

CHAPTER.....

AN ACT relating to water; authorizing the State Department of Conservation and Natural Resources to develop plans, recommendations and policies to address water pollution resulting from diffuse sources; revising requirements for regulations adopted by the State Environmental Commission relating to water pollution; revising notice requirements relating to regulations adopted by the Commission; revising various provisions relating to the control of water pollution by the Director of the Department; revising requirements relating to the control of diffuse sources of water pollution; requiring the Director to consult or notify Indian tribes of certain actions relating to water pollution; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law sets forth various requirements to control water pollution in this State, including authorizing the State Environmental Commission to prescribe controls for diffuse sources of water pollution. (NRS 445A.570) **Section 1.5** of this bill authorizes the State Department of Conservation and Natural Resources to develop plans, recommendations and policies to manage, control and mitigate water pollution from diffuse sources in this State which may include identifying the major categories of diffuse sources that contribute to water pollution in this State.

Section 3.5 of this bill sets forth a legislative declaration that the people of this State have a right to clean water and that it is the policy of this State to mitigate the degradation of the waters of the State.

Section 4 of this bill authorizes the Commission to adopt regulations for controlling the infiltration of contaminants into underground water resulting from contaminated fluids or soil, if the underground water supplies, or may be reasonably expected to supply, a public water system, which may address, without limitation, sewage treatment and effluent disposal, wastewater management and community planning and the management of fluids, effluent and septic systems.

Section 1 of this bill makes conforming changes to require the State Board of Health to adopt regulations consistent with the regulations adopted by the Commission, if such regulations impact residential individual systems for the disposal of sewage.

Section 4 also requires the Commission to consider any disproportionate impacts on underserved communities when adopting regulations, standards of water quality and effluent limitations.

Existing law requires the Commission to publish notice of a hearing on a regulation that provides a standard of water quality or waste discharge at least once in a newspaper of general circulation in the area to which the standard will apply, if adopted. (NRS 445A.435) **Section 5** of this bill requires the Commission to also publish notice of such a hearing at least once in a digital format that is generally accessible in the area and to any community impacted.

Existing law authorizes the Director of the Department to: (1) perform any acts consistent with the requirements of state and federal legislation concerning the control of the injection of fluids through a well and the control of water pollution; and (2) advise, consult and cooperate with other agencies of the State, the Federal



Government, other states, interstate agencies and certain other persons to further certain purposes related to the control of water pollution. (NRS 445A.450) **Section 6** of this bill authorizes the Director to submit recommendations to the Commission for the adoption of regulations deemed necessary to control the infiltration of contaminants into underground water resulting from contaminated fluids or soil. **Section 6** further authorizes the Director to consult and cooperate with Indian tribes when working to control water pollution.

Section 9 of this bill requires the holders of certain permits whose production increases, process modifications or facility expansions result in the infiltration of contaminants into underground waters to report the contamination to the Department.

Existing law requires the Department to notify each interested person and appropriate governmental agency of each complete application for a permit. (NRS 445A.590) **Section 13** of this bill requires the Department to notify affected Indian tribes upon receiving a complete application for a permit. **Section 14** of this bill requires the Commission to adopt regulations to provide for Indian tribes to request a public hearing on a permit application.

Sections 15-22 of this bill provide that the provisions of this bill are subject to the existing enforcement authority of the Department.

Section 23 of this bill provides that the provisions of this bill do not amend, modify or supersede the provisions of existing law relating to the appropriation of water.

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

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 444.650 is hereby amended to read as follows:

444.650 1. The State Board of Health shall adopt regulations to control the use of a residential individual system for disposal of sewage in this State. Those regulations are effective except in health districts in which a district board of health has adopted regulations to control the use of a residential individual system for disposal of sewage in that district.

2. A board which adopts such regulations shall consider and take into account the geological, hydrological and topographical characteristics of the area within its jurisdiction.

3. The regulations adopted pursuant to this section must not conflict with the provisions of NRS 445A.300 to 445A.730, inclusive, and any regulations adopted pursuant to those provisions.

If any regulations adopted by the State Environmental Commission pursuant to subsection 2 of NRS 445A.425 impact residential individual systems for disposal of sewage, the State Board of Health shall adopt regulations consistent with such regulations adopted by the State Environmental Commission.



4. As used in this section, “residential individual system for disposal of sewage” means an individual system for disposal of sewage from a parcel of land, including all structures thereon, that is zoned for single-family residential use.

Sec. 1.5. Chapter 445A of NRS is hereby amended by adding thereto a new section to read as follows:

1. In addition to any controls prescribed by the Commission pursuant to NRS 445A.570, the Department may develop plans, recommendations and policies consistent with any applicable federal requirements for diffuse sources to manage, control and mitigate water pollution resulting from diffuse sources. Such plans, recommendations and policies may, without limitation:

(a) Identify surface waters of this State that cannot reasonably be expected to attain or maintain state water quality standards and goals without additional action by the State to control water pollution resulting from diffuse sources;

(b) Identify the major categories of diffuse sources that contribute significant pollution to the surface waters of the State;

(c) Determine methods to facilitate the implementation of the best management practices, projects and measures to control each category of diffuse sources identified pursuant to paragraph (b); and

(d) Identify public and private sources of expertise, technical assistance, financial assistance, education assistance, training and technological resources to address water pollution resulting from diffuse sources.

2. The Department shall make any information received pursuant to paragraph (d) of subsection 1 available to the public upon request.

Secs. 2 and 3. (Deleted by amendment.)

Sec. 3.5. NRS 445A.305 is hereby amended to read as follows:

445A.305 1. The Legislature finds that pollution of water in this State:

(a) Adversely affects public health and welfare;

(b) Is harmful to wildlife, fish and other aquatic life; and

(c) Impairs domestic, agricultural, industrial, recreational and other beneficial uses of water.

2. The Legislature declares that *the people of this State have a right to clean water and* it is the policy of this State and the purpose of NRS 445A.300 to 445A.730, inclusive ~~§~~, *and section 1.5 of this act:*



(a) To maintain the quality of the waters of the State consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, the pursuit of agriculture, and the economic development of the State; ~~and~~

(b) *To mitigate the degradation of the waters of the State; and*

(c) To encourage and promote the use of methods of waste collection and pollution control for all significant sources of water pollution (including point and diffuse sources).

Sec. 4. NRS 445A.425 is hereby amended to read as follows:

445A.425 1. Except as specifically provided in NRS 445A.625 to 445A.645, inclusive, the Commission shall:

(a) Adopt regulations carrying out the provisions of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act*, including standards of water quality and amounts of waste which may be discharged into the waters of the State.

(b) Adopt regulations providing for the certification of laboratories that perform analyses for the purposes of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* to detect the presence of hazardous waste or a regulated substance in soil or water.

(c) Adopt regulations controlling the injection of fluids through a well to prohibit those injections into underground water, if it supplies or may reasonably be expected to supply any public water system, as defined in NRS 445A.840, which may result in that system's noncompliance with any regulation regarding primary drinking water or may otherwise have an adverse effect on human health.

(d) Advise, consult and cooperate with other agencies of the State, the Federal Government, other states, interstate agencies and other persons in furthering the provisions of NRS 445A.300 to 445A.730, inclusive ~~and~~, *and section 1.5 of this act*.

(e) Determine and prescribe the qualifications and duties of the supervisors and technicians responsible for the operation and maintenance of plants for sewage treatment.

2. *The Commission may adopt regulations for controlling the infiltration of contaminants into underground water through contaminated fluids or soil where:*

(a) *The underground water directly supplies a public water system or could be reasonably expected to supply a public water system through a surface-to-groundwater connection; and*

(b) *The infiltration of contaminants into the public system may result in:*



(1) The public water system not complying with any standard or regulation regarding primary drinking water; or

(2) A danger to the health and safety of persons.

↪ Any regulations adopted by the Commission pursuant to this subsection may address, without limitation, sewage treatment and effluent disposal, wastewater management and community planning and the management of fluids, effluent and septic systems.

3. Before adopting any regulations pursuant to subsection 2, the Commission shall:

(a) Consider:

(1) The economic and technological feasibility of the proposed regulations; and

(2) The potential costs for a local government to implement the proposed regulations.

(b) Notify the State Board of Health if the proposed regulations would impact residential individual systems for the disposal of sewage.

4. The Commission may by regulation require that supervisors and technicians responsible for the operation and maintenance of plants for sewage treatment be certified by the Department. The regulations may include a schedule of fees to pay the costs of certification. The provisions of this subsection apply only to a package plant for sewage treatment whose capacity is more than 5,000 gallons per day and to any other plant whose capacity is more than 10,000 gallons per day.

~~[3.]~~ 5. In adopting regulations, standards of water quality and effluent limitations pursuant to NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act*, the Commission shall recognize ~~[the]~~ *and consider:*

(a) The historical irrigation practices in the respective river basins of this State, the economy thereof and their effects [1]; and

(b) Any disproportionate impact on underserved communities in the respective river basins of this State.

~~[4.]~~ 6. The Commission may hold hearings, issue notices of hearings, issue subpoenas requiring the attendance of witnesses and the production of evidence, administer oaths and take testimony as it considers necessary to carry out the provisions of this section and for the purpose of reviewing standards of water quality.

~~[5.]~~ 7. As used in this section ~~[, "plant"]~~:

(a) "Block" means the smallest geographic unit whose boundaries were designated by the Bureau of the Census of the



United States Department of Commerce in its topographically integrated geographic encoding and referencing system.

(b) *“Block group” means a combination of blocks.*

(c) *“Census tract” means a combination of blocks whose numbers begin with the same digit.*

(d) *“Plant for sewage treatment” means any facility for the treatment, purification or disposal of sewage.*

(e) *“Public water system” has the meaning ascribed to it in NRS 445A.840.*

(f) *“Underserved community” means:*

(1) *A census tract in which, in the immediately preceding census:*

(I) *The median household income was less than 60 percent of the median household income in this State;*

(II) *At least 25 percent of the households had a household income below the federally designated level signifying poverty; or*

(III) *At least 20 percent of households were not proficient in the English language; or*

(2) *A community in this State with at least one public school:*

(I) *In which 75 percent or more of the enrolled pupils during the immediately preceding school year were eligible for free or reduced-price lunches under the National School Lunch Act, 42 U.S.C. §§ 1751 et seq.; or*

(II) *That participates in universal meal service pursuant to Section 104 of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111-296.*

Sec. 5. NRS 445A.435 is hereby amended to read as follows:

445A.435 If a regulation which is to be considered by the Commission provides a standard of water quality or waste discharge, notice of the hearing on the regulation must be published at least once in **[a]**:

1. A newspaper of general circulation in the area to which the standard, if adopted, will apply **[H]**; and

2. A digital format that is generally accessible in the area and to any affected communities to which the standard, if adopted, will apply. As used in this subsection, “digital format” includes, without limitation, an online newspaper or community forum.

Sec. 6. NRS 445A.450 is hereby amended to read as follows:

445A.450 The Director may:

1. Perform any acts consistent with the requirements of state and federal legislation concerning the control of the injection of



fluids through a well and the control of water pollution and conditions thereof relating to participation in and administration by this State of the National Pollutant Discharge Elimination System;

2. *Submit recommendations to the Commission for the adoption of regulations deemed necessary to control the infiltration of contaminants into underground water resulting from contaminated fluids or soils pursuant to NRS 445A.425;*

3. Advise, consult and cooperate with other agencies of the State, the Federal Government, other states, interstate agencies, *Indian tribes* and with other persons in furthering the purposes of NRS 445A.300 to 445A.730, inclusive ~~§~~, *and section 1.5 of this act;*

~~§~~ 4. Take the steps necessary to qualify for, accept and administer loans and grants from the Federal Government and from other sources, public or private, for carrying out any functions under NRS 445A.300 to 445A.730, inclusive ~~§~~, *and section 1.5 of this act;*

~~§~~ 5. Award subgrants to eligible persons to assist the Director in carrying out any functions under NRS 445A.300 to 445A.730, inclusive ~~§~~, *and section 1.5 of this act;*

~~§~~ 6. Encourage, request, participate in or conduct studies, surveys, investigations, research, experiments, demonstrations and pilot programs by contract, grant or other means;

~~§~~ 7. Maintain or require supervisors and operators of treatment plants which are privately owned or owned by a municipality or other public entity to maintain records and devices for continuing observation and establish or require these supervisors and operators to establish procedures for making inspections and obtaining samples necessary to prepare reports;

~~§~~ 8. Collect and disseminate information to the public as the Director considers advisable and necessary for the discharge of his or her duties under NRS 445A.300 to 445A.730, inclusive ~~§~~, *and section 1.5 of this act;*

~~§~~ 9. Hold hearings and issue subpoenas requiring the attendance of witnesses and the production of evidence as the Director finds necessary to carry out the provisions of NRS 445A.300 to 445A.730, inclusive ~~§~~, *and section 1.5 of this act;*

~~§~~ 10. Exercise all incidental powers necessary to carry out the purposes of NRS 445A.300 to 445A.730, inclusive ~~§~~, *and section 1.5 of this act;* and

~~§~~ 11. Delegate to the Division any function or authority granted to the Director under NRS 445A.300 to 445A.730, inclusive ~~§~~, *and section 1.5 of this act.*



Secs. 7 and 8. (Deleted by amendment.)

Sec. 9. NRS 445A.505 is hereby amended to read as follows:

445A.505 1. A holder of a permit for a publicly owned treatment works shall notify and supply the Department with information concerning any new or increased introduction of pollutants into the treatment works.

2. All holders of permits issued under NRS 445A.465 to 445A.510, inclusive, whose production increases, or whose process modifications or facility expansion result in new or increased discharges or injections of fluids through a well shall report such changes by submitting a new application for a permit to the Department.

3. All holders of permits issued under NRS 445A.465 to 445A.510, inclusive, whose production increases, or whose process modifications or facility expansion result in the infiltration of contaminants to underground waters of this State as a result of contaminated fluids or contaminated soils shall report the contamination to the Department.

Secs. 10-12. (Deleted by amendment.)

Sec. 13. NRS 445A.590 is hereby amended to read as follows:

445A.590 1. The Department shall notify each interested person, ~~and~~ appropriate governmental agency *and affected Indian tribe* of each complete application for a permit, and shall provide them an opportunity to submit their written views and recommendations thereon. The provisions of this subsection do not apply to an application for a temporary permit issued pursuant to NRS 445A.485.

2. Notification must be in the manner provided in the regulations adopted by the Commission pursuant to applicable federal law.

3. If the treatment works are to discharge into any waters of this State which flow directly or ultimately into an irrigation reservoir upstream from which are located urban areas in two or more counties and if each county has a population of 55,000 or more, the Department must include in its notification each city, county, unincorporated town and irrigation district located downstream from the point of discharge. Notice to an unincorporated town must be given to the town board or advisory council if there is one.

Sec. 14. NRS 445A.595 is hereby amended to read as follows:

445A.595 The Commission shall provide by regulation:

1. An opportunity for each permit applicant, interested agency, city, county, *Indian tribe* or irrigation district located downstream



from the point of discharge, or any person to request a public hearing conducted by the Director with respect to each permit application; and

2. For public notice of the hearing, at least 30 days before the date of the hearing.

↳ The provisions of this section do not apply to an application for a temporary permit issued pursuant to NRS 445A.485.

Sec. 15. NRS 445A.655 is hereby amended to read as follows:

445A.655 To enforce the provisions of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* or any regulation, order or permit issued thereunder, the Director or authorized representative of the Department may, upon presenting proper credentials:

1. Enter any premises in which any act violating NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* originates or takes place or in which any required records are required to be maintained;

2. At reasonable times, have access to and copy any records required to be maintained;

3. Inspect any equipment or method for continuing observation; and

4. Have access to and sample any discharges or injection of fluids into waters of the State which result directly or indirectly from activities of the owner or operator of the premises where the discharge originates or takes place or the injection of fluids through a well takes place.

Sec. 16. NRS 445A.675 is hereby amended to read as follows:

445A.675 1. Except as otherwise provided in NRS 445A.707, if the Director finds that any person is engaged or is about to engage in any act or practice which violates any provision of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act*, any standard or other regulation adopted by the Commission pursuant to those sections, or any permit issued by the Department pursuant to those sections, except for any violation of a provision concerning a diffuse source, the Director may:

(a) Issue an order pursuant to NRS 445A.690;

(b) Commence a civil action pursuant to NRS 445A.695 or 445A.700; or

(c) Request that the Attorney General institute by indictment or information a criminal prosecution pursuant to NRS 445A.705 and 445A.710.

2. The remedies and sanctions specified in subsection 1 are cumulative, and the institution of any proceeding or action seeking



any one of the remedies or sanctions does not bar any simultaneous or subsequent action or proceeding seeking any other of the remedies or sanctions.

Sec. 17. NRS 445A.680 is hereby amended to read as follows:

445A.680 Except as otherwise provided in NRS 445A.707, if the Director finds that any person is engaged or about to engage in any act or practice which violates any provision of NRS 445A.565 and 445A.570, *and section 1.5 of this act*, or any standard or other regulation adopted pursuant thereto, with respect to a diffuse source:

1. The Director may issue an order:

(a) Specifying the provision or provisions of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* or the regulation or order alleged to be violated or about to be violated;

(b) Indicating the facts alleged which constitute a violation thereof; and

(c) Prescribing the necessary corrective action to be taken and a reasonable period for completing that corrective action,

↳ but no civil or criminal penalty may be imposed for failure to obey the order.

2. If the corrective action is not taken or completed, or without the Director first issuing an order:

(a) The Director may commence a civil action pursuant to NRS 445A.695; or

(b) The Department may compel compliance by injunction or other appropriate remedy pursuant to subsection 4 of NRS 445A.700.

Sec. 18. NRS 445A.690 is hereby amended to read as follows:

445A.690 1. Except as otherwise provided in NRS 445A.707, if the Director finds that any person is engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act*, or of any rule, regulation or standard promulgated by the Commission, or of any permit or order issued by the Department pursuant to NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act*, the Director may issue an order:

(a) Specifying the provision or provisions of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* or the regulation or order alleged to be violated or about to be violated;

(b) Indicating the facts alleged which constitute a violation thereof; and

(c) Prescribing the necessary corrective action to be taken and a reasonable period for completing that corrective action.



2. Any compliance order is final and is not subject to review unless the person against whom the order is issued, within 30 days after the date on which the order is served, requests by written petition a hearing before the Commission.

Sec. 19. NRS 445A.695 is hereby amended to read as follows:

445A.695 1. Except as otherwise provided in NRS 445A.707, the Director may seek injunctive relief in the appropriate court to prevent the continuance or occurrence of any act or practice which violates any provision of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* or any permit, rule, regulation or order issued pursuant thereto.

2. On a showing by the Director that a person is engaged, or is about to engage, in any act or any practice which violates or will violate any of the provisions of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* or any rule, regulation, standard, permit or order issued pursuant to those provisions, the court may issue, without bond, any prohibitory and mandatory injunctions that the facts may warrant, including temporary restraining orders issued ex parte or, after notice and hearing, preliminary injunctions or permanent injunctions.

3. Failure to establish lack of an adequate remedy at law or irreparable harm is not a ground for denying a request for a temporary restraining order or injunction.

4. The court may require the posting of a sufficient performance bond or other security to ensure compliance with the court order within the period prescribed.

Sec. 20. NRS 445A.700 is hereby amended to read as follows:

445A.700 1. Except as otherwise provided in NRS 445C.010 to 445C.120, inclusive, a person who violates or aids or abets in the violation of any provision of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* or of any permit, regulation, standard or final order issued thereunder, except a provision concerning a diffuse source, shall pay a civil penalty of not more than \$25,000 for each day of the violation. The civil penalty imposed by this subsection is in addition to any other penalties provided pursuant to NRS 445A.300 to 445A.730, inclusive [], *and section 1.5 of this act*.

2. Except as otherwise provided in NRS 445C.010 to 445C.120, inclusive, in addition to the penalty provided in subsection 1, the Department may recover from the person actual damages to the State resulting from the violation of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act*, any regulation or standard adopted by the Commission, or permit or final order issued



by the Department, except the violation of a provision concerning a diffuse source.

3. Damages may include:

(a) Any expenses incurred in removing, correcting and terminating any adverse effects resulting from a discharge or the injection of contaminants through a well; and

(b) Compensation for any loss or destruction of wildlife, fish or aquatic life.

4. In addition to any other remedy provided by this chapter, the Department may compel compliance with any provision of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act*, or of any permit, regulation, standard or final order adopted or issued thereto, by injunction or other appropriate remedy. The Department may institute and maintain in the name of the State of Nevada any such enforcement proceedings.

Sec. 21. NRS 445A.710 is hereby amended to read as follows:

445A.710 1. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained by the provisions of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act*, or by any permit, rule, regulation or order issued pursuant thereto, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under the provisions of NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act*, or by any permit, rule, regulation or order issued pursuant thereto, is guilty of a gross misdemeanor and shall be punished by a fine of not more than \$10,000 or by imprisonment in the county jail for not more than 364 days, or by both fine and imprisonment.

2. The penalty imposed by subsection 1 is in addition to any other penalties, civil or criminal, provided pursuant to NRS 445A.300 to 445A.730, inclusive ~~§~~, *and section 1.5 of this act*.

Sec. 22. NRS 445A.715 is hereby amended to read as follows:

445A.715 Hearings initiated pursuant to NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* shall be held before the Commission and comply with the provisions of such rules and regulations as the Commission may prescribe.

Sec. 23. NRS 445A.725 is hereby amended to read as follows:

445A.725 Nothing in NRS 445A.300 to 445A.730, inclusive, *and section 1.5 of this act* shall be construed to amend, modify or supersede the provisions of title 48 of NRS or any rule, regulation or order promulgated or issued thereunder by the State Engineer.



Sec. 24. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 23, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks; and

(b) On January 1, 2022, for all other purposes.

