

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R143-07

October 19, 2007

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

AUTHORITY: §1, NRS 445B.210; §§2-6, NRS 445B.210 and 445B.300.

A REGULATION relating to air pollution; revising provisions of the Nevada Clean Air Mercury Rule Program to reflect changes in federal regulations; providing that a mercury allowance does not constitute a property right; requiring a mercury allowance allocation request to be based on authorized limits for emissions; setting forth the requirements for public participation in determining the amount of certain mercury credits that are available for auction or sale; and providing other matters properly relating thereto.

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

445B.221 1. Title 40 C.F.R. §§ 51.100(s) and 51.100(nn) and Appendix S of 40 C.F.R.

Part 51 are hereby adopted by reference as they existed on July 1, 2005.

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

3. Appendix W of 40 C.F.R. Part 51 is hereby adopted by reference as it existed on July 1, 2005, and the amendments to Appendix W of 40 C.F.R. Part 51 as set forth in Volume 70 of the Federal Register at pages 68218 et seq., November 9, 2005, are hereby adopted by reference.

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

5. 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, 2006;

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

(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, WW, XX, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, DDDD, EEEE and FFFF, as they existed on July 1, 2006;

(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; and

(e) Subpart KKKK as set forth in Volume 71 of the Federal Register at pages 38482 et seq., July 6, 2006.

6. Appendix B of 40 C.F.R. Part 60 is hereby adopted by reference as it existed on July 1, 2006.

7. 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, 2006.

8. 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, JJJJ, KKKK, MMMM, NNNN, OOOO, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEE, FFFF, JJJJ, KKKK, LLLL, MMMM, NNNN, PPPP, QQQQ and SSSS of 40 C.F.R. Part 63 are hereby adopted by reference as they existed on July 1, 2006.

9. Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, 2006. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3791, inclusive, the provisions of 40 C.F.R. Part 72 apply.

10. Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, 2006. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3791, inclusive, the provisions of 40 C.F.R. Part 76 apply.

11. 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.

12. 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.osha.gov/pls/imis/sic_manual.html.

13. A copy of the publications which contain the provisions adopted by reference in subsections 1 to 10, inclusive, 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) and 51.100(nn) and Appendices S and W of Part 51	\$45
(2) For the volume containing § 51.165	10
(3) For the volume containing § 52.21	61
(4) For Part 60 (Sections 60.1 to end)	58
(5) For Part 60 (Appendices).....	57
(6) For Part 61	43

(7) For Part 63 (Sections 63.1 to 63.599)..... 58

(8) For Part 63 (Sections 63.600 to 63.1199)..... 50

(9) For Part 63 (Sections 63.1200 to 63.1439)..... 50

(10) For Part 63 (Sections 63.1440 to 63.6175)..... 32

(11) For Part 63 (Sections 63.6580 to 63.8830)..... 32

(12) For Part 63 (Sections 63.8980 to end) 35

(13) For the volume containing Parts 72 and 76 62

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

(c) Government Printing Office, free of charge, at the Internet address

<http://www.gpoaccess.gov/nara/index.html>.

14. 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.

15. Except as otherwise provided in subsections 9 and 10, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3791, inclusive, for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

16. For the purposes of this section, “administrator” as used in the provisions of 40 C.F.R. ***[Parts] 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 pursuant to this section, means the Director.

Sec. 2. NAC 445B.3733 is hereby amended to read as follows:

445B.3733 “Mercury baseline emission period” means a period of operation of a new mercury budget unit of 36 consecutive months determined from measured emissions from the new mercury budget unit ~~[]~~ *in accordance with 40 C.F.R. §§ 60.4170 to 60.4175, inclusive, as adopted by reference in NAC 445B.221.*

Sec. 3. NAC 445B.3767 is hereby amended to read as follows:

445B.3767 An application for a CAMR operating permit to construct submitted pursuant to NAC 445B.3763 or an application for a revision of a CAMR operating permit to construct submitted pursuant to NAC 445B.3765 must include, without limitation:

1. Information to identify the applicant, including, without limitation:

(a) The name and address of the company that is applying for the CAMR operating permit to construct or revision of a CAMR operating permit to construct, or the name and address of the mercury budget source if it is different from the name and address of the company;

(b) The name of the owner of the company and his agent; and

(c) The name and telephone number of the manager of the mercury budget source or another appropriate person to contact;

2. An identification of each mercury budget unit located at the mercury budget source;

3. The location of any records that the applicant must keep ~~[pursuant to]~~, *in accordance with* the requirements of the CAMR operating permit to construct ~~[]~~ *and in accordance with paragraph (r) of subsection 2 of NAC 445B.3771*, if the records are kept at a location other than the emitting mercury budget source;

4. A mercury monitoring plan, the content of which is consistent with the appropriate provisions of 40 C.F.R. Parts 60 and 75; and

5. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

Sec. 4. NAC 445B.3771 is hereby amended to read as follows:

445B.3771 For each mercury budget unit:

1. Described in a CAMR operating permit to construct, the Director shall cite the legal authority for each condition contained in the CAMR operating permit to construct.

2. The CAMR operating permit to construct for the mercury budget unit must contain the following conditions:

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

(b) The holder of the CAMR operating permit to construct must comply with all conditions of the CAMR 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 CAMR operating permit to construct by the Director; or

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

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

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

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

(f) *A mercury allowance does not constitute a property right.*

(g) The holder of the CAMR 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 CAMR operating permit to construct, or to determine compliance with the conditions of the CAMR operating permit to construct.

~~(g)~~ (h) The holder of the CAMR 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 CAMR operating permit to construct where:

(I) The mercury budget unit is located;

(II) Activity related to the mercury budget unit is conducted; or

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

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including, without limitation, any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the CAMR operating permit to construct; and

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

~~[(b)]~~ (i) A mercury designated representative of the mercury budget source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted pursuant to any condition of the CAMR operating permit to construct are true, accurate and complete.

~~[(j)]~~ (j) The owners and operators, and the mercury designated representative, of each mercury budget source and each mercury budget unit at the mercury budget source shall comply with the monitoring, reporting and recordkeeping requirements of 40 C.F.R. §§ 60.4170 to ~~60.4176,~~ 60.4175, inclusive. The emissions measurements recorded and reported in accordance with 40 C.F.R. §§ 60.4170 to ~~60.4176,~~ 60.4175, inclusive, must be used to determine compliance by each mercury budget source with the mercury budget emissions limitations set forth in paragraphs ~~[(j) to (e)],~~ (k) to (p), inclusive.

~~[(k)]~~ (k) Not later than the deadline for allowance transfer for a control period, the owners and operators of each mercury budget source and each mercury budget unit at the mercury budget source shall hold, in the mercury budget source's compliance account, mercury allowances available for compliance deductions for the control period under 40 C.F.R. § ~~60.4154(b)]~~ 60.4154(a) in an amount not less than the ounces of total mercury emissions for the control period from all mercury budget units at the mercury budget source, as determined in accordance with 40 C.F.R. §§ 60.4170 to ~~60.4176,~~ 60.4175, inclusive.

~~[(k)]~~ (l) A mercury budget unit is subject to the requirements of paragraph ~~[(k)]~~ (k) beginning on January 1, 2010, or the deadline for meeting the unit's monitor certification requirements under 40 C.F.R. § 60.4170(b)(1) or (2), whichever occurs later.

~~[(m)]~~ (m) A mercury allowance must not be deducted for compliance with the requirements of paragraph ~~[(k)]~~ (k) for a control period in a calendar year before the year for which the mercury allowance was allocated.

~~[(n)]~~ (n) Mercury allowances must be held in, deducted from or transferred into or among mercury allowance tracking system accounts in accordance with 40 C.F.R. §§ 60.4160, 60.4161 and 60.4162.

~~[(o)]~~ (o) A mercury allowance is a limited authorization to emit 1 ounce of mercury in accordance with the mercury budget trading program. No provision of the mercury budget trading program, the application for a CAMR operating permit to construct, the CAMR operating permit to construct, an exemption under 40 C.F.R. § 60.4105 or any provision of law shall be construed to limit the authority of this State or the United States to terminate or limit such authorization.

~~[(p)]~~ (p) Upon recordation by the Administrator pursuant to 40 C.F.R. §§ 60.4150 to 60.4162, inclusive, every allocation or transfer of a mercury allowance to or deduction of a mercury allowance from the compliance account of a mercury budget unit is incorporated automatically into any CAMR operating permit to construct of the mercury budget source that includes the mercury budget unit.

~~[(q)]~~ (q) If a mercury budget source emits mercury during any control period in excess of the mercury budget emissions limitation:

(1) The owners and operators of the mercury budget source and each mercury budget unit at the mercury budget source shall surrender the mercury allowances required for deduction pursuant to 40 C.F.R. § 60.4154(d)(1) and pay any fine, penalty or assessment or comply with any other remedy imposed, for the same violation of the mercury budget emissions limitation under the Act or applicable state law; and

(2) Each ounce of such excess emissions and each day of such control period constitutes a separate violation of 40 C.F.R. Part 60, Subpart HHHH, the Act and applicable state law.

~~(q)~~ (r) Unless otherwise provided, the owners and operators of the mercury budget source and each mercury budget unit at the mercury budget source shall keep on-site at the mercury budget source each of the documents described in subparagraphs (1) to (4), inclusive, for a period of 5 years after the date on which the document is created. This period may be extended for cause, at any time before the end of the 5-year period, in writing by the Director or the Administrator. The owners and operators of the mercury budget source and each mercury budget unit at the mercury budget source shall keep on-site at the mercury budget source:

(1) The certificate of representation issued pursuant to 40 C.F.R. § 60.4113 for the mercury designated representative for the mercury budget source and each mercury budget unit at the mercury budget source and documents that demonstrate the truth of the statements in the certificate of representation, provided that the certificate and documents must be retained on-site at the mercury budget source beyond the 5-year period described in this paragraph until such documents are superseded because of the submission of a new certificate of representation pursuant to 40 C.F.R. § 60.4113 changing the mercury designated representative.

(2) All emissions monitoring information required by 40 C.F.R. §§ 60.4170 to ~~60.4176,~~ 60.4175, inclusive, provided that to the extent that 40 C.F.R. §§ 60.4170 to ~~60.4176,~~ 60.4175, inclusive, provide for a 3-year period for recordkeeping, the 3-year period will apply.

(3) Copies of all reports, compliance certifications and other submissions, and all records made or required pursuant to the provisions of the mercury budget trading program.

(4) Copies of all documents used to complete an application for a CAMR operating permit to construct and any other submission under the mercury budget trading program or to demonstrate compliance with the requirements of the mercury budget trading program.

~~(s)~~ (s) The mercury designated representative of a mercury budget source and each mercury budget unit at the mercury budget source must submit the reports required by the mercury budget trading program, including, without limitation, those reports required pursuant to 40 C.F.R. §§ 60.4170 to ~~60.4176,~~ 60.4175, inclusive.

~~(s)~~ (t) Each mercury budget source and each mercury budget unit at the mercury budget source must meet the requirements of the mercury budget trading program regarding liability, including, without limitation, that:

(1) Any provision of the mercury budget trading program ~~regarding liability~~ that applies to a mercury budget source or the mercury designated representative of a mercury budget source must also apply to the owners and operators of such source and of the mercury budget units at the mercury budget source; and

(2) Any provision of the mercury budget trading program ~~regarding liability~~ that applies to a mercury budget unit or the mercury designated representative of a mercury budget unit must also apply to the owners and operators of such unit.

~~(u)~~ (u) No provision of the mercury budget trading program, an application for a CAMR operating permit to construct, a CAMR operating permit to construct or an exemption under 40 C.F.R. § 60.4105 shall be construed as exempting or excluding the owners and operators and the mercury designated representative of a mercury budget source or mercury budget unit at the mercury budget source from compliance with any other provision of the applicable state implementation plan, a federally enforceable permit or the Act.

~~(v)~~ (v) The owner or operator of the mercury budget unit shall comply with the mercury monitoring plan which is required to be submitted pursuant to subsection 4 of NAC 445B.3767.

~~(w)~~ (w) Any other requirements which the Director determines are necessary.

Sec. 5. NAC 445B.3785 is hereby amended to read as follows:

445B.3785 1. For each new source allocation account, the mercury designated representative of a mercury budget source shall submit, in a format specified by the Director, a request to the Director for mercury allowance allocations starting with control period 2010 or the control period in which a new mercury budget unit commences commercial operation, whichever occurs later, until the first control period after the mercury budget source has established a mercury baseline emission period for which the unit is allocated mercury allowances under NAC ~~445B.3783.~~ **445B.3781.** The mercury allowance allocation request must be based on an 80 percent capacity factor ~~[-]~~ **and authorized limits for emissions.** The mercury allowance allocation request must be submitted on or before July 1 of the first control period for which the mercury allowances are requested and after the date on which the mercury budget unit commences commercial operation.

2. In reviewing each mercury allowance allocation requested pursuant to subsection 1, the Director shall:

(a) Accept an allowance allocation request only if the request meets, or is adjusted by the Director as necessary to meet, the requirements of subsection 1.

(b) Determine the sum of the mercury allowances requested in all allowance allocation requests accepted pursuant to paragraph (a) for the control period. If the number of mercury allowances in the new source allocation account is:

(1) Equal to or greater than the sum of mercury allowances requested, the Director shall allocate to the mercury budget source a number of mercury allowances equal to the number requested.

(2) Less than the sum of mercury allowances requested, the Director shall allocate mercury allowances to the mercury budget source on a prorated basis, using the total gross megawatts from all eligible mercury budget units for the preceding control period.

(c) Notify each mercury designated representative of a mercury budget source that submitted an allowance allocation request of the amount of mercury allowances allocated for the control period to the mercury budget source for each new mercury budget unit covered by the request.

3. On or before 15 business days before June 1, 2011, and June 1 of each year thereafter, for each mercury budget source that has been provided allocations in excess of the total actual emissions for all new mercury budget units at the mercury budget source for the preceding control period, the mercury designated representative shall submit a request to the Administrator to transfer from the compliance account of the mercury budget source to the LEU/IGCC allocation account the amount of allocations that exceeds actual mercury emissions from all new mercury budget units at the mercury budget source.

4. On or before 5 business days before February 28, 2011, and February 28 of each year thereafter, for each mercury budget source that has been provided allocations in an amount less

than that of the total actual emissions for all new mercury budget units at the mercury budget source for the preceding control period, the Director shall submit a request to the Administrator to transfer from the special allocation account to the compliance account of the mercury budget source the amount of allocations necessary to balance the mercury budget source's actual mercury emissions for the control period.

5. On or before October 31, 2010, and October 31 of each year thereafter, the Director shall submit a request to the Administrator to transfer the number of mercury allowances determined in paragraph (b) of subsection 2 from the new source allocation account to the compliance account of each mercury budget source.

6. The Director shall not allocate mercury allowances to any mercury budget unit to cover allowances needed by the mercury budget source pursuant to 40 C.F.R. § 60.4154(d).

7. Mercury allowances not transferred pursuant to subsection 5 will accrue *in the new source allocation account* for control periods 2010 to 2017, inclusive. On or before February 1, 2018, the Director shall submit a request to the Administrator to transfer all remaining unallocated allowances for control periods 2010 to 2017, inclusive, to the LEU/IGCC allocation account.

8. For control period 2018 and each year thereafter, mercury allowances not transferred pursuant to subsection 5 will accrue in the new source allocation account until allocated pursuant to subsection 2.

Sec. 6. NAC 445B.3789 is hereby amended to read as follows:

445B.3789 ~~For mercury allowances in the special allocation account, the Director:~~

1. ~~[Shall]~~ *The Director shall* allocate ~~[such]~~ *all* mercury allowances *in the special allocation account* in accordance with the provisions of NAC 445B.3781 to 445B.3787, inclusive.
2. ~~[May]~~ *The Director may* auction or offer for sale ~~[such]~~ *the* mercury allowances ~~[]~~ *specified in subsection 1*, with the proceeds being deposited in the State General Fund for credit to the Account for the Management of Air Quality created pursuant to NRS 445B.590.
3. ~~[May]~~ *The Director shall, before determining an amount of mercury allowances available for auction or sale pursuant to subsection 2, make public and maintain on file during normal business hours for at least 30 days at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701, the proposed amount of those mercury allowances to enable public participation and comment.*
4. *The Director shall:*
 - (a) *Cause to be published a notice in one or more newspapers of general circulation 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; and*
 - (d) *Establish a 30-day period for public participation.*
5. *The notice required in subsection 4 must include, without limitation:*
 - (a) *The address and telephone number of the Division of Environmental Protection of the State Department of Conservation and Natural Resources;*

- (b) The name, address and telephone number of a person at the Division from whom interested persons may obtain additional information;*
- (c) The date by which written comments must be submitted to the Director; and*
- (d) A brief description of the procedures for public participation and the time and place of any public meeting that may be held, including a statement of the procedures to request a public meeting.*

6. All comments concerning the proposed amount of mercury allowances to be made available for auction or sale for which notice to the public is required pursuant to this section must be submitted in writing to the Director within the time specified in the notice. The Director shall give notice of any public meeting scheduled pursuant to this section at least 30 days before the meeting. 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.

7. The Director shall make a final determination on the amount of mercury allowances to be made available for auction or sale after considering any written comments from the public and any comments made during public meetings.

8. The Director may bank for future use or permanently retire such mercury allowances.