

LCB File No. R201-97

PROPOSED PERMANENT REGULATION OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION

Petition 97007

Explanation: Matter in italics is new.

AUTHORITY: Section 13 of Assembly Bill 355 (Chapter 297) of the 1997 Legislative Session

Section 1. A new section is hereby added to NAC to read as follows:

“Environmental Audit” means an examination of the materials or practices at a regulated facility that is conducted by a regulated person or an agent of a regulated person that is specifically designed to:

- (1) Produce systematic, documented and objective results;*
- (2) Identify and prevent noncompliance with any environmental requirement;*
- (3) Improve compliance with such a requirement.*

Section 2. A new section is hereby added to NAC to read as follows:

“Environmental requirement” means a requirement contained in NRS 444.440 to 444.645, inclusive; 445A.300 to 445A.730, inclusive; 445B.100 to 445B.640, inclusive; 459.400 to 459.856, inclusive; or 519A.010 to 519A.280, inclusive; or in a regulation adopted pursuant to any of those statutes. The term does not apply to any permit, compliance order, consent order or agreement issued by or entered into between a regulatory agency and regulated person. The privilege granted through an environmental audit is applicable to state requirements only. The federal government is not bound by the audit privilege granted by the statute.

Section 3. A new section is hereby added to NAC to read as follows:

“Regulated facility” means an area, building, tank, or other facility that is subject to an environmental requirement.

Section 4. A new section is hereby added to NAC to read as follows:

Regulated person” means the owner or operator of a regulated facility.

Section 5. A new section is hereby added to NAC to read as follows:

“Regulatory agency” means:

- (1) The state environmental commission;*
- (2) The state department of conservation and natural resources or the division of environmental protection of that department;*
- (3) A district board of health acting as a solid waste management authority pursuant to NRS 444.440 to 444.620, inclusive; or*
- (4) A district board of health, county board of health or board of county commissioners administering a program for the control of air pollution pursuant to paragraph (a) of subsection 1 of NRS 445B.500.*

Section 6. A new section is hereby added to NAC to read as follows:

A. To secure the privileges associated with an environmental audit, a regulated person must enter into an administrative agreement with the regulatory agency or agencies that have a competent jurisdiction over the environmental requirement. Such an agreement must contain, at a minimum:

- (1) Name of the regulated facility or facilities;*
- (2) Name of the regulated person;*
- (3) Statutory and regulatory scope of the environmental audit;*
- (4) An enforceable commitment by the regulated person to voluntarily disclose environmental violations discovered during the audit;*
- (5) Methods, techniques, procedures and processes to be used to evaluate compliance;*
- (6) Identification of the person or persons conducting the audit including consultants and contractors;*
- (7) Time frame for conducting the audit including date of submittal of a final audit report and time frames for reporting identified violations of environmental requirements;*
- s(8) Procedures for modification of the audit agreement with the concurrence of the regulatory agency and the regulated person;*
- (9) Procedures for revoking the privilege if the agreement and schedule is not followed.*

B. A past violation of an environmental requirement prohibits the regulated entity from entering into an audit for that environmental requirement only.

Section 7. A new section is hereby added to NAC to read as follows:

Consultants hired by a regulated person to perform an environmental audit must be certified by the division in accordance with NAC 459.970 to 459.9729 inclusive.

Section 8. A new section is hereby added to NAC to read as follows:

If the environmental audit discovers that a violation of an environmental requirement has occurred, the regulated person shall enter into an enforceable agreement with the regulatory agency. This agreement shall contain at a minimum:

- (1) Identification of the specific violations of environmental requirements;*
- (2) Steps to be taken and schedule for the regulated person to bring the facility back into compliance;*
- 3) Steps to be taken and schedule for the regulated person to remedy any damage or other harm caused by the violation;*
- (4) Actions to be taken and schedule for the regulated person to prevent a reoccurrence of future violations.*

Section 9. A new section is hereby added to NAC to read as follows:

The results of the audit may be rebutted by the regulatory agency if it determines that:

- (1) The violation of the environmental requirement was committed willfully or with gross negligence;*
- (2) An actual economic benefit was realized by the regulated person or regulated facility as a result of the violation;*
- (3) The violation resulted in serious actual harm or presented an imminent or substantial threat to the public health or the environment;*
- (4) The environmental audit was conducted for fraudulent purposes.*
- (5) The regulated person conducted a previous environmental audit that disclosed the violation and he intentionally failed to report that violation to the appropriate regulatory agency.*

Section 10. A new section is hereby added to NAC to read as follows:

All environmental audit documents, reports and agreements shall be deemed privileged and cannot be used in an administrative or civil action unless:

- (1) A regulatory agency requests the admission of the results of an environmental audit at an administrative proceeding or civil action commenced by the regulatory agency;*
- (2) The regulated person expressly waives the privilege;*
- (3) A court or administrative hearing officer determines in camera that the presumption against administrative or civil liability is rebutted.*

END OF PETITION 97007