

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

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**The following document is the initial draft regulation proposed
by the agency submitted on 06/23/2024**

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P2023-05

06/20/2024

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

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AUTHORITY:

A REGULATION

Section 1. NAC 444.8632 is hereby amended to read as follows:

NAC 444.8632 Compliance with federal regulations adopted by reference; availability.
(NRS 459.485, 459.490)

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
(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. 2. NAC 444.86325 is hereby amended to read as follows:

NAC 444.86325 Exceptions to and revision or replacement of federal regulations adopted by reference. (NRS 459.485, 459.490)

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;]~~ **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;]~~, **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) **In section 124.5(b),** ~~[Delete]~~ **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) 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) 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) *In sections 124.31 and 124.32, [Delete] 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) *In sections 124.31(a), 124.32(a), and 124.33(a) [Delete] delete [from sections 124.31(a), 124.32(a) and 124.33(a)]* 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. part 271.”

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

(1) ~~[Section]~~ *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 ~~[.]~~”;

~~[(e)]~~ *(2) In section 260.10, replace “262.34” with “262.14 to 262.17” in the definition of Final Closure and delete [The definition of “hazardous secondary material generator” in section 260.10 is adopted except that] “261.2(a)(2)(ii) and” [is deleted.] from the definition of “Hazardous Secondary Material Generator”.*

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

~~[(g)]~~ *(4) [Section] 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)](5) [Section]~~ *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]~~.*

~~[(+)](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)(24)(vi)(E), replace “272” with “270”.*

(3) *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)”.*

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

(5) ~~[Section]~~ *In section 261.4(e)(3)(iii) ~~[is adopted except that], delete~~ “in the Region where the sample is collected” ~~[is deleted]~~.*

(6) *In section 261.6(a)(3)(i)(A), replace “§§262.53, 252.56(a) (1)-(4), (6), and (b), and 262.57” with “§262.83” and replace “subpart E” with “subpart H”.*

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

(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 the table in section 261.33(e), in the four entries for “P075”, 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 of “§ 265.5113(d)” with “§265.113(d)”*

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

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

(1) ~~[Section]~~ *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]~~.*

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

~~(k)~~Sections

(7) *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]~~.*

~~(h)~~(e) *Reserved*

(f) *Part 264 is adopted with the following exceptions:*

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

~~[(m)](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. Part 271, the EPA Regional Administrator[~~;~~]”.

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

~~[(o)](4)~~ Section 264.151 is adopted with the following exceptions:

~~[(+)](A)~~ 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)](B)~~ 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

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

(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)”.

~~(g)~~ *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), delete “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. Part 271, the EPA Regional Administrator.”

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

(h) 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”.

(i) [Reserved]

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

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

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

(k) 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).

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

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

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

(3) 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”.

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

(5) In section 273.17(b), 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”.

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

(1) In [Section] 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 waste” [~~is deleted~~].

~~[(r) 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(c)”;~~

~~(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(e) 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(c) 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”;

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.”]

(2) Replace section 279.82 in its entirety with “§279.82 Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited.”