

**ADOPTED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R076-08**

Effective August 26, 2008

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

AUTHORITY: §§1 and 2, NRS 445B.210; §3, NRS 445B.210 and 445B.300.

A REGULATION relating to air pollution; revising the definition of a Class III source; revising the provisions governing the adoption by reference of certain federal regulations; and providing other matters properly relating thereto.

**Section 1.** 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:

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 *does not exceed 750 horsepower and* is not subject to the requirements of 40

C.F.R. Part 60, except for ~~[a]~~:

(a) *A stationary compression ignition internal combustion engine subject to Subpart IIII ~~and which does not exceed 750 horsepower;~~ ; or*

(b) *A stationary spark ignition internal combustion engine subject to Subpart JJJJ;*

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 ~~§§~~, *except for a stationary reciprocating internal combustion engine subject to Subpart ZZZZ and which does not exceed 750 horsepower;*

7. Which is not a temporary source;

8. Which is not located at or a part of another stationary source;

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

and

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. 2.** NAC 445B.221 is hereby amended to read as follows:

445B.221 1. Title 40 C.F.R. §§ 51.100(s) and 51.100(nn) and Appendix S of 40 C.F.R.

Part 51 are hereby adopted by reference as they existed on July 1, 2007.

2. Title 40 C.F.R. § 51.165 is hereby adopted by reference as it existed on July 1, 2002.

3. Appendix W of 40 C.F.R. Part 51 is hereby adopted by reference as it existed on July 1, 2007.

4. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 1, 2007.

5. ~~[The]~~ *Except as otherwise provided in subsection 6, the* following subparts of 40 C.F.R.

Part 60 are hereby adopted by reference:

(a) Subpart A, except §§ 60.4, 60.8(b)(2), 60.8(b)(3) and 60.11(e), as it existed on July 1, 2007;

(b) Section 60.21 of Subpart B, as it existed on July 1, 2006;

(c) Subparts C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, DDDD, EEEE, FFFF, IIII and KKKK as they existed on July 1, 2007; ~~[and]~~

(d) Subpart HHHH, except §§ 60.4105(b)(2), 60.4106, 60.4120 to 60.4142, inclusive, 60.4153(a) and (b) and 60.4176, as set forth in Volume 70 of the Federal Register at pages 28606 et seq., May 18, 2005, and the amendments to Subpart HHHH as set forth in Volume 71 of the Federal Register at pages 33388 et seq., June 9, 2006 ~~[H]~~; *and*

*(e) Subpart JJJJ as set forth in Volume 73 of the Federal Register at pages 3568 et seq., January 18, 2008.*

6. *The amendments to Subpart A of 40 C.F.R. Part 60 as set forth in Volume 73 of the Federal Register at pages 3568 et seq., January 18, 2008, are hereby adopted by reference.*

7. Appendices B and F of 40 C.F.R. Part 60 are hereby adopted by reference as they existed on July 1, 2007.

~~[7.]~~ 8. Subparts A, C, D, E, F, H, I, J, K, L, N, O, P, Q, R, T, V, W, Y, BB and FF of 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, 2007.

~~[8.]~~ 9. *Except as otherwise provided in subsection 10, the following subparts of 40 C.F.R. Part 63 are hereby adopted by reference:*

*(a)* Subparts A, B, C, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM,

NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYYY, ZZZZ, AAAAA, BBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, JJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, SSSSS, DDDDDD, EEEEE, FFFFFFF and GGGGGG ~~[of 40 C.F.R. Part 63 are hereby adopted by reference]~~ as they existed on July 1, 2007 ~~[-~~

~~—9.1;~~

*(b) Subpart WWWWW as set forth in Volume 72 of the Federal Register at pages 73611 et seq., December 28, 2007;*

*(c) Subpart YYYYY as set forth in Volume 72 of the Federal Register at pages 74088 et seq., December 28, 2007;*

*(d) Subpart ZZZZZ as set forth in Volume 73 of the Federal Register at pages 226 et seq., January 2, 2008;*

*(e) Subparts LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP and QQQQQQ as set forth in Volume 72 of the Federal Register at pages 38864 et seq., July 16, 2007; and*

*(f) Subparts RRRRRR, SSSSSS and TTTTTT as set forth in Volume 72 of the Federal Register at pages 73180 et seq., December 26, 2007.*

*10. The amendments to the following subparts of 40 C.F.R. Part 63 are hereby adopted by reference:*

*(a) Subparts A and ZZZZ as set forth in Volume 73 of the Federal Register at pages 3568 et seq., January 18, 2008;*

*(b) Subpart DDDD as set forth in Volume 72 of the Federal Register at pages 61060 et seq., October 29, 2007;*

*(c) Subpart EEEEE as set forth in Volume 73 of the Federal Register at pages 7210 et seq., February 7, 2008;*

*(d) Subparts EEEEE and FFFFFF as set forth in Volume 72 of the Federal Register at pages 36363 et seq., July 3, 2007; and*

*(e) Subparts LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP and QQQQQQ as set forth in Volume 73 of the Federal Register at pages 15923 et seq., March 26, 2008.*

**11.** Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, 2007. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3791, inclusive, the provisions of 40 C.F.R. Part 72 apply.

~~{10}~~ **12.** Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, 2007. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3791, inclusive, the provisions of 40 C.F.R. Part 76 apply.

~~{11}~~ **13.** Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, is hereby adopted by reference as it existed on October 1, 1993.

~~{12}~~ **14.** The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained, free of charge, from the United States Department of Labor at the Internet address <http://www.dol.gov>.

~~{13}~~ **15.** A copy of the publications which contain the provisions adopted by reference in subsections 1 to ~~{14}~~ **13**, inclusive, may be obtained from the:

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

(b) Government Printing Office, free of charge, at the Internet address

<http://www.gpoaccess.gov/nara/index.html>.

~~{14.}~~ **16.** For the purposes of the provisions of 40 C.F.R. Parts 60, 61 and 63, adopted by reference pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

~~{15.}~~ **17.** Except as otherwise provided in subsections ~~{9}~~ **11** and ~~{10.}~~ **12**, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3791, inclusive, for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

~~{16.}~~ **18.** For the purposes of this section, “administrator” as used in the provisions of 40 C.F.R. Part 60, except Subpart B § 60.21 and Subpart HHHH §§ 60.4101 to 60.4105, inclusive, 60.4107 to 60.4114, inclusive, 60.4151 to 60.4173, inclusive, and 60.4175, and Parts 61 and 63, adopted pursuant to this section, means the Director.

**Sec. 3.** NAC 445B.3637 is hereby amended to read as follows:

445B.3637 “Precious metals mining” means the mining of gold or silver ore by the owner or operator of a stationary source that belongs to Industry Group 104, Gold and Silver Ores, of Major Group 10, Metal Mining, of the *Standard Industrial Classification Manual*, which is adopted by reference ~~{pursuant to subsection 12 of}~~ **in** NAC 445B.221.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R076-08**  
**SEC # P2008-09**

The State Environmental Commission adopted regulations assigned LCB File No. R076-08 which pertain to chapter 445B of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

**Regulation R076-08: Adopt By Reference Air Pollution / Air Quality Regulations:** This regulation updates NAC 445B.221, "Adoption by reference and applicability of certain provisions of federal law and regulations." The Division of Environmental Protection (NDEP) is proposing to adopt into State regulation sections of the federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules that have been adopted by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register.

NDEP is delegated implementation of the federal NSPS and NESHAP rules that apply in Nevada. In this regard it is necessary to keep the State's "adoption by reference" regulation up to date so that EPA can continue to delegate the implementation of new rules and revisions to existing rules to the State. NAC 445B.221 currently adopts the applicable NSPS and NESHAP rules, as they existed on July 1, 2007. This proposed regulatory amendment is necessary so that Nevada can request delegation for the implementation of new and revised federal NSPS and NESHAP rules promulgated after July 1, 2007. This will allow the regulated industry to continue to work with the State as opposed to the EPA.

**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.**

The Nevada Division of Environmental Protection, Bureau of Air Pollution Control, Air Quality Planning held one public workshops on the above referenced regulation at the locations noted below.

**CARSON CITY**

May 6, 2008 11:00 AM to 12:00 Noon  
Nevada Division of Environmental Protection  
Great Basin Conference Room (4th Floor South)  
901 South Stewart Street

Following this workshop, the State Environmental Commission (SEC) held a public hearing to consider the regulation on June 17, 2008. The hearing was held in Las Vegas at the Las Vegas Convention and Visitors Authority. The SEC hearing agenda was posted at the meeting location, at the 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 were also made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the regulation was published on Monday May 26, 2008 and on June 2<sup>nd</sup> and 9<sup>th</sup> 2008 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\\_061708.htm](http://www.sec.nv.gov/main/hearing_061708.htm)**

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

- (a) Attended June 17, 2008 hearing; 30 (approx.)
- (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.

**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 with several non-substantive changes.

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

The regulation is not anticipated to have any significant economic impact on the public or Nevada businesses.

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

There will be no additional cost to the agency for enforcement of the proposed 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.**

This regulation does not duplicate any other federal, state or local regulation.

**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 local or federal laws and regulations.



**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 address any fees.