

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R154-06

Effective January 1, 2007

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

AUTHORITY: §§1 and 4, NRS 445B.210 and 445B.300; §§2, 3 and 5, NRS 445B.210.

A REGULATION relating to air pollution; authorizing an owner or operator of a proposed new major source or modification of an existing major source to submit a written request to the Director of the State Department of Conservation and Natural Resources for an informal review of the proposed major source or modification of the major source; requiring the written request to include a fee for conducting the review; increasing certain fees for the issuance of an operating permit for a source of air contaminant; increasing the annual fee based on emissions for a Class I stationary source; increasing the annual fee for maintenance of a stationary source; providing that the annual fee for maintenance of a stationary source is included in the fee for the issuance of an operating permit for the stationary source under certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto a new section to read as follows:

1. An owner or operator of a proposed new major source or an existing major source for which the owner or operator proposes a modification may, before the owner or operator submits an application for an operating permit or an operating permit to construct for the proposed new major source or for the modification of the existing major source, submit a written request to the Director for an informal review of the proposed new major source or modification of the existing major source. In conducting the informal review, the Director may provide advice or other assistance to the owner or operator concerning the preparation of a draft application for the operating permit or operating permit to construct.

2. A written request for an informal review submitted pursuant to subsection 1 must include:

(a) A draft application for an operating permit or operating permit to construct for the proposed major source or modification of the existing major source;

(b) The fee for conducting the informal review specified in NAC 445B.327; and

(c) Any other information concerning the proposed new major source or modification of the existing major source required by the Director.

Sec. 2. NAC 445B.001 is hereby amended to read as follows:

445B.001 As used in NAC 445B.001 to 445B.3689, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445B.002 to 445B.211, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. NAC 445B.220 is hereby amended to read as follows:

445B.220 If any of the provisions of NAC 445B.001 to 445B.3689, inclusive, *and section 1 of this regulation*, or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

Sec. 4. 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.....	400 500
(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.....	400 500
(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) 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 *Class I* stationary source is ~~[\$5.60]~~ \$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

~~the~~

~~—(a) Emissions]~~ *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~~ *Except as otherwise provided in this section, the* annual fee for maintenance of a stationary source is:

(a) For a Class I source ~~.....\$12,500~~

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 landfill 15,000

(b) For a Class II source that has the potential to emit ~~50~~ :

(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

~~[(e) For a Class II source that has the potential to emit 25]~~

(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

~~[(d) For a Class II source that has the potential to emit less]~~

(6) Less than 25 tons per year of any one regulated air pollutant except carbon monoxide ~~[250]~~ 500

~~[(e)]~~ *(c) For a Class II source that is issued a Class II general permit 500*

(d) For a Class III source 250

~~[(f)]~~ *(e) For a surface area disturbance [..... ~~250]~~*

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 section 1 of this regulation 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.*

~~10.~~ 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.

Sec. 5. This regulation becomes effective on January 1, 2007.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R154-06
Petition 2006-10

The State Environmental Commission adopted regulations assigned LCB File No. R154-06 which pertain to chapter 445B of the Nevada Administrative Code on September 6, 2006.

Notice date: 8/7/2006
Hearing date: 9/6/2006

Date of adoption by agency: 9/6/2006
Filing date: 11/13/2006

INFORMATIONAL STATEMENT

This permanent regulation amends the fee structure in NAC 445B.327 to make the revenue generated by the air pollution control operating permits program more commensurate with the expense of administering the program. The air pollution control program is predominantly a fee based program, receiving no general fund revenue to support its efforts. These fees had not been significantly increased in ten years, whereas the size and scope of the program have increased due primarily to new federal mandates. Furthermore, a significant source of revenue, the Southern California Edison's Mohave Generating Station (Mohave), shut down at the end of 2005, and federal grant funding was reduced. Therefore, it was necessary to increase operating permit fees to pay the expenses of administering the program.

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

NDEP's Bureau of Air Pollution Control held two public workshops on the above referenced regulation at the following locations.

ELKO
Tuesday, August 8, 2006
11:00 AM to 1:00 PM
Community Center Social Room
Great Basin College
1500 College Parkway

RENO
Thursday, August 10, 2006
9:30 AM to 11:30 AM
Conference Room A
Nevada Division of Wildlife
1100 Valley Road

The workshop notice was sent by direct mail to every permitted facility in Nevada – over 600 – and to all interested persons on the Air Quality ground-based and electronic mailing lists. The workshop in Elko was attended by three persons; the Carson City workshop was attended by five persons. No adverse comments were received.

The State Environmental Commission (SEC) held a public hearing to consider this regulation on September 6, 2006 at the Nevada Division of Wildlife in Reno, Nevada.

The hearing agenda was posted at the following locations: the Nevada Department of Wildlife building in Reno, the Grant Sawyer Office Building in Las Vegas, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and

Las Vegas. Copies of the agenda, the public notice, and the proposed regulation noted above were made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the hearing was published on August 15, 2006, August 22, 2006 and August 29, 2006 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at http://sec.nv.gov/main/hearing_0906.htm.

2. The number persons who attended the SEC Regulatory Hearing:

- (a) Attended September 6, 2006 hearing; 70
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: -0-

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

Comments were solicited from affected facilities as indicated in number 1 above. In addition to the public workshop and the SEC regulatory hearing, the NDEP held numerous meetings with representatives from the affected industry during regulation development and incorporated stakeholder comments into the regulation as it was drafted.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The State Environmental Commission adopted the regulation without change on September 6, 2006. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry. These amendments will have an economic effect on the regulated industry. Specifically, the amendments:

- For application fees, (1) increase the fee for a Class II general permit and a surface area disturbance from \$400 to \$500; and (2) clarify that the first year's annual maintenance fee for a new source is included in the application fee.
- For annual fees based on emissions, (1) increase the fee for Class I sources to \$16 per ton for each regulated pollutant; (2) repeal the fee for Class II sources; and (3) add an inflationary adjustment factor of 2 percent compounded annually.

- For annual fees based on maintenance, (1) increase the fee for all Class I sources, adding a tiered structure; (2) add a 4th tier to the Class II fee structure; (3) increase the fee from \$250 to \$500 for Class II sources with a potential to emit less than 25 tons per year; (4) increase the fee for surface area disturbances, adding a tiered structure based on acreage permitted; and (5) add an inflationary adjustment factor of 2 percent compounded annually.
- Provide sources with an opportunity to request a pre-application review by the agency for a fee.

Public. The amendments will have no direct economic effect on the public.

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

There will be no additional costs to the agency.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulation does not overlap or duplicate any regulations of other state or government agencies.

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

The regulation is no more stringent than what is established by federal law.

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

The regulation does address fees. The existing fee structure has been generating approximately \$1,350,000 to 1,400,000, annually. The closure of Mohave (see introduction) will create an annual loss of approximately \$366,000, and the anticipated cutback in federal funding will further reduce annual income by approximately \$120,000.

The new fee structure is projected to generate approximately \$1,927,000. Together with application fees, which are basically being left unchanged, total revenue from fees under the new structure will be approximately \$2,377,000 annually. The revenue collected will be used to administer the growing air pollution permit program, to help fund three new positions for an Emissions Review and Auditing Branch in the Bureau of Air Pollution Control and to purchase necessary equipment.