

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB FILE NO. R018-201

**The following document is the initial draft regulation proposed
by the agency submitted on 02/06/2020**

PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

P2020-03

February 4, 2020

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

AUTHORITY: §§1-2 and 12, NRS 445A.425, NRS 445A.465, and NRS 445A.495; §§3 and 11, NRS 445A.425, NRS 445A.430, and NRS 445A.465; §§5-10 and 13-17, NRS 445A.425 and NRS 445A.465; §§4, NRS 445A.425, NRS 445A.430, NRS 445A.465, and NRS 445A.495.

Section 1. Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 3, inclusive, of this regulation.

Sec. 2. *“Pre-application review” means an optional submittal to the Department for review and approval prior to and in support of an anticipated future application for a new permit or a major modification or renewal of an existing permit pursuant to NAC 445A.394, NAC 445A.417, or NAC 445A.420. Such a submittal to the Department is commonly but not always made in conjunction with a federal agency review performed in accordance with the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., as amended.*

Sec 3. *Each optional pre-application review submitted to the Department after March 31, 2020 shall include the following:*

1. A rock characterization report, groundwater study, pit lake study, ecological risk assessment or other document which warrants a pre-application review;

2. A fee pursuant to NAC 445A.418 for each report, study, assessment or other document warranting a pre-application review;

3. The information required by paragraphs (a), (c) and (e) of subsection 2 of NAC 445A.394; and

4. A statement identifying the submittal as a pre-application review submitted to the Department for review and approval pursuant to Section 2 of this revision to regulation.

Sec. 4. NAC 445A.232 is hereby amended to read as follows:

445A.232 1. Except as otherwise provided in subsections 2 and 7, a nonrefundable application fee must accompany each original application for a permit, each application for a modification to a permit, other than a minor modification made pursuant to NAC 445A.263, and each application to renew a permit which is submitted to or required by the Director. The Director shall charge the following fees:

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
DISCHARGE OF DOMESTIC WASTEWATER		
Less than 50,000 gallons daily.....	\$1,000	\$1,000
50,000 gallons or more but less than 250,000 gallons daily.....	1,500	1,500
250,000 gallons or more but less than 500,000 gallons daily.....	2,000	2,000
500,000 gallons or more but less than 1,000,000 gallons daily.....	3,000	3,000
1,000,000 gallons or more but less than 2,000,000 gallons daily.....	4,000	4,000
2,000,000 gallons or more but less than 5,000,000 gallons daily.....	6,000	6,000
5,000,000 gallons or more but less than 10,000,000 gallons daily.....	10,000	10,000
10,000,000 gallons or more but less than		

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
20,000,000 gallons daily.....	10,000	20,000
20,000,000 gallons or more but less than 40,000,000 gallons daily.....	10,000	30,000
40,000,000 gallons or more daily.....	10,000	40,000
DISCHARGE OF RECLAIMED WATER OTHER THAN THROUGH A SPREADING BASIN		
Less than 50,000 gallons daily.....	\$750	\$750
50,000 gallons or more but less than 250,000 gallons daily.....	1,000	1,000
250,000 gallons or more but less than 500,000 gallons daily.....	1,250	1,250
500,000 gallons or more but less than 1,000,000 gallons daily.....	1,500	1,500
1,000,000 gallons or more but less than 10,000,000 gallons daily.....	2,000	2,000
10,000,000 gallons or more but less than 20,000,000 gallons daily.....	2,500	2,500
20,000,000 gallons or more but less than 40,000,000 gallons daily.....	3,000	3,000
40,000,000 gallons or more daily.....	3,500	3,500
DISCHARGE OF RECLAIMED WATER THROUGH A SPREADING BASIN		
Less than 10,000,000 gallons daily.....	\$10,000	\$10,000
10,000,000 gallons or more but less than 20,000,000 gallons daily.....	10,000	20,000

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
20,000,000 gallons or more but less than 40,000,000 gallons daily.....	10,000	30,000
40,000,000 gallons or more daily.....	10,000	40,000
DISCHARGE FROM REMEDIATION, DEWATERING, OTHER THAN A DISCHARGE TO GROUNDWATER FROM THE DEWATERING OF A MINE, OR FROM A POWER PLANT, A MANUFACTURING OR FOOD PROCESSING FACILITY OR ANY OTHER COMMERCIAL OR INDUSTRIAL FACILITY		
Cooling water only.....	\$2,000	\$2,000
Less than 50,000 gallons of process water daily.....	2,500	2,500
50,000 gallons or more but less than 250,000 gallons of process water daily.....	3,000	3,000
250,000 gallons or more but less than 500,000 gallons of process water daily.....	4,000	4,000
500,000 gallons or more but less than 1,000,000 gallons of process water daily.....	5,000	5,000
1,000,000 gallons or more but less than 2,000,000 gallons of process water daily.....	6,000	6,000
2,000,000 gallons or more but less than 5,000,000 gallons of process water daily.....	8,000	8,000
5,000,000 gallons or more but less than 10,000,000 gallons of process water daily.....	10,000	10,000
10,000,000 gallons or more but less than 20,000,000 gallons of process water daily.....	10,000	20,000

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
20,000,000 gallons or more but less than 40,000,000 gallons of process water daily.....	10,000	30,000
40,000,000 gallons or more of process water daily.....	10,000	40,000
DISCHARGE FROM A TREATMENT PLANT FOR DRINKING WATER		
Intermittent discharge of less than 100,000 gallons daily.....	\$500	\$500
Intermittent discharge of 100,000 gallons or more but less than 1,000,000 gallons daily.....	750	750
Intermittent discharge of 1,000,000 gallons or more daily.....	1,000	1,000
Routine discharge of less than 100,000 gallons daily.....	500	500
Routine discharge of 100,000 gallons or more but less than 1,000,000 gallons daily.....	750	750
Routine discharge of 1,000,000 gallons or more daily.....	1,000	1,000
DISCHARGE OF WASTEWATER FROM A CONCENTRATED ANIMAL FEEDING OPERATION		
Less than 100,000 gallons daily.....	\$1,500	\$1,500
100,000 gallons or more but less than 500,000 gallons daily.....	2,000	2,000
500,000 gallons or more daily.....	2,500	2,500
PERMIT FOR A CONCENTRATED ANIMAL FEEDING OPERATION		

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
THAT DOES NOT DISCHARGE WASTEWATER		
Area of a holding facility that is less than 10 acres.....	\$1,500	\$1,500
Area of a holding facility that is 10 acres or more but less than 20 acres.....	2,000	2,000
Area of a holding facility that is 20 acres or more.....	2,500	2,500
DISCHARGE FROM A FISH HATCHERY		
Less than 500,000 gallons daily.....	\$750	\$750
500,000 gallons or more but less than 2,500,000 gallons daily.....	1,000	1,000
2,500,000 gallons or more daily.....	1,500	1,500
OTHER PERMITTED DISCHARGES		
Less than 50,000 gallons daily.....	\$1,000	\$1,000
50,000 gallons or more but less than 250,000 gallons daily.....	1,500	1,500
250,000 gallons or more but less than 500,000 gallons daily.....	3,000	3,000
500,000 gallons or more but less than 1,000,000 gallons daily.....	5,000	5,000
1,000,000 gallons or more but less than 10,000,000 gallons daily.....	10,000	10,000
10,000,000 gallons or more but less than 35,000,000 gallons daily.....	10,000	20,000

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
35,000,000 gallons or more daily.....	10,000	30,000
REUSE OF SEWAGE SLUDGE		
Less than 20,000 cubic yards per year.....	\$1,500	\$1,500
20,000 cubic yards or more per year.....	3,000	3,000
REUSE OF DOMESTIC SEPTAGE.....		
	\$1,000	\$1,000
DISCHARGE FROM A RECREATIONAL LAKE.....		
	\$5,000	\$5,000
TEMPORARY PERMIT.....	\$250	Not Applicable

2. Except as otherwise provided in this subsection and subsection 7, a nonrefundable application fee must accompany each original application for a permit and each application to renew a permit for the discharges set forth in this subsection that is submitted to or required by the Director. The Director shall charge the following fees:

Type of Discharge Permitted	Application Fee for Original Permit	Application Fee for Renewal of Permit	Fee for Annual Review and Services
DISCHARGE TO GROUNDWATER FROM THE DEWATERING OF A MINE			
Cooling water only.....	\$625	\$315	\$1,000
Less than 50,000 gallons of			

dewatering water daily.....	625	315	1,500
50,000 gallons or more but less than 1,000,000 gallons of dewatering water daily.....	875	440	2,000
1,000,000 gallons or more but less than 5,000,000 gallons of dewatering water daily.....	1,000	500	2,500
5,000,000 gallons or more of dewatering water daily.....	1,250	625	3,000
MINING			
Physical separation facility discharging wash water where no chemicals are added for metallurgical recovery.....	\$500	\$500	\$250
Mining facility designed to chemically process less than 18,250 tons per year [or a pilot testing Facility]	500	500	250
Mining facility designed to chemically process 18,250 tons per year or more but less than 36,500 tons per year.....	1,500	1,500	2,000
Mining facility designed to chemically process 36,500 tons per year or more but less than 100,000 tons per year.....	4,000	4,000	4,000
Mining facility designed to chemically process 100,000 tons per year or more but less than 500,000 tons per year.....	6,000	6,000	8,000
Mining facility designed to chemically process			

500,000 tons per year or more but less than 1,000,000 tons per year.....	10,000	10,000	10,000
Mining facility designed to chemically process 1,000,000 tons per year or more but less than 2,000,000 tons per year.....	14,000	14,000	14,000
Mining facility designed to chemically process 2,000,000 tons per year or more.	20,000	20,000	20,000

<i>Monitoring of facilities that have completed all physical closure activities in accordance with the Division- approved final plan for permanent closure and are undergoing source stabilization</i>	<i>2500 or the active facility fee, whichever is lesser</i>	<i>2500 or the active facility fee, whichever is lesser</i>	<i>5000 or the active facility fee, whichever is lesser</i>
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<i>Post-closure [M]monitoring [of closed facilities]</i>	250	250	500
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RUNOFF OF STORM WATER

Industrial or commercial facility, including any structure, that is 5 acres to 10 acres, inclusive, in size.....	\$300	\$150	\$750
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Industrial or commercial facility, including any structure, that is more than 10 acres but less than 25 acres in size.....	600	300	750
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Industrial or commercial facility, including any structure, that is more than 25 acres in size	1,000	500	750
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Municipality whose population is 250,000 or less.....	600	300	750
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Municipality whose population

is more than 250,000..... 1,000 500 1,000

Sec. 5. NAC 445A.368 is hereby amended to read as follows:

445A.368 “Permit” means a written document issued pursuant to NRS 445A.300 to 445A.730, inclusive, which describes the responsibilities and obligations of the holder of the permit during the construction, operation, temporary or permanent closure, *and post-closure monitoring* of a facility.

Sec. 6. NAC 445A.391 is hereby amended to read as follows:

445A.391 Before submitting an application for a permit, a prospective applicant must meet with a representative of the Department to discuss:

1. The proposed location of the facility;
2. The operating plans for the process components; ~~and~~
3. The physical characteristics of the facility’s proposed site as required on the application for the permit~~;~~ *and*
4. *The need for pre-application review pursuant to sections 2 and 3 of this proposed revision.*

Sec. 7. NAC 445A.392 is hereby amended to read as follows:

445A.392 1. Except as otherwise provided in subsection 2, a person wishing to construct or modify materially a process component at a facility must file an application for a permit pursuant to NAC 445A.394.

2. Persons wishing to construct a ~~small-scale facility,~~ placer mining facility or other facility which relies solely on physical separation methods to process ore may file an abbreviated application for a permit pursuant to ~~NAC 445A.410 or~~ 445A.414~~, as applicable~~. The application must be accompanied by the appropriate fee as required by NAC 445A.232.

Sec. 8. NAC 445A.396 is hereby amended to read as follows:

445A.396 An application for a permit must include:

1. A summary of the historical monthly averages of rainfall obtained from the nearest recording station to the site adjusted for conditions at the site. ~~;~~
2. The 24-hour storm events with an interval of recurrence of 10 years, 25 years, ~~and~~ 100 years, *and 500 years.* ~~;~~
3. The diurnal temperature variation from the nearest recording station to the site adjusted for conditions at the site. ~~;~~ ~~and~~
4. Results from testing samples from the facility's mine site which are representative of the overburden, waste rock and ore at the proposed mine site that have ~~;~~

~~[(a)–C]~~ characterized *and evaluated* the samples *for their potential to release pollutants* by ~~[multi-element spectrographic assay or an equivalent]~~ *the following* analytical procedures: ~~;~~ ~~and~~

(a) A meteoric water mobility procedure and Profile I analysis conducted using ASTM E2242-13, "Standard Test Method for Column Percolation Extraction of Mine Rock by the Meteoric Water Mobility Procedure," available from ASTM International, P.O. Box C700, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (877) 909-2786 or at the Internet address <http://www.astm.org>, for the price of \$46, or the most recently promulgated version thereof that is approved in writing by the Department and scientifically demonstrated as achieving equivalent performance to the ASTM E2242-13 method in determining Profile I constituent release; and

(b) The Nevada Modified Sobek Procedure, available from the Department or at the Internet website of the Department.

5. Based on material characterization results pursuant to subsections 4(a-b), inclusive, of this regulation, the Department shall determine the need for a humidity cell test procedure conducted using ASTM D5744-18, Option 'A,' "Standard Test Method for Laboratory Weathering of Solid Materials Using a Humidity Cell," available from ASTM International, P.O. Box C700, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (877) 909-2786 or at the Internet address <http://www.astm.org>, for the price of \$81, or the most recently promulgated version thereof that is approved in writing by the Department and scientifically demonstrated as achieving equivalent performance to the ASTM D5744-18, Option 'A' method, or another analytical procedure, version, or method approved by the Department and scientifically demonstrated to achieve evaluation of the potential to release pollutants.

~~[(b) Evaluated the samples for their potential to release pollutants.]~~

Sec. 9. NAC 445A.398 is hereby amended to read as follows:

445A.398 The proposed operating plans for a facility must include:

1. A description of the mineral processing circuit which includes a flow chart of the facility and the range of operating conditions for which the process components were designed.
2. A plan for the management of process fluids which describes the methods to be used for the monitoring and controlling of all process fluids. The plan must provide a description of the means to evaluate the conditions in the fluid management system so as to be able to quantify the available storage capacity for meteoric waters and to define when and to what extent the designed containment capacity has been exceeded.
3. A plan for monitoring the facility which describes:
 - (a) The water quality in the area;

(b) The monitoring locations the applicant proposes to sample routinely in order to evaluate surface and groundwater at the site that may be affected by the operation of the facility;

(c) An analytical profile of each surface and groundwater that may be affected by the operation of the facility; and

(d) The locations of the leak detection systems, the frequency for sampling these systems and the analytical profile to be used for evaluation of the samples.

4. A plan for the management of waste rock which:

(a) Presents representative characterization data and sample locations from the waste rock that will be mined at the facility;

(b) Evaluates whether there is a potential for the waste rock to degrade the waters of the State;

(c) Describes the size and location of all proposed waste rock storage facilities;

(d) Describes the sampling and analysis protocols that will be used to verify the character of the waste rock once it is mined at the facility; and

(e) If the information required pursuant to paragraphs (a) to (d), inclusive, indicates that there is a potential for the waste rock to degrade the waters of the State, describes the management protocols or engineered containment, or both, which will be used to eliminate the potential degradation over both the short term and long term.

5. A plan for responding to emergencies which:

(a) Describes what actions must be initiated and by whom as a result of various possible failures in the fluid management system which would result in releases of pollutants; and

(b) Is designed to minimize the environmental impact resulting from the release of process fluids.

6. A temporary closure plan resulting from conditions described in subsection 1 of NAC 445A.444 which describes the activities which must be maintained during the time of closure.

7. A tentative plan for the permanent closure of the facility which describes the procedures, methods and schedule for stabilizing spent process materials and all other sources at the facility.

(a) The plan must include:

~~[(a)]~~ (1) Procedures for characterizing spent process materials as they are generated;

~~[(b)]~~ (2) The procedures to stabilize all process components and all other sources at the facility with an emphasis on stabilizing spent process materials and the estimated cost for the procedures; and

~~[(e)]~~ (3) Conceptual closure plans for all sources at the facility with sufficient detail to support an ~~[initial]~~ estimate of the cost of executing the plan for reclamation determined pursuant to NAC 519A.360.

(b) In addition to any updates required pursuant to NAC 445A.392, 445A.420, and 445A.427, the holder of the permit must submit to the Department an updated tentative plan for permanent closure concurrently with each submitted request to modify the plan for reclamation pursuant to NAC 519A.295, if that modification will affect the conceptual closure plan.

Sec. 10. NAC 445A.4155 is hereby amended to read as follows:

445A.4155 1. A modification to the engineering design of a facility for which a permit has been granted by the Department does not require a new public notice if:

(a) The modification to the engineering design requires review by the Department pursuant to NAC 445A.350 to 445A.447, inclusive ~~[, and sections 2 to 6, inclusive, of this regulation]~~; and

(b) The Department determines that the modification to the engineering design is not a modification of such significance as to constitute a “minor modification” or a “major modification,” as those terms are described in NAC 445A.416 and 445A.417, respectively.

2. A modification to the engineering design described in subsection 1 may not extend the term of the permit.

3. Examples of modifications to the engineering design described in subsection 1 may include but are not limited to:

(a) A change to process fluid containment.

(b) A proposal to construct or modify materially a beneficiation or non-beneficiation process component.

(c) A material modification that significantly deviates from a previously approved design during construction.

(d) A change to a previously approved design requiring a revised analysis of structural stability pursuant to NAC 445A.397.

(e) A proposed increase of process solution flow in excess of a maximum design rate previously authorized in the permit.

(f) A proposed change requiring the permit to be revised, such as a change to monitoring requirements or frequency, schedule of compliance, or permit limitations.

(g) A change to the operating plans if the change alters the potential to degrade waters of the State and is not a pre-application review.

(h) Proposed drilling or re-processing of closed process components.

Sec. 11. NAC 445A.418 is hereby amended to read as follows:

445A.418 1. The fee for a minor modification to a permit described in NAC 445A.416 is

one-half the amount of the renewal fee for a permit, up to a maximum fee of \$5,000.

2. The fee for a major modification to a permit described in NAC 445A.417 is equal to the amount of the renewal fee for a permit.

3. The fee for a modification to the engineering design described in NAC 445A.4155 is \$500.

4. The fee for a pre-application review as described in Section 3 of this proposed revision to regulation is \$1,500.

Sec. 12. NAC 445A.420 is hereby amended to read as follows:

445A.420 1. A permit may be renewed by the Department if the holder of the permit submits an application to renew the permit. The application must:

(a) Be filed at least 120 days before the expiration of the existing permit ~~(c)~~.

(b) Include the renewal fee required by NAC 445A.232 ~~(c) and~~.

(c) Include the information required by paragraphs (a) to (e), inclusive, of subsection 2 of NAC 445A.394.

~~(e)~~ ***(d) Include any new information to update information previously submitted to the Department. This may include but may not be limited to updated application information per NAC 445A.394 or 445A.414, as applicable, and updated location coordinates pursuant to NAC 445A.427.***

2. A permit for a facility which is inactive because of an unplanned closure may be renewed once if the holder of the permit demonstrates that the conditions under which the permit was issued will continue and the design life of the process components will not be exceeded.

3. If the Department has not issued a new permit as of the expiration of the existing permit, the holder of the permit may continue to operate the facility pursuant to the terms and conditions of the existing permit until a new permit is issued by the Department.

Sec. 13. NAC 445A.427 is hereby amended to read as follows:

445A.427 Within 30 days after completing construction on a new process component or *monitoring system specified in the permit*, or materially modifying an existing process component *or monitoring system specified in the permit*, the holder of the permit shall submit *a report* to the Department *for review and approval, including but not limited to:*

1. As-built drawings of the process component *or monitoring system and identification of any deviations from the previously approved design*~~[;]~~.

2. A summary of the *quality assurance and* quality control procedures which were carried out during construction *and associated test results* ~~[;-and]~~.

3. The final operating plans required by NAC 445A.398 which have been revised to reflect modifications made during construction.

4. Locations of all monitoring points specified in the permit, expressed in meters and decimals of a meter, using the Nevada Coordinate System of 1983 in accordance with NRS 327.005 and 327.030.

Sec. 14. NAC 445A.447 is hereby amended to read as follows:

445A.447 1. Plans for permanent closure are required for all sources at a facility.

2. A final plan for permanent closure of any source which has been identified as a process component must be submitted to the Department at least 2 years before the anticipated permanent closure of that process component.

3. The Department may require revision of a previously approved final plan for permanent closure if it determines based on new information that the plan will not achieve chemical stabilization, source removal, or mitigation of a process component.

~~3.~~ 4. Sources which have not been classified as process components must be evaluated at the end of their operating life to determine the potential for pollutants from these sources to migrate and degrade the waters of the State under the final proposed site conditions and must be closed in accordance with the *State Handbook of Best Management Practices* prepared pursuant to NAC 445A.336.

Sec. 15. NAC 445A.370 is hereby repealed.

TEXT OF REPEALED SECTION

NAC 445A.370 “Pilot facility” and “testing facility” defined. (NRS 445A.425, 445A.465)

“Pilot facility” or “testing facility” means a facility which is constructed principally to obtain data on the effectiveness of the beneficiation process to determine:

1. The feasibility of developing a body of ore; or
2. The optimum operating conditions of the process.

Sec. 16. NAC 445A.377 is hereby repealed.

TEXT OF REPEALED SECTION

NAC 445A.377 “Small-scale facility” defined. (NRS 445A.425, 445A.465) “Small-scale facility” means a facility which chemically processes less than 36,500 tons of ore per year and no more than 120,000 tons of ore for the life of the project at any one permitted site.

Sec. 17. NAC 445A.410 is hereby repealed.

TEXT OF REPEALED SECTION

NAC 445A.410 Permit for small-scale facility: Contents of application; limitation on holding; applicability of minimum design criteria. (NRS 445A.425, 445A.465)

1. An application for a permit to construct, operate and close permanently a small-scale facility must contain:

(a) The information required by paragraphs (a) to (e), inclusive, of subsection 2 of NAC 445A.394;

(b) Site information consisting of:

(1) The distance from the surface to groundwater;

(2) A topographic map which identifies all surface waters, waterways and springs within 1/2 mile of the site; and

(3) A description of the general character of the soil and geologic formations which lie beneath and adjacent to the proposed processing site;

(c) A description of and the criteria for the design of the containment system for the individual process components, including plans, schematics and cross-section diagrams of the process components which identify those components which provide for the containment of process fluids; and

(d) A copy of the draft operating plan for the facility which describes:

(1) The chemicals to be used in the beneficiation process;

(2) The methods which are proposed for controlling process fluids so that no discharges occur;

(3) The systems which are proposed for detecting leaks and monitoring the facility;

(4) The actions that will be taken if process fluids escape the fluid management system;

(5) The methods which are proposed to stabilize processed materials before they are disposed of or during the permanent closure of the facility; and

(6) The procedures which are to be instituted to ensure that the facility poses no threat to the environment when there is no activity at the facility or when there is a temporary closure.

2. A person may not concurrently hold more than one permit for a small-scale facility if the facilities are within 1 mile of each other.

3. The minimum design criteria in NAC 445A.433 to 445A.438, inclusive, apply to small-scale facilities.

(Added to NAC by Environmental Comm'n, eff. 9-1-89) — (Substituted in revision for NAC 445.2432) “Small-scale facility” defined. (NRS 445A.425, 445A.465) “Small-scale facility” means a facility which chemically processes less than 36,500 tons of ore per year and no more than 120,000 tons of ore for the life of the project at any one permitted site.