

LCB File No. R073-99

PROPOSED REGULATION OF THE STATE BOARD OF HEALTH

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations
of the Nevada State Health Division

The State Board of Health will hold a public hearing at 9:00 a.m. on August 13, 1999 at the Washoe County District Health Department, Ninth and Wells Streets, Reno, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding amendment to existing regulations in Nevada Administrative Code (NAC) §445A. The State Health Division proposes that these changes be adopted by the State Board of Health as permanent regulations.

The Safe Drinking Water Act (SDWA), as amended in 1996, requires that the State obtain legal authority or other means to ensure all new community water systems and new nontransient, noncommunity water systems beginning operation after October 1, 1999 demonstrate technical, managerial, and financial capability. These proposed amendments to NAC 445A define the necessary requirements that community water systems and nontransient, noncommunity water systems must fulfill to comply with the Safe Drinking Water Act as amended in 1996. The program is designed to focus on the technical, managerial, and financial capability of the systems for long-term operation

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The purpose of this proposed addition to NAC 445A is to ensure that all community water systems and nontransient, noncommunity water systems beginning operation on October 1, 1999 demonstrate technical, managerial, and financial capability as authorized by AB 134 of the 1999 Nevada Legislature.

The proposed addition to NAC 445A is required to avoid withholding of a portion of the States annual allotment for the Drinking Water State Revolving Fund (DWSRF). Without these additional regulations, the economic impact to the DWSRF is a loss to the state of approximately \$1.5 million in 1999 and 20% of the available State Revolving Fund Allotments thereafter.

2. The proposed regulation addresses and defines the following issues:
All community and nontransient, noncommunity water systems, beginning operation after September 30, 1999, shall submit capability development plan.
The capability development must address / include the following elements:
Description of the public water system
Management analysis

Basic planning
System analysis
Water resource analysis
An analysis of alternatives considered
A review of water
Capital improvement program
Financial program
Legal considerations

3. The estimated economic effects on the community and nontransient, noncommunity water systems are as follows:

No adverse economic effects.

Community and nontransient, noncommunity water systems that comply with the program will experience improved technical, managerial, and financial capability for both short and long-term operation.

The estimated economic effects on the general public are as follows:

No adverse effects on the public are anticipated.

The public will benefit from a public water system that has improved technical, managerial, and financial capability for both short and long-term operation.

4. No additional cost to the Nevada State Health Division is expected to result from the implementation of the proposed regulation since costs will be reimbursed from federal capitalization grants.

5. The proposed amendments do not overlap or duplicate any other local, state or federal processes or procedures. These regulations are a requirement of the Safe drinking Water Act, as amended in 1996.

6. The proposed amendment implements the provisions of federal laws and regulations and is no more stringent than those laws and regulations.

7. The proposed amendment does not establish or increase any existing fee.

Persons wishing to comment upon the proposed action of the state Board of Health may appear at the scheduled public hearing or address their comments, data, views or arguments, in written form to:

Secretary, Nevada State Board of Health
Capitol Complex
505 East King Street, Room 201
Carson City, NV 89701-4797

The Nevada State Board of Health must receive written submission on or before August 2, 1999. If no person who is directly affected by the proposed action appears to make an oral presentation, the State Board of Health may proceed immediately to act upon any written submission.

A copy of this notice and the regulation to be adopted will be on file at the Nevada State Library and Archives, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation will be available at:

Nevada State Health Division
Capitol Complex
505 East King Street, Room 201
Carson City, Nevada State Health Division

Nevada State Health Division, Bureau of Health Protection Services
1179 Fairview Drive, Suite 100
Carson City, Nevada

Nevada State Health Division, Bureau of Health Protection Services
620 Belrose Street, Suite 101
Las Vegas, Nevada

And in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice, and the text of the proposed amendment is available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice, and the proposed amendment will be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Per NRS 233B.064(2), upon adoption of any regulation the Nevada State Health division State Board of Health, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

STATE LIBRARY AND ARCHIVES, 100 Stewart Street, Carson City
BUREAU OF HEALTH PROTECTION SERVICES, 1179 Fairview Drive, Carson City
NEVADA STATE HEALTH DIVISION, 505 East King Street, Carson City
LEGISLATIVE COUNSEL BUREAU, 401 South Carson Street, Carson City

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PROPOSED REGULATION OF THE STATE BOARD OF HEALTH

**CAPABILITY DEVELOPMENT REGULATIONS
(PROPOSED)**

Section 1. Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

Sec. 2. *“Capability” has the meaning ascribed to it in Assembly Bill No. 134, Section 2.*

Sec. 3. *“Community water system” has the meaning ascribed to it in Assembly Bill No. 134, Section 3.*

Sec. 4. *“Financial capability” has the meaning ascribed to it in Assembly Bill No. 134, Section 4.*

Sec. 5. *“Health Division” means the health division of the department of human resources.*

Sec. 6. *“Managerial capability” has the meaning ascribed to it in Assembly Bill No. 134, Section 5.*

Sec. 7. *“Nontransient water system” has the meaning ascribed to it in Assembly Bill No. 134, Section 6.*

Sec. 8. *“Supplier of Water” has the meaning ascribed to it in NAC 445A.6648.*

Sec. 9. *“Technical capability” has the meaning ascribed to it in Assembly Bill No. 134, Section 10.*

Sec. 10. *All community and nontransient water systems, beginning operation after September 30, 1999, shall submit for review and approval a capability development plan to the*

health division. Such a community or nontransient water system shall not be issued a permit to operate prior to approval of its capability development plan by the health division.

Sec. 11. *In order to demonstrate technical, managerial, and financial capability the supplier of water shall submit a capability development plan that addresses the following elements:*

1. Description of the community or nontransient water system, which includes:

(a) A legal description of the entire area of service for the proposed community or nontransient water system, which includes, without limitation, a map showing the layout of the community or nontransient water system with clear reference to aerial or other maps showing the townships, ranges and sections,

(b) The purpose of the project and a plan to address problems,

(c) Program for the control of cross connection pursuant to NAC 445A.67185,

(d) Plan for restoration of services in emergency pursuant to NAC 445A.66665,

(e) Manual of operations and maintenance pursuant to NAC 445A.6667,

(f) If applicable, type of treatment as defined in NAC 445A.495 to NAC 445A.540 inclusive; and,

(g) Any characteristics unique to the service area or system.

2. Management analysis, which includes:

(a) Ownership and management, which includes the current names, addresses, and telephone numbers of the owners, managers, certified operators (which includes the operators classifications), emergency contact persons for the system,

(b) Management structure, organization, bylaws and policies as applicable,

(c) Communication strategy between the system and its customers,

(d) An evaluation of staff requirements for administration, operation, and maintenance of the system, that provides a description of all positions and their respective responsibilities, which includes who is responsible for monitoring changes in state and federal laws and regulations, who determines which changes will impact the community, and who evaluates the cost to the system in complying with those changes.

3. Basic planning data which includes:

- (a) Current population to be serviced,*
- (b) number of service connections,*
- (c) Amount of water estimated to be used,*
- (d) Description of customers to be served; and,*
- (e) Estimated use of the property for 20 years in 5-year increments.*

4. Community or nontransient water system analysis, which includes:

- (a) System design standards pursuant to NAC 445A.65505 to NAC 445A.6731 inclusive, and, if applicable, NAC 445A.495 to NAC 445A.540 inclusive,*
- (b) Water quality analysis pursuant to NAC 445A.450 to NAC 445A.652 inclusive; and,*
- (c) Description of the system inventory and analysis.*

5. Water resource analysis, which includes:

- (a) Water conservation program pursuant to NRS 540.131 to 540.151, inclusive, or 704.662 to 704.6624 inclusive, as applicable, and an analysis of the effectiveness of the program using water meters,*
- (b) Water demand forecasts for a five year period,*

(c) A demonstration of ownership of a sufficient quantity of water from a reliable source of water issued from the office of the State Engineer, which includes water supply alternatives if additional water sources and water rights will be needed,

(d) An analysis that identifies the impact of losing a customer that is not a residential customer. For purposes of this regulation, the community or nontransient water system shall define a residential customer in documents such as tariffs or rules; and,

(e) Water shortage response plan if a community or nontransient water system experiences a water shortage, or anticipates it will experience a water shortage, within the next five years.

6. An analysis of community or nontransient water system alternatives considered, which includes:

(a) Description of options,

(b) Identification of the nearest community or nontransient water system,

(c) Mutual support plans with existing community or nontransient water systems,

(d) Connections to existing community or nontransient water systems; and

(e) The rationale for selecting the proposed option.

7. Capital improvement program, which includes an implementation schedule. For the purposes of this regulation a capital improvement program consists of the following;

(a) Written documents that identify any necessary projects,

(b) The reason for each project,

(c) A prioritized ranking of the projects,

(d) The associated costs of the project; and,

(e) The source of funding for each project.

8. Financial program, which includes demonstration of financial capability by providing:

- (a) A balanced five-year operational budget, that demonstrates the ability to fund emergency improvements, capital improvements, and routine operations and maintenance,*
- (b) An evaluation of the rate structure and connection charges of the community or nontransient water system,*
- (c) An evaluation of the total cost of providing service,*
- (d) An evaluation of how the total costs will be recovered; and,*
- (e) An evaluation of the cash flow stability for the community or nontransient water system.*

9. Legal considerations, including:

- (a) receivership planning,*
- (b) ownership of the property and any buildings thereon,*
- (c) Any rights-of-way, easements and restrictive covenants; and,*
- (d) Contracts or agreements.*

10. Whether the community or nontransient water system is under the jurisdiction of any federal, state, or local governmental entities such as the Bureau of Land Management, Public Utilities Commission of Nevada, or any Planning Commission.

Sec. 12. *To ensure a complete capability development plan, the supplier of water shall submit any other information deemed necessary by the health division.*

Sec. 13. *All new community and nontransient water systems, beginning operation after September 30, 1999, shall update the capability development plan and submit it to the health division for approval every five years. If only minor alterations to an existing plan are necessary, an amendment to the capability development plan may be submitted to the health division for approval.*

Sec. 14. *The health division will accept reports submitted to the Public Utilities Commission of Nevada, state agencies, or local governing bodies if applicable to the requirements contained within this regulation.*

Sec. 15. *A copy of the capability development plan shall be maintained at each community or nontransient water system and shall be available for review by the health division upon reasonable request.*

Sec. 16. *Procedure for review of actions taken by the health division.*

1. An applicant or a recipient who has reason to believe that an action taken by an employee of the health division pursuant to this regulation concerning the capability development plan, inclusive, is 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. The informal discussion must be scheduled for a date, place and time mutually agreed upon by the applicant or recipient and the bureau, except that the informal discussion must be held no later than 30 days after the date on which the bureau received the request.

2. If the informal discussion does not resolve the problem, the applicant or the recipient may, within 10 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 applicant or recipient 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. An applicant or recipient may not appeal a determination of the bureau resulting from the informal conference. Such a determination is the final remedy available to the aggrieved applicant or recipient.

4. As used in this section, bureau means the bureau of health protection services of the health division, or its successor.