

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R139-18

1. A clear and concise explanation of the need for the adopted regulation.

Existing regulations require an excavator to inform all appropriate local public service agencies or, if available, emergency 911 services, of damage to a subsurface installation caused by or discovered during an excavation if the damage presents an emergency. (NAC 455.160) **Section 1** of this regulation requires an excavator to call emergency 911 services if the damage to the subsurface installation causes the release of certain gases or hazardous liquids. If an excavator provides such notice to emergency 911 services in relation to the release of a gas or hazardous liquid, the excavator is excused from providing notice to local public services agencies or providing additional notice to emergency 911 services if the release of the gas or hazardous liquid also presents an emergency.

Existing regulations require the excavator and the operator of a subsurface installation to submit a report in connection with an excavation or demolition that occurs on or after January 1, 2008, but before January 1, 2009. (NAC 455.163) **Section 2** of this regulation eliminates this reporting requirement because it no longer applies to any excavation or demolition. This regulation is needed to: (1) remove the discretion of excavators in determining what constitutes an “emergency,” (2) align the Commission’s regulations with new federal regulations (49 C.F.R. § 196.109); and (3) remove a reporting requirement that no longer applies to any excavation or demolition.

2. 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.

(a) Copies of the proposed regulation, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail and email to persons who were known to have an interest in the subjects of noticing and interventions. These documents were also made available on the website of the PUCN, <http://puc.nv.gov>, mailed to all county libraries in Nevada, the State library, and the Legislative Council Bureau, published in the following newspapers:

Ely Times
Las Vegas Review Journal
Reno Gazette Journal
Tonopah Times-Bonanza,

and posted at the following locations:

Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701

Public Utilities Commission
9075 West Diablo Drive, Suite 250
Las Vegas, Nevada 89148

(b) The Regulatory Operations Staff of the Commission (“Staff”) filed comments. Staff recommended that the Commission adopt the proposed regulations. Southwest Gas Corporation (“SWG”) filed comments. SWG stated in its comments that it supports the

proposed regulation. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”). NV Energy supported the proposed regulation because it will enhance the safety margin in potentially dangerous circumstances and makes NAC 455.160 consistent with the equivalent federal regulation.

(c) Copies of the transcripts of the proceedings are available for review at the offices of the PUCN: 1150 East William Street, Carson City, Nevada 89701 and 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

- 3. The number of persons who:**
 - (a) Attended each hearing: 3**
 - (b) Testified at each hearing: 0**
 - (c) Submitted written comments: 3**
- 4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**
 - (a) Name;**
 - (b) Telephone number;**
 - (c) Business address;**
 - (d) Business telephone number;**
 - (e) Electronic mail address; and**
 - (f) Name of entity or organization represented.**

Shelly Cassity
Regulatory Operations Staff of the PUCN
9075 W. Diablo Drive
Las Vegas, NV 89148
(702) 686-7218
scassity@puc.nv.gov

Catherine Mazzeo
Associate General Counsel
Southwest Gas Corporation
5421 Spring Mountain Road
Las Vegas, Nevada 89150

Christopher Hilan
Assistant General Counsel
NV Energy
6100 Neil Road
P.O. Box 10100
Reno, Nevada 89520

5. **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 in the same manner as they were solicited from the public, as provided in response to question 2(a); the summary of comments received is reflected in response to question 2(b); and the summary may be obtained as instructed in the response to question 2(c).

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Based on discussion in the workshop conducted prior to the hearing, no participant offered any amendments to the proposed regulation.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include: both adverse and beneficial effects, and both immediate and long-term effects.**

(a) Estimated economic effect on the businesses which they are to regulate.

The regulation would result in immediate and long term beneficial effect on the businesses it is intended to regulate by reducing the economic and other losses they experience and the associated liability for causing economic and other losses to others.

(b) Estimated economic effect on the public which they are to regulate.

Excavators, operators, and the general public in the vicinity of damage incidents will experience economic benefits from a lessening of the severity of damage incidents and the occurrence of economic loss.

8. **The estimated cost to the agency for enforcement of the proposed regulation:**

No additional costs are associated with the regulation.

9. **A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

(a) 47 CFR § 196.109 **What must an excavator do if damage to a pipeline from excavation activity causes a leak where product is released from the pipeline?** If damage to a pipeline from excavation activity causes the release of any Pipeline and Hazardous Materials Safety Administration (“PHMSA”) regulated natural and other gas or hazardous liquid as defined in part 192, 193, or 195 of this chapter from the pipeline, the excavator must promptly report the release to appropriate emergency response authorities by calling the 911 emergency telephone number.

(b) Pursuant to NRS 455.170, the PUCN is charged with enforcing Nevada’s One Call Law (“NOCL”), which is subsumed under Chapters 455 of the NRS and the NAC. To assist the Commission’s enforcement of NOCL, Staff obtained and continues to receive funds from the

United States Department of Transportation, PHMSA via a grant called the “One Call Grant,” which has allowed Staff to devote additional resources to the enforcement of NOCL. Additionally, Staff further coordinates with PHMSA at least annually to ensure NOCL is consistent with the federal damage prevention requirements and enforcement processes contained in the Code of Federal Regulations (“C.F.R.”) at 49 C.F.R. 196.

(c) The regulating federal agency is the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

N/A

11. 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.

N/A

12. If the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restrict the formation, operation or expansion of a small business, what methods did the agency use in determining the impact of the regulation on a small business?

Staff conducted a Delphi Method exercise to determine the impact of this proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses. Based upon Staff’s analysis, Staff recommended to the Commission that the Commission find that the proposed regulation will not impose a direct and significant economic burden on small businesses or directly restrict the formation, operation or expansion of a small business. The Commission accepted Staff’s recommendation and found that the proposed regulation does not impose a direct or significant economic burden upon small businesses, nor does it directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to NRS 233B.0608(2) is not required. This finding was memorialized in an Order issued in Docket No. 18-03027 on August 3, 2018.