

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R147-09

Effective January 28, 2010

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

AUTHORITY: §§1-3, NRS 445B.300.

A REGULATION relating to air quality; revising provisions relating to applications for Class I operating permits to construct and Class I operating permits which are submitted by certain sources of air pollutants; and providing other matters properly relating thereto.

Section 1. NAC 445B.3363 is hereby amended to read as follows:

445B.3363 1. Except as otherwise provided in NAC 445B.33637, in addition to the information required pursuant to NAC 445B.295, an application for a Class I operating permit to construct or for a revision of a Class I operating permit to construct must include:

- (a) Descriptions of all emissions of any regulated pollutants for which the source is defined as a major source.
- (b) A description of all emissions of regulated air pollutants from all emission units.
- (c) An identification and a description of all points of emissions and all activities which may generate emissions of the regulated air pollutants described pursuant to paragraph (a) in sufficient detail to establish the basis for the applicability of standards and fees.
- (d) The emission rates of all regulated air pollutants that are subject to an emissions limitation pursuant to an applicable requirement. The emission rates must be described in tons per year and in such terms as are necessary to establish compliance using the applicable standard reference test method.

- (e) Any other information required by any applicable requirement.
- (f) The calculations on which the information described in this subsection are based.
- (g) Citations to and a description of all applicable requirements.
- (h) A reference to any applicable test method used for determining compliance with each applicable requirement.

2. Except as otherwise provided in NAC 445B.33637, in addition to the information required pursuant to subsection 1, an application for a Class I operating permit to construct must contain:

(a) For a proposed new major stationary source, a proposed major modification to an existing stationary source or a major modification at an existing major stationary source:

- (1) All information required pursuant to 40 C.F.R. § 52.21;
- (2) A description of all emissions of each regulated pollutant:
 - (I) For which the source is a major stationary source; or
 - (II) That will, because of the major modification, result in a significant emissions increase or a significant net emissions increase in accordance with 40 C.F.R. § 52.21(a)(2);
- (3) A description of all emissions of each regulated pollutant associated with the major modification;
- (4) A description of each hydrographic area that may be triggered for increment consumption; and
- (5) Any other information that the Director determines is necessary to process the application.

(b) For a proposed new major source or a proposed modification which is not a major modification:

- (1) All information required by NAC 445B.308 to 445B.311, inclusive;
- (2) Any other information that the Director determines is necessary to process the application; and
- (3) For stationary sources subject to the provisions regarding new source review set forth in 42 U.S.C. §§ 7501 to 7515, inclusive, all information required by 42 U.S.C. § 7503.

(c) For a source, or proposed source, subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive:

- (1) All information required by 40 C.F.R. § 63.43(e); and*
- (2) Any other information that the Director determines is necessary to process the application.*

(d) For a source, or proposed source, subject to the requirements of 40 C.F.R. §§ 63.50 to 63.56, inclusive:

- (1) All information required by 40 C.F.R. § 63.53; and*
- (2) Any other information that the Director determines is necessary to process the application.*

3. Except as otherwise provided in NAC 445B.33637, in addition to the information required pursuant to subsections 1 and 2, an application for a Class I operating permit to construct for a modification at an existing major stationary source that is not a major modification must contain:

- (a) All applicable information required to determine whether the project or modification will result in a significant emissions increase or a significant net emissions increase in accordance with 40 C.F.R. § 52.21(a)(2);
- (b) A description of the project or modification, including all emission units;

(c) A description of the applicable procedures used to determine that the project or modification is not a major modification pursuant to the provisions of 40 C.F.R. § 52.21(a)(2);

(d) All calculations associated with the procedures required to make the determinations pursuant to 40 C.F.R. § 52.21(a)(2), including detailed information for expected and highest projections of any business activities in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(a);

(e) Calculations of emissions in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(b); and

(f) Detailed information used to demonstrate that emissions increases associated with any increased utilization that an emission unit could have accommodated during the baseline emission period is unrelated to the proposed project or modification, including any increased utilization due to product demand growth, in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(c).

↪ In lieu of paragraphs (d), (e) and (f), the application must contain information on the potential of the unit to emit in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(d).

4. ~~[H]~~ *Except for a source, or proposed source, subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive, or 40 C.F.R. §§ 63.50 to 63.56, inclusive, in* addition to the information required pursuant to subsections 1, 2 and 3, an application for an operating permit to construct must include an environmental evaluation pursuant to NAC 445B.308, 445B.310 and 445B.311.

5. As used in this section, “project” has the meaning established in 40 C.F.R. § 52.21, as adopted by reference in NAC 445B.221.

Sec. 2. NAC 445B.3364 is hereby amended to read as follows:

445B.3364 1. Except for sources that are subject to the permitting requirements set forth in 40 C.F.R. § 52.21 ~~[.]~~ *or sources subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive, or 40 C.F.R. §§ 63.50 to 63.56, inclusive,* within 45 days after the date of receipt of an

application for a Class I operating permit to construct or for the revision of a Class I operating permit to construct, 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 45 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 the 46th day after the date of receipt, whichever is earlier. Within 90 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny a Class I operating permit to construct or a revision of a Class I operating permit to construct.

2. For sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 30 days after the date of receipt of an application for a Class I operating permit to construct or for the revision of a Class I operating permit to construct, the Director shall determine whether the application contains adequate information to process the application. The official date of submittal of the application shall be deemed to be 31 days after the date of receipt, unless the Director determines before that date that substantial additional information is required. If the Director determines that substantial additional information is required, the Director shall return the application to the applicant. The Director shall require the applicant to submit a new application, or the applicant may formally withdraw the application. Within 180 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny an operating permit to construct or a revision of an operating permit to construct. For the purposes of 40 C.F.R. § 52.21, the application shall be deemed to be complete on the date that the Director

makes the preliminary determination to issue or deny a Class I operating permit to construct or a revision of an operating permit to construct.

3. *For sources subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive, or 40 C.F.R. §§ 63.50 to 63.56, inclusive, within 30 days after the date of receipt of an application for a Class I operating permit to construct or for the revision of a Class I operating permit to construct, the Director shall determine whether 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 30 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 the 31st day after the date of receipt, whichever is earlier. Within 180 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny the Class I operating permit to construct or the revision of the Class I operating permit to construct.*

4. For the submittal of an application for a Class I operating permit to construct for the approval of a plantwide applicability limitation, within 30 days after the date of receipt of such an application, 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 30 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 the 31st day after the date of receipt, whichever is earlier. Within 120 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny the Class I operating permit to construct for the approval of a plantwide applicability limitation.

~~[4.]~~ 5. If, after the official date of submittal, the Director discovers that additional information is required to act on 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.3689, 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 submitted to the Director.

~~[5.]~~ 6. The Director's review and preliminary intent to issue or deny an operating permit to construct or a revision of an operating permit to construct and the proposed conditions for the operating permit to construct must be made public and maintained on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249 and in the air quality region where the source is located for 30 days to enable public and EPA participation and comment.

~~[6.]~~ 7. 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 persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;

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

(d) Provide a copy of the Director's preliminary intent to issue or deny the operating permit to construct and the proposed operating permit to construct to the Administrator;

(e) Provide a copy of the Director's preliminary intent to issue or deny the operating permit to construct to each affected local air pollution control agency;

(f) Establish a 30-day period for comment from the public and the EPA; and

(g) If the application is for an administrative revision to a Class I operating permit, provide written notice to each affected state.

~~{7.}~~ 8. In addition to the requirements set forth in subsection ~~{6.}~~ 7, the notice required for a Class I operating permit to construct or for a revision of a Class I operating permit to construct must:

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

(b) Identify the name and address of the authority processing the Class I operating permit to construct;

(c) Identify the activity or activities involved in the Class I operating permit to construct and the change of emissions involved in any revision of the Class I operating permit to construct;

(d) State that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable;

(e) Include 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 Class I operating permit to construct, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the Class I operating permit

to construct and which are relevant to the determination of the issuance of the Class I operating permit to construct;

(f) Include 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; and

(g) If applicable, include a description of any revisions to a Class I operating permit resulting from an administrative revision to the Class I operating permit.

~~8.~~ **9.** All comments concerning the Director's review and the preliminary intent for the issuance or denial of a Class I operating permit to construct or of a revision of a Class I operating permit to construct must be submitted in writing to the Director within 30 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.

~~9.~~ **10.** Except as otherwise provided in subsections ~~10, 11 and 12,~~ **11 to 14, inclusive,** within 180 days after the official date of submittal of an application for an operating permit to construct or for the revision of an operating permit to construct, the Director shall issue or deny the new Class I operating permit to construct or the new revision of a Class I operating permit to construct. The Director shall make his decision by taking into account:

- (a) Written comments from the public;
- (b) Comments made during public hearings concerning the application and the Director's preliminary determination for issuance or denial;
- (c) Information submitted by proponents of the project; and
- (d) The effect of such a facility on the maintenance of the state and national ambient air quality standards contained in NAC 445B.22097 and the applicable state implementation plan.

~~[10.]~~ **11.** Except as otherwise provided in subsection ~~[11.]~~ **12**, for sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 12 months after the official date of submittal of an application for an operating permit to construct or for the revision of an operating permit to construct, the Director shall issue or deny the new Class I operating permit to construct or the new revision of a Class I operating permit to construct.

~~[11.]~~ **12.** The Director shall issue or deny a Class I operating permit to construct for the approval of a plantwide applicability limitation within 30 days after the close of the period for public participation or 30 days after the hearing, if a hearing is scheduled pursuant to this section, whichever occurs later.

~~[12.]~~ **13.** *For a source, or proposed source, subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive, or 40 C.F.R. §§ 63.50 to 63.56, inclusive, within 12 months after the official date of submittal of an application for an operating permit to construct or for the revision of an operating permit to construct, the Director shall issue or deny the new Class I operating permit to construct or the new revision of a Class I operating permit to construct.*

14. The Director shall not issue an administrative revision to a Class I operating permit if the Administrator objects to the issuance of the administrative revision in writing within 45 days after the Administrator's receipt of the proposed revision conditions for the Class I operating permit and the necessary supporting information.

~~[13.]~~ **15.** Any person may petition the Administrator to request that the Administrator object to the issuance of an administrative revision to a Class I operating permit as provided in 40 C.F.R. § 70.8(d).

~~[14.]~~ **16.** If, on his own or pursuant to a request by a person pursuant to subsection ~~[13.]~~ **15**, the Administrator objects to the issuance of an administrative revision to a Class I operating

permit, the Director shall submit revised proposed conditions for the Class I operating permit in response to the objection within 90 days after the date on which he is notified of the objection.

Sec. 3. NAC 445B.3368 is hereby amended to read as follows:

445B.3368 1. The information otherwise required by this section is not required if the owner or operator applied for an operating permit to construct and no changes have been made to the facility. The information provided in the application for the operating permit to construct must be resubmitted as part of the Class I operating permit application.

2. In addition to the information required pursuant to NAC 445B.295, an application for a Class I operating permit must include:

(a) Descriptions of all emissions of any pollutants for which the source is major and all emissions of regulated air pollutants from all emission units.

(b) An identification and a description of all points of emissions and all activities which may generate emissions of the regulated air pollutants described pursuant to paragraph (a) in sufficient detail to establish the basis for the applicability of standards and fees.

(c) The emission rates of all regulated air pollutants that are subject to an emissions limitation pursuant to an applicable requirement. The emission rates must be described in tons per year and in such terms as are necessary to establish compliance using the applicable standard reference test method.

(d) Any other information required by any applicable requirement.

(e) The calculations on which the information in this subsection and subsection 1 are based.

(f) Citations to and a description of all applicable requirements.

(g) A reference to any applicable test method used for determining compliance with each applicable requirement.

(h) A compliance plan that contains the following:

(1) A description of the compliance status of the stationary source with respect to all applicable requirements.

(2) A description that includes the following:

(I) For the applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with those requirements.

(II) For the applicable requirements that may become effective during the term of the permit, a statement that the stationary source will comply with those requirements on a timely basis.

(III) For each applicable requirement with which the stationary source will not be in compliance at the time that a permit will be issued, a narrative description of how the stationary source will achieve compliance with each such requirement.

(3) Schedules of compliance as follows:

(I) For the applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with those requirements.

(II) For the applicable requirements that may become effective during the term of the permit, a statement that the stationary source will comply with those requirements on a timely basis, unless the applicable requirement expressly requires a more detailed schedule for compliance.

(III) For each applicable requirement with which the stationary source will not be in compliance at the time that a permit will be issued, a schedule of compliance for each applicable requirement. Such a schedule must include a schedule of remedial measures, including, without limitation, an enforceable sequence of actions with milestones, leading to compliance with the

applicable requirements with which the stationary source is not in compliance. If the stationary source is subject to a judicial consent decree or an administrative order regarding its noncompliance, the schedule must resemble and be at least as stringent as any schedule contained in the decree or order. Such a schedule of compliance must be supplemental to, and must not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for the submission of certified progress reports at least once every 6 months for a schedule of compliance to remedy a violation. Such progress reports must contain the following:

(I) Dates for performing activities or achieving milestones or compliance required in the schedule of compliance, and the dates when the activities, milestones or compliance occurred or were achieved; and

(II) An explanation as to why any dates in the schedule of compliance were not or will not be met, and any preventative or corrective measures adopted.

↪ The content requirements of the compliance plan specified in this paragraph apply and must be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations adopted pursuant to Title IV of the Act with regard to the schedule and methods the source will use to achieve compliance with the emissions limitations relating to acid rain.

(i) Requirements for compliance certification, including:

(1) A certification of compliance with all applicable requirements by a responsible official, consistent with this section and 42 U.S.C. § 7414(a)(3);

(2) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements, and methods of testing;

(3) A schedule for submission of certifications of compliance during the term of the permit to be submitted not less frequently than annually, or more frequently if so specified by the underlying applicable requirement or the permitting authority; and

(4) A statement indicating the status of compliance by the stationary source with any applicable enhanced monitoring and compliance certification requirements of the Act.

3. In addition to the information required pursuant to subsections 1 and 2, a Class I-B application for a Class I operating permit must contain:

(a) For a proposed new major stationary source or a proposed major modification to an existing stationary source:

(1) All information required pursuant to 40 C.F.R. § 52.21;

(2) A description of all emissions of each regulated pollutant for which the source is a major stationary source or that will increase by a significant amount as a result of the major modification;

(3) A description of all emissions of each regulated pollutant associated with the major modification;

(4) A description of each hydrographic area that may be triggered for increment consumption; and

(5) Any other information that the Director determines is necessary to process the application.

(b) For a proposed new major source or a proposed significant revision to an existing stationary source:

(1) All information required by NAC 445B.308 to 445B.313, inclusive;

(2) Any other information that the Director determines is necessary to process the application; and

(3) For stationary sources subject to the provisions regarding new source review set forth in 42 U.S.C. §§ 7501 to 7515, inclusive, all information required by 42 U.S.C. § 7503.

(c) For a proposed new major source or a proposed significant revision to an existing stationary source which is subject to the requirements of 42 U.S.C. § 7412 regarding hazardous air pollutants:

(1) All information required by NAC 445B.308 to 445B.313, inclusive; ~~and~~

(2) *For a source subject to the requirements of 42 U.S.C. § 7412(g), all information required by 40 C.F.R. § 63.43(e);*

(3) *For a source subject to the requirements of 42 U.S.C. § 7412(j), all information required by 40 C.F.R. § 63.53; and*

(4) Any other information that the Director determines is necessary to process the application.

(d) For a revision to a Class I operating permit for a modification at an existing major stationary source that is not a major modification:

(1) All applicable information required to make the determinations pursuant to 40 C.F.R. § 52.21(a)(2);

(2) A description of the project or modification, including all emission units;

(3) A description of the applicable procedures used to determine that the project or modification is not a major modification pursuant to the provisions of 40 C.F.R. § 52.21(a)(2);

(4) All calculations associated with the procedures required to make the determinations pursuant to 40 C.F.R. § 52.21(a)(2), including detailed information for expected and highest projections of any business activities in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(a);

(5) Calculations of emissions in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(b); and

(6) Detailed information used to demonstrate that emissions increases associated with any increased utilization that an emission unit could have accommodated during the baseline emission period is unrelated to the proposed project or modification, including any increased utilization due to product demand growth, in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(c).

↪ In lieu of subparagraphs (4), (5) and (6), the application must contain information on the potential of the unit to emit in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(d).

4. As used in this section, “project” has the meaning established in 40 C.F.R. § 52.21 as adopted by reference in NAC 445B.221.

Permanent Regulation - Filing Statement

Nevada Division of Environmental Protection Bureaus of Air Pollution Control and Air Quality Planning

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission (SEC)

LCB File No. R147- 09

SEC # P2009-04

Regulation R147-09; Class I Air Quality Operating Permit to Construct (OPTC): This regulation amends timelines for air quality permits involving case-by-case Maximum Achievable Control Technology (MACT) determinations in Nevada's Class I Operating Permit to Construct (OPTC) program. Case-by-case MACT is required by federal rules governing the National Emissions Standards for Hazardous Air Pollutants.

The former Class I OPTC regulations did not allow sufficient time for processing case-by-case MACT determinations. R147-09 establishes requirements and timelines for OPTC permits involving case-by-case determinations for MACT that are consistent with the federal MACT program and aligns the case-by-case MACT determination process with Nevada's current Prevention of Significant Deterioration permitting process. The change ensures that there is adequate time to process a case-by-case application and develop a sound technical basis to support the determination. This timeline is also consistent with the existing Class I Operating Permit (Title V) timelines for a case-by-case determination.

1. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary. The Nevada Division of Environmental Protection (NDEP), Bureau of Air Quality Planning held a public workshop on the above referenced regulation in Carson City on November 4, 2009 at the Bryan Building (901 South Stewart Street).

Following this workshop, the State Environmental Commission (SEC) held a public hearing to consider the regulation on Wednesday, December 09 2009. The hearing was held at the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada. The SEC hearing agenda was posted at the meeting location, at the State Library in Carson City, and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of the agenda, the public notice, and the proposed regulation were also made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the regulation was published on Monday November 23 and 30, 2009, and on December 7, 2009 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at:
http://www.sec.nv.gov/main/hearing_1209.htm.

2. The number persons who attended the SEC Regulatory Hearing:

- (a) Attended December 09, 2009 hearing; 20 (approx.)
- (b) Testified on this Petition at the hearing: 1 (1 NDEP Staff)
- (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 of how other interested persons may obtain a copy of the summary.

The NDEP Bureau of Air Pollution Control held meetings with affected industry face-to-face, via conference call and e-mail during the development of the amendments. Comments were also solicited from affected businesses as indicated in number 1 above. Every business holding an air quality permit in Nevada was notified of the public workshop.

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 State Environmental Commission adopted the regulation with out any changes.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

The proposed regulation will not have an economic effect on the public or the business community.

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

There will be no additional costs to the NDEP for the administration of this regulation.

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.

This regulation does not duplicate any other federal, state or local regulation.

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 regulation is not more stringent than any local or federal laws and 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 regulation does not address fees.