

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R091-16

Proposed Permanent Regulations

P2016-08

June 13, 2016

Authority: NRS 459.485, 459.490 and 459.500

Explanation: matter in *blue bold italics* is new; matter in ~~red brackets~~ is omitted.

1. NAC 444.8427 “Facility for community recycling” defined. (NRS 459.485) “Facility for community recycling” means a facility for recycling hazardous waste which has a yearly capacity that is not more than twice the amount of the type of hazardous waste proposed to be recycled that is generated within the region in this State in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as *adopted by reference at NAC 444.8632* ~~[that section existed on July 1, 2008]~~.

2. NAC 444.84275 “Facility for community storage” defined. (NRS 459.485) “Facility for community storage” means a facility for the storage and consolidation of hazardous waste which has a yearly capacity that is not more than twice the amount of hazardous waste that is generated within the county in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as *adopted by reference at NAC 444.8632* ~~[that section existed on July 1, 2008]~~.

3. NAC 444.8452 Additional fees to offset cost of inspection and other regulation: Payment; accounting; penalty for unpaid fee; waiver. (NRS 459.485, 459.500, 459.510)

1. The owner or operator of a facility for the management of hazardous waste shall, in addition to any other applicable fees, pay the following fees to the Division to offset partially the cost of inspection and other regulation of the facility:

(a) For the disposal, open burn, open detonation or incineration of hazardous waste by a unit or for the burning of hazardous waste in a boiler or industrial furnace for the recovery of energy by a facility:

(1) Nineteen dollars per ton of the volume that is hazardous waste pursuant to paragraph (a) of subsection 2 of NAC 444.843; and

(2) Three dollars and fifty cents per ton of the volume that is hazardous waste pursuant to paragraph (b) or (c) of subsection 2 of NAC 444.843 but is not hazardous waste pursuant to paragraph (a) of that subsection.

(b) For the treatment or storage of a volume of hazardous waste by a unit without:

(1) Subsequent disposal, open burn, open detonation or incineration of the hazardous waste by the facility; or

(2) Subsequent burning of the hazardous waste in a boiler or industrial furnace for the recovery of energy by the facility,

↳ \$5 per ton if the waste that is stored or treated is waste generated at that facility.

(c) For the treatment of a volume of hazardous waste by a unit so that it is no longer hazardous waste pursuant to NAC 444.843 and subsequent disposal of the treated waste by the facility, \$4 per ton.

2. The owner or operator of such a facility shall:

(a) Calculate the amount of hazardous waste subject to the fees on a quarterly basis based on the volume of the hazardous waste that is newly managed by a unit during the quarter of the year for which the fees are calculated;

(b) Pay the fees provided in this section within 30 days after the end of each quarter; and

(c) Submit, with each payment, a detailed accounting of the volume of waste, which corresponds to the fee paid.

3. The Division may assess a penalty of 2 percent of the unpaid balance for each month, or portion thereof, that a fee remains unpaid.

4. The Division may waive any part of the fees specified in subsection 1 for waste brought to a state-owned facility if the waste is generated:

(a) By an agency of this State; or

(b) In compliance with an order issued by the Division to clean up a spill or deposit.

5. As used in this section:

(a) "Owner or operator of a facility for the management of hazardous waste" means a person who:

(1) Qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G; or

(2) Has been issued a permit pursuant to 40 C.F.R. Part 124, Subparts A, ~~and~~ B and G and Part 270, Subparts A to F and *H to J*, inclusive.

(b) "Unit" means a unit for the management of hazardous waste that is:

(1) Operated by a facility for the management of hazardous waste; and

(2) Subject to the permitting requirements of 40 C.F.R. Part 270.

4. NAC 444.850 Definitions. (NRS 459.485) As used in NAC 444.850 to 444.8746, inclusive, unless the context otherwise requires:

1. The words and terms defined in NAC 444.8505 to 444.861, inclusive, have the meanings ascribed to them in those sections.

2. Except for the words and terms otherwise defined in NAC 444.8505 to 444.861, inclusive, the words and terms defined in 40 C.F.R. § 260.10, *as adopted by reference at NAC 444.8632* ~~[that section existed on July 1, 2008]~~, have the meanings ascribed to them in that section.

5. NAC 444.8632 Compliance with federal regulations adopted by reference. (NRS 459.485)

1. In addition to the requirements of NAC 444.850 to 444.8746, inclusive, a person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil shall comply with all applicable requirements of, and may rely upon applicable exclusions or exemptions under, 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A, ~~and~~ B and G, Parts 260 to 270, inclusive, Part 273 and Part 279, as those provisions existed on July 1, 2008, which, except as otherwise modified by NAC 444.86325, 444.8633 and 444.8634, are hereby adopted by reference. The Commission may use federal statutes and regulations that are cited in 40

C.F.R. Part 2, Subpart A, Part 124, Subparts A, ~~and~~ B and G, Parts 260 to 270, inclusive, Part 273 and Part 279 to interpret those sections and parts.

2. The volumes containing those parts may be obtained by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, for the following prices:

(a) Volume 40 C.F.R. Parts 1 to 49, inclusive.....	\$60
(b) Volume 40 C.F.R. Parts 100 to 135, inclusive.....	48
(c) Volume 40 C.F.R. Parts 260 to 265, inclusive.....	53
(d) Volume 40 C.F.R. Parts 266 to 299, inclusive.....	50

6. NAC 444.86325 Exceptions to and revision of federal regulations adopted by reference. (NRS 459.485)

1. The following sections and parts of Title 40 of the Code of Federal Regulations, and any reference to those sections and parts, are not adopted by reference:

- (a) Section 2.101(a)(1)-(10);
- (b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;
- (c) Sections 260.1(b)(4)-(6) and 260.20, 260.21 and 260.22;
- (d) Section 261.5(j);
- (e) Part 262, Subpart H;
- (f) Sections 264.1(d), 264.1(f), 264.149, 264.150, 264.301(1), 264.1050(h), 265.1(c)(4), 265.149, 265.150, 265.430 and 265.1050(g);
- (g) Section 266.111;
- (h) Section 267.150;**
- (i) ~~(h)~~** Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) and 268.44;
- (j) ~~(i)~~** Sections 270.1(c)(1)(i), 270.60(b) and 270.64;
- (k) ~~(j)~~** Part 278; and
- (l) ~~(k)~~** Sections 279.10(b)(2), 279.10(b)(3), 279.10(c), 279.10(d)(1), 279.42(b)(2), 279.51(b)(2), 279.62(b)(2) and 279.73(b)(2).

2. The following parts and sections of Title 40 of the Code of Federal Regulations are adopted by reference, as revised in this subsection:

- (a) Part 124 is adopted with the following exceptions:
 - (1) Delete all references to appeals to the Administrator in section 124.5(b);
 - (2) Delete all references to “EPA-issued permits” and insert in its place “permits issued by the Department,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);
 - (3) Delete all references to “when EPA is the permitting issuing authority” and insert in its place “when the Department is authorized to issue a permit,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);
 - (4) Subpart A is adopted solely for the purpose of establishing procedures for permits for the management of hazardous waste, except that all references to “UIC,” “PSD” and “NPDES” are deleted;
 - (5) Delete all references to “RCRA part B,” “part B RCRA” and “part B” and insert in their place “NRS 459.400 to 459.600, inclusive,” in sections 124.31 and 124.32; and
 - (6) Delete from sections 124.31(a), 124.32(a) and 124.33(a) the following sentence: “For the purposes of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where

the units are located has not been authorized to issue RCRA permits pursuant to 40 C.F.R. part 271.”

(b) Section 260.2(a) is adopted except that the Freedom of Information Act, 5 U.S.C. § 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b) must be replaced with “NRS 459.555 and any regulations adopted pursuant thereto.”

(c) Section 260.11(a) is adopted except that “and 278” is deleted.

(d) Section 260.11(c)(3)(vii) is adopted except that “and § 278.3(b)(1)” is deleted.

(e) Section 260.33(b) is adopted except that “in the locality where the recycler is located” is deleted.

(f) Section 260.41(a) is adopted except that “or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal” is deleted.

(g) Section 261.4(e)(3)(iii) is adopted except that “in the Region where the sample is collected” is deleted.

(h) Section 262.11(c)(1) is adopted except that “, or according to an equivalent method approved by the Administrator under 40 C.F.R. Part 260.21” is deleted.

(i) Sections 262.42(a)(2) and 262.42(b) are adopted except that “for the Region in which the generator is located” is deleted.

(j) Sections 264.18(c) and 265.18 are adopted except that “except for the Department of Energy Waste Isolation Pilot Project in New Mexico” is deleted.

(k) Sections 264.143(h), 264.145(h), 265.143(g) and 265.145(g) are adopted except that “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions” is deleted *and is replaced with “If the facilities covered by the mechanism are in Nevada and another State, identical evidence of financial assurance must be submitted to and maintained with the Division and the Agency regulating hazardous waste in the other State or the EPA Regional Administrator if a facility is located in an unauthorized State.”*

(l) Sections 264.147(a)(1)(i), 264.147(b)(1)(i) and 265.147(a)(1)(i) are adopted except that “or Regional Administrators if the facilities are located in more than one Region” is deleted.

(m) Section 264.151 is adopted with the following exceptions:

(1) ~~“Delete all references to “(of/for) the Regions in which the facilities are located”, and~~ *Wherever Section 264.151 requires that the owners and operators notify EPA Regional Administrators of their financial obligations, the owners and operators must notify the Director and the Agency regulating hazardous waste in any other authorized State and all EPA Regional Administrators of Regions affected by the owners’ or operators’ financial mechanism.*

(2) *All orders, requests, instructions and notices to the Trustee regarding a financial assurance mechanism for a Nevada facility shall be in writing signed by the Director.*

(3) Delete “an agency of the United States Government” from the second paragraph of the trust agreement.

(n) Part 270 is adopted except that all references to “interim authorization” are deleted.

(o) Section 279.40(c) is adopted except that “unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste” is deleted.

7. NAC 444.8688 Transfer of hazardous waste from transport vehicle to boiler or industrial furnace. (NRS 459.485)

1. A person shall not transfer hazardous waste from a transport vehicle directly to a boiler or industrial furnace without the use of a storage unit.

2. An owner or operator of a boiler or industrial furnace may transfer hazardous waste from a transport vehicle to the boiler or furnace using a storage unit if he or she first obtains a permit for the storage of hazardous waste in the manner prescribed by 40 C.F.R. Part 270, as *adopted by reference at NAC 444.8632* ~~{that Part existed on July 1, 2008}~~.

8. NAC 444.8871 Applicability. (NRS 459.485)

1. The provisions of NAC 444.8801 to 444.9071, inclusive, apply to used antifreeze that is recycled and is determined to be a hazardous waste because:

(a) It exhibits a characteristic of hazardous waste which is identified in 40 C.F.R. Part 261, Subpart C, as *adopted by reference at NAC 444.8632* ~~{that Part existed on July 1, 2008}~~; or

(b) It was designated as a hazardous waste in the state of its origin.

2. The provisions of NAC 444.8801 to 444.9071, inclusive, do not apply to used antifreeze which will be disposed of and not recycled, or to mixtures of used antifreeze and hazardous waste. The used antifreeze described in this subsection is governed by the provisions of NAC 444.850 to 444.8746, inclusive.

9. NAC 444.8881 Underground storage tanks: Compliance with federal regulations; identification of pipes. (NRS 459.485)

1. Each storage tank that is underground which stores used antifreeze must comply with the requirements of 40 C.F.R. Part 265, Subpart J, as *adopted by reference at NAC 444.8632* ~~{that Subpart existed on July 1, 2008}~~.

2. Each pipe that transfers used antifreeze to storage tanks that are underground must be clearly marked with the words "Used Antifreeze."

10. NAC 444.8926 Recycling of used antifreeze for personal use: Requirements; calculation in determination of status; management of waste as hazardous waste. (NRS 459.485)

1. A generator of used antifreeze may recycle his or her used antifreeze for the generator's own use if the recycling:

(a) Is performed by the generator at a site which is located where the used antifreeze was generated; or

(b) Is performed pursuant to a written contract by a mobile unit for the recycling of used antifreeze which is located where the used antifreeze was generated.

2. Used antifreeze which is recycled pursuant to this section will not be calculated in the determination of the status of the generator of used antifreeze as a generator of hazardous waste pursuant to 40 C.F.R. Part 262, as *adopted by reference at NAC 444.8632* ~~{that Part existed on July 1, 2008}~~.

3. A person who performs recycling pursuant to this section shall manage any waste which is generated during the recycling process pursuant to the provisions of NAC 444.850 to 444.8746, inclusive.

4. A generator who recycles his or her used antifreeze pursuant to paragraph (a) of subsection 1 is not required to obtain a written determination pursuant to NAC 444.8455 and 444.84555.

11. NAC 444.8931 Transport of used antifreeze: Responsibilities of generator; calculation in determination of status. (NRS 459.485, 459.550)

1. Except as otherwise provided in this section, a generator of used antifreeze shall ensure that his or her used antifreeze is transported by persons who hold an identification number.

2. A generator may transport, without an identification number, used antifreeze generated at a site which is owned by the generator or collected from a person who generated the used antifreeze from his or her household if:

(a) The used antifreeze is transported in a motor vehicle which is owned by the generator or an employee of the generator;

(b) Not more than 350 gallons of used antifreeze is transported at one time; and

(c) The used antifreeze is transported to a point for aggregation or a center for the collection of used antifreeze which is registered pursuant to NAC 444.8921.

3. Used antifreeze which is transported pursuant to this section will not be calculated in the determination of the status of the generator of used antifreeze as a generator of hazardous waste pursuant to 40 C.F.R. Part 262, as *adopted by reference at NAC 444.8632* ~~that Part existed on July 1, 2008~~, if he or she maintains records which describe the disposition of the used antifreeze. The records must be maintained for at least 3 years and be made available, upon request, for inspection by a representative of the Division or the Commission. The records may be in the form of a log, copies of contractual agreements, invoices, bills of lading or other documents relating to shipping which show each shipment of used antifreeze that is transported for recycling. The records must include:

(a) The name and address of the generator;

(b) The identification number of the generator, if he or she has an identification number;

(c) The name and address of the center for the collection of used antifreeze or the facility for the recycling of used antifreeze with whom the generator has contracted to recycle the used antifreeze;

(d) The identification number of the center or facility, if it has an identification number;

(e) The amount of used antifreeze that is transported for recycling; and

(f) The signature and date of acceptance of the representative of the center or facility.

12. NAC 444.8941 Management of used antifreeze transported in truck used for hazardous waste. (NRS 459.485) If a transporter of used antifreeze transports used antifreeze in a truck which was used to transport hazardous waste, he or she shall manage the used antifreeze as a hazardous waste pursuant to the provisions of NAC 444.850 to 444.8746, inclusive, unless the transporter removes the hazardous waste from the truck in accordance with 40 C.F.R. § 261.7, as *adopted by reference at NAC 444.8632* ~~that section existed on July 1, 2008~~, before transporting the used antifreeze.

13. NAC 444.9006 Requirements when above-ground storage tank no longer used. (NRS 459.485)

1. Except as otherwise provided in subsection 2, if a storage tank that is above the ground is no longer used at a facility for the recycling of used antifreeze, the owner or operator of the

facility shall ensure that the used antifreeze, including its residue, is decontaminated or removed from the storage tank, system for containment, soil and other structures or equipment which are contaminated with used antifreeze. The owner or operator shall manage the used antifreeze as a hazardous waste unless it does not exhibit a characteristic of hazardous waste identified in 40 C.F.R. Part 261, as that Part existed on July 1, 2008.

2. If the owner or operator demonstrates to the satisfaction of the Division that the used antifreeze cannot be removed or decontaminated as required by subsection 1, he or she must follow the procedures for closure and postclosure set forth in 40 C.F.R. § 265.310, as *adopted by reference at NAC 444.8632* ~~that section existed on July 1, 2008~~.

14. NAC 444.9011 Requirements when facility is closed. (NRS 459.485) If a facility for the recycling of used antifreeze is closed, the owner or operator of the facility shall ensure that containers which are used to store used antifreeze, including its residue, are removed from the facility and that systems for containment, soil and other structures or equipment which are contaminated with used antifreeze are decontaminated or removed. Material that is removed must be managed as a hazardous waste unless it does not exhibit a characteristic of hazardous waste which is identified in 40 C.F.R. Part 261, as *adopted by reference at NAC 444.8632* ~~that Part existed on July 1, 2008~~.