

**ADOPTED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R125-07**

Effective January 30, 2008

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

AUTHORITY: §§1-11, 14-16 and 19, NRS 445A.425; §§12, 13 and 18, NRS 445A.425, 445A.660 and 459.485; §17, NRS 445A.425 and 445A.660.

A REGULATION relating to hazardous substances; revising provisions relating to the notification of the Director of the State Department of Conservation and Natural Resources of certain releases of hazardous substances; and providing other matters properly relating thereto.

**Section 1.** Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

**Sec. 2.** *“Confirmed release from an underground storage tank” means an actual or presumed underground release that is discovered by:*

*1. A test to determine the tightness of an underground storage tank or line that is conducted in accordance with the provisions of 40 C.F.R. § 280.43(c) or 40 C.F.R. § 280.44(b), respectively;*

*2. A visual or laboratory confirmation of a hazardous substance in soil surrounding the underground storage tank or in groundwater in the area of an underground storage tank which indicates that a release from the underground storage tank has occurred; or*

*3. Any unexplained rapid loss of a hazardous substance from an underground storage tank.*

**Sec. 3.** *“Facility” means any:*

*1. Building, structure, installation, equipment, pipe, including the pipe into a sanitary or storm sewer or publicly owned treatment works, pipeline, well, pit, pond, lagoon,*

*impoundment, ditch, landfill, container for storage, tank or underground tank for storage;*

*2. Site or area where a hazardous substance, pollutant or contaminant has been deposited, stored, disposed of, placed or otherwise located; or*

*3. Motor vehicle, rolling stock or aircraft or any vessel used as a means of transportation on water.*

*Sec. 4. "Groundwater" means all subsurface water comprising the zone of saturation, including perched water.*

*Sec. 5. "Hazardous substance" includes, without limitation:*

*1. A contaminant as defined in NRS 445A.325;*

*2. A hazardous material as defined in NRS 459.7024;*

*3. A hazardous substance as defined in 40 C.F.R. Part 302;*

*4. A pollutant as defined in NRS 445A.400; and*

*5. A regulated substance as defined in NRS 459.448.*

*Sec. 6. "Other surfaces of land" means rock, gravel, road base, compacted soil, asphalt, pavement or concrete. The term does not include a surface that is engineered to prevent a release of a hazardous substance into the environment.*

*Sec. 7. "Public water system" has the meaning ascribed to it in NRS 445A.235.*

*Sec. 8. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into the environment.*

*Sec. 9. "Surface water" means all water open to the atmosphere and subject to surface runoff.*

**Sec. 10.** *“Underground storage tank” means a tank or tanks which are used to contain a hazardous substance and which are at least 10 percent below the surface of the ground. The term includes any underground pipes connected to an underground storage tank.*

**Sec. 11.** *“Vulnerable resource” means:*

*1. Any building or other structure that is used primarily to house or provide services to children, elderly persons or sick persons, including, without limitation, a school, day care center, senior citizen center and hospital;*

*2. An area that is located within 150 feet of a wellhead of a public water system; or*

*3. A storm drain.*

**Sec. 12.** *1. Any person who owns or operates a facility, or his designated agent, shall notify the Director as soon as practicable after he notifies any emergency response agencies, if required, and initiates any action required to prevent or abate any imminent danger to the environment or the health or safety of persons after he has knowledge of a release of a hazardous substance that involves the facility if the release:*

*(a) Is in a quantity equal to or greater than that which is required to be reported to the National Response Center pursuant to 40 C.F.R. Part 302;*

*(b) Involves any amount of a hazardous substance that is released to surface water; or*

*(c) Threatens a vulnerable resource.*

*2. A release which is required to be reported to the Director pursuant to this section is not required to be reported to the Director pursuant to NAC 445A.347.*

**Sec. 13.** *Any notice of a release of a hazardous substance required to be provided to the Director pursuant to NAC 445A.347 or section 12 of this regulation must be provided by*

*telephone at (888) 331-6337, for in-state telephone calls, or (775) 687-9485, for in-state or out-of-state telephone calls.*

**Sec. 14.** NAC 445A.2267 is hereby amended to read as follows:

445A.2267 “Release” has the meaning ascribed to it in ~~NAC 445A.345.~~ *section 8 of this regulation.*

**Sec. 15.** NAC 445A.2269 is hereby amended to read as follows:

445A.2269 1. Except as otherwise provided in this section, if the owner or operator of a facility, or his designated agent, is required to give notice of a release pursuant to NAC 445A.345 to 445A.348, inclusive, *and sections 2 to 13, inclusive, of this regulation,* the Division shall require the owner or operator to conduct an assessment of the conditions at the site of the facility, including an assessment of the condition of the soil or water, or both, to determine the extent and magnitude of the contamination.

2. The Division shall not require an owner or operator to conduct an assessment of the soil required by subsection 1 if the level of contamination of the soil does not exceed the action level established for that soil pursuant to NAC 445A.2272 because of the actions taken by the owner or operator of the facility pursuant to NAC 445A.22695.

3. An assessment conducted pursuant to subsection 1 must:

(a) Identify the relevant pathways specifically related to the site that affect public health and the environment; and

(b) Be approved by the Division.

**Sec. 16.** NAC 445A.345 is hereby amended to read as follows:

445A.345 As used in NAC 445A.345 to 445A.348, inclusive, *and sections 2 to 13, inclusive, of this regulation,* unless the context otherwise requires ~~it~~:

~~—1. “Facility” means any:~~

~~—(a) Building, structure, installation, equipment, pipe, including the pipe into a sanitary or storm sewer or publicly owned treatment works, pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, container for storage, tank or underground tank for storage;~~

~~—(b) Site or area where a hazardous substance, pollutant or contaminant has been deposited, stored, disposed of, placed or otherwise located; or~~

~~—(c) Motor vehicle, rolling stock or aircraft or any vessel used as a means of transportation on water.~~

~~—2. “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into the environment.],~~ *the words and terms defined in sections 2 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 17.** NAC 445A.346 is hereby amended to read as follows:

445A.346 NAC 445A.345 to 445A.348, inclusive, *and sections 2 to 13, inclusive, of this regulation* do not apply to:

1. Any release resulting in exposure to an employee solely within an indoor place of employment for which the employee may assert a claim against his employer.

2. Emissions from the exhaust of the engine of a motor vehicle, the rolling stock of a railroad, an aircraft, a vessel or pipeline pumping station.

3. Release of source, by-product or special nuclear material resulting from the operation of a production or utilization facility as defined in the Atomic Energy Act of 1954, and which is subject to the regulatory authority of the Nuclear Regulatory Commission.

4. Any activity or substance which is subject to regulation pursuant to NRS 459.010 to 459.290, inclusive.
5. The normal application of fertilizers or pesticides.
6. Any release that complies with the limits or conditions of a permit issued by the State or the Federal Government.

**Sec. 18.** NAC 445A.347 is hereby amended to read as follows:

445A.347 ~~[1.]~~ Any person who owns or operates a facility , or his designated agent , shall ~~[, as soon as possible]~~ *notify the Director not later than the first working day* after he has knowledge of a release ~~[described in subsection 2]~~ *of a hazardous substance* that involves ~~[his facility, but not later than the end of the first working day after the release, provide notice of the release to the Director by telephone at (888) 331-6337 or (775) 687-9485.~~

~~—2.— The following are subject to the notice requirements of subsection 1:~~

~~—(a) A release in a quantity equal to or greater than that which is required to be reported to the National Response Center pursuant to 40 C.F.R. Part 302.~~

~~—(b) A release consisting of any quantity of pollutants, hazardous waste, as defined in NRS 459.430, or contaminants, as defined in NRS 445A.325, and the pollutant, hazardous waste or contaminant is not listed in 40 C.F.R. § 302.4.~~

~~—(c) A release consisting of a petroleum product:~~

~~—(1) Which is released]~~ *the facility if the hazardous substance is:*

*1. Released* to the soil or other surfaces of land in a quantity greater than 25 gallons ~~[; or~~

~~—(2) Discovered on or in the groundwater or]~~ *or 200 pounds;*

*2. Discovered* in at least 3 cubic yards of soil during excavation of soil, subsurface exploration ~~[, monitoring of groundwater]~~ or any other subsurface activity ~~[;];~~

*3. Discovered in or on the groundwater during subsurface exploration, monitoring of groundwater or any other subsurface activity; or*

*4. A confirmed release from an underground storage tank.*

**Sec. 19.** NAC 445A.348 is hereby amended to read as follows:

445A.348 Any notice received pursuant to NAC 445A.347 *or section 12 of this regulation* or any information obtained from the investigation of the release reported in the notice ~~[shall]~~ *must* not be used against the person giving the notice in any criminal prosecution, unless he is prosecuted for perjury, gross negligence or the giving of a false statement related to the reported release.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R125-07**

The State Environmental Commission adopted regulations assigned LCB File No. R125-07 which pertain to chapter 445A of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

**Regulation R125-07: Release Reporting Regulations of Hazardous Substances or Petroleum Products in Excess of Reportable Quantities:** The proposed regulation amends the Nevada Division of Environmental Protection's (NDEP) existing release reporting regulations that are contained in Nevada Administrative Code 445A.345 to 445A.348. Release reporting regulations require facilities to notify NDEP after the release of hazardous substances or petroleum products in excess of reportable quantities.

The regulation creates a category of releases that will be subject to more immediate notification requirements than what the existing regulations mandate. The existing regulations allow for notification of any incident, regardless of severity or impact, within one working day, which is not supportive of agency functions during significant events.

Reportable triggers based on environmental media have been added for "listed" hazardous substances taken from federal regulations. This brings hazardous substances in line with the handling of petroleum products and "unlisted" pollutants and contaminants, which all have media-specific reporting requirements.

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

NDEP's Bureau of Corrective Actions held three (3) public workshops on the above referenced regulation at the following locations. A total of 46 people attend these workshops.

Elko October 23rd, 2007 3:00pm Great Basin College 1500 College Parkway Community Center	Reno October 24th, 2007 3:00pm Washoe County Health Department 1001 E Ninth Street, Building	Las Vegas October 25th, 2007 3:00pm Las Vegas Public Library 833 Las Vegas Boulevard,
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The State Environmental Commission (SEC) held a public hearing to consider this regulation on December 04, 2007. The hearing was held in Reno at the Nevada Department of Wildlife (1100 Valley Road).

The hearing agenda was posted at the following locations: the Nevada Dept. of Wildlife in Reno, the Grant Sawyer Office Building in Las Vegas, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of

the agenda, the public notice, and the proposed regulation noted above were made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the regulations was published on November 12, 19, and 26, in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at: [http://sec.nv.gov/main/hearing\\_120407.htm](http://sec.nv.gov/main/hearing_120407.htm)

**2. The number persons who attended the SEC Regulatory Hearing:**

- (a) Attended December 04, 2007 hearing; 30 (approx.)
- (b) Testified on this Petition at the hearing: 1 (1 NDEP Staff)
- (c) Submitted to the agency written comments: 0

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

Comments were solicited from affected businesses as indicated in number 1 above. To facilitate the regulatory workshop process, NDEP staff prepared and distributed a “Q&A comment response document. The document contains specific responses to 11 comments raised during the workshops. In addition these comments, the US Dept. of Energy provided written comments on the regulations; NDEP provided specific responses to these comments. NDEP’s “Q&A” document is posted on the SEC website at: [http://www.sec.nv.gov/docs/workshop\\_r125-07\\_qa.pdf](http://www.sec.nv.gov/docs/workshop_r125-07_qa.pdf)

**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 without change on December 04, 2007. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

The proposed changes to the release reporting regulations are not believed to have an economic effect on the regulated community. Release reporting regulations apply to any facility at which hazardous substances and petroleum products are handled and may be released to the environment, but the changes do not substantially alter the existing requirements with the exception of the inclusion of immediate notification.

Immediate notification will be required in response to significant events that involve large amounts of hazardous substances or impact surface water resources. Most facilities that handle large amounts of hazardous substance or are located near surface water have already established

emergency response plans that include immediate notification to the regulatory agencies after a significant release event.

The proposed changes to the release reporting regulations do not have an economic effect on the public.

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

The inclusion of immediate notification requirements necessitates the use of on-call staff within the Division to field release reports after hours and on the weekends. An off-hour duty officer program has already been established by the Division using funds from federal grants. The funding required is minimal, and the funding source is stable.

**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 Division has established release reporting regulations to support its authorities for the oversight of applicable environmental laws and regulations. Other state agencies that have regulatory oversight of hazardous materials or involvement in significant release incidents may have separate reporting requirements. The two State agencies that have reporting provisions that may capture the same incidents as the Division's reporting requirements includes the Nevada Department of Transportation, which is involved with hazardous material releases on the roadways, and the Nevada Department of Emergency Management, which is responsible for coordinating the State's response to any significant incident.

These different release reporting requirements do not necessarily overlap each other because the State agencies may have different authorities and jurisdictions and the notification requirements may be built on entirely different reporting triggers.

The Federal government is also required to be notified after a release of a reportable quantity of hazardous substances. These reporting functions have been consolidated in the National Response Center operated by the US Coast Guard. The release of a reportable quantity of hazardous substances is felt to be a significant event that may require response under the National Contingency Plan.

While the various state and federal agencies that might be involved in the response to an incident involving hazardous substances may coordinate authorities and responsibilities, it is vital that a facility owner separately notifies each agency within the appropriate timeframe as established by each agency. Language has been added to the proposed regulation to clarify that notification made to the Division does not satisfy any other separate reporting requirements.

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

State reportable quantities for hazardous substances have been adopted from federal regulations. These federal reportable quantities provide an amount in pounds for known, individual hazardous chemicals that would represent a significant release event if discharged to the environment.

Because the Division's release reporting regulations are meant to cover both significant incidents and the more routine releases that may require regulatory response, the proposed regulation provides for a more stringent minimum reportable quantity for a number of these hazardous substances.

Specifically, reportable quantities for a number of chemical hazards have been set in the federal regulations at a quantity of 1,000 or 5,000 pounds. While these reportable quantities have been retained as a trigger representing a significant event requiring immediate notification, the Division is adopting a default minimum reportable quantity for hazardous substances. Under the proposed framework, notification must be made to the Division within one working day for any release of a hazardous substance in excess of 25 gallons or 200 pounds. This change is intended to eliminate the discrepancy in the handling of releases of petroleum products and chemical hazards.

**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 proposed regulation does address any fees.