

State Environmental Commission  
March 8, 2006  
Air Quality Regulations

Exhibit 3  
Changes to LCB File No. 189-05

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 the effective date of this regulation; 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 [~~;~~ and*
- ~~*3. The Director presumes to be the maximum degree of reduction of mercury emissions that is achievable for the system or process unit of the tier-1 unit that emits mercury].*~~

Sec. 21. *“Tier-3 thermal unit” means a thermal unit which [~~was constructed before the date on which the Commission adopts the Nevada Mercury Air Emissions Control Program established pursuant to section 24 of this regulation and 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, 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. 28. *An owner or operator of a stationary source which conducts precious metals mining shall submit an application on a form provided by the Director and obtain a mercury operating permit to construct for:*

- 1. A tier-1 thermal unit that emits mercury;*
- 2. A tier-2 thermal unit that emits mercury;*
- 3. A new thermal unit that emits mercury; and*
- 4. A modified thermal unit that emits mercury.*

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) ~~[In accordance]~~ **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, 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) ~~In accordance~~ 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 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.*

*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 5001, 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. 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) ~~In accordance~~ 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. 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 NvMACT for the thermal unit that emits mercury.*

*(b) Monitoring methods adequate to show compliance;*

*~~(b)~~ (c) Adequate recordkeeping and reporting requirements as deemed by the Director;*

*~~(e)~~ (d) Any requirement to report any mercury co-product on an annual basis; and*

*~~(d)~~ (e) Any other requirements deemed necessary by the Director.*

**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 [stationary source which maintains one or more] thermal unit[s] that emit mercury.*

9. *As used in this section, “thermal unit that emits mercury” has the meaning ascribed to it in section 18 of this regulation.*