

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission Permanent No: R161-24P

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

In order to remain consistent with federal hazardous waste regulations and continue to be authorized to enforce them in lieu of the US EPA, Nevada is required to periodically update its state hazardous waste regulations in response to changes made at the federal level. Once the regulations are updated, Nevada can complete the authorization application package. Additionally, the adoption of the hazardous secondary materials exclusions is to provide regulatory certainty and a framework promoting legitimate recycling of hazardous materials.

2. 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 Division held one hybrid (in-person and virtual) public workshop for R161-24P on October 30, 2024. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada, as well as the NDEP offices at 375 East Warm Springs Road in Las Vegas, Nevada. The workshop was held to present the substance of, and receive public comment on, the proposed regulation. Approximately fifty members of the public and regulated industry attended the workshop virtually or in person. The proposed regulations were also distributed to the Bureau of Sustainable Materials Management's email distribution list.

The Legislative Counsel Bureau published its draft, R161-24P, in the Nevada Register on September 19, 2024. The Division accepted written comments on R161-24I and R161-24P for 30 days ending on October 11, 2024. The Division received one clarifying verbal question concerning R161-24I and/or R161-24P during the public workshop, and numerous written comments. The written comments were generally related to clarification of the following:

- Recycling of hazardous waste, including universal waste, and NDEP's role in encouraging recycling in Nevada.
- The timeline for regulatory changes
- Whether NDEP would still recognize other states' waste programs
- Exclusions for Hazardous Secondary Materials, including certification options, storage of recyclable materials, confidentiality requirements, and the five-step process for Written Determinations
- The rationale for deleting "publicly available"
- Several aspects of the permitting process, including reciprocity with other states, the Materials Recovery Facility permit, Schedule of Compliance items, and timelines
- The term "Legitimate Recycling"
- The term "Inherently Waste-Like"
- Spent materials versus discarded materials
- The term "Thermal Treatment"
- Classification of materials as "Commercial Chemical Product"
- The term "Mixed Material Pathway"
- Classification of "Damaged, Defective, or Recalled Batteries"

The Division revised R161-24P as a result of some of these comments and provided a greenlined version to the SEC for adoption. A summary of the workshop, including public comment and bureau response, is included on the NDEP website as well as the SEC website.

The SEC held a hybrid regulatory hearing on November 19, 2024, to consider possible action on R161-24P. The SEC posted its public notice, which included a link¹ and instructions to access R161-24P and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice at the Division of Minerals in Carson City, at the Department of

¹ <https://sec.nv.gov/meetings/sec-meeting-november-19-2024>

Agriculture, on the LCB website, on the Division of Administration website, and on the SEC website.

The SEC also published the public notice in the Las Vegas Review Journal and Reno Gazette Journal newspapers once per week for three consecutive weeks prior to the SEC regulatory meeting.

3. The number of persons who attended the SEC Regulatory Hearing:

(a) Attended November 19, 2024, hearing: 37 (approximately)

(b) Testified on this petition at the hearing: 3

1. Jeff Kinder, on behalf of the Nevada Division of Environmental Protection
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3. Annalyn Settlemeyer, on behalf of the Nevada Division of Environmental Protection
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(c) Submitted to the Commission written comments: none

4. 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 through one public workshop and at the November 19, 2024, SEC hearing as noted in number 2 above.

5. 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 Commissioners unanimously adopted R161-24P with the greenlined changes because the public and the SEC were satisfied with the modified proposed regulation.

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

Regulated Business/Industry: Adoption of these additions, corrections, and clarifications to existing regulations are not anticipated to have any significant economic impact on Nevada businesses. The Resource Conservation and Recovery Act (RCRA) Subtitle C and other rule amendments that NDEP is proposing to adopt are federal rules, and the regulated business/industry must comply with them regardless of whether USEPA or the NDEP implements them.

There may be a nominally beneficial effect for the regulated universe as the changes may simplify compliance by correcting and clarifying the regulations. Additionally, adoption of the hazardous secondary materials exclusions may provide for a streamlined regulatory structure for certain recyclers of hazardous waste.

Public: There are no adverse or economic impacts on the public associated with this action in the short- or long-term.

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

Enforcing Agency. The proposed regulations do not impose additional functions or costs on the agency.

8. 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 proposed regulatory amendments in R161-24P pertain to existing regulations. They do not overlap or duplicate other regulations.

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

There are minor changes to the hazardous secondary materials exclusions that are being proposed to be adopted by reference. In section 261.4(a)(1)(ii), “except as prohibited by §266.505 and Clean Water Act requirements at 40 CFR 403.5(b).” will be deleted. And, in section 261.4(a)(24)(v)(B)(3) is adopted except that the term “publicly available” is deleted.

10. 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.

R161-24P does not address fees.