

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R139-06

Effective September 18, 2006

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

AUTHORITY: §§1-14, NRS 445B.210, 445B.300.

A REGULATION relating to air pollution; eliminating operating permits to construct for pollution control projects and the designation of clean units; eliminating the fees for issuance of those permits; and providing other matters properly relating thereto.

Section 1. NAC 445B.295 is hereby amended to read as follows:

445B.295 Except as otherwise provided in NAC ~~[445B.33633, 445B.33635 and]~~

445B.33637, 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. 2. NAC 445B.297 is hereby amended to read as follows:

445B.297 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, in writing, that the Director requests 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 NAC ~~445B.33633, 445B.33635 and~~ 445B.33637.

Sec. 3. NAC 445B.308 is hereby amended to read as follows:

445B.308 1. In any area designated as attainment or unclassifiable for a regulated air pollutant, before an operating permit or a revision of an operating permit may be issued:

(a) For a new or modified stationary source;

(b) ~~For a pollution control project;~~

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

~~(d)~~ (c) 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 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 4.

3. The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the Director determines that the degree of emission limitation required for control of an air pollutant under this section is affected by that amount of the stack height of any source as exceeds good engineering practice stack height, or any other dispersion technique.

4. Except as otherwise provided in subsection 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. § 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 adopted 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.3689, inclusive, 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 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 adopted 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. § 51.165, as adopted by reference in NAC 445B.221, 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 adopted 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.3689, inclusive, 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, the owner or operator must 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 adopted by reference in NAC 445B.221, and be coordinated with the appropriate local agency for the control of air pollution.

6. 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 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 adopted by reference in NAC 445B.221.

7. 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.3689, inclusive.

8. ~~Where~~ *If* 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.

9. 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.

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 adopted 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. 4. NAC 445B.310 is hereby amended to read as follows:

445B.310 1. 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. § 52.21, as adopted by reference in NAC 445B.221, must submit with the application an environmental evaluation for:

(a) A new stationary source which emits, or has the potential to emit, greater than 25 tons of a regulated air pollutant per year;

(b) A modification to an existing stationary source that meets the following criteria:

(1) The existing stationary source has the potential to emit greater than 25 tons of a regulated air pollutant per year; and

(2) The proposed modification has the potential to emit greater than 10 tons of a regulated air pollutant per year;

(c) 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

(d) Upon written notice from the Director, any other source or combination of sources.

2. An owner or operator of a Class II source may request an exemption from the requirement to submit an environmental evaluation with the application. 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. If such an exemption is granted, the Director shall perform the environmental evaluation.

Sec. 5. NAC 445B.327 is hereby amended to read as follows:

445B.327 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
(v) Administrative revision to a Class I operating permit.....	500
(w) For each designation of a clean unit listed in a Class I operating permit to construct for the designation of a clean unit	5,000
—(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~~ *adopted* by reference ~~by~~ *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..... 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.

Sec. 6. NAC 445B.3361 is hereby amended to read as follows:

445B.3361 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:

- (1) Operating permit to construct pursuant to NAC 445B.001 to 445B.3689, inclusive; or
- (2) Class I operating permit pursuant to NAC 445B.001 to 445B.3689, inclusive; and

(b) If the owner or operator of the Class I stationary source operates a thermal unit that emits mercury, apply for and obtain a new or revised mercury operating permit to construct for the thermal unit that emits mercury and comply with the provisions set forth in NAC 445B.3611 to 445B.3689, inclusive.

~~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 a clean unit pursuant to NAC 445B.001 to 445B.3689, inclusive.~~

~~—3.— To obtain the 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.3689, inclusive, 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.3689, inclusive. 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.3689, inclusive.

~~{5.}~~ 3. Except as otherwise provided in subsection ~~{7.}~~ 5, 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.

~~{6.}~~ 4. Except as otherwise provided in this subsection and subsections ~~{7 and 8.}~~ 5 and 6, 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 a clean unit. A Class I operating permit to construct for the designation of a 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] a~~ Class I operating permit to construct for the approval of a plantwide applicability limitation.

~~{7.}~~ 5. 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) For the construction or change in operation of the existing Class I stationary source:
- (1) Obtain a Class I operating permit to construct; or
 - (2) If the construction or change in operation involves mercury emissions from a thermal unit that emits mercury, obtain a mercury operating permit to construct pursuant to NAC 445B.3611 to 445B.3689, inclusive; 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 NAC 445B.3441 before commencing with the construction or change in operation of the existing Class I stationary source.

~~8.~~ **6.** If an owner or operator has a valid mercury operating permit to construct, the owner or operator may continue to operate the thermal unit that emits mercury which is located at an existing Class I stationary source if the owner or operator submits a complete application to revise the existing Class I operating permit within 12 months after the determination of the NvMACT contained in the mercury operating permit to construct by the Director.

~~9.~~ **7.** As used in this section:

- (a) “Mercury emissions” has the meaning ascribed to it in NAC 445B.3623.
- (b) “Mercury operating permit to construct” has the meaning ascribed to it in NAC 445B.3625.
- (c) “NvMACT” has the meaning ascribed to it in NAC 445B.3629.
- (d) “Thermal unit that emits mercury” has the meaning ascribed to it in NAC 445B.3643.

Sec. 7. NAC 445B.3363 is hereby amended to read as follows:

445B.3363 1. Except as otherwise provided in NAC ~~445B.33633, 445B.33635 and~~ 445B.33637, in addition to the information required pursuant to NAC 445B.295, an application for a Class I operating permit to construct or for a revision of a Class I operating permit to construct must include:

- (a) Descriptions of all emissions of any regulated pollutants for which the source is defined as a major source.
- (b) A description of all emissions of regulated air pollutants from all emission units.
- (c) An identification and a description of all points of emissions and all activities which may generate emissions of the regulated air pollutants described pursuant to paragraph (a) in sufficient detail to establish the basis for the applicability of standards and fees.
- (d) The emission rates of all regulated air pollutants that are subject to an emissions limitation pursuant to an applicable requirement. The emission rates must be described in tons per year and in such terms as are necessary to establish compliance using the applicable standard reference test method.
- (e) Any other information required by any applicable requirement.
- (f) The calculations on which the information described in this subsection are based.
- (g) Citations to and a description of all applicable requirements.
- (h) A reference to any applicable test method used for determining compliance with each applicable requirement.

2. Except as otherwise provided in NAC ~~445B.33633, 445B.33635 and~~ 445B.33637, in addition to the information required pursuant to NAC 445B.295 and 445B.3368, an application for a Class I operating permit to construct must contain:

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

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

(2) A description of all emissions of each regulated pollutant 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 modification which is not 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. Except as otherwise provided in NAC ~~445B.33633, 445B.33635,~~ 445B.33637, in addition to the information required ~~in~~ *pursuant to* subsections 1 and 2, an application for a

Class I operating permit to construct for a modification at an existing major stationary source that is not a major modification must contain:

(a) All applicable information required to 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 of 40 C.F.R. § 52.21(a)(2);

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

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

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

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

4. ~~Except as otherwise provided in NAC 445B.33633, in~~ **In** addition to the information required pursuant to subsections 1, 2 and 3, an application for an operating permit to construct must include an environmental evaluation pursuant to NAC 445B.308, 445B.310 and 445B.311.

5. ~~In addition to the information required pursuant to NAC 445B.33633, 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. 8. NAC 445B.3364 is hereby amended to read as follows:

445B.3364 1. Except for sources that are subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 45 days after the date of receipt of an application for a Class I operating permit to construct or for the revision of a Class I operating permit to construct, the Director shall determine if the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the Director shall determine the application to be complete. Unless the Director determines that the application is incomplete within 45 days after the date of receipt of the application, the official date of submittal of the application shall be deemed to be the date on which the Director determines that the application is complete or the 46th day after the date of receipt, whichever is earlier. Within 90 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny a Class I operating permit to construct or a revision of a Class I operating permit to construct.

2. For sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 30 days after the date of receipt of an application for a Class I operating permit to construct or for the revision of a Class I operating permit to construct, the Director shall determine whether the application contains adequate information to process the application. The official date of

submittal of the application shall be deemed to be 31 days after the date of receipt, unless the Director determines before that date that substantial additional information is required. If the Director determines that substantial additional information is required, the Director shall return the application to the applicant. The Director shall require the applicant to submit a new application, or the applicant may formally withdraw the application. Within 180 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny an operating permit to construct or a revision of an operating permit to construct. For the purposes of 40 C.F.R. § 52.21, the application shall be deemed to be complete on the date that the Director makes the preliminary determination to issue or deny a Class I operating permit to construct or a revision of an operating permit to construct.

3. ~~For the submittal of an application for a Class I operating permit to construct for the designation of a 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 a 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.]~~ 4. If, after the official date of submittal, the Director discovers that additional information is required to act on an application, the Director may request additional information necessary to determine whether the proposed operation will comply with all of the requirements set forth in NAC 445B.001 to 445B.3689, inclusive. The applicant must provide in writing any additional information that the Director requests within the time specified in the request of the Director. Any delay in the submittal of the requested information will result in a corresponding delay in the action of the Director on the application submitted to the Director.

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

~~[7.]~~ 6. The Director shall:

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

(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;

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

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

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

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

~~[8.]~~ 7. In addition to the requirements set forth in subsection ~~[7.]~~ 6, the notice required for a Class I operating permit to construct or for a revision of 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;
- (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; 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.

~~19.1~~ 8. 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.

~~10.~~ **9.** Except as otherwise provided in subsections ~~11, 12 and 13,~~ **10, 11 and 12,** within 180 days after the official date of submittal of an application for an operating permit to construct or for the revision of an operating permit to construct, the Director shall issue or deny the new Class I operating permit to construct or the new revision of a Class I operating permit to construct. The Director shall make his decision by taking into account:

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

~~11.~~ **10.** Except as otherwise provided in subsection ~~12,~~ **11,** 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.~~ **11.** 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.~~ **12.** 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.~~ **13.** 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.~~ **14.** If, on his own or pursuant to a request by a person pursuant to subsection ~~14.~~ **13,** the Administrator objects to the issuance of an administrative revision to a Class I operating permit, the Director shall submit revised proposed conditions for the Class I operating permit in response to the objection within 90 days after the date on which he is notified of the objection.

Sec. 9. NAC 445B.3365 is hereby amended to read as follows:

445B.3365 Except as otherwise provided in NAC ~~445B.33653 and~~ 445B.33656:

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 strip-chart recordings for continuous monitoring instrumentation.

(c) Each of the conditions and requirements of the 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 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, in writing and within a reasonable time, with any information that the Director requests 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. 10. NAC 445B.33656 is hereby amended to read as follows:

445B.33656 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}~~ 5 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, in writing and within a reasonable time, with any information that the Director requests 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.

Sec. 11. NAC 445B.3366 is hereby amended to read as follows:

445B.3366 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. 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 ~~f~~:

~~—(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] 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).~~

~~6.1~~ 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 NAC 445B.33637. 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 NAC 445B.33637. 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).

Sec. 12. NAC 445B.3375 is hereby amended to read as follows:

445B.3375 1. Except as otherwise provided in subsection ~~7.1~~ 5 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.

Sec. 13. NAC 445B.3441 is hereby amended to read as follows:

445B.3441 1. To modify a Class I stationary source in accordance with subsection ~~74~~ 5 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.

Sec. 14. NAC 445B.041, 445B.136, 445B.33633, 445B.33635 and 445B.33653 are hereby repealed.

TEXT OF REPEALED SECTIONS

445B.041 “Clean unit” defined. (NRS 445B.210) “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.3689, inclusive.

445B.136 “Pollution control project” defined. (NRS 445B.210) “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.3689, inclusive.

445B.33633 Operating permit to construct for designation of clean unit: Application. (NRS 445B.210, 445B.300)

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 a 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 a clean unit does not require an environmental evaluation pursuant to NAC 445B.308 to 445B.314, inclusive.

445B.33635 Operating permit to construct for approval of pollution control project:

Application. (NRS 445B.210, 445B.300) 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.

445B.33653 Operating permit to construct for designation of clean unit: Required conditions and information. (NRS 445B.210, 445B.300)

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).