

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL  
RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

HEARING ARCHIVE

FOR THE HEARING OF: August 19, 2004

HELD AT: Carson City

TYPE OF HEARING:

YES REGULATORY  
APPEAL  
ENFORCEMENT  
VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

YES AGENDA  
YES PUBLIC NOTICE  
YES MINUTES OF THE HEARING  
LISTING OF EXHIBITS

**Nevada State Environmental Commission**  
**Agenda**  
**August 19, 2004**

The State Environmental Commission (SEC) will hold a public hearing at **10:00 A.M. on Thursday, August 19, 2004, at 401 North Carson Street, Carson City, NV (i.e., The Laxalt Building).**

This agenda has been posted at the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library and Division of Environmental Protection and Department of Museums, Library and Arts in Carson City. The Public Notice for this hearing was published on July 19, July 26, and August 9, 2004 in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

**I. Approval of minutes from the February 26, 2004 hearing \* ACTION**

**II. Acknowledgement of newly appointed Commissioners**

**III. Regulatory Petitions \* ACTION**

**(1) Petition 2004-22 – LCB File No. R 125-04: New Source Review (NSR), Prevention of Significant Deterioration (PSD) rule, Ozone Nonattainment rule, and Minor Revision of Permit:** This regulatory petition amends NAC 445B.001-.3497. The regulation incorporates revisions to the federal New Source Review (NSR) and Prevention of Significant Deterioration (PSD) rule. The regulation also incorporates revision to certain permitting provisions for a major stationary source and/or a major modification in a basic nonattainment area for ozone. As well, the regulation integrates new federal NSR Reforms into State regulations for PSD sources. This is necessary to ensure consistency with the federal program and to ensure the State of Nevada's ability to implement these new provisions. The ozone nonattainment amendments are necessary as a result of new 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. On April 30, 2004 the US EPA published nationwide attainment/nonattainment designations for the 8-hour ozone NAAQS. This designation were effective June 15, 2004. The proposed regulations provide specific criteria for new major stationary sources that are locating in, or for sources making major modifications in, an area designated as nonattainment for the 8-hour ozone standard.

The regulatory petition applies only to major stationary sources of air pollution. The NSR Reforms would affect approximately 12 facilities. By adopting the proposed changes, NDEP will be able to regain full delegation of the PSD program in Nevada from the US EPA. Once NDEP has received full delegation, affected sources wishing to apply for permits for new facilities or modifications to their existing facility will be able to work directly with the state rather than having to go through the US EPA to receive permit approvals. Specific fees are proposed to cover costs associated with implementing the NSR flexibility provisions. These costs will be born by the sources requesting any of the new NSR reforms at the time they modify their existing permit.

This regulatory petition also contains language that (a) updates certain definition in the regulations, and (b) will shorten the timeline for processing minor revisions to Class I operating permits. Specifically, the regulation streamlines the public notification provisions of NAC 445B.3425

and removes definitions that are no longer used in NAC 445B. The regulation removes duplicate requirements for public notification and participation in cases where (a) the Director drafts proposed conditions for an operating permit because the applicant's proposed conditions were not adequate, and (b) the Administrator of the U.S. EPA objects to the proposed revision, and the Director subsequently revises the proposed revision.

**(2) Petition 2004-16 – LCB File No. R061-04: Certification of Environmental Laboratories:**

This regulatory petition proposes the repeal of existing regulations and adoption of new revised regulations. The petition repeals Nevada Administrative Code (NAC) 445A.055 through 445A.067 and adopts NAC 445A.0552 to NAC 445A.067, (i.e., Certification of Environmental Laboratories). The authority for these regulations are defined under Nevada Revised Statutes (NRS) 445A.425, 445A.428.

Currently, the regulations for certification of laboratories to analyze substances in water – as per the Federal Clean Water Act and the Federal Safe Drinking Water Act – are split between the Nevada Division of Environmental Protection (NDEP) and Nevada State Health Division. After the last biennium, the laboratory certification program was moved from the State Health Division to the NDEP. In part, this regulatory petition is needed to make the necessary language adjustments in the NAC's to accommodate this change. Specifically, the new regulations retain the provisions previously established for certification of laboratories to analyze substances in wastewater, while adding provisions for laboratories to analyze substances in drinking water; the latter provision was previously administered by the Health Division. In addition, authority to certify laboratories to analyze substances in accordance with the Federal Resource Conservation and Recovery Act (RCRA) has now been acquired by the NDEP – per Senate Bill 58, NRS 445A.425, 445A.428. Hence, the new revised regulations add provisions for laboratories to analyze environmental samples for hazardous waste substances.

The regulatory petition will have only marginal economic effects and may include a slightly higher cost for some laboratories. Small laboratories will be less affected than the larger laboratories. A poll of the laboratories affected indicates that none of the in-state laboratories consider the change in fees to present a hardship, and respondents indicated a beneficial effect from the RCRA certification program. The new regulations will enable in-state laboratories to demonstrate RCRA certified status so they can participate in certain contracts. The lack of a certification program for RCRA has resulted in out-of-state laboratories obtaining an inordinate amount of RCRA work in Nevada.

Regarding fees, the new regulations do contain changes in the fee structure for participating laboratories. The changes would better balance the wastewater and drinking water programs based upon actual time and effort required to administer the programs as well as support the RCRA certification program. These fees have been coordinated so that equivalent activities among the three program areas will be proportionally cost allocated. The new fee structure will generate an additional \$92,000.00 per year. These funds will support operational costs of the laboratory certification program as well as support a third certification officer and a part-time administrative assistance.

**(3) Petition 2004-15 – LCB File No. R063-04: Treated Effluent:** This Petition is an amendment to the regulations governing the use of treated effluent; NAC 445A. 275 – 280. Specific amendments include restructuring the titling of the effluent categories, adding additional uses of treated effluent beyond irrigation, adding some definitions, and modifying the aerosol control regulation.

This regulatory amendment is needed to allow a wider use of treated effluent in the environment. Over the past decade the quality of treated effluent has significantly improved. The higher quality of effluent now allows increased uses of treated effluent for a variety of applications including cooling water, water features, street washing, etc. In addition, the demand for the use of treated effluent has increased over the last ten years as the State's urban areas continue to grow and water supplies become consumed. To allow for new applications of treated effluent, the above referenced regulations must be amended.

This regulatory amendment also proposes to make two word changes to the pretreatment regulations defined under Nevada Administrative Code (NAC) 445A.257. The amendment would strike the requirement for the Division of Environmental Protection (Division) to administer a pretreatment program for municipalities and industrial users that do not have an approved pretreatment program. The revision would allow the Division the option to administer a pretreatment program in cases where a municipality does not have an approved pretreatment program.

At this time the Division does not have a delegated program to operate the pretreatment program from the U.S. EPA. Therefore, the necessary resource funding from the U.S. EPA has not been awarded to the Division in order to effectively staff a pretreatment oversight program. This revision will provide the Division the flexibility to administer a pretreatment program in the future on a case by case basis.

**(4) Petition 2004-18 – LCB File No. R079-04 Concentrated Animal Feed Operations (CAFO):**

This regulatory petition proposes changes to the discharge permits and general permitting provisions of NAC 445A – Water Controls. The regulation amendments focus exclusively on defining and permitting concentrated animal feeding operations (CAFO). The regulations will revise the list of production facilities that are defined as potential CAFOs as well as adjust the animal threshold numbers at a facility to be defined as a CAFO. The regulations will also improve consistency between the State and federal CAFO definitions, eliminate the mixed animal calculation, require a designated CAFO to apply for a discharge permit within ninety days of designation, and create a \$700 CAFO general permit application and annual fee.

This regulatory petition will amend the Nevada Administrative Code to conform with revisions to the federal National Pollutant Discharge Elimination System (NPDES) regulations. In 1975, the US Environmental Protection Agency (US EPA) approved the State NPDES permit program and delegated NDEP's permitting authority to the State. To maintain this delegation, the State must adopt regulations that are at least as stringent as the federal regulations. On February 12, 2003, the US EPA promulgated a revised NPDES permit regulation and effluent limitation guidelines and standards for CAFOs. This regulatory petition will raise the Nevada NPDES program to the minimum standards to maintain delegation.

The regulations are not expected to increase the number of facilities requiring CAFO permits. The Division has not identified any newly defined production facilities, (e.g. immature swine, lambs, ducks, or chickens) that are large enough to be classified as CAFOs under the proposed regulations. There are no CAFOs permitted under the mixed animal calculation, therefore, the number of permits will not change as a result of the elimination of this calculation. The Division has the authority to require a permit of any agricultural or silvicultural activity that has been identified as a significant contributor of pollution. The proposed regulations will establish a ninety-day deadline from the date of notification for a designated facility to apply for a permit. Although higher than the current general permit fee, the proposed \$700 application and annual CAFO general permit fees are lower than the permit fees for an individual CAFO permit.

**(5) Petition 2004-17 – LCB File No. R103-04 Underground Injection Control (UIC):** This regulation proposes changes to the permitting provisions of NAC 445A.825 through 445A.910 – Underground Injection Control (UIC). The Underground Injection Control Program is designed to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The proposed amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition the regulations are needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

Specifically, the revised regulations will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual permits. The regulations will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

**(6) Petition 2004-19 – LCB File No. R084-04 Brownfields Cleanup Revolving Loan Fund:** This regulatory petition proposes adoption of regulations governing the administration of a Brownfields Cleanup Revolving Loan Fund. The Nevada Division of Environmental Protection (NDEP) has received grant funding from the US Environmental Protection Agency (US EPA) to administer the fund. Funds will be used to address environmental cleanups conducted at Brownfield sites in Nevada. Brownfield sites, as defined in the federal “Small Business Liability Relief and Brownfields Revitalization Act,” mean real property, the expansion, redevelopment, or reuse of which may be complicated by the presence of a hazardous substance, pollutant, or contaminant. Funds awarded to the NDEP are to be used to make low-interest loans to individuals or municipalities for the cleanup of these sites; a portion of the funds received may also be used to offer sub-grants to municipalities or non-profit groups. The proposed regulation, drafted pursuant to NRS 459.892, has been developed to outline the application requirements for the revolving loan fund.

The proposed regulation will not have any negative economic impacts, either immediate or long term, on the regulated industry. The regulation is intended to off-set the cost of environmental cleanups at contaminated sites to allow for redevelopment or reuse of property. The revolving loan fund will have beneficial economic impacts on property owners and local communities. Loan funds are intended to put underutilized properties back into productive use, thereby increasing tax revenues and employment opportunities.

#### **IV. Settlement Agreements on Air Quality Violations\* ACTION By Consent Calendar**

- A. Hanse – Rice Inc. -- Notice of Alleged Violation Nos. 1836-1839**
- B. Mud Camp Mining LLC -- Notice of Alleged Violation Nos. 1832**
- C. Valley joist, Inc. – Notice of Alleged Violation Nos. 1828**
- D. W.E.S Construction. Inc – Notice of Alleged Violation Nos. 1830 - 1831**

#### **V. Public Comments**

#### **VI. Additional Information**

Copies of the proposed regulations may be obtained by calling the Executive Secretary, John Walker at (775) 687-9308. The public 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

[http://www.leg.state.nv.us/Register/indexes/2004\\_NAC\\_REGISTER\\_KEYWORD.htm](http://www.leg.state.nv.us/Register/indexes/2004_NAC_REGISTER_KEYWORD.htm) .

In addition the State Environmental Commission maintains an Internet site at

<http://www.sec.nv.gov/main/hearing081904.htm>.

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (775) 687-9308, by 5:00 p.m. August 11, 2004.

## **Notice Of Intent To Act Upon Regulations**

### **Notice of Hearing for the Adoption of Regulations of the State Environmental Commission**

The State Environmental Commission (SEC) will hold a public hearing at 10:00 A.M. on Thursday, August 19, 2004, at 401 North Carson Street, Carson City, NV (i.e., The Laxalt Building). The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions. If a person that may be directly affected by a proposed action does not appear and request time to make an oral presentation at the above referenced hearing, the SEC may proceed immediately to act upon any of the following regulatory petitions or other written submissions described in this notice.

#### **Air Pollution Control**

**(1) Petition 2004-22 – LCB File No. R 125-04: New Source Review (NSR), Prevention of Significant Deterioration (PSD) rule, Ozone Nonattainment rule, and Minor Revision of Permit:** This regulatory petition amends NAC 445B.001-.3497. The regulation incorporates revisions to the federal New Source Review (NSR) and Prevention of Significant Deterioration (PSD) rule. The regulation also incorporates revision to certain permitting provisions for a major stationary source and/or a major modification in a basic nonattainment area for ozone. As well, the regulation integrates new federal NSR Reforms into State regulations for PSD sources. This is necessary to ensure consistency with the federal program and to ensure the State of Nevada's ability to implement these new provisions. The ozone nonattainment amendments are necessary as a result of new 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. On April 30, 2004 the US EPA published nationwide attainment/nonattainment designations for the 8-hour ozone NAAQS. This designation were effective June 15, 2004. The proposed regulations provide specific criteria for new major stationary sources that are locating in, or for sources making major modifications in, an area designated as nonattainment for the 8-hour ozone standard.

The regulatory petition applies only to major stationary sources of air pollution. The NSR Reforms would affect approximately 12 facilities. By adopting the proposed changes, NDEP will be able to regain full delegation of the PSD program in Nevada from the US EPA. Once NDEP has received full delegation, affected sources wishing to apply for permits for new facilities or modifications to their existing facility will be able to work directly with the state rather than having to go through the US EPA to receive permit approvals. Specific fees are proposed to cover costs associated with implementing the NSR flexibility provisions. These costs will be born by the sources requesting any of the new NSR reforms at the time they modify their existing permit.

This regulatory petition also contains language that (a) updates certain definition in the regulations, and (b) will shorten the timeline for processing minor revisions to Class I operating permits. Specifically, the regulation streamlines the public notification provisions of NAC 445B.3425 and removes definitions that are no longer used in NAC 445B. The regulation removes duplicate requirements for public notification and participation in cases where (a) the Director drafts proposed conditions for an operating permit because the applicant's proposed conditions were not adequate, and (b) the Administrator of the U.S. EPA objects to the proposed revision, and the Director subsequently revises the proposed revision.

The provision contained in this regulation will have no adverse economic impacts on the regulated industry. Accordingly, the proposed regulation would have no direct economic effect on the public, it does not overlap or duplicate any regulations of other state or government agencies, and it is no more stringent than what is established by federal law.

### **Water Quality Planning**

**(2) Petition 2004-16 – LCB File No. R061-04: Certification of Environmental Laboratories:** This regulatory petition proposes the repeal of existing regulations and adoption of new revised regulations. The petition repeals Nevada Administrative Code (NAC) 445A.055 through 445A.067 and adopts NAC 445A.0552 to NAC 445A.067, (i.e., Certification of Environmental Laboratories). The authority for these regulations are defined under Nevada Revised Statutes (NRS) 445A.425, 445A.428.

Currently, the regulations for certification of laboratories to analyze substances in water – as per the Federal Clean Water Act and the Federal Safe Drinking Water Act – are split between the Nevada Division of Environmental Protection (NDEP) and Nevada State Health Division. After the last biennium, the laboratory certification program was moved from the State Health Division to the NDEP. In part, this regulatory petition is needed to makes the necessary language adjustments in the NAC's to accommodate this change. Specifically, the new regulations retain the provisions previously established for certification of laboratories to analyze substances in wastewater, while adding provisions for laboratories to analyze substances in drinking water; the latter provision was previously administered by the Health Division. In addition, authority to certify laboratories to analyze substances in accordance with the Federal Resource Conservation and Recovery Act (RCRA) has now been acquired by the NDEP – per Senate Bill 58, NRS

445A.425, 445A.428. Hence, the new revised regulations adds provisions for laboratories to analyze environmental samples for hazardous waste substances.

The regulatory petition will have only marginal economic effects and may include a slightly higher cost for some laboratories. Small laboratories will be less affected than the larger laboratories. A poll of the laboratories affected indicates that none of the in-state laboratories consider the change in fees to present a hardship, and respondents indicated a beneficial effect from the RCRA certification program. The new regulations will enable in-state laboratories to demonstrate RCRA certified status so they can participate in certain contracts. The lack of a certification program for RCRA has resulted in out-of-state laboratories obtaining an inordinate amount of RCRA work in Nevada.

The economic effects of the proposed regulations to the public would be of no consequence. In fact, the public should experience both a short-term and long-term benefit due to the improved quality of data obtained with the certification program in effect. The public should also see more competition between laboratories which may in turn stabilize costs associated with laboratory analysis. Agency costs to implement the proposed regulations would not be negatively effected; that is, the more participation in the lab certification program, the more fees will be obtained to fund the agency operations. The net effect would be the addition of one full time Laboratory Certification Official and a half time Administrative Assistant. The proposed regulations also do not overlap any existing state or federal regulations.

Regarding fees, the new regulations do contain changes in the fee structure for participating laboratories. The changes would better balance the wastewater and drinking water programs based upon actual time and effort required to administer the programs as well as support the RCRA certification program. These fees have been coordinated so that equivalent activities among the three program areas will be proportionally cost allocated. The new fee structure will generate an additional \$92,000.00 per year. These funds will support operational costs of the laboratory certification program as well as support a third certification officer and a part-time administrative assistance.

### **Water Pollution Control**

**(3) Petition 2004-15 – LCB File No. R063-04: Treated Effluent:** This Petition is an amendment to the regulations governing the use of treated effluent; NAC 445A. 275 – 280. Specific amendments include restructuring the titling of the effluent categories, adding additional uses of treated effluent beyond irrigation, adding some definitions, and modifying the aerosol control regulation.

This regulatory amendment is needed to allow a wider use of treated effluent in the environment. Over the past decade the quality of treated effluent has significantly improved. The higher quality of effluent now allows increased uses of treated effluent for a variety of applications including cooling water, water features, street washing, etc. In addition, the demand for the use of treated effluent has increased over the last ten years as the State's urban areas continue to grow and water supplies become consumed. To



allow for new applications of treated effluent, the above referenced regulations must be amended.

This regulatory amendment also proposes to make two word changes to the **pretreatment regulations** defined under Nevada Administrative Code (NAC) 445A.257. The amendment would strike the requirement for the Division of Environmental Protection (Division) to administer a pretreatment program for municipalities and industrial users that do not have an approved pretreatment program. The revision would allow the Division the option to administer a pretreatment program in cases where a municipality does not have an approved pretreatment program.

At this time the Division does not have a delegated program to operate the pretreatment program from the U.S. EPA. Therefore, the necessary resource funding from the U.S. EPA has not been awarded to the Division in order to effectively staff a pretreatment oversight program. This revision will provide the Division the flexibility to administer a pretreatment program in the future on a case by case basis.

This regulatory amendment will not have a negative economic impact, either immediate or long term, on the regulated industry or the public. In the case of treated effluent, the cost of such effluent is generally lower than potable water, hence industry will likely see an economic benefit from the adoption of this regulatory amendment. There will not be any additional costs to the agency for enforcement of the proposed regulation and the amendments will not overlap or duplicate any regulations of other state federal or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

**(4) Petition 2004-18 – LCB File No. R079-04 Concentrated Animal Feed Operations (CAFO):** This regulatory petition proposes changes to the discharge permits and general permitting provisions of NAC 445A – Water Controls. The regulation amendments focus exclusively on defining and permitting concentrated animal feeding operations (CAFO). The regulations will revise the list of production facilities that are defined as potential CAFOs as well as adjust the animal threshold numbers at a facility to be defined as a CAFO. The regulations will also improve consistency between the State and federal CAFO definitions, eliminate the mixed animal calculation, require a designated CAFO to apply for a discharge permit within ninety days of designation, and create a \$700 CAFO general permit application and annual fee.

This regulatory petition will amend the Nevada Administrative Code to conform with revisions to the federal National Pollutant Discharge Elimination System (NPDES) regulations. In 1975, the US Environmental Protection Agency (US EPA) approved the State NPDES permit program and delegated NDEP's permitting authority to the State. To maintain this delegation, the State must adopt regulations that are at least as stringent as the federal regulations. On February 12, 2003, the US EPA promulgated a revised NPDES permit regulation and effluent limitation guidelines and standards for CAFOs. This regulatory petition will raise the Nevada NPDES program to the minimum standards to maintain delegation.

The regulations are not expected to increase the number of facilities requiring CAFO permits. The Division has not identified any newly defined production facilities, (e.g. immature swine, lambs, ducks, or chickens) that are large enough to be classified as CAFOs under the proposed regulations. There are no CAFOs permitted under the mixed animal calculation, therefore, the number of permits will not change as a result of the elimination of this calculation. The Division has the authority to require a permit of any agricultural or silvicultural activity that has been identified as a significant contributor of pollution. The proposed regulations will establish a ninety-day deadline from the date of notification for a designated facility to apply for a permit. Although higher than the current general permit fee, the proposed \$700 application and annual CAFO general permit fees are lower than the permit fees for an individual CAFO permit.

The proposed regulation will not have any negative economic impacts, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of this regulation. The majority of the Bureau of Water Pollution Control operating budget is funded through permit fees. Due to the small number of CAFOs in the State, a higher CAFO general permit fee will be required to fund the implementation of a CAFO general permit program. The regulation does not overlap or duplicate any regulations of other state or government agencies and the amended regulations are no more stringent than what is established by federal law.

**(5) Petition 2004-17 – LCB File No. R103-04 Underground Injection Control (UIC):**

This regulation proposes changes to the permitting provisions of NAC 445A.825 through 445A.910 – Underground Injection Control (UIC). The Underground Injection Control Program is designed to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The proposed amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition the regulations are needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

Specifically, the revised regulations will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual permits. The regulations will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

While the proposed regulation generates new fees and increases existing fees, these fee increases will have little significant economic impact, either immediate or long term, on the regulated industry and/or the small businesses sector. There will be no additional costs to the agency for enforcement of these regulations, they are not more stringent than federal regulations, nor do they overlap or duplicate any regulations of other state or government agencies.

## **Corrective Actions**

### **(6) Petition 2004-19 – LCB File No. R084-04 Brownfields Cleanup Revolving Loan**

**Fund:** This regulatory petition proposes adoption of regulations governing the administration of a Brownfields Cleanup Revolving Loan Fund. The Nevada Division of Environmental Protection (NDEP) has received grant funding from the US Environmental Protection Agency (US EPA) to administer the fund. Funds will be used to address environmental cleanups conducted at Brownfield sites in Nevada. Brownfield sites, as defined in the federal “Small Business Liability Relief and Brownfields Revitalization Act,” mean real property, the expansion, redevelopment, or reuse of which may be complicated by the presence of a hazardous substance, pollutant, or contaminant. Funds awarded to the NDEP are to be used to make low-interest loans to individuals or municipalities for the cleanup of these sites; a portion of the funds received may also be used to offer sub-grants to municipalities or non-profit groups. The proposed regulation, drafted pursuant to NRS 459.892, has been developed to outline the application requirements for the revolving loan fund.

The proposed regulation will not have any negative economic impacts, either immediate or long term, on the regulated industry. The regulation is intended to off-set the cost of environmental cleanups at contaminated sites to allow for redevelopment or reuse of property. The revolving loan fund will have beneficial economic impacts on property owners and local communities. Loan funds are intended to put underutilized properties back into productive use, thereby increasing tax revenues and employment opportunities.

There will be no additional costs to the agency for enforcement of this regulation. NDEP has entered into an agreement with a private fund manager to administer the revolving loan fund program. Administrative fees are being paid for out of the competitive grant received from the US EPA. Any additional costs to NDEP to oversee the loan and grant program will be paid for with federal funds from the “Small Business Liability Relief and Brownfields Revitalization Act.” The regulation does not overlap or duplicate any regulations of other state or government agencies. Recipients of loan funds will follow existing State regulations governing the cleanup of contaminated sites. The amended regulations are no more stringent than what is established by federal law and NDEP does not anticipate that fees will be imposed on loan or grant recipients for the administration of the fund, though legislation in NRS 459.888 allows for the imposition of such a fee.

### **Public Hearing Process & Information:**

Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to: State Environmental Commission 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851. Written submissions must be received by the SEC at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

A copy of the regulations to be adopted or amended will be on file at the State Library and Archives, 100 Stewart Street, and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 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 notices have been deposited electronically at major library branches in each county in Nevada. The text of the proposed regulations are 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](#). Also, the [State Environmental Commission](#) maintains a website ([SEC.nv.gov](#)) that contains this public notice, the meeting agenda and the proposed regulations pending before the SEC.

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 John B. Walker, Executive Secretary, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on August 11, 2004.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: The Laxalt building in Carson City, the Washoe County Library in Reno, the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, and the Division of Environmental Protection and Department of Museums, Library and Arts in Carson City. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

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

**STATE ENVIRONMENTAL COMMISSION (SEC)**

**Meeting of August 19, 2004**

Laxalt Building  
Carson City, Nevada

**MEMBERS PRESENT:**

Melvin Close, Chairman  
Alan Coyner, Vice Chairman  
Pete Anderson  
Terry Crawforth  
Demar Dahl  
Don Henderson  
Ira Rackley  
Hugh Ricci  
Lewis Dodgion

**MEMBERS ABSENT:**

Harry Shull  
Joey Villaflor

**Staff Present:**

William Frey, Deputy Attorney General  
Susan Gray, Deputy Attorney General  
John Walker, Executive Secretary  
Nan Paulson, Recording Secretary

New member Harry Shull, from N. Las Vegas NV, was not present at this meeting.

Chairman Close called the meeting to order at 10:00 a.m.

**READER's NOTE:** These are summary minutes of the above references meeting of the State Environmental Commission (SEC). Please contact the SEC [Recording Secretary](#) for a copy of the verbatim minutes of the proceedings (i.e., available in audio format only, analog cassette magnetic tape).

**I. Approval of Minutes from the February 26, 2004 SEC Meeting**

On motion of Commissioner Crawford, the Commission unanimously voted to approve the minutes.

Chairman Close asked the new Commission Members to introduce themselves.

SEC Commissioner Lewis Dodgion initiated by saying he has been retired for 6 years from the Nevada Division of Environmental Protection (NDEP) after serving as the Administrator for close to 18 years. He added that it is a great pleasure to be given the opportunity to serve on this Commission, which he has always felt is one of the most important Commissions in State Government.

Nevada Division of Forestry's State Forester Pete Anderson introduced himself by saying he started his career a little over 12 years ago with the NDEP in Mine Reclamation, and prior to that he worked in the private sector for several consulting firms. Commissioner Anderson added that he has been involved with resource management and disturbed site reclamation most of his career. He also looks forward to serving on the Commission.

**II. SETTLEMENT AGREEMENTS**

Chairman Close opted to begin the meeting out of Agenda order by starting with Item number four, The Settlement Agreements. Chairman Close asked if there was a presentation for these items. Mike Elges, Bureau Chief for the NDEP Bureau of Air Pollution Control (BAPC), approached the speaker's booth. After Chairman Close requested a brief overview of the Agreements, Mike Elges introduced Mike Yamada as the Bureau staff member who would provide information on the settlements.

Mr. Yamada spoke about the settlement agreements for Air Pollution Control violations for the following four companies:

- A. Hansen – Rice Inc. -- Notice of Alleged Violation Nos. 1836-1839
- B. Mud Camp Mining LLC -- Notice of Alleged Violation Nos. 1832
- C. Valley joist, Inc. – Notice of Alleged Violation Nos. 1828
- D. W.E.S Construction. Inc – Notice of Alleged Violation Nos. 1830 - 1831

There were no public comments regarding the above settlements. Chairman Close made a motion to approve the settlement agreements, Commissioner Anderson seconded the motion, and the Commission members unanimously approved.

### **Air Pollution Control**

**(1) III. Petition 2004-22– LCB File No. R 125-04: New Source Review (NSR), Prevention of Significant Deterioration (PSD) rule, Ozone Nonattainment rule, and Minor Revision of Permit:** This regulatory petition amends NAC 445B.001-.3497. The regulation incorporates revisions to the federal New Source Review (NSR) and Prevention of Significant Deterioration (PSD) rule. The regulation also incorporates revision to certain permitting provisions for a major stationary source and/or a major modification in a basic nonattainment area for ozone. As well, the regulation integrates new federal NSR Reforms into State regulations for PSD sources. This is necessary to ensure consistency with the federal program and to ensure the State of Nevada's ability to implement these new provisions. The ozone nonattainment amendments are necessary as a result of new 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. On April 30, 2004 the US EPA published nationwide attainment/nonattainment designations for the 8-hour ozone NAAQS. This designation was effective June 15, 2004. The proposed regulations provide specific criteria for new major stationary sources that are locating in, or for sources making major modifications in, an area designated as nonattainment for the 8-hour ozone standard.

The regulatory petition applies only to major stationary sources of air pollution. The NSR Reforms would affect approximately 12 facilities. By adopting the proposed changes, NDEP will be able to regain full delegation of the PSD program in Nevada from the US EPA. Once NDEP has received full delegation, affected sources wishing to apply for permits for new facilities or modifications to their existing facility will be able to work directly with the state rather than having to go through the US EPA to receive permit approvals. Specific fees are proposed to cover costs associated with implementing the NSR flexibility provisions. These costs will be born by the sources requesting any of the new NSR reforms at the time they modify their existing permit.

This regulatory petition also contains language that (a) updates certain definition in the regulations, and (b) will shorten the timeline for processing minor revisions to Class I operating permits. Specifically, the regulation streamlines the public notification provisions of NAC 445B.3425 and removes definitions that are no longer used in NAC 445B. The regulation removes duplicate requirements for public notification and participation in cases where (a) the Director drafts proposed conditions for an operating permit because the applicant's proposed conditions were not adequate, and (b) the Administrator of the U.S. EPA objects to the proposed revision, and the Director subsequently revises the proposed revision.

### **Discussion:**

Mike Elges discussed the preparation of the four amendments for this regulation. For more information regarding the amendments, please refer to the Appendix 1 on page 15 at the end of this document.

Regarding the review process contained in this regulation, Commissioner Ricci asked Mr. Elges about the reform component of the changes. He wanted to know if under the Clean Unit and Pollution Control Project if the control units are changed or modified which resulted in more pollutants than before, would the facility have to go through another type of review process or shut down? Mr. Elges said the facility would have to go through the approval process again if there would be changes in emissions. To make changes in the past, the facility had to go through a very rigorous PSD review along with a State review. This reform does not alter the secondary component, which is the State's review. The reform frees up the federal level to allow more flexibility.

Commissioner Crowthorn asked if there was an appeal process if a facility were denied. Mr. Elges said the appeal process still contains the existing appeal rights.

**NOTE:** A copy of the outline of Mike Elges' speech is added as appendix #6 on page 17 at the end of this document.

When Mr. Elges finished speaking about the Non-attainment changes, Commissioner Ricci asked if the Apex power plant was affected. Mr. Elges said it was his understanding that previous permits would not be affected unless they modified the facility.

Mike Elges completed his presentation and asked for comments. Commissioner Henderson commented regarding NSR PSD and asked what type of facilities (of which there are 10), other than power plants, are affected? Mr. Elges said there are: one chemical manufacturing, one Portland Cement, and a couple of gold mining facilities. Commissioner Henderson inquired about the EPA's knowledge and concurrence of the proposals. Mr. Elges said they work closely with the EPA and they do have their concurrence. The EPA has been involved with the draft of the regulations and there has not been a lot of guidance from the EPA.

Commissioner Coyner questioned the fees and asked for an estimate of current and proposed fees, the workload associated with the changes, and if part of the fees were designed to cover the workload. Mike Elges replied the workload should not change significantly and he is optimistic of seeing a streamlining of the process through incorporation of the provisions in the regulation. He added the fees should remain consistent with current fees and, if there is a significant difference, they will come back and propose changes to adjust the fees accordingly.

Commissioner Anderson questioned the time it will take for full delegation and if it will fit in the timeframe. Mr. Elges responded that full delegation, if this packet is approved, may be reached by the end of September.

Commissioner Coyner inquired about the State Implementation Plan (SIP), if it would be available for review by the public, and the timeline for completion. Mr. Elges replied that they do not have

an exact date but it is a top priority for the BAPC to get away from the old SIP and go forward with the more current provisions contained in the Nevada Administrative Code (NAC).

### **Public Comments / SEC Discussions & Staff Responses**

Jonathan Brown, Director of Environmental & Regulatory Affairs for the Nevada Mining Association stepped up to the podium and stated the following:

Mr. Chairman, with your permission, I have a prepared statement in support of Air Pollution Control Petition 2004-22 that I would like to read in to the record at this time.

“The Nevada Mining Association and its members would like to commend the Nevada Division of Environmental Protection, Bureau of Air Pollution Control for providing us the opportunity to comment on the modifications proposed in the petition. The Bureau of Air Pollution Control worked hard to ensure that all interested stakeholders had this same opportunity. It is this opportunity for open dialogue that makes for a win-win situation for both the State’s environment and its economy. We look forward to working with the Bureau of Air Pollution Control in a similar fashion on other related matters. Thank you.”

### **SEC ACTION**

Chairman Close asked if there were any more comments or any discussion amongst Commission members. After no comments, Chairman Close asked for a motion, Commissioner Henderson made a motion to adopt LCB R125-04, Commissioner Crawforth seconded the motion, and all members were in favor.

#### **(2) Petition 2004-16 – LCB File No. R061-04: Certification of Environmental Laboratories:**

This regulatory petition proposes the repeal of existing regulations and adoption of new revised regulations. The petition repeals Nevada Administrative Code (NAC) 445A.055 through 445A.067 and adopts NAC 445A.0552 to NAC 445A.067, (i.e., Certification of Environmental Laboratories). The authority for these regulations are defined under Nevada Revised Statutes (NRS) 445A.425, 445A.428.

Currently, the regulations for certification of laboratories to analyze substances in water – as per the Federal Clean Water Act and the Federal Safe Drinking Water Act – are split between the Nevada Division of Environmental Protection (NDEP) and Nevada State Health Division. After the last biennium, the laboratory certification program was moved from the State Health Division to the NDEP. In part, this regulatory petition is needed to make the necessary language adjustments in the NAC’s to accommodate this change. Specifically, the new regulations retain the provisions previously established for certification of laboratories to analyze substances in wastewater, while adding provisions for laboratories to analyze substances in drinking water; the latter provision was previously administered by the Health Division. In addition, authority to certify laboratories to analyze substances in accordance with the Federal Resource Conservation and Recovery Act (RCRA) has now been acquired by the NDEP – per Senate Bill 58, NRS 445A.425, 445A.428.



Hence, the new revised regulations add provisions for laboratories to analyze environmental samples for hazardous waste substances.

The regulatory petition will have only marginal economic effects and may include a slightly higher cost for some laboratories. Small laboratories will be less affected than the larger laboratories. A poll of the laboratories affected indicates that none of the in-state laboratories consider the change in fees to present a hardship, and respondents indicated a beneficial effect from the RCRA certification program. The new regulations will enable in-state laboratories to demonstrate RCRA certified status so they can participate in certain contracts. The lack of a certification program for RCRA has resulted in out-of-state laboratories obtaining an inordinate amount of RCRA work in Nevada.

The economic effects of the proposed regulations to the public would be of no consequence. In fact, the public should experience both a short-term and long-term benefit due to the improved quality of data obtained with the certification program in effect. The public should also see more competition between laboratories which may in turn stabilize costs associated with laboratory analysis. Agency costs to implement the proposed regulations would not be negatively effected; that is, the more participation in the lab certification program, the more fees will be obtained to fund the agency operations. The net effect would be the addition of one full time Laboratory Certification Official and a half time Administrative Assistant. The proposed regulations also do not overlap any existing state or federal regulations.

Regarding fees, the new regulations do contain changes in the fee structure for participating laboratories. The changes would better balance the wastewater and drinking water programs based upon actual time and effort required to administer the programs as well as support the RCRA certification program. These fees have been coordinated so that equivalent activities among the three program areas will be proportionally cost allocated. The new fee structure will generate an additional \$92,000.00 per year. These funds will support operational costs of the laboratory certification program as well as support a third certification officer and a part-time administrative assistance.

## **Discussions**

Tom Porta, Chief of NDEP's Bureau of Water Quality Planning, stepped up to the speaker's podium. Mr. Porta chose to give the following background to this petition for Laboratory Certification Program:

In 1995 the Legislature passed a bill that allowed Nevada to certify laboratory's performing water analysis for Clean Water Act type activities, and the Nevada State Health Division's Bureau of Certification had a Safe Drinking Water Act laboratory certification program already in place. NDEP decided to combine the two programs and contracted with State Health since they already had the staff in place and the program running.

In 2003, two things happened in the Legislature, a bill sponsored by the laboratory industry SB58 was passed to include RCRA type certification for laboratories that

perform that type of analysis, and part of the Drinking Water Act Program was brought into NDEP, and that includes staff that were once in the Health Division.

Mr. Porta went on to explain that currently, there are approximately 80 laboratories in and out of state. NDEP put out a survey to determine how many laboratories would participate in the RCRA certification process if the regulations were passed. The survey indicated about 30 laboratories would apply. NDEP then held a workshop in Las Vegas and Carson City. The comments were positive on all aspects, including the fees. There were some inconsistencies in the fees and today's amendments will help adjust those. There will also be a separate set of fees charged for RCRA Certification.

Mr. Porta introduced two members that joined his Bureau from the Health Division. They are Dr. Jack Ruckman and Donald LaFara. Dr. Ruckman approached the podium.

Dr. Ruckman briefly spoke and wanted to make one correction. He stated that laboratories in this state can do RCRA analysis but they need to be certified if out of state and that is being corrected. The National accreditation and Nevada's accreditation are similar.

Dr. Ruckman continued to discuss pages 1 through 13, up to section 21 of the regulation. This information defines the delineation of the methodologies that are acceptable for the laboratories to utilize, and is for the Clean Water Act only.

Dr. Ruckman called attention to the middle of page 13 of the regulation, which better defines categories for laboratories to choose which parameters or groups of parameters to certify for. It also explains the fees and performance evaluations that take place twice a year.

Dr. Ruckman continued to clarify the Water Quality Planning sections of the regulation. He pointed out that there are not many changes, most are with addresses, methods, and prices, otherwise it is basically the same docket as the Clean Water Regulation for Certification of laboratories that has been used to certify laboratories over the last couple of years.

### **Public Comments / SEC Discussions & Staff Responses**

Chairman Close asked if there were any questions. Commissioner Ricci requested clarification of Section 67 on page 56, and if Dr. Ruckman felt most laboratories would go through the Division as opposed to Nevada Environmental Laboratory Accreditation Program (NELAP). Dr. Ruckman asserted the small laboratories that are non-commercial have no reason to go to NELAP. He added that many of the major laboratories that are NELAP certified have to go out of state to be certified. Commissioner Ricci asked if Nevada's fees for the program are comparable to those of NELAP. Dr. Ruckman replied he believes the laboratories could save thousands of dollars by having Nevada do the NELAP certification.

Commissioner Henderson questioned whether or not the regulations apply to governmental laboratories or if they are specific to commercial laboratories. Dr. Ruckman responded that they do apply to governmental laboratories or any laboratory that supplies data to agencies for regulation.

Any agency that requires data of sufficient quality, then the laboratory must either be certified by us, the EPA, or some other authority.

Commissioner Crawford asked for an example of what someone would do if someone knowingly employs a person who has violated a provision of these sections. Dr. Ruckman said there were a couple of instances where this has occurred. In his eight years in this business, Dr. Ruckman is aware of only two cases. He did mention one case in Texas where the laboratory gave incorrect analysis information and a half dozen or more people were fined over \$1,000,000.00 each and several went to prison. Commissioner Crawford expressed concern over a laboratory knowingly giving false information. Tom Porta interjected that Nevada is not the only state certifying a laboratory and NDEP converses with other states that may have information that will help with determining the seriousness of infractions.

Commissioner Anderson wanted to know if a laboratory could choose to certify only for pesticides (section 21 number 11 and in number 20 of the regulation). Dr. Ruckman replied the laboratory could choose the category for pesticides; there are areas for compounds that are man-made, so the laboratory could choose one section instead of all.

Commissioner Crawford asked why the definition of “Point Source” was being removed. Dr. Ruckman explained the repealed section was repealing only the meaning of Point Source, as they are no longer referring to Point Source in the document.

Don La Fara, Laboratory Certification Officer for the Health Division, approached the podium to answer questions regarding fees. Commissioner Crawford wondered if the cost of minerals, demands, and nutrients fees on page 35 were an increase. Mr. La Fara answered that the prices are the same even with new categories added.

Commissioner Henderson said the Dept of Agriculture runs a ground water sampling program for pesticides through the EPA and he assumes that the laboratory is certified through the EPA. Based on that assumption, is there a need for the State Dept. of Agriculture to register or certify with NDEP? Mr. La Fara said their credibility would be enhanced.

Mr. La Fara added that the Clean Water fees have not been adjusted since 1991 and this will raise them to the same level as the Drinking Water fees.

**Public Comment:**

Dr. Roger Scholl, Laboratory Director of Alpha Analytical, the largest commercial environmental analytical laboratory in Nevada, located in Sparks for 18 years and employs 45 people, approached the podium. He strongly supports this legislation that brings the RCRA program into the lab certification program. His company pays about \$30,000 annually for RCRA Certification and he would rather have their fees stay in Nevada. He believes this certification would improve the integrity of the data and the legal defensibility of the data, which is produced to protect human and environmental health.

John Kobza, Laboratory Director at Sierra Environmental Monitoring, said he agrees with Roger Scholl's comments and feels this legislation will greatly enhance the data integrity that is produced by the staff in Nevada. He commends the Certification Officer's in this state.

Chairman Close asked if there were any other comments, there were none so the Public Portion of the hearing was closed.

Chairman Close asked if a California lab comes into Nevada, must they get certified in Nevada or must we accept by reciprocity the certification that was granted to them by California. Dr. Ruckman answered that they will have to be certified and pay the fees, but if they are in Drinking Water, they have a reciprocity agreement with California so they do not have to survey that laboratory. Any lab that has NELAC certification, we can accept the survey from the NELAC primary authority. They still have to pay the fee, even if they do not have to be surveyed.

## **SEC ACTION**

With no other comments, Chairman Close asked if there was a motion. Commissioner Crawforth made a motion to adopt Regulation R061-04. Commissioner Dodgion seconded the motion, and all were in favor, motion was carried.

## **Water Pollution Control**

### **(3) Petition 2005-15 - LCB File No. R063-04: Treated Effluent**

This Petition is an amendment to the regulations governing the use of treated effluent; NAC 445A. 275 – 280. Specific amendments include restructuring the titling of the effluent categories, adding additional uses of treated effluent beyond irrigation, adding some definitions, and modifying the aerosol control regulation.

This regulatory amendment is needed to allow a wider use of treated effluent in the environment. Over the past decade the quality of treated effluent has significantly improved. The higher quality of effluent now allows increased uses of treated effluent for a variety of applications including cooling water, water features, street washing, etc.

In addition, the demand for the use of treated effluent has increased over the last ten years as the State's urban areas continue to grow and water supplies become consumed. To allow for new applications of treated effluent, the above referenced regulations must be amended.

This regulatory amendment will not have a negative economic impact, either immediate or long term, on the regulated industry or the public. In the case of treated effluent, the cost of such effluent is generally lower than potable water, hence industry will likely see an economic benefit from the adoption of this regulatory amendment. There will not be any additional costs to the agency for enforcement of the proposed regulation and the amendments will not overlap or duplicate any regulations of other state federal or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

### **Discussion:**

Joe Maez, NDEP, Bureau of Water Pollution Control (BWPC) discussed the need for an environmentally sound method of reuse for effluent water that is still protective of public health. The BWPC conducted three public workshops and solicited a 30-day public comment period for any concerns, and the BWPC believes their proposal is accepted.

Mr. Maez defined some of the wording and phrases in the sections and gave a brief description of each section. He continued with the Water Quality categories and the differences in them, see page 26 of the regulation for more information.

The meeting was closed for lunch at approximately 11:45 a.m., and was called back to order at 12:57 p.m. by Chairman Close

Joe Maez continued with definitions of letter meanings for categories of reuse. Commissioner Dahl asked what category golf courses fell into and application times allowed. Mr. Maez said they fall under Categories A, B, and possibly C. A and B has no buffer zone requirement for use of effluent water, but category C would have a 100 foot buffer zone requirement from the golf course area to a public area, like a dwelling unit. For categories B and C, the application of effluent water would have to be at night, and there is a drying time requirement at least two hours prior to playing time. Water cannot be allowed to pond in the playing area, and signs must be posted to notify the public of water use. Category D effluent is only for areas where there is no public use at all.

Commissioner Rackley asked about Surface Irrigation. Mr. Maez stated it would fall under category D Water for flood irrigation, although categories A, B, and C can use their water for flood irrigation. Commissioner Henderson asked if this regulation changes any fees. Mr. Maez responded that this does not increase or decrease fees.

Commissioner Henderson asked about the fee for CAFO permit and the effluent discharge. Would they have to pay the \$700 fee and the \$1500 fee? Joe Maez explained that the fees for effluent regulations are separate from the CAFO fees. Joe Maez referred the question to Jon Palm, the Chief of the BWPC who explained the application would be for one or the other permit, not both.

Commissioner Anderson expressed concern for hand crews working the fire lines that would get wet from Category B effluent water, and asked if it would be a problem. Joe Maez replied that NDEP feels the water used for firefighting is ok, compared to the concern for public safety, property, and public health from the fire. He added that the Fire Dept. must approve the water usage as well.

Commissioner Ricci asked about Section 11 A2, regarding the use of Effluent Water for agricultural use for human consumption but it would be approved for cattle use. Joe Maez said this would be a separate permit for reuse application at the alfalfa fields. They would have to submit a management plan for the loading of nutrients plus the water volume to the field on an annual basis.

Commissioner Ricci inquired about the run-off from businesses that reuse this water and asked if it was a problem. Joe Maez remarked this would be prohibited in the regulations and would be a permit issue, which BWPC would take care of.

Concern over the interest in this section from many State agencies prompted Commissioner Crawford to ask if BWPC got input from them. Mr. Maez said the other agencies do get the information regarding the workshops and public comment period. Commissioner Crawford also questioned the regulations for area of use at wetlands and associated grounds. Joe Maez answered that even when the effluent water is co-mingled with non-effluent water, it would all be considered the area of use. The compliance point would be from the outfall point of the effluent, not later on.

Joe Maez referred Commissioner Crawford to the back page (28, section 23 of the regulation) when explaining that BWPC can waive compliance if a proposed use, such as fish hatchery water, is not considered a public hazard. Jon Palm acknowledged Commissioner Crawford's question about using effluent water for flood irrigation and if the water from the field would ever be able to be released into the Walker River. Mr. Palm stated the water would be mixed with other water and in the environment; therefore it would depend on how the permit was written and other factors, which would have to be looked at specifically. As long as at the compliance point, the water reaches compliance requirements, it would not be considered a problem.

Commissioner Anderson asked to move the firefighting component from category B to category A. Joe Maez asked to have time to think about this because this would create limitations, as there are only a few facilities that could reach that category.

Joe Maez and Commissioner Dahl discussed the sign requirements for buffer zones.

After staff comments, Chairman Close asked for public comments.

### **Public Comments**

Bill Shepherd, Clark County Water Reclamation District (CCWRD) in Las Vegas, stepped up to the podium. He said CCWRD has been working with NDEP for the past couple of years to help clarify the regulations, make them more usable, and give CCWRD a usable resource for something other than irrigation. The definitions help the public to have a better feel for the uses. CCWRD commends NDEP for their efforts in putting this together, as they will be a real benefit for the state.

Chairman Close mentioned a letter from Michael Neher from the City of Henderson regarding their support for the adoption of the proposed changes to the regulations. For more information please see appendix #7 on page 22.

### **SEC ACTION**

Chairman Close asked for a motion. Commissioner Dahl made the motion to approve R063-04, and Commissioner Ricci seconded the motion. All were in favor.

### **Petition 2004-18 – LCB File No. R079-04 Concentrated Animal Feed Operations (CAFO):**

This regulatory petition proposes changes to the discharge permits and general permitting provisions of NAC 445A – Water Controls. The regulation amendments focus exclusively on defining and permitting concentrated animal feeding operations (CAFO). The regulations will

revise the list of production facilities that are defined as potential CAFOs as well as adjust the animal threshold numbers at a facility to be defined as a CAFO. The regulations will also improve consistency between the State and federal CAFO definitions, eliminate the mixed animal calculation, require a Public Notice designated CAFO to apply for a discharge permit within ninety days of designation, and create a \$700 CAFO general permit application and annual fee.

This regulatory petition will amend the Nevada Administrative Code to conform with revisions to the federal National Pollutant Discharge Elimination System (NPDES) regulations. In 1975, the US Environmental Protection Agency (US EPA) approved the State NPDES permit program and delegated NDEP's permitting authority to the State. To maintain this delegation, the State must adopt regulations that are at least as stringent as the federal regulations. On February 12, 2003, the US EPA promulgated a revised NPDES permit regulation and effluent limitation guidelines and standards for CAFOs. This regulatory petition will raise the Nevada NPDES program to the minimum standards to maintain delegation.

The regulations are not expected to increase the number of facilities requiring CAFO permits. The Division has not identified any newly defined production facilities, (e.g. immature swine, lambs, ducks, or chickens) that are large enough to be classified as CAFOs under the proposed regulations. There are no CAFOs permitted under the mixed animal calculation, therefore, the number of permits will not change as a result of the elimination of this calculation. The Division has the authority to require a permit of any agricultural or silvicultural activity that has been identified as a significant contributor of pollution. The proposed regulations will establish a ninety-day deadline from the date of notification for a designated facility to apply for a permit. Although higher than the current general permit fee, the proposed \$700 application and annual CAFO general permit fees are lower than the permit fees for an individual CAFO permit.

The proposed regulation will not have any negative economic impacts, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of this regulation. The majority of the Bureau of Water Pollution Control operating budget is funded through permit fees. Due to the small number of CAFOs in the State, a higher CAFO general permit fee will be required to fund the implementation of a CAFO general permit program. The regulation does not overlap or duplicate any regulations of other state or government agencies and the amended regulations are no more stringent than what is established by federal law.

### **Discussion:**

NDEP's BWPC staff, Al Tinney, explained the history of regulating animal waste management under the National Pollution Discharge Elimination Program (NPDES). In 1975 Nevada was given primacy over the CAFO portion of the regulations. NDEP held 3 public workshops, sent notices to officials of all Nevada counties, and to all the Bureau mailing list. Twelve people attended them, with only one change requested by the Nevada Farm Bureau, and this change was adopted.

### **SEC COMMENTS**

Commissioner Henderson said the Cattleman's Association and the Farm Bureau, who were complimentary of the staff working with them, contacted him and although they don't agree with

the regulation, they will accept it as being the best possible under the current federal requirements. There are a couple conditions he wanted on record:

- 1) Pg. 2, subparagraph 1- confinement of animals for 30 days or more and the ground is bare, then this regulation requires a permit.
- 2) A CAFO operation can go for an Effluent Permit, or a CAFO Permit, and of the fees associated, only one fee would apply?

Mr. Tinney confirmed that only one fee would be charged.

Chairman Close asked for confirmation that Page 3 refers to 125,000 chickens. Mr. Tinney stated the numbers of animals listed are correct, and per federal regulations.

Commissioner Ricci requested further clarification for the effluent water from cattle and they want to apply the water to their land, is another permit required? Mr. Tinney stated no permit would be needed if it were for their land.

#### **PUBIC COMMENTS:**

There were no public comments so the public comment session was closed.

Chairman Close asked for a motion. Commissioner Henderson moved for adoption of LCB Ro79-04, Commissioner Dodgion seconded the motion, all were in favor, motion carried.

#### **Petition 2004-17 – LCB File No. R103-04 Underground Injection Control (UIC):**

Jon Palm, Chief of BWPC requested to have this item removed from this agenda and be rescheduled for a subsequent meeting. The oil and gas industry sector of the community, who hold UIC permits, have said they did not receive proper notice of this. Postponing this will allow them to participate.

#### **SEC ACTION:**

Chairman Close asked for objections. There were none, so the matter was withdrawn.

**Petition 2004-19 – LCB File No. R084-04 Brownfields Cleanup Revolving Loan Fund:** This regulatory petition proposes adoption of regulations governing the administration of a Brownfields Cleanup Revolving Loan Fund. The Nevada Division of Environmental Protection (NDEP) has received grant funding from the US Environmental Protection Agency (US EPA) to administer the fund. Funds will be used to address environmental cleanups conducted at Brownfield sites in Nevada. Brownfield sites, as defined in the federal “Small Business Liability Relief and Brownfields Revitalization Act,” mean real property, the expansion, redevelopment, or reuse of which may be complicated by the presence of a hazardous substance, pollutant, or contaminant. Funds awarded to the NDEP are to be used to make low-interest loans to individuals or municipalities for the cleanup of these sites; a portion of the funds received may also be used to offer sub-grants to municipalities or non-profit groups. The proposed regulation, drafted pursuant



to NRS 459.892, has been developed to outline the application requirements for the revolving loan fund.

The proposed regulation will not have any negative economic impacts, either immediate or long term, on the regulated industry. The regulation is intended to off-set the cost of environmental cleanups at contaminated sites to allow for redevelopment or reuse of property. The revolving loan fund will have beneficial economic impacts on property owners and local communities. Loan funds are intended to put underutilized properties back into productive use, thereby increasing tax revenues and employment opportunities.

There will be no additional costs to the agency for enforcement of this regulation. NDEP has entered into an agreement with a private fund manager to administer the revolving loan fund program. Administrative fees are being paid for out of the competitive grant received from the US EPA. Any additional costs to NDEP to oversee the loan and grant program will be paid for with federal funds from the “Small Business Liability Relief and Brownfields Revitalization Act.” The regulation does not overlap or duplicate any regulations of other state or government agencies. Recipients of loan funds will follow existing State regulations governing the cleanup of contaminated sites. The amended regulations are no more stringent than what is established by federal law and NDEP does not anticipate that fees will be imposed on loan or grant recipients for the administration of the fund, though legislation in NRS 459.888 allows for the imposition of such a fee.

### **Discussion:**

NDEP’s Bureau of Corrective Actions (BCA) staff member Scott Smale explained the specifics about the loan program. The intention of Brownfields is to encourage the clean up, redevelopment, and reuse of historically contaminated sites. The federal government in SuperFund started this program. It encourages clean up and redevelopment through financial incentives and legal changes which make the historically contaminated sites competitive in the development market, in order to ease the pressure on open and undeveloped spaces. This program is targeted to local governments since they make their land use planning decisions and this is a program tied to real estate and economic development.

At first the program offered grants for site assessments to help alleviate the fear of putting the historically contaminated sites back into use because of clean-up costs. The assessments will help by determining the clean-up costs or that there is no clean up needed.

Next, the program moved to offering clean-up funds or grants that target local governments and non-profit groups. They must own the property for this program. This program did not help with private-to-private transfer of properties where municipal government was not involved. There were no programs available for this, so the EPA developed a program called the Clean-Up Revolving Loan Fund. The State of Nevada applied for a competitive grant and received 2 million dollars to administer this fund and offer it to private developers and municipal governments to take out loans to perform clean-ups on these sites. Mr. Smale discussed the sections of the proposed regulation and definitions.

NDEP is seeking adoption of sections 3-33 only, and ask the Commission to strike sections 1 and 2, as they contain redundant language that has been inserted into other regulations governing the required public notification element.

**SEC COMMENTS:**

Commissioner Close asked what the interest rate would be on the loans. Mr. Smale explained the interest rate will be set in the loan agreement, and BCA has contracted with a fund manager and the rates will be lower than market.

Commissioner Close inquired about the length of time for payback of the loans. Scott Smale said they have established loan documents that the EPA uses on their funds, and their model loan document are probably what BCA will be using, and they are currently being reviewed by the State Attorney (AG) General.

Commissioner Ricci questioned what the State would do with the collateral that is put up for the loans. Scott Smale answered the fund manager would determine what could be used as collateral. Section 22 was reviewed by the AG's office and the wording is such that it permits collateral from something other than the clean-up site.

**STAFF AND PUBLIC COMMENTS:**

There were no comments. Chairman Close called the public hearing to a close, and then asked for discussion among the Commissioners. There was no discussion so Chairman Close asked for a motion. Commissioner Crawforth made a motion for adoption of R084-04 absent sections 1 & 2. Commissioner Ricci seconded the motion, all were in favor.

The meeting adjourned at approximately 3:00 p.m.

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**APPENDIX**

- 1) INTRODUCTION TO P2004-22, page 15
- 2) INTEGRATION OF LATEST FEDERAL NSR/PSD PROVISIONS INTO THE NAC, p.15
- 3) 8-HOUR OZONE NONATTAINMENT AMENDMENTS, p. 17
- 4) STREAMLINING REQUIREMENTS FOR PUBLIC NOTIFICATION, p. 17
- 5) TECHNICAL CORRECTIONS, UPDATES AND DELETIONS, p. 17
- 6) MIKE ELGES', SEC PRESENTATION, AUGUST 19, 2004, p. 17
- 7) MICHAEL NEHER, CITY OF HENDERSON SUPPORT LETTER, p. 22
- 8) NDEP PROCEDURAL FLOW OF. R125-04, p. 23

**APPENDIX FOR PETITION 2004-22, LCB File No. R 125-04**

## 1) **INTRODUCTION TO P2004-22**

This petition contains proposed revisions to NAC 445B.001-.3497. The revisions are for four subject areas and are summarized below:

- The revisions integrate the latest federal New Source Review and Prevention of Significant Deterioration (NSR/PSD) provisions into the NAC. This is the majority of the petition.
  - The revisions provide for changes to the nonattainment area provisions in response to Clark County's recent designation as basic nonattainment for the 8-hour ozone standard. This is in NAC 445B.308(4) (Section 26 of the petition).
  - The revisions provide for the removal of repetitive requirements for public notification and participation in the processing of minor revisions to Class I operating permits in certain cases. This is in NAC 445B.3425 (Section 38 of the petition).
- 1) The revisions provide for technical corrections, updates for the SIP and repealed sections for definitions no longer used. These are found in Sections 17-21, and 39 of the petition.

## 2) **INTEGRATION OF LATEST FEDERAL NSR/PSD PROVISIONS INTO THE NAC**

On December 31, 2002, EPA adopted a final rule, effective March 03, 2003 revising the federal New Source Review and Prevention of Significant Deterioration (NSR/PSD) program. These revisions affect major stationary sources subject to the NSR/PSD rule and are intended to provide greater flexibility for facilities proposing changes (modifications) to their operations without being subject to PSD. The federal NSR reform provisions consist of two major components:

- The expansion of existing federal regulations that had previously been specific to power plants to all PSD sources.
  - A "baseline actual emissions" procedure for calculating pre-change emissions.
  - An "actual-to-projected-actual" applicability test to determine if a change will result in a significant emissions increase, thereby subjecting the source to the PSD permitting requirements.
- Creation of a new program to provide flexibility to the federal NSR/PSD rule. The new provisions offer three options that will allow facilities to make changes to their operations without triggering the PSD permitting requirements. In the enclosed petition, NDEP is proposing a new State application review and permitting process to accommodate the new federal flexibility options. The three new flexibility options include:
  - ***Clean Units (CU)***. A CU is an emissions unit that meets certain criteria found in 40 CFR 52.21. There are two cases: Those units that have been through NSR review within the last five years and are complying with the emission control levels specified in their NSR permit, or those newer units that are operating in a manner

that would satisfy those same control levels. Changes to a CU are not subject to PSD, if they do not cause a significant increase in emissions.

- ***Pollution Control Projects (PCP)***. The reform provisions contain a list of environmentally beneficial technologies that qualify as PCPs. Facilities installing these do not have to undergo PSD. Other projects may qualify as a PCP on a case-by-case basis.
- ***Plantwide Applicability Limitations (PAL)***. A PAL is based on plantwide actual emissions. If a facility keeps its emission below a plantwide actual emissions cap, it can avoid PSD when making alterations to the facility or individual emissions units. This option requires significant recordkeeping, monitoring and reporting.

The current application review and permitting process in Nevada provides two options, an operating permit program or an optional operating permit to construct program. We believe that, with the exception of a few minor changes to the existing permitting process, this flexible permitting process can also be retained for the federal NSR/PSD changes related to the first bullet above (i.e. facilities will retain the option to choose an operating permit or an operating permit to construct). For those changes for which a facility chooses to obtain an operating permit to construct and the conditions of the operating permit to construct would conflict with the conditions of an operating permit, we are proposing a new administrative revision procedure for the operating permit. This will allow concurrent review and approval of the operating permit to construct while revising the operating permit, thus streamlining the review process.

The second bullet above relates to the federal NSR/PSD operating flexibility changes (clean units, pollution projects and plant-wide applicability limits). Due to the complexity involved with these changes and the general nature of the duration of the permit authority, our existing operating permit program did not fit well. As a result, these federal NSR/PSD changes are proposed to be permitted only through the operating permit to construct regulations.

As a result, the majority of the petition deals with integrating the federal NSR revisions into State regulation. The changes proposed to NAC 445B include:

- Application content requirements for CUs, PCPs and PALs
- Application processing timelines for CUs, PCPs and PALs
- Permit content requirements for CUs, PCPs and PALs
- Additional fees to cover the costs for CUs, PCPs and PALs

Prior to the NSR Reforms, US EPA had delegated the authority to implement the federal NSR/PSD programs to the State. However, because the State regulatory framework was incompatible with the new federal provisions, the agency delegation was revoked on March 3, 2003. On June 3, 2003, the NDEP received partial delegation to issue PSD permits for new sources and modifications that do not use any of the new provisions under the NSR Reform rules. This partial delegation expires September 30, 2004. The regulation changes being proposed herein are necessary to regain full delegation of these federal programs before the partial delegation expires.

### 3) **8-HOUR OZONE NONATTAINMENT AMENDMENTS**

These amendments appear in Section 26 (pages 12-13) of the LCB petition. They are necessary as a result of new 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. On April 30, 2004, effective June 15, 2004, US EPA published nationwide attainment/nonattainment designations for the 8-hour ozone NAAQS. In this publication, US EPA recognized a new category of non-attainment area – the “basic” non-attainment designation. The current NAC regulations provide for requirements in other type of non-attainment areas. However, the offset and control requirements in the current regulations are more stringent than what is required for the new “basic” non-attainment designation. The proposed regulations provide specific criteria for new major stationary sources that are locating in or for sources making major modifications in an area designated as “basic” nonattainment for the 8-hour ozone standard.

#### **4) STREAMLINING REQUIREMENTS FOR PUBLIC NOTIFICATION**

These amendments appear in Section 38 (pages 31-32 of the LCB petition). They are a follow-up to an agreement made at the last SEC hearing with the Nevada Mining Association. NvMA supported P2003-7 last February with one exception. They objected to the proposed requirements for repetitive public notification and participation in the minor revision to Class I operating permits provisions. NDEP agreed to streamline these public notification requirements. The revisions limit public notification and participation to one time, occurring at the beginning of the minor revision process.

#### **5) TECHNICAL CORRECTIONS, UPDATES AND DELETIONS**

These are found in Sections 17-21, and 39 (deletion of unused definitions). The revisions to Section 17 update the list of abbreviations used in NAC 445B. Sections 18 and 19 correct NAC section references in the regulations dealing with sulfur emissions. Section 20 updates the “adopt by reference” regulation. Section 21 adds a provision dealing with the delivery of written notice to a source. Section 39 contains the text of definitions being repealed because they are no longer used in the NAC.

#### **6) Mike Elges’, SEC Presentation, August 19, 2004**

Good morning Mr. Chairman, members of the commission, for the record my name is Mike Elges. I’m the Chief of the Bureau of Air Pollution Control. I’m here this morning to present a summary of proposed changes to the air quality regulations contained in Petition 2004-22. The contents of this Petition can be described as four separate changes to the air quality regulations. In an effort to better organize the amendments contained in this Petition, the agency prepared a summary of the proposed amendments. The summary was provided in the Commission packet along with a reorganized version of the LCB approved amendments to better match the different categories and their procedural flow. As always, the LCB approved version of the proposed amendments was also included. I might mention that we used this same approach of organizing the proposed revisions while working with industry and found that it made understanding the changes much easier.

Before discussing each of the categories, I want to mention that the agency held several working group meetings with industry and stakeholders in an effort to develop this amendment package. The agency also

work-shopped these amendments in Reno on July 28th to solicit comments on the proposed revisions. Approximately 20 interested persons attended the workshop. No negative comments were received.

As I said, the amendments can be grouped into four subject matter categories. Those categories are, the integration into the NAC of the Federal New Source Review and Prevention of Significant Deterioration provisions, the 8-hour Ozone non-attainment provisions, revisions to the public notice requirements for minor revisions to Class I Operating Permits, and lastly, some technical corrections, updates and deletions.

The first group constitutes the largest component of the proposed amendments. Before going through the amendments, I'd like to provide a little in the way of background for the Federal New Source Review and Prevention of Significant Deterioration provisions. The State of Nevada has been delegated the authority to implement the federal NSR/PSD program by the USEPA since the mid 1980's. The PSD provisions currently affect approximately 10 existing facilities. Little or no changes have been made to the federal NSR/PSD regulations over the years, until more recently. On December 31st, 2002, the USEPA adopted a final rule that substantially revised the federal NSR/PSD program. The revisions are collectively known as NSR Reform, and became effective on March 3rd, 2003. On that same day, EPA revoked NDEP's delegation agreement because the regulatory structure of the NAC was no longer consistent with the newly adopted federal Reform provisions. On June 3rd, 2003, the NDEP received partial delegation to issue PSD permits for new sources, and for modifications at existing facilities that are not relying on any of the new Reform provisions. This partial delegation agreement expires on September 30<sup>th</sup> of this year. Therefore, it is important that the Reform provisions be incorporated into the NAC so that the NDEP can retain full PSD delegation before the end of September.

The NSR Reform can be summarized as essentially providing for two overall changes. First is the expansion of existing federal regulation, much of which applied only to power plants, such that these regulations can now be used by all PSD sources. Power plants have long been afforded specific regulations, such as those that allow them to consider future actual emissions rather than potential emissions for determining if a PSD modification was occurring as the result of some physical or operational change at a plant. The Reform provisions now allow these applicability determination criteria to be utilized by all existing PSD sources and not just the utilities. Second is the creation of a new program that provides some options for existing sources that allows them to avoid PSD permitting for select projects. The new program provides for three new concepts, the Pollution Control Project Exclusion, the Clean Unit Test and the Plant-wide Applicability Limitation. The Pollution Control Project Exclusion, or PCP, allows a project that reduces emissions of one or more air pollutants to avoid PSD even if there is a significant increase in a collateral pollutant. The Clean Unit Test allows certain units that are designated as clean units to avoid PSD permitting when undergoing a modification. These units are ones that are typically equipped with some of the best pollution controls available. Last is the Plant-wide Applicability Limitation or PAL. The PAL allows a facility that is proposing a modification to combine or cap all of the same type of emissions into an overall facility-wide cap or limitation. This allows the facility to shuttle emissions between emission units while not exceeding the overall facility wide limitation.

While the Reform provisions provide new mechanisms for reviewing applicability and for avoiding PSD permitting, these Federal NSR Reforms did not affect the requirement for the State to review and approve any proposed modifications. However, in order to incorporate these changes, the Bureau needed to develop and incorporate procedures for reviewing the applicability determinations, and approving the PCP, Clean Unit and PAL approvals. Since early in 2003, the NDEP has held several working group meetings with the

affected industry and their representatives. From these meetings, it was determined that NDEP's existing air quality permit programs, both the Class I Operating Permit and the Operating Permit to Construct program, could be modified to incorporate the NSR Reform. The proposed amendments for review today contain these proposed changes.

I'd like to briefly go through the proposed amendments and discuss and clarify a couple of points. In doing so, I'd like to refer you to the "*NDEP's Procedural Flow*" version of the amendments. This document contains all of the LCB amendments. The individual sections (both new and amended) are numbered exactly the same as the LCB version, but they have been reordered to make it easier to review. We feel that this document closely reflects what will be the final codified version of these proposed changes should they be approved today. If there are any questions or concerns, I can also go through the LCB version of the amendments if that's necessary.

The Reform provisions are largely based in 40 CFR Part 52.21. Part 52.21 provides the framework for the Reform provisions but as federal regulation, it lacks the procedural criteria necessary for describing the application review and permit issuance or denial criteria specific to NDEP's air program. As I mentioned, it was determined that incorporation of the Reform provisions could be accomplished by utilizing the procedural aspects of the existing permit programs. As you may recall, Class I sources have the option of applying directly for a Class I Operating Permit, or they can apply for an Operating Permit to Construct, build or modify their emission unit, and later file for the longer term operating permit. To maintain this option for Class I sources wishing to utilize these reforms, both the Class I Operating Permit and the Operating Permit to Construct provisions need to be amended to incorporate appropriate procedural requirements for the new Reform provisions.

Referring to Page 1 of the "*NDEP's Procedural Flow*" version of the amendments, in Part 1 – The Definitions, you can see that there are a few new definitions and some subtle definition changes that are being proposed for adoption. You can see that the Clean Unit, Plant-wide Applicability Limitation and the Pollution Control Project are being included here. Also worth noting is the Administrative revision definition in Section 2. I will discuss this change in more detail in a moment. On Page 2, Part 2 – The Adoption by Reference, in Section 20, you can see that we are proposing to update the adoption by reference date for 40 CFR Part 52.21. This change will bring into our regulations the Reform provisions that became effective in 2003.

Unrelated to the reform changes, we are also taking advantage of this opportunity to update the citations for 21 newly established MACT provisions in 40 CFR Part 63 as shown in this same section. These MACT provisions establish specific emissions levels and control technology requirements for operations such as municipal solid waste landfills, surface coating of large appliances, rubber tire manufacturing, and hydrochloric acid production plants. I have a complete list of these facilities and can make them available if you'd like.

On page 3, Part 3 – The Permitting Process Entry Point, in Section 22, you can see that NAC 445B.287 is the entry point or starting point for the permitting requirements. On that same page near the bottom, Section 30 contains proposed changes to NAC 445B.3361. This regulation provides for the different permitting options that are available to an applicant. We are proposing to expand this regulation to provide for the review and approval of the new Reform concepts. Currently, this regulation provides the Class I applicant with the option of directly obtaining an operating permit or they can obtain an operating permit to

construct. We are proposing to amend this regulation so that it will allow an applicant for a Clean Unit Designation, a Pollution Control Project or a Plant-wide Applicability Limitation to submit an application for an operating permit to construct and obtain approval for the respective submittal through the operating permit to construct provisions. Since there are no requirements for these approvals to be initially based in federally approved operating permits, we believe that the operating permit to construct provisions are the most efficient review and approval process for these projects.

The other change being proposed in 3361 is the incorporation of the administrative revision criteria. While related to the Reform provisions, it was determined during the review of the proposed amendments that the existing operating permit to construct program did not align properly with the federal Title V Program requirements. A facility will modify its operations essentially in two ways. By bringing in new emissions units' or by modifying existing emissions units. When bringing in a new unit, the existing Title V Operating Permit does not contain any conditions or requirements for the new process. The Title V provisions allow the facility to obtain a construction permit, install and start operation of the new unit and then submit an application to revise the existing Title V permit within 12-months of startup of the new process. However, for existing units that the facility wants to modify, the existing Title V operating permit will already have conditions established for the unit. The Title V Provisions do not allow for the issuance of a construction permit that could have conditions that are in conflict with the operating permit. For example, let's say that a chemical manufacturing facility has an existing package boiler, and they would like to modify there process such that they will need to increase the heat input of the existing boiler. The boiler's heat input is constrained by a condition of the existing Title V Operating Permit. Should the source choose to utilize the Operating Permit to Construct Program, a construction permit would be issued with the requested increased heat input. Without having the ability to revise the Title V permit condition, the source would have two conflicting requirements. To resolve this potential problem, we are proposing to incorporate an administrative revision provision that allows for the concurrent revision of a Title V Operating Permit whenever an Operating Permit to Construct is being issued and there is otherwise overlap between the two permits. The specifics of the administrative revision are contained in Section 8 under the operating permit requirements, and I'll point that out when I get to the proposed operating permit changes.

On Page 6, The Operating Permit to Construct Process is described. Starting near the bottom of that page you can see that we have the Application Content described in Sections 23, 24 and 31. The changes here are made to make it clear that these provisions are not required for an application for a Clean Unit, a PCP or a PAL. The requirements for each of these are contained in sections 9, 10 and 11, respectively. Those start on page 9 and finish on page 10. Additionally, in Section 31, the provisions have been amended to clarify what information is required for an existing major stationary source proposing a modification. These same clarifications are being proposed in the parallel operating permit provisions that I'll talk about in a moment.

In Section 26 and 27, starting at the bottom of page 10, we show the changes to the environmental evaluation provisions. As you can see in subsection 1 of NAC 445B.308 we're clarifying that an environmental evaluation must be conducted for PCP's and PAL's. In this same section, under subsection 4, you'll note that we're proposing additional changes to the requirements for non-attainment areas. Since this is unrelated to the Reform changes I'd like to come back to this and later in my presentation.

On page 14, we've grouped the Application Processing Timelines which are described in Sections 25 and 32. Here we are adding the application processing timelines for the Clean Unit Exemption, the PCP and



the PAL. As part of the Commission packet, we provided a graphical representation of all of the Operating Permit to Construct timelines that are described in NAC 445B.3364. I believe that the last two timelines represent the changes that we're proposing for these new permits.

Near the middle of page 17 we get into changes needed for permit content. Sections 33, 12 and 13 show the changes that are needed to incorporate the permit content criteria for the PCP, Clean Unit Exemption and the PAL.

Towards the bottom of page 20, Section 34 addresses permit expirations. The changes shown here address the expiration criteria established in the Reform provisions for Clean Unit's, PCP's and PAL's.

I believe that those are all of the amendments for the Operating Permit to Construct program.

On Page 21, we start near the bottom of the page with the Changes to the Operating Permit Program. Sections 28 and 8 contain criteria for an administrative amendment and an administrative revision. While sounding similar, these sections really do not have anything to do with one another. The changes shown in subsection 3 of Section 28 are to clarify that if an administrative amendment is made to a Class I Operating Permit then a copy of the amendment must be sent to the Administrator of EPA, including minor source amendments. It is not necessary for minor source amendments to be sent to EPA so we are proposing to clarify this language.

As I mentioned earlier, to resolve any potential conflict between Title V Operating Permit conditions and conditions that may be established under an Operating Permit to Construct, we're introducing the administrative revision allowance so that a Title V Operating Permit can be administratively revised at the same time that an Operating Permit to Construct is being issued. The addition of the revision criteria is shown in Section 8 on page 22.

As with the Application Content for the operating permit to construct, Section 35 shows the amendments needed to clarify what information is required for an existing major stationary source proposing a modification, in this case under the Operating Permit Program. Likewise, for the Application Processing Timelines, those are provided for in Section 37 on page 25. While there are no changes being made to the existing Operating Permit application processing timelines, the changes being proposed are to ensure that the language between the Operating Permit to Construct section and this one are consistent.

On Page 28, Section 38 contains proposed changes to the minor revision provisions. I'd like to come back to this Section in a moment, as it does not directly pertain to the Reform provisions.

The last portion of the Reform changes has to do with permit fees. Starting on Page 30, Section 29 contains proposed fees for a Clean Unit, a Pollution Control Project and for a Plant-wide Applicability Limitation. This Section also provides a fee for the new administrative revision of an operating permit. These fees were developed based on the estimated length of time for processing each of the different types of applications. The costs for public notice were also factored in to the proposed fees.

I believe that covers all the changes for incorporation of the Reform provisions. Before going through the remainder of proposed amendments I can try to answer any questions that you may have.

I'd like to go back to page 12 and review the proposed changes that relate to the new 8-hour Ozone non-attainment criteria. As you may know, on April 30<sup>th</sup>, EPA published nation wide attainment and non-attainment designations for the 8-hour Ozone standard. In general, those designations became effective on June 15<sup>th</sup>. Based on 2001-2003 data, Clark County was determined to be in non-attainment of the 8-hour ozone standard and was designated as basic non-attainment. The basic non-attainment designation is a new classification that was applied to those areas that had been in attainment with the old 1-hour ozone standard. Prior to the effective date, Clark County sought a 120-day extension to the designation to allow them the opportunity to demonstrate that the entire County need not be designated non-attainment and to propose a more appropriate non-attainment boundary. A 90-day extension, to September 13<sup>th</sup>, was granted. The County has prepared an analysis and, based on that analysis, recommended an 8-hour ozone non-attainment boundary to EPA. This recommendation is being reviewed by EPA, and the final non-attainment area boundary will be published in the Federal Register just prior to September 13<sup>th</sup>.

In any case, because of the new basic designation classification, the NDEP is proposing to amend the existing requirements for emissions controls and offsets in non-attainment areas to be consistent with what we think EPA will be requiring for basic non-attainment areas. The proposed amendments provide for Best Available Control Technology or BACT for control measures, and offsets at a 1:1 ratio for NO<sub>x</sub> and VOC's. Without amending the rule, the current provisions would otherwise require more stringent Lowest Achievable Emissions Rate or LAER, and greater than 1:1 offsets for VOC's and NO<sub>x</sub>. Even though the effective date for most 8-hour non-attainment areas in the US has passed, EPA has not yet finalized their guidance on what will constitute appropriate control requirements and offsets. For this reason, we may have to revise this regulation again in the future to be consistent with any final determinations made by EPA.

I think that covers the non-attainment changes. I'd like to go to Page 28 and talk a little about the minor revision public notice amendments.

At the last Commission hearing the NDEP agreed to streamline the public notice procedures for a minor revision to a Class I Operating Permit. The current version of the regulation requires the minor revision to go back to public notice if the Director revises the proposed revision after the initial public notice. These proposed amendments would eliminate this second public notice requirement. Those changes are shown in Section 38.

I think that takes us to the last part of the amendments, technical corrections updates and deletions. This starts on Page 33. Sections 14, 18 and 19 are changes related to adding or correcting NAC section references, and Section 21 adds a provision dealing with the delivery of written notice to a source.

Last is the repealed text. There are four definitions that we are asking to repeal because they are no longer utilized in the NAC.

I think that I have covered all of the Sections and would be happy to answer any questions.

**7) Michael A. Neher, Environmental Services Manager, City of Henderson, and President of the Nevada Section of WasteReuse Association**, sent in a letter stating: On behalf of the City of Henderson and the Nevada Section of the WasteReuse Association (Nevada WRA), I would like to

extend our support for the adoption of proposed changes to the reclaimed water regulations as found in the referenced petition.

For the last two years, the City and Nevada WRA have worked closely with the Nevada Water Environment Association and the NDEP to draft changes to the regulations which will enhance the development of reclaimed water in Nevada. The proposed modifications will improve the public's understanding and acceptance of reclaimed water while maintaining controls to protect public health and the environment. Reclaimed water has become an increasingly important component of water resources in the arid west, and the proposed changes to the regulations are supportive of water resources management in Nevada.

Thank you for presenting to the Commission these comments and our recommendation to approve the referenced petition.

8)

**NDEP PROCEDURAL FLOW TO:  
REVISED PROPOSED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION  
LCB File No. R125-04**

August 6, 2004

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

**PART 1 – DEFINITIONS**

**Section 1.** Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

**Sec. 2.** *“Administrative revision to a Class I operating permit” means a revision of an existing Class I operating permit that incorporates the relevant conditions of an operating permit to construct.*

**Sec. 15.** NAC 445B.036 is hereby amended to read as follows:

**445B.036 “Class I source” defined.** “Class I source” means any stationary source ~~[which]~~ :

- 1. Which is subject to the requirements of 42 U.S.C. §§ 7661 to 7661f, inclusive [-];*
- 2. For which the owner or operator has proposed the construction of a major modification; or*
- 3. Which is a major stationary source.*

**Sec. 3.** *“Clean unit” means a clean unit as defined in 40 C.F.R. § 52.21(b)(42) that has been designated by the Director pursuant to 40 C.F.R. § 52.21(y) and authorized in an operating permit to construct pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 13, inclusive, of this regulation.*

**Sec. 4.** *“Major modification” has the meaning ascribed to it in 40 C.F.R. § 52.21.*

**Sec. 5.** *“Major stationary source” has the meaning ascribed to it in 40 C.F.R. §52.21(b)(1).*

**Sec. 6.** *“Plantwide applicability limitation” means a plantwide applicability limitation as defined in 40 C.F.R. § 52.21(aa)(2)(v) that has been approved by the Director and authorized in an operating permit to construct pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 13, inclusive, of this regulation.*

**Sec. 7.** *“Pollution control project” means a pollution control project as defined in 40 C.F.R. § 52.21(b)(32) that has been approved by the Director and authorized in an operating permit to construct pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 13, inclusive, of this regulation.*

**Sec. 16.** NAC 445B.157 is hereby amended to read as follows:

**445B.157 “Revision of an operating permit” defined.** “Revision of an operating permit” means any modification of, or any administrative amendment *or administrative revision*, to an operating permit.

**Sec. 17.** NAC 445B.211 is hereby amended to read as follows:

**445B.211 Abbreviations.** The abbreviations used in NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 13, inclusive, of this regulation* have the following meanings:

<i>BACT</i> .....	<i>best available control technology</i>
Btu .....	British thermal unit
C.F.R. ....	Code of Federal Regulations
<del>[CO]</del> .....	<del>carbon monoxide</del>
CO <sub>2</sub> .....	carbon dioxide
°F .....	degree Fahrenheit
Hg .....	mercury
<del>[H<sub>2</sub>O]</del> .....	<del>water</del>
H <sub>2</sub> S .....	hydrogen sulfide
lb .....	pound
<i>NO</i> .....	<i>nitric oxide</i>
NO <sub>x</sub> .....	nitrogen oxides
O <sub>2</sub> .....	oxygen
ppm .....	parts per million
SO <sub>2</sub> .....	sulfur dioxide
VOC .....	volatile organic compound

## PART 2 – ADOPTION BY REFERENCE

**Sec. 20.** NAC 445B.221 is hereby amended to read as follows:

**445B.221 Adoption by reference of provisions of federal law and regulations.** 1. Title 40 C.F.R. §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, ~~[51.100(nn), 51.165 and 52.21,]~~ *51.100(nn) and 51.165*, and Appendix S and Appendix W of Title 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2002.

2. *Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 1, 2003.*

3. The following subparts of Title 40 C.F.R. Part 60 are hereby adopted by reference as they

existed on July 1, 2003:

(a) Subpart A, except §§ 60.4, 60.8(b)(3) and 60.11(e).

(b) 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, WW, XX, AAA, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW and AAAA.

~~[3-]~~ **4.** Subparts A, B, C, D, E, F, H, I, J, K, L, M, N, O, P, Q, R, T, V, W, Y, BB and FF of Title 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, 2003.

~~[4-]~~ **5.** Subparts A, B, 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, GGGG, HHHH, **JJJJ**, **NNNN**, **OOOO**, **QQQQ**, **RRRR**, SSSS, TTTT, UUUU, ~~[and]~~ VVVV, **WWWW**, **XXXX**, **BBBBB**, **CCCCC**, **FFFFF**, **JJJJJ**, **KKKKK**, **LLLLL**, **MMMMM**, **NNNNN**, **PPPPP**, **QQQQQ** and **SSSSS** of Title 40 C.F.R. Part 63 are hereby adopted by reference as they existed on July 1, 2003.

~~[5-]~~ **6.** Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, 2003. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, **and sections 2 to 13, inclusive, of this regulation**, the provisions of 40 C.F.R. Part 72 apply.

~~[6-]~~ **7.** Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, 2003. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, **and sections 2 to 13, inclusive, of this regulation**, the provisions of 40 C.F.R. Part 76 apply.

~~[7-]~~ **8.** Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, and the amendments to section 7412 contained in 40 C.F.R. Part 63, Subpart C, are hereby adopted by reference as they existed on July 1, 2003.

~~[8-]~~ **9.** 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 from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$40.

~~[9-]~~ **10.** A copy of the publications which contain these provisions may be obtained from the:

(a) Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954.

The price is:

(1) For the volume containing §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165 and Appendices S and W of Part 51 .....	\$ <del>[\$40]</del> \$44
(2) For § 52.21.....	<del>[\$5]</del> 58
(3) For Part 60 (Sections 60.1 to end) .....	58
(4) For Part 60 (Appendices).....	51
(5) For Parts 61 - 62 .....	43
(6) For Part 63 (Sections 63.1 to 63.599).....	58
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~~[10.]~~ **11.** For the purposes of the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

~~[11.]~~ **12.** Except as otherwise provided in subsections ~~[5 and 6,]~~ **6 and 7**, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3497, inclusive, **and sections 2 to 13, inclusive, of this regulation** for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

~~[12.]~~ **13.** For the purposes of this section, “administrator” as used in the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section means the Director.

### **PART 3 – THE PERMITTING PROCESS ENTRY POINT**

**Sec. 22.** NAC 445B.287 is hereby amended to read as follows:

**445B.287 Operating permits: General requirements; exception; restrictions on transfers.**

1. Except as otherwise provided in subsection 2 and in NAC 445B.288, an operating permit, operating permit to construct or permit to construct is required for each stationary source and:

(a) If a stationary source is a Class I source:

(1) A revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3425 , ~~[and]~~ 445B.344 **or section 8 of this regulation** before the stationary source may be modified; or

(2) A revision of the operating permit to construct is required pursuant to the requirements of paragraph (a) of subsection 1 of NAC 445B.3361 before the stationary source may be modified, **as appropriate.**

(b) If a stationary source is a Class II source, a revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3465 before the stationary source may be modified.

(c) If a stationary source is a Class III source, a revision of the operating permit is required pursuant to the requirements of NAC 445B.3493 before the stationary source may be modified.

2. A Class I source is not subject to the provisions of subparagraph (1) of paragraph (a) of subsection 1 if the source is not a major source, an affected source or a solid waste incineration unit required to obtain a permit pursuant to 42 U.S.C. § 7429(e). For a Class I source which is not a major source and which subsequently becomes subject to a standard or other requirement under 42 U.S.C. § 7411 or 7412, the Administrator will determine whether to exempt the source from the requirement to obtain a Class I operating permit at the time that the new standard is adopted.

3. An operating permit, operating permit to construct or permit to construct may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment reflecting a change of ownership or the name of the stationary source for the effective time remaining on the original operating permit pursuant to NAC 445B.319.

4. For the purposes of this section, “permit to construct” means a document issued and signed by the Director before November 1, 1995, certifying that:

(a) Adequate empirical data for a stationary source has been received and constitutes approval of location; or

(b) All portions of NAC 445B.305 to 445B.314, inclusive, and 445B.3395, and any other provisions of NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 13, inclusive, of this regulation* have been complied with and constitute approval of location and for construction.

**Sec. 30.** NAC 445B.3361 is hereby amended to read as follows:

**445B.3361 General requirements.** 1. To establish a new Class I stationary source or modify an existing Class I stationary source, the owner or operator of a proposed new Class I stationary source or the existing Class I stationary source must:

(a) Apply for and obtain a new or revised operating permit to construct pursuant to NAC 445B.001 to 445B.3497, inclusive ~~1~~, *and sections 2 to 13, inclusive, of this regulation*; or

(b) Apply for and obtain a new or revised Class I operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive ~~1~~

~~—2.1f~~, *and sections 2 to 13, inclusive, of this regulation.*

*2. To obtain a designation for an emission unit as a clean unit, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the designation of the clean unit pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 13, inclusive, of this regulation.*

*3. To obtain an approval of a pollution control project as specified in 40 C.F.R. § 52.21(z)(1), the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of a pollution control project pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 13, inclusive, of this regulation, before the owner or operator begins actual construction of the pollution control project.*

*4. To establish a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of the plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 13, inclusive, of this regulation. To revise or renew a Class I operating permit to construct for the approval of a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a revised or renewed Class I operating permit to construct for the approval of a plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 13, inclusive, of this regulation.*

*5. Except as otherwise provided in subsection 7, if an owner or operator obtains an operating permit to construct, the owner or operator is not required to obtain an operating permit or revised operating permit before commencing initial construction, start-up and operation of the proposed new Class I stationary source or the modification to the existing Class I stationary source.*

~~—[3.1f]~~

*6. Except as otherwise provided in this subsection and subsection 7, if an owner or operator has a valid operating permit to construct, the owner or operator may continue to operate a new Class I stationary source or modifications to an existing Class I stationary source under that operating permit to construct if the owner or operator submits a complete application for a Class I operating permit within 12 months after the date of initial start-up of the new Class I stationary source or modifications to the existing Class I stationary source. **The provisions of this subsection do not apply to:***

*(a) A Class I operating permit to construct for the designation of the clean unit. A Class I operating permit to construct for the designation of the clean unit must be incorporated into the Class I operating permit pursuant to 40 C.F.R. § 52.21(y)(8).*

*(b) A Class I operating permit for the approval of a pollution control project.*

*(c) A Class I operating permit to construct for the approval of a plantwide applicability limitation.*

*7. If the conditions of an existing Class I operating permit would prohibit the construction or change in operation of the existing Class I stationary source and the owner or operator is not seeking to revise the Class I operating permit at the Class I stationary source pursuant to paragraph (b) of subsection 1, the owner or operator must concurrently:*

*(a) Obtain a Class I operating permit to construct for the construction or change in operation of the existing Class I stationary source; and*

*(b) Obtain an administrative revision to an operating permit to incorporate the conditions of the Class I operating permit to construct into the existing Class I operating permit pursuant to section 8 of this regulation before commencing with the construction or change in operation of the existing Class I stationary source.*

**Sec. 36.** NAC 445B.3375 is hereby amended to read as follows:

**445B.3375 Class I-B application: Filing requirement.** 1. ~~[Aa]~~ *Except as otherwise provided in subsection 7 of NAC 445B.3361, an* owner or operator of a stationary source must file a Class I-B application, on a form provided by the Director, and obtain a Class I operating permit before commencing the construction, reconstruction or modification of:

(a) A Class I existing stationary source;

(b) A proposed modification for which a revision of an operating permit is requested pursuant to NAC 445B.3425 or 445B.344 to a Class I stationary source;

(c) A modification to a Class II source that results in total emissions of any regulated air pollutant above the thresholds defined in NAC 445B.094 for a major source;

(d) A proposed new Class I stationary source;

(e) A proposed new Class I stationary source subject to a standard, a limitation or any other requirement adopted pursuant to 42 U.S.C. § 7411 or 7412, unless the Class I stationary source is subject only to the requirements of 42 U.S.C. § 7412(r); or

(f) A proposed new stationary source which is included in a category of sources designated by the Administrator pursuant to 42 U.S.C. § 7661a(a).

2. If a new stationary source becomes subject to the requirements of a Class I stationary source, the owner or operator of the new stationary source must submit a Class I-B application to the Director within 12 months after the date on which the new stationary source becomes subject to the requirements for Class I sources.

3. An affected source that is not a major source and is not otherwise subject to the requirements of paragraph (f) of subsection 1 may apply for a Class II operating permit. If an affected source obtains a Class II operating permit pursuant to this subsection, the affected source must file with the Director:

(a) A completed application for an acid rain permit before the source commences operation; and

(b) A Class I-B application within 12 months after the date on which the Class II operating permit was issued to the affected source.

## **PART 4 – THE OPERATING PERMIT to CONSTRUCT PROCESS**

### **Application Content:**

**Sec. 23.** NAC 445B.295 is hereby amended to read as follows:



**445B.295 Application: General requirements.** ~~[Aa]~~ *Except as otherwise provided in sections 9, 10 and 11 of this regulation,*

*an* application for an operating permit must include:

1. Information to identify the applicant, including the name and address of the company or the name and address of the plant if different from that of the company, the name of the owner of the company and his agent, and the name and telephone number of the manager of the plant or another appropriate person to contact;
2. A description of the stationary source's processes and products by Standard Industrial Classification Code, including any processes and products associated with an alternative operating scenario identified by the owner or operator;
3. A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each emission unit which is a part of the stationary source;
4. An identification and a description of any equipment for the control of air pollution and any devices or activities for monitoring compliance with emission limitations;
5. Limitations on the operation of the stationary source or any standards for work practices which affect emissions for all regulated air pollutants at the stationary source;
6. An explanation of any proposed exemption from any applicable requirement;
7. The location of any records that the applicant must keep pursuant to the requirements of the operating permit, if the records are kept at a location other than the emitting facility; and
8. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

**Sec. 24.** NAC 445B.297 is hereby amended to read as follows:

**445B.297 Application: Submission of application and supplementary or corrected information.** 1. An applicant for an operating permit must:

(a) Submit an application to the Director on the appropriate form provided by the Director. A responsible official of the stationary source must certify that, based on information and belief formed after a reasonable inquiry, the statements in the application for the operating permit are true, accurate and complete.

(b) Submit supplementary facts or corrected information upon discovery.

(c) Provide any additional information that the Director requests in writing within the time specified in the Director's request.

2. In addition to the requirements set forth in subsection 1, an applicant for a Class I operating permit must submit a copy of the application directly to the Administrator. *The provisions of this subsection do not apply to applications for operating permits to construct that are subject to sections 9, 10 and 11 of this regulation.*

**Sec. 31.** NAC 445B.3363 is hereby amended to read as follows:

**445B.3363 Operating permit to construct: Application.** 1. ~~[Hh]~~ *Except as otherwise provided in sections 9, 10 and 11 of this regulation, in* addition to the information required pursuant to NAC 445B.295, an application for ~~[aa]~~ *a Class I* operating permit to construct or for a revision to ~~[aa]~~ *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. ~~[H]~~ *Except as otherwise provided in sections 9, 10 and 11 of this regulation, in addition to the information required pursuant to NAC 445B.295 and 445B.3368, an application for ~~[a]~~ a Class I operating permit to construct must contain:*

(a) For a proposed new major *stationary* source, ~~[as defined in 40 C.F.R. § 52.21, or]~~ a proposed major modification ~~[, as defined in 40 C.F.R. § 52.21,]~~ to an existing stationary source ~~[which is subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, as adopted pursuant to NAC 445B.221:]~~ *or a major modification at an existing major stationary source:*

(1) All information required ~~[by]~~ *pursuant to* 40 C.F.R. § 52.21; ~~[and]~~

(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 ~~[, as defined in NAC 445B.094,]~~ or a proposed modification ~~[, as defined in NAC 445B.099, to an existing stationary source]~~ which is not ~~[subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality:]~~ *a major modification:*

(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.

3. ~~[H]~~ *Except as otherwise provided in sections 9, 10 and 11 of this regulation, in addition to the information required in 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 make the determinations pursuant to 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 in 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. Except as otherwise provided in section 9 of this regulation, in addition to the information required pursuant to subsections 1, 2 ~~and 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. In addition to the information required pursuant to section 9 of this regulation, an application for a Class I operating permit to construct for a modification or project at an emission unit that has been designated as a clean unit must contain a demonstration that the modification or project will not cause the unit to lose its designation as a clean unit pursuant to 40 C.F.R. § 52.21(y)(9).*

*6. 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. 9. 1.** *In addition to the requirements set forth in subsection 1 of NAC 445B.297, an application for a Class I operating permit to construct for the designation of the clean unit must contain:*

*(a) A description of the air pollution control technology used to meet the emissions levels that are comparable to the BACT level of emissions reduction;*

*(b) A demonstration that the control technology qualifies or requalifies as an air pollution control technology and that an investment to install the control technology was made under the criteria established in 40 C.F.R. § 52.21(y)(3);*

*(c) A demonstration and analysis that the control technology used is comparable to the BACT in accordance with 40 C.F.R. § 52.21(y)(4);*

*(d) The date on which the air pollution control technology was installed for the emission unit;*

*(e) The date on which the air pollution control technology for the emission unit was placed into service, if known; and*

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

*2. Unless the Director determines otherwise, an application for a Class I operating permit to construct for the designation of the clean unit does not require an environmental evaluation pursuant to NAC 445B.308 to 445B.314, inclusive.*

**Sec. 10.** *In addition to the requirements set forth in subsection 1 of NAC 445B.297, an application for a Class I operating permit to construct for the approval of a pollution control project must contain:*

*1. All the information required pursuant to 40 C.F.R. § 52.21(z)(3); and*

*2. Any other information that the Director determines is necessary to process the application.*

**Sec. 11. 1.** *In addition to the requirements set forth in subsection 1 of NAC 445B.297, an application for a Class I operating permit to construct for the approval of a plantwide applicability limitation for a major stationary source must contain:*

*(a) All the information required pursuant to 40 C.F.R. § 52.21(aa)(3) and all the information necessary to establish the plantwide applicability limitation in accordance with the requirements of 40 C.F.R. § 52.21(aa)(4);*

*(b) A description of each pollutant for which the owner or operator is requesting a plantwide applicability limitation;*

*(c) For each pollutant described in paragraph (b), the proposed plantwide applicability limitation for the entire major stationary source;*

*(d) A monitoring plan that will be used to make an accurate determination of the plantwide emissions subject to the plantwide applicability limitation as specified in 40 C.F.R. § 52.21(aa)(12). The monitoring plan must identify, without limitation:*

*(1) The monitoring approach proposed for each emission unit;*

*(2) The minimum performance requirements of each such approach;*

*(3) The basis for any emissions factors proposed; and*

*(4) Any emission unit for which the owner or operator cannot demonstrate a correlation between the monitored parameters and the plantwide applicability limitation at all operating points;*

*(e) If the owner or operator cannot demonstrate a correlation between the monitored parameters and the plantwide applicability limitation at all operating points as identified in paragraph (d), and the owner or operator requests to establish default values for determining compliance with the plantwide applicability limitation, any proposed default values to be used for determining compliance with the plantwide applicability limitation based on the highest potential emissions potentially operated for each emission unit;*

*(f) A description of the calculation procedures that the source will use to convert monitored data into monthly emissions on a 12-month rolling period;*

*(g) A description of any emission units that were permanently shut down after the baseline actual emissions period and the associated emissions;*

*(h) A description of any emission units for which construction began after the baseline actual emissions period and the associated emissions; and*

*(i) Any other requirements or information that the Director determines is necessary to implement and enforce the plantwide applicability limitation.*

*2. An application for a Class I operating permit to construct to allow a plantwide applicability limitation to expire and not be renewed must contain:*

*(a) A description of the proposed distribution of the emissions allowed by the plantwide applicability limitation for each emission unit or group of emission units at the major stationary source; and*

*(b) A description of the proposed methods for complying with the distribution of the allowable emissions provided in paragraph (a).*

*3. In addition to the information required pursuant to subsection 1, an application for a Class I operating permit to construct for the renewal of a plantwide applicability limitation must contain the information required pursuant to 40 C.F.R. § 52.21(aa)(10) for each plantwide applicability limitation pollutant.*

*4. In addition to the information required pursuant to subsection 1, an application for a Class I operating permit to construct for increasing a plantwide applicability limitation must contain all the information required pursuant to 40 C.F.R. § 52.21(aa)(11).*

## **Environmental Evaluation:**

Sec. 26. NAC 445B.308 is hereby amended to read as follows:

**445B.308 Prerequisites and conditions for issuance of operating permits: Environmental evaluation; compliance with control strategy; exemption from environmental evaluation.** 1.

Before an operating permit or a revision of an operating permit may be issued ~~[for a]~~ :

*(a) For a new or modified stationary source [.] ;*

*(b) For a pollution control project;*

*(c) For a plantwide applicability limitation; or*

*(d) To allow a plantwide applicability limitation to expire and not be renewed,*

➔ in accordance with NAC 445B.308 to 445B.314, inclusive, the applicant must submit to the Director an environmental evaluation and any other information the Director ~~[deems]~~ *determines is* necessary to make an independent air quality impact assessment.

2. The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the environmental evaluation submitted by the applicant shows, or if the Director determines, in accordance with the provisions of this section, that the stationary source:

(a) Will prevent the attainment and maintenance of the state or national ambient air quality standards. For the purposes of this paragraph, only those ambient air quality standards that have been established in NAC 445B.22097 need to be considered in the environmental evaluation.

(b) Will cause a violation of the applicable control strategy contained in the approved air quality plan.

(c) Will cause a violation of any applicable requirement.

(d) Will not comply with subsection 3.

3. ~~[F]~~ *Except as otherwise provided in subsection 4, to* be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification, as those terms are defined in 40 C.F.R. § 51.165, who proposes to construct in an area designated nonattainment for the regulated air pollutant or pollutants for which the stationary source or modification is major must:

(a) Comply with the provisions of 40 C.F.R. § 51.165, as incorporated by reference in NAC 445B.221.

(b) Adopt as an emission limitation for the stationary source the lowest achievable emission rate for each nonattainment regulated air pollutant from the stationary source.

(c) Demonstrate that all other stationary sources within this State which are owned, operated or controlled by the applicant are in compliance or on a schedule of compliance with NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 13, inclusive, of this regulation* and all other applicable requirements and conditions of the permit.

(d) Conduct an analysis of any anticipated impact on visibility in any federal Class I area which may be caused by emissions from the stationary source.

(e) Conduct an analysis of alternative sites, sizes, processes of production and techniques for environmental control for the proposed stationary source. Except as otherwise provided in this paragraph, the analysis must demonstrate that the benefits of the proposed stationary source

significantly outweigh the detrimental environmental and social effects that will result from its location, construction or modification. If the major stationary source or major modification proposes to locate in an area designated as marginal nonattainment for ozone, the analysis must demonstrate an offset ratio of 1.2 to 1 for volatile organic compounds and nitrogen oxides. For the purposes of this paragraph, a stationary source which is major for volatile organic compounds or nitrogen oxides shall be deemed major for ozone if ~~[it proposes to locate]~~ *the proposed location of the major stationary source or major modification is* in an area designated as nonattainment for ozone.

(f) Comply with one of the following:

(1) Sufficient offsets in emissions must be obtained by the time the proposed stationary source begins operation to ensure that the total allowable emissions of each nonattainment regulated air pollutant from the existing stationary sources in the area, those stationary sources in the area which have received their respective permits and the proposed stationary source will be sufficiently less than the total emissions from the existing stationary sources and those stationary sources in the area which have received their respective permits before the proposed stationary source applies for its operating permit or a revision of an operating permit, in order to achieve reasonable further progress; or

(2) If the major stationary source or major modification is located in a zone identified by the Administrator as one to be targeted for economic development, *the owner or operator must* demonstrate that the emission from the stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for a regulated air pollutant for the nonattainment area. ➔ For the purposes of this paragraph, offsets must comply with the provisions of Appendix S of 40 C.F.R. Part 51, as incorporated by reference in NAC 445B.221, and be coordinated with the appropriate local agency for the control of air pollution.

*4. To be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification, as those terms are defined in 40 C.F.R. § 51.165, who proposes to construct in an area designated as basic nonattainment for ozone must:*

*(a) Comply with the provisions of 40 C.F.R. § 51.165, as incorporated by reference in NAC 445B.221.*

*(b) Adopt as an emission limitation for the stationary source the best available control technology for volatile organic compounds and nitrogen oxides from the stationary source.*

*(c) Demonstrate that all other stationary sources within this State that are owned, operated or controlled by the applicant are in compliance or on a schedule of compliance with NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 13, inclusive, of this regulation and all other applicable requirements and conditions of the permit.*

*(d) Demonstrate an offset ratio of 1 to 1 for volatile organic compounds and nitrogen oxides. For the purposes of this paragraph, a stationary source that is major for volatile organic compounds or nitrogen oxides shall be deemed major for ozone if the proposed location of the major stationary source or major modification is located in an area designated as basic nonattainment for ozone.*

*(e) Comply with one of the following:*

*(1) Sufficient offsets in emissions must be obtained by the time the proposed stationary source begins operation to ensure that the total allowable emissions of each nonattainment regulated air pollutant from the existing stationary sources in the area, those stationary sources in the area that have received their respective permits and the proposed stationary source will be sufficiently less than the total emissions from the existing stationary sources and those stationary*

*sources in the area that received their respective permits before the proposed stationary source applies for its operating permit or a revision of an operating permit, in order to achieve reasonable further progress; or*

*(2) If the major stationary source or major modification is located in a zone identified by the Administrator as one to be targeted for economic development, demonstrate that the emissions from the stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for a regulated air pollutant for the nonattainment area.*

*➔ For the purposes of this paragraph, offsets must comply with the provisions of Appendix S of 40 C.F.R. Part 51, as incorporated by reference in NAC 445B.221, and be coordinated with the appropriate local agency for the control of air pollution.*

5. To be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification ~~[as those terms are defined in 40 C.F.R. § 52.21,]~~ who proposes to construct in any area designated as attainment or unclassifiable under 42 U.S.C. § 7407(d), must comply with the provisions of 40 C.F.R. § 52.21, as incorporated by reference in NAC 445B.221.

~~[5.]~~ 6. The Director may impose any reasonable conditions on his approval, including conditions requiring the owner or operator of the stationary source to:

(a) Conduct monitoring of the quality of the ambient air at the facility site for a reasonable period before the commencement of construction or modification and for any specified period after operation has begun at the stationary source; and

(b) Meet standards for emissions that are more stringent than those found in NAC 445B.001 to 445B.3497, inclusive ~~+~~ ~~—6.]~~, and sections 2 to 13, inclusive, of this regulation.

7. Where a proposed stationary source located on contiguous property is constructed or modified in phases which individually are not subject to review as provided in NAC 445B.308 to 445B.314, inclusive, all phases occurring since November 7, 1975, must be added together for determining the applicability of those sections.

~~[7.]~~ 8. Approval and issuance of an operating permit or a revision of an operating permit for any stationary source does not affect the responsibilities of the owner or owners to comply with any other portion of the control strategy.

~~[8.]~~ 9. An owner or operator of a Class II source may request an exemption from the requirement to submit an environmental evaluation. Within 30 days after receipt of a written request for an exemption, the Director shall grant or deny the request and notify the owner or operator in writing of his determination.

~~[9.]~~ 10. As used in this section:

(a) “Lowest achievable emission rate” has the meaning ascribed to it in 40 C.F.R. § 51.165, as incorporated by reference in NAC 445B.221.

(b) “Offset ratio” means the percentage by which a reduction in an emission must exceed the corresponding increase in that emission.

(c) “Reasonable further progress” means the annual incremental reductions in emissions of the relevant regulated air pollutant that are required by 42 U.S.C. §§ 7501 to 7515, inclusive, or are required by the Administrator to ensure attainment of the applicable standard for national ambient air quality by the applicable date.

**Sec. 27.** NAC 445B.310 is hereby amended to read as follows:

**445B.310 Environmental evaluation: Applicable sources.** An applicant for an operating permit, a revision to an operating permit or a request for a change of location, which is not subject to the provisions of 40 C.F.R. ~~[Part]~~ § 52.21, as adopted by reference in NAC 445B.221, must submit with the application an environmental evaluation for:

1. A new stationary source which emits, or has the potential to emit, greater than 25 tons of a regulated air pollutant per year;
2. A modification to an existing stationary source that meets the following criteria:
  - (a) The existing stationary source has the potential to emit greater than 25 tons of a regulated air pollutant per year; and
  - (b) The proposed modification has the potential to emit greater than 10 tons of a regulated air pollutant per year; ~~[or]~~
3. *The approval of a pollution control project, the approval of a plantwide applicability limitation or the approval to allow a plantwide applicability limitation to expire and not be renewed; or*
4. Upon written notice from the Director, any other source or combination of sources.

### **Application Processing Timelines:**

**Sec. 25.** NAC 445B.298 is hereby amended to read as follows:

**445B.298 Application: Official date of submittal.** Except as otherwise provided in NAC 445B.3364, 445B.3395 ~~[or 445B.3457,]~~, *445B.3457 or 445B.3487*, the official date of submittal of an application for:

1. An operating permit;
2. An operating permit to construct;
3. A revision of an existing operating permit; or
4. A revision of an existing operating permit to construct,

➔ is the date on which the Director determines that the application is complete.

**Sec. 32.** NAC 445B.3364 is hereby amended to read as follows:

**445B.3364 Operating permit to construct: Review of application and determination of completeness by director; notice.** 1. Except for sources that are subject to the permitting requirements set forth in 40 C.F.R. § 52.21, 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 ~~[an]~~ *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 the submittal of an application for a Class I operating permit to construct for the designation of the clean unit or a Class I operating permit to construct for the approval of a pollution control project, within 10 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 10 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 11th day after the date of receipt, whichever is earlier. Within 60 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 designation of the clean unit or Class I operating permit to construct for the approval of a pollution control project.*

*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.*

5. If, after the official date of submittal, the Director discovers that additional information is required to act on ~~the~~ 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.3497, inclusive ~~[-]~~, *and sections 2 to 13, inclusive, of this regulation.* 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.

~~[4-]~~ 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 333 West Nye Lane, Carson City, Nevada, and in the air quality region where the source is located for 30 days to enable public and EPA participation and comment.

~~[5.]~~ **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; ~~[and]~~

(e) Establish a 30-day period for comment from the public and the EPA ~~[-~~

~~-6.]~~; and

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

**8.** In addition to the requirements set forth in subsection ~~[5.]~~ **7**, the notice required for a Class I operating permit to construct or for a revision of ~~[an]~~ **a Class I** operating permit to construct must identify:

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

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

(c) 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) 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; ~~[and]~~

(e) A brief description of the procedures for public comment and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing ~~[-~~

~~-7.]~~; and

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

**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.

~~[8.]~~ **10.** Except as otherwise provided in ~~[subsection 9.]~~ **subsections 11, 12 and 13**, 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.

~~[9. For]~~ **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 control strategy contained in the air quality plan.*

*11. Except as otherwise provided in subsection 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.*

*12. The Director shall issue or deny a Class I operating permit to construct for the designation of a clean unit, for the approval of a pollution control project or 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.*

*13. 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.*

*14. 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).*

*15. If, on his own or pursuant to a request by a person pursuant to subsection 14, 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.*

## **Permit Content:**

**Sec. 33.** NAC 445B.3365 is hereby amended to read as follows:

**445B.3365 Operating permit to construct: Required conditions.** *Except as otherwise provided in sections 12 and 13 of this regulation:*

1. The Director shall cite the legal authority for each condition contained in an operating permit to construct.

2. An operating permit to construct must contain the following conditions:

(a) The expiration date of the operating permit to construct must be defined as described in NAC 445B.3366.

(b) The holder of the operating permit to construct shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes, *without limitation*, all records regarding calibration and maintenance of the monitoring equipment and all original stripchart recordings for continuous monitoring instrumentation.

(c) Each of the conditions and requirements of the operating permit to construct is severable and, if any are held invalid, the remaining conditions and requirements continue in effect.

(d) The holder of the operating permit to construct shall comply with all conditions of the operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the operating permit to construct by the Director; or

(3) The reopening or revising of the operating permit to construct by the holder of the operating permit to construct as directed by the Director.

(e) The need to halt or reduce activity to maintain compliance with the conditions of the operating permit to construct is not a defense to noncompliance with any condition of the operating permit to construct.

(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the operating permit to construct for cause.

(g) The operating permit to construct does not convey any property rights or any exclusive privilege.

(h) The holder of the operating permit to construct shall provide the Director, within a reasonable time, with any information that the Director requests in writing to determine whether cause exists for revoking or terminating the operating permit to construct, or to determine compliance with the conditions of the operating permit to construct.

(i) The holder of the operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the operating permit to construct where:

(I) The stationary source is located;

(II) Activity related to emissions is conducted; or

(III) Records are kept pursuant to the conditions of the operating permit to construct;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the operating permit to construct or applicable requirements.

(j) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the operating permit to construct are true, accurate and complete.

3. An operating permit to construct must contain:

(a) All applicable requirements, emission limits and standards;

(b) Monitoring methods adequate to show compliance;

(c) Adequate recordkeeping and reporting requirements as deemed by the Director; and

(d) Any other requirements deemed necessary by the Director.

***4. In addition to the requirements established in subsections 1, 2 and 3, if the operating permit to construct is a Class I operating permit to construct for the approval of a pollution control project, the Class I operating permit to construct must contain the information set forth in 40 C.F.R. § 52.21 (z)(6).***

***Sec. 12. 1. The Director shall cite the legal authority for each condition contained in a Class I operating permit to construct for the designation of a clean unit.***

*2. A Class I operating permit to construct for the designation of a clean unit must contain the following conditions:*

*(a) The expiration date of the Class I operating permit to construct must be determined in accordance with subsection 5 of NAC 445B.3366.*

*(b) The holder of the Class I operating permit to construct shall retain records of all required monitoring data and supporting information for at least 5 years after the date of the sample collection, measurement, report or analysis. For the purposes of this paragraph, "supporting information" includes, without limitation, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.*

*(c) Each of the conditions and requirements of the Class I operating permit to construct is severable and, if any is held invalid, the remaining conditions and requirements continue in effect.*

*(d) The Director may revise, revoke and reissue, reopen and revise, or terminate the Class I operating permit to construct for cause.*

*(e) The Class I operating permit to construct does not convey any property right or exclusive privilege.*

*(f) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the Class I operating permit to construct are true, accurate and complete.*

*3. In addition to the requirements set forth in subsections 1 and 2, a Class I operating permit to construct for the designation of a clean unit must contain:*

*(a) All applicable requirements, emission limits and standards;*

*(b) Monitoring methods adequate to show compliance;*

*(c) Adequate recordkeeping and reporting requirements determined necessary by the Director; and*

*(d) Any other requirements determined necessary by the Director.*

*4. In addition to the requirements established in subsections 1, 2 and 3, a Class I operating permit to construct for the designation of a clean unit must contain the information set forth in 40 C.F.R. § 52.21(y)(8).*

**Sec. 13. 1.** *The Director shall cite the legal authority for each condition contained in a Class I operating permit to construct for the approval of a plantwide applicability limitation.*

*2. A Class I operating permit to construct for the approval of a plantwide applicability limitation must contain the following conditions:*

*(a) The expiration date of the Class I operating permit to construct must be determined in accordance with subsection 6 of NAC 445B.3366.*

*(b) The holder of the Class I operating permit to construct shall retain records pursuant to 40 C.F.R. § 52.21(aa)(13).*

*(c) Each of the conditions and requirements of the Class I operating permit to construct is severable and, if any is held invalid, the remaining conditions and requirements continue in effect.*

*(d) The holder of the Class I operating permit to construct shall comply with all conditions of the Class I operating permit to construct. Any noncompliance constitutes a violation and is a ground for:*

- (1) *An action for noncompliance;*
- (2) *The revoking and reissuing, or the terminating, of the Class I operating permit to construct by the Director; or*
- (3) *The reopening or revising of the Class I operating permit to construct by the holder of the Class I operating permit to construct as directed by the Director.*
- (e) *The need to halt or reduce activity to maintain compliance with the conditions of the Class I operating permit to construct is not a defense to noncompliance with any condition of the Class I operating permit to construct.*
- (f) *The Director may revise, revoke and reissue, reopen and revise, or terminate the Class I operating permit to construct for cause.*
- (g) *The Class I operating permit to construct does not convey any property right or exclusive privilege.*
- (h) *The holder of the Class I operating permit to construct shall provide the Director, within a reasonable time, with any information that the Director requests in writing to determine whether cause exists for revoking or terminating the Class I operating permit to construct, or to determine compliance with the conditions of the Class I operating permit to construct.*
- (i) *The holder of the Class I operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:*
- (1) *Enter upon the premises of the holder of the Class I operating permit to construct where:*
- (I) *The stationary source is located;*
- (II) *Activity related to emissions is conducted; or*
- (III) *Records are kept pursuant to the conditions of the Class I operating permit to construct;*
- (2) *Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the Class I operating permit to construct;*
- (3) *Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the Class I operating permit to construct; and*
- (4) *Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the Class I operating permit to construct or applicable requirements.*
- (j) *A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the Class I operating permit to construct are true, accurate and complete.*
3. *In addition to the requirements established in subsections 1 and 2, a Class I operating permit to construct for the approval of a plantwide applicability limitation must contain the information set forth in 40 C.F.R. § 52.21(aa)(7) as adopted by reference in NAC 445B.221.*

## **Permit Expiration:**

**Sec. 34.** NAC 445B.3366 is hereby amended to read as follows:

**445B.3366 Operating permit to construct: Expiration; extension.** 1. If construction will occur in one phase, an operating permit to construct for a new or modified stationary source expires if

construction is not commenced within 18 months after the date of issuance thereof or construction of the facility is delayed for 18 months after initiated. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.

2. If construction will occur in more than one phase, the projected date of the commencement of construction of each phase of construction must be approved by the Director. An operating permit to construct expires if the initial phase of construction is not commenced within 18 months after the projected date of the commencement of construction approved by the Director. The Director may extend only the date on which the initial phase of construction may be commenced upon a showing that the extension is justified.

3. An operating permit to construct issued to a new *major* stationary source or issued for a *major* modification to an existing stationary source that is subject to the permitting requirements set forth in 40 C.F.R. § 52.21 is subject to the expiration requirements established in 40 C.F.R. § 52.21(r)(2).

4. ~~[A#]~~ *Except as otherwise provided in this subsection, an* operating permit to construct expires if a complete application for a Class I operating permit or modification of an existing Class I operating permit is not submitted within 12 months after the date of initial start-up. *The provisions of this subsection do not apply to:*

*(a) A Class I operating permit to construct for the designation of a clean unit;*

*(b) A Class I operating permit for the approval of a pollution control project; or*

*(c) A Class I operating permit to construct for the approval of a plantwide applicability limitation.*

*5. An operating permit to construct for the designation of a clean unit expires pursuant to the expiration provision in 40 C.F.R. § 52.21(y)(6) or if the designation of the clean unit is lost for failing to comply with the provisions of 40 C.F.R. § 52.21(y)(9).*

*6. A plantwide applicability limitation expires at the end of the plantwide applicability limitation effective period in accordance with 40 C.F.R. § 52.21(aa)(9), unless the plantwide applicability limitation is renewed pursuant to subsection 3 of section 11 of this regulation. If the owner or operator is not going to renew the plantwide applicability limitation, the operating permit for the Class I stationary source must be revised to incorporate the redistribution of the emissions allowed by the plantwide applicability limitation that is expiring in accordance with subsection 2 of section 11 of this regulation. For the purposes of this subsection, “plantwide applicability limitation effective period” means the “PAL effective period” as that term is defined in 40 C.F.R. § 52.21(aa)(2)(vii).*

## **PART 5 – CHANGES NECESSARY FOR THE OPERATING PERMIT PROCESS**

**Sec. 28.** NAC 445B.319 is hereby amended to read as follows:

**445B.319 Operating permits: Administrative amendment.** 1. The holder of an operating permit may request or the Director may initiate an administrative amendment of an operating permit to:

(a) Correct typographical errors;

(b) Identify a change in the name, address or telephone number of any person identified in the operating permit, or provide a similar minor administrative change at the stationary source;

(c) Require more frequent monitoring or reporting by the holder of the operating permit;

(d) Add the serial numbers of specific pieces of equipment which were not available at the time of the issuance of or revision of the operating permit; or

(e) Allow for a change in ownership or operational control of a stationary source if the Director determines that no other change in the operating permit is necessary. A person who requests an administrative amendment pursuant to this paragraph must submit to the Director a written agreement specifying a date for the transfer of responsibility for the operating permit and an agreement between the current and the new holder of the operating permit regarding insurance coverage and liability.

2. A holder of an operating permit must request an administrative amendment on an application provided by the Director. The application must be accompanied by a fee in the amount specified in NAC 445B.327.

3. The Director shall:

(a) Issue or deny an application for an administrative amendment within 30 days after receipt of the application.

(b) **[Send]** *If the administrative amendment is for a Class I operating permit, send* a copy of the administrative amendment to the Administrator.

**Sec. 8. 1.** *To modify a Class I stationary source in accordance with subsection 7 of NAC 445B.3361, the owner or operator of the Class I stationary source must submit an application for an administrative revision to a Class I operating permit to incorporate the conditions of a Class I operating permit to construct into the existing Class I operating permit for the Class I stationary source.*

*2. The Director shall issue a revised Class I operating permit or deny the application for an administrative revision to a Class I operating permit within the timelines established for processing an application for a Class I operating permit to construct as specified in NAC 445B.3364.*

*3. An application for an administrative revision to a Class I operating permit must comply with the requirements for an application for a Class I operating permit set forth in NAC 445B.295, 445B.297 and 445B.3368, and the requirements relating to public participation and comment and a review by any affected states and the Administrator pursuant to NAC 445B.3395.*

*4. An application for an administrative revision to a Class I operating permit must be accompanied by the appropriate fee set forth in NAC 445B.327.*

## **Application Content:**

**Sec. 35.** NAC 445B.3368 is hereby amended to read as follows:

**445B.3368 Application: Additional requirements; exception.** 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 **[significant] major** modification to an existing stationary source : ~~[which is subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, as adopted pursuant to NAC 445B.221:]~~

(1) All information required **[by] pursuant to** 40 C.F.R. § 52.21; **[and]**

(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 **[modification] revision** to an existing stationary source : ~~[which is not subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality:]~~

(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 **[modification] 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) 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 in 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.*

## **Application Processing Timelines:**

**Sec. 37.** NAC 445B.3395 is hereby amended to read as follows:

**445B.3395 Review of application and determination of completeness by director; notice; expiration of permit.** 1. Except for sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21 and as otherwise provided in this subsection, within 60 days after the date on which an application for a Class I operating permit or for the significant revision of a Class I operating permit is received, 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 that the application is complete. Unless the Director determines that the application is incomplete within 60 days after the date of receipt, the official date of submittal shall be deemed to be the date on which the Director determines that the application is complete or 61 days after the date of receipt, whichever is earlier.

2. 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 or for the revision of a Class I operating permit, 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.

3. If, after the official date of submittal, the Director discovers that additional information is required to act on the application, the Director may request such additional information that is necessary to determine whether the proposed operation will comply with all the requirements set forth in NAC 445B.001 to 445B.3497, inclusive ~~[ ]~~, **and sections 2 to 13, inclusive, of this regulation.** 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 pursuant to subsection 1 or 2.

4. Except as otherwise provided in this section, within 180 days after the official date of submittal of an application for a Class I operating permit or for the revision of a Class I operating permit, the Director shall make a preliminary determination to issue or deny the Class I operating permit or the revision of the Class I operating permit. The Director shall give preliminary notice of his intent to issue or deny the Class I operating permit or the revision of the Class I operating permit within 180 days after the official date of submittal.

5. Within 10 working days after the receipt of an application for a minor revision of a Class I operating permit, the Director shall determine whether the application is complete. If substantial additional information is required, the Director shall determine the application to be incomplete and return the application to the applicant. If substantial additional information is not required, the Director shall determine the application to be complete. Unless the Director determines that the application is incomplete within 10 working days after the date on which the Director receives the application, the official date of submittal is the date on which the Director determines that the application is complete or 11 working days after the date of receipt, whichever is earlier.

6. The Director's review and preliminary intent to issue or deny a Class I operating permit or the revision of a Class I operating permit and the proposed conditions for the Class I operating permit must be made public and maintained on file with the Director during normal business hours at 333 West Nye Lane, Carson City, Nevada, and in the air quality region where the source is located for 30 days to enable public participation and comment and a review by any affected states.

7. The Director shall:

(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the Class I stationary source is located or in a state publication designed to give general public notice;

(b) Provide written notice to:

(1) Persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list; and

(2) Any affected state;

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

(d) Provide a copy of the Director's review of the application, the Director's preliminary intent to issue or deny the Class I operating permit or the revision of a Class I operating permit, and the proposed Class I operating permit to the Administrator; and

(e) Establish a 30-day period for public comment.

8. The provisions of subsections 6 and 7 do not apply to:

(a) An administrative amendment to a Class I operating permit made pursuant to NAC 445B.319;

(b) A change without revision to a Class I operating permit made pursuant to NAC 445B.342; or

(c) A minor revision of a Class I operating permit made pursuant to NAC 445B.3425, if the Director determines that the minor revision does not result in a significant change in air quality at any location where the public is present on a regular basis.

9. The notice required for a Class I operating permit or for a revision of a Class I operating permit pursuant to subsection 7 must identify:

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

(b) The name and address of the authority processing the Class I operating permit;

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

(d) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the proposed conditions for the Class I operating permit, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the Class I operating permit and which are relevant to the determination of the issuance of the Class I operating permit; and

(e) A brief description of the procedures for public comment and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

10. All comments on the Director's review and preliminary intent for the issuance or denial of a Class I operating permit or a revision of a Class I operating permit 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.

11. Except as otherwise provided in subsection 12 and NAC 445B.319, 445B.342 and 445B.3425, within 12 months after the official date of submittal of a Class I-B application, the Director shall issue or deny the application for a Class I-B operating permit or for a revision of the Class I-B operating permit. The Director shall make his decision by taking into account **written** :

(a) **Written** comments from the public, affected states and the Administrator ~~[-and the comments]~~ ;

(b) **Comments** made during public hearings ~~[on]~~ **concerning the application and** the Director's ~~[review and preliminary intent]~~ **preliminary determination** for issuance or denial ~~[-, information]~~ ;

(c) **Information** submitted by proponents of the project ; and ~~[the]~~

(d) **The** effect of such a facility on the maintenance of the ~~[State,]~~ **state** and national ambient air quality standards contained in NAC 445B.22097 and the control strategy contained in the air quality plan.

➔ The Director shall send a copy of the final Class I-B operating permit to the Administrator.

12. For stationary sources subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, adopted pursuant to NAC 445B.221, the Director shall issue or deny an application for a Class I operating permit, or ~~[for]~~ the revision or renewal of a Class I operating permit, within 12 months after the official date of submittal of an application for a new Class I operating permit or the revision of a Class I operating permit. The application shall be deemed to be complete for the purposes of 40 C.F.R. § 52.21 on the date that the Director makes the preliminary determination to issue or deny the Class I operating permit or the revision of the Class I operating permit.

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

14. Any person may petition the Administrator to request that he object to a Class I operating permit or a revision of a Class I operating permit as provided in 40 C.F.R. § 70.8(d).

15. If the Administrator objects to the issuance of a Class I operating permit or a revision of a Class I operating permit of his own accord or in response to a public petition, the Director shall submit revised proposed conditions for the Class I operating permit or the revision of a Class I

operating permit in response to the objection within 90 days after the date on which he is notified of the objection.

16. If construction will occur in one phase, a Class I operating permit or the revision of a Class I operating permit for a new or modified stationary source, other than a stationary source subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, expires if construction is not commenced within 18 months after the date of issuance thereof or construction of the facility is delayed for 18 months after initiated. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.

17. If construction will occur in more than one phase, the projected date of the commencement of construction of each phase of construction must be approved by the Director. A Class I operating permit or the revision of a Class I operating permit for a new or modified stationary source, other than a stationary source subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, expires if the initial phase of construction is not commenced within 18 months after the projected date of the commencement of construction approved by the Director. The Director may extend only the date on which the initial phase of construction may be commenced upon a showing that the extension is justified.

**Sec. 38.** NAC 445B.3425 is hereby amended to read as follows:

**445B.3425 Minor revision of permit.** 1. A minor revision may be made to a Class I operating permit if the revision:

- (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);
  - (e) Is not a modification pursuant to any provision of 42 U.S.C. §§ 7401 to 7515, inclusive;
- [and]**
- (f) Does not result in an increase in allowable emissions that exceeds any of the following specified thresholds:
    - (1) Carbon monoxide, 100 tons per year ; ~~±~~
    - (2) Nitrogen oxides, 40 tons per year ; ~~±~~
    - (3) Sulfur dioxide, 40 tons per year ; ~~±~~
    - (4) PM<sub>10</sub>, 15 tons per year ; ~~±~~
    - (5) Ozone, 40 tons per year of volatile organic compounds ; ~~±~~
    - (6) Sulfuric acid mist, 7 tons per year ~~±~~ ; *and*
    - (7) Hydrogen sulfide (H<sub>2</sub>S), 10 tons per year ~~±~~ ; *and*

*(g) Is not a major modification at an existing major stationary source.*

2. An owner or operator must request a minor revision on an application form provided by

the Director. 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 revision set forth in subsection 1; and
- (f) Any relevant information concerning the proposed change which is required by NAC 445B.295 and 445B.3368.

3. The Director shall:

(a) Determine, in accordance with subsection 5 of NAC 445B.3395, whether the application for a minor revision is complete.

(b) Transmit the application to the Administrator within 10 working days after the official date of submittal of the application.

(c) Provide notice to any affected state within 10 working days after the official date of submittal of the application for a minor revision.

(d) Unless the application is for a minor revision described in subsection 8 of NAC 445B.3395, enable public participation and comment and provide notice to the public concerning the application for a minor revision in the manner set forth in subsections 6 and 7 of NAC 445B.3395.

(e) Provide a 30-day period for comment by any affected state and the public, if applicable, concerning the application.

(f) Within 45 days after the official date of submittal of the application:

(1) Determine whether the proposed minor revision meets the criteria for a minor revision set forth in this section;

(2) Determine whether the proposed conditions of the operating permit are adequate; and

(3) If the Director determines that the proposed modification does not meet the criteria for a minor revision, deny the proposed revision and notify the applicant and the Administrator.

(g) If the Director determines that the applicant's proposed conditions of the operating permit are not adequate, draft appropriate conditions for the operating permit. Proposed conditions drafted by the Director must be submitted to the Administrator for review.

(h) ~~Unless the application is for a minor revision described in subsection 8 of NAC 445B.3395, enable public participation and comment and provide notice to the public concerning any proposed conditions drafted pursuant to paragraph (g) in the manner set forth in subsections 6 and 7 of NAC 445B.3395.~~

~~(i) Notify the Administrator of any recommendations from an affected state which the Director does not accept.~~

4. The Director may issue the minor revision upon notification by the Administrator that the Administrator does not object to the minor revision. If the Administrator does not notify the Director within 45 days after the date on which the Administrator received the notification pursuant to this section or within 45 days after the date on which the Administrator receives the Director's proposed conditions, whichever is later, the Administrator shall be deemed to have not objected to the minor revision.

5. If the Administrator objects to the minor revision, the Director shall:

- (a) Deny the application for the minor revision;

(b) Determine whether the minor revision should be reviewed under the procedures for a significant revision; or

(c) Revise the proposed revision of the operating permit and forward it to the Administrator for review. ~~[If the Director revises the proposed revision of the operating permit, the Director shall, unless the application is for a minor revision described in subsection 8 of NAC 445B.3395, enable public participation and comment and provide notice to the public concerning the Director's revision of the operating permit in the manner set forth in subsections 6 and 7 of NAC 445B.3395.]~~

6. The Director shall take action pursuant to subsection 4 or 5 within 90 days after the official date of submittal of an application for a minor revision or within 15 days after the Administrator's 45-day review period ends, whichever is later.

## **PART 6 – FEES**

**Sec. 29.** NAC 445B.327 is hereby amended to read as follows:

**445B.327 Fees; late penalty.** 1. Except as otherwise provided in this section, if a stationary source is not subject to the permitting requirements of 40 C.F.R. § 52.21, as incorporated by reference by NAC 445B.221, the fees for an operating permit are as follows:

(a) Class I operating permit to construct.....	\$20,000
(b) Conversion of an operating permit to construct into a Class I operating permit involving only one phase.....	5,000
(c) Conversion of an operating permit to construct into a Class I operating permit involving two or more phases (per phase).....	5,000
(d) Modification to an operating permit to construct.....	5,000
(e) Revision of an operating permit to construct.....	5,000
(f) Class I operating permit .....	30,000
(g) Significant revision of a Class I operating permit .....	20,000
(h) Minor revision of a Class I operating permit.....	5,000
(i) Renewal of a Class I operating permit .....	5,000
(j) Class II operating permit .....	3,000
(k) Revision of a Class II operating permit.....	2,000
(l) Renewal of a Class II operating permit .....	2,000
(m) Class II general permit .....	400
(n) Class III operating permit.....	300
(o) Revision of a Class III operating permit.....	200
(p) Renewal of a Class III operating permit.....	250
(q) Surface area disturbance permit .....	400
(r) Revision of a surface area disturbance permit .....	200
(s) Administrative amendment of an operating permit .....	200
(t) Replacement of a lost or damaged operating permit to construct or an operating permit.....	200
(u) Request for change of location of an emission unit .....	100
<i>(v) Administrative revision to a Class I operating permit .....</i>	<i>500</i>
<i>(w) For each designation of a clean unit listed in a Class I operating permit to construct for the designation of a clean unit.....</i>	<i>5,000</i>



- (x) For each approval of a pollution control project listed in a Class I operating permit to construct for the approval of a pollution control project..... 7,500
- (y) Class I operating permit to construct for the approval of a plantwide applicability limitation .....20,000

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

2. The fee to revise an operating permit so that the operating permit is consistent with any guidelines established by the Division of Environmental Protection of the State Department of Conservation and Natural Resources pursuant to NAC 445B.255 is \$1,000. An applicant must pay the entire fee when he submits an application to the Director.

3. Except as otherwise provided in this section, if a stationary source is subject to the permitting requirements of 40 C.F.R. § 52.21, as incorporated by reference by NAC 445B.221, the owner or operator of that stationary source must obtain an operating permit. The fees for such an operating permit are as follows:

- (a) Operating permit for a stationary source subject to the program for the prevention of significant deterioration of air quality.....\$50,000
- (b) Revision of an operating permit for a stationary source subject to the permitting requirements of 40 C.F.R. § 52.21 to authorize a major modification of the stationary source .....50,000
- (c) Class I operating permit to construct.....50,000
- (d) Conversion of an operating permit to construct into a Class I operating permit involving only one phase.....5,000
- (e) Conversion of an operating permit to construct into a Class I operating permit involving two or more phases (per phase).....5,000
- (f) Revision of an operating permit to construct .....5,000
- ~~{(g) Revision of an operating permit for a modification that is not a major modification, as defined in 40 C.F.R. § 52.21, of a stationary source ..... 10,000}~~
- ~~—{(h)} (g) Administrative amendment of an operating permit or operating permit to construct .....200~~
- ~~{(i)} (h) Replacement of a lost or damaged operating permit to construct or an operating permit.....200~~
- ~~{(j)} (i) Request for the change of location of an emission unit .....100~~
- (j) Administrative revision to a Class I operating permit.....500**

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

4. If no changes need to be made to convert an operating permit to construct into a Class I operating permit, no fee will be assessed.

5. Except as otherwise provided in this subsection, the annual fee based on emissions for a stationary source is \$5.60 per ton times the total tons of each regulated pollutant emitted during the preceding calendar year. The annual fee based on emissions does not apply to:

- (a) Emissions of carbon monoxide; or
- (b) Class III stationary sources.

6. To determine the fee set forth in subsection 5:

- (a) Emissions must be calculated using:
  - (1) The emission unit’s actual operating hours, rates of production and in-place control equipment;
  - (2) The types of materials processed, stored or combusted; and
  - (3) Data from:

- (I) A test for emission compliance;
- (II) A continuous emission monitor;
- (III) The most recently published issue of *Compilation of Air Pollutant Emission Factors*, EPA Publication No. AP-42; or
- (IV) Other emission factors or methods which the Director has validated; or

(b) If paragraph (a) does not apply to a stationary source that was in operation during the preceding calendar year, emissions must be calculated using the permitted allowable emissions for that stationary source.

7. The annual fee for maintenance of a stationary source is:

- (a) For a Class I source..... \$12,500
- (b) For a Class II source that has the potential to emit 50 tons or more per year of any one regulated air pollutant except carbon monoxide.....3,000
- (c) For a Class II source that has the potential to emit 25 tons or more per year but less than 50 tons per year of any one regulated air pollutant except carbon monoxide.....1,000
- (d) For a Class II source that has the potential to emit less than 25 tons per year of any one regulated air pollutant except carbon monoxide.....250
- (e) For a Class III source.....250
- (f) For a surface area disturbance.....250

8. The State Department of Conservation and Natural Resources shall collect all fees required pursuant to subsections 5 and 7 not later than July 1 of each year.

9. Except as otherwise provided in this subsection, the owner or operator of a source who does not pay his annual fee installments within 30 days after the date on which payment becomes due will be assessed a late penalty in the amount of 25 percent of the amount of the fees due. The late fee must be paid in addition to the annual fees. The late penalty set forth in this subsection does not apply if, at the time that the late fee would otherwise be assessed, the owner or operator is in negotiations with the Director concerning his annual fees.

**PART 7 – OTHER, NON-NSR RELATED CHANGES**

**Sec. 14.** NAC 445B.001 is hereby amended to read as follows:

**445B.001 Definitions.** As used in NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 13, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445B.002 to 445B.211, inclusive, *and sections 2 to 7, inclusive, of this regulation* have the meanings ascribed to them in those sections.

**Sec. 18.** NAC 445B.22043 is hereby amended to read as follows:

**445B.22043 “Sulfur emissions” defined.** For the purposes of NAC 445B.2204 to ~~445B.22063~~, **445B.2205**, inclusive, total feed sulfur must be calculated as the aggregate sulfur content of all fuels and other feed materials whose products of combustion and gaseous by-products are emitted to the atmosphere.

When furnaces, sinter machines, sinter boxes, roasters, converters, or other similar devices are used for converting ores, concentrates, residues, or slag to the metal or the oxide of the metal either wholly or in part, the combined sulfur input of all units must be used to determine the allowable emission.

**Sec. 19.** NAC 445B.2205 is hereby amended to read as follows:

**445B.2205 Sulfur emissions: Other processes which emit sulfur.** 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:

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

when “E” is equal to or greater than 10 pounds per hour. When “E” is less than 10 pounds 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 per hour.

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

3. When 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 this section and NAC 445B.22047 . ~~[and 445B.22057.]~~

4. Incinerators used solely for the control of odor by the combustion of noxious sulfur containing compounds are exempt from *the provisions of* NAC 445B.2204 to ~~[445B.22063,]~~ *445B.2205, inclusive, and are governed by the provisions of* NAC *445B.22027 to 445B.22037, inclusive, and 445B.287 to 445B.3497, inclusive, and* ~~[445B.22027 to 445B.22037, inclusive.]~~ *sections 2 to 13, inclusive, of this regulation.*

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 or 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 40 C.F.R. Part 51, Appendix W, Guideline on Air Quality Models, adopted by reference pursuant to NAC 445B.221, except that the Director may authorize the modification of a model specified in the Guideline on Air Quality Models or the use of a model not included in the Guideline on Air Quality Models if the Director determines that such modification or use is appropriate.

**Sec. 21.** NAC 445B.230 is hereby amended to read as follows:

**445B.230 Plan for reduction of emissions.** 1. Any person who is able to cause or permit the emission of 100 tons (90.7 metric tons) or more per year of a regulated air pollutant from a stationary source shall prepare and submit to the Director a plan for reducing or eliminating that emission in accordance with the episode stages of alert, warning, and emergency as defined in the air quality plan for the State of Nevada.

2. Any person required to have an operating permit who is able to cause or permit the emission of less than 100 tons (90.7 metric tons) per year of a regulated air pollutant shall, upon written notice from the Director, prepare and submit to the Director a plan for reducing or eliminating that emission in accordance with the episode stages of alert, warning, and emergency as defined in the air quality plan for the State of Nevada.

3. The written notice required under subsection 2 must be transmitted in accordance with subsection ~~[3 of NAC 445B.275]~~ 4 to all persons who are within the same classification of sources as defined in the *Standard Industrial Classification Manual*, 1987, and who are able to cause or permit the emission of less than 100 tons (90.7 metric tons) per year of a regulated air pollutant.

*4. Written notice shall be deemed to have been served if delivered to the person to whom addressed or if sent by registered or certified mail to the last known address of the person.*

**Sec. 39.** NAC 445B.032, 445B.139, 445B.140 and 445B.195 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**445B.032 “Calcine” defined. (NRS 445B.210)** “Calcine” means the solid materials produced by a roaster.

**445B.139 “Precious metal” defined. (NRS 445B.210)** “Precious metal” means a metal of the gold, silver or platinum metal group.

**445B.140 “Precious metal processing plant” defined. (NRS 445B.210)** “Precious metal processing plant” means a facility which is primarily engaged in crushing, screening, grinding, handling, loading, transferring or storing any precious metal or precious metal ore.

**445B.195 “Thermit process” defined. (NRS 445B.210)** “Thermit process” means an exothermic reaction produced by heating finely divided aluminum on a metal oxide causing reduction of the oxide.