

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R040-01

July 16, 2001

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

AUTHORITY: §§1-15, NRS 445B.210 and 445B.300.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“Class III source” means a stationary source which is subject to the requirements set forth in NAC 445B.001 to 445B.395, inclusive, and sections 2, 3 and 4 of this regulation and:*

- 1. Which emits or has the potential to emit a combined 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. §§ 7661-7661f, inclusive;*
- 4. Which is not subject to the requirements of 40 C.F.R. Part 60;*
- 5. Which is not subject to the requirements of 40 C.F.R. Part 61;*
- 6. Which is not a temporary source;*
- 7. Which is not located at or a part of another stationary source; and*
- 8. Whose owner or operator:*
 - (a) Is not seeking a limitation on emissions to avoid the requirements of 40 C.F.R. Part 63;*

and

(b) Is not required to obtain an operating permit to operate the stationary source solely to comply with NAC 445B.365 relating to disturbances of surface area.

Sec. 3. 1. *The owner or operator of a stationary source with a Class III operating permit may apply, on a form provided by the director, for a revision of the operating permit.*

2. An application for a revision of a Class III operating permit for a stationary source must include:

(a) The name and address of the owner or operator of the stationary source;

(b) The location of the stationary source;

(c) A description of:

(1) The existing emission units undergoing modification and the applicable control systems; and

(2) The proposed modifications to those control systems;

(d) A description of any proposed new emission units and applicable control systems;

(e) The potential to emit for each proposed new and existing emission unit for each regulated air pollutant to which a standard applies; and

(f) Any other information that the director determines is necessary to process the application and issue a revised Class III operating permit in accordance with NAC 445B.001 to 445B.395, inclusive, and sections 2, 3 and 4 of this regulation.

Sec. 4. 1. *If a stationary source operating under a Class II operating permit qualifies as a Class III source pursuant to section 2 of this regulation, the owner or operator of the stationary source may submit an application with the appropriate fee and obtain a Class III operating permit for the stationary source.*

2. If a new stationary source qualifies as a Class III source pursuant to section 2 of this regulation, the owner or operator of the new stationary source may submit an application with the appropriate fee and obtain a Class III operating permit for the new stationary source. An operating permit must be obtained before commencing construction on a new stationary source.

3. For a proposed revision of a Class III operating permit, an owner or operator must submit an application with the appropriate fee and obtain a revision for the Class III operating permit before commencing construction of a proposed modification.

Sec. 5. NAC 445B.001 is hereby amended to read as follows:

445B.001 As used in NAC 445B.001 to 445B.395, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445B.002 to 445B.211, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 6. NAC 445B.006 is hereby amended to read as follows:

445B.006 “Affected source” means a stationary source subject to the requirements relating to acid ~~rain~~ *rain* set forth in 42 U.S.C. §§ 7651-7651o, inclusive.

Sec. 7. NAC 445B.037 is hereby amended to read as follows:

445B.037 “Class II source” means any stationary source which is not subject to the requirements of 42 U.S.C. §§ 7661-7661f, inclusive, but which is otherwise subject to the requirements of NAC 445B.001 to 445B.395, inclusive ~~[-]~~, *and sections 2, 3 and 4 of this regulation. The term does not include a stationary source that is operating under a Class III operating permit issued pursuant to NAC 445B.001 to 445B.395, inclusive, and sections 2, 3 and 4 of this regulation.*

Sec. 8. 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 a Class I, ~~and~~ a Class II *and a Class III* operating permit.

Sec. 9. NAC 445B.211 is hereby amended to read as follows:

445B.211 The abbreviations used in NAC 445B.001 to 445B.395, inclusive, *and sections 2, 3 and 4 of this regulation* have the following meanings:

BtuBritish thermal unit

C.F.R.Code of Federal Regulations

COcarbon monoxide

CO₂carbon dioxide

°Fdegree Fahrenheit

Hgmercury

H₂Owater

H₂Shydrogen sulfide

lbpound

NO_xnitrogen oxides

O₂oxygen

ppmparts per million

SO₂sulfur dioxide

~~[C.F.R.Code of Federal Regulations]~~

VOCvolatile organic carbon

Sec. 10. NAC 445B.281 is hereby amended to read as follows:

445B.281 1. Except as otherwise provided in NAC 445B.001 to 445B.395, inclusive, *and sections 2, 3 and 4 of this regulation*, any violation of the provisions of those sections is classified as a major violation, and a fine up to \$10,000 per day per violation may be levied.

2. For Class II *and Class III* sources, violations of subsections 3 and 4 of NAC 445B.232, subsection 8 of NAC 445B.252, subsection 2 of NAC 445B.265, paragraph (d) of subsection 1 of NAC 445B.275, and NAC 445B.331, 445B.365, 445B.381, 445B.382 and 445B.393 are classified as minor or lesser violations, unless there are four or more violations of any one of those sections by a person, occurring within a period of 60 consecutive months.

3. The schedule of fines for minor violations is as follows:

	First Offense	Second Offense	Third Offense
Subsection 3 or 4 of NAC 445B.232, reporting of excess emissions.....	\$125	\$250	\$500
Subsection 8 of NAC 445B.252, testing and sampling reporting.....	100	200	400
Subsection 2 of NAC 445B.265, reporting of monitoring systems	100	200	400
Paragraph (d) of subsection 1 of NAC 445B.275, recordkeeping, monitoring, reporting or compliance certification	50	100	200
NAC 445B.331, change of location	100	200	400
<i>NAC 445B.365, fugitive dust.....</i>	<i>125</i>	<i>250</i>	<i>500</i>
NAC 445B.381, open burning.....	50	100	200
NAC 445B.382, incinerator burning, equal to or less than 25 lbs per hour	50	100	200
greater than 25 lbs per hour	50	100	200
NAC 445B.365, fugitive dust	125	250	500
NAC 445B.393, odors.....	100	200	400

4. All minor violations become major violations upon the occurrence of the fourth violation of the same section within a period of 60 consecutive months.

Sec. 11. NAC 445B.291 is hereby amended to read as follows:

445B.291 ~~[H.]~~ An owner or operator of any stationary source that is not subject to the requirements of NAC 445B.289 or 445B.290 must submit an application for and obtain a Class II operating permit ~~[.]~~ *pursuant to this section or, if applicable, a Class III operating permit pursuant to section 4 of this regulation.* For a proposed stationary source or a proposed modification to a stationary source that is not subject to the requirements of NAC 445B.289 or 445B.290, an owner or operator must file an application and obtain a Class II operating permit or a revision to an existing Class II operating permit, as appropriate, before commencing construction of the proposed stationary source of the proposed modification ~~[.]~~

~~—2.— If an owner or operator of an existing stationary source that is not subject to the requirements of NAC 445B.289 or 445B.290 has not applied for and obtained an operating permit before the effective date of the program, he must file an application for an operating permit within 12 months after the effective date of the program. Filing such an application does not relieve the owner or operator of legal responsibility for his failure to obtain an operating permit pursuant to NAC 445B.300 or 445B.318, respectively, as these provisions existed before the effective date of the program.~~

~~—3.— The following provisions of NAC 445B.300 do not apply to Class II operating permits:~~

~~—(a) Public notice;~~

~~—(b) Notice to the EPA and affected states;~~

~~—(c) Veto of the operating permit by the EPA; and~~

~~—(d) Petitions to the administrator.] pursuant to this section or, if applicable, a Class III operating permit pursuant to section 4 of this regulation.~~

Sec. 12. NAC 445B.300 is hereby amended to read as follows:

445B.300 1. Except as otherwise provided in this subsection and NAC 445B.303, within 60 calendar days after the date on which an application for a Class I operating permit or for the significant revision of such an operating permit is received, 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 that the application is complete. Unless the director determines that the application is incomplete within 60 days after the date of receipt, the official date of submittal shall be deemed to be the date on which the director determines that the application is complete or 61 days after the date of receipt, whichever is earlier.

2. Except as otherwise provided in this subsection and NAC 445B.303, within 180 calendar days after the official date of submittal of an application for a Class I operating permit or for the revision of a Class I operating permit, the director shall make a preliminary determination to issue or deny the operating permit or the revision of the operating permit. The director shall give preliminary notice of his intent to issue or deny the operating permit or the revision of the operating permit within 180 calendar days after the official date of submittal.

3. Within 10 working days after the receipt of an application for a minor revision of a Class I operating permit, the director shall determine if the application is complete. If substantial additional information is required, the director shall determine the application to be incomplete and return the application to the applicant. If substantial additional information is not required,

the director shall determine the application to be complete. Unless the director determines that the application is incomplete within 10 working days after the date on which the director receives the application, the official date of submittal is the date on which the director determines that the application is complete ~~or~~ or 11 working days after the date of receipt, whichever is earlier.

4. Except as otherwise provided in NAC 445B.319 and 445B.320, within 10 working days after the date of receipt of an application for a Class II *or Class III* operating permit or for the revision of a Class II *or Class III* operating permit, the director shall determine if the application is complete. If substantial additional information is required, the director shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the director shall determine the application to be complete. Unless the director determines that the application is incomplete within 10 working days after the date of receipt of the application, the official date of submittal of the application shall be deemed to be the date on which the director determines that the application is complete or 11 working days after the date of receipt, whichever is earlier. ~~Within 60 days after the official date of submittal,~~ ~~the~~ *The* director shall issue or deny such an operating permit or the revision of such an operating permit ~~or~~:

(a) For a Class II operating permit, within 60 days after the official date of submittal of the application.

(b) For a Class III operating permit, within 30 days after the official date of submittal of the application.

5. If, after the official date of submittal, the director discovers that additional information is required to act on ~~the~~ *an* application, the director may request additional information necessary

to determine whether the proposed operation will comply with all of the requirements set forth in NAC 445B.001 to 445B.395, inclusive ~~[]~~, *and sections 2, 3 and 4 of this regulation*. The applicant must provide in writing any additional information that the director requests within the time specified in the request of the director. Any delay in the submittal of the requested information will result in a corresponding delay in the action of the director on the application submitted to the director . ~~[pursuant to subsection 1, 2 or 10.]~~

6. The director's review and preliminary intent to issue or deny a Class I operating permit and the proposed conditions for the operating permit must be made public and maintained on file with the director during normal business hours at ~~[333]~~ *123* West Nye Lane, Carson City, Nevada, and in the air quality region where the source is located for 30 calendar days to enable public participation and comment and a review by any affected states.

7. ~~[The]~~ *For Class I operating permits, the* director shall:

(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the stationary source is located or in a state publication designed to give general public notice;

(b) Provide written notice to:

(1) Persons on a mailing list developed by the director, including those persons who request in writing to be included on the list; and

(2) Any affected state;

(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public and affected states;

(d) Provide a copy of the director's review of the application, the director's preliminary intent to issue or deny the operating permit and the proposed operating permit to the administrator; and

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

8. ~~[Except as otherwise provided in NAC 445B.321, the]~~ *The* provisions of subsections 6 and 7 do not apply to an administrative amendment to a *Class I operating* permit made pursuant to NAC 445B.319, a change without revision to a *Class I operating* permit made pursuant to NAC 445B.320 or a minor revision of a Class I operating permit made pursuant to NAC 445B.321.

9. The notice required *for a Class I operating permit* pursuant to subsection 7 must identify:

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

(b) The name and address of the authority processing the operating permit;

(c) The activity or activities involved in the operating permit and the emissions change involved in any revision of the operating permit;

(d) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the proposed conditions for the operating permit, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the operating permit and which are relevant to the determination of the issuance of the operating permit; and

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

10. All comments on the director's review and preliminary intent for *the* issuance or denial *of a Class I operating permit* must be submitted in writing to the director within 30 calendar days after the public announcement. The director shall give notice of any public hearing at least

30 days before the date of the hearing. The director shall keep a record of the names of any persons who made comments and of the issues raised during the process for public participation.

11. Except as otherwise provided in subsection 12 and NAC 445B.319, 445B.320 and 445B.321, within 12 months after the official date of submittal of a Class I-B application, the director shall issue or deny the application for an operating permit or for a revision of the operating permit. The director shall make his decision by taking into account written comments from the public, affected states, and the administrator and the comments made during public hearings on the director's review and preliminary intent for issuance or denial, information submitted by proponents of the project and the effect of such a facility on the maintenance of the state, and national ambient air quality standards contained in NAC 445B.391 and the control strategy contained in the air quality plan. The director shall send a copy of the final *operating* permit to the administrator.

12. For stationary sources subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, adopted pursuant to NAC 445B.221, the director shall issue or deny an application for an operating permit, or for the revision or renewal of such an operating permit, within 12 months after receiving a complete application.

13. The director shall not issue an operating permit, or a revision of or a renewal of an operating permit, if the administrator objects to its issuance in writing within 45 days after the administrator's receipt of the proposed conditions for the operating permit and the necessary supporting information.

14. Any person may petition the administrator to request that he object to ~~an~~ *a Class I* operating permit as provided in 40 C.F.R. § 70.8(d).

15. If the administrator objects to the issuance of ~~an~~ *a Class I* operating permit of his own accord or in response to a public petition, the director shall submit revised proposed conditions for the operating permit in response to the objection within 90 days after the date on which he is notified of the objection.

16. If construction will occur in one phase, an operating permit or the revision of an operating permit for a new or modified stationary source, other than a stationary source subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, expires if construction is not commenced within 18 months after the date of issuance thereof or construction of the facility is delayed for 18 months after initiated. The director may extend the date on which the construction may be commenced upon a showing that the extension is justified.

17. If construction will occur in more than one phase, the projected date of the commencement of construction of each phase of construction must be approved by the director. An operating permit or the revision of an operating permit for a new or modified stationary source, other than a stationary source subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, expires if the initial phase of construction is not commenced within 18 months after the projected date of the commencement of construction approved by the director. The director may extend only the date on which the initial phase of construction may be commenced upon a showing that the extension is justified.

Sec. 13. NAC 445B.313 is hereby amended to read as follows:

445B.313 1. For the purposes of determining the effects of Class II *and Class III* sources on the quality of ambient air pursuant to NAC 445B.308 to 445B.313, inclusive, 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.

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

Sec. 14. NAC 445B.323 is hereby amended to read as follows:

445B.323 1. All operating permits must be renewed 5 years after the date of issuance.

2. A ~~completed~~ *complete* application for renewal of an operating permit must be submitted to the director on the form provided by ~~him~~ *the director* with the appropriate fee ~~at~~ :

(a) *At least 180 calendar days, but no earlier than 18 months, before the expiration date of the current operating permit for Class I stationary sources* ~~[, or at]~~ ;

(b) *At least 30 calendar days before the expiration date of the current operating permit for Class II stationary sources* ~~[,]~~ ; *or*

(c) *At least 30 calendar days before the expiration date of the current operating permit for Class III stationary sources.*

3. Applications for renewal must comply with all requirements for the issuance of an initial operating permit ~~[,]~~ *as specified in NAC 445B.300.*

4. If an application for renewal is *timely* submitted ~~[at least 180 calendar days before the expiration of the current permit for Class I sources, or at least 30 days before the expiration of the current permit for Class II sources,]~~ *in accordance with subsection 2,* the stationary source may continue to operate *under the conditions of the existing operating permit* until the

operating permit is renewed or the application for renewal is denied. ~~[[The continued operation of the stationary source must comply with the conditions of the expired permit.]]~~ If a request is not submitted in ~~[[a timely manner.]]~~ *accordance with subsection 2*, the stationary source may be required to cease operation when the *operating* permit expires, and may not recommence the operation until the *operating* permit is renewed.

5. The fee for the renewal of an operating permit is as specified in NAC 445B.327.

Sec. 15. NAC 445B.327 is hereby amended to read as follows:

445B.327 1. Except as otherwise provided in subsection 2, the fees for an operating permit are as follows:

- (a) Class I operating permit.....\$30,000
- (b) Significant revision of a Class I operating permit20,000
- (c) Minor revision of a Class I operating permit.....5,000
- (d) Renewal of a Class I operating permit5,000
- (e) Class II operating permit3,000
- (f) Revision of a Class II operating permit.....2,000
- (g) Renewal of a Class II operating permit2,000
- (h) Class II general permit400
- (i) *Class III operating permit*.....**300**
- (j) *Revision of a Class III operating permit***200**
- (k) *Renewal of a Class III operating permit***250**
- (l) Administrative amendment of an operating permit.....200

FLUSH An applicant must pay the entire fee when he 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 he submits an application to the director.

3. If a stationary source is subject to participation in the program for the prevention of significant deterioration of air quality pursuant to 40 C.F.R. § 52.21, as incorporated by reference by 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) ~~Permit~~ *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~~ *an operating* permit for a stationary source subject to the program for the prevention of significant deterioration of air quality to authorize a major modification of the stationary source\$50,000

FLUSH An applicant must pay the entire fee when he submits an application to the director.

4. Except as otherwise provided in this subsection, the annual fee based on emissions for ~~any~~ *a* stationary source is \$5.60 per ton times the total tons of each regulated pollutant ~~except carbon monoxide,~~ emitted during the preceding calendar year. *The annual fee based on emissions does not apply to:*

- (a) *Emissions of carbon monoxide; or*
- (b) *Class III stationary sources.*

5. To determine the fee set forth in subsection 4:

(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.

6. The annual fee for maintenance of a stationary source is:

(a) For a Class I source\$12,500

(b) For a Class II source that has the potential to emit 50 tons or more per year of any one regulated air pollutant except carbon monoxide.....\$3,000

(c) For a Class II source that has the potential to emit 25 tons or more per year but less than 50 tons per year of any one regulated air pollutant except carbon monoxide\$1,000

- (d) For a Class II source that has the potential to emit less than 25 tons per year of any one regulated air pollutant except carbon monoxide.....\$250
- (e) *For a Class III source*.....\$250
- (f) For a surface area disturbance.....\$250

7. The *state* department *of conservation and natural resources* shall collect all fees required pursuant to subsections 4 and 6 not later than July 1 of each year.

8. The fees required pursuant to subsections 4 and 6 are due and payable to the “Nevada State Treasurer, Environmental Protection” within 45 days after the date of the invoice.