

Permanent Regulation - Informational Statement

A Regulation Relating to the Bureau of Safe Drinking Water

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066 & 233B.0603.10(f)

State Environmental Commission (SEC) LCB File No: R118-14

Regulation R118-14:

On December 3, 2014, the SEC adopted a regulation modification associated with the NDEP Bureau of Safe Drinking Water. The proposed regulation provides for the adoption of federal standards/requirements, design and construction requirements and general cleanup.

1. Need for Regulation:

Nevada's Safe Drinking Water Program regulates public water systems using a combination of State regulations and the National Primary Drinking Water Regulations (NPDWR) adopted by reference. The United States Environmental Protection Agency (EPA) granted the NDEP primary enforcement responsibility for the NPDWR in 1978. In order to maintain primary enforcement responsibility, the NDEP must adopt regulations that are at least as stringent as new or amended federal regulations.

The purpose of the Revised Total Coliform Rule (TCR), which becomes effective on April 1, 2016, is to provide better health protection by decreasing the presence of coliform in drinking water. As required by the Safe Drinking Water Act (SDWA), EPA reviewed the requirements of the 1989 TCR, identified enhancements to the TCR and revised the regulation. In summary, the revisions will require Public Water Systems (PWS) to identify and fix problems that are associated with the presence of Total Coliform and *E. coli* in their drinking water systems.

The Reduction of Lead in Drinking Water Act of January 4, 2011 is a revision of the existing Lead Free requirements of the SDWA and became effective nationally on January 4, 2014. The US Congress lowered the definition of "Lead Free" for fittings and fixtures from a maximum of 8% lead to a maximum of 0.25% lead. States are required to enforce the revised requirements and failure to address the Reduction of Lead in Drinking Water Act will result in a 5% withholdings of Federal Grants for the Public Water System Supervision Program.

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.

On November 5, 6, 13 and 18, 2014, NDEP conducted public workshops on LCB's Proposed Draft Regulation R118-14. The workshops were held in Tonopah, Elko, Las Vegas and Carson City, respectively. In addition, NDEP also held a videoconference workshop on November 14, 2014.

Thirty-one (31) members of the public attended the workshops. The over-all public response was in favor of the regulation changes. Based upon comments received during the workshops, NDEP modified the regulatory petition after receiving approval from the Attorney General's Office that the revisions were non-substantive and within the scope of the posted workshop notification.

Written comments were submitted by the following people:

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Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop and response to comments are posted on the SEC website at:

http://sec.nv.gov/docs/1214/R118_14_Workshop_Minutes.pdf .

Following the workshop, the SEC held a formal regulatory hearing on December 3, 2014 at the Nevada Department of Conservation and Natural Resources, 901 South Stewart Street, Carson City, Nevada. A public notice and agenda for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of the Division of Environmental Protection in Las Vegas, at the Division of Minerals in Carson City, at the Division of Wildlife, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed permanent regulation R118-14 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_1214.htm .

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

- (a) Attended December 3, 2014 hearing: 6 (approximately)
- (b) Testified on this Petition at the hearing: 0
- (c) Submitted to the agency written comments: 0

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 entities through broad e-mail notification, four (4) public workshops, a videoconference workshop and also at the December 3, 2014 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 regulation was adopted with changes. It is important to note that Attorney General's Office agreed that the NDEP changes to two (2) separate sections were non-substantive changes and were within the scope of the original notice provided to the public. The SEC agreed and adopted the regulation with the recommended change:

EXPLANATION - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted. Matter in **bold double underline** is a proposed Agency Amendment subsequent to LCB review; matter in double strikethrough brackets ~~[omitted material]~~ is material to be omitted.

Sec. 8. NAC 445A.66085 is hereby amended to read as follows:

445A.66085 “Lead-free” means, with regard to:

1. Solder and flux, that not more than 0.2 percent of the composition of the solder or flux is lead.
2. Pipes , ~~and~~ fittings ~~;~~ *and fixtures*, that not more than ~~8~~ *a weighted average of 0.25*

percent of the composition of the *wetted surfaces of the* pipe , ~~or~~ fitting *or fixture* is lead ~~;~~ ,

as calculated in accordance with Standard 372 of the American National Standards Institute and the National Sanitation Foundation International, as adopted by reference in NAC 445A.6663.

~~*[2 Gate valves which are 2 inches in diameter or more, service saddles and fire hydrants, that:*~~

~~*(a) Not more than 8 percent of the composition of the gate valve, service saddle or fire hydrant is lead; and*~~

~~*(b)] The gate valve, service saddle or fire hydrant complies with Standard 61 of the National Sanitation Foundation International, as adopted by reference in NAC 445A.6663.]*~~

Sec. 12. NAC 445A.67125 is hereby amended to read as follows:

445A.67125 1...

2. The choice of materials for ~~the pipes of~~ a distribution system must be based on the

properties of the soil and water. In areas where:

- (a) The water is corrosive, ~~metallic pipe~~ ~~metal~~ metallic pipe must not be used.
- (b) The groundwater or soil is contaminated with volatile or synthetic organic chemicals,

plastic ~~pipe~~ and ~~gasketed pipe~~ *gaskets* must not be used.

↪ unless otherwise approved by the Division or the appropriate district board of health in accordance with NAC 445A.6665.

3. Any pipes, fittings, *fixtures*, solder, ~~or~~ and flux~~, service saddles, fire hydrants and~~

~~gate valves~~ used in the installation or repair of a public water system must be lead-free, except

gate valves which are 2 inches in diameter or larger, service saddles and fire hydrants, as exempted by the Federal Act, defined in NAC 445A.450 . ~~[and comply with section 316.1.3 of the Uniform Plumbing Code.]~~

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

(a) Regulated Business/Industry.

Revised Total Coliform Rule

Adoption of the Revised TCR into Nevada Administrative Code is not expected to result in a significant additional financial burden to the regulated utilities and businesses. In general, the economic provisions of the revised TCR may have the following economic impacts, but the overall financial burden related to individual PWSs cannot be quantified:

Monitoring and repairs to a PWS are the predominant economic effects associated with complying with the existing TCR and, subsequently, the RTCR. Monitoring for Total Coliform and *E. coli* continue in the RTCR, and in some instances decrease. Repairs and operational changes to comply with the presence of Total Coliform and *E. coli* will not change; however, the manner in which they are reviewed, tracked and expedited will be enhanced.

It is expected that enhancements included in the revised TCR will result in a better awareness by utilities and businesses related to the understanding that proper operation and oversight of their drinking water system is critical to their business. In the long-term, engaging small utilities and businesses in understanding and reviewing their water system will reduce the instances in which Total Coliform and *E. coli* are present in drinking water systems.

Reduction of Lead in Drinking Water Act

Adoption of the Reduction of Lead in Drinking Water Act (Act) into Nevada Administrative Code is not expected to result in a significant additional financial burden to the regulated businesses. The cost of compliance cannot be directly quantified as it is only related to the retail cost of pipes, fittings and fixtures purchased for installation into drinking water systems. The Act does not require removal and replacement of existing fittings and fixtures throughout Public Water Systems. However, when new equipment is installed, or existing equipment is repaired or replaced, it must meet the new lead free definition. Existing stock on hand that

does not meet the definition must be disposed of. The quantity of a water system's stock of fittings and fixtures that do not meet the new definition of lead free is unknown. The Act became federally effective in January, 2014 and water systems are required to comply.

It is important to note that the adopted regulation changes are federal requirements which industry must comply with regardless of whether the EPA or the NDEP implements them.

(b) Public.

The economic effect on the public as a result of the regulations for Revised TCR and the Act cannot be directly quantified. The regulations will provide for better protection of the health and safety of the public and may result in decreased medical costs that might be incurred as a direct result of waterborne disease or lead exposure. An unquantifiable increase in costs to PWS customers who are served by systems needing infrastructure or other system improvements related to the Revised TCR is anticipated, but these improvements would be required by current regulations governing PWSs.

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

The Revised TCR and the Reduction of Lead in Drinking Water Act program adoptions/revisions increase the responsibilities of the NDEP, but the programs will be implemented through existing programs and by existing staff. The overall workload of the BSDW continues to be evaluated. Additional personnel resources to ensure adequate oversight of regulated PWSs for public health protection may be sought when appropriate. To secure our current grant percentage from EPA, it is noted that failure to address the Reduction of Lead in Drinking Water Act will result in 5% withholding of Federal Grants for the Public Water System Supervision Program.

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.

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

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 regulation is not more stringent than any federal regulation or guidance.

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 regulation does not address new or increased fees.