

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
State Environmental Commission

HEARING ARCHIVE

FOR THE HEARING OF- **March 08, 2006 -- Reno Nevada**

**TYPE OF HEARING:**

Regulatory

**RECORDS CONTAINED IN THIS FILE INCLUDE:**

Meeting Web Page

Agenda

Public Notice

Minutes of the Hearing

Regulations (4)

**REGULATIONS (4)**

**Waste Management**

1. Regulation R175-05: Adoption of Federal Regulations by Reference Governing Hazardous Waste Management.
2. Regulation R176-05: Procedures For Grants To Enhance Solid Waste Management Systems And Promote The Efficient Use Of Resources

**Air Quality Planning / Air Pollution Control**

3. Regulation R206-05: Adoption By Reference of Federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs):
4. Regulation R189-05: Mercury Air Emission Permitting Program For Precious Metal Mining Facilities



# Department of Conservation & Natural Resources State Environmental Commission



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Las Vegas, Nevada

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Division of Minerals  
Commission on Mineral  
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Hugh Ricci  
State Engineer  
Division of Water  
Resources

Frances Sponer  
State Health Board  
Las Vegas, Nevada

Stephanne  
Zimmerman Las  
Vegas, Nevada

## COUNSEL

David Newton  
Deputy Attorney  
General

## STAFF

John B. Walker  
Executive Secretary

Nan Paulson  
Recording Secretary

## SEC Regulatory Hearing

### Notice Of Intent To Act Upon Regulations

March 8<sup>th</sup> 2006

The State Environmental Commission (SEC) will hold a public hearing at 10:00 a.m. on March 8<sup>th</sup>, 2006 at the Washoe County Commission Chambers located at 1001 E. Ninth Street, Building A Reno, NV 89512.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions and related SEC business. If a person that may be directly affected by a proposed action does not appear and request time to make an oral presentation at the above referenced hearing, the SEC may proceed immediately to act upon any of the following regulatory petitions or other written submissions described in this notice.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

- ▶ [Public Notice](#)
- ▶ [Meeting Agenda](#)
- ▶ [Approval of minutes from the October 04, 2005 hearing \(1.07MB pdf\)](#) \* ACTION
- ▶ [Settlement Agreements, Air Quality Violations](#) \* ACTION By Consent Calendar
- ▶ [Appointment of Advisory Board to the State Environmental Commission \(SEC\) on Certification of Operators of Public Water Systems](#) \* ACTION
- ▶ [Regulatory Petitions](#) \* ACTION
- ▶ Briefing to the Commission from the Administrator
- ▶ [Additional Information about the meeting process](#)

## Waste Management

**(1) Regulation R175-05: Adoption of Federal Regulations by Reference Governing Hazardous Waste Management.** This proposed regulation is needed to incorporate changes to the federal hazardous waste regulations that are currently in conflict with Nevada's existing State regulations. The regulation will revise State regulations to be more consistent with federal regulations.

The regulation will amend Chapter 444 of the Nevada Administrative Code (NAC). The proposed amendments will update Nevada's adoption of federal regulations by reference by modifying NAC 444.8427, 84275, 850, 8688, 8871, 8881, 8926, 8931, 8941, 9006, 9011 and 9452 to refer to the federal regulations as they existed on July 1, 2005. The regulation will further modify NAC 444.8632 to adopt federal regulations 40 CFR Parts 2, Subpart A, 124, Subparts A and B, Parts 260 to 270, inclusive, and Part 279 as those parts existed on July 1, 2005. The regulation also updates NAC 444.8618, 86334, 8951 and 8996 to account for the address

change regarding the recent move of the Nevada Division of Environmental Protection (NDEP) into the Bryan State Office Building located at 901 South Stewart Street, Suite 4001, Carson City, NV 89701-5249.

Corresponding changes to NAC 444.86325 and 8633 are further proposed to continue to exclude federal provisions previously not adopted and to provide for standard word substitutions to insure that NDEP and the US Environmental Protection Agency (US EPA) are properly referenced in the NACs.

As way of background, the federal regulatory changes adopted by US EPA (between July 1, 2003 and July 1, 2005) include clarification of the used oil management standards, revisions to the National Performance Track Program, new listing of hazardous wastes from the dye and pigment industries and revisions to related land disposal restrictions. The regulatory changes also include standardization of the Uniform Hazardous Waste Manifest and updates to the analytical and sampling methods approved for use in complying with Resource Conservation Recovery and Act (RCRA) regulations.

This regulation will not have an immediate or long-term adverse effect on business or the public. In fact, adoption of the federal regulations by reference is not anticipated to have any significant economic impact on Nevada businesses, but conversely should make it easier for affected businesses to comply by simplifying the requirements. In addition, Nevada is required to adopt these federal regulations to maintain State authorization for the RCRA hazardous waste program. Authorization allows the State to implement the RCRA program in lieu of the federal government, eliminating duplicative regulatory authority. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees. (SEC reference # P2005-08)

- September 12, 2005 — [Workshop Notice](#)
- September 12, 2005 — [First Draft Regulation](#)
- October 21, 2005 — [Workshop Minutes](#)
- October 25, 2005 — [SEC Form #1, adopt, amend or repeal regulations](#)
- October 25, 2005 — [SEC Form #4, Small business impact disclosure process](#)
- Background material — [Federal RCRA Revisions](#)
- EPA Testing Methods — [External Link](#)
- November 02, 2005 — [SEC Regulation Submittal Letter to LCB](#)
- December 12, 2005 — [LCB Final Draft of Proposed Regulations R175-05](#)
- March 17, 2006 — [Filing Statement Transmittal Letter](#)
- March 17, 2006 — [Filing Statement](#)
- May 04, 2006 — [Final Adopted Regulation - with filing statement](#)

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## Waste Management

### **(2) Regulation R176-05: Procedures For Grants To Enhance Solid Waste Management Systems And Promote The Efficient Use Of Resources.**

This regulation proposes adoption of several new sections in Chapter 444A of the Nevada Administrative Code (NAC). The new regulation would establish procedures for the Division to award grants to municipalities, educational institutions, and nonprofit organizations for projects that enhance solid waste management systems and promote the efficient use of resources.

In the 2005 legislative session, SB 396 modified NRS 444A.110 by authorizing the Division to award grants for the above referenced activities. It also required the State Environmental Commission (SEC) to adopt regulations governing the administration of the grants. This petition seeks to carry out this requirement. It outlines grant application requirements, eligibility determination, evaluation criteria, grant agreements, and procedures for disbursement of funds, grant termination, etc.

The Division currently has a program to provide public education and support of recycling programs in Nevada through contracts. The grants program, which has now been authorized in legislation, is better suited for carrying out this function. The new regulation would also broaden

the range of qualifying projects from recycling public education and support, to projects that enhance solid waste management systems and promote the efficient use of resources. The Division would still utilize recycling contracts as necessary for entities that are not eligible to receive grants under the statute.

Local governments, nonprofit organizations and educational institutions may see beneficial economic effects, both short and long term, if they become grant recipients. Similarly, businesses that provide services in support of grant projects may have modest beneficial effects. Modest economic benefits may accrue to the public due to improvements in waste management and recycling services. Implementation of the grants procedures will not cause agency costs to increase.

No new revenue source is provided for this program. Funds available for grants would be a portion of those that the Division previously used for recycling contracts. This regulation will not have an immediate or long-term adverse effect on business or the public, there is no additional cost to the agency for enforcement of the proposed regulation, and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The regulation is also no more stringent than what is established by federal law. (SEC reference # P2005-09)

- November 01, 2005 — [Workshop Notice](#)
- November 01, 2005 — [First Draft Regulation](#)
- November 01 — [SEC Form #1, adopt, amend or repeal regulations](#)
- November 01 — [SEC Form #4, Small business impact disclosure process](#)
- November 02, 2005 — [SEC Regulation Submittal Letter to LCB](#)
- December 21, 2005 — [LCB Final Draft of Proposed Regulations R176-05](#)
- March 17, 2006 — [Filing Statement Transmittal Letter](#)
- March 17, 2006 — [Filing Statement](#)
- May 04, 2006 — [Final Adopted Regulation - with filing statement](#)

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## Air Quality Planning / Air Pollution Control

### **(3) Regulation R206-05: Adoption By Reference of Federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs):**

The Nevada Division of Environmental Protection (NDEP) is proposing to adopt into State regulation federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs) that have been promulgated by the U.S. EPA since July 1, 2004. The NDEP is delegated the implementation of the federal NSPS and NESHAPs programs relevant in Nevada, however, it is necessary to keep the State's "adoption by reference" regulation (NAC 445B.221) up to date so that EPA can continue to delegate the implementation of new rules to the State.

This regulation will not have an immediate or long-term adverse effect on business or the public, there is no additional cost to the agency for enforcement of the proposed regulation, and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The regulation is also no more stringent than what is established by federal law. (SEC reference # P2006-08)

- November 23, 2005 — [Workshop Notice](#)
  - November 29, 2005 — [First Draft Regulation](#)
  - December 01, 2005 — [SEC Form #1, adopt, amend or repeal regulations](#)
  - December 01, 2005 — [SEC Form #4, Small business impact disclosure process](#)
  - December 01, 2005 — [SEC Regulation Submittal Letter to LCB](#)
  - December 27, 2005 — [LCB Draft of Proposed Regulations R206-05](#)
  - March 17, 2006 — [Filing Statement Transmittal Letter](#)
  - March 17, 2006 — [Filing Statement](#)
  - May 04, 2006 — [Final Adopted Regulation - with filing statement](#)
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## Air Quality Planning / Air Pollution Control —

**(4) Regulation R189-05: Mercury Air Emission Permitting Program For Precious Metal Mining Facilities:** Between 2002 and 2005 the Nevada Voluntary Mercury Reduction Program, a joint effort of the NDEP, the U.S. EPA and four Nevada mining companies, achieved significant and rapid mercury emission reductions from thermal processes used in metal mining. Subsequent to this voluntary program, the NDEP has determined that it is necessary and appropriate to expand the coverage of the program to all metal mining operations in Nevada. Therefore, the NDEP is proposing regulations to require mercury air emission controls at precious metal mining facilities through a new mercury permitting program, as an adjunct to the current operating permit to construct program. The new program will apply to precious metals mining facilities that process mercury-containing ore and use thermal treatment processes that have the potential for liberating mercury into the atmosphere.

The new regulation will have an economic impact on precious metals mining companies that process mercury-containing ore and use thermal treatment processes that have the potential for liberating mercury into the atmosphere. These companies will be subject to the mercury permitting program and applicable fees. The proposed regulation will have no economic effect on the public. Additional cost to the agency for enforcement of the proposed regulation would be covered by permitting fees assessed to metals mining companies. The regulation would not overlap or duplicate any regulations of other state, federal, or local agencies and the regulation would not be more stringent than what is established by federal law. (SEC reference # P2006-07)

- November 23, 2005 — [Workshop Notice](#)
- December 05, 2005 — [SEC Form #1, adopt, amend or repeal regulations](#)
- December 05, 2005 — [SEC Form #4, Small business impact disclosure](#)
- December 05, 2005 — [SEC Regulation Submittal Letter to LCB](#)
- March 03, 2006 — [LCB Draft of Proposed Regulations R189-05](#)
- March, 2006 — [Technical changes to R189-05 \(Discuss by NDEP directly with LCB\)](#)
- March 08, 2006 - Exhibit 2 — [Summary of Written Comments Received by NDEP](#)
- March 08, 2006 - Exhibit 3 — [SEC Adopted Changes to LCB File No. 189-05](#)
- March 15, 2006 — [Filing Statement Transmittal Letter](#)
- March 15, 2006 — [Filing Statement](#)
- May 04, 2006 — [Final Adopted Regulation - with filing statement](#)

### ▶ Related Information

- Program Description — [Nevada Mercury Air Emissions Control Program](#)
- External Link — [Nevada Mercury Air Emissions Control Program Website](#)

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## Additional Information - about the meeting process

Additional Information: Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to: State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. The SEC must receive written submissions at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

Members of the public can inspect copies of the regulations to be adopted at the State Library and Archives in Carson City (100 Stewart Street), and at the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Carson City office is located at 901 South Stewart Street, Suite 4001 and the Las Vegas office is located at 1771 E. Flamingo, Suite 121-A.

In addition, copies of this public notice and the accompanying regulations have been deposited electronically at major library branches in each county in Nevada. All of the proposed regulations

denoted in this notice, including previous drafts are posted on Legislative Counsel Bureau's website at <http://www.leg.state.nv.us/Register/>

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on February 07, 2006.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: the Nevada Department of Wildlife building in Reno, the Grant Sawyer Office Building in Las Vegas, and the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the SEC, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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Last Updated 05/08/06



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Melvin D. Close  
Las Vegas, NV

VICE CHAIRMAN:  
Alan Coyner  
Administrator  
Division of Minerals  
Commission on Mineral  
Resources

#### MEMBERS

Pete Anderson  
State Forester  
Division of Forestry

Terry Crawforth  
Director Department of  
Wildlife

Lew Dodgion  
Carson City, NV

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Agriculture

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Las Vegas, NV

Hugh Ricci  
State Engineer  
Division of Water Resources

Harry Shull  
Las Vegas, NV

Frances Sponer  
State Board of Health  
Las Vegas, Nevada

Stephanne Zimmerman  
Las Vegas, NV

COUNSEL  
David Newton

STAFF  
Nan Paulson  
Recording Secretary

John B. Walker  
Executive Secretary

## Meeting Agenda Regulatory Hearing -- March 08, 2006

The State Environmental Commission (SEC) will hold a public hearing at 10:00 a.m. on March 8th, 2006 at the Washoe County Commission Chambers located at 1001 E. Ninth Street, Building A, Reno, NV 89512.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this meeting agenda has been posted at the following locations: the Washoe County Commission Chambers in Reno, the Nevada Department of Wildlife building in Reno, the Grant Sawyer Office Building in Las Vegas, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of this agenda and the proposed regulations noted below were made available to all public libraries throughout the state as well as individuals on the SEC electronic mailing lists. The public notice for this hearing was also published on February 20 and 27, 2006 and on March 06, 2006 in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interests and time of the persons attending.

- I. Approval of minutes from the June 10 hearing \* ACTION
- II. **Settlement Agreements on Air Quality Violations \*ACTION by Consent Calendar**
  - 1) American Cement and Aggregate –Violations #1965 & 1966
  - 2) Awesome Construction, LLC –Violation # 1969
  - 3) Bolling Construction, Inc –Violations # 1965A & 1966A
  - 4) Builders Choice, Inc. –Violation # 1996
  - 5) Eagle Ridge at Genoa, LLC –Violation # 1997
  - 6) FNF Construction, Inc. –Violations # 1967, 1968, 1971, 1972 - 1974
  - 7) Frehner Construction Inc. – Violation # 1987 - 1989
  - 8) Glamis Marigold Mining Co. –Violations # 1999 & 2000
  - 9) Hunewill Construction Co. –Violation # 1984
  - 10) James Hardie Building Products –Violations # 2004 -2007
  - 11) Mercer, Fraser, Inc –Violations # 2008 & 2009
  - 12) North Tahoe Investment Group –Violation # 1983
  - 13) River Park Properties, LLC –Violation # 1985
  - 14) Vega Construction & Trucking –Violation # 1977
  - 15) Wendover Casinos, Rainbow Hotel Casino –Violation # 1964
- III. **Appointment of Advisory Board to the State Environmental Commission (SEC) on Certification of Operators of Public Water Systems \* ACTION**

**Recommended Action:** In accordance with Senate Bill No. 395, the Division of Environmental Protection is recommending appointment of the Advisory Board as follows:

- Darrin Price (Chairman), Sun Valley G.I.D., 5000 Sun Valley Boulevard
- Lynn Forsberg – Elko County (Representing the General Public)
- Chet Auckly, S.E.E. Company LLC
- Cameron McKay (Secretary), Round Hill General Improvement District
- Marie Pollack (Vice Chair)
- Marcellus Jones, Las Vegas Valley Water District
- Harvey Johnson, Incline Village General Improvement District

**IV. Regulatory Petitions \* ACTION**

1. **Regulation R175-05:** Adoption of Federal Regulations by Reference Governing Hazardous Waste Management
2. **Regulation R176-05:** Procedures For Grants To Enhance Solid Waste Management Systems And Promote The Efficient Use Of Resources
3. **Regulation R206-05:** Adoption By Reference of Federal New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants
4. **Regulation R189-05:** Mercury Air Emission Permitting Program For Precious Metal Mining Facilities

**V. General Public Comment** – In consideration of others, who may also wish to provide public comment, please avoid repetition and limit your comments to no more than five (5) minutes.

**VI. Briefing to Commission** – NDEP Administrator

**VII. Set Next Meeting Date** – September 2006

**Meeting Information:** Copies of the proposed regulations may be obtained by calling the Executive Secretary, John Walker at (775) 687-9308. The public notice and the text of the proposed regulations are also available on the State Environmental Commission website at: <http://www.sec.nv.gov/index.htm> and the Legislative Counsel Bureau's website at: <http://www.leg.state.nv.us/Register/>

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on March 01, 2006.



901 South Stewart Street, Suite 4001  
Carson City, Nevada 89701-5249  
Telephone (775) 687-9308  
Fax (775) 687-5856  
[www.sec.nv.gov](http://www.sec.nv.gov)



CHAIRMAN:  
Melvin D. Close  
Las Vegas, NV

VICE CHAIRMAN:  
Alan Coyner  
Administrator  
Division of Minerals  
Commission on  
Mineral Resources

#### MEMBERS

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State Engineer  
Division of Water  
Resources

Harry Shull  
Las Vegas, NV

Frances Sponer  
State Board of  
Health  
Las Vegas, Nevada

Stephanne  
Zimmerman  
Las Vegas, NV

COUNSEL  
David Newton

STAFF  
[Nan Paulson](#)  
Recording  
Secretary

[John B. Walker](#)  
Executive Secretary

## State Environmental Commission Notice of Hearing for the Adoption of Regulations Posted February 1, 2006

The State Environmental Commission (SEC) will hold a public hearing at 10:00 a.m. on March 8, 2006 at the Washoe County Commission Chambers located at 1001 E. Ninth Street, Building A Reno, NV 89512.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions. The petitions will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

**Regulation R175-05: Adoption of federal regulations by reference governing hazardous waste management.** This proposed regulation is needed to incorporate changes to the federal hazardous waste regulations that are currently in conflict with Nevada's existing State regulations. The regulation will revise State regulations to be more consistent with federal regulations. The regulation will amend Chapter 444 of the Nevada Administrative Code (NAC). The regulations addresses the federal regulatory changes adopted by the US EPA (between July 1, 2003 and July 1, 2005) which includes clarification of the used oil management standards, revisions to the National Performance Track Program, new listing of hazardous wastes from the dye and pigment industries, and revisions to related land disposal restrictions. The regulatory changes also include standardization of the Uniform Hazardous Waste Manifest and updates to the analytical and sampling methods approved for use in complying with Resource Conservation and Recovery Act (RCRA) regulations.

**Regulation R176-05: Procedures for grants to enhance solid waste management systems and efficient use of resources.** This regulation proposes adoption of several new sections in Chapter 444A of the Nevada Administrative Code (NAC). The new regulation would establish procedures for the Nevada Division of Environmental Protection (NDEP) to award grants to municipalities, educational institutions, and nonprofit organizations for projects that enhance solid waste management systems and promote the efficient use of resources. The regulation outlines grant application requirements, eligibility determination, evaluation criteria, grant agreements, and procedures for disbursement of funds. This new regulation would also broaden the range of qualifying projects from recycling public education and support, to projects that enhance solid waste management systems and promote the efficient use of resources.

**Regulation R206-05: Adoption by reference of federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs):** The Nevada Division of Environmental Protection (NDEP) is proposing to adopt into State regulation the federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs) that have been promulgated by the U.S. EPA since July 1, 2004. The NDEP is delegated the implementation of the federal NSPS and NESHAPs programs relevant in Nevada, however, it is necessary to keep the State's "adoption by reference" regulation (NAC 445B.221) up to date so that the US EPA can continue to delegate the implementation of new rules to the State.

The regulations referenced in this notice (R175-05, R176-05 and R206-05) will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to NDEP for enforcement of these proposed regulations and the regulations do not overlap or

duplicate any regulations of other state, federal, or local agencies. The amended regulations are no more stringent than what is established by federal law and the will not increase fees.

**Regulation R189-05: Mercury air emission permitting program for precious metal mining facilities:** This proposed regulation will expand Chapter 445B of the Nevada Administrative Code (NAC). As way of background, between 2002 and 2005 the Nevada Voluntary Mercury Reduction Program, a joint effort of the NDEP, the U.S. EPA and four Nevada mining companies, achieved significant mercury emission reductions from thermal processes used in metal mining. Subsequent to this voluntary program, the NDEP has determined that it is appropriate to expand the coverage of the program to all metal mining operations in Nevada. Therefore, the NDEP is proposing new regulations to require mercury air emission controls at precious metal mining facilities through a new mercury permitting program, as an adjunct to the current Operating Permit to Construct Program. The new program will apply to precious metals mining facilities that process mercury-containing ore and use thermal treatment processes that have the potential for liberating mercury into the atmosphere.

This new regulation will have an economic impact on precious metals mining companies that process mercury-containing ore and use thermal treatment processes that have the potential for liberating mercury into the atmosphere. These companies will be subject to the Mercury Permitting Program and applicable fees. The proposed regulation will have no economic effect on the public. Additional cost to the agency for enforcement of the proposed regulation would be covered by permitting fees assessed to metals mining companies. The regulation would not overlap or duplicate any regulations of other state, federal, or local agencies and the regulation would not be more stringent than what is established by federal law. For more information, see Nevada Mercury Air Emissions Control Program website at: <http://ndep.nv.gov/mercury/index.htm>.

**Additional Information:**

Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to: State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. The SEC must receive written submissions at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

Members of the public can inspect copies of the regulations to be adopted at the State Library and Archives in Carson City (100 Stewart Street), and at the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Carson City office is located at 901 South Stewart Street, Suite 4001 and the Las Vegas office is located at 1771 E. Flamingo, Suite 121-A.

In addition, copies of this public notice and the accompanying regulations have been deposited electronically at major library branches in each county in Nevada. This notice and the text of the proposed regulations are available on the State Environmental Commission's website at <http://www.sec.nv.gov/>. All of the proposed regulations denoted in this notice, including previous drafts are posted on Legislative Counsel Bureau's website at <http://www.leg.state.nv.us/Register/>.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on February 28, 2006.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: the Nevada Department of Wildlife building in Reno, the Grant Sawyer Office Building in Las Vegas, and the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of this notice and the proposed

regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the SEC, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

02/01/06

# STATE ENVIRONMENTAL COMMISSION (SEC)

## Meeting of March 08, 2006

Washoe County Commission, Chambers  
Reno, Nevada

### Members Present:

Alan Coyner, Vice Chairman  
Terry Crawford  
Lewis Dodgion  
Pete Anderson  
M. Francis Sponer  
Don Henderson  
Ira Rackley  
Hugh Ricci

### Members Absent

Melvin Close, Chairman  
Harry Shull  
Stephanne Zimmerman

### Staff Present:

David Newton, Deputy Attorney General  
John Walker, Executive Secretary  
Nan Paulson, Recording Secretary

**Readers Note:** *These are summary minutes of the above referenced meeting of the State Environmental Commission (SEC). Please contact the SEC Recording Secretary for a copy of the verbatim minutes of the proceedings (i.e., available in audio format only, analog cassette magnetic tape).*

Vice Chairman Alan Coyner called the meeting to order at 10:00 a.m. Mr. Coyner requested from the Commission concurrence on an agenda item. Chairman Coyner asked the Commission not to take up the mercury regulation prior to 1:00 pm. The Commission acknowledged the request and Chairman Coyner informed all present that he would not entertain the mercury petition until after lunch (i.e., after 1:00 pm). He also noted that he would dispense with as many agenda items as possible before lunch, with the exception of the mercury regulations. The Commission agreed.

### **I. Approval of Minutes from the October 04, 2005 SEC Meeting**

Chairman Coyner moved to the Agenda Item, and called for approval of the Minutes of the October 04, 2005 meeting. Commissioner Terry Crawford responded by suggesting that future minutes contain the details of motions made at the meeting. He noted the October minutes were somewhat deficient in this area and recommended that be addressed in the future. The Commission agreed.

**SEC Motion** -- Commissioner Crawford made a motion to accept the minutes with the stipulation that minutes of all future meetings contain details of all motions. Chairman Coyner called for a second on the motion; Commissioner Ira Rackley provided the second and the motion carried with a unanimous vote.

### **II. Settlement Agreements on Air Quality Violations**

Vice Chairman Coyner proceeded to agenda item II, Air Quality Violations. He asked the Commission to consider the violations as a group, i.e. by consent calendar. He then asked if there were any members of the public that wished to address the NOAVs. There were none so

he asked the Nevada Division of Environmental Protection (NDEP) to provide a brief summary of the fifteen (15) settlement agreements under consideration.

Mr. Leo Drozdoff, Administrator of NDEP, approaches the podium. Mr. Drozdoff informed the Commission that this would be Mike Yamada's last appearance before the Commission; He noted that Mr. Yamada would be retiring from NDEP. He further noted that Mr. Yamada has served NDEP and the Commission admirably over the past several years.

Mike Yamada, Enforcement Supervisor for NDEP's Bureau of Air Pollution Control (BAPC) approached the podium. Mr. Yamada provided the Commission with a short synopsis of each of the 15 settlement agreements listed below for air pollution control violations.

- 1) American Cement and Aggregate –Violations #1965 & 1966
- 2) Awesome Construction, LLC –Violation # 1969
- 3) Bolling Construction, Inc –Violations # 1965A & 1966A
- 4) Builders Choice, Inc. –Violation # 1996
- 5) Eagle Ridge at Genoa, LLC –Violation # 1997
- 6) FNF Construction, Inc. –Violations # 1967, 1968, 1971, 1972 -1974
- 7) Frehner Construction Inc. – Violation # 1987 - 1989
- 8) Glamis Marigold Mining Co. –Violations # 1999 & 2000
- 9) Hunewill Construction Co. –Violation # 1984
- 10) James Hardie Building Products –Violations # 2004 -2007
- 11) Mercer, Fraser, Inc –Violations # 2008 & 2009
- 12) North Tahoe Investment Group –Violation # 1983
- 13) River Park Properties, LLC –Violation # 1985
- 14) Vega Construction & Trucking –Violation # 1977
- 15) Wendover Casinos, Rainbow Hotel Casino –Violation # 1964

Commissioner's Hugh Ricci and Terry Crawforth asked Mr. Yamada a series of questions about how the fines are assessed. Mr. Yamada responded by describing how the enforcement conferences work including when a Supplemental Environmental Project (SEP) is considered in lieu of issuing an air quality violation to a company. Commissioner Frances Sponer chimed in by asking Mr. Yamada about a reference in the minutes from the last SEC meeting about NDEP's penalty matrix. She asked how the matrix is used to determine fine amounts. Mr. Yamada noted that the same matrix is being used today; however, it does need improvement. He said that NDEP would bring the matrix back to the Commission for review. Commissioner Sponer then asked Mr. Yamada for a copy of the matrix, he said he would send it to her.

Chairman Coyner noted the fines for the 15 violations totaled just over \$274,000. He asked Mr. Yamada why the number of fines and amounts were so high; Mr. Yamada suggested that new companies coming from other states are not fully aware of Nevada's air quality regulations. Mr. Coyner noted to everyone that the violations (NOVA's) serve as a deterrent, although Nevada would rather work with industry than fine them. Mr. Yamada responded by saying that is exactly what NDEP does.

**SEC Motion:** Chairman Coyner asked for any public comment on the violations listed on the agenda, being none; he called for a "consent vote" on all 15 violations from the Commission. Commission Lew Dodgion so moved; Commission Crawforth second, there being no further discussion, the Commission unanimously approved the motion.

Chairman Coyner then asked the Executive Secretary to prepare a letter from the Commission to Mr. Yamada describing the Commission's appreciation for the five years of service provided by Mr. Yamada. The Executive Secretary acknowledges he would. Mr. Yamada ended by thanking the Commission for their cooperation and dedication.

**Note:** Appendix I contains the settlement agreements index. The index provides the companies names, a brief description of the violations, the NOAV number(s) and the proposed settlement (FINE) amounts.

### **III. Appointment of Advisory Board to the State Environmental Commission (SEC) on Certification of Operators of Public Water Systems**

Vice Chairman Coyner proceeded to agenda item III concerning the Advisory Board to the SEC on the Certification of Operators of Public Water System. Mr. Doug Zimmerman Bureau of Safe Drinking Water approached the podium and provided the commission with the following background.

Mr. Zimmerman noted that agenda item III is the Division's recommendation for appointment (or reappointment) of an Advisory Board on Certification of Operators of Public Water Systems. He noted that Darrin Price, Chairman of the current Board was available to answer any questions the Commission may have.

**Prepared Comments from Mr. Zimmerman:** "As a result of SB 395 passed in the last legislative session, drinking water programs were transferred from the Nevada Division of Health to the NDEP. The transfer occurred on July 1, 2005 or about 8 months ago. The transfer included the program for certification of operators of public water systems -- and as the Commission knows, at its last meeting you approved a significantly revised set of regulations covering certification. The Advisory Board took a leadership role with respect to development of the regulations and were essential to their successful completion.

The statute addressing the appointment of an Advisory Board is NRS 445A.870 and this was part of the statutory authority transferred by SB 395. The statute states that the Commission may appoint an advisory board to act in an advisory capacity in matters relating to the certification of operators.

The statute goes on to say that if a Board is appointed at least one member must be a member of the American Water Works Association and at least one member must be a member of the Nevada Rural Water Association. The current Board consists of 7 members (the Bio's of the members are in your packet) and they more than satisfy these requirements. The members serve without compensation however they can receive per diem for travel expenses. The State Board of Health first appointed the Advisory Board in 1992 and the Board has been in existence since that date.

As I stated earlier the Division supports the appointment of the Advisory Board and there are two primary reasons why we make this recommendation. First, the Board provides a forum for communication between the regulated community and NDEP. There are approximately 1200 certified operators in the State and the Board meetings provide a mechanism and opportunity for communication. For example, at the last meeting of the Advisory Board in January of this year,

NDEP placed on the agenda a discussion item regarding contract operators and their responsibilities to the systems they are working for. Without going into detail, the Division wanted to assure that these contract operators (individuals who typically provide services to small systems who don't have their own operators) were fulfilling their responsibilities as the person in responsible charge of the system. After hearing our concerns, the action the Board decided to take was to redistribute an ethics policy that was developed a number of years ago and to raise this issue at the annual Nevada Rural Water Conference which is scheduled for next week. So again the Board provides a mechanism by which we can communicate with the regulated community.

The second reason we recommend appointment of the Board is to get their assistance with an ongoing effort the Division has undertaken to evaluate and compare the certification programs for waste water treatment plant operators and drinking water operators. On the water pollution control side of the Division we have a program for certification of operators of sewage treatment plants and a Board similar to this Advisory Board exists for that program. Now that both programs are under the Division we believe it makes sense for us to look at the programs and identify opportunities for improvements and perhaps consolidation of the programs. Input from both Boards on this effort would be very valuable.”

Thus, the Division is recommending the SEC approve the continuance of the Advisory Board for a period of two years. Again, this time period would allow the Division to consider alternatives such as consolidation of the two boards, need statutory or regulatory changes etc..

I would be happy to answer any questions from the Commission and as I noted earlier Darrin Price, Chairman of the Advisory Board is here and is also available for questions. **(End of prepared comments)**

Chairman Coyner asked Mr. Zimmerman if NDEP usually attended meetings of the Advisory Board and how vacancies are filled on the Board. Mr. Zimmerman noted that NDEP attends all board meetings. Regarding vacancies, Mr. Zimmerman stated that the Advisory Board makes recommendations which then must be approved by the SEC.

Chairman Coyner then asked Mr. Darrin Price to address the Commission. Mr. Price gave the Commission some additional background and history of the Board and he noted that NDEP staff has been helpful during the period of transitions between the State Board of Health and the SEC.

Commissioner Sponer asked Mr. Price how the Advisory Board would be reporting to the SEC. Mr. Price said that NDEP staff could report, or a member of the Board could report in writing or at the SEC meetings, as might be appropriate. Commissioner Sponer then asked the Chairman Coyner how he envisioned the Advisory Board might report to the SEC. Chairman Coyner said the Division should decide and that no fixed reporting should be considered at this time.

Mr. Coyner then asked for any public comment on the agenda item, being none he suggested to the Commission that staff had prepared a draft motion and he asked if anyone would like to introduce it.

**SEC Motion** – Commissioner Crawford posed the suggest motions. The motion reads “Appoint an Advisory Board to the State Environmental Commission on Certification of Operators of Public Water Systems. The Advisory Board will consist of the members listed below who are appointed

for a two-year term.” Commissioner Sponer seconded the motions, Chairman Coyner call for the vote and the vote was unanimous.

Advisory Board to the State Environmental Commission on Certification of Operators of Public Water Systems.

- Darrin Price (Chairman), Sun Valley G.I.D., 5000 Sun Valley Boulevard
- Lynn Forsberg – Elko County (Representing the General Public)
- Chet Auckly, S.E.E. Company LLC
- Cameron McKay (Secretary), Round Hill General Improvement District
- Marie Pollack (Vice Chair)
- Marcellus Jones, Las Vegas Valley Water District
- Harvey Johnson, Incline Village General Improvement District

#### **IV Regulatory Petitions**

Vice Chairman Coyner proceeded to agenda item III, “Regulatory Petitions.” He noted that three (3) of the four petitions would be heard before lunch and that the last petition (Mercury Air Emission Permitting Program For Precious Metal Mining Facilities) would be consider in one continues afternoon session.

**Regulation R175-05: Adoption of federal regulations by reference governing hazardous Waste Management:** Mr. Jim Trent, Supervisor, Program Development Branch, Bureau of Waste Management approached the podium. Below are Mr. Trent’s prepared remarks which he presented to the SEC regarding this regulation.

**Prepared Remarks by Jim Trent:** With this petition, the Bureau of Waste Management is proposing to update our adoption by reference of federal hazardous waste regulations and make minor updates and corrections to existing state regulations. A workshop to solicit public comment on the proposed regulations was held on October 19, 2005, in Carson City. Five people attended the workshop. The proposed regulations and minutes from the workshop were posted on the NDEP website and available for review and comment via the internet.

As you are aware, Nevada adopts by reference federal hazardous waste regulations. Since changes are continually made at the federal level, it is necessary to periodically update our reference to federal regulations in the NAC so as to remain authorized to enforce these federal regulations in lieu of U.S. EPA. Sections 1, 2, 3, 5, 9, 10, 11, 12, 13, 14, 17, 18 and 19 of this petition incorporate federal rules published from July 1, 2003 to July 1, 2005.

Let me briefly describe the five federal amendments proposed for adoption. They include the following: clarification of the recycled used oil management standards; revisions to the National Environmental Performance Track Program; new listing of hazardous non-wastewaters from the dye and pigment industries and revisions to related land disposal restrictions; standardization of the Uniform Hazardous Waste Manifest; and updates to the analytical and sampling methods that have been approved for use in complying with RCRA hazardous waste regulations.

Section 6 deletes from adoption provisions of the new federal regulations Nevada does not wish to incorporate as they would conflict with current state hazardous waste regulations. Section 7 provides exceptions to standard word substitutions to ensure that the NDEP and the federal EPA are properly referenced.

State initiated changes in Section 4, 8, 15 and 16 are address revisions to reflect our recent move to the Bryan State Office Building, 901 South Stewart Street, in Carson City. Sections 6 and 8 also contain revisions where references to obsolete federal regulations were updated. I will be glad to answer any questions **(end of prepared remarks)**.

Vice Chairman Coyner asked for questions from the Commission. Commissioner Ricci asked Mr. Trent if there was an administrative way to get these regulations adopted, i.e., as opposed to having the Commission take the action. Chairman Coyner responded that this was a likely question for Mr. David Newton, Deputy Attorney General for the SEC. Mr. Newton responded by saying the short answer was “No”. He went on to note that NRS 233B is quite clear on this point. He noted there is no real way to circumvent the regulatory adoption process. He did say if the agency desired (e.g., NDEP), it could combine the required public workshop and the public hearing at the same time -- and this was the only way to “streamline” the process.

Vice Chairman Coyner then asked Mr. Trent why some federal regulations were not adopted. Mr. Trent noted in certain cases federal regulations are not adopted because they would apply to an industry that doesn't exist in Nevada – such as auto manufacturing.

Vice Chairman Coyner then called for public comment, being none; he closed the public comment period and asked for a motion from the Commission.

**SEC Motion** – Commissioner Crawford moved for adoption of Regulation R175-05: Adoption of Federal Regulations by Reference Governing Hazardous Waste Management. Commission Spomer seconded the motion, Vic Chairman Coyner call for the vote and the vote was unanimous.

Vice Chairman Coyner proceeded to the next regulations on the agenda.

**Regulation R176-05: Procedures for grants to enhance solid waste management systems and efficient use of resources.** Mr. Eric Noack, Chief of the Bureau of Waste Management of the Nevada Division of Environmental Protection presented the regulation to the Commission. Below are his prepared remarks.

**Prepared Remarks by Eric Nock:** “The purpose of this petition is to establish procedures for the Division to award grants to municipalities, educational institutions and nonprofit organizations for projects that enhance solid waste management systems and promote the efficient use of resources.

Currently, the Division uses contracts to promote recycling and waste reduction programs in Nevada, but the State contract procedure is an inefficient means of soliciting proposals and awarding funds for such broad purposes as enhancement of solid waste systems and promotion of the efficient use of resources. For this reason legislative change was sought to establish Division authority to award grants.

In the 2005 legislative session, Senate Bill 396 amended NRS 444A.110 to authorize the NDEP to: ...Award grants to municipalities, educational institutions and nonprofit organizations for projects that enhance solid waste management systems and promote the efficient use of resources. Senate Bill 396 further states that: The State Environmental Commission shall adopt regulations governing the administration of grants awarded...

This petition seeks to amend Chapter 444A of the Nevada Administrative Code by establishing procedures for the administration of solid waste and recycling grants. If adopted, the new regulation will streamline NDEP procedures for providing financial assistance for projects that improve recycling, waste reduction and solid waste management. The new regulation will broaden the projects eligible for NDEP assistance. They will no longer be limited to recycling and waste reduction projects.

Examples of projects that will become eligible are:

- Solid waste management planning
- Landfill equipment, and
- Illegal dumping prevention & cleanup

The new regulation will not increase the funding available for financial assistance, which is currently about \$150,000 per year. Project award amounts are anticipated to continue to be within the range of \$1,000 to \$15,000. The new regulation will also not allow grants to be awarded to for-profit businesses.

Public workshops were held in Las Vegas and Carson City on November 16 & 17, 2005 to provide information and receive public comment on the proposed regulations. A total of 24 people attended the two workshops. The draft regulation was also posted on the NDEP website prior to the workshops.

I will now briefly go through the regulation and describe the main provisions of each section.

The first few sections contain definitions.

Section 8 establishes procedures for the Division to solicit grant applications and defines eligible applicants. It also defines the required form and contents of the application.

Section 9 provides that the Division shall review the application to determine the following: the eligibility of the applicant, the eligibility of the project, the eligibility of the costs and the adequacy of the supporting information.

Section 10 describes what factors the Division shall consider in its evaluation of the application. This section also provides that the Division shall consult with a solid waste management authority before awarding a grant to an applicant in its jurisdiction.

Section 11 provides that the Division shall award grants for proposed projects that best meet the factors specified in Section 10. Section 11 also provides that multiple grants may be awarded to a single applicant.

Section 12 provides that the Division and the grant recipient shall enter into an agreement that establishes the length of the term of the grant, a schedule, terms for payment, and other grantee requirements.

Section 13 contains provisions for grant cancellation if it is not completed in accordance with the terms and conditions of the grant or is deemed to no longer be beneficial. It allows the Division to

examine relevant records and may require reimbursement for ineligible expenditures. It also allows for the return of unexpended funds.

To sum up, this new regulation establishes procedures for the Division to award grants to municipalities, educational institutions and non-profit organizations for projects that enhance solid waste management systems and promote the efficient use of resources. I would now be glad to answer any questions concerning this petition (**end of prepared remarks**).

Vice-Chairman Coyner asked if the Commission had any questions. Commissioner Dodgion responded and asked Mr. Noack about the \$150,000 in the tire fund. Mr. Noack said there was several hundred thousand in the fund. Mr. Dodgion asked for a further explanation of the fund. Mr. David Friedman, NDEP Recycling Coordinator came to the podium and provided the history and background about the fund. He said that about \$1.9 million is collected annually and that NDEP is allocated about 45% of that amount with the rest going to the health districts in Clark and Washoe Counties. Commissioner Anderson then asked if there was a match to the \$150,000 being allocated to the grant program and if the base amount of grant funds was sufficient to meet grant requests. Mr. Noack said there was no match required and the base amount seemed adequate. He noted that NDEP receives about \$250,000 worth of requests per year.

Commissioner Sponer then asked about how the grant allocation process works within urban counties including the health districts. She also asked several questions about the fund in general. NDEP staff responded to all of her questions. Commissioner Ricci asked about the RFP and grant approval process. Mr. Friedman explained how the State Purchasing process works; he explained how RFP's are rated according to set criteria in the RFPs and the committee review/approval process at the State Purchasing Division.

Vice Chairman Coyner then called for public comment, being none; he closed the public comment period and asked for a motion from the Commission.

**SEC Motion** – After considerable discussion, Vice Chairman Coyner asked the Commission for a motion on the petition. Commissioner Sponer moved for adoption of Regulation R176-05 titled procedures for grants to enhance solid waste management systems and efficient use of resources. Commission Crawforth seconded the motion, Vic Chairman Coyner call for the vote and the vote was unanimous.

Vice Chairman Coyner proceeded to the next regulations on the agenda.

**Regulation R206-05: Adoption by reference of federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs):** Ms. Adele Malone, Planner - Bureau of Air Quality Planning of the Nevada Division of Environmental Protection presented the regulation to the Commission. Below are her summary remarks.

**Adele Malone Summary Remarks:** This regulation (R206-05) provides a routine update, which was last done in November 2004. The regulation adopts certain federal rules, mostly NSPS and NESHAP (emission standards & other requirements specific to certain industries), so that EPA can delegate its implementation authority to Nevada. As EPA promulgates new NSPS or NESHAPs or amends existing ones, the State also has to adopt the new rules and amendments

in order to be able to implement them. This update will allow the regulated community to continue to work with the State as opposed to with the EPA. Some specific changes include:

- Updating Appendix W to Part 51 of the CFR, Guideline on Air Quality Models,(addresses the need for consistency in applying AQ models for SIP development) through it's revision on November 9, 2005;
- Regulation currently adopts the applicable NSPS and NESHAP rules as they existed on July 1, 2004 in the CFR and in the FR through September 13, 2004;
- This update adopts new rules and amendments published after September 13, 2004 through mid-November 2005 when this petition was drafted;
- In section 12 the Standard Industrial Classification Manual is available on the internet – address added;
- Section 13, cost of CFRs is updated;
- Bottom of page 2, subpart DDDDD is deleted by mistake and I would like to request that the Commission add “DDDDD” into the list found in (7)(a);

Regarding the public process, a first draft of the proposed regulation was posted on SEC website November 29, 2005. Public Workshops in tandem with mercury regulation workshop were held on December 15 in Carson City and December 19 in Elko. No adverse comments were received on the regulations (**end of summary remarks**).

Vice Chairman Coyner asked for questions from the Commission. Commissioner Lew Dodgion asked Ms. Malone to explain what NESHAPs were. She responded by asking Mike Elges, Bureau Chief for the Bureau of Air Pollutions control to respond. Mr. Elges noted that the NESHAP's list contains 189 air pollinates that were established in the Clear Act by Congress and Congress established industrial standards for these pollutants. Commission Spomer then asked about the adoption process of federal regulations. Staff responded by explain how federal regulations are posted in the federal register and then how and why the State adopts those federal regulations into the NAC.

Vice Chairman Coyner then called for public comment, being none; he closed the public comment period and asked for a motion from the Commission.

**SEC Motion** – After some further discussion, Vice Chairman Coyner asked the Commission for a motion on the petition. Commissioner Ricci moved for adoption of Regulation R206-05 titled Adoption by reference of federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs) with the amendment to sub section 7 of section 1 as proposed by Ms Malone. Commissioner Dodgion seconded the motion, Vic Chairman Coyner call for the vote and the vote was unanimous.

Vic Chairman Coyner noted there was time available before the lunch brake to address other items on the agenda, with the exception of the mercury regulations, which would be addressed after the lunch period. He then moved to Agenda item VI.

## **VI Briefing to Commission – NDEP Administrator**

Mr. Leo Drozdoff Administrator, of NDEP approached the podium and provided the following briefing. He began with a discussion about a recent decision by the US EPA Board of Appeal on a permit the Division issued to Newmount for a power plant. The plant would supply power to company facilities. The appeal was filed by an environmental organization and NDEP defended the appeal before the EPA. Mr. Drozdoff offered the following account, paraphrased from a recent NDEP press release:

EPA's Environmental Appeals Board in a written decision has upheld a permit issued by the Nevada Division of Environmental Protection. NDEP issued the permit to Newmont Nevada Energy Investment for the construction of the TS Power Plant near the town of Dunphy in Eureka County, Nev. The permit was challenged by the Association for Clean Energy and brought before the EAB. In an 82-page decision, the EAB upheld the State permit decision in its entirety and denied the petition for review on all counts. In a written summary of the decision provided by EPA, the Board found that ACE failed to show that the State had committed reversible error in any respect. The EAB's decision represents final agency action on the TS Power Plant permit.

Commission Ricci asked about the US EPA Board of Appeals. Mr. Drozdoff noted it was a US EPA Headquarters entity and that yes its actions were administratively final. Any appeal denied by the entity could then be taken to federal court.

Mr. Drozdoff then provided the Commission an updated on another appeal that was recently upheld by the Nevada State Supreme Court. This appeal concerned the Lone Tree mine, another facility owned by the Newmont Company. He noted that the SEC heard this appeal from Great Basin Mine Watch (GBMW) and the SEC upheld NDEP's water pollution control permit that was issued to the mine. GBMW then took the case to court and it was upheld on all counts in district court and the Nevada State Supreme Court.

Mr. Drozdoff moved on to the alternated fuels issues – he noted changes in state law will now require new regulations governing emission testing of alternated fuel vehicles. Testing is now required and many of the "alt fuel vehicles" are owned by government agencies. Because of different fuels and varying technologies, he noted the reg development process may be difficult and that numerous public workshops are planned to address public concerns.

Mr. Drozdoff next address the planning process for scheduling future SEC meetings. He noted that an assessment was made concerning what regulations would need to be considered by the Commission in this fiscal year – and being none, he said early in the next fiscal year would be an appropriate time for the next meeting. He also noted there are certain constraints with the SEC operating budget and that by not having another meeting this fiscal year would relieve those constraints. Mr. Walker (SEC Secretary) was asked if he had any comments; he responded by echoing Mr. Drozdoff's concerns, noting the time and expensed involved in putting together an SEC meeting.

Mr. Drozdoff said he had two other issues to discuss with the Commission. The first being a number of pending applications for permitting major power plants in Nevada. He said the permitting process is a signification undertaking and the process has ramifications on agency resources. In northern Washoe County and in White Pine County there are power plants being

considered. Commissioner Anderson asked about the timing of permitting a major power plant. Mr. Drozdoff said it's a year plus process not counting public input.

Mr. Drozdoff also discussed the Mohave power plant in southern Nevada, noting that it is shut down, in accordance with a consent agreement reached in 2005. He said they are still paying fees, however, they are not in operation now and they are looking for a new water source for the plant. He also said that NDEP does, anticipate that other air permitting fees may be increased to compensate for the loss in fees from the Mohave station.

Commission Ricci asked about the duration of the Mohave permit in terms of fees. He also asked if the existing permit were terminated and Mohave closed and then re-opened -- would they need a new permit and would they be required to upgrade the facility to meet more stringent permitting requirements. Mr. Drozdoff said yes that would be the case.

The last issues presented by Mr. Drozdoff concerned the arsenic issue that was discussed at the last SEC meeting. He said the Division is now reviewing waiver/exemption requests from small water systems throughout the state. He said that Nevada was ahead of other states in the process of addressing the arsenic issue in drinking water. He noted the Division would bring the issues to the Commission at the next meeting.

Vice Charmin Coyner remarked that Mr. Newton was asked at the last meeting if a panel of the SEC could hear waiver/exemption requests, or did the full SEC have to act on those requests. Vice Chairman Coyner then ended the meeting for the lunch hour.

Vice Chairman Coyner opened the meeting for the afternoon session and he proceeded to the next regulations on the agenda.

**Regulation R189-05: Mercury air emission permitting program for precious metal mining facilities:** Mr. Coyner noted the meeting process would be to here from the agency first, which would take about an hour. This would be followed by public comments from elected officials, non-government organizations, the public and the industry. He noted the lineups as requested would be:

NGO's

Glenn Miller, PhD

Elyssa Rosen, GBMW,

Justin Hayes, Idaho Conservation League, Boise

Tim Wagner – Utah Clean Energy Campaign, Salt Lake City

Lee Loudon – Crescent Valley, NV

Roger Featherstone – Earthworks, Tuscon, AZ

Industry

Russ Fields

John Mud

Jerry Hepworth

Rich Hadic

Mr. Leo Drozdoff opened the discussion with a prepared statement on the mercury regulation. His statement addressed the process NDEP used in getting a draft regulation before the

Commission. His statement acknowledged the many institutions and individuals had participated in the process. He then said that Colleen Cripps, Deputy Administrator would provide the background information including information about the mercury voluntary program and that Mike Elges, Bureau Chief for Air Pollution Control would “walk” the Commission through the regulation.

**Summary Comments, from Colleen Cripps:** Mercury is:

- Naturally occurring
- Geologically concentrated
- Associated with volcanic activity, gold deposits and geothermal springs
- Cycles extensively in the environment
- Complex chemistry that is not well understood
- Transported globally, regionally and locally – transport is thought to be dependent on the form of the Hg being emitted, with RGM being deposited more locally than elemental Hg which is thought to enter the global Hg pool.

Anthropogenic sources: coal combustion, hospital and municipal waste incinerators, thermal treatment of ore in precious metal mining, geothermal heat recovery, and historical mining releases.

The Hg from natural and anthropogenic sources that enters our oceans, lakes, and rivers is converted to methyl mercury by aquatic organisms and bioaccumulates in fish and shellfish. According to the National Research Council’s Committee on the Toxicological Effects of Methylmercury, the primary route of human and wildlife exposure to Hg is primarily through the ingestion of these contaminated fish, particularly large predatory species. In humans, Hg is a known neurotoxin and developing fetuses and children are more sensitive to those affects than adults.

In 1997 EPA reported that 5,500 metric tons of atmospheric cyclical mercury is released world wide into the global reservoir annually from natural, oceanic and newly produced anthropogenic emission sources. In that same year, EPA reported that 159 metric tons were emitted from US industrial sources, such as coal-burning utilities, municipal and hospital waste incinerators, industrial boilers, chlor-alkali plants, cement manufacturers and mining. As of 2002, global emissions continue to increase, while US emissions have dropped to 111.4 metric tons, with the mining industry accounting for 6.5 of the 111.4 tons (these numbers are based on the 2002 NEI) (Table of emissions from US source categories). This compares to the baseline mercury emissions from the mining industry of about 10.5 tons. Current EPA estimates show the mining emissions at less than 2 tons.

According to Ellen Brown, of EPA’s Office of Air and Radiation, EPA modeling data suggests that about 21% of US emissions of new mercury are deposited in the lower 48 states. The rest is transported into the global mercury pool.

Prior to 1998, mercury released from gold mining had not been systematically measured, and estimates from this industry were not available.

In 1998, the TRI was changed to require reporting by the mining industry. Initial estimates showed significant air releases of mercury (about 7 tons) from 7 mining facilities in Nevada. This estimate was revised upward to about 10.5 tons after some initial source testing.

## Voluntary Mercury Reduction Program

In recognition of the hazards posed by mercury and the fact that no federal requirements existed for controlling mercury from this industry, the Voluntary Mercury Reduction Program (VMRP) was initiated in 2000 after the 1998 TRI data was published. This program was developed by the US EPA, the Nevada Division of Environmental Protection and the four mining companies with the largest reported Hg releases and finalized in February of 2002.

### *Why voluntary program rather than a MACT (**Maximum Achievable Control Technology**)?*

EPA determined there was no existing regulatory requirement for the mines to control mercury emissions. Although a MACT could have been established, we all knew that the process would be lengthy and reductions would not be seen for years. EPA has established a number of voluntary programs in the past and that model would result in much quicker reductions.

### *Why just a Nevada program?*

Nevada program because gold mining is concentrated in NV. Based on TRI reports, these four companies represented greater than 95% of the mercury released to the atmosphere by the gold mining industry. Program participation was based on a number of factors, but primarily the program was focused on those facilities with the largest emissions and the greatest potential to emit Hg due to the Hg concentration in the ore.

### Program Goals:

- Achieve significant, permanent and rapid reductions in mercury air emissions from gold mining operations;
- Achieve reductions at reasonable costs;
- Achieve reductions through approaches most suitable for each individual mining facility.

Two alternative tracks were identified: (1) the MACT Equivalent Track - where the facility agreed to implement and install or had already implemented and installed MACT equivalent controls. During the initial development and implementation of the voluntary program, EPA conducted an evaluation of the existing available controls and determined which ones they considered MACT equivalent. This is important, because it set the baseline for what we are calling presumptive MACT.

The second option was called the Process Modification Track – here the facility agreed to use existing controls (which may or may not be MACT equivalent) coupled with pollution prevention, waste minimization, or pollution abatement measures to achieve air emission reduction goals of at least 33% by the end of 2003 and 50% by the end of 2005. (Although there were facilities that initially took advantage of this second option, by the end of the initial 5 years of the voluntary program, all of the companies had installed some MACT equivalent controls)

A plan was to be developed that included a description of the controls that had been implemented or installed or, for the second track, the process modification, pollution prevention, waste minimization measures that had been implemented and the annual emissions estimates and annual reporting was required of the four participating companies. (The details of the reporting

requirements and a description of what were considered MACT equivalent controls are available in the VMRP Guidance Document dated February 12, 2002.) And finally, these companies were to assist EPA in effort to encourage additional participation.

To ensure the sustainability of the reductions, the VMRP members agreed to incorporate the control measures into their facility's operating permit upon renewal.

EPA considered this program an alternative to developing a MACT for the mining industry. The success of the program was to be reviewed at the end of 2005.

*Results:*

According to EPA, the voluntary program has reduced Hg emissions at these five facilities by over 80%.

*Where do we go from here?*

Program Enhancements -- NDEP began evaluating the VMRP program and consider enhancements in the fall of 2004 (a year before the scheduled program review).

- The issuance of a draft report that raised questions about the how the data are presented and the testing and recordkeeping requirements
- Concerns about how the requirements would be included in a permit revision
- Discussions of research needs, and
- Response to Notice of Intent to Sue by ICL

We had an initial meeting with the industry in November and then had a two or three discussions with industry, and representatives from Nevada environmental groups and UNR. At those meetings we decided to move forward with a more formal process to identify needed program enhancements and discussed expanding the program to include additional facilities and whether or not the program should remain voluntary or if it should be regulated by the state. We heard concerns that not all of the mining facilities with the potential to emit Hg were in the program; that because there were no regulatory hammers, a facility could potentially decide to just opt out of the program; that there was no mechanism for ensuring that the Hg controls were the best available and that those controls were being operated effectively; and that the emissions were not being reported consistently.

We held a meeting of all the interested parties in early June and since then dozens of meeting various groups have been held and presentations made at a number of regional meetings. We issued an initial draft of the Nevada Mercury Control Program on November 18th. This is one of the documents in your packet.

The NMCP (Nevada Mercury Control Program) was designed to build on the successes of the VMRP, but the differences are significant. As currently proposed, the NMCP expands coverage to all precious metal mining operations. This will be done through a regulatory and permitting program that is designed to ensure that the best available controls are applied to all thermal sources that emit significant amounts of Hg (not only will facilities be unable to just opt out these regulations make all aspects of this program enforceable). This new program provides a mechanism for ensuring the installation of state of the art controls. This will be done through a

case-by-case review of best available controls and requiring that those controls be installed (aka the Nevada MACT). We have developed specific monitoring, testing, recordkeeping and reporting, and operations and maintenance requirements to (1) ensure that the controls are working efficiently and effectively so that Hg is being controlled to the maximum extent possible and (2) to ensure that reporting is being done consistently.

After the draft program document was (posted) issued, we began working on the regulations in earnest. The regulations were drafted and workshops were held in December in Carson City and Elko. The formal public comment period opened on February 1st. We have received well over a hundred written comment letters and emails. Mike will discuss the types of comments we received, but first he will walk you through the regulations and timelines.

In conclusion -- given the large global mercury pool, the fact that mercury can be transported very long distances, the complexity of the chemistry involved, and the paucity of existing data, we feel that it would be irresponsible to make any specific claims about the fate and transport of the mercury released by Nevada's mines. Rather, we are committed to ensuring that the mercury reductions we have seen to date are sustained and that additional reductions are achieved while this research continues.

**Prepared Testimony, Mike Elges:**

Good afternoon Mr. Chairman, members of the commission, for the record my name is Mike Elges. I'm the Chief of the Bureau of Air Pollution Control. As Colleen said, I'm here today to present an overview of the proposed air quality regulations contained in Petition 2006-07 for the Nevada Mercury Air Emissions Control Program. As Colleen mentioned, there are three major goals of this proposed Program; to enhance the VMRP program's monitoring, testing, recordkeeping and reporting requirements; to expand the program to all precious metal mining operations; and to implement improved and additional state of the art mercury emissions controls through a regulatory process.

**PROGRAM OVERVIEW**

The proposed Mercury Air Emissions Control Program requires the best available mercury emissions controls for precious metal mining facilities that process mercury-containing ore and that utilize thermal treatment processes. Program requirements are all provided through a permit process, and all applicable conditions are established in a permit known as the Mercury Operating Permit to Construct. The proposed mercury permit program is based on the very successful Operating Permit to Construct program which was adopted by the Commission in November of 2002.

Before going through the proposed regulations, I'd like to provide a brief overview of the Mercury Program and its requirements. This program requires thermal processes located at precious metal mining operations that emit mercury to apply the best mercury air emissions controls available. Like most new regulatory requirements that affect existing units, the program has been developed based on a phased approach to bring the existing units up to the new control requirement standards.

Phase 1 requires 3 things: One; that the mercury emissions control technology installed on the VMRP units is included in a mercury permit. This is done to ensure the continued operation of these controls. Two; it requires mercury emissions testing of existing thermal units to establish a better understanding of the type and amount of mercury emitted from the thermal units. And

three, this Phase requires sampling, operation and maintenance, monitoring, recordkeeping and reporting criteria for each thermal unit at a facility to be established in a permit. Incorporation into the permit ensures that the requirements are enforceable and that the existing controls are effectively reducing mercury emissions.

Phase 1 also provides an incentive program for installing additional controls on a thermal unit. Early Reduction Credit or ERC is an allowance that provides credit to a facility that installs additional controls early in the program. The credit is an extended period of time or grace period for having to install what is ultimately determined to be the best controls available known as NvMACT.

Phase 2 of the program focuses on establishing what will constitute the best available controls for each type of thermal unit. This is the NvMACT process. Along with determining the best controls, the determination establishes the associated emissions limitations or other requirements for those controls, and establishes the timelines for installation and operation of the controls.

I need to emphasize here that the two phased approach applies to existing units only. For new units or units that are being modified, the NvMACT requirements apply immediately. That is, there is no transition or phase-in period for installing NvMACT level controls on new or modified units. I will clarify all of this as I go through the regulations and describe how the program works. I just wanted to make sure that it is clear that not all thermal units are afforded this phased approach.

Before getting into the regulations, I'd like to briefly discuss a mercury questionnaire that the Division has sent to all precious metal mining operations in Nevada. The purpose of the questionnaire is to gather information so we can better understand how many facilities have thermal treatment units that may emit mercury, how many facilities may be planning to add thermal units, and to obtain information about existing mercury controls, or the lack there of. The requirement to provide information in the questionnaire is not built into the proposed regulations as we utilized existing authority to require the submittal of that information. I can report that we are seeing that information come-in now and if you've looked at the Gantt chart that we provided you'll note that the questionnaires are required to submit by March 20th, which are only a few days from now.

With that brief overview of the program, I'd like to go over the regulatory provisions. I would like to apologize right upfront about the delay in getting you the LCB version of the regulations. LCB is allowed 35 days to review our draft regulations. This regulation package was provided to them on November 22nd and we received the final version at noon on Friday March 3rd. We reviewed the LCB version and have identified a number of technical and substantive changes that were not in the document that we originally included in your packet.

At the end of my presentation I will go through the specific changes to the LCB version that need to be made to bring the regulations back in line with the program document and the original intent of the program. Because this is a large and rather complex program that does not stand alone with Chapter 445B, but consists of changes throughout our existing regulations as well as many new provisions, I had planned to describe the program and point out the corresponding Sections in the LCB version of the proposed provisions to show where various aspects of the program can be found. I will be referring to the Gantt chart that we provided throughout my presentation as

well. Once I've described the program, if there is a need to I can go through the proposed provisions line-by-line.

Since Sections 2 through 21 are definitions, I will be primarily discussing Sections 22 through 41. I'd like to start by having you look at Section 26. Section 26 requires the application of the best controls on thermal processes that have the potential to emit mercury and that are located at precious metal mining operations. This is a unit specific mercury control requirement that is like other regulations in Chapter 445B that are established to control air pollution. This is the standard that is being set to control mercury emissions from these emissions units. The majority of what I'll be discussing today describes how sources must comply with this new mercury control requirement.

Earlier I had said that one of the program goals was to expand the VMRP program to all precious metal mining operations. To do so, the proposed provisions establish a three-tier classification system for thermal units located at the mining operations. You can find the three Tiers, cleverly called Tiers 1, 2 and 3, defined in Sections 19, 20 and 21 of the LCB version of the regulations.

Tier 1 units are existing thermal units that participated in the VMRP program. As we've discussed, these were the larger mercury emitters that installed mercury emissions controls prior to the development of this regulatory program. I'm going to skip over Tier 2 units for a moment and describe the Tier 3's next. Tier 3 units are thermal units that either have no mercury emissions, very low (or De Minimis) mercury emissions levels. I'll describe how De Minimis emissions are determined in a second.

With Tier 1 and Tier 3 you have the two extremes, with Tier 1 being the larger emitting units that have installed mercury controls and that are participants in the VMRP; and, the thermal units that emit mercury at De Minimis levels or thermal units that have no potential to emit mercury at the Tier 3 level. Tier 2 units are simply all of the other thermal units in between.

With a basic understanding of the three Tiers, let me go on to describe how the proposed program gets started. Again, this is for existing units. I will describe new and modified units later. The program begins with the Bureau having to evaluate the information provided in the questionnaires and determining if a De Minimis level of emissions can be established. The concept here is to weed out any processes that may have very low levels of mercury emissions. Some processes may not warrant spending considerable time and effort determining whether mercury controls could even be applied, or otherwise be warranted because of limited or no benefit from adding controls. These will be Tier 3 thermal units. One process that seems on the surface to fit this criteria are laboratory fume hoods.

De Minimis is defined in Section 3 of the provisions, and the initial determination of De Minimis must be made within 60 days after the effective date of the regulations in accordance with the provisions of Section 25. This is also shown on the Gantt chart on line 6. Section 25 also provides a facility the opportunity to request that a specific thermal unit be determined to be De Minimis. This can be done at anytime and is not necessarily part of the initial determination. Any facility making this request must provide a demonstration as to why the unit should be designated as having De Minimis mercury emissions. This allowance is provided to allow for evaluation of processes that may be unique to a facility, or for new processes that may come into play in the future.

The provisions in Section 25 require the agency to public notice all proposed determinations of De Minimis for a period of 30 days to provide for public comment. The initial determination must go to public notice even if there are no units that can be deemed De Minimis or if there is no level of mercury emissions that the Division can deem De Minimis. After considering all comments, the agency must take final action within 90 days after the date of the notice. This timeline is shown on line 7 of the Gantt chart. Again, these would be Tier 3 units.

Let me describe how a precious metal mining operation determines whether they have an existing thermal unit, and how they are regulated. First, a thermal unit is one that by definition is located at a precious metal mining operation and that uses direct or indirect sources of heat energy. That definition is contained in Section 17. An existing thermal unit is defined in Section 4 as one that is constructed before the date the Commission adopts the Mercury Program. If a particular unit is constructed before that date, the unit is an existing unit. If constructed after that date, it is a new thermal unit that has different requirements that I'll discuss later.

If a unit is an existing thermal unit, the next step is to determine the appropriate Tier. Again, I'd like to start with Tier 3 thermal units. As I mentioned, a Tier 3 thermal unit, which is defined in Section 21, is one that has no potential to emit mercury, or one that has a De Minimis level of mercury emissions. A mercury emitting unit can be designated Tier 3 if it obtains permit conditions to limit its mercury emissions to a level below De Minimis levels. Permit conditions could include operating parameters, limitations on throughput or hours of operation, but not add-on mercury controls. If mercury controls are required to lower the emissions to below De Minimis levels, the unit would be considered Tier 2.

All Tier 3 units require an annual certification of their Tier 3 status. This annual certification provides a backstop mechanism to ensure that any changes that would alter the units' classification would not go on unchecked. Permission for any physical or operational changes to a unit that would result in an increase in mercury emissions must be granted through a permit prior to the change being made. If there are proposed changes to a thermal unit at a Tier 3 facility, those changes would be identified through the normal permit review process. If a mercury permit would be required, an appropriate modification application would need to be submitted.

All Tier 3 units are required in Section 29 to be permitted, but rather than applying for and receiving a mercury control permit, these units will be included in, and regulated under a standard operating permit. Their existing permit must be revised to include limitations on the thermal unit to keep the potential to emit mercury below the De Minimis level and to require the annual certification for all Tier 3 units. Also, if the mining operation has a Class III operating permit, it must file an application and convert the Class III permit to a Class II permit. As you may recall, Class III permits were developed for small operations that did not require complex permit requirements. I really don't think we have any mining operations under a Class III permit but we wanted to make sure if we did, that we had a way to bring them into the Mercury Program.

The Tier 3 applications to revise their current operating permits must be filed within 90 days of the Director's final notification of determining a De Minimis level. This is shown in Section 29, subsection 2 and on line 33 of the Gantt chart. Once submitted, the existing Class II operating permit provisions in the NAC that govern the permit timelines take over and the permit is processed accordingly.

That takes care of the Tier 3 thermal units.

Next I'd like to discuss the Tier 1 thermal units. Tier 1 units are defined in Section 19 and are specifically listed in Section 23, all by mining operation, process and mercury emissions control technology. These are the thermal units that were part of the VMRP program. As I mentioned before, the installation of the best available controls or NvMACT at Tier 1 and Tier 2 units is accomplished in two steps – Phase 1 and Phase 2.

In the first phase all Tier 1 thermal units are required to obtain a mercury permit. This requirement is contained in Section 28. To do so, they must start by submitting a Phase 1 application within 90 days of the effective date of the program as required in Section 30. This timeline is also shown on line 9 of the Gantt chart. The first phase is designed to obtain a better understanding of the amount and type of mercury emitted from each existing unit, to establish sampling, operation and maintenance, monitoring, recordkeeping and reporting criteria for each existing unit and the associated mercury emissions control devices; and to ensure continued operation of the controls and that the controls are being operated effectively.

The Phase 1 application content for Tier 1 units is outlined in Sections 32 and 33. Section 32 specifically requires the submission of general information about the applicant, such as identification of each mercury emitting thermal unit, rates of production and operating schedules, and location of records. Under this Section the application must also include information regarding additional mercury controls for which any Early Reduction Credit is being requested, and any other information the Director deems necessary. I should point out that ERC controls are not just any mercury controls, but must be the best controls available at the time.

Section 33 contains specific requirements related to the existing controls including a description of any equipment used for controlling mercury emissions, and a proposed Monitoring Plan. The application must also contain an identification of any mercury controls that are "Presumptive NvMACT".

The Monitoring Plan required in the Phase 1 application must contain procedures for operation and maintenance of the thermal unit, and methods for monitoring and recordkeeping for mercury processes and emissions controls. The Plan must also include a proposed schedule for sampling and testing mercury emissions on an annual basis. The first round of testing must be completed before December 31, 2006. I can report that some of the mining companies have already conducted this initial testing and we are beginning to get that data back now. The Plan must also contain provisions for annual reporting of mercury emissions, the calculation of which is based on the emissions test results. And finally, the Plan must contain provisions for reporting all mercury Co-Product that is collected for off-site sale or recycling.

To facilitate getting requirements in place to ensure appropriate and continued operation of these mercury controls the Monitoring Plan submitted by the applicant must be complied with until the initial mercury permit is issued. This requirement is in Section 33, Subsection 2.

Let me take a minute to describe "Presumptive NvMACT". At the Federal level, Presumptive MACT serves as a statement of current knowledge of MACT, and serves as a basis for a decision on how to develop the emissions standard or emissions limitation for the source category. "Presumptive NvMACT" is the same thing only that it recognizes the existing VMRP control technology. The presumption in this case is based on the prior determinations made of the VMRP control technology as being MACT equivalent for the Federal HAPs program.

“Presumptive NvMACT” is a requirement to continue to operate existing mercury emissions controls, only which at the first Phase, the controls do not have a specific emission limitation associated with them. That comes later in the process, should the controls be deemed to be NvMACT. I should point out the “Presumptive NvMACT” controls are defined in Section 16 of the proposed provisions and specifically listed in Section 22 for each facility.

Once the Bureau receives the Phase 1 application, we have 30 days to determine if the application is complete. Should the application not be complete, it is returned to the applicant and must be resubmitted within 15 days. These processing requirements are established in Section 35 of the regulations. The processing timelines are similar to the existing timelines for other permits that are processed by the Bureau. The date the application becomes complete sets the Official Date of Submittal.

Within 180 days of the official date of submittal, the Bureau must propose the conditions of the Mercury Operating Permit to Construct, identify any “presumptive NvMACT” controls, and evaluate any request for Early Reduction Credit. Our technical review must be completed and a draft permit developed within 180 days. This a very aggressive processing schedule.

For Early Reduction Credit, a very thorough review of the additional controls must be conducted before credit is granted. The Bureau must consider the following for each thermal unit: The best controls available for controlling mercury, measures that reduce or eliminate emissions through process changes, substitution of materials or other modifications to the process; enclosures of systems or processes to eliminate mercury emissions; collection, capture or treatment of mercury emissions; the design, equipment, work practice or operational standards for the unit including training and certification of operators; differences in age, remaining operating life and configurations of similar units; as well as differences in mercury in the ore and sizes of similar thermal units, or any combination of these. These requirements are contained in Section 35, subsection 2.c.

Still looking at Section 35, in Subsection 5 you’ll find a requirement that provides for a 30 day public notice and comment period. Like all of our operating permits to construct, all Mercury Permits to Construct are required to go to public review for 30 days. The notice must provide for a 30 day period for public comment and these provisions also provide for a public hearing should one be requested, they also require us to maintain records of all issues raised and the names of persons that commented.

Final action on the mercury permit is required within 12 months of the official date of submittal of the application. Final action must take into consideration all written comments, comments made during any hearing, and information submitted by any proponents of the project.

The contents of the mercury permit for a Phase 1 application are provided for in Section 36 of the proposed regulations. The requirements are similar to other permit requirements that we have currently in the NAC. This includes the more general requirements such as citing the legal authority, maintaining records for 5-years, allowing entry and so on. The mercury permit must also identify the mercury control technology for each Tier 1 unit. So each “Presumptive NvMACT” must be specified in the permit. Also, if any Early Reduction Credit is granted, the permit must require the installation and operation of those additional mercury controls. This timeline is shown on lines 13 and 25 of the Gantt chart. ERC controls must be installed and operational prior to the

submittal date for the Phase 2 applications. Otherwise, they would not qualify for the early reduction credit.

The permit must require monitoring methods adequate to show compliance. At this point in the process we'll have been able to evaluate the effectiveness of the Monitoring Plans for these units and will be using that information to establish the monitoring requirements in the permit. With the monitoring will come recordkeeping and reporting requirements including the annual requirement to conduct mercury emissions testing and the reporting of mercury Co-product. Again, the focus here is to ensure that the existing mercury controls on the Tier 1 units continue to be operated in the most effective manner possible.

So that completes the Phase 1 process for Tier 1 thermal units.

That leaves the Tier 2 thermal units and their requirements under Phase 1. So to recap, the Tier 2 units are those that have the potential to emit mercury at levels above any De Minimis level set, but that were not part of the VMRP. These thermal units are expected to range from units that have no mercury controls to those that have either a specific mercury control device or achieve some mercury emissions reduction through the use of a control device designed for other pollutants but that yields some mercury reduction as a co-benefit.

The requirements for application filing, permit processing and permit content for the Tier 2 units are very similar to that of the Tier 1 units. So much so that LCB combined many sections and they now begin with "For each Tier 1 and Tier 2 thermal unit that emits mercury...". While this cuts down on duplication of provisions it can make it a little difficult to read. I'll do my best to draw out the significant differences between the two Tiers.

Tier 2 application filing requirements are also contained in Sections 28 and 30. However, the application for a Tier 2 unit is required to be submitted within 180 days of the effective date of the program rather than 90 days for Tier 1 units.

Similar to that of the Tier 1 units, Sections 32 and 33 of the regulations describes the Tier 2 application content. The application must contain general information about the applicant, applicable processes, and a description of any controls for mercury. It must contain a proposed Monitoring Plan with the same requirements as those of the Tier 1 units except for the stack sampling frequency. Tier 1 units are required to conduct testing on an annual basis, and participate in the initial testing that is required prior to the end of this year. Tier 2 units required to propose a schedule for testing, but are not being held to the annual minimum for testing or the initial testing that is required before the end of the year. We'll determine the frequency of testing for these units when we develop the permit. This difference can be seen by comparing the requirements in Section 33, subsection 2.a and 2.b. As with Tier 1, the proposed Tier 2 Monitoring Plan must be complied with until the mercury permit is issued.

Action on the application for a Tier 2 unit is the same as I described before for Tier 1. Thirty days for completeness, 180 days to process application and develop draft permit conditions, 30 day public comment period, and final permit action within 12 months of the official date of submittal. This process is contained in Section 35. Also, Early Reduction Credit is provided for in the same manner as I described for Tier 1 units. Anyone can propose to install additional controls during the Phase 1 period and be eligible for the credit program.

Permit content is described in Section 36 and is similar to that of the Tier 1 permit conditions. General conditions are required as specified in Subsections 1 and 2. Should a Tier 2 unit have mercury controls installed, they are required to be maintained and operated just like those of a Tier 1 unit. Any additional controls for the Early Reduction Credit program will be required in the permit just as with the Tier 1 units. We are hopeful that we will see several Tier 2 units take advantage of the ERC as this will get mercury controls in place even sooner.

For facilities that have not filed an application for a unit because they were waiting for the De Minimis determination, and they find out that they have a unit that is not De Minimis, they must file a Phase 1 application within 90 days of the Director's determination of De Minimis. You can find this requirement in Section 31. Likewise, for a facility that has filed an application and received a permit, but did not include a unit because they were waiting for the De Minimis determination, and they find out they have a unit that is not De Minimis, they have to file a Phase 1 application within 90 days to revise the permit.

So that's it for Phase 1.

The requirements of the program developed in Phase 1 leads us to the process of determining what will constitute the best available mercury controls, and establishing the timeline for installation and operation of those controls. That's Phase.

So by now, all existing thermal units either have Class II permit conditions that limit their potential to emit mercury to levels that are below De Minimis (Tier 3), or have obtained a Mercury Operating Permit to Construct through the Phase 1 Requirements (Tier 1 & 2).

To comply with the emissions control technology requirement of Section 26 that I discussed earlier, the existing thermal units, both Tier 1 and Tier 2, must file a Phase 2 application. The Phase 2 application filing requirements can be found in Section 30, Subsection 3, and the corresponding timelines shown on lines 15 and 27 of the Gantt chart. The Phase 2 application must be filed within 21 months of the effective date of the regulations. As with a Phase 1 application, Section 32 sets forth the general criteria required in the Phase 2 application.

Section 34 provides the requirements regarding the specific criteria for a Phase 2 application. Here, the applicant must provide a NvMACT analysis. That is, they have to provide an analysis that determines the method of control or other limitations to be applied to the thermal unit for the reduction of mercury emissions that the applicant believes is sufficient for the Director to determine that the methods of control are the best available and constitute NvMACT. The analysis must also provide a list of similar thermal units that emit mercury and used for precious metal mining that includes methods and technologies for mercury emissions control, the level of mercury emissions associated with each method or technology, the design for each method or technology to control mercury emissions, costs associated with reductions of mercury emissions, costs associated with energy for each method or control technology, any non-air quality health and environmental impacts and energy requirements for each method or control technology consistent with Section 112(d) of the Clean Air Act.

The applicant must also provide another proposed Monitoring Plan as these requirements may change depending on the control that is determined to be NvMACT, and on the availability of new monitoring technologies such as mercury Continuous Emissions Monitors. This time the plan must again contain procedures for operation and maintenance of the thermal unit. Methods for

monitoring of and recordkeeping for any controls for mercury processes and emissions and a proposed schedule for testing that must be conducted on an annual basis. Here now, Tier 2 thermal units are required to conduct testing annually. And as before, reporting of mercury emissions and mercury Co-product on an annual basis.

So with the Phase 2 application submitted and including the applicant's NvMACT analysis, the Bureau must process the application and revise the Mercury Operating Permit to Construct. Again, these provisions are contained in Section 35 and the timelines for processing are shown on lines 16 and 22 of the Gantt chart. Just as before, the Bureau has 30 days to review the application for completeness, but has 9 months after the official date of submittal to propose conditions for revising the mercury permit to include NvMACT, rather than 180 days as is allowed for the Phase 1 application review period.

The proposed conditions of the revised permit and the determination of the mercury control technology determined to be NvMACT is provided the same public process for review and comment as the Phase 1 permits. These requirements are contained in Section 35 as well.

Section 36 contains the permit requirements for the Phase 2 permit revisions. The provisions require the permit to be revised to include what the Bureau determines to be NvMACT and the corresponding emissions limitation. The revised permit must require the installation of the NvMACT controls within 24 months of the permit being revised. This timeline is shown on lines 18 and 30 of the Gantt chart. If a thermal unit has been granted Early Reduction Credit, the NvMACT controls must be installed within 48 months from the date of issuance of the revised permit. This provides the extension of time to install the NvMACT controls granted under the ERC program.

So I've talked about the Phase 2 application filing requirements, the processing timelines, public notice and review, and permit content. I'd like to take a moment and discuss the process for determining the NvMACT controls. In Section 35, Subsection 3, the determination of NvMACT is to be based on 7 criteria. The maximum degree of reduction in mercury emissions that is achievable, the measures that reduce the volume or eliminate mercury emissions through process changes, substitution of materials or other modifications, The enclosure of systems or processes to eliminate mercury emissions, the collection, capture or treatment of mercury emissions, the design, equipment, work practice or operational standards of the thermal unit, the differences in the age, remaining operating life and configurations of similar units that emit mercury, or any combination of these criteria. As you can see, this is a very comprehensive level of review that each thermal unit will be evaluated against.

There is one last point that I'd like to make regarding the determination of the NvMACT controls. You'll note that under Section 35, Subsection 3.b.1, there is a reference to section 112(d) of the Clean Air Act. This section says that we'll consider determining the maximum degree of reduction in mercury emissions in accordance with this section, and consider any non-air quality health and environmental impacts and energy requirements. Many of the comments we received had to do with this provision and understanding what this section of the Clean Air Act actually requires. There is quite an extensive history associated with the Section 112 provisions and while I don't want to get into a complete dissertation, I do think it is appropriate to provide some background.

To understand the requirements, you need to start at 1970, when Congress enacted Section 112 of the Clean Air Act. This statute was the first time that Congress focused its efforts on reducing hazardous air pollutants (HAPs). The statutes at that time defined HAPs as pollutants that, in the judgment of the EPA Administrator, cause or contribute to air pollution which may increase mortality or have an increase in serious irreversible illness. Section 112 required EPA to publish a list of each HAP that EPA intended to establish an emissions limitation for, and then promulgate a standard, or otherwise explain why the HAP was not hazardous. To do this, EPA utilized a risk-based analysis to set the emissions standards. EPA considered levels of HAPs at which health effects were observed, and factored in an ample margin of safety to protect public health, and set the standard accordingly.

Between 1970 and 1990, EPA only listed 8 HAPs and set standards for only 7 of them. Clearly, the risk-based approach did not work. Congress was provided information that concluded that the program was not effective. Subsequently, Congress passed the 1990 Clean Air Act Amendments with an emphasis on strengthening and expanding the HAP program through an emissions control technology-based approach. Today, the technology-based approach requires emissions control to levels that utilize the best available control technology.

There were two significant changes made to Section 112 in the 1990 reauthorization. First, rather than the EPA Administrator listing HAPs, as was done previously, Congress established the list of 189 HAPs on their own (see 7412(b)). Second, an emissions standards implementation process was formed and is based on the maximum reduction in emissions which can be achieved by applying the best available control technology.

This technology-based approach consists of a two-step process for determining emissions standards under the 1990 Act Amendments. First, EPA is required to establish technology-based emissions standards for categories of sources that emit HAPs. That is the maximum achievable control technology is required to apply to each category. This requires all sources in a category to at least cleanup emissions to the level their best performing peers have shown can be achieved. This is strictly a technology review and contains no risk-based assessment.

So to be clear, the NvMACT determination process that we are proposing here today is not a risk-based determination. Rather, it is a determination based strictly on a technology review and the application of the best available controls for each type of emissions unit.

That's it for existing thermal units. Let me briefly go through the process for new and modified thermal units. As I said earlier, a new thermal unit is one that obtains a permit after the effective date of the program. A modified unit is one that is requesting a physical or operational change that will result in an increase in emissions after the effective date of the program.

The application filing requirements contained in Section 37 for a new or modified unit require the submittal of an application and the issuance of a Mercury Operating Permit to Construct prior to constructing the new unit or modifying the existing unit. These requirements are similar to the Phase 2 application requirements. The provisions for processing these applications can be found in Section 38. New and modified units are required to install NvMACT controls as a condition of the mercury permit they are issued. The NvMACT determination process is the same as I described before. Applications have a 30 day completeness period and a proposed permit must be made available for public review and comment within 180 days. The public comment period is 30 days with the allowance for a public hearing. This is the same as I describe before. The final

permit must be issued within 60 days following the end of the comment period. The requirements for permit conditions are contained in Section 39, but are the same as those that I discussed for the Phase 2 permit. Essentially, the permit requires NvMACT, associated emissions limitations and all the testing, monitoring requirements necessary to demonstrate compliance, and the reporting of mercury emissions and Co-product annually.

A couple of final notes regarding the Mercury Operating Permit to Construct. If a facility is required to have a Title V Operating Permit, the conditions established in the mercury permit are required to be made part of the Title V permit as they constitute new applicable requirements. The mechanism that we established in our regular Operating Permit to Construct program provides a Title V facility the ability to submit an application within 12 months of commencing operation of any new units that are identified in the construction permit. There is also a mechanism for amending the Title V Operating Permit if there is a conflict in requirements between the Title V permit and the construction permit. We are proposing to utilize this same mechanism to fold the conditions of a Mercury Operating Permit to Construct into the Title V permits and to provide for amending a Title V Operating Permit if there is a conflict between the two permits. You can find these provisions in Section 56 of the proposed regulations.

For a new or modified thermal unit, the Mercury permit can expire if construction is not commenced within 18 months. So if a unit is not built the permit expires. This is contained in Section 41.

### **MERCURY CONTROL INSTALLATION TIMELINES**

I wanted to make one last reference to the Gantt chart. On the chart you'll notice that there are a few timelines that are shaded yellow. These are the timelines for required mercury emissions control installation. I wanted to provide as clear a representation as possible regarding when new mercury controls are to be installed. This has been provided to allow everyone to see when the controls from the Early Reduction Credit come in to play, and when the NvMACT controls must be in place.

### **FEES & STAFF**

So now that I've described the process for getting the best mercury emissions controls in place, I need to briefly describe how the Bureau intends to provide adequate staff resources and the mechanism for funding those resources. If you take a look at Section 41, you'll find the fee requirements for the Mercury Program. This fee schedule is based on the need for two additional Staff Engineers to process permits and conduct inspections of the thermal processes and their associated controls. Two additional staff and their associated overhead costs are approximately \$300,000 for the first year, and \$250,000 each year thereafter.

Section 41 contains the mechanism by which this funding will be generated. We had expected LCB to weave these requirements into our existing fee section, but they elected to develop a separate section which you see here. Subsection 1 of Section 41 establishes a one-time fee for the Phase 1 applications. The application fee is developed by taking \$50,000 and dividing it by the total number of stationary sources that are required to submit a Phase 1 application. This effectively distributes the application fee across all of the affected facilities.

The total number of stationary sources are to be determined by the Bureau based on information received from the questionnaires and from any Phase 1 applications that may be filed prior to the fee being determined. This determination must be made within 104 days after the effective date

of the regulations. Once the fee distribution is calculated, the Bureau must invoice the stationary source with the fee being due within 30 days of receipt of the invoice or when the Phase 1 application is submitted, whichever is later. For a new or modified thermal unit, or for the revision of a mercury operating permit to construct, the application filing fee is simply a flat fee of \$5,000.

Section 41 also provides for an annual maintenance fee. For fiscal year 2007, the maintenance fee for each thermal unit is based on dividing \$250,000 by the total number of thermal units in the program. This has the effect of distributing the total program costs across the thermal units. The more thermal units a mining operation has, the more they pay each year. The less thermal units they have the less they pay. The more units that are part of the program the less each thermal unit's individual cost is. The number of thermal units must be determined by the Bureau on or before May 1, 2006, for fiscal year 2007. Combining the \$50,000 from Phase 1 applications and the \$250,000 from the thermal units, we achieve our \$300,000 total for fiscal year 2007 which begins July of 2006.

For each fiscal year thereafter, the same concept applies that the total number of thermal units in the program are divided into \$250,000, only without the Phase 1 application filing fee. The number of units is determined on or before May 1 of each preceding fiscal year. This will ensure that the \$250,000 needed each year is generated, but continues to distribute the per unit cost across all thermal units.

As with our other fee provisions, there is a penalty section that provides for an additional 25% late fee for any late payments. This is contained in Subsection 4 of Section 41. I think that's all I wanted to mention about fees.

The balance of the provisions contained in Sections 42 through 59 contain changes to the existing NAC provisions to allow for the mercury program to be integrated into the balance of the Chapter 445B provisions. I hadn't planned to go through those in detail but if there are any questions I can.

## **REGULATION DEVELOPMENT PROCESS – COMMENTS**

I would like to spend a little time talking about the regulation development process and comments that we received. To get a true picture of the regulatory process, you really need to go back to over a year ago. Since our initial meetings with industry to discuss the program review and the need for enhancements, we have held over three dozen meetings with industry, environmental groups, the states of Utah and Idaho, EPA (Regions 8, 9, 10 and HQ), researchers, and the public; provided information to legislators and the Governor's office; set up a mercury website; made presentations at Regional meetings of western state air directors; applied for and received federal funding for mercury research; prepared and published a plain English version of our proposed program; drafted press releases; responded to countless calls from the press; regularly notified interested parties of our progress through a list serve that currently contains over 160 listings; and, responded to innumerable phone calls and emails.

The formal public process started in December with a workshop in Carson City held on December 15th. Approximately 33 people attended. Although a second workshop had been scheduled in Elko on December 13th, that workshop had to be rescheduled because bad weather forced the cancellation of our flight. We did hold a 2nd meeting the following week in Elko on December 19th and approximately 29 people attended.

In addition to the comments received during the workshops, the Division has also received significant written comment regarding the proposed provisions. I should point out that we received a lot of comments that go beyond what this program was designed to do. I would like to provide the Commission with a copy of all of these written comments so they can be made part of the record. If I may Mr. Chairman, I'd like to provide Exhibit 1 which contains the written comments.

To effectively evaluate all of the comments provided to the Division we created a summary document in which all comments were reviewed and sorted by common issue. This document contains a summary of each group of comments, the number of times a particular comment was made, and the Divisions response. Again Mr. Chairman, If I may I'd like to provide this summary document to the Commission as Exhibit 2. (*See Appendix 3 in this document*)

While I had not planned to discuss each of the comments, there are a few that I do think are worth mentioning, particularly those that resulted in a change to the program. We received several comments that suggested that we require the reporting of mercury by-product (or Co-product) so that a record of how much material is collected and shipped off-site could be maintained. As I've discussed, this requirement has been included in the program and the corresponding regulations.

Another comment that we received was, what happens if an existing unit submits an application but it is deemed incomplete and returned. There was no specific requirement for the applicant to resubmit. Here again, we revised the program to include this change and there is now a requirement to resubmit any incomplete application within 15 days.

There are also comments that we received where we did not make changes to the program and that I think are worth mentioning. One of the biggest issues raised, was that the program lacked a mechanism to evaluate public health and environmental impact through a risk-based evaluation. I discussed this issue a little when I went through how Congress and EPA struggled with a risk-based approach, but I think it's worth mentioning again. As I described earlier, this program evaluates and requires the installation and operation of the best mercury controls available. The determination process is strictly based on a control technology review and not a risk-based analysis consistent with section 112(d) of the Clean Air Act.

One other comment that was raised that I think is worth mentioning was the request to include requirements for using mass balance methods to determine mercury emissions from thermal units. Because of the large quantities of ore that are processed in the thermal units and the relatively small concentrations of mercury present in the ore, it is not reasonably possible to account for mercury associated with the processing activities with any relative accuracy or certainty.

Another comment was why we did not require ambient monitoring as part of this program. Ambient monitoring is typically required to protect against an ambient standard. EPA has not established an ambient standard for mercury. This proposed program requires mercury controls on applicable mercury sources. The NDEP believes that the protection provided under this program would be greater than one that is based on an ambient standard. Utilizing an ambient standard would not guarantee that controls would be required on all mercury sources.

Another comment was why we weren't looking more closely at fugitive emissions. Currently there is no approved method for determining mercury from fugitive emissions. While not part of this proposed program, the NDEP understands that fugitive emissions will be studied. The NDEP has been working industry and other interested parties on fugitive emissions research. The precious metal mining companies are providing funding for further research in Northern Nevada on point sources, fugitive sources and natural sources of mercury emissions.

The last comment that I wanted to discuss was the regulation development process. We received several comments that suggested that the process was flawed and it did not allow ample time to understand the program or review the regulations. The provisions only require one workshop and the Carson City workshop met that requirement. Postponement of the Elko workshop was unfortunate and due to circumstances beyond the Divisions control. The meeting in Elko was rescheduled a week later to provide an opportunity for additional comment.

The Agency draft regulations were posted and noticed to the public on February 1, 2006, which was more than 30 days in advance of the scheduled March 8, 2006 State Environmental Commission hearing as required by the APA. The submittal made on February 1st contains the same program as the LCB version recently provided, with a few errors introduced by LCB that will be corrected at the Commission hearing. The version that will be proposed at the hearing is the same as the February 1st version.

### **CHANGES TO LCB VERSION OF THE REGULATIONS**

As I said earlier, after reviewing the LCB version of the regulations on Monday, we have identified a number of technical and substantive changes that were made by LCB that are not consistent with the program as we have proposed it. After talking with LCB we have been advised that LCB will make the technical corrections such as typos, and correcting our Suite number throughout the provisions.

Substantive changes that affect the program are changes that we need to clearly identify and ask the Commission to consider correcting as part of the adoption. For these changes we have prepared a redline strikeout version of the sections that are in error. If I may Mr. Chairman I'd like to introduce into the record Exhibit 1 – Changes to LCB File Number 189-5.

If I may, I'd like to go through each of the sections and explain the changes that we are proposing to the LCB version of the provisions. The language that has the strike through is language that we are asking to have removed. This is the red language for those of you who have color copies. The new language is the language that is underlined. On the color copies this language is in green. The rest of the language is the original from LCB, or the dark blue language.

So in Section 1 we are proposing to remove subsection 3. This was language that LCB added that is not consistent with what Presumptive NvMACT is.

In Section 21, "Tier-3 thermal unit" we are proposing to strike the language shown in red. For some reason, LCB added the language about a unit being constructed before the date the commission adopts the program which is incorrect for this definition.

In Section 28, we are asking to add the language "submit an application on a form provided by the Director and" to make it clear that the owner or operator of the stationary source must use the Directors forms for the application. We had asked LCB to include this but they failed to do so.

In the next three Sections, 34, 35, and 37, LCB changed the language that we had proposed when referring to section 112(d) of the Act from “consistent with” to “In accordance with”. This introduces a problem in that we believe that the term in accordance with may be interpreted to mean that we need to follow a Act specifically. As I discussed earlier, the Division is simply relying on the principles established in section 112 and think that it is more appropriate to change the terms back to “consistent with”.

In Section 39, subsection 3, all mercury operating permits to construct issued for new or modified units must include the requirement to apply NvMACT controls. This language was inadvertently left out of the LCB version so we are requesting that it be added accordingly.

Lastly, Section 52, subsection 8, LCB mistakenly added language about stationary sources into this subsection when it is only suppose to apply to thermal units and not the stationary source as a whole.

With that, I would ask the Commission to consider replacing each of the LCB sections with these that have been corrected. That completes my presentation (**end of prepared statement**).

#### **Discussion By the Commission:**

With the completion of Mr. Elges’s presentation, the Commission entertained a short discussion about the process involved in making changes to regulations and how those changes are “accepted” by LCB. Mr. Elges noted that LCB cannot change the substance of a regulation that is adopted by the Commission. Mr. Walker noted that a very formal process of submitting the regulations to LCB – noting any changes made by the Commission – is followed to insure the Commission’s intent is note misrepresented.

Commissioner Sponer then asked Mr. Elges about fugitive mercury emissions. Mr. Elges noted that this regulation does not and was not developed to address any emissions outside of mechanical processing equipment, i.e. point sources.

#### **Next Vice Chairman Coyner asked if Mr. Leo Drozdoff would like to make summary comments.**

**Mr. Drozdoff provided the following remarks:** As you heard, the program that we are proposing will no longer be voluntary. Although the voluntary program was a great success and has reduced Hg emissions in this industry sector by over 80% in a three year period, we feel that the program outlined today is a significant step forward even from that success. This program ensures that all of the mining facilities with the potential to emit Hg from thermal processes are controlled and that those controls are operated and maintained in a way that results in the greatest reductions possible under a program that is fully enforceable and permissible.

Yet, even as good as this program is, there are still a number of moving pieces and change is inevitable. As Mike indicated, we are continuing to collect information from the industry through a questionnaire that we sent out in mid-January. The questionnaire must be returned to us by mid-March. Based on the information we receive, we will be establishing de minimus levels, and determining which additional facilities, of those not currently participating in our voluntary program, will be required to install the best available control technologies. We will also be using that information to assess existing control technologies as the starting point for our NV MACT

determinations. The establishment of the de minimus levels or processes will be done as a full public process. In addition, Hg permits will need to be established, evaluations of available control technologies will be done, and Hg MACTs established for each type of emission unit.

Again, each of these permitting steps requires a public process. In addition, research continues to be conducted on a number of fronts, i.e. at universities and by numerous state and federal agencies. Although we have included a five-year review cycle in the regulations, we know that in the near term, the program will also need some changes. As our knowledge of Hg and its impacts increases, we are committed to continually evaluating the effectiveness of this program and making changes as necessary.

However, and I want to be clear here, we also feel that it is critically important that the program that we have presented to you be adopted today in its entirety. The program revisions being proposed have been extensively evaluated and we feel that they ensure that the best available controls will be installed as soon as possible and operated as efficiently and effectively as possible. There is no research or future data that warrants waiting to adopt this program. Too much money can be spent trying to explain fate and transport and, given the current state of mercury research, you may not get answers for decades. In fact, I would argue that the most responsible thing that we could do would be to get the most robust Hg controls in place as soon as possible – and this program does just that.

Another critical aspect of this program is the funding. The Division has expended significant resources over the past year developing this proposed program and we have done that by robbing Peter to pay Paul. Many of our other programs have taken a backseat to this issue and they are suffering. We cannot continue to work on our mercury program to the extent that we have over the past year without additional resources. Any changes or enhancements to this program require the funding that is included in this proposed reg package. Thank you very much for your time and we will answer any questions (**end of prepared remarks**).

Vic Chairman Coyner thanked Mr. Drozdoff and then asked the members of the Commission if they had and questions of the Division about the mercury regulations.

Commission Hugh Ricci asked about thermal process that would be subject to the regulation. Mr. Elges noted that process that could/would emit mercury would be covered by the regulations.

Mr. Ricci asked about fugitive mercury emissions and ambient standards in the biosphere. He asked if it would be possible to establish a background number downwind from Nevada mining facilities in an effort to measure mercury emissions. Ms. Cripps responded by advising the Commission about a University of Nevada program that is involved in a national network of mercury monitoring stations (i.e., a research effort to define ambient “background” mercury levels in the environment). She further noted that NDEP was recently funded by EPA to begin a monitoring program in Nevada, however, she also stated that defining a footprint for mercury in the environment (i.e., where the mercury comes from) is quite problematic from a scientific perspective.

Next Vice Chairman Coyner asked Mr. Elges about countious emission monitoring; Mr. Coyner noted that NDEP received numerous comments on the issue; likewise he inquired why the regulations only required annual testing (i.e. monitoring). Mr. Elges noted the technology for continuous emission monitoring was not well proven for the verity/diversity of thermal mining

process that would be subject to the regulations. Regarding annual testing, Mr. Elges said the normal permitting practice by the Division is to conduct emission testing at the issuance and renewal of the permitting process (e.g., every 5 years). He noted that other monitoring and reporting data required by the permitting process is used along with testing to assess compliance. Mr. Elges further stated that after receiving numerous comments on the regulations about testing, the Division decide to incorporate annual testing of the thermal units being regulated.

Vice Chairman Coyner ask for any further questions of the Division, being none he acknowledged the presentations by the Division along with questions from the Commission had taken two hours. He then stated that the remainder of the meeting (two hours) would be devoted to public comments on the mercury regulation.

### **Public Comments:**

Vice Chairman Coyner opened the meeting for public comment. The first speaker was **Glenn Miller, PhD, professor at the University of Nevada, Reno**. Mr. Miller talked briefly about his professional background and his board affiliations on several Non-Governmental Organizations (NGOs) in the community.

Mr. Miller noted to the Commission that he recently finished a report funded by EPA on mining in Nevada. He indicated that he and some other scientists were responsible for setting up several “mercury depositions sites” in Northern Nevada; however the funding for the program had expired. With that he said one of his comments and concerns to the Commission would be identification of new funding to continue the “ambient” mercury monitoring program. He said such a program is needed to understand what the environmental impacts of mercury emission from mining in Nevada might be.

Mr. Miller continued by commending the staff work done by NDEP on the mercury regulations, albeit noting he didn’t necessarily agree with the outcome of the regulations. He also commended the mining industry for reducing mercury emission to the environment. He did say however that most of those reductions came from just one mine – Jerritt Canyon.

Doctor Miller then talked about mercury as a highly toxic element. He said mercury is probably the single element that is causing an offsite risk in the mining industry. He talked about mercury contamination in fish – (data from the Nevada Division of Wildlife) and that fish in some streams and lakes in Nevada should not be eaten, at least by pregnant women and children. He mentioned wild horse reservoir has mercury sediment issues. He also said that once mercury is deposited in lakes and streams it just remains there – and could be there for 500 years. Doctor Miller said the regulations proposed by NDEP falls far short in addressing the problem. He said streams and lakes in Idaho and Utah now have fish advisories for mercury contamination and that even a duck advisory is in place – he then said “can you east the ducks you shoot in Northern Nevada.”

He noted the regulations focus on a technology based approach, however mercury is still being “kicked out” and it remains a threat to human health and the environment. He asked what is the effeteness of the proposed “capture process” (i.e. per the Nevada MAC). He said mercury levels could even go up if the mining industry gets into a high mercury ore body. He also said there should be some criteria we want to protect, “do we want to protect fish, pregnant women, children, etc.

Regarding funding, Doctor Miller said that just \$60,000.00 is proposed in the regulations for monitoring (testing). He said this was not sufficient. He asked why NDEP could not do quarterly monitoring. Doctor Miller then asked about ambient monitoring – noting there is no requirement to do any ambient monitoring in the regulation.

Doctor Miller asked “how much mercury is in the air – we need to do ambient monitoring.” He also said there is no “mass balance” for mercury. He said there is no way to tell how much mercury goes into a facility and then how much might come out. He said the mercury should be measured through a mass balance analysis.

Doctor Miller concluded his comments by focusing on the money that will be spent to implement the new mercury regulations. He said that “two guys and pickup just doesn’t make it. He noted that money should be available for ambient monitoring. He said that another \$500,000.00 a year is needed to support an ambient monitoring program. He concluded by asking the Commission to delay the regulation, noting that sufficient funding, analytical measurements, and an assessment of mass balance needs to be included in the regulation.

**The next speaker was Elyssa Rosen representing Great Basin Mine Watch.** She began her comments by showing the Commission a diagram of mercury hot spots in Nevada. She noted that 5,000 pounds have been released in four northern counties in 2003. In the last 25 years she said approximately 100 tons of mercury has been released into the air by the gold mines in Nevada.

She said mercury from gold rosters is moving downwind. She also noted the Nevada’s program will not reduce mercury emission while other states are actually reducing mercury emission (from coal power plants). She went on to say the regulation fails to address the cost to human health. No emission caps or reductions of mercury emissions are addressed by the regulation; it does not address the fugitive emission problem, nor is a strong testing program mandated for fish and water fowl. Ms. Rosen asked the Commission to delay the regulation until a meaningful mercury reduction program is in place.

She also raised concerns about the methods the Division used to involve stakeholders, particularly from downwind states, She said the Division failed to have adequate consultation with wildlife agencies and she noted the final regulation was not available in a timely manner.

Commissioner Coyner ask for questions -- Commission Don Henderson responded by asking Ms. Rosen if she had been involved in the consultation process with the Division on the regulation from the beginning. She said yes, the points noted in here presentation have been presented throughout the process. Commission Henderson then asked if she had offered specific suggestions for the regulation – Ms. Rosen said no, she had not provided specific language for the most recent draft of the regulation.

**The next speaker was Justin Hayes from the Idaho Conservation League in Boise.** Justin addressed the Commission and talked about fish in Idaho lakes and streams that are now contaminated by mercury air emissions. His opening remarks to the Commission focused on the relationship between mercury emissions and human health. He noted there is a significant level of agreement in the professional health community about the negative health effects of mercury – particularly for children. He focused his comments on health consequences, such as mental retardation. Commissioner Coyner intervened in the conversation by stating the Commission was

well aware of the health effects of mercury in the environment – he implored Mr. Hayes to focus his comments on the substance of the mercury regulations.

Mr. Hayes then addressed the fishing issue in Idaho – focusing on mercury advisories that have been issued to explain the health dangers of fish consumption. He then presented the Commission with a map showing air modeling data. The map demonstrated how mercury air emissions from Nevada gold mines has been deposited in lakes and streams in southern Idaho. He noted the Idaho has become a “downwind” receptor of mercury emissions.

He then addressed the fugitive mercury air emissions issue. He explained how he used a portable mercury monitoring device to assess background mercury levels throughout northern Nevada – noting that 5 nongrams per cubic meter was the typical background level. He then presented mercury emission data from various points of dispersal downwind from selected gold mines in Nevada. The monitoring data showed as much as 700 nongrams per cubic meter of fugitive mercury emissions from various downwind points located on public roads. He said the fugitive mercury air emission in Carlin, Nevada registered 10 times the natural background.

In closing, Mr. Hayes said it would be a mistake not to include a fugitive emissions component in the mercury regulations. He said there is a need for additional controls to reduce the amount of mercury emissions to the environment in Nevada, Utah and Idaho. He questioned the concept of the “Nevada MAC” in terms of schedules and he asked for a numerical limit on emissions and a program to control fugitive emissions.

Commissioner Ricci asked Mr. Hayes about the difference in mercury concentrations in the environment between northern and southern Idaho. Mr. Hayes noted there were existing sources of mercury contamination in northern Idaho, which had been traced to a superfund site in Idaho – but that was not the case in southern Idaho – where the emissions are believed to be from Nevada’s gold mining operations.

**The next speaker was Tim Wagner – Utah Chapter of the Sierra Club, Salt Lake City.** Mr. Wagner provided the Commission with some background about his environmental activities in Utah. He then talked about mercury testing in Utah and New Mexico, noting that Utah only recently started testing for mercury in selected streams and lakes. He then gave the Commission some additional information about press accounts that had recently focused on mercury air emissions for northern Nevada that were contributing to mercury contamination in Utah’s streams and lakes. He advised the Commission that Utah recently issued a duck advisory -- the first mercury advisory for waterfowl in the country. He noted Utah environmental officials have recently instituted a large scale fish sampling program across the state. A Utah mercury working group has also been established in effort to identify the sources of mercury in and around the Great Salt Lake. He said the lake is widely used by waterfowl from around the country. He requested the Commission to revise the regulation to require ambient air monitoring, adjustment of the MAC schedules and incorporation of a mass balance approach.

**The next speaker was Lee Loudon – Crescent Valley, NV.** Mr. Loudon advised the Commission that he lives right next to the big gold mines in northern Nevada. He said he was very concerned about mercury emissions in Nevada. He requested the Commission not let the mines regulate themselves.

**The next speaker was Roger Featherstone -- southwest circuit rider for Earthworks.** Mr. Featherstone provided the Commission with some background about Earthworks – noting it's an organization that protects communities from the impacts of mining, (Earthworks is comely known as the Mineral Polity Center). He said Earthworks would have provided written comments on the proposed regulations; however he advised the Commission that the regulations were not made available in a timely manner. Because Earthworks was not given the opportunity to provide timely comment on the regulations, Mr. Featherstone requested the Commission to postpone any action on the regulations. He noted the rule making process lacked adequate citizen involvement, it failed to contain provisions for the reduction of mercury emissions and while NDEP officials have stated the regulations could be altered in the future, he said that rarely happens.

He went on to say the mercury regulations requires only one monitoring test per year and the test would be conducted by each gold mine – he said monthly testing should be done and that monitoring of fugitive emissions from tailing piles and other sources should be done monthly. A third party – not the companies – should do all the testing. He also said that an emission cap should be required. As it stands, the regulations fail to put forth a goal for capping mercury emission at some level. He further stated that the costs for reducing mercury emission are well within the bottom line of the gold companies and that offsite monitoring should be done and it's relatively inexpensive. Mr. Featherstone concludes his comments by requesting the Commission to postpone the regulations until they can be revised to address ambient monitoring, emission caps and other methods to protect human health and the environment.

**The next speaker was Tina Nappy – chairperson, Tyobe Chapter of the Sierra Club.** She advised the Commission that the Sierra Club is an outdoor organization and that club members assume the waters in Nevada are clean. She said we should not play around with mercury in the environment and that we are a tourism state. She asked the Commission not to take any action on the regulation until it can be strengthened.

**The next speaker was Wayne Garcia -- Tribal Chairman for the Yerington Piute Tribe.** Mr. Garcia thanked the mining industry and NDEP for moving forward with the mercury regulations. He did say that fugitive emissions remain problems for human health and it should be part of the regulation. He called for a reporting and ambient air monitory of mercury fugitive emissions.

**The next speaker was Bill Comas - citizen.** He gave the Commission some sociological background about his childhood and how his friends played with mercury and never got ill. He gave other similar examples of mercury exposure including his own experiences at Bald Mountain, Nevada. He suggested the Commission should assess just how dangerous mercury is to human health.

**The next speaker was Jamie Greening, resident of Crescent Valley.** She said she lives very close to the Cortez mine in Nevada. Her comments focused on human health issues related to mercury in the environment. She said independent monitoring should be done on a regular basis. She ask the Commission to postpone any action on the regulations.

#### **Mining Industry Comments:**

**The next speaker was Russ Fields, Nevada Mining Association.** He said he was here today to support the regulations. He advised the Commission that this new regulation would server as a model for regulating mercury air emissions from mining operations. He said the voluntary

program was very successful in reducing mercury air emissions from gold mining operations, and that these new regulations will even go further in reducing mercury emissions to the environment. Mr. Fields said that this is the first effort to regulate mercury emissions from gold mining operations; he encouraged the Commission to adopt the regulations as proposed.

Commissioner Henderson asked Mr. Fields what the effects might be on the mining industry if the Commission delayed action on the regulations. Mr. Fields said it would not affect industry; it would just be one less permit and fee to pay. He then said the question should be what would be gained by delaying – and he said nothing would be gained. The regulation would make all precious metal operations subject to these new regulations and that the best available control technology would be deployed to reduce mercury emissions to the environment.

Commission Dodgion asked Mr. Fields if the industry would support additional fees for ambient monitoring to include fish and wildlife resources. Mr. Fields said that if NDEP brought a proposal forward – beyond the mercury regulation in a public process, then industry would likely support it. Commissioner Anderson asked Mr. Fields if the industry would consider an “Adaptive Management Approach” to address the mercury air emissions problem. Mr. Anderson noted in his field, Adaptive Management” is used to respond to new technologies and information. Mr. Fields noted the mercury control technology is changing all the time and thus yes, adaptive management is the approach that is being used.

**The next speaker was John Mudge, Director of Environmental Affairs -- Newmont Mining.**

Mr. Mudge said Newmont employs 3,200 people in Northern Nevada. He said that when mercury became an issue, Newmont signed up to the voluntary program. He provided the Commission with detailed background on the types of controls now used by Newmont for reducing mercury emissions from mining operations. He did note the new program will require best control technologies. He further noted the inherent problems of defining a risk analysis to assess health effects of mercury in the environment. Beyond exposure to workers, defining a safe level of mercury exposure for the general public is just not yet feasible, he said. He went on to say that’s why a technology approaches for reducing mercury at the industrial sources in the best approach.

Regarding fugitive emissions, Mr. Mudge said he is interested in finding out what level of emissions are coming off the mining pits and leach pads and if those emissions are significant compared to natural background, i.e., baseline conditions. He said Newmont is a proponent of additional research for understanding fugitive mercury emissions.

Regarding testing and monitoring, he said the key is actually the everyday operation of the equipment and providing the source data for those operations to the regulator. He noted while annual testing is burdensome, the industry has signed up for it. He conclude his remarks by stating that the focus of the Clean Air Act is on best control technologies instead of the risk approach and this new Nevada mercury regulation follows that logic.

**The next speaker was Jerry Hepworth, Environmental Manager Core Rochester Mine. Mr.**

Hepworth advised the Commission that the mining industry has been pro-active in supporting this new regulation. He said Rochester is a heap leach operations only. It’s just a silver mine. He provided the Commission with the technical background of the Rochester mining operation regarding various mercury control technologies. He said this new regulation is based on a success story archived through NDEP’s voluntary mercury control program. He then asked to Commission to adopt the regulation.

**The Next Speaker was Rich Haddock, Vice President of Operations, Barrick Gold Corporation.** Mr. Haddock said the common theme with this new regulation is the concept of maximum achievable control technology (MACT). He said the regulation requires continuous improvement or adaptive management. "It's not a cap and trade program and it doesn't require continuous monitoring but it does require the best control technologies for controlling mercury emitting sources, he said." Mr. Haddock said the Mining industry has "come to the plate" to address and reduce mercury emissions. He noted that he lives in Salt Lake City and that everyone is a downwinder from somewhere. He said that globally mercury is an important issue and that we should all be doing our part to reduce emissions to the environment.

Regarding ambient air monitoring, Mr. Haddock provided the Commission with a comparative analysis of standards for mercury exposure for humans -- against known background levels. He talked about the real relevant exposure number -- the worker exposure number, which is 50,000 nanograms per cubic meter. He compared this to reading taken in Idaho and other states and that such reading were in the 8 to 50 nanogram range. He said those numbers were just not high, nonetheless -- he said it is the mining companies' responsibility to address the mercury emissions problem. He concluded his remarks by asking the Commission to approve the regulations, noting that NDEP has shown considerable leadership through the entire rulemaking process.

### **Public Comment Section Closed**

Vice Chairmen Coyner closed the public comment section and then asked the Commissioners for their thoughts about the regulations.

Commissioner Sponer asked Leo Drozdoff (NDEP Administrator) why the Commission should not table the regulation, given all the public comments presented at the meeting. Mr. Drozdoff noted that NDEP has been working on the regulations for more than a year. He said that many requirements in the regulation are a result of many meetings with both the industry and environmental groups. He did note that the last version of the regulation received from the Legislative Counsel Bureau was late, but that was not in NDEP's control. Nevertheless, he said the regulation that was made available on February 1<sup>st</sup> is for all practical purposes the regulation that was made available to the Commission and the public for today's meeting. Regarding fugitive emissions and ambient monitoring, Mr. Drozdoff said those issues were not incorporated into the regulation. The focus of the regulation remains on implementation of maximum achievable control technologies at the mercury emission source.

He did say that NDEP may well address fugitive emissions and ambient monitoring through a research program -- but he noted that would take time and is currently out of scope from the MAC concept now embodied in the current regulation.

Commissioner Don Henderson asks Mr. Drozdoff about the comments presented today -- in opposition to the regulation. He asked if any of these were new comments not addressed before by the Division. Mr. Drozdoff acknowledges that the cap and trade issue, more frequent testing, fugitive emissions and ambient monitoring had all come up during the regulatory consultation process.

Commissioner Crawford then asked Mr. Drozdoff what the Division would do if we reject the regulations. Mr. Drozdoff said he would ask the industry to maintain pollution controls, but because of other pressing matters at the agency, including strained staff resources, he would most likely be forced to table the regulations.

Commissioner Crawford then ask what would happen if the regulations are approved and would NDEP come back to the Commission to revise the regulations in response to new emerging pollution control technologies and research (e.g., finding from future research about mercury in the environment, etc. etc.). Mr. Drozdoff responded with an absolute yes, stating that he has consistently said in numerous public forums that the mercury regulations would be re-visited to reflect significant new information that might improve the permitting program.

Commissioner Crawford then made a statement that he came to the meeting with many questions and that he was not generally supportive of the regulations, but after hearing all of the testimony and presentations by staff he now supports the regulations.

Vic Chairman Coyner asked for any further questions. Being none, he posed a question of his own; he asked if the Commission approves the regulations then when would new reliable data on mercury reductions become available. Mr. Drozdoff responded by saying only when all of the precious metal mining facilities are subject to the new permitting program (i.e., authorized by the regulations) would data be available about mercury reductions. He said that would most likely be in 2009.

Vice Chairman Coyner then said he believed that if you want reductions in mercury emissions from precious metal mining operations, then you need to go to the source of the emissions and that's what this regulation proposed to do. He then said the Division is obligated to generate good reliable numbers on those reductions. Mr. Drozdoff concurred and then Vice Chairman Coyner asked for any further question, being none, he call for a motion.

**SEC Motion** – Commissioner Crawford then made a motion to adopt regulation R189-05 Mercury air emission permitting program for precious metal mining facilities noting that the amendments to the regulations present by the Division at the meeting be adopted and that the typical error found on page 10 of the regulations be corrected. Commissioner Dodgion seconded the motion. Vice Chairman Coyner called for further discussion where upon Commissioner Dodgion offered a comment. He asked the Division to report back to the Commission at its' next meeting in September on the 2005 data on mercury emissions. As well, he said the Commission might discuss the fugitive dust issue (mercury air emissions) and what future options might be to address the issue.

Commissioner Henderson then made a statement thanking all the presenters and the Division for there testimony. He then suggested the groups making testimony should get together with the Division to address unresolved issues such as ambient monitoring and fugitive mercury emissions. He further stated that the Division should consider a funding request in the next budget cycle to address any identified mercury research and monitoring needs. He also supported the mining industries suggestion that mine rock waste piles might be a prime candidates for monitoring fugitive mercury emissions.

Next Commissioner Ricci said the Division needed to start somewhere in terms regulating mercury emissions; he said he is confident with NDEP in getting the job done. He also acknowledged a letter from USEPA Region 9 that provided full support for the regulations.

Vice Chairman Coyner then requested that letters from the Great Salt Lake Keeper, USEPA Region 9, Parsons Behle & Laitimer, and the Mayor of Salt Lake City be included in the record. Commissioner Sponer then asked to clarify that at the next meeting the Division should provide updates on the fugitive mercury issue, "a quantification of an acceptable mercury cap" and who was going to do monitoring (at the mine sites). She requested that these be discussion point at the next meeting.

Vice Chairman Coyner then requested a vote on the regulations. The vote was taken and it was unanimous. Vice-Chairman Coyner adjourned the meeting at 5:30pm.

**Appendix 1 -- Agenda Item 1  
Settlement Agreement Index**

APPENDIX 1 – SETTLEMENT AGREEMENTS INDEX

TAB NO.	NAME OF COMPANY	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
1	American Cement and Aggregate	NAC 445B.275 "Violations: Acts Constituting; Notice" – For numerous violations of a Stop Order and installing and operating un-permitted equipment.	1965 & 1966	\$135,000.00
2	Awesome Construction, LLC	NAC 445B.275 "Violations: Acts Constituting; Notice" – For operating without an Air Quality Operating Permit & Locating Screening Equipment onsite without first obtaining an Air Quality Operating Permit	1969	\$3,570.00
3	Bolling Construction, Inc.	NAC 445B.275 "Violations: Acts Constituting; Notice"-For failure to install and operate emission control equipment required in its Air Quality Operating Permit.	1965A & 1966A	\$7,750.00
4	Builders Choice, Inc.	NAC 445B.275 "Violations: Acts Constituting; Notice" – For commencing earthwork operations on 5 acres or more without first obtaining an Air Quality Operating Permit.	1996	\$2,400.00
5	Eagle Ridge at Genoa, LLC	NAC 445B.275 "Violations: Acts Constituting; Notice" – For commencing earthwork operations on 5 acres or more with out first obtaining an Air Quality Operating Permit.	1997	\$6,120.00
6	FNF Construction, Inc.	NAC 445B.275 "Violations: Acts Constituting; Notice" – Failure to: 1) install and operate wet dust suppression controls on emission units associated with its aggregate operation, resulting in emissions of fugitive dust; 2) obtain a surface area disturbance permit; 3) obtain an operating permit for a lime marination silo; 4) employ proper procedures for filling the same lime silo, resulting in excess emissions; 5) contain,	1967, 1968,1971, 1972, 1973 & 1974	\$35,460.00

		properly handle and dispose of fines collected by the baghouse during operation of the asphalt plant, resulting in excess emissions; and 6) notify the DCNR/DEP/BAPC of excess emissions within 24 hours of their occurrence.		
8	Glamis Marigold Mining Co.	NAC 445B.275 "Violations: Acts Constituting; Notice" – Exceedence of permitted emission limits for PM & PM-10 during source testing	1999 & 2000	\$1,200.00

SETTLEMENT AGREEMENTS INDEX

TAB NO.	NAME OF COMPANY	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
9	Hunewill Construction Co.	NAC 445B.275 "Violations: Acts Constituting; Notice" – Operating without adequate fugitive dust controls.	1984	\$1,890.00
10	James Hardie Building Products	NAC 445B.275 "Violations: Acts Constituting; Notice" – For : 1) failing to maintain records as required in AP3272-1410; 2) exceedences of permitted operating hours and material throughput rates; 3) exceeding maximum permitted emission limits; and, 4) failing to install the baghouse emission control required by AP3272-1410.	2004, 2005, 2006 & 2007	\$60,600.00
11	Mercer, Fraser, Inc	NAC 445B.275 "Violations: Acts Constituting; Notice" – For : (1) operating gravel emission units southeast of Beatty, Nevada without a Class II Air Quality permit, and, (2) constructing an asphalt batch plant southwest of Beatty, Nevada without a Class II Air Quality permit.	2008 & 2009	\$4,800.00
12	North Tahoe Investment Group	NAC 445B.275 "Violations: Acts Constituting; Notice" – For locating and operating mechanical screening equipment onsite without first obtaining an Air Quality Operating Permit	1983	\$600.00
13	River Park Properties, LLC	NAC 445B.275 "Violations: Acts Constituting; Notice" – For operating earthmoving equipment (disturbing 5 acres or more) without a valid Air	1985	\$3,600.00

		Quality Operating Permit		
14	Vega Construction & Trucking	NAC 445B.275 "Violations: Acts Constituting; Notice" – For constructing a stationary source without applying for and receiving a modification of an Air Quality Operating Permit.	1977	\$1,200.00
15	Wendover Casinos, Inc. dba Rainbow Hotel Casino	NAC 445B.275 "Violations: Acts Constituting; Notice" – For operating a stationary source without an Air Quality Operating Permit.	1964	\$6,000.00

## Appendix 2 -- Agenda Item III

### Appointment of Advisory Board to the State Environmental Commission on Certification of Operators of Public Water Systems

**Recommended Action:** NDEP is requesting the SEC to re-appoint the Advisory Board on Certification of Operators of Public Water Systems for a period of at least 2 years. During this time period NDEP is requesting the SEC to direct the Advisory Board to coordinate efforts with the advisory board for Waste Water Treatment Plant Operators and review potential opportunities for consolidation and improvement in both the water and wastewater certifications programs.

A list of the existing members and their bios, along with a proposed motion is presented below.

Background: The 2005 Nevada Legislature enacted SB 395, which among other things transferred certain responsibility for the operation of Nevada's safe drinking water programs from the State Health Division to NDEP.

Regarding the certification of operators of public water systems, SB 395 states that the "Commission may appoint an Advisory Board to act in an advisory capacity in matters relating to the certification of operators of community water systems." It is important to recognize that before the safe drinking water programs were transferred to NDEP, this Advisory Board reported to the State Board of Health. SB 395 now gives the SEC the option to continue, or not continue, the use of this Advisory Board.

Over the past two years this Advisory Board has worked on revising the regulation governing the certification of operators of public water systems (i.e., NAC 445A.617 through 445A.652). This revised regulation was adopted by the SEC at the October 2005 meeting. The adopted regulation requires increased skills and knowledge to operate public water systems for individuals certified by the Division as safe drinking water operators.

Since 1993 NDEP has maintained a similar advisory board to support the certification program for Waste Water Treatment Plant Operators, e.g., sewer plant operators. This activity is authorized under NRS 445A.425 (1) (e). This board provides advice directly to NDEP and not the SEC; however its functions are similar to those performed by the Advisory Board for the Certification of Operators of Public Water Systems.

It's worth mentioning here that a recent survey by Farr West Engineering, consultants to NDEP, found that utilities that employ both drinking water and wastewater operators retain a 70 percent dual certification rate (i.e., 7 of 10 operators hold certifications in both functions). There may be an opportunity to coordinate these boards in the future.

Reason for Appointing the Advisory Board for Certification of Operators of Public Water Systems: With the transfer of the safe drinking water programs to NDEP, NDEP has initiated an evaluation of the operator certification programs for both Public Water Systems and Wastewater systems. Differences between the two programs include issues such as fees and requirements for qualifying education, testing and continuing education. The NDEP will be examining these two programs over the coming year and with input from the two advisory boards will make recommendations for improvements to the programs.

In addition to this ongoing effort, existence of the Board provides NDEP a mechanism by which NDEP can routinely communicate with the regulated community. The Board has historically held quarterly meeting at which the Health Division and now NDEP are regular participants.

Once again, NDEP is requesting the SEC to re-appoint the Advisory Board on Certification of Operators of Public Water Systems for a period of at least 2 years. During this time period NDEP is requesting the SEC to direct the Advisory Board to review potential opportunities for consolidation and improvement in both the drinking water and wastewater certifications programs.

#### **Existing Advisory Board Members**

- Darrin Price (Chairman), Sun Valley G.I.D.,
- Lynn Forsberg – Elko County
- Chet Auckly, S.E.E. Company LLC
- Cameron McKay (Secretary), Round Hill GID
- Marie Pollack (Vice Chair)
- Marcellus Jones, Las Vegas Valley Water District
- Harvey Johnson, Incline Village GID

**Suggested Motion:** Appoint an Advisory Board to the State Environmental Commission on Certification of Operators of Public Water Systems. The Advisory Board will consist of the above listed members who are appointed for a two-year term:

### **Membership Profiles**

#### **Advisory Board to the State Environmental Commission (SEC) on Certification of Operators of Public Water Systems**

**March 2006**

#### **Darrin Price (Advisory Board Chairman)**

Darrin Price is the Public Works Director for the Sun Valley General Improvement District in Sun Valley a community located just north of Reno, Nevada. Darrin has over 20 years experience in the water and wastewater industry. Mr. Price is a certified Grade 4 Water Distribution Operator and a certified Backflow Specialist and Tester. He is currently finishing his Bachelors degree in

Business Administration with a minor in Civil Engineering. Darrin is a member of the CA/NV Management and Development Training committee and is currently chairman of its Advisory Board. Mr. Price has authored many articles for publication in trade magazines and given training to operators on both water distribution and cross-connection control.

### **Lynn Forsberg**

Lynn attended Salt Lake Community College from 1976 until 1978 graduating with a certificate in construction management. He worked as a private contractor and a contract project manager until 1980 when he went to work for Park City, Utah as the Public Works Supervisor until 1981. Since that time he has lived in Wendover Utah where he was the Public Works Director until 1985 then West Wendover for Elko County as the Public Works Director until 1990. With the incorporation of the City of West Wendover Lynn went to work for Elko County, he started as the Public Works Supervisor and subsequently now is the Public Works Director.

Lynn has served on the Operators Certification Advisory Board since 1998 and has during his tenure been the secretary, chairman of vice, and chairman. He has enjoyed his association with other operators and board members. Lynn holds a wastewater grade 1 treatment plant operator certificate and water operator certificates as grade 3 distribution, grade 4 OIT Distribution, and grade 2 Treatment Plant Operator. He is the operator in charge for the Montello water and sewer system, the Jackpot water and sewer system, Lamoille water system, Jarbidge water treatment and distribution system, and advisor to Mountain City water system and wastewater disposal.

### **Chet Auckly**

Chet Auckly is Director of Water Quality and Environmental Affairs for the California Water Service Company and President of S.E.E. Company, LLC. He has over 30 years as an Analytical/Biochemist, Microbiologist, Water Quality Manager, Researcher, Trainer/Educator, and Water Treatment Problem Solver.

Chet is a Registered Environmental Health Specialist in California and a Certified Grade IV Water Treatment Operator. Mr. Auckly holds an A.A. (Physical Science/Math), B.S. (Biology/Chemistry), M.S. (Environmental Engineering) and On-Going Post Graduate Studies in, Chemistry, Water Treatment and Business Administration and has both published and/or presented over 30 technical papers in the Water/Water Reclamation Field. Chet is the recipient of the George A. Elliott Memorial and the George Warren Fuller Memorial Awards of Excellence in the Water Field (California-Nevada Section American Water Works Association (AWWA) and International AWWA, respectively).

He is Past Chair of the California – Nevada Section AWWA. Chet is a recent past member of the Board of Directors, Past Chair of the Conference Management Committee, and Past Member of the Administrative and Policy Council of the International AWWA.

### **Cameron McKay (Advisory Board Secretary)**

Cameron McKay began his career in the water industry after retiring from 20 years in the oil and gas industry, most of which was spent overseas. He has since spent 15 years in the water industry starting as an operator for Kingsbury General Improvement District before accepting his current position of District Manager at Round Hill General Improvement District.

Cameron currently holds a Grade 3 Water Treatment and a Grade 3 Water Distribution certificate as well as being a certified Backflow Tester and Specialist. Cameron is also the owner/ operator

of Sierra Water Management, a company that operates a number of smaller water systems in the Lake Tahoe and Northern Nevada areas. Very active in the water industry, McKay currently sits on the Water and Wastewater Training Coalition as well as being the secretary for the Operator Certification Advisory Board. He is also very active in training in both operations and operator safety.

### **Marcellus Jones**

Marcellus Jones Jr. has 34 years of experience in the water industry. Mr. Jones has been with the Las Vegas Valley Water District for 17 years as the Distribution Systems Manager responsible for managing a 24-hour work force consisting of 9 supervisors and 83 employees responsible for maintaining approximately 3,542 miles of pipe over 300,000 service accounts, 59,000 valves, and other appurtenance to supply potable water for domestic and industrial use.

Before this Marcellus was with Los Angeles Department of Water and Power for 17 years. Mr. Jones holds a State of Nevada and California Grade III in Distribution. Marcellus received the George A. Elliott Memorial Award - AWWA-CA/NV in 2003. Marcellus has been a member of AWWA since 1987, CA/NV Competition Committee Chair, 1995- 2000, National Pipe Tapping Committee Chair 2002-2005, Tri-State Committee Chair 2004-2005 and the Assistant Conference Director for CA/NV AWWA 2004-2006.

### **Harvey Johnson**

Harvey graduated from the University of Wisconsin (Superior) with a Bachelor's Degree in Chemistry. He joined the Incline Village General Improvement District (IVGID) in 1977 as a Chemist. As a chemist, he was responsible for analyzing the water and wastewater systems as well as other operational duties. He held the positions at IVGID of Assistant Superintendent, Operations Manager and most recently Utilities Superintendent. He is certified as a Wastewater Treatment Plant Operator IV; Water Treatment Operator Grade T2, Mechanical Technologist Grade II. Harvey also holds a certificate of Public Management from the University of Reno, Nevada.

## **Appendix III - Agenda Item IV**

### **Exhibit 2**

March 8, 2006

### **Proposed Nevada Mercury Air Emissions Control Program**

#### **Summary of Written Comments NDEP Received by 8:00am, March 7, 2006**

Comments the Division received and has compiled below were from a number of sources including: the regulatory workshops held in Carson City on December 15, 2005 and Elko on December 19, 2005; letters received by US mail; and e-mail comments. This document reflects a compilation of comments received. Comments that were similar in scope were consolidated for brevity. Comment counts identified with a "~" are approximate.

**Comment #1:** Request to add annual reporting of mercury co-product.

**Comment Count:** ~95

**NDEP Response:** The draft regulations were amended to address this comment. The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of “mercury co-product” in Section 6. The requirement for annual co-product reporting is contained in numerous Sections; including, Sections 33, 34, 36 and 39.

**Comment #2:** Request to add a 15-day time limit to the period an applicant has to resubmit an application that the NDEP deems incomplete.

**Comment Count:** 1

**NDEP Response:** A requirement was added to the draft regulation that states, “If an incomplete application is returned to the applicant, the applicant must resubmit a complete application within 15 days after the applicant receives the returned incomplete application”. The provision applies to both Phase 1 and Phase 2 applications covering either Tier 1 or Tier 2 thermal units. The language can be read in the March 3, 2006, LCB File No.R189-05, at Section 35.

**Comment #3:** The tiered regulatory system doesn’t thoroughly identify which mines will be considered for each tier and Tier 1 mines were not fully specified.

**Comment Count:** 1

**NDEP Response:** The listing of Tier 1 thermal units first became available as Appendix A in NDEP’s November 17, 2005 posting of the Proposed Nevada Mercury Air Emissions Control Program summary document. The regulation-format listing of Tier 1 thermal units then became available in the January posting of the Agency Draft regulation, followed by the February 1, 2006 Agency Draft provided to the public in advance of the March 8, 2006 State Environmental Commission hearing. The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of “Tier-1 thermal unit that emits mercury” in Section 19. The formal identification of units is in Section 23.

Both the draft regulations and the Proposed Nevada Mercury Air Emissions Control Program (NMCP) summary document discuss the process for NDEP to designate units as Tier 1, Tier 2 or Tier 3. Tier 1 units were designated as a result of their involvement in the former Voluntary Mercury Reduction Program. Initially, all other units will be designated as Tier 2 (regardless of whether they are located at a VMRP participating facility or not). Tier 3 units may be determined as a result of the de minimis determination process. To aid in this determination, over 50 mining companies received and are required to complete the NDEP’s “Precious Metals Mining Mercury Air Emissions Questionnaire (for Nevada Facilities)”. The deadline for submittal is March 20, 2006.

**Comment #4:** De Minimis Determination: The definition is vague and allows for changes without an objective basis. A numerical minimum definition of de minimis should be incorporated into the regulations. The proposed process is too subjective and should include objective criteria such as ore concentration or process fluid concentration. The cumulative total for a facility should be no more than 16 ounces per year. The section should strengthen the required testing and reporting for any source that has de minimis status.

**Comment Count: 8**

**NDEP Response:** During development of the program, it was realized that there may be type(s) of thermal unit(s) that could emit such a small amount of mercury that the construction of a control device is not feasible. One example commonly used for discussion purposes is a laboratory assay hood.

The NDEP was reluctant to set an arbitrary de minimis threshold without supporting data. To aid the Director in this determination, over 50 mining companies received and are required to complete the NDEP's "Precious Metals Mining Mercury Air Emissions Questionnaire (for Nevada Facilities)". The deadline for submittal is March 20, 2006. The results of the questionnaire are intended to provide the NDEP with information necessary to determine if such a threshold can be set. The regulations also provide for a company to petition the Director for an initial de minimis determination that emissions from a thermal unit are de minimis emissions. In either case, the Director shall make such initial determinations publicly available for review and comment. As a component of this initial determination, the NDEP is allowed to factor in to the decision process whether multiple de minimis units at a single facility will be allowed, and if so, at what level of combined mercury emissions. The draft regulations provide for a public process in setting such a de minimis emissions threshold.

The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of "De minimis mercury emissions" in Section 3. The public process defined for evaluating and setting a de minimis is contained in Section 25.

**Comment #5:** Annual Self Monitoring/Stack Testing: Annual self-monitoring is too infrequent and insufficient to protect human health and the environment. The requirement should be changed from annual to monthly.

**Comment Count: 3**

**NDEP Response:** Annual source testing is adequate to demonstrate that the mercury controls are operating efficiently and will provide sufficient information to support a demonstration of compliance with an emissions limitation. It is not uncommon to have an even longer interval between tests. Based on decades of experience in evaluating pollution control devices and reviewing emissions testing from emissions controls, and the inherent gas stream design range of the current mercury emissions controls, the NDEP does not believe that significant changes in emissions will occur. Additionally, the NDEP does not believe that more frequent testing will result in any additional environmental benefit.

**Comment #6:** Request to add speciated stack testing requirements to the regulations for the testing that Tier 1 units have started. The sources need more time to complete the testing.

**Comment Count: 2**

**NDEP Response:** The Voluntary Mercury Reduction Program (VMRP) companies are already at various stages in the process of developing testing protocols and conducting speciated testing of existing thermal units. This work will be done by the end of the calendar year.

**Comment #7:** Presumptive Nevada MACT: Presuming that a piece of control equipment performs as MACT merely because the equipment was installed under the former VMRP is inappropriate. ... The 'presumptive MACT' inappropriately allows existing VMRP companies to operate 'as-is' with no requirement for additional mercury emissions reductions. Existing facilities should undergo timely review to identify and implement additional measures. NDEP's proposed program would allow these mines to get a "presumptive MACT" or essentially permit the mine as-is. Presumptive NvMACT should be eliminated.

**Comment Count:** ~96

**NDEP Response:** These comments reflect a general misunderstanding of the NDEP's use of presumptive NvMACT. The purpose of identifying current control devices as presumptive NvMACT is to ensure the continued implementation of controls that have been operating under the previous Voluntary Mercury Control Program. Phase 2 of the program requires evaluation of all units and the installation of maximum achievable control technology. The NvMACT may result in the requirement for additional or updated controls at any facility including those originally identified as Presumptive NvMACT.

**Comment #8:** Fugitive Mercury Emissions: The program needs to go farther in addressing fugitive emissions. There is strong reason to believe that emissions coming from waste rock and dust at gold mining operations are a significant source of mercury pollution. The draft rule fails to incorporate emissions control or monitoring of fugitive dust.

**Comment Count:** ~100

**NDEP Response:** Currently there is no approved method for determining mercury from fugitive emissions. While not part of this proposed program, the NDEP understands that fugitive emissions will be studied. The NDEP has been working industry and other interested parties on fugitive emissions research. The precious metal mining companies are providing funding for further research in Northern Nevada on point sources, fugitive sources and natural sources of mercury emissions.

**Comment #9:** Continuous Emissions Monitors (CEMs): CEMs should be part of the program is necessary and appropriate to ensure controls are working and to ensure accountability. As the NMCP matures and emissions limits are developed in Phase II, NDEP should consider if it is appropriate to require CEMs. About two thirds of the coal fired electric generating units in the US will be required to monitor their mercury emissions in 2008...should be technically feasible at precious metal mines.

*Counter comment:* NDEP needs to weigh the need for CEMs against the current state of technology and consider that it is not currently available.

**Comment Count:** 12

**NDEP Response:** The program requires monitoring methods adequate to demonstrate that the mercury controls are operating efficiently and provide sufficient information to support a demonstration of compliance with an emissions limitation. The draft regulations do not prohibit an evaluation of the methods used to demonstrate compliance, including the use of CEMs. However, at this time, the technology for mercury CEMs continues to evolve and is driven by the coal fired electric generating units in the U.S. that will be required to monitor their mercury emissions. The technology is in an alpha, or at best a

beta, development stage and is not yet available for the processes regulated under this program.

**Comment #10: Adequate Ambient Air Monitoring:  
Comment Count: ~98**

**NDEP Response:** Ambient monitoring is typically required to protect against an ambient standard. EPA has not established an ambient standard for mercury. This proposed program requires mercury controls on applicable mercury sources. The NDEP believes that the protection provided under this program would be greater than one that is based on an ambient standard. Utilizing an ambient standard would not guarantee that controls would be required on all mercury sources.

**Comment #11: Public Health Criteria and Residual Risk Evaluations:  
Comment Count: ~90**

**NDEP Response:** To understand the requirements, you need to start at 1970, when Congress enacted Section 112 of the Clean Air Act. This statute was the first time that Congress focused its efforts on reducing hazardous air pollutants (HAPs). The statutes at that time defined HAPs as pollutants that, in the judgment of the EPA Administrator, cause or contribute to air pollution which may increase mortality or have an increase in serious irreversible illness. Section 112 required EPA to publish a list of each HAP that EPA intended to establish an emissions limitation for, and then promulgate a standard, or otherwise explain why the HAP was not hazardous. To do this, EPA utilized a risk-based analysis to set the emissions standards. EPA considered levels of HAPs at which health effects were observed, and factored in an ample margin of safety to protect public health, and set the standard accordingly.

Between 1970 and 1990, EPA only listed 8 HAPs and set standards for only 7 of them. Clearly, the risk-based approach did not work. Congress was provided information that concluded that the program was not effective. Subsequently, Congress passed the 1990 Clean Air Act Amendments with an emphasis on strengthening and expanding the HAP program through an emissions control technology-based approach. Today, the technology-based approach requires emissions control to levels that utilize the best available control technology.

There were two significant changes made to Section 112 in the 1990 reauthorization. First, rather than the EPA Administrator listing HAPs, as was done previously, Congress established the list of 189 HAPs on their own (see 7412(b)). Second, an emissions standards implementation process was formed and is based on the maximum reduction in emissions which can be achieved by applying the best available control technology.

This technology-based approach consists of a two-step process for determining emissions standards under the 1990 Act Amendments. First, EPA is required to establish technology-based emissions standards for categories of sources that emit HAPs. That is the maximum achievable control technology is required to apply to each category. This requires all sources in a category to at least cleanup emissions to the level their best performing peers have shown can be achieved. This is strictly a technology review and contains no risk-based assessment.

**Comment #12:** Reduction Goals and Emission Caps: Does the proposed NMCP have emission reduction goals similar to the former voluntary (VMRP) program? What further reductions do you expect? The program should provide for overall emissions reductions. Reductions achieved by other industries should be used as a benchmark, such as medical waste incinerators. The program should establish a cap on total annual mercury emissions.

*Counter comment:* Given the success of the VMRP, are regulations really necessary?

**Comment Count:** 8

**NDEP Response:** The Voluntary Mercury Reduction Program (VMRP) was designed to address the most significant sources of mercury air emissions and utilized EPA's successful 33/50 program as its foundation. According to the US EPA, the four VMRP companies comprised more than 90 percent of reported mercury air emissions in Region 9 in 2000, and the companies have since reduced their emissions by more than 80%. This meets or exceeds most of the goals or caps set by other states for other industry sectors.

There is no basis for establishing a cap and when doing so, there is no guarantee that controls will be required on all units to achieve the cap. In the proposed NMCP best available controls are required on all applicable units.

**Comment #13:** Will the state mercury permit roll up into the Title V program for affected facilities?

**Comment Count:** 1

NDEP Response: **Yes.**

**Comment #14:** Early Reduction Credit: This section should be deleted. Sources should not operate with emissions above a MACT level at any time.

**Comment Count:** 2

**NDEP Response:** The establishment of the Early Reduction Credit program is designed to create an incentive for companies with currently un-controlled or minimally controlled units to reduce emissions in advance of the NvMACT. Early Reduction Credit is based on a rigorous evaluation to determine the best controls available at the time the request is made.

**Comment #15:** Mercury Control Timeline. The program must be accelerated to realize improvements in mercury control sooner. We can hope that companies will adopt controls on the early reduction track, but NvMACT will not be required until 3 to 4 years from now. This delay is unreasonable considering the serious public health risk.

**Comment Count:** ~98

**NDEP Response:** The most significant sources of mercury are the VMRP facilities and they are already controlled. The timelines in the NMCP for implementing additional controls are much more aggressive than any timelines for implementing a federal MACT, and for the implementation allowed for power plants in the most recent CAMR rule. These timelines have been developed based on our ability to adequately evaluate the control

measures to establish appropriate conditions in the mercury permits, and to fulfill our public comment requirements.

**Comment #16:** All public comment periods in the regulations should be set at a minimum of 60 days and include public hearings to provide adequate time for public examination.

**Comment Count:** 1

**NDEP Response:** This program includes various points in the process where the Director is making a determination or permits are being processed and public input will be solicited. The proposed regulations are consistent with standard 30-day comment period for all other permit actions and NDEP programs.

**Comment #17:** Regulation Development Process: The public process for this program and regulation development is complex and flawed. The public comment process was unreasonable; the Elko meeting was cancelled and rescheduled with limited notice that did not permit everyone's attendance. The regulations continued to evolve from draft versions and the [originally proposed timeframe of a] January hearing should be postponed. The timeframe for submitting comments was far too short for such an important issue and therefore an extension of the public process is requested.

**Comment Count:** 5

**NDEP Response:** The regulations only require one workshop and the Carson City workshop met that requirement. Postponement of the Elko workshop was unfortunate and due to circumstances beyond the Divisions control. The meeting in Elko was rescheduled a week later to provide an opportunity for additional comment.

The Agency draft regulations were posted and noticed to the public on February 1, 2006, which was more than 30 days in advance of the scheduled March 8, 2006 State Environmental Commission hearing as required by the APA. The submittal made on February 1<sup>st</sup> contains the same program as the LCB version recently provided, with a few errors introduced by LCB that will be corrected at the Commission hearing. The version that will be proposed at the hearing is the same as the February 1<sup>st</sup> version.

**Comment #18:** Tier 3 thermal units should not be grandfathered into the regulation. Tier 3 thermal units should be held to the same mercury emission standards, rules, applications, monitoring and Tier 1 and Tier 2 thermal units and not have a lower or lesser standard applied to their operation, maintenance or modification. Modification of a Tier 3 thermal unit should be considered as construction of a thermal unit, and not given more lenient consideration than Tier 1 and Tier 2 thermal units.

**Comment Count:** 1

**NDEP Response:** According to the proposed regulations, a Tier 3 thermal unit is one that either doesn't have the potential to emit mercury (i.e. zero emissions of mercury) or one that emits at or below de minimis mercury emission levels. The de minimis approval process allows the Director to consider the level of mercury emission or type of unit that doesn't warrant further evaluation of additional controls, permitting and monitoring. Any Tier 3 thermal unit that proposes a modification will be evaluated to determine if any of the mercury requirements would be applicable. In addition, all Tier 3 units are required to certify annually of the units continued status.

**Comment #19:** Section 35, item 6(a) should not allow the applicant to determine what is deemed sufficient to determine what is to be NvMACT. This set up a self approval and self regulatory program and does not protect the public or public trust resources.

**Comment Count:** 1

**NDEP Response:** The proposed regulations require an applicant to propose what they believe is NvMACT as part of the application. The Director (i.e. NDEP) reviews, evaluates and determines the NvMACT based on the information provided by the applicant and any other information available to the Director. Section 35.6(a), however, discusses only the requirement for the Director to make public and receive comment on his proposed NvMACT determination. The program is most decidedly not a self approval and self regulatory program.

**Comment #20:** General oppositions to adoption: The control of emissions is supported, but the final draft of the regulations still need considerable work to suitably protect public health, public trust resources, fish and wildlife. The proposed program is substantially flawed because NDEP has not conducted a rigorous public health risk assessment so there is not means of determining if it is sufficient.

**Comment Count:** 2

*Counter Comment:* The need for action is urgent and should not be delayed. We urge you to adopt rules for mercury reduction that will make sure that the State of Nevada will not allow our native lands to be contaminated further by mercury pollution. We greatly appreciate your efforts to protect the public and environmental health from mercury emissions. The NDEP has shown great leadership in developing the regulations and the new program should be recognized as a significant first step.

**Comment Count:** 4

**NDEP Response:** Based on all of the information available to the NDEP, we believe that the most appropriate course of action at this point in time is to continue to require efficient operation of existing mercury controls and to require the installation and operation of the best available controls on all thermal mercury emitting units. This approach will ensure the most rapid reductions of mercury while additional information is gathered and studies are conducted.

**Comment #21:** Mass Balance

**Comment Count:** 10

**NDEP Response:** Because of the large quantities of ore that are processed and the relatively small concentrations of mercury present in the ore, it is not reasonably possible to account for mercury associated with the mineral processing activities with any relative accuracy and certainty. Attempting to do so with large thermal processing units would result in inaccurate information. A more representative way to account for mercury emission to the atmosphere is to perform direct emissions testing.

**ADOPTED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R175-05**

Effective May 4, 2006

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

AUTHORITY: §§1-12 and 14-19, NRS 459.485; §13, NRS 459.485 and 459.550.

A REGULATION relating to hazardous waste; revising the date on which certain regulations are adopted by reference; revising the address of the office of the Division of Environmental Protection of the State Department of Conservation and Natural Resources for purposes of obtaining certain information; and providing other matters properly relating thereto.

**Section 1.** NAC 444.8427 is hereby amended to read as follows:

444.8427 “Facility for community recycling” means a facility for recycling hazardous waste which has a yearly capacity that is not more than twice the amount of the type of hazardous waste proposed to be recycled that is generated within the region in this State in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July 1, ~~[2003.]~~ *2005*.

**Sec. 2.** NAC 444.84275 is hereby amended to read as follows:

444.84275 “Facility for community storage” means a facility for the storage and consolidation of hazardous waste which has a yearly capacity that is not more than twice the amount of hazardous waste that is generated within the county in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July 1, ~~[2003.]~~ *2005*.

**Sec. 3.** NAC 444.850 is hereby amended to read as follows:

444.850 As used in NAC 444.850 to 444.8746, inclusive, unless the context otherwise requires:

1. The words and terms defined in NAC 444.8505 to 444.861, inclusive, have the meanings ascribed to them in those sections.

2. Except for the words and terms otherwise defined in NAC 444.8505 to 444.861, inclusive, the words and terms defined in 40 C.F.R. § 260.10, as that section existed on July 1, ~~2003,~~ 2005, have the meanings ascribed to them in that section.

**Sec. 4.** NAC 444.8618 is hereby amended to read as follows:

444.8618 A generator, transporter or facility owner or operator who is required to obtain an EPA identification number pursuant to 40 C.F.R. § 262.12, 263.11, 264.1(j)(1), 264.11 or 265.11 may obtain information relating to the procedure to obtain the identification number and an application by submitting a request in writing to the Division of Environmental Protection, ~~333 West Nye Lane, Room 138,~~ *Bryan State Office Building, 901 South Stewart Street*, Carson City, Nevada ~~89706-0851,~~ *89701-5249*, or by telephone at (775) 687-9481.

**Sec. 5.** NAC 444.8632 is hereby amended to read as follows:

444.8632 1. In addition to the requirements of NAC 444.850 to 444.8746, inclusive, a person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil shall comply with all applicable requirements of, and may rely upon applicable exclusions or exemptions under, 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, Part 273 and Part 279, as those provisions existed on July 1, ~~2003,~~ 2005, which, except as otherwise modified by NAC 444.86325, 444.8633 and 444.8634, are hereby adopted by reference. The Commission may use federal statutes and regulations that are cited in

40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, Part 273 and Part 279 to interpret ~~these~~ *those* sections and parts.

2. The volumes containing ~~these~~ *those* parts may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the following prices:

- (a) Volume 40 C.F.R. Part 2 ..... \$60
- (b) Volume 40 C.F.R. Part 124 ..... ~~43~~ *45*
- (c) Volume 40 C.F.R. Parts 260 to 265, inclusive ..... 50
- (d) Volume 40 C.F.R. Parts 266 to 299, inclusive ..... ~~47~~ *50*

**Sec. 6.** NAC 444.86325 is hereby amended to read as follows:

444.86325 1. The following sections and parts of Title 40 of the Code of Federal Regulations, and any reference to ~~these~~ *those* sections and parts, are not adopted by reference:

- (a) ~~Sections 2.106(b) and 2.110;~~ *Section 2.101(a)(1)-(10);*
- (b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;
- (c) Sections 260.1(b)(4)-(6) and 260.20, 260.21 and 260.22;
- (d) Section 261.5(j);
- (e) Part 262, Subpart H;
- (f) Sections 264.1(d), 264.1(f), 264.149, 264.150, 264.301(1), *264.1050(h)*, 265.1(c)(4), 265.149, 265.150 ~~and 265.430;~~ *265.430 and 265.1050(g);*
- (g) Section 266.111;
- (h) Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) and 268.44;
- (i) Sections 270.1(c)(1)(i), 270.60(b) and 270.64; and

(j) Sections 279.10(b)(2), 279.10(b)(3), 279.10(c), 279.10(d)(1), 279.42(b)(2), 279.51(b)(2), 279.62(b)(2) and 279.73(b)(2).

2. The following parts and sections of Title 40 of the Code of Federal Regulations are adopted by reference, as revised in this subsection:

(a) Part 124 is adopted with the following exceptions:

(1) Delete all references to appeals to the Administrator in section 124.5(b);

(2) Delete all references to “EPA-issued permits” and insert in its place “permits issued by the Department,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);

(3) Delete all references to “when EPA is the permitting issuing authority” and insert in its place “when the Department is authorized to issue a permit,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);

(4) Subpart A is adopted solely for the purpose of establishing procedures for permits for the management of hazardous waste, except that all references to “UIC,” “PSD” and “NPDES” are deleted;

(5) Delete all references to “RCRA part B,” “part B RCRA” and “part B” and insert in their place “NRS 459.400 to 459.600, inclusive,” in sections 124.31 and 124.32; and

(6) Delete from sections 124.31(a), 124.32(a) and 124.33(a) the following sentence: “For the purposes of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 C.F.R. part 271.”

(b) Section 260.2(a) is adopted except that the Freedom of Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information

Act and section 3007(b) must be replaced with “NRS 459.555 and any regulations adopted pursuant thereto.”

(c) Section 260.33(b) is adopted except that “in the locality where the recycler is located” is deleted.

(d) Section 260.41(a) is adopted except that “or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal” is deleted.

(e) Section 261.4(e)(3)(iii) is adopted except that “in the Region where the sample is collected” is deleted.

(f) Section 262.11(c)(1) is adopted except that “, or according to an equivalent method approved by the Administrator under 40 C.F.R. Part 260.21” is deleted.

(g) Sections 262.42(a)(2) and 262.42(b) are adopted except that “for the Region in which the generator is located” is deleted.

(h) Sections 264.18(c) and 265.18 are adopted except that “except for the Department of Energy Waste Isolation Pilot Project in New Mexico” is deleted.

(i) Sections 264.143(h), 264.145(h), 265.143(g) and 265.145(g) are adopted except that “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions” is deleted.

(j) Sections 264.147(a)(1)(i), 264.147(b)(1)(i) and 265.147(a)(1)(i) are adopted except that “or Regional Administrators if the facilities are located in more than one Region” is deleted.

(k) Section 264.151 is adopted with the following exceptions:

(1) Delete all references to “(of/for) the Regions in which the facilities are located”; and

(2) Delete “an agency of the United States Government” from the second paragraph of the trust agreement.

(l) Part 270 is adopted except that all references to “interim authorization” are deleted.

(m) Section 279.40(c) is adopted except that “unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste” is deleted.

**Sec. 7.** NAC 444.8633 is hereby amended to read as follows:

444.8633 Except as otherwise provided in NAC 444.8634:

1. Any references in any part of Title 40 of the Code of Federal Regulations to the U.S. Environmental Protection Agency, “United States Environmental Protection Agency,” “Agency,” “EPA Headquarters,” “EPA Region(s)” or “EPA” which have been adopted by reference shall be deemed to mean the “Department” with the following exceptions:

(a) Any reference to “EPA” identification numbers;

(b) Any reference to “EPA” hazardous waste numbers;

(c) Any reference to “EPA” test methods;

(d) Any reference to “EPA” forms;

(e) Any reference to “EPA” publications or manuals;

(f) Any reference to “EPA” guidance;

(g) Any reference to “EPA” Acknowledgment of Consent; ~~and~~

(h) Any reference to “EPA” or “Agency” in:

(1) Sections 124.1(f), 124.2(b), 124.6(e) and 124.10(c)(1)(ii);

(2) The provisions of section 124.2(a) defining “Administrator,” “Director,” “EPA,” “permit,” “person” and “Regional Administrator”;

- (3) The provisions of section 260.10 defining “Administrator,” “EPA Region,” “federal agency,” “person” and “Regional Administrator”;
- (4) Part 260, Appendix I;
- (5) Part 261, Appendix IX;
- (6) Section 262.32(b), Part 262, ~~Subpart E,~~ *Subparts E and F, and* the Appendix to Part 262;
- (7) The Note following section 263.10(a);
- (8) Sections 264.11 ~~and 265.11;~~, *264.71, 265.11 and 265.71;*
- (9) Section 268.1(e)(3);
- (10) Sections 270.1(a)(1), 270.1(b), 270.3, 270.5, 270.10(e)(1)-(2), 270.11(a)(3), 270.32(a), 270.32(c), 270.51, 270.72(a)(5) and 270.72(b)(5); and
- (11) The provisions of section 270.2 defining “Administrator,” “approved program or approved State,” “Director,” “Environmental Protection Agency,” “EPA,” “final authorization,” “permit,” “person,” “Regional Administrator” and “state/EPA agreement ~~[.]~~”; *and*
  - (i) *Any reference to “EPA,” “Agency” or “EPA Director of the Office of Solid Waste” in section 262.21 and any subsequent reference to EPA’s oversight of the manifest registry process in Part 262, Subparts C and E.*

2. Any references in any part of Title 40 of the Code of Federal Regulations to the “Regional Administrator” or “Administrator” which have been adopted by reference shall be deemed to mean the “Director” with the following exceptions:

- (a) The provisions of section 124.2(a) defining “Administrator,” “Director,” “interstate agency,” “major facility” and “Regional Administrator”;
- (b) Sections 124.2(b), 124.5(d), 124.6(e) and 124.10(b);

(c) The provisions of section 260.10 defining “Administrator,” “Regional Administrator” and “hazardous waste constituent”;

(d) Section 261.30(b) and Part 261, Appendix IX;

(e) Section 262.12, Part 262, Subpart E ~~§~~ and the Appendix to Part 262;

(f) Sections 263.11 and 264.1(j)(1);

(g) Sections 264.12(a) and 265.12(a);

(h) The provisions of section 270.2 defining “Administrator,” “Director,” “major facility,” “Regional Administrator” and “state/EPA agreement”; and

(i) Sections 270.3, 270.5, 270.10(e)(1)-(2), 270.10(e)(4), 270.10(f)-(g), 270.11(a)(3), 270.14(b)(20), 270.32(b)(2) and 270.51.

3. Any references in any part of Title 40 of the Code of Federal Regulations to the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C” which have been adopted by reference shall be deemed to mean “NRS 459.400 to 459.600, inclusive,” when referring to an operating permit or to the federal hazardous waste program, with the following exceptions:

(a) Any references to a specific provision of the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C”;

(b) The provisions of section 124.2 defining “appropriate act and regulations” and “RCRA”;

(c) The provisions of section 260.10 defining “Act or RCRA”;

(d) Part 260, Appendix I;

(e) Part 261, Appendix IX;

(f) The Appendix to Part 262;

(g) Section 270.1(a)(2); and

(h) The provisions of section 270.2 defining “RCRA” and the provision of section 270.51 defining “RCRA permit.”

4. Following any references in any part of Title 40 of the Code of Federal Regulations to a specific provision of the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C,” which have been adopted by reference, the phrase “or any comparable provisions of NRS 459.400 to 459.600, inclusive, and any regulations adopted pursuant thereto” shall be deemed to be added with the following exceptions:

- (a) Section 270.1(a)(2);
- (b) Section 270.72(a)(5); and
- (c) Section 270.72(b)(5).

5. Any references in any part of Title 40 of the Code of Federal Regulations to the “Department of Transportation” or “DOT” which have been adopted by reference shall be deemed to mean “the Department of Transportation of the United States.”

6. Any references in any part of Title 40 of the Code of Federal Regulations to “state(s),” “authorized state,” “approved state” or “approved program” which have been adopted by reference shall be deemed to mean “Nevada” with the following exceptions:

- (a) The provisions of section 124.2(a) defining “Director,” “interstate agency,” “person” and “state”;
- (b) The provisions of section 260.10 defining “person,” “state” and “United States”;
- (c) Part 262;
- (d) Sections 264.143(e)(1), 264.145(e)(1), 264.147(a)(1)(ii), 264.147(b)(1)(ii), 264.147(g)(2) and 264.147(i)(4);

(e) Sections 265.143(d)(1), 265.145(d)(1), 265.147(a)(1)(ii), 265.147(g)(2) and 265.147(i)(4); and

(f) The provisions of section 270.2 defining “approved program or approved State,” “Director,” “final authorization,” “person” and “state.”

**Sec. 8.** NAC 444.8634 is hereby amended to read as follows:

444.8634 1. Any reference to the following terms in 40 C.F.R. Part 2, Subpart A, shall be deemed to have the meanings ascribed thereto in this section:

(a) “District court of the United States” or “Federal district court” shall be deemed to mean “district court in Nevada”;

(b) “Federal agency” shall be deemed to mean “state agency”;

(c) Except in section ~~2.118(a),~~ **2.105(a)**, Freedom of Information Act, “FOIA,” the “Act” or “5 U.S.C. 552” shall be deemed to mean “NRS 459.555 and any regulations adopted pursuant thereto”;

(d) “Freedom of information officer” shall be deemed to mean the “Administrator of the Division or his designee”;

(e) “General counsel” shall be deemed to mean the “Attorney General of Nevada”;

(f) Any addresses shall be deemed to mean the “Division of Environmental Protection, ~~333 W. Nye Lane, Room 138,~~ **Bryan State Office Building, 901 South Stewart Street**, Carson City, Nevada ~~89706-0851”;~~ **89701-5249”;**

(g) Any references to the employment rankings of “GS-8” or “GS-9” shall be deemed to mean, respectively, “grade 31” and “grade 32” of the Nevada Personnel System established pursuant to NRS 284.170, and any reference to a fee for the cost of staff time shall be deemed to mean, respectively, \$15 and \$22.50 per half hour;

(h) Any references to duplication or reproduction charges of “\$0.15 per page” shall be deemed to mean “10 cents per page”; and

(i) Any reference to an officer except the general counsel shall be deemed to mean the “Administrator of the Division.”

2. Any reference to the “Administrator” in 40 C.F.R. 262.12, 263.11 or 264.1(j)(1) shall be deemed to include the “Director.”

3. Any reference to the “EPA” in 40 C.F.R. 264.11 or 265.11 shall be deemed to include the “Director.”

4. Fees required to be paid to the “U.S. Environmental Protection Agency” or the “United States Environmental Protection Agency” pursuant to section ~~2.120~~ 2.107 of 40 C.F.R. must be paid to the “State of Nevada” and deposited in the Account for the Management of Hazardous Waste.

**Sec. 9.** NAC 444.8688 is hereby amended to read as follows:

444.8688 1. A person shall not transfer hazardous waste from a transport vehicle directly to a boiler or industrial furnace without the use of a storage unit.

2. An owner or operator of a boiler or industrial furnace may transfer hazardous waste from a transport vehicle to the boiler or furnace using a storage unit if he first obtains a permit for the storage of hazardous waste in the manner prescribed by 40 C.F.R. Part 270, as that part existed on July 1, ~~2003~~ 2005.

**Sec. 10.** NAC 444.8871 is hereby amended to read as follows:

444.8871 1. The provisions of NAC 444.8801 to 444.9071, inclusive, apply to used antifreeze that is recycled and is determined to be a hazardous waste because:

(a) It exhibits a characteristic of hazardous waste which is identified in 40 C.F.R. Part 261, Subpart C, as that part existed on July 1, ~~2003;~~ 2005; or

(b) It was designated as a hazardous waste in the state of its origin.

2. The provisions of NAC 444.8801 to 444.9071, inclusive, do not apply to used antifreeze which will be disposed of and not recycled, or to mixtures of used antifreeze and hazardous waste. The used antifreeze described in this subsection is governed by the provisions of NAC 444.850 to 444.8746, inclusive.

**Sec. 11.** NAC 444.8881 is hereby amended to read as follows:

444.8881 1. Each storage tank that is underground which stores used antifreeze must comply with the requirements of 40 C.F.R. Part 265, Subpart J, as that subpart existed on July 1, ~~2003;~~ 2005.

2. Each pipe that transfers used antifreeze to storage tanks that are underground must be clearly marked with the words "Used Antifreeze."

**Sec. 12.** NAC 444.8926 is hereby amended to read as follows:

444.8926 1. A generator of used antifreeze may recycle his used antifreeze for his own use if the recycling:

(a) Is performed by the generator at a site which is located where the used antifreeze was generated; or

(b) Is performed pursuant to a written contract by a mobile unit for the recycling of used antifreeze which is located where the used antifreeze was generated.

2. Used antifreeze which is recycled pursuant to this section will not be calculated in the determination of the status of the generator of used antifreeze as a generator of hazardous waste pursuant to 40 C.F.R. Part 262, as that part existed on July 1, ~~2003;~~ 2005.

3. A person who performs recycling pursuant to this section shall manage any waste which is generated during the recycling process pursuant to the provisions of NAC 444.850 to 444.8746, inclusive.

4. A generator who recycles his used antifreeze pursuant to paragraph (a) of subsection 1 is not required to obtain a written determination pursuant to NAC 444.8455 and 444.84555.

**Sec. 13.** NAC 444.8931 is hereby amended to read as follows:

444.8931 1. Except as otherwise provided in this section, a generator of used antifreeze shall ensure that his used antifreeze is transported by persons who hold an identification number.

2. A generator may transport, without an identification number, used antifreeze generated at a site which is owned by the generator or collected from a person who generated the used antifreeze from his household if:

(a) The used antifreeze is transported in a motor vehicle which is owned by the generator or an employee of the generator;

(b) Not more than 350 gallons of used antifreeze is transported at one time; and

(c) The used antifreeze is transported to a point for aggregation or a center for the collection of used antifreeze which is registered pursuant to NAC 444.8921.

3. Used antifreeze which is transported pursuant to this section will not be calculated in the determination of the status of the generator of used antifreeze as a generator of hazardous waste pursuant to 40 C.F.R. Part 262, as that part existed on July 1, ~~2003,~~ 2005, if he maintains records which describe the disposition of the used antifreeze. The records must be maintained for at least 3 years and be made available, upon request, for inspection by a representative of the Division or the Commission. The records may be in the form of a log, copies of contractual

agreements, invoices, bills of lading or other documents relating to shipping which show each shipment of used antifreeze that is transported for recycling. The records must include:

- (a) The name and address of the generator;
- (b) The identification number of the generator, if he has an identification number;
- (c) The name and address of the center for the collection of used antifreeze or the facility for the recycling of used antifreeze with whom the generator has contracted to recycle the used antifreeze;
- (d) The identification number of the center or facility, if it has an identification number;
- (e) The amount of used antifreeze that is transported for recycling; and
- (f) The signature and date of acceptance of the representative of the center or facility.

**Sec. 14.** NAC 444.8941 is hereby amended to read as follows:

444.8941 If a transporter of used antifreeze transports used antifreeze in a truck which was used to transport hazardous waste, he shall manage the used antifreeze as a hazardous waste pursuant to the provisions of NAC 444.850 to 444.8746, inclusive, unless he removes the hazardous waste from the truck in accordance with 40 C.F.R. § 261.7, as that section existed on July 1, ~~2003,~~ 2005, before he transports the used antifreeze.

**Sec. 15.** NAC 444.8951 is hereby amended to read as follows:

444.8951 1. Except as otherwise provided in subsection 2 of NAC 444.8931, a transporter of used antifreeze must hold an identification number. A person may obtain information relating to the procedure to obtain the identification number and an application by submitting a request in writing to the Division of Environmental Protection, ~~333 West Nye Lane, Room 138,~~ *Bryan State Office Building*, Carson City, Nevada ~~89706-0851,~~ *89701-5249*, or by telephone at (775) 687-9481.

2. A transporter of used antifreeze shall comply with all applicable provisions of 49 C.F.R. Parts 173, 178 and 179, which govern the packaging, labeling and placarding of hazardous waste.

**Sec. 16.** NAC 444.8996 is hereby amended to read as follows:

444.8996 1. An owner or operator of a facility for the recycling of used antifreeze shall obtain a written determination from the Administrator pursuant to NAC 444.8455 and 444.84555.

2. An owner or operator of a facility for the recycling of used antifreeze shall obtain an identification number. A person may obtain information relating to the procedure to obtain the identification number and an application by submitting a request in writing to the Division of Environmental Protection, ~~[333 West Nye Lane, Room 138,]~~ *Bryan State Office Building, 901 South Stewart Street*, Carson City, Nevada ~~[89706-0851,]~~ *89701-5249*, or by telephone at (775) 687-9481.

**Sec. 17.** NAC 444.9006 is hereby amended to read as follows:

444.9006 1. Except as otherwise provided in subsection 2, if a storage tank that is above the ground is no longer used at a facility for the recycling of used antifreeze, the owner or operator of the facility shall ensure that the used antifreeze, including its residue, is decontaminated or removed from the storage tank, system for containment, soil and other structures or equipment which are contaminated with used antifreeze. The owner or operator shall manage the used antifreeze as a hazardous waste unless it does not exhibit a characteristic of hazardous waste identified in 40 C.F.R. Part 261, as that part existed on July 1, ~~[2003.]~~ *2005*.

2. If the owner or operator demonstrates to the satisfaction of the Division that the used antifreeze cannot be removed or decontaminated as required by subsection 1, he must follow the

procedures for closure and postclosure ~~[which are]~~ set forth in 40 C.F.R. § 265.310, as that section existed on July 1, ~~[2003.]~~ 2005.

**Sec. 18.** NAC 444.9011 is hereby amended to read as follows:

444.9011 If a facility for the recycling of used antifreeze is closed, the owner or operator of the facility shall ensure that containers which are used to store used antifreeze, including its residue, are removed from the facility and that systems for containment, soil and other structures or equipment which are contaminated with used antifreeze are decontaminated or removed. Material that is removed must be managed as a hazardous waste unless it does not exhibit a characteristic of hazardous waste which is identified in 40 C.F.R. Part 261, as that part existed on July 1, ~~[2003.]~~ 2005.

**Sec. 19.** NAC 444.9452 is hereby amended to read as follows:

444.9452 1. All sections, subparts and parts of Title 40 of the Code of Federal Regulations referred to in NAC 444.940 to 444.9555, inclusive, as modified by NAC 444.9453, are hereby adopted by reference as ~~[they]~~ *those sections, subparts and parts* existed on July 1, ~~[2003.]~~ 2005.

2. The volumes containing ~~[these]~~ *those* sections, subparts and parts may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the following prices:

- (a) The volume containing 40 C.F.R. Parts 260 to 265, inclusive .....\$50
- (b) The volume containing 40 C.F.R. Parts 266 to 299, inclusive.....~~[47]~~ 50
- (c) The volume containing 40 C.F.R. Part 761 .....61

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R175-05**

The State Environmental Commission adopted regulations assigned LCB File No. R175-05 which pertain to chapter 444 of the Nevada Administrative Code on March 8, 2006.

**Notice date:** 2/1/2006  
**Hearing date:** 3/8/2006

**Date of adoption by agency:** 3/8/2006  
**Filing date:** 5/4/2006

**INFORMATIONAL STATEMENT**

This regulation incorporates changes to the federal hazardous waste regulations that are currently in conflict with Nevada's existing State regulations. The regulation will revise State regulations to be more consistent with federal regulations.

The federal regulatory changes adopted by US EPA which are now being adopted by Nevada include clarification of the used oil management standards, revisions to the National Performance Track Program, new listing of hazardous wastes from the dye and pigment industries and revisions to related land disposal restrictions. The regulatory changes also include standardization of the Uniform Hazardous Waste Manifest and updates to the analytical and sampling methods approved for use in complying with Resource Conservation Recovery and Act (RCRA) regulations.

**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.**

The Nevada Division of Environmental Protection (NDEP) held one workshop on the above referenced regulation. The purpose of the workshop was to inform the public and regulated community about the proposed regulatory changes and solicit comments from interested persons. Time and location of the workshop is noted below.

October 19, 2005 - 9:00 AM  
Nevada Division of Environmental Protection  
Richard H. Bryan State Office Building  
901 South Stewart Street,  
Conference Room 413 Carson City, Nevada

The State Environmental Commission (SEC) held a public hearing to consider this regulation on March 8th, 2006 at the Washoe County Commission Chambers in Reno, Nevada.

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

- (a) Attended March 08, 2006 hearing; 70
- (b) Testified on this Petition at the hearing: 1
- (c) Submitted to the agency written comments: (none)

**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 as indicated in number 1 above. Comments were also solicited by State Environmental Commission (SEC) in the SEC notice in the newspapers, by direct mail to interested persons subscribing to the SEC electronic and ground-based mailing list.

The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The workshop notice, summary of comments received at the workshop, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at: <http://www.sec.nv.gov/main/hearing030806.htm>

**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.**

No changes were proposed at the State Environmental Commission Hearing, either by NDEP staff, the public or the Commission. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

No anticipated economic effects will result from adoption of this regulation

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

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

The regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

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

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

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

This regulation does not address fees changes.

**ADOPTED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R176-05**

Effective May 4, 2006

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

AUTHORITY: §§1-13, NRS 444A.110.

A REGULATION relating to solid waste; establishing the requirements for awarding certain grants to enhance solid waste management systems and promote the efficient use of resources; and providing other matters properly relating thereto.

**Section 1.** Chapter 444A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 13, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Division” means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.*

**Sec. 4.** *“Municipality” has the meaning ascribed to it in NRS 444A.012.*

**Sec. 5.** *“Solid waste” has the meaning ascribed to it in NRS 444.490.*

**Sec. 6.** *“Solid waste management authority” has the meaning ascribed to it in NRS 444.495.*

**Sec. 7.** *“Solid waste management system” has the meaning ascribed to it in NRS 444.500.*

**Sec. 8.** *1. The Division may solicit applications for grants to enhance solid waste management systems and promote the efficient use of resources, including, without limitation,*

*the recycling of solid waste. The Division may establish deadlines for applications by giving public notice of the availability of grants and the deadlines. An application received after 5 p.m. on the last business day of the application period will be returned to the applicant.*

*2. An application for a grant may be submitted to the Division by:*

- (a) A municipality;*
- (b) An educational institution; or*
- (c) A nonprofit organization.*

*3. An application for a grant must be submitted in the form specified by the Division in its solicitation for the grant and must include:*

*(a) A one-page cover letter setting forth:*

*(1) The name, address, telephone number, facsimile number and e-mail address of the municipality, educational institution or nonprofit organization submitting the application;*

*(2) The name of the proposed project;*

*(3) A summary of the proposed project; and*

*(4) The name, address and telephone number of a contact person for the proposed project;*

*(b) A description of:*

*(1) The managerial and technical ability of the applicant to carry out the proposed project; and*

*(2) The extent of any assistance that a consultant may provide for the proposed project;*

*(c) A proposed schedule for the project which includes, without limitation, a beginning and an ending date for the project;*

*(d) A work plan setting forth the principal objectives of the proposed project, including, without limitation, a description of the background, goals, deliverables and need for the proposed project;*

*(e) The criteria according to which the success of the proposed project will be measured;*

*(f) A budget for the proposed project prepared on a form furnished by the Division; and*

*(g) Any other information required by the Division in the solicitation for the grant.*

**Sec. 9. 1. The Division shall review each application to determine:**

*(a) The eligibility of the applicant;*

*(b) The eligibility of the proposed project specified in the application;*

*(c) The eligibility of the costs specified in the application; and*

*(d) The adequacy of the supporting documentation.*

*2. Any proposal that is designed to enhance solid waste management systems or promote the efficient use of resources is eligible for the award of a grant pursuant to sections 2 to 13, inclusive, of this regulation.*

*3. Any costs incurred in carrying out the purposes specified in subsection 2 are eligible for the grant program.*

*4. Documentation is considered adequate if it is submitted in the form required by subsection 3 of section 8 of this regulation and enables the Division to:*

*(a) Determine whether the proposed project is feasible;*

*(b) Determine whether the applicant has the managerial and technical ability and experience to carry out the proposed project; and*

*(c) Evaluate the proposed project pursuant to section 10 of this regulation.*

**Sec. 10. 1. In evaluating an application, the Division shall consider:**

- (a) The goals and policies of the Bureau of Waste Management of the Division;*
- (b) Whether the proposed project is consistent with:
  - (1) The State's plan for the management of solid waste; and*
  - (2) The plan for the management of solid waste adopted by the municipality in which the proposed project is located;**
- (c) If the applicant is a municipality, whether the municipality has adopted a plan for the management of solid waste that has been updated at least once within the immediately preceding 5 years;*
- (d) Whether the proposed project is likely to improve solid waste management systems within this State or a municipality;*
- (e) Whether the proposed project will increase opportunities for the recycling and reuse of solid waste;*
- (f) Whether the proposed project is likely to increase public awareness of the importance of conserving natural resources or the reuse, recycling and appropriate disposal of solid waste;*
- (g) Whether the proposed budget is reasonable for the proposed work plan for the project;*
- (h) Whether any alternative source of financial and technical support is available for use by the applicant;*
- (i) Whether the proposed project may be completed without financial assistance from the Division;*
- (j) The managerial and technical ability of the applicant to carry out the proposed project;*  
*and*
- (k) Whether the proposed project is likely to require continuing financial assistance after the expiration of the term of the grant for the proposed project.*

*2. The Division shall consult with a solid waste management authority concerning the proposed project pursuant to subsection 4 of NRS 444A.110. After notifying the solid waste management authority of the proposed project, the Division shall allow the solid waste management authority at least 30 days to provide comments on the proposed project.*

**Sec. 11.** *1. The Division shall award grants for proposed projects that, as determined by the Division, best meet the factors set forth in section 10 of this regulation.*

*2. The Division shall determine the amount of a grant based upon a review of the factors specified in subsection 1. The Division may grant multiple awards to a single applicant.*

**Sec. 12.** *The Division and the recipient of a grant shall enter into an agreement which must:*

*1. Establish the term of the grant, not to exceed 2 years, unless otherwise determined by the Division;*

*2. Establish a schedule and the terms for the payment of the grant;*

*3. Unless otherwise specified by the Division, require payments to be based upon completion of all or some of the objectives identified in the work plan for the project;*

*4. Provide that the recipient may enter into contracts to complete the work specified in the agreement;*

*5. Require the recipient to submit the results of all studies and analyses performed under the agreement to the Division; and*

*6. Require the recipient to include in any document, statement or promotional item issued by the recipient that describes the project a statement indicating that money for the project was provided through a grant from the Division. Before issuing any such document, statement or promotional item, the recipient must submit the document, statement or promotional item to*

*the Division for its approval. Any document, statement or promotional item submitted for approval pursuant to this subsection shall be deemed approved if the Division fails to approve or disapprove the document, statement or promotional item within 30 days after receiving the document, statement or promotional item.*

**Sec. 13. 1.** *Unless the Division determines that a variance is justified, the Division shall cancel a grant that is not completed in accordance with the terms and conditions of the grant, including, without limitation, time schedules.*

*2. If the Division determines that a project is no longer beneficial, the Division may, upon its own initiative or at the request of the recipient of the grant for the project, terminate the grant 30 days after giving notice of the termination to the recipient. The Division may order a recipient to cease expending money awarded by the grant, effective on the date of issuance of the notice of termination.*

*3. The Division shall disburse the money awarded by a grant in accordance with the schedule for payments set forth in the grant agreement.*

*4. If the books, records, documents and accounting procedures and practices of a recipient of a grant are relevant to the grant, they are subject to examination at any time by the Division and other appropriate state officers. The recipient shall reimburse the Division for any costs that have been paid which, as determined by the Division, are ineligible for payment.*

*5. If the Division makes payments to the recipient of a grant before completion of the project, the recipient shall, upon completion of the project, cancellation of the grant or termination of the project, return to the Division any money that has not been spent. The*

*money must be returned in accordance with the procedure for returning the money set forth in the grant agreement.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R176-05**

The State Environmental Commission adopted regulations assigned LCB File No. R176-05 which pertain to chapter 444A of the Nevada Administrative Code on March 8, 2006.

**Notice date:** 2/1/2006  
**Hearing date:** 3/8/2006

**Date of adoption by agency:** 3/8/2006  
**Filing date:** 5/4/2006

**INFORMATIONAL STATEMENT**

This regulation adds several new sections to Chapter 444A of the Nevada Administrative Code (NAC). The new regulation establishes procedures for the Division of Environmental Protection (NDEP) to award grants to municipalities, educational institutions, and nonprofit organizations for projects that enhance solid waste management systems and promote the efficient use of resources.

As way of background, the 2005 legislative session enacted SB 396 which modified NRS 444A.110. The new law authorized NDEP to award grants for the above referenced activities. It also required the State Environmental Commission (SEC) to adopt regulations governing the administration of the grants. This regulation carries out this requirement. The regulation outlines grant application requirements, eligibility determination, evaluation criteria, grant agreements, and procedures for disbursement of funds, grant termination, etc.

NDEP currently has a program to provide public education and support of recycling programs in Nevada through contracts. The new grants program is better suited for carrying out this function. The regulation will broaden the range of qualifying projects from recycling public education and support, to projects that enhance solid waste management systems and promote the efficient use of resources. NDEP will still utilize recycling contracts as necessary for entities that are not eligible to receive grants under the statute.

**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.**

The Nevada Division of Environmental Protection (NDEP) held two workshops on the above referenced regulation. The purpose of the workshops was to inform the public and regulated community about the proposed regulatory changes and solicit comments from interested persons. Time and location of the workshop are noted below.

November 16, 2005 - 9:00 AM to 11:00 AM  
Clark County Public Library,  
1401 E. Flamingo Road  
Las Vegas, NV

November 17, 2005 - 1:00 PM to 3:00 PM  
Nevada Division of Environmental Protection  
Richard H. Bryan State Office Building  
901 South Stewart Street, Conference Room 413  
Carson City, Nevada

The State Environmental Commission (SEC) held a public hearing to consider this regulation on March 8th, 2006 at the Washoe County Commission Chambers in Reno, Nevada.

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

- (a) Attended March 08, 2006 hearing; 70
- (b) Testified on this Petition at the hearing: 2 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

**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 as indicated in number 1 above. Comments were also solicited by State Environmental Commission (SEC) in the SEC notice in the newspapers, by direct mail to interested persons subscribing to the SEC electronic and ground-based mailing list.

The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The workshop notice, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at: <http://www.sec.nv.gov/main/hearing030806.htm>

**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.**

No changes were proposed at the State Environmental Commission Hearing, either by NDEP staff, the public or the Commission. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

No anticipated economic effects will result from adoption of this regulation

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

**7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication**

**or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

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

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

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

This regulation does not address fees changes.

**ADOPTED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R206-05**

Effective May 4, 2006

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

AUTHORITY: §1, NRS 445B.210.

A REGULATION relating to the State Environmental Commission; revising the provisions governing the adoption by reference of certain federal regulations by the State Environmental Commission; and providing other matters properly relating thereto.

**Section 1.** NAC 445B.221 is hereby amended to read as follows:

445B.221 1. Title 40 C.F.R. §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165, and Appendix S ~~[and Appendix W]~~ of Title 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2002.

2. *Appendix W of Title 40 C.F.R. Part 51 is hereby adopted by reference as it existed on July 1, 2005, and the amendments to Appendix W of Title 40 C.F.R. Part 51 as set forth in Volume 70 of the Federal Register at pages 68218 et seq., November 9, 2005, are hereby adopted by reference.*

3. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 1, 2003.

~~[3.]~~ 4. Except as otherwise provided in subsection ~~[4.]~~ 5, the following subparts of Title 40 C.F.R. Part 60 are hereby adopted by reference : ~~[as they existed on July 1, 2004:]~~

(a) Subpart A, except §§ 60.4, *60.8(b)(2)*, 60.8(b)(3) and 60.11(e) ~~[and]~~, *as it existed on July 1, 2005;*

(b) Subparts C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW and AAAA ~~F~~

~~—4.]~~ *as they existed on July 1, 2005; and*

*(c) Subparts CCCC and DDDD of Title 40 C.F.R. Part 60 as set forth in Volume 70 of the Federal Register at pages 55568 et seq., September 22, 2005, are hereby adopted by reference.*

5. The amendments to subpart ~~[GG]~~ *Da* of Title 40 C.F.R. Part 60 set forth in Volume ~~[69]~~ *70* of the Federal Register at pages ~~[41346]~~ *51266* et seq., ~~[July 8, 2004,]~~ *August 30, 2005*, are hereby adopted by reference.

~~[5.]~~ 6. Subparts A, ~~[B,]~~ C, D, E, F, H, I, J, K, L, N, O, P, Q, R, T, V, W, Y, BB and FF of Title 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, 2003.

~~[6.]~~ 7. Except as otherwise provided in subsection ~~[7,]~~ *8*, the following subparts of Title 40 C.F.R. Part 63 are hereby adopted by reference:

(a) A, B, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, EEEE, GGGG, HHHH, JJJJ, KKKK, MMMM, NNNN, OOOO, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, *DDDDD, EEEEE*, FFFFF, JJJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ and SSSSS, as they existed on July 1, ~~[2004,]~~ *2005*; and

(b) Subpart ~~[DDDD]~~ *FFFF* as set forth in Volume ~~[69]~~ *70* of the Federal Register at pages ~~[55218]~~ *38553* et seq., ~~[September 13, 2004,]~~

~~7.] July 1, 2005, and pages 51269 et seq., August 30, 2005.~~

8. The amendments to ~~[subpart YYYY]~~:

(a) *Subpart B* of Title 40 C.F.R. Part 63 *as* set forth in Volume ~~[69]~~ 70 of the Federal Register at pages ~~[51184]~~ 39662 et seq., ~~[August 18, 2004,]~~ July 11, 2005;

(b) *Subpart LL of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 66280 et seq., November 2, 2005;*

(c) *Subpart EEE of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 59401 et seq., October 12, 2005;*

(d) *Subpart QQQ of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 40672 et seq., July 14, 2005;*

(e) *Subpart RRR of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 57513 et seq., October 3, 2005;*

(f) *Subpart UUUU of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 46683 et seq., August 10, 2005;*

(g) *Subpart WWW of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 50117 et seq., August 25, 2005; and*

(h) *Subpart CCCCC of Title 40 C.F.R. Part 63 as set forth in Volume 70 of the Federal Register at pages 44285 et seq., August 2, 2005,*

↪ are hereby adopted by reference.

~~[8.]~~ 9. Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, 2003. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, the provisions of 40 C.F.R. Part 72 apply.

~~19.~~ 10. Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, 2003.

If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, the provisions of 40 C.F.R. Part 76 apply.

~~110.~~ 11. Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, and the amendments to section 7412 contained in 40 C.F.R. Part 63, Subpart C, are hereby adopted by reference as they existed on July 1, 2003.

~~111.~~ 12. The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the ~~Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$40.~~

~~12.~~ Internet at the following website: [http://www.osha.gov/pls/imis/sic\\_manual.html](http://www.osha.gov/pls/imis/sic_manual.html).

13. A copy of the publications which contain these provisions may be obtained from the:

(a) Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954.

The price is:

(1) For the volume containing §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165 and Appendices S and W of Part 51 .....	<del>101</del> 45
(2) For § 52.21 .....	<del>58</del> 61
(3) For Part 60 (Sections 60.1 to end) .....	58
(4) For Part 60 (Appendices).....	57
(5) For Parts 61 - 62 .....	<del>43</del> 45
(6) For Part 63 (Sections 63.1 to 63.599).....	58
(7) For Part 63 (Sections 63.600 to 63.1199).....	50
(8) For Part 63 (Sections 63.1200 to 63.1439).....	50

(9) For Part 63 (Sections 63.1440 to <del>63.8830</del> 63.6175) .....	<del>64</del> 32
(10) <i>For Part 63 (Sections 63.6580 to 63.8830)</i> .....	32
<i>(11)</i> For Part 63 (Sections 63.8980 to end) .....	35
<del>(11)</del> <i>(12)</i> For the volume containing Parts 72 and 76.....	<del>64</del> 62

(b) Division of State Library and Archives of the Department of Cultural Affairs for 10 cents per page.

(c) Internet at the following website: <http://www.gpoaccess.gov/nara/index.html>.

~~(13)~~ 14. For the purposes of the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

~~(14)~~ 15. Except as otherwise provided in subsections ~~8 and 9,~~ 9 and 10, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3497, inclusive, for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

~~(15)~~ 16. For the purposes of this section, “administrator” as used in the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section means the Director.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R206-05**

The State Environmental Commission adopted regulations assigned LCB File No. R206-05 which pertain to chapter 445B of the Nevada Administrative Code on March 8, 2006.

**Notice date:** 2/1/2006  
**Hearing date:** 3/8/2006

**Date of adoption by agency:** 3/8/2006  
**Filing date:** 5/4/2006

**INFORMATIONAL STATEMENT**

This regulation adopts into the Nevada Administrative Code federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs) that have been promulgated by the U.S. EPA since July 1, 2004. The Nevada Division of Environmental Protection is delegated the implementation of the federal NSPS and NESHAPs programs relevant in Nevada. Accordingly, it is necessary to keep the State's "adoption by reference" regulation (NAC 445B.221) up to date so that the United States Environmental Protection Agency (U.S. EPA) can continue to delegate the implementation of new rules to the State.

**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.**

NDEP's Bureau of Air Quality Planning (BAQP) held two workshops on the above referenced regulation at the following location.

<b>Elko Nevada</b> Tuesday, December 13, 2005 Great Basin College 1500 College Parkway Elko, Nevada 10:30 AM to 12:30 PM	<b>Carson City, Nevada</b> Thursday, December 15, 2005 Room 2144 Legislative Counsel Bureau 401 South Carson Street Carson City, Nevada 10:00 AM to 12:00 Noon
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The State Environmental Commission (SEC) held a public hearing to consider this regulation on March 8th, 2006 at the Washoe County Commission Chambers in Reno, Nevada.

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

- (a) Attended March 08, 2006 hearing; 70
- (b) Testified on this Petition at the hearing: (1 NDEP Staff)
- (c) Submitted to the agency written comments:

**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 as indicated in number 1 above. Comments were also solicited by State Environmental Commission (SEC) in the SEC notice in the newspapers, by direct mail to interested persons subscribing to the SEC electronic and ground-based mailing list.

The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The workshop notice, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at: <http://www.sec.nv.gov/main/hearing030806.htm>

**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.**

Changes were proposed to the regulation at the State Environmental Commission Hearing, by NDEP staff. The changes were minor and non-substantive and were communicated to Legislative Counsel Bureau staff in the cover letter accompanying this filing statement.

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

No anticipated economic effects will result from adoption of this regulation

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

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

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

The regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

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

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

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

This regulation does not address fees changes.

**ADOPTED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R189-05**

Effective May 4, 2006

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

AUTHORITY: §§1-59, NRS 445B.210 and 445B.300.

A REGULATION relating to the control of air pollution; establishes the Nevada Mercury Air Emissions Control Program to require a mercury operating permit to construct and the application of certain controls of mercury emissions for thermal units that emit mercury which are located at stationary sources that conduct mining of gold or silver ore; 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 41, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 41, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 21, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“De minimis mercury emissions” means mercury emissions from a thermal unit that emits mercury which are determined by the Director pursuant to section 25 of this regulation to be insufficient to require compliance with the requirements for a mercury operating permit or the application of NvMACT as set forth in the Nevada Mercury Air Emissions Control Program established pursuant to section 24 of this regulation.*

**Sec. 4.** *“Existing thermal unit that emits mercury” means a thermal unit that emits mercury which was constructed before March 8, 2006.*

**Sec. 5.** *“Mercury” means elemental mercury and all compounds of mercury.*

**Sec. 6.** *“Mercury co-product” means any mercury which is collected from the site of a stationary source that conducts precious metals mining for shipment to another location to be sold or recycled.*

**Sec. 7.** *“Mercury early reduction credit” means an extension of the time required to apply NvMACT pursuant to sections 2 to 41, inclusive, of this regulation, which may be granted by the Director in his taking final action concerning the proposed conditions for the mercury operating permit to construct pursuant to section 35 of this regulation if the owner or operator of an existing thermal unit that emits mercury has installed additional controls for mercury emissions.*

**Sec. 8.** *“Mercury emissions” means mercury which is released into the atmosphere.*

**Sec. 9.** *“Mercury operating permit to construct” means a permit signed and issued by the Director for the operation, construction or modification of a thermal unit that emits mercury, which includes, without limitation:*

*1. For an existing thermal unit that emits mercury, the conditions of operation that apply to the existing thermal unit that emits mercury.*

*2. For a new thermal unit that emits mercury:*

*(a) Authorization for:*

*(1) The construction of the new thermal unit that emits mercury; and*

*(2) An initial period of operation of the new thermal unit that emits mercury.*

*(b) The conditions which apply to the construction and operation of the new thermal unit that emits mercury.*

*3. For a modified thermal unit that emits mercury:*

*(a) Authorization for:*

*(1) The construction of a physical modification to or a change in the method of operation of a thermal unit that emits mercury; and*

*(2) An initial period of operation of the modified thermal unit that emits mercury.*

*(b) The conditions which apply to the modified thermal unit that emits mercury.*

**Sec. 10.** *“Modified thermal unit that emits mercury” means a thermal unit that emits mercury for which an application is submitted on or after May 4, 2006, to change the method of operation of or to physically change the thermal unit that emits mercury in a manner which results in an increase in the amount of mercury that will be or has the potential to be emitted into the atmosphere.*

**Sec. 11.** *“Nevada maximum achievable control technology,” abbreviated as “NmMACT,” means a standard, method of control or any other limitation which is applied to an existing thermal unit that emits mercury, a new thermal unit that emits mercury or a modified thermal unit that emits mercury, and which is:*

- 1. Designed to reduce the level of mercury emissions; and*
- 2. Determined by the Director to be the maximum degree of reduction of mercury emissions that is achievable for the thermal unit that emits mercury.*

**Sec. 12.** *“New thermal unit that emits mercury” means a thermal unit that emits mercury which has obtained, on or after May 4, 2006, an operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 41, inclusive, of this regulation, that authorizes the construction of the thermal unit that emits mercury.*

**Sec. 13.** *“Phase-I application” means an application for a mercury operating permit to construct for an existing thermal unit that emits mercury which is submitted in accordance with section 33 of this regulation.*

**Sec. 14.** *“Phase-2 application” means an application which is submitted in accordance with section 34 of this regulation to revise a mercury operating permit to construct which was issued pursuant to a phase-1 application for an existing thermal unit that emits mercury.*

**Sec. 15.** *“Precious metals mining” means the mining of gold or silver ore by the owner or operator of a stationary source that belongs to Industry Group 104, Gold and Silver Ores, of Major Group 10, Metal Mining, of the Standard Industrial Classification Manual, which is adopted by reference pursuant to subsection 11 of NAC 445B.221.*

**Sec. 16.** *“Presumptive Nevada maximum achievable control technology,” abbreviated as “presumptive NvMACT,” means the technologies to control mercury emissions which:*

- 1. Have been implemented before May 4, 2006; and*
- 2. Are associated with the system or process units of the tier-1 thermal units that emit mercury which are described and set forth in section 22 of this regulation.*

**Sec. 17.** *“Thermal unit” means an emission unit which:*

- 1. Is located at a stationary source that conducts precious metals mining; and*
- 2. Uses direct or indirect sources of heat energy.*

**Sec. 18.** *“Thermal unit that emits mercury” means an emission unit which:*

- 1. Is located at a stationary source that conducts precious metals mining; and*
- 2. Emits or has the potential to emit mercury that:*
  - (a) Does not constitute a fugitive emission; and*
  - (b) Is generated by direct or indirect sources of heat energy.*

**Sec. 19.** *“Tier-1 thermal unit that emits mercury” means any existing thermal unit that emits mercury which:*

- 1. Emits mercury at a level that is greater than de minimis mercury emissions; and*

*2. Is located at any of the mining locations and includes the associated system or process units described and set forth in section 23 of this regulation.*

**Sec. 20.** *“Tier-2 thermal unit that emits mercury” means an existing thermal unit that emits mercury which:*

*1. Emits or has the potential to emit mercury at a level that is greater than de minimis mercury emissions; and*

*2. Is not a tier-1 thermal unit that emits mercury.*

**Sec. 21.** *“Tier-3 thermal unit” means a thermal unit which:*

*1. Without any controls for mercury emissions, is not capable of and does not have the potential to emit mercury into the atmosphere;*

*2. Obtains an operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 41, inclusive, of this regulation, that includes the appropriate conditions to limit the potential to emit mercury, without any controls for mercury emissions, to an amount not to exceed de minimis mercury emissions; or*

*3. Has de minimis mercury emissions.*

**Sec. 22.** *The technologies to control mercury emissions which are set forth in this section by the associated system or process unit of the tier-1 thermal unit that emits mercury, and none other, are presumptive NvMACT:*

*1. For Goldstrike Mining Operations of Barrick Gold Corporation:*

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS</i>
<i>Ore roasting circuits</i>	<i>Gas quenching, wet gas condenser, wet electrostatic precipitator, mercury adsorption tower</i>
<i>Carbon reactivation kiln, unit 2 (Drum)</i>	<i>Wet venturi scrubber, sulfur-impregnated carbon filtration unit</i>
<i>Autoclave circuits (Units 1, 2, 2-3, 4 and 5-6)</i>	<i>Four wet venturi scrubbers (Units 1, 2-3, 4 and 5-6)</i>
<i>Retorts</i>	<i>Mercury condensers and scrubbers with carbon filtration canisters</i>
<i>Retort room exhaust</i>	<i>Sulfur-impregnated carbon scrubber unit (Stack combined with retort stack)</i>
<i>Electric induction furnaces</i>	<i>Cyclone and baghouse, sulfur-impregnated carbon filtration scrubber unit</i>
<i>Electrowinning cells</i>	<i>Sulfur-impregnated carbon filtration scrubber unit (Stack combined with electrowinning furnace)</i>

**2. For Newmont Mining Corporation:**

**(a) For the Gold Quarry Operations Area:**

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS</i>
<i>North and south CFB ore preheaters</i>	<i>Baghouses, SO<sub>2</sub> scrubber</i>
<i>North and south CFB ore roasters</i>	<i>Roaster off-gas quench, wet scrubber, electrostatic precipitator, wash tower, SO<sub>2</sub> scrubber, mercurous chloride scrubber</i>
<i>Carbon regeneration kilns, 1 and 2 (Drum)</i>	<i>Carbon adsorption unit, wet scrubber</i>
<i>Mercury retort furnaces</i>	<i>Carbon filter pack</i>
<i>Electric induction furnaces</i>	<i>Carbon filter pack, baghouse</i>
<i>Pregnant and barren solution tanks</i>	<i>Carbon adsorption unit, wet scrubber</i>

*(b) For the Twin Creeks Mine:*

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS</i>
<i>Juniper mill carbon kiln (Drum)</i>	<i>Wet scrubber, mercury scrubber</i>
<i>Pinon mill carbon regeneration kiln (Drum)</i>	<i>Wet scrubber</i>
<i>Sage mill autoclaves</i>	<i>Venturi scrubber</i>
<i>Mercury retort furnaces</i>	<i>Carbon adsorption</i>
<i>Juniper induction furnaces</i>	<i>Baghouse</i>

*3. For the Pipeline Mining Operation of Cortez Gold Mines of Placer Dome, Inc.:*

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS</i>
<i>Electric carbon reactivation kilns, 1 and 2</i>	<i>Chemical treatment, added wet scrubber 10/05</i>
<i>Electric induction refinery furnaces, 1 and 2</i>	<i>Chemical treatment, baghouse</i>
<i>Electrowinning cells</i>	<i>Chemical treatment</i>

*4. For the Jerritt Canyon Mine of Queenstake Resources, Ltd.:*

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>TECHNOLOGIES FOR CONTROL OF MERCURY EMISSIONS</i>
<i>East and west roasters</i>	<i>Gas quench scrubber, venturi dust scrubber, SO<sub>2</sub> scrubber, mercury scrubber, tail gas scrubber, sodium hypochlorite injection system</i>
<i>Refinery and carbon regeneration kiln</i>	<i>Venturi mercury wet-scrubbing/carbon- polishing system</i>

*Sec. 23. The existing thermal units that emit mercury which are set forth in this section, and none other, are tier-1 thermal units that emit mercury:*

*1. For Goldstrike Mining Operations of Barrick Gold Corporation:*

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>NUMBER OF UNITS</i>	<i>MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION</i>
<i>Ore roasting circuits</i>	<i>2</i>	<i>S2.209.1 and S2.209.2 from Air Permit 1041-0739</i>
<i>Carbon reactivation kiln, unit 2 (Drum)</i>	<i>1</i>	<i>Lockheed Haggerty, serial number 119-122</i>
<i>Autoclave circuits (units 1, 2, 2-3, 4 and 5-6)</i>	<i>6</i>	<i>Eaton Metals</i>
<i>Retorts</i>	<i>3</i>	<i>EnviroCare Systems</i>
<i>Retort room exhaust</i>	<i>1</i>	<i>Vented through controls on the retorts</i>
<i>Electric induction furnaces</i>	<i>2</i>	<i>Inductotherm Corporation:  East: Model number 125 KW PowerTrak and serial number 91-50165-246-11  West: Model number 75 KW PowerTrak and serial number 87-77730-246-11</i>
<i>Electrowinning cells</i>	<i>16</i>	<i>Located on the second floor of the secured refinery building</i>

*2. For Newmont Mining Corporation:*

*(a) For the Gold Quarry Operations Area:*

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>NUMBER OF UNITS</i>	<i>MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION</i>
<i>North and south CFB ore preheaters</i>	<i>2</i>	<i>Thermal Transfer, custom-made</i>
<i>North and south CFB ore roasters</i>	<i>2</i>	<i>Mark Steel, custom-made</i>
<i>Carbon regeneration kilns, 1 and 2 (Drum)</i>	<i>2</i>	<i>Boliden-Allis, custom-made</i>
<i>Mercury retort furnaces</i>	<i>7</i>	<i>Saracco Manufacturing Corporation, custom-made</i>
<i>Electric induction furnaces</i>	<i>3</i>	<i>Inductotherm Corporation</i>
<i>Pregnant and barren solution tanks</i>	<i>3</i>	<i>Two tanks located inside and one tank located immediately outside the refinery building</i>

*(b) For the Twin Creeks Mine:*

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>NUMBER OF UNITS</i>	<i>MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION</i>
<i>Juniper mill carbon kiln (Drum)</i>	<i>1</i>	<i>Lockheed Haggerty</i>
<i>Pinon mill carbon regeneration kiln (Drum)</i>	<i>1</i>	<i>Lockheed Haggerty, Serial number 171-63</i>

<i>Sage mill autoclaves</i>	<i>2</i>	<i>Eaton Metals</i>
<i>Mercury retort furnaces, A, B, C and D</i>	<i>4</i>	<i>Lockheed Haggerty:</i>  <i>Retorts A-D: Model number 13053</i>  <i>Retort A: Serial number 171-64a</i>  <i>Retort B: Serial number 171-64b</i>  <i>Retort C: Serial number 16082, equipment number 370-514-103</i>  <i>Retort D: Serial number 16082, equipment number 370-514-104</i>
<i>Juniper induction furnaces, east and west</i>	<i>2</i>	<i>Inductotherm Corporation:</i>  <i>East: New furnace located in smelting area</i>  <i>West: Serial number 750-72010-3-87</i>

*3. For the Pipeline Mining Operation of Cortez Gold Mines of Placer Dome, Inc.:*

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>NUMBER OF UNITS</i>	<i>MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION</i>
<i>Electric carbon reactivation kilns, 1 and 2</i>	<i>2</i>	<i>Lockheed Haggarty, 48X40</i>

<i>Electric induction refinery furnaces, 1 and 2</i>	<i>2</i>	<i>Inductotherm Corporation, VIP PowerTrak-R; serial numbers 80354 and 59585</i>
<i>Electrowinning cells</i>	<i>6</i>	<i>Summit Valley, 125CF</i>

*4. For the Jerritt Canyon Mine of Queenstake Resources, Ltd.:*

<i>SYSTEM OR PROCESS UNITS OF TIER-1 THERMAL UNITS THAT EMIT MERCURY</i>	<i>NUMBER OF UNITS</i>	<i>MANUFACTURER, MODEL NUMBER, SERIAL NUMBER OR OTHER DESCRIPTION</i>
<i>East and west roasters</i>	<i>2</i>	<i>Keeler/Dorr-Oliver: East: Serial number 46DD 3250 West: Serial number 46DD 3050</i>
<i>Refinery and carbon regeneration kiln</i>	<i>1</i>	<i>Elmco Technologies, serial number 44DD 3071</i>

*Sec. 24. The Commission will establish and the Director shall implement the Nevada Mercury Air Emissions Control Program in accordance with the provisions set forth in sections 2 to 41, inclusive, of this regulation to require a mercury operating permit to construct and the application of NvMACT for thermal units that emit mercury.*

*Sec. 25. 1. The Director shall make an initial determination of the de minimis mercury emissions for thermal units that emit mercury not later than July 3, 2006.*

*2. The Director may, upon written request and satisfactory demonstration by the owner or operator of a thermal unit that emits mercury, determine that the mercury emissions from the*

*thermal unit that emits mercury are de minimis mercury emissions. Within 60 days after receiving a written request pursuant to this subsection, the Director shall make an initial determination of the mercury emissions from the thermal unit that emits mercury to determine whether the mercury emissions are de minimis mercury emissions.*

*3. In making a determination pursuant to subsection 1 or 2, if a stationary source has more than one thermal unit that emits mercury, the Director may, after considering the impact of the combined mercury emissions from the thermal units that emit mercury at the stationary source, make an initial determination concerning whether the mercury emissions from one or more of the thermal units that emit mercury are de minimis mercury emissions.*

*4. An initial evaluation of de minimis mercury emissions determined pursuant to subsection 1, 2 or 3 must be made public and maintained on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701, and at a location to be determined by the Director in the air quality region where the source is located, for 30 days to enable public participation and comment. The Director shall provide public notice of the location in the air quality region in which the initial evaluation will be made public and maintained on file.*

*5. The Director shall:*

*(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the stationary source is located or in a state publication designed to give general public notice;*

*(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;*

*(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public; and*

*(d) Establish a 30-day period for comment from the public.*

*6. The Director shall make a final determination of de minimis mercury emissions within 90 days after the date of the notice of the initial evaluation provided pursuant to subsection 5. The final notification must be made public and maintained on file with the Director in accordance with subsection 4 and noticed to the public in accordance with paragraphs (a), (b) and (c) of subsection 5.*

*Sec. 26. No owner or operator of a tier-1 thermal unit that emits mercury, tier-2 thermal unit that emits mercury, new thermal unit that emits mercury or modified thermal unit that emits mercury may cause or permit the discharge of mercury into the atmosphere without applying NvMACT for the control of mercury emissions pursuant to the provisions of sections 2 to 41, inclusive, of this regulation.*

*Sec. 27. 1. A mercury operating permit to construct is required for each:*

*(a) Existing thermal unit that emits mercury, other than a tier-3 thermal unit, pursuant to the schedules and requirements set forth in sections 30 to 36, inclusive, of this regulation; and*

*(b) New thermal unit that emits mercury or modified thermal unit that emits mercury pursuant to the schedules and requirements set forth in sections 37 to 40, inclusive, of this regulation.*

*2. The owner or operator of a new thermal unit that emits mercury or a modified thermal unit that emits mercury must apply for and obtain a new or revised mercury operating permit to construct before the construction of or modification to the thermal unit that emits mercury may commence.*

*3. A mercury operating permit to construct may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment which reflects a change of ownership or the name of the stationary source for the original mercury operating permit to construct in accordance with the procedures set forth in NAC 445B.319.*

**Sec. 28.** *1. An owner or operator of a stationary source which conducts precious metals mining shall obtain a mercury operating permit to construct for:*

- (a) A tier-1 thermal unit that emits mercury;*
- (b) A tier-2 thermal unit that emits mercury;*
- (c) A new thermal unit that emits mercury; and*
- (d) A modified thermal unit that emits mercury.*

*2. Any application for a mercury operating permit to construct which is submitted to the Director pursuant to the provisions set forth in sections 2 to 41, inclusive, of this regulation must be submitted on a form provided by the Director.*

**Sec. 29.** *1. An owner or operator of a tier-3 thermal unit:*

- (a) Must have an operating permit issued pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 41, inclusive, of this regulation, to operate the thermal unit;*
- (b) Shall submit documentation to the Director on an annual basis which certifies that the thermal unit satisfies the criteria to be a tier-3 thermal unit; and*
- (c) Is not required to submit an application for or obtain a mercury operating permit to construct.*

*2. Within 90 days after the date of final notification of the determination of de minimis mercury emissions by the Director pursuant to section 25 of this regulation, an owner or operator of a tier-3 thermal unit shall:*

*(a) Submit an application to revise the conditions of the operating permit of the stationary source that was issued pursuant to NAC 445B.001 to 445B.3497, inclusive, and sections 2 to 41, inclusive, of this regulation, to limit the potential to emit mercury, without any controls for mercury emissions, to an amount not to exceed de minimis mercury emissions; or*

*(b) If the owner or operator of the tier-3 thermal unit has a Class III operating permit, submit an application to convert the Class III operating permit of the stationary source to a Class II operating permit which includes conditions to limit the potential to emit mercury, without any controls for mercury emissions, to an amount not to exceed de minimis mercury emissions.*

**Sec. 30. 1.** *An owner or operator of a tier-1 thermal unit that emits mercury shall submit a phase-1 application to the Director not later than August 2, 2006.*

*2. Except as otherwise provided in section 31 of this regulation, an owner or operator of a tier-2 thermal unit that emits mercury shall submit a phase-1 application to the Director not later than October 31, 2006.*

*3. An owner or operator of a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury shall submit a phase-2 application to the Director not later than February 4, 2008.*

**Sec. 31.** *Within 90 days after the date of final notification of the determination of de minimis mercury emissions pursuant to section 25 of this regulation:*

*1. If the owner or operator of an existing thermal unit that emits mercury determines that the thermal unit that emits mercury does or has the potential to emit mercury at a level which is greater than de minimis mercury emissions and has not yet submitted an application pursuant to subsection 1 or 2 of section 30 of this regulation, the owner or operator must submit a phase-1 application to the Director to obtain a mercury operating permit to construct for the thermal unit that emits mercury; or*

*2. If the owner or operator of a stationary source has a mercury operating permit to construct which was issued pursuant to a phase-1 application for one or more thermal units that emit mercury and determines that any of the thermal units that emit mercury emits or has the potential to emit mercury at a level which is greater than the de minimis mercury emissions, the owner or operator must submit an application to revise the mercury operating permit to construct to authorize the operation of the thermal unit that emits mercury at a level which is greater than de minimis mercury emissions.*

**Sec. 32.** *A phase-1 application, a phase-2 application and an application for a revision of a mercury operating permit to construct for an existing thermal unit that emits mercury must include:*

*1. 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;*

*2. An identification of each thermal unit that emits mercury;*

3. *A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each thermal unit that emits mercury which is a part of the stationary source;*

4. *Limitations on the operation of the stationary source or any standards for work practices which affect mercury emissions at the stationary source;*

5. *The location of any records that the applicant must keep pursuant to the requirements of the mercury operating permit to construct if the records are kept at a location other than the emitting stationary source;*

6. *Additional controls which will be implemented by a tier-1 thermal unit that emits mercury or tier-2 thermal unit that emits mercury to reduce the level of mercury emissions for which the owner or operator is requesting mercury early reduction credit; and*

7. *Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.*

**Sec. 33.** *A phase-1 application or an application for a revision of a mercury operating permit to construct which was issued pursuant to a phase-1 application for an existing thermal unit that emits mercury must include:*

1. *An identification and a description of any equipment for the control of mercury emissions, including, without limitation, any controls that are presumptive NvMACT; and*

2. *A proposed monitoring plan which must be complied with by the applicant until a mercury operating permit to construct is issued pursuant to the phase-1 application and which includes, without limitation:*

(a) *For a tier-1 thermal unit that emits mercury:*

(1) *Procedures for the operation and maintenance of the thermal unit.*

*(2) Methods of the monitoring of and recordkeeping for any controls for mercury processes and emissions.*

*(3) A proposed schedule for sampling and testing of mercury emissions and tests of performance to be conducted on an annual basis in accordance with the procedures set forth in NAC 445B.252. The owner or operator of the thermal unit that emits mercury must conduct the initial sampling and testing of mercury emissions and tests of performance and submit the results of the initial sampling and testing and tests of performance to the Director not later than December 31, 2006. After the owner or operator of the thermal unit has submitted the results of the initial sampling and testing of mercury emissions and tests of performance, the owner or operator may submit a request to the Director to waive the requirement for annual sampling and testing of mercury emissions or consider other schedules for the frequency with which such sampling and testing and tests of performance must be conducted.*

*(4) A requirement to report the level of mercury emissions on an annual basis which must be based on mercury emissions test data.*

*(5) A requirement to report any mercury co-product on an annual basis.*

*(b) For a tier-2 thermal unit that emits mercury:*

*(1) Procedures for the operation and maintenance of the thermal unit.*

*(2) Methods of the monitoring of and recordkeeping for any controls for mercury processes and emissions.*

*(3) A proposed schedule for sampling and testing of mercury emissions and tests of performance for the thermal unit that emits mercury.*

*(4) A requirement to report the level of mercury emissions on an annual basis which must be based on mercury emissions test data.*

*(5) A requirement to report any mercury co-product on an annual basis.*

*Sec. 34. A phase-2 application for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury, or an application for a revision of a mercury operating permit to construct which was issued pursuant to a phase-2 application for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury must include:*

*1. An analysis conducted by the applicant which:*

*(a) Determines the standards, methods of control or other limitations to be applied to the thermal unit for the reduction of mercury emissions that the applicant deems sufficient for the Director to determine to be NvMACT for the thermal unit that emits mercury; and*

*(b) Sets forth a list of similar thermal units that emit mercury which are used for precious metal mining that includes, without limitation:*

*(1) Any methods or technologies to control mercury emissions which are associated with the thermal units that emit mercury;*

*(2) The level of mercury emissions associated with each method or technology to control mercury emissions from the thermal units that emit mercury;*

*(3) The design for each method or technology to control mercury emissions from the thermal units that emit mercury;*

*(4) Costs associated with reductions of mercury emissions as a result of each method or technology to control mercury emissions from the thermal units that emit mercury;*

*(5) Costs associated with energy for each method or technology to control mercury emissions from the thermal units that emit mercury; and*

*(6) Consistent with section 112(d)(2) of the Act, any nonair quality health and environmental impacts and energy requirements for each method or technology to control mercury emissions from the thermal units that emit mercury.*

*2. A proposed monitoring plan which includes, without limitation:*

*(a) Procedures for the operation and maintenance of the thermal unit.*

*(b) Methods of the monitoring of and recordkeeping for any controls for mercury processes and emissions.*

*(c) A proposed schedule for sampling and testing of mercury emissions and tests of performance for the thermal unit that emits mercury which must be conducted on an annual basis in accordance with NAC 445B.252.*

*(d) A requirement to report the level of mercury emissions on an annual basis which must be based on mercury emissions test data.*

*(e) A requirement to report any mercury co-product on an annual basis.*

**Sec. 35.** *For each tier-1 thermal unit that emits mercury and tier-2 thermal unit that emits mercury:*

*1. For a phase-1 application, phase-2 application or an application for the revision of a mercury operating permit to construct for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury, within 30 days after the date of receipt of the application, the Director shall determine whether the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. If an incomplete application is returned to the applicant, the applicant must resubmit a complete application within 15 days after the applicant receives the returned incomplete application. If substantial additional information is*

*not required, the Director shall determine the application to be complete. 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 31st day after the date of receipt of the most recently submitted application, whichever is earlier.*

*2. For a phase-1 application or an application for the revision of a mercury operating permit to construct which was issued pursuant to a phase-1 application for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury, within 180 days after the official date of submittal, the Director shall:*

*(a) Propose the conditions for a mercury operating permit to construct or a revision of a mercury operating permit to construct for the thermal unit that emits mercury;*

*(b) Include the presumptive NvMACT for the tier-1 thermal unit that emits mercury; and*

*(c) If the applicant requests mercury early reduction credit, consider the following for each thermal unit that emits mercury:*

*(1) The best controls available for mercury emissions.*

*(2) The measures that reduce the volume or eliminate mercury emissions through process changes, substitution of materials or any other modifications.*

*(3) The enclosure of systems or processes to eliminate mercury emissions.*

*(4) The collection, capture or treatment of mercury emissions.*

*(5) The design, equipment, work practice or operational standards of the thermal unit that emits mercury, including, without limitation, the requirements for training and certification of operators of the thermal unit that emits mercury.*

*(6) The differences in the age, remaining operating life and configurations of similar thermal units that emit mercury. The Director may also consider the differences in the*

*concentration of mercury in the ore, size and any other relevant factors of the similar thermal units that emit mercury.*

*(7) Any combination of subparagraphs (1) to (6), inclusive.*

*3. For a phase-2 application or an application for the revision of a mercury operating permit to construct which was issued pursuant to a phase-2 application for a tier-1 thermal unit that emits mercury or a tier-2 thermal unit that emits mercury, within 9 months after the official date of submittal, the Director shall:*

*(a) Propose the conditions for a mercury operating permit to construct or a revision of a mercury operating permit to construct for the thermal unit that emits mercury; and*

*(b) Make a determination of NvMACT for the thermal unit that emits mercury in which the Director shall consider the following for each thermal unit that emits mercury:*

*(1) The maximum degree of reduction of mercury emissions that is achievable for the thermal unit after considering:*

*(I) The cost of achieving such a reduction; and*

*(II) Consistent with section 112(d)(2) of the Act, any nonair quality health and environmental impacts and energy requirements for each method or technology to control mercury emissions from the thermal units that emit mercury to implement NvMACT.*

*(2) The measures that reduce the volume or eliminate mercury emissions through process changes, substitution of materials or any other modifications.*

*(3) The enclosure of systems or processes to eliminate mercury emissions.*

*(4) The collection, capture or treatment of mercury emissions.*

*(5) The design, equipment, work practice or operational standards of the thermal unit that emits mercury, including, without limitation, the requirements for training and certification of operators of the thermal unit that emits mercury.*

*(6) The differences in the age, remaining operating life and configurations of similar thermal units that emit mercury. The Director may also consider the differences in the concentration of mercury in the ore, size and any other relevant factors of the similar thermal units that emit mercury.*

*(7) Any combination of subparagraphs (1) to (6), inclusive.*

*4. If, after the official date of submittal of an application pursuant to subsection 1, 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 construction or operation will comply with all of the requirements set forth in sections 2 to 41, 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.*

*5. The Director's review and the proposed conditions for a mercury operating permit to construct or a revision of a mercury operating permit to construct must be made public and maintained on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701, and at a location to be determined by the Director in the air quality region where the source is located, for 30 days to enable public participation and comment. The Director shall provide public notice of the location in the air quality region in which the initial evaluation will be made public and maintained on file.*

**6. The Director shall:**

*(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the stationary source is located or in a state publication designed to give general public notice;*

*(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;*

*(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public; and*

*(d) Establish a 30-day period for comment from the public.*

**7. In addition to the requirements set forth in subsections 5 and 6, the notice required for a mercury operating permit to construct or for a revision of a mercury operating permit to construct must identify:**

*(a) The stationary source and the name and address of the applicant;*

*(b) The name and address of the authority processing the mercury operating permit to construct;*

*(c) The activity or activities involved in the mercury operating permit to construct and the change of mercury emissions involved in any revision of the mercury operating permit to construct;*

*(d) The presumptive NvMACT or the determination of NvMACT, as appropriate;*

*(e) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the proposed conditions for the mercury operating permit to construct, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the mercury*

*operating permit to construct and which are relevant to the proposed conditions for the mercury operating permit to construct; and*

*(f) A brief description of the procedures for public comment and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.*

*8. All comments concerning the Director's review and the conditions proposed by the Director concerning the phase-1 application or phase-2 application for a mercury operating permit to construct or of a revision of a mercury operating permit to construct must be submitted in writing to the Director within 30 days after the public notice required to be provided pursuant to subsection 6. The Director shall give notice of any public hearing at least 30 days before the date of the hearing. The Director shall keep a record of the names of any persons who made comments and of the issues raised during the process for public participation.*

*9. Within 12 months after the official date of submittal of a phase-1 application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct which was issued pursuant to a phase-1 application, the Director shall take final action concerning the proposed conditions for the mercury operating permit to construct or the proposed revision of a mercury operating permit to construct. The Director shall make his decision by taking into account:*

*(a) Written comments from the public;*

*(b) Comments made during public hearings concerning the Director's review and the conditions proposed by the Director for the mercury operating permit to construct; and*

*(c) Information submitted by proponents of the project.*

*10. Within 16 months after the official date of submittal of a phase-2 application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct which was issued pursuant to a phase-2 application, the Director shall take final action concerning the proposed conditions for the mercury operating permit to construct or the proposed revision of a mercury operating permit to construct. The Director shall make his decision by taking into account:*

*(a) Written comments from the public;*

*(b) Comments made during public hearings concerning the Director's review and the conditions proposed by the Director for the mercury operating permit to construct; and*

*(c) Information submitted by proponents of the project.*

**Sec. 36.** *For each tier-1 thermal unit that emits mercury and tier-2 thermal unit that emits mercury:*

*1. The Director shall cite the legal authority for each condition contained in the mercury operating permit to construct.*

*2. The mercury operating permit to construct must contain the following conditions:*

*(a) The holder of the mercury operating permit to construct shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes, without limitation, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.*

*(b) Each of the conditions and requirements of the mercury operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.*

*(c) The holder of the mercury operating permit to construct must comply with all conditions of the mercury operating permit to construct. Any noncompliance constitutes a violation and is a ground for:*

*(1) An action for noncompliance;*

*(2) The revoking and reissuing, or the terminating, of the mercury operating permit to construct by the Director; or*

*(3) The reopening or revising of the mercury operating permit to construct by the holder of the mercury operating permit to construct as directed by the Director.*

*(d) The need to halt or reduce activity to maintain compliance with the conditions of the mercury operating permit to construct is not a defense to noncompliance with any condition of the mercury operating permit to construct.*

*(e) The Director may revise, revoke and reissue, reopen and revise, or terminate the mercury operating permit to construct for cause.*

*(f) The mercury operating permit to construct does not convey any property rights or any exclusive privilege.*

*(g) The holder of the mercury operating permit to construct shall provide the Director, in writing and within a reasonable time, with any information that the Director requests to determine whether cause exists for revoking or terminating the mercury operating permit to construct, or to determine compliance with the conditions of the mercury operating permit to construct.*

*(h) The holder of the mercury operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:*

*(1) Enter upon the premises of the holder of the mercury operating permit to construct where:*

*(I) The thermal unit that emits mercury is located;*

*(II) Activity related to mercury emissions is conducted; or*

*(III) Records are kept pursuant to the conditions of the mercury operating permit to construct;*

*(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the mercury operating permit to construct;*

*(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the mercury operating permit to construct; and*

*(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the mercury operating permit to construct or applicable requirements.*

*(i) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the mercury operating permit to construct are true, accurate and complete.*

*3. The mercury operating permit to construct must contain:*

*(a) All applicable requirements concerning controls for mercury emissions, emission limits and standards, including, without limitation:*

*(1) For a mercury operating permit to construct that is issued pursuant to a phase-1 application:*

*(I) The applicable presumptive NvMACT for the tier-1 thermal unit that emits mercury as set forth in section 22 of this regulation; and*

*(II) If the owner or operator of the thermal unit that emits mercury applied for mercury early reduction credit which was granted by the Director, the additional controls which will be implemented to reduce the level of mercury emissions before the date required to submit a phase-2 application pursuant to subsection 3 of section 30 of this regulation; and*

*(2) For a mercury operating permit to construct that is issued pursuant to a phase-2 application:*

*(I) The NvMACT for the thermal unit that emits mercury which must, except as otherwise provided in sub-subparagraph (II), be implemented not later than 24 months after the date the mercury operating permit to construct is issued pursuant to the phase-2 application; and*

*(II) If the owner or operator of the thermal unit that emits mercury has been issued mercury early reduction credit by the Director, the additional controls which will be implemented to reduce the level of mercury emissions required to satisfy the NvMACT not later than 48 months after the date the mercury operating permit to construct is issued pursuant to the phase-2 application;*

*(b) Monitoring methods adequate to show compliance;*

*(c) Adequate recordkeeping and reporting requirements as deemed by the Director;*

*(d) Any requirement to report any mercury co-product on an annual basis; and*

*(e) Any other requirements deemed necessary by the Director.*

**Sec. 37.** *An application for a mercury operating permit to construct or an application for a revision of a mercury operating permit to construct for a new thermal unit that emits mercury or a modified thermal unit that emits mercury must include, without limitation:*

*1. 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;*

*2. An identification of each thermal unit that emits mercury;*

*3. A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each thermal unit that emits mercury which is a part of the stationary source;*

*4. Limitations on the operation of the stationary source or any standards for work practices which affect emissions of mercury at the stationary source;*

*5. The location of any records that the applicant must keep pursuant to the requirements of the mercury operating permit to construct, if the records are kept at a location other than the emitting stationary source;*

*6. An analysis conducted by the applicant which:*

*(a) Determines the standards, methods of control or other limitations to be applied to the thermal unit for the reduction of mercury emissions that the applicant deems sufficient for the Director to determine to be NvMACT for the thermal unit that emits mercury; and*

*(b) Sets forth a list of similar thermal units that emit mercury which are used for precious metal mining that includes, without limitation:*

*(1) Any methods or technologies to control mercury emissions which are associated with the thermal units that emit mercury;*

*(2) The level of mercury emissions associated with each method or technology to control mercury emissions from the thermal units that emit mercury;*

*(3) The design for each method or technology to control mercury emissions from the thermal units that emit mercury;*

*(4) Costs associated with reductions of mercury emissions as a result of each method or technology to control mercury emissions from the thermal units that emit mercury;*

*(5) Costs associated with energy for each method or technology to control mercury emissions from the thermal units that emit mercury; and*

*(6) Consistent with section 112(d)(2) of the Act, any nonair quality health and environmental impacts and energy requirements for each method or technology to control mercury emissions from the thermal units that emit mercury; and*

*7. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.*

**Sec. 38.** *For each new or modified thermal unit that emits mercury:*

*1. Within 30 days after the date of receipt of an application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct, the Director shall determine whether the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the Director shall determine the application to be complete. Unless the Director determines that the application is incomplete within 30 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 31st day after the date of receipt of the most recently submitted application, whichever is earlier.*

*2. Within 180 days after the official date of submittal, the Director shall:*

*(a) Propose the conditions for a mercury operating permit to construct or a revision of a mercury operating permit to construct for the thermal unit that emits mercury.*

*(b) Make a determination of NvMACT for the thermal unit that emits mercury in which the Director shall consider the following for each thermal unit that emits mercury:*

*(1) The maximum degree of reduction of mercury emissions that is achievable for the thermal unit after considering:*

*(I) The cost of achieving such a reduction; and*

*(II) Consistent with section 112(d)(2) of the Act, any nonair quality health and environmental impacts and energy requirements for each method or technology to control mercury emissions from the thermal unit that emits mercury to implement the NvMACT.*

*(2) The measures that reduce the volume or eliminate mercury emissions through process changes, substitution of materials or any other modifications.*

*(3) The enclosure of systems or processes to eliminate mercury emissions.*

*(4) The collection, capture or treatment of mercury emissions.*

*(5) The design, equipment, work practice or operational standards of the thermal unit that emits mercury, including, without limitation, the requirements for training and certification of operators of the thermal unit that emits mercury.*

*(6) The differences in the age, remaining operating life and configurations of similar thermal units that emit mercury. The Director may also consider the differences in the*

*concentration of mercury in the ore, size and any other relevant factors of the similar thermal units that emit mercury.*

*(7) Any combination of subparagraphs (1) to (6), inclusive.*

*(c) Make a preliminary determination to issue or deny a mercury operating permit to construct or a revision of a mercury operating permit to construct which includes any proposed conditions for the mercury operating permit to construct.*

*3. 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 construction or operation will comply with all of the requirements set forth in sections 2 to 41, 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.*

*4. The Director's review, the proposed conditions for the mercury operating permit to construct and the preliminary intent to issue or deny a mercury operating permit to construct or a revision of a mercury operating permit to construct must be made public and maintained on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701, and at a location to be determined by the Director in the air quality region where the source is located, for 30 days to enable public participation and comment. The Director shall provide public notice of the location in the air quality region in which the initial evaluation will be made public and maintained on file.*

*5. The Director shall:*

*(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the stationary source is located or in a state publication designed to give general public notice;*

*(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;*

*(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public; and*

*(d) Establish a 30-day period for comment from the public.*

*6. In addition to the requirements set forth in subsection 5, the notice required for a mercury operating permit to construct or for a revision of a mercury operating permit to construct must identify:*

*(a) The stationary source and the name and address of the applicant;*

*(b) The name and address of the authority processing the mercury operating permit to construct;*

*(c) The activity or activities involved in the mercury operating permit to construct and the change of mercury emissions involved in any revision of the mercury operating permit to construct;*

*(d) The determination of NvMACT;*

*(e) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the proposed conditions for the mercury operating permit to construct, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the mercury*

*operating permit to construct and which are relevant to the determination of the issuance of the mercury operating permit to construct; and*

*(f) A brief description of the procedures for public comment and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.*

*7. All comments concerning the Director's review, the proposed conditions for the mercury operating permit to construct and the preliminary intent for the issuance or denial of a mercury operating permit to construct or of a revision of a mercury operating permit to construct must be submitted in writing to the Director within 30 days after the public notice required to be provided pursuant to subsection 5. The Director shall give notice of any public hearing at least 30 days before the date of the hearing. The Director shall keep a record of the names of any persons who made comments and of the issues raised during the process for public participation.*

*8. Within 60 days after the close of the period for public participation, or 60 days after the hearing if a hearing is scheduled pursuant to this section, whichever is later, the Director shall take final action concerning the proposed conditions for the mercury operating permit to construct and whether to issue or deny a mercury operating permit to construct or the revision of a mercury operating permit to construct. The Director shall make his decision by taking into account:*

*(a) Written comments from the public;*

*(b) Comments made during public hearings concerning the Director's review and the conditions proposed by the Director for the mercury operating permit to construct; and*

*(c) Information submitted by proponents of the project.*

**Sec. 39.** *For each new thermal unit that emits mercury or modified thermal unit that emits mercury:*

*1. The Director shall cite the legal authority for each condition contained in a mercury operating permit to construct.*

*2. A mercury operating permit to construct must contain the following conditions:*

*(a) The circumstances under which the mercury operating permit to construct may expire as set forth in section 40 of this regulation.*

*(b) The holder of the mercury operating permit to construct shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes, without limitation, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.*

*(c) Each of the conditions and requirements of the mercury operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.*

*(d) The holder of the mercury operating permit to construct must comply with all conditions of the mercury operating permit to construct. Any noncompliance constitutes a violation and is a ground for:*

*(1) An action for noncompliance;*

*(2) The revoking and reissuing, or the terminating, of the mercury operating permit to construct by the Director; or*

*(3) The reopening or revising of the mercury operating permit to construct by the holder of the mercury operating permit to construct as directed by the Director.*

*(e) The need to halt or reduce activity to maintain compliance with the conditions of the mercury operating permit to construct is not a defense to noncompliance with any condition of the mercury operating permit to construct.*

*(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the mercury operating permit to construct for cause.*

*(g) The mercury operating permit to construct does not convey any property rights or any exclusive privilege.*

*(h) The holder of the mercury operating permit to construct shall provide the Director, in writing and within a reasonable time, with any information that the Director requests to determine whether cause exists for revoking or terminating the mercury operating permit to construct, or to determine compliance with the conditions of the mercury operating permit to construct.*

*(i) The holder of the mercury operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:*

*(1) Enter upon the premises of the holder of the mercury operating permit to construct where:*

*(I) The thermal unit that emits mercury is located;*

*(II) Activity related to emissions is conducted; or*

*(III) Records are kept pursuant to the conditions of the mercury operating permit to construct;*

*(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the mercury operating permit to construct;*

*(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the mercury operating permit to construct; and*

*(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the mercury operating permit to construct or applicable requirements.*

*(j) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the mercury operating permit to construct are true, accurate and complete.*

*3. A mercury operating permit to construct must contain:*

*(a) All applicable requirements concerning controls for mercury emissions, emission limits and standards, including, without limitation, the N<sub>v</sub>MACT for the thermal unit that emits mercury;*

*(b) Monitoring methods adequate to show compliance;*

*(c) Adequate recordkeeping and reporting requirements as deemed by the Director;*

*(d) Any requirement to report any mercury co-product on an annual basis; and*

*(e) Any other requirements deemed necessary by the Director.*

**Sec. 40.** *For a new thermal unit that emits mercury or a modified thermal unit that emits mercury:*

*1. If construction will occur in one phase, a mercury operating permit to construct for a new or modified thermal unit that emits mercury expires if construction is not commenced within 18 months after the date of issuance thereof or construction of the thermal unit that*

*emits mercury is delayed for 18 months after initiated. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.*

*2. If construction will occur in more than one phase, the projected date of the commencement of construction of each phase of construction must be approved by the Director. A mercury operating permit to construct expires if the initial phase of construction is not commenced within 18 months after the projected date of the commencement of construction approved by the Director. The Director may extend only the date on which the initial phase of construction may be commenced upon a showing that the extension is justified.*

**Sec. 41. 1.** *The fee for a mercury operating permit to construct as required pursuant to sections 2 to 41, inclusive, of this regulation must be determined as follows:*

*(a) For a mercury operating permit to construct pursuant to a phase-1 application, the fee must be determined in an amount, in dollars, that is equal to the amount calculated by dividing 50,000 by the total number of stationary sources that conduct precious metals mining and operate one or more thermal units that emit mercury which submit a phase-1 application. The Director shall determine the total number of stationary sources that conduct precious metals mining and operate one or more thermal units that emit mercury to be charged pursuant to this paragraph on or before August 16, 2006. Upon the determination of the total number of stationary sources that conduct precious metals mining and operate one or more thermal units that emit mercury, the Director shall notify the applicant of the amount of the application fee. An applicant must pay the entire fee when he submits the application to the Director or within 30 days after receipt of the notification by the Director of the amount of the application fee, whichever occurs later.*

*(b) For a mercury operating permit to construct for a new or modified thermal unit that emits mercury or for a revision of a mercury operating permit to construct, the fee is \$5,000 for each application. An applicant must pay the entire fee upon submission of the application to the Director.*

*2. For a thermal unit that emits mercury which is a roaster, autoclave, carbon reactivation kiln, mercury retort or induction furnace, including a refining furnace or mill furnace and excluding an analytical laboratory furnace, or that uses the process of electrowinning in which mercury is recovered from a solution involving cathodes, anodes and direct currents, the owner or operator of a stationary source that conducts precious metals mining and operates one or more of such thermal units that emit mercury must submit an annual maintenance fee for each thermal unit that emits mercury. The annual maintenance fee must be determined as follows:*

*(a) For the fiscal year ending on June 30, 2007, the fee for each thermal unit that emits mercury must be determined in an amount, in dollars, that is equal to the amount calculated by dividing 250,000 by the total number of thermal units that emit mercury, as described in this subsection. The Director shall determine the total number of thermal units that emit mercury to be charged pursuant to this paragraph on or before May 1, 2006.*

*(b) For each fiscal year after the fiscal year ending on June 30, 2007, the fee for each thermal unit that emits mercury must be determined in an amount, in dollars, that is equal to the amount calculated by dividing 250,000 by the total number of thermal units that emit mercury, as described in this subsection, which have previously obtained a mercury operating permit to construct. The Director shall determine the total number of thermal units that emit*

*mercury to be charged pursuant to this paragraph each year on or before May 1 of the immediately preceding fiscal year.*

*3. The State Department of Conservation and Natural Resources shall collect all fees required pursuant to this section not later than July 1 of each year.*

*4. Except as otherwise provided in this subsection, the owner or operator of a source who does not pay his annual fee installments within 30 days after the date on which payment becomes due will be assessed a late penalty in the amount of 25 percent of the amount of the fees due. The late penalty must be paid in addition to the annual fees. The late penalty set forth in this subsection does not apply if, at the time that the late fee would otherwise be assessed, the owner or operator is in negotiations with the Director concerning his annual fees.*

**Sec. 42.** NAC 445B.001 is hereby amended to read as follows:

445B.001 As used in NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445B.002 to 445B.211, inclusive, have the meanings ascribed to them in those sections.

**Sec. 43.** NAC 445B.038 is hereby amended to read as follows:

445B.038 “Class III source” means a stationary source which is subject to the requirements set forth in NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation*, and:

1. Which emits or has the potential to emit, individually or in combination, a total of not more than 5 tons per year of PM<sub>10</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and H<sub>2</sub>S;
2. Which emits less than 1,000 pounds of lead per year;
3. Which is not subject to the requirements of 42 U.S.C. §§ 7661 to 7661f, inclusive;

4. Which is not subject to the requirements of 40 C.F.R. Part 60;
5. Which is not subject to the requirements of 40 C.F.R. Part 61;
6. Which is not a temporary source;
7. Which is not located at or a part of another stationary source; ~~and~~
8. *Which does not operate a thermal unit that emits mercury, as defined in section 18 of this regulation; and*

9. Whose owner or operator:

- (a) Is not seeking a limitation on emissions to avoid the requirements of 40 C.F.R. Part 63; or
- (b) Is not required to obtain an operating permit to operate the stationary source solely to

comply with NAC 445B.22037 relating to surface area disturbances.

**Sec. 44.** NAC 445B.123 is hereby amended to read as follows:

445B.123 “Operating permit” has the meaning ascribed to it in NRS 445B.145. Unless otherwise specifically stated, the term includes ~~and~~:

1. A Class I, a Class II and a Class III operating permit ~~and an~~;
2. An operating permit to construct ~~and~~; and
3. A mercury operating permit to construct, as defined in section 9 of this regulation.

**Sec. 45.** NAC 445B.220 is hereby amended to read as follows:

445B.220 If any of the provisions of NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation*, or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

**Sec. 46.** NAC 445B.22077 is hereby amended to read as follows:

445B.22077 Any portion of any affected facility not listed in NAC 445B.2208 must comply with the remaining portions of NAC 445B.001 to 445B.3497, inclusive ~~§ 1~~, *and sections 2 to 41, inclusive, of this regulation.*

**Sec. 47.** NAC 445B.221 is hereby amended to read as follows:

445B.221 1. Title 40 C.F.R. §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165, and Appendix S and Appendix W of Title 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2002.

2. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 1, 2003.

3. Except as otherwise provided in subsection 4, the following subparts of Title 40 C.F.R. Part 60 are hereby adopted by reference as they existed on July 1, 2004:

(a) Subpart A, except §§ 60.4, 60.8(b)(3) and 60.11(e); and

(b) Subparts C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW and AAAA.

4. The amendments to subpart GG of Title 40 C.F.R. Part 60 set forth in Volume 69 of the Federal Register at pages 41346 et seq., July 8, 2004, are hereby adopted by reference.

5. Subparts A, B, C, D, E, F, H, I, J, K, L, N, O, P, Q, R, T, V, W, Y, BB and FF of Title 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, 2003.

6. Except as otherwise provided in subsection 7, the following subparts of Title 40 C.F.R. Part 63 are hereby adopted by reference:

(a) A, B, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE,

GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, EEEE, GGGG, HHHH, JJJJ, KKKK, MMMM, NNNN, OOOO, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCCC, FFFFF, JJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ and SSSSS, as they existed on July 1, 2004; and

(b) Subpart DDDDD as set forth in Volume 69 of the Federal Register at pages 55218 et seq., September 13, 2004.

7. The amendments to subpart YYYY of Title 40 C.F.R. Part 63 set forth in Volume 69 of the Federal Register at pages 51184 et seq., August 18, 2004, are hereby adopted by reference.

8. Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, 2003. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation*, the provisions of 40 C.F.R. Part 72 apply.

9. Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, 2003. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation*, the provisions of 40 C.F.R. Part 76 apply.

10. Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, and the amendments to section 7412 contained in 40 C.F.R. Part 63, Subpart C, are hereby adopted by reference as they existed on July 1, 2003.

11. The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual

may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$40.

12. A copy of the publications which contain these provisions may be obtained from the:

(a) Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954.

The price is:

(1) For the volume containing §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165 and Appendices S and W of Part 51 .....	\$10
(2) For § 52.21 .....	58
(3) For Part 60 (Sections 60.1 to end) .....	58
(4) For Part 60 (Appendices).....	57
(5) For Parts 61 – 62.....	43
(6) For Part 63 (Sections 63.1 to 63.599).....	58
(7) For Part 63 (Sections 63.600 to 63.1199).....	50
(8) For Part 63 (Sections 63.1200 to 63.1439).....	50
(9) For Part 63 (Sections 63.1440 to 63.8830).....	64
(10) For Part 63 (Sections 63.8980 to end) .....	35
(11) For the volume containing Parts 72 and 76 .....	61

(b) Division of State Library and Archives of the Department of Cultural Affairs for 10 cents per page.

(c) Internet at the following website: <http://www.gpoaccess.gov/nara/index.html>.

13. For the purposes of the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

14. Except as otherwise provided in subsections 8 and 9, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation* for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

15. For the purposes of this section, “administrator” as used in the provisions of Parts 60, 61 and 63, Chapter I, Title 40, Code of Federal Regulations adopted pursuant to this section means the Director.

**Sec. 48.** NAC 445B.275 is hereby amended to read as follows:

445B.275 1. Failure to comply with any requirement of NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation*, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

- (a) Failure to apply for and obtain an operating permit;
- (b) Failure to construct a stationary source in accordance with the application for an operating permit as approved by the Director;
- (c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;
- (d) Commencing construction or modification of a stationary source without applying for and receiving an operating permit or a modification of an operating permit as required by NAC 445B.001 to 445B.3497, inclusive ~~[;]~~, *or a mercury operating permit to construct as required by sections 2 to 41, inclusive, of this regulation;*

(e) Failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit; or

(f) Failure to pay fees as required by NAC 445B.327 ~~§~~ *or section 41 of this regulation.*

2. The written notice must specify the provision of NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation,* the condition of the operating permit or the applicable requirement that is being violated.

3. Written notice shall be deemed to have been served if delivered to the person to whom addressed or if sent by registered or certified mail to the last known address of the person.

**Sec. 49.** NAC 445B.277 is hereby amended to read as follows:

445B.277 1. The Director shall issue a stop order if:

(a) The proposed construction, installation, alterations or establishment will not be in accordance with the provisions of the plans, specifications and other design material required to be submitted as part of the application for an operating permit and approved by the Director as a condition of the operating permit; or

(b) The design material or the construction itself is of such a nature that it patently cannot bring the stationary source into compliance with NAC 445B.001 to 445B.3497, inclusive ~~§~~, *and sections 2 to 41, inclusive, of this regulation.*

2. A stop order may be issued at any time by the Director upon his determination that there has been a violation of any of the provisions of NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation,* any applicable requirement or any condition of the operating permit.

3. A person served with a stop order:

(a) Shall immediately stop all activities specified in the stop order.

(b) May apply for its revocation at any time, setting forth the facts upon which he believes that the reasons for the issuance of the stop order no longer exist. If the Director finds that the reasons for the issuance of the stop order no longer exist, he shall withdraw the order promptly. If the Director finds that the reasons for the issuance of the stop order still exist, or that other reasons exist for continuing a stop order in effect, he shall, within 24 hours, serve a written statement of his reasons for so finding.

**Sec. 50.** NAC 445B.281 is hereby amended to read as follows:

445B.281 1. Except as otherwise provided in NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation*, any violation of the provisions of those sections is classified as a major violation, and a fine up to \$10,000 per day per violation may be levied.

2. For Class II and Class III sources:

(a) Violations of NAC 445B.22067, 445B.2207, 445B.22087, subsections 3 and 4 of NAC 445B.232, subsection 8 of NAC 445B.252, subsection 2 of NAC 445B.265, paragraph (e) of subsection 1 of NAC 445B.275 and NAC 445B.331 are classified as minor or lesser violations, unless there are four or more violations of any one of those sections by a person, occurring within a period of 60 consecutive months.

(b) The first violation of NAC 445B.22037 is classified as a minor violation. A subsequent violation of NAC 445B.22037 is classified as a major violation.

3. The schedule of fines for minor violations is as follows:

	First	Second	Third
	Offense	Offense	Offense

		Major	Major
NAC 445B.22037, fugitive dust.....	\$250	violation	violation
NAC 445B.22067, open burning.....	250	500	500
NAC 445B.2207, incinerator burning.....	250	500	500
NAC 445B.22087, odors.....	250	500	500
Subsection 3 or 4 of NAC 445B.232, reporting of excess emissions .....	250	500	500
Subsection 8 of NAC 445B.252, testing and sampling reporting .....	250	500	500
Subsection 2 of NAC 445B.265, reporting of monitoring systems .....	250	500	500
Paragraph (e) of subsection 1 of NAC 445B.275, recordkeeping, monitoring, reporting or compliance certification.....	250	500	500
NAC 445B.331, change of location .....	250	500	500

4. All minor violations become major violations upon the occurrence of the fourth violation of the same section within a period of 60 consecutive months.

**Sec. 51.** NAC 445B.287 is hereby amended to read as follows:

445B.287 1. Except as otherwise provided in subsection 2 and in NAC 445B.288, an operating permit, operating permit to construct or permit to construct is required for each stationary source and:

(a) If a stationary source is a Class I source:

(1) A revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3425, 445B.344 or 445B.3441 before the stationary source may be modified; or

(2) A revision of the operating permit to construct is required pursuant to the requirements of paragraph (a) of subsection 1 of NAC 445B.3361 before the stationary source may be modified,

↳ as appropriate.

(b) If a stationary source is a Class II source, a revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3465 before the stationary source may be modified.

(c) If a stationary source is a Class III source, a revision of the operating permit is required pursuant to the requirements of NAC 445B.3493 before the stationary source may be modified.

*(d) If a stationary source maintains one or more thermal units that emit mercury, the owner or operator of a thermal unit that emits mercury shall comply with the provisions set forth in sections 2 to 41, inclusive, of this regulation.*

2. A Class I source is not subject to the provisions of subparagraph (1) of paragraph (a) of subsection 1 if the source is not a major source, an affected source or a solid waste incineration unit required to obtain a permit pursuant to 42 U.S.C. § 7429(e). For a Class I source which is not a major source and which subsequently becomes subject to a standard or other requirement under 42 U.S.C. § 7411 or 7412, the Administrator will determine whether to exempt the source from the requirement to obtain a Class I operating permit at the time that the new standard is adopted.

3. An operating permit, operating permit to construct or permit to construct may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment reflecting a change of ownership or the name of the stationary source for the effective time remaining on the original operating permit pursuant to NAC 445B.319.

4. ~~For the purposes of~~ *As used in* this section ~~["permit"]~~ :

(a) *"Permit to construct"* means a document issued and signed by the Director before November 1, 1995, certifying that:

~~(a)~~ (1) Adequate empirical data for a stationary source has been received and constitutes approval of location; or

~~(b)~~ (2) All portions of NAC 445B.305 to 445B.314, inclusive, and 445B.3395, and any other provisions of NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation* have been complied with and constitute approval of location and for construction.

(b) *"Thermal unit that emits mercury" has the meaning ascribed to it in section 18 of this regulation.*

**Sec. 52.** NAC 445B.288 is hereby amended to read as follows:

445B.288 1. The following categories of sources are not required to obtain an operating permit:

(a) A source that would otherwise be required to obtain an operating permit solely because it is subject to 40 C.F.R. Part 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters.

(b) A source that would otherwise be required to obtain an operating permit solely because it is subject to 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos, section 61.145.

(c) Agricultural equipment used in the normal operation of a farm, other than agricultural equipment which is classified as, or located at, a source for which a permit is required under Title V of the Act or which is subject to any standard set forth in 40 C.F.R. Part 60 or 61.

2. The following emission units are considered to be insignificant activities unless the emission unit is otherwise subject to another specific applicable requirement, including, without limitation, any requirement or standard set forth in 40 C.F.R. Part 60, 61 or 63:

(a) Any equipment or other contrivance used exclusively for the processing of food for human consumption.

(b) An incinerator which has a rated burning capacity that is less than 25 pounds per hour.

(c) An emission unit that has a maximum allowable throughput or batch load rate of less than 50 pounds per hour, unless the emission unit directly emits, or has the potential to emit, a hazardous air pollutant.

(d) A storage container for petroleum liquid, or a storage facility for volatile organic liquid, that has a capacity of less than 40,000 gallons.

(e) Except as otherwise provided in paragraphs (f), (g) and (h), air-conditioning equipment or fuel-burning equipment that, individually, has a rating which is:

(1) Less than 4,000,000 Btu's per hour; or

(2) Equal to or greater than 4,000,000 Btu's per hour if the equipment operates less than 100 hours per calendar year.

(f) A portable internal combustion engine that has a rating for output which is:

(1) Less than 500 horsepower; or

(2) Equal to or greater than 500 horsepower if the engine operates less than 100 hours per calendar year.

(g) A stationary internal combustion engine that has a rating for output which is:

(1) Less than 250 horsepower; or

(2) Equal to or greater than 250 horsepower if the engine operates less than 100 hours per calendar year.

(h) An emergency generator. Except as otherwise provided in this paragraph, an emergency generator qualifies as an insignificant activity pursuant to this paragraph only if the emergency generator is an internal combustion engine that is used to generate electrical power to maintain essential operations during unplanned electrical power outages. An emergency generator that is owned or operated by a Class II source and whose potential to emit is calculated on the basis of less than 500 hours of operation does not qualify as an insignificant activity.

3. If an emission unit is considered an insignificant activity and is subject to a limitation on its hours of operation pursuant to subsection 2, the owner or operator of the emission unit shall maintain an operating log of the hours of operation of the emission unit. The operating log must be maintained at the site of the emission unit and made available to the Director upon his request. The owner or operator shall retain the operating log for not less than 5 years.

4. The Director may, upon written request and a satisfactory demonstration by an applicant, approve an emission unit as an insignificant activity if the emission unit is not otherwise subject to another specific applicable requirement, including, without limitation, any requirement or standard set forth in 40 C.F.R. Part 60, 61 or 63. To be approved as an insignificant activity, an emission unit must meet the following criteria:

(a) The operation of the emission unit, not considering controls or limits on production, type of materials processed, combusted or stored, or hours of operation, will not result in:

(1) Emissions of a hazardous air pollutant that exceed 1 pound per hour or 1,000 pounds per year, as appropriate;

(2) Emissions of regulated air pollutants that exceed 4,000 pounds per year;

(3) Emissions of regulated air pollutants that exceed any other limitation on emissions pursuant to any other applicable requirement; or

(4) Emissions of regulated air pollutants that adversely impact public health or safety, or exceed any ambient air quality standards; and

(b) The emissions from the emission unit are not relied on to avoid any other applicable requirements.

↪ If there are multiple emission units, the Director may, after considering the impact of the combined emissions of multiple emission units, determine whether to approve one or more of the specific emission units as an insignificant activity.

5. Except as otherwise provided in NAC 445B.094, emissions from insignificant activities, as determined pursuant to this section, must be included in any determination of whether a stationary source is a major source.

6. A stationary source is not required to obtain an operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation* for any emission unit determined to be an insignificant activity in accordance with this section, as long as the stationary source is not otherwise subject to any other requirement to obtain an operating permit under Title V of the Act. Such an exclusion from the requirements relating to permitting is not an exclusion or exemption from any other requirement set forth in NAC 445B.001 to

445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation* relating to the operation of the emission unit determined to be an insignificant activity.

7. A stationary source which consists solely of insignificant activities as determined pursuant to this section and which is not otherwise subject to any other requirement to obtain an operating permit under Title V of the Act is not required to obtain an operating permit to operate as a stationary source. Such an exclusion from the requirements relating to permitting is not an exclusion or exemption from any other requirement set forth in NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation* relating to the operation of the stationary source or any insignificant activity that is a part of the stationary source.

*8. The provisions of this section do not apply to a thermal unit that emits mercury.*

*9. As used in this section, “thermal unit that emits mercury” has the meaning ascribed to it in section 18 of this regulation.*

**Sec. 53.** NAC 445B.297 is hereby amended to read as follows:

445B.297 1. An applicant for an operating permit must:

(a) Submit an application to the Director on the appropriate form provided by the Director. A responsible official of the stationary source must certify that, based on information and belief formed after a reasonable inquiry, the statements in the application for the operating permit are true, accurate and complete.

(b) Submit supplementary facts or corrected information upon discovery.

(c) Provide any additional information, *in writing*, that the Director requests ~~in writing~~ within the time specified in the Director’s request.

2. In addition to the requirements set forth in subsection 1, an applicant for a Class I operating permit must submit a copy of the application directly to the Administrator. The

provisions of this subsection do not apply to applications for operating permits to construct that are subject to NAC 445B.33633, 445B.33635 and 445B.33637.

**Sec. 54.** NAC 445B.315 is hereby amended to read as follows:

445B.315 1. Notwithstanding any provision of this section to the contrary, the provisions of this section do not apply to operating permits to construct.

2. The Director shall cite the legal authority for each condition contained in an operating permit.

3. An operating permit must contain the following conditions:

(a) The term of the operating permit is 5 years.

(b) The holder of the operating permit shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.

(c) Each of the conditions and requirements of the operating permit is severable, and ~~if~~ if any are held invalid, the remaining conditions and requirements continue in effect.

(d) The holder of the operating permit shall comply with all conditions of the operating permit. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) Revising, revoking, reopening and revising, or terminating the operating permit by the Director; or

(3) Denial of an application for a renewal of the operating permit by the Director.

(e) The need to halt or reduce activity to maintain compliance with the conditions of the operating permit is not a defense to noncompliance with any condition of the operating permit.

(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the operating permit for cause.

(g) The operating permit does not convey any property rights or any exclusive privilege.

(h) The holder of the operating permit shall provide the Director, *in writing and* within a reasonable time, with any information that the Director requests ~~[in writing]~~ to determine whether cause exists for revising, revoking and reissuing, reopening and revising, or terminating the operating permit, or to determine compliance with the conditions of the operating permit.

(i) The holder of the operating permit shall pay fees to the Director in accordance with the provisions set forth in NAC 445B.327 and 445B.331.

(j) The holder of the operating permit shall allow the Director or any authorized representative, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the operating permit where:

(I) The stationary source is located;

(II) Activity related to emissions is conducted; or

(III) Records are kept pursuant to the conditions of the operating permit;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the operating permit;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the operating permit; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the operating permit or applicable requirements.

(k) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the operating permit are true, accurate and complete.

**Sec. 55.** NAC 445B.318 is hereby amended to read as follows:

445B.318 1. ~~[A separate]~~ *An* operating permit is required for each new or existing stationary source.

2. Application for the issuance of an operating permit or a replacement for a lost or damaged operating permit must be submitted in writing to the Director on the exact form provided by him.

3. An operating permit must be granted if the Director finds from a stack emission test or other appropriate test and other relevant information that use of the stationary source will not result in any violation of the air quality regulations or the provisions of 40 C.F.R. § 52.21 or 40 C.F.R. Parts 60 and 61, Prevention of Significant Deterioration, New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants adopted by reference in NAC 445B.221.

4. A denial of an application for an operating permit must be accompanied by a statement of the reasons therefor, and if the Director has relied in his decision upon information not contained in the application, the statement of reasons must identify and state the substance of such information.

5. Operating permits must be posted conspicuously at or near the stationary source.

**Sec. 56.** NAC 445B.3361 is hereby amended to read as follows:

445B.3361 1. To establish a new Class I stationary source or modify an existing Class I stationary source, the owner or operator of a proposed new Class I stationary source or the existing Class I stationary source must:

(a) Apply for and obtain a new or revised ~~operating~~ :

*(1) Operating permit to construct pursuant to NAC 445B.001 to 445B.3497, inclusive ~~;~~*  
~~or~~

~~—(b) Apply for and obtain a new or revised], and sections 2 to 41, inclusive, of this regulation; or~~

*(2) Class I operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive ~~;~~, and sections 2 to 41, inclusive, of this regulation; and*

*(b) If the owner or operator of the Class I stationary source operates a thermal unit that emits mercury, apply for and obtain a new or revised mercury operating permit to construct for the thermal unit that emits mercury and comply with the provisions set forth in sections 2 to 41, inclusive, of this regulation.*

2. To obtain a designation for an emission unit as a clean unit, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the designation of a clean unit pursuant to NAC 445B.001 to 445B.3497, inclusive ~~;~~, *and sections 2 to 41, inclusive, of this regulation.*

3. To obtain the approval of a pollution control project as specified in 40 C.F.R. § 52.21(z)(1), the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of a pollution control project pursuant to NAC 445B.001 to 445B.3497, inclusive, *and sections 2 to 41, inclusive, of this regulation* before the owner or operator begins actual construction of the pollution control project.

4. To establish a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of the plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3497, inclusive ~~§~~, *and sections 2 to 41, inclusive, of this regulation.* To revise or renew a Class I operating permit to construct for the approval of a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a revised or renewed Class I operating permit to construct for the approval of a plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3497, inclusive ~~§~~, *and sections 2 to 41, inclusive, of this regulation.*

5. Except as otherwise provided in subsection 7, if an owner or operator obtains an operating permit to construct, the owner or operator is not required to obtain an operating permit or revised operating permit before commencing initial construction, start-up and operation of the proposed new Class I stationary source or the modification to the existing Class I stationary source.

6. Except as otherwise provided in this subsection and ~~subsection 7,~~ *subsections 7 and 8,* if an owner or operator has a valid operating permit to construct, the owner or operator may continue to operate a new Class I stationary source or modifications to an existing Class I stationary source under that operating permit to construct if the owner or operator submits a complete application for a Class I operating permit within 12 months after the date of initial start-up of the new Class I stationary source or modifications to the existing Class I stationary source. The provisions of this subsection do not apply to:

(a) A Class I operating permit to construct for the designation of a clean unit. A Class I operating permit to construct for the designation of a clean unit must be incorporated into the Class I operating permit pursuant to 40 C.F.R. § 52.21(y)(8).

(b) A Class I operating permit for the approval of a pollution control project.

(c) A Class I operating permit to construct for the approval of a plantwide applicability limitation.

7. If the conditions of an existing Class I operating permit would prohibit the construction or change in operation of the existing Class I stationary source and the owner or operator is not seeking to revise the Class I operating permit at the Class I stationary source pursuant to paragraph (b) of subsection 1, the owner or operator must concurrently:

(a) ~~Obtain a Class I operating permit to construct for~~ **For** the construction or change in operation of the existing Class I stationary source ~~[- and] :~~

*(1) Obtain a Class I operating permit to construct; or*

*(2) If the construction or change in operation involves mercury emissions from a thermal unit that emits mercury, obtain a mercury operating permit to construct pursuant to sections 2 to 41, inclusive, of this regulation; and*

(b) Obtain an administrative revision to an operating permit to incorporate the conditions of the Class I operating permit to construct into the existing Class I operating permit pursuant to NAC 445B.3441 before commencing with the construction or change in operation of the existing Class I stationary source.

*8. If an owner or operator has a valid mercury operating permit to construct, the owner or operator may continue to operate the thermal unit that emits mercury which is located at an existing Class I stationary source if the owner or operator submits a complete application to revise the existing Class I operating permit within 12 months after the determination of the NvMACT contained in the mercury operating permit to construct by the Director.*

*9. As used in this section:*

(a) *“Mercury emissions” has the meaning ascribed to it in section 8 of this regulation.*

(b) *“Mercury operating permit to construct” has the meaning ascribed to it in section 9 of this regulation.*

(c) *“NvMACT” has the meaning ascribed to it in section 11 of this regulation.*

(d) *“Thermal unit that emits mercury” has the meaning ascribed to it in section 18 of this regulation.*

**Sec. 57.** NAC 445B.3365 is hereby amended to read as follows:

445B.3365 Except as otherwise provided in NAC 445B.33653 and 445B.33656:

1. The Director shall cite the legal authority for each condition contained in an operating permit to construct.

2. An operating permit to construct must contain the following conditions:

(a) The expiration date of the operating permit to construct must be defined as described in NAC 445B.3366.

(b) The holder of the operating permit to construct shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes, without limitation, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.

(c) Each of the conditions and requirements of the operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.

(d) The holder of the operating permit to construct shall comply with all conditions of the operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the operating permit to construct by the Director; or

(3) The reopening or revising of the operating permit to construct by the holder of the operating permit to construct as directed by the Director.

(e) The need to halt or reduce activity to maintain compliance with the conditions of the operating permit to construct is not a defense to noncompliance with any condition of the operating permit to construct.

(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the operating permit to construct for cause.

(g) The operating permit to construct does not convey any property rights or any exclusive privilege.

(h) The holder of the operating permit to construct shall provide the Director, *in writing and* within a reasonable time, with any information that the Director requests ~~in writing~~ to determine whether cause exists for revoking or terminating the operating permit to construct, or to determine compliance with the conditions of the operating permit to construct.

(i) The holder of the operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

- (1) Enter upon the premises of the holder of the operating permit to construct where:
  - (I) The stationary source is located;
  - (II) Activity related to emissions is conducted; or
  - (III) Records are kept pursuant to the conditions of the operating permit to construct;
- (2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the operating permit to construct or applicable requirements.

(j) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the operating permit to construct are true, accurate and complete.

3. An operating permit to construct must contain:

(a) All applicable requirements, emission limits and standards;

(b) Monitoring methods adequate to show compliance;

(c) Adequate recordkeeping and reporting requirements as deemed by the Director; and

(d) Any other requirements deemed necessary by the Director.

4. In addition to the requirements established in subsections 1, 2 and 3, if the operating permit to construct is a Class I operating permit to construct for the approval of a pollution control project, the Class I operating permit to construct must contain the information set forth in 40 C.F.R. § 52.21 (z)(6).

**Sec. 58.** NAC 445B.33656 is hereby amended to read as follows:

445B.33656 1. The Director shall cite the legal authority for each condition contained in a Class I operating permit to construct for the approval of a plantwide applicability limitation.

2. A Class I operating permit to construct for the approval of a plantwide applicability limitation must contain the following conditions:

(a) The expiration date of the Class I operating permit to construct must be determined in accordance with subsection 6 of NAC 445B.3366.

(b) The holder of the Class I operating permit to construct shall retain records pursuant to 40 C.F.R. § 52.21(aa)(13).

(c) Each of the conditions and requirements of the Class I operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.

(d) The holder of the Class I operating permit to construct shall comply with all conditions of the Class I operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the Class I operating permit to construct by the Director; or

(3) The reopening or revising of the Class I operating permit to construct by the holder of the Class I operating permit to construct as directed by the Director.

(e) The need to halt or reduce activity to maintain compliance with the conditions of the Class I operating permit to construct is not a defense to noncompliance with any condition of the Class I operating permit to construct.

(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the Class I operating permit to construct for cause.

(g) The Class I operating permit to construct does not convey any property right or exclusive privilege.

(h) The holder of the Class I operating permit to construct shall provide the Director, *in writing and* within a reasonable time, with any information that the Director requests ~~[in writing]~~ to determine whether cause exists for revoking or terminating the Class I operating permit to construct, or to determine compliance with the conditions of the Class I operating permit to construct.

(i) The holder of the Class I operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the Class I operating permit to construct where:

(I) The stationary source is located;

(II) Activity related to emissions is conducted; or

(III) Records are kept pursuant to the conditions of the Class I operating permit to construct;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the Class I operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the Class I operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the Class I operating permit to construct or applicable requirements.

(j) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be

submitted by any condition of the Class I operating permit to construct are true, accurate and complete.

3. In addition to the requirements established in subsections 1 and 2, a Class I operating permit to construct for the approval of a plantwide applicability limitation must contain the information set forth in 40 C.F.R. § 52.21(aa)(7) as adopted by reference in NAC 445B.221.

**Sec. 59.** NAC 445B.3453 is hereby amended to read as follows:

445B.3453 1. ~~[An]~~ *Except as otherwise provided in subsection 3, an* owner or operator of any stationary source that is not subject to the requirements of NAC 445B.337 or 445B.3375 must submit an application for and obtain a Class II operating permit or, if applicable, a Class III operating permit pursuant to NAC 445B.3485.

2. For a proposed stationary source or a proposed modification to a stationary source that is not subject to the requirements of NAC 445B.337 or 445B.3375, an owner or operator must file an application and obtain a Class II operating permit or a revision to an existing Class II operating permit or, if applicable, a Class III operating permit or a revision to an existing Class III operating permit pursuant to NAC 445B.3485, before commencing construction of the proposed stationary source or the proposed modification.

*3. The owner or operator of a thermal unit that emits mercury which is located at a Class II stationary source shall comply with the provisions of sections 2 to 41, inclusive, of this regulation. As used in this subsection, “thermal unit that emits mercury” has the meaning ascribed to it in section 18 of this regulation.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R189-05**

The State Environmental Commission adopted regulations assigned LCB File No. R189-05 which pertain to chapter 445B of the Nevada Administrative Code on March 8, 2006.

**Notice date:** 2/1/2006  
**Hearing date:** 3/8/2006

**Date of adoption by agency:** 3/8/2006  
**Filing date:** 5/4/2006

**INFORMATIONAL STATEMENT**

This new permanent regulation will modify NAC 445B.001 to 445B.3497. The regulation establishes a Nevada Mercury Air Emissions Control Program for precious metals mining facilities in Nevada. As way of background, between 2002 and 2005 the Nevada Voluntary Mercury Reduction Program, a joint effort of the Nevada Division of Environmental Protection (NDEP), the U.S. Environmental Protection Agency (US EPA) and four Nevada mining companies, achieved significant and rapid mercury emission reductions from thermal processes used in precious metals mining. Subsequent to this voluntary program, the NDEP determined it necessary and appropriate to make the program mandatory and expand the coverage of the program to all precious metals mining operations in Nevada.

This regulation allows NDEP to implement a new permitting program that requires mercury air emission controls at precious metal mining facilities. The new permitting program is an adjunct to the current operating permit to construct program operated by the Division. The new program will apply to precious metals mining facilities that process mercury-containing ore and use thermal treatment processes that have the potential for liberating mercury into the atmosphere.

**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.**

NDEP's Bureau of Air Quality Planning (BAQP) held two workshops on the above referenced regulation at the following location.

<b>Carson City Workshop</b> December 15, 2005 Room 2144 Legislative Counsel Bureau 401 South Carson Street Carson City, Nevada 10:00 AM to 12:00 Noon	<b>Elko Workshop</b> December 19, 2005 Great Basin College 1500 College Parkway Elko, Nevada 10:30 AM to 12:30 PM
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The Carson City workshop was attended by 33 individuals; six persons provided oral comments at the workshop. In Elko, 29 individuals attended with ten providing oral comments.

Regarding written comments on the draft regulation, the Division received numerous letters and emails from a wide variety of individuals and organizations. To accommodate the diversity and volume of comments, Division staff developed a formal comment response document, which is attached as appendix 1. The comment response document reflects a compilation and disposition of comments received about the regulation. The document is organized to address comments by “similarity of scope.” There are twelve different categories of “similar comments” that are responded to in the document.

The comment response document was made available to the public and presented by NDEP staff to SEC at the regulatory hearing held on March 8<sup>th</sup> in Reno. At the SEC regulatory hearing, staff discussed the comment response document in detail with the Commission.

Regarding the SEC regulatory hearing process -- and as required by the provisions of chapters 233B and 241 of Nevada Revised Statutes -- the hearing agenda was posted at the following locations: the Washoe County Commission Chambers in Reno, the Nevada Department of Wildlife building in Reno, the Grant Sawyer Office Building in Las Vegas, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of the agenda, the public notice, and the proposed regulation noted above were made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the hearing was also published on February 20 and 27, 2006 and on March 6, 2006 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Extensive information about the regulation was also made available on websites managed by NDEP and the SEC; see: <http://ndep.nv.gov/mercury/index.htm> and <http://www.sec.nv.gov/main/hearing030806.htm>

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

- (a) Attended March 08, 2006 hearing; 70
- (b) Testified on this Petition at the hearing: 17 (3 NDEP Staff, 14 Public)
- (c) Submitted to the agency written comments: (See Appendix 1)

## **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.**

In addition to the above referenced public workshops and the SEC regulatory hearing, the NDEP held numerous meeting with non governmental organizations and industry representatives. Comments were solicited from affected businesses as indicated in number 1 above. In addition, NDEP developed a special purpose website to further keep interested organizations and individuals abreast of the regulatory process proposed for the new Nevada Mercury Air Emissions Control Program. The website, which remains an integral part of the program, remains posted at: <http://ndep.nv.gov/mercury/index.htm>

**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.**

Changes to the regulation were proposed at the hearing by NDEP staff and a consensus on the proposed changes were agreed to and adopted at the hearing by the Commission. The changes made to the regulation were not considered substantive in content or scope with regard to implementation of the Nevada Mercury Air Emissions Control Program.

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

The new regulation will have an economic impact on precious metals mining companies that process mercury-containing ore and use thermal processes that have the potential for liberating mercury into the atmosphere. These companies will be subject to the mercury permitting program and applicable fees. See number 9 below for a description of the fees.

Negative economic effects to the public will not result from adoption of this regulation; to the contrary, a significant long-term positive effect will occur from reduction of mercury air emissions to the biosphere. Benefits will occur to both human health and the environment resources.

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

There will be additional costs to NDEP for implementing this regulation and those costs will be covered entirely by new permit fees imposed on the mining industry in Nevada. See number 9 below.

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

The regulation does not overlap or duplicate any regulations of other state, federal or local agencies.

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

The regulation is more stringent than what is established by federal law. The U.S EPA does not currently regulate mercury emissions from precious metals mining facilities that process mercury-containing ore and use thermal treatment processes that have the potential for liberating mercury into the atmosphere. It is worth noting however, US EPA is on record in support of the above referenced regulation. Of note, mercury air emissions are hazardous to human health and the environment and mercury air emissions do find their way into the food chain; such emissions are hazardous to the biosphere. Accordingly, NDEP has decided to implement the Nevada

Mercury Air Emissions Control Program to protect human health and the environment for Nevadans and for the region.

**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.**

In order to fund the Nevada Mercury Air Emissions Control Program, the regulation imposes a new fee structure on the affected precious metals mining facilities. A one-time permit application fee totaling \$50,000 will be divided among all of the existing facilities that use thermal treatment processes that have the potential for liberating mercury into the atmosphere. The permit application fee for new or modified thermal units that emit mercury or a revision to an existing permit is \$5,000. Annual maintenance charges totaling \$250,000 a year will be divided among the permitted facilities to support the program. The program fees will support overhead and equipment for two full time staff engineers at NDEP.

**Appendix I**

**March 8, 2006**

**Proposed Nevada Mercury Air Emissions Control Program  
Summary of Written Comments  
NDEP Received by 8:00 am, March 7, 2006**

Comments the Division received and has compiled below were from a number of sources including: the regulatory workshops held in Carson City on December 15, 2005 and Elko on December 19, 2005; letters received by US mail; and e-mail comments. This document reflects a compilation of comments received. Comments that were similar in scope were consolidated for brevity. Comment counts identified with a “~” are approximate.

***Comment #1: Request to add annual reporting of mercury co-product.***  
**Comment Count: ~95**

**NDEP Response:** The draft regulations were amended to address this comment. The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of “mercury co-product” in Section 6. The requirement for annual co-product reporting is contained in numerous Sections; including, Sections 33, 34, 36 and 39.

***Comment #2: Request to add a 15-day time limit to the period an applicant has to resubmit an application that the NDEP deems incomplete.***  
**Comment Count: 1**

**NDEP Response:** A requirement was added to the draft regulation that states, “If an incomplete application is returned to the applicant, the applicant must resubmit a complete application

within 15 days after the applicant receives the returned incomplete application”. The provision applies to both Phase 1 and Phase 2 applications covering either Tier 1 or Tier 2 thermal units. The language can be read in the March 3, 2006, LCB File No.R189-05, at Section 35.

**Comment #3: The tiered regulatory system doesn’t thoroughly identify which mines will be considered for each tier and Tier 1 mines were not fully specified.**

**Comment Count: 1**

**NDEP Response:** The listing of Tier 1 thermal units first became available as Appendix A in NDEP’s November 17, 2005 posting of the Proposed Nevada Mercury Air Emissions Control Program summary document. The regulation-format listing of Tier 1 thermal units then became available in the January posting of the Agency Draft regulation, followed by the February 1, 2006 Agency Draft provided to the public in advance of the March 8, 2006 State Environmental Commission hearing. The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of “Tier-1 thermal unit that emits mercury” in Section 19. The formal identification of units is in Section 23.

Both the draft regulations and the Proposed Nevada Mercury Air Emissions Control Program (NMCP) summary document discuss the process for NDEP to designate units as Tier 1, Tier 2 or Tier 3. Tier 1 units were designated as a result of their involvement in the former Voluntary Mercury Reduction Program. Initially, all other units will be designated as Tier 2 (regardless of whether they are located at a VMRP participating facility or not). Tier 3 units may be determined as a result of the de minimis determination process. To aid in this determination, over 50 mining companies received and are required to complete the NDEP’s “Precious Metals Mining Mercury Air Emissions Questionnaire (for Nevada Facilities)”. The deadline for submittal is March 20, 2006.

**Comment #4: De Minimis Determination: The definition is vague and allows for changes without an objective basis. A numerical minimum definition of de minimis should be incorporated into the regulations. The proposed process is too subjective and should include objective criteria such as ore concentration or process fluid concentration. The cumulative total for a facility should be no more than 16 ounces per year. The section should strengthen the required testing and reporting for any source that has de minimis status.**

**Comment Count: 8**

**NDEP Response:** During development of the program, it was realized that there may be type(s) of thermal unit(s) that could emit such a small amount of mercury that the construction of a control device is not feasible. One example commonly used for discussion purposes is a laboratory assay hood.

The NDEP was reluctant to set an arbitrary de minimis threshold without supporting data. To aid the Director in this determination, over 50 mining companies received and are required to complete the NDEP’s “Precious Metals Mining Mercury Air Emissions Questionnaire (for Nevada Facilities)”. The deadline for submittal is March 20, 2006. The results of the questionnaire are intended to provide the NDEP with information necessary to determine if such

a threshold can be set. The regulations also provide for a company to petition the Director for an initial de minimis determination that emissions from a thermal unit are de minimis emissions. In either case, the Director shall make such initial determinations publicly available for review and comment. As a component of this initial determination, the NDEP is allowed to factor in to the decision process whether multiple de minimis units at a single facility will be allowed, and if so, at what level of combined mercury emissions. The draft regulations provide for a public process in setting such a de minimis emissions threshold.

The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of “De minimis mercury emissions” in Section 3. The public process defined for evaluating and setting a de minimis is contained in Section 25.

***Comment #5: Annual Self Monitoring/Stack Testing: Annual self-monitoring is too infrequent and insufficient to protect human health and the environment. The requirement should be changed from annual to monthly.***

**Comment Count: 3**

**NDEP Response:** Annual source testing is adequate to demonstrate that the mercury controls are operating efficiently and will provide sufficient information to support a demonstration of compliance with an emissions limitation. It is not uncommon to have an even longer interval between tests. Based on decades of experience in evaluating pollution control devices and reviewing emissions testing from emissions controls, and the inherent gas stream design range of the current mercury emissions controls, the NDEP does not believe that significant changes in emissions will occur. Additionally, the NDEP does not believe that more frequent testing will result in any additional environmental benefit.

***Comment #6: Request to add speciated stack testing requirements to the regulations for the testing that Tier 1 units have started. The sources need more time to complete the testing.***

**Comment Count: 2**

**NDEP Response:** The Voluntary Mercury Reduction Program (VMRP) companies are already at various stages in the process of developing testing protocols and conducting speciated testing of existing thermal units. This work will be done by the end of the calendar year.

***Comment #7: Presumptive Nevada MACT: Presuming that a piece of control equipment performs as MACT merely because the equipment was installed under the former VMRP is inappropriate. ... The ‘presumptive MACT’ inappropriately allows existing VMRP companies to operate ‘as-is’ with no requirement for additional mercury emissions reductions. Existing facilities should undergo timely review to identify and implement additional measures. NDEP’s proposed program would allow these mines to get a “presumptive MACT” or essentially permit the mine as-is. Presumptive NvMACT should be eliminated.***

**Comment Count: ~96**

**NDEP Response:** These comments reflect a general misunderstanding of the NDEP’s use of presumptive NvMACT. The purpose of identifying current control devices as presumptive

NvMACT is to ensure the continued implementation of controls that have been operating under the previous Voluntary Mercury Control Program. Phase 2 of the program requires evaluation of all units and the installation of maximum achievable control technology. The NvMACT may result in the requirement for additional or updated controls at any facility including those originally identified as Presumptive NvMACT.

***Comment #8: Fugitive Mercury Emissions: The program needs to go farther in addressing fugitive emissions. There is strong reason to believe that emissions coming from waste rock and dust at gold mining operations are a significant source of mercury pollution. The draft rule fails to incorporate emissions control or monitoring of fugitive dust.***

**Comment Count: ~100**

**NDEP Response:** Currently there is no approved method for determining mercury from fugitive emissions. While not part of this proposed program, the NDEP understands that fugitive emissions will be studied. The NDEP has been working industry and other interested parties on fugitive emissions research. The precious metal mining companies are providing funding for further research in Northern Nevada on point sources, fugitive sources and natural sources of mercury emissions.

***Comment #9: Continuous Emissions Monitors (CEMs): CEMs should be part of the program is necessary and appropriate to ensure controls are working and to ensure accountability. As the NMCP matures and emissions limits are developed in Phase II, NDEP should consider if it is appropriate to require CEMs. About two thirds of the coal fired electric generating units in the US will be required to monitor their mercury emissions in 2008...should be technically feasible at precious metal mines.***

***Counter comment: NDEP needs to weigh the need for CEMs against the current state of technology and consider that it is not currently available.***

**Comment Count: 12**

**NDEP Response:** The program requires monitoring methods adequate to demonstrate that the mercury controls are operating efficiently and provide sufficient information to support a demonstration of compliance with an emissions limitation. The draft regulations do not prohibit an evaluation of the methods used to demonstrate compliance, including the use of CEMs. However, at this time, the technology for mercury CEMs continues to evolve and is driven by the coal fired electric generating units in the U.S. that will be required to monitor their mercury emissions. The technology is in an alpha, or at best a beta, development stage and is not yet available for the processes regulated under this program.

***Comment #10: Adequate Ambient Air Monitoring:***

**Comment Count: ~98**

**NDEP Response:** Ambient monitoring is typically required to protect against an ambient standard. EPA has not established an ambient standard for mercury. This proposed program requires mercury controls on applicable mercury sources. The NDEP believes that the protection provided under this program would be greater than one that is based on an ambient standard.

Utilizing an ambient standard would not guarantee that controls would be required on all mercury sources.

***Comment #11: Public Health Criteria and Residual Risk Evaluations:***  
**Comment Count: ~90**

NDEP Response: To understand the requirements, you need to start at 1970, when Congress enacted Section 112 of the Clean Air Act. This statute was the first time that Congress focused its efforts on reducing hazardous air pollutants (HAPs). The statutes at that time defined HAPs as pollutants that, in the judgment of the EPA Administrator, cause or contribute to air pollution which may increase mortality or have an increase in serious irreversible illness. Section 112 required EPA to publish a list of each HAP that EPA intended to establish an emissions limitation for, and then promulgate a standard, or otherwise explain why the HAP was not hazardous. To do this, EPA utilized a risk-based analysis to set the emissions standards. EPA considered levels of HAPs at which health effects were observed, and factored in an ample margin of safety to protect public health, and set the standard accordingly.

Between 1970 and 1990, EPA only listed 8 HAPs and set standards for only 7 of them. Clearly, the risk-based approach did not work. Congress was provided information that concluded that the program was not effective. Subsequently, Congress passed the 1990 Clean Air Act Amendments with an emphasis on strengthening and expanding the HAP program through an emissions control technology-based approach. Today, the technology-based approach requires emissions control to levels that utilize the best available control technology.

There were two significant changes made to Section 112 in the 1990 reauthorization. First, rather than the EPA Administrator listing HAPs, as was done previously, Congress established the list of 189 HAPs on their own (see 7412(b)). Second, an emissions standards implementation process was formed and is based on the maximum reduction in emissions which can be achieved by applying the best available control technology.

This technology-based approach consists of a two-step process for determining emissions standards under the 1990 Act Amendments. First, EPA is required to establish technology-based emissions standards for categories of sources that emit HAPs. That is the maximum achievable control technology is required to apply to each category. This requires all sources in a category to at least cleanup emissions to the level their best performing peers have shown can be achieved. This is strictly a technology review and contains no risk-based assessment.

***Comment #12: Reduction Goals and Emission Caps: Does the proposed NMCP have emission reduction goals similar to the former voluntary (VMRP) program? What further reductions do you expect? The program should provide for overall emissions reductions. Reductions achieved by other industries should be used as a benchmark, such as medical waste incinerators. The program should establish a cap on total annual mercury emissions.***

***Counter comment: Given the success of the VMRP, are regulations really necessary?***  
**Comment Count: 8**

**NDEP Response:** The Voluntary Mercury Reduction Program (VMRP) was designed to address the most significant sources of mercury air emissions and utilized EPA's successful 33/50 program as its foundation. According to the US EPA, the four VMRP companies comprised more than 90 percent of reported mercury air emissions in Region 9 in 2000, and the companies have since reduced their emissions by more than 80%. This meets or exceeds most of the goals or caps set by other states for other industry sectors.

There is no basis for establishing a cap and when doing so, there is no guarantee that controls will be required on all units to achieve the cap. In the proposed NMCP best available controls are required on all applicable units.

**Comment #13: Will the state mercury permit roll up into the Title V program for affected facilities?**

**Comment Count: 1**

**NDEP Response:** Yes.

**Comment #14: Early Reduction Credit: This section should be deleted. Sources should not operate with emissions above a MACT level at any time.**

**Comment Count: 2**

**NDEP Response:** The establishment of the Early Reduction Credit program is designed to create an incentive for companies with currently un-controlled or minimally controlled units to reduce emissions in advance of the NvMACT. Early Reduction Credit is based on a rigorous evaluation to determine the best controls available at the time the request is made.

**Comment #15: Mercury Control Timeline. The program must be accelerated to realize improvements in mercury control sooner. We can hope that companies will adopt controls on the early reduction track, but NvMACT will not be required until 3 to 4 years from now. This delay is unreasonable considering the serious public health risk.**

**Comment Count: ~98**

**NDEP Response:** The most significant sources of mercury are the VMRP facilities and they are already controlled. The timelines in the NMCP for implementing additional controls are much more aggressive than any timelines for implementing a federal MACT, and for the implementation allowed for power plants in the most recent CAMR rule. These timelines have been developed based on our ability to adequately evaluate the control measures to establish appropriate conditions in the mercury permits, and to fulfill our public comment requirements.

**Comment #16: All public comment periods in the regulations should be set at a minimum of 60 days and include public hearings to provide adequate time for public examination.**

**Comment Count: 1**

**NDEP Response:** This program includes various points in the process where the Director is making a determination or permits are being processed and public input will be solicited. The

proposed regulations are consistent with standard 30-day comment period for all other permit actions and NDEP programs.

***Comment #17: Regulation Development Process: The public process for this program and regulation development is complex and flawed. The public comment process was unreasonable; the Elko meeting was cancelled and rescheduled with limited notice that did not permit everyone's attendance. The regulations continued to evolve from draft versions and the [originally proposed timeframe of a] January hearing should be postponed. The timeframe for submitting comments was far too short for such an important issue and therefore an extension of the public process is requested.***

**Comment Count: 5**

**NDEP Response:** The regulations only require one workshop and the Carson City workshop met that requirement. Postponement of the Elko workshop was unfortunate and due to circumstances beyond the Divisions control. The meeting in Elko was rescheduled a week later to provide an opportunity for additional comment.

The Agency draft regulations were posted and noticed to the public on February 1, 2006, which was more than 30 days in advance of the scheduled March 8, 2006 State Environmental Commission hearing as required by the APA. The submittal made on February 1<sup>st</sup> contains the same program as the LCB version recently provided, with a few errors introduced by LCB that will be corrected at the Commission hearing. The version that will be proposed at the hearing is the same as the February 1<sup>st</sup> version.

***Comment #18: Tier 3 thermal units should not be grandfathered into the regulation. Tier 3 thermal units should be held to the same mercury emission standards, rules, applications, monitoring and Tier 1 and Tier 2 thermal units and not have a lower or lesser standard applied to their operation, maintenance or modification. Modification of a Tier 3 thermal unit should be considered as construction of a thermal unit, and not given more lenient consideration than Tier 1 and Tier 2 thermal units.***

**Comment Count: 1**

**NDEP Response:** According to the proposed regulations, a Tier 3 thermal unit is one that either doesn't have the potential to emit mercury (i.e. zero emissions of mercury) or one that emits at or below de minimis mercury emission levels. The de minimis approval process allows the Director to consider the level of mercury emission or type of unit that doesn't warrant further evaluation of additional controls, permitting and monitoring. Any Tier 3 thermal unit that proposes a modification will be evaluated to determine if any of the mercury requirements would be applicable. In addition, all Tier 3 units are required to certify annually of the units continued status.

***Comment #19: Section 35, item 6(a) should not allow the applicant to determine what is deemed sufficient to determine what is to be NvMACT. This set up a self approval and self regulatory program and does not protect the public or public trust resources.***

**Comment Count: 1**

**NDEP Response:** The proposed regulations require an applicant to propose what they believe is NvMACT as part of the application. The Director (i.e. NDEP) reviews, evaluates and determines the NvMACT based on the information provided by the applicant and any other information available to the Director. Section 35.6(a), however, discusses only the requirement for the Director to make public and receive comment on his proposed NvMACT determination. The program is most decidedly not a self approval and self regulatory program.

**Comment #20: General oppositions to adoption: The control of emissions is supported, but the final draft of the regulations still need considerable work to suitably protect public health, public trust resources, fish and wildlife. The proposed program is substantially flawed because NDEP has not conducted a rigorous public health risk assessment so there is not means of determining if it is sufficient.**

**Comment Count: 2**

**Counter Comment:** The need for action is urgent and should not be delayed. We urge you to adopt rules for mercury reduction that will make sure that the State of Nevada will not allow our native lands to be contaminated further by mercury pollution. We greatly appreciate your efforts to protect the public and environmental health from mercury emissions. The NDEP has shown great leadership in developing the regulations and the new program should be recognized as a significant first step.

**Comment Count: 4**

**NDEP Response:** Based on all of the information available to the NDEP, we believe that the most appropriate course of action at this point in time is to continue to require efficient operation of existing mercury controls and to require the installation and operation of the best available controls on all thermal mercury emitting units. This approach will ensure the most rapid reductions of mercury while additional information is gathered and studies are conducted.

**Comment #21: Mass Balance**

**Comment Count: 10**

**NDEP Response:** Because of the large quantities of ore that are processed and the relatively small concentrations of mercury present in the ore, it is not reasonably possible to account for mercury associated with the mineral processing activities with any relative accuracy and certainty. Attempting to do so with large thermal processing units would result in inaccurate information. A more representative way to account for mercury emission to the atmosphere is to perform direct emissions testing.