

**NEVADA DEPARTMENT OF  
CONSERVATION & NATURAL RESOURCES**

**STATE ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVES FOR**

**REGULATORY PETITIONS**

**COMMISSION PETITION NO. 96006**

**LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-011-96**

**DOCUMENTS INCLUDED IN THIS FILE:**

**YES SECRETARY OF STATE FILING FORM**

**YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B**

**REGULATORY PETITIONS**

**ORIGINAL DRAFTED BY COMMISSION**

**ADOPTED BY COMMISSION**

**YES AS FILED AND CODIFIED BY LCB**

Secretary of State  
Filing Data

For Filing Administrative  
Regulations

For Emergency  
Regulations Only

Effective Date \_\_\_\_\_

Expiration Date \_\_\_\_\_

\_\_\_\_\_  
Governor's Signature

### State Environmental Commission

Classification [ ] Proposed [ ] Adopted By Agency [xx] Temporary [ ] Emergency [ ]

**Brief description of action:** LCB R-011-96 (Petition 96006) permanently amends NAC 445B.339 to 445B.351 to make existing State requirements regarding Hazardous Air Pollutants (HAPs) consistent with federal requirements. Redundant regulations regarding the Commission authority to adopt emission standards are repealed. The threshold in permitting HAPs emissions is simplified and made consistent with federal regulations. The requirements for sources to develop Best Available Control Technology and Maximum Achievable Control Technology are repealed. The petition amends NAC 445B.339 and 445B.349 and repeals NAC 445B.341, 445B.343, 445B.347, and 445B.351.

**Authority citation other than 233B:** NRS 445B.210 and NRS 445B.300

**Notice date:** February 23, February 28 and March 5, 1996

**Hearing date:** March 26, 1996

**Date of Adoption of Agency:** March 26, 1996

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED  
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
PETITION 96006  
LCB FILE R-011-96**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445B.

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

Petition 96006 (R-011-96) was noticed three (3) times: February 23, February 28 and March 5, 1996 in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. No comment was received from the public regarding this petition. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

**2. The number persons who:**

- |  |    |
|--|----|
| <b>(a) Attended each hearing;</b>                    | 40 |
| <b>(b) Testified at each hearing;</b>                | 16 |
| <b>(c) Submitted to the agency written comments:</b> | 3  |

Note: Only one person testified in support and two written comments were received during this petition at the Environmental Commission hearing of March 26, 1996.

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

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. Comments from interested businesses included the Nevada Mining Association (exhibit #2) and Newmont Gold Company (exhibit #3). The testimony by then Nevada Mining Assn was supportive of the change in the regulations and the written comments support the states efforts at being more consistent with federal regulation of hazardous pollutants. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

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

The permanent regulation was adopted at the State Environmental Commission hearing on March 26, 1996 with no changes made to the regulation. No changes were proposed during adoption of the regulation.

**5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.
  - a. The public should not experience any anticipated long or short term adverse economic impact. The amendments, as proposed, will have a positive economic effect on facilities that are required to obtain air quality operating permits. It is estimated that facilities will save an average of \$2,500 by not having to evaluate Best Available Control Technology (BACT) and Maximum Achievable Control Technology (MACT) during submittal of an operating permit application. In addition, stationary sources will not be required to replace air pollution control equipment that may be established through the current Nevada BACT requirements.
  - b. The Division of Environmental Protection will realize cost savings of about \$24,000 annually as a result of the proposed regulations. The business community will receive an immediate and long-term positive economic effect from this regulation. The public is not anticipated to see an immediate or long-term effect from the adopted regulatory changes.

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

There is no additional cost to the agency for enforcement of 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.**

There are no other state or government agency regulations which the proposed amendments duplicate.

**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 regulations are in compliance with Federal regulations and are not more stringent than Federal requirements and regulations. The proposed regulation makes the Nevada hazardous air pollutant requirements consistent with federal requirements for hazardous air pollutants.

**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.**

This regulation does not provide or involve a new fee, and hence since no fee is involved there is not a total amount expected to be collected or used.

**END OF STATEMENT FOR R-011-96**

**ADOPTED PERMANENT REGULATION OF THE  
NEVADA STATE ENVIRONMENTAL COMMISSION**

LCB File No. R011-96

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

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

**Section 1.** NAC 445B.295 is hereby amended to read as follows:

1. An application for an operating permit must include:

- (a) Information to identify the applicant, including the name and address of the company or the name and address of the plant if different from that of the company, the name of the owner of the company and his agent and the name and telephone number of the manager of the plant or another appropriate person to contact;
- (b) A description of the stationary source's processes and products by Standard Industrial Classification Code, including any processes and products associated with an alternative operating scenario identified by the owner or operator;
- (c) A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each emission unit which is a part of the stationary source;
- (d) An identification and a description of any equipment for the control of air pollution and any devices or activities for monitoring compliance with emission limitations;
- (e) Limitations on the operation of the stationary source or any standards for work practices which affect emissions for all regulated air pollutants at the stationary source;
- (f) An explanation of any proposed exemption from any applicable requirement;
- (g) The location of any records that the applicant must keep pursuant to the requirements of the operating permit, if the records are kept at a location other than the emitting facility; and
- (h) Other specific information that the director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

2. In addition to the information required pursuant to subsection 1, an application for a Class I

operating permit must include:

(a) Descriptions of all emissions of any pollutants for which the source is major and all emissions of regulated air pollutants from all emission units. [;]

(b) An identification and a description of all points of emissions and all activities which may generate emissions of the regulated air pollutants described in paragraph (a) in sufficient detail to establish the basis for the applicability of standards and fees. [;]

(c) The emission rates of all regulated air pollutants that are subject to an emissions limitation pursuant to an applicable requirement. The emission rates must be described in tons per year and in such terms as are necessary to establish compliance using the applicable standard reference test method. [;]

(d) Any other information required by any applicable requirement. [;]

(e) The calculations on which the information in subsection 1 and this subsection are based. [;]

(f) A citation of and a description of all applicable requirements. [;]

(g) A reference to any applicable test method used for determining compliance with each applicable requirement. [; and]

(h) A compliance plan that contains, with respect to all applicable requirements, each of the following:

(1) A narrative description of the compliance status of the stationary source.

(2) A compliance certification by a responsible official of the stationary source, stating that the owner or operator must comply in a timely manner with any new applicable requirement that becomes effective during the term of the operating permit. This certification must include a description of the test methods and the requirements for monitoring, enhanced monitoring, recordkeeping and reporting that the stationary source will use to comply with the new applicable requirement, fuel use, the rate of production, raw materials and operating schedules which are used to determine the compliance status of the stationary source.

(3) If the stationary source is not in compliance with any applicable requirements at the time of the issuance of the operating permit, a narrative description and a schedule for achieving compliance which includes remedial measures to be taken, an enforceable sequence of actions with milestones and certified progress reports that must be submitted every 6 months. This

schedule must be at least as stringent as that contained in any consent decree rendered by a federal court, a court of this state or an administrative order which applies to the stationary source.

(4) A schedule for the submission of compliance certifications during the term of the operating permit that provides for the submission of certifications at least annually or more frequently if required by an applicable requirement or the director.

3. In addition to the information required pursuant to subsections 1 and 2, a Class I-B application for a Class I operating permit must contain:

(a) For a proposed new major source or a proposed significant modification to an existing stationary source which is subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, as adopted pursuant to NAC 445B.221:

- (1) All information required by C.F.R. § 52.21; and
- (2) Any other information that the director determines is necessary to process the application.

(b) For a proposed new major source or a proposed significant modification to an existing source which is not subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality:

- (1) All information required by NAC 445B.308 to 445B.313, inclusive;
- (2) Any other information that the director determines is necessary to process the application;

and

(3) For stationary sources subject to the provisions regarding new source review set forth in 42 U.S.C. §§ 7501-7515, inclusive, all information required by 42 U.S.C. § 7503.

(c) For a proposed new major source or a proposed significant modification to an existing stationary source which is subject to the requirements of 42 U.S.C. § 7412 regarding hazardous air pollutants:

- (1) All information required by NAC 445B.308 to 445B.313, inclusive; **[, and 445B.341;]** and
- (2) Any other information that the director determines is necessary to process the application.

**Sec. 2.** NAC 445B.339 is hereby amended to read as follows:

445B.339 1. A substance is a hazardous air pollutant if it is listed in on the federal list of hazardous air pollutants set forth in 42 U.S.C. § 7412(b), which is adopted pursuant to NAC 445B.221.

2. A substance is a toxic regulated air pollutant if the commission determines that it causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, unless a federal standard for the quality of ambient air, standard for the quality of ambient air adopted by the commission, new source performance standard or national emission standard for hazardous air pollutants applies.

**[3. The commission may establish a lower emission rate for a hazardous air pollutant or, for radionuclides, different criteria based on:**

- (a) The potency of the regulated air pollutant;**
- (b) The persistence of the regulated air pollutant;**
- (c) The potential for bioaccumulation;**
- (d) Other characteristics of the hazardous air pollutant; or**
- (e) Any other relevant factors.]**

**Sec. 3.** NAC 445B.349 is hereby amended to read as follows:

445B.349 **[Except as otherwise provided in NAC 445B.339 TO 445B.351, inclusive, an] An** owner or operator shall not cause or permit the discharge into the atmosphere from any stationary source of any hazardous air pollutant or toxic regulated air pollutant that [:

- 1. Exceeds the acceptable emission rate established by the director in accordance with NAC 445B.341, 445B.343 or 445B.345; or**
- 2. Threatens] *threatens* the health and safety of the general public, as determined by the director.**

**Sec. 4.** NAC 445B.341, 445B.343, 445B.345, 445B.347 and 445B.351 are hereby repealed.

**END OF LCB R011-96**

**TEXT OF REPEALED SECTIONS**

**445B.341 Evaluation and approval of best available control technology.**

1. An applicant must complete an evaluation of the best available control technology to obtain an operating permit, or the modification or renewal of an operating permit for any emission unit of:

(a) A hazardous air pollutant that, without controls, emits at least 1 pound or an equivalent amount of the hazardous air pollutant per hour, but less than 10 tons per year of any single hazardous air pollutant for any stationary source or 25 tons per year of any combination of hazardous air pollutants for any stationary source; and

(b) A toxic regulated air pollutant that, without controls, emits at least 1 pound of the toxic regulated air pollutant per hour.

2. If the director determines that the best available control technology must be applied, the technology must be approved by the director on a case-by-case basis before it is applied.

3. The technology may include, but is not limited to:

(a) Traditional methods such as baghouses, wet scrubbers, carbon absorbers, granular adsorbers, fluidized adsorbers, incinerators, chemical scrubbers and catalytic neutralizers.

(b) Alternative operating practices, such as a source reduction in the amount of hazardous materials used in the industrial process or prevention of pollution, or the use of substitute compounds, or both.

(c) Training in the safe application or use of the hazardous air pollutant or toxic regulated air pollutant.

(d) Restrictions on patterns of use of the hazardous air pollutant or toxic regulated air pollutant or locations of use of the hazardous air pollutant or toxic regulated air pollutant.

(e) Reclassification of the toxic regulated air pollutant as a restricted material.

**445B.343 Development of maximum achievable control technology; establishment of lower emission rates or different criteria.**

1. An applicant for an operating permit or for a modification of or a renewal of an operating permit must develop the maximum achievable control technology for:

(a) Any major source of a hazardous air pollutant; and

(b) Any area source of a hazardous air pollutant, if the administrator has established an emission limitation which applies to that area source.

2. The administrator may establish a lower emission rate for the hazardous air pollutant or, in the

case of radionuclides, different criteria based on:

- (a) The potency of the hazardous air pollutant;
- (b) The persistence of the hazardous air pollutant;
- (c) The potential for bioaccumulation;
- (d) Other characteristics of the hazardous air pollutant; or
- (e) Any other relevant factors.

**445B.345 Maximum achievable control technology: Approval, degree of reduction in emissions; methods.**

1. The director shall approve maximum achievable control technology on a case-by-case basis before the owner or operator applies it to a stationary source. At a minimum, the technology must comply with the federal requirements for such technology.
2. For existing stationary sources, the degree of reduction in emissions resulting from the maximum achievable control technology must be no less stringent than the requirements set forth in 42 U.S.C. § 7412(d)(3). If the director or administrator has established an applicable emission limitation, no person may operate any stationary source of a hazardous air pollutant unless the director determines that the stationary source will comply with the emission limitation established for the maximum achievable control technology applied.
3. The maximum achievable control technology may include, but is not limited to, measures which eliminate or reduce the volume of the emission of hazardous air pollutants or, in the case of radionuclides, the mass and total activity of each species, through:
  - (a) Source reduction or prevention of pollution, or both;
  - (b) Enclosed systems or processes;
  - (c) Design, equipment, work practices or operational standards, including requirements for the training or certification of an operator; or
  - (e) Collection, capture, filtration or treatment systems on a process, stack, storage or fugitive emissions point.

**445B.347 Prerequisites to issuance or renewal of operating permit.**

1. Before an operating permit will be issued, an analysis of the probable effect of the hazardous air pollutant or toxic regulated air pollutant on the quality of air must conclude that the emission

of the hazardous air pollutant or toxic regulated air pollutant from the stationary source will not exceed the acceptable emission rate. If an unacceptable emission rate is predicted or demonstrated to occur:

(a) The best available control technology must be applied to a stationary source subject to NAC 445B.341 in order to achieve compliance with the acceptable rate; or

(b) The maximum achievable control technology must be applied to a stationary source subject to NAC 445B.343.

2. Before an operating permit will be issued, the applicant must demonstrate by monitoring, sampling of emissions or using a predictive model approved by the director that the emission rate based on the maximum achievable control technology or the best available control technology, as applicable, is not exceeded.

3. An operating permit for a stationary source subject to NAC 445B.341 will not be renewed unless the stationary source is in compliance or on an approved schedule for compliance with an acceptable emission rate upon the date specified for renewal pursuant to NAC 445B.323 or within 1 year after the emission rate is determined by the director, whichever is later, unless the commission extends the period of compliance. The schedule for compliance must require the application of the best available control technology within a reasonable time as prescribed by the director or local air pollution control agency.

**445B.351 Notice of high concentration.** Notice of the existence of hazardous air pollutant or toxic regulated air pollutant at a level of 90 percent or more of the acceptable emission rate must be conspicuously posted at any point of access to the area available to the general public.

### **End of Repealed Sections**