

**REVISED PROPOSED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R142-07**

February 6, 2008

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

AUTHORITY: §§1-4, NRS 445B.210; §5, NRS 445B.210, 445B.225 and 445B.300; §6, NRS 445B.210, 445B.470 and 445B.640; §§7-14, NRS 445B.210 and 445B.300.

A REGULATION relating to pollution; revising the amount of certain fines for minor air pollution violations; providing that an emergency generator which is owned or operated by a stationary source does not qualify as an insignificant activity under certain circumstances; requiring a notice for a Class I or Class II operating permit to include a statement concerning potential emissions of lead under certain circumstances; requiring the Director of the State Department of Conservation and Natural Resources to provide written notice to an affected local air pollution control agency under certain circumstances; and providing other matters properly relating thereto.

**Section 1.** Chapter 445B of NAC is hereby amended by adding thereto a new section to read as follows:

*“Commence,” as used in reference to construction or modification of a stationary source, means that the owner or operator has:*

*1. Obtained all necessary preconstruction approvals or permits, including those required by federal air quality control laws and regulations, NAC 445B.001 to 445B.3689, inclusive, and air quality laws and regulations which are part of the applicable state implementation plan; and*

*2. Taken affirmative steps toward construction or modification, in one of the following ways:*

*(a) Has begun, or caused to begin, a continuous program of on-site construction of the source to be completed within a reasonable time, as demonstrated by the initiation of physical on-site construction activities on an emission unit which are of a permanent nature, which may include, without limitation, the installation of building supports and foundations, laying of underground pipework and the construction of permanent storage structures;*

*(b) Has entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source, to be completed within a reasonable time; or*

*(c) For modification of a stationary source, has begun those on-site activities, other than preparatory activities, which mark the initiation of the modification.*

**Sec. 2.** NAC 445B.001 is hereby amended to read as follows:

445B.001 As used in NAC 445B.001 to 445B.3791, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445B.002 to 445B.211, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 3.** 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.3791, inclusive, *and section 1 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<sub>10</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and H<sub>2</sub>S;
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 ~~[H]~~, *except for a stationary compression ignition internal combustion engine subject to Subpart IIII and which does not exceed 750 horsepower;*

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

6. *Which is not subject to the requirements of 40 C.F.R. Part 63;*

7. Which is not a temporary source;

~~[7.]~~ 8. Which is not located at or a part of another stationary source;

~~[8.]~~ 9. Which does not operate a thermal unit that emits mercury, as defined in NAC 445B.3643; and

~~[9.]~~ 10. 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. 4.** NAC 445B.069 is hereby amended to read as follows:

445B.069 “Federally enforceable” means *all limitations and conditions which are* enforceable by the Administrator pursuant to any provision of ~~[42 U.S.C. §§ 7401 to 7671q,~~ *inclusive,] the Act*, 40 C.F.R. §§ 52.21 ~~[and]~~, *any requirements developed pursuant to the applicable state implementation plan and 40 C.F.R. §§ 51.160 to 51.166, inclusive, ~~[or] 40 C.F.R. Parts 60, 61 and 63, or~~ 40 C.F.R. Part 70, or by other persons pursuant to 42 U.S.C. § 7604.*

**Sec. 5.** NAC 445B.252 is hereby amended to read as follows:

445B.252 1. To determine compliance with NAC 445B.001 to 445B.3791, inclusive, *and section 1 of this regulation* before the approval or the continuance of an operating permit or

similar class of permits, the Director may either conduct or order the owner of any stationary source to conduct or have conducted such testing and sampling as the Director determines necessary. Testing and sampling or either of them must be conducted and the results submitted to the Director within 60 days after achieving the maximum rate of production at which the affected facility will be operated, but not later than 180 days after initial start-up of the facility and at such other times as may be required by the Director.

2. Tests of performance must be conducted and data reduced in accordance with the methods and procedures of the test contained in each applicable subsection of this section unless the Director:

(a) Specifies or approves, in specific cases, the use of a *reference* method ~~[of reference]~~ with minor changes in methodology;

(b) Approves the use of an equivalent method;

(c) Approves the use of an alternative method, the results of which he has determined to be adequate for indicating whether a specific stationary source is in compliance; or

(d) Waives the requirement for tests of performance because the owner or operator of a stationary source has demonstrated by other means to the Director's satisfaction that the affected facility is in compliance with the standard.

3. Tests of performance must be conducted under such conditions as the Director specifies to the operator of the plant based on representative performance of the affected facility. The owner or operator shall make available to the Director such records as may be necessary to determine the conditions of the test of performance. Operations during periods of start-up, shutdown and malfunction must not constitute representative conditions of a test of performance unless otherwise specified in the applicable standard.

4. The owner or operator of an affected facility shall give notice to the Director 30 days before the test of performance to allow the Director to have an observer present. A written testing procedure for the test of performance must be submitted to the Director at least 30 days before the test of performance to allow the Director to review the proposed testing procedures.

5. Each test of performance must consist of at least three separate runs using the applicable method for that test. Each run must be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the runs apply. In the event of forced shutdown, failure of an irreplaceable portion of the sampling train, extreme meteorological conditions or other circumstances with less than three valid samples being obtained, compliance may be determined using the arithmetic mean of the results of the other two runs upon the Director's approval.

6. All testing and sampling will be performed in accordance with recognized methods and as specified by the Director.

7. The cost of all testing and sampling and the cost of all sampling holes, scaffolding, electric power and other pertinent allied facilities as may be required and specified in writing by the Director must be provided and paid for by the owner of the stationary source.

8. All information and analytical results of testing and sampling must be certified as to their truth and accuracy and as to their compliance with all provisions of these regulations, and copies of these results must be provided to the Director no later than 60 days after the testing or sampling, or both.

9. Notwithstanding the provisions of subsection 2, the Director shall not approve an alternative method or equivalent method to determine compliance with a standard or emission limitation contained in Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations for:

- (a) An emission unit that is subject to a testing requirement pursuant to Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations; or
- (b) An affected source.

**Sec. 6.** NAC 445B.281 is hereby amended to read as follows:

445B.281 1. Except as otherwise provided in NAC 445B.001 to 445B.3791, inclusive, *and section 1 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]~~, *violations* of NAC ~~445B.22037~~, 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	Second	Third
	Offense	Offense	Offense

	First Offense	Second Offense	Third Offense
NAC 445B.22037, fugitive dust.....	<del>[\$250]</del>	<del>[Major violation]</del>	<del>[Major violation]</del>
	<i>\$500</i>	<i>\$1,000</i>	<i>\$2,000</i>
NAC 445B.22067, open burning.....	250	500	<del>[500]</del>
			<i>1,000</i>
NAC 445B.2207, incinerator burning.....	250	500	<del>[500]</del>
			<i>1,000</i>
NAC 445B.22087, odors.....	250	500	<del>[500]</del>
			<i>1,000</i>
Subsection 3 or 4 of NAC 445B.232, reporting of excess emissions.....	250	500	<del>[500]</del>
			<i>1,000</i>
Subsection 8 of NAC 445B.252, testing and sampling reporting .....	250	500	<del>[500]</del>
			<i>1,000</i>
Subsection 2 of NAC 445B.265, reporting of monitoring systems.....	250	500	<del>[500]</del>
			<i>1,000</i>

	First	Second	Third
	Offense	Offense	Offense

Paragraph (e) of subsection 1 of NAC 445B.275, recordkeeping, monitoring, reporting or compliance certification.....	250	500	<del>500</del> <i>1,000</i>
NAC 445B.331, change of location .....	250	500	<del>500</del> <i>1,000</i>

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. 7.** 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 III~~ *stationary* 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.3689, inclusive, *and section 1 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.3689, inclusive, *and section 1 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.3689, inclusive, *and section 1 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 NAC 445B.3643.

**Sec. 8.** NAC 445B.308 is hereby amended to read as follows:

445B.308 1. In any area designated as attainment or unclassifiable for a regulated air pollutant, before an operating permit or a revision of an operating permit may be issued:

- (a) For a new or modified stationary source;
- (b) For a plantwide applicability limitation; or
- (c) To allow a plantwide applicability limitation to expire and not be renewed,

↳ in accordance with NAC 445B.308 to 445B.314, inclusive, the applicant must submit to the Director an environmental evaluation and any other information the Director determines is necessary to make an independent air quality impact assessment.

2. The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the environmental evaluation submitted by the applicant shows, or if the Director determines, in accordance with the provisions of this section, that the stationary source:

(a) Will prevent the attainment and maintenance of the state or national ambient air quality standards. For the purposes of this paragraph, only those ambient air quality standards that have been established in NAC 445B.22097 need to be considered in the environmental evaluation.

(b) Will cause a violation of the applicable state implementation plan.

(c) Will cause a violation of any applicable requirement.

(d) Will not comply with subsection 4.

3. The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the Director determines, *in accordance with subsection 3 of NAC 445B.311*, that the degree of emission limitation required for control of an air pollutant under this section is affected by that amount of the stack height of any source as exceeds good engineering practice stack height, *including a good engineering practice stack height demonstrated by a fluid model or a field study approved by the Director in accordance with paragraph (c) of subsection 1 of NAC 445B.083*, or any other dispersion technique.

4. Except as otherwise provided in subsection 5, to be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification, as those terms are defined in 40 C.F.R. § 51.165, who proposes to construct in an area designated nonattainment for the regulated air pollutant or pollutants for which the stationary source or modification is major must:

(a) Comply with the provisions of 40 C.F.R. § 51.165, as adopted by reference in NAC 445B.221.

(b) Adopt as an emission limitation for the stationary source the lowest achievable emission rate for each nonattainment regulated air pollutant from the stationary source.

(c) Demonstrate that all other stationary sources within this State which are owned, operated or controlled by the applicant are in compliance or on a schedule of compliance with NAC 445B.001 to 445B.3689, inclusive, *and section 1 of this regulation* and all other applicable requirements and conditions of the permit.

(d) Conduct an analysis of any anticipated impact on visibility in any federal Class I area which may be caused by emissions from the stationary source.

(e) Conduct an analysis of alternative sites, sizes, processes of production and techniques for environmental control for the proposed stationary source. Except as otherwise provided in this paragraph, the analysis must demonstrate that the benefits of the proposed stationary source significantly outweigh the detrimental environmental and social effects that will result from its location, construction or modification. If the major stationary source or major modification proposes to locate in an area designated as marginal nonattainment for ozone, the analysis must demonstrate an offset ratio of 1.2 to 1 for volatile organic compounds and nitrogen oxides. For the purposes of this paragraph, a stationary source which is major for volatile organic compounds or nitrogen oxides shall be deemed major for ozone if the proposed location of the major stationary source or major modification is in an area designated as nonattainment for ozone.

(f) Comply with one of the following:

(1) Sufficient offsets in emissions must be obtained by the time the proposed stationary source begins operation to ensure that the total allowable emissions of each nonattainment regulated air pollutant from the existing stationary sources in the area, those stationary sources in the area which have received their respective permits and the proposed stationary source will be sufficiently less than the total emissions from the existing stationary sources and those stationary

sources in the area which have received their respective permits before the proposed stationary source applies for its operating permit or a revision of an operating permit, in order to achieve reasonable further progress; or

(2) If the major stationary source or major modification is located in a zone identified by the Administrator as one to be targeted for economic development, the owner or operator must demonstrate that the emission from the stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for a regulated air pollutant for the nonattainment area.

↪ For the purposes of this paragraph, offsets must comply with the provisions of Appendix S of 40 C.F.R. Part 51, as adopted by reference in NAC 445B.221, and be coordinated with the appropriate local agency for the control of air pollution.

5. To be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification, as those terms are defined in 40 C.F.R. § 51.165, as adopted by reference in NAC 445B.221, who proposes to construct in an area designated as basic nonattainment for ozone must:

(a) Comply with the provisions of 40 C.F.R. § 51.165, as adopted by reference in NAC 445B.221.

(b) Adopt as an emission limitation for the stationary source the best available control technology for volatile organic compounds and nitrogen oxides from the stationary source.

(c) Demonstrate that all other stationary sources within this State that are owned, operated or controlled by the applicant are in compliance or on a schedule of compliance with NAC 445B.001 to 445B.3689, inclusive, *and section 1 of this regulation* and all other applicable requirements and conditions of the permit.

(d) Demonstrate an offset ratio of 1 to 1 for volatile organic compounds and nitrogen oxides.

For the purposes of this paragraph, a stationary source that is major for volatile organic compounds or nitrogen oxides shall be deemed major for ozone if the proposed location of the major stationary source or major modification is located in an area designated as basic nonattainment for ozone.

(e) Comply with one of the following:

(1) Sufficient offsets in emissions must be obtained by the time the proposed stationary source begins operation to ensure that the total allowable emissions of each nonattainment regulated air pollutant from the existing stationary sources in the area, those stationary sources in the area that have received their respective permits and the proposed stationary source will be sufficiently less than the total emissions from the existing stationary sources and those stationary sources in the area that received their respective permits before the proposed stationary source applies for its operating permit or a revision of an operating permit, in order to achieve reasonable further progress; or

(2) If the major stationary source or major modification is located in a zone identified by the Administrator as one to be targeted for economic development, the owner or operator must demonstrate that the emissions from the stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for a regulated air pollutant for the nonattainment area.

↪ For the purposes of this paragraph, offsets must comply with the provisions of Appendix S of 40 C.F.R. Part 51, as adopted by reference in NAC 445B.221, and be coordinated with the appropriate local agency for the control of air pollution.



6. To be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification who proposes to construct in any area designated as attainment or unclassifiable under 42 U.S.C. § 7407(d) must comply with the provisions of 40 C.F.R. § 52.21, as adopted by reference in NAC 445B.221.

7. The Director may impose any reasonable conditions on his approval, including conditions requiring the owner or operator of the stationary source to:

(a) Conduct monitoring of the quality of the ambient air at the facility site for a reasonable period before the commencement of construction or modification and for any specified period after operation has begun at the stationary source; and

(b) Meet standards for emissions that are more stringent than those found in NAC 445B.001 to 445B.3689, inclusive ~~§ 1~~, *and section 1 of this regulation.*

8. If a proposed stationary source located on contiguous property is constructed or modified in phases which individually are not subject to review as provided in NAC 445B.308 to 445B.314, inclusive, all phases occurring since November 7, 1975, must be added together for determining the applicability of those sections.

9. Approval and issuance of an operating permit or a revision of an operating permit for any stationary source does not affect the responsibilities of the owner or owners to comply with any other portion of the applicable state implementation plan.

10. As used in this section:

(a) “Lowest achievable emission rate” has the meaning ascribed to it in 40 C.F.R. § 51.165, as adopted by reference in NAC 445B.221.

(b) “Offset ratio” means the percentage by which a reduction in an emission must exceed the corresponding increase in that emission.

(c) “Reasonable further progress” means the annual incremental reductions in emissions of the relevant regulated air pollutant that are required by 42 U.S.C. §§ 7501 to 7515, inclusive, or are required by the Administrator to ensure attainment of the applicable standard for national ambient air quality by the applicable date.

**Sec. 9.** NAC 445B.313 is hereby amended to read as follows:

445B.313 For the purposes of determining the effects of Class I sources on the quality of ambient air and determining the applicability of a federally enforceable standard or requirement to an emission unit, the *maximum* heat input will be determined by using the appropriate method of ~~[the American Society for Testing and Materials (ASTM) contained in 40 C.F.R. Parts 51, 52, 60 and 61.]~~ *ASTM International*.

**Sec. 10.** NAC 445B.3364 is hereby amended to read as follows:

445B.3364 1. Except for sources that are subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 45 days after the date of receipt of an application for a Class I operating permit to construct or for the revision of a Class I operating permit to construct, 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 45 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 46th day after the date of receipt, whichever is earlier. Within 90 days after the official date of submittal, the Director shall make a preliminary

determination to issue or deny a Class I operating permit to construct or a revision of a Class I operating permit to construct.

2. For sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 30 days after the date of receipt of an application for a Class I operating permit to construct or for the revision of a Class I operating permit to construct, the Director shall determine whether the application contains adequate information to process the application. The official date of submittal of the application shall be deemed to be 31 days after the date of receipt, unless the Director determines before that date that substantial additional information is required. If the Director determines that substantial additional information is required, the Director shall return the application to the applicant. The Director shall require the applicant to submit a new application, or the applicant may formally withdraw the application. Within 180 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny an operating permit to construct or a revision of an operating permit to construct. For the purposes of 40 C.F.R. § 52.21, the application shall be deemed to be complete on the date that the Director makes the preliminary determination to issue or deny a Class I operating permit to construct or a revision of an operating permit to construct.

3. For the submittal of an application for a Class I operating permit to construct for the approval of a plantwide applicability limitation, within 30 days after the date of receipt of such an application, 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 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, whichever is earlier. Within 120 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny the Class I operating permit to construct for the approval of a plantwide applicability limitation.

4. 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 operation will comply with all of the requirements set forth in NAC 445B.001 to 445B.3689, inclusive ~~§~~ , *and section 1 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 preliminary intent to issue or deny an operating permit to construct or a revision of an operating permit to construct and the proposed conditions for the 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 89701-5249 , and in the air quality region where the source is located for 30 days to enable public and EPA participation and comment.

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;

(d) Provide a copy of the Director's preliminary intent to issue or deny the operating permit to construct and the proposed operating permit to construct to the Administrator;

(e) *Provide a copy of the Director's preliminary intent to issue or deny the operating permit to construct to each affected local air pollution control agency;*

(f) Establish a 30-day period for comment from the public and the EPA; and

~~(g)~~ (g) If the application is for an administrative revision to a Class I operating permit, provide written notice to each affected state.

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

~~Identify:~~

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

(b) ~~The~~ *Include the* name and address of the authority processing the Class I operating permit to construct;

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

(d) ~~The~~ *State that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable;*

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

~~[(e) A]~~

(f) *Include 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; and

~~[(g)]~~ (g) If applicable, *include* a description of any revisions to a Class I operating permit resulting from an administrative revision to the Class I operating permit.

8. All comments concerning the Director's review and the preliminary intent for the issuance or denial of a Class I operating permit to construct or of a revision of a Class I operating permit to construct must be submitted in writing to the Director within 30 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 subsections 10, 11 and 12, within 180 days after the official date of submittal of an application for an operating permit to construct or for the revision of an operating permit to construct, the Director shall issue or deny the new Class I operating permit to construct or the new revision of a Class I 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 application and the Director's preliminary determination for issuance or denial;

(c) Information submitted by proponents of the project; and

(d) 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 applicable state implementation plan.

10. Except as otherwise provided in subsection 11, for sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 12 months after the official date of submittal of an application for an operating permit to construct or for the revision of an operating permit to construct, the Director shall issue or deny the new Class I operating permit to construct or the new revision of a Class I operating permit to construct.

11. The Director shall issue or deny a Class I operating permit to construct for the approval of a plantwide applicability limitation within 30 days after the close of the period for public participation or 30 days after the hearing, if a hearing is scheduled pursuant to this section, whichever occurs later.

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

13. Any person may petition the Administrator to request that the Administrator object to the issuance of an administrative revision to a Class I operating permit as provided in 40 C.F.R. § 70.8(d).

14. If, on his own or pursuant to a request by a person pursuant to subsection 13, the Administrator objects to the issuance of an administrative revision to a Class I operating permit,

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.

**Sec. 11.** NAC 445B.3395 is hereby amended to read as follows:

445B.3395 1. Except for sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21 and as otherwise provided in this subsection, within 60 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 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 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. For sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 30 days after the date of receipt of an application for a Class I operating permit or for the revision of a Class I operating permit, the Director shall determine whether the application contains adequate information to process the application. The official date of submittal of the application shall be deemed to be 31 days after the date of receipt, unless the Director determines before that date that substantial additional information is required. If the Director determines that substantial additional information is required, the Director shall return the application to the applicant. The Director shall require the applicant to submit a new application or the applicant may formally withdraw the application.



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 such additional information that is necessary to determine whether the proposed operation will comply with all the requirements set forth in NAC 445B.001 to 445B.3689, inclusive ~~H~~ , *and section 1 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 pursuant to subsection 1 or 2.

4. Except as otherwise provided in this section, within 180 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 days after the official date of submittal.

5. Within 10 working days after the receipt of an application for a minor revision of a Class I operating permit, the Director shall determine whether 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.

6. The Director's review and preliminary intent to issue or deny a Class I operating permit or the revision of 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 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249 , and in the air quality region where the source is located for 30 days to enable public participation and comment and a review by any affected states.

7. 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; *and*

*(3) Any affected local air pollution control agency;*

(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 or the revision of a Class I operating permit, and the proposed Class I operating permit to the Administrator; and

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

8. The provisions of subsections 6 and 7 do not apply to:

(a) An administrative amendment to a Class I operating permit made pursuant to NAC 445B.319;

(b) A change without revision to a Class I operating permit made pursuant to NAC 445B.342;

or

(c) A minor revision of a Class I operating permit made pursuant to NAC 445B.3425, if the Director determines that the minor revision does not result in a significant change in air quality at any location where the public is present on a regular basis.

9. The notice required for a Class I operating permit or for a revision of a Class I operating permit pursuant to subsection 7 must : ~~identify:~~

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

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

(c) ~~The~~ *Identify 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~~ *State that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable;*

(e) *Include 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]~~

(f) *Include 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.

10. All comments on the Director's review and preliminary intent for the issuance or denial of a Class I operating permit or a revision of a Class I operating permit must be submitted in writing to the Director within 30 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.

11. Except as otherwise provided in subsection 12 and NAC 445B.319, 445B.342 and 445B.3425, within 12 months after the official date of submittal of a Class I-B application for an operating permit or revision of an operating permit, the Director shall issue or deny the operating permit or revision of the operating permit. The Director shall make his decision by taking into account:

- (a) Written comments from the public, affected states and the Administrator;
  - (b) Comments made during public hearings concerning the application and the Director's preliminary determination for issuance or denial;
  - (c) Information submitted by proponents of the project; and
  - (d) 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 applicable state implementation plan.
- ↪ The Director shall send to the Administrator a copy of the final operating permit issued by the Director after approving the Class I-B application.

12. For stationary sources subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, adopted *by reference* pursuant to NAC

445B.221, the Director shall issue or deny an application for a Class I operating permit, or the revision or renewal of a Class I operating permit, within 12 months after the official date of submittal of an application for a new Class I operating permit or the revision of a Class I operating permit. The application shall be deemed to be complete for the purposes of 40 C.F.R. § 52.21 on the date that the Director makes the preliminary determination to issue or deny the Class I operating permit or the revision of the Class I operating permit.

13. 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.

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

15. If the Administrator objects to the issuance of a Class I operating permit or a revision 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 or the revision of a Class I operating permit in response to the objection within 90 days after the date on which he is notified of the objection.

16. 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.

17. 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. 12.** NAC 445B.340 is hereby amended to read as follows:

445B.340 The Director may issue a Class I operating permit, or a revision of or a renewal of a Class I operating permit, if:

1. The Director has:

(a) Received a complete application for a Class I operating permit or for a revision of or a renewal of a Class I operating permit;

(b) Completed all requirements regarding public participation and comment pursuant to NAC 445B.3395; and

(c) Notified and responded to all comments from affected states;

2. The conditions of the operating permit provide for compliance with the requirements of NAC 445B.001 to 445B.3689, inclusive, *and section 1 of this regulation* and any other applicable requirements; and

3. The Administrator has received a copy of the proposed operating permit, any necessary supporting information, and any notices to the public, ~~and~~ affected *local air pollution control agencies and affected* states required pursuant to NAC 445B.3395, and has not objected to the issuance of the operating permit within 45 days after receipt of the proposed operating permit.

**Sec. 13.** NAC 445B.3457 is hereby amended to read as follows:

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.

2. 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.3689, inclusive ~~and~~, *and section 1 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.

3. If notice to the public is not required pursuant to subsection 5, 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 for the revision of the Class II operating permit.

4. If notice to the public is required pursuant to subsection 5, the Director shall:

(a) 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 for the revision of the Class II operating permit;

(b) Take such action as is necessary to ensure compliance with the provisions of subsections 5, 6 and 7, as applicable; and

(c) Issue or deny the Class II operating permit or the revision of the Class II operating permit within the period set forth in subsection 8.

5. If, after review of an application for a Class II operating permit or for the revision of a Class II operating permit, the Director determines that the change to the stationary source results in a significant change in air quality at any location where the public is present on a regular basis:

(a) The Director's preliminary determination to issue or deny the Class II operating permit or the revision of the Class II operating permit, and the proposed conditions for the Class II operating permit or the proposed conditions for the revision of the Class II operating permit must, within 10 working days after the Director makes that preliminary determination, be made public and maintained on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249 , for 30 days to enable public participation and comment; and



(b) The Director shall:

(1) Cause to be published a notice in a newspaper of general circulation in the area in which the Class II 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; and

(4) Establish a 30-day period for public participation.

6. The notice required pursuant to paragraph (b) of subsection 5 must include:

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

(b) The name and address of the state agency processing the Class II operating permit or the revision of the Class II operating permit;

(c) The name, address and telephone number of a representative from the state agency that is processing the Class II operating permit or the revision of the Class II operating permit from whom interested persons may obtain additional information, including copies of:

(1) The application;

(2) The proposed conditions for the Class II operating permit or the proposed conditions for the revision of the Class II operating permit;

(3) All relevant supporting materials; and

(4) All other materials which are available to the state agency that is processing the Class II operating permit or the revision of the Class II operating permit and which are relevant to the determination of the issuance of the Class II operating permit or the revision of the Class II operating permit;

(d) A description of the proposed new Class II source or the proposed modification to the existing Class II source and a summary of the emissions involved;

(e) The date by which comments must be submitted to the Director;

(f) A summary of the impact of the proposed new Class II source or the proposed modification to the existing Class II source on the quality of air; ~~and~~

(g) *A statement indicating that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable; and*

(h) A brief description of the procedures for public participation 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 applications for which notice to the public is required to be provided pursuant to this section must be submitted in writing to the Director within the time specified in the notice. The Director shall give notice of any public hearing scheduled pursuant to this section 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. If an application for a Class II operating permit or for the revision of a Class II operating permit is submitted for a Class II source that is subject to the notice requirements set forth in subsection 5, the Director shall issue or deny the Class II operating permit or the revision of the Class II operating permit within 30 days after the close of the period for public participation or 30 days after the hearing if a hearing is scheduled pursuant to this section, whichever occurs later. The Director shall make his decision by taking into account:

(a) Written comments from the public;

(b) The comments made during public hearings concerning the application and the Director's preliminary determination for issuance or denial;

(c) Information submitted by proponents of the project; and

(d) 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 applicable state implementation plan.

9. If construction will occur in one phase, a Class II operating permit or the revision of a Class II operating permit for a new or modified stationary source 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 or more after the construction begins. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.

10. If construction will occur in more than one phase, the projected date of commencement of construction of each phase must be approved by the Director. A Class II operating permit or the revision of a Class II operating permit for a new or modified stationary source 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. 14.** NAC 445B.3477 is hereby amended to read as follows:

445B.3477 1. The Director may issue a Class II general permit covering numerous similar stationary sources.

2. *Before issuing a Class II general permit, the proposed conditions for the Class II general permit 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 89701-5249, for 30 days to enable public participation and comment. The Director shall:*

*(a) Cause to be published a notice in one or more newspapers of general circulation in the area in which the Class II general operating permit is applicable;*

*(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 public participation.*

*3. The notice required pursuant to subsection 2 must include, without limitation:*

*(a) The name and address of the state agency processing the Class II general permit;*

*(b) The name, address and telephone number of a representative from the state agency that is processing the Class II general permit from whom interested persons may obtain additional information, including copies of:*

*(1) The proposed conditions for the Class II general permit;*

*(2) All relevant supporting materials; and*

*(3) All other materials which are available to the state agency that is processing the Class II general permit and which are relevant to the determination of the issuance of the Class II general permit;*

*(c) A description of the proposed Class II general permit and a summary of the emissions involved;*

*(d) The date by which comments must be submitted to the Director;*

*(e) A summary of the impact of the proposed Class II general permit on the quality of the air;*

*(f) A statement indicating that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable; and*

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

*4. All comments concerning the proposed Class II general permit for which notice to the public is required to be provided pursuant to this section must be submitted in writing to the Director within the time specified in the notice. The Director shall give notice of any public hearing scheduled pursuant to this section at least 30 days before 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.*

*5. The Director may issue the Class II general permit after considering:*

*(a) Written comments from the public;*

*(b) The comments made during public hearings concerning the proposed Class II general permit;*

*(c) Information submitted by proponents of the Class II general permit; and*

*(d) The effect of the Class II general permit on the maintenance of the state and national ambient air quality standards contained in NAC 445B.22097 and the applicable state implementation plan.*

*6. A Class II general permit must set forth the criteria by which stationary sources may qualify for the Class II general permit.*

~~{3.}~~ **7.** After the effective date of a Class II general permit, the owner or operator of any stationary source that meets the criteria set forth in the Class II general permit may request authority to operate under the Class II general permit. The request must be in writing and must include all the information required by the Class II general permit.

~~{4.}~~ **8.** The Director shall grant or deny authority to operate under a Class II general permit within 30 days after his receipt of a request for such authority. The Director's decision to grant or deny an application for authority to operate under the terms of a Class II general permit is not subject to the requirements of NAC 445B.3457.

~~{5.}~~ **9.** A person may challenge the provisions of a Class II general permit only at the time the Class II general permit is issued. The Director's grant or denial of authority to operate under a Class II general permit to a stationary source or stationary sources does not provide an opportunity for an administrative review or a judicial review of the Class II general permit.

~~{6.}~~ **10.** The Director shall not grant authority to operate under a Class II general permit to an affected source.

~~{7.}~~ **11.** The term of a Class II general permit is 5 years.

~~{8.}~~ **12.** The authority to operate under a Class II general permit expires after 5 years. An owner or operator of a stationary source operating under the authority of a Class II general permit shall apply to renew his authority to operate under the Class II general permit at least 30 days before his authorization expires.

~~{9.}~~ **13.** A stationary source which obtains authorization to operate under a Class II general permit but is later determined not to qualify under the conditions of the Class II general permit may be subject to an action enforcing the prohibition against operating without a permit.