

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R129-11

Effective May 30, 2012

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

AUTHORITY: §§1 and 2, NRS 445B.210.

A REGULATION relating to air pollution; adopting by reference certain regulations of the United States Environmental Protection Agency concerning air pollution; repealing certain unnecessary regulations of the State Environmental Commission; and providing other matters properly relating thereto.

Section 1. NAC 445B.221 is hereby amended to read as follows:

445B.221 1. Title 40 C.F.R. §§ 51.100(s), 51.100(nn) and 51.301 and Appendix S of 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2010.

2. Title 40 C.F.R. § 51.165 is hereby adopted by reference as it existed on July 1, 2002.

3. Appendices M and W of 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2010.

4. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on ~~[August 2, 2010.]~~

July 18, 2011.

5. *Appendix E of 40 C.F.R. Part 52 is hereby adopted by reference as it existed on July 1, 2011.*

6. The following subparts of 40 C.F.R. Part 60 are hereby adopted by reference:

(a) Subpart A, except §§ 60.4, 60.8(b)(2), 60.8(b)(3), *60.8(g)* and 60.11(e), as it existed on July 1, ~~[2010.]~~ *2011;*

(b) Section 60.21 of Subpart B, as it existed on July 1, ~~[2010;]~~ **2011;**

(c) Subparts C, Cb, Cc, Cd, **Ce**, D, Da, Db, Dc, E, Ea, Eb, **Ec, F**, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, DDDD, EEEE, FFFF ~~[, III, JJJ]~~ and KKKK as they existed on July 1, ~~[2010;]~~ **2011;**

~~(d) [Subparts Ce and Ec as they existed on May 4, 2011;~~

~~—(e) Subpart F as it existed on November 8, 2010; and~~

~~—(f) Subpart HHHH, except §§ 60.4105(b)(2), 60.4106, 60.4120 to 60.4142, inclusive, 60.4153(a) and (b) and 60.4176, as it existed on June 9, 2006~~ ~~[~~

~~—6.] ; and~~

(e) Subparts IIII and JJJJ as they existed on August 29, 2011.

7. Appendices A, B and F of 40 C.F.R. Part 60 are hereby adopted by reference:

(a) Appendix A as it existed on July 1, 2010; and

(b) Appendices B and F as they existed on ~~[November 8, 2010.~~

~~—7.] July 1, 2011.~~

8. Subparts A, C, D, E, F, H, I, J, K, L, N, O, P, Q, R, T, V, W, Y, BB and FF of 40 C.F.R.

Part 61 are hereby adopted by reference as they existed on July 1, 2010.

~~[8.]~~ **9.** Appendix B of 40 C.F.R. Part 61 is hereby adopted by reference as it existed on July 1, 2010.

~~[9.]~~ **10.** The following subparts of 40 C.F.R. Part 63 are hereby adopted by reference:

(a) **Subpart A as it existed on July 1, 2010;**

(b) Subparts ~~[A,]~~ B, C, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, *LLL*, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYYY, *ZZZZ*, AAAAA, BBBB, CCCCC, *DDDDD*, EEEEE, FFFFF, GGGGG, HHHHH, JJJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, SSSSS, WWWW, YYYYY, ZZZZ, *BBBBB*, *CCCCCC*, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, *JJJJJ*, LLLLL, MMMMM, NNNNN, OOOOO, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, VVVVV, ~~[WWWWW,]~~ XXXXX, ZZZZZ, AAAAAA, BBBBBB ~~[and]~~ CCCCCC ~~[,]~~ *and EEEEE*, as they existed on July 1, ~~[2010;~~

~~—(b) Subpart LLL as it existed on November 8, 2010;~~

~~—(c) Subpart ZZZZ, as it existed on May 9, 2011;~~

~~—(d) Subpart DDDDD as it existed on May 20, 2011;~~

~~—(e) Subparts BBBBB and CCCCC, as they existed on January 24, 2011;~~

~~—(f) Subpart JJJJJ, as it existed on May 20, 2011; and~~

~~—(g) Subpart EEEEE, as it existed on February 17, 2011.~~

~~—10.] 2011; and~~

(c) Subpart *WWWWW* as it existed on October 19, 2011.

11. Appendix A of 40 C.F.R. Part 63 is hereby adopted by reference as it existed on ~~[November 8, 2010.~~

~~—11.] July 1, 2011.~~

~~12.~~ Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, ~~[2010.]~~ **2011.** If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, and sections 2 to 7, inclusive, of LCB File No. R014-11, the provisions of 40 C.F.R. Part 72 apply.

~~[12.]~~ **13.** Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, ~~[2010.]~~ **2011.** If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, and sections 2 to 7, inclusive, of LCB File No. R014-11, the provisions of 40 C.F.R. Part 76 apply.

~~[13.]~~ **14.** Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, is hereby adopted by reference as it existed on October 1, 1993.

~~[14.]~~ **15.** The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained, free of charge, from the United States Department of Labor at the Internet address <http://www.dol.gov>.

~~[15.]~~ **16.** A copy of the publications which contain the provisions adopted by reference in subsections 1 to ~~[13.]~~ **14**, inclusive, may be obtained from the:

(a) Division of State Library and Archives of the Department of Cultural Affairs for 10 cents per page.

(b) Government Printing Office, free of charge, at the Internet address <http://www.gpoaccess.gov/nara/index.html>.

~~[16.]~~ **17.** The following standards of ASTM International are hereby adopted by reference:

(a) ASTM D5504, "Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence," set forth in

Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D5504 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address **<http://www.astm.org>**, for the price of \$40.

(b) ASTM D2234 and D2234M, “Standard Practice for Collection of a Gross Sample of Coal,” set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D2234 and D2234M is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address **<http://www.astm.org>**, for the price of \$40.

(c) ASTM D2013, “Standard Practice for Preparing Coal Samples for Analysis,” set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D2013 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address **<http://www.astm.org>**, for the price of \$46.

(d) ASTM D6784, “Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),” set forth in Volume 11.07 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D6784 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address **<http://www.astm.org>**, for the price of \$46.

(e) ASTM D2015, “Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter,” dated April 10, 2000. A copy of ASTM D2015 is available for

purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of ~~[\$54.]~~ \$56.

(f) ASTM D3286, “Standard Test Method for Gross Calorific Value of Coal and Coke by the Iso-peribol Bomb Calorimeter,” dated July 10, 1996. A copy of ASTM D3286 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of ~~[\$54.]~~ \$56.

(g) ASTM D1989, “Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Iso-peribol Calorimeters,” dated July 10, 1997. A copy of ASTM D1989 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of ~~[\$54.]~~ \$56.

~~17.]~~ 18. For the purposes of the provisions of 40 C.F.R. Parts 60, 61 and 63, adopted by reference pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

~~18.]~~ 19. Except as otherwise provided in subsections ~~11.]~~ 12 and ~~12.]~~ 13, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3689, inclusive, and sections 2 to 7, inclusive, of LCB File No. R014-11 for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

~~19.]~~ 20. For the purposes of this section, “administrator” as used in the provisions of 40 C.F.R. Part 60, except Subpart B § 60.21 and Subpart HHHH §§ 60.4101 to 60.4105, inclusive, 60.4107 to 60.4114, inclusive, 60.4151 to 60.4173, inclusive, and 60.4175, and Parts 61 and 63, adopted by reference pursuant to this section, means the Director.

Sec. 2. NAC 445B.159 and 445B.254 are hereby repealed.

TEXT OF REPEALED SECTIONS

445B.159 “Ringelmann Chart” defined. (NRS 445B.210) “Ringelmann Chart” means the chart published by the United States Bureau of Mines, which illustrates graduated shades of gray to black, for use in estimating the light-obscuring capacity of smoke.

445B.254 Exceptional event: Review of data concerning air quality collected in affected area; determination. (NRS 445B.210)

1. The Commission will review the data concerning air quality collected during the period and in the affected area of the exceptional event to determine whether a person or government, governmental agency or political subdivision of a government has complied with the provisions of NAC 445B.001 to 445B.3689, inclusive.

2. The Commission hereby adopts by reference sections 2, 3, 4.2 and 4.4 of the Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events, EPA-450/4-86-007, published by the Environmental Protection Agency, July 1986. A copy of the publication may be obtained from the National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, for the price of \$20.

3. The Commission may declare an event an exceptional event if the event complies with any of the following requirements:

(a) For a high wind, an hourly speed equal to or greater than 30 miles per hour or gusts equal to or greater than 40 miles per hour with no precipitation or only a trace of precipitation observed as scattered drops that do not completely wet or cover an exposed area at a rate of not more than 0.01 inch per hour.

(b) For a forest or wildland fire, an uncontrolled fire in vegetation or related flammable material that is destructive to natural resources if the fire burns an area:

(1) Equal to or greater than 9 acres and is within 3 miles upwind of a device to monitor air quality; or

(2) Greater than 9 acres and receptor or dispersion modeling demonstrates that air quality in the monitored area was affected by the fire.

(c) For a prescribed burning, a controlled fire of vegetative material that is used to improve range or forestry resources. Prescribed burning must be limited to those days when the meteorological conditions are conducive to maximum dispersion.

(d) For a structural fire, any accidental fire involving a building that is at least 600 square feet in size and located within 500 meters of a device to monitor air quality.

(e) For a high pollen count, a pollen count index above 25 grains/cm² or 1,000 grains/m³.

(f) For a rerouting of traffic, a temporary deviation or detour of vehicular traffic because of an accident, construction or demolition, if the detour lasts for not more than 1 week and the rerouted traffic is within 500 meters of a device to monitor air quality.

(g) For unusual traffic congestion, a condition resulting from a major accident, or an obstruction for a short period, such as demolition or construction, if the congestion is not a regular occurrence and is located within 500 meters of a monitoring site.

(h) For a large gathering of persons, a gathering of more than 10,000 persons and 5,000 cars at any one time and at a single location, if the:

- (1) Unusual traffic congestion is associated with the event;
- (2) Event occurs less than once a year; and
- (3) Event is held in a location which is not regularly used for those purposes.

(i) For a chemical spill or an industrial accident, emissions that result from accidents such as a fire, explosion, power outage, train derailment, vehicular accident, or any combination thereof, if the spill or accident is not a regular occurrence.

(j) For a stratospheric ozone intrusion, a parcel of air originating in the stratosphere at an average height of 12.4 miles entrained directly to the surface of the earth.

(k) For a volcanic eruption, the emission or ejection of volcanic materials at the earth's surface from a crater or fissure.

(l) For any activity relating to cleanup after a major natural disaster, if the Governor or Legislature declares an emergency because of the natural disaster or the area affected by the natural disaster has been designated as being eligible for federal assistance.

4. If the Commission determines that an event is exceptional, the air quality data collected within the period and affected area of the event must be treated in a consistent manner.

5. As used in this section, "exceptional event" means an event which is uncontrollable or is not expected to occur regularly at a given location.

Permanent Regulation - Filing Statement

A Regulation Relating to Air Pollution Control

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066 & 233B.0603.10(f)

State Environmental Commission (SEC) LCB File No: R129-11

Petition R129-11: The regulation updates NAC 445B.221, "Adoption by reference and applicability of certain provisions of federal law and regulations." The regulation adopts into State regulation certain federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules that have been adopted by the US EPA and published in the Federal Register since July 2010. In addition, this amendment will update the Division of Environmental Protection's adoption of federal Prevention of Significant Deterioration (PSD) rules relating to fine particulate matter.

This regulation also would repeal two regulations: the definition of "Ringelmann Chart" and the exceptional event provisions. The term Ringelmann Chart is not used in NAC Chapter 445B, and the exceptional event provisions are duplicative of the federal regulation.

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.

On December 21, 2011 staff from NDEP conducted a public workshop on LCB's Proposed Draft Regulation R129-11. The workshop was conducted in Carson City at the Bryan Building in the PEBP Boardroom (901 S. Stewart St). Four (4) members of the public attended the workshop as list below:

Vida Keller, Lyon County Commissioner
Scott Keller, Silver Springs Advisory Board
Tara Hess-McGeown, Washoe Tribe of NV & CA
Tansey Smith, Inter-Tribal Council of NV

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes (two pages) of the workshop are posted on the SEC website at:
http://sec.nv.gov/main/hearing_0212.htm see agenda item 9.

Following the workshop, the SEC held a formal regulatory hearing on February 15, 2012. The hearing was held in Reno at the Nevada Dept. of Wildlife, 1100 Valley Road. A public notice and agenda for the regulatory hearing 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 permanent regulation R129-11 were also made available to all public libraries throughout the state as well as to individuals on the SEC mailing lists.

The public notice for the permanent regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory hearing. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_0212.htm.

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

- (a) Attended February 15, 2012 hearing: 30 (approx.)
- (b) Testified on this Petition at the hearing: 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.

Comments were solicited at the public workshop and at the February 15 Commission hearing as noted in number 1 above.

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 regulation was adopted without changes.

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

This regulation will not have an immediate or long-term adverse economic impact 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 agency for enforcement of the proposed 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 federal regulation or guidance.

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 specific fees.