

PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

P2015-03

July 10, 2015

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

AUTHORITY: NRS 445B.210 and 445B.300.

A REGULATION relating to air pollution; establishing an emission reduction credit program for the creation, banking, transfer and use of an emission reduction credit; establishing fees for applying for an emission reduction credit and use of an emission reduction credit; and providing other matters properly relating thereto.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

Sec. 2. *“Actual emissions” means the actual rate of emissions of a criteria pollutant from an emission unit. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the criteria pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Director shall allow the use of a different time period upon determining that it is more representative of normal source operation. Actual emissions shall be measured using the emission unit’s actual emissions or calculated using the emission unit’s actual operating hours, production rates and types of materials processed, stored or combusted during the selected time period, as appropriate.*

Sec. 3. *“Banking” means the procedures which allow the Director to collect, identify, track, store and reserve emission reduction credits for future air quality management use, including sale, transfer or demonstration of maintenance or progress towards attainment, according to the requirements in sections 2 to 22, inclusive, of this regulation.*

Sec. 4. *“Emission reduction credit” or “ERC” means a unit of emission reduction measured in tons per year that has been applied for and approved by the Director in accordance with the provisions of sections 2 to 22, inclusive, of this regulation. An ERC shall*

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be surplus, permanent, quantifiable and federally enforceable. An ERC can be used to satisfy federal offset requirements.

Sec. 5. *“ERC summary report” means a report showing the ERC balance in the State Registry following the Director’s action pursuant to sections 17, 20 and 21 of this regulation.*

Sec. 6. *“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.*

Sec. 7. *“Permanent” means an emission reduction that is long-lasting and unchanging for the remaining life of the facility or project that generated the ERC.*

Sec. 8. *“Project” means a physical change in, or change in the method of operation of, an existing major stationary source.*

Sec. 9. *“Reasonably achievable control technology” means the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.*

Sec. 10. *“Quantifiable” means an emission reduction that can be reliably measured or determined and reproduced.*

Sec. 11. *“Registry” means a public record of the ownership, creation, deposit, use, sale or transfer of emission reduction credits.*

Sec. 12. *“Surplus” means an emission reduction that:*

1. Has not been relied on in any air quality program related to any nonattainment area state implementation plan;

2. Is not a requirement of any nonattainment area state implementation plan;

3. Is not a requirement of a state air quality program that has been adopted but is not in the Nevada applicable state implementation plan;

4. Is not credited in any federal reasonable further progress or other milestone demonstration;

5. Is not a requirement of a consent decree;

6. Is not a requirement of a federal rule that focuses on reducing criteria air pollutants or their precursors;

7. Has not been relied upon to issue any preconstruction permit.

8. Is not a requirement established in a new source performance standard or a national emission standard for hazardous air pollutants; and

9. Has not already been credited in any other air quality program.

↳ The purpose of requiring that emissions offsets be surplus is to prohibit double-counting of emission reductions.

Sec. 13. Applicability

1. This regulation provides for the creation, banking, transfer and use of ERCs. This regulation applies to the following:

(a) A new or existing major stationary source or a major modification with a federally enforceable permit that contains requirements associated with an ERC; and

(b) Any party involved with the trading of an ERC.

2. The Director may allow the issuance, transfer, use, redemption or banking of an eligible ERC for carbon monoxide, PM₁₀, PM_{2.5}, VOC, NO_x, lead or SO₂ in accordance with the limitations set forth in this regulation.

3. An ERC may be used only in the nonattainment area where it was created and for the same pollutant for that is being offset, except as provided in subsection 4.

4. An ERC created in another nonattainment area may be used in the nonattainment area the source is located in if:

(a) The other nonattainment area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) Emissions from the other nonattainment area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

5. An ERC granted pursuant to this regulation does not constitute an interest in property or create any contractual rights.

Sec. 14. Limits on the use of ERCs

1. An ERC shall not provide or allow:

(a) Authority for or the recognition of a preexisting vested right to emit any regulated air pollutant;

(b) Exemption from reasonably available control technology, best available control technology and lowest achievable emission rate requirements or any other air pollution control requirement pursuant to NAC 445B.001 to 445B.3689 or under federal, state or local laws, rules and regulations;

(c) Dual accounting of emission reductions that have already been included as part of the baseline emissions in the Nevada applicable state implementation plan;

(d) For emission reductions already required by law; or

(e) Authority for or the recognition of any rights that would be contrary to applicable law.

2. Only ERCs of the same pollutant may be used to offset emissions from a new major stationary source or a major modification.

Sec. 15. Application requirements

1. An applicant for an ERC must submit an application to the Director on the appropriate form provided by the Director. An applicant must pay the entire determination fee as required by NAC 445B.327 when the applicant submits an application to the Director.

2. An application for an ERC is eligible for consideration if the following conditions are met:

(a) Emission units that provide an ERC requested in the application must be compliant with all permit conditions for all timeframes associated with the emission reductions;

(b) Permits for emission units that provide the emission reduction for an ERC requested in the application must be surrendered or modified/revised to contain practicably enforceable conditions to ensure the emission reductions that are the basis of the ERC are permanent emission reductions;

(c) Emission reductions must be based on a full or partial shutdown, application of innovative or improved control technologies, and/or process improvements.

3. An application for an ERC must be submitted to the Director within the following time limits:

(a) For a full stationary source shutdown, the application must be submitted within 180 calendar days after the date of the voluntary termination of the permit containing the federally enforceable conditions associated with the stationary source shutdown that generated the emission reductions for the requested ERC.

(b) For a source with a partial shutdown, reconfiguration, operational change, or a reconfiguration or operational change and a partial shutdown, the application must be submitted within 180 calendar days after the permit is issued containing the federally enforceable conditions associated with the partial shutdown, reconfiguration, operational

change, or reconfiguration or operational change and a partial shutdown, that generated the emission reductions for the requested ERC.

4. Notwithstanding the requirements in subsection 3, for facilities that were issued an ERC in a permit before <the effective date of this regulation>, the ERC shall be automatically banked on <the effective date of the regulation>, subject to subsection 3 of section 17.

Sec. 16. Criteria for granting ERCs

The Director shall not issue an ERC unless the following requirements are met:

1. Emission reductions used to generate the ERC must be surplus, permanent, quantifiable and federally enforceable.

2. Except when a unit is fully shutdown, a revised federally enforceable operating permit has been issued which contains practicably enforceable conditions to limit the emission unit's potential to emit to the allowable emissions of the stationary source.

3. The baseline for determining credit for emission reductions will be the applicable Nevada state implementation plan emission limitations in effect at the time the application to construct or modify a source is filed, except that the baseline shall be the actual emissions of the emissions unit from which the ERC is obtained when:

(a) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(b) The Nevada applicable state implementation plan does not contain an emission limitation for that emissions unit.

4. Where the Nevada applicable state implementation plan requires certain equipment controls in lieu of an emission limitation, baseline allowable emissions shall be based on continuous emissions monitoring system data where available, or calculated using the emission unit's actual operating conditions for the previous two year period in conjunction with the required equipment controls.

5. Where the emissions limit under the Nevada applicable state implementation plan allows greater emissions than the uncontrolled emission rate of the source, an ERC will not be allowed for emissions above the uncontrolled emission rate.

6. An ERC shall only be granted to the extent that the Director has not relied on it in issuing any permit under regulations approved pursuant to sections 160 to 166, inclusive, of

40 C.F.R. Part 51, or it has not been relied on in an attainment demonstration or reasonable further progress demonstration in a nonattainment area plan.

7. No credit shall be given for existing actual emissions which exceed the allowable emissions specified in the source's federally enforceable operating permit.

8. Where a stationary source is subject to both:

(a) An emission limitation established in a new source performance standard or a national emission standard for hazardous air pollutants under sections 111 and 112, respectively, of the Act; and

(b) A different Nevada applicable state implementation plan limitation, ↪ the more stringent limitation shall be used as the baseline for determining an ERC. The difference in emissions between the applicable Nevada state implementation plan and the new source performance standard or national emission standard for hazardous air pollutants for the stationary source shall not be used as a basis for an ERC. However, if a stationary source is not subject to a new source performance standard or national emission standard for hazardous air pollutants emissions limit, an ERC may be granted if the stationary source accepts a federally enforceable emission limit that is more stringent than the Nevada applicable state implementation plan emission limitation.

Sec. 17. Director's determination

1. Within 60 days after the date of receipt of the ERC 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. Unless the Director determines that the application is incomplete within 60 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 61st day after the date of receipt, whichever is earlier.

2. Within 120 days after the application is deemed complete, the Director shall make a determination to issue or deny the ERC based on the criteria in section 16. 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 ERC request will comply with all of the requirements set forth in sections 2 to 22 inclusive, of this regulation. 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 an ERC is approved for issuance, the Director shall record the issuance transaction in the ERC registry. The Director shall discount approved ERCs by 10 percent before recording, including any ERCs approved prior to <the effective date of this regulation>. The Director shall produce an ERC summary report and include the report as an attachment to the final ERC determination.

4. If the Director does not approve the applicant's ERC request or approves it in part, the applicant may, within 10 calendar days after receipt of the final ERC determination, appeal the decision to the State Environmental Commission in writing for a hearing to review the Director's decision. For purposes of this subsection, NAC 445B.890 shall govern the appeals process.

Sec. 18. ERC registry and tracking system

1. The Director shall establish and maintain an ERC registry to record and track all ERC transactions. The ERC registry established by the Director shall be accessible to the public and shall contain the following information for all ERC transactions:

- (a) The owner's name;*
- (b) The stationary source change or project that generated the ERC;*
- (c) The pollutant;*
- (d) The amount of ERCs in tons per year; and*
- (e) The date the ERCs were granted.*

2. The ERC registry shall not contain information that has been deemed confidential pursuant to NRS 239.010 to 239.030, inclusive, and NRS 445B.570.

3. When an ERC is recorded in the ERC registry under the owner's account, it is banked. When an ERC or a portion of an ERC is redeemed to satisfy a stationary source's offset requirement, the ERC is no longer banked because it is expended and no longer available for use.

4. A banked ERC does not expire.

Sec. 19. Retirement of an ERC; moratorium on the ERC program

1. The Director shall have the authority to retire a banked ERC or impose a temporary or permanent moratorium on the ERC program for the following purposes:

(a) To prevent an exceedance of the national ambient air quality standards;

(b) To establish baseline emissions or future emission projections for a state implementation plan or maintenance plan;

(c) To ensure reasonable further progress of the state implementation plan; and

(d) To control air quality within an airshed or nonattainment area.

2. The Director shall notify each owner of an ERC affected by any action pursuant to subsection 1 at least seven calendar days before the action takes effect. The notification must include:

(a) A description of the action;

(b) A summary of the justification for the action;

(b) For each specific pollutant, a summary of the ownership and amount of ERCs being retired, if applicable; and

(c) Duration of a temporary moratorium, if applicable.

Sec. 20. ERC transfer requirements; summary report

1. An ERC may be transferred in whole or in part.

2. An ERC transfer request shall be limited to two parties, i.e., the current owner of the ERC and the transferee.

3. The ERC summary report, signed by the Director, is the sole proof of ownership of the ERC. The ERC summary report shall be dated and each new ERC summary report will supersede all previous versions of the report. The ERC summary report reflects the balance of all ERC transactions contained in the registry for the owner.

4. Only the owner of an ERC, as indicated on the ERC summary report, may deposit, withdraw, redeem or transfer an ERC.

5. To request a transfer of an ERC to another party, the owner of an ERC must submit a transfer request on a form provided by the Director accompanied by the entire transfer request fee as required by NAC 445B.327 to the Director. The ERC transfer request must:

(a) Be signed and dated by the owner and the transferee;

(b) Contain the owner's information: name, address, city, state, zip code and phone number;

(c) Contain the transferee's information: name, address, city, state, zip code and phone number;

(d) Specify the amount in tons per year of ERCs being transferred for each air pollutant specified in subsection 2 of section 13;

(e) Identify the project associated with the origin of the ERC being transferred as specified in the final determination to grant the ERC; and

(f) If applicable, include the new or modified permit application where the ERC will be applied.

6. The Director will review the transfer request and make a determination whether to approve or disapprove the transfer. In making the determination, the Director will consider whether the intended use of the ERC conforms to section 14 of this regulation.

7. Transfer of a banked ERC shall become effective on the date the transfer is recorded in the registry. An ERC summary report signed by the Director shall be provided to both parties.

Sec. 21. ERC reciprocity

1. The Director may grant reciprocity for banking, transferring and redeeming an ERC that is issued by an air quality control agency other than the State of Nevada, if the other air quality control agency's requirements for issuing an ERC are equivalent to or more stringent than the applicable requirements of section 16 of this regulation.

2. The other air quality control agency shall submit the ERC reciprocity request on behalf of the ERC owner to the Director accompanied by the entire administrative and determination review reciprocity request fees as required by NAC 445B.327. All documentation associated with the original ERC issued by the other air quality control agency shall be submitted with the ERC reciprocity request, including, but not limited to:

(a) The ERC owner's transfer request, including the transferee's information;

(b) The complete application that originated the ERC;

(c) The other agency's technical support materials for granting the ERC;

(d) The final ERC determination;

(e) Public notices;

(f) Public comments;

- (g) Appeal documents;*
- (h) The operating permit as it was before the ERC issuance; and*
- (i) The operating permit as revised, resulting in the generation of the ERC; or*
- (j) Evidence of termination of the operating permit.*

3. The Director will review the reciprocity request and make a determination whether to approve or disapprove the transfer. In making the determination, the Director will evaluate the other agency's criteria against the criteria for granting ERCs in section 16 of this regulation. If the request is approved, the transfer shall become effective on the date the Director notifies both parties of the transfer, which signifies that the transfer is complete, approved and recorded in the registry. The notification shall contain an ERC summary report signed by the Director.

4. On behalf of the ERC owner, the Director may request reciprocity of an air quality control agency other than the State of Nevada to transfer an ERC that is recorded in the State registry to the other air quality agency's registry. The reciprocity request must be submitted to the Director accompanied by the entire administrative reciprocity request fees as required by NAC 445B.327.

5. ERCs that have been granted reciprocity to be transferred from the State registry to an other air quality control agency registry shall be placed in a holding account in the State registry for up to one year pending evidence provided by the transferee to the Director of a federally enforceable permit issued by the other air quality control agency. When such evidence is received, the ERCs will be transferred to the other air quality control agency registry for recording in the transferee's account. If, at the end of one year, such evidence has not been provided, the ERCs will be returned to the owners account in the State registry. The Director may grant an extension of the one year holding period upon a showing that the extension is justified.

6. ERCs will be recorded in tons per year for each air pollutant specified in subsection 2 of section 13.

Sec. 22. Procedures for redeeming an ERC

1. The owner of an ERC shall submit a request to the Director on a form provided by the Director to redeem an ERC for use at a specific stationary source and include the entire redemption request fee as required by NAC 445B.327. The redemption request must:

(a) Be signed and dated by the owner;

(b) Contain the owner's information: name, address, city, state, zip code and phone number;

(c) Contain the stationary source's information for which the ERC is being redeemed: name, authority to construct and/or operating permit number, physical address, city, state, zip code and phone number;

(d) Specify the amount in tons per year of ERCs being redeemed for each air pollutant specified in subsection 2 of section 13; and

(e) Identify the project associated with the origin of the ERCs being redeemed.

2. Redemption of an ERC shall become final and effective on the date the federally enforceable permit containing the ERC redemption used to satisfy an offset requirement is issued.

Sec. 23. NAC 445B.308 is hereby amended to read as follows:

1. Except for a Class IV operating permit, 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 plantwide applicability limitation; or

(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 state implementation 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, in accordance with subsection 3 of [NAC 445B.311](#), 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, including a good engineering practice stack height demonstrated by a fluid model or a field study approved by the Director in accordance with paragraph (c) of subsection 1 of [NAC 445B.083](#), or any other dispersion technique.

4. 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 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](#).

6. The Director may impose any reasonable conditions on his or her 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.

7. 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.

8. 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 applicable state implementation plan.

9. 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)~~ (b) “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.

NAC 445B.327 is amended to add ERC fees and include an inflation provision, as for the other permitting fees.

Sec. 24. 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 adopted by reference in [NAC 445B.221](#), the fees for an operating permit are as follows:

- (a) Class I operating permit to construct..... \$20,000
- (b) Conversion of an operating permit to construct into a Class I operating permit involving only one phase..... 5,000
- (c) Conversion of an operating permit to construct into a Class I operating permit involving two or more phases (per phase)..... 5,000
- (d) Modification to an operating permit to construct..... 5,000
- (e) Revision of an operating permit to construct..... 5,000
- (f) Class I operating permit..... 30,000
- (g) Significant revision of a Class I operating permit..... 20,000

(h) Minor revision of a Class I operating permit.....	5,000
(i) Renewal of a Class I operating permit.....	5,000
(j) Class II operating permit.....	3,000
(k) Revision of a Class II operating permit.....	2,000
(l) Renewal of a Class II operating permit.....	2,000
(m) Class II general permit.....	500
(n) Class III operating permit.....	300
(o) Revision of a Class III operating permit.....	200
(p) Renewal of a Class III operating permit.....	250
(q) Surface area disturbance permit.....	500
(r) Revision of a surface area disturbance permit.....	200
(s) Administrative amendment of an operating permit.....	200
(t) Replacement of a lost or damaged operating permit to construct or an operating permit	200
(u) Request for change of location of an emission unit.....	100
(v) Administrative revision to a Class I operating permit.....	500
(w) Class I operating permit to construct for the approval of a plantwide applicability limitation.....	20,000
(x) Class IV operating permit.....	50

↳ An applicant must pay the entire fee when the applicant 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 the applicant submits an application to the Director.

3. Except as otherwise provided in this section, if a stationary source is subject to the permitting requirements of 40 C.F.R. § 52.21, as adopted by reference in [NAC 445B.221](#), the owner or operator of that stationary source must obtain an operating permit. The fees for such an operating permit are as follows:

(a) Operating permit for a stationary source subject to the program for the prevention of significant deterioration of air quality.....	\$50,000
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(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 the applicant submits an application to the Director.

4. *The fees for the ERC program are as follows:*

(a) <i>Determination</i>	<i>\$10,000</i>
(b) <i>Transfer request</i>	<i>2,000</i>
(c) <i>Redemption request</i>	<i>2,000</i>
(d) <i>Reciprocity request</i>	
(1) <i>Administrative</i>	<i>1,000</i>
(2) <i>Determination review</i>	<i>9,000</i>

↪ *An applicant must pay the entire fee when the applicant submits an application or request to the Director. Fees are assessed on a per application basis.*

5. 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.

6. ~~[5.]~~ Except as otherwise provided in this subsection, the annual fee based on emissions for a Class I stationary source is \$16 per ton times the total tons of each regulated pollutant emitted

during the preceding calendar year. The annual fee based on emissions does not apply to emissions of carbon monoxide or emissions of greenhouse gases.

7. ~~[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.

8. ~~[7-]~~ Except as otherwise provided in this section, the annual fee for maintenance of a stationary source is:

(a) For a Class I source qualifying as:

(1) A major stationary source that is issued a prevention of significant deterioration permit..... \$30,000

(2) A major stationary source that is not issued a prevention of significant deterioration permit..... 25,000

(3) A major source that is not a major stationary source and is issued a Class I operating permit..... 20,000

(4) A major source that is not a major stationary source and is issued a Class I operating permit for a municipal solid waste landfill..... 15,000

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

(1) Eighty tons or more per year but less than 100 tons per year of any one regulated air pollutant except carbon monoxide..... 5,000

(2) Eight tons or more per year but less than 10 tons per year of any single hazardous air pollutant.....	5,000
(3) Twenty tons or more per year but less than 25 tons per year of any combination of hazardous air pollutants.....	5,000
(4) Fifty tons or more per year but less than 80 tons per year of any one regulated air pollutant except carbon monoxide.....	3,000
(5) Twenty-five tons or more per year but less than 50 tons per year of any one regulated air pollutant except carbon monoxide.....	1,000
(6) Less than 25 tons per year of any one regulated air pollutant except carbon monoxide.....	500
(c) For a Class II source that is issued a Class II general permit.....	500
(d) For a Class III source.....	250
(e) For a surface area disturbance permit for a total disturbance of:	
(1) Five or more acres but less than 20 acres.....	250
(2) Twenty or more acres but less than 50 acres.....	500
(3) Fifty or more acres but less than 100 acres.....	750
(4) One hundred or more acres but less than 200 acres.....	1,000
(5) Two hundred or more acres but less than 500 acres.....	2,000
(6) Five hundred or more acres.....	5,000
(f) For a Class IV source.....	50

9. ~~[8.]~~ The fee for conducting an informal review of a proposed new major source or proposed modification of an existing major source pursuant to NAC 445B.2915 is \$50,000.

10. ~~[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.

11. ~~[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~~;~~; *and*

(c) Increase the fees for the ERC program by an amount that is equal to 2 percent of the fee 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.

12. ~~[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.

13. ~~[12.]~~ Except as otherwise provided in this subsection, the owner or operator of a source who does not pay his or her 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 or her annual fees.

14. ~~[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.