

Chapter 445B of NAC

ADOPTED TEMPORARY REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

LCB File No. T011-10

Filed with the Secretary of State on January 11, 2011

T011-10 (P2010-11)
December 7, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.
Matter in underline is new, added at the direction of the State Environmental Commission on 12/7/2010.

AUTHORITY: NRS 445B.210.

Section 1. NAC 445B.3457 is hereby amended to read as follows:

445B.3457 1. Except as otherwise provided in NAC 445B.319 and 445B.342, within 10 working days after the date of receipt of an application accompanied by the appropriate fee for a Class II operating permit or for the revision of a Class II operating permit, 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 working 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 11 working days after the date of receipt, whichever is earlier.

2. If, after the official date of submittal, the Director discovers that additional information is required to act on the 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.

3. ~~If notice to the public is not required pursuant to subsection 5, the~~ *The* Director shall issue or deny a Class II operating permit or the revision of a Class II operating permit within 60 days after the official date of submittal of the application for the Class II operating permit or for the revision of the Class II operating permit.

4. If notice to the public is required pursuant to subsection 5, the Director shall:

(a) Make a preliminary determination to issue or deny a Class II operating permit or the revision of a Class II operating permit within ~~{60}~~ *15* days after the official date of submittal of the application for the Class II operating permit or for the revision of the Class II operating permit;

(b) Take such action as is necessary to ensure compliance with the provisions of subsections ~~{5, 6, and 7,}~~ *6, 7, and 8,* as applicable; and

(c) Issue or deny the Class II operating permit or the revision of the Class II operating permit ~~[within the period set forth in subsection 8.]~~ *taking into account:*

(i) *Written comments from the public;*

(ii) *Information submitted by proponents of the project; and*

(iii) *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 applicable state implementation plan.*

5. ~~[If, after review of an application for a Class II operating permit or for the revision of a Class II operating permit, the Director determines that the change to the stationary source results in a significant change in air quality at any location where the public is present on a regular basis:]~~ *Public notice is required for an application for:*

(a) ~~[The Director's preliminary determination to issue or deny the Class II operating permit or the revision of the Class II operating permit, and the proposed conditions for the Class II operating permit or the proposed conditions for the revision of the Class II operating permit must, within 10 working days after the Director makes that preliminary determination, be made public and maintained on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249, for 30 days to enable public participation and comment; and]~~ *A new Class II operating permit; or*

(b) ~~[The Director shall]~~ *The revision of a Class II operating permit for which the Director determines that the change to the stationary source results in an increase in allowable emissions that exceeds any of the following thresholds:*

<i>Pollutant</i>	<i>Threshold in tons per year</i>
<i>Carbon monoxide.....</i>	<i>40</i>
<i>Nitrogen oxides.....</i>	<i>40</i>
<i>Sulfur dioxide.....</i>	<i>40</i>
<i>PM10.....</i>	<i>15</i>
<i>Ozone measured as VOC.....</i>	<i>40</i>
<i>Lead.....</i>	<i>0.6</i>

(c) *As used in this subsection a new Class II operating permit means a permit issued to a stationary source which has not previously held a Class I or Class II operating permit.*

6. *For a notice required pursuant to subsection 5 and at the time the Director makes a preliminary determination to issue or deny a Class II operating permit or a revision of a Class II operating permit pursuant to subsection 4, [The] the Director shall:*

~~[(1)]~~ (a) *Make the preliminary determination available to the public and maintain it on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249, for 30 days to enable public participation and comment.*

(b) *Cause to be published [a notice in a newspaper of general circulation in the area in which the Class II source is located] on a state website designed to give general public notice an electronic copy of the Director's notice of proposed action;*

~~[(2)]~~ (c) *Provide written [notice] notification of the Director's proposed action to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;*

~~[(3)]~~ (d) *Provide [notice by other means if necessary] the Director's notice of proposed action and a copy of the application at a local library in the area in which the Class II source is located to ensure that adequate notice is given to the public;*

(e) Provide the Director's notice of proposed action and a copy of the application to the Administrator and to any local air pollution control agencies having jurisdiction within the area in which the Class II source is located; and

~~[(4)]~~ *(f)* Establish a 30-day period for public participation.

~~[6.]~~ *7.* The notice required pursuant to ~~[paragraph (b) of]~~ subsection 5 must include:

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

(b) The name and address of the state agency *and the name, address and telephone number of a representative from the state agency* processing the Class II operating permit or the revision of the Class II operating permit;

(c) ~~[The name, address and telephone number of a representative from the state agency that is processing the Class II operating permit or the revision of the Class II operating permit from whom interested persons may obtain additional information, including copies of:~~

~~—— (1) The application;~~

~~—— (2) The proposed conditions for the Class II operating permit or the proposed conditions for the revision of the Class II operating permit;~~

~~—— (3) All relevant supporting materials; and~~

~~—— (4) All other materials which are available to the state agency that is processing the Class II operating permit or the revision of the Class II operating permit and which are relevant to the determination of the issuance of the Class II operating permit or the revision of the Class II operating permit;~~

~~— (d)]~~ A description of the proposed new Class II source or the proposed modification to the existing Class II source and a summary of the emissions involved;

~~[(e)]~~ *(d)* The date by which comments must be submitted to the Director;

~~[(f)]~~ *(e)* A summary of ~~[the impact of]~~ *the agency's analysis of the effect of* the proposed new Class II source or the proposed modification to the existing Class II source on the quality of air;

~~[(g)]~~ *(f)* A statement indicating that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable; and

~~[(h)]~~ *(g)* A brief description of the procedures for public participation ~~[and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing].~~

~~[7.]~~ *8.* All comments concerning the applications for which notice to the public is required to be provided 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 hearing scheduled pursuant to this section at least 30 days before the date of the hearing.]~~ The Director shall keep a record of the names of any persons who made comments and of the issues raised during the process for public participation.

~~[8. If an application for a Class II operating permit or for the revision of a Class II operating permit is submitted for a Class II source that is subject to the notice requirements set forth in subsection 5, the Director shall issue or deny the Class II operating permit or the revision of the Class II operating permit 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. The Director shall make the decision by taking into account:~~

~~—— (a) Written comments from the public;~~

~~—— (b) [The 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 applicable state implementation plan.]~~

9. If construction will occur in one phase, a Class II operating permit or the revision of a Class II operating permit 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 or more after the construction begins. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.

10. If construction will occur in more than one phase, the projected date of commencement of construction of each phase must be approved by the Director. A Class II operating permit or the revision of a Class II operating permit for a new or modified stationary source 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.

Temporary Regulation - Filing Statement

Nevada Division of Environmental Protection Bureaus of Air Pollution Control and Air Quality Planning

Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission (SEC) LCB T011-10 SEC # P2010-11

T011-10: Air Pollution Control – New Public Notice Provisions For Class II Air Permits:

The Nevada Division of Environmental Protection (NDEP) has amended one section in the air permitting provisions of NAC 445B, which deals with Class II permit applications. This temporary regulation addresses the Director's action on applications and public notice.

Specifically, the regulation requires the Director (NDEP) to act on all Class II permit applications within 60 days after the official date of submittal thus streamlining the public notice timeline for Class II applications. It requires all new Class II air permit applications and all applications for a modification (to an existing Class II source) that exceeds a certain threshold be made available for public notice on a state web site. These regulatory changes respond to U.S. EPA comments on the approvability of the NDEP's public notice provisions for minor sources into Nevada's applicable State Implementation Plan. The temporary regulation is necessary to align state regulations with the federal Clean Air Act and U.S. EPA rule requirements.

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.

The NDEP held a public workshop on the above referenced regulation on Tuesday November 16, 2010 at the Bryan Building in Carson City. Minutes are available on the SEC web site http://www.sec.nv.gov/main/hearing_1210.htm agenda item #8. At this meeting, the NDEP solicited comment on the proposed regulation. The workshop took approximately 45 minutes; eight (8) members of the public attended the workshop.

Following the workshop, the SEC held a regulatory hearing on December 7th 2010. The hearing was held in Reno at the Nevada Dept. of Wildlife. A public notice and agenda for the SEC regulatory hearing was posted at the meeting location, at the 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 temporary regulation were also 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 was also published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory hearing. Other

information about the regulation was also made available on the SEC website at:
http://www.sec.nv.gov/main/hearing_1210.htm

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

- (a) Attended December 07, 2010 hearing; 20 (approx.)
- (b) Testified on this Petition at the hearing: 3 (3 NDEP)
- (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 businesses and responded to through e-mail and telephone exchanges, and the working meetings and public workshops indicated in number 1 above.

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.

One non-substantive change to the proposed regulation was requested at the Hearing by the Commission.

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

The NDEP does not believe there will be an economic impact from the amendments on the regulated industry or on the public.

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

There will be additional costs to the Division of Environmental Protection for implementing this regulation.

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.

This regulation does not duplicate any other federal, state or local regulation.

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 not more stringent than any federal regulation or guidance.

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 proposed amendments do not address fees.