

ADOPTED REGULATION OF THE STATE
ENVIRONMENTAL COMMISSION

LCB File No. R237-03

Effective April 15, 2004

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

AUTHORITY: §§1 and 2, NRS 445B.210.

A REGULATION relating to open burning; revising the provisions pertaining to open burning used for the purpose of weed abatement, conservation, disease control, game or forest management, personnel training and elimination of hazards; requiring a person to obtain approval by the Director of the State Department of Conservation and Natural Resources before the open burning of solid waste; allowing open burning at single-family residences located in certain areas of the State; allowing single chamber incinerators to be used at single-family residences in certain areas of the State; and providing other matters properly relating thereto.

Section 1. NAC 445B.22067 is hereby amended to read as follows:

445B.22067 1. The open burning of any combustible refuse, waste, garbage ~~[,]~~ *or* oil, or for any salvage operations, except as specifically exempted, is prohibited.

2. ~~[This section does not apply to open]~~ *Open* burning:

(a) ~~[Approved in advance by the Director-~~

~~—(b) Concurred in by the Director and authorized by an officer of the State or its political subdivisions for]~~ **For** the purpose of weed abatement, conservation, disease control, game or forest management, personnel training or elimination of hazards ~~[-~~

~~—(c) For]~~ **is allowed if:**

(1) Approved in advance by the Director; or

(2) Authorized by an officer of the State of Nevada or its political subdivisions and concurred in by the Director.

(b) Of yard waste and other untreated wood waste, as described in NAC 444.640, is allowed if approved in advance by the Director.

(c) Is allowed for agricultural purposes and management except where prohibited by local ordinances or regulations.

(d) [At] Is allowed at single-family residences ~~[-unless prohibited by local ordinances or regulations.]~~ **located** in all areas of the State except in and within 1 mile of the boundaries of ~~[the following cities, towns and areas:]~~ Babbitt, Battle Mountain, Caliente, Carlin, **Douglas County**, East Ely, Elko ~~[-]~~ **Township**, Ely, Fallon, Fernley, Gabbs, ~~[-Gardnerville, Gardnerville Ranchos, Genoa, Hawthorne, Johnson Lane,]~~ **Hawthorne**, Lovelock, McGill, ~~[-Minden, Tonopah, Topaz Ranch Estates,]~~ **Tonopah**, Virginia City, Weed Heights, Wells, Winnemucca and Yerington ~~[- and on the Nevada side of the Tahoe Basin, in -]~~, **and inside the limits of** Carson City and in those portions of ~~[-Douglas and Lyon counties]~~ **Lyon County** that are within 1 mile of the Carson City line.

(e) Is allowed at single-family residences located in and within 1 mile of the boundaries of Babbitt, Battle Mountain, Caliente, Carlin, Douglas County, East Ely, Elko Township, Ely, Fallon, Fernley, Gabbs, Hawthorne, Lovelock, McGill, Tonopah, Virginia City, Weed Heights,

Wells, Winnemucca and Yerington, and inside the limits of Carson City and in those portions of Lyon County that are within 1 mile of the Carson City line if:

(1) Authorized by an officer of the State of Nevada or its political subdivisions;

(2) Concurred in by the Director; and

(3) Not specifically prohibited by local ordinances or regulations.

(f) Of small wood fires *is allowed* for recreational, educational, ceremonial, heating or cooking purposes.

3. All open burning must be attended and controlled at all times to eliminate fire hazards.

Sec. 2. NAC 445B.2207 is hereby amended to read as follows:

445B.2207 1. Except as *otherwise* provided in subsection 6:

(a) Burning in any incinerator other than the multiple chamber type ~~for as approved by the Director~~ is prohibited.

(b) Incinerator burning which produces, for periods totaling 1 minute in 1 hour, a visible emission which is of an opacity equal to or greater than 20 percent is prohibited.

2. Incinerators used for the burning of pathological wastes, wet garbage or high moisture content material must be high temperature types with either grate or solid hearth construction, drying shelves for wet wastes ~~and~~ and an auxiliary heating unit to ensure temperatures of 1400°F (760°C) for not less than 0.3 of a second. The hearth must be frequently cleaned at regular intervals to prevent buildup of residues and deposits.

3. The rated burning capacity, operating and maintenance procedures approved by the Director must be posted conspicuously at or near the incinerator.

4. Allowable PM₁₀ emissions from incinerators of less than 2,000 lb per hour rated burning capacity may not exceed 1.8 lb/ton of dry refuse charged.

5. Allowable PM₁₀ emissions from incinerators equal to or greater than 2,000 lb per hour burning capacity must be calculated using the following equation:

$$E = 0.6 (40.7 \times 10^{-5}C)$$

↪ For the purposes of this subsection, “E” means the maximum allowable rate of emission of PM₁₀ in pounds per hour and “C” means the rate of charge of dry refuse in pounds per hour.

6. Single chamber incinerators *may be used* at single-family residences, in all areas of the State, except in and within 1 mile of the boundaries of ~~[the following cities, towns and areas:]~~ Babbitt, Battle Mountain, Caliente, Carlin, *Douglas County*, East Ely, Elko ~~[;]~~ *Township*, Ely, Fallon, Fernley, Gabbs, ~~[Gardnerville, Gardnerville Ranchos, Genoa, Hawthorne, Johnson Lane,]~~ *Hawthorne*, Lovelock, McGill, ~~[Minden, Tonopah, Topaz Ranch Estates,]~~ *Tonopah*, Virginia City, Weed Heights, Wells, Winnemucca and Yerington ~~[; and on the Nevada side of the Tahoe Basin, in]~~, *and inside the limits of* Carson City and in those portions of ~~[Douglas and Lyon counties]~~ *Lyon County* that are within 1 mile of the Carson City line, unless otherwise prohibited by local ordinances or regulations . ~~[; are exempt from the provisions of this section.]~~

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R237-03**

The State Environmental Commission adopted regulations assigned LCB File No. R237-03 which pertain to chapter 445B of the Nevada Administrative Code.

Notice date: 1/23/2004

Hearing date: 2/26/2004

Filing date: 4/15/2004

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code NAC 445B.22067 Open Burning: This regulation prohibits open burning of any combustible refuse, waste, garbage, oil, or burning for any salvage operations. The regulation does allow open burning for the purpose of weed abatement, conservation, disease control, game or forest management, the elimination of hazards, or for open burning of yard waste and other untreated wood waste. Such actions must be approved in advance by the Director of the Department of Conservation and Natural Resources. The regulation also allows opening burning for agricultural purposes and management except where prohibited by local ordinances or regulations. As well, it allows open burning at singlefamily residences in all areas of the state except in and within 1 mile of the boundaries of selected towns and cities named in the regulation. Moreover, in these areas, open burning is allowed only if authorized by the State of Nevada or its political subdivisions and concurred with by the Director and not specifically prohibited by local ordinances or regulations. The regulation allows small wood fires for recreational, educational, ceremonial, heating or cooking purposes, and it requires that open burning be attended and controlled at all times to eliminate fire hazards. Except as otherwise provided, open burning in any incinerator (NAC 445b.2207) other than the multiple chamber type is prohibited by this regulation.

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.

To solicit public comments on the proposed Open Burning amendments, the Nevada Division of Environmental Protection, Bureau of Air Quality Planning (BAQP) conducted eleven public workshops throughout Nevada. Total attendance exceeded 200. Opponents were concerned about a number of issues including possible economic impacts such as increased landfill and transfer station costs passed on as a tax increase and increased trash collection and disposal fees, along with the cost of extra trips to a disposal site. Other concerns included environmental impacts such as increases in illegal dumping and litter created as a result of overfilled collection bins and impacts on physically disabled and handicapped who would be required to haul trash cans to the curb or a collection sites. Others supported the amendments because of concerns over acute health effects such as asthmatic attacks and respiratory problems triggered by the smoke, as well as fire safety and nuisance issues such as odor. The proposed regulation was noticed by the State Environmental Commission in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates – January 28, February 4, and February 11, 2004. The

public was subsequently mailed a public notice and meeting agenda for the SEC hearing; the SEC mailing list was used for both mailings. There were public oral comments received by the Commission during the adoption hearing for the referenced regulation (see below).

2. The number persons who:

- (a) **Attended February 26, 2004 hearing; 40**
- (b) **Testified on this Petition at the hearing: 3**
- (c) **Submitted to the agency written comments: 17**

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 notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. In addition, the workshop notices were posted on the Bureau of Air Quality Planning's website (see: <http://ndep.nv.gov/baqp/planintro.html>) and sent to local newspapers and libraries. The proposed regulation was also posted on the website hosted by the State Environmental Commission at (<http://www.sec.nv.gov/main/hearing0204.htm>). Businesses that would be affected by the proposed amendments include Nevada farmers and ranchers. For their comments see #1 above.

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 regulation was adopted by the State Environmental Commission on February 26, 2004. The regulation was altered from the original draft permanent regulations received by LCB on January 14, 2004 (R-237-03). The changes to the LCB draft regulation reflect comments obtained through numerous public workshops held throughout Nevada by the Division of Environmental Protection Bureau of Air Quality Planning - BAQP. The changes were accepted by the SEC and constitute a diminution of content from the original LCB draft regulations dated January 14, 2004.

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

There will be no economic impacts on businesses or the public.

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

There will be no additional costs to the agency for enforcement of 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 regulation does not overlap or duplicate any regulations of other state or government agencies.

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 regulations are no more stringent than what is established by federal law.

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.

The regulations do not provide a new fee nor increase an existing fee.