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R161-24: This permanent regulation revises NAC 444. The State Environmental Commission adopted permanent regulation R161-24P, which addresses Nevada Division of Environmental Protection's Bureau of Sustainable Materials Management. This regulation amends sections of NAC 444 to revise the definition of the Solid Waste Rule that was partially adopted in 2020. These amendments also provide regulatory clarification and framework promoting recycling of hazardous materials, as well as clear guidelines for the proper management of hazardous secondary materials.

Authority citation other than 233B:
§§ 1-5, NRS 459.485 and 459.490.

Notice date: October 16, 2024
Hearing date: November 19, 2024

**APPROVED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R161-24

Filed December 19, 2024

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

AUTHORITY: §§ 1-5, NRS 459.485 and 459.490.

A REGULATION relating to hazardous waste; revising provisions concerning certain federal regulations adopted and exceptions thereto relating to hazardous waste; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the State Environmental Commission of the State Department of Conservation and Natural Resources to adopt regulations relating to systems of hazardous waste management, which must be based on studies, guidelines and regulations of the Federal Government and meet certain other requirements. (NRS 459.485, 459.490) Existing regulations: (1) adopt by reference certain federal regulations with which a person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil must comply; (2) set forth certain specific parts and sections of federal regulations that are not adopted by reference or are adopted by reference but with certain revisions; and (3) deem certain references in specific parts and sections of federal regulations to have certain meaning, with limited exceptions. (NAC 444.8632, 444.86325, 444.8634) **Section 2** of this regulation updates the version of such federal regulations relating to hazardous waste which have been adopted by reference. **Section 3** of this regulation revises specific parts and sections of federal regulations that are not adopted by regulation or that are adopted by reference with certain revisions. **Sections 1, 4 and 5** of this regulation further correct and revise certain internal references in federal regulations that are adopted by regulation. **Section 1** also updates certain contact information for the Division of Environmental Protection of the Department.

Section 1. NAC 444.8618 is hereby amended to read as follows:

444.8618 A generator, transporter or facility owner or operator who is required to obtain an EPA identification number pursuant to 40 C.F.R. §§ ~~262.12,~~ **262.18**, 263.11, 264.1(j)(1), 264.11 or 265.11, as adopted by reference in NAC 444.8632, may obtain information relating to the procedure to obtain the identification number and an application by:

1. Submitting a request in writing to the Division of Environmental Protection, 901 South Stewart Street, Suite 4001, Carson City, Nevada ~~89701-5249;~~ **89701;**
2. Telephone at ~~(775) 687-9461;~~ **(775) 687-4670;** or
3. Visiting the Internet website **<https://ndep.nv.gov/land/waste/hazardous-waste-management/epa-id-number-information>**.

Sec. 2. NAC 444.8632 is hereby amended to read as follows:

444.8632 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, B and G, Parts 260 to 270, inclusive, Part 273 and Part 279, as those provisions existed on July 1, ~~2018,~~ **2022**, 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, 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 Publishing 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	\$66
(b) Volume 40 C.F.R. Parts 100 to 135, inclusive	51 50
(c) Volume 40 C.F.R. Parts 260 to 265, inclusive	56
(d) Volume 40 C.F.R. Parts 266 to 299, inclusive	56

Sec. 3. NAC 444.86325 is hereby amended to read as follows:

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)-(4);
- (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, 260.22 and 260.42;
- (d) Sections ~~261.4(a)(23), 261.4(a)(24), 261.4(a)(27),~~ 261.4(b)(4), 261.4(h), **261.7(c)**, 261.400(a)-(b), 261.410(e)-(f), 261.411, 261.420, 261.1035(b)(1) and 261.1064(b)(2);
- (e) Sections 262.10(l), **262.10(m), 262.10(n), 262.13(c)(9)**, 262.13(f)(1)(iii) , **262.14(a)(5)(ix)-(x)** and Part 262, Subpart K;
- (f) Sections 264.1(d), 264.1(f), **264.1(g)(13)**, 264.15(b)(5), 264.149, 264.150, 264.301(l), 264.1050(h), 265.1(c)(4), **265.1(c)(16)**, 265.149, 265.150, 265.430 and 265.1050(g);
- (g) Section 266.111 ~~†~~ **and Part 266, Subpart P;**
- (h) Section 267.150;
- (i) Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) , ~~and~~ 268.44 ~~†~~ **and 268.50(a)(4)-(5);**
- (j) Sections 270.1(c)(1)(i), **270.1(c)(2)(x)**, 270.60(b) and 270.64;

(k) ~~{Part 278;}~~ *Section 273.80(d)*; and

(l) 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)}~~ (2) 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)}~~ *permit*”;

(3) 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}~~

(4) *In sections 124.31 and 124.32, 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}~~

(5) *In* sections 124.31(a), 124.32(a) and 124.33(a), *delete* 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.~~ *CFR* part 271.”

(b) ~~Section~~ *Part 260 is adopted with the following exceptions:*

(1) *In section* 260.2(a) ~~is adopted except that~~, *replace* 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) The definition of “hazardous secondary material generator” in section 260.10 is adopted except that}~~

(2) *In section 260.10, replace “262.34” with “262.14 to 262.17” in the definition of “Final closure” and delete “261.2(a)(2)(ii) and” is deleted.*

~~—(d) Section 260.11(a) is adopted except that “and 278” is deleted.~~

~~—(e) Section 260.11(e)(3)(vii) is adopted except that “and § 278.3(b)(1)” is deleted.~~

~~—(f) Section from the definition of “Hazardous secondary material generator.”~~

(3) *In section* 260.33(b) ~~is adopted except that~~, *delete* “in the locality where the recycler is ~~located~~” is deleted.

~~—(g) Section located.”~~

(4) *In section* 260.34(a) ~~is adopted except that~~, *delete* “Determinations may also be granted by the State if the State is either authorized for this provision or if the following

conditions are met: (1) The State determines the hazardous secondary material meets the criteria in paragraphs (b) or (c) of this section, as applicable; (2) The State requests that EPA review its determination; and (3) EPA approves the State ~~{determination} is deleted.~~

~~—(h) Section} determination.”~~

(5) *In section 260.41(a) ~~{is adopted except that} , delete~~ “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.~~”*

~~—(i) Section} appeal.”~~

(c) Part 261 is adopted with the following exceptions:

(1) In section 261.1(a)(1), delete “hazardous waste produced by very small quantity generators and.”

(2) In section 261.4(a)(1)(ii), delete “, except as prohibited by § 266.505 and Clean Water Act requirements at 40 CFR 403.5(b).”

(3) In section 261.4(a)(24)(v)(B)(3), delete “publicly available.”

(4) In section 261.4(a)(24)(vi)(E), replace “272” with “270.”

(5) In section 261.4(e)(1), replace “40 CFR 261.5 and 262.34(d)” with “40 CFR 262.13 and 262.16(b).”

(6) In section 261.4(e)(3)(iii) ~~{is adopted except that} , delete~~ “in the Region where the sample is ~~{collected} is deleted.~~”

~~{j) Section} collected.”~~

(7) In section 261.6(a)(3)(i)(A), replace “§§ 262.53, 262.56(a)(1)-(4),”

(6), and (b), and 262.57” with “§ 262.83” and replace “subpart E” with “subpart H.”

(8) In section 261.11(c), replace “261.5(c)” with “262.13(c).”

(9) In section 261.30(d), replace “261.5” with “262.13.”

(10) In section 261.33(c), delete “or § 266.507.”

(11) In each of the four entries for “P075” in the table in section 261.33(e), delete “(this listing does not include patches, gums and lozenges that are FDA-approved over-the-counter nicotine replacement therapies).”

(12) In section 261.142(a)(3)-(4), replace both references to “§ 265.5113(d)” with “§ 265.113(d).”

(13) In section 261.1089(f), replace “261.1082(c)(1) or (c)(2)(i) through (vi)” with “261.1082(c).”

(14) In Part 261, Appendix IX, replace any references to “40 CFR 262.34” with “40 CFR 262.15, 262.16 and 262.17.”

(d) Part 262 is adopted with the following exceptions:

(1) In section 262.11(d)(2) ~~is adopted except that “,~~ delete “ or according to an equivalent method approved by the Administrator under 40 ~~C.F.R. Part 260.21” is deleted.~~

~~(k) Sections~~ *CFR 260.21.”*

(2) In section 262.14(a)(5)(ix), replace the final period with a semicolon.

(3) In section 262.14(a)(5)(x), replace the final period with “; and.”

(4) In section 262.20(a)(2), replace “262.54 and 262.60” with “262.83(c)-(e) and 262.84” and replace both references to “262.34” with “262.16, 262.17.”

(5) In sections 262.42(a)(2) and 262.42(b) ~~are adopted except that~~, delete “for the Region in which the generator is ~~located~~” is deleted.

~~(l) Sections~~ located.”

(6) In section 262.212(e)(3), replace “§ 261.5(c) and (d)” with “§ 262.13(c) and (d).”

(e) Part 264 is adopted with the following exceptions:

(1) In section 264.18(c) ~~and 265.18 are adopted except that~~, delete “except for the Department of Energy Waste Isolation Pilot Project in New ~~Mexico~~” is deleted.

~~(m) Sections~~ Mexico.”

(2) In sections 264.143(h) ~~and~~ 264.145(h), ~~265.143(g) and 265.145(g) are adopted except that~~ replace “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 replaced~~ with “If the facilities covered by the mechanism are in this State 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, if the other state has not been approved or authorized by the EPA under 40 ~~C.F.R.~~ CFR Part 271, the EPA Regional Administrator.”

~~(n) Sections~~

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

~~(o) Section~~ Region.”

(4) In section 264.151 : ~~is adopted with the following exceptions:~~

~~(1)~~ Replace any requirement that an owner or operator notify the EPA Regional Administrator of the financial obligations of the owner or operator with a requirement that the owner or operator notify the Director, the agency regulating hazardous waste in a state that has been approved or authorized by the EPA under 40 C.F.R. Part 271 and all EPA Regional Administrators of Regions affected by the financial assurance mechanism of the owner or operator;

~~(2)~~ **(II)** Require that all orders, requests, instructions and notices to the Trustee regarding a financial assurance mechanism for a facility in this State be in writing and signed by the Director; and

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

~~(4)~~ **(5)** *In section 264.1030(b)(3), replace “40 CFR 262.34(a)” with “40 CFR 262.17(a).”*

(6) *In section 264.1050(b)(2), replace “40 CFR 262.34(a)” with “40 CFR 262.17(a).”*

(f) *Part 265 is adopted with the following exceptions:*

(1) *In section 265.18, delete “, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.”*

(2) *In section 265.145(g), replace “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” with “If the facilities covered by the mechanism are in this State 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, if the other state has not been approved or authorized by the EPA under 40 CFR Part 271, the EPA Regional Administrator.”

(3) In section 265.147(a)(1)(i), delete “or Regional Administrator if the facilities are located in more than one Region.”

(g) Part 266 is adopted with the following exceptions:

(1) In section 266.100(c)(3), replace “conditionally exempt small quantity generators under § 261.5” with “very small quantity generators under §§ 262.13 and 262.14.”

(2) In section 266.108(c), replace “§ 261.5” with “§§ 262.13 and 262.16.”

(h) Part 268 is adopted with the following exceptions:

(1) In the leadline for section 268.7, delete “reverse distributors.”

(2) In section 268.7(a), delete “and reverse distributors.”

(i) Part 270 is adopted with the following exceptions:

(1) Delete all references to “interim authorization”; and

(2) Delete “or 267.150” in § 270.290(r).

~~**{(q) Section}**~~

(j) Part 273 is adopted with the following exceptions:

(1) In section 273.1(b), replace “272” with “270.”

(2) In section 273.13(a)(3)(i), 273.13(c)(2)(iii), 273.13(c)(2)(iv), 273.13(c)(4)(ii) and 273.13(e)(4)(v), replace “272” with “270.”

(3) In section 273.13(e)(4)(vi), replace “or” with “and.”

(4) In section 273.17(b), replace “272” with “270.”

(5) In section 273.3(b)(2), replace “272” with “270.”

(6) In section 273.33(a)(3)(i), 273.33(c)(2)(iii), 273.33(c)(2)(iv), 273.33(c)(4)(ii) and 273.33(e)(4)(v), replace “272” with “270.”

(7) In section 273.33(e)(4)(vi), replace “or” with “and.”

(8) In section 273.37(b), replace “272” with “270.”

(9) In section 273.54(b), replace “272” with “270.”

(10) In section 273.80(a), replace “Except as provided in paragraph (d) of this section, any” with “Any.”

(k) Part 279 is adopted with the following exceptions:

(1) In section 279.40(c) ~~is adopted except that~~, delete “unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous ~~if waste~~” is deleted.

~~—(r) Section~~ waste.”

(2) Delete the entirety of section 279.82 ~~is adopted except that:~~

~~—(1) Delete “except when such activity takes place in one of the states listed in paragraph (e) of this section”; and~~

~~—(2) Delete “A State may petition (e.g., as part of its authorization petition submitted to EPA under § 271.5 of this chapter or by a separate submission) EPA to allow the use of used oil (that is not mixed with hazardous waste and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such programs must minimize the impacts of use as a dust suppressant on the environment” and replace with “The list of states given at 279.82(e)~~

are those states which have petitioned EPA to allow the use of used oil as a dust suppressant and which EPA has granted permission.”

—3. The following sections of Title 40 of the Code of Federal Regulations are adopted by reference, with the following corrections to internal references:

—(a) Delete any references in any part of Title 40 of the Code of Federal Regulations to “Part 262, Subpart E” and replace with “Part 262, Subpart H”;

—(b) In section 261.1089(f), delete “261.1082(c)(1) or (c)(2)(i) through (vi)” and replace with “261.1082(e)”;

—(c) In section 262.20(a)(2), delete “262.54, and 262.60” and replace with “262.83(c) (e) and 262.84”;

—(d) In section 260.10, delete “262.34” and replace with “262.15 and 262.17”;

—(e) In section 261.4(e)(1), delete “40 CFR 261.5 and 262.34(d)” and replace with “40 CFR 262.13 and 262.16(b)”;

—(f) In section 261.11(c), delete “261.5(c) and replace with “262.13(e)”;

—(g) In section 261.30(d), delete “261.5” and replace with “262.13”;

—(h) In section 261.142(a)(3) (4), delete both references to “§ 265.5113(d)” and replace with “§ 265.113(d)”;

—(i) In Part 261, Appendix IX, delete any references to “40 CFR 262.34” and replace with “40 CFR 262.15, 262.16 and 262.17”;

—(j) In section 262.20(a)(2), delete both references to “262.34” and replace with “262.16, 262.17”;

- (k) In section 262.212(e)(3), delete “§ 261.5(e) and (d)” and replace with “§ 262.13(e) and (d)”;
- (l) In section 264.1030(b)(3), delete “40 CFR 262.34(a)” and replace with “40 CFR 262.17(a)”;
- (m) In section 264.1050(b)(2), delete “40 CFR 262.34(a)” and replace with “40 CFR 262.17(a)”;
- (n) In section 266.100(c)(3), delete “conditionally exempt small quantity generators under § 261.5” and replace with “very small quantity generators under §§ 262.13 and 262.14”;
- (o) In section 266.108(c), delete “§ 261.5” and replace with “§§ 262.13 and 262.16”;
- (p) In section 273.13(c)(2)(iii)–(iv), delete both references to “40 CFR 262.34” and replace with “40 CFR 262.15 and 262.16”; and
- (q) In section 273.33(c)(2)(iii)–(iv), delete both references to “40 CFR 262.34” and replace with [“40 CFR 262.15 and 262.17.”] **“§ 279.82 Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited.”**

Sec. 4. NAC 444.8633 is hereby amended to read as follows:

444.8633 Except as otherwise provided in NAC 444.8634:

1. Any references in any part of Title 40 of the Code of Federal Regulations to the U.S. Environmental Protection Agency, “United States Environmental Protection Agency,” “Agency,” “EPA Headquarters,” “EPA Region(s)” or “EPA” which have been adopted by reference in NAC 444.8632 shall be deemed to mean the “Department” with the following exceptions:

(a) Any reference to “EPA” identification numbers;

- (b) Any reference to “EPA” hazardous waste numbers;
- (c) Any reference to “EPA” test methods;
- (d) Any reference to “EPA” forms;
- (e) Any reference to “EPA” publications or manuals;
- (f) Any reference to “EPA” guidance;
- (g) Any reference to “EPA” Acknowledgment of Consent;
- (h) Any reference to “EPA” or “Agency” in:
 - (1) Sections 124.1(f), 124.2(b), 124.6(e) and 124.10(c)(1)(ii);
 - (2) The provisions of section 124.2(a) defining “Administrator,” “Director,” “EPA,” “permit,” “person” and “Regional Administrator”;
 - (3) The provisions of section 260.10 defining “Administrator,” “EPA Region,” “federal agency,” “person” and “Regional Administrator”;
 - (4) Sections 260.4(a)(4), 260.5(b)(2) ~~H~~ and 260.11 ; ~~and Part 260, Appendix I;~~
 - (5) Sections 261.39(a)(5), 261.41 and Part 261, Appendix IX;
 - (6) Section 262.32(b) and Part 262, Subpart H;
 - (7) The Note following section 263.10(a);
 - (8) Sections 264.11, 264.12(a) and 264.71;
 - (9) Sections 265.11, 265.12(a) and 265.71;
 - (10) Sections 268.1(e)(3) and 268.2(j);
 - (11) Sections 270.1(a)(1), 270.1(b), 270.3, 270.5, 270.10(e)(1)-(2), 270.11(a)(3), 270.32(a), 270.32(c), 270.51, 270.72(a)(5) and 270.72(b)(5); **and**

(12) The provisions of section 270.2 defining “Administrator,” “approved program or approved State,” “Director,” “Environmental Protection Agency,” “EPA,” “final authorization,” “permit,” “person,” “Regional Administrator” and “state/EPA agreement”; ~~and~~

~~— (13) Section 279.82(b);~~

(i) Any reference to “EPA,” “Agency” or “EPA Director of the Office of Solid Waste” in sections 262.21 and 262.24(a)(3) and any subsequent reference to EPA’s oversight of the manifest registry process in Part 262, Subparts C and H, sections 264.71(j), 265.71(j), Part 264, Subpart FF and Part 265, Subpart FF; and

(j) Any reference to “EPA,” “federal requirements” or internal reference to section 262.25 in any of the provisions addressing the federal requirements for electronic manifest signatures in Title 40 of the Code of Federal Regulations.

2. Any references in any part of Title 40 of the Code of Federal Regulations to the “Regional Administrator ~~and~~,” “Administrator” or “the Regional Administrator, or State Director (if located in an authorized State)” which have been adopted by reference shall be deemed to mean the “Director” with the following exceptions:

(a) The provisions of section 124.2(a) defining “Administrator,” “Director,” “interstate agency,” “major facility” and “Regional Administrator”;

(b) Sections 124.2(b), 124.5(d), 124.6(e) and 124.10(b);

(c) The provisions of section 260.10 defining “Administrator,” “Regional Administrator” and “hazardous waste constituent”;

(d) Sections 260.23 and 260.30 to 260.34, inclusive;

(e) Sections 261.30(b), 261.4 and Part 261, Appendix IX;

- (f) Part 262, Subpart H;
- (g) Sections 263.11 and 264.1(j)(1);
- (h) Sections 268.5, 268.6, 268.42(b) and 268.44(a)-(g);
- (i) The provisions of section 270.2 defining “Administrator,” “Director,” “major facility,” “Regional Administrator” and “state/EPA agreement”; and
- (j) Sections 270.3, 270.5, 270.10(e)(1)-(2), 270.10(e)(4), 270.10(f)-(g), 270.11(a)(3), 270.14(b)(20), 270.32(b)(2) and 270.51.

3. Any references in any part of Title 40 of the Code of Federal Regulations to the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C” which have been adopted by reference in NAC 444.8632 shall be deemed to mean “NRS 459.400 to 459.600, inclusive,” when referring to an operating permit or to the federal hazardous waste program, with the following exceptions:

- (a) Any references to a specific provision of the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C”;
- (b) The provisions of section 124.2 defining “appropriate act and regulations” and “RCRA”;
- (c) The provisions of section 260.10 defining “Act or RCRA”;
- (d) Part 261, Appendix IX;
- (e) Section 270.1(a)(2); and
- (f) The provisions of section 270.2 defining “RCRA” and the provision of section 270.51 defining “RCRA permit.”

4. Following any references in any part of Title 40 of the Code of Federal Regulations to a specific provision of the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of

RCRA,” “RCRA Subtitle C” or “Subtitle C,” which have been adopted by reference in NAC 444.8632, the phrase “or any comparable provisions of NRS 459.400 to 459.600, inclusive, and any regulations adopted pursuant thereto” shall be deemed to be added with the following exceptions:

- (a) Section 270.1(a)(2);
- (b) Section 270.72(a)(5); and
- (c) Section 270.72(b)(5).

5. Any references in any part of Title 40 of the Code of Federal Regulations to the “Department of Transportation” or “DOT” which have been adopted by reference in NAC 444.8632 shall be deemed to mean “the Department of Transportation of the United States.”

6. Any references in any part of Title 40 of the Code of Federal Regulations to “state(s),” “authorized state,” “approved state” or “approved program” which have been adopted by reference in NAC 444.8632 shall be deemed to mean “Nevada” with the following exceptions:

- (a) The provisions of section 124.2(a) defining “Director,” “interstate agency,” “person” and “state”;
- (b) The provisions of section 260.10 defining “person,” “state” and “United States”;
- (c) Part 262;
- (d) Sections 264.143(e)(1), 264.145(e)(1), 264.147(a)(1)(ii), 264.147(b)(1)(ii), 264.147(g)(2) and 264.147(i)(4);
- (e) Sections 265.143(d)(1), 265.145(d)(1), 265.147(a)(1)(ii), 265.147(b)(1)(ii), 265.147(g)(2) and 265.147(i)(4);
- (f) Section 267.147(g)(2); and

(g) The provisions of section 270.2 defining “approved program or approved State,” “Director,” “final authorization,” “person” and “state.”

Sec. 5. NAC 444.8634 is hereby amended to read as follows:

444.8634 1. Any reference to the following terms in 40 C.F.R. Part 2, Subpart A, as adopted by reference in NAC 444.8632, shall be deemed to have the meanings ascribed thereto in this section:

(a) ~~“District court of the United States” or “Federal district court” shall be deemed to mean “district court in Nevada”;~~

~~—(b) “Federal agency” shall be deemed to mean “state agency”;~~

~~{(c) Except in section 2.105(a),}~~

(b) Freedom of Information Act, “FOIA,” the “Act” or “5 U.S.C. 552” shall be deemed to mean “NRS 459.555 and any regulations adopted pursuant thereto”;

~~{(d)}~~ (c) “Freedom of information officer” shall be deemed to mean the “Administrator of the Division or his or her designee”;

~~{(e)}~~ (d) “General counsel” shall be deemed to mean the “Attorney General of Nevada”;

~~{(f)}~~ (e) Except in 40 C.F.R. § 261.4(b)(11)(ii), any addresses shall be deemed to mean the “Division of Environmental Protection, 901 South Stewart Street, Suite 4001, Carson City, Nevada ~~{89701-5249}~~;

~~—(g) 89701”;~~

(f) Any references to the employment rankings of “GS-8” or “GS-9” shall be deemed to mean, respectively, *the* “grade 31” and “grade 32” *class* of ~~{the Nevada Personnel System}~~

employment established pursuant to NRS 284.170, and any reference to a fee for the cost of staff time shall be deemed to mean, respectively, \$15 and \$22.50 per half hour;

~~{(h) Any references to duplication or reproduction charges of "\$0.15 per page" shall be deemed to mean "10 cents per page";}~~ and

~~{(i)}~~ (g) Any reference to an officer except the general counsel shall be deemed to mean the "Administrator of the Division."

2. Any reference to the "EPA" in 40 C.F.R. § 264.11 or 265.11 shall be deemed to include the "Director."

3. Fees required to be paid to the "U.S. Environmental Protection Agency" or the "United States Environmental Protection Agency" pursuant to 40 C.F.R. § 2.107 must be paid to the "State of Nevada" and deposited in the Account for the Management of Hazardous Waste.

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission Permanent No: R161-24P

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

In order to remain consistent with federal hazardous waste regulations and continue to be authorized to enforce them in lieu of the US EPA, Nevada is required to periodically update its state hazardous waste regulations in response to changes made at the federal level. Once the regulations are updated, Nevada can complete the authorization application package. Additionally, the adoption of the hazardous secondary materials exclusions is to provide regulatory certainty and a framework promoting legitimate recycling of hazardous materials.

2. A 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.

The Division held one hybrid (in-person and virtual) public workshop for R161-24P on October 30, 2024. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada, as well as the NDEP offices at 375 East Warm Springs Road in Las Vegas, Nevada. The workshop was held to present the substance of, and receive public comment on, the proposed regulation. Approximately fifty members of the public and regulated industry attended the workshop virtually or in person. The proposed regulations were also distributed to the Bureau of Sustainable Materials Management's email distribution list.

The Legislative Counsel Bureau published its draft, R161-24P, in the Nevada Register on September 19, 2024. The Division accepted written comments on R161-24I and R161-24P for 30 days ending on October 11, 2024. The Division received one clarifying verbal question concerning R161-24I and/or R161-24P during the public workshop, and numerous written comments. The written comments were generally related to clarification of the following:

- Recycling of hazardous waste, including universal waste, and NDEP's role in encouraging recycling in Nevada.
- The timeline for regulatory changes
- Whether NDEP would still recognize other states' waste programs
- Exclusions for Hazardous Secondary Materials, including certification options, storage of recyclable materials, confidentiality requirements, and the five-step process for Written Determinations
- The rationale for deleting "publicly available"
- Several aspects of the permitting process, including reciprocity with other states, the Materials Recovery Facility permit, Schedule of Compliance items, and timelines
- The term "Legitimate Recycling"
- The term "Inherently Waste-Like"
- Spent materials versus discarded materials
- The term "Thermal Treatment"
- Classification of materials as "Commercial Chemical Product"
- The term "Mixed Material Pathway"
- Classification of "Damaged, Defective, or Recalled Batteries"

The Division revised R161-24P as a result of some of these comments and provided a greenlined version to the SEC for adoption. A summary of the workshop, including public comment and bureau response, is included on the NDEP website as well as the SEC website.

The SEC held a hybrid regulatory hearing on November 19, 2024, to consider possible action on R161-24P. The SEC posted its public notice, which included a link¹ and instructions to access R161-24P and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice at the Division of Minerals in Carson City, at the Department of

¹ <https://sec.nv.gov/meetings/sec-meeting-november-19-2024>

Agriculture, on the LCB website, on the Division of Administration website, and on the SEC website.

The SEC also published the public notice in the Las Vegas Review Journal and Reno Gazette Journal newspapers once per week for three consecutive weeks prior to the SEC regulatory meeting.

3. The number of persons who attended the SEC Regulatory Hearing:

(a) Attended November 19, 2024, hearing: 37 (approximately)

(b) Testified on this petition at the hearing: 3

1. Jeff Kinder, on behalf of the Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
(775) 687-9307
jkinder@ndep.nv.gov

2. Kayla Alm, on behalf of the Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
(775) 687-9467
kalm@ndep.nv.gov

3. Annalyn Settlemeyer, on behalf of the Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
(775) 687-9366
asettelm@ndep.nv.gov

(c) Submitted to the Commission written comments: none

4. 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 through one public workshop and at the November 19, 2024, SEC hearing as noted in number 2 above.

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

The Commissioners unanimously adopted R161-24P with the greenlined changes because the public and the SEC were satisfied with the modified proposed regulation.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry: Adoption of these additions, corrections, and clarifications to existing regulations are not anticipated to have any significant economic impact on Nevada businesses. The Resource Conservation and Recovery Act (RCRA) Subtitle C and other rule amendments that NDEP is proposing to adopt are federal rules, and the regulated business/industry must comply with them regardless of whether USEPA or the NDEP implements them.

There may be a nominally beneficial effect for the regulated universe as the changes may simplify compliance by correcting and clarifying the regulations. Additionally, adoption of the hazardous secondary materials exclusions may provide for a streamlined regulatory structure for certain recyclers of hazardous waste.

Public: There are no adverse or economic impacts on the public associated with this action in the short- or long-term.

7. The estimated cost to the agency for enforcement of the adopted regulation.

Enforcing Agency. The proposed regulations do not impose additional functions or costs on the agency.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulatory amendments in R161-24P pertain to existing regulations. They do not overlap or duplicate other regulations.

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

There are minor changes to the hazardous secondary materials exclusions that are being proposed to be adopted by reference. In section 261.4(a)(1)(ii), “except as prohibited by §266.505 and Clean Water Act requirements at 40 CFR 403.5(b).” will be deleted. And, in section 261.4(a)(24)(v)(B)(3) is adopted except that the term “publicly available” is deleted.

10. 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.

R161-24P does not address fees.

