

Chapter 445B of NAC

ADOPTED TEMPORARY REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION

LCB File No. T008-17

P2017-02

June 1, 2017

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

AUTHORITY: §§1 and 2, NRS 445B.210.

A REGULATION relating to air pollution; revising provisions governing certain motor vehicles equipped with an incorrectly installed device for the control of air pollution.

Section 1. NAC 445B.575 is hereby amended to read as follows:

NAC 445B.575 Device to control pollution: General requirement; alteration or modification; exemption for certain wholesale transactions; audits; repair of noncompliant motor vehicles; maintenance of records of noncompliant motor vehicles. (NRS 445B.210, 445B.770, 445B.785)

1. Except as otherwise provided in this section, a person shall not:

(a) Sell, offer to sell, display for sale, operate or permit the operation of or leave standing any motor vehicle which is required by state or federal law to be equipped with a device for the control of pollution unless the device is correctly installed and in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation.

(b) Disconnect, alter or modify any such required device.

2. *The provisions of subsection 1 do not apply to motor vehicles subject to a settlement agreement entered into by the State of Nevada, an Agency of the State of Nevada, or to which the State of Nevada is a beneficiary that is intended to mitigate the effects of any device for the control of pollution which is not correctly installed or in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation.*

3. Except for NAC 445B.5815, the provisions of subsection 1 and NAC 445B.576 to 445B.582, inclusive, do not apply to an alteration or modification of a motor vehicle to use fuel other than gasoline or diesel fuel where the alteration or modification is effected without violating existing federal and state standards for the control of exhaust emissions.

~~3.~~ 4. The provisions of subsection 1 do not apply to a wholesale transaction between licensed dealers of motor vehicles if:

(a) The motor vehicle sold in the wholesale transaction was identified as a noncompliant motor vehicle by the Department during an audit pursuant to subsection 4 and the seller of the motor vehicle:

(1) Informs the prospective purchaser of the motor vehicle before the completion of the wholesale transaction that the motor vehicle is designated as a noncompliant motor vehicle; and

(2) Provides a written disclosure notice that identifies any device for the control of pollution which is not correctly installed or in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation; or

(b) The seller of the motor vehicle sold in the wholesale transaction has:

(1) Physically separated the motor vehicle from all other motor vehicles displayed for retail sale;

(2) Marked the motor vehicle in a manner that reasonable and prudent persons would know the motor vehicle is not intended for retail sale;

(3) Indicated on all written records relating to the motor vehicle identifying the motor vehicle as suitable only for sale in a wholesale transaction; and

(4) Prepared a written disclosure notice for inclusion with the dealership's permanent records of the motor vehicle which details the reasons why the motor vehicle is only suitable for sale in a wholesale transaction.

~~14.~~ **5.** The Department may audit a licensed dealer of motor vehicles to determine compliance with this section. Such audits may include, without limitation:

(a) An inspection of every device for the control of pollution on any motor vehicle displayed for retail sale and selected for the audit; and

(b) An inspection of any document which contains information relating to emission inspections for the motor vehicle selected for the audit.

~~15.~~ **6.** A device for the control of pollution which is deemed by the Department as not correctly installed or in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation pursuant to subsection 4 may be repaired by an authorized station or class 2 fleet station.

~~16.~~ **7.** A noncompliant motor vehicle shall no longer be deemed noncompliant if:

(a) The authorized station or class 2 fleet station that repaired the device for the control of pollution issues evidence of compliance; and

(b) The Department conducts a physical inspection of the motor vehicle to verify compliance.

~~17.~~ **8.** A licensed dealer of motor vehicles shall maintain a written record, in a manner satisfactory to the Department, of every noncompliant motor vehicle. The record must be maintained at the established place of business of the dealer and must be made available for inspection by any authorized agent of the Department during normal business hours. The record must include at least the following information:

(a) The vehicle identification number of each motor vehicle;

(b) Every date on which the motor vehicle was deemed noncompliant by the Department;

(c) If any device for the control of pollution installed on the motor vehicle was repaired and subsequently inspected by the Department, every date on which the motor vehicle was deemed compliant by the Department; and

(d) If the motor vehicle was sold as a wholesale transaction between licensed dealers of motor vehicles, the name of the dealer who purchased the motor vehicle and the date on which it was purchased.

~~§ 9.~~ **9.** For purposes of this section:

(a) The failure of a seller to meet any of the requirements described in subsection 3 relating to a wholesale transaction shall be deemed prima facie evidence of misrepresentation of a material fact.

(b) The failure of a licensed dealer of motor vehicles to comply with a directive of the Director advising the licensed dealer of his or her noncompliance with any provision of this section within 10 days after his or her receipt of the directive is prima facie evidence of a willful failure to comply with the directive.

~~§ 10.~~ **10.** As used in this section:

(a) “Device for the control of pollution” includes, without limitation:

(1) On any motor vehicle manufactured on or after January 1, 1981, if the equipment was originally installed on the motor vehicle by the manufacturer, a catalytic converter, fuel inlet restrictor, air injection system, exhaust gas recirculation system, crankcase depression regulator or fuel inlet cap; and

(2) On any motor vehicle with a model year of 1996 or newer, if the equipment was originally installed on the motor vehicle by the manufacturer, a certified on-board diagnostic system, malfunction illumination light or a data-link connector.

(b) “Noncompliant motor vehicle” means any motor vehicle that has a device for the control of pollution which is not correctly installed or in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation.

Temporary Regulation – Informational Statement

A Temporary Regulation Relating to Air Quality

Legislative Review of Adopted Temporary Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission (SEC) Temporary No: T2017-02

Temporary Regulation T2017-02:

Nevada Revised Statutes (NRS) 445B.210 establishes the authority of the State Environmental Commission (SEC) to adopt regulations to prevent, abate and control air pollution. NRS 445B.770 establishes specific authority of the SEC regarding the establishment of regulations that control emissions from motor vehicles and the appropriate criteria and procedures for the approval, installation and use of devices for the control of emissions from motor vehicles.

SPECIFIC CHANGES:

The amendment pertains to NAC Chapter 445B. The NDEP will, under specific circumstances, provide an exemption from requirements that motor vehicles registered in Nevada that were originally equipped with devices to control pollution, must have those devices correctly installed and in good operating condition.

The State of Nevada is seeking Beneficiary Status in the matter of the Volkswagen 2.0L Partial Consent Decree Environmental Mitigation Trust Agreement. The State likely qualifies as a beneficiary due to the environmental harm suffered by the State from emissions that exceeded EPA-compliance levels emitted by the diesel-powered Subject Vehicles identified in the settlement manufactured by the Volkswagen Group. To qualify as a beneficiary, the State must certify that it shall not deny registration to any Subject Vehicle based solely on the fact that it has a defeat device installed that renders it ineffective or inoperable for the control of pollution. The 2.0L Partial Consent Decree requires the Volkswagen Group, by June 30, 2019, to take steps to address the emissions from at least 85% of the Subject Vehicles. This will be accomplished through either a vehicle buyback/early lease termination program, or through an emissions modification recall program. NDEP expects that these programs will be effective in substantially reducing future emissions from the Subject Vehicles.

1. Need for Regulation:

The regulatory amendment is needed to allow the State of Nevada to qualify for Beneficiary Status. As a beneficiary, the State expects to receive approximately \$25 million to be used for diesel emission reduction projects and zero emission vehicle infrastructure projects (electric vehicle charging stations) that are intended to mitigate the excess nitrogen oxide emissions produced by the Subject Vehicles. The expected reductions in emissions resulting from these projects, combined with the long-term environmental benefits of providing charging infrastructure which may help facilitate a transition to clean electric vehicles, outweighs the

future environmental harm presented by allowing the Subject Vehicles to remain on Nevada's roadways.

2. 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.

On April 12, 2017 NDEP conducted a public workshop on regulation T2017-02. The workshop was held in Carson City and video-conferenced in Las Vegas. The meeting location in Carson City was at the Bryan Building located at 901 S. Stewart Street (Great Basin Conference Room) and video-conferenced to the NDEP office, located at 2030 East Flamingo Road, Suite 230.

One (1) member of the public and two (2) DMV employees attended the workshop.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at: http://sec.nv.gov/main/hearing_0517.htm .

Following the workshop, the SEC held a formal regulatory hearing on May 3, 2017 at the Bryan Building Tahoe Conference room located at 901 South Carson Street, Carson City. A public notice for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at NDEP in Las Vegas, at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed temporary regulation T2017-02 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list, the Bureau of Air Quality Planning electronic mailing list and the DMV electronic mailing list.

The public notice for the proposed temporary regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_0517.htm .

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended May 3, 2017 hearing: 4 (approximately)
- (b) Testified on this Petition at the hearing: 0
- (c) Submitted to the agency written comments: 0

4. 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 through e-mail, a public workshop and at the May 3, 2017 SEC hearing as noted in number 2 above.

5. 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 regulation was adopted without change because the public and the SEC were satisfied with the amendments.

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

Regulated Business/Industry. The regulation will have no impact on regulated business/industry.

Public. The regulation will have no economic impact on the public, at large. It will have a positive economic benefit for those owners of the vehicles subject to the amendment.

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

Enforcing Agency. The regulation will have no economic impact on NDEP or DMV.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The amendments do not overlap any other State or federal regulations.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is no more stringent than what is established by federal law.

10. 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 regulation does not address new fees.