

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R034-26

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

AUTHORITY: § 1, NRS 459.485, 459.490 and 459.500; §§ 2-4, NRS 459.485 and 459.490.

A REGULATION relating to hazardous waste; revising the fees for certain activities relating to hazardous waste and regulated units related thereto; imposing certain duties on persons who recycle certain hazardous waste; exempting certain facilities from certain prohibitions relating to the locations at which such facilities may be constructed under certain circumstances; revising provisions concerning exceptions to certain federal regulations relating to hazardous waste adopted by reference; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Environmental Commission to adopt regulations to carry out provisions governing the management of hazardous waste to: (1) protect human health, public safety and the environment from the effects of improper, inadequate or unsound management of hazardous waste; (2) establish a program for the regulation of the management of hazardous waste; (3) ensure safe and adequate management of hazardous waste; and (4) conserve resources of material and energy through the recycling or recovery of hazardous waste. (NRS 459.400, 459.485)

Existing law requires the Commission to adopt those regulations based on studies, guidelines and regulations of the Federal Government. (NRS 459.490) Existing regulations: (1) adopt by reference certain federal regulations with which a person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil must comply; and (2) set forth certain specific parts and sections of federal regulations that are not adopted by reference or are adopted by reference but with certain revisions. (NAC 444.8632, 444.86325) **Section 4** of this regulation revises specific parts and sections of federal regulations that are not adopted by reference or that are adopted by reference with certain revisions.

Existing regulations require, with certain exceptions, a person who proposes to construct or operate a facility or mobile unit for the recycling of hazardous waste to obtain a written determination from the Administrator of the Division of Environmental Protection of the State Department of Conservation and Natural Resources that the facility will operate as a facility or mobile unit, as applicable, for such recycling before commencing the construction or operation of the facility or mobile unit. (NAC 444.8455) **Section 2** of this regulation requires a person who recycles certain hazardous waste to comply with: (1) certain federal requirements, as adopted by the regulations of the Commission; (2) local zoning requirements, in certain circumstances; (3)

certain reporting and notification requirements; and (4) certain other regulations of the Commission.

Existing regulations impose certain prohibitions on the locations at which a stationary new or expanding facility for the management of hazardous waste may be constructed. (NAC 444.8456) **Section 3** of this regulation exempts certain facilities from such prohibitions if those facilities are subject to local zoning requirements pursuant to **section 2**.

Existing law authorizes the regulations of the Commission to include provisions for fees to pay the cost of inspection, certification and other regulation. (NRS 459.500) Existing regulations establish a schedule of annual permit fees which the owner or operator of a facility for the management of hazardous waste is required to pay to the Division for certain activities and regulated units to offset partially the cost of inspection and other regulation of the facility. (NAC 444.845) **Section 1** of this regulation clarifies that the annual fees are imposed to offset the cost of inspection and other regulation of a facility and are not limited to fees for permits. **Section 1** also establishes a \$5,000 annual fee for: (1) a written determination, issued by the Administrator of the Division, that a proposed facility or mobile unit will operate as a facility or mobile unit, as applicable, for the recycling of hazardous waste; and (2) owners and operators of certain facilities that recycle certain hazardous materials or materials that are not stored before they are recycled.

Section 1. NAC 444.845 is hereby amended to read as follows:

444.845 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:

	Annual
Permitted Activity or Regulated Unit	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

Written determination issued pursuant to NAC 444.84555.....5,000

*Recycling hazardous waste that is described in 40 C.F.R. § 261.4(a)(23),
261.4(a)(24) or 261.4(a)(27), as adopted by reference in NAC 444.8632,
or recycling that is described in 40 C.F.R. § 261.6(c)(2), as adopted by
reference in NAC 444.8632.....5,000*

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) Recycles hazardous waste that is described in 40 C.F.R. § 261.4(a)(23), 261.4(a)(24) or 261.4(a)(27), as adopted by reference in NAC 444.8632, or recycles recyclable materials

without storing those materials before they are recycled, as described in 40 C.F.R. § 261.6(c)(2), as adopted by reference in NAC 444.8632; or

(e) Holds a written determination issued by the Administrator pursuant to NAC 444.84555.

Sec. 2. NAC 444.8455 is hereby amended to read as follows:

444.8455 1. Except as otherwise provided in subsection ~~4~~ 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~~ 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. *A person who recycles hazardous waste that is described in 40 C.F.R. § 261.4(a)(23), 261.4(a)(24) or 261.4(a)(27), as adopted by reference in NAC 444.8632, shall comply with the following:*

(a) The federal requirements as adopted by reference in NAC 444.8632, including, without limitation:

(1) The notification requirements set forth in 42 U.S.C. § 6930, as implemented in 40 C.F.R. § 260.42;

(2) The manifest requirements set forth in 40 C.F.R. §§ 265.71 and 265.72;

(3) The requirements for biennial reporting set forth in 40 C.F.R. § 265.75;

(4) The requirements for speculative accumulation of hazardous secondary materials set forth in 40 C.F.R. § 261.1(c)(8);

(5) The requirements for legitimate recycling of hazardous secondary materials set forth in 40 C.F.R. § 260.43, and appropriate documentation pursuant to 40 C.F.R. § 261.2(f);

(6) The requirements relating to materials that are “contained,” as defined in 40 C.F.R. § 260.10;

(7) The standards for containers and tank systems, as set forth in 40 C.F.R. Part 264, Subparts I and J;

(8) The air emission standards and related monitoring requirements set forth in 40 C.F.R. Part 264, Subparts AA, BB and CC;

(9) The requirement to manage any residues that are generated from the recycling process in a manner that is protective of human health and the environment, including, without limitation, performing an accurate waste determination as required by 40 C.F.R. § 262.11, for the disposal of any residues;

(10) The requirements for emergency preparedness and contingency planning set forth in 40 C.F.R. Part 264, Subparts C and D and, if applicable, 40 C.F.R. Part 261, Subpart M; and

(11) If the person is an owner or operator of a facility that recycles recyclable materials without storing those materials before they are recycled, the requirements set forth in 40 C.F.R. § 261.6(c)(2).

(b) The financial requirements set forth in 40 C.F.R. Part 261, Subpart H, as adopted by reference in NAC 444.8632, and 40 C.F.R. Part 264, Subparts G and H, as adopted by reference in NAC 444.8632, for the closure and post-closure of the facility based on the maximum amount of material handled at the facility, including, without limitation, the disposal of the maximum amount of materials and wastes generated from the recycling process at the facility.

(c) For a facility established after the effective date of this paragraph, applicable local zoning requirements in lieu of the requirements of NAC 444.8456. If no such local zoning requirements exist, the facility shall comply with NAC 444.8456.

(d) In addition to the requirements of 40 C.F.R. § 265.75, as adopted by reference in NAC 444.8632, a person who recycles hazardous waste shall, by March 1 of each year, report to the Division through a database or form prescribed by the Division all materials the person:

(1) Received;

(2) Recycled; and

(3) Sent for disposal.

(e) In addition to the requirements set forth in NAC 445A.347 and 445A.3473, an owner or operator of a facility, or an agent designated by the owner or operator, shall, not later than 24 hours after any event at the facility, including, without limitation, a fire, explosion or release of hazardous waste, that requires the notification or response of an emergency response agency or the activation of the contingency plan for the facility, notify the Division of the event.

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

Sec. 3. NAC 444.8456 is hereby amended to read as follows:

444.8456 1. A stationary new or expanding facility for the management of hazardous waste must not be constructed within:

(a) One mile of:

- (1) A dwelling, school, church or community center;
- (2) An area zoned solely for residential use;
- (3) A public park;
- (4) A wildlife management area;
- (5) An area identified by the Department of Wildlife as a key habitat for wildlife or as a habitat for an endangered or threatened species;
- (6) An area where surface water or wetlands occur;

(7) A natural or artificially created geologic hazard which provides a potential for the conveyance of hazardous constituents, as that term is defined in Appendix VIII of 40 C.F.R. Part 261, as adopted by reference in NAC 444.8632, to surface or groundwaters; or

(8) An existing well which supplies public drinking water;

(b) An area identified by the Office of Historic Preservation of the State Department of Conservation and Natural Resources as an historical or archeological site that is eligible for listing in the State Register of Historic Places or the National Register of Historic Places, unless an approved mitigation activity has been completed on the site;

(c) A 100-year floodplain; or

(d) An area where the water table seasonally rises to within 150 feet of the surface of the ground.

2. The provisions of this section do not apply to a facility:

(a) For community recycling;

(b) For community storage;

(c) For the storage of hazardous waste which is generated on the site of the facility; ~~or~~

(d) Which qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G, as adopted by reference in NAC 444.8632 ~~H~~; *or*

(e) That is established after the effective date of paragraph (c) of subsection 4 of NAC 444.8455 and which is subject to local zoning requirements pursuant to that paragraph.

Sec. 4. NAC 444.86325 is hereby amended to read as follows:

444.86325 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(b)(4), 261.4(h), 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) Section 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 the 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)~~ 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 leadline 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.”