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: R116-26P

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

1. Need for Regulation

The proposed regulatory amendment is needed to update and clarify provisions in NAC 445A to ensure effective implementation of federal Safe Drinking Water Act, Underground Injection Control (UIC) Program, and better protects underground sources of drinking water from contamination by regulating the injection of fluids into the subsurface.

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 Legislative Counsel Bureau published its draft, R116-26P, in the Nevada Register on August 5, 2026.

The NDEP held one public workshop for R116-26P on August 26, 2026. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada, as well as at 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. Sixteen members of the public and regulated industry attended the workshop either in person or virtually. During and after the public workshop, the Division received four verbal comments:

1) Q: Mark Hauenstein from UCI made the following comments:
   Mr. Hauenstein asked about the regulatory process and whether the proposed changes would amend the Nevada Revised Statutes (NRS). NDEP clarified that the proposal amends the Nevada Administrative Code (NAC). Mr. Hauenstein then asked whether the proposed changes comply with or exceed the primacy agreement signed by the Attorney General in May 2021.
   A: Andrew Dixon explained that the UIC program is regulated under the Safe Drinking Water Act rather than the Clean Water Act and stated that he was unsure whether the referenced agreement applies to the UIC program. Mr. Dixon offered to follow up if Mr. Hauenstein provided additional information regarding the agreement.

Q: Mr. Hauenstein raised concerns regarding confidentiality and referenced NRS 445.665, which addresses proprietary trade secrets and excludes information describing discharges into state waters or the injection of contaminants through a well from trade-secret protection. He recommended that the proposed NAC language clarify what injection-related information may be treated as confidential.
A: Bureau staff reiterated that the workshop addresses amendments to the NAC and does not amend the NRS. Mr. Dixon explained that information submitted with a permit application may be requested as confidential, subject to Department review and approval under the applicable statutory requirements. He clarified that the permit itself is a public document, while portions of a permit application may qualify for confidential treatment. Mr. Hauenstein asked whether the table in Appendix B of UIC General Permit GHGU-26RC would be publicly available, and bureau staff confirmed that it would.

Q: Mr. Hauenstein noted that NAC 445A.902 allows a permit modification to be considered minor based solely on a change in flow rate and recommended that this provision be reviewed for consistency with the proposed amendments.
A: Bureau staff acknowledged the comment and indicated that it would be reviewed.

Q: Mr. Hauenstein recommended including changes in injection fluid chemistry among the criteria for modifications that increase risk to a USDW, noting that changes in chemistry could potentially constitute a major modification.
A: Mr. Dixon explained that the determination would depend on factors such as the existing injection fluid, background water chemistry, and beneficial use of the water. He noted that degradation beyond drinking water standards would be a clear consideration under the UIC program. Brent Allen clarified that such determinations would be made by the bureau's permit writers.

Q: Mr. Hauenstein also raised concerns regarding an outstanding gap in the current MOU with NDOM, which allows injection for up to seven days and could alter reservoir water chemistry before testing. He suggested conducting testing when the well is drilled and samples are already being collected, which he stated could avoid additional costs. He asked whether the MOU would be updated and whether any changes would be subject to public or stakeholder review.
A: Jeff Kinder stated that the Department would consider the comments and address the questions as it moves forward with the regulatory package.

2) Q: Matthew Winterhawk from W4Nevada had the following comments:
Mr. Winterhawk raised concerns regarding the proposed language in NAC 445A.6667 and the O&M requirements for public water systems. He questioned whether requirements addressing power generation systems, injection wells, cooling towers, well blowout procedures, and radioactive tracer surveys are intended to apply to all public water suppliers. He noted that the draft does not include an "if applicable" provision and asked whether the requirements are intended only for underground injection facilities or whether the incorrect regulatory section was referenced. He stated that the applicability should be clear in the regulation.

Mr. Winterhawk also identified inconsistencies among the supporting documents regarding the regulatory and economic impacts of the proposal. He noted that Form 1 states there are no new substantive technical or operational requirements and only minimal economic impact, while the proposal adds requirements related to O&M manuals, chemical use requests, testing procedures, and long-term recordkeeping. He further noted that Form 1 states the proposal is not more stringent than federal requirements, while Form 4 indicates that some provisions may be more stringent. He also referenced information on the SEC website indicating an economic impact on the regulated community. Mr. Winterhawk requested that NDEP reconcile these statements and provide supporting analysis.

Mr. Winterhawk expressed concern that website notice and an opt-in mailing list would not provide sufficient notice for major modifications involving increased pressure, volume, injection area, or risk. He recommended direct notice to affected counties, cities, tribal governments, water suppliers, and nearby well owners.

Mr. Winterhawk asked whether a major modification would reset a permit for another five years and stated that a modification should not postpone a full renewal review or allow unresolved compliance issues to be avoided.

Mr. Winterhawk requested that NDEP correct the public water system language, reconcile the conflicting impact statements, publish the completed and signed supporting documents, strengthen direct notice requirements, and provide an opportunity for additional public review. He emphasized the importance of protecting Nevada's drinking water sources and referenced NRS 535.025.

A: NDEP staff thanked Mr. Winterhawk for his comments.

3) Q: Sheldon Byde from Fervo Energy made the following comments:
Mr. Byde thanked NDEP for the workshop and stated that Fervo Energy generally supports efforts to improve and streamline the regulations. He focused on the definition of major modifications and noted that the process requires significant time and effort from both industry and the Department. He recommended retaining sufficient agency discretion to ensure that only substantive major modifications are subject to the major modification process.

Mr. Byde noted that the proposal appears to expand the types of changes that could be considered major modifications while narrowing the scope of minor modifications. He referenced the proposed language concerning changes in the location, design, or operation of an injection well that differ from the existing permit and compared it with language addressing changes to injection fluids or methods that increase risk to a USDW. He recommended applying the risk-increase criterion to changes in well location, design, or operation. He stated that relocating or adding an injection well within an existing area

of review (AOR) should not automatically constitute a major modification if the change does not increase risk to a USDW.

Mr. Byde further recommended retaining discretion for agency staff and leadership to determine that a proposed change is not a major modification when the change can be demonstrated not to increase risk to drinking water. He referenced the Director's discretion provisions in NAC 445A.902 as a potential model.

Mr. Byde then asked about the proposed requirement in NAC 445A.920 that an injection well maintain constant pressure for the duration of a mechanical integrity test (MIT). He noted that certain tests, including pressure-temperature logs and radioactive tracer surveys, may require a constant injection rate rather than constant pressure. Lauren Bowen explained that the proposed language refers to a static pressure test used to evaluate the internal mechanical integrity of a well and verify that there are no leaks in the casing. She clarified that other surveys, including pressure-temperature-spinner surveys, are dynamic tests in which pressure may change.

Mr. Byde asked whether "constant pressure" allows for minor pressure loss during testing. NDEP staff explained that no specific numerical standard was included because the appropriate pressure may vary based on well depth and site-specific conditions. Staff also noted that NDEP follows EPA Region 9 guidance addressing the testing requirements and that the proposed language was intentionally not limited to a specific numerical value.

Mr. Byde thanked NDEP for the clarification and reiterated the importance of preserving agency discretion and flexibility within the regulations.
A: NDEP staff thanked Mr. Byde for his comments

4) Q: Ryan Colley from Ormat made the following comments:
   Mr. Colley raised a concern regarding the proposed requirements for internal and external MITs and the requirement to maintain operational conditions during testing. He noted that, in some situations, the required operational conditions may exceed the conditions under which testing equipment can effectively operate. He recommended including language that allows for additional discussion and Department discretion in unique circumstances where an alternative testing approach could verify equipment integrity and prevent equipment failure or damage to the injection or production system.
   A: NDEP staff acknowledged the concern and indicated that the Department would consider adding language allowing discretion for unique circumstances, consistent with the discussion regarding MIT requirements

A summary of the workshop is included on the NDEP website as well as the SEC website.

The proposed regulations were also distributed to the bureau's email distribution lists. The Division accepted written comments on R116-26P for 30 days ending on August 27, 2026.

The SEC held a hybrid regulatory hearing on September 16, 2026, to consider possible action on R116-26P. The SEC posted its public notice, which included a link[1] and instructions to access R116-26P 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 Agriculture, on the LCB website, on the Division of Administration website, and on the SEC website.

The public notice was also published 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 September 16, 2026, hearing: 73 (approximately)
(b) Testified on this petition at the hearing: 2

1. Andrew Dixon, on behalf of the Nevada Division of Environmental Protection
   901 South Stewart Street, Suite 4001
   Carson City, Nevada 89701
   (775) 687-9433
   andrew.dixon@ndep.nv.gov

2. Bret Allen, on behalf of the Nevada Division of Environmental Protection
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(c) Submitted to the agency 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 during the September 16, 2026, SEC hearing as noted in number 2 above. There was no verbal or written comments received regarding the regulatory amendments during the September 16, 2026, SEC meeting.

[1] https://sec.nv.gov/meetings/sec-meeting-september-16-2026

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 R116-26P with NDEP-proposed changes because the SEC was satisfied with the proposed regulation and the proposed edits to the LCB draft.

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

Regulated Business/Industry:

The proposed regulatory amendment is expected to have a minimal economic effect on the regulation of a business. The amendment generally provides clarification to provide certainty to the regulated industry and updates outdated language for an existing program.

No adverse effects are expected. Beneficial effects may include providing additional certainty to the regulated industry and updating outdated language.

Immediate and long-term effects may include providing additional certainty to the regulated industry and updating outdated language.

Public:

The proposed regulatory amendment is not expected to have an economic effect on the public.

No adverse effects are expected. Beneficial effects should include improved implementation of the UIC program.

Immediate and long-term effects should include improved implementation of the UIC program.

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

Enforcing Agency.

The proposed regulatory amendment is not expected to create any additional enforcement costs for 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 amendment does not overlap or duplicate the regulations of any other state or local government agency. Because Nevada administers the UIC program under primacy granted by the U.S. EPA, some overlap with federal requirements in 40 CFR Part 144 is

unavoidable and necessary. State regulations must remain consistent with federal minimum standards to maintain the primacy designation.

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

The proposed regulatory amendment does not impose technical or operational requirements that are more stringent than the federal UIC regulations administered by the U.S. EPA under 40 CFR Part 144. The amendment does include additional detail regarding Operations and Maintenance Manual content, clarifies mechanical integrity testing expectations, and defines "major modification" for state permitting purposes to provide certainty to the regulated community.

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.

The proposed regulatory amendment does not establish any new fees or increase any existing fees.