

**ADOPTED TEMPORARY REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

PETITION 1999-05

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

AUTHORITY: NRS 445A.425

Section 1. NAC 445A.228 is hereby amended to read as follows:

445A.228 *Except as provided for in Subsection 1, no person may discharge a pollutant from a point source into the waters of the state without obtaining a discharge permit from the department.*

1. Although not exempted from complying with all other applicable laws, rules and regulations regarding pollution, the following are specifically exempted from the requirements to obtain a permit:

[1.] (a) Persons utilizing individual sewage disposal systems *or other sewage disposal systems utilizing a soil absorption system for the treatment and disposal of domestic wastes, with accumulative flows of less than 5000 gallons per day [which do not discharge pollutants into the waters of the state, other than toxic materials,]* providing the system is approved and is installed, operated and maintained in accordance with the rules and regulations and other requirements of the district health departments or the state board of health. This exemption does not preclude the possibility that health authorities will require permits.

[2.] (b) Persons discharging pollutants [**other than toxic materials**] into a publicly owned or privately owned sewerage system, if the owner of such sewerage system has a valid permit from the department. In such cases, the owner of the sewerage system assumes ultimate responsibility for controlling and treating the pollutants which he allows to be discharged into the system.

Except for:

(1) Any industrial user who discharges into a publicly owned treatment works which does not have a state approved pretreatment program may be granted a permit by the state.

[3.] (c) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands and forest lands, except that this exclusion does not apply to the following:

[(a)] (1) Discharges from facilities which confine animals if the facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

- [(1)] (I) Slaughter and feeder cattle, 1,000;
- [(2)] (II) Mature dairy cattle (whether milkers or dry cows), 700;
- [(3)] (III) Swine weighing over 55 pounds, 2,500;
- [(4)] (IV) Horses, 500;
- [(5)] (V) Sheep, 10,000;
- [(6)] (VI) Turkeys, 55,000;
- [(7)] (VII) Laying hens and broilers, if the animal confinement facility has continuous overflow watering, 100,000;
- [(8)] (VIII) Laying hens and broilers, if the animal confinement facility has liquid manure handling systems, 30,000; or
- [(9)] (IX) Ducks, 5,000.

[(b)] (2) Discharges from facilities which confine animals if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: The number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

[(c)] (3) Discharges from production facilities for aquatic animals.

[(d)] (4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced groundwater flow or bypass water) operated by public or private organizations or natural persons if the source of water is effluent from a treatment works.

[(e)] (5) Discharges from any agricultural or silvicultural activity which have been identified by the administrator or the director as a significant contributor of pollution.

Sec. 2. NAC 445A.230 is hereby amended to read as follows:

445A.230 1. **[The applicant shall file a complete permit application no later than 60 days following receipt of notice from the director that the applicant's previously filed Refuse Act or NPDES application is so deficient as not to have satisfied the filing requirements.**

2.] Any person wishing to commence future discharges of pollutants must file a complete permit application **[either:] *on forms provided by the department,***

[(a) N] not less than 180 days in advance of the date on which it is desired to commence the discharge of pollutants [; or] *unless permission for a later date has been granted by the department.*

[(b) In sufficient time prior to the commencement of the discharge of pollutants to ensure compliance with the requirements of § 306 of the Act, any applicable zoning or siting requirements established pursuant to § 208(b)(2)(c) of the Act and any other water quality standards or limitations.

3.] 2. The director:

(a) May require the submission of additional information after a permit application has been filed; and

(b) Shall ensure that if a permit application is incomplete or otherwise deficient, processing of the application is not completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

[4.] 3. If, upon review of an application, the department determines that a permit is not required, the department shall notify the applicant in writing of this determination. The notification constitutes final action by the department on the application.

[5. A person presently discharging pollutants must have filed a complete Refuse Act or NPDES application with the Federal Government.]

Sec. 3. NAC 445A.231 is hereby amended to read as follows:

NAC 445A.231 1. Application and reporting forms submitted to the department must be signed by:

(a) A principal executive officer of the corporation (of at least the level of vice president) or his authorized representative who is responsible for the overall operation of the facility from which the discharge described in the application or reporting form originates.

(b) A general partner of the partnership.

(c) The proprietor of the sole proprietorship.

(d) A principal executive officer, ranking elected official or other authorized employee of the municipal, state or other public facility.

2. Each application must contain a certification by the person signing the application that he is familiar with the information provided, that to the best of his knowledge and belief the information is complete and accurate and that he has the authority to sign and execute the application.

3. Discharge monitoring reports must be signed by the senior certified operator or the person directly responsible for operating the facility.

Sec. 4. NAC 445A.234 is hereby amended to read as follows:

NAC 445A.234 1. Public notice of every complete application for a discharge permit, except ***a temporary permit or*** a permit for pretreatment discharge or the poisoning of trash fish, must be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a permit for the discharge. Procedures for the circulation of public notice must include at least the following:

(a) Notice must be circulated within the geographical area of the proposed discharge by publishing in a local newspaper or periodical or, if the local newspaper is not a daily newspaper, in a daily newspaper of general circulation; and

(b) Notice must be mailed to any person or group on the mailing list maintained by the department or upon request.

2. The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for permit applications.

3. The director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the application. All written comments submitted during the 30-day comment period must be retained by the director and considered in the formulation of his final determinations with respect to the permit application. The period for comment may be extended at the director's discretion.

4. The contents of the public notice of applications for permit must include at least the following:

- (a) The name, address and phone number of the department;
- (b) The name and address of each applicant;
- (c) A brief description of each applicant's activities or operations which result in the discharge described in the application (for example, municipal waste treatment plant, steel manufacturing or drainage from mining activities);
- (d) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is existing or new;
- (e) A statement of the tentative determination to issue or deny a permit for the discharge described in the application;
- (f) A brief description of the procedures for the formulation of final determinations including the required 30-day comment period and any other means by which interested persons may influence or comment upon those determinations; and
- (g) The address and phone number of the premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to subsection 2 of NAC 445A.233, request a copy of the fact sheet and inspect and copy relevant forms and documents.

Sec. 5. NAC 445A.235 is hereby amended to read as follows:

445A.235 The director shall notify other appropriate governmental agencies of each complete application for a permit, *except for a temporary permit*, and shall provide the agencies with an opportunity to submit their written views and recommendations. Procedures for such notification must include the following:

1. At the time of issuance of a public notice, pursuant to NAC 445A.234, transmission of a fact sheet to any other states whose waters may be affected by the issuance of a permit and, upon request, providing such states with a copy of the application and a copy of the proposed permit prepared pursuant to subsection 2 of NAC 445A.233. Each affected state must be given an opportunity to submit written recommendations to the director and to the regional administrator which the director may incorporate into the permit if issued. Should the director fail to incorporate any written recommendations thus received, he shall provide to the affected state or states (and to the regional administrator) a written explanation of his reasons for failing to accept any of the written recommendations.

2. A procedure, similar to that prescribed by subsection 1, for notifying any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit.

3. At the time of issuance of a public notice pursuant to NAC 445A.234, transmission of a fact sheet to the appropriate district engineer of the Army Corps of Engineers for applications involving discharges to navigable waters. A copy of any written agreement made pursuant to this subsection between the director and a district engineer must be forwarded to the regional administrator and must be made available to the public for inspection and copying.

4. A procedure for mailing copies of fact sheets of applications for permits to any other federal, state or local agency upon request and providing such agencies an opportunity to respond, comment or request a public hearing pursuant to NAC 445A.238.

5. Procedures for notice to and coordination with appropriate public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Act with any applicable requirements of such public health agencies.

Sec. 6. NAC 445A.236 is hereby amended to read as follows:

445A.236 1. For every discharge, the director shall prepare and, following public notice *pursuant to NAC 445A.234*, shall send upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets must include at least the following information:

(a) A sketch or detailed description of the location of the discharge described in the application;

(b) A quantitative description of the discharge described in the NPDES application which includes at least the following:

(1) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(2) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit; and

(3) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under § 301, 302, 306 or 307 of the Act and regulations published thereunder;

(c) The tentative determinations required under NAC 445A.233;

(d) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and limitations applied to the proposed discharge; and

(e) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:

(1) The 30-day comment period required by subsection 3 of NAC 445A.234;

(2) Procedures for requesting a public hearing and the nature thereof; and

(3) Any other procedures by which the public may participate in the formulation of the final determinations.

2. The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

Sec. 7. NAC 445A.241 is hereby amended to read as follows:

445A.241 1. The duration of permits is fixed and does not exceed 5 years. The expiration date must be recorded on each permit issued. A new application must be filed with the department to obtain renewal or modification of a permit. Applications for renewal must be filed at least 180 days prior to expiration of the permit.

2. For the reissuance of a permit, the same procedures must be followed as for the initial issuance of a permit.

3. A person who holds an expired permit and who has submitted a timely application for reissuance of the permit may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the agency takes final action on the application unless the department determines that any of the following are true:

a. The permittee is not in substantial compliance with the terms and conditions of the expired permit or with a compliance schedule designed to bring the permittee in compliance with the permit;

b. The department, as a result of an action or failure to act of the permittee, has been unable to take final action on the application on or before the expiration date of the permit; or

c. The permittee has submitted an application with major deficiencies or has failed to properly supplement the application in a timely manner after being informed of deficiencies.

Sec. 8. NAC 445A.243 is hereby amended to read as follows:

445A.243 In establishing an effluent limitation, consideration must be given to, but is not limited by, the following ***so that the policy of the state, as declared in subsection 2 of NRS 445.305, is effectively carried out:***

1. The effect of the discharge on the receiving waters and its beneficial use.

2. The need for standards that specify by chemical, physical, biological or other characteristics the extent to which pollution by various substances will not be tolerated.

3. Standards for water quality ***and effluent limitations*** promulgated from time to time by the United States Environmental Protection Agency, including the following:

(a) Effluent limitations under §§ 301 and 302 of the Act.

(b) Standards of performance for new sources under § 306 of the Act.

(c) Effluent standards, effluent prohibitions and pretreatment standards under § 307 of the Act.

(d) Any more stringent limitations, including those:

(1) Necessary to meet standards for water quality and treatment or schedules of compliance, established pursuant to any state law or regulation;

(2) Necessary to meet any other federal law or regulation; or

(3) Required to carry out any applicable standards for water quality.

Such limitations must include any legally applicable requirements necessary to carry out total maximum daily loads established pursuant to § 303(d) of the Act and incorporated in the continuing planning process approved under § 303(e) of the Act and any regulations and guidelines issued thereunder.

(e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to § 208(b) of the Act.

4. In the application of water quality standards and limitations and other legally applicable requirements pursuant to subsection 3, the director shall, for each issued permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge *in terms of weight except pH, temperature, radiation and any other pollutants not appropriately expressed by weight.*

Sec. 9. NAC 445A.244 is hereby amended to read as follows:

445A.244 1. In addition to the application of the water quality standards and limitations and other legally applicable requirements pursuant to subsection 3 of NAC 445A.243, the director shall adhere to the following procedures in setting schedules and compliance:

(a) A permit issued for any discharge not in compliance with the requirements listed in subsection 3 of NAC 445A.243 must contain a schedule to reach compliance with those requirements. The schedule must set forth interim requirements and the dates for their achievement. *In any case where the period of time for compliance exceed One year, a schedule of compliance must be specified in the permit setting forth interim requirements and the dates for their achievements; in no event may more than One year elapses between interim dates. Where the time for compliance is less than One year, a schedule with interim requirements and dates may be specified. If the time necessary for completion of the interim requirements (such as the construction of a treatment facility) is more than One year and cannot be readily divided into stages for completion, interim dates must be specified for the submission of reports of progress towards completion of the interim requirement.*

(b) Not later than 14 days following each interim date and the final date for compliance contained in the schedule, the holder of the permit shall provide the director with written notice of the holder's compliance or noncompliance with the interim or final requirement.

(c) If a holder of a permit fails or refuses to comply with an interim or final requirement in a permit, such noncompliance constitutes a violation of the permit for which the director may suspend or revoke the permit or take direct enforcement action.

2. A compliance schedule to bring an existing point source into compliance with a discharge limitation based on a water quality standard may be established in a permit for the point source if:

(a) The schedule requires compliance with the discharge limitation as soon as practicable; and

(b) The owner or operator of the point source demonstrates that the requirements of §§ 301(b) and 306 of the Act have been satisfied and that the point source cannot comply immediately with the discharge limitation through the application of existing water pollution control technology or operational changes.

Sec. 10. NAC 445A.250 is hereby amended to read as follows:

445A.250 1. Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the director including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

2. Any discharge authorized by a permit which:

(a) Is not a minor discharge;

(b) The regional administrator requests, in writing, be monitored; or

(c) Contains toxic pollutants for which an effluent standard has been established by the administrator pursuant to section 307(a) of the Act, must be monitored by the holder of **[the] an NPDES permit** for at least the following:

(1) Flow, in gallons per day; and

(2) All of the following pollutants:

(I) Pollutants either directly or indirectly through the use of accepted correlation coefficients or equivalent measurement which are subject to reduction or elimination under the terms and conditions of the permit;

(II) Pollutants which the director finds, on the basis of information available to him, could have a significant impact on the quality of the waters of the state;

(III) Pollutants specified by the administrator, in regulations issued pursuant to the Act, as subject to monitoring *as a requirement of an NPDES permit*; and

(IV) Any pollutants in addition to the above which the regional administrator requests, in writing, be monitored *as a requirement of an NPDES permit*.

(3) Each effluent flow or pollutant required to be monitored pursuant to this subsection must be monitored at intervals sufficiently frequent to yield data which reasonably characterize the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels.

Sec. 11. NAC 445A.253 is hereby amended to read as follows:

445A.253 1. Any disposal of pollutants into wells must be regulated to protect the public health and welfare and to prevent pollution of the ground and surface water resources of the state.

2. If an applicant for a permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of a permit, the director shall specify additional terms and conditions in the final permit which must prohibit the proposed disposal or must control the proposed disposal in order to prevent pollution of ground and surface waters of the state and to protect the public health and welfare.

3. Any permit issued for the disposal of pollutants into wells must be issued in accordance with the procedures and requirements specified in NAC 445A.070 to 445A.340, inclusive *and NAC 445A.810 to 445A.925 inclusive*.

4. The director shall utilize in his review of any permits proposed to be issued for the disposal of pollutants into wells any policies, technical information or requirements specified by the administrator in regulations issued pursuant to the Act or in directives issued to the regional offices of the United States Environmental Protection Agency.

Sec. 12. NAC 445A.260 is hereby amended to read as follows:

445A.260 In accordance with the powers granted in NRS 33.010 and subsection[s] 1 [**9 and 12**] of NRS 445A.445 and NRS 445A.675, 445A.685, 445A.690, 445A.695, 445A.700 and 445A.705, the director may take any appropriate action authorized under the law against a pollution source or any combination of sources which the director has evidence is presenting an imminent and substantial endangerment to the health and welfare of persons, where such endangerment is to the livelihood of such persons.

Sec. 13. NAC 445A.261 is hereby amended to read as follows:

445A.261 The permit may be modified, suspended, or revoked in whole or in part for cause including, but not limited to, the following:

1. A violation of any term or condition of the permit.
2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.
3. A change in conditions or the existence of a condition, which requires either a temporary or permanent reduction or an elimination of the permitted activity. Any such revocation, modification or suspension is effective no later than 30 days after the holder of the permit receives written notice, issued by the director, of the facts or conduct warranting such action.

4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

5. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

6. The department has received new information which was not available at the time of permit issuance which would have justified the application of different permit conditions at the time of issuance.

7. The standards or regulation on which the permit was based have been changed.

8. The department has received notification of a proposed transfer of the permit. A permit also may be revoked to reflect a transfer after the effective date of the transfer.

[4.] **9.** A demonstration by any interested person that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user. The demonstration must be made in accordance with 40 C.F.R. § 403.13.

[5.] **10.** A demonstration by any interested person that a publicly owned treatment works consistently removes a pollutant for which a categorical pretreatment standard has been established. The demonstration must be in accordance with 40 C.F.C. § 403.7.

Sec. 14. NAC 445A.263 is hereby amended to read as follows:

445A.263 1. The director may, after notice and opportunity for a public hearing, modify, suspend or revoke any permit in whole or in part during its term for cause including, but not limited to, the causes listed in NAC 445A.261 or for failure or refusal of the holder of the permit to carry out the requirements of NAC 445A.247.

2. The director may, upon the request of the holder of the permit, revise or modify a schedule of compliance in an issued permit if:

(a) He determines good and valid cause (such as an act of God, strike, flood, materials shortage or other event over which the holder has little or no control) exists for such revision; and

(b) Within 30 days following receipt of notice from the director, the regional administrator does not object in writing.

3. The director may, upon request of the holder of a permit, modify or revoke and reissue a permit to identify the new permittee and incorporate such other requirements as necessary if:

(a) The current permittee notifies the department at least 30 days in advance of the proposed transfer date; and

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of the permit responsibility, coverage, and liability between them.

4. With the consent of the permittee and without public notice, the director may make minor changes in a permit to:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in ownership or operational control of facility where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department;

(e) Change the construction schedule for a discharger which is a new source, provided such change shall not affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge; or

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

5. The director may modify or revoke and reissue a permit and may require from the permittee an updated application. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

[3.]6. A person aggrieved by the modification, suspension or revocation of a permit may file notice of appeal with the commission within 10 days after the date of notice of action of the department, except as otherwise provided by law.

Sec. 15. NAC 445A.285 is hereby amended to read as follows:

445A.285 1. In locating the site for a treatment [works] *facility*, the designer shall attempt to select a site that is not:

(a) Within 984.3 feet (300 meters) of an occupied dwelling or other building.

(b) Within the limit of a 100-year flood plain unless protected from the flood to the satisfaction of the department.

2. No site may be approved by the department without having first been approved by local government.

Sec. 16. NAC 445A.105 and NAC 445A.246 are hereby repealed.

TEXT OF REPEALED SECTIONS

NAC 445A.105 "Refuse Act application" defined. "Refuse Act application" means the application for a permit under section 13 of the River and Harbor Act of March 3, 1899.

NAC 445A.246 Application of more stringent standards of performance. Notwithstanding any other provision of NAC 445A.070 to 445A.340, inclusive, any industrial point source, the construction of which is commenced after the date of enactment of the Act and which is so constructed as to meet all applicable standards of performance, is not subject to any more stringent standards of performance during a 10-year period beginning on the date of completion of the construction or during the period of depreciation or amortization of the facility for the purposes of section 167 or 169, or both, of the Internal Revenue Code of 1954, whichever period ends first.

END OF TEMPORARY PETITION 1999-05