

LCB File No. R233-03

PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

Petition 2003-12

Explanation: Matter in bold italics is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: NRS 445B.210 and 445B.300

Section 1. NAC 445B.327 is hereby amended to read as follows:

NAC 445B.327. 1. Except as otherwise provided in this section, if a stationary source is not subject to the permitting requirements of 40 C.F.R. § 52.21, as incorporated by reference by NAC 445B.221, the fees for an operating permit are as follows:

Table with 2 columns: Description of permit/revision and Fee amount. Includes items (a) through (l) with various conditions and public notice requirements. Fees range from \$20,000 to \$2,000.

(m) Class II general permit .....	400
(n) Class III operating permit .....	300
(o) Revision of a Class III operating permit .....	200
(p) Renewal of a Class III operating permit .....	250
(q) Surface area disturbance permit .....	400
(r) Revision of a surface area disturbance permit .....	200
(s) Administrative amendment of an operating permit .....	200
(t) Replacement of a lost or damaged operating permit to construct or an operating permit .....	200
(u) Request for change of location of an emission unit .....	100

An applicant must pay the entire fee when he submits an application to the Director.

2. The fee to revise an operating permit so that the operating permit is consistent with any guidelines established by the Division of Environmental Protection of the State Department of Conservation and Natural Resources pursuant to NAC 445B.255 is \$1,000. An applicant must pay the entire fee when he submits an application to the Director.

3. Except as otherwise provided in this section, if a stationary source is subject to the permitting requirements of 40 C.F.R. § 52.21, as incorporated by reference by NAC 445B.221, the owner or operator of that stationary source must obtain an operating permit. The fees for such an operating permit are as follows:

(a) Operating permit for a stationary source subject to the program for the prevention of significant deterioration of air quality .....	\$50,000
(b) Revision of an operating permit for a stationary source subject to the permitting requirements of 40 C.F.R. § 52.21 to authorize a major modification of the stationary source .....	50,000
(c) Class I operating permit to construct .....	50,000
(d) Conversion of an operating permit to construct into a Class I operating permit involving only one phase .....	5,000
(e) Conversion of an operating permit to construct into a Class I operating permit involving two or more phases (per phase) .....	5,000
(f) Revision of an operating permit to construct .....	5,000
(g) Revision of an operating permit for a modification that is not a major modification, as defined in 40 C.F.R. § 52.21, of a stationary source .....	10,000
(h) Administrative amendment of an operating permit or operating permit to construct .....	200
(i) Replacement of a lost or damaged operating permit to construct or an operating permit .....	200
(j) Request for the change of location of an emission unit .....	100

An applicant must pay the entire fee when he submits an application to the Director.

4. If no changes need to be made to convert an operating permit to construct into a Class I operating permit, no fee will be assessed.

5. Except as otherwise provided in this subsection, the annual fee based on emissions for a stationary source is \$5.60 per ton times the total tons of each regulated pollutant emitted during the preceding calendar year. The annual fee based on emissions does not apply to:

- (a) Emissions of carbon monoxide; or
- (b) Class III stationary sources.

6. To determine the fee set forth in subsection 5:

- (a) Emissions must be calculated using:
  - (1) The emission unit's actual operating hours, rates of production and in-place control equipment;
  - (2) The types of materials processed, stored or combusted; and
  - (3) Data from:
    - (I) A test for emission compliance;
    - (II) A continuous emission monitor;
    - (III) The most recently published issue of Compilation of Air Pollutant Emission Factors, EPA Publication No. AP-42; or
    - (IV) Other emission factors or methods which the Director has validated; or
- (b) If paragraph (a) does not apply to a stationary source that was in operation during the preceding calendar year, emissions must be calculated using the permitted allowable emissions for that stationary source.

7. The annual fee for maintenance of a stationary source is:

- (a) For a Class I source ..... \$12,500
- (b) For a Class II source that has the potential to emit 50 tons or more per year of any one regulated air pollutant except carbon monoxide ..... 3,000
- (c) For a Class II source that has the potential to emit 25 tons or more per year but less than 50 tons per year of any one regulated air pollutant except carbon monoxide ..... 1,000
- (d) For a Class II source that has the potential to emit less than 25 tons per year of any one regulated air pollutant except carbon monoxide ..... 250
- (e) For a Class III source ..... 250
- (f) For a surface area disturbance ..... 250

8. The State Department of Conservation and Natural Resources shall collect all fees required pursuant to subsections 5 and 7 not later than July 1 of each year.

9. 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 fee 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. 2.** NAC 445B.3395 is hereby amended to read as follows:

NAC 445B.3395. 1. Except as otherwise provided in this subsection, within 60 calendar days after the date on which an application for a Class I operating permit or for the significant revision of a Class I operating permit is received, the Director shall determine if 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 that the application is complete. Unless the Director determines that the application is incomplete within 60 days after the date of receipt, the official date of submittal shall be deemed to be the date on which the Director determines that the application is complete or 61 days after the date of receipt, whichever is earlier.

2. Except as otherwise provided in this subsection, within 180 calendar days after the official date of submittal of an application for a Class I operating permit or for the revision of a Class I operating permit, the Director shall make a preliminary determination to issue or deny the Class I operating permit or the revision of the Class I operating permit. The Director shall give

preliminary notice of his intent to issue or deny the Class I operating permit or the revision of the Class I operating permit within 180 calendar days after the official date of submittal.

3. Within 10 working days after the receipt of an application for a minor revision of a Class I operating permit, the Director shall determine if the application is complete. If substantial additional information is required, the Director shall determine the application to be 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 10 working days after the date on which the Director receives the application, the official date of submittal is the date on which the Director determines that the application is complete or 11 working days after the date of receipt, whichever is earlier.

4. The Director's review and preliminary intent to issue or deny a Class I operating permit and the proposed conditions for the Class I operating permit must be made public and maintained on file with the Director during normal business hours at 333 West Nye Lane, Carson City, Nevada, and in the air quality region where the source is located for 30 calendar days to enable public participation and comment and a review by any affected states.

5. The Director shall:

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

(b) Provide written notice to:

(1) Persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list; and

(2) Any affected state;

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

(d) Provide a copy of the Director's review of the application, the Director's preliminary intent to issue or deny the Class I operating permit and the proposed Class I operating permit to the Administrator; and

(e) Establish a 30-day period for public comment.

6. The provisions of subsections 4 and 5 do not apply to an administrative amendment to a Class I operating permit made pursuant to NAC 445B.319~~[,]~~ *or* a change without revision to a Class I operating permit made pursuant to NAC 445B.342 ~~[for a minor revision of a Class I operating permit made pursuant to NAC 445B.3425].~~

7. The notice required for a Class I operating permit pursuant to subsection 5 must identify:

(a) The affected facility and the name and address of the applicant;

(b) The name and address of the authority processing the Class I operating permit;

(c) The activity or activities involved in the Class I operating permit and the emissions change involved in any revision of the Class I operating permit;

(d) 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 Class I operating permit, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the Class I operating permit and which are relevant to the determination of the issuance of the Class I operating permit; and

(e) 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 on the Director's review and preliminary intent for the issuance or denial of a Class I operating permit must be submitted in writing to the Director within 30 calendar days after the public announcement. 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. Except as otherwise provided in subsection 10 and NAC 445B.319, 445B.342 and 445B.3425, within 12 months after the official date of submittal of a Class I-B application, the Director shall issue or deny the application for a Class I-B operating permit or for a revision of the Class I-B operating permit. The Director shall make his decision by taking into account written comments from the public, affected states and the Administrator, and the comments made during public hearings on the Director's review and preliminary intent for issuance or denial, information submitted by proponents of the project and the effect of such a facility on the maintenance of the State, and national ambient air quality standards contained in NAC 445B.22097 and the control strategy contained in the air quality plan. The Director shall send a copy of the final Class I-B operating permit to the Administrator.

10. For stationary sources subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, adopted pursuant to NAC 445B.221, the Director shall issue or deny an application for a Class I operating permit, or for the revision or renewal of a Class I operating permit, within 12 months after receiving a complete application.

11. The Director shall not issue a Class I operating permit, or a revision or renewal of a Class I operating permit, if the Administrator objects to its issuance in writing within 45 days after the Administrator's receipt of the proposed conditions for the Class I operating permit and the necessary supporting information.

12. Any person may petition the Administrator to request that he object to a Class I operating permit as provided in 40 C.F.R. § 70.8(d).

13. If the Administrator objects to the issuance of a Class I operating permit of his own accord or in response to a public petition, the Director shall submit revised proposed conditions for the Class I operating permit in response to the objection within 90 days after the date on which he is notified of the objection.

14. If construction will occur in one phase, a Class I operating permit or the revision of a Class I operating permit for a new or modified stationary source, other than a stationary source subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, expires if construction is not commenced within 18 months after the date of issuance thereof or construction of the facility 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.

15. 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 Class I operating permit or the revision of a Class I operating permit for a new or modified stationary source, other than a stationary source subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, 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. 3.** NAC 445B.3425 is hereby amended to read as follows:

NAC 445B.3425. 1. A minor revision may be made to a Class I operating permit if the revision:

- (a) Does not violate any applicable requirement;
- (b) Does not involve significant changes to the existing requirements for monitoring, reporting or recordkeeping;
- (c) Does not require or change:
  - (1) A determination of an emission limitation or other standard on a case-by-case basis;
  - (2) A determination of the ambient impact for any temporary source; or
  - (3) A visibility or increment analysis;
- (d) Does not establish or change a condition of the operating permit for which there is no corresponding underlying applicable requirement and which was requested in order to avoid an applicable requirement, including:
  - (1) A federally enforceable emissions cap; or
  - (2) An alternative emission limitation pursuant to 42 U.S.C. § 7412(i)(5);
- (e) Is not a modification pursuant to any provision of 42 U.S.C. §§ 7401 to 7515, inclusive; and
- (f) Does not result in an increase in allowable emissions that exceeds any of the following specified thresholds:
  - (1) Carbon monoxide, 100 tons per year.
  - (2) Nitrogen oxides, 40 tons per year.
  - (3) Sulfur dioxide, 40 tons per year.
  - (4) PM10, 15 tons per year.
  - (5) Ozone, 40 tons per year of volatile organic compounds.
  - (6) Sulfuric acid mist, 7 tons per year.
  - (7) Hydrogen sulfide (H<sub>2</sub>S), 10 tons per year.

2. An owner or operator must request a minor revision on an application form provided by the Director. The application must include:

- (a) A description of the modification;
- (b) A description of the emissions resulting from the modification;
- (c) An identification of any new applicable requirements that will apply because of the modification;
- (d) Suggested conditions of the operating permit;
- (e) Certification by a responsible official of the stationary source that the proposed modification complies with the criteria for a minor revision set forth in subsection 1; and
- (f) Any relevant information concerning the proposed change which is required by NAC 445B.295 and 445B.3368.

3. The Director shall:

- (a) Determine, in accordance with subsection 3 of NAC 445B.3395, whether the application for a minor revision is complete.
- (b) Transmit the application to the Administrator within ~~5~~ **10** working days after the official date of submittal of the application.
- (c) Provide notice to any affected state within ~~5~~ **10** working days after the official date of submittal of the application for a minor revision.

***(d) Provide notice to the public in accordance with the public notice requirements of subsections 4 and 5 of NAC 445B.3395.***

~~[(d)]~~ (e) Provide a 30-day period for comment by *the public and* any affected state concerning the application.

~~[(e)]~~ (f) Within 45 days after the official date of submittal of the application:

(1) Determine whether the proposed minor revision meets the criteria for a minor revision set forth in this section;

(2) Determine whether the proposed conditions of the operating permit are adequate; and

(3) If the Director determines that the proposed modification does not meet the criteria for a minor revision, deny the proposed revision and notify the applicant and the Administrator.

~~[(f)]~~ (g) If the Director determines that the applicant's proposed conditions of the operating permit are not adequate, draft appropriate conditions for the operating permit. Proposed conditions drafted by the Director must be submitted to the Administrator for review *and the Director must provide public notice in accordance with paragraph (d) of subsection 3.*

~~[(g)]~~ (h) Notify the Administrator of any recommendations from an affected state which the Director does not accept.

4. The Director may issue the minor revision upon notification by the Administrator that the Administrator does not object to the minor revision. If the Administrator does not notify the Director within 45 days after the date on which the Administrator received the notification pursuant to this section or within 45 days after the date on which the Administrator receives the Director's proposed conditions, whichever is later, the Administrator shall be deemed to have not objected to the minor revision.

5. If the Administrator objects to the minor revision, the Director shall:

(a) Deny the application for the minor revision;

(b) Determine whether the minor revision should be reviewed under the procedures for a significant revision; or

(c) Revise the proposed revision of the operating permit and forward it to the Administrator for review *and the Director must provide public notice in accordance with paragraph (d) of subsection 3.*

6. The Director shall take action pursuant to subsection 4 or 5 within 90 days after the official date of submittal of an application for a minor revision or within 15 days after the Administrator's 45-day review period ends, whichever is later.

**Sec. 4.** NAC 445B.3457 is hereby amended to read as follows:

NAC 445B.3457. 1. Except as otherwise provided in NAC 445B.319 and 445B.342, within 10 working days after the date of receipt of an application for a Class II operating permit or for the revision of a Class II operating permit, the Director shall determine if 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 10 working 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 11 working days after the date of receipt, whichever is earlier. ~~[(The Director shall issue or deny a Class II operating permit or the revision of a Class II operating permit within 60 days after the official submittal of the application for the Class II operating permit or revision of a Class II operating permit.)]~~ *If notice is required pursuant to subsection 4 of this section, the Director shall make a preliminary determination to issue or deny a Class II operating permit or the revision of a*

*Class II operating permit within 60 days after the official date of submittal of the application for the Class II operating permit or revision of a Class II operating permit.*

*2. For Class II sources not subject to the notice requirements of subsection 4 in this section, the Director shall issue or deny a Class II operating permit or the revision of a Class II operating permit within 60 days after the official date of submittal of the application for the Class II operating permit or revision of a Class II operating permit.*

~~2~~. 3. If, after the official date of submittal, the Director discovers that additional information is required to act on the application, the Director may request additional information necessary to determine whether the proposed operation will comply with all of the requirements set forth in NAC 445B.001 to 445B.3497, inclusive. 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. Class II notice requirements:*

*(a) Within 10 working days after the Director makes a preliminary determination to issue or deny an application for a Class II source with proposed facility-wide permitted emissions greater than or equal to 70 tons per year of a regulated air pollutant, the Director's preliminary determination to issue or deny a new Class II operating permit or a revision to a Class II operating, and the proposed conditions for the new Class II operating permit or revised Class II operating permit must be made public and maintained on file with the Director during normal business hours at 333 West Nye Lane, Carson City, Nevada for 30 days to enable public participation and comment. The Director shall:*

*(1) Publish a notice in a newspaper of general circulation in the area in which the Class II stationary source is located;*

*(2) 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;*

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

*(4) Establish a 30-day public comment period;*

*(5) At a minimum, identify in the notice:*

*(I) The name of the facility and the name and address of the applicant;*

*(II) The name and address of the agency processing the Class II operating permit;*

*(III) The name, address and telephone number of a representative of the Agency from whom interested persons may obtain additional information, including copies of the proposed conditions for the Class II operating permit, the application, all relevant supporting materials and all other materials which are available to the Agency that are relevant to the determination of the issuance of the Class II operating permit;*

*(IV) A description of the proposed new or modified source and a summary of the emissions involved;*

*(V) A summary of the impact on the quality of air;*

*(VI) The date by which comments must be submitted; and*

*(VII) 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.*

*(b) Within 15 working days after the official date of submittal for a Class II source with facility-wide emissions contained in the application which are greater than or equal to 30 tons per year but less than 70 tons per year of a regulated air pollutant and which is required to*

*submit an environmental evaluation with the application pursuant to NAC 445B.310 or provides with the application an environmental evaluation, a notice of the receipt by the Director of the Class II operating permit application, must be made public and maintained on file with the Director during normal business hours at 333 West Nye Lane, Carson City, Nevada for 15 days to enable public participation and comment. The Director shall:*

- (1) Publish a notice on the Agency's public world wide web electronic site;*
- (2) Establish a 15-day public comment period on the application received by the Director;*

*and*

- (3) At a minimum, identify in the notice:*

- (I) The name of the facility and the name and address of the applicant;*
- (II) The name and address of the agency processing the Class II operating permit;*
- (III) The name, address and telephone number of a representative of the Agency from whom interested persons may obtain additional information, including copies of the application, all relevant supporting materials and all other materials which are available to the Agency that are relevant to the determination of the issuance of the Class II operating permit;*

- (IV) A description of the proposed new or modified source;*

- (V) The Director's preliminary determination to issue or deny the Class II operating permit based on a preliminary review of the application;*

- (VI) The date by which comments must be submitted; and*

- (VII) A brief description of the procedures for public comment.*

*(c) Within 10 working days after the Director makes a preliminary determination to issue or deny an application for a Class II source with proposed facility-wide permitted emissions which are greater than or equal to 30 tons per year but less than 70 tons per year of a regulated air pollutant and which is not required to submit an environmental evaluation with the application pursuant to NAC 445B.310, the Director's preliminary intent to issue or deny a new Class II operating permit or a revision to a Class II operating permit, must be made public and maintained on file with the Director during normal business hours at 333 West Nye Lane, Carson City, Nevada for 15 days to enable public participation and comment. The Director shall:*

- (1) Not require public notice of a revision of a Class II operating permit if the modification is not subject to the requirements of subsection (2) of NAC 445B.310.*

- (2) Publish a notice on the Agency's public world wide web electronic site; and*

- (3) Establish a 15-day public comment period.*

- (4) At a minimum, identify in the notice:*

- (I) The name of the facility and the name and address of the applicant;*
- (II) The name and address of the agency processing the Class II operating permit;*
- (III) The name, address and telephone number of a representative of the Agency from whom interested persons may obtain additional information, including copies of the proposed conditions for the Class II operating permit, the application, all relevant supporting materials and all other materials which are available to the Agency that are relevant to the determination of the issuance of the Class II operating permit;*

- (IV) A description of the proposed new or modified source and a summary of the emissions involved;*

- (V) A summary of the impact on quality of air;*

- (VI) The date by which comments must be submitted; and*

*(VII) A brief description of the procedures for public comment.*

*5. All comments on the Director's notice must be submitted in writing to the Director within the time specified in the public announcement.*

*6. If a public hearing is scheduled pursuant to subsection 4 of this section, the Director shall give notice of any public hearing at least 30 days before the date of the hearing.*

*7. 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. For Class II sources subject to the notice requirements of paragraphs (a) or (c) of subsection 4 of this section, within 30 days after the close of the public comment period or the public hearing as required in subsection 4 of this section, whichever is later, the Director shall issue or deny the Class II operating permit or revision of the Class II operating permit. The Director shall make his decision by taking into account substantive written comments, and substantive comments made during public hearings on the Director's notice and preliminary determination for issuance or denial, information submitted by proponents of the project and the effect of such a facility on the maintenance of the State, and national ambient air quality standards contained in NAC 445B.22097 and the control strategy contained in the air quality plan.*