

LCB File No. T041-03

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

Petition 2003-04

**NOTICE OF PUBLIC HEARING AND
OF INTENT TO ACT UPON REGULATIONS**

The Nevada State Environmental Commission will hold a public hearing beginning at **9:30 a.m. on Thursday, June 19, 2003, at the Nevada Division of Wildlife's Conference Room A, 1000 Valley Road, Reno, Nevada.**

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.

1. Petition 2003-03 (T040-03) is proposed temporary amendments to NAC 445B.001 to 445B.3497, the air pollution control regulations. The regulation amends NAC 445B.281 to increase and standardize the fines in the schedule for minor violations, including fugitive dust, open burning, odors, excess emissions, testing and sampling reporting, monitoring system reporting and change of location. First offense is increased to \$250, second offense to \$500 and third offense to \$750, except for fugitive dust emissions where the fine is proposed to be \$1,000 for the third offense.

Unless the NAC is violated, there will be no economic impact on the regulated community. If a minor violation occurs, the penalty will be approximately two to five times greater than under current regulation. The regulation is not expected to have any economic effect on the public in the immediate term and long term. The regulation is not expected to result in additional cost by the agency for enforcement. There are no other state or government agency regulations, which the revisions duplicate. The regulation is not more stringent than a federal regulation. The regulation does not provide for a new fee or increase an existing fee, but does increase fines.

2. Petition 2003-04 (T041-03) is proposed temporary amendments to NAC 445B.001 to 445B.3497, the air pollution control regulations. The proposed regulation amendments include clarifications, technical corrections and the removal of regulations that are no longer applicable. These are necessary to update and correct the NAC. They will also bring Nevada's program more into alignment with the Applicable State Implementation Plan.

The proposed regulation amendments include only technical corrections, clarifications and removal of regulations that are no longer applicable and will have no economic impacts, either immediate or long term, on the regulated community or the public. The proposed regulation amendments will not result in additional cost by the agency for enforcement. The proposed

regulation amendments do not overlap or duplicate any other state or government agency regulations. The regulation is no more stringent than what is established by federal regulation. The proposed regulation amendments do not provide for a new fee or increase an existing fee.

3. Petition 2003-05 (T042-03) is proposed temporary amendments to NAC 445B.001 to 445B.3497, the air pollution control regulations. On December 31, 2002, the U.S. Environmental Protection Agency adopted revisions to the federal New Source Review (NSR) and Prevention of Significant Deterioration (PSD) rule. The federal revisions include changes to applicability determinations, plant-wide applicability limits (PALs), clean unit exemptions, and pollution control projects. The changes being proposed by the agency adopt by reference those revisions and create a separate set of regulations for PSD sources necessary to ensure consistency with the federal program and allow NDEP to implement the new federal provisions. Specifically, the agency is proposing: 1) Application requirements for each of the new provisions; 2) Application processing timelines for each of the new provisions; 3) Permit content

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requirements; 4) A fee structure that is expected to cover costs for each of the new provisions; and 5) Technical corrections to separate PSD source requirements from the application and permit requirements for other sources. These regulation changes are necessary to regain full delegation of these federal programs.

The proposed regulation only applies to major stationary sources which is currently 12 facilities. The changes will allow affected sources to utilize the new NSR provisions which were designed to provide additional flexibility and to decrease the number of modifications that would otherwise be required in a formal PSD review. The economic impact will be an increase in annual maintenance fees assessed on these facilities and added specific permitting fees necessary to cover agency costs. These costs will apply only to those sources requesting any of the new NSR provisions at the time that they modify their existing permit and the new maintenance fee will be assessed for the life of the facility. The regulation is not expected to have any economic effect on the public in the immediate term and long term. There will be additional costs to the agency for compliance monitoring and enforcement of these amendments and for processing these new types of applications and the issuing of permits. These additional costs will be covered by the modifications to the fee structure that are being proposed as part of this proposed regulation amendment. The proposed regulation amendments do not overlap or duplicate any regulations or other state of government agencies. The regulation is not more stringent than what is established by federal regulation. The regulation does provide for a new fee and increases existing fees. Any fees collected will be used to support the program.

NON REGULATORY ACTIONS

The Nevada Environmental Commission pursuant to NAC 444.8476 received a request on January 16, 2003, from Day & Zimmerman Hawthorne Corporation, the operations contractor for the Hawthorne Army Depot, for **renewal** of a variance application from NAC 444.8456(1)(d). The variance is in regards to the proposed plasma ordnance demilitarization system and concerns the proximity of groundwater beneath the proposed plasma ordnance demilitarization system. NAC

444.847 through 444.8482 provides for the Environmental Commission to act upon variance requests. The renewal variance application has been reviewed by the Nevada Division of Environmental Protection. NAC 444.8478 provides for a thirty-day public notice and comment period.

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, Room 138, 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 and Archives, 100 Stewart Street, Carson City; the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City, and at the Division of Environmental Protection, 1771 E. Flamingo, Suite 121-A, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notice 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 site. It is at sec.nv.gov/ This site contains the current public notice, agenda, the aforementioned proposed regulations and previously filed regulations from past commission hearings.

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 the Executive Secretary, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-9309, no later than 5:00 p.m. on **June 13, 2003**.

This public notice has been posted at the following locations: Clark County Public Library and the Grant Sawyer Office Building in Las Vegas, Washoe County Library and the Nevada Division of Wildlife in Reno, and the Division of Environmental Protection and Department of Cultural Affairs in Carson City.

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Explanation: Matter in *bold italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: NRS 445B.210.

Section 1. NAC 445B.2204 is hereby amended to read as follows:

NAC 445B.2202. NAC 445B.22017 and 445B.22023 do not apply to:

1. Smoke from the open burning described in NAC 445B.22067;
2. Smoke discharged in the course of training air pollution control inspectors to observe visible emissions, if the facility has written approval of the commission;
3. Emissions from an incinerator as set forth in NAC 445B.2207;
~~[4.—Emission from a thermit batch process when charging which does not exceed 60 minutes and for no more than one charging in any 24 consecutive hours;]~~
- ~~[5.]~~ 4. Emissions of stationary diesel-powered engines during warmup for not longer than 15 minutes to achieve operating temperatures; or
- ~~[6.]~~ 5. Emission from a steam generating unit fired by fossil fuel or wood for boiler lancing or soot blowing, not to exceed 180 minutes in any 24 consecutive hours.

Sec. 2. NAC 445B.22057 is hereby amended to read as follows:

NAC 445B.22057. The allowable emission of sulfur from fossil fuel-fired power generating units Number 1, 2 and 3 of Nevada Power Company's Reid Gardner Station, located in Air Quality Control Region 13, Basin 218, California Wash, must not be greater than .275 pounds per million Btu's (.504 kilograms per million kg-cal) ~~[per hour]~~.

Sec. 3. NAC 445B.232 is hereby amended to read as follows:

NAC 445B.232. 1. Scheduled maintenance or testing or scheduled repairs which may result in excess emissions of regulated air pollutants prohibited by NAC 445B.001 to 445B.3497, inclusive, must be approved by the director and performed during a time designated by the director as being favorable for atmospheric ventilation.

2. The director must be notified in writing of the time and expected duration at least 24 hours in advance of any scheduled maintenance which may result in excess emissions of regulated air pollutants prohibited by NAC 445B.001 to 445B.3497, inclusive.

3. The director must be notified in writing or by telephone of the time and expected duration at least 24 hours in advance of any scheduled repairs which may result in excess emissions of regulated air pollutants prohibited by NAC 445B.001 to 445B.3497, inclusive.

4. The director must be notified of any excess emissions within 24 hours after any malfunction or upset of the process equipment or equipment for controlling pollution or during start-up or shutdown of such equipment. The telephone number for the notification is ~~[(775) 687-4670]~~ **(775) 687-9350**.

5. The owner or operator of an affected facility shall provide the director, within 15 days after any malfunction, upset, start-up, shutdown or human error which results in excess emissions, sufficient information to enable the director to determine the seriousness of the excess emissions. The information must include at least the following:

- (a) The identity of the stack or other point of emission, or both, where the excess emissions occurred.
- (b) The estimated magnitude of the excess emissions expressed in opacity or in the units of the applicable limitation on emission and the operating data and methods used in estimating the magnitude of the excess emissions.
- (c) The time and duration of the excess emissions.
- (d) The identity of the equipment causing the excess emissions.
- (e) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunction.
- (f) The steps taken to limit the excess emissions.
- (g) Documentation that the equipment for controlling air pollution, process equipment or processes were at all times maintained and operated, to a maximum extent practicable, in a manner consistent with good practice for minimizing emissions.

Sec. 4 . NAC 445B.252 is hereby amended to read as follows:
NAC 445B.252.

1. To determine compliance with NAC 445B.001 to 445B.3497, inclusive, before the approval or the continuance of an operating permit or similar class of permits, the director may either conduct or order the owner of any stationary source to conduct or have conducted such testing and sampling as the director determines necessary. Testing and sampling or either of them must be conducted and the results submitted to the director within 60 days after achieving the maximum rate of production at which the affected facility will be operated, but not later than 180 days after initial start-up of the facility and at such other times as may be required by the director.

2. Tests of performance must be conducted and data reduced in accordance with the methods and procedures of the test contained in each applicable subsection of this section unless the director:

- (a) Specifies or approves, in specific cases, the use of a method of reference with minor changes in methodology;
- (b) Approves the use of an equivalent method;
- (c) Approves the use of an alternative method, the results of which he has determined to be adequate for indicating whether a specific stationary source is in compliance; or
- (d) Waives the requirement for tests of performance because the owner or operator of a stationary source has demonstrated by other means to the director's satisfaction that the affected facility is in compliance with the standard.

3. Tests of performance must be conducted under such conditions as the director specifies to the operator of the plant based on representative performance of the affected facility. The owner or operator shall make available to the director such records as may be necessary to determine the conditions of the test of performance. Operations during periods of start-up, shutdown and malfunction must not constitute representative conditions of a test of performance unless otherwise specified in the applicable standard.

4. The owner or operator of an affected facility shall give notice to the director 30 days before the test of performance to allow the director to have an observer present. A written testing procedure for the test of performance must be submitted to the director at least 30 days before the test of performance to allow the director to review the proposed testing procedures.

5. Each test of performance must consist of at least three separate runs using the applicable method for that test. Each run must be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the runs apply. In the event of forced shutdown, failure of an irreplaceable portion of the sampling train, extreme meteorological conditions or other circumstances with less than three valid samples being obtained, compliance may be determined using the arithmetic mean of the results of the other two runs upon the director's approval.

6. All testing and sampling will be performed in accordance with recognized methods and as specified by the director.

7. The cost of all testing and sampling and the cost of all sampling holes, scaffolding, electric power and other pertinent allied facilities as may be required and specified in writing by the director must be provided and paid for by the owner of the stationary source.

8. All information and analytical results of testing and sampling must be certified as to their truth and accuracy and as to their compliance with all provisions of these regulations, and copies of these results must be provided to the director no later than 60 days after the testing or sampling, or both.

The provisions of this section shall not be construed to preclude any federal testing and sampling requirements for emission units that are subject to a federal emission limitation or standard contained in 40 CFR Part 60, 61, or 63 or that are affected sources as defined in NAC 445B.006.

Sec. 5. NAC 445B.262 is hereby amended to read as follows:

NAC 445B.262. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases must be cleaned prior to performing the zero or span drift adjustments, except that for systems using automatic zero adjustments, the optical surfaces must be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity. Unless otherwise approved by the director, the following procedures, as applicable, must be followed:

1. For extractive continuous monitoring systems measuring gases, minimum procedures must include introducing applicable zero and span gas mixtures into the measurement system as near the probe as is practical. Span and zero gases certified by their manufacturer to be traceable to National Bureau of Standards reference gases must be used whenever these reference gases are available. The span and zero gas mixtures must be the same composition as specified in Appendix B of 40 C.F.R. § 60. Every 6 months from the date of manufacture, span and zero gases must be reanalyzed by conducting triplicate analyses with Reference Methods 6 for SO₂, 7 for NO, and 3 for O₂ and CO₂, respectively. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.

2. For nonextractive continuous monitoring systems measuring gases, minimum procedures include upscale checks using a certified calibration gas cell or test cell which is functionally equivalent to a known gas concentration. The zero check may be performed by

computing the zero value from upscale measurements or by mechanically producing a zero condition.

3. For continuous monitoring systems measuring opacity of emissions, minimum procedures include a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. These procedures must provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

The provisions of this section shall not be construed to preclude any federal testing and sampling requirements for emission units that are subject to a federal emission limitation or standard contained in 40 CFR Part 60, 61, or 63 or that are affected sources as defined in NAC 445B.006.

Sec. 6. NAC 445B.267 is hereby amended to read as follows:

NAC 445B.267. Upon written application by an owner or operator, the director may approve alternatives to any monitoring procedures or requirements of NAC 445B.256 to 445B.267, inclusive, including, but not limited to, the following:

1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by those sections would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases.
2. Alternative monitoring requirements when the affected facility is infrequently operated.
3. Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions.
4. Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements.
5. Alternative methods of converting regulated air pollutant concentration measurements to units of the standards.
6. Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells.
7. Alternatives to the A.S.T.M. test methods or sampling procedures specified by any provision of NAC 445B.256 to 445B.267, inclusive.
8. Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1, Appendix B of 40 C.F.R. § 60, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The director may require that such demonstration be performed for each affected facility.
9. Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.

The provisions of this section shall not be construed to preclude any federal testing and sampling requirements for emission units that are subject to a federal emission limitation or

standard contained in 40 CFR Part 60, 61, or 63 or that are affected sources as defined in NAC 445B.006.

Sec. 7. NAC 445B.22053 is hereby repealed.

TEXT OF REPEALED LANGUAGE

NAC 445B.22053 Allowable emissions of sulfur from specific sources: Gabbs plant of Basic Refractories. The allowable emission of sulfur from the #1 Kiln of the Gabbs plant of Basic Refractories, located in Air Quality Region 148, Basin 122, Gabbs Valley, must not be greater than 0.26 pound per million Btu's (0.47 kilogram per million kilogram-calories).