing was held at the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada. The SEC hearing agenda was posted at the meeting location, at the 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 were also 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 regulation was published on Monday June 1, June 8<sup>th</sup> and June 15<sup>th</sup> 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\\_061709.htm#r189-08](http://sec.nv.gov/main/hearing_061709.htm#r189-08)

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

(a) Attended June 17, 2009 hearing; 30 (approx.)

(b) Testified on this Petition at the hearing: 2 (1 NDEP Staff & 1 support comment from Industry trade association)

(c) Submitted to the agency written comments: 3

**Note:** A comment/response document is posted on the SEC Website at: [http://sec.nv.gov/docs/r189\\_public\\_outreach\\_summary.pdf](http://sec.nv.gov/docs/r189_public_outreach_summary.pdf)

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**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.

**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 regulations with several non-substantive word clarifications to reflect comments acquired during the public workshop process. These changes are detailed in Errata Sheet attached to the above referenced regulations R189-08.

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

The regulation is not anticipated to have any significant economic impact on the public or Nevada businesses.

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

There will be no additional cost to the agency for enforcement of the proposed regulation.

**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.**

This regulation does not duplicate any other federal, state or local regulation.

**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 not more stringent than any local or federal laws and regulations. More importantly, the proposed regulation is consistent with provisions of the federal Resource Conservation and Recovery Act (RCRA) which establishes requirements for corrective action at sites that generate or store hazardous wastes. The RCRA program has been delegated to the Division of Environmental Protection, and the corrective action elements of the program are routinely reviewed for their consistency with federal provisions. The proposed regulation is no more stringent than the federal Superfund cleanup program, which cannot be delegated to the States. However, the State's cleanup program has been found to be sufficient to maintain an enforcement bar that prevents direct federal action where a State-lead cleanup is in progress.

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 not address any fees.