

LCB File No. R194-03

PROPOSED REGULATION OF THE HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES

Italicized type is new and will be added to the regulation, except for existing underlined type between parentheses. Type with a [strikethrough] will be deleted from the regulation. Other type is existing in the regulation.

Bottled Water Plants

NAC 445A.547 Permits and fees required for distribution of water bottled outside Nevada.

- 1. No bottled water produced in a plant located outside of this state may be sold or distributed within this state unless the operator or distributor has obtained a permit issued by the appropriate health authority.
2. An applicant for such a permit must submit with his application:
(a) A copy of the document which records the approval of the source of water by the health authority which has jurisdiction;
(b) A copy of the permit issued to the applicant by the state or country in which his plant is located;
(c) A report by the applicant regarding his past compliance with the applicable regulations on the quality and sampling of the water he produced or distributed;
(d) A copy of each type of label which will be displayed with the bottled water distributed in this state;
(e) A copy of the most recent analysis conducted pursuant to:
(1) Paragraph (b) of subsection 1 of NAC 445A.555; and
(2) Paragraph (c) of subsection 1 of NAC 445A.555; and
(f) Copies of the three most recent analyses conducted pursuant to paragraph (a) of subsection 1 of NAC 445A.555.

3. The Health Division shall charge the applicant an application/permit fee of \$175. The fee is nonrefundable after the application has been processed by the Health Division whether or not the permit is issued.

NAC 445A.589 Fees. The Health Division shall charge and collect the following fees:

Table with 2 columns: Description of fee and Amount. Rows include: For an annual permit to operate a plant (\$150), To review plans for constructing a plant (\$200), To review plans for remodeling a permitted plant (\$100).

Operator Certification-Public Water Systems

NAC 445A.651 Fees of Health Division. The Health Division shall charge and collect the following fees:

Table with 2 columns: Description of fee and Amount. Rows include: For the issuance of a full certificate (\$84), For a certificate issued pursuant to subsection 1 of NAC 445A.634 (\$57), For a certificate issued pursuant to subsection 2 of NAC 445A.634 (\$57).

For the issuance of a certificate as an operator-in-training.....	[40] <u>57</u>
For conversion of a certificate as an operator-in-training to a full certificate.....	[25] <u>30</u>
For the issuance of a provisional certificate.....	[25] <u>30</u>
For the renewal of a full certificate.....	[25] <u>30</u>
For the renewal of a provisional certificate.....	[25] <u>30</u>
For the renewal of a certificate as an operator-in-training.....	[25] <u>30</u>
For the reinstatement and renewal of a full certificate.....	100

Annual permit fees for public water systems and Plan review fees for water projects

NAC 445A.66635 Health Division: Payment of fees. The Health Division shall not issue or renew any permit to operate a public water system or, except as otherwise provided in subsection 2 of [NAC 445A.6669](#), review plans to construct, ~~[remodel]~~ modify or expand such a system until the fees prescribed in [NAC 445A.6664](#) have been paid.

NAC 445A.6664 Health Division: Fees.

1. The Health Division shall charge and collect fees for its service, as follows:

(a) Except as otherwise provided in subsection 2 of [NAC 445A.6669](#), for reviewing an application for a permit to construct, ~~[remodel]~~ modify or expand a public water system:

(1) If it is a community water system:

(I) For reviewing ~~[the master plan of:]~~ on-site and off-site improvement plans for a subdivision for a new system or for the expansion of an existing system

~~[(i) The water system for a subdivision.....]~~ ~~[\$100]~~ 250 Deleted: Deleted: +
 plus ~~[\$3]~~ for each connection for supply of water to customers.

~~[(ii) A treatment facility.....]~~ ~~[150]~~ Deleted:

(II) For reviewing plans not specifically related to subdivisions to ~~[150]~~ 300 ~~[remodel]~~ modify or make system improvements to the public water system.....

(III) For reviewing ~~[plans to expand the system.....]~~ ~~[150]~~ plus \$1 for each connection for supply of water to customers.] a treatment facility (initial construction or modification to existing facility)..... 0.1% of the capital cost of the facility, but not to exceed \$3,250
For the purposes of this section, "capital" cost is the engineer-certified cost estimate of the facility

~~[(IV) For reviewing plans for water line improvements only.....]~~ ~~[75]~~ Deleted:

(2) If the system is not a community water system, for reviewing all water project plans..... ~~[75]~~ \$200

(b) For issuing an annual permit to operate a public water system:

(1) If the system is a community water system:

Number of connections for service to customers

1 25	1 25 or less	.....	\$225
2 6	- 50	.....	300
5 1	- 100	.....	400
10 1	- 500	.....	800
50 1	- 1,000	.....	2,000
1,00 1	- 3,000	.....	3,000
<u>26</u>	<u>= 3,000</u>		<u>\$225 plus \$0.75</u> <u>for each</u> <u>connection over</u> <u>25</u>
3,001	- 10,000	.....	5,000 <u>\$2,500</u> <u>plus \$0.60 for</u> <u>each</u> <u>connection over</u> <u>3,000</u>
10,001	- 50,000	.....	8,000 <u>\$6,700</u> <u>plus \$0.25 for</u> <u>each</u> <u>connection over</u> <u>10,000</u>
Over <u>50,001</u>	50,000 <u>100,000</u>	.....	16,000 <u>\$16,700</u> <u>0 plus \$0.10 for</u> <u>each</u> <u>connection over</u> <u>50,000</u>
<u>100,001</u>	<u>and over</u>		<u>\$21,700</u>

~~[In determining the number of connections for service to customers, a community water system shall include the number of connections for service of any consecutive public water system which receives water from the community water system. Except as otherwise provided in subsections 2 and 3, a consecutive public water system is not required to pay a fee pursuant to this subparagraph.]~~

- (2) If the system is not a community water system and regularly serves at least 25 of the same persons for more than 6 months per year..... \$225
- (3) If the system is not a community water system or a public water system that serves at least 25 of the same persons for more than 6 months per year..... 100

(c) For issuing an annual permit to operate a treatment plant (for the purposes of this section, chlorination is not considered treatment):

(1) If the capacity of the treatment plant is

<i>Less than 500,000 gallons per day</i>	<i>\$ 150</i>
<i>500,000 gallons per day to less than 1 million gallons per day (MGD)</i>	<i>\$ 250</i>
<i>1 MGD to less than 5 MGD</i>	<i>1,500</i>
<i>5 MGD to less than 10 MGD</i>	<i>2,000</i>
<i>10 MGD to less than 50 MGD</i>	<i>3,000</i>
<i>50 MGD to less than 100 MGD</i>	<i>4,000</i>
<i>100 MGD and greater</i>	<i>7,500</i>

~~[2. A consecutive public water system that operates a facility for the treatment of surface water shall pay an annual fee based on the number of the connections for service to customers served by the facility for the treatment of surface water in the same amount as designated in subparagraph (1) of paragraph (b) of subsection 1.~~

~~—3. A community water system may require a consecutive public water system which receives water from the community water system to pay annually a portion of the fee imposed pursuant to subparagraph (1) of paragraph (b) of subsection 1 equal in proportion to the amount of services received by the consecutive public water system.~~

~~—4. As used in this section:~~

~~—(a) “Community water system” means a public water system which:~~

~~—(1) Has at least 15 service connections used by residents for an entire year; or~~

~~—(2) Regularly serves at least 25 residents for an entire year.~~

~~—(b) “Consecutive public water system” means a public water system that:~~

~~—(1) Has at least 15,000 service connections; and~~

~~—(2) Receives treated water from a community water system.]~~

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**PROPOSED REGULATION OF THE HEALTH DIVISION OF
THE DEPARTMENT OF HUMAN RESOURCES**

SMALL BUSINESS IMPACT STATEMENT

Amendments to Fees by the Bureau of Health Protection Services Contained in Nevada Administrative Code (NAC) 445A.547, 445A.589, 445A.651, NAC 445A.66635 and 445A.6664

PROPOSED AMENDMENTS TO EXISTING REGULATIONS within Nevada Administrative Code (NAC) provide for fee increases to allow the Bureau of Health Protection Services (BHPS), a bureau within the State Health Division to recover the increased costs of reviewing plans and issuing permits for bottled water plants (NAC 445A.547 and 445A.589), administering the operator certification program (NAC 445A.651), and of managing and administering the public water system supervision program (NAC 445A.66635 and NAC 445A.6664).

A small business is defined in Nevada Revised Statutes (NRS) 233B.0382 as a "business conducted for profit which employs fewer than 150 full-time or part-time employees." **This statement generally applies to fees charged by the Health Division for bottled water plants, for fees charged to water system operators for certification, for annual permits issued to public water systems, and for fees charged for the review and approval of water projects of public water systems. See the Small Business Impact Statement for regulatory amendments to Chapter 278 of the NAC for a similar discussion of the impacts of fee increases related to the review of subdivision tentative and final maps.**

Background

The State Health Division receives funding for BHPS from three primary sources: grants from the federal government for administering the Public Water System Supervision Program; fees from regulated entities; and General Fund appropriations by the Nevada State Legislature. Nevada's allotment of the primary federal grant has decreased in recent years while expenses have increased. The federal grant, which is limited to the management and administration of the Public Water System Supervision Program, provides a major portion of the revenues to support the Public Health Engineering Section. Additional revenue from fees and General Fund appropriations provide the required match for the federal grants and supplemental revenue to meet remaining expenses. Since the review of bottled water plants is a state, not a federal, requirement, federal funds do not provide revenue to support this work. The only sources of revenue for this section are from fees and General Fund appropriations.

The Health Division has statutory responsibilities defined in NRS 439 and 445A that provide for review and permitting of bottled water plants. It has statutory responsibility defined in NRS 445A that provides for annual permits, for the purposes of administering the public water system supervision program, which includes issuing annual permits, reviewing plans of water projects, and administering an operator certification program. Corresponding sections of the NAC 445A provide the regulatory framework under which these duties are carried out by the BHPS. BHPS

collects fees for the purpose of administering these regulations, but the collected fees do not cover the actual cost of the BHPS performing these statutory responsibilities.

While the Nevada State Legislature appropriates varying levels of funds for all of these purposes, the combined federal and state funding does not cover the actual cost of the Bureau performing these statutory responsibilities. To meet this funding shortfall, and to provide program enhancements, the Nevada State Legislature has historically required that regulated entities pay fees to the State Health Division to supplement the funding for BHPS. (See NRS 439.150.) In State Fiscal Year 04 (July 1, 2003 — June 30, 2004) and State Fiscal Year 05 (July 1, 2004— June 30, 2005), the Nevada State Legislature has budgeted a fee increase of approximately \$208,000 just to provide funding for the work performed by Public Health Engineering and Environmental Health Sections performed of the BHPS.

The federal Safe Drinking Water Act, as amended in 1996 (42 United States Code §§300f et seq), provides specifically for assistance to smaller systems serving less than 10,000 consumers. The Health Division's position in addressing fee increases for public water systems is consistent with this approach and recognizes the federal and state funding as a subsidy for costs to administer the public water system supervision program, especially for the smaller systems.

The proposed amendment to NAC 445A.547 adds a new application/permit fee of \$175 for bottled water purveyors which bottle water outside of Nevada, but distribute water in Nevada. The proposed amendment to NAC 445A.259 increases the annual permit fee to operate a plant in Nevada from \$100 to \$150; to review plans for constructing a plant from \$100 to \$200; and to review plans for remodeling a permitted plant from \$50 to \$100. The proposed amendment to NAC 445A.651 raises the fees generally increases fees for the operator certification program (testing, issuing and renewal of an operator certificate). The changes to NAC 445A.66635 clarify wording to correspond with changes to NAC 445A.6664. Although the impacts to individual privately-owned, public water systems are difficult, if not impossible, to quantify, the following impacts due to proposed changes in NAC 445A.6664 may be expected.

- Operator certification fees increase between \$5 and \$44 for certain types of applications to cover the cost of tests, postage and administrative costs to administer the operator certification program.
- Plan review fees for subdivision tentative maps and for final maps and associated water project improvement plans, and for other water project plans (i.e., distribution, transmission, storage, treatment) will also increase.
- The formula for charging fees for annual permits is proposed to be revised from a “stepped” system to a fee system prorated on service connections for all public water systems serving more than 25 connections. The existing “stepped” fee system has been in effect since at least 1992. For community and noncommunity public water systems serving fewer than 25 connections, the fee would be unchanged. For public water systems serving more than 26 connections, the fee would be generally be less than currently charged.
- A new annual permit fee for treatment plants would be implemented. The impact of this fee is unknown, but will affect those public water systems that either have existing water

treatment plants, or expect to have install treatment as a result of new drinking water regulation requirements (such as for arsenic).

1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Letters were sent to all affected public water systems as well as those engineering firms who normally do business with the BHPS and local health authorities advising them of the potential fee changes and providing notice of public workshops. Copies of the proposed amendments will be posted at the Health Division's web site. Public workshops were held in September 2003 and are scheduled again for October 28, 2003. Copies of proposed amendments have been provided to those individuals and businesses, which have requested direct service.

Several faxed responses and numerous phone calls provided initial general responses to the generic questionnaire included in the mass mailing, which included fee amendments to nine Chapters of the NAC. Generally, many responders, whether or not they met the definition of a small business, complained that any increase in state fees was an increase in consumer fees, which was an adverse impact, and therefore not warranted. Although many of the responses were not specific to the changes proposed in NAC 445A, the following did appear to address the proposal. Some indicated that they doubted very much if they would see any beneficial effects. Some indicated that the increase in fees would erode already slim profit margins. Several respondents indicated that an increase in water system fees would have an adverse economic impact, and that an increase in operator certification fees would make it harder to qualify and hire operators. Generally, responders did not recognize that annual permit fees for smaller water systems would actually decrease; when that was clarified for those that phoned, they were somewhat mollified.

Interested persons may obtain a list of the recipients and a summary of written responses to the solicited comments by contacting Galen D. Denio, Manager, or Kinley Goodman, Acting EHS Supervisor, BHPS, 1179 Fairview Dr., Ste 101, Carson City, NV 89701 or by calling (775) 687-4750, extension 229, after October 24, 2003.

2. The estimated economic effect of the proposed regulation on the small business which it is to regulate including, without limitation, both adverse and beneficial effects and both direct and indirect effects.

Direct Adverse and Beneficial Effects

A potential direct adverse effect may be that some small privately-owned, public water systems and some engineering firms will experience increased costs for plan reviews of subdivisions, water projects, and treatment facilities. Fees for bottled water plants, both in-state and out-of-state will increase. A beneficial direct effect is that costs for annual permits should decrease for some privately-owned, public water systems. Overall, better service to those entities affected should result from adequate funding of BHPS administrative activities.

The estimated direct and indirect beneficial economic effects of the proposed fee changes on affected small businesses cannot be quantified. Fee decreases for annual permits will be generally lower for small systems, so that should be beneficial. Overall, an indirect beneficial effect of the proposed fees will be that adequate funding for better protection of the health and safety of Nevada residents and tourists by decreasing the possibility of contamination of the public water supply, and ensuring the safe drinking water.

Direct and Indirect Costs

The estimated direct adverse economic effect of the proposed fee increases on the public water systems that qualify as small businesses, although unknown, is not expected to be large and will primarily occur in the plan review process and the annual permits for treatment facilities. Indirect costs may be incurred by the customers of those systems in that the costs might be passed through to rates. Costs would be determined on a case-by-case basis.

3. A description of the methods that BHPS considered to reduce the impact of the proposed regulation on small businesses and statement regarding whether the agency actually used those methods.

In considering methods to reduce the impact of the proposed regulation on small businesses as required by NRS 233B.0608 2 (b) (1), the agency shall consider simplifying the proposed regulation.

This fee proposal does not propose new regulations for compliance. The impact of these fee increases on small businesses has been minimized or eliminated to the extent possible. New fees are implemented, or existing ones increased in those areas where BHPS has experienced or expects increased activity and, therefore, increased costs. However, fees must be increased based upon the legislatively approved budget for BHPS's regulatory responsibilities.

In considering methods to reduce the impact of the proposed regulation on small businesses as required by NRS 233B.0608 2 (b) (2), the agency shall consider establishing different standards of compliance for a small business.

This fee proposal does not propose new regulations for compliance.

In considering methods to reduce the impact of the proposed regulation on small businesses as required by NRS 233B.0608 (2)(b)(3), the agency shall consider modifying a fee or fine set forth in the regulation so that a small business is authorized to pay a lower fee or fine.

Annual permit fees for small businesses have been decreased to the extent possible by taking into account the availability of federal and state funds to regulate small public water system.

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

The estimated cost to the agency for enforcement of the proposed regulation is minimal and will be handled through the existing administrative process. Some changes in the fee system and operator certification (Safe Drinking Water Information System) modules may be required.

5. Total amount BHPS expects to collect from any fees and the manner in which the money will be used.

The total amount of revenue expected to be collected from this fee proposal in Chapter 445A of the NAC is estimated at \$405,739, an increase of about \$89,599 over existing revenue. This additional revenue (\$78,549 for Public Health Engineering and \$11,050 for Environmental Health Services) will be used to purchase needed equipment, and to provide additional funds for salaries in order to improve the administration of the affected programs.

6. An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.

The proposed fee changes do not overlap or duplicate any federal, state or local regulations.