

LCB File No. T010-01

**PROPOSED TEMPORARY REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

**NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING**

The Nevada State Environmental Commission will hold a public hearing beginning at **10:00 a.m. on Thursday, February 15, 2001, at the Nevada Commission on Tourism, Commission Chamber, 2nd Floor, 401 N. Carson Street, Carson City, Nevada (The Laxalt Building is located immediately south of the Carson Nugget and two blocks north of the Capitol Building)**. If the business of February 15, 2001 is not completed, the hearing shall continue to the next day at the same location, with a starting time of 9:00 a.m.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of regulations. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Environmental Commission may proceed immediately to act upon any written submission.

Note: The public hearing regarding the Walker River and Walker Lake water quality standards as heard on December 5, 2000 in Yerington, Nevada will be continued at this February 15, 2001 meeting.

1. Petition 2000-12 (LCB R-117-00) is a permanent amendment to NAC 445B.001 to 445B.395, the air pollution control regulations. Amended is NAC 445B.194, which limits the criteria for temporary sources. NAC 445B.287 redefines the requirement when an operating permit or permit to construct is required. NAC 445B.288 redefines insignificant activities. NAC 445B.290 requires new stationary Class I sources to submit an application. NAC 445B.295 redefines the requirements for compliance plans. NAC 445B.316 amends the description of emissions trading to be modified to ensure consistency with 40 CFR Part 70 and provides conditions governing a permit shield. And, finally, NAC 445B.331 is amended for change of location fees for Class I and II sources requiring 10 days advanced notice.

The proposed amendments will require additional review time for industry to evaluate insignificant activities. The proposed amendments will not have an adverse short-term or long-term economic impact upon the regulated communities or the public. There is no overlap or duplication of any other state or government agency. The proposed amendments are no more stringent than what is required in 40 CFR Part 70, the State Operating Permit Program regulations, as established by federal law. The implementation of the proposed regulation is not expected to result in any additional cost by the Division of Environmental Protection for enforcement. This regulation does not provide for any new or increased fees.

Temporary Petition 2001-05 was received on December 26, 2000 from the Division of Environmental Protection, Bureau of Air Quality. This petition is before the Commission on February 15, 2001 for adoption

2. Petition 2001-03 is a temporary amendment to NAC 444A.005 to 444A.470 to extend programs for separating at the source recyclable material from other solid waste to include public buildings in counties with populations greater than 100,000. The proposed temporary regulations add for public buildings the minimum standards and a model plan which were previously established for the source separation of recyclables at residential premises. Definitions for public building, paper and paper product are added. NAC 444A.120 is proposed to be amended to add public buildings and 444A.130 is amended to provide for a municipality to make available a source separation of recyclable materials at public buildings.

The regulated business community may encounter some startup costs to provide a collection service at public buildings. There may be a modest beneficial long term economic effect on recycling businesses because of the potential to increase the amount of recyclable commodities diverted from disposal. The proposed amendments will have no adverse economic impact upon the public. There will be no additional cost to the Division of Environmental Protection for enforcement of these amendments. There are no other State regulations which the amendments overlap or duplicate. This regulation is no more restrictive or stringent than the federal requirements. There is no federal regulation that requires recycling collection services be provided to public buildings. The amendment does not provide a new fee and nor does it amend existing fees.

3. Petition 2001-04 is a temporary amendment to NAC 232 and/or NAC 444A. The proposed temporary regulation prescribes the paper and paper product recycling procedures for state agencies. The temporary regulation provides criteria for exemption from the recycling requirements, provides for clearly labeled containers, establishes reporting criteria by state agencies and requires a building recycling plan to be submitted to the Division of Environmental Protection.

The regulated business community may encounter some startup costs to provide a collection service at public buildings. There may be a modest beneficial long term economic effect on recycling businesses because of the potential to increase the amount of recyclable commodities diverted from disposal. The proposed amendments will have no adverse economic impact upon the public. There will be no additional cost to the Division of Environmental Protection for enforcement of these amendments. There are no other State regulations which the amendments overlap or duplicate. This regulation is no more restrictive or stringent than the federal requirements. There is no federal regulation that requires recycling collection services be provided to public buildings. The amendment does not provide a new fee and nor does it amend existing fees.

4. Petition 2001-05 is a temporary amendment to NAC 445B.001 to 445B.395, the state air pollution control permitting program. The proposed temporary regulation amends NAC 445B by creating and defining a new classification of operating permits. The new Class III permit will provide eligible sources (those emitting 5 tons or less of specific pollutants) a streamlined permitting process, which includes accelerated permit review and issuance and lower permitting fees. This regulation will provide regulatory relief for small quantity sources.

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. The proposed amendments will have no adverse economic impact upon the public. There will be no additional cost to the Division of Environmental Protection for enforcement of these amendments. There are no other State regulations which the amendments overlap or duplicate.

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This regulation is no more restrictive or stringent than the federal requirements. 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.

5. Petition 2001-06 is a temporary amendment to NAC 459.952 to 459.95528, the chemical accident prevention program. The temporary regulation adds new provisions to incorporate explosives manufacturing into the program, to add construction permit requirements for new chemical and explosive facilities, and other minor technical amendments to the regulations to reflect statutory amendments to the list of regulated chemicals. Facilities that manufacture explosives or ammonium nitrate/fuel oil for sale will be subject to the requirements of the program. A fee structure to regulate explosive facilities is established.

Previously unregulated businesses will now be subject to regulation under the program. The program amendments will have an associated cost for regulated businesses, with the basic benefit being the reduced risk of catastrophic accidents and improved facility operation and efficiency. The cost of compliance will require new fees for permits. This regulation is not anticipated to have an adverse economic impact upon the public. The Nevada Division of Industrial Relations shares jurisdiction through delegation of the federal Process Safety Management regulations. The Division of Environmental Protection has a Memorandum of Understanding to coordinate activities where statutory overlap occurs. This regulation is no more restrictive or stringent than the federal requirements. The fees will cover the cost of a contractor to deal with the explosives manufacturers and for the cost of permitting facilities. The amount of fees to be collected is undetermined, with fees for permitting based upon an hourly rate charged for processing the applications.

Pursuant to NRS 233B.0603 the provisions of NRS 233B.064 (2) are hereby provided:

"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption."

Persons wishing to comment on the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least five days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notices have been deposited at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>. In addition, the State Environmental Commission maintains an Internet

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site. It is at <http://www.state.nv.us/ndep/admin/envir01.htm>. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-4670 Extension 3118, no later than 5:00 p.m. on February 9, 2001.

This public notice has been posted at the following locations: Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library in Reno, Division of Environmental Protection, the Department of Museums, Library and Arts and the Commission on Tourism in Carson City , the Casino West Convention Center and the Lyon County Courthouse in Yerington and the Mineral County Courthouse in Hawthorne, Nevada.

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Agency Draft of Proposed Temporary Regulation T010-01

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NEVADA STATE ENVIRONMENTAL COMMISSION

Petition 2001-05

Explanation - Matter in *italics* is new; matter in brackets ~~is~~ 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;

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(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, ~~II~~ 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 set forth in 42 U.S.C. §§ 7651-7651o, inclusive.

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Sec. 8. 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

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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 ~~§~~.

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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;

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(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.

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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. 9. 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 ~~H~~ application for renewal of an operating permit must be submitted to the director on the form provided *by the director* ~~H~~ with the appropriate fee;

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(a) 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~~;~~;

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(b) A ~~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 ~~complete~~

application is not submitted in ~~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.

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

Sec. 10. 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 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) 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

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

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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

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(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.

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