

**ADOPTED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R071-03

Effective October 22, 2003

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

AUTHORITY: §§1-12 and 14-21, NRS 439.200; §13, NRS 439.150 and 439.200.

Section 1. Chapter 444 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 21, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Food establishment” has the meaning ascribed to it in NRS 446.020.*

Sec. 4. *“Operator of a temporary mass gathering” means the person responsible for the operation of a temporary mass gathering. The term includes, but is not limited to, the holder of a permit to operate a temporary mass gathering issued by the health authority.*

Sec. 5. *“Potable water” has the meaning ascribed to it in NAC 444.7664.*

Sec. 6. *“Public bathing or swimming facility” has the meaning ascribed to it in NAC 444.058.*

Sec. 7. *“Public spa” has the meaning ascribed to it in NAC 444.385.*

Sec. 8. *“Solid waste” has the meaning ascribed to it in NRS 444.490.*

Sec. 9. *“Temporary food establishment” has the meaning ascribed to it in NRS 446.067.*

Sec. 10. *“Temporary mass gathering” means an outdoor assembly of persons with an actual or reasonably anticipated daily attendance of not fewer than 500 persons that operates or may reasonably be expected to operate not less than 20 hours a day for more than 3 days and takes place at a location that lacks permanent facilities specifically intended for the type of assembly involved.*

Sec. 11. *“Water station” means a facility for dispensing potable water for immediate human consumption. The term includes a drinking fountain.*

Sec. 12. 1. *A person shall not operate a temporary mass gathering unless he first obtains a permit to do so from the health authority.*

2. *A person desiring to obtain a permit to operate a temporary mass gathering must apply to the health authority on an application provided by the health authority. The application must include, without limitation:*

(a) The full name and mailing address of the applicant.

(b) A statement specifying whether the applicant is a natural person, firm or corporation, and, if the applicant is a partnership, the names and addresses of the partners.

(c) The location of the temporary mass gathering.

(d) A description of the type of temporary mass gathering.

(e) The inclusive dates and hours of operation of the temporary mass gathering.

(f) The number of persons that the applicant anticipates will attend the temporary mass gathering.

3. *The application for a permit to operate a temporary mass gathering must be:*

(a) Received by the health authority not later than 30 days before the first day of the temporary mass gathering.

(b) Signed by the applicant or a person authorized by the applicant to sign on his behalf.

(c) Accompanied by:

(1) The fee established by the health authority.

(2) A detailed plan of the site of the temporary mass gathering. The plan must identify:

(I) The location, types and number of toilet facilities and facilities for hand washing.

(II) The location and a description of each water station and the source of the water for each station.

(III) The location and identity of each food establishment, including each temporary food establishment, and the type of food to be served at each establishment.

(IV) The location, types and number of containers for the collection or storage of solid waste and the name of the provider of the containers.

(V) The location of the headquarters of the operator.

(VI) The location of each public bathing or swimming facility and public spa.

4. The health authority may require an applicant to provide any additional information that the health authority determines is reasonably necessary to protect the public health.

5. Unless the health authority provides an earlier expiration date, a permit to operate a temporary mass gathering expires at midnight on the 30th day of operation of the gathering. A permit to operate a temporary mass gathering may not be renewed.

6. A permit to operate a temporary mass gathering must be posted in the headquarters of the operator at the site of the gathering.

Sec. 13. *The Health Division shall charge and collect fees for a permit to operate a temporary mass gathering in accordance with the following schedule, except in areas where*

the laws and regulations governing temporary mass gatherings are administered by local health authorities:

<i>For a permit to operate a temporary mass gathering with</i>	<i>Fee per day</i>
<i>an anticipated attendance of:</i>	
<i>500 to 1,000 persons</i>	<i>\$500</i>
<i>1,001 to 5,000 persons</i>	<i>750</i>
<i>5,001 to 10,000 persons</i>	<i>1,000</i>
<i>10,001 or more persons</i>	<i>1,500</i>

Sec. 14. *The operator of a temporary mass gathering shall:*

1. Maintain a headquarters at the site of the gathering.

2. Ensure that a natural person designated by the operator is:

(a) Present at the headquarters of the operator at all times that the temporary mass gathering is in operation; and

(b) Authorized to take immediate action to correct or terminate a violation of any provision of sections 2 to 21, inclusive, of this regulation identified to him by the health authority.

Sec. 15. *1. The operator of a temporary mass gathering shall remove all solid waste from the site of the gathering within a reasonable time after the end of the gathering.*

2. If, during the operation of a temporary mass gathering, the health authority determines that an accumulation of solid waste is a nuisance:

(a) The health authority shall notify the operator of the gathering; and

(b) The operator shall, within a reasonable time after being notified, abate the nuisance.

3. As used in this section, “nuisance” has the meaning ascribed to it in NAC 444.594.

Sec. 16. 1. *Except as otherwise provided in NRS 446.870, the operator of a temporary mass gathering shall not operate, or allow another person to operate, a food establishment, including a temporary food establishment, at the gathering unless the person operating the food establishment:*

(a) Possesses a valid permit issued to him by the health authority; and

(b) Complies with the applicable provisions of:

(1) Chapter 446 of NRS; and

(2) The regulations of the State Board of Health, or the local board of health, adopted pursuant to chapter 446 of NRS.

2. *For the purposes of this section, a person who sells, offers or displays for sale or serves, at a temporary mass gathering, water, including water dispensed from a water station, or ice intended for ultimate human consumption operates a food establishment or temporary food establishment.*

Sec. 17. 1. *The operator of a temporary mass gathering shall ensure that each person who attends the gathering:*

(a) Provides sufficient potable water to meet his individual needs; and

(b) Disposes of his graywater in a manner approved by the health authority or transports it away from the site of the gathering for disposal.

2. *The operator of a temporary mass gathering shall not engage, or allow another person to engage, in the bulk transportation of water to the site of the temporary mass gathering for the purpose of consumption or external use unless the person so engaged has first obtained the approval of the health authority pursuant to NAC 445A.6728 to engage in water hauling.*

3. As used in this section, “graywater” means untreated wastewater that has not come into contact with toilet waste. The term includes, without limitation, used water from bathtubs, showers, washbasins, kitchen sinks, dishwashers, machines for washing clothes and laundry tubs.

Sec. 18. *1. The operator of a temporary mass gathering shall provide toilet facilities as set forth in NAC 444.825 unless the health authority reduces the number of toilet facilities otherwise required pursuant to NAC 444.825 by the number of public toilet facilities available.*

2. The operator of a temporary mass gathering shall provide at least one facility for hand washing at each group of toilet facilities provided by the operator pursuant to subsection 1.

3. An operator of a temporary mass gathering shall not operate, or allow another person to operate, a service to provide nonsewered toilets at the gathering unless the person operating the service has obtained a permit in accordance with NAC 444.820, 444.826 and 444.828.

4. An operator of a temporary mass gathering shall not engage, or allow another person to engage, in the operation of removing and disposing of the solid and liquid contents of nonsewered toilets at the temporary mass gathering unless the person so engaged has obtained a permit as a septic tank pumping contractor in accordance with NAC 444.820, 444.821, 444.822 and 444.828.

5. As used in this section, “nonsewered toilet” has the meaning ascribed to it in NAC 444.7654.

Sec. 19. *The operator of a temporary mass gathering shall not discharge, or allow another person to discharge, water onto the ground to provide dust control at the gathering unless:*

1. If the water used is potable:

(a) The source of the water is licensed by the Health Division and approved by the health authority; and

(b) Each vehicle used to transport the water, and each tank used to discharge the water, is:

(1) Approved by the Bureau of Health Protective Services of the Health Division; and

(2) Used for no other purpose than the transportation or discharge of potable water.

2. If the water used is nonpotable, the tank from which the water is discharged is marked “NONPOTABLE WATER, AVOID CONTACT” on each side and on the rear of the water tank. The lettering used to mark the tank must be legible, of a color that contrasts with the color of the water tank and, unless the health authority otherwise approves, not less than 4 inches in height. The health authority shall not approve lettering that is less than 4 inches in height unless there is insufficient room on the tank for such lettering.

Sec. 20. 1. *The operator of a temporary mass gathering shall not operate, or permit another person to operate, a public bathing or swimming facility at the gathering unless the person operating the public bathing or swimming facility:*

(a) Possesses a permit to do so from the health authority; and

(b) Complies with all applicable provisions of:

(1) NRS 444.065 to 444.120, inclusive; and

(2) NAC 444.010 to 444.306, inclusive, or the regulations adopted by the local board of health.

2. The operator of a temporary mass gathering shall not operate, or permit another person to operate, a public spa at the gathering unless the person operating the public spa:

(a) Possesses a permit to do so from the health authority; and

(b) Complies with all applicable provisions of:

(1) NRS 444.065 to 444.120, inclusive; and

(2) NAC 444.310 to 444.546, inclusive, or the regulations adopted by the local board of health.

Sec. 21. *The health authority may conduct any inspection reasonably necessary to enforce any provision of sections 2 to 21, inclusive, of this regulation.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R071-03**

The State Board of Health adopted regulations assigned LCB File No. R071-03 which pertain to chapter 444 of the Nevada Administrative Code on September 12, 2003.

Notice date: 8/8/2003 & 8/9/2003
Hearing date: 9/12/2003

Date of adoption by agency: 9/12/2003
Filing date: 10/22/2003

INFORMATIONAL STATEMENT

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

Answer: Public comment was solicited through newspaper legal notices announcing the public workshops on July 28, 2003. Legal notices were published on the following days:

Las Vegas Review Journal:	July 7, 2003
Elko Free Press	July 8, 2003
Reno Gazette Journal:	July 4, 2003

A copy of the proposed, draft regulation language, the Small Business Impact Statement and the proposed Petition Form were also made available at each main county library. A copy of the Public Notice is attached.

- 2. The Number of persons who:**
(a) Attended each workshop.
(b) Testified at each workshop.
(c) Submitted written statements to the agency.

Answer: (a) Seven (7) individuals were in attendance. Three (3) were from the public and four (4) were from the Nevada State Health Division.
(b) Three (3) testified at the workshop.
(c) One (1) submitted written testimony/documentation after the workshop.

- 3. A description of how comment was solicited from affected businesses, a summary of their response(s), and an explanation of how other interested individuals may obtain a copy of the summary.**

Answer: Pursuant to the Small Business Impact Statement prepared by the Health Division, no small businesses will be affected by the adoption of the proposed regulation. Comments were solicited from all known potentially affected businesses via telephone interview and written notification. Interested individuals may obtain a

copy of the results of the telephone interview and responses to the written notification results by contacting the Nevada State Health Division, Bureau of Health Protection Services, Environmental Health Section, 1179 Fairview Dr., STE 104, Carson City, NV 89701-5405. Additionally, a copy of the regulations remains on file at each county library.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reason for adopting the regulation without change.

Answer: The following comments were presented by the public during the workshop.

1. Regarding Section 10. Definition of temporary mass gathering. “Appears arbitrary, capricious, singles out only Burning Man.”
2. Regarding Section 19. (3) Hand washing requirements, “This is not required in NAC 444.825 for portable toilets.”
3. Section 21 Fee schedule “may penalize an operator of a temporary mass gathering if that person operates temporary food establishments as at the temporary mass gathering. The operator would be in essence paying two times for the oversight from the health authority.”
4. Recommend that “there be a provision to allow the health department to grant variance/allowance/exception to regulations without the formal variance procedure through the BOH.”
5. Suggestion that “there be a division of “commercial” vs. non-commercial with regards to the fee schedule.”

The aforementioned comments were considered for incorporation into the final draft of the proposed regulations. Each comment was considered separately. The rationale is explained below as it relates to each numbered item above.

1. Regarding Section 10, the regulations were written to address all potential temporary mass gatherings, those known such as Burning Man, the Rainbow Gathering, or any other unforeseen potential temporary mass gathering. At present Black Rock City, LLC the corporate operator of Burning Man is the only event organizer that these regulations will affect. However if the Rainbow Gathering had chosen Nevada then they also would have come under the regulations. The unforeseen events must also be considered. If an event such as a large motorcycle rally were to come to Nevada then it likely would fall under the regulations. Also, success of the Burning Man event may encourage other temporary mass gatherings within Nevada. The comment was not incorporated into the draft regulation.
2. Regarding Section 19 (3), This comment will be considered in reviewing NAC 444.825 to address public health concerns. Regarding the Temporary Mass Gathering Regulations the hand washing requirements are designed for any event where participants do not have ready access to permanent restroom facilities (toilets/hand wash sinks). The comment was not incorporated into the draft regulation.

3. Regarding Section 21 the fee charged to temporary food establishment operators is to cover the application review and inspection of the establishments. The fee charged to the operators of temporary mass gatherings is to review the application for the event and conduct repeated inspections during the event. There also are investigations conducted during the event such as verification of numbers of portable toilets, servicing of the toilets, investigating problems such as operation of unpermitted food establishments, sewage spills, water attractions (public bathing), etc. The services provided are separate and hence two separate types of permits are issued. The comment was not incorporated into the draft regulation.
4. Regarding the request that variances from regulation be approved onsite; BHPS staff believe that the decisions regarding plans for temporary mass gatherings should be made prior to the events. Hence the application review prior to issuance of a permit to operate. Decisions regarding issues of variance from the regulation should be made by the Board of Health and not by the inspector during the event. The comment was not incorporated into the draft regulation.
5. Regarding the suggestion of “commercial” vs. “non-commercial” in regards to the fee schedule. The service provided to “commercial” and “non-commercial” operators of temporary mass gatherings are treated equally. The service provided is the same; hence the permit fee should be the same. The sewage disposal regulations in NAC 444 provide for commercial and non-commercial fees. However there is a different level of service provided. The commercial permit requires that the plans be drawn by a professional engineer and are reviewed by an engineer. The non-commercial permit does not require a professional engineer to draw the plans. Subsequently the plans are reviewed by an Environmental Health Specialist. The comment was not incorporated into the draft regulation.

- 5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:**
- (a) both adverse and beneficial effects.**
 - (b) both immediate and long term effects.**

Answer: Effect on Business

- (a) No small businesses were deemed to be affected. Other businesses meeting the NRS 233B definition may be affected. The adverse affect is the permit holder offsetting the cost of the oversight by BHPS by paying a fee between \$500 and \$1,500 per day depending upon the number of attendees at the event. The beneficial effect is the business will be protected by oversight from the Health Division.
- (b) Immediate economic effect is the business operator of a temporary mass gathering will pay a fee to cover the cost of oversight by the Health Division. The long term effect will be the business operator of a temporary mass gathering paying fees to cover the cost of oversight by the Health Division for each future event.

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

Answer: The cost to the Health Division to adopt regulations will be approximately \$4,000. Estimated costs to the agency for enforcement/oversight pursuant to the regulations are expected to be \$17,000 - \$20,000 per year.

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.

Answer: Not applicable. No overlap or duplication is created.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

Answer: Not applicable.

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.

Answer: Based upon the fee schedule in the temporary mass gathering regulations approved as temporary regulations by the State Board of Health at the June 6, 2003 hearing it is estimated that \$10,000 - 15,000 will be generated yearly from permit fees. These fees will be used to offset the actual expenditure by the Health Division in the oversight of such temporary mass gatherings. During the last three years the agency has had the following expenditures to cover the oversight of temporary mass gatherings;

2000	\$23,645
2001	\$17,277
2003	\$17,532

10. If the agency is required to adopt this regulation pursuant to a federal statute or regulation; and exceeds the agency's specific statutory authority or sets forth requirements more stringent than a statute of this state, includes a statement that adoption of the regulation is required by federal statute or regulation.

Answer: Not applicable.