

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R036-05

§§1, 2 and 4 effective April 1, 2006, or, under certain circumstances, upon the expiration of an
extended deadline for complying with certain emission limitations

§§3 and 5 effective October 31, 2005

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

AUTHORITY: §§1-5, NRS 445B.210.

A REGULATION relating to air pollution; prospectively repealing the provisions relating to the control of certain emissions of air pollutants by certain coal-fired steam generating facilities; and providing other matters properly relating thereto.

Section 1. NAC 445B.22017 is hereby amended to read as follows:

445B.22017 1. Except as otherwise provided in this section and NAC 445B.2202 , ~~and 445B.22023,~~ no owner or operator may cause or permit the discharge into the atmosphere from any emission unit which is of an opacity equal to or greater than 20 percent. Opacity must be determined by one of the following methods:

(a) If opacity is determined by a visual measurement, it must be determined as set forth in Reference Method 9 in Appendix A of 40 C.F.R. Part 60.

(b) If a source uses a continuous monitoring system for the measurement of opacity, the data must be reduced to 6-minute averages as set forth in 40 C.F.R. § 60.13(h).

2. The provisions of this section and NAC 445B.2202 ~~and 445B.22023~~ do not apply to that part of the opacity that consists of uncombined water. The burden of proof to establish the application of this exemption is upon the person seeking to come within the exemption.

3. If the provisions of 40 C.F.R. Part 60, Subpart D or Da apply to an emission unit, the emission unit must be allowed one 6-minute period per hour of not more than 27 percent opacity as set forth in 40 C.F.R. § 60.42(a)(2) and 40 C.F.R. § 60.42a(b).

4. The continuous monitoring system for monitoring opacity at a facility must be operated and maintained by the owner or operator specified in the permit for the facility in accordance with NAC 445B.256 to 445B.267, inclusive.

SECOND
PARALLEL
SECTION

Sec. 2. NAC 445B.2202 is hereby amended to read as follows:

445B.2202 *The provisions of* NAC 445B.22017 ~~[and 445B.22023]~~ do not apply to:

1. Smoke from the open burning described in NAC 445B.22067;
2. Smoke discharged in the course of training air pollution control inspectors to observe visible emissions, if the facility has written approval of the Commission;
3. Emissions from an incinerator as set forth in NAC 445B.2207; or
4. Emissions of stationary diesel-powered engines during warm-up for not longer than 15 minutes to achieve operating temperatures.

Sec. 3. Sections 1 to 4, inclusive, of LCB File No. T003-05 are hereby repealed.

Sec. 4. NAC 445B.22023 is hereby repealed.

Sec. 5. 1. This section and section 3 of this regulation become effective on the date on which the regulation is filed by the Legislative Counsel with the Secretary of State.

2. Sections 1, 2 and 4 of this regulation become effective:

(a) On April 1, 2006;

(b) Upon the expiration of an extended deadline for complying with the emission limitations in the consent decree set forth in *Grand Canyon Trust, Inc. v. Southern California Edison Co.*, No. CV-S-98-00305-LDG (RJJ) (D. Nev. filed Dec. 17, 1999) if the extended deadline is:

(1) Either provided pursuant to the consent decree or provided in a judicial amendment of the consent decree; and

(2) Set for a date that is later than April 1, 2006; or

(c) Upon the date on which this regulation is filed by the Legislative Counsel with the Secretary of State,

↳ whichever occurs later. As soon as practicable after sections 1, 2 and 4 of this regulation become effective, the Chairman of the State Environmental Commission will publish a notice indicating that those sections have become effective and will file a copy of the notice with the Legislative Counsel and the Secretary of State.

TEXT OF REPEALED SECTION

445B.22023 Visible emissions: Coal-fired steam generating facilities. (NRS 445B.210)

1. The provisions of this section and NAC 445B.22017 and 445B.2202 apply to any coal-fired steam generating facility used to produce electricity with an equipment manufacturer's guarantee or demonstrated capability of more than 7,936 x 10⁶ Btu (2,000 x 10⁶ kg-cal) per hour of heat input which existed before 1972.

2. Each coal-fired steam generating unit at a facility must not discharge any particulate matter which exceeds an average opacity of 30 percent for any 6-minute period contained in any hour as measured in the emissions stack of the facility in the manner described in subsection 3.

3. The opacity of the particulate matter must be averaged over each 6-minute period and recorded 10 times per hour. The initial 6-minute period for each hour must begin on the hour. The average opacity for each 6-minute period must be recorded after the expiration of that period.

4. During the interim compliance period specified in 40 C.F.R. § 52.1488(d), each coal-fired steam generating unit at a facility must comply with the opacity provisions of 40 C.F.R. § 52.1488(d).

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R036-05**

The State Environmental Commission adopted regulations assigned LCB File No. R036-05 which pertain to chapter 445B of the Nevada Administrative Code on October 14, 2005.

Notice date: 8/30/2005
Hearing date: 10/4/2005

Date of adoption by agency: 10/14/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

This regulation repeals NAC 445B.22023, "Visible emissions: Coal-fired steam generating facilities," contingent upon the requirements of a federal consent decree. The amendment is needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and maintained. This amended regulation is necessary as part of the ASIP update that was submitted to U.S. EPA in February 2005 with a supplement in June 2005.

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

The Nevada Division of Environmental Protection (NDEP), Bureau of Air Quality Planning (BAQP) held a workshop on the above referenced temporary regulation at the following location. Workshop announcements were mailed to all air quality permit holders in Nevada.

Carson City

Wednesday, November 3, 2004
9:30 am - 11:00 am
Western Nevada Community College
Room 103, Reynolds Building
2201 West College Parkway
Carson City NV

The proposed regulation was also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates (September 05, 19, 26, 2005). The public was subsequently mailed a public notice and meeting agenda for the SEC regulatory hearing, which was held in Reno on October 04, 2005; the SEC mailing list was used for both mailings.

At the SEC hearing, there were no public comments received by the Commission during the adoption of the referenced regulation.

2. The number persons who:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

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.

Comments were solicited from affected businesses by the notice in the newspapers, as outlined in #1 above and by direct mail to interested persons subscribing to the SEC electronic mailing list. The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The regulation, public notice and meeting agenda were also made available on SEC Website at: <http://www.sec.nv.gov/main/hearing1005.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.

No changes were proposed at the State Environmental Commission Hearing, either by NDEP staff, the public or the Commission. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

No anticipated economic effects will result from adoption of this regulation.

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

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 no more stringent than what is established by federal law.

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.

This regulation does not address fees changes.