

**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.*

Name: Scott Smale, Nevada Division of Environmental Protection

Address: 901 S. Stewart Street, Suite 4001

Carson City, NV 89701

Signature: _____

Phone: (775) 687-9384

Date of Petition: _____

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.*

The proposed regulation has been developed by the Nevada Division of Environmental Protection (Division), Bureau of Corrective Actions, which is the Bureau responsible for the consolidated release reporting functions of the Division

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 proposal amends the Division's existing release reporting regulations that are contained in Nevada Administrative Code 445A.345 to 445A.348. Release reporting regulations require facilities to notify the Nevada Division of Environmental Protection after the release of hazardous substances or petroleum products in excess of reportable quantities. The proposed regulation makes a number of changes and clarifications to the existing regulations:

- The proposed 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.
- A "discovery event" trigger has been added for the reporting of hazardous substance contamination discovered in soil or groundwater as a result of historic or prior releases. The "discovery event" trigger will be based on the existing framework for petroleum product releases.
- A clarifying definition has been added for "other surfaces of land," which was previously undefined.

- A minimum reportable quantity for “listed” hazardous substances has been adopted to be consistent with existing reportable quantities for petroleum products.
- A specific reportable trigger for releases from underground storage tanks has been added in coordination with the State’s UST program.

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

The changes and clarifications in the proposed regulation are intended to support the Division’s functions as the State agency responsible for the implementation of the Nevada Water Pollution Control Law and those statutes and regulations adopted for the management of hazardous wastes, hazardous substances, and underground storage tanks. The changes and clarifications eliminate inconsistencies in the existing regulations and rely on standards of practice that already exist within most sections of the regulated community.

The adoption of immediate notification requirements is in support of the Division’s responsibility for emergency support functions at incidents involving the release of hazardous substances. While the Division is not a first-response agency, such as the fire or police departments, it is responsible for a number of functions that may require immediate notification and involvement in these types of incidents. The Division provides technical assistance to facilities and responders, interacts with the press and public, provides monitoring equipment and resources, makes rulings on regulatory issues during responses, and initiates potential federal involvement. Immediate notification requirements are structured around several reportable triggers corresponding to incidents that may represent a significant and immediate threat to human health and the environment, including the release of large quantities of chemical hazards, discharges to surface water, or threats to vulnerable resources.

The clarifications being made in the proposed regulation have all been identified by Division staff members who routinely field release notification calls from the regulated community. The areas addressed by the clarifications are often the subject of inquiries on whether a particular release is reportable under the regulations. The following answers and responses have been developed to summarize the ambiguity in the existing regulations, the need for clarification, and the approach taken to eliminate any confusion in the regulatory language.

Q: Are releases to paved surfaces considered to be reportable under either the federal regulations or under the state regulations which include the phrase “released to soil or other surfaces of land”?

A: The Division intends for releases of hazardous substances and petroleum products to paved surfaces to be reportable and interprets the existing regulations to support this intention. This interpretation depends on the specific inclusion of the phrase “other surfaces of land.” If releases to paved surfaces were to be excluded from release reporting, the phrase “other surfaces of land” would not be included in the regulations, since all unpaved surfaces could conceivably be covered under the term “soil” making the “other surfaces of land” phrasing redundant. In addition to the term “other surfaces of land”, releases to paved surfaces would still be considered as a release due to the broad definition given to “release” in both the state and federal regulations. The definition broadly includes any release to the environment and does not specifically exclude releases to paved surfaces.

The Nevada Water Pollution Control Law under section NRS 445A.465 makes the discharge of a pollutant unlawful without a permit if that discharge “could be carried into the

waters of the State by any means.” Releases to paved surfaces could be carried to waters of the State either through the lack of integrity of the paved surface (cracks, joints, etc.), surface runoff, or the connection to storm water collection systems. The only instance where a release to a paved surface would not be carried to waters of the State would be a release to an engineered and maintained containment structure that was intended to prevent a hazardous substance, petroleum product, or pollutant from being discharged into the environment.

A definition for “other surfaces of land” has been added to the proposed regulation to clarify the position of the Division on releases to paved surfaces versus releases to engineered containment structures.

Q: Are the hazardous substance reportable quantities media specific?

A: The reportable quantities for hazardous substances contained in 40 CFR Part 302 (referred to as “listed” hazardous substances) and referenced in the Division’s release reporting regulations (NAC 445A.347(2)(a)) are not media-specific, according to the reading by the Division of the federal regulations. This creates a large disparity between how “listed” hazardous substances are treated in comparison to other types of releases under the existing State regulations. Releases of petroleum products and all other unlisted pollutants to waters of the State are considered to be reportable regardless of quantity. This is consistent with NRS 445A.465 which prohibits the discharge of any pollutant to waters of the State without a permit.

The proposed regulation eliminates this disparity and applies media-specific reportable triggers to “listed” hazardous substances.

Q: How is the discovery of soils contaminated with “listed” hazardous substances treated under the release reporting regulations?

A: The reportable quantity for federally listed hazardous substances was intended for application to contemporaneous releases and is only applied with great difficulty to historic or unobserved releases that are discovered after the fact through excavation or subsurface exploration. The federal reportable quantities are given in terms of pounds of substance released, which can be calculated at the time of the release, but if these quantities were to be applied to the discovery of soil or groundwater contamination, it would require extensive back calculation and would rely on numerous assumptions about the extent of impacts and the concentration of contaminants in soil and groundwater. This makes it difficult to determine whether a facility needs to be reported to the NDEP as a result of the discovery of historic contamination during the performance of a Phase II environmental site assessment or other means.

The proposed regulation extends the reportable triggers governing “discovery events” for petroleum products in soil and groundwater to federally listed hazardous substances.

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) 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.

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

(c) 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.

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.*

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.

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.

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.

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.*

The proposed regulation does not provide a new fee or increase any existing fee.

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