

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R201-97

January 5, 1998

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

AUTHORITY: §§1-14, NRS 445C.120.

Section 1. Chapter 445C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Division” means the division of environmental protection of the state department of conservation and natural resources.*

Sec. 4. *“Environmental audit” has the meaning ascribed to it in NRS 445C.020.*

Sec. 5. *“Environmental audit agreement” means a written agreement between a regulatory agency and a regulated person that:*

- 1. Requires the regulated person to conduct an environmental audit; and*
- 2. Complies with the provisions of this chapter and chapter 445C of NRS.*

Sec. 6. *“Environmental requirement” has the meaning ascribed to it in NRS 445C.030.*

Sec. 7. *“Regulated facility” has the meaning ascribed to it in NRS 445C.040.*

Sec. 8. *“Regulated person” has the meaning ascribed to it in NRS 445C.050.*

Sec. 9. *“Regulatory agency” has the meaning ascribed to it in NRS 445C.060.*

Sec. 10. *1. A regulatory agency shall not enter into an environmental audit agreement with a regulated person for a particular environmental requirement if the regulated person:*

(a) Has been cited for a violation of that particular environmental requirement in the immediately preceding 3 years; or

(b) Is specifically required to comply with that particular environmental requirement pursuant to:

(1) The general or specific conditions or limitations contained in a permit; or

(2) The terms of a judicial order, administrative order, consent order, consent agreement or any other agreement between the regulated person and a regulatory agency.

2. The provisions of this section do not limit the authority of the regulatory agency to enter into an environmental audit agreement with the regulated person for any other environmental requirement that is not subject to the provisions of subsection 1.

Sec. 11. *In addition to the requirements set forth in NRS 445C.070 and 445C.080, an environmental audit agreement must include, but is not limited to:*

1. The name of each regulated facility that is subject to the agreement.

2. The name of each regulated person who is subject to the agreement.

3. The statutory and regulatory scope of the environmental audit.

4. An enforceable commitment by the regulated person to disclose voluntarily any violation of an environmental requirement that is discovered as a result of the environmental audit.

5. The methods, processes and procedures that are to be used to conduct the environmental audit and to evaluate compliance with environmental requirements.

6. *The identity of each person who will be conducting the environmental audit, including, but not limited to, any consultant or contractor.*

7. *The period within which the environmental audit must be conducted, including, but not limited to, the date for submitting a final report for the environmental audit.*

8. *The period within which any violation of an environmental requirement that is discovered as a result of the environmental audit must be reported.*

9. *The procedures for modifying the environmental audit agreement if the regulated person and the regulatory agency specifically agree to a modification.*

10. *The procedures for terminating the environmental audit agreement if the regulated person does not comply with the terms of the agreement.*

11. *A provision informing the regulated person that the provisions of this chapter and chapter 445C of NRS:*

(a) Apply to state and local environmental requirements only; and

(b) Do not create any rights, privileges or immunities with regard to any actions taken by the federal government pursuant to a federal law or regulation, unless the federal law or regulation provides otherwise.

Sec. 12. *1. A consultant who is hired by a regulated person to conduct an environmental audit must be certified by the division pursuant to NAC 459.970 to 459.9729, inclusive.*

2. As used in this section, “consultant” has the meaning ascribed to it in NAC 459.9701.

Sec. 13. *If a violation of an environmental requirement is discovered as a result of an environmental audit, the regulated person shall enter into an enforceable agreement with the regulatory agency. The enforceable agreement must include, but is not limited to:*

1. *A list of each specific violation of an environmental requirement that was discovered as a result of the environmental audit.*

2. *The actions that are to be taken by the regulated person to bring the regulated facility into compliance and the dates by which those actions are to be completed.*

3. *The actions that are to be taken by the regulated person to remedy any damage or other harm caused by each violation and the dates by which those actions are to be completed.*

4. *The actions that are to be taken by the regulated person to prevent similar violations in the future and the dates by which those actions are to be completed.*

Sec. 14. 1. *A regulatory agency shall consider the following to be public records that are open to inspection and copying pursuant to the provisions of chapter 239 of NRS:*

(a) All environmental audit agreements.

(b) All information relating to an environmental audit that is obtained by a regulatory agency, whether or not such information is privileged and inadmissible in an administrative proceeding or civil action against a regulated person pursuant to NRS 445C.110. The information described in this paragraph includes, but is not limited to, all data, documents, reports, results or schedules relating to an environmental audit that are submitted by a regulated person to a regulatory agency.

2. *The division shall maintain a public registry that contains:*

(a) A listing of each regulated person who has entered into an environmental audit agreement and each environmental requirement that is covered by each such agreement; and

(b) Any other information relating to environmental audits and environmental audit agreements that the division determines is appropriate for inclusion in the public registry.