

LCB File No. T010-01

ADOPTED TEMPORARY REGULATION OF THE  
NEVADA STATE ENVIRONMENTAL COMMISSION

(Effective May 14, 2001)

Petition 2001-05

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

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Authority: §§1-13, 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” defined.** *“Class III source” means any stationary source which is subject to the requirements of NAC 445B.001 to 445B.395, and:*

- 1. Emits or has the potential to emit individually or in combination, a total of 5 tons or less per year of PM10, NOX, SO2, CO, VOC, and H2S;*
- 2. Emits less than 1,000 lbs of Lead (Pb) per year.*
- 3. Does not seek an emission limitation to avoid the requirements of 40 CFR Part 63;*
- 4. Is not subject to the requirements of 42 U.S.C. §§ 7661-7661f;*
- 5. Is not subject to the requirements of 40 CFR Part 60;*
- 6. Is not subject to the requirements of 40 CFR Part 61;*
- 7. Is not a temporary source, as defined in NAC 445B.194;*
- 8. Is not required to obtain an operating permit to comply solely with the requirements of NAC 445B.365 for surface area disturbances; and*
- 9. Is not located at or part of another stationary source.*

**Sec. 3. Class III operating permits: Application for revision.**

*1. The owner or operator of a stationary source with a Class III operating permit may request, on an application form provided by the director, a revision of the operating permit.*

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

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

*(b) The location of the stationary source; and*

*(c) A description of:*

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

*(2) The proposed modification to such emission units;*

*(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 units for each regulated air pollutant to which a standard applies;*

*(f) Any other information that the director determines is necessary to process the application and issue a Class III operating permit pursuant to this section and NAC 445B.001 to 445B.395, inclusive.*

**Sec. 4. Class III operating permits: Filing requirements; applicability of certain provisions.**

*1. An owner or operator of any stationary source operating under a Class II permit that meets the definition of a Class III Source in section 2 of this regulation may submit an application for and obtain a Class III operating permit.*

*2. For a new stationary source that meets the definition of a Class III Source in section 2 of this regulation, an owner or operator may file an application and obtain a Class III operating permit. An operating permit shall be obtained before commencing construction.*

*3. For a proposed revision of a Class III permit, an owner or operator must file an application and obtain a revision to the Class III operating permit before commencing construction of the proposed modification.*

*4. The provisions of NAC 445B.300.7, 445B.300.10, 445B.300.14 and 445B.300.15 do not apply to Class III operating permits.*

**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 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.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.

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**Sec. 7.** 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 ~~and~~ set forth in 42 U.S.C. §§ 7651-7651o, inclusive.

Deleted: and

**Sec. 8.** 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, 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   | Second  | Third   |
|---------------------------------------|---------|---------|---------|
|                                       | Offense | Offense | 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     |

|   |     |     |     |
|---|-----|-----|-----|
| NAC 445B.381, open burning.....   | 50  | 100 | 200 |
| NAC 445B.382, incinerator<br>burning, equal to or less<br>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.

[Environmental Comm'n, Air Quality Reg. §§ 2.8.1-2.8.4, eff. 11-7-75; A 12-4-76]—(NAC A 10-22-87; 12-8-89; 12-13-93)—(Substituted in revision for NAC 445.699)

**Sec. 9.** 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 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 a Class III* operating permit or for the revision of a Class II *or a 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. ~~§~~ *After the official date of submittal*, the director shall issue or deny such an operating permit or the revision of such an operating permit~~§~~:

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*(a) Within 60 days for a Class II source; or*

*(b) Within 30 days for a Class III source.*

5. If, after the official date of submittal, the director discovers that additional information is required to act on the 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. 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 ~~§~~.

Deleted: ~~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 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. *Except as provided in NAC 445B.319, 445B.320 and 445B.321, for Class I operating permits* ~~§~~ the director shall:

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(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 provisions of subsections 6 and 7 do not apply to an administrative amendment to a permit made pursuant to NAC 445B.319, a change without revision to a 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 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 issuance or denial 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 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 operating permit as provided in 40 C.F.R. § 70.8(d).

15. If the administrator objects to the issuance of an 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. 10.** 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 complete ~~it~~ application for renewal of an operating permit must be submitted to the director on the form provided *by the director*, ~~it~~ with the appropriate fee;

*(a) At least 180 calendar days, but no earlier than 18 months, before the expiration date of the current permit for a Class I stationary source;*

*(b) At least 30 calendar days before the expiration date of the current permit for a Class II stationary source; or*

*(c) At least 30 calendar days before the expiration date of the current permit for a Class III stationary source and must be deemed complete at least 15 days before the expiration date.*

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

4. If an application for renewal is submitted *and fulfills the requirements under subsection 2*,

~~it~~, the stationary source may continue to operate *under the conditions of the existing permit*

until the permit is renewed or the application for renewal is denied. ~~it~~ If a ~~it~~ *complete application* is not submitted in ~~it~~ *accordance with subsection 2*, the stationary source may be

required to cease operation when the permit expires, and may not recommence the operation until the permit is renewed.

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

**Sec. 11.** 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

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Deleted: 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

Deleted: The continued operation of the stationary source must comply with the conditions of the expired permit.

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|--|------------|
| (b) Significant revision of a Class I operating permit | 20,000     |
| (c) Minor revision of a Class I operating permit       | 5,000      |
| (d) Renewal of a Class I operating permit              | 5,000      |
| (e) Class II operating permit                          | 3,000      |
| (f) Revision of a Class II operating permit            | 2,000      |
| (g) Renewal of a Class II operating permit             | 2,000      |
| (h) Class II general permit                            | 400        |
| <i>(i) Class III operating permit</i>                  | <i>300</i> |
| <i>(j) Revision of a Class III operating permit</i>    | <i>200</i> |
| <i>(k) Renewal of a Class III operating permit</i>     | <i>250</i> |
| (l) Administrative amendment of an operating permit    | 200        |

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 permit is consistent with any guidelines established by the division 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 for a stationary source subject to the program for the prevention of significant deterioration of air quality  | \$50,000 |
| (b) Revision of a 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 |

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 a stationary source is \$5.60 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:*

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*(a) Emissions of carbon monoxide (CO); and*

*(b) Class III 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 department 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.

## NOTICE OF ADOPTION OF TEMPORARY REGULATION T009-01

The Nevada State Environmental Commission adopted amendments to the air pollution control operating permit program on May 10, 2001.

**Notice date:** 1/16/0, 1/25/01 & 1/30/01  
**Hearing date:** 12/18/00 & 12/19/00

**Date of Adoption by Agency:** 5/10/01  
**Filing date:** 5/14/02

### INFORMATIONAL STATEMENT

#### LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED

**BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
TEMPORARY PETITION 2001-05  
STATE ENVIRONMENTAL COMMISSION**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445B. This temporary regulation deals with amendments to the air pollution control operating permit program.

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

**Petition 2001-05**, was noticed three (3) on January 16, January 25 and January 30, 2001 as a temporary regulation in the Las Vegas Review Journal and the Reno-Gazette-Journal newspapers. Regulatory workshops were conducted by the Nevada Division of Environmental Protection's Bureau of Air Quality on December 18, 2000 in Reno, December 19, 2000 in Las Vegas and December 21, 2000 in Elko. The regulation was adopted by the State Environmental Commission on May 10, 2001. No oral or written comments opposing or supporting the regulation were received by the Commission. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

**2. The number persons who:**

|     |   |    |
|-----|---|----|
| (a) | Attended each hearing;                    | 35 |
| (b) | Testified at each hearing;                | 0  |
| (c) | Submitted to the agency written comments; | 0  |

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates of the public notices and public workshops. No oral or written testimony was received that opposed or supported the regulation. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The temporary regulation was adopted by the State Environmental Commission on May 10, 2001 with no proposed amendments.

**5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Estimated economic effect of the regulation on the business which it is to regulate;

The regulated business community will see a positive beneficial effect by the reduction in the time and effort to prepared Class III permit applications and reduced fees for application, revision renewal and annual maintenance fees.

- (b) Estimated economic effect on the public;

The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public.

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

There will be no additional cost to the Division of Environmental Protection for enforcement of these amendments.

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

The regulations do not overlap or duplicate any regulations of another state or local governmental agency.



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

The regulations are no more stringent than federal regulations.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The amendment does provide a new fee that reduces the amount currently paid by small quantity sources. The Division of Environmental Protection does not anticipate increased revenues from the new Class III permits, but rather an overall reduction in fees from affected businesses.