

**FORM FOR PETITIONING THE STATE ENVIRONMENTAL COMMISSION FOR
ADOPTION, FILING AMENDMENTS OR REPEAL OF COMMISSION
REGULATIONS.
Form #1 -- R189-08**

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 State agency responsible for the oversight of soil and groundwater cleanups after a release of hazardous substances or the discovery of contamination in the environment. The Bureau of Corrective Actions (BCA) is the consolidated authority for environmental cleanups in the State including the cleanup of releases from leaking underground storage tanks.

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 proposed regulation makes changes to and clarifies provisions of existing regulations that govern the cleanup of contaminated sites and leaking underground storage tanks. The existing regulations in Nevada Administrative Code (NAC) 445A.226 to 445A.22755, which deals with releases of a hazardous substance from any source that is not a regulated storage tank, and NAC 459.9921 to 459.999, which deals with releases from regulated storage tanks, outline a process for corrective actions to be taken after a release of hazardous substances or the discovery of contaminated soil, groundwater, or surface water. The corrective action process covers all aspects of site cleanup from an assessment of site conditions to the establishment of action levels and conditions for closure.

The proposed regulation eliminates the parallel and largely similar cleanup language in NAC 445A and NAC 459 in favor of a single set of cleanup regulations to be contained in NAC 445A that will cover **all** site cleanups including releases from regulated storage tanks. The storage tank regulations in NAC 459 will still cover all aspects of the installation, registration, and operation of regulated storage tanks including marine tanks and underground storage tanks; however, the corrective action requirements in NAC 445A will apply and need to be followed by a tank owner/operator upon the discovery of a reportable release of a regulated substance.

In addition to the consolidation of cleanup provisions into a single section of the NAC, the proposed regulations clarify aspects of the corrective action process. The changes to existing language in the corrective action regulation is intended to accomplish the following elements:

- Allow for preliminary investigation and inquiry into a reported release in order to determine whether that release will result in a corrective action case for which an assessment of site conditions by a facility owner will be required;
- Provide authority for the Division to require additional site characterization under an approved workplan in order to obtain information necessary for cleanup decision-making;
- Clarify what immediate actions are considered necessary to abate imminent and substantial hazards to public health or safety;
- Change the way that soil action levels are established and are determined to be protective of groundwater resources of the State;
- Replace existing groundwater waiver conditions with a consistent approach for closure of sites with groundwater contamination above action levels that is based on an understanding of sources, plume characteristics, protection of resources and receptors, and control of exposure;
- Add additional conditions for the termination of a remediation system while contaminants are above action levels if remedial objectives are met in agreement with the Division; and
- Clarify reportable triggers and the transition to corrective actions in response to releases from underground storage tanks.

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

The Division operates under a unified site cleanup model. A single framework has been employed by the Division, consolidated within the Bureau of Corrective Actions, to address environmental cleanup of soil and groundwater at all sites requiring such action in the State. The framework accommodates the full variety of sites from the response to simple spills to the assessment and cleanup of complex sites with extended operational histories. The only distinction that persists in this unified cleanup framework is the existence of two sets of regulations pertaining to regulated storage tanks and all other sources.

The distinction between regulated storage tanks and all other sources is largely *pro forma* since the cleanup language in the sections of the Nevada Administrative Code covering regulated storage tanks (NAC 459) is nearly identical to those for all other sources (NAC 445A). The Division will reference the same cleanup authorities, just with a different regulatory citation depending on the source. However, minor differences in language between the two sections has resulted in some substantive differences in cleanups depending on whether the release was from a regulated storage tank or another source. These differences are not intentional, and the proposed regulations are an attempt to rectify these differences so that all cleanups follow the same framework.

The Division proposes to eliminate the differences by consolidating the cleanup language into a single chapter of the Nevada Administrative Code. The corrective action language will be retained in NAC 445A, and these corrective action requirements will apply to regulated storage tanks through reference from NAC 459 after the confirmation of a release. This would 1) eliminate the redundancy of having similar language in two different sections of the NAC; 2)

ensure that all cleanups follow the same regulatory authority; and 3) eliminate the possibility that differences in cleanup language may accumulate over time in different sections of the NAC.

In addition to consolidating and unifying the cleanup framework, the proposed regulation includes changes that are intended to clarify and improve the corrective action process. This is accomplished by strengthening some authorities, eliminating unused provisions, and clarifying ambiguous language, specifically for the following purposes:

- The assessment section of the regulations has been expanded to allow the Division to require submittal of a work plan for additional site characterization. The submittal of a work plan that covers assessment activities would not be necessary at most sites but would be beneficial at large or complex sites. The negotiation of a work plan would allow for NDEP involvement and approval prior to the investment of resources by a land owner for site characterization.
- The current regulations allow for an exemption from corrective action in groundwater based on the usability of the impacted groundwater as a source of drinking water. For releases from regulated tanks, an exemption can also be applied if it is shown that the contamination of groundwater will not cross property boundaries. The proposed regulations tighten the requirements for an exemption, including a requirement for source identification, plume delineation, establishment of a point of demonstration, determination of groundwater usability, and control of groundwater exposure.
- The development of soil action levels has been streamlined, and the use of the Toxicity Characteristic Leaching Profile (TCLP) as an action level protective of groundwater has been removed. The removal of TCLP allows for the establishment of action levels protective of groundwater for a wider variety of contaminants. The new methodology for establishment of soil action levels outlined in the proposed regulations relies on Risk Based Corrective Action calculations and on the Integrated Risk Information System to craft site-specific or general numbers that are protective of all exposure pathways applicable to a site.

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 primary purpose of the proposed regulation is to fix discrepancies in cleanups based on the source of the release. Since these discrepancies have not resulted in a functional difference in site cleanup costs, eliminating the discrepancies will not have economic effects either adverse or beneficial to the regulated community. The other changes made in the proposed regulation are intended to clarify and better define the corrective action process but does not significantly alter cleanup requirements. Greater clarification in regulations has a generally beneficial economic impact on the regulated community because the consistency allows for more accurate accounting and predicting of costs.

- (b) No economic impacts to the public are anticipated.

(c) The proposed regulation does not add new areas of enforcement authority and will not increase costs for the Division.

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 Nevada Division of Environmental Protection is the sole agency in the State with authority for the oversight and enforcement of site cleanups associated with environmental hazards. There are no overlapping or duplicate authorities other than the duplicate regulations which are the subject of the proposed regulatory changes.

The Division has entered into interlocal agreements with Clark and Washoe counties to administer some of the provisions of the underground storage tank and corrective action programs. These authorities do not overlap State authority. The Counties must follow state regulations and operate in a manner consistent with the Division, subject to periodic review. If the proposed regulations are approved, the Counties will need to follow the revised framework for corrective actions with guidance by the Division.

The State's site cleanup authorities largely consolidate federal cleanup authorities from many federal programs including the Resource Conservation and Recovery Act, Clean Water Act, and the Comprehensive Environmental Response Compensation and Liability Act, also known as Superfund.

The authorities of these federal programs are largely delegated or deferred to the Division, such that site cleanup is primarily undertaken through State-lead actions.

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.*

Proposed regulations are consistent with provisions of the federal Resource Conservation and Recovery Act which establishes requirements for corrective action at sites that generate or store hazardous wastes. The RCRA program has been delegated to the Division, and the corrective action elements of the program are routinely reviewed for their consistency with federal provisions. The proposed regulations are 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.

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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