

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

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P2025-02

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

AUTHORITY: §§ 1-5, NRS 459.485 and 459.490.

A PERMANENT REGULATION relating to facilities for the management of hazardous waste; establishing requirements for hazardous waste recyclers that do not store recyclable materials prior to being recycled and that reclaim under an exclusion for hazardous secondary materials; and providing other matters properly relating thereto.

Section 1. NAC 444.8455 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 4 *and 5*, a person who proposes to construct or operate a facility for the recycling of hazardous waste must obtain a written determination from the Administrator that the facility will operate as a facility for the recycling of hazardous waste before commencing the construction or operation of the facility. If the facility will recycle hazardous waste other than used antifreeze governed by NAC 444.8801 to 444.9071, inclusive, or precious metals governed by 40 C.F.R. Part 266, as adopted by reference in NAC 444.8632, the Administrator must approve an operating plan for the facility before construction or operation of the facility commences. Such an operating plan must, without limitation, include a description of the procedures that will ensure safe operation and demonstrate compliance with:

(a) The requirements for emergency preparedness and a contingency plan specified in 40 C.F.R. Part 264, Subparts C and D, as adopted by reference in NAC 444.8632;

(b) The standards for containers and tanks specified in 40 C.F.R. Part 264, Subparts I, J, AA, BB and CC, as adopted by reference in NAC 444.8632; and

(c) The applicable requirements for closure and financial assurance for closure specified in 40 C.F.R. Part 264, Subparts G and H, as adopted by reference in NAC 444.8632.

2. Except as otherwise provided in subsection 4 *and* 5, a person who proposes to construct or operate a mobile unit for the recycling of hazardous waste must obtain a written determination from the Administrator that the mobile unit will operate as a mobile unit for the recycling of hazardous waste before commencing the construction or operation of the mobile unit.

3. A written determination required pursuant to subsection 1 or 2 may be requested by filing a written application with the Administrator.

4. The provisions of this section do not apply to a person who is recycling hazardous waste which he or she has generated, at a unit for the recycling of hazardous waste which is owned by the person and is located at the same site at which the hazardous waste is generated.

5. The provisions of sections 1 through 4 above do not apply to hazardous waste recyclers, subject to 40 CFR 261.6(c)(2), that reclaim in a manner that complies with the requirements in 40 CFR 261.4(a)(23), (24), or (27). Hazardous waste recyclers subject to this section must demonstrate compliance with the following:

(a) Federal Requirements. The hazardous waste recycler must meet the following federal requirements as adopted in NAC 444.8632:

(1) The notification requirements under Section 3010 of RCRA, including the notification requirements in 40 CFR 260.42.

(2) The manifest requirements in 40 CFR 265.71 and 265.72.

(3) The biennial reporting requirements on 40 CFR 265.75. Additionally, the hazardous waste recycler must report all materials received, all materials recycled, and all materials sent for disposal to the Division by March 1 of each year to a database or form prescribed by the Division.

(4) The speculative accumulation requirements in 40 CFR 261.1(c)(8) for hazardous secondary materials.

(5) The legitimate recycling requirements in 40 CFR 260.43, including the documentation requirements in 40 CFR 261.2(f).

(6) The requirements for “contained” as defined in 40 CFR 260.10; including meeting the standards for containers in 40 CFR 264, subparts I and J.

(7) The air emission standards and monitoring requirements in 40 CFR 264, subparts AA, BB, CC.

(8) The requirement to manage any residuals that are generated from the recycling process in a manner that is protective of human health and the environment; including performing an accurate waste determination as required in 40 CFR 262.11 for the disposal of any residuals.

(9) The emergence preparedness and contingency planning requirements in 40 CFR 261 subpart M and 40 CFR 264 subparts C and D.

(b) Financial Requirements. The hazardous waste recycler must meet the requirements in 40 CFR 261 subpart H and 40 CFR 264 subparts G and H as adopted in NAC 444.8632 for the closure and post-closure of the facility for the maximum amount of material planned to be handled at the facility, including the disposal of the maximum amount product and waste generated from the recycling process that may be onsite.

(c) Siting Requirements. Hazardous waste recycling facilities established after the effective date of the paragraph must meet local zoning requirements. In the absence of local zoning requirements, the facility must meet the restriction on location requirements in NAC 444.8456.

(d) Notification. In addition to the notification requirements in NAC 445A.347 and NAC 445A.3473, any person who owns or operates a facility, or the person’s designated agent, shall notify the Division of any event at the facility that requires the notification and/or response of an emergency response agencies or activation of the facility's contingency plan within 24 hours of the event.

Section 2. NAC 444.845 is hereby amended to read as follows:

Annual ~~permit~~ fee; penalty for unpaid fee.

1. The owner or operator of a facility for the management of hazardous waste shall, on or before March 1 of each year, pay the following annual ~~permit~~ fee to the Division to offset partially the cost of inspection and other regulation of the facility:

Permitted Activity or Regulated Unit	Annual Permit Fee
Land disposal, or incineration or burning in a boiler or industrial furnace	\$50,000
Treatment of hazardous waste	10,000
Thermal treatment of waste munitions of the Armed Forces of the United States or its contractor, including, without limitation, detonation.	7,500
Storage of hazardous waste	2,500
<i>Written Determination per NAC 444.84555</i>	<i>5,000</i>
<i>Hazardous waste recyclers, subject to 40 CFR 261.6(c)(2), that reclaim in a manner that complies with the requirements in 40 CFR</i>	<i>5,000</i>

2. If the facility contains more than one type of regulated unit or engages in more than one type of permitted activity, the operator is not required to pay more than the annual permit fee for the regulated unit or permitted activity to which the highest fee is applicable.

3. The Division may assess a penalty of 2 percent of the unpaid balance for each month, or portion thereof, that the fee remains unpaid.

4. As used in this section, “owner or operator of a facility for the management of hazardous waste” means a person who:

(a) Qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G, as adopted by reference in NAC 444.8632;

(b) Has been issued a permit pursuant to 40 C.F.R. Part 124, Subparts A, B and G, and Part 270, Subparts A to F, inclusive, I and J, as adopted by reference in NAC 444.8632; ~~or~~

(c) Has been issued a permit to carry out a remedial action plan pursuant to 40 C.F.R. Part 270, Subpart H, as adopted by reference in NAC 444.8632, if the facility is constructed and the permit issued after October 24, 2014~~;~~;

(d) Is a hazardous waste recycler, subject to 40 CFR 261.6(c)(2), that reclaims in a manner that complies with the requirements in 40 CFR 261.4(a)(23), (24), or (27); or

(e) Hold a Written Determination holders that are subject to NAC 444.84555

(Added to NAC by Environmental Comm’n, eff. 7-22-87; A 5-27-92; 3-1-94; R038-13, 10-24-2014; R091-16, 11-2-2016)

Section 3. NAC 444.86325 is hereby amended to read as follows:

1. The following sections and parts of Title 40 of the Code of Federal Regulations, and any reference to those sections and parts, are not adopted by reference:

(a) Section 2.101(a)(1)-(4);

(b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;

(c) Sections 260.1(b)(4)-(6) and 260.20, 260.21, *and* 260.22~~[and 260.42]~~;

(d) Sections 261.4(a)(23)(i)(B), 261.4(b)(4), 261.4(h), 261.6(c)(2), 261.7(c), 261.400(a)-(b), 261.410(e)-(f), 261.411, 261.420, 261.1035(b)(1) and 261.1064(b)(2);

(e) Sections 262.10(l), 262.10(m), 262.10(n), 262.13(c)(9), 262.13(f)(1)(iii), 262.14(a)(5)(ix)-(x) and Part 262, Subpart K;

(f) Sections 264.1(d), 264.1(f), 264.1(g)(13), 264.15(b)(5), 264.149, 264.150, 264.301(l), 264.1050(h), 265.1(c)(4), 265.1(c)(16), 265.149, 265.150, 265.430 and 265.1050(g);

(g) Section 266.111 and Part 266, Subpart P;

(h) Section 267.150;

(i) Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b), 268.44 and 268.50(a)(4)-(5);

(j) Sections 270.1(c)(1)(i), 270.1(c)(2)(x), 270.60(b) and 270.64;

(k) Sections 273.60(b) and 273.80(d); and

(l) Sections 279.10(b)(2), 279.10(b)(3), 279.10(c), 279.10(d)(1), 279.42(b)(2), 279.51(b)(2), 279.62(b)(2) and 279.73(b)(2).

2. The following parts and sections of Title 40 of the Code of Federal Regulations are adopted by reference, as revised in this subsection:

(a) Part 124 is adopted with the following exceptions:

(1) Delete all references to “EPA-issued permits” and insert in its place “permits issued by the Department,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);

(2) Delete all references to “when EPA is the permitting issuing authority” and insert in its place “when the Department is authorized to issue a permit”;

(3) Subpart A is adopted solely for the purpose of establishing procedures for permits for the management of hazardous waste, except that all references to “UIC,” “PSD” and “NPDES” are deleted;

(4) In sections 124.31 and 124.32, delete all references to “RCRA part B,” “part B RCRA” and “part B” and insert in their place “NRS 459.400 to 459.600, inclusive;” and

(5) In sections 124.31(a), 124.32(a) and 124.33(a), delete the following sentence: “For the purposes of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.”

(b) Part 260 is adopted with the following exceptions:

(1) In section 260.2(a), replace the “Freedom of Information Act, 5 U.S.C. § 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b)” with “NRS 459.555 and any regulations adopted pursuant thereto.”

(2) In section 260.10, replace “262.34” with “262.14 to 262.17” in the definition

of “Final closure” and delete “261.2(a)(2)(ii) and” from the definition of “Hazardous secondary material generator.”

(3) In section 260.33(b), delete “in the locality where the recycler is located.”

(4) In section 260.34(a), delete “Determinations may also be granted by the State if the State is either authorized for this provision or if the following conditions are met:

(1) The State determines the hazardous secondary material meets the criteria in paragraphs (b) or (c) of this section, as applicable; (2) The State requests that EPA review its determination; and (3) EPA approves the State determination.”

(5) In section 260.41(a), delete “or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal.”

(c) Part 261 is adopted with the following exceptions:

(1) In section 261.1(a)(1), delete “hazardous waste produced by very small quantity generators and.”

(2) In section 261.4(a)(1)(ii), delete “, except as prohibited by § 266.505 and Clean Water Act requirements at 40 CFR 403.5(b).”

(3) In section 261.4(a)(24)(v)(B)(3), delete “publicly available.”

(4) In section 261.4(a)(24)(vi)(E), replace “272” with “270.”

(5) In section 261.4(e)(1), replace “40 CFR 261.5 and 262.34(d)” with “40 CFR 262.13 and 262.16(b).”

(6) In section 261.4(e)(3)(iii), delete “in the Region where the sample is collected.”

(7) In section 261.6(a)(3)(i)(A), replace “§§ 262.53, 262.56(a)(1)-(4), (6), and (b),

and 262.57” with “§ 262.83” and replace “subpart E” with “subpart H.”

(8) In section 261.11(c), replace “261.5(c)” with “262.13(c).”

(9) In section 261.30(d), replace “261.5” with “262.13.”

(10) In section 261.33(c), delete “or § 266.507.”

~~[(11) In each of the four entries for “P075” in table in section 261.33(e), delete “(this listing does not include patches, gums and lozenges that are FDA-approved over-the-counter nicotine replacement therapies).”]~~

~~[(12)]~~ **(11)** In section 261.142(a)(3)-(4), replace both references to “§ 265.5113(d)” with “§ 265.113(d).”

~~[(13)]~~ **(12)** In section 261.1089(f), replace “261.1082(c)(1) or (c)(2)(i) through (vi)” with “261.1082(c).”

~~[(14)]~~ **(13)** In Part 261, Appendix IX, replace any references to “40 CFR 262.34” with “40 CFR 262.15, 262.16 and 262.17.”

(d) Part 262 is adopted with the following exceptions:

(1) In section 262.11(d)(2), delete “or according to an equivalent method approved by the Administrator under 40 CFR 260.21.”

(2) In section 262.14(a)(5)(ix), replace the final period with a semicolon.

(3) In section 262.14(a)(5)(x), replace the final period with “; and.”

(4) In section 262.20(a)(2), replace “262.54 and 262.60” with “262.83(c)-(e) and 262.84” and replace both references to “262.34” with “262.16, 262.17.”

(5) In sections 262.42(a)(2) and 262.42(b), delete “for the Region in which the generator is located.”

(6) In section 262.212(e)(3), replace “§ 261.5(c) and (d)” with “§ 262.13(c) and

(d).”

(e) Part 264 is adopted with the following exceptions:

(1) In section 264.18(c), delete “except for the Department of Energy Waste Isolation Pilot Project in New Mexico.”

(2) In sections 264.143(h) and 264.145(h), replace “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions” with “If the facilities covered by the mechanism are in this State and another state, identical evidence of financial assurance must be submitted to and maintained with the Division and the agency regulating hazardous waste in the other state or, if the other state has not been approved or authorized by the EPA under 40 CFR Part 271, the EPA Regional Administrator.”

(3) In sections 264.147(a)(1)(i) and 264.147(b)(1)(i), delete “, or Regional Administrators if the facilities are located in more than one Region.”

(4) In section 264.151: (I) Replace any requirement that an owner or operator notify the EPA Regional Administrator of the financial obligations of the owner or operator with a requirement that the owner or operator notify the Director, the agency regulating hazardous waste in a state that has been approved or authorized by the EPA under 40 C.F.R. Part 271 and all EPA Regional Administrators of Regions affected by the financial assurance mechanism of the owner or operator; (II) Require that all orders, requests, instructions and notices to the Trustee regarding a financial assurance mechanism for a facility in this State be in writing and signed by the Director; and (III) Delete “an agency of the United States Government” from the second paragraph of the

trust agreement.

(5) In section 264.1030(b)(3), replace “40 CFR 262.34(a)” with “40 CFR 262.17(a).”

(6) In section 264.1050(b)(2), replace “40 CFR 262.34(a)” with “40 CFR 262.17(a).”

(f) Part 265 is adopted with the following exceptions:

(1) In section 265.18, delete “, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.”

(2) In section 265.145(g), replace “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions” with “If the facilities covered by the mechanism are in this State and another state, identical evidence of financial assurance must be submitted to and maintained with the Division and the agency regulating hazardous waste in the other state or, if the other state has not been approved or authorized by the EPA under 40 CFR Part 271, the EPA Regional Administrator.”

(3) In section 265.147(a)(1)(i), delete “or Regional Administrator if the facilities are located in more than one Region.”

(g) Part 266 is adopted with the following exceptions:

(1) In section 266.100(c)(3), replace “conditionally exempt small quantity generators under § 261.5” with “very small quantity generators under §§ 262.13 and 262.14.”

(2) In section 266.108(c), replace “§ 261.5” with “§§ 262.13 and 262.16.”

(h) Part 268 is adopted with the following exceptions:

(1) In the headline for section 268.7, delete “reverse distributors.”

(2) In section 268.7(a), delete “and reverse distributors.”

(i) Part 270 is adopted with the following exceptions:

(1) Delete all references to “interim authorization”; and

(2) Delete “or 267.150” in § 270.290(r).

(j) Part 273 is adopted with the following exceptions:

(1) In section 273.1(b), replace “272” with “270.”

(2) In section 273.13(a)(3)(i), 273.13(c)(2)(iii), 273.13(c)(2)(iv), 273.13(c)(4)(ii) and 273.13(e)(4)(v), replace “272” with “270.”

(3) In section 273.13(e)(4)(vi), replace “or” with “and.”

(4) In section 273.17(b), replace “272” with “270.”

(5) In section 273.3(b)(2), replace “272” with “270.”

(6) In section 273.33(a)(3)(i), 273.33(c)(2)(iii), 273.33(c)(2)(iv), 273.33(c)(4)(ii) and 273.33(e)(4)(v), replace “272” with “270.”

(7) In section 273.33(e)(4)(vi), replace “or” with “and.”

(8) In section 273.37(b), replace “272” with “270.”

(9) In section 273.54(b), replace “272” with “270.”

(10) In section 273.80(a), replace “Except as provided in paragraph (d) of this section, any” with “Any.”

(k) Part 279 is adopted with the following exceptions:

(1) In section 279.40(c), delete “unless, under the provisions of §279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.”

(2) Delete the entirety of section 279.82 and replace with “§279.82 Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited.”