

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 96010

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-027-96

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

For Filing Administrative
Regulations

For Emergency
Regulations Only

Effective Date _____

Expiration Date _____

Governor's Signature

State Environmental Commission

Classification [] Proposed [] Adopted By Agency [xx] Temporary [] Emergency []

Brief description of action: LCB R-027-96 (Petition 96010) permanently amends NAC 445B.001 to NAC 445B.395 by revising the fee structure for the State's air quality stationary source permitting program. NAC 445B.327 revises the current fee structure for operating permits and annual fees. Fees for Class I and II permits applications are increased and Class II General permits are decreased. The annual emission fee is increased from \$3.36 to \$3.75 per ton, and sources emitting less than 25 tons per year are exempted from annual emission fees. The annual maintenance fee is eliminated; the annual fee of \$350, charged to sources emitting less than 1 ton per year is eliminated and the annual fee of \$450 for surface area disturbances is eliminated. NAC 445B.331 is amended to eliminate the distinct fee for reissuance of an expired permit. The fee for a request for a change of location of an emission unit is reduced from \$90 to \$50.

Authority citation other than 233B: NRS 455B.300

Notice date: February 23, February 28 and March 5, 1996

Hearing date: March 26, 1996

Date of Adoption of Agency: March 26, 1996

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 96010
LCB FILE R-027-96**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445B.

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

Petition 96010 (R-021-96) was noticed three (3) times: February 23, February 28 and March 5, 1996 in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. No comment were received from the public regarding this petition. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

2. The number persons who:

- | | | |
|-----|--|----|
| (a) | Attended each hearing; | 40 |
| (b) | Testified at each hearing; | 16 |
| (c) | Submitted to the agency written comments: | 3 |

Note: One written comment (exhibit 3) was received and four person testified at the Environmental Commissions hearing of March 26, 1996 regarding the change in air quality fees.

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

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. The Bureau of Air Quality did extensive work with the affected business communities regarding the changes to the fee structure. The Bureau mailed to all regulated businesses, the Nevada Manufacturer' Assn a copy of the proposed rule changes. In addition the Bureau conducted 10 workshops throughout Nevada (exhibit #5). Testimony was received at the hearing from the Nevada Mining Assn, Nevada Operations, Sierra Pacific Power Co. and Southern California Edison. The comments expressed support of the petition with focus on how the new fee schedule addressed inequities inherent under the old framework. Written comments were received from Newmont Gold Co. The comments were supportive of fees based on the cost of sustaining the permitting process. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

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 permanent regulation was adopted at the State Environmental Commission hearing on March 26, 1996 with no changes made to the regulation. No changes were proposed during adoption of the regulation.

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

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.

- a. This petition has no estimated adverse economic effect upon the public and will possibly have a slight beneficial effect that could possibly be passed on to the consumer by businesses. There is no estimated immediate or long-term economic effect upon the public. The petition will provide a substantial economic benefit to certain classes of businesses and an adverse economic effect upon a small class of regulated businesses. Effects for businesses will be immediate and long term. The cumulative annual net benefit to businesses by the reduction of fees is anticipated to be \$198,200. Overall, regulated facilities with emission less than 25 tons per year will be paying less in air quality control fees under the proposed fee structure in comparison to the current fee structure. Generally, regulated facilities will pay less in annual fees and more for specific permitting needs. The proposed fee structure will result in lower annual fees for 367 facilities, with an annual savings realized by each source from \$60 to \$9,000, with an expected total annual savings to businesses of approximately \$305,500. In addition, these facilities will realize a savings of \$100 per facility due to a decreased administrative burden relating to the processing of annual invoices and payments. This indirect saving would be approximately \$36,700 annually.

An additional 69 facilities emitting over 25 tons annually of pollutants will realize lower annual air quality fees. The annual saving realized ranges from \$60 to \$40,000, with an annual savings to businesses estimated at \$322,000. One facility will have to pay higher fees, with the increase estimated to be \$16,000 or an overall increase of 7.8 percent in terms of fees currently paid. Permit fee modifications will result in a savings or increased cost for existing facilities. These fees will vary by specific facility in which modifications or renewals of permits are requested. The Division will collect an additional \$450,000 in permits per year under the proposed fee structure. Again, the increased cost for a permit application will be offset by the reduced annual fees. The overall change in the fee structure will result in a "revenue neutral" funding schema.

- b. There is no estimated immediate or long-term economic effect upon the public. As stated above the public will not realize a immediate or long term economic benefit. However businesses will receive a positive immediate and long term effect from the re-structuring of the air quality fees. Only one company will receive a moderate increase in air quality fees because of this regulation.

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

The Division will realize a decreased cost for implementation of proposed fees as compared to the existing fees. It is estimated that the Division will realize an annual savings of \$66,000 in terms of reduced paperwork for processing invoices.

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.

There are no other state or government agencies which the proposed regulation overlaps or duplicates.

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

This regulation does not contain provisions more stringent than federal regulations.

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

This petition does not establish a new fee, however the overall fee structure will be amended. Approximately \$ 900,000 will be collected. This a annual reduction of \$ 160,000 from the old fee structure. Annual maintenance fees are reduced. Annual emissions fees and permit fees are increased. Overall, fee collections are reduced by this proposal. Fees collected under this proposal will be used to sustain the State of Nevada's air pollution control program. Fees will be used for permitting, monitoring, compliance and related air quality planning activities in jurisdictional areas of the State's air quality program.

END OF STATEMENT FOR R-027-96

**ADOPTED PERMANENT REGULATION
OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION**

LCB File No. R027-96

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

AUTHORITY: NRS 445B.300

Section 1. NAC 445B.321 is hereby amended to read as follows:

445B.321 1. A minor modification may be made to a Class I operating permit if it:

- (a) Does not violate any applicable requirement;
 - (b) Does not involve significant changes to the existing requirements for monitoring, reporting or recordkeeping;
 - (c) Does not require or change:
 - (1) A determination of an emission limitation or other standard on a case-by-case basis;
 - (2) A determination of the ambient impact for any temporary source; or
 - (3) A visibility or increment analysis;
 - (d) Does not establish or change a condition of the operating permit for which there is no corresponding underlying applicable requirement and which was requested in order to avoid an applicable requirement, including:
 - (1) A federally enforceable emissions cap; or
 - (2) An alternative emission limitation pursuant to 42 U.S.C. § 7412(i)(5); and
 - (e) Is not a modification pursuant to any provision of 42 U.S.C. §§ 7401 to 7515, inclusive.
2. The director may process as a minor modification an increase in the emissions of a criteria pollutant, other than lead, of 1 ton per year or less from a source located in an area designated as an attainment or as an unclassifiable area for the criteria pollutant if the increase in emissions does not violate any of the requirements set forth in subsection 1.

3. An owner or operator must request a minor modification on an application form provided by the director. **[The application must be accompanied by a fee of \$100.]** The application must include:

- (a) A description of the modification;
- (b) A description of the emissions resulting from the modification;
- (c) An identification of any new applicable requirements that will apply because of the modification;
- (d) Suggested conditions of the operating permit;
- (e) Certification by a responsible official of the stationary source that the proposed modification complies with the criteria for a minor modification set forth in subsection 1; and
- (f) Any relevant information concerning the proposed change which is required by NAC 445B.295.

4. The director shall:

- (a) Provide notice to the administrator and any affected state within 5 working days after his receipt of a complete application for a minor modification.
- (b) Notify the administrator of any recommendations from an affected state which the director does not accept.

5. If the administrator does not object to the minor modification within 45 days after his receipt of the notification, the director may issue the minor modification.

6. If the administrator objects to the minor modification, the director shall:

- (a) Deny the application for the minor modification.
- (b) Determine whether the minor modification should be reviewed under the procedures for a significant modification; or
- (c) Revise the proposed modification of the operating permit and forward it to the administrator for review.

7. The director shall take action pursuant to subsections 5 or 6 within 90 days after receipt of an application for a minor modification or within 15 days after the administrator's 45-day review period ends, whichever is later.

Sec. 2. NAC 445B.327 is hereby amended to read as follows:

445B.327 1. The [fee] *fees* for an operating permit [, a significant modification of a permit or a renewal of a permit for all sources is \$250 per application.] *are as follows:*

- (a) *Class I operating permit* \$14,500
- (b) *Significant Modification to a Class I operating permit* 7,500
- (c) *Minor Modification to a Class I operating permit* 1,500
- (d) *Renewal of a Class I operating permit* 5,000
- (e) *Class II operating permit* 1,800
- (f) *Modification of a Class II operating permit* 900
- (g) *Renewal of a Class II operating permit* 700
- (h) *Class II General Permit* 100

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

2. [The] *Except as otherwise provided in this subsection, the annual* fee based on emissions for [a new or an existing] *any* stationary source [or for any significant modification to an existing stationary source is \$3.36] *is \$3.75* per ton times the total tons of each regulated pollutant, except carbon monoxide, emitted during the preceding calendar year. *If a stationary source emitted less than 25 tons of all regulated air pollutants combined, except carbon monoxide, during the preceding calendar year, the holder of the operating permit is exempt from the fee required by this subsection for that stationary source.*

3. To determine the fee set forth in subsection 2:

(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 emissions 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.

4. [Annual fees for services and maintenance are as follows:

(1) For facilities which have more than 1 ton of emissions of regulated air pollutants per year:

<u>Type of Emission Unit</u>	<u>Fee per permitted emission unit</u>
Emission units within major group 49 - power	
Power generation units	\$2,850
Power generation related emission units	175
Other emission units within major group 49	175
Emission units within major group 10 - mining	175
Emission units within major group 14 and 16 -	
aggregate/concrete	75
Other emission units	125

(b) For facilities which have less than 1 ton of emission per year, each facility shall pay \$350.

5. The annual fee for a permit for a surface area disturbance is \$450 for 5 acres or more.

6. The fee for the modification of a facility requiring a new review for a stationary source, including the location of temporary equipment on a site with permitted stationary equipment, is the same fee as is required for an operating permit as set forth in subsection 1.

7.] The department shall [calculate and] collect all fees [based on emissions and fees for services and maintenance beginning July 1, 1994, and on each] *required by subsection 2 no later than* July 1st [thereafter.

8. Annual fees for operating permits are] *of each year.*

5. *The fee required by subsection 2 is* due and payable to the "Nevada State Treasurer, Environmental Protection" within 45 days after the date of the invoice.

[9. As used in subsection 4, "major group" means the major groups described in the "Standard Industrial Classification Manual," as adopted by reference in NAC 445B.221.]

Sec. 3. NAC 445B.331 is hereby amended to read as follows:

445B.331 1. The [fees] *fee* for the replacement of lost or damaged operating permit [or the

reissuance of an expired operating permit are as follows:

(a) For the replacement of each lost or damaged operating permit, \$200.

(b) For reissuing an expired operating permit, 1.25 times the fee specified in NAC 445B.327.]
is \$200.00.

2. The fee for a request for a change of the location of an emission unit is [\$90] \$50. Such a request must be made in writing to the director and submitted with the fee for each operating permit at least 10 days before the commencement of the operation of the emission unit at the new location. An owner or operator must not operate the emission unit at the new location until the director approves the location.

Sec. 4. NAC 445B.374 is hereby amended to read as follows:

445B.374 1. No person may cause or permit the emission of sulfur compounds where the sulfur originates in the material being processed, excluding hydrogen sulfide and sulfur from all solid, liquid or gaseous fuel, in excess of the quantity determined by the following equation:

ENGLISH

$$E = 0.292P^{0.904}$$

METRIC

$$(E = 0.271P^{0.904})$$

when "E" is equal to or greater than 10 pounds (5 kilograms) per hour. When "E" is less than 10 pounds (5 kilograms) per hour, the gas stream concentration must not exceed 1,000 ppm by volume.

2. For the purposes of subsection 1:

(a) "E" means the allowable sulfur emission in pounds (kilograms) per hour.

(b) "P" means the total feed sulfur, excluding hydrogen sulfide, in pounds (kilograms) per hour.

3. When the sulfur emissions are due to sulfur contributions from both the fuel and the material being processed, the allowable emissions must be the sum of those allowed by NAC 445B.373 to 445B.376, inclusive.

4. Incinerators used solely for the control of odor by the combustion of noxious sulfur containing compounds are exempt from NAC 445B.370 to 445B.376, inclusive, and are governed by NAC 445B.287 to [445B.331,] 445B.335, inclusive, and 445B.360 to 445B.367, inclusive.

5. A person shall not cause or permit the emission of any gas containing hydrogen sulfide which is discharged to the atmosphere from any emission unit unless the emission unit is vented, incinerated, flared or the stream is otherwise disposed of, in a manner such that the ambient sulfur

dioxide standards and the ambient hydrogen sulfide standards are not exceeded. Before construction, compliance with the ambient standards must be based on the applicable models, bases and other requirements specified in "Guideline on Air Quality Models' (Revised) EPA 450/2-78-027R, published by the United States Environmental Protection Agency. The publication as it exists on August 1, 1986, is adopted by reference. A copy of the publication may be obtained from the National Technical Information Service, United States Department of Commerce, Springfield, Virginia 22161, for the price of \$31.

END OF LCB R027-96