ADOPTED REGULATION OF THE

STATE ENVIRONMENTAL COMMISSION

LCB File No. R189-05

Effective May 4, 2006

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

AUTHORITY: §§1-59, NRS 445B.210 and 445B.300.

A REGULATION relating to the control of air pollution; establishes the Nevada Mercury Air Emissions Control Program to require a mercury operating permit to construct and the application of certain controls of mercury emissions for thermal units that emit mercury which are located at stationary sources that conduct mining of gold or silver ore; and providing other matters properly relating thereto.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 41, inclusive, of this regulation.

Sec. 2. ***As used in sections 2 to 41, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 21, inclusive, of this regulation have the meanings ascribed to them in those sections.***

Sec. 3. ***"De minimis mercury emissions" means mercury emissions from a thermal unit that emits mercury which are determined by the Director pursuant to section 25 of this regulation to be insufficient to require compliance with the requirements for a mercury operating permit or the application of NvMACT as set forth in the Nevada Mercury Air Emissions Control Program established pursuant to section 24 of this regulation.***

Sec. 4. ***"Existing thermal unit that emits mercury" means a thermal unit that emits mercury which was constructed before March 8, 2006.***

Sec. 5. ***"Mercury" means elemental mercury and all compounds of mercury.***

Sec. 6. ***"Mercury co-product" means any mercury which is collected from the site of a stationary source that conducts precious metals mining for shipment to another location to be sold or recycled.***

Sec. 7. ***"Mercury early reduction credit" means an extension of the time required to apply NvMACT pursuant to sections 2 to 41, inclusive, of this regulation, which may be granted by the Director in his taking final action concerning the proposed conditions for the mercury operating permit to construct pursuant to section 35 of this regulation if the owner or operator of an existing thermal unit that emits mercury has installed additional controls for mercury emissions.***

Sec. 8. ***"Mercury emissions" means mercury which is released into the atmosphere.***

Sec. 9. ***"Mercury operating permit to construct" means a permit signed and issued by the Director for the operation, construction or modification of a thermal unit that emits mercury, which includes, without limitation:***

1. For an existing thermal unit that emits mercury, the conditions of operation that apply to the existing thermal unit that emits mercury.

2. For a new thermal unit that emits mercury:

(a) Authorization for:

(1) The construction of the new thermal unit that emits mercury; and

(2) An initial period of operation of the new thermal unit that emits mercury.

(b) The conditions which apply to the construction and operation of the new thermal unit that emits mercury.

3. For a modified thermal unit that emits mercury:

(a) Authorization for:

(1) The construction of a physical modification to or a change in the method of operation of a thermal unit that emits mercury; and

(2) An initial period of operation of the modified thermal unit that emits mercury.

(b) The conditions which apply to the modified thermal unit that emits mercury.

Sec. 10. *"Modified thermal unit that emits mercury" means a thermal unit that emits mercury for which an application is submitted on or after May 4, 2006, to change the method of operation of or to physically change the thermal unit that emits mercury in a manner which results in an increase in the amount of mercury that will be or has the potential to be emitted into the atmosphere.*

Sec. 11. *"Nevada maximum achievable control technology," abbreviated as "NvMACT," means a standard, method of control or any other limitation which is applied to an existing thermal unit that emits mercury, a new thermal unit that emits mercury or a modified thermal unit that emits mercury, and which is:*

1. Designed to reduce the level of mercury emissions; and

2. Determined by the Director to be the maximum degree of reduction of mercury emissions that is achievable for the thermal unit that emits mercury.

Sec. 12. *"New thermal unit that emits mercury" means a thermal unit that emits mercury which has obtained, on or after May 4, 2006, an operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 41, inclusive, of this regulation, that authorizes the construction of the thermal unit that emits mercury.*

Sec. 13. *"Phase-1 application" means an application for a mercury operating permit to construct for an existing thermal unit that emits mercury which is submitted in accordance with section 33 of this regulation.*

Sec. 14. ***"Phase-2 application" means an application which is submitted in accordance with section 34 of this regulation to revise a mercury operating permit to construct which was issued pursuant to a phase-1 application for an existing thermal unit that emits mercury.***

Sec. 15. ***"Precious metals mining" means the mining of gold or silver ore by the owner or operator of a stationary source that belongs to Industry Group 104, Gold and Silver Ores, of Major Group 10, Metal Mining, of the Standard Industrial Classification Manual, which is adopted by reference pursuant to subsection 11 of NAC 445B.221.***

Sec. 16. ***"Presumptive Nevada maximum achievable control technology," abbreviated as "presumptive NvMACT," means the technologies to control mercury emissions which:***

1. Have been implemented before May 4, 2006; and

2. Are associated with the system or process units of the tier-1 thermal units that emit mercury which are described and set forth in section 22 of this regulation.

Sec. 17. ***"Thermal unit" means an emission unit which:***

1. Is located at a stationary source that conducts precious metals mining; and

2. Uses direct or indirect sources of heat energy.

Sec. 18. ***"Thermal unit that emits mercury" means an emission unit which:***

1. Is located at a stationary source that conducts precious metals mining; and

2. Emits or has the potential to emit mercury that:

(a) Does not constitute a fugitive emission; and

(b) Is generated by direct or indirect sources of heat energy.

Sec. 19. ***"Tier-1 thermal unit that emits mercury" means any existing thermal unit that emits mercury which:***

1. Emits mercury at a level that is greater than de minimis mercury emissions; and

2. Is located at any of the mining locations and includes the associated system or process units described and set forth in section 23 of this regulation.

Sec. 20. *"Tier-2 thermal unit that emits mercury" means an existing thermal unit that emits mercury which:*

1. Emits or has the potential to emit mercury at a level that is greater than de minimis mercury emissions; and

2. Is not a tier-1 thermal unit that emits mercury.

Sec. 21. *"Tier-3 thermal unit" means a thermal unit which:*

1. Without any controls for mercury emissions, is not capable of and does not have the potential to emit mercury into the atmosphere;

2. Obtains an operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 41, inclusive, of this regulation, that includes the appropriate conditions to limit the potential to emit mercury, without any controls for mercury emissions, to an amount not to exceed de minimis mercury emissions; or

3. Has de minimis mercury emissions.

Sec. 22. *The technologies to control mercury emissions which are set forth in this section by the associated system or process unit of the tier-1 thermal unit that emits mercury, and none other, are presumptive NvMACT:*

1. For Goldstrike Mining Operations of Barrick Gold Corporation:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS*
Ore roasting circuits	*Gas quenching, wet gas condenser, wet electrostatic precipitator, mercury adsorption tower*
Carbon reactivation kiln, unit 2 (Drum)	*Wet venturi scrubber, sulfur-impregnated carbon filtration unit*
Autoclave circuits (Units 1, 2, 2-3, 4 and 5-6)	*Four wet venturi scrubbers (Units 1, 2-3, 4 and 5-6)*
Retorts	*Mercury condensers and scrubbers with carbon filtration canisters*
Retort room exhaust	*Sulfur-impregnated carbon scrubber unit (Stack combined with retort stack)*
Electric induction furnaces	*Cyclone and baghouse, sulfur-impregnated carbon filtration scrubber unit*
Electrowinning cells	*Sulfur-impregnated carbon filtration scrubber unit (Stack combined with electrowinning furnace)*

2. For Newmont Mining Corporation:

(a) For the Gold Quarry Operations Area:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS*
North and south CFB ore preheaters	*Baghouses, SO_2 scrubber*
North and south CFB ore roasters	*Roaster off-gas quench, wet scrubber, electrostatic precipitator, wash tower, SO_2 scrubber, mercurous chloride scrubber*
Carbon regeneration kilns, 1 and 2 (Drum)	*Carbon adsorption unit, wet scrubber*
Mercury retort furnaces	*Carbon filter pack*
Electric induction furnaces	*Carbon filter pack, baghouse*
Pregnant and barren solution tanks	*Carbon adsorption unit, wet scrubber*

(b) For the Twin Creeks Mine:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS*
Juniper mill carbon kiln (Drum)	*Wet scrubber, mercury scrubber*
Pinon mill carbon regeneration kiln (Drum)	*Wet scrubber*
Sage mill autoclaves	*Venturi scrubber*
Mercury retort furnaces	*Carbon adsorption*
Juniper induction furnaces	*Baghouse*

3. For the Pipeline Mining Operation of Cortez Gold Mines of Placer Dome, Inc.:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS*
Electric carbon reactivation kilns, 1 and 2	*Chemical treatment, added wet scrubber 10/05*
Electric induction refinery furnaces, 1 and 2	*Chemical treatment, baghouse*
Electrowinning cells	*Chemical treatment*

4. For the Jerritt Canyon Mine of Queenstake Resources, Ltd.:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS*
East and west roasters	*Gas quench scrubber, venturi dust scrubber, SO_2 scrubber, mercury scrubber, tail gas scrubber, sodium hypochlorite injection system*
Refinery and carbon regeneration kiln	*Venturi mercury wet-scrubbing/carbon-polishing system*

Sec. 23. *The existing thermal units that emit mercury which are set forth in this section, and none other, are tier-1 thermal units that emit mercury:*

1. For Goldstrike Mining Operations of Barrick Gold Corporation:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*NUMBER OF UNITS*	*MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION*
Ore roasting circuits	*2*	*S2.209.1 and S2.209.2 from Air Permit 1041-0739*
Carbon reactivation kiln, unit 2 (Drum)	*1*	*Lockheed Haggerty, serial number 119-122*
Autoclave circuits (units 1, 2, 2-3, 4 and 5-6)	*6*	*Eaton Metals*
Retorts	*3*	*EnviroCare Systems*
Retort room exhaust	*1*	*Vented through controls on the retorts*
Electric induction furnaces	*2*	*Inductotherm Corporation:* *East: Model number 125 KW PowerTrak and serial number 91-50165-246-11* *West: Model number 75 KW PowerTrak and serial number 87-77730-246-11*
Electrowinning cells	*16*	*Located on the second floor of the secured refinery building*

2. For Newmont Mining Corporation:

(a) For the Gold Quarry Operations Area:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*NUMBER OF UNITS*	*MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION*
North and south CFB ore preheaters	*2*	*Thermal Transfer, custom-made*
North and south CFB ore roasters	*2*	*Mark Steel, custom-made*
Carbon regeneration kilns, 1 and 2 (Drum)	*2*	*Boliden-Allis, custom-made*
Mercury retort furnaces	*7*	*Saracco Manufacturing Corporation, custom-made*
Electric induction furnaces	*3*	*Inductotherm Corporation*
Pregnant and barren solution tanks	*3*	*Two tanks located inside and one tank located immediately outside the refinery building*

(b) For the Twin Creeks Mine:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*NUMBER OF UNITS*	*MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION*
Juniper mill carbon kiln (Drum)	*1*	*Lockheed Haggerty*
Pinon mill carbon regeneration kiln (Drum)	*1*	*Lockheed Haggerty, Serial number 171-63*

Sage mill autoclaves	*2*	*Eaton Metals*
Mercury retort furnaces, A, B, C and D	*4*	*Lockheed Haggerty:* *Retorts A-D: Model number 13053* *Retort A: Serial number 171-64a* *Retort B: Serial number 171-64b* *Retort C: Serial number 16082, equipment number 370-514-103* *Retort D: Serial number 16082, equipment number 370-514-104*
Juniper induction furnaces, east and west	*2*	*Inductotherm Corporation:* *East: New furnace located in smelting area* *West: Serial number 750-72010-3-87*

3. For the Pipeline Mining Operation of Cortez Gold Mines of Placer Dome, Inc.:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*NUMBER OF UNITS*	*MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION*
Electric carbon reactivation kilns, 1 and 2	*2*	*Lockheed Haggarty, 48X40*

Electric induction refinery furnaces, 1 and 2	*2*	*Inductotherm Corporation, VIP PowerTrak-R; serial numbers 80354 and 59585*
Electrowinning cells	*6*	*Summit Valley, 125CF*

4. For the Jerritt Canyon Mine of Queenstake Resources, Ltd.:

SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY	*NUMBER OF UNITS*	*MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION*
East and west roasters	*2*	*Keeler/Dorr-Oliver:* *East: Serial number 46DD 3250* *West: Serial number 46DD 3050*
Refinery and carbon regeneration kiln	*1*	*Elmco Technologies, serial number 44DD 3071*

Sec. 24. *The Commission will establish and the Director shall implement the Nevada Mercury Air Emissions Control Program in accordance with the provisions set forth in sections 2 to 41, inclusive, of this regulation to require a mercury operating permit to construct and the application of NvMACT for thermal units that emit mercury.*

Sec. 25. *1. The Director shall make an initial determination of the de minimis mercury emissions for thermal units that emit mercury not later than July 3, 2006.*

2. The Director may, upon written request and satisfactory demonstration by the owner or operator of a thermal unit that emits mercury, determine that the mercury emissions from the

thermal unit that emits mercury are de minimis mercury emissions. Within 60 days after receiving a written request pursuant to this subsection, the Director shall make an initial determination of the mercury emissions from the thermal unit that emits mercury to determine whether the mercury emissions are de minimis mercury emissions.

3. In making a determination pursuant to subsection 1 or 2, if a stationary source has more than one thermal unit that emits mercury, the Director may, after considering the impact of the combined mercury emissions from the thermal units that emit mercury at the stationary source, make an initial determination concerning whether the mercury emissions from one or more of the thermal units that emit mercury are de minimis mercury emissions.

4. An initial evaluation of de minimis mercury emissions determined pursuant to subsection 1, 2 or 3 must be made public and maintained on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701, and at a location to be determined by the Director in the air quality region where the source is located, for 30 days to enable public participation and comment. The Director shall provide public notice of the location in the air quality region in which the initial evaluation will be made public and maintained on file.

5. The Director shall:

(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the stationary source is located or in a state publication designed to give general public notice;

(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;

(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public; and

(d) Establish a 30-day period for comment from the public.

6. The Director shall make a final determination of de minimis mercury emissions within 90 days after the date of the notice of the initial evaluation provided pursuant to subsection 5. The final notification must be made public and maintained on file with the Director in accordance with subsection 4 and noticed to the public in accordance with paragraphs (a), (b) and (c) of subsection 5.

Sec. 26. *No owner or operator of a tier-1 thermal unit that emits mercury, tier-2 thermal unit that emits mercury, new thermal unit that emits mercury or modified thermal unit that emits mercury may cause or permit the discharge of mercury into the atmosphere without applying NvMACT for the control of mercury emissions pursuant to the provisions of sections 2 to 41, inclusive, of this regulation.*

Sec. 27. *1. A mercury operating permit to construct is required for each:*

(a) Existing thermal unit that emits mercury, other than a tier-3 thermal unit, pursuant to the schedules and requirements set forth in sections 30 to 36, inclusive, of this regulation; and

(b) New thermal unit that emits mercury or modified thermal unit that emits mercury pursuant to the schedules and requirements set forth in sections 37 to 40, inclusive, of this regulation.

2. The owner or operator of a new thermal unit that emits mercury or a modified thermal unit that emits mercury must apply for and obtain a new or revised mercury operating permit to construct before the construction of or modification to the thermal unit that emits mercury may commence.

3. A mercury operating permit to construct may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment which reflects a change of ownership or the name of the stationary source for the original mercury operating permit to construct in accordance with the procedures set forth in NAC 445B.319.

Sec. 28. *1. An owner or operator of a stationary source which conducts precious metals mining shall obtain a mercury operating permit to construct for:*

(a) A tier-1 thermal unit that emits mercury;

(b) A tier-2 thermal unit that emits mercury;

(c) A new thermal unit that emits mercury; and

(d) A modified thermal unit that emits mercury.

2. Any application for a mercury operating permit to construct which is submitted to the Director pursuant to the provisions set forth in sections 2 to 41, inclusive, of this regulation must be submitted on a form provided by the Director.

Sec. 29. *1. An owner or operator of a tier-3 thermal unit:*

(a) Must have an operating permit issued pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 41, inclusive, of this regulation, to operate the thermal unit;

(b) Shall submit documentation to the Director on an annual basis which certifies that the thermal unit satisfies the criteria to be a tier-3 thermal unit; and

(c) Is not required to submit an application for or obtain a mercury operating permit to construct.

2. Within 90 days after the date of final notification of the determination of de minimis mercury emissions by the Director pursuant to section 25 of this regulation, an owner or operator of a tier-3 thermal unit shall:

(a) Submit an application to revise the conditions of the operating permit of the stationary source that was issued pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 41, inclusive, of this regulation, to limit the potential to emit mercury, without any controls for mercury emissions, to an amount not to exceed de minimis mercury emissions; or

(b) If the owner or operator of the tier-3 thermal unit has a Class III operating permit, submit an application to convert the Class III operating permit of the stationary source to a Class II operating permit which includes conditions to limit the potential to emit mercury, without any controls for mercury emissions, to an amount not to exceed de minimis mercury emissions.

Sec. 30. *1. An owner or operator of a tier-1 thermal unit that emits mercury shall submit a phase-1 application to the Director not later than August 2, 2006.*

2. Except as otherwise provided in section 31 of this regulation, an owner or operator of a tier-2 thermal unit that emits mercury shall submit a phase-1 application to the Director not later than October 31, 2006.

3. An owner or operator of a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury shall submit a phase-2 application to the Director not later than February 4, 2008.

Sec. 31. *Within 90 days after the date of final notification of the determination of de minimis mercury emissions pursuant to section 25 of this regulation:*

1. If the owner or operator of an existing thermal unit that emits mercury determines that the thermal unit that emits mercury does or has the potential to emit mercury at a level which is greater than de minimis mercury emissions and has not yet submitted an application pursuant to subsection 1 or 2 of section 30 of this regulation, the owner or operator must submit a phase-1 application to the Director to obtain a mercury operating permit to construct for the thermal unit that emits mercury; or

2. If the owner or operator of a stationary source has a mercury operating permit to construct which was issued pursuant to a phase-1 application for one or more thermal units that emit mercury and determines that any of the thermal units that emit mercury emits or has the potential to emit mercury at a level which is greater than the de minimis mercury emissions, the owner or operator must submit an application to revise the mercury operating permit to construct to authorize the operation of the thermal unit that emits mercury at a level which is greater than de minimis mercury emissions.

Sec. 32. *A phase-1 application, a phase-2 application and an application for a revision of a mercury operating permit to construct for an existing thermal unit that emits mercury must include:*

1. Information to identify the applicant, including the name and address of the company or the name and address of the plant if different from that of the company, the name of the owner of the company and his agent, and the name and telephone number of the manager of the plant or another appropriate person to contact;

2. An identification of each thermal unit that emits mercury;

3. A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each thermal unit that emits mercury which is a part of the stationary source;

4. Limitations on the operation of the stationary source or any standards for work practices which affect mercury emissions at the stationary source;

5. The location of any records that the applicant must keep pursuant to the requirements of the mercury operating permit to construct if the records are kept at a location other than the emitting stationary source;

6. Additional controls which will be implemented by a tier-1 thermal unit that emits mercury or tier-2 thermal unit that emits mercury to reduce the level of mercury emissions for which the owner or operator is requesting mercury early reduction credit; and

7. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

Sec. 33. *A phase-1 application or an application for a revision of a mercury operating permit to construct which was issued pursuant to a phase-1 application for an existing thermal unit that emits mercury must include:*

1. An identification and a description of any equipment for the control of mercury emissions, including, without limitation, any controls that are presumptive NvMACT; and

2. A proposed monitoring plan which must be complied with by the applicant until a mercury operating permit to construct is issued pursuant to the phase-1 application and which includes, without limitation:

(a) For a tier-1 thermal unit that emits mercury:

(1) Procedures for the operation and maintenance of the thermal unit.

(2) Methods of the monitoring of and recordkeeping for any controls for mercury processes and emissions.

(3) A proposed schedule for sampling and testing of mercury emissions and tests of performance to be conducted on an annual basis in accordance with the procedures set forth in NAC 445B.252. The owner or operator of the thermal unit that emits mercury must conduct the initial sampling and testing of mercury emissions and tests of performance and submit the results of the initial sampling and testing and tests of performance to the Director not later than December 31, 2006. After the owner or operator of the thermal unit has submitted the results of the initial sampling and testing of mercury emissions and tests of performance, the owner or operator may submit a request to the Director to waive the requirement for annual sampling and testing of mercury emissions or consider other schedules for the frequency with which such sampling and testing and tests of performance must be conducted.

(4) A requirement to report the level of mercury emissions on an annual basis which must be based on mercury emissions test data.

(5) A requirement to report any mercury co-product on an annual basis.

(b) For a tier-2 thermal unit that emits mercury:

(1) Procedures for the operation and maintenance of the thermal unit.

(2) Methods of the monitoring of and recordkeeping for any controls for mercury processes and emissions.

(3) A proposed schedule for sampling and testing of mercury emissions and tests of performance for the thermal unit that emits mercury.

(4) A requirement to report the level of mercury emissions on an annual basis which must be based on mercury emissions test data.

(5) A requirement to report any mercury co-product on an annual basis.

Sec. 34. *A phase-2 application for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury, or an application for a revision of a mercury operating permit to construct which was issued pursuant to a phase-2 application for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury must include:*

1. An analysis conducted by the applicant which:

(a) Determines the standards, methods of control or other limitations to be applied to the thermal unit for the reduction of mercury emissions that the applicant deems sufficient for the Director to determine to be NvMACT for the thermal unit that emits mercury; and

(b) Sets forth a list of similar thermal units that emit mercury which are used for precious metal mining that includes, without limitation:

(1) Any methods or technologies to control mercury emissions which are associated with the thermal units that emit mercury;

(2) The level of mercury emissions associated with each method or technology to control mercury emissions from the thermal units that emit mercury;

(3) The design for each method or technology to control mercury emissions from the thermal units that emit mercury;

(4) Costs associated with reductions of mercury emissions as a result of each method or technology to control mercury emissions from the thermal units that emit mercury;

(5) Costs associated with energy for each method or technology to control mercury emissions from the thermal units that emit mercury; and

(6) Consistent with section 112(d)(2) of the Act, any nonair quality health and environmental impacts and energy requirements for each method or technology to control mercury emissions from the thermal units that emit mercury.

2. A proposed monitoring plan which includes, without limitation:

(a) Procedures for the operation and maintenance of the thermal unit.

(b) Methods of the monitoring of and recordkeeping for any controls for mercury processes and emissions.

(c) A proposed schedule for sampling and testing of mercury emissions and tests of performance for the thermal unit that emits mercury which must be conducted on an annual basis in accordance with NAC 445B.252.

(d) A requirement to report the level of mercury emissions on an annual basis which must be based on mercury emissions test data.

(e) A requirement to report any mercury co-product on an annual basis.

Sec. 35. *For each tier-1 thermal unit that emits mercury and tier-2 thermal unit that emits mercury:*

1. For a phase-1 application, phase-2 application or an application for the revision of a mercury operating permit to construct for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury, within 30 days after the date of receipt of the application, the Director shall determine whether the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. If an incomplete application is returned to the applicant, the applicant must resubmit a complete application within 15 days after the applicant receives the returned incomplete application. If substantial additional information is

not required, the Director shall determine the application to be complete. The official date of submittal of the application shall be deemed to be the date on which the Director determines that the application is complete or the 31st day after the date of receipt of the most recently submitted application, whichever is earlier.

2. For a phase-1 application or an application for the revision of a mercury operating permit to construct which was issued pursuant to a phase-1 application for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury, within 180 days after the official date of submittal, the Director shall:

(a) Propose the conditions for a mercury operating permit to construct or a revision of a mercury operating permit to construct for the thermal unit that emits mercury;

(b) Include the presumptive NvMACT for the tier-1 thermal unit that emits mercury; and

(c) If the applicant requests mercury early reduction credit, consider the following for each thermal unit that emits mercury:

(1) The best controls available for mercury emissions.

(2) The measures that reduce the volume or eliminate mercury emissions through process changes, substitution of materials or any other modifications.

(3) The enclosure of systems or processes to eliminate mercury emissions.

(4) The collection, capture or treatment of mercury emissions.

(5) The design, equipment, work practice or operational standards of the thermal unit that emits mercury, including, without limitation, the requirements for training and certification of operators of the thermal unit that emits mercury.

(6) The differences in the age, remaining operating life and configurations of similar thermal units that emit mercury. The Director may also consider the differences in the

concentration of mercury in the ore, size and any other relevant factors of the similar thermal units that emit mercury.

(7) Any combination of subparagraphs (1) to (6), inclusive.

3. For a phase-2 application or an application for the revision of a mercury operating permit to construct which was issued pursuant to a phase-2 application for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury, within 9 months after the official date of submittal, the Director shall:

(a) Propose the conditions for a mercury operating permit to construct or a revision of a mercury operating permit to construct for the thermal unit that emits mercury; and

(b) Make a determination of NvMACT for the thermal unit that emits mercury in which the Director shall consider the following for each thermal unit that emits mercury:

(1) The maximum degree of reduction of mercury emissions that is achievable for the thermal unit after considering:

(I) The cost of achieving such a reduction; and

(II) Consistent with section 112(d)(2) of the Act, any nonair quality health and environmental impacts and energy requirements for each method or technology to control mercury emissions from the thermal units that emit mercury to implement NvMACT.

(2) The measures that reduce the volume or eliminate mercury emissions through process changes, substitution of materials or any other modifications.

(3) The enclosure of systems or processes to eliminate mercury emissions.

(4) The collection, capture or treatment of mercury emissions.

(5) The design, equipment, work practice or operational standards of the thermal unit that emits mercury, including, without limitation, the requirements for training and certification of operators of the thermal unit that emits mercury.

(6) The differences in the age, remaining operating life and configurations of similar thermal units that emit mercury. The Director may also consider the differences in the concentration of mercury in the ore, size and any other relevant factors of the similar thermal units that emit mercury.

(7) Any combination of subparagraphs (1) to (6), inclusive.

4. If, after the official date of submittal of an application pursuant to subsection 1, the Director discovers that additional information is required to act on an application, the Director may request additional information necessary to determine whether the proposed construction or operation will comply with all of the requirements set forth in sections 2 to 41, inclusive, of this regulation. The applicant must provide in writing any additional information that the Director requests within the time specified in the request of the Director. Any delay in the submittal of the requested information will result in a corresponding delay in the action of the Director on the application submitted to the Director.

5. The Director's review and the proposed conditions for a mercury operating permit to construct or a revision of a mercury operating permit to construct must be made public and maintained on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701, and at a location to be determined by the Director in the air quality region where the source is located, for 30 days to enable public participation and comment. The Director shall provide public notice of the location in the air quality region in which the initial evaluation will be made public and maintained on file.

6. The Director shall:

(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the stationary source is located or in a state publication designed to give general public notice;

(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;

(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public; and

(d) Establish a 30-day period for comment from the public.

7. In addition to the requirements set forth in subsections 5 and 6, the notice required for a mercury operating permit to construct or for a revision of a mercury operating permit to construct must identify:

(a) The stationary source and the name and address of the applicant;

(b) The name and address of the authority processing the mercury operating permit to construct;

(c) The activity or activities involved in the mercury operating permit to construct and the change of mercury emissions involved in any revision of the mercury operating permit to construct;

(d) The presumptive NvMACT or the determination of NvMACT, as appropriate;

(e) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the proposed conditions for the mercury operating permit to construct, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the mercury

operating permit to construct and which are relevant to the proposed conditions for the mercury operating permit to construct; and

(f) A brief description of the procedures for public comment and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

8. All comments concerning the Director's review and the conditions proposed by the Director concerning the phase-1 application or phase-2 application for a mercury operating permit to construct or of a revision of a mercury operating permit to construct must be submitted in writing to the Director within 30 days after the public notice required to be provided pursuant to subsection 6. The Director shall give notice of any public hearing at least 30 days before the date of the hearing. The Director shall keep a record of the names of any persons who made comments and of the issues raised during the process for public participation.

9. Within 12 months after the official date of submittal of a phase-1 application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct which was issued pursuant to a phase-1 application, the Director shall take final action concerning the proposed conditions for the mercury operating permit to construct or the proposed revision of a mercury operating permit to construct. The Director shall make his decision by taking into account:

(a) Written comments from the public;

(b) Comments made during public hearings concerning the Director's review and the conditions proposed by the Director for the mercury operating permit to construct; and

(c) Information submitted by proponents of the project.

10. Within 16 months after the official date of submittal of a phase-2 application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct which was issued pursuant to a phase-2 application, the Director shall take final action concerning the proposed conditions for the mercury operating permit to construct or the proposed revision of a mercury operating permit to construct. The Director shall make his decision by taking into account:

(a) Written comments from the public;

(b) Comments made during public hearings concerning the Director's review and the conditions proposed by the Director for the mercury operating permit to construct; and

(c) Information submitted by proponents of the project.

Sec. 36. *For each tier-1 thermal unit that emits mercury and tier-2 thermal unit that emits mercury:*

1. The Director shall cite the legal authority for each condition contained in the mercury operating permit to construct.

2. The mercury operating permit to construct must contain the following conditions:

(a) The holder of the mercury operating permit to construct shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes, without limitation, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.

(b) Each of the conditions and requirements of the mercury operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.

(c) The holder of the mercury operating permit to construct must comply with all conditions of the mercury operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the mercury operating permit to construct by the Director; or

(3) The reopening or revising of the mercury operating permit to construct by the holder of the mercury operating permit to construct as directed by the Director.

(d) The need to halt or reduce activity to maintain compliance with the conditions of the mercury operating permit to construct is not a defense to noncompliance with any condition of the mercury operating permit to construct.

(e) The Director may revise, revoke and reissue, reopen and revise, or terminate the mercury operating permit to construct for cause.

(f) The mercury operating permit to construct does not convey any property rights or any exclusive privilege.

(g) The holder of the mercury operating permit to construct shall provide the Director, in writing and within a reasonable time, with any information that the Director requests to determine whether cause exists for revoking or terminating the mercury operating permit to construct, or to determine compliance with the conditions of the mercury operating permit to construct.

(h) The holder of the mercury operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the mercury operating permit to construct where:

(I) The thermal unit that emits mercury is located;

(II) Activity related to mercury emissions is conducted; or

(III) Records are kept pursuant to the conditions of the mercury operating permit to construct;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the mercury operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the mercury operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the mercury operating permit to construct or applicable requirements.

(i) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the mercury operating permit to construct are true, accurate and complete.

3. The mercury operating permit to construct must contain:

(a) All applicable requirements concerning controls for mercury emissions, emission limits and standards, including, without limitation:

(1) For a mercury operating permit to construct that is issued pursuant to a phase-1 application:

(I) The applicable presumptive NvMACT for the tier-1 thermal unit that emits mercury as set forth in section 22 of this regulation; and

(II) If the owner or operator of the thermal unit that emits mercury applied for mercury early reduction credit which was granted by the Director, the additional controls which will be implemented to reduce the level of mercury emissions before the date required to submit a phase-2 application pursuant to subsection 3 of section 30 of this regulation; and

(2) For a mercury operating permit to construct that is issued pursuant to a phase-2 application:

(I) The NvMACT for the thermal unit that emits mercury which must, except as otherwise provided in sub-subparagraph (II), be implemented not later than 24 months after the date the mercury operating permit to construct is issued pursuant to the phase-2 application; and

(II) If the owner or operator of the thermal unit that emits mercury has been issued mercury early reduction credit by the Director, the additional controls which will be implemented to reduce the level of mercury emissions required to satisfy the NvMACT not later than 48 months after the date the mercury operating permit to construct is issued pursuant to the phase-2 application;

(b) Monitoring methods adequate to show compliance;

(c) Adequate recordkeeping and reporting requirements as deemed by the Director;

(d) Any requirement to report any mercury co-product on an annual basis; and

(e) Any other requirements deemed necessary by the Director.

Sec. 37. ***An application for a mercury operating permit to construct or an application for a revision of a mercury operating permit to construct for a new thermal unit that emits mercury or a modified thermal unit that emits mercury must include, without limitation:***

1. Information to identify the applicant, including the name and address of the company or the name and address of the plant if different from that of the company, the name of the owner of the company and his agent, and the name and telephone number of the manager of the plant or another appropriate person to contact;

2. An identification of each thermal unit that emits mercury;

3. A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each thermal unit that emits mercury which is a part of the stationary source;

4. Limitations on the operation of the stationary source or any standards for work practices which affect emissions of mercury at the stationary source;

5. The location of any records that the applicant must keep pursuant to the requirements of the mercury operating permit to construct, if the records are kept at a location other than the emitting stationary source;

6. An analysis conducted by the applicant which:

(a) Determines the standards, methods of control or other limitations to be applied to the thermal unit for the reduction of mercury emissions that the applicant deems sufficient for the Director to determine to be NvMACT for the thermal unit that emits mercury; and

(b) Sets forth a list of similar thermal units that emit mercury which are used for precious metal mining that includes, without limitation:

(1) Any methods or technologies to control mercury emissions which are associated with the thermal units that emit mercury;

(2) The level of mercury emissions associated with each method or technology to control mercury emissions from the thermal units that emit mercury;

(3) The design for each method or technology to control mercury emissions from the thermal units that emit mercury;

(4) Costs associated with reductions of mercury emissions as a result of each method or technology to control mercury emissions from the thermal units that emit mercury;

(5) Costs associated with energy for each method or technology to control mercury emissions from the thermal units that emit mercury; and

(6) Consistent with section 112(d)(2) of the Act, any nonair quality health and environmental impacts and energy requirements for each method or technology to control mercury emissions from the thermal units that emit mercury; and

7. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

Sec. 38. *For each new or modified thermal unit that emits mercury:*

1. Within 30 days after the date of receipt of an application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct, the Director shall determine whether the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the Director shall determine the application to be complete. Unless the Director determines that the application is incomplete within 30 days after the date of receipt of the application, the official

date of submittal of the application shall be deemed to be the date on which the Director determines that the application is complete or the 31st day after the date of receipt of the most recently submitted application, whichever is earlier.

2. Within 180 days after the official date of submittal, the Director shall:

(a) Propose the conditions for a mercury operating permit to construct or a revision of a mercury operating permit to construct for the thermal unit that emits mercury.

(b) Make a determination of NvMACT for the thermal unit that emits mercury in which the Director shall consider the following for each thermal unit that emits mercury:

(1) The maximum degree of reduction of mercury emissions that is achievable for the thermal unit after considering:

(I) The cost of achieving such a reduction; and

(II) Consistent with section 112(d)(2) of the Act, any nonair quality health and environmental impacts and energy requirements for each method or technology to control mercury emissions from the thermal unit that emits mercury to implement the NvMACT.

(2) The measures that reduce the volume or eliminate mercury emissions through process changes, substitution of materials or any other modifications.

(3) The enclosure of systems or processes to eliminate mercury emissions.

(4) The collection, capture or treatment of mercury emissions.

(5) The design, equipment, work practice or operational standards of the thermal unit that emits mercury, including, without limitation, the requirements for training and certification of operators of the thermal unit that emits mercury.

(6) The differences in the age, remaining operating life and configurations of similar thermal units that emit mercury. The Director may also consider the differences in the

concentration of mercury in the ore, size and any other relevant factors of the similar thermal units that emit mercury.

(7) Any combination of subparagraphs (1) to (6), inclusive.

(c) Make a preliminary determination to issue or deny a mercury operating permit to construct or a revision of a mercury operating permit to construct which includes any proposed conditions for the mercury operating permit to construct.

3. If, after the official date of submittal, the Director discovers that additional information is required to act on an application, the Director may request additional information necessary to determine whether the proposed construction or operation will comply with all of the requirements set forth in sections 2 to 41, inclusive, of this regulation. The applicant must provide in writing any additional information that the Director requests within the time specified in the request of the Director. Any delay in the submittal of the requested information will result in a corresponding delay in the action of the Director on the application submitted to the Director.

4. The Director's review, the proposed conditions for the mercury operating permit to construct and the preliminary intent to issue or deny a mercury operating permit to construct or a revision of a mercury operating permit to construct must be made public and maintained on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701, and at a location to be determined by the Director in the air quality region where the source is located, for 30 days to enable public participation and comment. The Director shall provide public notice of the location in the air quality region in which the initial evaluation will be made public and maintained on file.

5. The Director shall:

(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the stationary source is located or in a state publication designed to give general public notice;

(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;

(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public; and

(d) Establish a 30-day period for comment from the public.

6. In addition to the requirements set forth in subsection 5, the notice required for a mercury operating permit to construct or for a revision of a mercury operating permit to construct must identify:

(a) The stationary source and the name and address of the applicant;

(b) The name and address of the authority processing the mercury operating permit to construct;

(c) The activity or activities involved in the mercury operating permit to construct and the change of mercury emissions involved in any revision of the mercury operating permit to construct;

(d) The determination of NvMACT;

(e) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the proposed conditions for the mercury operating permit to construct, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the mercury

operating permit to construct and which are relevant to the determination of the issuance of the mercury operating permit to construct; and

(f) A brief description of the procedures for public comment and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

7. All comments concerning the Director's review, the proposed conditions for the mercury operating permit to construct and the preliminary intent for the issuance or denial of a mercury operating permit to construct or of a revision of a mercury operating permit to construct must be submitted in writing to the Director within 30 days after the public notice required to be provided pursuant to subsection 5. The Director shall give notice of any public hearing at least 30 days before the date of the hearing. The Director shall keep a record of the names of any persons who made comments and of the issues raised during the process for public participation.

8. Within 60 days after the close of the period for public participation, or 60 days after the hearing if a hearing is scheduled pursuant to this section, whichever is later, the Director shall take final action concerning the proposed conditions for the mercury operating permit to construct and whether to issue or deny a mercury operating permit to construct or the revision of a mercury operating permit to construct. The Director shall make his decision by taking into account:

(a) Written comments from the public;

(b) Comments made during public hearings concerning the Director's review and the conditions proposed by the Director for the mercury operating permit to construct; and

(c) Information submitted by proponents of the project.

Sec. 39. ***For each new thermal unit that emits mercury or modified thermal unit that emits mercury:***

1. The Director shall cite the legal authority for each condition contained in a mercury operating permit to construct.

2. A mercury operating permit to construct must contain the following conditions:

(a) The circumstances under which the mercury operating permit to construct may expire as set forth in section 40 of this regulation.

(b) The holder of the mercury operating permit to construct shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes, without limitation, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.

(c) Each of the conditions and requirements of the mercury operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.

(d) The holder of the mercury operating permit to construct must comply with all conditions of the mercury operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the mercury operating permit to construct by the Director; or

(3) The reopening or revising of the mercury operating permit to construct by the holder of the mercury operating permit to construct as directed by the Director.

(e) The need to halt or reduce activity to maintain compliance with the conditions of the mercury operating permit to construct is not a defense to noncompliance with any condition of the mercury operating permit to construct.

(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the mercury operating permit to construct for cause.

(g) The mercury operating permit to construct does not convey any property rights or any exclusive privilege.

(h) The holder of the mercury operating permit to construct shall provide the Director, in writing and within a reasonable time, with any information that the Director requests to determine whether cause exists for revoking or terminating the mercury operating permit to construct, or to determine compliance with the conditions of the mercury operating permit to construct.

(i) The holder of the mercury operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the mercury operating permit to construct where:

(I) The thermal unit that emits mercury is located;

(II) Activity related to emissions is conducted; or

(III) Records are kept pursuant to the conditions of the mercury operating permit to construct;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the mercury operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the mercury operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the mercury operating permit to construct or applicable requirements.

(j) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the mercury operating permit to construct are true, accurate and complete.

3. A mercury operating permit to construct must contain:

(a) All applicable requirements concerning controls for mercury emissions, emission limits and standards, including, without limitation, the NvMACT for the thermal unit that emits mercury;

(b) Monitoring methods adequate to show compliance;

(c) Adequate recordkeeping and reporting requirements as deemed by the Director;

(d) Any requirement to report any mercury co-product on an annual basis; and

(e) Any other requirements deemed necessary by the Director.

Sec. 40. *For a new thermal unit that emits mercury or a modified thermal unit that emits mercury:*

1. If construction will occur in one phase, a mercury operating permit to construct for a new or modified thermal unit that emits mercury expires if construction is not commenced within 18 months after the date of issuance thereof or construction of the thermal unit that

emits mercury is delayed for 18 months after initiated. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.

2. If construction will occur in more than one phase, the projected date of the commencement of construction of each phase of construction must be approved by the Director. A mercury operating permit to construct expires if the initial phase of construction is not commenced within 18 months after the projected date of the commencement of construction approved by the Director. The Director may extend only the date on which the initial phase of construction may be commenced upon a showing that the extension is justified.

Sec. 41. *1. The fee for a mercury operating permit to construct as required pursuant to sections 2 to 41, inclusive, of this regulation must be determined as follows:*

(a) For a mercury operating permit to construct pursuant to a phase-1 application, the fee must be determined in an amount, in dollars, that is equal to the amount calculated by dividing 50,000 by the total number of stationary sources that conduct precious metals mining and operate one or more thermal units that emit mercury which submit a phase-1 application. The Director shall determine the total number of stationary sources that conduct precious metals mining and operate one or more thermal units that emit mercury to be charged pursuant to this paragraph on or before August 16, 2006. Upon the determination of the total number of stationary sources that conduct precious metals mining and operate one or more thermal units that emit mercury, the Director shall notify the applicant of the amount of the application fee. An applicant must pay the entire fee when he submits the application to the Director or within 30 days after receipt of the notification by the Director of the amount of the application fee, whichever occurs later.

(b) For a mercury operating permit to construct for a new or modified thermal unit that emits mercury or for a revision of a mercury operating permit to construct, the fee is $5,000 for each application. An applicant must pay the entire fee upon submission of the application to the Director.

2. For a thermal unit that emits mercury which is a roaster, autoclave, carbon reactivation kiln, mercury retort or induction furnace, including a refining furnace or mill furnace and excluding an analytical laboratory furnace, or that uses the process of electrowinning in which mercury is recovered from a solution involving cathodes, anodes and direct currents, the owner or operator of a stationary source that conducts precious metals mining and operates one or more of such thermal units that emit mercury must submit an annual maintenance fee for each thermal unit that emits mercury. The annual maintenance fee must be determined as follows:

(a) For the fiscal year ending on June 30, 2007, the fee for each thermal unit that emits mercury must be determined in an amount, in dollars, that is equal to the amount calculated by dividing 250,000 by the total number of thermal units that emit mercury, as described in this subsection. The Director shall determine the total number of thermal units that emit mercury to be charged pursuant to this paragraph on or before May 1, 2006.

(b) For each fiscal year after the fiscal year ending on June 30, 2007, the fee for each thermal unit that emits mercury must be determined in an amount, in dollars, that is equal to the amount calculated by dividing 250,000 by the total number of thermal units that emit mercury, as described in this subsection, which have previously obtained a mercury operating permit to construct. The Director shall determine the total number of thermal units that emit

mercury to be charged pursuant to this paragraph each year on or before May 1 of the immediately preceding fiscal year.

3. The State Department of Conservation and Natural Resources shall collect all fees required pursuant to this section not later than July 1 of each year.

4. Except as otherwise provided in this subsection, the owner or operator of a source who does not pay his annual fee installments within 30 days after the date on which payment becomes due will be assessed a late penalty in the amount of 25 percent of the amount of the fees due. The late penalty must be paid in addition to the annual fees. The late penalty set forth in this subsection does not apply if, at the time that the late fee would otherwise be assessed, the owner or operator is in negotiations with the Director concerning his annual fees.

Sec. 42. NAC 445B.001 is hereby amended to read as follows:

445B.001 As used in NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation,*** unless the context otherwise requires, the words and terms defined in NAC 445B.002 to 445B.211, inclusive, have the meanings ascribed to them in those sections.

Sec. 43. NAC 445B.038 is hereby amended to read as follows:

445B.038 "Class III source" means a stationary source which is subject to the requirements set forth in NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation,*** and:

1. Which emits or has the potential to emit, individually or in combination, a total of not more than 5 tons per year of PM_{10}, NO_x, SO_2, VOC and H_2S;

2. Which emits less than 1,000 pounds of lead per year;

3. Which is not subject to the requirements of 42 U.S.C. §§ 7661 to 7661f, inclusive;

4. Which is not subject to the requirements of 40 C.F.R. Part 60;

5. Which is not subject to the requirements of 40 C.F.R. Part 61;

6. Which is not a temporary source;

7. Which is not located at or a part of another stationary source; ~~[and]~~

8. ***Which does not operate a thermal unit that emits mercury, as defined in section 18 of this regulation; and***

9. Whose owner or operator:

(a) Is not seeking a limitation on emissions to avoid the requirements of 40 C.F.R. Part 63; or

(b) Is not required to obtain an operating permit to operate the stationary source solely to comply with NAC 445B.22037 relating to surface area disturbances.

Sec. 44. NAC 445B.123 is hereby amended to read as follows:

445B.123 "Operating permit" has the meaning ascribed to it in NRS 445B.145. Unless otherwise specifically stated, the term includes ~~[a]~~ ***:***

1. A Class I, a Class II and a Class III operating permit ~~[and an]~~ ***;***

2. An operating permit to construct ~~[.]~~ ***; and***

3. A mercury operating permit to construct, as defined in section 9 of this regulation.

Sec. 45. NAC 445B.220 is hereby amended to read as follows:

445B.220 If any of the provisions of NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation,*** or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

Sec. 46. NAC 445B.22077 is hereby amended to read as follows:

445B.22077 Any portion of any affected facility not listed in NAC 445B.2208 must comply with the remaining portions of NAC 445B.001 to 445B.3497, inclusive ~~.~~ ***, and sections 2 to 41, inclusive, of this regulation.***

Sec. 47. NAC 445B.221 is hereby amended to read as follows:

445B.221 1. Title 40 C.F.R. §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165, and Appendix S and Appendix W of Title 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2002.

2. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 1, 2003.

3. Except as otherwise provided in subsection 4, the following subparts of Title 40 C.F.R. Part 60 are hereby adopted by reference as they existed on July 1, 2004:

(a) Subpart A, except §§ 60.4, 60.8(b)(3) and 60.11(e); and

(b) Subparts C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW and AAAA.

4. The amendments to subpart GG of Title 40 C.F.R. Part 60 set forth in Volume 69 of the Federal Register at pages 41346 et seq., July 8, 2004, are hereby adopted by reference.

5. Subparts A, B, C, D, E, F, H, I, J, K, L, N, O, P, Q, R, T, V, W, Y, BB and FF of Title 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, 2003.

6. Except as otherwise provided in subsection 7, the following subparts of Title 40 C.F.R. Part 63 are hereby adopted by reference:

(a) A, B, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE,

GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, EEEE, GGGG, HHHH, JJJJ, KKKK, MMMM, NNNN, OOOO, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, FFFFF, JJJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ and SSSSS, as they existed on July 1, 2004; and

(b) Subpart DDDDD as set forth in Volume 69 of the Federal Register at pages 55218 et seq., September 13, 2004.

7. The amendments to subpart YYYY of Title 40 C.F.R. Part 63 set forth in Volume 69 of the Federal Register at pages 51184 et seq., August 18, 2004, are hereby adopted by reference.

8. Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, 2003. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation,*** the provisions of 40 C.F.R. Part 72 apply.

9. Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, 2003. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation,*** the provisions of 40 C.F.R. Part 76 apply.

10. Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, and the amendments to section 7412 contained in 40 C.F.R. Part 63, Subpart C, are hereby adopted by reference as they existed on July 1, 2003.

11. The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual

may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of $40.

12. A copy of the publications which contain these provisions may be obtained from the:

(a) Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954. The price is:

(1) For the volume containing §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165 and Appendices S and W of Part 51 ..... $10

(2) For § 52.21 58

(3) For Part 60 (Sections 60.1 to end) 58

(4) For Part 60 (Appendices) 57

(5) For Parts 61 – 62 43

(6) For Part 63 (Sections 63.1 to 63.599) 58

(7) For Part 63 (Sections 63.600 to 63.1199) 50

(8) For Part 63 (Sections 63.1200 to 63.1439) 50

(9) For Part 63 (Sections 63.1440 to 63.8830) 64

(10) For Part 63 (Sections 63.8980 to end) 35

(11) For the volume containing Parts 72 and 76 61

(b) Division of State Library and Archives of the Department of Cultural Affairs for 10 cents per page.

(c) Internet at the following website: **http://www.gpoaccess.gov/nara/index.html**.

13. For the purposes of the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

14. Except as otherwise provided in subsections 8 and 9, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation*** for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

15. For the purposes of this section, "administrator" as used in the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section means the Director.

Sec. 48. NAC 445B.275 is hereby amended to read as follows:

445B.275 1. Failure to comply with any requirement of NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation,*** any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(a) Failure to apply for and obtain an operating permit;

(b) Failure to construct a stationary source in accordance with the application for an operating permit as approved by the Director;

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

(d) Commencing construction or modification of a stationary source without applying for and receiving an operating permit or a modification of an operating permit as required by NAC 445B.001 to 445B.3497, inclusive ~~[;]~~ ***, or a mercury operating permit to construct as required by sections 2 to 41, inclusive, of this regulation;***

(e) Failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit; or

(f) Failure to pay fees as required by NAC 445B.327 ~~[.]~~ ***or section 41 of this regulation.***

2. The written notice must specify the provision of NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation,*** the condition of the operating permit or the applicable requirement that is being violated.

3. Written notice shall be deemed to have been served if delivered to the person to whom addressed or if sent by registered or certified mail to the last known address of the person.

Sec. 49. NAC 445B.277 is hereby amended to read as follows:

445B.277 1. The Director shall issue a stop order if:

(a) The proposed construction, installation, alterations or establishment will not be in accordance with the provisions of the plans, specifications and other design material required to be submitted as part of the application for an operating permit and approved by the Director as a condition of the operating permit; or

(b) The design material or the construction itself is of such a nature that it patently cannot bring the stationary source into compliance with NAC 445B.001 to 445B.3497, inclusive ~~[.]~~ ***, and sections 2 to 41, inclusive, of this regulation.***

2. A stop order may be issued at any time by the Director upon his determination that there has been a violation of any of the provisions of NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation,*** any applicable requirement or any condition of the operating permit.

3. A person served with a stop order:

(a) Shall immediately stop all activities specified in the stop order.

(b) May apply for its revocation at any time, setting forth the facts upon which he believes that the reasons for the issuance of the stop order no longer exist. If the Director finds that the reasons for the issuance of the stop order no longer exist, he shall withdraw the order promptly. If the Director finds that the reasons for the issuance of the stop order still exist, or that other reasons exist for continuing a stop order in effect, he shall, within 24 hours, serve a written statement of his reasons for so finding.

Sec. 50. NAC 445B.281 is hereby amended to read as follows:

445B.281 1. Except as otherwise provided in NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation,*** any violation of the provisions of those sections is classified as a major violation, and a fine up to $10,000 per day per violation may be levied.

2. For Class II and Class III sources:

(a) Violations of NAC 445B.22067, 445B.2207, 445B.22087, subsections 3 and 4 of NAC 445B.232, subsection 8 of NAC 445B.252, subsection 2 of NAC 445B.265, paragraph (e) of subsection 1 of NAC 445B.275 and NAC 445B.331 are classified as minor or lesser violations, unless there are four or more violations of any one of those sections by a person, occurring within a period of 60 consecutive months.

(b) The first violation of NAC 445B.22037 is classified as a minor violation. A subsequent violation of NAC 445B.22037 is classified as a major violation.

3. The schedule of fines for minor violations is as follows:

	First Offense	Second Offense	Third Offense

		Major	Major
NAC 445B.22037, fugitive dust	$250	violation	violation
NAC 445B.22067, open burning	250	500	500
NAC 445B.2207, incinerator burning	250	500	500
NAC 445B.22087, odors	250	500	500
Subsection 3 or 4 of NAC 445B.232, reporting of excess emissions	250	500	500
Subsection 8 of NAC 445B.252, testing and sampling reporting	250	500	500
Subsection 2 of NAC 445B.265, reporting of monitoring systems	250	500	500
Paragraph (e) of subsection 1 of NAC 445B.275, recordkeeping, monitoring, reporting or compliance certification	250	500	500
NAC 445B.331, change of location	250	500	500

4. All minor violations become major violations upon the occurrence of the fourth violation of the same section within a period of 60 consecutive months.

Sec. 51. NAC 445B.287 is hereby amended to read as follows:

445B.287 1. Except as otherwise provided in subsection 2 and in NAC 445B.288, an operating permit, operating permit to construct or permit to construct is required for each stationary source and:

(a) If a stationary source is a Class I source:

(1) A revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3425, 445B.344 or 445B.3441 before the stationary source may be modified; or

(2) A revision of the operating permit to construct is required pursuant to the requirements of paragraph (a) of subsection 1 of NAC 445B.3361 before the stationary source may be modified,

➥ as appropriate.

(b) If a stationary source is a Class II source, a revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3465 before the stationary source may be modified.

(c) If a stationary source is a Class III source, a revision of the operating permit is required pursuant to the requirements of NAC 445B.3493 before the stationary source may be modified.

(d) If a stationary source maintains one or more thermal units that emit mercury, the owner or operator of a thermal unit that emits mercury shall comply with the provisions set forth in sections 2 to 41, inclusive, of this regulation.

2. A Class I source is not subject to the provisions of subparagraph (1) of paragraph (a) of subsection 1 if the source is not a major source, an affected source or a solid waste incineration unit required to obtain a permit pursuant to 42 U.S.C. § 7429(e). For a Class I source which is not a major source and which subsequently becomes subject to a standard or other requirement under 42 U.S.C. § 7411 or 7412, the Administrator will determine whether to exempt the source from the requirement to obtain a Class I operating permit at the time that the new standard is adopted.

3. An operating permit, operating permit to construct or permit to construct may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment reflecting a change of ownership or the name of the stationary source for the effective time remaining on the original operating permit pursuant to NAC 445B.319.

4. ~~[For the purposes of]~~ ***As used in*** this section ~~[,"permit]~~ ***:***

(a) "Permit to construct" means a document issued and signed by the Director before November 1, 1995, certifying that:

~~[(a)]~~ ***(1)*** Adequate empirical data for a stationary source has been received and constitutes approval of location; or

~~[(b)]~~ ***(2)*** All portions of NAC 445B.305 to 445B.314, inclusive, and 445B.3395, and any other provisions of NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation*** have been complied with and constitute approval of location and for construction.

(b) "Thermal unit that emits mercury" has the meaning ascribed to it in section 18 of this regulation.

Sec. 52. NAC 445B.288 is hereby amended to read as follows:

445B.288 1. The following categories of sources are not required to obtain an operating permit:

(a) A source that would otherwise be required to obtain an operating permit solely because it is subject to 40 C.F.R. Part 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters.

(b) A source that would otherwise be required to obtain an operating permit solely because it is subject to 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos, section 61.145.

(c) Agricultural equipment used in the normal operation of a farm, other than agricultural equipment which is classified as, or located at, a source for which a permit is required under Title V of the Act or which is subject to any standard set forth in 40 C.F.R. Part 60 or 61.

2. The following emission units are considered to be insignificant activities unless the emission unit is otherwise subject to another specific applicable requirement, including, without limitation, any requirement or standard set forth in 40 C.F.R. Part 60, 61 or 63:

(a) Any equipment or other contrivance used exclusively for the processing of food for human consumption.

(b) An incinerator which has a rated burning capacity that is less than 25 pounds per hour.

(c) An emission unit that has a maximum allowable throughput or batch load rate of less than 50 pounds per hour, unless the emission unit directly emits, or has the potential to emit, a hazardous air pollutant.

(d) A storage container for petroleum liquid, or a storage facility for volatile organic liquid, that has a capacity of less than 40,000 gallons.

(e) Except as otherwise provided in paragraphs (f), (g) and (h), air-conditioning equipment or fuel-burning equipment that, individually, has a rating which is:

(1) Less than 4,000,000 Btu’s per hour; or

(2) Equal to or greater than 4,000,000 Btu’s per hour if the equipment operates less than 100 hours per calendar year.

(f) A portable internal combustion engine that has a rating for output which is:

(1) Less than 500 horsepower; or

(2) Equal to or greater than 500 horsepower if the engine operates less than 100 hours per calendar year.

(g) A stationary internal combustion engine that has a rating for output which is:

(1) Less than 250 horsepower; or

(2) Equal to or greater than 250 horsepower if the engine operates less than 100 hours per calendar year.

(h) An emergency generator. Except as otherwise provided in this paragraph, an emergency generator qualifies as an insignificant activity pursuant to this paragraph only if the emergency generator is an internal combustion engine that is used to generate electrical power to maintain essential operations during unplanned electrical power outages. An emergency generator that is owned or operated by a Class II source and whose potential to emit is calculated on the basis of less than 500 hours of operation does not qualify as an insignificant activity.

3. If an emission unit is considered an insignificant activity and is subject to a limitation on its hours of operation pursuant to subsection 2, the owner or operator of the emission unit shall maintain an operating log of the hours of operation of the emission unit. The operating log must be maintained at the site of the emission unit and made available to the Director upon his request. The owner or operator shall retain the operating log for not less than 5 years.

4. The Director may, upon written request and a satisfactory demonstration by an applicant, approve an emission unit as an insignificant activity if the emission unit is not otherwise subject to another specific applicable requirement, including, without limitation, any requirement or standard set forth in 40 C.F.R. Part 60, 61 or 63. To be approved as an insignificant activity, an emission unit must meet the following criteria:

(a) The operation of the emission unit, not considering controls or limits on production, type of materials processed, combusted or stored, or hours of operation, will not result in:

(1) Emissions of a hazardous air pollutant that exceed 1 pound per hour or 1,000 pounds per year, as appropriate;

(2) Emissions of regulated air pollutants that exceed 4,000 pounds per year;

(3) Emissions of regulated air pollutants that exceed any other limitation on emissions pursuant to any other applicable requirement; or

(4) Emissions of regulated air pollutants that adversely impact public health or safety, or exceed any ambient air quality standards; and

(b) The emissions from the emission unit are not relied on to avoid any other applicable requirements.

➥ If there are multiple emission units, the Director may, after considering the impact of the combined emissions of multiple emission units, determine whether to approve one or more of the specific emission units as an insignificant activity.

5. Except as otherwise provided in NAC 445B.094, emissions from insignificant activities, as determined pursuant to this section, must be included in any determination of whether a stationary source is a major source.

6. A stationary source is not required to obtain an operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation*** for any emission unit determined to be an insignificant activity in accordance with this section, as long as the stationary source is not otherwise subject to any other requirement to obtain an operating permit under Title V of the Act. Such an exclusion from the requirements relating to permitting is not an exclusion or exemption from any other requirement set forth in NAC 445B.001 to

445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation*** relating to the operation of the emission unit determined to be an insignificant activity.

7. A stationary source which consists solely of insignificant activities as determined pursuant to this section and which is not otherwise subject to any other requirement to obtain an operating permit under Title V of the Act is not required to obtain an operating permit to operate as a stationary source. Such an exclusion from the requirements relating to permitting is not an exclusion or exemption from any other requirement set forth in NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation*** relating to the operation of the stationary source or any insignificant activity that is a part of the stationary source.

8. The provisions of this section do not apply to a thermal unit that emits mercury.

9. As used in this section, "thermal unit that emits mercury" has the meaning ascribed to it in section 18 of this regulation.

Sec. 53. NAC 445B.297 is hereby amended to read as follows:

445B.297 1. An applicant for an operating permit must:

(a) Submit an application to the Director on the appropriate form provided by the Director. A responsible official of the stationary source must certify that, based on information and belief formed after a reasonable inquiry, the statements in the application for the operating permit are true, accurate and complete.

(b) Submit supplementary facts or corrected information upon discovery.

(c) Provide any additional information ***, in writing,*** that the Director requests ~~[in writing]~~ within the time specified in the Director's request.

2. In addition to the requirements set forth in subsection 1, an applicant for a Class I operating permit must submit a copy of the application directly to the Administrator. The

provisions of this subsection do not apply to applications for operating permits to construct that are subject to NAC 445B.33633, 445B.33635 and 445B.33637.

Sec. 54. NAC 445B.315 is hereby amended to read as follows:

445B.315 1. Notwithstanding any provision of this section to the contrary, the provisions of this section do not apply to operating permits to construct.

2. The Director shall cite the legal authority for each condition contained in an operating permit.

3. An operating permit must contain the following conditions:

(a) The term of the operating permit is 5 years.

(b) The holder of the operating permit shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.

(c) Each of the conditions and requirements of the operating permit is severable , and ~~[,]~~ if any are held invalid, the remaining conditions and requirements continue in effect.

(d) The holder of the operating permit shall comply with all conditions of the operating permit. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) Revising, revoking, reopening and revising, or terminating the operating permit by the Director; or

(3) Denial of an application for a renewal of the operating permit by the Director.

(e) The need to halt or reduce activity to maintain compliance with the conditions of the operating permit is not a defense to noncompliance with any condition of the operating permit.

(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the operating permit for cause.

(g) The operating permit does not convey any property rights or any exclusive privilege.

(h) The holder of the operating permit shall provide the Director, ***in writing and*** within a reasonable time, with any information that the Director requests ~~[in writing]~~ to determine whether cause exists for revising, revoking and reissuing, reopening and revising, or terminating the operating permit, or to determine compliance with the conditions of the operating permit.

(i) The holder of the operating permit shall pay fees to the Director in accordance with the provisions set forth in NAC 445B.327 and 445B.331.

(j) The holder of the operating permit shall allow the Director or any authorized representative, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the operating permit where:

(I) The stationary source is located;

(II) Activity related to emissions is conducted; or

(III) Records are kept pursuant to the conditions of the operating permit;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the operating permit;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the operating permit; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the operating permit or applicable requirements.

(k) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the operating permit are true, accurate and complete.

Sec. 55. NAC 445B.318 is hereby amended to read as follows:

445B.318 1. ~~[A separate]~~ ***An*** operating permit is required for each new or existing stationary source.

2. Application for the issuance of an operating permit or a replacement for a lost or damaged operating permit must be submitted in writing to the Director on the exact form provided by him.

3. An operating permit must be granted if the Director finds from a stack emission test or other appropriate test and other relevant information that use of the stationary source will not result in any violation of the air quality regulations or the provisions of 40 C.F.R. § 52.21 or 40 C.F.R. Parts 60 and 61, Prevention of Significant Deterioration, New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants adopted by reference in NAC 445B.221.

4. A denial of an application for an operating permit must be accompanied by a statement of the reasons therefor, and if the Director has relied in his decision upon information not contained in the application, the statement of reasons must identify and state the substance of such information.

5. Operating permits must be posted conspicuously at or near the stationary source.

Sec. 56. NAC 445B.3361 is hereby amended to read as follows:

445B.3361 1. To establish a new Class I stationary source or modify an existing Class I stationary source, the owner or operator of a proposed new Class I stationary source or the existing Class I stationary source must:

(a) Apply for and obtain a new or revised ~~[operating]~~ ***:***

(1) Operating permit to construct pursuant to NAC 445B.001 to 445B.3497, inclusive ~~[,~~

~~or~~

~~(b) Apply for and obtain a new or revised]~~ ***, and sections 2 to 41, inclusive, of this regulation; or***

(2) Class I operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive ~~[.]~~ ***, and sections 2 to 41, inclusive, of this regulation; and***

(b) If the owner or operator of the Class I stationary source operates a thermal unit that emits mercury, apply for and obtain a new or revised mercury operating permit to construct for the thermal unit that emits mercury and comply with the provisions set forth in sections 2 to 41, inclusive, of this regulation.

2. To obtain a designation for an emission unit as a clean unit, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the designation of a clean unit pursuant to NAC 445B.001 to 445B.3497, inclusive ~~[.]~~ ***, and sections 2 to 41, inclusive, of this regulation.***

3. To obtain the approval of a pollution control project as specified in 40 C.F.R. § 52.21(z)(1), the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of a pollution control project pursuant to NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 41, inclusive, of this regulation*** before the owner or operator begins actual construction of the pollution control project.

4. To establish a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of the plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3497, inclusive ~~[.]~~ ***, and sections 2 to 41, inclusive, of this regulation.*** To revise or renew a Class I operating permit to construct for the approval of a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a revised or renewed Class I operating permit to construct for the approval of a plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3497, inclusive ~~[.]~~ ***, and sections 2 to 41, inclusive, of this regulation.***

5. Except as otherwise provided in subsection 7, if an owner or operator obtains an operating permit to construct, the owner or operator is not required to obtain an operating permit or revised operating permit before commencing initial construction, start-up and operation of the proposed new Class I stationary source or the modification to the existing Class I stationary source.

6. Except as otherwise provided in this subsection and ~~[subsection 7,]~~ ***subsections 7 and 8,*** if an owner or operator has a valid operating permit to construct, the owner or operator may continue to operate a new Class I stationary source or modifications to an existing Class I stationary source under that operating permit to construct if the owner or operator submits a complete application for a Class I operating permit within 12 months after the date of initial start-up of the new Class I stationary source or modifications to the existing Class I stationary source. The provisions of this subsection do not apply to:

(a) A Class I operating permit to construct for the designation of a clean unit. A Class I operating permit to construct for the designation of a clean unit must be incorporated into the Class I operating permit pursuant to 40 C.F.R. § 52.21(y)(8).

(b) A Class I operating permit for the approval of a pollution control project.

(c) A Class I operating permit to construct for the approval of a plantwide applicability limitation.

7. If the conditions of an existing Class I operating permit would prohibit the construction or change in operation of the existing Class I stationary source and the owner or operator is not seeking to revise the Class I operating permit at the Class I stationary source pursuant to paragraph (b) of subsection 1, the owner or operator must concurrently:

(a) ~~[Obtain a Class I operating permit to construct for]~~ ***For*** the construction or change in operation of the existing Class I stationary source ~~[; and]~~ ***:***

(1) Obtain a Class I operating permit to construct; or

(2) If the construction or change in operation involves mercury emissions from a thermal unit that emits mercury, obtain a mercury operating permit to construct pursuant to sections 2 to 41, inclusive, of this regulation; and

(b) Obtain an administrative revision to an operating permit to incorporate the conditions of the Class I operating permit to construct into the existing Class I operating permit pursuant to NAC 445B.3441 before commencing with the construction or change in operation of the existing Class I stationary source.

8. If an owner or operator has a valid mercury operating permit to construct, the owner or operator may continue to operate the thermal unit that emits mercury which is located at an existing Class I stationary source if the owner or operator submits a complete application to revise the existing Class I operating permit within 12 months after the determination of the NvMACT contained in the mercury operating permit to construct by the Director.

9. As used in this section:

(a) "Mercury emissions" has the meaning ascribed to it in section 8 of this regulation.

(b) "Mercury operating permit to construct" has the meaning ascribed to it in section 9 of this regulation.

(c) "NvMACT" has the meaning ascribed to it in section 11 of this regulation.

(d) "Thermal unit that emits mercury" has the meaning ascribed to it in section 18 of this regulation.

Sec. 57. NAC 445B.3365 is hereby amended to read as follows:

445B.3365 Except as otherwise provided in NAC 445B.33653 and 445B.33656:

1. The Director shall cite the legal authority for each condition contained in an operating permit to construct.

2. An operating permit to construct must contain the following conditions:

(a) The expiration date of the operating permit to construct must be defined as described in NAC 445B.3366.

(b) The holder of the operating permit to construct shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes, without limitation, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.

(c) Each of the conditions and requirements of the operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.

(d) The holder of the operating permit to construct shall comply with all conditions of the operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the operating permit to construct by the Director; or

(3) The reopening or revising of the operating permit to construct by the holder of the operating permit to construct as directed by the Director.

(e) The need to halt or reduce activity to maintain compliance with the conditions of the operating permit to construct is not a defense to noncompliance with any condition of the operating permit to construct.

(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the operating permit to construct for cause.

(g) The operating permit to construct does not convey any property rights or any exclusive privilege.

(h) The holder of the operating permit to construct shall provide the Director, ***in writing and*** within a reasonable time, with any information that the Director requests ~~[in writing]~~ to determine whether cause exists for revoking or terminating the operating permit to construct, or to determine compliance with the conditions of the operating permit to construct.

(i) The holder of the operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the operating permit to construct where:

(I) The stationary source is located;

(II) Activity related to emissions is conducted; or

(III) Records are kept pursuant to the conditions of the operating permit to construct;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the operating permit to construct or applicable requirements.

(j) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the operating permit to construct are true, accurate and complete.

3. An operating permit to construct must contain:

(a) All applicable requirements, emission limits and standards;

(b) Monitoring methods adequate to show compliance;

(c) Adequate recordkeeping and reporting requirements as deemed by the Director; and

(d) Any other requirements deemed necessary by the Director.

4. In addition to the requirements established in subsections 1, 2 and 3, if the operating permit to construct is a Class I operating permit to construct for the approval of a pollution control project, the Class I operating permit to construct must contain the information set forth in 40 C.F.R. § 52.21 (z)(6).

Sec. 58. NAC 445B.33656 is hereby amended to read as follows:

445B.33656 1. The Director shall cite the legal authority for each condition contained in a Class I operating permit to construct for the approval of a plantwide applicability limitation.

2. A Class I operating permit to construct for the approval of a plantwide applicability limitation must contain the following conditions:

(a) The expiration date of the Class I operating permit to construct must be determined in accordance with subsection 6 of NAC 445B.3366.

(b) The holder of the Class I operating permit to construct shall retain records pursuant to 40 C.F.R. § 52.21(aa)(13).

(c) Each of the conditions and requirements of the Class I operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.

(d) The holder of the Class I operating permit to construct shall comply with all conditions of the Class I operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the Class I operating permit to construct by the Director; or

(3) The reopening or revising of the Class I operating permit to construct by the holder of the Class I operating permit to construct as directed by the Director.

(e) The need to halt or reduce activity to maintain compliance with the conditions of the Class I operating permit to construct is not a defense to noncompliance with any condition of the Class I operating permit to construct.

(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the Class I operating permit to construct for cause.

(g) The Class I operating permit to construct does not convey any property right or exclusive privilege.

(h) The holder of the Class I operating permit to construct shall provide the Director, ***in writing and*** within a reasonable time, with any information that the Director requests ~~[in writing]~~ to determine whether cause exists for revoking or terminating the Class I operating permit to construct, or to determine compliance with the conditions of the Class I operating permit to construct.

(i) The holder of the Class I operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the Class I operating permit to construct where:

(I) The stationary source is located;

(II) Activity related to emissions is conducted; or

(III) Records are kept pursuant to the conditions of the Class I operating permit to construct;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the Class I operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the Class I operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the Class I operating permit to construct or applicable requirements.

(j) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be

submitted by any condition of the Class I operating permit to construct are true, accurate and complete.

3. In addition to the requirements established in subsections 1 and 2, a Class I operating permit to construct for the approval of a plantwide applicability limitation must contain the information set forth in 40 C.F.R. § 52.21(aa)(7) as adopted by reference in NAC 445B.221.

Sec. 59. NAC 445B.3453 is hereby amended to read as follows:

445B.3453 1. ~~[An]~~ ***Except as otherwise provided in subsection 3, an*** owner or operator of any stationary source that is not subject to the requirements of NAC 445B.337 or 445B.3375 must submit an application for and obtain a Class II operating permit or, if applicable, a Class III operating permit pursuant to NAC 445B.3485.

2. For a proposed stationary source or a proposed modification to a stationary source that is not subject to the requirements of NAC 445B.337 or 445B.3375, an owner or operator must file an application and obtain a Class II operating permit or a revision to an existing Class II operating permit or, if applicable, a Class III operating permit or a revision to an existing Class III operating permit pursuant to NAC 445B.3485, before commencing construction of the proposed stationary source or the proposed modification.

3. The owner or operator of a thermal unit that emits mercury which is located at a Class II stationary source shall comply with the provisions of sections 2 to 41, inclusive, of this regulation. As used in this subsection, "thermal unit that emits mercury" has the meaning ascribed to it in section 18 of this regulation.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R189-05

The State Environmental Commission adopted regulations assigned LCB File No. R189-05 which pertain to chapter 445B of the Nevada Administrative Code on March 8, 2006.

Notice date: 2/1/2006 **Date of adoption by agency:** 3/8/2006
Hearing date: 3/8/2006 **Filing date:** 5/4/2006

INFORMATIONAL STATEMENT

This new permanent regulation will modify NAC 445B.001 to 445B.3497. The regulation establishes a Nevada Mercury Air Emissions Control Program for precious metals mining facilities in Nevada. As way of background, between 2002 and 2005 the Nevada Voluntary Mercury Reduction Program, a joint effort of the Nevada Division of Environmental Protection (NDEP), the U.S. Environmental Protection Agency (US EPA) and four Nevada mining companies, achieved significant and rapid mercury emission reductions from thermal processes used in precious metals mining. Subsequent to this voluntary program, the NDEP determined it necessary and appropriate to make the program mandatory and expand the coverage of the program to all precious metals mining operations in Nevada.

This regulation allows NDEP to implement a new permitting program that requires mercury air emission controls at precious metal mining facilities. The new permitting program is an adjunct to the current operating permit to construct program operated by the Division. The new program will apply to precious metals mining facilities that process mercury-containing ore and use thermal treatment processes that have the potential for liberating mercury into the atmosphere.

1. A description of how <u>public comment</u> was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

NDEP's Bureau of Air Quality Planning (BAQP) held two workshops on the above referenced regulation at the following location.

Carson City Workshop	**Elko Workshop**
December 15, 2005	December 19, 2005
Room 2144	Great Basin College
Legislative Counsel Bureau	1500 College Parkway
401 South Carson Street	Elko, Nevada
Carson City, Nevada	10:30 AM to 12:30 PM
10:00 AM to 12:00 Noon	

The Carson City workshop was attended by 33 individuals; six persons provided oral comments at the workshop. In Elko, 29 individuals attended with ten providing oral comments.

Regarding written comments on the draft regulation, the Division received numerous letters and emails from a wide variety of individuals and organizations. To accommodate the diversity and volume of comments, Division staff developed a formal comment response document, which is attached as appendix 1. The comment response document reflects a compilation and disposition of comments received about the regulation. The document is organized to address comments by "similarity of scope." There are twelve different categories of "similar comments" that are responded to in the document.

The comment response document was made available to the public and presented by NDEP staff to SEC at the regulatory hearing held on March 8th in Reno. At the SEC regulatory hearing, staff discussed the comment response document in detail with the Commission.

Regarding the SEC regulatory hearing process -- and as required by the provisions of chapters 233B and 241 of Nevada Revised Statutes -- the hearing agenda was posted at the following locations: the Washoe County Commission Chambers in Reno, the Nevada Department of Wildlife building in Reno, the Grant Sawyer Office Building in Las Vegas, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of the agenda, the public notice, and the proposed regulation noted above were made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the hearing was also published on February 20 and 27, 2006 and on March 6, 2006 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Extensive information about the regulation was also made available on websites managed by NDEP and the SEC; see: **http://ndep.nv.gov/mercury/index.htm** and **http://www.sec.nv.gov/main/hearing030806.htm**

2. The number persons who attended the SEC Regulatory Hearing:

(a) Attended March 08, 2006 hearing; 70
(b) Testified on this Petition at the hearing: 17 (3 NDEP Staff, 14 Public)
(c) Submitted to the agency written comments: (See Appendix 1)

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

In addition to the above referenced public workshops and the SEC regulatory hearing, the NDEP held numerous meeting with non governmental organizations and industry representatives. Comments were solicited from affected businesses as indicated in number 1 above. In addition, NDEP developed a special purpose website to further keep interested organizations and individuals abreast of the regulatory process proposed for the new Nevada Mercury Air Emissions Control Program. The website, which remains an integral part of the program, remains posted at: **http://ndep.nv.gov/mercury/index.htm**

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

Changes to the regulation were proposed at the hearing by NDEP staff and a consensus on the proposed changes were agreed to and adopted at the hearing by the Commission. The changes made to the regulation were not considered substantive in content or scope with regard to implementation of the Nevada Mercury Air Emissions Control Program.

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

The new regulation will have an economic impact on precious metals mining companies that process mercury-containing ore and use thermal processes that have the potential for liberating mercury into the atmosphere. These companies will be subject to the mercury permitting program and applicable fees. See number 9 below for a description of the fees.

Negative economic effects to the public will not result from adoption of this regulation; to the contrary, a significant long-term positive effect will occur from reduction of mercury air emissions to the biosphere. Benefits will occur to both human health and the environment resources.

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

There will be additional costs to NDEP for implementing this regulation and those costs will be covered entirely by new permit fees imposed on the mining industry in Nevada. See number 9 below.

7. 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 regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

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

The regulation is more stringent than what is established by federal law. The U.S EPA does not currently regulate mercury emissions from precious metals mining facilities that process mercury-containing ore and use thermal treatment processes that have the potential for liberating mercury into the atmosphere. It is worth noting however, US EPA is on record in support of the above referenced regulation. Of note, mercury air emissions are hazardous to human health and the environment and mercury air emissions do find their way into the food chain; such emissions are hazardous to the biosphere. Accordingly, NDEP has decided to implement the Nevada

Mercury Air Emissions Control Program to protect human health and the environment for Nevadans and for the region.

9. 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.

In order to fund the Nevada Mercury Air Emissions Control Program, the regulation imposes a new fee structure on the affected precious metals mining facilities. A one-time permit application fee totaling $50,000 will be divided among all of the existing facilities that use thermal treatment processes that have the potential for liberating mercury into the atmosphere. The permit application fee for new or modified thermal units that emit mercury or a revision to an existing permit is $5,000. Annual maintenance charges totaling $250,000 a year will be divided among the permitted facilities to support the program. The program fees will support overhead and equipment for two full time staff engineers at NDEP.

Appendix I

March 8, 2006

Proposed Nevada Mercury Air Emissions Control Program
Summary of Written Comments
NDEP Received by 8:00 am, March 7, 2006

Comments the Division received and has compiled below were from a number of sources including: the regulatory workshops held in Carson City on December 15, 2005 and Elko on December 19, 2005; letters received by US mail; and e-mail comments. This document reflects a compilation of comments received. Comments that were similar in scope were consolidated for brevity. Comment counts identified with a "~" are approximate.

Comment #1: **Request to add annual reporting of mercury co-product.**
Comment Count: ~95

NDEP Response: The draft regulations were amended to address this comment. The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of "mercury co-product" in Section 6. The requirement for annual co-product reporting is contained in numerous Sections; including, Sections 33, 34, 36 and 39.

Comment #2: **Request to add a 15-day time limit to the period an applicant has to resubmit an application that the NDEP deems incomplete.**
Comment Count: 1

NDEP Response: A requirement was added to the draft regulation that states, "If an incomplete application is returned to the applicant, the applicant must resubmit a complete application

within 15 days after the applicant receives the returned incomplete application". The provision applies to both Phase 1 and Phase 2 applications covering either Tier 1 or Tier 2 thermal units. The language can be read in the March 3, 2006, LCB File No.R189-05, at Section 35.

Comment #3: **The tiered regulatory system doesn't thoroughly identify which mines will be considered for each tier and Tier 1 mines were not fully specified.**
Comment Count: 1

NDEP Response: The listing of Tier 1 thermal units first became available as Appendix A in NDEP's November 17, 2005 posting of the Proposed Nevada Mercury Air Emissions Control Program summary document. The regulation-format listing of Tier 1 thermal units then became available in the January posting of the Agency Draft regulation, followed by the February 1, 2006 Agency Draft provided to the public in advance of the March 8, 2006 State Environmental Commission hearing. The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of "Tier-1 thermal unit that emits mercury" in Section 19. The formal identification of units is in Section 23.

Both the draft regulations and the Proposed Nevada Mercury Air Emissions Control Program (NMCP) summary document discuss the process for NDEP to designate units as Tier 1, Tier 2 or Tier 3. Tier 1 units were designated as a result of their involvement in the former Voluntary Mercury Reduction Program. Initially, all other units will be designated as Tier 2 (regardless of whether they are located at a VMRP participating facility or not). Tier 3 units may be determined as a result of the de minimis determination process. To aid in this determination, over 50 mining companies received and are required to complete the NDEP's "Precious Metals Mining Mercury Air Emissions Questionnaire (for Nevada Facilities)". The deadline for submittal is March 20, 2006.

Comment #4: **De Minimis Determination: The definition is vague and allows for changes without an objective basis. A numerical minimum definition of de minimis should be incorporated into the regulations. The proposed process is too subjective and should include objective criteria such as ore concentration or process fluid concentration. The cumulative total for a facility should be no more than 16 ounces per year. The section should strengthen the required testing and reporting for any source that has de minimis status.**
Comment Count: 8

NDEP Response: During development of the program, it was realized that there may be type(s) of thermal unit(s) that could emit such a small amount of mercury that the construction of a control device is not feasible. One example commonly used for discussion purposes is a laboratory assay hood.

The NDEP was reluctant to set an arbitrary de minimis threshold without supporting data. To aid the Director in this determination, over 50 mining companies received and are required to complete the NDEP's "Precious Metals Mining Mercury Air Emissions Questionnaire (for Nevada Facilities)". The deadline for submittal is March 20, 2006. The results of the questionnaire are intended to provide the NDEP with information necessary to determine if such

a threshold can be set. The regulations also provide for a company to petition the Director for an initial de minimis determination that emissions from a thermal unit are de minimis emissions. In either case, the Director shall make such initial determinations publicly available for review and comment. As a component of this initial determination, the NDEP is allowed to factor in to the decision process whether multiple de minimis units at a single facility will be allowed, and if so, at what level of combined mercury emissions. The draft regulations provide for a public process in setting such a de minimis emissions threshold.

The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of "De minimis mercury emissions" in Section 3. The public process defined for evaluating and setting a de minimis is contained in Section 25.

Comment #5: **Annual Self Monitoring/Stack Testing: Annual self-monitoring is too infrequent and insufficient to protect human health and the environment. The requirement should be changed from annual to monthly.**
Comment Count: 3

NDEP Response: Annual source testing is adequate to demonstrate that the mercury controls are operating efficiently and will provide sufficient information to support a demonstration of compliance with an emissions limitation. It is not uncommon to have an even longer interval between tests. Based on decades of experience in evaluating pollution control devices and reviewing emissions testing from emissions controls, and the inherent gas stream design range of the current mercury emissions controls, the NDEP does not believe that significant changes in emissions will occur. Additionally, the NDEP does not believe that more frequent testing will result in any additional environmental benefit.

Comment #6: **Request to add speciated stack testing requirements to the regulations for the testing that Tier 1 units have started. The sources need more time to complete the testing.**
Comment Count: 2

NDEP Response: The Voluntary Mercury Reduction Program (VMRP) companies are already at various stages in the process of developing testing protocols and conducting speciated testing of existing thermal units. This work will be done by the end of the calendar year.

Comment #7: **Presumptive Nevada MACT: Presuming that a piece of control equipment performs as MACT merely because the equipment was installed under the former VMRP is inappropriate. … The 'presumptive MACT' inappropriately allows existing VMRP companies to operate 'as-is' with no requirement for additional mercury emissions reductions. Existing facilities should undergo timely review to identify and implement additional measures. NDEP's proposed program would allow these mines to get a "presumptive MACT" or essentially permit the mine as-is. Presumptive NvMACT should be eliminated.**
Comment Count: ~96

NDEP Response: These comments reflect a general misunderstanding of the NDEP's use of presumptive NvMACT. The purpose of identifying current control devices as presumptive

NvMACT is to ensure the continued implementation of controls that have been operating under the previous Voluntary Mercury Control Program. Phase 2 of the program requires evaluation of all units and the installation of maximum achievable control technology. The NvMACT may result in the requirement for additional or updated controls at any facility including those originally identified as Presumptive NvMACT.

Comment #8: **Fugitive Mercury Emissions: The program needs to go farther in addressing fugitive emissions. There is strong reason to believe that emissions coming from waste rock and dust at gold mining operations are a significant source of mercury pollution. The draft rule fails to incorporate emissions control or monitoring of fugitive dust.**
Comment Count: ~100

NDEP Response: Currently there is no approved method for determining mercury from fugitive emissions. While not part of this proposed program, the NDEP understands that fugitive emissions will be studied. The NDEP has been working industry and other interested parties on fugitive emissions research. The precious metal mining companies are providing funding for further research in Northern Nevada on point sources, fugitive sources and natural sources of mercury emissions.

Comment #9: **Continuous Emissions Monitors (CEMs): CEMs should be part of the program is necessary and appropriate to ensure controls are working and to ensure accountability. As the NMCP matures and emissions limits are developed in Phase II, NDEP should consider if it is appropriate to require CEMs. About two thirds of the coal fired electric generating units in the US will be required to monitor their mercury emissions in 2008…should be technically feasible at precious metal mines.**

Counter comment: **NDEP needs to weigh the need for CEMs against the current state of technology and consider that it is not currently available.**
Comment Count: 12

NDEP Response: The program requires monitoring methods adequate to demonstrate that the mercury controls are operating efficiently and provide sufficient information to support a demonstration of compliance with an emissions limitation. The draft regulations do not prohibit an evaluation of the methods used to demonstrate compliance, including the use of CEMs. However, at this time, the technology for mercury CEMs continues to evolve and is driven by the coal fired electric generating units in the U.S. that will be required to monitor their mercury emissions. The technology is in an alpha, or at best a beta, development stage and is not yet available for the processes regulated under this program.

Comment #10: **Adequate Ambient Air Monitoring:**
Comment Count: ~98

NDEP Response: Ambient monitoring is typically required to protect against an ambient standard. EPA has not established an ambient standard for mercury. This proposed program requires mercury controls on applicable mercury sources. The NDEP believes that the protection provided under this program would be greater than one that is based on an ambient standard.

Utilizing an ambient standard would not guarantee that controls would be required on all mercury sources.

Comment #11: **Public Health Criteria and Residual Risk Evaluations:**
Comment Count: ~90

NDEP Response: To understand the requirements, you need to start at 1970, when Congress enacted Section 112 of the Clean Air Act. This statute was the first time that Congress focused its efforts on reducing hazardous air pollutants (HAPs). The statutes at that time defined HAPs as pollutants that, in the judgment of the EPA Administrator, cause or contribute to air pollution which may increase mortality or have an increase in serious irreversible illness. Section 112 required EPA to publish a list of each HAP that EPA intended to establish an emissions limitation for, and then promulgate a standard, or otherwise explain why the HAP was not hazardous. To do this, EPA utilized a risk-based analysis to set the emissions standards. EPA considered levels of HAPs at which health effects were observed, and factored in an ample margin of safety to protect public health, and set the standard accordingly.

Between 1970 and 1990, EPA only listed 8 HAPs and set standards for only 7 of them. Clearly, the risk-based approach did not work. Congress was provided information that concluded that the program was not effective. Subsequently, Congress passed the 1990 Clean Air Act Amendments with an emphasis on strengthening and expanding the HAP program through an emissions control technology-based approach. Today, the technology-based approach requires emissions control to levels that utilize the best available control technology.

There were two significant changes made to Section 112 in the 1990 reauthorization. First, rather than the EPA Administrator listing HAPs, as was done previously, Congress established the list of 189 HAPs on their own (see 7412(b)). Second, an emissions standards implementation process was formed and is based on the maximum reduction in emissions which can be achieved by applying the best available control technology.

This technology-based approach consists of a two-step process for determining emissions standards under the 1990 Act Amendments. First, EPA is required to establish technology-based emissions standards for categories of sources that emit HAPs. That is the maximum achievable control technology is required to apply to each category. This requires all sources in a category to at least cleanup emissions to the level their best performing peers have shown can be achieved. This is strictly a technology review and contains no risk-based assessment.

Comment #12: **Reduction Goals and Emission Caps: Does the proposed NMCP have emission reduction goals similar to the former voluntary (VMRP) program? What further reductions do you expect? The program should provide for overall emissions reductions. Reductions achieved by other industries should be used as a benchmark, such as medical waste incinerators. The program should establish a cap on total annual mercury emissions.**

Counter comment: **Given the success of the VMRP, are regulations really necessary?**
Comment Count: 8

NDEP Response: The Voluntary Mercury Reduction Program (VMRP) was designed to address the most significant sources of mercury air emissions and utilized EPA's successful 33/50 program as its foundation. According to the US EPA, the four VMRP companies comprised more than 90 percent of reported mercury air emissions in Region 9 in 2000, and the companies have since reduced their emissions by more than 80%. This meets or exceeds most of the goals or caps set by other states for other industry sectors.

There is no basis for establishing a cap and when doing so, there is no guarantee that controls will be required on all units to achieve the cap. In the proposed NMCP best available controls are required on all applicable units.

Comment #13: **Will the state mercury permit roll up into the Title V program for affected facilities?**
Comment Count: 1

NDEP Response: Yes.

Comment #14: **Early Reduction Credit: This section should be deleted. Sources should not operate with emissions above a MACT level at any time.**
Comment Count: 2

NDEP Response: The establishment of the Early Reduction Credit program is designed to create an incentive for companies with currently un-controlled or minimally controlled units to reduce emissions in advance of the NvMACT. Early Reduction Credit is based on a rigorous evaluation to determine the best controls available at the time the request is made.

Comment #15: **Mercury Control Timeline. The program must be accelerated to realize improvements in mercury control sooner. We can hope that companies will adopt controls on the early reduction track, but NvMACT will not be required until 3 to 4 years from now. This delay is unreasonable considering the serious public health risk.**
Comment Count: ~98

NDEP Response: The most significant sources of mercury are the VMRP facilities and they are already controlled. The timelines in the NMCP for implementing additional controls are much more aggressive than any timelines for implementing a federal MACT, and for the implementation allowed for power plants in the most recent CAMR rule. These timelines have been developed based on our ability to adequately evaluate the control measures to establish appropriate conditions in the mercury permits, and to fulfill our public comment requirements.

Comment #16: **All public comment periods in the regulations should be set at a minimum of 60 days and include public hearings to provide adequate time for public examination.**
Comment Count: 1

NDEP Response: This program includes various points in the process where the Director is making a determination or permits are being processed and public input will be solicited. The

proposed regulations are consistent with standard 30-day comment period for all other permit actions and NDEP programs.

Comment #17: **Regulation Development Process: The public process for this program and regulation development is complex and flawed. The public comment process was unreasonable; the Elko meeting was cancelled and rescheduled with limited notice that did not permit everyone's attendance. The regulations continued to evolve from draft versions and the [originally proposed timeframe of a] January hearing should be postponed. The timeframe for submitting comments was far too short for such an important issue and therefore an extension of the public process is requested.**
Comment Count: 5

NDEP Response: The regulations only require one workshop and the Carson City workshop met that requirement. Postponement of the Elko workshop was unfortunate and due to circumstances beyond the Divisions control. The meeting in Elko was rescheduled a week later to provide an opportunity for additional comment.

The Agency draft regulations were posted and noticed to the public on February 1, 2006, which was more than 30 days in advance of the scheduled March 8, 2006 State Environmental Commission hearing as required by the APA. The submittal made on February 1st contains the same program as the LCB version recently provided, with a few errors introduced by LCB that will be corrected at the Commission hearing. The version that will be proposed at the hearing is the same as the February 1st version.

***Comment #18*: Tier 3 thermal units should not be grandfathered into the regulation. Tier 3 thermal units should be held to the same mercury emission standards, rules, applications, monitoring and Tier 1 and Tier 2 thermal units and not have a lower or lesser standard applied to their operation, maintenance or modification. Modification of a Tier 3 thermal unit should be considered as construction of a thermal unit, and not given more lenient consideration than Tier 1 and Tier 2 thermal units.**
Comment Count: **1**

NDEP Response: According to the proposed regulations, a Tier 3 thermal unit is one that either doesn't have the potential to emit mercury (i.e. zero emissions of mercury) or one that emits at or below de minimis mercury emission levels. The de minimis approval process allows the Director to consider the level of mercury emission or type of unit that doesn't warrant further evaluation of additional controls, permitting and monitoring. Any Tier 3 thermal unit that proposes a modification will be evaluated to determine if any of the mercury requirements would be applicable. In addition, all Tier 3 units are required to certify annually of the units continued status.

Comment #19: **Section 35, item 6(a) should not allow the applicant to determine what is deemed sufficient to determine what is to be NvMACT. This set up a self approval and self regulatory program and does not protect the public or public trust resources.**
Comment Count: **1**

NDEP Response: The proposed regulations require an applicant to propose what they believe is NvMACT as part of the application. The Director (i.e. NDEP) reviews, evaluates and determines the NvMACT based on the information provided by the applicant and any other information available to the Director. Section 35.6(a), however, discusses only the requirement for the Director to make public and receive comment on his proposed NvMACT determination. The program is most decidedly not a self approval and self regulatory program.

Comment #20: **General oppositions to adoption: The control of emissions is supported, but the final draft of the regulations still need considerable work to suitably protect public health, public trust resources, fish and wildlife. The proposed program is substantially flawed because NDEP has not conducted a rigorous public health risk assessment so there is not means of determining if it is sufficient.**
Comment Count: 2

Counter Comment: The need for action is urgent and should not be delayed. We urge you to adopt rules for mercury reduction that will make sure that the State of Nevada will not allow our native lands to be contaminated further by mercury pollution. We greatly appreciate your efforts to protect the public and environmental health from mercury emissions. The NDEP has shown great leadership in developing the regulations and the new program should be recognized as a significant first step.
Comment Count: 4

NDEP Response: Based on all of the information available to the NDEP, we believe that the most appropriate course of action at this point in time is to continue to require efficient operation of existing mercury controls and to require the installation and operation of the best available controls on all thermal mercury emitting units. This approach will ensure the most rapid reductions of mercury while additional information is gathered and studies are conducted.

Comment #21: **Mass Balance**
Comment Count: 10

NDEP Response: Because of the large quantities of ore that are processed and the relatively small concentrations of mercury present in the ore, it is not reasonably possible to account for mercury associated with the mineral processing activities with any relative accuracy and certainty. Attempting to do so with large thermal processing units would result in inaccurate information. A more representative way to account for mercury emission to the atmosphere is to perform direct emissions testing.