

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R056-07

Effective October 31, 2007

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

AUTHORITY: §1, NRS 445B.210 and 445B.300 and section 2 of Assembly Bill No. 115,
chapter 534, Statutes of Nevada 2007, at page 3311.

A REGULATION relating to mercury emissions; increasing the amount of the annual maintenance fee imposed on the operator of a thermal unit that emits mercury; and providing other matters properly relating thereto.

Section 1. NAC 445B.3689 is hereby amended to read as follows:

445B.3689 1. The fee for a mercury operating permit to construct as required pursuant to NAC 445B.3611 to 445B.3689, inclusive, 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,~~ 2008, 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~~:

(1) *Dividing* 250,000 by the total number of thermal units that emit mercury, as described in this subsection ~~1~~; and

(2) *Pursuant to section 2 of Assembly Bill No. 115, chapter 534, Statutes of Nevada 2007, at page 3311, dividing 157,500 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,~~ 2007.

(b) For each fiscal year after the fiscal year ending on June 30, ~~[2007,]~~ 2008, 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]~~:

(1) *Dividing 500,000* 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 ~~[+]~~; *and*

(2) *Except as otherwise provided in this subsection, increasing the amount determined pursuant to subparagraph (1) by 2 percent compounded annually.*

↪ 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. *The Director may suspend imposition of the increase required pursuant to subparagraph (2) for any 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 ~~[+]~~, *except the fees required pursuant to subparagraph (2) of paragraph (a) of subsection 2, which must be collected not later than January 1, 2008.*

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.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R056-07
Petition 2007-01

The State Environmental Commission adopted regulations assigned LCB File No. R056-07 which pertain to chapter 445B of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

Nevada Division of Environmental Protection
Bureau of Air Pollution Control, Air Quality Planning

Regulation R056-07: Nevada Mercury Air Emissions Control Program Fees: This regulation amends the Nevada Mercury Air Emissions Control Program (NMCP) — NAC 445B.3611 to 445B.3689. This program governs the precious metal mining industry in Nevada.

The regulation implements Assembly Bill 115 which was passed by the 2007 Nevada Legislature (<http://www.leg.state.nv.us/74th/reports/history.cfm?ID=273>). The legislation required the State Environmental Commission to "adopt regulations prescribing the appropriate fee to be imposed on the operator of a mine with the potential to emit mercury . . ." in order to hire staff to ensure compliance with the NMCP.

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

NDEP's Bureau of Air Pollution Control / Air Quality Planning held two public workshops on the above referenced regulation at the following locations.

ELKO

July 10, 2007 1:00 PM to 2:00 PM
Berg Hall Conference Room
Great Basin College
1500 College Parkway

CARSON CITY

July 17, 2007 10:00 AM to 11:00 AM
Nevada Division of Environmental
Protection
4th Floor South Conference Room
901 South Carson Street

The State Environmental Commission (SEC) held a public hearing to consider this regulation on September 07, 2007. The hearing was held in Carson City and Las Vegas through a videoconference. The meeting location in Carson City was at the Legislative Counsel Bureau Chambers in the State Legislative Building (Room 2135), 401 South Carson Street. The meeting location in Las Vegas was at the Legislative Counsel Bureau in the Grant Sawyer Building (Room 4412), 555 E. Washington Street.

The hearing agenda was posted at the following locations: the Legislative Building in Carson City, 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 was published on August 14, 2007, August 21, 2007 and August 28, 2007 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at:
http://www.sec.nv.gov/main/hearing_0907.htm

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

- (a) Attended September 7, 2007 hearing; 40
- (b) Testified on this Petition at the hearing: 1 (1 NDEP Staff)
- (c) Submitted to the agency written comments: 0

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

Comments were solicited from affected businesses as indicated in number 1 above. In addition to the public workshop and the SEC regulatory hearing, the Nevada Division of Environmental Protection held numerous meetings with representatives from the mining industry and Nevada's environmental community; the meetings were used to solicit and incorporate stakeholder comments into the regulation. Prior to adoption of the regulation by the SEC, the Nevada Mining Industry (NMA) sent a letter to the SEC supporting the regulation.

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.

The State Environmental Commission adopted the regulation without change on September 7, 2006. 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.

For state fiscal year 2008, the regulation increases annual maintenance fees for all thermal units that emit mercury by an amount sufficient to support two full-time state employees for 6 months (i.e., \$125,000) and fund start-up equipment costs of \$32,500.

For fiscal year 2009, and each year thereafter, the collective annual maintenance fee will be increased by \$250,000 to cover the continuing cost of the two employees. These employees will be responsible for ensuring compliance with the NMCP. An inflationary adjustment factor of 2 percent, compounded annually, is also added. The inflation factor was added to make the

mercury maintenance fee procedures consistent with fee procedures for other stationary sources permitted by the Division of Environmental Protection. All fee increases will be divided among the number of thermal units that emit mercury from precious metal mining operations in Nevada.

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

Specific costs to the agency are detailed in # 5 above.

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 proposed regulation does overlap or duplicate any regulations of other state or government 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 not more stringent than any federal regulations adopted by US EPA.

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.

The proposed regulation does alter existing fees for permitting and monitoring activities conducted by the Nevada Division of Environmental Protection; see # 5 above.