

**ADOPTED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R152-08**

Effective December 17, 2008

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

AUTHORITY: §§1-25, NRS 445A.855 and 445A.860.

A REGULATION relating to environmental control; clarifying the authority of the State Environmental Commission and the Division of Environmental Protection of the State Department of Conservation and Natural Resources to regulate public water systems; and providing other matters properly relating thereto.

**Section 1.** NAC 278.010 is hereby amended to read as follows:

278.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC ~~[278.020]~~ *278.030* to 278.230, inclusive, have the meanings ascribed to them in those sections.

**Sec. 2.** NAC 278.050 is hereby amended to read as follows:

278.050 “Division ” ~~[of Environmental Protection”]~~ means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

**Sec. 3.** NAC 278.090 is hereby amended to read as follows:

278.090 “Local agency” means a district board of health, county or city, which is authorized to act for the ~~[Health]~~ Division pursuant to NRS 278.335.

**Sec. 4.** NAC 278.210 is hereby amended to read as follows:

278.210 “System of community sewerage” means a system of sanitary sewerage which:

1. Has been approved by the Division ; ~~[of Environmental Protection;]~~ and

2. Serves or is intended to serve two or more dwellings, buildings or lots in a subdivision.

**Sec. 5.** NAC 278.260 is hereby amended to read as follows:

278.260 A developer shall submit all the following items of information to the ~~Health~~

Division or local agency for its review of a tentative map:

1. A map showing the topographic features of the subdivision, including contours at intervals of 2 feet for slopes of 10 percent or less and intervals of 5 feet for slopes of over 10 percent.
2. Two copies of the map showing the tentative design of the subdivision, including the arrangement of lots, the alignment of roads and easements.
3. If a system for subsurface disposal of sewage will be used in the subdivision, a report on the soil, including the types of soil, a table showing seasonal high water levels and the rate of percolation at the depth of any proposed system for absorption by soil.
4. A statement of the type of water system to be used and the water source, for example, private wells or a public water system.
5. Unless water for the subdivision is to be supplied from an existing public water system, a report of the analyses of four 1-gallon samples taken in or adjacent to the subdivision from different wells. The analyses must show that the water meets the standards prescribed in NAC 445A.450 to 445A.492, inclusive.
6. A map of the 100-year floodplain for the applicable area. The map must have been prepared by recognized methods or by an appropriate governmental agency for those areas subject to flooding.

7. A description of the subdivision in terms of 40-acre parts of a designated section, township and range, or any other description which provides a positive identification of the location of the subdivision.

8. A map of the vicinity of the subdivision, showing the location of the proposed subdivision relative to the nearest city or major highway.

9. The names and addresses of the owners and developers of the subdivision.

10. A master plan showing the future development and intended use of all land under the ownership or control of the developer in the vicinity of the proposed subdivision.

**Sec. 6.** NAC 278.270 is hereby amended to read as follows:

278.270 1. An application for review of a tentative map is not complete until all the required items of information have been submitted by the local government. The period allowed the ~~[Health]~~ Division or local agency for its review begins on the date when the application is complete.

2. If an incomplete application for review is received by the ~~[Health]~~ Division or local agency, it shall give the local government written notice of that fact. The notice must include a list of the specific items which are missing.

**Sec. 7.** NAC 278.310 is hereby amended to read as follows:

278.310 In preparing the certificate required by subsection 1 of NRS 278.377, the ~~[Health]~~ Division or a local agency acting for the ~~[Health]~~ Division shall include the following statement:

This final map is approved by the ~~[(Health-Division;)]~~ *(Division of Environmental Protection of the State Department of Conservation and Natural Resources, or the* health district, county or city for the ~~[(Health-Division)-of-the-Department-of-Health-and-Human~~

~~Services.}]~~ *Division of Environmental Protection*). This approval concerns sewage disposal, water pollution, water quality and water supply facilities and is predicated upon plans for a (public, private) water supply and (a community, individual systems) for disposal of sewage.

.....

.....

~~[(Health Division;)]~~ *(Division of Environmental Protection;*

Date

Health District, County, City)

**Sec. 8.** NAC 278.320 is hereby amended to read as follows:

278.320 A local agency which certifies to the ~~[(Health)]~~ Division, pursuant to subsection 3 of NRS 278.335, that the water quality and quantity, sewage disposal and control of water pollution for a subdivision meet all the requirements of law must also certify that the requirements of this chapter are met, if the agency so finds.

**Sec. 9.** NAC 278.330 is hereby amended to read as follows:

278.330 1. The ~~[(Health)]~~ Division or local agency shall review and either approve or disapprove the plans for improvements shown on the final map and related plans within 30 days after receipt of the map and plans.

2. The ~~[(Health)]~~ Division or local agency shall give written notice of its approval or disapproval to the developer. If the ~~[(Health)]~~ Division or local agency disapproves the map or plans, its notice must include the reasons for its action.

3. If the developer fails to record an approved final map within the time allowed by NRS 278.360, he must resubmit a tentative map through the governing body to the ~~Health~~ Division or local agency for its review and approval.

**Sec. 10.** NAC 278.340 is hereby amended to read as follows:

278.340 The developer shall not perform any construction on the site of a subdivision, except that necessary to evaluate the subdivision, until the ~~Health~~ Division or local agency approves the final map.

**Sec. 11.** NAC 278.350 is hereby amended to read as follows:

278.350 An approval by the ~~Health~~ Division or local agency of a tentative map constitutes an approval of the concept of the proposed methods of providing for disposal of sewage, controlling water pollution, ensuring the quality of water and providing facilities for water supply.

**Sec. 12.** NAC 278.360 is hereby amended to read as follows:

278.360 Development of a subdivision must be carried on in a manner which will:

1. Minimize water pollution; and
2. Be in conformance with the applicable plans and specifications approved by the ~~Health~~ Division or local agency.

**Sec. 13.** NAC 278.370 is hereby amended to read as follows:

278.370 1. If the ~~Health~~ Division has not authorized the county or city to conduct inspections of the construction of the system for water supply and sewerage in a subdivision, the developer must have the design engineer or a third person conduct those inspections.

2. The inspector shall, at intervals of construction specified by the ~~[Health]~~ Division or local agency, certify in writing that the improvements are being installed in accordance with the approved plans and recognized practices of the trade.

3. The developer must bear the cost of the inspections.

4. The developer may select a third-person inspector but the selection must be approved by the ~~[Health]~~ Division or local agency. A third-person inspector must be a disinterested person who is not an employee of the developer.

**Sec. 14.** NAC 278.400 is hereby amended to read as follows:

278.400 1. If a public water system is to be used for the subdivision, the system must have:

(a) Necessary facilities to treat water to meet the standards provided in NAC 445A.450 to 445A.492, inclusive.

(b) The capacity to meet the demands upon the system.

2. The ~~[Health]~~ Division or local agency shall not approve a subdivision with respect to water quality if the subdivision is in an area where:

(a) The water is to be supplied from individual wells and the water does not meet the standards established by the ~~[State Board of Health]~~ *Division* in NAC 445A.450 to 445A.492, inclusive; or

(b) Where there is a community water supply and the water is treated by the use of individual units in single-family dwellings.

**Sec. 15.** NAC 278.420 is hereby amended to read as follows:

278.420 ~~{When}~~ *The Division, or a local agency when* the written approval of the Division ~~{of Environmental Protection}~~ is obtained, ~~{the Health Division or local agency}~~ may approve any of the following methods for disposing of sewage:

1. Connection to an existing system of community sewerage if the system:
  - (a) Will not be brought to overcapacity by the connection; and
  - (b) Will be expanded to provide for the additional demand.
2. Connection to a newly constructed system of community sewerage.
3. Connection to a system for subsurface disposal of sewage.

**Sec. 16.** NAC 278.430 is hereby amended to read as follows:

278.430 To obtain approval for connection to an existing system of community sewerage, the developer must submit to the ~~{Health}~~ Division or local agency a written statement from the local authority responsible for sewage disposal stating that service from the existing system will be extended to the subdivision and:

1. The community facility for treatment will not be caused to exceed its capacity and the discharge permit requirements by this added service; or
2. The facility will be expanded to provide for the added service.

**Sec. 17.** NAC 278.440 is hereby amended to read as follows:

278.440 To obtain the ~~{Health Division's or local agency's}~~ approval *of the Division or a local agency* for connection to a new system of community sewerage, the developer must first submit complete engineering plans and specifications to and have them approved by the Division ~~. {of Environmental Protection.}~~

**Sec. 18.** NAC 278.450 is hereby amended to read as follows:

278.450 1. Before the ~~[Health]~~ Division or local agency may approve the use in a subdivision of a system for subsurface disposal of sewage or private systems for disposal of sewage, the developer must comply with the conditions set forth in this section.

2. Percolation tests of soil must be made at the rate of four tests per 10 acres or fraction thereof and one additional test for each additional 10 acres or fraction thereof. For example, 10 such tests are required for a 67-acre subdivision. In a subdivision covering an area of more than 1 square mile, at least 16 percolation tests per square mile are required for the initial submission of data. Complete results of these tests must be submitted to the Division ~~[of Environmental Protection]~~ and to the ~~[Health Division or]~~ local agency for review.

3. In any subdivision where the characteristics of soil percolation are questionable, the developer may be required to make additional tests. The location of test holes must be shown on the plan.

4. If the percolation tests show that the times for seepage exceed 60 minutes per inch, the method of absorption by soil must not be used for disposal.

**Sec. 19.** NAC 278.470 is hereby amended to read as follows:

278.470 1. As a further condition of the ~~[Health Division's or local agency's]~~ approval of a subsurface system or private systems for sewage disposal, the developer must have all the following items prepared and submitted to the Division ~~[of Environmental Protection]~~ and the ~~[Health Division or]~~ local agency:

(a) For a tentative map, a report containing a comprehensive log of the soil conditions existing throughout the area of the subdivision to a depth of at least 5 feet below the bottom of the proposed system for subsurface disposal. This report must be prepared by a professional engineer or other person who is qualified by training and experience to make such a report. For



absorption by soil to be approved as a method of disposal, the soil cover throughout the area must be adequate to ensure that at least 4 feet of suitable soil lie between bedrock (or any other impervious formation) and the bottom of the trenches used to allow absorption in soil of the effluent from the septic tank.

(b) For a tentative map, a statement of the present and maximum elevation of ~~[ground-water]~~ *groundwater* throughout the area of the subdivision. This statement must be prepared by a professional engineer or other person who is qualified by training and experience to prepare such a statement. A subsurface system for disposal of sewage must not be approved if there is evidence that ~~[ground-water]~~ *groundwater* rises to within 5 feet of the bottom of the trenches.

(c) For a final map, a report presenting information in sufficient detail to demonstrate that the soil characteristics of all parcels of land within the subdivision will be suitable for a subsurface system for disposal of sewage. The report must be prepared by a professional engineer or other person authorized under state law to prepare such a report.

2. The developer must inform the ~~[Health]~~ Division or local agency when test holes have been excavated, so that a representative of the Division or *the local* agency may inspect the holes.

**Sec. 20.** NAC 278.490 is hereby amended to read as follows:

278.490 The following fees are prescribed for services performed by the ~~[Health]~~ Division:

For reviewing a tentative map .....\$400

Plus \$3 for each building lot shown on the map.

For reviewing a final map .....400

Plus \$3 for each building lot shown on the final map.

For a preliminary evaluation of a plant for water treatment for a subdivision, an additional fee of .....	50
For requesting and considering information which the subdivider has failed to submit in accordance with NAC 278.260 to 278.370, inclusive, each request .....	100

**Sec. 21.** NAC 278.500 is hereby amended to read as follows:

278.500 1. Any developer who has reason to believe that an action taken by the ~~[Health]~~ Division pursuant to this chapter was 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.

2. If the informal discussion does not lead to a resolution of the developer's problem, he may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the ~~[Bureau]~~ *Division* for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the developer and the ~~[Bureau,]~~ *Division*, except that the informal conference must be held ~~[no]~~ *not* later than 60 days after the date on which the ~~[Bureau]~~ *Division* received the written request.

3. The determination of the ~~[Bureau]~~ *Division* resulting from the informal conference cannot be appealed and is the final remedy available to the developer.

4. The ~~[Bureau]~~ *Division* may waive the informal procedures by giving written notice to the developer.

5. Local agencies shall adopt a parallel procedure for handling similar situations.

**Sec. 22.** NAC 278.510 is hereby amended to read as follows:

278.510 1. Before the developer begins construction of any improvements based on the final map, he must be able to show proof that the map includes a certificate of approval issued by the ~~[Health]~~ Division or local agency pursuant to NRS 278.377 and NAC 278.310. The proof must be available at the jobsite.

2. If the proof is not available at the jobsite, the health authority or other enforcing officer shall issue an order to the developer to cease and desist until such time as proper proof is available.

3. If the developer fails to comply with the order to cease and desist, the enforcing officer shall seek injunctive relief through a court of competent jurisdiction.

**Sec. 23.** NAC 278.520 is hereby amended to read as follows:

278.520 Each certificate which the ~~[Health]~~ Division or local agency issues to approve construction must include a declaration that:

1. The appropriate inspections were performed; and
2. The construction and installations at the subdivision meet the requirements of this chapter.

**Sec. 24.** NAC 278.530 is hereby amended to read as follows:

278.530 1. Any person who requests a hearing before the State Environmental Commission concerning a final decision of the Division ~~[of Environmental Protection of the State Department of Conservation and Natural Resources]~~ pursuant to NRS 278.377 may do so by filing a request, within 10 days after notice of the action of the *State* Department ~~[H]~~ *of Conservation and Natural Resources*, on Form 3\* with the State Environmental Commission, ~~[333 West Nye Lane, Capitol Complex,]~~ *Bryan State Office Building, 901 South Stewart Street, Suite 4001*, Carson City, Nevada ~~[89710.]~~ *89701-5249*.

2. The provisions of NAC 445B.875 to 445B.899, inclusive, apply to a hearing of the State Environmental Commission requested pursuant to subsection 1.

\*(See adopting agency for form.)

**Sec. 25.** NAC 278.020 and 278.060 are hereby repealed.

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### TEXT OF REPEALED SECTIONS

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**278.020 “Bureau” defined. (NRS 439.200)** “Bureau” means the Bureau of Health Protection Services of the Health Division or its successor.

**278.060 “Health Division” defined. (NRS 439.200)** “Health Division” means the Health Division of the Department of Health and Human Services.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R152-08**  
**SEC # P2008-12**

The State Environmental Commission adopted regulations assigned LCB File No. R152-08 which pertain to chapter 278 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

**Regulation R152-08: Transfer of Regulatory Authorities for Subdivision Review:** The purpose of this regulation is to complete the transfer of authorities covered by Senate Bill SB395. SB395 was passed in 2005; among other actions the legislation transferred statutory and regulatory authorities for subdivision review programs (contained in NRS and NAC 278 respectively) from the Nevada Division of Health to the Nevada Division of Environmental Protection (NDEP). Accordingly, this regulation revises the text references of "Health Division" to "Division of Environmental Protection." The regulation was originally adopted by the State Board of Health in 1982 in order to implement the statutory responsibilities contained in NRS 278.

**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.** The Nevada Division of Environmental Protection, Bureau of Water Pollution Control held three public workshops on the above referenced regulation at the locations noted below.

**Las Vegas**

Wednesday, November 5,  
2008 - 2:00PM – 3:00PM  
Department of  
Conservation and Natural  
Resources – Nevada  
Division of Environmental  
Protection 2030 E.  
Flamingo Suite 230 Las  
Vegas, Nevada 89119

**Carson City**

Tuesday, November 4, 2008 -  
2:00PM – 3:00pm  
Department of Conservation and  
Natural Resources – Nevada  
Division of Environmental  
Protection 901 South Stewart  
Street – Humboldt Conference  
Room Carson City, Nevada  
89701

**Elko**

Tuesday, November 4, 2008 -  
2:00PM – 3:00pm  
City Hall  
1751 College Avenue  
Elko, Nevada 89801

Following these workshops, the State Environmental Commission (SEC) held a public hearing to consider the regulation on November 12, 2008. The hearing was held at the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada. The SEC hearing agenda was posted at the meeting location, at the 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 were also 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 regulation was published on Monday October 13 and 27, 2008, and on November 3<sup>rd</sup> 2008 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://www.sec.nv.gov/main/hearing\\_111208.htm](http://www.sec.nv.gov/main/hearing_111208.htm)

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

- (a) Attended November 12, 2008 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.

**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 that was presented at the meeting with out any changes.

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

This regulation will not have an immediate or long-term adverse economic impact on the public or the business community

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

There will be no additional cost to the agency for enforcement of the proposed 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 regulation is not more stringent than any local or federal laws and regulations.

**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 not address any fees.