ADOPTED REGULATION OF THE STATE

ENVIRONMENTAL COMMISSION

LCB File No. R103-04

Effective February 11, 2005

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

AUTHORITY: §§1-6 and 8, NRS 445A.425; §7, NRS 445A.425 and 445A.430.

A REGULATION relating to underground injection control; revising the definition of "well"; revising the provisions relating to classification of a well; revising the provisions relating to motor vehicle waste disposal wells; revising the fees for a permit for an injection well; revising the provisions relating to modification, revocation, suspension, cancellation or denial of a permit; and providing other matters properly relating thereto.

Section 1. NAC 445A.838 is hereby amended to read as follows:

445A.838 "Well" means:

1. A bored, drilled or driven shaft with a depth greater than the largest surface dimension;

2. A hole which is dug, with a depth greater than the largest surface dimension;

3. An improved sinkhole; or

4. A subsurface fluid distribution system, not including subsurface fluid distribution systems associated with septic systems that have a capacity of 5,000 gallons or less per day **.** **[**~~or with mining processes.~~**]**

Sec. 2. NAC 445A.845 is hereby amended to read as follows:

445A.845 A Class I well is an injection well for the disposal of industrial, municipal and radioactive waste, whereby fluids are injected below the lowest formation containing, within one-quarter mile of the well bore, water with a concentration of total dissolved solids of 10,000 milligrams or less per liter, and includes:

1. A well used for the injection of hazardous waste by a person who generates hazardous waste or an owner or operator of a facility for the management of hazardous waste; ~~[and]~~

2. A well for the disposal of industrial waste ~~[and municipal sewage effluent.]~~ ***; and***

3. Except as otherwise provided in this subsection, a well for the disposal of municipal waste. The classification of Class I well does not include a well for the disposal of treated municipal effluent.

Sec. 3. NAC 445A.849 is hereby amended to read as follows:

445A.849 A Class V well is any injection well not included in Classes I, II, III and IV, ~~[and includes:]~~ ***including, without limitation:***

1. Wells used to inject the water for heating or cooling by a heat pump;

2. Cesspools or other devices receiving wastes which have an open bottom and sometimes have perforated sides;

3. Wells used to inject water previously used for cooling;

4. Wells used to drain surface fluid, primarily the runoff from storms, into a subsurface formation;

5. Wells used for the injection of fluids accumulated from dewatering operations;

6. Drywells and wells used for the injection of nonhazardous wastes into a subsurface formation;

7. Wells used to replenish the water in an aquifer;

8. Wells used to inject water into an aquifer of fresh water to prevent the intrusion of water of a lower quality into the fresh water;

9. Wells used to inject a mixture of water and sand, mill tailings or other solids into subsurface mines;

10. Wells used to inject sanitary waste for facilities other than single-family residences or facilities having a volume capacity of less than 5,000 gallons per day;

11. Wells used to inject fluids into a zone, other than an oil or gas producing zone, to reduce or eliminate subsidence associated with the overdraft of fresh water;

12. Wells used for the storage of hydrocarbons in a gaseous state at standard temperature and pressure;

13. Geothermal injection wells used in contact and noncontact heating and aquaculture, and in the production of energy;

14. Wells used for solution mining of ores or minerals in conventional mines, such as stopes leaching;

15. Wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;

16. Injection wells used in experimental technologies;

17. Injection wells that are approved under a federal or state cleanup program and used to reinject pumped and treated contaminated ground water, other than hazardous waste, back into the same formation ~~[.]~~ **;**

18. Injection wells used to inject fluids for the chemical or microbiological treatment of contaminated ground water or soil; and

19. Motor vehicle waste disposal wells.

Sec. 4. NAC 445A.8491 is hereby amended to read as follows:

445A.8491 1. The owner of an existing motor vehicle waste disposal well that was in operation or under construction on or before April 5, 2000, shall close the well, obtain a permit

to operate the well or convert the well in accordance with NAC 445A.8493 to 445A.8499, inclusive.

2. Not later than 90 days after October 25, 2001, the owner of the well shall submit to the Director information concerning the location and operating status of the well, and such additional information concerning the well as requested by the Director.

3. Based on the information provided by the owner of the well, the Director shall determine whether the well is located within a ground water protection area and notify the owner of that determination.

4. If the Director determines that the well is not located within a ground water protection area, the Director shall make a preliminary determination, based on data provided by the Division, whether the well is located within an other sensitive ground water area and notify the owner of that determination. If the Director makes a preliminary determination that a well is located within an other sensitive ground water area, the owner of the well shall close the well, obtain a permit to operate the well or convert the well in accordance with NAC 445A.8493 to 445A.8499, inclusive.

5. If, by January 1, 2004, or, if an extension has been approved by the Environmental Protection Agency, by January 1, 2005, the local source water assessment has not been completed and the plan for the determination of other sensitive ground water areas has not been carried out for the area in which the motor vehicle waste disposal well is located, the motor vehicle waste disposal well shall be deemed to be located within ~~[an other sensitive]~~ ***a*** ground water ***protection*** area and must be permitted, closed or converted accordingly.

6. If the Director determines that the well is not located within a ground water protection area or other sensitive ground water area, and if the well is not deemed to be located within ~~[an~~

~~other sensitive]~~ ***a*** ground water ***protection*** area pursuant to subsection 5, the owner shall close the well, obtain a permit to operate the well or convert the well in accordance with its classification pursuant to NAC 445A.810 to 445A.925.

Sec. 5. NAC 445A.8493 is hereby amended to read as follows:

445A.8493 1. Except as otherwise provided in this section, the owner of an existing motor vehicle waste disposal well that is located within:

(a) A ground water protection area shall, not later than 1 year after the date on which the local source water assessment for the area is completed or January 1, 2005, whichever occurs first, close the well, ~~[apply for]~~ ***obtain*** a permit to operate the well or convert the well.

(b) An other sensitive ground water area shall, not later than January 1, 2007, close the well, ~~[apply for]~~ ***obtain*** a permit to operate the well or convert the well.

2. The deadlines set forth in subsection 1 may be extended for not more than 1 year if the Environmental Protection Agency approves an extension for this State pursuant to 40 C.F.R. §§ 144.87(b) and 144.87(c).

3. The Director may extend the deadline for the closure of a motor vehicle waste disposal well for not more than 1 year if he determines that the most efficient option for compliance with applicable state and federal requirements concerning such wells is connection to a sanitary sewer or installation of new treatment technology. The Director may not extend the deadline for obtaining a permit.

4. The Director may authorize the conversion of a motor vehicle waste disposal well to another Class V type of well, including, without limitation, a storm water well, if the conversion is done in accordance with 40 C.F.R. § 144.89(b). The Director shall, in conjunction with the

owner of the well to be converted, establish a specific schedule pursuant to which the well must be converted.

Sec. 6. NAC 445A.8499 is hereby amended to read as follows:

445A.8499 1. Except as otherwise provided in this section, if a motor vehicle waste disposal well initially determined not to be located in a ground water protection area is subsequently determined to be located within a ground water protection area pursuant to an updated local source water assessment, the owner of the well shall, not later than 1 year after the issuance of public notice of the change:

(a) Close the well;

(b) Obtain, pursuant to NAC 445A.8495, a permit to operate the well; or

(c) Convert the well and obtain a permit to operate the converted well.

2. Upon the request of the owner of the well, the Director may approve an extension of the deadline ***for not more than 1 year*** for the closure or permitting of the well if he determines that the most efficient option for compliance with applicable state and federal requirements concerning such wells is connection to a sanitary sewer or installation of new treatment technology.

Sec. 7. NAC 445A.872 is hereby amended to read as follows:

445A.872 1. A nonrefundable fee must accompany each application for a permit for an injection well. The applicable fee is:

Type of Injection Well	Application Fee	Fee for Annual Services, Major Modifications or Renewal of Permit
Class II, oil and gas	~~[$4,000 plus $500]~~ ***$5,000 plus $625*** for each well	~~[$2,000 plus $150]~~ ***$2,500 plus $200*** for each well
Class V, geothermal injection wells associated with the production of energy		
Producing 25 megawatts or more	~~[$5,000 plus $500]~~ ***$6,250 plus $625*** for each well	~~[$3,000 plus $150]~~ ***$3,750 plus $200*** for each well
Producing 10 megawatts or more but less than 25 megawatts	~~[$4,000 plus $500]~~ ***$5,000 plus $625*** for each well	~~[$1,500 plus $150]~~ ***$1,875 plus $200*** for each well
Producing less than 10 megawatts	~~[$3,000 plus $500]~~ ***$3,750 plus $625*** for each well	~~[$1,000 plus $150]~~ ***$1,250 plus $200*** for each well

Type of Injection Well	Application Fee	Fee for Annual Services, Major Modifications or Renewal of Permit
Class V, geothermal injection associated with space heating		
Discharging less than 250,000 gallons daily	~~[$700]~~ ***$875***	~~[$250]~~ ***$325***
Discharging 250,000 gallons or more daily	~~[$1,500]~~ ***$1,875***	~~[$500]~~ ***$625***
Class V, injection wells associated with remediation, treatment of waste or experimental technology	~~[$2,000 plus $500 for each well]~~ ***$3,000***	~~[$1,000 plus $150 for each well]~~ ***$1,500***
Class V, injection wells associated with mining pit dewatering	~~[$4,000 plus $500]~~ ***$5,000 plus $625*** for each well	~~[$2,000 plus $150]~~ ***$2,500 plus $200*** for each well

Type of Injection Well	Application Fee	Fee for Annual Services, Major Modifications or Renewal of Permit
Class V, injection wells associated with aquifer storage and recovery, aquifer recharge or treated effluent projects	***$2,000 plus $60 for each well***	***$600 plus $40 for each well***
Class V, all others	~~[$500 plus $100]~~ ***$625 plus $125*** for each well	~~[$150 plus $25]~~ ***$200 plus $50*** for each well
General Permit ***, remediation lasting more than 6 months***	~~[No fee]~~ ***$1,500***	***$900***
General Permit, remediation lasting 6 months or less	***$300***	
General Permit, septic system with a capacity of 5,000 or more gallons	***$400***	***$300***

Type of Injection Well	Application Fee	Fee for Annual Services, Major Modifications or Renewal of Permit
General Permit, all others with a report requirement	***$400***	***$300***
General Permit, all others without a report requirement	***$200***	***$150***
General Permit, filing fee for review of the plan	***$200***	

2. A Class III well will be charged a fee for a permit for the actual cost of the review of the application calculated at a rate of $50 per hour for the time spent for the review. The fee for renewal of a permit for a Class III well is $750.

3. A fee for the renewal of a permit or for major modifications, if applicable, must be paid in addition to the fee for annual services.

4. ~~[Except as otherwise provided in NAC 445A.885, the]~~ ***The*** fee for annual services must be:

(a) Submitted to the Division on or before July 1; and

(b) Paid in advance for each subsequent year during the life of the permit.

Sec. 8. NAC 445A.885 is hereby amended to read as follows:

445A.885 1. In addition to the grounds specified in NRS 445A.600, the Director may modify, revoke, suspend or cancel a permit during its term or deny the renewal of a permit upon a determination by the Director that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by modification, revocation, suspension or denial of the permit.

2. If the activity for an injection well requiring a permit ceases, the holder of the permit may request that the Director cancel the permit, if the holder is in compliance with all the conditions set forth in the permit and the conditions set for the closure of the site in question, including well plugging and abandonment. The holder of the permit may request permission to keep the injection well open to monitor the well or for any other purpose. The holder of a permit who submits a request to keep an injection well open must provide with the request legal and financial assurance pursuant to NAC 445A.871 that the well will ultimately be plugged and abandoned in accordance with all applicable state and federal laws and regulations.

~~[3. The holder of a permit for an injection well may request that the Director suspend the permit for the well if injection has currently ceased at the well but may be required for projects in the future, including, without limitation, remediation projects. During the period of the voluntary suspension of the permit, the holder of the permit is not required to pay the fee for annual services for the permit. The holder of a voluntarily suspended permit may request that the Director activate the permit without reapplying for a new permit if the request is made before the date on which the permit otherwise would have expired if it had not been voluntarily suspended. If the holder of a permit voluntarily suspended pursuant to this subsection does not request reactivation of the permit before the expiration of the permit, the holder of the permit must apply for a new permit before he may again use the well as an injection well.]~~

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R103-04

The State Environmental Commission adopted regulations assigned LCB File No. R103-04 which pertain to chapter 445A of the Nevada Administrative Code on November 30, 2004.

Notice date: 10/26/2004
Hearing date: 11/30/2004
Date of adoption by agency: 11/30/2004
Filing date: 2/11/2005

INFORMATIONAL STATEMENT

This regulation changes to the permitting provisions of NAC 445A.825 through 445A.910 - Underground Injection Control (UIC). The Underground Injection Control Program is designed to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition, the regulation is needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

The revised regulation will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual permits. The regulation will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Nevada Division of Environmental Protection, Bureau of Water Pollution Control held public hearings at the following locations to solicit comments from interested parties about the proposed changes in the regulations referenced above.

Carson City
Monday, April 19, 2004
10:00am – 12:00pm
Western Nevada Community College
Reynolds Center for Technology
Room 103
2001 W. College Parkway
Carson City, Nevada

Henderson
Friday, April 23, 2004
1:00pm – 3:00pm
Henderson Convention Center
200 Water Street
Henderson, Nevada

Elko
Monday, April 26, 2004
10:00am – 12:00pm
Elko City Hall Council Chambers
1751 College Avenue
Elko, Nevada

Proposed changes to these regulations were also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates – November 8, 15, and 22, 2004. The public was subsequently mailed a public notice and meeting agenda for the SEC hearing; the SEC mailing lists were used for both mailings.

At the SEC hearing, there were no public oral comments received by the Commission during the adoption of the referenced regulation.

2. The number persons who:

(a) Attended August 19, 2004 hearing; 30

(b) Testified on this Petition at the hearing: 1

(c) Submitted to the agency written comments: **None**

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notice in the newspapers, as outlined in #1 above and by direct mail to interested persons subscribing to the SEC electronic mailing lists. The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The regulation, public notice and meeting agenda were also made available on SEC Website at: http://www.sec.nv.gov/main/hearing113004.htm

4. 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 State Environmental Commission adopted the regulation on November 30, 2004 with the following changes.

1. Under Section 4, subsection 6, the word "protection" shall be added after the words "ground water" to read "ground water protection area pursuant to subsection 5,;
2. Removal of Section 8 in its entirety; and
3. Removal of Section 10, subsection 2 in its entirety.

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

The proposed regulations will not have a significant economic impact, either immediate or long term, on the regulated industry and/or small businesses. In general, this regulation change will have beneficial effects for the regulated industry in that some permits will be regulated under a general permit instead of an individual permit at a cost and time savings.

Specifically, the economic effect will vary depending on the facility and the type of discharge(s) at a particular facility. The adverse and beneficial economic effects will be seen through the increase in application and annual fees under the proposed regulation changes. The adverse effect will be an increase in application and annual fees. Application and annual increases for 1) individual permits will be approximately 25-30 percent ($200 - $3000) depending on the permit type, and 2) current general permits will be approximately $100-$200. The beneficial effect will be a reduction of annual fees for some permittees by creation of general permit fee categories that will allow the UIC Program to transfer individual permit holders to a lower-cost general permit. Savings will be seen in the application and annual fee costs of $1,500 and $600 per year, respectfully.

One adverse impact on the public might be slightly higher fees ($10-20 per year) at commercial sites like mobile home parks. Other businesses might also charge slightly higher fees for services. However, the program's goals, in addition to protecting ground water quality, are to ensure proper operation to prevent very costly repairs to systems passed onto tenants, or even worse, closure of some businesses due to poor maintenance of their systems.

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

7. 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 regulation changes only duplicates federal environmental protection regulations to the extent of being as stringent as the federal rule under the U.S. Environmental Protection Agency, which is a primacy requirement.

8. 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 regulations changes make the state regulations as stringent as the federal regulation.

9. 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.

This regulation increases existing fees and provides new fees for newly created Underground Injection Control categories. This is the first new fee or fee increase in fourteen (14) years. The increase to existing fees will generate an additional $70,000 to $80,000 per year over current program income (approximately $280,000) to cover the FY2005-06 budget for the permitting,

inspection and compliance of the Underground Injection Control Program, including large capacity septic systems and other general permits of the Bureau of Water Pollution Control.

The fee increase will allow the UIC Program to add one new staff member in support of the administration of discharges to the subsurface environment as required in statute and regulation, including the new requirements established back in 2001 that has created a backlog in issuing new permit, renewing existing permit, and ensure compliance with the permit and regulations.