APPENDIX A

State of Nevada Applicable State Implementation Plan
STATUTORY ELEMENTS: Air Pollution

State of Nevada Applicable State Implementation Plan[1]
STATUTORY ELEMENTS: Air Pollution
(2004 Codification)
as of August 19, 2011

EXPLANATION: Numbers in brackets after NRS number refer to the superseded statute in the ASIP, where applicable.

TITLE 0 - PRELIMINARY CHAPTER

GENERAL PROVISIONS

NRS 0.039 [new]	"Person" defined.

TITLE 40 CHAPTER 445B - AIR POLLUTION

GENERAL PROVISIONS

NRS 445B.105 [445.406]	Definitions.
NRS 445B.110 [445.411]	"Air contaminant" defined.
NRS 445B.115 [445.416]	"Air pollution" defined.
NRS 445B.120 [445.421]	"Commission" defined.
NRS 445B.125 [445.424]	"Department" defined.
NRS 445B.130 [445.427]	"Director" defined.
NRS 445B.135 [445.431]	"Federal Act" defined.
NRS 445B.140 [new]	"Hazardous air pollutant" defined.
NRS 445B.145 [new]	"Operating permit" defined.
NRS 445B.150 [445.441]	"Person" defined.
NRS 445B.155 [445.446]	"Source" and "indirect source" defined.

STATE ENVIRONMENTAL COMMISSION

NRS 445B.200 [445.451]	Creation and composition; Chairman; quorum; compensation of members and employees; disqualification; technical support.
NRS 445B.205 [445.456]	Department designated as State Air Pollution Control Agency.
NRS 445B.210 [445.461]	Powers of Commission.
NRS 445B.220 [445.471]	Additional powers of Commission.
NRS 445B.225 [445.472]	Power of Commission to require testing of sources.
NRS 445B.230 [445.473]	Powers and duties of Department.
NRS 445B.235 [445.474]	Additional powers of Department.
NRS 445B.240 [445.476]	Power of representatives of Department to enter and inspect premises.
NRS 445B.245 [445.477]	Power of Department to perform or require test of emissions from stacks.

LOCAL HEARING BOARD

[1] *This is the ASIP to the best of NDEP's knowledge; it may vary somewhat from the U.S. EPA version. A proposed updated/replacement ASIP was submitted to EPA on February 16, 2005 with revisions on January 12, 2006, December 8, 2006, June 26, 2007 and August 20, 2007. This "Current" ASIP incorporates all of EPA's final actions on NDEP's submittals through April 16, 2008: the 3/27/06, 12/11/06, 4/20/07, 5/8/07, 4/9/08 and 4/16/08 FR actions and the 1/3, 5/8, 6/13, 11/2/07and 4/16/08 rescissions.*

NRS 445B.275 [445.481] Creation; members; terms.
NRS 445B.280 [445.486] Attendance of witnesses at hearing; contempt; compensation.

PROVISIONS FOR ENFORCEMENT

NRS 445B.300 [445.491] Operating permit for source of air contaminant; notice and approval of proposed construction; administrative fees; failure of Commission or Department to act.
NRS 445B.310 [445.493] Limitations on enforcement of federal and state regulations concerning indirect sources.
NRS 445B.320 [445.496] Approval of plans and specifications required before construction or alteration of structure.
NRS 445B.340 [445.498] Appeals to Commission: Notice of appeal.
NRS 445B.350 [445.499] Appeals to Commission: Hearings.
NRS 445B.360 [445.501] Appeals to Commission: Appealable matters; action by Commission; regulations.

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NRS 445B.450 [445.526] Notice and order by Director; hearing; alternative procedures.
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PROGRAM FOR CONTROL OF AIR POLLUTION

NRS 445B.500 [445.546] Establishment and administration of program; contents of program; designation of air pollution control agency of county for purposes of federal act; powers and duties of local air pollution control board; notice of public hearings; delegation of authority to determine violations and levy administrative penalties; cities and smaller counties; regulation of certain electric plants prohibited.
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PENALTIES

NRS 445B.640 [445.601] Levy and disposition of administrative fines; additional remedies available; penalty.

TITLE 0 - PRELIMINARY CHAPTER

GENERAL PROVISIONS

NRS 0.039 "Person" defined. Except as otherwise expressly provided in a particular statute or required by the context, "person" means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government.

(Added to NRS by 1985, 499)

TITLE 40 - CHAPTER 445B - AIR POLLUTION

GENERAL PROVISIONS

NRS 445B.105 [445.406] Definitions. As used in NRS 445B.100 to 445B.640, inclusive, unless the context otherwise requires, the words and terms defined in NRS 445B.110 to 445B.155, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1971, 1192; A 1973, 1811; 1993, 2852)—(Substituted in revision for NRS 445.406)

NRS 445B.110 [445.411] "Air contaminant" defined. "Air contaminant" means any substance discharged into the atmosphere except water vapor and water droplets.

(Added to NRS by 1971, 1192)—(Substituted in revision for NRS 445.411)

NRS 445B.115 [445.416] "Air pollution" defined. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or any combination thereof in such quantity and duration as may tend to:

1. Injure human health or welfare, animal or plant life or property.
2. Limit visibility or interfere with scenic, esthetic and historic values of the State.
3. Interfere with the enjoyment of life or property.

(Added to NRS by 1971, 1192)—(Substituted in revision for NRS 445.416)

NRS 445B.120 [445.421] "Commission" defined. "Commission" means the State Environmental Commission.

(Added to NRS by 1971, 1192; A 1973, 1811)—(Substituted in revision for NRS 445.421)

NRS 445B.125 [445.424] "Department" defined. "Department" means the State Department of Conservation and Natural Resources.

(Added to NRS by 1973, 1808; A 1973, 1406; 1977, 1142)—(Substituted in revision for NRS 445.424)

NRS 445B.130 [445.427] "Director" defined. "Director" means the Director of the Department or his designee or person designated by or pursuant to a county or city ordinance or regional agreement or regulation to enforce local air pollution control ordinances and regulations.

(Added to NRS by 1973, 1808)—(Substituted in revision for NRS 445.427)

NRS 445B.135 [445.431] "Federal Act" defined. "Federal Act" means the Clean Air Act (42 U.S.C. §§ 7401 et seq.), which includes the Clean Air Act of 1963 (P.L. 88-206) and amendments made by the Motor Vehicle Air Pollution Control Act (P.L. 89-272, October 20, 1965), the Clean Air Act Amendments of 1966 (P.L. 89-675, October 15, 1966), the Air Quality Act of 1967 (P.L. 90-148, November 21, 1967), the Clean Air Amendments of 1970 (December 31, 1970) and any amendments thereto made after July 1, 1971.

(Added to NRS by 1971, 1192; A 1993, 2852)—(Substituted in revision for NRS 445.431)

NRS 445B.140 "Hazardous air pollutant" defined. "Hazardous air pollutant" means a substance designated as such by the Commission pursuant to NRS 445B.210.

(Added to NRS by 1993, 2849)—(Substituted in revision for NRS 445.433)

NRS 445B.145 "Operating permit" defined. "Operating permit" means a permit signed and issued by the Director approving, with conditions, the construction and operation of a source of any air contaminant.

(Added to NRS by 1993, 2849)—(Substituted in revision for NRS 445.438)

NRS 445B.150 [445.441] "Person" defined. "Person" includes the State of Nevada, political subdivisions, administrative agencies and public or quasi-public corporations.

(Added to NRS by 1971, 1192; A 1985, 517)—(Substituted in revision for NRS 445.441)

NRS 445B.155 [445.446] "Source" and "indirect source" defined.

1. "Source" means any property, real or personal, which directly emits or may emit any air contaminant.

2. "Indirect source" means any property or facility that has or solicits secondary or adjunctive activity which emits or may emit any air contaminant for which there is an ambient air quality standard, notwithstanding that such property or facility may not itself possess the capability of emitting such air contaminants. Indirect sources include, but are not limited to:

(a) Highways and roads;

(b) Parking facilities;

(c) Retail, commercial and industrial facilities;

(d) Recreation, amusement, sports and entertainment facilities;

(e) Airports;

(f) Office and government buildings;

(g) Apartment and condominium buildings;

(h) Educational facilities; and

(i) Other such property or facilities which will result in increased air contaminant emissions from motor vehicles or other stationary sources.

(Added to NRS by 1971, 1192; A 1973, 1811; 1975, 1781; 1977, 1558)—(Substituted in revision for NRS 445.446)

STATE ENVIRONMENTAL COMMISSION

NRS 445B.200 [445.451] Creation and composition; Chairman; quorum; compensation of members and employees; disqualification; technical support.

1. The State Environmental Commission is hereby created within the State Department of Conservation and Natural Resources. The Commission consists of:

(a) The Director of the Department of Wildlife;

(b) The State Forester Firewarden;

(c) The State Engineer;

(d) The Director of the State Department of Agriculture;

(e) The Administrator of the Division of Minerals of the Commission on Mineral Resources;

(f) A member of the State Board of Health to be designated by that Board; and

(g) Five members appointed by the Governor, one of whom is a general engineering contractor or a general building contractor licensed pursuant to chapter 624 of NRS and one of whom possesses expertise in performing mining reclamation.

2. The Governor shall appoint the Chairman of the Commission from among the members of the Commission.

3. A majority of the members constitutes a quorum, and a majority of those present must concur in any decision.

4. Each member who is appointed by the Governor is entitled to receive a salary of not more than $80, as fixed by the Commission, for each day's attendance at a meeting of the Commission.

5. While engaged in the business of the Commission, each member and employee of the Commission is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

6. Any person who receives or has received during the previous 2 years a significant portion of his income, as defined by any applicable state or federal law, directly or indirectly from one or more holders of or applicants for a permit required by NRS 445A.300 to 445A.730, inclusive, is disqualified from serving as a member of the Commission. The provisions of this subsection do not apply to any person who receives or has received during the previous 2 years, a significant portion of his income from any department or agency of state government which is a holder of or an applicant for a permit required by NRS 445A.300 to 445A.730, inclusive.

7. The State Department of Conservation and Natural Resources shall provide technical advice, support and assistance to the Commission. All state officers, departments, commissions and agencies, including the Department of Transportation, the Department of Human Resources, the University and Community College System of Nevada, the State Public Works Board, the Department of Motor Vehicles, the Department of Public Safety, the Public Utilities Commission of Nevada, the Transportation Services Authority and the State Department of Agriculture may also provide technical advice, support and assistance to the Commission.

(Added to NRS by 1971, 1192; A 1973, 908, 1406, 1720; 1975, 1404; 1977, 1142, 1220, 1484, 1561; 1979, 910, 1800; 1981, 1983; 1983, 2089; 1985, 424, 1991; 1989, 1288, 1715; 1989, 1288, 1715; 1993, 404, 1623; 1995, 579; 1997, 1998; 1999, 3623; 2001, 2616; 2003, 1564)

NRS 445B.205 [445.456] Department designated as State Air Pollution Control Agency. The Department is:

1. Designated as the Air Pollution Control Agency of the State for the purposes of the Federal Act insofar as it pertains to state programs.
2. Authorized to take all action necessary or appropriate to secure to this state the benefits of the Federal Act.

(Added to NRS by 1971, 1139; A 1973, 1813)—(Substituted in revision for NRS 445.456)

NRS 445B.210 [445.461] Powers of Commission. The Commission may:

1. Subject to the provisions of NRS 445B.215, adopt regulations consistent with the general intent and purposes of NRS 445B.100 to 445B.640, inclusive, to prevent, abate and control air pollution.
2. Establish standards for air quality.
3. Require access to records relating to emissions which cause or contribute to air pollution.
4. Cooperate with other governmental agencies, including other states and the Federal Government.
5. Establish such requirements for the control of emissions as may be necessary to prevent, abate or control air pollution.
6. By regulation:

(a) Designate as a hazardous air pollutant any substance which, on or after October 1, 1993, is on the federal list of hazardous air pollutants pursuant to 42 U.S.C. § 7412(b); and

(b) Delete from designation as a hazardous air pollutant any substance which, after October 1, 1993, is deleted from the federal list of hazardous air pollutants pursuant to 42 U.S.C. § 7412(b),

➥based upon the Commission's determination of the extent to which such a substance presents a risk to the public health.

7. Hold hearings to carry out the provisions of NRS 445B.100 to 445B.640, inclusive, except as otherwise provided in those sections.
8. Establish fuel standards for both stationary and mobile sources of air contaminants. Fuel standards for mobile sources of air contaminants must be established to achieve air quality standards that protect the health of the residents of the State of Nevada.
9. Require elimination of devices or practices which cannot be reasonably allowed without generation of undue amounts of air contaminants.

(Added to NRS by 1971, 1193; A 1973, 1813; 1993, 2852; 1997, 3230)

NRS 445B.220 [445.471] Additional powers of Commission. In carrying out the purposes of NRS 445B.100 to 445B.640, inclusive, the Commission, in addition to any other action which may be necessary or appropriate to carry out such purposes, may:

1. Cooperate with appropriate federal officers and agencies of the Federal Government, other states, interstate agencies, local governmental agencies and other interested parties in all matters relating to air pollution control in preventing or controlling the pollution of the air in any area.
2. Recommend measures for control of air pollution originating in this state.

(Added to NRS by 1971, 1194; A 1973, 1814)—(Substituted in revision for NRS 445.471)

NRS 445B.225 [445.472] Power of Commission to require testing of sources. The Commission may require the monitoring or source tests of existing or new stationary sources which can emit an air contaminant.

(Added to NRS by 1973, 1810)—(Substituted in revision for NRS 445.472)

NRS 445B.230 [445.473] Powers and duties of Department. The Department shall:

1. Make such determinations and issue such orders as may be necessary to implement the purposes of NRS 445B.100 to 445B.640, inclusive.
2. Apply for and receive grants or other funds or gifts from public or private agencies.
3. Cooperate and contract with other governmental agencies, including other states and the Federal Government.
4. Conduct investigations, research and technical studies consistent with the general purposes of NRS 445B.100 to 445B.640, inclusive.
5. Prohibit as specifically provided in NRS 445B.300 and 445B.320 and as generally provided in NRS 445B.100 to 445B.640, inclusive, the installation, alteration or establishment of any equipment, device or other article capable of causing air pollution.

6. Require the submission of such preliminary plans and specifications and other information as it deems necessary to process permits.

7. Enter into and inspect at any reasonable time any premises containing an air contaminant source or a source under construction for purposes of ascertaining compliance with NRS 445B.100 to 445B.640, inclusive.

8. Specify the manner in which incinerators may be constructed and operated.

9. Institute proceedings to prevent continued violation of any order issued by the Director and to enforce the provisions of NRS 445B.100 to 445B.640, inclusive.

10. Require access to records relating to emissions which cause or contribute to air pollution.

11. Take such action in accordance with the rules, regulations and orders promulgated by the Commission as may be necessary to prevent, abate and control air pollution.

(Added to NRS by 1973, 1808)—(Substituted in revision for NRS 445.473)

NRS 445B.235 [445.474] Additional powers of Department. In carrying out the purposes of NRS 445B.100 to 445B.640, inclusive, the Department may, if it considers it necessary or appropriate:

1. Cooperate with appropriate federal officers and agencies of the Federal Government, other states, interstate agencies, local governmental agencies and other interested parties in all matters relating to air pollution control in preventing or controlling the pollution of the air in any area.

2. On behalf of this state, apply for and receive funds made available to the State for programs from any private source or from any agency of the Federal Government under the Federal Act. All moneys received from any federal agency or private source as provided in this section shall be paid into the State Treasury and shall be expended, under the direction of the Department, solely for the purpose or purposes for which the grant or grants have been made.

3. Certify to the appropriate federal authority that facilities are in conformity with the state program and requirements for control of air pollution, or will be in conformity with the state program and requirements for control of air pollution if such facility is constructed and operated in accordance with the application for certification.

4. Develop measures for control of air pollution originating in the State.

(Added to NRS by 1973, 1809)—(Substituted in revision for NRS 445.474)

NRS 445B.240 [445.476] Power of representatives of Department to enter and inspect premises.

1. Any duly authorized officer, employee or representative of the Department may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640, inclusive, and rules and regulations in force pursuant thereto.

2. No person shall:

(a) Refuse entry or access to any authorized representative of the Department who requests entry for purposes of inspection, as provided in this section, and who presents appropriate credentials.

(b) Obstruct, hamper or interfere with any such inspection.

3. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

(Added to NRS by 1971, 1194; A 1973, 1815)—(Substituted in revision for NRS 445.476)

NRS 445B.245 [445.477] Power of Department to perform or require test of emissions from stacks. The Department may perform a stack source emission test or require the source owner or operator to have such test made prior to approval or prior to the continuance of an operating permit or similar class of permits.

(Added to NRS by 1973, 1810; A 1975, 1405)—(Substituted in revision for NRS 445.477)

LOCAL HEARING BOARD

NRS 445B.275 [445.481] Creation; members; terms.

1. The governing body of any district, county or city authorized to operate an air pollution control program pursuant to NRS 445B.100 to 445B.640, inclusive, may appoint an air pollution control hearing board.

2. The air pollution control hearing board appointed by a county, city or health district must consist of seven members who are not employees of the State or any political subdivision of the State. One member of the hearing board must be an attorney admitted to practice law in Nevada, one member must be a professional engineer licensed in Nevada and one member must be licensed in Nevada as a general engineering contractor or a general building contractor as defined by NRS 624.215. Three must be appointed for a term of 1 year, three must be appointed for a

term of 2 years and one must be appointed for a term of 3 years. Each succeeding term must be for a period of 3 years.

(Added to NRS by 1971, 1195; A 1973, 1815; 1975, 1782; 1997, 1068)

NRS 445B.280 [445.486] Attendance of witnesses at hearing; contempt; compensation.

1. The district court in and for the county in which any hearing is being conducted may compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpoena issued by the chairman of the hearing.

2. In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena the chairman may report to the district court in and for the county in which the hearing is held, by petition setting forth:

(a) That due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) That the witness has been subpoenaed in the manner prescribed in NRS 445B.100 to 445B.640, inclusive; and

(c) That the witness has failed and refused to attend or produce the papers required by subpoena in the hearing named in the subpoena, or has refused to answer questions propounded to him in the course of such hearing,

➥and asking an order of the court compelling the witness to attend and testify or produce the books or papers in the hearing.

3. The court, upon petition of the chairman, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers in the hearing. A certified copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued by the chairman, the court shall thereupon enter an order that the witness appear in the hearing at the time and place fixed in the order and testify or produce the required books or papers, and upon a failure to obey the order the witness shall be dealt with as for contempt of court.

4. Witnesses may be compensated in the amounts provided in NRS 50.225.

(Added to NRS by 1971, 1195; A 1973, 1816)—(Substituted in revision for NRS 445.486)

PROVISIONS FOR ENFORCEMENT

NRS 445B.300 [445.491] Operating permit for source of air contaminant; notice and approval of proposed construction; administrative fees; failure of Commission or Department to act.

1. The Commission shall by regulation:

(a) Require the person operating or responsible for the existence of each source of air contaminant, generally or within a specified class or classes, to apply for and obtain an operating permit for the source.

(b) Require that written notice be given to the Director before the construction, installation, alteration or establishment of any source of air contaminant or of any specified class or classes of such sources, or the alteration of any device intended primarily to prevent or reduce air pollution. If within the time prescribed by regulation the Director determines that:

(1) The proposed construction, installation, alteration or establishment will not be in accordance with the provisions of the plans, specifications and other design material required to be submitted under NRS 445B.100 to 445B.640, inclusive, or applicable regulations; or

(2) The design material or the construction itself is of such a nature that it patently cannot bring such source into compliance with NRS 445B.100 to 445B.640, inclusive, or applicable regulations,

➥the Director shall issue an order prohibiting the construction, installation, alteration or establishment of the source or sources of air contaminant.

2. The Commission shall by regulation provide for:

(a) The issuance, renewal, modification, revocation and suspension of operating permits, and charge appropriate fees for their issuance in an amount sufficient to pay the expenses of administering NRS 445B.100 to 445B.640, inclusive, and any regulations adopted pursuant to those sections.

(b) The issuance of authorizations for the issuance of building permits pursuant to paragraph (a) of subsection 2 of NRS 445B.320.

3. Any failure of the Commission or the Department to issue a regulation or order to prohibit any act does not relieve the person so operating from any legal responsibility for the construction, operation or existence of the source of air contaminant.

4. All administrative fees collected by the Commission pursuant to subsection 2 must be accounted for separately and deposited in the State General Fund for credit to the Account for the Management of Air Quality. This subsection does not apply to any fees collected by political subdivisions or their agencies.

(Added to NRS by 1971, 1196; A 1973, 1816; 1993, 2853)—(Substituted in revision for NRS 445.491)

NRS 445B.310 [445.493] Limitations on enforcement of federal and state regulations concerning indirect sources.

1. If any federal regulations relating to indirect sources become effective after January 17, 1977, the authority of a state agency to review new indirect sources may be exercised only:

(a) In the enforcement of those federal regulations; and

(b) To the extent enforcement by the state agency is required by the Federal Act.

2. The local air pollution control agency may enforce within its jurisdiction against existing indirect sources any federal or state regulations relating to indirect sources or any regulations it adopts relating to indirect sources, to the extent that:

(a) Local enforcement is not inconsistent with the requirements of any federal law or regulation; and

(b) Enforcement is necessary to comply with the federal standards for ambient air quality.

(Added to NRS by 1975, 1781; A 1977, 1559; 1981, 1539; 1985, 290; 1991, 1380)—(Substituted in revision for NRS 445.493)

NRS 445B.320 [445.496] Approval of plans and specifications required before construction or alteration of structure.

1. The Commission shall require, with respect to all sources of air contaminant, including indirect sources, that plans, specifications and such other information as the Commission may direct be submitted to the Director not later than a specified interval before the construction or alteration of a building or other structure if such construction or alteration includes the establishment or alteration of a source or indirect source of air contaminant.

2. The local government authority, if any, responsible for issuing any required building permit shall not issue such building permit:

(a) Until the Department has given its authorization therefor, pursuant to regulation of the Commission.

(b) If a stop order prohibiting such construction or alteration has been issued.

(Added to NRS by 1971, 1197; A 1973, 1817; 1977, 1559; 1993, 2854)—(Substituted in revision for NRS 445.496)

NRS 445B.340 [445.498] Appeals to Commission: Notice of appeal. A party aggrieved may file notice of appeal with the Commission within 10 days after the date of notice of action of the Department, except as otherwise provided by law.

(Added to NRS by 1973, 1809)—(Substituted in revision for NRS 445.498)

NRS 445B.350 [445.499] Appeals to Commission: Hearings.

1. Within 20 days after receipt of the notice of appeal provided for in NRS 445B.340, the Commission shall hold a hearing.

2. Notice of the hearing shall be given to all affected parties no less than 5 days prior to the date set for the hearing.

3. The Commission may sit en banc or in panels of three or more to conduct hearings.

4. The attendance of witnesses and the production of documents may be subpoenaed by the Commission at the request of any party. Witnesses shall receive the fees and mileage allowed witnesses in civil cases. Costs of subpoenas shall be taxed against the requesting party.

5. All testimony shall be given under oath, and recorded verbatim by human or electronic means.

6. For the purpose of judicial review under NRS 445B.560, the parties may agree upon a statement of facts in lieu of a transcript of testimony.

7. Costs of transcribing proceedings of the Commission shall be taxed against the requesting party.

(Added to NRS by 1973, 1809)—(Substituted in revision for NRS 445.499)

NRS 445B.360 [445.501] Appeals to Commission: Appealable matters; action by Commission; regulations.

1. Any person aggrieved by:

(a) The issuance, denial, renewal, modification, suspension or revocation of an operating permit; or

(b) The issuance, modification or rescission of any other order,

➥by the Director may appeal to the Commission.

2. The Commission shall affirm, modify or reverse any action taken by the Director which is the subject of the appeal.

3. The Commission shall provide by regulation for the time and manner in which appeals are to be taken to the Commission.

(Added to NRS by 1971, 1197; A 1973, 1818; 1977, 69; 1993, 2854)—(Substituted in revision for NRS 445.501)

VIOLATIONS

NRS 445B.450 [445.526] Notice and order by Director; hearing; alternative procedures.

1. Whenever the Director believes that a statute or regulation for the prevention, abatement or control of air pollution has been violated, he shall cause written notice to be served upon the person or persons responsible for the alleged violation.

2. The notice shall specify:

(a) The statute or regulation alleged to be violated; and

(b) The facts alleged to constitute the violation.

3. The notice may include an order to take corrective action within a reasonable time, which shall be specified. Such an order becomes final unless, within 10 days after service of the notice, a person named in the order requests a hearing before the Commission.

4. With or without the issuance of an order pursuant to subsection 3, or if corrective action is not taken within the time specified:

(a) The Director may notify the person or persons responsible for the alleged violation to appear before the Commission at a specified time and place; or

(b) The Commission may initiate proceedings for recovery of the appropriate penalty.

5. Nothing in this section prevents the Commission or the Director from making efforts to obtain voluntary compliance through warning, conference or other appropriate means.

(Added to NRS by 1971, 1198; A 1973, 1818; 1975, 1405)—(Substituted in revision for NRS 445.526)

NRS 445B.460 [445.529] Injunctive relief.

1. If, in the judgment of the Director, any person is engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of NRS 445B.100 to 445B.640, inclusive, or any rule, regulation, order or operating permit issued pursuant to NRS 445B.100 to 445B.640, inclusive, the Director may request that the Attorney General apply to the district court for an order enjoining the act or practice, or for an order directing compliance with any provision of NRS 445B.100 to 445B.640, inclusive, or any rule, regulation, order or operating permit issued pursuant to NRS 445B.100 to 445B.640, inclusive.

2. If, in the judgment of the control officer of a local air pollution control board, any person is engaged in or is about to engage in such an act or practice, the control officer may request that the district attorney of the county in which the act or practice is being engaged in or is about to be engaged in apply to the district court for such an order.

3. Upon a showing by the Director or the control officer that a person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order or other appropriate order may be granted by the court.

(Added to NRS by 1973, 1809; A 1993, 2854; 2001, 1295)

PROGRAM FOR CONTROL OF AIR POLLUTION

NRS 445B.500 [445.546] Establishment and administration of program; contents of program; designation of air pollution control agency of county for purposes of federal act; powers and duties of local air pollution control board; notice of public hearings; delegation of authority to determine violations and levy administrative penalties; cities and smaller counties; regulation of certain electric plants prohibited.

1. Except as otherwise provided in this section and in NRS 445B.310:

(a) The district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control of air pollution and administer the program within its jurisdiction unless superseded.

(b) The program:

(1) Must include, without limitation, standards for the control of emissions, emergency procedures and variance procedures established by ordinance or local regulation which are equivalent to or stricter than those established by statute or state regulation;

(2) May, in a county whose population is 400,000 or more, include requirements for the creation, receipt and exchange for consideration of credits to reduce and control air contaminants in accordance with NRS 445B.508; and

(3) Must provide for adequate administration, enforcement, financing and staff.

(c) The district board of health, county board of health or board of county commissioners is designated as the air pollution control agency of the county for the purposes of NRS 445B.100 to 445B.640, inclusive, and the Federal

Act insofar as it pertains to local programs, and that agency is authorized to take all action necessary to secure for the county the benefits of the Federal Act.

(d) Powers and responsibilities provided for in NRS 445B.210, 445B.240 to 445B.470, inclusive, 445B.560, 445B.570, 445B.580 and 445B.640 are binding upon and inure to the benefit of local air pollution control authorities within their jurisdiction.

2. The local air pollution control board shall carry out all provisions of NRS 445B.215 with the exception that notices of public hearings must be given in any newspaper, qualified pursuant to the provisions of chapter 238 of NRS, once a week for 3 weeks. The notice must specify with particularity the reasons for the proposed regulations and provide other informative details. NRS 445B.215 does not apply to the adoption of existing regulations upon transfer of authority as provided in NRS 445B.610.

3. In a county whose population is 400,000 or more, the local air pollution control board may delegate to an independent hearing officer or hearing board its authority to determine violations and levy administrative penalties for violations of the provisions of NRS 445B.100 to 445B.450, inclusive, and 445B.500 to 445B.640, inclusive, or any regulation adopted pursuant to those sections. If such a delegation is made, 17.5 percent of any penalty collected must be deposited in the county treasury in an account to be administered by the local air pollution control board to a maximum of $17,500 per year. The money in the account may only be used to defray the administrative expenses incurred by the local air pollution control board in enforcing the provisions of NRS 445B.100 to 445B.640, inclusive. The remainder of the penalty must be deposited in the county school district fund of the county where the violation occurred.

4. Any county whose population is less than 100,000 or any city may meet the requirements of this section for administration and enforcement through cooperative or interlocal agreement with one or more other counties, or through agreement with the State, or may establish its own program for the control of air pollution. If the county establishes such a program, it is subject to the approval of the Commission.

5. No district board of health, county board of health or board of county commissioners may adopt any regulation or establish a compliance schedule, variance order or other enforcement action relating to the control of emissions from plants which generate electricity by using steam produced by the burning of fossil fuel.

6. For the purposes of this section, "plants which generate electricity by using steam produced by the burning of fossil fuel" means plants that burn fossil fuels in a boiler to produce steam for the production of electricity. The term does not include any plant which uses technology for a simple or combined cycle combustion turbine, regardless of whether the plant includes duct burners.

(Added to NRS by 1971, 1199; A 1973, 1819; 1975, 1126, 1782; 1977, 1559; 1979, 546; 1985, 291; 1991, 2161; 1993, 175; 1997, 1999; 1999, 1976; 2001, 1296, 1515; 2003, 44)

NRS 445B.510 [445.551] Commission may require program for designated area.

1. If the Commission finds that:

(a) The location, character or extent of particular concentrations of population or sources of air contaminant;

(b) Geographic, topographic or meteorological considerations; or

(c) Any combination of these factors,

➥makes impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, it shall after a public hearing define the area so affected.

2. If an areawide air pollution control program is not established by cooperative or interlocal agreement within a time specified by the Commission, the Commission shall establish such a program, which shall be a charge on the counties, and may supersede any local program within the area.

(Added to NRS by 1971, 1200)—(Substituted in revision for NRS 445.551)

NRS 445B.520 [445.556] Commission may establish or supersede county program.

1. If a county required to establish or participate in an air pollution control program fails to do so, or if the Commission believes that a program previously approved is inadequate, it shall hold a public hearing. If it finds that an adequate program has not been adopted or that a program has become inadequate, it shall fix a time within which necessary corrective measures are to be taken.

2. If the prescribed measures are not so taken, the Commission shall direct the Department to administer an adequate air pollution control program within the county, which shall be a charge on the county, and may supersede any existing county air pollution control program.

(Added to NRS by 1971, 1200; A 1973, 1820)—(Substituted in revision for NRS 445.556)

NRS 445B.530 [445.561] Commission may assume jurisdiction over specific classes of air contaminants.

1. If the Commission finds that the control of a particular class of sources of air contaminant because of its complexity or magnitude is beyond the reasonable capability of one or more local air pollution control authorities, it may assume and retain jurisdiction over that class in the county or counties so affected.

2. Sources may be classified for the purpose of this section on the basis of their nature or their size relative to the county in which they are located.

(Added to NRS by 1971, 1200)—(Substituted in revision for NRS 445.561)

NRS 445B.540 [445.566] Restoration of superseded local program; continuation of existing local program.

1. A county or area whose local jurisdiction over air pollution control has been superseded may establish or restore a local air pollution control program if such program is approved as adequate by the Commission.

2. A district, county or city which has an air pollution control program in operation on July 1, 1971, may continue its program if within 1 year after July 1, 1971, the program is approved as adequate by the Commission. Such approval shall be deemed granted unless the Commission specifically disapproves the program after a public hearing. Nothing in NRS 445B.100 to 445B.640, inclusive, is to be construed as invalidating any rule, regulation, enforcement action, variance, permit, cease and desist order, compliance schedule, or any other legal action taken by any existing air pollution control authority pursuant to former NRS 445.400 to 445.595, inclusive, on or before July 1, 1971, unless it is specifically repealed, superseded or disapproved, pursuant to NRS 445B.215.

(Added to NRS by 1971, 1200)—(Substituted in revision for NRS 445.566)

MISCELLANEOUS PROVISIONS

NRS 445B.560 [455.571] Plan or procedure for emergency.

1. The Commission may provide by rules and regulations for alert, warning, and emergency standards and abatement procedures relative to air pollution episodes or emergencies constituting, or likely to constitute, an imminent and substantial danger to the health of persons.

2. Any person responsible for the operation of a source of air contaminants which is designated by the Director shall prepare and submit emergency plans for reducing or eliminating the emissions of air contaminants during such periods of air stagnation or air pollution episodes or emergencies as may be declared by the Director. The emergency plans shall be subject to review and approval by the Director. If, in the opinion of the Director, an emergency plan does not effectively carry out the objective of reducing or eliminating the emissions of air contaminants during periods of air stagnation or air pollution episodes or emergencies, the Director shall disapprove it, state the reason for disapproval, and order the preparation and submission of an amended emergency plan within the time period specified in the order. If an approvable emergency plan is not prepared and submitted within the time period specified in the order, the Director shall issue an emergency plan applicable to that person. Persons subject to the emergency plan shall obey the plan during periods of air stagnation or air pollution episodes or emergencies declared by the Director. The provisions of NRS 445B.360 with respect to appeals do not apply to this subsection.

3. Any other provisions of law to the contrary notwithstanding, if the Director finds that a generalized condition of air pollution exists or that emissions from one or more air contaminant sources occur and that the condition or sources create, or are likely to create, an imminent and substantial danger to health requiring immediate action to protect human health and safety, the Director shall order persons causing or contributing to the air pollution or responsible for the operation of the source to reduce or discontinue immediately the emission of air contaminants. Any person subject to the order may appeal directly to the district court or request a hearing before the Commission.

4. This section does not limit any power of any other state officer to declare an emergency and to act on the basis of such declaration.

(Added to NRS by 1971, 1201; A 1973, 1820)—(Substituted in revision for NRS 445.571)

NRS 445B.570 [445.576] Confidentiality and use of information obtained by Department; penalty.

1. Any information which the Department obtains in the course of the performance of its duties pursuant to the provisions of this chapter is public information unless otherwise designated as confidential information pursuant to the provisions of this section.

2. The emission of an air contaminant which has an ambient air quality standard or emission standard or has been designated as a hazardous air pollutant by regulation of the Commission cannot be certified as being confidential.

3. Any confidential information received by the Commission, the Director or any local control authority which is certified in writing to the recipient as confidential by the owner or operator disclosing the information and verified and approved in writing as confidential by the recipient must, unless the owner expressly agrees to its publication or availability to the public, be used only:

(a) In the administration or formulation of air pollution controls;

(b) In compiling or publishing analyses or summaries relating to the condition of the outdoor atmosphere which do not identify any owner or operator or reveal any confidential information; or

(c) In complying with federal statutes, rules and regulations.

4. This section does not prohibit the use of confidential information in a prosecution for the violation of any statute, ordinance or regulation for the control of air pollution.

5. A person who discloses or knowingly uses confidential information in violation of this section is guilty of a misdemeanor, and is liable in tort for any damages which may result from such disclosure or use.

6. As used in this section, "confidential information" means information or records which:

(a) Relate to dollar amounts of production or sales;

(b) Relate to processes or production unique to the owner or operator; or

(c) If disclosed, would tend to affect adversely the competitive position of the owner or operator.

(Added to NRS by 1971, 1201; A 1973, 1821; 1975, 1405; 1993, 2855)—(Substituted in revision for NRS 445.576)

NRS 445B.580 [445.581] Officer of Department may inspect or search premises; search warrant.

1. It is a condition of the issuance of any operating permit required by the Commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by any authorized officer of the Department at any time during the holder's hours of operation without prior notice. This condition must be stated on each application form and operating permit.

2. If a source of air contaminant exists or is constructed or operated without an operating permit, such an officer may inspect it at any reasonable time, and may enter any premises to search for such a source. If entry is refused, or before attempting to enter, such an officer may apply to any magistrate for a search warrant. The magistrate shall issue the warrant if he believes from the supporting affidavit or affidavits that there is probable cause to believe that a source of air contaminant exists or is being constructed or operated on the premises to be searched.

(Added to NRS by 1971, 1202; A 1973, 1822; 1993, 2855)—(Substituted in revision for NRS 445.581)

NRS 445B.595 [445.586] Governmental sources of air contaminants to comply with state and local provisions regarding air pollution; permit to set fire for training purposes; planning and zoning agencies to consider effects on quality of air.

1. Except as otherwise provided by subsection 2, all governmental sources of air contaminants shall comply with all local and state air pollution laws, regulations and ordinances.

2. A fire department, county fire protection district, fire protection training academy or training center may, after obtaining a permit for a specific site, set a fire at that site for training purposes so long as the site is not within an area in which an air pollution episode or emergency constituting, or likely to constitute, an imminent and substantial danger to the health of persons exists. The permit must be obtained from:

(a) The county air pollution control agency, if one has been designated pursuant to NRS 445B.500; or

(b) The Director, if an agency has not been so designated.

3. All planning commissions, zoning boards of adjustment, and governing bodies of unincorporated towns, incorporated cities and counties shall in the performance of their duties imposed by chapter 278 of NRS or other statutes relating to planning and zoning consider the effects of possible air pollution and shall submit to the Department for evaluation a concise statement of the effects on air quality by complex sources.

(Added to NRS by 1971, 1202; A 1973, 1822; 1975, 1406; 1989, 584)—(Substituted in revision for NRS 445.586)

NRS 445B.600 [445.596] Private rights and remedies not affected. NRS 445B.100 to 445B.595, inclusive, does not abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor in the courts of this state or the courts of the United States on a tort claim against the United States or a federal agency as authorized by federal statutes.

(Added to NRS by 1971, 1202; A 1985, 292)—(Substituted in revision for NRS 445.596)

NRS 445B.610 [445.598] Provisions for transition in administration.

1. All rules, regulations and standards promulgated by the State Commission of Environmental Protection pertaining to air pollution control in force on July 1, 1973, shall remain in effect until such time as revised by the State Environmental Commission pursuant to NRS 445B.100 to 445B.640, inclusive.

2. Any and all action taken by the State Commission of Environmental Protection, including but not limited to existing orders, notices of violation, variances, permits, cease and desist orders and compliance schedules, shall remain in full force and effect and binding upon the State Environmental Commission, the Director, the Department and all persons to whom such action may apply on or after July 1, 1973.

3. In the event that a local air pollution control program described in NRS 445B.500 is transferred in whole or in part from an existing air pollution control agency to another agency, all rules and regulations adopted by the existing agency may be readopted as amended to reflect the transfer of authorities by the new agency immediately upon such transfer, and the provisions of NRS 445B.215 shall not apply to such readoption.

4. If a transfer of local authority as described in subsection 3 occurs, all orders, notices of violation, variances, cease and desist orders, compliance schedules and other legal action taken by the existing air pollution control board, control officer, or hearing board shall remain in full force and effect, and shall not be invalidated by reason of such transfer.

(Added to NRS by 1973, 1810)—(Substituted in revision for NRS 445.598)

PENALTIES

NRS 445B.640 [445.601] Levy and disposition of administrative fines; additional remedies available; penalty.

1. Except as otherwise provided in subsection 4 and NRS 445C.010 to 445C.120, inclusive, any person who violates any provision of NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, or any regulation in force pursuant thereto, other than NRS 445B.570 on confidential information, is guilty of a civil offense and shall pay an administrative fine levied by the Commission of not more than $10,000 per day per offense. Each day of violation constitutes a separate offense.

2. The Commission shall by regulation establish a schedule of administrative fines not exceeding $500 for lesser violations of any provision of NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, or any regulation in force pursuant thereto.

3. Action pursuant to subsection 1 or 2 is not a bar to enforcement of the provisions of NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, regulations in force pursuant thereto, and orders made pursuant to NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, by injunction or other appropriate remedy, and the Commission or the Director may institute and maintain in the name of the State of Nevada any such enforcement proceedings.

4. Any person who fails to pay a fine levied pursuant to subsection 1 or 2 within 30 days after the fine is imposed is guilty of a misdemeanor. The provisions of this subsection do not apply to persons found by the court to be indigent.

5. All administrative fines collected by the Commission pursuant to this section must be deposited in the county school district fund of the county where the violation occurred.

(Added to NRS by 1971, 1202; A 1973, 1822; 1975, 1406; 1977, 70; 1989, 736; 1993, 2856; 1997, 1080)