

LCB File No. R152-08

PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

P2008-12

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 439.200, 445A.860.

A REGULATION to complete the transfer of authorities covered by Senate Bill (SB) 395. SB395, passed in the 2005 Legislative session transferred statutory and regulatory authorities for Subdivision Review Programs (Nevada Revised Statute (NRS) and Nevada Administrative Code (NAC) 278) from the Nevada Division of Health to the Nevada Division of Environmental Protection (NDEP). The above referenced regulations were originally adopted by the State Board of Health in 1982 in order to implement the statutory responsibilities of NRS 278. These responsibilities were transferred to NDEP by SB 395. These responsibilities include the review of tentative maps and approval of final subdivision maps. Final map approval, as amended by SB 395, is found in NRS 278.377:

Section 1. NAC 278.020 through NAC 278.520 is hereby amended to read as follows:

NAC 278.020 “Bureau” defined. (NRS 439.200) “Bureau” means the Bureau of ~~Health Protection Services~~ *Water Pollution Control* of the ~~Health Division~~ *Division of Environmental Protection of the State Department of Conservation and Natural Resources* or its successor.

NAC 278.090 “Local agency” defined. (NRS 439.200) “Local agency” means a district board of health, county or city, which is authorized to act for the ~~Health Division~~ *Division of Environmental Protection* pursuant to NRS 278.335.

NAC 278.260 Information required for review of tentative map. (NRS 439.200, 445A.860) A developer shall submit all the following items of information to the ~~Health Division~~ *Division of Environmental Protection* or local agency for its review of a tentative map:

1. A map showing the topographic features of the subdivision, including contours at intervals of 2 feet for slopes of 10 percent or less and intervals of 5 feet for slopes of over 10 percent.
2. Two copies of the map showing the tentative design of the subdivision, including the arrangement of lots, the alignment of roads and easements.
3. If a system for subsurface disposal of sewage will be used in the subdivision, a report on the soil, including the types of soil, a table showing seasonal high water levels and the rate of percolation at the depth of any proposed system for absorption by soil.
4. A statement of the type of water system to be used and the water source, for example, private wells or a public water system.

5. Unless water for the subdivision is to be supplied from an existing public water system, a report of the analyses of four 1-gallon samples taken in or adjacent to the subdivision from different wells. The analyses must show that the water meets the standards prescribed in NAC 445A.450 to 445A.492, inclusive.

6. A map of the 100-year floodplain for the applicable area. The map must have been prepared by recognized methods or by an appropriate governmental agency for those areas subject to flooding.

7. A description of the subdivision in terms of 40-acre parts of a designated section, township and range, or any other description which provides a positive identification of the location of the subdivision.

8. A map of the vicinity of the subdivision, showing the location of the proposed subdivision relative to the nearest city or major highway.

9. The names and addresses of the owners and developers of the subdivision.

10. A master plan showing the future development and intended use of all land under the ownership or control of the developer in the vicinity of the proposed subdivision.

NAC 278.270 Completeness of application. (NRS 439.200)

1. An application for review of a tentative map is not complete until all the required items of information have been submitted by the local government. The period allowed the ~~{Health Division}~~ *Division of Environmental Protection* or local agency for its review begins on the date when the application is complete.

2. If an incomplete application for review is received by the ~~{Health Division}~~ *Division of Environmental Protection* or local agency, it shall give the local government written notice of that fact. The notice must include a list of the specific items which are missing.

NAC 278.310 Certification: Form of statement required. (NRS 439.200) In preparing the certificate required by subsection 1 of NRS 278.377, the ~~{Health Division}~~ *Division of Environmental Protection* or a local agency acting for the ~~{Health Division}~~ *Division of Environmental Protection* shall include the following statement:

This final map is approved by the (~~{Health Division}~~ *Division of Environmental Protection*; health district, county or city for the ~~{Health Division}~~ *Division of Environmental Protection*) of the Department of Health and Human Services. This approval concerns sewage disposal, water pollution, water quality and water supply facilities and is predicated upon plans for a (public, private) water supply and (a community, individual systems) for disposal of sewage.

.....
(~~{Health Division}~~ *Division of Environmental Protection*;
District, County, City)

.....
Date

NAC 278.320 Certification: Reference to compliance with chapter. (NRS 439.200) A local agency which certifies to the ~~{Health Division}~~ *Division of Environmental Protection*, pursuant to subsection 3 of NRS 278.335, that the water quality and quantity, sewage disposal and control of water pollution for a subdivision meet all the requirements of law must also certify that the requirements of this chapter are met, if the agency so finds.

NAC 278.330 Time for review of final map; notice of decision; delay in recording map. (NRS 439.200)

1. The ~~{Health Division}~~ *Division of Environmental Protection* or local agency shall review and either approve or disapprove the plans for improvements shown on the final map and related plans within 30 days after receipt of the map and plans.

2. The ~~{Health Division}~~ *Division of Environmental Protection* or local agency shall give written notice of its approval or disapproval to the developer. If the ~~{Health Division}~~ *Division of Environmental Protection* or local agency disapproves the map or plans, its notice must include the reasons for its action.

3. If the developer fails to record an approved final map within the time allowed by NRS 278.360, he must resubmit a tentative map through the governing body to the ~~{Health Division}~~ *Division of Environmental Protection* or local agency for its review and approval.

NAC 278.340 Construction prohibited until final map approved. (NRS 439.200) The developer shall not perform any construction on the site of a subdivision, except that necessary to evaluate the subdivision, until the ~~{Health Division}~~ *Division of Environmental Protection* or local agency approves the final map.

NAC 278.350 Approval of map constitutes approval of concept of proposed methods. (NRS 439.200) An approval by the ~~{Health Division}~~ *Division of Environmental Protection* or local agency of a tentative map constitutes an approval of the concept of the proposed methods of providing for disposal of sewage, controlling water pollution, ensuring the quality of water and providing facilities for water supply.

NAC 278.360 Manner of development. (NRS 439.200) Development of a subdivision must be carried on in a manner which will:

1. Minimize water pollution; and
2. Be in conformance with the applicable plans and specifications approved by the ~~{Health Division}~~ *Division of Environmental Protection* or local agency.

NAC 278.370 Inspection by third persons. (NRS 439.200)

1. If the ~~{Health Division}~~ *Division of Environmental Protection* has not authorized the county or city to conduct inspections of the construction of the system for water supply and sewerage in a subdivision, the developer must have the design engineer or a third person conduct those inspections.

2. The inspector shall, at intervals of construction specified by the ~~{Health Division}~~ *Division of Environmental Protection* or local agency, certify in writing that the improvements are being installed in accordance with the approved plans and recognized practices of the trade.

3. The developer must bear the cost of the inspections.

4. The developer may select a third-person inspector but the selection must be approved by the ~~{Health Division}~~ *Division of Environmental Protection* or local agency. A third-person inspector must be a disinterested person who is not an employee of the developer.

NAC 278.400 Conditions of approval with respect to water quality; exceeding maximum contaminant level for arsenic. ~~{Effective until the adoption by the United States Environmental Protection Agency of a final rule establishing a maximum contaminant level for arsenic in public~~

~~water systems and the adoption of that standard by the State Board of Health.] (NRS 439.200, 445A.860)~~

1. Except as otherwise provided in subsection 3, if a public water system is to be used for the subdivision, the system must have:

(a) Necessary facilities to treat water to meet the standards provided in NAC 445A.450 to 445A.492, inclusive.

(b) The capacity to meet the demands upon the system.

2. Except as otherwise provided in subsection 3, the ~~Health Division~~ *Division of Environmental Protection* or local agency shall not approve a subdivision with respect to water quality if the subdivision is in an area where:

(a) The water is to be supplied from individual wells and the water does not meet the standards established by the State Board of Health in NAC 445A.450 to 445A.492, inclusive; or

(b) There is a community water supply and the water is treated by the use of individual units in single-family dwellings.

3. Water furnished in a subdivision from a public water system or from individual wells is not required to comply with the maximum contaminant level for arsenic.

4. Upon the approval of the final map of a subdivision whose water system or water supply exceeds the maximum contaminant level for arsenic, the subdivider shall cause to be published a notice that the water system or water supply exceeds that level. The notice must be:

(a) Published in a newspaper of general circulation in the area served by the water system or water supply not more than 20 days after receipt of the approval;

(b) Published in that manner annually thereafter if the maximum contaminant level continues to be exceeded; and

(c) Provided in writing to any prospective purchaser of real property within the subdivision before any such sale is consummated.

5. As used in this section, “maximum contaminant level for arsenic” means the maximum contaminant level for that element established by 40 C.F.R. § 141.11, as adopted by reference in NAC 445A.4525.

NAC 278.400 Conditions of approval with respect to water quality; exceeding maximum contaminant level for arsenic. ~~[Effective upon the adoption by the United States Environmental Protection Agency of a final rule establishing a maximum contaminant level for arsenic in public water systems and the adoption of that standard by the State Board of Health.] (NRS 439.200, 445A.860)~~

1. If a public water system is to be used for the subdivision, the system must have:

(a) Necessary facilities to treat water to meet the standards provided in NAC 445A.450 to 445A.492, inclusive.

(b) The capacity to meet the demands upon the system.

2. The ~~Health Division~~ *Division of Environmental Protection* or local agency shall not approve a subdivision with respect to water quality if the subdivision is in an area where:

(a) The water is to be supplied from individual wells and the water does not meet the standards established by the State Board of Health in NAC 445A.450 to 445A.492, inclusive; or

(b) Where there is a community water supply and the water is treated by the use of individual units in single-family dwellings.

~~[Bd. of Health, Subdiv., Condo., & PUD Reg. § 39, eff. 9-15-82]~~—(NAC A 8-31-89, eff. upon the adoption by the United States Environmental Protection Agency of a final rule

establishing a maximum contaminant level for arsenic in public water systems and the adoption of that standard by the State Board of Health; R088-00, 8-3-2001, eff. upon the adoption by the United States Environmental Protection Agency of a final rule establishing a maximum contaminant level for arsenic in public water systems and the adoption of that standard by the State Board of Health)

NAC 278.420 Acceptable methods of sewerage. (NRS 439.200) When the written approval of the *Division of Environmental Protection* is obtained the ~~Health Division~~ *Division of Environmental Protection* or local agency may approve any of the following methods for disposing of sewage:

1. Connection to an existing system of community sewerage if the system:
 - (a) Will not be brought to overcapacity by the connection; and
 - (b) Will be expanded to provide for the additional demand.
2. Connection to a newly constructed system of community sewerage.
3. Connection to a system for subsurface disposal of sewage.

NAC 278.430 Conditions for connection to existing system of community sewerage. (NRS 439.200) To obtain approval for connection to an existing system of community sewerage, the developer must submit to the ~~Health Division~~ *Division of Environmental Protection* or local agency a written statement from the local authority responsible for sewage disposal stating that service from the existing system will be extended to the subdivision and:

1. The community facility for treatment will not be caused to exceed its capacity and the discharge permit requirements by this added service; or
2. The facility will be expanded to provide for the added service.

NAC 278.440 Conditions for connection to new system of community sewerage. (NRS 439.200) To obtain the ~~Health Division~~ *Division of Environmental Protection*'s or local agency's approval for connection to a new system of community sewerage, the developer must first submit complete engineering plans and specifications to and have them approved by the *Division of Environmental Protection*.

NAC 278.450 Percolation tests. (NRS 439.200)

1. Before the ~~Health Division~~ *Division of Environmental Protection* or local agency may approve the use in a subdivision of a system for subsurface disposal of sewage or private systems for disposal of sewage, the developer must comply with the conditions set forth in this section.
2. Percolation tests of soil must be made at the rate of four tests per 10 acres or fraction thereof and one additional test for each additional 10 acres or fraction thereof. For example, 10 such tests are required for a 67-acre subdivision. In a subdivision covering an area of more than 1 square mile, at least 16 percolation tests per square mile are required for the initial submission of data. Complete results of these tests must be submitted to the *Division of Environmental Protection* and to the ~~Health Division~~ *Division of Environmental Protection* or local agency for review.
3. In any subdivision where the characteristics of soil percolation are questionable, the developer may be required to make additional tests. The location of test holes must be shown on the plan.
4. If the percolation tests show that the times for seepage exceed 60 minutes per inch, the method of absorption by soil must not be used for disposal.

NAC 278.470 Soil conditions; ground water; soil characteristics. (NRS 439.200)

1. As a further condition of the ~~Health Division~~ *Division of Environmental Protection*'s or local agency's approval of a subsurface system or private systems for sewage disposal, the developer must have all the following items prepared and submitted to the *Division of Environmental Protection* ~~and the Health Division~~ or local agency:

(a) For a tentative map, a report containing a comprehensive log of the soil conditions existing throughout the area of the subdivision to a depth of at least 5 feet below the bottom of the proposed system for subsurface disposal. This report must be prepared by a professional engineer or other person who is qualified by training and experience to make such a report. For absorption by soil to be approved as a method of disposal, the soil cover throughout the area must be adequate to ensure that at least 4 feet of suitable soil lie between bedrock (or any other impervious formation) and the bottom of the trenches used to allow absorption in soil of the effluent from the septic tank.

(b) For a tentative map, a statement of the present and maximum elevation of ground water throughout the area of the subdivision. This statement must be prepared by a professional engineer or other person who is qualified by training and experience to prepare such a statement. A subsurface system for disposal of sewage must not be approved if there is evidence that ground water rises to within 5 feet of the bottom of the trenches.

(c) For a final map, a report presenting information in sufficient detail to demonstrate that the soil characteristics of all parcels of land within the subdivision will be suitable for a subsurface system for disposal of sewage. The report must be prepared by a professional engineer or other person authorized under state law to prepare such a report.

2. The developer must inform the ~~Health Division~~ *Division of Environmental Protection* or local agency when test holes have been excavated, so that a representative of the Division or agency may inspect the holes.

NAC 278.480 Disposal of sludge. (NRS 439.200) Before approval is given for a subdivision which is to be served by septic tanks, the local government within whose jurisdiction the subdivision is located must submit a written statement that a site for disposal of sludge had been provided and will be maintained in a sanitary manner.

NAC 278.490 Fees for services of ~~Health Division~~ *Division of Environmental Protection*. (NRS 439.150, 439.200) The following fees are prescribed for services performed by the *Division of Environmental Protection* ~~Health Division~~:

For reviewing a tentative map..... \$400
Plus \$3 for each building lot shown on the map.	
For reviewing a final map..... 400
Plus \$3 for each building lot shown on the final map.	
For a preliminary evaluation of a plant for water treatment for a subdivision, an additional fee of..... 50
For requesting and considering information which the subdivider has failed to submit in accordance with <u>NAC 278.260</u> to <u>278.370</u> , inclusive, each request 100

NAC 278.500 Procedure for review of actions taken by ~~Health Division~~ *Division of Environmental Protection*. (NRS 439.200)

1. Any developer who has reason to believe that an action taken by the ~~Health Division~~ *Division of Environmental Protection* pursuant to this chapter was incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.

2. If the informal discussion does not lead to a resolution of the developer's problem, he may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the Bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the developer and the Bureau, except that the informal conference must be held no later than 60 days after the date on which the Bureau received the written request.

3. The determination of the Bureau resulting from the informal conference cannot be appealed and is the final remedy available to the developer.

4. The Bureau may waive the informal procedures by giving written notice to the developer.

5. Local agencies shall adopt a parallel procedure for handling similar situations.

NAC 278.510 Proof of approval; order to cease and desist. (NRS 439.200)

1. Before the developer begins construction of any improvements based on the final map, he must be able to show proof that the map includes a certificate of approval issued by the ~~Health Division~~ *Division of Environmental Protection* or local agency pursuant to NRS 278.377 and NAC 278.310. The proof must be available at the jobsite.

2. If the proof is not available at the jobsite, the health authority or other enforcing officer shall issue an order to the developer to cease and desist until such time as proper proof is available.

3. If the developer fails to comply with the order to cease and desist, the enforcing officer shall seek injunctive relief through a court of competent jurisdiction.

NAC 278.520 Approval of construction. (NRS 439.200) Each certificate which the ~~Health Division~~ *Division of Environmental Protection* or local agency issues to approve construction must include a declaration that:

1. The appropriate inspections were performed; and

2. The construction and installations at the subdivision meet the requirements of this chapter.