

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R014-11

August 22, 2011

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

AUTHORITY: §§1-18, NRS 445B.210 and 445B.300.

A REGULATION relating to air pollution; establishing permitting requirements for Class IV sources of hazardous air pollutants; adopting by reference certain provisions of the Code of Federal Regulations; establishing fees for obtaining a Class IV operating permit and for maintenance of a Class IV stationary source; and providing other matters properly relating thereto.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. 1. *“Class IV source” means a stationary source which:*

(a) Except as otherwise provided in subsection 2, is subject to the requirements set forth in NAC 445B.001 to 445B.3689, inclusive, and sections 2 to 7, inclusive, of this regulation.

(b) Is not located at or a part of another stationary source.

(c) Is not subject to the requirements of 40 C.F.R. Part 60.

2. The term does not include a stationary source that is subject to the requirements for obtaining a Class I, Class II or Class III operating permit.

Sec. 3. *The following area sources, as adopted by reference in NAC 445B.221, are subject to the provisions of NAC 445B.001 to 445B.3689, inclusive, and sections 2 to 7, inclusive, of this regulation:*

| <i>Area Source Category</i> | <i>Subpart</i> |
|---|----------------|
| <i>Aluminum, copper, and other nonferrous foundries</i> | <i>ZZZZZZ</i> |
| <i>Asphalt processing and asphalt roofing manufacturing</i> | <i>AAAAAAA</i> |
| <i>Chemical manufacturing</i> | <i>VVVVVV</i> |
| <i>Chemical preparations industry</i> | <i>BBBBBBB</i> |
| <i>Chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks</i> | <i>N</i> |
| <i>Clay ceramics manufacturing</i> | <i>RRRRRR</i> |
| <i>Gasoline dispensing facilities</i> | <i>CCCCCC</i> |
| <i>Gasoline distribution bulk terminals, bulk plants, and pipeline facilities</i> | <i>BBBBBB</i> |
| <i>Glass manufacturing</i> | <i>SSSSSS</i> |
| <i>Industrial, commercial, and institutional boilers</i> | <i>JJJJJJ</i> |
| <i>Nine metal fabrication and finishing source categories.....</i> | <i>XXXXXX</i> |
| <i>Paint stripping and miscellaneous surface coating operations.....</i> | <i>HHHHHH</i> |
| <i>Paints and allied products manufacturing.....</i> | <i>CCCCCCC</i> |
| <i>Perchloroethylene air emission standards for dry cleaning facilities.....</i> | <i>M</i> |
| <i>Plating and polishing operations.....</i> | <i>WWWWWW</i> |
| <i>Secondary nonferrous metals processing</i> | <i>TTTTTT</i> |
| <i>Stationary reciprocating internal combustion engines.....</i> | <i>ZZZZ</i> |

Sec. 4. 1. *For an area source subject to 40 C.F.R. Part 63, as adopted by reference in NAC 445B.221, whose owner or operator commenced construction or reconstruction before the effective date of this regulation, if the owner or operator of the area source has not been issued a valid operating permit, the owner or operator must apply for and obtain a Class IV operating permit.*

2. The owner or operator of an area source subject to 40 C.F.R. Part 63, as adopted by reference in NAC 445B.221, that proposes to commence construction on or after the effective date of this regulation must apply for and obtain a Class IV operating permit before commencing construction.

3. An applicant for a Class IV operating permit must submit to the Director the appropriate fees and an application on a form provided by the Director. An application for a Class IV operating permit must include:

(a) Information which identifies the applicant, including, without limitation, the name and address of the company and the name and address of the plant if the name and address of the plant is different from that of the company, the name of the owner of the company and the name of the registered agent of the owner, and the name and telephone number of the manager of the plant or another appropriate person.

(b) Information sufficient to determine the suitability of the Class IV operating permit for the stationary source.

(c) The location of any records the applicant must keep pursuant to the requirements of the operating permit.

(d) Any other information which the Director determines is necessary.

4. A responsible official of the area source must certify that, based on information and belief formed after a reasonable inquiry, the statements in the application for the operating permit are true, accurate and complete.

Sec. 5. In addition to the conditions set forth in NAC 445B.315, a Class IV operating permit may contain any other requirements deemed necessary by the Director.

Sec. 6. 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 IV operating permit or for the revision of a Class IV 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 on which the Director receives the application, the official date of submittal of the application 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. The Director shall issue or deny a Class IV operating permit or the revision of a Class IV operating permit within 30 working days after the official date of submittal of the application.

Sec. 7. The holder of a Class IV operating permit shall submit any reports required by NAC 445B.001 to 445B.3689, inclusive, and sections 2 to 7, inclusive, of this regulation and any other reports deemed necessary by the Director to the Director in accordance with the reporting provisions required by the applicable sections of 40 C.F.R. Part 63, as adopted by reference in NAC 445B.221.

Sec. 8. 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.3689, inclusive, *and sections 2 to 7, inclusive, 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 PM₁₀, NO_x, SO₂, VOC and H₂S;

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 stationary compression ignition internal combustion engine subject to Subpart IIII; 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 ~~[]~~; *or*

(c) Is not required to obtain a Class IV operating permit to operate the stationary source.

Sec. 9. NAC 445B.0423 is hereby amended to read as follows:

445B.0423 “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 sections 2 to 7, inclusive, of this regulation* 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. 10. NAC 445B.123 is hereby amended to read as follows:

445B.123 “Operating permit” has the meaning ascribed to it in NRS 445B.145. Unless otherwise specifically stated, the term includes:

1. A Class I, a Class II, ~~and~~ a Class III *and a Class IV* operating permit;
2. An operating permit to construct; and
3. A mercury operating permit to construct, as defined in NAC 445B.3625.

Sec. 11. NAC 445B.221 is hereby amended to read as follows:

445B.221 1. Title 40 C.F.R. §§ 51.100(s), 51.100(nn) and 51.301 and Appendix S of 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2009.

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

3. Appendices M and W of 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2009.

4. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 1, 2009.

5. 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, 2009;

(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, VVa, WW, XX, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, DDDD, EEEE, FFFF, IIII, JJJJ and KKKK as they existed on July 1, 2009; 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.,~~ *it existed on* June 9, 2006.

6. Appendices A, B and F of 40 C.F.R. Part 60 are hereby adopted by reference as they existed on July 1, 2009.

7. 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, 2009.

8. Appendix B of ~~[Title]~~ 40 C.F.R. Part 61 is hereby adopted by reference as it existed on July 1, 2009.

9. ~~[Subparts]~~ *The following subparts of 40 C.F.R. Part 63 are hereby adopted by reference:*

(a) 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, YYYY, ~~[ZZZZ,]~~ AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, JJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, SSSSS, WWWW, YYYYY, ZZZZZ, DDDDDD, EEEEE, FFFFF, GGGGG, **HHHHH**, LLLLL, MMMMM, NNNNN, OOOOO, PPPPP, QQQQQ, RRRRR, SSSSS, ~~[and]~~ TTTTT ~~[of 40 C.F.R. Part 63 are hereby adopted by reference]~~, **VVVVV, WWWW, XXXXX, ZZZZZ, AAAAAA, BBBBBB and CCCCCC**, as they existed on July 1, ~~[2009.]~~ **2010;**

(b) Subpart ZZZZ, as it existed on May 9, 2011;

(c) Subparts BBBBB and CCCCC, as they existed on January 24, 2011;

(d) Subpart JJJJJJ, as it existed on May 20, 2011; and

(e) Subpart EEEEEEE, as it existed on February 17, 2011.

10. Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, 2009. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 7, inclusive, of this regulation*, the provisions of 40 C.F.R. Part 72 apply.

11. Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, 2009. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 7, inclusive, of this regulation*, the provisions of 40 C.F.R. Part 76 apply.

12. 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.

13. 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>.

14. A copy of the publications which contain the provisions adopted by reference in subsections 1 to 12, 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>.

15. The following standards of ASTM International are hereby adopted by reference:

(a) ASTM D5504, “Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence,” set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D5504 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of ~~[\$37.]~~ \$39.

(b) ASTM D2234 and D2234M, “Standard Practice for Collection of a Gross Sample of Coal,” set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D2234 and D2234M is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of ~~[\$37.]~~ \$39.

(c) ASTM D2013, “Standard Practice for Preparing Coal Samples for Analysis,” set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D2013 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of ~~[\$43.]~~ \$45.

(d) ASTM D6784, “Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),” set forth in Volume 11.07 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D6784 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of ~~[\$43.]~~ \$45.

(e) ASTM D2015, “Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter,” dated April 10, 2000. A copy of ASTM D2015 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of ~~[\$52.]~~ \$55.

(f) ASTM D3286, “Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter,” dated July 10, 1996. A copy of ASTM D3286 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of ~~[\$52.]~~ \$55.

(g) ASTM D1989, “Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Isoperibol Calorimeters,” dated July 10, 1997. A copy of ASTM D1989 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of ~~[\$52.]~~ \$55.

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.

17. Except as otherwise provided in subsections 10 and 11, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 7, inclusive, of this regulation* for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

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 by reference pursuant to this section, means the Director.

Sec. 12. NAC 445B.287 is hereby amended to read as follows:

445B.287 1. Except as otherwise provided in subsection 2 and in NAC 445B.288, an operating permit, operating permit to construct or permit to construct is required for each stationary source and:

(a) If a stationary source is a Class I source:

(1) A revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3425, 445B.344 or 445B.3441 before the stationary source may be modified; or

(2) A revision of the operating permit to construct is required pursuant to the requirements of paragraph (a) of subsection 1 of NAC 445B.3361 before the stationary source may be modified,

↳ as appropriate.

(b) If a stationary source is a Class II source, a revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3465 before the stationary source may be modified.

(c) If a stationary source is a Class III source, a revision of the operating permit is required pursuant to the requirements of NAC 445B.3493 before the stationary source may be modified.

(d) If a stationary source maintains one or more thermal units that emit mercury, the owner or operator of a thermal unit that emits mercury shall comply with the provisions set forth in NAC 445B.3611 to 445B.3689, inclusive.

2. A Class I source is not subject to the provisions of subparagraph (1) of paragraph (a) of subsection 1 if the source is not a major source, an affected source or a solid waste incineration unit required to obtain a permit pursuant to 42 U.S.C. § 7429(e). For a Class I source which is not a major source and which subsequently becomes subject to a standard or other requirement under 42 U.S.C. § 7411 or 7412, the Administrator will determine whether to exempt the source from the requirement to obtain a Class I operating permit at the time that the new standard is adopted.

3. *The owner or operator of a stationary source may apply for and obtain only one Class IV operating permit for the stationary source. If the owner or operator of a stationary source is subject to more than one area source requirement or standard set forth in 40 C.F.R. Part 63, as adopted by reference in NAC 445B.221, the owner or operator must apply for and obtain a Class I, Class II or Class III operating permit, as appropriate.*

4. An operating permit, operating permit to construct or permit to construct may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment reflecting a change of ownership or the name of the stationary source for the effective time remaining on the original operating permit pursuant to NAC 445B.319.

~~[4.]~~ 5. As used in this section:

(a) “Permit to construct” means a document issued and signed by the Director before November 1, 1995, certifying that:

(1) Adequate empirical data for a stationary source has been received and constitutes approval of location; or

(2) All portions of NAC 445B.305 to 445B.314, inclusive, and 445B.3395, and any other provisions of NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 7, inclusive, of this regulation* have been complied with and constitute approval of location and for construction.

(b) “Thermal unit that emits mercury” has the meaning ascribed to it in NAC 445B.3643.

Sec. 13. NAC 445B.295 is hereby amended to read as follows:

445B.295 Except as otherwise provided in NAC 445B.33637, *and section 4 of this regulation*, an application for an operating permit must include:

1. Information to identify the applicant, including the name and address of the company or the name and address of the plant if different from that of the company, the name of the owner of the company and the owner’s agent, and the name and telephone number of the manager of the plant or another appropriate person to contact;
2. A description of the stationary source’s processes and products by Standard Industrial Classification Code, including any processes and products associated with an alternative operating scenario identified by the owner or operator;
3. A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each emission unit which is a part of the stationary source;
4. An identification and a description of any equipment for the control of air pollution and any devices or activities for monitoring compliance with emission limitations;
5. Limitations on the operation of the stationary source or any standards for work practices which affect emissions for all regulated air pollutants at the stationary source;
6. An explanation of any proposed exemption from any applicable requirement;

7. The location of any records that the applicant must keep pursuant to the requirements of the operating permit, if the records are kept at a location other than the emitting facility; and

8. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

Sec. 14. NAC 445B.298 is hereby amended to read as follows:

445B.298 Except as otherwise provided in NAC 445B.3364, 445B.3395, 445B.3457, 445B.3487 or 445B.3683, *or section 6 of this regulation*, the official date of submittal of an application for:

1. An operating permit;
2. An operating permit to construct;
3. A revision of an existing operating permit; or
4. A revision of an existing operating permit to construct,

↪ is the date on which the Director determines that the application is complete.

Sec. 15. NAC 445B.308 is hereby amended to read as follows:

445B.308 1. ~~It~~ *Except for a Class IV operating permit, 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 sections 2 to 7, inclusive, 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 sections 2 to 7, inclusive, 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 or her 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~~, *or sections 2 to 7, inclusive, 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. 16. NAC 445B.314 is hereby amended to read as follows:

445B.314 For the purposes of determining the effects of a Class III source *or a Class IV source* on the quality of ambient air pursuant to NAC 445B.308, 445B.310 and 445B.311, the heat input is the aggregate heat content of all combusted fuels, or the guaranteed maximum input of the manufacturer or designer of the equipment, whichever is greater. The total heat input of all fuel-burning units in a plant or on the premises must be used to determine the maximum amount of a regulated air pollutant which may be emitted.

Sec. 17. NAC 445B.327 is hereby amended to read as follows:

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

- (a) Class I operating permit to construct..... \$20,000
- (b) Conversion of an operating permit to construct into a Class I operating permit involving only one phase..... 5,000
- (c) Conversion of an operating permit to construct into a Class I operating 5,000

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| permit involving two or more phases (per phase)..... | |
| (d) Modification to an operating permit to construct..... | 5,000 |
| (e) Revision of an operating permit to construct..... | 5,000 |
| (f) Class I operating permit | 30,000 |
| (g) Significant revision of a Class I operating permit | 20,000 |
| (h) Minor revision of a Class I operating permit..... | 5,000 |
| (i) Renewal of a Class I operating permit | 5,000 |
| (j) Class II operating permit | 3,000 |
| (k) Revision of a Class II operating permit..... | 2,000 |
| (l) Renewal of a Class II operating permit | 2,000 |
| (m) Class II general permit | 500 |
| (n) Class III operating permit..... | 300 |
| (o) Revision of a Class III operating permit..... | 200 |
| (p) Renewal of a Class III operating permit..... | 250 |
| (q) Surface area disturbance permit | 500 |
| (r) Revision of a surface area disturbance permit | 200 |
| (s) Administrative amendment of an operating permit | 200 |
| (t) Replacement of a lost or damaged operating permit to construct or an operating permit | 200 |
| (u) Request for change of location of an emission unit | 100 |
| (v) Administrative revision to a Class I operating permit..... | 500 |
| (w) Class I operating permit to construct for the approval of a plantwide applicability limitation | 20,000 |

(x) Class IV operating permit 50

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

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

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

- (a) Operating permit for a stationary source subject to the program for the prevention of significant deterioration of air quality \$50,000
- (b) Revision of an operating permit for a stationary source subject to the permitting requirements of 40 C.F.R. § 52.21 to authorize a major modification of the stationary source 50,000
- (c) Class I operating permit to construct 50,000
- (d) Conversion of an operating permit to construct into a Class I operating permit involving only one phase 5,000
- (e) Conversion of an operating permit to construct into a Class I operating permit involving two or more phases (per phase) 5,000
- (f) Revision of an operating permit to construct 5,000

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| (g) Administrative amendment of an operating permit or operating permit to construct..... | 200 |
| (h) Replacement of a lost or damaged operating permit to construct or an operating permit..... | 200 |
| (i) Request for the change of location of an emission unit | 100 |
| (j) Administrative revision to a Class I operating permit..... | 500 |

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

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

5. Except as otherwise provided in this subsection, the annual fee based on emissions for a Class I stationary source is \$16 per ton times the total tons of each regulated pollutant emitted during the preceding calendar year. The annual fee based on emissions does not apply to emissions of carbon monoxide.

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

(a) Emissions must be calculated using:

(1) The emission unit’s actual operating hours, rates of production and in-place control equipment;

(2) The types of materials processed, stored or combusted; and

(3) Data from:

(I) A test for emission compliance;

(II) A continuous emission monitor;

(III) The most recently published issue of *Compilation of Air Pollutant Emission Factors*, EPA Publication No. AP-42; or

(IV) Other emission factors or methods which the Director has validated; or

(b) If paragraph (a) does not apply to a stationary source that was in operation during the preceding calendar year, emissions must be calculated using the permitted allowable emissions for that stationary source.

7. Except as otherwise provided in this section, the annual fee for maintenance of a stationary source is:

(a) For a Class I source qualifying as:

(1) A major stationary source that is issued a prevention of significant deterioration permit..... \$30,000

(2) A major stationary source that is not issued a prevention of significant deterioration permit..... 25,000

(3) A major source that is not a major stationary source and is issued a Class I operating permit 20,000

(4) A major source that is not a major stationary source and is issued a Class I operating permit for a municipal solid waste landfill 15,000

(b) For a Class II source that has the potential to emit:

(1) Eighty tons or more per year but less than 100 tons per year of any one regulated air pollutant except carbon monoxide..... 5,000

(2) Eight tons or more per year but less than 10 tons per year of any single hazardous air pollutant..... 5,000

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| (3) Twenty tons or more per year but less than 25 tons per year of any combination of hazardous air pollutants | 5,000 |
| (4) Fifty tons or more per year but less than 80 tons per year of any one regulated air pollutant except carbon monoxide | 3,000 |
| (5) Twenty-five tons or more per year but less than 50 tons per year of any one regulated air pollutant except carbon monoxide | 1,000 |
| (6) Less than 25 tons per year of any one regulated air pollutant except carbon monoxide..... | 500 |
| (c) For a Class II source that is issued a Class II general permit | 500 |
| (d) For a Class III source..... | 250 |
| (e) For a surface area disturbance permit for a total disturbance of: | |
| (1) Five or more acres but less than 20 acres | 250 |
| (2) Twenty or more acres but less than 50 acres | 500 |
| (3) Fifty or more acres but less than 100 acres | 750 |
| (4) One hundred or more acres but less than 200 acres | 1,000 |
| (5) Two hundred or more acres but less than 500 acres..... | 2,000 |
| (6) Five hundred or more acres | 5,000 |
| <i>(f) For a Class IV source</i> | <i>50</i> |

8. The fee for conducting an informal review of a proposed new major source or proposed modification of an existing major source pursuant to NAC 445B.2915 is \$50,000.

9. The annual fee for maintenance of a stationary source for the fiscal year during which an operating permit or an operating permit to construct is issued for the stationary source is included in the fee for the operating permit or operating permit to construct.

10. For the fiscal year beginning on July 1, 2009, and for each fiscal year thereafter, the Director shall:

(a) Increase the dollar per ton emissions rate that is used to calculate the annual fee based on emissions by an amount that is equal to 2 percent of the dollar per ton emissions rate for the immediately preceding fiscal year; and

(b) Increase the annual fee for maintenance of a stationary source by an amount that is equal to 2 percent of the annual fee for maintenance of the stationary source for the immediately preceding fiscal year.

↪ The Director may, during any fiscal year, suspend an increase in a rate or fee specified in this subsection.

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

12. Except as otherwise provided in this subsection, the owner or operator of a source who does not pay his or her annual fee installments within 30 days after the date on which payment becomes due will be assessed a late penalty in the amount of 25 percent of the amount of the fees due. The late fee must be paid in addition to the annual fees. The late penalty set forth in this subsection does not apply if, at the time that the late fee would otherwise be assessed, the owner or operator is in negotiations with the Director concerning his or her annual fees.

13. As used in this section, “prevention of significant deterioration permit” means an operating permit that is issued for a major source in accordance with the conditions set forth in 40 C.F.R. § 52.21.

Sec. 18. NAC 445B.346 is hereby amended to read as follows:

445B.346 In addition to the conditions set forth in NAC 445B.315, Class II operating permits must contain, as applicable:

1. Emission limitations and standards, including those operational requirements and limitations that ensure compliance with the conditions of the operating permit.
2. All requirements for monitoring, testing and reporting that apply to the stationary source.
3. A requirement that the owner or operator of the stationary source promptly report any deviations from any requirements of the operating permit.
4. The terms and conditions for any reasonably anticipated alternative operating scenarios identified by the owner or operator of the stationary source in his or her application and approved by the Director. Such terms and conditions must require the owner or operator to keep a contemporaneous log of changes from one alternative operating scenario to another.
5. A schedule of compliance for stationary sources that are not in compliance with any applicable requirement or NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 7, inclusive, of this regulation* at the time the operating permit is issued, including:
 - (a) Semiannual progress reports and a schedule of dates for achieving milestones;
 - (b) Prior notice of and explanations for missed deadlines; and
 - (c) Any preventive or corrective measures taken.

~~[6.—Requirements for compliance certification which reflect the terms and conditions of the operating permit. A compliance certification must include:~~

~~—(a) An identification of each term or condition of the operating permit that is the basis of the certification;~~

~~—(b) The status of the stationary source's compliance with any applicable requirement;~~

~~—(c) A statement of whether compliance was continuous or intermittent;~~

~~—(d) The method used for determining compliance; and~~

~~—(e) Any other facts that the Director deems necessary to determine compliance.]~~