

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R054-15

Effective October 27, 2015

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

AUTHORITY: §§1-25, NRS 445B.210 and 445B.300.

A REGULATION relating to air pollution; providing for the issuance, banking, transfer and use of emission reduction credits; establishing fees relating to emission reduction credits; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Environmental Commission to adopt regulations to prevent, abate and control air pollution. (NRS 445B.210) Existing law also requires the Commission to adopt regulations requiring certain persons responsible for the existence of a source of an air contaminant to apply for an operating permit and to charge appropriate fees. (NRS 445B.300) **Section 13** of this regulation authorizes the Director of the State Department of Conservation and Natural Resources to issue, transfer, bank and redeem emission reduction credits for certain pollutants. **Section 15** of this regulation provides for an application for the issuance of an emission reduction credit. **Section 16** of this regulation establishes the requirements for the issuance of an emission reduction credit. **Section 17** of this regulation provides for the determination by the Director of whether to issue an emission reduction credit. **Section 18** of this regulation requires the Director to establish a registry to record and track emission reduction credits. **Section 19** of this regulation authorizes the Director to retire banked emission reduction credits or impose a temporary or permanent moratorium on the issuance or use of such credits in certain circumstances. **Section 20** of this regulation provides for the transfer of emission reduction credits. **Section 21** of this regulation provides for reciprocity for emission reduction credits. **Section 22** of this regulation provides for the redemption of emission reduction credits. **Section 25** of this regulation establishes fees relating to emission reduction credits.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this regulation.

Sec. 2. *“Actual emissions” means the actual rate of emissions of a criteria pollutant from an emission unit.*

Sec. 3. *“Bank” or “banking” means the procedure which allows the Director to collect, identify, track, store and reserve emission reduction credits for future air quality management use, including, without limitation, the sale, transfer or demonstration of maintenance or progress towards attainment, according to the requirements of sections 13 to 23, inclusive, of this regulation.*

Sec. 4. *“Emission reduction credit” 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 13 to 23, inclusive, of this regulation and which can be used to satisfy federal offset requirements.*

Sec. 5. *“Emission reduction credit summary report” means a report showing the emission reduction credit balance in the registry following the Director’s action pursuant to section 17, 19, 20 or 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 emission reduction credit.*

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

Sec. 9. “Reasonably available 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 established and maintained by the Director 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 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 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. 1. Sections 13 to 23, inclusive, of this regulation apply to:

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

(b) Any party involved with the trading of an emission reduction credit.

2. The Director may allow for the issuance, transfer, use, redemption or banking of an eligible emission reduction credit for carbon monoxide, lead, PM₁₀, PM_{2.5}, VOC, NO_x or SO₂ in accordance with the limitations set forth in sections 13 to 23, inclusive, of this regulation.

3. Except as otherwise provided in subsection 4, an emission reduction credit may be used only in the nonattainment area where it was created and for the same pollutant that is being offset.

4. An emission reduction credit created in a nonattainment area other than the nonattainment area in which the source is located may be used in the nonattainment area in which the source is located 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 emission reduction credit issued pursuant to sections 13 to 23, inclusive, of this regulation does not constitute an interest in property or create any contractual rights.

Sec. 14. 1. An emission reduction credit shall not provide or allow:

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

(b) For an 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, inclusive, and sections 2 to 23, inclusive, of this regulation, or under any federal, state or local law, rule or regulation;

(c) For dual accounting of emission reductions that have already been included in the emission reduction credit as part of the baseline emissions in the applicable state implementation plan;

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

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

2. Except as otherwise provided in Appendix S of 40 C.F.R. Part 51, as adopted by reference in NAC 445B.221, only emission reduction credits of the same pollutant may be used to offset emissions from a new major stationary source or a major modification.

Sec. 15. 1. An applicant for an emission reduction credit must submit an application to the Director on the form provided by the Director and pay the determination fee required by NAC 445B.327 when the applicant submits the application to the Director.

2. An application for an emission reduction credit is eligible for consideration if:

(a) All emission units that provide an emission reduction credit requested in the application are compliant with all permit conditions for all timeframes associated with the emission reductions;

(b) All permits for emission units that provide the emission reduction for an emission reduction credit requested in the application are surrendered, modified or revised to contain practicably enforceable conditions to ensure that the emission reductions that are the basis of the emission reduction credit are permanent emission reductions; and

(c) All the emission reductions are based on a full or partial shutdown, the application of innovative or improved control technologies or process improvements.

3. An application for an emission reduction credit must be submitted to the Director:

(a) If for the full shutdown of a stationary source, within 180 days after the date of the voluntary termination of the permit containing the federally enforceable conditions associated with the shutdown that generated the emission reductions for the emission reduction credit that is being requested.

(b) If for the partial shutdown, reconfiguration, operational change, or reconfiguration or operational change and partial shutdown of a source, within 180 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 partial shutdown that generated the emission reductions for the emission reduction credit that is being requested.

4. Notwithstanding the requirements of subsection 3, an emission reduction credit issued to a facility in a permit before October 27, 2015, shall, subject to subsection 3 of section 17 of this regulation, be automatically banked on October 27, 2015.

Sec. 16. 1. The Director shall not issue an emission reduction credit unless the following requirements are met:

(a) The emission reductions used to generate the emission reduction credit are surplus, permanent, quantifiable and federally enforceable.

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

(c) The baseline for determining credit for emission reductions is the applicable state implementation plan emission limitation 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 emission reduction credit is obtained when:

(1) 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

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

(d) If the applicable state implementation plan requires certain equipment controls in lieu of an emission limitation, the baseline allowable emissions are based on continuous emissions monitoring system data, where available, or calculated using the actual operating conditions of the emission unit for the previous 2-year period in conjunction with the required equipment controls.

(e) The emission reduction credit has not been relied upon by the Director in issuing any permit under regulations approved pursuant to 40 C.F.R. §§ 51.160 to 51.166, inclusive, or in

an attainment demonstration or reasonable further progress demonstration in a nonattainment area state implementation plan.

(f) If the stationary source is subject to both:

(1) An emission limitation established in a new source performance standard or a national emission standard for hazardous air pollutants under 42 U.S.C. §§ 7411 and 7412; and

(2) A different applicable state implementation plan limitation, ↪ the more stringent limitation is used as the baseline for determining the emission reduction credit. The difference in emissions between the applicable 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 emission reduction credit. If a stationary source is not subject to an emission limitation pursuant to a new source performance standard or national emission standard for hazardous air pollutants, an emission reduction credit may be issued if the stationary source accepts a federally enforceable emission limitation that is more stringent than an emission limitation under the applicable state implementation plan.

2. An emission reduction credit shall not be issued:

(a) If the emission limitation under the applicable state implementation plan allows for greater emissions than the uncontrolled emission rate of the source, for emissions above the uncontrolled emission rate.

(b) For existing actual emissions which exceed the allowable emissions specified in the source's federally enforceable operating permit.

Sec. 17. 1. Within 60 days after the date of receipt of an application for an emission reduction credit, 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, within 60 days after the date of receipt of the application, determines that the application is incomplete, 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 an application is deemed complete, the Director shall make a determination to issue or deny the emission reduction credit based on the criteria described in section 16 of this regulation. 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 emission reduction credit proposed in the application will comply with all the requirements set forth in sections 13 to 23, 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.

3. If the Director issues an emission reduction credit, the Director shall record the issuance in the registry. The Director shall discount each emission reduction credit, including any emission reduction credit approved before October 27, 2015, by 10 percent before recording the emission reduction credit in the registry. The Director shall produce an emission

reduction credit summary report and include the report as an attachment to the final determination on the issuance of the emission reduction credit.

4. If the Director denies an application in whole or in part or issues an emission reduction credit which differs from the emission reduction credit that was applied for, the applicant may, within 10 days after receipt of the decision of the Director, appeal in writing to the Commission for a hearing to review the decision of the Director. An appeal pursuant to this subsection is governed by the provisions of NAC 445B.890.

Sec. 18. 1. The Director shall establish and maintain a registry to record and track all emission reduction credit transactions. The registry must be accessible to the public and must contain the following information for all emission reduction credit transactions:

- (a) The name of the owner of the emission reduction credit;*
- (b) The stationary source change or project that generated the emission reduction credit;*
- (c) The pollutant;*
- (d) The amount of emission reduction credits in tons per year; and*
- (e) The date on which the emission reduction credit was issued.*

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

3. An emission reduction credit is banked when it is recorded in the registry under the account of the owner of the emission reduction credit. When an emission reduction credit or a portion thereof is redeemed to satisfy an offset requirement for a stationary source, the emission reduction credit is expended and no longer available for use or banking.

4. An emission reduction credit that is banked does not expire.

Sec. 19. 1. The Director shall have the authority to retire an emission reduction credit that is banked or impose a temporary or permanent moratorium on the issuance or use of emission reduction credits:

(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; or

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

2. The Director shall notify each owner of an emission reduction credit affected by any action pursuant to subsection 1 at least 7 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;

(c) For each specific pollutant, a summary of the ownership and amount of emission reduction credits being retired, if applicable; and

(d) The duration of a temporary moratorium, if applicable.

Sec. 20. 1. An emission reduction credit may be transferred in whole or in part.

2. A request for the transfer of an emission reduction credit shall be limited to two parties.

3. The emission reduction credit summary report signed by the Director is the sole proof of ownership of an emission reduction credit. The emission reduction credit summary report must be dated and each new emission reduction credit summary report supersedes all previous versions of the report. An emission reduction credit summary report must reflect the balance

of all emission reduction credit transactions contained in the registry for the owner of the emission reduction credit.

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

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

(a) Be signed and dated by the owner of the emission reduction credit and the transferee;

(b) Contain the name, address, city, state, zip code and telephone number of the owner of the emission reduction credit;

(c) Contain the name, address, city, state, zip code and telephone number of the transferee;

(d) Specify the amount in tons per year of emission reduction credits being transferred for each air pollutant specified in subsection 2 of section 13 of this regulation;

(e) Identify the project associated with the origin of the emission reduction credit being transferred as specified in the final determination to issue the emission reduction credit; and

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

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

7. The transfer of an emission reduction credit that is banked becomes effective on the date on which the transfer is recorded in the registry. After an emission reduction credit is transferred pursuant to this section, the Director will provide an emission reduction credit summary report signed by him or her to both parties.

Sec. 21. 1. The Director may grant reciprocity for banking, transferring or redeeming an emission reduction credit that is issued by an entity other than the Director if the requirements used by the entity for issuing an emission reduction credit are equivalent to or more stringent than the applicable requirements of section 16 of this regulation.

2. For an emission reduction credit to be granted reciprocity pursuant to this section, the entity issuing the emission reduction credit must submit a reciprocity request on behalf of the owner of the emission reduction credit to the Director accompanied by the administrative and determination review fees for a reciprocity request required by NAC 445B.327 and all documentation associated with the original emission reduction credit issued by the entity, including, but not limited to:

(a) The transfer request of the owner of the emission reduction credit, including the transferee's information;

(b) The complete application that originated the emission reduction credit;

(c) The technical support materials used by the entity for issuing the emission reduction credit;

(d) The final emission reduction credit determination;

(e) Any public notice relating to the issuance of the emission reduction credit;

(f) Any public comment relating to the issuance of the emission reduction credit;

(g) Any appeal documents relating to the issuance of the emission reduction credit;
(h) The operating permit as it was before the issuance of the emission reduction credit; and
(i) The operating permit, as revised, which resulted in the generation of the emission reduction credit or evidence of the termination of the operating permit.

3. The Director will review the reciprocity request and make a determination whether to approve or deny the transfer. In making the determination, the Director will evaluate the entity's criteria against the criteria for issuing an emission reduction credit in section 16 of this regulation. If the reciprocity request is approved, the transfer becomes effective on the date on which the Director records the transfer in the registry and notifies both parties of the transfer. The notification shall contain an emission reduction credit summary report signed by the Director.

4. On behalf of the owner of the emission reduction credit, the Director may request reciprocity from an entity which maintains a registry to transfer an emission reduction credit that is recorded in the registry to a registry maintained by the entity. The reciprocity request must be submitted to the Director accompanied by the administrative reciprocity request fee required by NAC 445B.327.

5. An emission reduction credit that has been granted reciprocity to be transferred from the registry to a registry maintained by another entity shall be placed in a holding account in the registry for up to 1 year pending evidence provided by the transferee to the Director of a federally enforceable permit issued by the entity. When such evidence is received, the emission reduction credit will be transferred to the registry maintained by the entity for recording in the account of the transferee. If such evidence has not been provided within 1 year after

reciprocity is granted, the emission reduction credit will be returned to the account of the owner in the registry. The Director may grant an extension of the time to provide evidence pursuant to this subsection upon a showing that the extension is justified.

6. An emission reduction credit transferred pursuant to this section will be recorded in tons per year for each air pollutant specified in subsection 2 of section 13 of this regulation.

Sec. 22. 1. An owner of an emission reduction credit must submit a request to the Director on a form provided by the Director accompanied by the redemption request fee required by NAC 445B.327 to redeem the emission reduction credit for use at a specific stationary source. The redemption request must:

(a) Be signed and dated by the owner of the emission reduction credit;

(b) Contain the name, address, city, state, zip code and telephone number of the owner of the emission reduction credit;

(c) Contain the name, authority to construct or operating permit number, physical address, city, state, zip code and telephone number of the stationary source for which the emission reduction credit is being redeemed;

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

(e) Identify the project associated with the origin of the emission reduction credit being redeemed.

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

Sec. 23. *For the purposes of section 2 of this regulation, unless the Director allows for the use of a different time period upon determining that the period is more representative of the normal operation of a source, the average rate, in tons per year, at which an emission unit actually emits a criteria pollutant during the consecutive 24-month period immediately preceding a date and which is representative of the normal operation of a source shall be deemed the actual emissions of the emission unit on that date. For the purpose of this section and section 2 of this regulation, actual emissions must be measured using the actual emissions of the emission unit 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. 24. NAC 445B.308 is hereby amended to read as follows:

445B.308 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 sections 2 to 23, inclusive, of this regulation*, 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 ~~+~~, *and sections 2 to 23, inclusive, of this regulation.*

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.

Sec. 25. 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
(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. 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 \$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.

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. 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

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.

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. *Except as otherwise provided in this section, the fees relating to emission reduction credits are as follows:*

<i>(a) Determination of an application for an emission reduction credit</i>	..... <i>\$10,000</i>
<i>(b) Request for the transfer of an emission reduction credit</i>	..... <i>2,000</i>
<i>(c) Request for the redemption of an emission reduction credit</i>	..... <i>2,000</i>
<i>(d) Administration of a reciprocity request for an emission reduction credit</i>	..... <i>1,000</i>

(e) Determination review of a reciprocity request for an emission reduction

credit 9,000

↪ *An applicant must pay the entire fee when the applicant submits an application or request to the Director. A fee may be assessed only once for each application or request regardless of the number of emission reduction credits contained within the application or request.*

11. 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 each fee required by subsection 10 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.

~~11.~~ 12. 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.

~~12.~~ 13. 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.

~~13.~~ **14.** 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.

Permanent Regulation - Informational Statement

A Regulation Relating to Air Quality Standards

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

State Environmental Commission (SEC) LCB File No: R054-15

Regulation R054-15:

Nevada Revised Statutes (NRS) 445B.210 establishes the authority of the State Environmental Commission (SEC) to adopt regulations to prevent, abate and control air pollution. NRS 445B.300 establishes specific authority of the SEC regarding operating permit requirements for sources of air contaminants.

SPECIFIC CHANGES:

The NDEP is adopting a new, voluntary program intended to assist in growth and economic development in areas designated nonattainment for a national ambient air quality standard(s) (NAAQS). The program will provide offsets for a new major stationary source wishing to locate in a nonattainment area or for an existing facility to make a major modification, while at the same time providing air quality benefits. This program provides for the creation, banking, transfer and use of Emission Reduction Credits (ERCs). In a nonattainment area, if a facility reduces emissions through an operational change, a reconfiguration or a shutdown, the program allows the facility to request credit for the reductions and bank a reduced portion of the credit for future use or sale. The emission reductions used to generate an ERC must be surplus, permanent, quantifiable and federally enforceable.

1. Need for Regulation:

The U.S. Environmental Protection Agency (USEPA) continues to establish lower NAAQS. Some NDEP- regulated facilities in Clark County currently hold ERCs that were granted in an operating permit; however, there is no mechanism for those ERCs to be used. To provide this mechanism and in preparation of possible future nonattainment area designations in Nevada, there is a clear need for this type of program.

In order for a new major stationary source or major modification to an existing source to locate in a nonattainment area, the USEPA requires emission offsets, or reductions, from the new proposed source or modification, such that there will be reasonable

progress toward attainment of the applicable NAAQS. The emissions offsets generated as a result of the ERC program will provide a positive net air quality benefit in the affected area (40 CFR 51, Appendix S, IV.A). The ERC program will enable the NDEP to implement USEPA's emissions offset rule for those facilities in Clark County that are regulated by the NDEP and in any possible future nonattainment areas in the NDEP's jurisdiction.

2. 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.

On July 7, 2015 NDEP conducted a public workshop on proposed Regulation R054-15. The workshop was held in Carson City teleconferenced in Las Vegas. The meeting location in Carson City was at the Bryan Building located at 901 S. Stewart Street (Great Basin Conference Room) and teleconferenced to the NDEP office, located at 2030 East Flamingo Road, Suite 230.

Eight (8) members of the public attended the workshop.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at: http://www.sec.nv.gov/main/hearing_1015.htm .

Following the workshop, the SEC held a formal regulatory hearing on October 14, 2015 at the Nevada Legislative Building located at 401 South Carson Street, Room 2135. A public notice for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of the Division of Environmental Protection in Las Vegas, at the Division of Minerals in Carson City, at the Department of Wildlife, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed permanent regulation R054-15 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list and the Bureau of Air Quality Planning electronic mailing list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://www.sec.nv.gov/main/hearing_1015.htm .

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended October 14, 2015 hearing: 21 (approximately)
- (b) Testified on this Petition at the hearing: 0

(c) Submitted to the agency written comments: 1

The name of the person who submitted written comments was not present at the hearing:

Starla Lacy
Nevada Energy
6226 West Sahara Avenue, Las Vegas, Nevada 89146
Nvenergy.com
slacy@nvenergy.com

4. 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 through e-mail, telephone conversations, a public workshop and at the October 14, 2015 SEC hearing as noted in number 2 above.

5. 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 regulation was adopted with changes that resulted from the comment letter mentioned above. The erratum has been included and SEC approved the modified regulation (see Number 3 above).

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

Regulated Business/Industry. The NDEP has structured fees for the ERC program commensurate with the level of effort currently required by the NDEP in its review of operating permit applications from the regulated community. It is also important to note that this regulation is a voluntary program and industry can choose whether or not to participate.

Public. The regulation will have beneficial effects in terms of improved health and welfare. Due to the automatic reduction in the allowable emissions from the ERC program, the public will benefit from cleaner air.

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

There will be an incremental cost to the agency of implementing this regulation. The changes to the BAPC fee structure (NAC 445B.327) will accommodate these costs.

8. 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 any other State regulations.

9. 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.

10. 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; see 6 above. Any fees collected will be used to support the ERC program.