

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

**LCB# T009-11 SEC# P2011-01**

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

AUTHORITY: §1, NRS 445B.210.

A TEMPORARY REGULATION relating to the State Environmental Commission; revising the definition of “major source” and “regulated air pollutant;” revising the provisions governing the adoption by reference of certain federal regulations by the State Environmental Commission; and providing other matters properly relating thereto.

**Section. 1.** NAC 445B.094 is hereby amended to read as follows:

**NAC 445B.094 “Major source” defined.**

1. Except as otherwise provided in subsection 3, “major source” means any stationary source that:

- (a) Is located on one or more contiguous or adjacent properties;
- (b) Is under the common control of the same person or persons;
- (c) Belongs to a single major industrial grouping as described in the *Standard Industrial Classification Manual*, as incorporated by reference in NAC 445B.221; and

(d) Meets one of the following conditions:

(1) Is located in a nonattainment area and is required to obtain an operating permit pursuant to 42 U.S.C. §§ 7501 to 7515, inclusive;

(2) Directly emits or has the potential to emit:

(I) One hundred tons per year or more of any regulated air pollutant, excluding particulate matter more than 10 microns in diameter ~~§~~, *except that:*

*(i) Greenhouse gases, as defined in NRS 445B.137, shall not be subject to regulation unless, as of July 1, 2011, the greenhouse gas emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year CO<sub>2</sub> equivalent emissions and 100 tons per year on a mass basis;*

*(ii) The term “tons per year CO<sub>2</sub> equivalent emissions” shall represent an amount of greenhouse gases emitted, and shall be computed by multiplying the mass amount of emissions in tons per year, for each of the six greenhouse gases in the pollutant greenhouse gases, by the gas’s associated global warming potential as published at 40 C.F.R. Part 98, Table A-1, and summing the resultant value for each to compute a tons per year of CO<sub>2</sub> equivalent emissions;*

*(iii) The term “tons per year on a mass basis” shall represent an amount of greenhouse gases emitted, and shall be calculated as the sum of the six greenhouse gases on a mass basis; or*

(II) Ten tons per year or more of a hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants or a lesser quantity as established by the Commission; or

(3) Is located in a particulate matter (PM<sub>10</sub>) “serious” nonattainment area and directly emits or has the potential to emit 70 tons per year or more of PM<sub>10</sub>.

↳ The Director shall consider fugitive emissions in determining whether a stationary source is major for any source category listed in 40 C.F.R. § 52.21(b)(1)(iii), as adopted by reference pursuant to [NAC 445B.221](#), or whether a stationary source of a hazardous air pollutant is a major source. To determine whether a stationary source is a major source of hazardous air pollutants under 42 U.S.C. § 7412, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station must not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control.

2. In determining whether a stationary source is a major source, the Director shall not consider the emissions from mobile sources subject to regulation under Title II of the federal Clean Air Act, 42 U.S.C. §§ 7521 to 7590, inclusive, or from nonroad engines.

3. For the purposes of the program for the prevention of significant deterioration of air quality (PSD), the term “major source” is synonymous with the term “major stationary source” as that term is defined in 40 C.F.R. § 52.21(b)(1), as adopted by reference in [NAC 445B.221](#).

**Sec. 2.** NAC 445B.153 is hereby amended to read as follows:

**NAC 445B.153 “Regulated air pollutant” defined.** “Regulated air pollutant” means:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant subject to:
  - (a) A national ambient air quality standard and any constituents or precursors for such pollutants identified by the Administrator;
  - (b) A standard or requirement adopted pursuant to 42 U.S.C. § 7411; or
  - (c) A standard established pursuant to [NAC 445B.22097](#);
3. Any Class I or Class II substance subject to a standard adopted pursuant to 42 U.S.C. §§ 7671 to 7671q, inclusive; or
4. Any pollutant that otherwise is subject to regulation under the Act, except that any hazardous air pollutant regulated under 42 U.S.C. § 7412 is not a regulated air pollutant unless the hazardous air pollutant is also regulated as a constituent or precursor of an air pollutant listed pursuant to 42 U.S.C. § 7408.

*5. As used in this section, “subject to regulation” for a stationary source that is subject to:*

- (a) The provisions of 40 C.F.R. §52.21, has the meaning ascribed to it in 40 C.F.R. § 52.21(49), as incorporated by reference in NAC 445B.221; or*
- (b) The provisions of 40 C.F.R. Part 70, has the meaning ascribed to it in 40 C.F.R. § 70.2.*

**Sec. 3.** NAC 445B.221 is hereby amended to read as follows:

**NAC 445B.221 Adoption by reference and applicability of certain provisions of federal law and regulations.**

1. Title 40 C.F.R. §§ 51.100(s), 51.100(nn), and 51.301 and Appendix S of 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, ~~2009~~ 2010.
2. Title 40 C.F.R. § 51.165 is hereby adopted by reference as it existed on July 1, 2002.
3. Appendices M and W of 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, ~~2009~~ 2010.

4. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 1, ~~2009~~ **2010**.

5. ~~The~~ **Except as otherwise provided in subsection 6, the** following subparts of 40 C.F.R. Part 60 are hereby adopted by reference:

(a) Subpart A, except §§ 60.4, 60.8(b)(2), 60.8(b)(3) and 60.11(e), as it existed on July 1, ~~2009~~ **2010**;

(b) Section 60.21 of Subpart B, as it existed on July 1, ~~2006~~ **2010**;

(c) Subparts C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, DDDD, EEEE, FFFF, IIII, JJJJ and KKKK as they existed on July 1, ~~2009~~ **2010**; and

(d) Subpart HHHH, except §§ 60.4105(b)(2), 60.4106, 60.4120 to 60.4142, inclusive, 60.4153(a) and (b) and 60.4176, as set forth in Volume 70 of the Federal Register at pages 28606 et seq., May 18, 2005, and the amendments to Subpart HHHH as set forth in Volume 71 of the Federal Register at pages 33388 et seq., June 9, 2006.

6. **The amendments to:**

(a) **Subparts Ce and Ec of Title 40 C.F.R. Part 60 as set forth in Volume 76 of the Federal Register at pages 18407 et seq., April 4, 2011; and**

(b) **Subpart F of Title 40 C.F.R. Part 60 as set forth in Volume 75 of the Federal Register at pages 54970 et seq., September 9, 2010, are hereby adopted by reference.**

7. Appendices A, B and F of 40 C.F.R. Part 60 are hereby adopted by reference as they existed on July 1, ~~2009~~ **2010**.

8. **The amendments to Appendices B and F of Title 40 C.F.R. Part 60 as set forth in Volume 75 of the Federal Register at pages 54970 et seq., September 9, 2010, are hereby adopted by reference.**

~~7-~~ **9.** Subparts A, C, D, E, F, H, I, J, K, L, N, O, P, Q, R, T, V, W, Y, BB and FF of 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, ~~2009~~ **2010**.

~~8-~~ **10.** Appendix B of Title 40 C.F.R. Part 61 is hereby adopted by reference as it existed on July 1, ~~2009~~ **2010**.

~~9-~~ **11.** ~~Subparts~~ **Except as otherwise provided in subsection 12, subparts** A, B, C, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEEE, FFFFF, GGGG, HHHH, JJJJ, KKKK, LLLL, MMMM, NNNN, PPPP, QQQQ, SSSS, WWWW, YYYYY, ZZZZ, DDDDD, EEEEE, FFFFF, GGGGG, LLLLL, MMMMM, NNNNN, OOOOO, PPPPP, QQQQQ, RRRRR, SSSSS and TTTTT of 40 C.F.R. Part 63 are hereby adopted by reference as they existed on July 1, ~~2009~~ **2010**.

12. **The amendments to:**

(a) **Subpart LLL of Title 40 C.F.R. Part 63 as set forth in Volume 75 of the Federal Register at pages 54970 et seq., September 9, 2010; and**

*(b) Subpart DDDDD of Title 40 C.F.R. Part 63 as set forth in Volume 76 of the Federal Register at pages 15608 et seq., March 21, 2011, are hereby adopted by reference.*

~~[10]~~ **13.** *Appendix A of Title 40 C.F.R. Part 63, as set forth in Volume 75 of the Federal Register at page 54970, September 9, 2010, is hereby adopted by reference.*

**14.** Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, ~~[2009]~~ **2010**. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, the provisions of 40 C.F.R. Part 72 apply.

~~[11]~~ **15.** Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, ~~[2009]~~ **2010**. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, the provisions of 40 C.F.R. Part 76 apply.

~~[12]~~ **16.** Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, is hereby adopted by reference as it existed on October 1, 1993.

~~[13]~~ **17.** The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained, free of charge, from the United States Department of Labor at the Internet address <http://www.dol.gov>.

~~[14]~~ **18.** A copy of the publications which contain the provisions adopted by reference in subsections 1 to ~~[12]~~ **16**, inclusive, may be obtained from the:

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

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

~~[15]~~ **19.** The following standards of ASTM International are hereby adopted by reference:

(a) ASTM D5504, “Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence,” set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D5504 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of \$37.

(b) ASTM D2234 and D2234M, “Standard Practice for Collection of a Gross Sample of Coal,” set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D2234 and D2234M is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of \$37.

(c) ASTM D2013, “Standard Practice for Preparing Coal Samples for Analysis,” set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D2013 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of \$43.

(d) ASTM D6784, “Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),” set forth in Volume 11.07 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D6784 is available by mail from ASTM International, 100 Barr Harbor Drive, West

Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of \$43.

(e) ASTM D2015, “Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter,” dated April 10, 2000. A copy of ASTM D2015 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of \$52.

(f) ASTM D3286, “Standard Test Method for Gross Calorific Value of Coal and Coke by the Isooperibol Bomb Calorimeter,” dated July 10, 1996. A copy of ASTM D3286 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of \$52.

(g) ASTM D1989, “Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Isooperibol Calorimeters,” dated July 10, 1997. A copy of ASTM D1989 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of \$52.

~~[46]~~ **20.** For the purposes of the provisions of 40 C.F.R. Parts 60, 61 and 63, adopted by reference pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

~~[47]~~ **21.** Except as otherwise provided in subsections ~~[40]~~ **14** and ~~[41]~~ **15**, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3689, inclusive, for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

~~[48]~~ **22.** For the purposes of this section, “administrator” as used in the provisions of 40 C.F.R. Part 60, except Subpart B § 60.21 and Subpart HHHH §§ 60.4101 to 60.4105, inclusive, 60.4107 to 60.4114, inclusive, 60.4151 to 60.4173, inclusive, and 60.4175, and Parts 61 and 63, adopted by reference pursuant to this section, means the Director.

**Sec. 4.** NAC 445B.230 is hereby amended to read as follows:

**NAC 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, *except for greenhouse gas emissions*, 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 applicable state implementation plan.

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, *except for greenhouse gas emissions*, 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 applicable state implementation plan.

3. The written notice required under subsection 2 must be transmitted in accordance with subsection 4 to all persons who are within the same classification of sources as defined in the *Standard Industrial Classification Manual*, adopted by reference in NAC 445B.221, 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, *except for greenhouse gas emissions*.

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. 5.** 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.....	500
(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.....	500
(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
(v) Administrative revision to a Class I operating permit.....	500
(w) Class I operating permit to construct for the approval of a plant wide 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 adopted by reference in 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) Administrative amendment of an operating permit or operating permit to construct.....200
- (h) Replacement of a lost or damaged operating permit to construct or an operating permit.....200
- (i) Request for the change of location of an emission unit.....100
- (j) Administrative revision to a Class I operating permit..... 50

➤ 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 Class I stationary source is \$16 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 emissions of carbon monoxide *or emissions of greenhouse gases, as defined in NRS 445B.137*.

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. Except as otherwise provided in this section, the annual fee for maintenance of a stationary source is:

- (a) For a Class I source qualifying as:
    - (1) A major stationary source that is issued a prevention of significant deterioration permit.....\$30,000
    - (2) A major stationary source that is not issued a prevention of significant deterioration permit.....25,000
    - (3) A major source that is not a major stationary source and is issued a Class I operating permit..... 20,000
    - (4) A major source that is not a major stationary source and is issued a Class I operating permit for a municipal solid waste land..... 15,000
  - (b) For a Class II source that has the potential to emit:
    - (1) Eighty tons or more per year but less than 100 tons per year of any one regulated air pollutant except carbon monoxide..... 5,000
    - (2) Eight tons or more per year but less than 10 tons per year of any single hazardous air pollutant..... 5,000
    - (3) Twenty tons or more per year but less than 25 tons per year of any combination of hazardous air pollutants..... 5,000
    - (4) Fifty tons or more per year but less than 80 tons per year of any one regulated air pollutant except carbon monoxide..... 3,000
    - (5) Twenty-five tons or more per year but less than 50 tons per year of any one regulated air pollutant except carbon monoxide..... .. 1,000
    - (6) Less than 25 tons per year of any one regulated air pollutant except carbon monoxide..... 500
  - (c) For a Class II source that is issued a Class II general permit..... 500
  - (d) For a Class III source..... 250
  - (e) For a surface area disturbance permit for a total disturbance of:
    - (1) Five or more acres but less than 20 acres..... 250
    - (2) Twenty or more acres but less than 50 acres..... 500
    - (3) Fifty or more acres but less than 100 acres.....750
    - (4) One hundred or more acres but less than 200 acres..... 1,000
    - (5) Two hundred or more acres but less than 500 acres..... 2,000
    - (6) Five hundred or more acres..... 5,000
8. The fee for conducting an informal review of a proposed new major source or proposed modification of an existing major source pursuant to NAC 445B.2915 is \$50,000.
9. The annual fee for maintenance of a stationary source for the fiscal year during which an operating permit or an operating permit to construct is issued for the stationary source is included in the fee for the operating permit or operating permit to construct.
10. For the fiscal year beginning on July 1, 2009, and for each fiscal year thereafter, the Director shall:
- (a) Increase the dollar per ton emissions rate that is used to calculate the annual fee based on emissions by an amount that is equal to 2 percent of the dollar per ton emissions rate for the immediately preceding fiscal year; and
  - (b) Increase the annual fee for maintenance of a stationary source by an amount that is equal to 2 percent of the annual fee for maintenance of the stationary source for the immediately preceding fiscal year.

↪ The Director may, during any fiscal year, suspend an increase in a rate or fee specified in this subsection.

11. 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.

12. 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.

13. As used in this section, “prevention of significant deterioration permit” means an operating permit that is issued for a major source in accordance with the conditions set forth in 40 C.F.R. § 52.21.