

STATE OF NEVADA

Department of Conservation & Natural Resources

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

DIVISION OF ENVIRONMENTAL PROTECTION

Colleen Cripps, Ph.D., Administrator

April 10, 2013

Jared Blumenfeld
Regional Administrator
ORA-1, USEPA Region 9
75 Hawthorne Street
San Francisco CA 94105

**RE: The Nevada State Implementation Plan for the 2008 8-Hour Ozone NAAQS:
Demonstration of Adequacy**

Dear Mr. Blumenfeld:

On behalf of Governor Sandoval, as his appointed designee, the Nevada Division of Environmental Protection (NDEP) certifies that with the exception of elements or sub-elements that require a SIP-based program for the prevention of significant deterioration (PSD) of air quality, the existing Nevada applicable state implementation plan (SIP) contains provisions addressing all the "infrastructure" requirements of Clean Air Act (CAA) section 110(a)(2) for the 2008 8-hour ozone national ambient air quality standard (NAAQS). The NDEP is submitting one hard copy and one exact duplicate of the hard copy in electronic form of this certification letter and the following documents as demonstration of the adequacy of Nevada's existing SIP provisions:

- *The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2008 Ozone NAAQS: Demonstration of Adequacy* (Demonstration of Adequacy) and appendices.
- February 25, 2013 letter from the Clark County Department of Air Quality (CCDAQ) transmitting their 2008 ozone NAAQS infrastructure SIP to the NDEP.
- *State Implementation Plan Revision to Meet the Ozone Infrastructure SIP Requirements of the Clean Air Act Section 110(a)(2)* and attachments. Clark County, Nevada.
- April 4, 2013 letter from the Washoe County Health District-Air Quality Management Division (WCHD-AQMD) transmitting their 2008 ozone NAAQS infrastructure SIP to the NDEP.
- *The Washoe County Portion of the Nevada State Implementation Plan for the 2008 Ozone NAAQS: Demonstration of Adequacy* and attachments.

The enclosed demonstrations from each of the three Nevada air agencies are organized in table format and list each CAA section 110(a)(2) element and the existing Nevada SIP provisions that satisfy the requirement in each element. In the absence of guidance from the U.S. Environmental Protection Agency (US EPA) for the 2008 ozone infrastructure SIP, Nevada followed US EPA's October 14, 2011 guidance for lead infrastructure SIPs (US EPA, Memorandum to Regional Air

Division Directors, *Guidance on Infrastructure State Implementation Plan Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)*. S. Page, OAQPS). Nevada's ozone infrastructure SIP selects those regulatory and statutory provisions from the Nevada applicable SIP that address ozone specifically. This should not be interpreted as an intent to exclude other more general provisions from the applicable SIP from applying to ozone sources in Nevada. Further, although some of the SIP provisions cited in the NDEP table may not be in state regulation, nonetheless those provisions support the NDEP's authority to implement, maintain and enforce the 2008 ozone NAAQS because they are incorporated into the NDEP's title V operating permits and are federally enforceable.

We certify that this submittal was properly noticed; evidence of public participation for each portion of Nevada's ozone infrastructure SIP is included with the respective submittals. For the NDEP portion of the SIP, the Administrator of the NDEP has the authority to adopt and submit state implementation plans to US EPA (see Appendix E). The NDEP portion of the ozone infrastructure SIP was public noticed from February 1 through March 6, 2013, and adopted by the NDEP Administrator as of the date of this submittal. The Clark County portion of the ozone infrastructure SIP was adopted by the Clark County Board of Commissioners on February 19, 2013 after a 30-day public notice period. The Washoe County ozone infrastructure SIP was adopted by the Washoe County District Board of Health on February 28, 2013 after a 30-day public notice period. The minutes from that meeting were not available for today's submittal and will be forwarded to US EPA within a month.

With the exception of those elements or sub-elements that depend on a SIP-based PSD program, the NDEP requests that the US EPA propose approval of this certification of the adequacy of the existing Nevada applicable SIP to implement, maintain and enforce the 2008 ozone NAAQS. The NDEP further requests that as provisions in Nevada's applicable SIP are replaced or removed through subsequent approvals by US EPA of SIP revisions submitted by the NDEP, US EPA update the affected provisions in all of Nevada's CAA 110(a)(2) SIPs accordingly.

If you should have any questions about this submittal or require additional clarification, you may contact Rob Bamford, Chief, Bureau of Air Quality Planning at (775) 687-9330.

Sincerely,



Colleen Cripps, Ph.D.
Administrator

Enclosures

cc w/o enclosures:

Cory Hunt, Policy Analyst, Office of the Governor
Amy Zimpfer, Associate Director, Air Division, USEPA Region IX (AIR-1)
Doris Lo, Acting Chief, Planning Office, USEPA Region IX (AIR-2)

Jared Blumenfeld

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Kevin Dick, Director, Air Quality Management Division, Washoe County Health District
Lewis Wallenmeyer, Director, Department of Air Quality & Environmental Management, Clark County

cc w/o enclosures

Leo Drozdoff, Director, Nevada Department of Conservation and Natural Resources

Michael Elges, Deputy Administrator, NDEP

Rob Bamford, Chief, Bureau of Air Quality Planning, NDEP

Certified Mail No. 9171 9690 0935 0011 8845 04

**The Nevada Division of Environmental
Protection Portion of the Nevada State
Implementation Plan for the
2008 Ozone NAAQS:
Demonstration of Adequacy**

April 10, 2013

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Nevada Division of Environmental Protection
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Acronyms and Abbreviations

BART	Best available retrofit technology
CAA	Clean Air Act
CFR	Code of Federal Regulations
FIP	Federal implementation plan
FR	Federal Register
NAAQS	National ambient air quality standard
NDEP	Nevada Division of Environmental Protection
NO _x	Oxides of nitrogen
NAC	Nevada Administrative Code
NRS	Nevada Revised Statute
NSR	New source review
PM _{2.5}	Particulate matter less than or equal to a nominal 2.5 microns in aerodynamic diameter
PM ₁₀	Particulate matter less than or equal to a nominal 10 microns in aerodynamic diameter
PSD	Prevention of significant deterioration
RGGS	Reid Gardner Generating Station
SIP	State implementation plan
US EPA	U.S. Environmental Protection Agency

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Introduction and Background

Sections 110(a)(1) and 110(a)(2), which are generally called the “infrastructure” state implementation plan (SIP) requirements of the Clean Air Act (CAA), require states to submit a plan to the U.S. Environmental Protection Agency (US EPA) demonstrating their ability and authority to implement, maintain, and enforce each newly promulgated or revised national ambient air quality standard (NAAQS). Section 110(a)(1) addresses the timing requirement for the submission of infrastructure SIPs. States are required to submit a statewide infrastructure SIP to the US EPA not later than 3 years after promulgation of a new or revised NAAQS.

Section 110(a)(2) lists the elements, (A) through (M), that generally must be addressed in an infrastructure SIP. Many of the section 110(a)(2) elements relate to the general information and authorities that constitute the infrastructure of a state’s air quality management program. The required elements include: enforceable emission limitations, an ambient air monitoring program, an enforcement program, air quality modeling capabilities, and confirmation of adequate personnel, resources and legal authority.

The federally enforceable applicable SIP for Nevada is compiled in 40 CFR Part 52 Subpart DD. This *Demonstration of Adequacy* addresses the Nevada Division of Environmental Protection’s (NDEP) authority to implement, maintain and enforce the 2008 8-hour ozone NAAQS for the NDEP’s jurisdiction. The following table demonstrates how the NDEP, through its SIP and state programs, addresses each of the applicable requirements of section 110(a)(2). The authorities approved by the US EPA for the 1997 ozone NAAQS (77 FR 64737) remain intact and provide adequate ability and authority to implement, maintain, and enforce the 2008 ozone NAAQS. Although some of the SIP provisions cited may not be in state regulation, they are incorporated into title V operating permits and are federally enforceable.

Per US EPA direction, the NDEP has developed the table in accordance with US EPA’s October 14, 2011 guidance for the 2008 lead NAAQS (US EPA, Memorandum to Regional Air Division Directors, 10/14/11. *Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)*. Stephen D. Page). The description of each required element is taken from the guidance. We have also relied on US EPA’s recent action on Nevada’s ozone and fine particulate matter infrastructure SIPs (77 FR 64737). The statutory and regulatory provisions of the applicable SIP referenced in the table may be viewed in Appendices A and B, respectively.

The following support documents are appended:

APPENDIX A:	State of Nevada Applicable SIP: Statutory Elements
APPENDIX B:	State of Nevada Applicable SIP: Regulatory Elements
APPENDIX C:	Ambient Air Monitoring Network Plan 2012
APPENDIX D:	Element (D)(i)(I) Support Documents
APPENDIX E:	May 30, 2007 letter to the US EPA Region 9 Administrator
APPENDIX F:	Non-SIP provisions cited in Elements A and J
APPENDIX G:	Evidence of Public Participation

**Nevada Applicable State Implementation Plan Provisions for the 2008 8-Hour Ozone NAAQS:
Nevada Division of Environmental Protection Jurisdiction**

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
(A)	<p><u>Emission limits and other control measures:</u> Each such plan shall [. . .] include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.</p> <p><i>Ground level ozone, is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO_x) and volatile organic compounds. The dominant source sectors for NO_x emissions are mobile sources and fuel combustion. Industrial processes, miscellaneous (dominated by waste disposal), and fires are less important source sectors. The dominant source sectors for volatile organic compounds are mobile sources, solvent, and industrial processes. Miscellaneous, fuel combustion, agriculture, and fires are less important source sectors. The Nevada applicable SIP includes enforceable emission limits and other control measures, means, or techniques, as well as schedules for compliance to support element (A) in Nevada Administrative Code (NAC):</i></p> <ul style="list-style-type: none"> • <i>445B.22067 Open burning.</i> • <i>445B.22093 Organic solvents and other volatile compounds.</i> • <i>445B. 22083 Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.</i> • <i>445B.22095 Emission limitation for BART.</i> • <i>445B.22096 Control measures constituting BART; limitations on emissions. *</i> • <i>445B.22097 Standards of quality for ambient air.</i> • <i>445B.308 Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan.</i> • <i>Article 13 “General Provisions for the Review of New Sources.”</i> • <i>445B.310 Environmental evaluation: Applicable sources and other subjects; exemption.</i> • <i>445B.311 Environmental evaluation: Contents; consideration of good engineering practice stack height</i>

¹ The NDEP requests that as provisions in Nevada’s current applicable SIP are replaced or removed through subsequent approvals by US EPA of updated provisions submitted by the NDEP, US EPA also replace or remove those provisions in this ozone infrastructure SIP.

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<p><i>*The best available retrofit technology (BART) emission limits for NO_x at the Reid Gardner Generating Station (RGGGS), as well as compliance method, and compliance schedule listed in NAC 445B.22096 are not in the SIP; rather, US EPA published a Federal Implementation Plan (FIP) (77 FR 50936), which established NO_x emission limits for RGGGS. The Nevada State Environmental Commission adopted the emission limits from the FIP on October 11, 2012.</i></p> <p><i>NAC 445B.221, “Adoption by reference and applicability of certain provisions of federal law and regulations,” has not been submitted as part of Nevada’s SIP, but is in state regulation and further supports this element (see Appendix F).</i></p> <p><i>Finally, the NDEP has full delegation from the US EPA of the federal prevention of significant deterioration (PSD) program as it existed on July 20, 2011 at 40 CFR § 52.21. The PSD program provides a permitting review system to assure that the best controls available are selected before construction of a new major stationary source or modification of an existing major stationary source.</i></p>
(B)	<p><u>Ambient air quality monitoring/data system:</u> Each such plan shall [. . .] provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.</p>
	<p><i>The NDEP commits to an ambient air quality monitoring program in its CAA section 105 grant work plan. The NDEP operates an air quality monitoring network that collects ambient air quality data that are compiled, analyzed, and reported to US EPA in accordance with 40 CFR 58. The network comprises federally-approved monitors that measure PM₁₀, PM_{2.5} and ozone. The NDEP submitted its 2012 Annual Monitoring Network Plan to US EPA on June 30, 2012 (Appendix C). US EPA indicated in a letter received by the NDEP on February 28, 2013 that the details of the NDEP’s monitoring network, except for five items that they did not act on, meet the requirements set forth under 40 CFR Part 58.10.</i></p> <p><i>The NDEP’s monitoring network satisfies US EPA’s requirements for the 2008 ozone NAAQS (Appendix C).</i></p>
(C)	<p><u>Programs for enforcement, PSD, and NSR:</u> Each such plan shall [. . .] include a program to provide for the enforcement of the measures described in subparagraph [element] (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter.</p>
	<p><i>The Nevada applicable SIP contains the following provisions that provide enforcement authority.</i></p>

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<p>NRS:</p> <ul style="list-style-type: none"> • 445B.210 Powers of Commission. • 445B.230 Powers and duties of Department. • 445B.450 Notice and order by Director; hearing; alternative procedures. • 445B.460 Injunctive relief. • 445B.640 Levy and disposition of administrative fines; additional remedies available; penalty. <p>NAC:</p> <ul style="list-style-type: none"> • 445B.225 Prohibited conduct: Concealment of emissions. • 445B.227 Prohibited conduct: Operation of source without required equipment; removal or modification of required equipment; modification of required procedure. • 445B.229 Hazardous emissions: Order for reduction of emissions. • 445.667 Excess emissions: Scheduled maintenance; testing; malfunctions. • 445B.250 Notification of planned construction or reconstruction. • 445B.252 Testing and sampling. • 445.694 Emission discharge information. • 445B.275 Violations: Acts constituting; notice. • 445B.277 Stop orders. • 445B.308 Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan. • 445B.310 Environmental evaluation: Applicable sources and other subjects; exemption. • 445B.311 Environmental evaluation: Contents; consideration of good engineering practice stack height. • Article 13 General Provisions for the Review of New Sources. <p>The NDEP does not have a SIP-based program to prevent significant deterioration of air quality; however, pursuant to 40 CFR 52.21(u), the US EPA has delegated its responsibility for implementation of the federal PSD program as it existed on July 20, 2011 to the NDEP, thus helping to meet the requirements of this element</p>
(D)(i)	<u>Interstate transport provisions:</u>

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<p>Each such plan shall [...] contain adequate provisions: (i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will, (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility.</p>
	<p><u>(D)(i)(I)</u> <i>Gina McCarthy, Assistant Administrator of the US EPA issued a memo on November 19, 2012 to EPA Air Division Directors, Regions 1-10, regarding states' and US EPA's obligations with respect to the requirements of (D)(i)(I). Ms. McCarthy notes:</i></p> <p><i>"I would also like to note that the recent CSAPR decision made certain holdings regarding the requirement for states to submit SIPs addressing the provisions of Clean Air Act section 110(a)(2)(D)(i)(I), the good neighbor provision that addresses upwind emissions linked to NAAQS attainment problems in downwind states. The decision states that a SIP cannot be deemed deficient for failing to meet the good neighbor obligation before the EPA quantifies that obligation. Although we have filed a petition for rehearing of the Court's decision, including this element of the decision, and although the mandate for that decision has not yet been issued, we intend to act in accordance with the decision during the pendency of the appeal. Therefore, at this time the EPA does not intend to make findings that states failed to submit SIPs to comply with section 110(a)(2)(D)(i)(I). To the extent that states may inquire about their obligations to submit SIPs addressing this provision, we believe it would be appropriate to convey that at this time we do not intend to make such findings with respect to section 110(a)(2)(D)(i)(I)."</i></p> <p><i>Because US EPA has not informed Nevada of its contribution to any ozone NAAQS attainment problem in downwind states, the NDEP concludes that it is not obligated to address this requirement at this time. Nevertheless, we present the following information to show that emissions from Nevada do not contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone standard in downwind states. Nevada relies first on the modeling work conducted by US EPA to determine which states should be included in the Clean Air Interstate Rule (CAIR). US EPA's CAIR analysis identified states contributing significantly to nonattainment of ozone in adjacent states; US EPA determined that Nevada is not subject to the CAIR.</i></p> <p><i>"In analyzing significant contribution to nonattainment, we determined it was reasonable to exclude the Western U.S., including the States of Washington, Idaho, Oregon, California, Nevada, Utah and Arizona from further analysis due to geography, meteorology, and topography. Based on these factors, we concluded that the PM 2.5 and 8-hour ozone nonattainment problems are not likely to be affected significantly by pollution transported across these States' boundaries. Therefore, for the purpose of assessing State's</i></p>

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contributions to nonattainment in other States, we have only analyzed the nonattainment counties located in the rest of the U.S.”²

Next, the NDEP has identified nearby nonattainment areas from the US EPA map of 8-Hour Ozone Nonattainment Areas (2008 Standard) (Appendix D) and evaluated the potential impact from emissions in Nevada to those nonattainment areas. The nearest nonattainment areas are located in Phoenix, Arizona and throughout mid and southern California. There are no ozone maintenance areas adjacent to Nevada. The NDEP relies on wind rose plots for Reno and Las Vegas, Nevada, Phoenix, Arizona, and Sacramento and Edwards Air Force Base, California, in the following discussion (Appendix D).

Arizona

The Phoenix nonattainment area is 300 miles from Las Vegas in a southeasterly direction. Wind data from the Phoenix Sky Harbor International Airport for 2003 through 2011 show that the prevailing winds in Phoenix come mainly from the east and to a lesser degree from the west. Meteorological data at the McCarran International Airport in Las Vegas indicate that the prevailing winds in Las Vegas are from the southwest. We can assume that winds leaving the Las Vegas area would blow northeast or easterly, and not toward Phoenix (southeasterly). Based on this meteorological data, the NDEP finds it reasonable to conclude that the Phoenix nonattainment area is not significantly influenced by winds from Nevada.

California

The California ozone nonattainment areas are west, southwest and northwest of Las Vegas and west and southwest of Reno. The NDEP reviewed meteorological data for Edwards Air Force Base (~215 miles by road southwest of Las Vegas) from 2005 through 2011, and Sacramento (~130 miles by road west-southwest of Reno) from 2003 through 2011, as a general indication of wind direction for the California nonattainment areas. The prevailing winds at Edwards AFB are from the west or southwest and from the south at Sacramento, clearly not from Nevada. Meteorological data at the McCarran International Airport in Las Vegas indicate that the prevailing winds at Las Vegas are from the southwest and from the west or northwest for Reno. We can assume that winds leaving the Las Vegas area would blow northeast or easterly, not toward the California nonattainment areas; and winds

² See “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule,” 69 FR at 4581, January 30, 2004, Preamble, first full paragraph, middle column.

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<p><i>leaving the Reno area would blow east or southeast, again not toward the California nonattainment areas.</i></p> <p><i>There are no ozone nonattainment areas in Nevada We also point out that Nevada’s interstate transport SIP for the 1997 ozone NAAQS was approved by US EPA on July 31, 2007 (72 FR 41629).</i></p> <p><i>Based on the above information, the State of Nevada concludes that ozone and ozone precursor emissions from Nevada do not contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone standard in any other state. Nevada commits to continue to review new air quality information as it becomes available to ensure that this negative declaration is still supported by such information.</i></p> <p><u><i>(D)(i)(II)</i></u> <i>New major sources and major modifications in Nevada are subject to PSD. The NDEP does not have a SIP-based program to prevent significant deterioration of air quality; however, pursuant to 40 CFR 52.21(u), the US EPA has delegated its responsibility for implementation of the federal PSD program to the NDEP as it existed on July 20, 2011 thus meeting the requirements of (D)(i)(II). The visibility requirements of subsection (D)(i)(II) are addressed by the “Nevada Regional Haze State Implementation Plan.” US EPA finalized approval of most of the Nevada regional haze SIP on March 26, 2012 (77 FR 17334). US EPA approved in part and disapproved in part the remaining portion of the regional haze SIP on August 23, 2012 (77 FR 50936). In the same action, US EPA promulgated a FIP replacing the disapproved provisions of the State plan.</i></p>
(D)(ii)	<p><u>Interstate and international transport provisions:</u> Each such plan shall [. . .] contain adequate provisions: (ii) insuring compliance with the applicable requirements of CAA sections 115 or 126 that involve ozone emissions (relating to interstate and international pollution abatement).</p>
	<p><u>CAA section 115</u> <i>The requirements of section 115 do not apply, because there are no actions pending against Nevada.</i></p> <p><u>CAA section 126</u> <i>The requirements of section 126 (b) and (c) do not apply, because there are no petitions pending against Nevada. The following provisions (NAC) of the Nevada applicable SIP address the CAA section 126(a) requirements regarding notification to affected nearby states of major proposed new or modified sources. [see also elements (J) and (M)]:</i></p> <ul style="list-style-type: none"> • <i>445B.325 Operating permits: Termination, reopening and revision, revision, or revocation and reissuance.</i>

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<ul style="list-style-type: none"> • 445B.3364 <i>Operating permit to construct: Action by Director on application; notice; public comment and hearing.</i> • 445B.3395 <i>Action by Director on application; notice; public comment and hearing; objection by Administrator; expiration of permit.</i> • 445B.3425 <i>Minor revision of permit.</i> • 445B.344 <i>Significant revision of permit.</i> • 445B.3441 <i>Administrative revision of permit to incorporate conditions of certain permits to construct.</i> • 445B.3457 <i>Action by Director on application; notice; public comment and hearing; expiration of permit.</i> <p><i>In addition, although the NDEP does not have a SIP-based program to prevent significant deterioration of air quality, pursuant to 40 CFR 52.21(u), the US EPA has delegated its responsibility for implementation of the federal prevention significant deterioration (PSD) program as it existed on July 20, 2011 to the NDEP. The federal PSD program also addresses the section 126(a) notification requirements.</i></p>
(E)	<p><u>Adequate personnel, funding and authority:</u> Each such plan shall [. . .] provide:</p> <p>(i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof),</p> <p>(ii) requirements that the state comply with the requirements respecting state boards under section 128, (See section 40 CFR 52.1182, http://edocket.access.gpo.gov/cfr_2004/julqtr/pdf/40cfr52.1180.pdf)</p> <p>(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.</p>
	<p><i>NRS 445B.205, "Department designated as State Air Pollution Control Agency," designates the Department of Conservation and Natural Resources as the air pollution control agency for the State of Nevada for the purposes of the CAA insofar as it pertains to state programs. Within the Department, pursuant to NAC 445B.053 ("Director" defined), the Director has assigned the NDEP responsibility to manage air quality planning and air pollution control programs for the State and to act on his behalf for the purposes of adoption, revision and submittal of state plans (see Appendix E).</i></p>

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The specific statutes in the Nevada applicable SIP that deal with personnel, funding, authority to support SIP requirements, CAA section 128 requirements, and state responsibility for implementing the SIP include NRS:

- *232A.020 Residency requirement for appointment; terms of members; vacancies; qualification of member appointed as representative of general public; gubernatorial appointee prohibited from serving on more than one board, commission or similar body.*
- *281A.150 Public employee defined.*
- *281A.160 Public officer defined.*
- *281A.400 General requirements: exceptions.*
- *281A.410 Limitations on representing or counseling private persons before public agencies; disclosure required by certain public officers.*
- *281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions. 445B.200 Creation and composition; Chairman; quorum; compensation of members and employees; disqualification; technical support.*
- *445B.210 Powers of Commission.*
- *445B.220 Additional powers of Commission.*
- *445B.225 Power of Commission to require testing of sources.*
- *445B.230 Powers and duties of Department.*
- *445B.235 Additional powers of Department.*
- *445B.240 Power of representatives of Department to enter and inspect premises.*
- *445B.245 Power of Department to perform or require test of emissions from stacks.*
- *445B.300 Operating permit for source of air contaminant; notice and approval of proposed construction; administrative fees; failure of Commission or Department to act.*
- *445B.450 Notice and order by Director; hearing; alternative procedures.*
- *445B.460 Injunctive relief.*
- *445B.500 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*

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<p><i>certain electric plants prohibited.</i></p> <ul style="list-style-type: none"> • 445B.510 Commission may require program for designated area. • 445B.520 Commission may establish or supersede county program. • 445B.530 Commission may assume jurisdiction over specific classes of air contaminants. • 445B.540 Restoration of superseded local program; continuation of existing local program. • 445B.560 Plan or procedure for emergency. • 445B.570 Confidentiality and use of information obtained by Department; penalty. • 445B.580 Officer of Department may inspect or search premises; search warrant. • 445B.640 Levy and disposition of administrative fines; additional remedies available; penalty for failure to pay administrative fine. <p><i>Further, Section 12 (“Resources”) of the Nevada applicable SIP, updated effective October 23, 2012 (77 FR 64737), provides information concerning funding and personnel supporting the functions of the three air pollution control agencies administering CAA programs in Nevada: the NDEP, Clark County Department of Air Quality, and Washoe County Health District Air Quality Management Division.</i></p> <p><i>The Nevada Legislature approves the NDEP air programs’ funding and personnel resources requests every two years. The air programs receive funding from fees paid by regulated businesses, motor vehicle registration fees, and federal grants. The NDEP’s State Fiscal Year 2012 budget is in excess of \$7 million with 54 approved full-time equivalent staff positions in the air programs.</i></p>
(F)	<p><u>Stationary source monitoring and reporting:</u></p> <p>Each such plan shall [. . .] require, as may be prescribed by the Administrator:</p> <ul style="list-style-type: none"> (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such source, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.
	<p><i>Nevada’s applicable SIP provides a system for monitoring emissions from stationary sources and the submittal of periodic emission reports in NAC:</i></p> <ul style="list-style-type: none"> • 445B.063 “Excess emissions” defined.

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<ul style="list-style-type: none"> • 445B.252 Testing and sampling. • 445B.256 Monitoring systems: Calibration, operation, and maintenance of equipment. • 445B.257 Monitoring systems: Location. • 445B.258 Monitoring systems: Verification of operational status. • 445B.259 Monitoring systems: Performance evaluations. • 445B.260 Monitoring systems: Components contracted for before September 11, 1974. • 445B.261 Monitoring systems: Adjustments. • 445B.262 Monitoring systems: Measurement of opacity. • 445B.263 Monitoring systems: Frequency of operation. • 445B.264 Monitoring systems: Recordation of data. • 445B.265 Monitoring systems: Records; reports. • 445B.267 Alternative monitoring procedures or requirements. • 445B.275 Violations: Acts constituting; notice. • 445B.308 Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan. [See paragraph (a) of subsection (7).] • 445B.315(3) Contents of operating permits: Exception for operating permits to construct; required conditions. • 445B.3368 Additional requirements for application; exception. • 445B.346 Required contents of permit. <p>NRS 445B.570 is also supportive of the portion of the CAA section 110(a)(2)(F)(iii) requirement pertaining to the public availability of reports.</p> <p>Ambient air quality monitoring data and trends are reported annually in the Nevada Air Quality Trend Report. This report indirectly correlates stationary source emissions with the NAAQS. It is available for public inspection on the NDEP's web site at http://ndep.nv.gov/baqp/monitoring/docs/trend.pdf. Additionally, the state submits stationary source emissions data to US EPA for publication in the annual National Emission Inventory, which is also available for public inspection.</p>
(G)	<u>Emergency episodes:</u> Each such plan shall provide for authority comparable to that in section 303 of this title and adequate contingency plans to

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	implement such authority.
	<p><i>Emergency powers are provided in Nevada's current SIP in:</i></p> <ul style="list-style-type: none"> • <i>NRS 445B.560 Plan or procedure for emergency.</i> • <i>NAC 445B.229 Hazardous emissions: Order for reduction or discontinuance.</i> • <i>NAC 445B.230 Plan for reduction of emissions.</i> <p><i>The provisions cited above are adequate to constrain any sources of ozone precursor emissions, as necessary, in an emergency situation. The NDEP's jurisdiction is classified as a Priority III area for particulate matter, carbon monoxide, nitrogen dioxide and ozone. Priority III areas are not required to prepare emergency episode plans.</i></p>
(H)	<p><u>Future SIP revisions:</u> Each such plan shall [. . .] provide for revision of such plan—</p> <p>(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and</p> <p>(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter (CAA).</p>
	<p><i>NRS 445B.205, "Department designated as State Air Pollution Control Agency," designates the Department of Conservation and Natural Resources as the air pollution control agency for the State of Nevada for the purposes of the CAA insofar as it pertains to state programs. Within the Department, pursuant to NAC 445B.053 ("Director" defined), the Director has assigned the NDEP Administrator responsibility to manage air quality planning and air pollution control programs for the State and to act on his behalf for the purposes of adoption, revision and submittal of state plans (see Appendix E). The NDEP commits to submit appropriate SIP revisions in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to a US EPA finding that the SIP is substantially inadequate.</i></p> <p><i>Other NRS that may provide support for this element include:</i></p> <ul style="list-style-type: none"> • <i>445B.135 "Federal Act" defined.</i> • <i>445B.210 Powers of Commission.</i> • <i>445B.220 Additional powers of Commission.</i> • <i>445B.500 Establishment and administration of program; contents of program; designation of air pollution control agency of</i>

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<i>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.</i>
(I)	<p><u>Nonattainment area plan or plan revision under Part D:</u> Each such plan shall [. . .] in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).</p>
	<i>US EPA considers this element of 110(a)(2) to be outside the scope of infrastructure SIP actions because it pertains to plan requirements for nonattainment areas. Therefore, US EPA does not expect infrastructure SIP submissions to address this element (US EPA, Memorandum to Regional Air Division Directors, 10/14/11. Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS). S. Page).</i>
(J)	<p><u>Consultation with government officials, public notification, PSD and visibility protection:</u> Each such plan shall [. . .] meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection).</p>
	<p><u>CAA Section 121</u> <i>Section 11 of the Nevada applicable SIP, “Intergovernmental Relations,” describes the process for consultation among the three air pollution control agencies administering CAA programs in Nevada: NDEP, Clark County Department of Air Quality, and Washoe County Health District’s Air Quality Management Division, as well as for regional planning and transportation agencies that also have certain air-quality-planning-related responsibilities. It identifies the applicable state and local provisions governing consultation; describes provisions relevant to consultation in permitting new or modified stationary sources; and, for Clark County, Washoe County and the Lake Tahoe Basin, addresses consultation’s role in transportation planning and conformity to the Nevada applicable SIP.</i></p> <p><i>Together with Section 11, the following SIP provisions fulfill the requirements of CAA section 121.</i></p> <p><i>NRS:</i></p> <ul style="list-style-type: none"> • <i>445B.220 Additional powers of Commission.</i> • <i>445B.235 Additional powers of Department.</i> • <i>445B.500 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;</i>

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<p><i>delegation of authority to determine violations and levy administrative penalties; cities and small counties; regulation of certain electric plants provided.</i></p> <ul style="list-style-type: none"> • <i>445B.503 Local air pollution control board in county whose population is 400,000 or more: Cooperation with regional planning coalition and regional transportation commission; prerequisites to adoption or amendment of plan, policy or program.</i> • <i>445B.510 Commission may require program for designated areas.</i> <p><i>NAC:</i></p> <ul style="list-style-type: none"> • <i>445B.325 Operating permits: Termination, reopening and revision, revision, or revocation and reissuance.</i> • <i>445B.3364 Operating permit to construct: Action by Director on application; notice; public comment and hearing.</i> • <i>445B.3395 Action by Director on application; notice; public comment and hearing; objection by Administrator; expiration of permit.</i> • <i>445B.3425 Minor revision of permit.</i> • <i>445B.344 Significant revision of permit.</i> • <i>445B.3441 Administrative revision of permit to incorporate conditions of certain permits to construct.</i> • <i>445B.3447 Class I general permit.</i> • <i>445B.3457 Action by Director on application; notice; public comment and hearing; expiration of permit.</i> <p><i>The following provisions have not been submitted as part of Nevada's SIP, but are in state law or regulation and further support this element requirement (see Appendix F).</i></p> <p><i>NRS Chapter 445B, Air Pollution:</i></p> <ul style="list-style-type: none"> • <i>445B.100 Declaration of public policy.</i> <p><i>NRS Chapter 233B, Nevada Administrative Procedure Act, requires notification and provision of comment opportunities to all parties affected by proposed regulations:</i></p> <ul style="list-style-type: none"> • <i>233B.060 Notice of adoption, amendment or repeal of permanent or temporary regulation; adoption of permanent regulation after adoption of temporary regulation.</i> • <i>233B.0603 Contents and form of notice of intent to adopt, amend or repeal permanent or temporary regulation; solicitation of comments from public or affected businesses.</i> • <i>233B.061 Proposed permanent or temporary regulation: Public comment; workshop; public hearing; applicability of Open</i>

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<p><i>Meeting Law.</i></p> <p><i>Additionally, NAC 445B.221, “Adoption by reference and applicability of certain provisions of federal law and regulations,” adopts the federal PSD requirements by reference and thereby includes requirements to consult with affected land managers on PSD-related actions.</i></p> <p><u>Section 127</u> <i>Effective July 20, 2012 the entire state of Nevada is designated unclassifiable/attainment for the 2008 8-hour ozone NAAQS. The NDEP maintains a web site, http://ndep.nv.gov/, which describes the state’s air quality planning and air pollution control programs and includes public information pages with public notices and news releases. The Nevada Air Quality Trend Report (http://ndep.nv.gov/baqp/monitoring/docs/trend.pdf) is published annually and includes a discussion of air quality trends with respect to the NAAQS.</i></p> <p><u>Part C</u> <i>The NDEP does not have a SIP-based program to prevent significant deterioration of air quality; however, pursuant to 40 CFR 52.21(u), the US EPA has delegated its responsibility for implementation of the federal prevention significant deterioration (PSD) program as it existed on July 20, 2011 to the NDEP. With respect to visibility protection, US EPA does not expect to treat this provision as applicable for purposes of the infrastructure SIP approval process (US EPA Memorandum 10/14/11, Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS). S. Page). For informational purposes, the NDEP submitted a regional haze SIP to US EPA on November 18, 2009. US EPA approved the entire RH SIP, with the exception of certain requirements for BART for NO_x at NV Energy’s Reid Gardner Generating Station (77 FR 17334). On August 23, 2012, US EPA approved in part and disapproved in part the remaining portion of the regional haze SIP (77 FR 50936). In the same action, US EPA promulgated a FIP replacing the disapproved provisions of the State plan.</i></p>
(K)	<p><u>Air quality modeling/data:</u> Each such plan shall [. . .] provide for—</p> <p>(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and</p> <p>(ii) the submission, upon request, of data related to such air quality modeling to the Administrator.</p>
	<p><i>Nevada’s applicable SIP provides provisions for the environmental evaluation of stationary sources in:</i></p>

SECTION 110(a)(2) ELEMENT	CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP ¹
	<ul style="list-style-type: none"> • <i>NAC 445B.308 Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan.</i> • <i>NAC 445B.310 Environmental evaluation: Applicable sources and other subjects; exemption.</i> • <i>NAC 445B.311 Environmental evaluation: Contents; consideration of good engineering practice stack height.</i> • <i>Article 13 General Provisions for the Review of New Sources.</i> <p><i>Together with the NDEP's full delegation of the federal PSD program, these regulations satisfy the requirements of this element.</i></p>
(L)	<p><u>Permitting fees:</u> Each such plan shall require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—</p> <ul style="list-style-type: none"> (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter (title) V of this chapter.
	<p><i>In US EPA's Technical Support Document ("Overarching" TSD) for their October 23, 2012 action on Nevada's 1997 ozone, 1997 PM_{2.5} and 2006 PM_{2.5} NAAQS infrastructure SIP submittals, they note that, ". . . the permitting fee requirement under CAA section 110(a)(L) is superseded by EPA approval of a fee program under title V of the CAA, and we [EPA] have approved the title V programs of NDEP, Clark County, and Washoe County." (77 FR 64737) Thus, a separate program to satisfy element (L) is not required.</i></p>
(M)	<p><u>Consultation/participation by affected local entities:</u> Each such plan shall [. . .] provide for consultation and participation by local political subdivisions affected by the plan.</p>
	<p><i>The following applicable SIP provisions provide a framework for consultation in the development of SIPs or SIP revisions.</i></p> <p><i>NRS:</i></p> <ul style="list-style-type: none"> • <i>445B.210 Powers of Commission.</i> • <i>445B.220 Additional powers of Commission.</i> • <i>445B.235 Additional powers of Department; deposit of money collected from sale of emission credits or allocations; Department to develop regulations concerning public participation in determination of amount of emission credits or allocations available for sale.</i>

**SECTION
110(a)(2)
ELEMENT**

CURRENT PROGRAMS AND PROVISIONS IN THE NEVADA APPLICABLE SIP¹

Section 11 of the Nevada applicable SIP, "Intergovernmental Relations," describes the process for consultation among the three air pollution control agencies administering CAA programs in Nevada: NDEP, Clark County Department of Air Quality, and Washoe County Health District's Air Quality Management Division, as well as for regional planning and transportation agencies that also have certain air-quality-planning-related responsibilities. For each area, SIP Section 11 identifies the applicable state and local provisions governing consultation and notification to affected entities, including for those parts of the SIP related to permitting new and modified major sources and transportation planning, as appropriate. By the very nature of delegating air program responsibilities to Clark County and Washoe County, and cooperating with the Tahoe Regional Planning Agency, while retaining SIP revision authority at the state level, Nevada has instilled a process for developing, implementing, and enforcing the SIP that relies upon the involvement of such local political subdivisions.

The Nevada applicable SIP further provides authority and functionality to the primary agencies in Clark and Washoe counties to engage local political subdivisions in air quality planning. It also includes provisions to supersede a county program, if such program is found inadequate by the State Environmental Commission. These authorities are found in NRS:

- 445B.500 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.*
- 445B.503 Local air pollution control board in county whose population is 700,000 or more: Cooperation with regional planning coalition and regional transportation commission; prerequisites to adoption or amendment of plan, policy or program.*
- 445B.510 Commission may require program for designated area.*
- 445B.520 Commission may establish or supersede county program.*

APPENDIX A

State of Nevada Applicable State Implementation Plan STATUTORY ELEMENTS

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State of Nevada Applicable State Implementation Plan¹

NEVADA REVISED STATUTES

Through and including 10/23/2012 final FR actions
January 28, 1972 - October 23, 2012
Last revised 11/28/2012

TITLE 0 - PRELIMINARY CHAPTER – GENERAL PROVISIONS

0.039 Person defined.

TITLE 18 - CHAPTER 232A – BOARDS, COMMISSIONS AND SIMILAR BODIES

232A.020 Residency requirement for appointment; terms of members; vacancies; qualification of member appointed as representative of general public; gubernatorial appointee prohibited from serving on more than one board, commission or similar body.

TITLE 23 - CHAPTER 281A – ETHICS IN GOVERNMENT

GENERAL PROVISIONS

281A.150 Public employee defined.
281A.160 Public officer defined.

CODE OF ETHICAL STANDARDS

281A.400 General requirements; exceptions.
281A.410 Limitations on representing or counseling private persons before public agencies; disclosure required by certain public officers.
281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.

TITLE 40 - CHAPTER 439 – ADMINISTRATION OF PUBLIC HEALTH

District Board of Health and District Health Officer in Counties Whose Population is Less Than 700,000

439.390 District board of health: Composition; qualifications of members.

TITLE 40 - CHAPTER 445B - AIR POLLUTION

GENERAL PROVISIONS

445B.105 Definitions.
445B.110 Air contaminant defined.
445B.115 Air pollution defined.

¹ This includes the statutory elements of the Nevada ASIP to the best of the 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, August 20, 2007, May 21, 2012, and August 30, 2012. This "Current" ASIP incorporates all of EPA's final actions on NDEP's submittals through October 23, 2012: the 4/13/82, 3/27/06, 12/11/06, 4/20/07, 5/8/07, 4/9/08, 4/16/08, 9/27/12, and 10/23/12 FR actions and the 1/3, 5/8, 6/13, 11/2/07 and 4/16/08 rescissions.

<u>445B.120</u>	Commission defined.
<u>445B.125</u>	Department defined.
<u>445B.130</u>	Director defined.
<u>445B.135</u>	Federal Act defined.
<u>445B.140</u>	Hazardous air pollutant defined.
<u>445B.145</u>	Operating permit defined.
<u>445B.150</u>	Person defined.
<u>445B.155</u>	Source and indirect source defined.

STATE ENVIRONMENTAL COMMISSION

<u>445B.200</u>	Creation and composition; Chairman; quorum; compensation of members and employees; disqualification; technical support.
<u>445B.205</u>	Department designated as State Air Pollution Control Agency.
<u>445B.210</u>	Powers of Commission.
<u>445B.220</u>	Additional powers of Commission.
<u>445B.225</u>	Power of Commission to require testing of sources.
<u>445B.230</u>	Powers and duties of Department.
<u>445B.235</u>	Additional powers of Department.
<u>445B.240</u>	Power of representatives of Department to enter and inspect premises.
<u>445B.245</u>	Power of Department to perform or require test of emissions from stacks.

LOCAL HEARING BOARD

<u>445B.275</u>	Creation; members; terms.
<u>445B.280</u>	Attendance of witnesses at hearing; contempt; compensation.

PROVISIONS FOR ENFORCEMENT

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

VIOLATIONS

<u>445B.450</u>	Notice and order by Director; hearing; alternative procedures.
<u>445B.460</u>	Injunctive relief.

PROGRAM FOR CONTROL OF AIR POLLUTION

<u>445B.500</u>	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.
<u>445B.503</u>	Local air pollution control board in county whose population is 700,000 or more: Cooperation with regional planning coalition and regional transportation commission; prerequisites to adoption or amendment of plan, policy or program.
<u>445B.510</u>	Commission may require program for designated area.
<u>445B.520</u>	Commission may establish or supersede county program.
<u>445B.530</u>	Commission may assume jurisdiction over specific classes of air contaminants.
<u>445B.540</u>	Restoration of superseded local program; continuation of existing local program.

MISCELLANEOUS PROVISIONS

- 445B.560 Plan or procedure for emergency.
- 445B.570 Confidentiality and use of information obtained by Department; penalty.
- 445B.580 Officer of Department may inspect or search premises; search warrant.
- 445B.595 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.
- 445B.600 Private rights and remedies not affected.
- 445B.610 Provisions for transition in administration.

PENALTIES

- 445B.640 Levy and disposition of administrative fines; additional remedies available; penalty.

TITLE 43 - CHAPTER 485 - MOTOR VEHICLES: INSURANCE AND FINANCIAL RESPONSIBILITY

GENERAL PROVISIONS

- 485.050 Motor vehicle defined.

TITLE 58 - CHAPTER 704 - REGULATION OF PUBLIC UTILITIES GENERALLY

CONSTRUCTION OF UTILITY FACILITIES: UTILITY ENVIRONMENTAL PROTECTION ACT

- 704.820 Short title.
- 704.825 Declaration of legislative findings and purpose.
- 704.830 Definitions.
- 704.840 Commence to construct.
- 704.845 Local government.
- 704.850 Person.
- 704.855 Public Utility.
- 704.860 Utility facility.
- 704.865 Construction permit: Requirement; transfer; exceptions to requirement.
- 704.870 Construction permit application: Form, contents; filing; service; public notice.
- 704.875 Review of application by state environmental commission.
- 704.880 Hearing on application for permit.
- 704.885 Parties to permit proceeding; appearances; intervention.
- 704.890 Grant or denial of application; required findings; service of copies of order.
- 704.892 Grant, denial, conditioning of permit for plant for generation of electrical energy for export.
- 704.895 Rearing; judicial review.
- 704.900 Cooperation with United States, other states.

GENERAL ORDER NO. 3- RULES OF PRACTICE AND PROCEDURE BEFORE THE PUBLIC SERVICE COMMISSION

- Rule 25 Construction Permits- Utility Environmental Protection Act.

Approved Referenc:	State Implementation Plan Text of Statutes		FR
NRS #			
TITLE 0 - PRELIMINARY CHAPTER - GENERAL PROVISIONS			
0.039	<p>“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)</p>	71FR51766 8/31/2006	
TITLE 18, CHAPTER 232A – BOARDS, COMMISSIONS AND SIMILAR BODIES			
232A.020	<p>Residency requirement for appointment; terms of members; vacancies; qualification of member appointed as representative of general public; gubernatorial appointee prohibited from serving on more than one board, commission or similar body.</p> <p>1. Except as otherwise provided in this section, a person appointed to a new term or to fill a vacancy on a board, commission or similar body by the Governor must have, in accordance with the provisions of NRS 281.050, actually, as opposed to constructively, resided, for the 6 months immediately preceding the date of the appointment:</p> <p>(a) In this State; and</p> <p>(b) If current residency in a particular county, district, ward, subdistrict or any other unit is prescribed by the provisions of law that govern the position, also in that county, district, ward, subdistrict or other unit.</p> <p>2. After the Governor’s initial appointments of members to boards, commissions or similar bodies, all such members shall hold office for terms of 3 years or until their successors have been appointed and have qualified.</p> <p>3. A vacancy on a board, commission or similar body occurs when a member dies, resigns, becomes ineligible to hold office or is absent from the State for a period of 6 consecutive months.</p> <p>4. Any vacancy must be filled by the Governor for the remainder of the unexpired term.</p> <p>5. A member appointed to a board, commission or similar body as a representative of the general public must be a person who:</p> <p>(a) Has an interest in and a knowledge of the subject matter which is regulated by the board, commission or similar body; and</p> <p>(b) Does not have a pecuniary interest in any matter which is within the jurisdiction of the board, commission or similar body.</p> <p>6. The Governor shall not appoint a person to a board, commission or similar body if the person is a member of any other board, commission or similar body.</p> <p>7. The provisions of subsection 1 do not apply if:</p> <p>(a) A requirement of law concerning another characteristic or status that a member must possess, including, without limitation, membership in another organization, would make it impossible to fulfill the provisions of subsection 1; or</p> <p>(b) The membership of the particular board, commission or similar body includes residents of another state and the provisions of subsection 1 would conflict with a requirement that applies to all members of that body. (Added to NRS by 1977, 1176; A 2005, 1581; 2011, 2992)</p>	77FR64737 10/23/2012	

Approved Referenc:	State Implementation Plan Text of Statutes		FR
NRS #	TITLE 23, CHAPTER 281A – ETHICS IN GOVERNMENT GENERAL PROVISIONS		
281A.150	<p>“Public employee” defined. “Public employee” means any person who performs public duties under the direction and control of a public officer for compensation paid by the State or any county, city or other political subdivision. (Added to NRS by 1985, 2121; A 2009, 1047)—(Substituted in revision for NRS 281.436)</p>	77FR64737 10/23/2012	
281A.160	<p>“Public officer” defined. 1. “Public officer” means a person elected or appointed to a position which: (a) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and (b) Involves the exercise of a public power, trust or duty. As used in this section, “the exercise of a public power, trust or duty” means: (1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy; (2) The expenditure of public money; and (3) The administration of laws and rules of the State or any county, city or other political subdivision. 2. “Public officer” does not include: (a) Any justice, judge or other officer of the court system; (b) Any member of a board, commission or other body whose function is advisory; (c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district’s money; or (d) A county health officer appointed pursuant to NRS 439.290. 3. “Public office” does not include an office held by: (a) Any justice, judge or other officer of the court system; (b) Any member of a board, commission or other body whose function is advisory; (c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district’s money; or (d) A county health officer appointed pursuant to NRS 439.290. (Added to NRS by 1985, 2121; A 1987, 2093; 1999, 883; 2001, 658, 1955, 2288; 2003, 116; 2005, 2302; 2009, 1047)—(Substituted in revision for NRS 281.4365)</p>	77FR64737 10/23/2012	
CODE OF ETHICAL STANDARDS			
281A.400	<p>General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees: 1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer’s or employee’s position to depart from the faithful and impartial discharge of the public officer’s or employee’s public duties.</p>	77FR64737 10/23/2012	

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NRS #	<p>2. A public officer or employee shall not use the public officer’s or employee’s position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:</p> <p>(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281A.420.</p> <p>(b) “Unwarranted” means without justification or adequate reason.</p> <p>3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.</p> <p>4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of the public officer’s or employee’s duties as a public officer or employee.</p> <p>5. If a public officer or employee acquires, through the public officer’s or employee’s public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further the pecuniary interests of the public officer or employee or any other person or business entity.</p> <p>6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably the public officer’s or employee’s pecuniary interests.</p> <p>7. Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer’s or employee’s personal or financial interest. This subsection does not prohibit:</p> <p>(a) A limited use of governmental property, equipment or other facility for personal purposes if:</p> <ol style="list-style-type: none"> (1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances; (2) The use does not interfere with the performance of the public officer’s or employee’s public duties; (3) The cost or value related to the use is nominal; and (4) The use does not create the appearance of impropriety; <p>(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or</p> <p>(c) The use of telephones or other means of communication if there is not a special charge for that use.</p> <p>➡ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.</p> <p>8. A State Legislator shall not:</p> <p>(a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of the State Legislator or any other person. This paragraph does not prohibit:</p> <ol style="list-style-type: none"> (1) A limited use of state property and resources for personal purposes if: 	

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NRS #	<p>(I) The use does not interfere with the performance of the State Legislator’s public duties;</p> <p>(II) The cost or value related to the use is nominal; and</p> <p>(III) The use does not create the appearance of impropriety;</p> <p>(2) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or</p> <p>(3) The use of telephones or other means of communication if there is not a special charge for that use.</p> <p>(b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:</p> <p>(1) In unusual and infrequent situations where the employee’s service is reasonably necessary to permit the State Legislator or legislative employee to perform that person’s official duties; or</p> <p>(2) Where such service has otherwise been established as legislative policy.</p> <p>9. A public officer or employee shall not attempt to benefit the public officer’s or employee’s personal or financial interest through the influence of a subordinate.</p> <p>10. A public officer or employee shall not seek other employment or contracts through the use of the public officer’s or employee’s official position.</p> <p>(Added to NRS by 1977, 1105; A 1987, 2094; 1991, 1595; 1993, 2243; 1997, 3324; 1999, 2736; 2003, 3388; 2009, 1053)—(Substituted in revision for NRS 281.481)</p>		
281A.410	<p>Limitations on representing or counseling private persons before public agencies; disclosure required by certain public officers. In addition to the requirements of the code of ethical standards:</p> <p>1. If a public officer or employee serves in a state agency of the Executive Department or an agency of any county, city or other political subdivision, the public officer or employee:</p> <p>(a) Shall not accept compensation from any private person to represent or counsel the private person on any issue pending before the agency in which that public officer or employee serves, if the agency makes decisions; and</p> <p>(b) If the public officer or employee leaves the service of the agency, shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during the public officer’s or employee’s service. As used in this paragraph, “issue” includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.</p> <p>2. A State Legislator or a member of a local legislative body, or a public officer or employee whose public service requires less than half of his or her time, may represent or counsel a private person before an agency in which he or she does not serve. Any other public officer or employee shall not represent or counsel a private person for compensation before any state agency of the Executive or Legislative Department.</p> <p>3. Not later than January 15 of each year, any State Legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the Executive Department shall disclose for each such representation or counseling during the previous calendar year:</p> <p>(a) The name of the client;</p> <p>(b) The nature of the representation; and</p>		77FR64737 10/23/2012

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	<p>(c) The name of the state agency.</p> <p>4. The disclosure required by subsection 3 must be made in writing and filed with the Commission on a form prescribed by the Commission. For the purposes of this subsection, the disclosure is timely filed if, on or before the last day for filing, the disclosure is filed in one of the following ways:</p> <p>(a) Delivered in person to the principal office of the Commission in Carson City.</p> <p>(b) Mailed to the Commission by first-class mail, or other class of mail that is at least as expeditious, postage prepaid. Filing by mail is complete upon timely depositing the disclosure with the United States Postal Service.</p> <p>(c) Dispatched to a third-party commercial carrier for delivery to the Commission within 3 calendar days. Filing by third-party commercial carrier is complete upon timely depositing the disclosure with the third-party commercial carrier.</p> <p>5. The Commission shall retain a disclosure filed pursuant to subsections 3 and 4 for 6 years after the date on which the disclosure was filed.</p> <p>(Added to NRS by 1977, 1106; A 1991, 1597; 2001, 2289; 2007, 638; 2009, 1054)—(Substituted in revision for NRS 281.491)</p>		
281A.420	<p>Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.</p> <p>1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:</p> <p>(a) Regarding which the public officer or employee has accepted a gift or loan;</p> <p>(b) In which the public officer or employee has a pecuniary interest; or</p> <p>(c) Which would reasonably be affected by the public officer’s or employee’s commitment in a private capacity to the interest of others, ➔ without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer’s or employee’s pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer’s or employee’s organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.</p> <p>2. The provisions of subsection 1 do not require a public officer to disclose:</p> <p>(a) Any campaign contributions that the public officer reported in a timely manner pursuant to NRS 294A.120 or 294A.125; or</p> <p>(b) Any contributions to a legal defense fund that the public officer reported in a timely manner pursuant to NRS 294A.286.</p> <p>3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer’s situation would be materially affected by:</p> <p>(a) The public officer’s acceptance of a gift or loan;</p> <p>(b) The public officer’s pecuniary interest; or</p>		77FR64737 10/23/2012

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NRS #	<p>(c) The public officer’s commitment in a private capacity to the interests of others.</p> <p>4. In interpreting and applying the provisions of subsection 3:</p> <p>(a) It must be presumed that the independence of judgment of a reasonable person in the public officer’s situation would not be materially affected by the public officer’s pecuniary interest or the public officer’s commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of others, accruing to the other persons, is not greater than that accruing to any other member of the general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.</p> <p>(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer has properly disclosed the public officer’s acceptance of a gift or loan, the public officer’s pecuniary interest or the public officer’s commitment in a private capacity to the interests of others in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer’s constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer’s situation would be materially affected by the public officer’s acceptance of a gift or loan, the public officer’s pecuniary interest or the public officer’s commitment in a private capacity to the interests of others.</p> <p>5. Except as otherwise provided in NRS 241.0355, if a public officer declares to the body or committee in which the vote is to be taken that the public officer will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.</p> <p>6. The provisions of this section do not, under any circumstances:</p> <p>(a) Prohibit a member of a local legislative body from requesting or introducing a legislative measure; or</p> <p>(b) Require a member of a local legislative body to take any particular action before or while requesting or introducing a legislative measure.</p> <p>7. The provisions of this section do not, under any circumstances, apply to State Legislators or allow the Commission to exercise jurisdiction or authority over State Legislators. The responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government which are adopted, administered and enforced exclusively by the appropriate bodies of the Legislative Department of State Government pursuant to Section 6 of Article 4 of the Nevada Constitution.</p> <p>8. As used in this section:</p> <p>(a) “Commitment in a private capacity to the interests of others” means a commitment to a person:</p> <p>(1) Who is a member of the public officer’s or employee’s household;</p> <p>(2) Who is related to the public officer or employee by blood, adoption or marriage within the third degree of consanguinity or affinity;</p>	

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	<p>(3) Who employs the public officer or employee or a member of the public officer’s or employee’s household; (4) With whom the public officer or employee has a substantial and continuing business relationship; or (5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph. (b) “Public officer” and “public employee” do not include a State Legislator. (Added to NRS by 1977, 1106; A 1987, 2095; 1991, 1597; 1995, 1083; 1997, 3326; 1999, 2738; 2003, 818, 1735, 3389; 2007, 3372; 2009, 1055, 1057)—(Substituted in revision for NRS 281.501)</p>		
TITLE 40, CHAPTER 439 – ADMINISTRATION OF PUBLIC HEALTH District Board of Health And District Health Officer in Counties Whose Population Is Less Than 700,000			
439.390	<p>District board of health: Composition; qualifications of members. 1. A district board of health must consist of two members from each county, city or town which participated in establishing the district, to be appointed by the governing body of the county, city or town in which they reside, together with one additional member to be chosen by the members so appointed. 2. The additional member must be a physician licensed to practice medicine in this State. 3. If the appointive members of the district board of health fail to choose the additional member within 30 days after the organization of the district health department, the additional member may be appointed by the State Health Officer. [Part 35:199:1911; added 1939, 297; 1931 NCL § 5268.01]—(NRS A 1959, 104; 1963, 941; 1991, 1379)</p>		
TITLE 40, CHAPTER 445B - AIR POLLUTION GENERAL PROVISIONS			
445B.105 (Supersedes 445.406)	<p>Definitions. As used in <u>NRS 445B.100</u> to <u>445B.640</u>, inclusive, unless the context otherwise requires, the words and terms defined in <u>NRS 445B.110</u> to <u>445B.155</u>, 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)</p>		71FR51766 8/31/2006
445B.110 (Supersedes 445.411)	<p>“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)</p>		71FR51766 8/31/2006
445B.115 (Supersedes 445.416)	<p>“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)</p>		71FR51766 8/31/2006
445B.120 (Supersedes	<p>“Commission” defined. “Commission” means the State Environmental Commission. (Added to NRS by 1971, 1192; A 1973, 1811)—(Substituted in revision for NRS 445.421)</p>		71FR51766 8/31/2006

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445.421)		
445B.125 (Supersedes 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)	71FR51766 8/31/2006
445B.130 (Supersedes 445B.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)	71FR51766 8/31/2006
445B.135 (Supersedes 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)	71FR51766 8/31/2006
445B.140	“Hazardous air pollutant” defined. “Hazardous air pollutant” means a substance designated as such by the Commission pursuant to <u>NRS 445B.210</u> . (Added to NRS by 1993, 2849)—(Substituted in revision for NRS 445.433)	71FR51766 8/31/2006
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)	71FR51766 8/31/2006
445B.150 (Supersedes 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)	71FR51766 8/31/2006
445B.155 (Supersedes 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	71FR51766 8/31/2006

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	(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			
445B.200 (Supersedes 445.451)	<p>Creation and composition; Chairman; quorum; compensation of members and employees; disqualification; technical support.</p> <p>1. The State Environmental Commission is hereby created within the State Department of Conservation and Natural Resources. The Commission consists of:</p> <ul style="list-style-type: none"> (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. <p>2. The Governor shall appoint the Chairman of the Commission from among the members of the Commission.</p> <p>3. A majority of the members constitutes a quorum, and a majority of those present must concur in any decision.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>(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, <u>3623</u>; 2001, <u>2616</u>; 2003, <u>1564</u>)</p>		72FR11 01/03/2007
445B.205	Department designated as State Air Pollution Control Agency. The Department is:		72FR11

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(Supersedes 445.456)	<ol style="list-style-type: none"> 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)	01/03/2007
445B.210 (Supersedes 455.461)	<p>Powers of Commission. The Commission may:</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> (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)	73FR38124 07/03/2008
445B.220 (Supersedes 445.471)	<p>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:</p> <ol style="list-style-type: none"> 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)	71FR51766 8/31/2006
445B.225 (Supersedes 445.472)	<p>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.</p> (Added to NRS by 1973, 1810)—(Substituted in revision for NRS 445.472)	71FR51766 8/31/2006
445B.230	<p>Powers and duties of Department. The Department shall:</p> <ol style="list-style-type: none"> 1. Make such determinations and issue such orders as may be necessary to implement the purposes of NRS 445B.100 to 445B.640, 	72FR11 01/03/2007

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(Supersedes 445.473)	<p>inclusive.</p> <ol style="list-style-type: none"> 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. <p>(Added to NRS by 1973, 1808)—(Substituted in revision for NRS 445.473)</p>		
445B.235 (Supersedes 445.474)	<p>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:</p> <ol style="list-style-type: none"> 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. <p>(Added to NRS by 1973, 1809)—(Substituted in revision for NRS 445.474)</p>		71FR51766 8/31/2006
445B.240 (Supersedes 445.476)	<p>Power of representatives of Department to enter and inspect premises.</p> <ol style="list-style-type: none"> 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: 		72FR11 01/03/2007

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	<p>(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.</p> <p>(b) Obstruct, hamper or interfere with any such inspection.</p> <p>3. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.</p> <p>(Added to NRS by 1971, 1194; A 1973, 1815)—(Substituted in revision for NRS 445.476)</p>	
445B.245 (Supersedes 445.477)	<p>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.</p> <p>(Added to NRS by 1973, 1810; A 1975, 1405)—(Substituted in revision for NRS 445.477)</p>	71FR51766 8/31/2006
LOCAL HEARING BOARD		
445B.275 (Supersedes 445.481)	<p>Creation; members; terms.</p> <p>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.</p> <p>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.</p> <p>(Added to NRS by 1971, 1195; A 1973, 1815; 1975, 1782; 1997, 1068)</p>	71FR51766 8/31/2006
445B.280 (Supersedes 445.486)	<p>Attendance of witnesses at hearing; contempt; compensation.</p> <p>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.</p> <p>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:</p> <p>(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;</p> <p>(b) That the witness has been subpoenaed in the manner prescribed in NRS 445B.100 to 445B.640, inclusive; and</p> <p>(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,</p> <p>→ and asking an order of the court compelling the witness to attend and testify or produce the books or papers in the hearing.</p> <p>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</p>	71FR51766 8/31/2006

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	<p>order the witness shall be dealt with as for contempt of court.</p> <p>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)</p>		
PROVISIONS FOR ENFORCEMENT			
<p>445B.300 (Supersedes 445.491)</p>	<p>Operating permit for source of air contaminant; notice and approval of proposed construction; administrative fees; failure of Commission or Department to act.</p> <p>1. The Commission shall by regulation:</p> <p>(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.</p> <p>(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:</p> <p>(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</p> <p>(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,</p> <p>→the Director shall issue an order prohibiting the construction, installation, alteration or establishment of the source or sources of air contaminant.</p> <p>2. The Commission shall by regulation provide for:</p> <p>(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.</p> <p>(b) The issuance of authorizations for the issuance of building permits pursuant to paragraph (a) of subsection 2 of NRS 445B.320.</p> <p>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.</p> <p>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.</p> <p>(Added to NRS by 1971, 1196; A 1973, 1816; 1993, 2853)—(Substituted in revision for NRS 445.491)</p>		<p>71FR51766 8/31/2006</p>
<p>445B.310 (Supersedes 445.493)</p>	<p>Limitations on enforcement of federal and state regulations concerning indirect sources.</p> <p>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:</p> <p>(a) In the enforcement of those federal regulations; and</p> <p>(b) To the extent enforcement by the state agency is required by the Federal Act.</p> <p>2. The local air pollution control agency may enforce within its jurisdiction against existing indirect sources any federal or state</p>		<p>74FR15219 04/03/2009</p>

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	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)		
445B.320 (Supersedes 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)		71FR51766 8/31/2006
445B.340 (Supersedes 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)		72FR11 01/03/2007
445B.350 (Supersedes 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)		72FR11 01/03/2007
445B.360 (Supersedes 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)		72FR11 01/03/2007

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445B.450 (Supersedes 445.526)	<p>Notice and order by Director; hearing; alternative procedures.</p> <p>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.</p> <p>2. The notice shall specify:</p> <p>(a) The statute or regulation alleged to be violated; and</p> <p>(b) The facts alleged to constitute the violation.</p> <p>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.</p> <p>4. With or without the issuance of an order pursuant to subsection 3, or if corrective action is not taken within the time specified:</p> <p>(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</p> <p>(b) The Commission may initiate proceedings for recovery of the appropriate penalty.</p> <p>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.</p> <p>(Added to NRS by 1971, 1198; A 1973, 1818; 1975, 1405)—(Substituted in revision for NRS 445.526)</p>	72FR11 01/03/2007	
445B.460 (Supersedes 445.529)	<p>Injunctive relief.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>(Added to NRS by 1973, 1809; A 1993, 2854; 2001, 1295)</p>	72FR11 01/03/2007	
PROGRAM FOR CONTROL OF AIR POLLUTION			
445B.500 (Supersedes 445.546)	<p>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.</p> <p>1. Except as otherwise provided in this section and in NRS 445B.310:</p> <p>(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.</p>	77FR64737 10/23/2012	

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	<p>(b) The program:</p> <p>(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;</p> <p>(2) May, in a county whose population is 700,000 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</p> <p>(3) Must provide for adequate administration, enforcement, financing and staff.</p> <p>(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.</p> <p>(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.</p> <p>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.</p> <p>3. In a county whose population is 700,000 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 and must be accounted for separately in the fund. A school district may spend the money received pursuant to this section only in accordance with an annual spending plan that is approved by the local air pollution control board and shall submit an annual report to that board detailing the expenditures of the school district under the plan. A local air pollution control board shall approve an annual spending plan if the proposed expenditures set forth in the plan are reasonable and limited to:</p> <p>(a) Programs of education on topics relating to air quality; and</p> <p>(b) Projects to improve air quality, including, without limitation, the purchase and installation of equipment to retrofit school buses of the school district to use biodiesel, compressed natural gas or a similar fuel formulated to reduce emissions from the amount of emissions produced by the use of traditional fuels such as gasoline and diesel fuel,</p> <p>➤ which are consistent with the state implementation plan adopted by this State pursuant to 42 U.S.C. §§ 7410 and 7502.</p> <p>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</p>		

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	<p>Commission.</p> <p>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.</p> <p>6. As used in 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.</p> <p>(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; 2007, 319; 2011, 1262)</p>	
445B.503	<p>Local air pollution control board in county whose population is 700,000 or more: Cooperation with regional planning coalition and regional transportation commission; prerequisites to adoption or amendment of plan, policy or program.</p> <p>1. In addition to the duties set forth in NRS 445B.500, the local air pollution control board in a county whose population is 700,000 or more shall cooperate with the regional planning coalition and the regional transportation commission in the county in which it is located to:</p> <p>(a) Ensure that the plans, policies and programs adopted by each of them are consistent to the greatest extent practicable.</p> <p>(b) Establish and carry out a program of integrated, long-range planning that conserves the economic, financial and natural resources of the region and supports a common vision of desired future conditions.</p> <p>2. Before adopting or amending a plan, policy or program, a local air pollution control board shall:</p> <p>(a) Consult with the regional planning coalition and the regional transportation commission; and</p> <p>(b) Conduct hearings to solicit public comment on the consistency of the plan, policy or program with:</p> <p>(1) The plans, policies and programs adopted or proposed to be adopted by the regional planning coalition and the regional transportation commission; and</p> <p>(2) Plans for capital improvements that have been prepared pursuant to NRS 278.0226.</p> <p>3. As used in this section:</p> <p>(a) “Local air pollution control board” means a board that establishes a program for the control of air pollution pursuant to NRS 445B.500.</p> <p>(b) “Regional planning coalition” has the meaning ascribed to it in NRS 278.0172.</p> <p>(c) “Regional transportation commission” means a regional transportation commission created and organized in accordance with chapter 277A of NRS.</p> <p>(Added to NRS by 1999, 1975; A 2011, 1264)</p>	77FR64737 10/23/2012
445B.510 (Supersedes 445.551)	<p>Commission may require program for designated area.</p> <p>1. If the Commission finds that:</p> <p>(a) The location, character or extent of particular concentrations of population or sources of air contaminant;</p> <p>(b) Geographic, topographic or meteorological considerations; or</p> <p>(c) Any combination of these factors,</p> <p>↪ makes impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, it shall after a</p>	71FR51766 8/31/2006

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	<p>public hearing define the area so affected.</p> <p>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.</p> <p>(Added to NRS by 1971, 1200)—(Substituted in revision for NRS 445.551)</p>		
445B.520 (Supersedes 445.556)	<p>Commission may establish or supersede county program.</p> <p>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.</p> <p>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.</p> <p>(Added to NRS by 1971, 1200; A 1973, 1820)—(Substituted in revision for NRS 445.556)</p>		71FR51766 8/31/2006
445B.530 (Supersedes 445.561)	<p>Commission may assume jurisdiction over specific classes of air contaminants.</p> <p>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.</p> <p>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.</p> <p>(Added to NRS by 1971, 1200)—(Substituted in revision for NRS 445.561)</p>		71FR51766 8/31/2006
445B.540 (Supersedes 445.566)	<p>Restoration of superseded local program; continuation of existing local program.</p> <p>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.</p> <p>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.</p> <p>(Added to NRS by 1971, 1200)—(Substituted in revision for NRS 445.566)</p>		71FR51766 8/31/2006
MISCELLANEOUS PROVISIONS			
445B.560 (Supersedes 445.571)	<p>Plan or procedure for emergency.</p> <p>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.</p> <p>2. Any person responsible for the operation of a source of air contaminants which is designated by the Director shall prepare and submit</p>		71FR51766 8/31/2006

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	<p>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.</p> <p>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.</p> <p>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)</p>	
445B.570 (Supersedes 445.576)	<p>Confidentiality and use of information obtained by Department; penalty.</p> <p>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.</p> <p>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.</p> <p>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:</p> <p>(a) In the administration or formulation of air pollution controls;</p> <p>(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</p> <p>(c) In complying with federal statutes, rules and regulations.</p> <p>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.</p> <p>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.</p> <p>6. As used in this section, "confidential information" means information or records which:</p> <p>(a) Relate to dollar amounts of production or sales;</p> <p>(b) Relate to processes or production unique to the owner or operator; or</p> <p>(c) If disclosed, would tend to affect adversely the competitive position of the owner or operator.</p>	72FR11 01/03/2007

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	(Added to NRS by 1971, 1201; A 1973, 1821; 1975, 1405; 1993, 2855)—(Substituted in revision for NRS 445.576)		
445B.580 (Supersedes 445.581)	<p>Officer of Department may inspect or search premises; search warrant.</p> <p>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.</p> <p>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.</p> <p style="text-align: center;">(Added to NRS by 1971, 1202; A 1973, 1822; 1993, 2855)—(Substituted in revision for NRS 445.581)</p>		72FR11 01/03/2007
445B.595 (Supersedes 445.586)	<p>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.</p> <p>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.</p> <p>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:</p> <p style="margin-left: 20px;">(a) The county air pollution control agency, if one has been designated pursuant to NRS 445B.500; or</p> <p style="margin-left: 20px;">(b) The Director, if an agency has not been so designated.</p> <p>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.</p> <p style="text-align: center;">(Added to NRS by 1971, 1202; A 1973, 1822; 1975, 1406; 1989, 584)—(Substituted in revision for NRS 445.586)</p>		71FR51766 8/31/2006
445B.600 (Supersedes 445.596)	<p>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.</p> <p style="text-align: center;">(Added to NRS by 1971, 1202; A 1985, 292)—(Substituted in revision for NRS 445.596)</p>		72FR11 01/03/2007
445B.610 (Supersedes 445.598)	<p>Provisions for transition in administration.</p> <p>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</p>		72FR11 01/03/2007

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	<p>445B.100 to 445B.640, inclusive.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>(Added to NRS by 1973, 1810)—(Substituted in revision for NRS 445.598)</p>		
PENALTIES			
<p>445B.640 (Supersedes 445.601)</p>	<p>Levy and disposition of administrative fines; additional remedies available; penalty.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>(Added to NRS by 1971, 1202; A 1973, 1822; 1975, 1406; 1977, 70; 1989, 736; 1993, 2856; 1997, 1080)</p>		<p>72FR11 01/03/2007</p>
TITLE 43, CHAPTER 485 - MOTOR VEHICLES: INSURANCE AND FINANCIAL RESPONSIBILITY GENERAL PROVISIONS			
<p>485.050</p>	<p>“Motor vehicle” defined. “Motor vehicle” means every self-propelled vehicle which is designed for use upon a highway, including:</p> <p>1. Trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, tractor cranes, power shovels and well drillers; and</p>		<p>77FR59321 9/27/2012</p>

Approved Referenc:	State Implementation Plan Text of Statutes	FR
NRS #		
	2. Every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails. ↳ The term does not include electric personal assistive mobility devices as defined in NRS 482.029. [1.3:127:1949; 1943 NCL § 4439.01c]—(NRS A 2003, 1206)	
TITLE 58, CHAPTER 704 - REGULATION OF PUBLIC UTILITIES GENERALLY CONSTRUCTION OF UTILITY FACILITIES: UTILITY ENVIRONMENTAL PROTECTION ACT²		
704.820	Short title. (Added to NRS by 1971, 554)	47FR15790 4/13/1982
704.825	Declaration of legislative findings and purpose. (Added to NRS by 1971, 554)	47FR15790 4/13/1982
704.830	Definitions. (Added to NRS by 1971, 554; A 1973, 1263)	47FR15790 4/13/1982
704.840	“Commence to construct” defined. (Added to NRS by 1971, 555)	47FR15790 4/13/1982
704.845	“Local government” defined. (Added to NRS by 1971, 555)	47FR15790 4/13/1982
704.850	“Person” defined. (Added to NRS by 1971, 555)	47FR15790 4/13/1982
704.855	“Public Utility,” “utility” defined. (Added to NRS by 1971, 555; A 1973, 1035)	47FR15790 4/13/1982
704.860	“Utility facility” defined. (Added to NRS by 1971, 555; A 1979,671)	47FR15790 4/13/1982
704.865	Construction permit: Requirement; transfer; exceptions to requirement. (Added to NRS by 1971, 555)	47FR15790 4/13/1982
704.870	Construction permit application: Form, contents; filing; service; public notice. (Added to NRS by 1971, 556; A 1973, 1263)	47FR15790 4/13/1982
704.875	Review of application by state environmental commission. (Added to NRS by 1971, 556; A 1973, 1264)	47FR15790 4/13/1982
704.880	Hearing on application for permit. (Added to NRS by 1971, 556)	47FR15790 4/13/1982
704.885	Parties to permit proceeding; appearances; intervention. (Added to NRS by 1971, 556; A 1973, 910, 1265, 1837; 1977, 215)	47FR15790 4/13/1982

² Text of statute not included for the Utility Environmental Protection Act or General Order No. 3.

Approved Referenc:	State Implementation Plan Text of Statutes	FR
NRS #		
704.890	Grant or denial of application; required findings; service of copies of order. (Added to NRS by 1971, 557)	47FR15790 4/13/1982
704.892	Grant, denial, conditioning of permit for plant for generation of electrical energy for export. (Added to NRS by 1973, 1035; A 1979, 693)	47FR15790 4/13/1982
704.895	Rearing; judicial review. (Added to NRS by 1971, 558)	47FR15790 4/13/1982
704.900	Cooperation with United States, other states. (Added to NRS by 1971, 558)	47FR15790 4/13/1982
GENERAL ORDER NO. 3- RULES OF PRACTICE AND PROCEDURE BEFORE THE PUBLIC SERVICE COMMISSION		
Rule 25	Construction Permits- Utility Environmental Protection Act.	47FR15790 4/13/1982

APPENDIX B

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

State of Nevada Applicable State Implementation Plan¹

REGULATORY ELEMENTS: Air Pollution

Through and including 9/27/2012 final FR actions
January 28, 1972 - September 27, 2012
Last revised 11/01/2012

EXPLANATION:

Gray = Provision proposed for rescission by EPA 12/18/06 (71FR75690 re excess emissions), but not finalized.

Definitions

445B.001	Definitions.
445.431	Acid mist defined.
445B.002	Act defined.
445B.003	Adjacent properties defined
445B.0035	Administrative revision to a Class I operating permit defined.
445B.004	Administrator defined.
445B.005	Affected facility defined.
445B.006	Affected source defined.
445B.007	Affected state defined.
445B.009	Air-conditioning equipment defined.
445.436	Air contaminant defined.
445B.011	Air pollution defined.
445B.013	Allowable emissions defined.
445B.014	Alteration defined.
445B.015	Alternative method defined.
445B.016	Alternative operating scenarios defined.
445B.018	Ambient air defined.
445B.019	Applicable requirements defined.
445B.022	Atmosphere defined.
445.445	Barite defined.
445.447	Barite grinding mill defined.
445B.029	Best available retrofit technology.
445B.030	British thermal units defined.
445.458	Calcine defined.
445B.035	Class I-B application defined.
445B.036	Class I source defined.
445B.037	Class II source defined.
445B.038	Class III source defined.
445.464	Coal defined.
445.470	Colemanite defined.
445.471	Colemanite processing plant defined.
445B.042	Combustible refuse defined
445B.0423	Commence defined.
445B.0425	Commission defined.
445B.044	Construction defined.

¹ This includes the regulatory elements of the Nevada ASIP applicable to the NDEP's jurisdiction to the best of the 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, August 20, 2007, January 24, 2011, November 9, 2011 and May 21, 2012. This "Current" ASIP incorporates all of EPA's final actions on NDEP's submittals through September 27, 2012: the 3/27/06, 12/11/06, 4/20/07, 5/8/07, 4/9/08, 4/16/08, 3/26/12 and 9/27/2012 FR actions and the 1/3, 5/8, 6/13, 11/2/07 and 4/16/08 rescissions.

445B.046 Contiguous property defined
 445B.047 Continuous monitoring system defined.
 445.482 Converter defined.
 445B.051 Day defined.
 445B.053 Director defined.
 445B.054 Dispersion technique defined.
 445.492 Dryer defined.
 Art. 1.60 Effective date.
 445B.055 Effective date of the program defined.
 445B.056 Emergency defined.
 445B.058 Emission defined.
 445B.059 Emission unit defined.
 445B.060 Enforceable defined.
 445B.061 EPA defined.
 445B.062 Equivalent method defined.
 445B.063 Excess emissions defined.
 445B.064 Excessive concentration defined.
 Art. 1.73 Existing source.
 445B.066 Existing stationary source defined.
 445B.068 Facility defined.
 445B.069 Federally enforceable defined.
 445B.070 Federally enforceable emissions cap defined.
 445.512 Floating roof defined.
 445.513 Fossil fuel defined.
 445B.072 Fuel defined.
 445B.073 Fuel-burning equipment defined.
 445B.075 Fugitive dust defined.
 445B.077 Fugitive emissions defined.
 445B.080 Garbage defined.
 445B.082 General permit defined.
 445B.083 Good engineering practice stack height defined.
 445B.084 Hazardous air pollutant defined.
 445B.086 Incinerator defined.
 445B.087 Increment defined
 445.536 Lead defined.
 445B.091 Local air pollution control agency defined.
 Art. 1-Definitions: No. 2-LAER
 Lowest achievable emission rate.
 445B.093 Major modification defined.
 445B.094 Major source defined.
 445B.0945 Major stationary source defined.
 445B.095 Malfunction defined.
 445B.097 Maximum allowable throughput defined.
 445B.099 Modification defined.
 445B.103 Monitoring device defined.
 445B.104 Motor vehicle defined.
 445B.106 Multiple-chamber incinerator defined.
 445B.107 Nearby defined.
 Art. 1.114 New source.
 445B.108 New stationary source defined.
 445B.109 Nitrogen oxides defined.
 445B.112 Nonattainment area defined.
 445B.113 Nonroad engine defined.
 445B.1135 Nonroad vehicle defined.
 445B.116 Odor defined.

445B.117 Offset defined.
 445B.119 One-hour period defined.
 445B.121 Opacity defined.
 445B.122 Open burning defined.
 445B.123 Operating permit defined.
 445B.124 Operating permit to construct defined.
 445B.125 Ore defined.
 445B.127 Owner or operator defined.
 445B.129 Particulate matter defined.
 445B.130 Pathological wastes defined.
 445B.134 Person defined.
 445.565 Petroleum defined.
 445B.1345 Plantwide applicability limitation defined.
 445B.135 PM (10) defined.
 Art. 1.131 Point source.
 445.570 Portland cement plant defined.
 445B.138 Potential to emit defined.
 445.574 Precious metal defined.
 445.575 Precious metal processing plant defined.
 445B.142 Prevention of significant deterioration of air quality defined.
 445B.144 Process equipment defined.
 445B.145 Process weight defined.
 445.585 Process weight rate defined.
 445B.147 Program defined.
 445B.151 Reference conditions defined.
 445B.152 Reference method defined.
 445.592 Registration certificate defined.
 445B.153 Regulated air pollutant defined.
 445B.154 Renewal of an operating permit defined.
 445B.156 Responsible official defined.
 445B.157 Revision of an operating permit defined.
 445.597 Roaster defined.
 445B.161 Run defined.
 445B.163 Salvage operation defined.
 445B.167 Shutdown defined.
 445B.168 Single-chamber incinerator defined.
 Art. 1.171 Single source.
 445B.172 Six-minute period defined.
 445.618 Slag defined.
 445B.174 Smoke defined.
 445B.176 Solid waste defined.
 445B.177 Source defined.
 445B.179 Special mobile equipment defined.
 445B.180 Stack and chimney defined.
 445B.182 Standard defined.
 445B.185 Start-up defined.
 445B.187 Stationary source defined.
 445B.190 Stop order defined.
 445.633 Submerged fill pipe defined.
 445B.194 Temporary source defined.
 445B.198 Uncombined water defined.
 445B.200 Violation defined.
 445B.202 Volatile organic compound defined.
 445B.205 Waste defined.
 445B.207 Wet garbage defined.

445B.209 Year defined.
445B.211 Abbreviations.

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445B.220 Severability.
445B.22017 Visible emissions: Maximum opacity; determination.
445B.2202 Visible emissions: Exceptions for stationary sources.
Art. 16.3.3 Standard for opacity
Art. 16.3.3.2 No person shall cause, suffer, allow, or permit the discharge from any clinker cooler which exhibit greater than 10 percent opacity
Art. 16.3.3.3 On or after the date on which the performance test required by Article 2.6 is completed . . .
445.729 Process weight rate for calculating emission rates.
445.730 Colemanite flotation processing plants.
445B.22027 Emissions of particulate matter: Maximum allowable throughput for calculating emissions rates.
445B.2203 Emissions of particulate matter: Fuel-burning equipment.
445B.22033 Emissions of particulate matter: Sources not otherwise limited.
445B.22037 Emissions of particulate matter: Fugitive dust.
Art. 7.2.5.1 The maximum allowable weight of particulates which may be discharged per hour from the first barite grinding mill
445.808 1. This section applies to those systems of the facilities described in subsection 2 . . .
445.816 1. This section applies to those systems of the facilities described in subsection 2 . . .
Art. 8.2.1 No person shall cause, suffer, allow or permit the emission of sulfur compounds . . .
Art. 8.2.2 For purposes of Article 8, "sulfur emission" means . . .
445B.2204 Sulfur emission defined.
445B.22043 Sulfur emissions: Calculation of total feed sulfur.
445B.22047 Sulfur emissions: Fuel-burning equipment.
445B.2205 Sulfur emissions: Other processes which emit sulfur.
445B.22067 Open burning.
445B.2207 Incinerator burning.
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445B.2209 Reduction of animal matter.
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445B.22095 Emission limitation for BART.
445B.22096 Control measures constituting BART; limitations on emissions.
445B.22097 Standards of quality for ambient air.
445B.225 Prohibited Conduct: Concealment of emissions.
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445B.229 Hazardous emissions: Order for reduction or discontinuance.
445B.230 Plan for reduction of emissions.
445.667 Excess emissions: Scheduled maintenance; testing; malfunctions.
Art. 2.5 Scheduled maintenance, testing, and breakdown or upset
Art. 2.5.4 Breakdown or upset, determined by the Director to be unavoidable and not the result of careless or marginal operations, shall not be considered a violation of these regulations.
445B.250 Notification of planned construction or reconstruction.
445B.252 Testing and sampling.
445B.256 Monitoring systems: Calibration, operation and maintenance of equipment.
445B.257 Monitoring systems: Location.
445B.258 Monitoring systems: Verification of operational status.
445B.259 Monitoring systems: Performance evaluations.
445B.260 Monitoring systems: Components contracted for before September 11, 1974.
445B.261 Monitoring systems: Adjustments.

445B.262	Monitoring systems: Measurement of opacity.
445B.263	Monitoring systems: Frequency of operation.
445B.264	Monitoring systems: Recordation of data.
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445B.267	Alternative monitoring procedures or requirements.
445B.275	Violations: Acts constituting; notice.
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445B.288	Operating permits: Exemptions from requirements; insignificant activities.
445B.295	Application: General requirements.
445B.297	Application: Submission; certification; additional information.
445B.298	Application: Official date of submittal.
445B.305	Operating permits: Imposition of more stringent standards for emissions.
445B.308	Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan.
Art. 13.1	General provisions for the review of new sources.
Art. 13.1.1	Prior to the issuance of any registration certificates in accordance with . . .
Art. 13.1.3	The Director shall not issue a registration certificate for any point source if: . . .
Art. 13.2	The following new single sources or modifications to an existing single source . . .
Art. 13.2.1	Any single source which can cause, allow or permit the emission of an air . . .
Art. 13.2.2	Any combination of single sources located at a single premise which can cause, . . .
445B.310	Environmental evaluation: Applicable sources and other subjects; exemption.
445B.311	Environmental evaluation: Contents; consideration of good engineering practice stack height.
445B.313	Method for determining maximum heat input: Class I sources.
445B.3135	Method for determining heat input: Class II sources.
445B.314	Method for determining heat input: Class III sources.
445B.315	Contents of operating permits: Exception for operating permits to construct; required conditions.
445B.318	Operating permits: Requirement for each source; form of application; issuance or denial; posting.
445B.319	Operating permits: Administrative amendment.
445B.325	Operating permits: Termination, reopening and revision, revision, or revocation and reissuance.
445B.331	Request for change of location of emission unit.

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445B.3363	Operating permit to construct: Application.
445B.33637	Operating permit to construct for approval of plantwide applicability limitation: Application.
445B.3364	Operating permit to construct: Action by Director on application; notice; public comment and hearing.
445B.3365	Operating permit to construct: Contents; noncompliance with conditions.
445B.33656	Operating permit to construct for approval of plantwide applicability limitation: Contents; noncompliance with conditions.
445B.3366	Expiration and extension of operating permit to construct; expiration and renewal of plantwide applicability limitation.

445B.3368 Additional requirements for application; exception.
445B.3375 Class I-B application: Filing requirement.
445B.3395 Action by Director on application; notice; public comment and hearing; objection by Administrator; expiration of permit.
445B.340 Prerequisites to issuance, revision or renewal of permit.
445B.342 Certain changes authorized without revision of permit; notification of authorized changes.
445B.3425 Minor revision of permit.
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445B.3443 Renewal of permit.
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445B.3453 Application: General requirements.
445B.3457 Action by Director on application; notice; public comment and hearing; expiration of permit.
445B.346 Required contents of permit.
445B.3465 Application for revision.
445B.3473 Renewal of permit.
445B.3477 Class II general permit.

Class III Operating Permits

445B.3485 Application: General requirements
445B.3487 Action by Director on application; expiration of permit.
445B.3489 Required contents of permit.
445B.3493 Application for revision.
445B.3497 Renewal of permit.

Approved Reference:		State Implementation Plan Text of Regulations and Articles:	Cite: 40 CFR 52.1490 and or FR ²
Article #	NAC #		
Definitions			
	445B.001 (Supersedes 445.430)	Definitions. As used in <u>NAC 445B.001</u> to <u>445B.3791</u> , inclusive, unless the context otherwise requires, the words and terms defined in <u>NAC 445B.002</u> to <u>445B.211</u> , inclusive, have the meanings ascribed to them in those sections. (Supplied in codification; A by Environmental Comm'n, 12-5-84; 10-15-85; 8-22-86; 9-25-87; 10-22-87; 12-15-88; 12-8-89; 9-13-91; 12-26-91; 9-4-92; 10-29-93; 12-13-93; 3-29-94, eff. 11-15-94; R105-97, 3-5-98; R117-00, 6-1-2001; R040-01, 10-25-2001; R103-02, 12-17-2002; R125-04, 9-24-2004; R096-05, 10-31-2005; R189-05, 5-4-2006; R162-06, 9-18-2006; R154-06, 11-13-2006, eff. 1-1-2007)	(c)(66)(i)(A)(3)) 73FR 19144 4/09/2008
	445.431	"Acid mist" defined. "Acid mist" means sulfuric acid mist, as measured by Method 8 of 40 C.F.R. S 60, Appendix A, or an equivalent or alternative method. [Environmental Comm'n, Air Quality Reg. 1.1, eff. 12-4-76; A 8-28-79]	(c)(25)(i)(A) 49 FR 11626 3/27/1984
	445B.002 (Supersedes 445.432)	"Act" defined. "Act" means the Clean Air Act, 42 U.S.C. §§ 7401 et seq., as amended. [Environmental Comm'n, Air Quality Reg. § 1.2, eff. 12-4-76; A 8-28-79]—(Substituted in revision for NAC 445.432)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B. 003	"Adjacent properties" defined. "Adjacent properties" means parcels of land that lie near each other or in close proximity. (Added to NAC by Environmental Comm'n, eff. 12-13-93)—(Substituted in revision for NAC 445.4325)	77FR59321 9/27/2012
	445B.0035	"Administrative revision to a Class I operating permit" defined. "Administrative revision to a Class I operating permit" means a revision of an existing Class I operating permit that incorporates the relevant conditions of an operating permit to construct. (Added to NAC by Environmental Comm'n by R125-04, eff. 9-24-2004)	77FR59321 9/27/2012
	445B.004 (Supersedes 445.433)	"Administrator" defined. "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's representative or delegate. [Environmental Comm'n, Air Quality Reg. § 1.2.5, eff. 10-16-80]—(NAC A 10-14-82)—(Substituted in revision for NAC 445.433)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.005 (Supersedes 445.434)	"Affected facility" defined. "Affected facility" means, with reference to a stationary or temporary source, any apparatus to which a standard is applicable. [Environmental Comm'n, Air Quality Reg. § 1.3, eff. 12-4-76; A 8-28-79]—(NAC A 10-22-87; 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.006	"Affected source" defined. "Affected source" means a stationary source subject to the requirements relating to acid rain set	(c)(56)(i)(A)

² Effective March 13, 2012 (77 FR 14862), EPA redesignated 40 CFR § 52.1470 as § 52.1490. Before this date, all of the CFR citations in this document pointed to § 52.1470. The March 13, 2012 action reformatted the Nevada SIP recordation into table format. State regulations approved into the Nevada SIP after this date appear in a table maintained by EPA at 40 CFR § 52.1470(c). In this document, for further information on SIP revisions made after March 13, 2012, we provide the Federal Register notice citation.

Approved Reference:		State Implementation Plan Text of Regulations and Articles:	Cite: 40 CFR 52.1490 and or FR ²
Article #	NAC #		
		forth in 42 U.S.C. §§ 7651 to 7651o, inclusive. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94; A 10-30-95; R040-01, 10-25-2001)	71FR15040 3/27/2006
	445B.007	"Affected state" defined. "Affected state" means a state that is within 50 miles of a Class I source located in this State, or a state that is contiguous to this State whose air quality may be affected by emissions from a Class I source located in this State. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94)—(Substituted in revision for NAC 445.4346)	77FR59321 9/27/2012
	445B.009 (Supersedes 445B.435)	"Air-conditioning equipment" defined. "Air-conditioning equipment" means equipment utilized to heat or cool the interior of a building or structure. [Environmental Comm'n, Air Quality Reg. § 1.1, eff. 11-7-75; renumbered as § 1.4, 12-4-76; A 8-28-79]—(Substituted in revision for NAC 445.435)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445.436	"Air contaminant" defined. "Air contaminant" means any substance discharged into the atmosphere except water vapor and water droplets. [Environmental Comm'n, Air Quality Reg. 1.2, eff. 11-7-75; renumbered as 1.5, 12-4-76; A 8-28-79]	(c)(25)(i)(A)
	445B.011 (Supersedes 445.437)	"Air pollution" defined. "Air pollution" has the meaning ascribed to it in NRS 445B.115. [Environmental Comm'n, Air Quality Reg. §§ 1.3-1.3.3, eff. 11-7-75; renumbered as § 1.6, 12-4-76; A 8-28-79]—(NAC A by R105-97, 3-5-98)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.013	"Allowable emissions" defined. "Allowable emissions" means the emissions from a stationary source at its designed maximum capacity or at its actual maximum capacity, whichever is greater, except as reduced by any federally enforceable limitations on its emissions which are established: 1. By Nevada laws or regulations; 2. By any applicable requirement; or 3. By conditions of the stationary source's operating permit, imposed on the emission rate, the type or amount of materials combusted or processed, the operating rates, the hours of operation, or any other factor limiting production or emission, whichever is most stringent. [Environmental Comm'n, Air Quality Reg. § 1.6.5, eff. 10-16-80]—(NAC A 10-22-87; 12-13-93; 10-30-95; R096-05, 10-31-2005)	77FR59321 9/27/2012
	445B.014	"Alteration" defined. "Alteration" means any addition to, or enlargement, replacement, modification or change of the design, capacity, process, arrangement, operating hours or control apparatus that will affect the kind or amount of regulated air pollutants emitted. (Added to NAC by Environmental Comm'n, eff. 12-8-89; A 10-30-95)	77FR59321 9/27/2012
	445B.015 (Supersedes 445.439)	"Alternative method" defined. "Alternative method" means any method of sampling and analyzing for a regulated air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the director that, in specific cases, it produces results adequate to determine compliance. [Environmental Comm'n, Air Quality Reg. § 1.7, eff. 12-4-76; A 8-28-79]—(NAC A 10-30-95)	(c)(56)(i)(A) 71FR71486 12/11/2006
	445B.016	"Alternative operating scenarios" defined. "Alternative operating scenarios" means two or more modes or types of	77FR59321

Approved Reference:		State Implementation Plan Text of Regulations and Articles:	Cite: 40 CFR 52.1490 and or FR ²
Article #	NAC #		
		operation specifically identified by a stationary source in its application and approved by the Director as a condition or as conditions of the source's operating permit. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94; A 10-30-95)	9/27/2012
	445B.018 (Supersedes 445.441)	"Ambient air" defined. "Ambient air" means that portion of the atmosphere which is external to buildings, structures, facilities or installations to which the public has access. [Environmental Comm'n, Air Quality Reg. § 1.4, eff. 11-7-75; renumbered as § 1.9, 12-4-76; A 8-28-79]—(NAC A 10-22-87)—(Substituted in revision for NAC 445.441)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.019	"Applicable requirement" defined. "Applicable requirement" means, as applied to a stationary source: 1. Any standard or other relevant requirement: (a) Provided in <u>NRS 445B.100</u> to <u>445B.640</u> , inclusive, and <u>NAC 445B.001</u> to <u>445B.3689</u> , inclusive, except for the standards for ambient air established in <u>NAC 445B.22097</u> ; (b) Provided in the applicable implementation plan approved or adopted by the EPA pursuant to 42 U.S.C. §§ 7401 to 7515, inclusive; (c) For a hazardous air pollutant adopted pursuant to 42 U.S.C. § 7412, including any requirement regarding the prevention of accidental releases; (d) For a program to control acid rain adopted pursuant to 42 U.S.C. §§ 7651 to 7651o, inclusive; (e) For enhanced monitoring or for compliance certification adopted pursuant to 42 U.S.C. § 7413(a)(3) or 7661c(b); (f) For solid waste incineration units adopted pursuant to 42 U.S.C. § 7429; (g) For consumer and commercial products or tank vessels adopted pursuant to 42 U.S.C. § 7511b; and (h) For the protection of stratospheric ozone adopted pursuant to 42 U.S.C. §§ 7671 to 7671q, inclusive, unless the Administrator determines that such provisions are not required in an operating permit; 2. A new source performance standard adopted pursuant to 42 U.S.C. § 7411; 3. Any term or condition of any permit issued pursuant to the requirements of 42 U.S.C. §§ 7401 to 7515, inclusive, including provisions regarding the prevention of significant deterioration of air quality and new source review; and 4. Any national ambient air quality standard or requirement regarding increments or visibility adopted pursuant to 42 U.S.C. §§ 7470 to 7492, inclusive, as the standard applies to a temporary source for which the owner or operator has applied for and obtained an operating permit pursuant to <u>NAC 445B.287</u> to <u>445B.3497</u> , inclusive. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 10-30-95, eff. 1-11-96; R105-97, 3-5-98; R040-10, eff. 7-22-2010)	77FR59321 9/27/2012
	445B.022 (Supersedes 445.444)	"Atmosphere" defined. "Atmosphere" means all the air surrounding the earth and external to buildings and structures. [Environmental Comm'n, Air Quality Reg. § 1.7, eff. 11-7-75; renumbered as § 1.14, 12-4-76; A and renumbered as § 1.13, 8-28-79]—(Substituted in revision for NAC 445.444)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445.445	"Barite" defined. "Barite" means a naturally occurring sulfate of barium, BaSO ₄ , which is transparent to opaque and is whitish in color.	(c)(25)(i)(A)

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		[Environmental Comm'n, Air Quality Reg. Art. 1 § 1, eff. 1-25-79; renumbered as 1.14, 8-28-79]	
	445.447	"Barite grinding mill" defined. "Barite grinding mill" means any single source designed to reduce crude barite to a finished product. [Environmental Comm'n, Air Quality Reg. Art. 1 § 2, eff. 1-25-79]	(c)(25)(i)(A)
	445B.029	"Best available retrofit technology" defined. "Best available retrofit technology" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility as defined in 40 C.F.R. § 51.301. (Added to NAC by Environmental Comm'n by R190-08, eff. 4-23-2009)	77FR17334 3/26/2012
	445B.030 (Supersedes 445.457)	"British thermal units" defined. "British thermal units (Btu)" means that quantity of heat required to raise the temperature of one pound of water from 60 degrees Fahrenheit to 61 degrees Fahrenheit at a constant, absolute pressure of 14.7 pounds per square inch (29.92 inches of mercury). [Environmental Comm'n, Air Quality Reg. § 1.9, eff. 11-7-75; A and renumbered as § 1.21, 12-4-76]—(NAC A 10-22-87)—(Substituted in revision for NAC 445.457)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445.458	"Calcine" defined. "Calcine" means the solid materials produced by a roaster. [Environmental Comm'n, Air Quality Reg. 1.22, eff. 12-4-76]	(c)(25)(i)(A)
	445B.035	"Class I-B application" defined. "Class I-B application" means an application for a Class I operating permit that is required for any new stationary source or significant modification to an existing stationary source which is subject to the requirements of 42 U.S.C. §§ 7661 to 7661f, inclusive. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 10-30-95, eff. 1-11-96)	77FR59321 9/27/2012
	445B.036	"Class I source" defined. "Class I source" means any stationary source: 1. Which is subject to the requirements of 42 U.S.C. §§ 7661 to 7661f, inclusive; 2. For which the owner or operator has proposed the construction of a major modification; or 3. Which is a major stationary source. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 10-30-95, eff. 1-11-96; R125-04, 9-24-2004)	77FR59321 9/27/2012
	445B.037	"Class II source" defined. "Class II source" means any stationary source which is not subject to the requirements of 42 U.S.C. §§ 7661 to 7661f, inclusive, but which is otherwise subject to the requirements of <u>NAC 445B.001 to 445B.3689</u> , inclusive. The term does not include a stationary source that is operating under a Class III operating permit issued pursuant to <u>NAC 445B.001 to 445B.3689</u> , inclusive. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 10-30-95, eff. 1-11-96; R040-01, 10-25-2001; R040-1-, eff. 7-22-2010)	77FR59321 9/27/2012
	445B.038	"Class III source" defined. "Class III source" means a stationary source which is subject to the requirements set forth in <u>NAC 445B.001 to 445B.3689</u> , inclusive, 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	77FR59321 9/27/2012

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		<p>PM₁₀, NO_x, SO₂, VOC and H₂S;</p> <ol style="list-style-type: none"> 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 does not exceed 750 horsepower and is not subject to the requirements of 40 C.F.R. Part 60 except for: <ol style="list-style-type: none"> (a) A stationary compression ignition internal combustion engine subject to Subpart IIII; or (b) A stationary spark ignition internal combustion engine subject to Subpart JJJJ; 5. Which is not subject to the requirements of 40 C.F.R. Part 61; 6. Which is not subject to the requirements of 40 C.F.R. Part 63, except for a stationary reciprocating internal combustion engine subject to Subpart ZZZZ and which does not exceed 750 horsepower; 7. Which is not a temporary source; 8. Which is not located at or a part of another stationary source; 9. Which does not operate a thermal unit that emits mercury, as defined in NAC 445B.3643; and 10. Whose owner or operator: <ol style="list-style-type: none"> (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. <p>(Added to NAC by Environmental Comm'n by R040-01, eff. 10-25-2001; A by R189-05, 5-4-2006; R142-07, 4-17-2008; R076-08, 8-26-2008; R040-10, 7-22-2010)</p>	
	445.464	<p>"Coal" defined. "Coal" means all solid fossil fuels classified as anthracite, bituminous, subbituminous or lignite as defined by Designation D-388-66 of the American Society for Testing and Materials. [Environmental Comm'n, Air Quality Reg. § 1.29, eff. 12-4-76]</p>	(c)(25)(i)(A)
	445.470	<p>"Colemanite" defined. "Colemanite" means naturally occurring hydrated calcium borate with a molecular formula of Ca₂B₆O₁₁, 5H₂O, and which is normally white or colorless. [Environmental Comm'n, Air Quality Reg. Art. 1 § 2, eff. 11-17-78]</p>	(c)(25)(i)(A)
	445.471	<p>"Colemanite processing plant" defined. "Colemanite processing plant" means a facility which has the capability of treating colemanite ore for the production of calcined or uncalcined concentrate. Treating may consist of crushing, screening, grinding, transferring, storing, calcining as required and loading. [Environmental Comm'n, Air Quality Reg. Art. 1 § 1, eff. 11-17-78]</p>	(c)(25)(i)(A)
	445B.042 (Supersedes 445.472)	<p>"Combustible refuse" defined. "Combustible refuse" means any waste material which can be consumed by combustion. [Environmental Comm'n, Air Quality Reg. § 1.11, eff. 11-7-75; renumbered as § 1.35, 12-4-76]—(Substituted in revision for NAC 445.472)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006

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	445B.0423 (Supersedes Article 1.36)	<p>“Commence” defined. “Commence,” as used in reference to construction or modification of a stationary source, means that the owner or operator has:</p> <ol style="list-style-type: none"> 1. Obtained all necessary preconstruction approvals or permits, including those required by federal air quality control laws and regulations, NAC 445B.001 to 445B.3689, inclusive, and air quality laws and regulations which are part of the applicable state implementation plan; and 2. Taken affirmative steps toward construction or modification, in one of the following ways: <ol style="list-style-type: none"> (a) Has begun, or caused to begin, a continuous program of on-site construction of the source to be completed within a reasonable time, as demonstrated by the initiation of physical on-site construction activities on an emission unit which are of a permanent nature, which may include, without limitation, the installation of building supports and foundations, laying of underground pipework and the construction of permanent storage structures; (b) Has entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source, to be completed within a reasonable time; or (c) For modification of a stationary source, has begun those on-site activities, other than preparatory activities, which mark the initiation of the modification. <p>(Added to NAC by Environmental Comm’n by R142-07, eff. 4-17-2008)</p>	77FR59321 9/27/2012
	445B.0425 (Supersedes Article 1.38)	<p>“Commission” defined. “Commission” has the meaning ascribed to it in NRS 445B.120. (Added to NAC by Environmental Comm’n, eff. 10-30-95; A by R105-97, 3-5-98)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.044 (Supersedes Article 1.42)	<p>“Construction” defined. “Construction” means any physical change or change in the method of operation of an emission unit, including, without limitation, the fabrication, erection, installation or modification of an emission unit. [Environmental Comm’n, Air Quality Reg. § 1.42, eff. 12-4-76]—(NAC A by R105-97, 3-5-98; R096-05, 10-31-2005)</p>	77FR59321 9/27/2012
	445B.046 (Supersedes Article 1.43)	<p>“Contiguous property” defined. “Contiguous property” means any property under single or joint ownership or operatorship which is in physical contact, touching, near or adjoining. Public property or a public right-of-way shall not be deemed as a break in any otherwise contiguous property. [Environmental Comm’n, Air Quality Reg. § 1.16, eff. 11-7-75; renumbered as § 1.43, 12-4-76]—(Substituted in revision for NAC 445.479)</p>	77FR59321 9/27/2012
	445B.047 (Supersedes 445.480)	<p>“Continuous monitoring system” defined. “Continuous monitoring system” means the equipment required for monitoring emissions which is used to sample and, if applicable, condition, to analyze, and to provide a permanent record of emissions or process parameters. [Environmental Comm’n, Air Quality Reg. § 1.44, eff. 12-4-76; A 12-15-77]—(Substituted in revision for NAC 445.480)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006
	445.482	"Converter" defined.	(c)(25)(i)(A)

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		"Converter" means any vessel in which lead concentrate or bullion is charged and refined. [Environmental Comm'n, Air Quality Reg. 1.46, eff. 12-4-76]	
	445B.051 (Supersedes 445.486)	"Day" defined. "Day" means a 24-hour period which begins at midnight. [Environmental Comm'n, Air Quality Reg. § 1.51, eff. 12-4-76]—(NAC A 10-22-87)—(Substituted in revision for NAC 445.486)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.053 (Supersedes 445.488)	"Director" defined. "Director" means the Director of the State Department of Conservation and Natural Resources or his designee or a 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. [Environmental Comm'n, Air Quality Reg. § 1.19, eff. 11-7-75; renumbered as § 1.53, 12-4-76; A 12-15-77]—(Substituted in revision for NAC 445.488)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.054	"Dispersion technique" defined. 1. "Dispersion technique" means any technique that attempts to affect the concentration of a pollutant in the ambient air by: (a) Using that portion of a stack which exceeds good engineering practice stack height; (b) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or (c) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters or stack parameters, combining exhaust gases from several existing stacks into one stack or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. 2. The term does not include: (a) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream. (b) The merging of exhaust gas streams where: (1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams; (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" applies only to the emission limitation for the pollutant affected by such a change in operation; or (3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence before the merging, an increase in the quantity of pollutants actually emitted before the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging	77FR59321 9/27/2012

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		was not significantly motivated by such an intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source. (c) Smoke management in agricultural or silvicultural prescribed burning programs. (d) Episodic restrictions on residential woodburning and open burning. (e) Techniques under paragraph (c) of subsection 1 which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year. (Added to NAC by Environmental Comm'n by R096-05, eff. 10-31-2005)	
	445.492	"Dryer" defined. "Dryer" means any facility in which a charge of a copper sulfide ore concentrate is heated in the presence of air to eliminate a portion of the moisture from the charge, provided less than 5 percent of the sulfur contained in the charge is eliminated in the facility. [Environmental Comm'n, Air Quality Reg. 1.57, eff. 12-4-76]	(c)(25)(i)(A)
1.60		Effective date. Upon the filing of the regulations with the Secretary of State, or as specified in the exceptions contained in NRS 233B.070.	(c)(14)(vii)
	445B.055	"Effective date of the program" defined. "Effective date of the program" means the date on which the Administrator approves the program. (Added to NAC by Environmental Comm'n, eff. 12-13-93)—(Substituted in revision for NAC 445.4915)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.056	"Emergency" defined. "Emergency" means any situation arising from a sudden and reasonably unforeseeable event beyond the control of the owner or operator, including an act of God, that requires immediate corrective action to restore normal operation, and that causes the source to exceed an emission limitation contained in the operating permit which is based on a specific type of technology. The term does not include the failure to comply with emission limitations because of the improper design of the source, the lack of preventative maintenance, the careless or improper operation of the source, or any error by the operator. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94)—(Substituted in revision for NAC 445.4955)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.058 (Supersedes 445.499)	"Emission" defined. 1. "Emission" means the act of passing into the atmosphere a regulated air pollutant or a gas stream which contains, or may contain, a regulated air pollutant. 2. The term includes the material passed to the atmosphere. [Environmental Comm'n, Air Quality Reg. § 1.22, eff. 11-7-75; renumbered as § 1.65, 12-4-76]—(NAC A by R105-97, 3-5-98)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.059 (Supersedes 445.500)	"Emission unit" defined. "Emission unit" means a part of a stationary source which emits or has the potential to emit any regulated air pollutant. [Environmental Comm'n, Air Quality Reg. § 1.57.5, eff. 10-16-80]—(NAC A 10-22-87; 3-29-94, eff. 11-15-94; 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.060	"Enforceable" defined. "Enforceable" means enforceable under federal, state or local law.	(c)(56)(i)(A)

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		(Added to NAC by Environmental Comm'n, eff. 10-14-82)—(Substituted in revision for NAC 445.5005)	71FR15040 3/27/2006
	445B.061	“EPA” defined. “EPA” means the United States Environmental Protection Agency. (Added to NAC by Environmental Comm'n, eff. 12-13-93)—(Substituted in revision for NAC 445.5008)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.062 (Supersedes 445.501)	“Equivalent method” defined. “Equivalent method” means any method of sampling and analyzing for a regulated air pollutant which has been demonstrated to the director’s satisfaction to have a consistent and quantitatively known relationship to the reference method under specified conditions. [Environmental Comm’n, Air Quality Reg. § 1.67, eff. 12-4-76]—(NAC A 10-30-95)	(c)(56)(i)(A) 71FR71486 12/11/2006
	445B.063 (Supersedes 445.504)	“Excess emissions” defined. “Excess emissions” means any emission which exceeds any applicable emission limitation prescribed by <u>NAC 445B.001 to 445B.3791</u> , inclusive, or that is contained in an operating permit. The averaging time and test procedures for determining excess emissions must be as specified in the relevant condition or conditions of the operating permit, except that this does not preclude the use, including the exclusive use, of any credible evidence or information relevant to the determination of whether a source would have been in compliance with the applicable requirements if the appropriate performance or compliance test or procedure had been performed to determine excess emissions. [Environmental Comm’n, Air Quality Reg. Art. 1 § 1, eff. 8-29-79]—(NAC A 10-22-87; 12-13-93; R096-05, 10-31-2005)	(c)(66)(i)(A)(3)) 73FR19144 04/09/2008
	445B.064	“Excessive concentration” defined. “Excessive concentration” means, for the purpose of determining good engineering practice stack height: 1. For sources seeking credit for stack height exceeding that established under paragraph (b) of subsection 1 of <u>NAC 445B.083</u> , a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to 40 C.F.R. § 52.21, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations pursuant to <u>NAC 445B.001 to 445B.3689</u> , inclusive, must be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate must be established in consultation with the source owner or operator. 2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under paragraph (b) of subsection 1 of <u>NAC 445B.083</u> , either: (a) A maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in	77FR59321 9/27/2012

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		<p>subsection 1, except that the emission rate specified by any applicable state limit or, in the absence of such a limit, the actual emission rate, must be used; or</p> <p>(b) The actual presence of a local nuisance caused by the existing stack, as determined by the Director.</p> <p>3. For sources seeking credit after January 12, 1979, for a stack height determined under paragraph (b) of subsection 1 of <u>NAC 445B.083</u>, where the Director requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in paragraph (b) of subsection 1 of <u>NAC 445B.083</u>, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes or eddy effects.</p> <p>(Added to NAC by Environmental Comm'n by R096-05, eff. 10-31-2005)</p>	
1.73		<p>Existing source. Equipment, machines, devices, articles, contrivances, or facilities which are constructed, purchased, or in operation on the effective date of these regulations; except that any existing equipment, machine, device, article, contrivance, or facility which is altered, replaced, or rebuilt which increases the total emission after the effective date of these regulations shall be reclassified as a "new source".</p>	(c)(12)
	445B.066 (Supersedes Article 1.72)	<p>"Existing stationary source" defined. "Existing stationary source" means:</p> <ol style="list-style-type: none"> 1. For stationary sources subject to 42 U.S.C. § 7412, any stationary source other than a new stationary source. 2. For all other stationary sources, a stationary source which was constructed, or for which the owner or operator submitted a complete application for an operating permit, before the effective date of the program. <p>[Environmental Comm'n, Air Quality Reg. § 1.26, eff. 11-7-75; renumbered as § 1.73, 12-4-76]—(NAC A 12-13-93; 10-30-95)</p>	77FR59321 9/27/2012
	445B.068	<p>"Facility" defined. "Facility" includes any groups of activities which emit regulated air pollutants, are located on one or more contiguous properties, and are owned, operated or controlled by the same person.</p> <p>[Environmental Comm'n, Air Quality Reg. § 1.64, eff. 5-7-80]—(NAC A 10-30-95)</p>	77FR59321 9/27/2012
	445B.069	<p>"Federally enforceable" defined. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator pursuant to any provision of the Act, 40 C.F.R. §§ 52.21, any requirements developed pursuant to the applicable state implementation plan and 40 C.F.R. §§ 51.160 to 51.166, inclusive, 40 C.F.R. Parts 60, 61 and 63, or 40 C.F.R. Part 70, or by other persons pursuant to 42 U.S.C. § 7604.</p> <p>(Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94; A 3-29-94, eff. 11-15-94; R142-07, 4-17-2008)— (Substituted in revision for NAC 445.5095)</p>	77FR59321 9/27/2012
	445B.070	<p>"Federally enforceable emissions cap" defined. "Federally enforceable emissions cap" means a condition of an operating permit containing an emission limitation that the holder of the operating permit requested and the Director approved and which is independent of any applicable requirement or requirements.</p> <p>(Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94)—(Substituted in revision for NAC 445.5105)</p>	77FR59321 9/27/2012

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	445.512	"Floating roof" defined. "Floating roof" means a cover of a storage vessel consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the petroleum liquid being contained and is equipped with a seal or seals to close the space between the edge of the roof and wall of the tank. [Environmental Comm'n, Air Quality Reg. 1.78, eff. 12-4-76]	(c)(25)(i)(A)
	445.513	"Fossil fuel" defined. "Fossil fuel" means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials for the purpose of creating useful heat. [Environmental Comm'n, Air Quality Reg. 1.79, eff. 12-4-76]	(c)(25)(i)(A)
	445B.072 (Supersedes 445.516)	"Fuel" defined. "Fuel" means any form of combustible matter, solid, liquid, vapor or gas which is used to generate energy. [Environmental Comm'n, Air Quality Reg. § 1.28, eff. 11-7-75; renumbered as § 1.82, 12-4-76]—(NAC A 10-22-87)— (Substituted in revision for NAC 445.516)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.073 (Supersedes 445.517)	"Fuel-burning equipment" defined. "Fuel-burning equipment" means: 1. Indirect heat transfer fuel-burning equipment which is any device used for the combustion of fuel in which heat is transferred from the products of combustion indirectly for the production of useful heat or power. 2. Direct heat transfer fuel-burning equipment which is any device used for the combustion of fuel in which heat is transferred from the products of combustion directly for the production of useful heat or power. [Environmental Comm'n, Air Quality Reg. §§ 1.29-1.29.2, eff. 11-7-75; renumbered as § 1.85, 12-4-76]—(NAC A 9-19-90)—(Substituted in revision for NAC 445.517)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.075 (Supersedes Article 1.86)	"Fugitive dust" defined. "Fugitive dust" means emissions of solid, airborne particulate matter which could not reasonably pass through a stack, chimney, vent or a functionally equivalent opening. [Environmental Comm'n, Air Quality Reg. § 1.30, eff. 11-7-75; renumbered as § 1.86, 12-4-76; A and renumbered as § 1.75, 10-16-80]—(NAC A 3-29-94, eff. 11-15-94)—(Substituted in revision for NAC 445.520)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.077	"Fugitive emissions" defined. "Fugitive emissions" means emissions of any regulated air pollutants, including fugitive dust, which could not reasonably pass through a stack, chimney, vent or a functionally equivalent opening. [Environmental Comm'n, Air Quality Reg. § 1.75.5, eff. 10-16-80]—(NAC A 3-29-94, eff. 11-15-94; 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.080 (Supersedes 445.525)	"Garbage" defined. "Garbage" means putrescible animal or vegetable refuse. [Environmental Comm'n, Air Quality Reg. § 1.31, eff. 11-7-75; renumbered as § 1.89, 12-4-76]—(Substituted in revision for NAC 445.525)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.082	"General permit" defined. "General permit" means an operating permit issued by the Director to cover numerous similar stationary sources. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94; A 10-30-95)	77FR59321 9/27/2012
	445B.083	"Good engineering practice stack height" defined. 1. "Good engineering practice stack height" means the stack height that is the greater of:	77FR59321 9/27/2012

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		<p>(a) Two hundred thirteen feet, measured from the ground-level elevation at the base of the stack;</p> <p>(b) A height determined as follows:</p> <p>(1) For stacks that commenced construction on or before January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required pursuant to 40 C.F.R. Parts 51 and 52 and <u>NAC 445B.001 to 445B.3689</u>, inclusive, the height determined by use of the equation $H_g = 2.5H$, so long as the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation; and</p> <p>(2) For all other stacks, the height determined by use of the equation $H_g = H + 1.5L$,</p> <p>↳ except that the Director may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or</p> <p>(c) The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes or eddy effects created by the source itself, nearby structures or nearby terrain features.</p> <p>2. For the purposes of this section:</p> <p>H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack;</p> <p>H = height of nearby structures measured from the ground-level elevation at the base of the stack; and</p> <p>L = lesser dimension, height or projected width, of nearby structures.</p> <p>(Added to NAC by Environmental Comm'n by R096-05, eff. 10-31-2005)</p>	
	445B.084	<p>“Hazardous air pollutant” defined. “Hazardous air pollutant” has the meaning ascribed to it in NRS 445B.140. (Added to NAC by Environmental Comm'n, eff. 12-13-93)—(Substituted in revision for NAC 445.5305)</p>	(c)(56)(i)(A) 71FR71486 12/11/2006
	445B.086 (Superseded 445.533)	<p>“Incinerator” defined. “Incinerator” means an engineered apparatus capable of withstanding heat and designed to efficiently reduce solid, semisolid, liquid or gaseous waste at specified rates and from which the residues contain little or no combustible material. [Environmental Comm'n, Air Quality Reg. § 1.33, eff. 11-7-75; renumbered as § 1.98, 12-4-76]—(Substituted in revision for NAC 445.533)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.087	<p>NAC 445B.087 “Increment” defined. “Increment” has the meaning ascribed to it in 40 C.F.R. § 52.21, as adopted in <u>NAC 445B.221</u>. (Added to NAC by Environmental Comm'n, eff. 12-13-93)—(Substituted in revision for NAC 445.5335)</p>	77FR59321 9/27/2012
	445.536	<p>"Lead" defined. "Lead" means elemental lead or alloys in which the predominant component is lead. [Environmental Comm'n, Air Quality Reg. 1.101, eff. 12-4-76; A and renumbered as 1.98, 8-28-79]</p>	(c)(25)(i)(A)
	445B.091	<p>“Local air pollution control agency” defined. “Local air pollution control agency” means any city, county or district air</p>	(c)(56)(i)(A)

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	(Superseded 445.537)	pollution control agency approved by the Commission. [Environmental Comm'n, Air Quality Reg. § 1.36, eff. 11-7-75; renumbered as § 1.103, 12-4-76; A and renumbered as § 1.99, 8-28-79]—(Substituted in revision for NAC 445.537)	71FR15040 3/27/2006
1- Definitions : No. 2- LAER		“Lowest achievable emission rate” means the emission rate for any source for which an environmental evaluation must be prepared which reflects: <ul style="list-style-type: none"> a. The most stringent emission rate in the approve implementation plan of any state for any class or category or source, unless the owner or operator of the source demonstrates that such an emission limitation is not achievable; or b. The most stringent emission limitation which is achieved in practice by such class or category or source, whichever is more stringent so long as it is not less stringent than the emission rate allowed by any applicable emission standard established in these regulations. 	(c)(16)(i)
	445B.093	“ Major modification ” defined. “Major modification” has the meaning ascribed to it in 40 C.F.R. § 52.21. (Added to NAC by Environmental Comm’n by R125-04, eff. 9-24-2004)	77FR59321 9/27/2012
	445B.094	“ Major source ” defined. <ol style="list-style-type: none"> 1. Except as otherwise provided in subsection 3, “major source” means any stationary source that: <ol style="list-style-type: none"> (a) Is located on one or more contiguous or adjacent properties; (b) Is under the common control of the same person or persons; (c) Belongs to a single major industrial grouping as described in the <i>Standard Industrial Classification Manual</i>, as incorporated by reference in <u>NAC 445B.221</u>; and (d) Meets one of the following conditions: <ol style="list-style-type: none"> (1) Is located in a nonattainment area and is required to obtain an operating permit pursuant to 42 U.S.C. §§ 7501 to 7515, inclusive; (2) Directly emits or has the potential to emit: <ol style="list-style-type: none"> (I) One hundred tons per year or more of any regulated air pollutant, excluding particulate matter more than 10 microns in diameter; or (II) Ten tons per year or more of a hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants or a lesser quantity as established by the Commission; or (3) Is located in a particulate matter (PM₁₀) “serious” nonattainment area and directly emits or has the potential to emit 70 tons per year or more of PM₁₀. <p>↪ The Director shall consider fugitive emissions in determining whether a stationary source is major for any source category listed in 40 C.F.R. § 52.21(b)(1)(iii), as adopted by reference pursuant to <u>NAC 445B.221</u>, or whether a stationary source of a hazardous air pollutant is a major source. To determine whether a stationary source is a major source of hazardous air pollutants under 42 U.S.C. § 7412, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station must not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control.</p> 	77FR59321 9/27/2012

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		<p>2. In determining whether a stationary source is a major source, the Director shall not consider the emissions from mobile sources subject to regulation under Title II of the federal Clean Air Act, 42 U.S.C. §§ 7521 to 7590, inclusive, or from nonroad engines.</p> <p>3. For the purposes of the program for the prevention of significant deterioration of air quality (PSD), the term “major source” is synonymous with the term “major stationary source” as that term is defined in 40 C.F.R. § 52.21(b)(1), as adopted by reference in <u>NAC 445B.221</u>.</p> <p>(Added to NAC by Environmental Comm’n, 12-13-93, eff. 11-15-94; A 3-29-94, eff. 11-15-94; 10-30-95; 5-3-96; R105-97, 3-5-98; R117-00, 6-1-2001)</p>	
	445B.0945 (Supersedes Article 1.104)	<p>“Major stationary source” defined. “Major stationary source” has the meaning ascribed to it in 40 C.F.R. § 52.21(b)(1). (Added to NAC by Environmental Comm’n by R125-04, eff. 9-24-2004)</p>	77FR59321 9/27/2012
	445B.095 (Superseded 445.542)	<p>“Malfunction” defined. “Malfunction” means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown are not considered malfunctions. [Environmental Comm’n, Air Quality Reg. § 1.105, eff. 12-4-76; A and renumbered as § 1.101, 8-28-79]— (Substituted in revision for NAC 445.542)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.097	<p>“Maximum allowable throughput” defined. “Maximum allowable throughput” means:</p> <ol style="list-style-type: none"> 1. The maximum process weight allowed through a continuous or long-run steady-rate operation, per hour; or 2. For cyclical or batch unit operations or unit processes, the total process weight for a 1-hour period. <p>➤ If any process, operation or the design of any equipment permits more than one interpretation of this section, the interpretation which results in the lesser value of allowable emissions applies. (Added to NAC by Environmental Comm’n, eff. 10-22-87)—(Substituted in revision for NAC 445.5435)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.099 (Supersedes Article 1.109)	<p>“Modification” defined. “Modification” means any physical change in, or change in the method of operation of a stationary source which:</p> <ol style="list-style-type: none"> 1. Increases the amount of any regulated air pollutant, to which a standard applies, emitted into the atmosphere by that stationary source; or 2. Results in the emission of any regulated air pollutants, to which a standard applies, into the atmosphere if the regulated air pollutants were not previously emitted. <p>[Environmental Comm’n, Air Quality Reg. § 1.109, eff. 12-4-76; A and renumbered as § 1.95, 5-7-80]—(NAC A 10-30-95)</p>	77FR59321 9/27/2012
	445B.103 (Supersedes	<p>“Monitoring device” defined. “Monitoring device” means the total equipment used to measure and record emissions and process parameters which is required pursuant to 42 U.S.C. §§ 7401 to 7671q, inclusive, or NAC 445B.001 to 445B.601,</p>	(c)(56)(i)(A) 71FR15040

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	445.548)	inclusive, or as a condition of an operating permit. [Environmental Comm'n, Air Quality Reg. § 1.110, eff. 12-4-76]—(NAC A 3-29-94, eff. 1-11-96; 10-30-95, eff. 1-11-96)—(Substituted in revision for NAC 445.548)	3/27/2006
	445B.104 (Supersedes Article 1.111)	“Motor vehicle” defined. “Motor vehicle” has the meaning ascribed to it in <u>NRS 485.050</u> . (Added to NAC by Environmental Comm'n by R117-00, eff. 6-1-2001)	77FR59321 9/27/2012
	445B.106 (Superseded 445.549)	“Multiple-chamber incinerator” defined. “Multiple-chamber incinerator” means any article, machine, equipment contrivance, structure or part of a structure used to dispose of combustible refuse by burning, which consists of three or more refractory lined combustion furnaces in series, physically separated by refractory walls and interconnected by gas passage ports or ducts and employing adequate design parameters necessary for maximum combustion of the material to be burned. [Environmental Comm'n, Air Quality Reg. § 1.39, eff. 11-7-75; renumbered as § 1.113, 12-4-76]—(Substituted in revision for NAC 445.549)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.107	“Nearby” defined. “Nearby” means, as used in <u>NAC 445B.064</u> and <u>445B.083</u> , with respect to a specific structure or terrain feature: 1. For the purpose of using the equations set forth in paragraph (b) of subsection 1 of <u>NAC 445B.083</u> , that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than one-half mile; and 2. For the purpose of conducting demonstrations under paragraph (c) of subsection 1 of <u>NAC 445B.083</u> , not greater than one-half mile, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height of the feature, not to exceed 2 miles if the feature achieves a height one-half mile from the stack that is at least 40 percent of the good engineering practice stack height determined by using the equation set forth in subparagraph (2) of paragraph (b) of subsection 1 of <u>NAC 445B.083</u> or 85 feet, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack. (Added to NAC by Environmental Comm'n by R096-05, eff. 10-31-2005)	77FR59321 9/27/2012
1.114		New source. Equipment, machines, devices, articles, contrivances, or facilities built or installed on or after the effective date of these regulations.	(c)(12)
	445B.108	“New stationary source” defined. “New stationary source” means: 1. For stationary sources subject to the requirements of 42 U.S.C. § 7412, a stationary source for which the owner or operator commenced construction or reconstruction after the Administrator proposed regulations pursuant to 42 U.S.C. § 7412 which established an emission standard applicable to the stationary source. 2. For all other stationary sources, a stationary source or modification for which an owner or operator has not submitted a complete application for an operating permit before the effective date of the program. [Environmental Comm'n, Air Quality Reg. § 1.41, eff. 11-7-75; renumbered as § 1.114, 12-4-76; A and renumbered as §	77FR59321 9/27/2012

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		1.100, 5-7-80]—(NAC A 12-13-93; 10-30-95)	
	445B.109 (Superseded 445.552)	“Nitrogen oxides” defined. “Nitrogen oxides” means all oxides of nitrogen except nitrous oxide, as measured by test methods approved by the EPA. [Environmental Comm’n, Air Quality Reg. § 1.116, eff. 12-4-76]—(NAC A 3-29-94, eff. 11-15-94)—(Substituted in revision for NAC 445.552)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.112	“Nonattainment area” defined. “Nonattainment area” means, for any regulated air pollutant, an area: 1. Which is shown by monitored data or is calculated by air quality modeling or any other method determined by the Administrator to be reliable, to exceed any national standard of ambient air quality for the regulated air pollutant; 2. Which is designated as a nonattainment area by the Governor; and 3. Which is promulgated as a nonattainment area by the Administrator. [Environmental Comm’n, Air Quality Reg. § 1.103, eff. 5-7-80]—(NAC A 3-29-94, eff. 11-15-94; 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.113	“Nonroad engine” defined. “Nonroad engine” has the meaning ascribed to it in 40 C.F.R. § 89.2, as that section existed on December 31, 1997. (Added to NAC by Environmental Comm’n by R117-00, eff. 6-1-2001)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.1135	“Nonroad vehicle” defined. “Nonroad vehicle” has the meaning ascribed to it in 40 C.F.R. § 89.2, as that section existed on December 31, 1997. (Added to NAC by Environmental Comm’n by R117-00, eff. 6-1-2001)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.116 (Superseded 445.555)	“Odor” defined. “Odor” means a characteristic of a regulated air pollutant which makes it perceptible to the sense of smell. [Environmental Comm’n, Air Quality Reg. § 1.43, eff. 11-7-75; renumbered as § 1.118, 12-4-76]—(NAC A 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.117	“Offset” defined. “Offset” means a reduction in emissions at an existing stationary source which is greater than a corresponding increase in emissions of the same regulated air pollutant at a new stationary source or a modification of a stationary source in the same nonattainment area. (Added to NAC by Environmental Comm’n, eff. 3-29-94; A 10-30-95)	77FR59321 9/27/2012
	445B.119 (Superseded 445.556)	“One-hour period” defined. “One-hour period” means any 60-minute period. [Environmental Comm’n, Air Quality Reg. § 1.119, eff. 12-4-76]—(NAC A 10-22-87)—(Substituted in revision for NAC 445.556)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.121 (Superseded 445.557)	“Opacity” defined. “Opacity” means the property of a substance tending to obscure vision and measured in terms of percent obscuration. The relationship between opacity and Ringelmann number is approximately equal to the following in shades of white to gray. <div style="display: flex; justify-content: space-around; width: 100%;"> <div style="text-align: center;">Opacity (Percent)</div> <div style="text-align: center;">Ringelmann Number</div> </div>	(c)(56)(i)(A) 71FR15040 3/27/2006

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		20..... 1 40..... 2 60..... 3 80..... 4 100..... 5 [Environmental Comm’n, Air Quality Reg. § 1.44, eff. 11-7-75; renumbered as § 1.120, 12-4-76]—(Substituted in revision for NAC 445.557)	
	445B.122 (Superseded 445.558)	“Open burning” defined. “Open burning” means any fire from which the products of combustion are emitted into the atmosphere without passing through a stack or chimney. [Environmental Comm’n, Air Quality Reg. § 1.45, eff. 11-7-75; renumbered as § 1.21, 12-4-76]—(Substituted in revision for NAC 445.558)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.123 (Supersedes 445.559)	“Operating permit” defined. “Operating permit” has the meaning ascribed to it in <u>NRS 445B.145</u> . Unless otherwise specifically stated, the term includes: <ol style="list-style-type: none"> 1. A Class I, a Class II and a Class III operating permit; 2. An operating permit to construct; and 3. A mercury operating permit to construct, as defined in <u>NAC 445B.3625</u>. [Environmental Comm’n, Air Quality Reg. § 1.46, eff. 11-7-75; renumbered as § 1.122, 12-4-76]—(NAC A 12-13-93; R040-01, 10-25-2001; R103-02, 12-17-2002; R189-05, 5-4-2006; R162-06, 9-18-2006; R040-10, eff. 7-22-2010)	77FR59321 9/27/2012
	445B.124	“Operating permit to construct” defined. “Operating permit to construct” means an operating permit signed and issued by the Director which: <ol style="list-style-type: none"> 1. Authorizes the construction and an initial period of operation of a proposed new Class I stationary source or modification to an existing Class I stationary source; 2. Includes the conditions which apply to the construction and the initial period of operation of the Class I stationary source or modification to an existing Class I stationary source; and 3. Includes the requirement that the holder of the operating permit to construct submit a complete application for a Class I operating permit or for a modification of an existing Class I operating permit within 12 months after the date of the initial start-up of the new or modified Class I stationary source. (Added to NAC by Environmental Comm’n by R103-02, eff. 12-17-2002)	77FR59321 9/27/2012
	445B.125 (Superseded 445.560)	“Ore” defined. “Ore” means a natural combination of minerals from which a metal can be extracted. [Environmental Comm’n, Air Quality Reg. Art. 1 § 3, eff. 11-17-78]—(Substituted in revision for NAC 445.560)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.127 (Superseded)	“Owner or operator” defined. “Owner or operator” means any person who owns, leases, operates, controls or supervises an affected facility or a stationary source of which an affected facility is a part.	(c)(56)(i)(A) 71FR15040

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	445.561)	[Environmental Comm'n, Air Quality Reg. § 1.123, eff. 12-4-76]—(Substituted in revision for NAC 445.561)	3/27/2006
	445B.129 (Superseded 445B.562)	“Particulate matter” defined. “Particulate matter” means any material except uncombined water that exists in a finely divided form as a liquid or solid at reference conditions. [Environmental Comm'n, Air Quality Reg. § 1.47, eff. 11-7-75; renumbered as § 1.124, 12-4-76]—(Substituted in revision for NAC 445.562)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.130 (Superseded 445.563)	“Pathological wastes” defined. “Pathological wastes” means human and animal remains consisting of carcasses, organs and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds and similar stationary sources. [Environmental Comm'n, Air Quality Reg. § 1.48, eff. 11-7-75; renumbered as § 1.125, 12-4-76]—(NAC A 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.134 (Superseded 445.564)	“Person” defined. “Person” has the meaning ascribed to it in NRS 0.039 and includes the State of Nevada, political subdivisions, administrative agencies and public or quasi-public corporations. [Environmental Comm'n, Air Quality Reg. § 1.49, eff. 11-7-75; renumbered as § 1.126, 12-4-76]—(NAC A by R151-06, 9-18-2006)	(c)(62)(i)(A)(1) 72FR19801 4/20/2007
	445.565	"Petroleum" defined. "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale and coal. [Environmental Comm'n, Air Quality Reg. 1.127, eff. 12-4-76]	(c)(25)(i)(A)
	445B.1345	“Plantwide applicability limitation” defined. “Plantwide applicability limitation” means a plantwide applicability limitation as defined in 40 C.F.R. § 52.21(aa)(2)(v) that has been approved by the Director and authorized in an operating permit to construct pursuant to <u>NAC 445B.001</u> to <u>445B.3689</u> , inclusive. (Added to NAC by Environmental Comm'n by R125-04, eff. 9-24-2004; R040-10, eff. 7-22-2010)	77FR59321 9/27/2012
	445B.135	“PM₁₀” defined. “PM ₁₀ ” means any particulate matter in the atmosphere with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an approved reference method or equivalent method based on 40 C.F.R. Part 50, Appendix J and designated in accordance with 40 C.F.R. Part 53. (Added to NAC by Environmental Comm'n, eff. 12-26-91)—(Substituted in revision for NAC 445.5655)	(c)(56)(i)(A) 71FR15040 3/27/2006
1.131		Point source. Any stationary source causing emission in excess of 23 metric tons (25 tons) per year of any pollutant for which there is ambient air standard, or without regard to amount of emission, stationary sources such as those listed in 40 CFR 51, Appendix C.	(c)(12)
	445B.138	“Potential to emit” defined. “Potential to emit” means the maximum capacity of a stationary source to emit a regulated air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a stationary source to emit a regulated air pollutant, including equipment for the control of air pollution and any restrictions on the hours of operation of the stationary source or on the type or amount of material combusted, stored or processed, may be treated as part of its design for the purposes of determining its potential to emit if the limitation is federally enforceable. [Environmental Comm'n, Air Quality Reg. part § 1.115.5, eff. 10-16-80]—(NAC A 12-13-93; 10-30-95; 5-3-96; R126-10, 12-16-2010)	77FR59321 9/27/2012

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	445.570 (proposed)	"Portland cement plant" defined. "Portland cement plant" means any facility manufacturing portland cement by either the wet or dry process. [Environmental Comm'n, Air Quality Reg. 1.132, eff. 12-4-76]	(c)(25)(i)(A)
	445.574	"Precious metal" defined. "Precious metal" means a metal of the gold, silver or platinum metal group. [Environmental Comm'n, Air Quality Reg. Art. 1, § 1, eff. 1-25-79; A 8-28-79]	(c)(25)(i)(A)
	445.575	"Precious metal processing plant" defined. "Precious metal processing plant" means a facility which is primarily engaged in crushing, screening, grinding, handling, loading, transferring or storing any precious metal or precious metal ore. [Environmental Comm'n, Air Quality Reg. Art. 1, § 2, eff. 1-25-79; A 8-28-79]	(c)(25)(i)(A)
	445B.142	"Prevention of significant deterioration of air quality" defined. "Prevention of significant deterioration of air quality" has the meaning ascribed to it in 40 C.F.R. § 52.21. (Added to NAC by Environmental Comm'n, eff. 12-13-93)—(Substituted in revision for NAC 445.5795)	77FR59321 9/27/2012
	445B.144 (Superseded 445.581)	"Process equipment" defined. "Process equipment" means any equipment used for storing, handling, transporting, processing or changing any material, excluding that equipment specifically defined in NAC 445B.001 to 445B.601, inclusive, as fuel-burning equipment or incinerators. [Environmental Comm'n, Air Quality Reg. § 1.52, eff. 11-7-75; renumbered as § 1.140, 12-4-76]—(Substituted in revision for NAC 445.581)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.145 (Superseded 445.584)	"Process weight" defined. "Process weight" means the total weight of all materials introduced into an emission unit including solid fuels, but excluding liquids and gases used solely as fuels and air introduced for purposes of combustion of the fuel. [Environmental Comm'n, Air Quality Reg. § 1.50, eff. 11-7-75; renumbered as § 1.143, 12-4-76; A and renumbered as § 1.140, 8-28-79]—(NAC A 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445.585	"Process weight rate" defined. "Process weight rate" means a rate established as follows: 1. For continuous or long-run steady-rate operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of the period or portions thereof. 2. For cyclical or batch unit operations or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles divided by the number of hours of actual process operation during such a period. 3. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this section, the interpretation that results in the minimum value of allowable emission applies. [Environmental Comm'n, Air Quality Reg. 1.51-1.51.3, eff. 11-7-75; renumbered as 1.144, 12-4-76; A and renumbered as 1.141, 8-28-79]	(c)(25)(i)(A)
	445B.147	"Program" defined. "Program" means the program for issuing operating permits to Class I sources which the Administrator has approved as complying with the requirements of 40 C.F.R. Part 70.	77FR59321 9/27/2012

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		(Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94)—(Substituted in revision for NAC 445.5855)	
	445B.151 (Superseded 445.589)	“Reference conditions” defined. “Reference conditions” means that all measurements of ambient air quality are corrected to a reference temperature of 77°F (25°C) and to a reference pressure of 29.92 inches (760 millimeters, 1,013.2 millibars) of mercury. [Environmental Comm'n, Air Quality Reg. § 1.53, eff. 11-7-75; A and renumbered as § 1.147, 12-4-76; A and renumbered as § 1.144, 8-28-79]—(NAC A 10-22-87)—(Substituted in revision for NAC 445.589)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.152 (Superseded 445.590)	“Reference method” defined. “Reference method” means any method of sampling and analyzing for a regulated air pollutant as described in Appendix A of 40 C.F.R. § 60. [Environmental Comm'n, Air Quality Reg. § 1.148, eff. 12-4-76; A and renumbered as § 1.145, 8-28-79]—(NAC A 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445.592	"Registration certificate" defined. "Registration certificate" means a document issued and signed by the director certifying that: 1. Adequate empirical data for a single source has been received and constitutes approval of location; or 2. An environmental evaluation has been submitted for a point source and that all portions of NAC 445.707 to 445.711, inclusive, and any other provisions of NAC 445.430 to 445.945, inclusive, have been complied with and constitutes approval of location and for construction. [Environmental Comm'n, Air Quality Reg. 1.55, eff. 11-7-75; renumbered as 1.151, 12-4-76; A and renumbered as 1.147, 8-28-79]	(c)(25)(i)(A)
	445B.153	“Regulated air pollutant” defined. “Regulated air pollutant” means: 1. Nitrogen oxides or any volatile organic compounds; 2. Any pollutant subject to: (a) A national ambient air quality standard and any constituents or precursors for such pollutants identified by the Administrator; (b) A standard or requirement adopted pursuant to 42 U.S.C. § 7411; or (c) A standard established pursuant to <u>NAC 445B.22097</u> ; 3. Any Class I or Class II substance subject to a standard adopted pursuant to 42 U.S.C. §§ 7671 to 7671q, inclusive; or 4. Any pollutant that otherwise is subject to regulation under the Act, except that any hazardous air pollutant regulated under 42 U.S.C. § 7412 is not a regulated air pollutant unless the hazardous air pollutant is also regulated as a constituent or precursor of an air pollutant listed pursuant to 42 U.S.C. § 7408. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94; A 10-30-95; R096-05, 10-31-2005)	(c)(66)(i)(A)(3)) 73FR 19144 4/09/2008
	445B.154	“Renewal of an operating permit” defined. “Renewal of an operating permit” means the process by which a holder of an operating permit applies for and the Director reissues the operating permit at the end of its term. (Added to NAC by Environmental Comm'n, eff. 12-13-93)—(Substituted in revision for NAC 445.5915)	77FR59321 9/27/2012
	445B.156	“Responsible official” defined. “Responsible official” means:	77FR59321

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		<p>1. For a corporation:</p> <p>(a) A president;</p> <p>(b) A vice president in charge of a principal business function;</p> <p>(c) A secretary;</p> <p>(d) A treasurer; or</p> <p>(e) An authorized representative of such a person who is responsible for the overall operation of the facility and who is designated in writing by an officer of the corporation and approved in advance by the Director.</p> <p>2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively.</p> <p>3. For a municipality or a state, federal or other public agency, a ranking elected official or a principal executive officer, including, for a federal agency, a chief executive officer who has responsibility for the overall operations of a principal geographic unit of the agency.</p> <p>4. For an affected source, the designated representative or his alternate, as defined in 42 U.S.C. § 7651a (26). (Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94; A by R162-06, 9-18-2006; R040-10, eff. 7-22-2010)</p>	9/27/2012
	445B.157	<p>“Revision of an operating permit” defined. “Revision of an operating permit” means any modification of, or any administrative amendment or administrative revision to, an operating permit. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94; A by R125-04, 9-24-2004)</p>	77FR59321 9/27/2012
	445.597	<p>"Roaster" defined. "Roaster" means:</p> <p>1. Any facility in which a zinc sulfide ore concentrate charge is heated in the presence of air to eliminate 10 percent or more of the sulfur contained in the charge; or</p> <p>2. Any facility in which a copper sulfide ore concentrate charge is heated in the presence of air to eliminate 5 percent or more of the sulfur contained in the charge. [Environmental Comm'n, Air Quality Reg. 1.156-1.157, eff. 12-4-76]</p>	(c)(25)(i)(A)
	445B.161 (Superseded 445.599)	<p>“Run” defined. “Run” means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice. [Environmental Comm'n, Air Quality Reg. § 1.159, eff. 12-4-76]—(Substituted in revision for NAC 445.599)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.163 (Superseded 445.601)	<p>“Salvage operation” defined. “Salvage operation” means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material. [Environmental Comm'n, Air Quality Reg. § 1.157, eff. 11-7-75; renumbered as § 1.161, 12-4-76]—(Substituted in revision for NAC 445.601)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.167 (Superseded Article 1.166)	<p>“Shutdown” defined. “Shutdown” means the cessation of operation of an affected facility for any purpose. [Environmental Comm'n, Air Quality Reg. § 1.166, eff. 12-4-76]—(Substituted in revision for NAC 445.606)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.168	<p>“Single-chamber incinerator” defined. “Single-chamber incinerator” means an incinerator with one chamber that serves for</p>	(c)(56)(i)(A)

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	(Superseded 445.612)	ignition, combustion and ash removal of a design approved by the Division of Environmental Protection of the State Department of Conservation and Natural Resources. [Environmental Comm'n, Air Quality Reg. § 1.98.1, eff. 3-31-77; A 12-27-77; A and renumbered as § 1.94.1, 8-28-79]—(Substituted in revision for NAC 445.612)	71FR15040 3/27/2006
1.171		Single source. All similar process operations located at a single premise which can technically and economically be replaced by a single process that performs the same function. Two or more pieces of equipment or processes that handle different materials or produce dissimilar products will be treated separately.	(c)(12)
	445B.172 (Supersedes 445.617)	“Six-minute period” defined. “Six-minute period” means any one of the 10 equal parts of a 1-hour period. [Environmental Comm'n, Air Quality Reg. § 1.175, eff. 12-4-76]—(Substituted in revision for NAC 445.617)	(c)(66)(i)(A) 73FR19144 4/9/2008
	445.618	"Slag" defined. "Slag" means the more or less completely fused and vitrified matter separated during the reduction of a metal from its ore. [Environmental Comm'n, Air Quality Reg. 1.176, eff. 12-4-76]	(c)(25)(i)(A)
	445B.174 (Supersedes 445.621)	“Smoke” defined. “Smoke” means small particles consisting predominantly, but not exclusively, of carbon, ash or other combustible material, resulting from incomplete combustion. [Environmental Comm'n, Air Quality Reg. § 1.59, eff. 11-7-75; renumbered as § 1.179, 12-4-76]—(Substituted in revision for NAC 445.621)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.176 (Supersedes 445.622)	“Solid waste” defined. “Solid waste” means refuse, more than 50 percent of which is municipal type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles and noncombustible materials such as glass and rock. [Environmental Comm'n, Air Quality Reg. § 1.176, eff. 12-4-76]—(Substituted in revision for NAC 445.622)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.177 (Supersedes Article 1.181)	“Source” defined. “Source” has the meaning ascribed to it in NRS 445B.155. [Environmental Comm'n, Air Quality Reg. § 1.60, eff. 11-7-75; renumbered as § 1.177, 12-4-76]—(NAC A 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.180 (Supersedes 445.624)	“Stack” and “chimney” defined. “Stack” or “chimney” means any flue, conduit or duct which conducts a regulated air pollutant to the atmosphere. [Environmental Comm'n, Air Quality Reg. § 1.62, eff. 11-7-75; renumbered as § 1.178, 12-4-76]—(NAC A 10-14-82; 3-29-94, eff. 11-15-94; 10-30-95)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.182 (Supersedes Article 1.185)	“Standard” defined. “Standard” means a standard of performance that is proposed or promulgated by the Administrator or the Director pursuant to NAC 445B.001 to 445B.735, inclusive. [Environmental Comm'n, Air Quality Reg. § 1.180, eff. 12-4-76]—(NAC A 3-29-94, eff. 11-15-94; 7-5-94)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.185 (Supersedes	“Start-up” defined. “Start-up” means the setting in operation of an affected facility for any purpose. [Environmental Comm'n, Air Quality Reg. § 1.179, eff. 12-4-76]—(Substituted in revision for NAC 445.627)	(c)(56)(i)(A) 71FR15040

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	445.627)		3/27/2006
	445B.187 (Supersedes Article 1.187)	<p>“Stationary source” defined.</p> <p>1. “Stationary source” means all buildings, structures, facilities and installations, including temporary sources, which:</p> <p>(a) Belong to the same major industrial groupings described in the <i>Standard Industrial Classification Manual</i>, as incorporated by reference in <u>NAC 445B.221</u>;</p> <p>(b) Are located on one or more contiguous or adjacent properties;</p> <p>(c) Are owned or operated by the same person or by persons under common control; and</p> <p>(d) Emit or may emit any regulated air pollutant that is regulated under 42 U.S.C. §§ 7401 to 7671q, inclusive, or <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive.</p> <p>2. Contracted operations that support the primary operations of the stationary source are part of the stationary source, except that temporary construction activities, including, without limitation, the construction of emission units, are not part of the stationary source.</p> <p>3. The term does not include motor vehicles, nonroad engines and nonroad vehicles.</p> <p>[Environmental Comm’n, Air Quality Reg. § 1.182, eff. 12-4-76]—(NAC A 3-29-94, eff. 1-11-96; 10-30-95; R105-97, 3-5-98; R117-00, 6-1-2001; R040-10, 7-22-2010; R126-10, 12-16-2010)</p>	77FR59321 9/27/2012
	445B.190 (Superseded 445.630)	<p>“Stop order” defined. “Stop order” means a written notice by the Director served on a person or persons requiring such persons to cease the activity that the Director, pursuant to <u>NAC 445B.277</u>, has determined is in violation of any provision of <u>NAC 445B.001</u> to <u>445B.3791</u>, inclusive, an applicable requirement or any condition of an operating permit.</p> <p>[Environmental Comm’n, Air Quality Reg. § 1.63, eff. 11-7-75; renumbered as § 1.184, 12-4-76]—(NAC A 12-13-93)</p>	(c)(66)(i)(A) 73FR19144 4/9/2008
	445.633	<p>“Submerged fill pipe” defined.</p> <p>“Submerged fill pipe” means:</p> <p>1. Any fill pipe, the discharge opening of which is entirely submerged when the liquid level is 6 inches (15 cm) above the bottom of the tank; or</p> <p>2. When applied to a tank which is loaded from the side, any fill pipe, the discharge of which is entirely submerged when the liquid level is two times the diameter of the fill pipe above the bottom of the tank.</p> <p>[Environmental Comm’n, Air Quality Reg. 1.64, eff. 11-7-75; renumbered as 1.191, 12-4-76]</p>	(c)(25)(i)(A)
	445B.194	<p>“Temporary source” defined. “Temporary source” means any building, structure, facility or installation which:</p> <p>1. Emits or may emit any regulated air pollutant;</p> <p>2. May be moved from one location to another;</p> <p>3. Is located or operated in a location for a period of less than 12 months; and</p> <p>4. Is not an affected source.</p> <p>(Added to NAC by Environmental Comm’n, eff. 10-30-95; A by R117-00, 6-1-2001)</p>	77FR59321 9/27/2012
	445B.198 (Superseded	<p>“Uncombined water” defined. “Uncombined water” means visible mist or condensed water vapor.</p> <p>[Environmental Comm’n, Air Quality Reg. § 1.65, eff. 11-7-75; renumbered as § 1.205, 12-4-76; A and renumbered as §</p>	(c)(56)(i)(A) 71FR15040

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	445.647)	1.200, 8-28-79]—(Substituted in revision for NAC 445.647)	3/27/2006
	445B.200 (Supersedes 445.649)	“Violation” defined. “Violation” means a failure to comply with any of the provisions of <u>NAC 445B.001 to 445B.3689</u> , inclusive, any applicable requirement or any condition of an operating permit. [Environmental Comm’n, Air Quality Reg. § 1.203, eff. 8-28-79]—(NAC A 10-22-87; 12-13-93; R040-10, eff. 7-22-10)	77FR59321 9/27/2012
	445B.202 (Superseded 445.650)	“Volatile organic compounds” defined. “Volatile organic compounds” has the meaning ascribed to it in 40 C.F.R. § 51.100(s), as incorporated by reference in NAC 445B.221. [Environmental Comm’n, Air Quality Reg. § 1.67, eff. 11-7-75; renumbered as § 1.208, 12-4-76; A and renumbered as § 1.204, 8-28-79]—(NAC A 3-29-94, eff. 11-15-94)—(Substituted in revision for NAC 445.650)	(c)(56)(i)(A) 71FR71486 12/11/2006
	445B.205 (Superseded 445.651)	“Waste” defined. “Waste” means useless, unneeded, or superfluous matter or discarded or excess material. [Environmental Comm’n, Air Quality Reg. § 1.68, eff. 11-7-75; renumbered as § 1.209, 12-4-76; A and renumbered as § 1.205, 8-28-79]—(Substituted in revision for NAC 445.651)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.207 (Superseded 445.653)	“Wet garbage” defined. “Wet garbage” means a combination of waste and garbage which contains more than 50 percent moisture. [Environmental Comm’n, Air Quality Reg. § 1.69, eff. 11-7-75; renumbered as § 1.211, 12-4-76; A and renumbered as § 1.207, 8-28-79]—(Substituted in revision for NAC 445.653)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.209	“Year” defined. “Year” means any consecutive 365-day period. (Added to NAC by Environmental Comm’n, eff. 10-22-87)—(Substituted in revision for NAC 445.6535)	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.211 (Superseded 445.655)	Abbreviations. The abbreviations used in NAC 445B.001 to 445B.3497, inclusive, have the following meanings: BACT..... best available control technology Btu..... British thermal unit C.F.R..... Code of Federal Regulations CO ₂ carbon dioxide °F..... degree Fahrenheit Hg..... mercury H ₂ S..... hydrogen sulfide lb..... pound NO..... nitric oxide NO _x nitrogen oxides O ₂ oxygen ppm..... parts per million SO ₂ sulfur dioxide VOC..... volatile organic compound	(c)(56)(i)(A) 71FR15040 3/27/2006

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		[Environmental Comm'n, Air Quality Reg. § 1.213, eff. 12-4-76; A and renumbered as § 1.209, 8-28-79]—(NAC A 10-15-85; R105-97, 3-5-98; R040-01, 10-25-2001; R125-04, 9-24-2004)	
General Provisions			
	445B.220 (Superseded 445.660)	Severability. If any of the provisions of <u>NAC 445B.001</u> to <u>445B.3791</u> , inclusive, 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. [Environmental Comm'n, Air Quality Reg. § 2.1.1, eff. 11-7-75]—(NAC A by R105-97, 3-5-98; R189-05, 5-4-2006; R154-06, 11-13-2006, eff. 1-1-2007)	(c)(66)(i)(A) 73FR19144 4/9/2008
	445B.22017 (Superseded 445.721)	Visible emissions: Maximum opacity; determination and monitoring of opacity. 1. Except as otherwise provided in this section and <u>NAC 445B.2202</u> , no owner or operator may cause or permit the discharge into the atmosphere from any emission unit which is of an opacity equal to or greater than 20 percent. Opacity must be determined by one of the following methods: (a) If opacity is determined by a visual measurement, it must be determined as set forth in Reference Method 9 in Appendix A of 40 C.F.R. Part 60. (b) If a source uses a continuous monitoring system for the measurement of opacity, the data must be reduced to 6-minute averages as set forth in 40 C.F.R. § 60.13(h). 2. The provisions of this section and <u>NAC 445B.2202</u> do not apply to that part of the opacity that consists of uncombined water. The burden of proof to establish the application of this exemption is upon the person seeking to come within the exemption. 3. If the provisions of 40 C.F.R. Part 60, Subpart D or Da apply to an emission unit, the emission unit must be allowed one 6-minute period per hour of not more than 27 percent opacity as set forth in 40 C.F.R. § 60.42(a)(2) and 40 C.F.R. § 60.42a(b). 4. The continuous monitoring system for monitoring opacity at a facility must be operated and maintained by the owner or operator specified in the permit for the facility in accordance with <u>NAC 445B.256</u> to <u>445B.267</u> , inclusive. [Environmental Comm'n, Air Quality Reg. §§ 4.1 & 4.2, eff. 11-7-75; § 4.5.1.1, eff. 8-28-79]—(NAC A 9-19-90; 10-30-95; R118-00, 9-25-2000; R036-05, 10-31-2005, eff. 4-1-2006)	(c)(66)(i)(A)(3)) 73FR 19144 4/09/2008
	NAC 445B.2202 (Superseded Articles 4.3, 4.3.1-4.3.3, 4.3.5)	Visible emissions: Exceptions for stationary sources. The provisions of <u>NAC 445B.22017</u> do not apply to: 1. Smoke from the open burning described in <u>NAC 445B.22067</u> ; 2. Smoke discharged in the course of training air pollution control inspectors to observe visible emissions, if the facility has written approval of the Commission; 3. Emissions from an incinerator as set forth in <u>NAC 445B.2207</u> ; or 4. Emissions of stationary diesel-powered engines during warm-up for not longer than 15 minutes to achieve operating temperatures. [Environmental Comm'n, Air Quality Reg. §§ 4.3.1-4.3.3, eff. 11-7-75; § 4.3.6, eff. 12-4-76; A and renumbered as § 4.3.4,	(c)(66)(i)(A)(3)) 73FR 19144 4/09/2008

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		12-15-77; § 4.3.5, eff. 11-7-75; § 4.3.6, eff. 12-15-77; A 4-18-80]—(NAC A by R065-03, 10-30-2003; R198-03, 4-26-2004, eff. 3-1-2006; R036-05, 10-31-2005, eff. 4-1-2006)	
16.3.3		Standard for Opacity	(c)(14)(viii)
16.3.3.2		No person shall cause, suffer, allow, or permit the discharge from any clinker cooler which exhibit greater than 10 percent opacity.	(c)(14)(viii)
16.3.3.3		On or after the date on which the performance test required by Article 2.6 is completed, no owner or operator subject to the provision of Article 16.3 shall cause to be discharged into the atmosphere from any affect facility other than the kiln and clinker cooler any gases which exhibit 10% opacity or greater.	(c)(14)(viii)
	445.729	Process weight rate for calculating emission rates. For purposes of NAC 445.729 to 445.737, inclusive, the process weight rate to be used to calculate allowable emission rates must be the weight rates for single sources. [Environmental Comm'n, Air Quality Reg. 7.2.4, eff. 11-7-75; A 12-4-76]	(c)(25)(i)(A)
	445.730	Colemanite flotation processing plants. 1. The maximum amount of particulate matter which may be emitted in an hour by any colemanite flotation processing plant and the formulas by which the amount will be determined are: (a) For a crushing, screening or grinding plant, a maximum of 2.5 pounds (1.13 kilograms) per hour as calculated by: $E = 0.02 \times 10^{-3} P (0.04P)$. (b) For a storage bin for ore or an ore product, a maximum of 0.55 pounds (0.25 kilogram) per hour as calculated by: $E = 0.01 \times 10^{-3} P (0.02P)$. (c) For a dryer and calciner, a maximum of 10.50 pounds (4.75 kilograms) per hour as calculated by: $E = 0.31 \times 10^{-3} P (0.62P)$. 2. For the purposes of subsection 1: (a) "E" means the maximum emission rate allowed in pounds (kilograms) per hour. (b) "P" means the process weight rate in tons (kilograms) per hour. [Environmental Comm'n, Air Quality Reg. 7.2.8.1-7.2.8.3, eff. 11-17-78]	(c)(25)(i)(A)
	445B.22027	Emissions of particulate matter: Maximum allowable throughput for calculating emissions rates. For purposes of NAC 445B.22027 to 445B.22037, inclusive, the maximum allowable throughput to be used to calculate allowable emission rates must be the maximum process weight for an emission unit. [Environmental Comm'n, Air Quality Reg. § 7.2.4, eff. 11-7-75; A 12-4-76]—(NAC A 10-22-87; 12-26-91; R105-97, 3-5-98)—(Substituted in revision for NAC 445B.360)	(c)(56)(i)(A)(3)) 72FR25972 5/8/2007
	445B.2203 (Superseded 445.731)	Emissions of particulate matter: Fuel-burning equipment. 1. No person may cause or permit the emission of PM ₁₀ resulting from the combustion of fuel in fuel-burning equipment in excess of the quantity set forth in the following formulas: (a) For maximum input of heat equal to or greater than 4 million Btu's per hour, but less than or equal to 10 million Btu's	(c)(56)(i)(A)(3)) 72FR25972 5/8/2007

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		<p>per hour, the allowable emission is 0.6 of a pound per million Btu's of input of heat.</p> <p>(b) For maximum input of heat greater than 10 million Btu's per hour, but less than 4,000 million Btu's per hour, the allowable emissions must be calculated using the following equation:</p> $Y = 1.02X^{-0.231}$ <p>(c) For maximum input of heat equal to or greater than 4,000 million Btu's per hour, the emission must be calculated using the following equation:</p> $Y = 17.0X^{-0.568}$ <p>2. For the purposes of paragraphs (b) and (c) of subsection 1:</p> <p>(a) "X" means the maximum operating rate in million Btu's per hour.</p> <p>(b) "Y" means the allowable rate of emission in pounds per million Btu's.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 7.1.1-7.1.1.2, eff. 11-7-75; § 7.1.3, eff. 11-7-75; renumbered as § 7.1.2, 12-15-77]—(NAC A 10-15-85; 9-19-90; 12-26-91; 10-30-95; R022-99, 9-27-99)—(Substituted in revision for NAC 445B.362)</p>	
	445B.22033 (Superseded 445.732)	<p>Emissions of particulate matter: Sources not otherwise limited.</p> <p>1. Owners or operators of stationary sources not otherwise included in NAC 445B.22027 to 445B.22037, inclusive, shall not cause or permit PM₁₀ to be discharged from any emission unit into the atmosphere in excess of the allowable emission determined by the use of the formula contained in subsection 2 or 3.</p> <p>2. When the maximum allowable throughput is less than 30 tons per hour, the maximum allowable weight discharged per hour must be determined by using the following equation:</p> $E = 4.10P^{0.67}$ <p>3. When the maximum allowable throughput equals or exceeds 30 tons per hour, the maximum allowable weight discharged per hour must be determined by using the following equation:</p> $E = 55P^{0.11} - 40$ <p>4. For the purposes of subsections 2 and 3:</p> <p>(a) "E" means the maximum rate of emission in pounds per hour.</p> <p>(b) "P" means the maximum allowable throughput in tons per hour.</p>	(c)(56)(i)(A)(3)) 72FR25972 5/8/2007

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		[Environmental Comm'n, Air Quality Reg. §§ 7.2.1-7.2.3, eff. 11-7-75]—(NAC A 10-19-83; 10-15-85; 10-22-87; 9-19-90; 12-26-91; 10-30-95; R105-97, 3-5-98)—(Substituted in revision for NAC 445B.363)	
	445B.22037 (Superseded 445.734)	<p>Emissions of particulate matter: Fugitive dust.</p> <p>1. No person may cause or permit the handling, transporting or storing of any material in a manner which allows or may allow controllable particulate matter to become airborne.</p> <p>2. Except as otherwise provided in subsection 4, no person may cause or permit the construction, repair, demolition, or use of unpaved or untreated areas without first putting into effect an ongoing program using the best practical methods to prevent particulate matter from becoming airborne. As used in this subsection, “best practical methods” includes, but is not limited to, paving, chemical stabilization, watering, phased construction and revegetation.</p> <p>3. Except as otherwise provided in subsection 4, no person may disturb or cover 5 acres or more of land or its topsoil until he has obtained an operating permit for surface area disturbance to clear, excavate, or level the land or to deposit any foreign material to fill or cover the land.</p> <p>4. The provisions of subsections 2 and 3 do not apply to:</p> <p>(a) Agricultural activities occurring on agricultural land; or</p> <p>(b) Surface disturbances authorized by a permit issued pursuant to NRS 519A.180 which occur on land which is not less than 5 acres or more than 20 acres.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 7.3.1 & 7.3.2, eff. 11-7-75; § 7.3.3, eff. 11-7-75; A 12-15-77]—(NAC A 9-19-90; 12-26-91; 12-13-93; 10-30-95)—(Substituted in revision for NAC 445B.365)</p>	(c)(56)(i)(A)(3)) 72FR25972 5/8/2007
7.2.5.1		<p>The maximum allowable weight of particulates which may be discharged per hour from the first barite grinding mill of Milchem Incorporated near Battle Mountain is the weight prescribed in paragraph (a) or the weight determined by the use of the equation in paragraph (b), whichever is less:</p> <p>(a) Emissions of 5.6 kilograms (12.4 pounds) per hour.</p> <p>(b) Emissions determined by the equation $E = 0.0084 P^{0.67}$ ($E = 1.79 P^{0.67}$), where</p> <p>P = Process weight rate in kilograms (tons) per hour.</p> <p>E = Emission allowed in kilograms (pounds) per hour.</p>	(c)(22)(ii)
	445.808	<p>1. This section applies to those systems of the facilities described in subsection 2 which are used for crushing, screening, grinding, handling, transferring, concentrating, refining and storing crude barite.</p> <p>2. No owner or operator may cause or permit the emission of particulate matter in excess of the following:</p> <p>(a) IMCO Services' barite grinding mill in Battle Mountain in Air Quality Region 147, Humboldt River Basin, Basin 59, Lower Reese River Valley, for grinding barite ore, 0.06 pounds per short ton (0.03 kilograms per metric ton) of crude barite processed.</p> <p>(b) Dresser Industries barite grinding mill south of Battle Mountain in Air Quality Control Region 147, Humboldt River Basin, Basin 55, Carico Lake Valley:</p> <p>(1) For primary crushing of barite ore, 0.015 pounds per short ton (0.0075 kilograms per metric ton) of barite ore</p>	(c)(26)(i)(A)

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		<p>processed.</p> <p>(2) For secondary crushing or screening of barite ore, 0.035 pounds per short ton (0.0175 kilograms per metric ton) of barite ore processed.</p> <p>(c) Dresser Industries' barite grinding mill in Battle Mountain in Air Quality Control Region 147, Humboldt River Basin, Basin 59, Lower Reese River Valley:</p> <p>(1) For grinding barite ore, 0.06 pounds per short ton (0.03 kilograms per metric ton) of crude barite processed.</p> <p>(2) For bulk-loading barite ore, 0.18 pounds per short ton (0.09 kilograms per metric ton) of barite dispensed.</p> <p>3. No owner or operator may cause or permit a discharge with an opacity of greater than 20 percent from a barite grinding mill.</p> <p>4. The owner or operator of any barite grinding mill, as indicated on the permit, shall record the production rates and hours of operation of the mill and shall comply with all requirements for notification and recordkeeping in NAC 445.660 to 445.700 inclusive.</p> <p>5. All test methods and procedures in NAC 445.660 to 445.700, inclusive, and Appendix A, Reference Methods of 40 C.F.R. Part 60, apply to barite grinding mills. [Environmental Comm'n, Air Quality Reg. 16.27, eff. 1-25-79; A 8-28-79; 12-3-80; 8-17-81; 16.27.2, eff. 1-25-79; A 8-28-79; 8-17-81; 16.27.1.1-16.27.4 eff. 8-17-81; 16.27.4, eff. 1-25-79; NAC A 10-19-83]</p>	
	445.816	<p>1. This section applies to those systems of the facilities described in subsection 2 which are used for crushing, screening, grinding, handling, transferring, concentrating, refining and storing any precious metals or precious metal ore.</p> <p>2. No operator may permit the emission of particulate matter in excess of the following:</p> <p>(d) Freeport Gold Company's processing plant for precious metal in Air Quality Control Region 147, Basin 44, North Fork area:</p> <p>(1) For crushing, screening, grinding, handling and transferring any precious metal or precious metal ore, 0.04 lb/short ton (0.02 kg/metric ton) of precious metal ore processed.</p> <p>(2) For loading, transferring and storing any precious metal or precious metal ore, 0.02 lb/short ton (0.01 kg/metric ton).</p> <p>3. No owner or operator may permit the discharge of particulate matter of greater than 20 percent opacity from a single source of a processing plant for precious metal.</p> <p>4. The owner and the operator of any processing plant for precious metal shall record the yearly production rate and hours of operation for each source of particulate matter to which an emission standard applies.</p> <p>5. All tests must be performed in accordance with Appendix A of 40 C.F.R. Part 60. [Environmental Comm'n, Air Quality Reg. 16.26, eff. 1-25-79; A 8-28-79; 11-21-79; 12-20-79; 4-18-80; 16.26.1., eff. 1-25-79; 16.26.1.1, eff. 1-25-79; 8-28-79; 4-18-80; 16.26.1.2, eff. 1-25-79; A 4-18-80; 16.26.1.3-16.26.1.6, eff. 4-18-80; 16.26.1.7, eff. 4-18-80; A 8-17-81; 16.26.1.8; eff. 16.32.2, eff. 12-20-79; renumbered as 16.26.1.3, 4-18-80; NAC A 7-29-82; 10-19-83]</p>	(c)(26)(i)(A)
8.2.1		No person shall cause, suffer, allow or permit the emission of sulfur compounds caused by the combustion of fuel in excess of	(c)(14)(vii)

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		<p>the quantity set forth in the following table:</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Heat input, millions of British thermal units per hour</th> <th style="text-align: center;">Maximum sulfur emission, pounds per hour</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">10.....</td> <td style="text-align: center;">7.</td> </tr> <tr> <td style="text-align: center;">100.....</td> <td style="text-align: center;">70.</td> </tr> <tr> <td style="text-align: center;">1,000.....</td> <td style="text-align: center;">105.</td> </tr> <tr> <td style="text-align: center;">10,000.....</td> <td style="text-align: center;">1050.</td> </tr> <tr> <td style="text-align: center;">100,000.....</td> <td style="text-align: center;">10500.</td> </tr> </tbody> </table>	Heat input, millions of British thermal units per hour	Maximum sulfur emission, pounds per hour	10.....	7.	100.....	70.	1,000.....	105.	10,000.....	1050.	100,000.....	10500.	
Heat input, millions of British thermal units per hour	Maximum sulfur emission, pounds per hour														
10.....	7.														
100.....	70.														
1,000.....	105.														
10,000.....	1050.														
100,000.....	10500.														
8.2.2		For purposes of Article 8, “sulfur emission” means the sulfur portion of the sulfur compounds emitted.	(c)(14)(vii)												
	445B.2204 (Superseded 445.742)	<p>“Sulfur emission” defined. For purposes of NAC 445B.2204 to 445B.22063, inclusive, “sulfur emission” means the sulfur portion of the sulfur compounds emitted. [Environmental Comm’n, Air Quality Reg. § 8.2.2.4, eff. 11-7-75; renumbered as § 8.2.4, 12-4-76; A and renumbered as § 8.2.2, 12-15-77]—(Substituted in revision for NAC 445B.370)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006												
	445B.22043 (Superseded 445.743)	<p>Sulfur emissions: Calculation of total feed sulfur. For the purposes of <u>NAC 445B.2204 to 445B.2205</u>, inclusive, total feed sulfur must be calculated as the aggregate sulfur content of all fuels and other feed materials whose products of combustion and gaseous by-products are emitted to the atmosphere. When furnaces, sinter machines, sinter boxes, roasters, converters, or other similar devices are used for converting ores, concentrates, residues, or slag to the metal or the oxide of the metal either wholly or in part, the combined sulfur input of all units must be used to determine the allowable emission. [Environmental Comm’n, Air Quality Reg. § 8.1.5, eff. 11-7-75]—(NAC A by R125-04, 9-24-2004)</p>	(c)(66)(i)(A)(3)) 73FR 19144 4/09/2008												
	445B.22047 (Superseded Article 8.2, 8.2.1.1 and 8.2.1.2)	<p>Sulfur emissions: Fuel-burning equipment.</p> <ol style="list-style-type: none"> 1. No person may cause or permit the emission of compounds of sulfur caused by the combustion of fuel in fuel-burning equipment in excess of the quantity calculated by the use of the formula in subsection 2 or 3. 2. Where an emission unit has a maximum input of heat of less than 250 million Btu’s per hour, the allowable emission must be calculated by the use of the following equation: <p style="text-align: center;">$Y = 0.7X$</p> <p>For the purposes of this subsection:</p> <ol style="list-style-type: none"> (a) “X” means the maximum operating input of heat in millions of Btu’s per hour. (b) “Y” means the allowable rate of emission of sulfur in pounds per hour. <ol style="list-style-type: none"> 3. Where an emission unit has a maximum input of heat equal to or greater than 250 million Btu’s per hour, the allowable emission of sulfur must be calculated by the use of the following equations: <p style="text-align: center;">Liquid fuel $Y = 0.4X$</p> 	(c)(56)(i)(A) 71FR15040 3/27/2006												

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		<p>Solid fuel Y = 0.6X</p> <p>Combination Fuel $Y = \frac{L(0.4X) + S(0.6X)}{L + S}$</p> <p>For the purposes of this subsection:</p> <p>(a) "X" means the maximum input of the operation in millions of Btu's per hour.</p> <p>(b) "Y" means the allowable rate of emissions of sulfur in pounds per hour.</p> <p>(c) "L" means the percentage of total input of heat derived from liquid fuel.</p> <p>(d) "S" means the percentage of total input of heat derived from solid fuel.</p> <p>[Environmental Comm'n, Air Quality Reg. § 8.2.1, eff. 11-7-75; § 8.2.2.1, eff. 11-7-75; A and renumbered as § 8.2.2, 12-4-76; renumbered as § 8.2.1.1, 12-15-77; § 8.2.2.2, eff. 11-7-75; A and renumbered as § 8.2.3, 12-4-76; renumbered as § 8.2.1.2, 12-15-77; § 8.2.2.3, eff. 11-7-75]—(NAC A 10-19-83; 10-15-85; 9-19-90; 12-24-91; 10-30-95; R105-97, 3-5-98; R022-99, 9-27-99)—(Substituted in revision for NAC 445B.373)</p>	
	445B.2205 (Superseded 445.746)	<p>Sulfur emissions: Other processes which emit sulfur.</p> <p>1. No person may cause or permit the emission of sulfur compounds where the sulfur originates in the material being processed, excluding hydrogen sulfide and sulfur from all solid, liquid or gaseous fuel, in excess of the quantity determined by the following equation:</p> $E = 0.292P^{0.904}$ <p>when "E" is equal to or greater than 10 pounds per hour. When "E" is less than 10 pounds per hour, the gas stream concentration must not exceed 1,000 ppm by volume.</p> <p>2. For the purposes of subsection 1:</p> <p>(a) "E" means the allowable sulfur emission in pounds per hour.</p> <p>(b) "P" means the total feed sulfur, excluding hydrogen sulfide, in pounds per hour.</p> <p>3. When sulfur emissions are due to sulfur contributions from both the fuel and the material being processed, the allowable emissions must be the sum of those allowed by this section and <u>NAC 445B.22047</u>.</p> <p>4. Incinerators used solely for the control of odor by the combustion of noxious sulfur containing compounds are exempt from the provisions of <u>NAC 445B.2204</u> to <u>445B.2205</u>, inclusive, and are governed by the provisions of <u>NAC 445B.22027</u> to <u>445B.22037</u>, inclusive, and <u>445B.287</u> to <u>445B.3497</u>, inclusive.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 8.3.1-8.4, eff. 11-7-75]—(NAC A 9-5-84; 9-19-90; 12-26-91; 12-13-93; 10-30-95; 5-3-96; R105-97, 3-5-98; R125-04, 9-24-2004)</p>	(c)(66)(i)(A)(3)) 73FR 19144 4/09/2008
	445B.22067	Open burning.	(c)(56)(i)(A)

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	(Superseded Article 5.1, 5.2, 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.5 and 5.3)	<p>1. The open burning of any combustible refuse, waste, garbage or oil, or for any salvage operations, except as specifically exempted, is prohibited.</p> <p>2. Open burning:</p> <p>(a) For the purpose of weed abatement, conservation, disease control, game or forest management, personnel training or elimination of hazards is allowed if:</p> <p>(1) Approved in advance by the Director; or</p> <p>(2) Authorized by an officer of the State of Nevada or its political subdivisions and concurred in by the Director.</p> <p>(b) Of yard waste and other untreated wood waste, as described in NAC 444.640, is allowed if approved in advance by the Director.</p> <p>(c) Is allowed for agricultural purposes and management except where prohibited by local ordinances or regulations.</p> <p>(d) Is allowed at single-family residences located in all areas of the State except in and within 1 mile of the boundaries of Babbitt, Battle Mountain, Caliente, Carlin, Douglas County, East Ely, Elko Township, Ely, Fallon, Fernley, Gabbs, Hawthorne, Lovelock, McGill, Tonopah, Virginia City, Weed Heights, Wells, Winnemucca and Yerington, and inside the limits of Carson City and in those portions of Lyon County that are within 1 mile of the Carson City line.</p> <p>(e) Is allowed at single-family residences located in and within 1 mile of the boundaries of Babbitt, Battle Mountain, Caliente, Carlin, Douglas County, East Ely, Elko Township, Ely, Fallon, Fernley, Gabbs, Hawthorne, Lovelock, McGill, Tonopah, Virginia City, Weed Heights, Wells, Winnemucca and Yerington, and inside the limits of Carson City and in those portions of Lyon County that are within 1 mile of the Carson City line if:</p> <p>(1) Authorized by an officer of the State of Nevada or its political subdivisions;</p> <p>(2) Concurred in by the Director; and</p> <p>(3) Not specifically prohibited by local ordinances or regulations.</p> <p>(f) Of small wood fires is allowed for recreational, educational, ceremonial, heating or cooking purposes.</p> <p>3. All open burning must be attended and controlled at all times to eliminate fire hazards. [Environmental Comm'n, Air Quality Reg. Art. 5, eff. 11-7-75; A 5-8-77]—(NAC A by R237-03, 4-15-2004)</p>	71FR15040 3/27/2006
	445B.2207 (Superseded 445.754)	<p>Incinerator burning.</p> <p>1. Except as otherwise provided in subsection 6:</p> <p>(a) Burning in any incinerator other than the multiple-chamber type is prohibited.</p> <p>(b) Incinerator burning which produces, for periods totaling 1 minute in 1 hour, a visible emission which is of an opacity equal to or greater than 20 percent is prohibited.</p> <p>2. Incinerators used for the burning of pathological wastes, wet garbage or high moisture content material must be high temperature types with either grate or solid hearth construction, drying shelves for wet wastes and an auxiliary heating unit to ensure temperatures of 1400°F (760°C) for not less than 0.3 of a second. The hearth must be frequently cleaned at regular intervals to prevent buildup of residues and deposits.</p> <p>3. The rated burning capacity, operating and maintenance procedures approved by the Director must be posted</p>	(c)(56)(i)(A) 71FR15040 3/27/2006

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		<p>conspicuously at or near the incinerator.</p> <p>4. Allowable PM₁₀ emissions from incinerators of less than 2,000 lb per hour rated burning capacity may not exceed 1.8 lb/ton of dry refuse charged.</p> <p>5. Allowable PM₁₀ emissions from incinerators equal to or greater than 2,000 lb per hour burning capacity must be calculated using the following equation:</p> $E = 0.6 (40.7 \times 10^{-5}C)$ <p>For the purposes of this subsection, “E” means the maximum allowable rate of emission of PM₁₀ in pounds per hour and “C” means the rate of charge of dry refuse in pounds per hour.</p> <p>6. Single-chamber incinerators may be used at single-family residences, in all areas of the State, except in and within 1 mile of the boundaries of Babbitt, Battle Mountain, Caliente, Carlin, Douglas County, East Ely, Elko Township, Ely, Fallon, Fernley, Gabbs, Hawthorne, Lovelock, McGill, Tonopah, Virginia City, Weed Heights, Wells, Winnemucca and Yerington, and inside the limits of Carson City and in those portions of Lyon County that are within 1 mile of the Carson City line, unless otherwise prohibited by local ordinances or regulations.</p> <p>[Environmental Comm’n, Air Quality Reg. §§ 6.1 & 6.2, eff. 11-7-75; § 6.3, eff. 11-7-75; A 3-31-77; §§ 6.4-6.6.2, eff. 11-7-75]—(NAC A 9-19-90; 12-26-91; R237-03, 4-15-2004)</p>	
	445B.22083	<p>Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.</p> <p>1. Except as otherwise provided in subsections 2 and 3, a person shall not make a major modification to an existing plant or construct a new plant to generate electricity using steam produced by the burning of fossil fuels within:</p> <p>(a) The Las Vegas Valley, Hydrographic Area 212;</p> <p>(b) The El Dorado Valley, Hydrographic Area 167;</p> <p>(c) The Ivanpah Valley, Hydrographic Areas 164 a and 164 b; or</p> <p>(d) The city limits of Boulder City.</p> <p>2. Fossil fuel-fired power generating units Numbers 1, 2 and 3 at Clark Station and fossil fuel-fired power generating unit Number 1 at Sunrise Station may be relocated to the Ivanpah Valley and must comply with the provisions of NAC 445B.001 to 445B.3689, inclusive.</p> <p>3. If an emission unit is relocated to Ivanpah Valley:</p> <p>(a) The previously used emission unit must be deactivated and removed from the previous site when the relocated unit begins operation.</p> <p>(b) Any credit for reduced emission is not available as an offset credit.</p> <p>4. As used in this section, “major modification” has the meaning ascribed to it in 40 C.F.R. § 51.165, as adopted by reference in NAC 445B.221.</p>	(c)(67)(i)(A)(1)) 73FR20536 4/16/2008

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		(Added to NAC by Environmental Comm'n, eff. 9-4-92; A 3-29-94; R096-05, 10-31-2005)	
	445B.2209 (Superseded 445.845)	<p>Reduction of animal matter.</p> <p>1. The operation of any machine, equipment or other contrivance for the reduction of animal matter is prohibited unless all gases, vapors and gas-entrained effluents are:</p> <p>(a) Incinerated at temperatures of not less than 1400°F (760°C) for not less than 0.3 second;</p> <p>2. This section does not apply to any machine, equipment or other contrivance used exclusively for the processing of food for human consumption.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 10.2.1-10.2.2, eff. 11-7-75]—(Substituted in revision for NAC 445B.394)</p>	(c)(56)(i)(A) 71FR15040 3/27/2006
	445B.22093 (Superseded 445.846 and Articles 9.2, 9.2.1, 9.2.1.1 and 9.2.1.2)	<p>Organic solvents and other volatile compounds.</p> <p>1. Solvents or other volatile compounds such as paints, acids, alkalies, pesticides, fertilizers and manure must be processed, stored, used and transported in such a manner and by such means as to minimize the tendency to evaporate, leak, escape or be otherwise discharged into the ambient air causing or contributing to air pollution. If methods of control are available and feasible effectively to reduce the contribution to air pollution from evaporation, leakage or discharge, as determined by the Director, the installation and use of such methods, devices or equipment for control is mandatory.</p> <p>2. No person may place, store or hold in any new reservoir, stationary tank or other container with a capacity equal to or greater than 40,000 gallons (150 kiloliters) any gasoline, petroleum distillate, or volatile organic compound having a vapor pressure of 1.5 lb/square inch absolute (1,055 kg/square meter) or greater under actual storage conditions unless the tank, reservoir or other container is a pressure tank maintaining working pressure sufficient at all times to prevent loss of vapor or gas to the atmosphere or is equipped with one of the following devices properly installed, in good working order, and in operation:</p> <p>(a) A floating roof which consists of a pontoon type or double-deck roof which rests on the surface of the liquid contents and is equipped with a seal to close the space between the roof eave and tank wall or a vapor balloon or a vapor dome designed in accordance with accepted standards of the petroleum industry. This control equipment is not permitted if the gasoline or petroleum distillate has a vapor pressure of 11 lb/square inch absolute (7,734 kg/square meter) or greater under actual conditions. All gauging and sampling devices for tanks must be gastight except when gauging or sampling is taking place.</p> <p>(b) Other equipment proven to be of equal efficiency for preventing discharge of gases and vapors to the atmosphere.</p> <p>3. Any tank for the storage of any other petroleum or volatile organic compound which is constructed or extensively remodeled on or after November 7, 1975, must be equipped with a submerged fill pipe for the control of emissions.</p> <p>4. All facilities for dock loading of products consisting of petroleum or other volatile organic compounds having a vapor pressure of 1.5 lb/square inch absolute (1,055 kg/square meter) or greater at loading pressure must have facilities for submerged filling by a submerged fill pipe for the control of emissions.</p> <p>[Environmental Comm'n, Air Quality Reg. Art. 9, eff. 11-7-75]—(NAC A 10-19-83; R096-05, 10-31-2005)</p>	(c)(66)(i)(A)(3)) 73FR 19144 4/09/2008
	445B.22095	Emission limitation for BART. The emission limitation for BART must be established on a case-by-case basis, taking into	77FR17334

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Article #	NAC #																																																		
		consideration: <ol style="list-style-type: none"> 1. The technology available; 2. The costs of compliance; 3. The energy and nonair quality environmental impacts of compliance; 4. Any pollution control equipment in use or in existence at the source or unit; 5. The remaining useful life of the source or unit; and 6. The degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. (Added to NAC by Environmental Comm'n by R190-08, eff. 4-23-2009)					3/26/2012																																												
445B.22096		Control measures constituting BART; limitations on emissions. <ol style="list-style-type: none"> 1. The sources listed below must install, operate and maintain the following control measures which constitute BART and must not emit or cause to be emitted NO_x, SO₂, or PM₁₀ in excess of the following limits: <ol style="list-style-type: none"> (a) For power-generating units numbers 1 and 2 of NV Energy's Fort Churchill Generating Station, located in hydrographic area 108: <table border="1" data-bbox="466 797 1759 1104"> <thead> <tr> <th rowspan="2">UNIT (Boiler)</th> <th colspan="2">NO_x</th> <th colspan="2">SO₂</th> <th colspan="2">PM₁₀</th> </tr> <tr> <th>Emission Limit (lb/10⁶ Btu, 12-month rolling average)</th> <th>Control Type</th> <th>Emission Limit (lb/10⁶ Btu, 24-hr average)</th> <th>Control Type</th> <th>Emission Limit (lb/10⁶ Btu, 3-hr average)</th> <th>Control Type</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>0.20</td> <td rowspan="2">Low NO_x burners with flue gas recirculation</td> <td>0.05</td> <td rowspan="2">Pipeline natural gas and/or No. 2 fuel oil</td> <td>0.03</td> <td rowspan="2">Pipeline natural gas and/or No. 2 fuel oil</td> </tr> <tr> <td>2</td> <td>0.16</td> <td>0.05</td> <td>0.03</td> </tr> </tbody> </table> (b) For power-generating units numbers 1, 2 and 3 of NV Energy's Tracy Generating Station, located in hydrographic area 83: <table border="1" data-bbox="466 1229 1759 1445"> <thead> <tr> <th rowspan="2">UNIT (Boiler)</th> <th colspan="2">NO_x</th> <th colspan="2">SO₂</th> <th colspan="2">PM₁₀</th> </tr> <tr> <th>Emission Limit (lb/10⁶ Btu, 12-month rolling average)</th> <th>Control Type</th> <th>Emission Limit (lb/10⁶ Btu, 24-hr average)</th> <th>Control Type</th> <th>Emission Limit (lb/10⁶ Btu, 3-hr average)</th> <th>Control Type</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>0.15</td> <td>Low NO_x burners with</td> <td>0.05</td> <td>Pipeline natural gas and/or No. 2</td> <td>0.03</td> <td>Pipeline natural gas and/or No.</td> </tr> </tbody> </table> 					UNIT (Boiler)	NO _x		SO ₂		PM ₁₀		Emission Limit (lb/10 ⁶ Btu, 12-month rolling average)	Control Type	Emission Limit (lb/10 ⁶ Btu, 24-hr average)	Control Type	Emission Limit (lb/10 ⁶ Btu, 3-hr average)	Control Type	1	0.20	Low NO _x burners with flue gas recirculation	0.05	Pipeline natural gas and/or No. 2 fuel oil	0.03	Pipeline natural gas and/or No. 2 fuel oil	2	0.16	0.05	0.03	UNIT (Boiler)	NO _x		SO ₂		PM ₁₀		Emission Limit (lb/10 ⁶ Btu, 12-month rolling average)	Control Type	Emission Limit (lb/10 ⁶ Btu, 24-hr average)	Control Type	Emission Limit (lb/10 ⁶ Btu, 3-hr average)	Control Type	1	0.15	Low NO _x burners with	0.05	Pipeline natural gas and/or No. 2	0.03	Pipeline natural gas and/or No.	77FR17334 3/26/2012
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		2	0.12	flue gas recirculation	0.05	fuel oil	0.03	2 fuel oil																																																		
		3	0.19	Low NO _x burners with selective noncatalytic reduction	0.05		0.03																																																			
<p>(c) For power-generating units numbers 1, 2 and 3 of NV Energy's Reid Gardner Generating Station, located in hydrographic area 218:</p> <table border="1"> <thead> <tr> <th rowspan="2">UNIT (Boiler)</th> <th colspan="2">NO_x</th> <th colspan="2">SO₂</th> <th colspan="2">PM₁₀</th> </tr> <tr> <th>Emission Limit (lb/10⁶ Btu, 12-month rolling average)</th> <th>Control Type</th> <th>Emission Limit (lb/10⁶ Btu, 24-hr average)</th> <th>Control Type</th> <th>Emission Limit (lb/10⁶ Btu, 3-hr average)</th> <th>Control Type</th> </tr> </thead> <tbody> <tr> <td>1</td> <td rowspan="3">**See FIP 77 FR 50936**</td> <td rowspan="3"></td> <td>0.15</td> <td rowspan="3">Wet soda ash flue gas desulphurization</td> <td>0.015</td> <td rowspan="3">Fabric filter</td> </tr> <tr> <td>2</td> <td>0.15</td> <td>0.015</td> </tr> <tr> <td>3</td> <td>0.15</td> <td>0.015</td> </tr> </tbody> </table> <p>Footnote: (1) Rotamix is a technology for adding selective noncatalytic reduction using ammonia or urea-based reagent.</p> <p>(d) For power-generating units numbers 1 and 2 of Southern California Edison's Mohave Generating Station, located in hydrographic area 213:</p> <table border="1"> <thead> <tr> <th rowspan="2">UNIT (Boiler)</th> <th colspan="3">NO_x</th> <th colspan="2">SO₂</th> <th colspan="2">PM₁₀</th> </tr> <tr> <th>Emission Limit (lb/10⁶ Btu, 12-month rolling average)</th> <th>Mass Emission Rate (lb/hr, 1-hr average)</th> <th>Control Type</th> <th>Emission Limit (lb/10⁶ Btu, 30-day rolling average)</th> <th>Control Type</th> <th>Emission Limit (lb/10⁶ Btu, 3-hr average)</th> <th>Control Type</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>0.15</td> <td>788</td> <td>Low NO_x burners with over-fire air and</td> <td>0.0019</td> <td>Conversion to pipeline natural gas only</td> <td>0.0077</td> <td>Conversion to pipeline natural gas only</td> </tr> </tbody> </table>										UNIT (Boiler)	NO _x		SO ₂		PM ₁₀		Emission Limit (lb/10 ⁶ Btu, 12-month rolling average)	Control Type	Emission Limit (lb/10 ⁶ Btu, 24-hr average)	Control Type	Emission Limit (lb/10 ⁶ Btu, 3-hr average)	Control Type	1	**See FIP 77 FR 50936**		0.15	Wet soda ash flue gas desulphurization	0.015	Fabric filter	2	0.15	0.015	3	0.15	0.015	UNIT (Boiler)	NO _x			SO ₂		PM ₁₀		Emission Limit (lb/10 ⁶ Btu, 12-month rolling average)	Mass Emission Rate (lb/hr, 1-hr average)	Control Type	Emission Limit (lb/10 ⁶ Btu, 30-day rolling average)	Control Type	Emission Limit (lb/10 ⁶ Btu, 3-hr average)	Control Type	1	0.15	788	Low NO _x burners with over-fire air and	0.0019	Conversion to pipeline natural gas only	0.0077	Conversion to pipeline natural gas only
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		<p>2. The control measures established in subsection 1 may be replaced or supplemented with alternative technologies approved in advance by the Director, provided that the emission limits in subsection 1 are met. The established or approved control measures must be installed and operating:</p> <p>(a) For NV Energy's Fort Churchill, Tracy and Reid Gardner generating stations:</p> <p>(1) On or before January 1, 2015; or</p> <p>(2) Not later than 5 years after approval of Nevada's state implementation plan for regional haze by the United States Environmental Protection Agency Region 9,</p> <p>↪ whichever occurs first.</p> <p>(b) For Southern California Edison's Mohave Generating Station, at the time that each unit resumes operation.</p> <p>3. If the ownership of any BART regulated emission unit changes, the new owner must comply with the requirements set forth in subsection 2.</p> <p>4. For purposes of this section, emissions of PM₁₀ include the components of PM_{2.5} as a subset. (Added to NAC by Environmental Comm'n by R190-08, eff. 4-23-2009; A by R148-09, 1-28-2010)</p>																																							
	445B.22097 (Superseded 445.843)	<p>Standards of quality for ambient air.</p> <p>1. The table contained in this section lists the minimum standards of quality for ambient air.</p> <table border="1"> <thead> <tr> <th rowspan="2">POLLUTANT</th> <th rowspan="2">AVERAGING TIME</th> <th colspan="2">NEVADA STANDARDS^A</th> <th colspan="3">NATIONAL STANDARDS^B</th> </tr> <tr> <th>CONCENTRATION^C</th> <th>METHOD^D</th> <th>PRIMARY^{C, E}</th> <th>SECONDARY^{C, F}</th> <th>METHOD^D</th> </tr> </thead> <tbody> <tr> <td>Ozone</td> <td>1 hour</td> <td>0.12 ppm (235 µg/m³)</td> <td>Ultraviolet absorption</td> <td>0.12 ppm (235 µg/m³)</td> <td>Same as primary</td> <td>Chemiluminescence</td> </tr> <tr> <td>Ozone-Lake Tahoe Basin, #90</td> <td>1 hour</td> <td>0.10 ppm (195 µg/m³)</td> <td>Ultraviolet absorption</td> <td>--</td> <td>--</td> <td>--</td> </tr> <tr> <td>Carbon monoxide less than 5,000' above mean sea level</td> <td>8 hours</td> <td>9 ppm (10,500 µg/m³)</td> <td>Non-</td> <td>9 ppm</td> <td></td> <td>Non-</td> </tr> </tbody> </table>						POLLUTANT	AVERAGING TIME	NEVADA STANDARDS ^A		NATIONAL STANDARDS ^B			CONCENTRATION ^C	METHOD ^D	PRIMARY ^{C, E}	SECONDARY ^{C, F}	METHOD ^D	Ozone	1 hour	0.12 ppm (235 µg/m ³)	Ultraviolet absorption	0.12 ppm (235 µg/m ³)	Same as primary	Chemiluminescence	Ozone-Lake Tahoe Basin, #90	1 hour	0.10 ppm (195 µg/m ³)	Ultraviolet absorption	--	--	--	Carbon monoxide less than 5,000' above mean sea level	8 hours	9 ppm (10,500 µg/m ³)	Non-	9 ppm		Non-	(c)(56)(i)(A) 71FR15040 3/27/2006
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		At or greater than 5,000' above mean sea level		6 ppm (7,000 µg/m ³)	dispersive infrared photometry	(10 mg/m ³)	None	dispersive infrared photometry
		Carbon monoxide at any elevation	1 hour	35 ppm (40,500 µg/m ³)		35 ppm (40 mg/m ³)		
		Nitrogen dioxide	Annual arithmetic mean	0.053 ppm (100 µg/m ³)	Gas phase chemiluminescence	0.053 ppm (100 µg/m ³)	Same primary as	Gas phase chemiluminescence
		Sulfur dioxide	Annual arithmetic mean	0.030 ppm (80 µg/m ³)	Ultraviolet Fluorescence	0.030 ppm	None	Spectrophotometry (Pararosaniline method)
			24 hours	0.14 ppm (365 µg/m ³)		0.14 ppm		
			3 hours	0.5 ppm (1,300 µg/m ³)		None	0.5 ppm	
		Particulate matter as PM ₁₀	Annual arithmetic mean	50 µg/m ³	High volume PM ₁₀ sampling	50 µg/m ³	Same primary as	High volume PM ₁₀ sampling
			24 hours	150 µg/m ³		150 µg/m ³		
		Lead (Pb)	Quarterly arithmetic mean	1.5 µg/m ³	High volume sampling, acid extraction and atomic absorption spectrometry	1.5 µg/m ³	Same primary as	High volume sampling, acid extraction and atomic absorption spectrometry
		Hydrogen sulfide	1 hour	0.08 ppm (112 µg/m ³) ^G	Ultraviolet Fluorescence	--	--	--

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		<p>Notes:</p> <p>Note A: The Director shall use the Nevada standards in considering whether to issue a permit for a stationary source and shall ensure that the stationary source will not cause the Nevada standards to be exceeded in areas where the general public has access.</p> <p>Note B: These standards, other than for ozone, particulate matter, and those based on annual averages, must not be exceeded more than once per year. The 1-hour ozone standard is attained when the expected number of days per calendar year with a maximum hourly average concentration above the standard is equal to or less than one. The PM₁₀ 24-hour standard is attained when the expected number of days per calendar year with a 24-hour average concentration above the standard, rounded to the nearest 10 µg/m³, is equal to or less than one. The expected number of days per calendar year is generally based on an average of the number of times the standard has been exceeded per year for the last 3 years. The National standards are to be used in determinations of attainment or nonattainment.</p> <p>Note C: Where applicable, concentration is expressed first in units in which it was adopted. All measurements of air quality that are expressed as mass per unit volume, such as micrograms per cubic meter, must be corrected to a reference temperature of 25°C and a reference pressure of 760 mm of Hg (1,013.2 millibars); “ppm” in this table refers to parts per million by volume, or micromoles of regulated air pollutant per mole of gas; “µg/m³” refers to micrograms per cubic meter.</p> <p>Note D: Any reference method specified in accordance with 40 C.F.R. Part 50 or any reference method or equivalent method designated in accordance with 40 C.F.R. Part 53 may be substituted.</p> <p>Note E: National primary standards are the levels of air quality necessary, with an adequate margin of safety, to protect the public health.</p> <p>Note F: National secondary standards are the levels of air quality necessary to protect the public welfare from any known or anticipated adverse effects of a regulated air pollutant.</p> <p>Note G: The ambient air quality standard for hydrogen sulfide does not include naturally occurring background concentrations.</p> <p>2. These standards of quality for ambient air are minimum goals, and it is the intent of the Commission in this section to protect the existing quality of Nevada’s air to the extent that it is economically and technically feasible. [Environmental Comm’n, Air Quality Reg. §§ 12.1-12.1.6, eff. 11-7-75; A and renumbered as § 12.1, 12-4-76; A 12-15-77; 8-28-79; §§ 12.2-12.4, eff. 11-7-75; § 12.5, eff. 12-4-76; A 8-28-79]—(NAC A 10-19-83; 9-5-84; 12-26-91; 10-30-95; R103-02, 12-17-2002; R198-03, 4-26-2004)</p>	
	445B.225 (Superseded 445.663)	<p>Prohibited conduct: Concealment of emissions. No person may install, construct or use any device which conceals any emission without reducing the total release of regulated air pollutants to the atmosphere. [Environmental Comm’n, Air Quality Reg. § 2.2.1, eff. 11-7-75]—(NAC A 10-22-87; 10-30-95)</p>	(c)(66)(i)(A) 73FR19144 4/9/2008
	445B.227 (Superseded 445.664)	<p>Prohibited conduct: Operation of source without required equipment; removal or modification of required equipment; modification of required procedure. Except as otherwise provided in NAC 445B.001 to 445B.3497, inclusive, no person may:</p>	(c)(56)(i)(A) 73FR19144 4/9/2008

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		<p>1. Operate a stationary source of air pollution unless the control equipment for air pollution which is required by applicable requirements or conditions of the permit is installed and operating.</p> <p>2. Disconnect, alter, modify or remove any of the control equipment for air pollution or modify any procedure required by an applicable requirement or condition of the permit.</p> <p>[Environmental Comm'n, Air Quality Reg. § 2.2.2, eff. 12-15-77]—(NAC A 10-14-82; 10-15-85; 8-22-86; 10-22-87; 3-29-94, eff. 1-11-96; 10-30-95)</p>	
	445B.229 (Superseded 445.665)	<p>Hazardous emissions: Order for reduction or discontinuance. Without limiting the authority of any state officer to declare or to act on an emergency, the Director or local air pollution control agency, upon determining that a generalized condition of air pollution exists or that the emission from one or more stationary sources of regulated air pollutants is causing a danger to human health or safety, may order persons causing or contributing to the air pollution to immediately reduce or discontinue all emission of contaminants.</p> <p>[Environmental Comm'n, Air Quality Reg. § 2.4.1, eff. 11-7-75]—(NAC A 10-30-95)</p>	(c)(66)(i)(A) 73FR19144 4/9/2008
	445B.230 (Superseded 445.666)	<p>Plan for reduction of emissions.</p> <p>1. Any person who is able to cause or permit the emission of 100 tons (90.7 metric tons) or more per year of a regulated air pollutant from a stationary source shall prepare and submit to the Director a plan for reducing or eliminating that emission in accordance with the episode stages of alert, warning, and emergency as defined in the applicable state implementation plan.</p> <p>2. Any person required to have an operating permit who is able to cause or permit the emission of less than 100 tons (90.7 metric tons) per year of a regulated air pollutant shall, upon written notice from the Director, prepare and submit to the Director a plan for reducing or eliminating that emission in accordance with the episode stages of alert, warning, and emergency as defined in the applicable state implementation plan.</p> <p>3. The written notice required under subsection 2 must be transmitted in accordance with subsection 4 to all persons who are within the same classification of sources as defined in the <i>Standard Industrial Classification Manual</i>, adopted by reference in NAC 445B.221, and who are able to cause or permit the emission of less than 100 tons (90.7 metric tons) per year of a regulated air pollutant.</p> <p>4. 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.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 2.4.2-2.4.4, eff. 11-7-75]—(NAC A 10-30-95; R125-04, 9-24-2004; R151-06, 9-18-2006)</p>	(c)(62)(i)(A)(1)) 72FR19801 4/20/2007
	445.667	<p>Excess emissions: Scheduled maintenance; testing; malfunctions.</p> <p>1. Scheduled maintenance or testing approved by the director or repairs which may result in excess emissions of air contaminants prohibited by NAC 445.430 to 445.846, inclusive, must be performed during a time designated by the director as being favorable for atmospheric ventilation.</p> <p>2. The director must be notified in writing of the time and expected duration at least 24 hours in advance of any scheduled maintenance or repairs which may result in excess emissions of air contaminants prohibited by NAC 445.430 to 445.846,</p>	(c)(25)(i)(A)

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		<p>inclusive.</p> <p>3. The director must be notified of any excess emissions within 24 hours after any malfunction, breakdown, or upset of process or pollution control equipment or during startup of such equipment. Phone (702) 885-4670.</p> <p>4. The owner or operator of an affected facility shall provide the director, within 15 days after any malfunction, breakdown, upset, startup or human error sufficient information to enable the director to determine the seriousness of the excess emissions. The submission must include as a minimum:</p> <p>(a) The identity of the stack and other emission point or either of them where the excess emissions occurred.</p> <p>(b) The estimated magnitude of the excess emissions expressed in opacity or in the units of the applicable emission limitation and the operating data and methods used in estimating the magnitude of the excess emissions.</p> <p>(c) The time and duration of the excess emissions.</p> <p>(d) The identity of the equipment causing the excess emissions.</p> <p>(e) If the excess emissions were the result of a malfunction, steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions.</p> <p>(f) The steps taken to limit the excess emissions.</p> <p>(g) Documentation that the air pollution control equipment, process equipment or processes were at all times maintained and operated, to a maximum extent practicable, in a manner consistent with good practice for minimizing emissions.</p> <p>[Environmental Comm'n, Air Quality Reg. 2.5.1-2.5.3, eff. 11-7-75; A 8-28-79; 2.5.4, eff. 11-7-75; 2.5.4.1-2.5.4.7, eff. 8-28-79]</p>	
2.5		Scheduled Maintenance, Testing, and Breakdown or Upset	
2.5.4 (EPA proposed to remove using 110(k)(6) authority 12/18/06)		Breakdown or upset, determined by the Director to be unavoidable and not the result of careless or marginal operations, shall not be considered a violation of these regulations.	(c)(11)
	445B.250 (Superseded Art. 2.16.1)	<p>Notification of planned construction or reconstruction. Any owner or operator subject to the provisions of NAC 445B.001 to 4445B.3689, inclusive, shall furnish the Director written notification of:</p> <p>1. The date that construction or reconstruction of an affected facility is commenced, postmarked no later than 30 days after such date. This requirement does not apply in the case of mass-produced facilities which are purchased in completed form.</p> <p>2. The anticipated date of initial start-up of an affected facility, postmarked not more than 60 days and not less than 30 days before such date.</p> <p>3. The actual date of initial start-up of an affected facility, postmarked within 15 days after such date.</p> <p>4. The date upon which demonstration of the continuous monitoring system performance commences in accordance with NAC 445B.256 to 445B.267, inclusive. Notification must be postmarked not less than 30 days before such date.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 2.16.1-2.16.1.5, eff. 12-4-76]—(NAC R 12-13-93, eff. 11-15-94; A 10-30-95; R105-97, 3-5-98; R096-05, 10-31-2005)</p>	(c)(67)(i)(A)(1)) 73FR20536 4/16/2008
	445B.252	Testing and sampling.	(c)(67)(i)(A)

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	(Superseded 445.682)	<p>1. To determine compliance with NAC 445B.001 to 445B.3497, inclusive, before the approval or the continuance of an operating permit or similar class of permits, the director may either conduct or order the owner of any stationary source to conduct or have conducted such testing and sampling as the director determines necessary. Testing and sampling or either of them must be conducted and the results submitted to the director within 60 days after achieving the maximum rate of production at which the affected facility will be operated, but not later than 180 days after initial start-up of the facility and at such other times as may be required by the director.</p> <p>2. Tests of performance must be conducted and data reduced in accordance with the methods and procedures of the test contained in each applicable subsection of this section unless the director:</p> <p>(a) Specifies or approves, in specific cases, the use of a method of reference with minor changes in methodology; or</p> <p>(d) Waives the requirement for tests of performance because the owner or operator of a stationary source has demonstrated by other means to the director's satisfaction that the affected facility is in compliance with the standard.</p> <p>3. Tests of performance must be conducted under such conditions as the director specifies to the operator of the plant based on representative performance of the affected facility. The owner or operator shall make available to the director such records as may be necessary to determine the conditions of the test of performance. Operations during periods of start-up, shutdown and malfunction must not constitute representative conditions of a test of performance unless otherwise specified in the applicable standard.</p> <p>4. The owner or operator of an affected facility shall give notice to the director 30 days before the test of performance to allow the director to have an observer present. A written testing procedure for the test of performance must be submitted to the director at least 30 days before the test of performance to allow the director to review the proposed testing procedures.</p> <p>5. Each test of performance must consist of at least three separate runs using the applicable method for that test. Each run must be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the runs apply. In the event of forced shutdown, failure of an irreplaceable portion of the sampling train, extreme meteorological conditions or other circumstances with less than three valid samples being obtained, compliance may be determined using the arithmetic mean of the results of the other two runs upon the director's approval.</p> <p>7. The cost of all testing and sampling and the cost of all sampling holes, scaffolding, electric power and other pertinent allied facilities as may be required and specified in writing by the director must be provided and paid for by the owner of the stationary source.</p> <p>8. All information and analytical results of testing and sampling must be certified as to their truth and accuracy and as to their compliance with all provisions of these regulations, and copies of these results must be provided to the director no later than 60 days after the testing or sampling, or both.</p> <p>9. Notwithstanding the provisions of subsection 2, the Director shall not approve an equivalent method or alternative method to determine compliance with a standard or emission limitation contained in Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations for:</p>	73FR20536 4/16/2008

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		(a) An emission unit that is subject to a testing requirement pursuant to Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations; or (b) An affected source. [Environmental Comm'n, Air Quality Reg. §§ 2.6.1-2.6.4, eff. 11-7-65; A 12-4-76; §§ 2.6.5-2.6.9, eff. 12-4-76]—(NAC A 10-15-85; 10-22-87; 10-30-95; R065-03, 10-30-2003)	
	445B.256 (Superseded Art.2.17.10 and 2.17.10.1	Monitoring systems: Calibration, operation and maintenance of equipment. The owners or operators of all stationary sources identified in Appendix P of 40 C.F.R. § 51(1.1) as amended from time to time, are required to install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring the pollutants specified in Appendix P for the applicable source category. Those stationary sources must meet the basic requirements of Appendix P of 40 C.F.R. § 51(2.0 et seq.). [Environmental Comm'n, Air Quality Reg. §§ 2.17.10 & 2.17.10.1, eff. 4-4-77]—(NAC A 10-30-95)	(c)(56)(i)(A) 71FR71486 12/11/2006
	445B.257 (Superseded Art. 2.17.6 and 2.17.7)	Monitoring systems: Location. 1. All continuous monitoring systems or monitoring devices must be installed so that representative measurements of emissions or process parameters from the affected facility are obtained. Additional procedures for location of continuous monitoring systems are contained in the applicable Performance Specifications of Appendix B of 40 C.F.R. § 60. [Environmental Comm'n, Air Quality Reg. §§ 2.17.6 & 2.17.7, eff. 12-4-76]—(Substituted in revision for NAC 445.684)	(c)(56)(i)(A) 71FR71486 12/11/2006
	445B.258 (Superseded 445.685)	Monitoring systems: Verification of operational status. 2. All continuous monitoring systems and monitoring devices must be installed and operational before conducting performance tests under NAC 445B.252. Verification of operational status must, as a minimum, consist of the following: (a) For continuous monitoring systems referred to in subsection 2 of NAC 445B.259, completion of the conditioning period specified by applicable requirements in Appendix B of 40 C.F.R. Part 60. (b) For continuous monitoring systems referred to in NAC 445B.260, completion of 7 days of operation. (c) For monitoring devices referred to in NAC 445B.256 to 445B.267, inclusive, completion of the manufacturer's written requirements or recommendations for checking the operation or calibration of the device. [Environmental Comm'n, Air Quality Reg. §§ 2.17.1-2.17.2.3, eff. 12-4-76]—(NAC A by R151-06, 9-18-2006)	(c)(62)(i)(A)(1)) 72FR19801 4/20/2007
	445B.259 (Superseded 445.686)	Monitoring systems: Performance evaluations. 1. During any performance tests required under NAC 445B.252 or within 30 days thereafter and at such other times as may be required by the Director under § 114 of the Act, the owner or operator of any affected facility shall conduct continuous evaluations of the performance of monitoring systems and furnish the Director within 60 days thereof two or upon request more copies of a written report of the results of such tests. These evaluations must be conducted in accordance with the specifications and procedures provided in this section and NAC 445B.260. 2. Except as provided in NAC 445B.260, continuous monitoring systems listed within this subsection must be evaluated in accordance with the requirements and procedures contained in the applicable performance specification of Appendix B of 40 C.F.R. Part 60. Continuous monitoring systems for measuring:	(c)(62)(i)(A)(1)) 72FR19801 4/20/2007

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		(a) Opacity of emissions must comply with Performance Specification 1. (b) Nitrogen oxides emissions must comply with Performance Specification 2. (c) Sulfur dioxide emissions must comply with Performance Specification 2. (d) The oxygen and carbon dioxide content of effluent gases must comply with Performance Specification 3. [Environmental Comm'n, Air Quality Reg. §§ 2.17.3 & 2.17.3.1, eff. 12-4-76]—(NAC A by R151-06, 9-18-2006)	
	445B.260 (Superseded 445.687)	Monitoring systems: Components contracted for before September 11, 1974. 1. Except as otherwise provided in subsection 2, an owner or operator who, before September 11, 1974, entered into a binding contractual obligation to purchase specific continuous monitoring system components shall comply with the following requirements: (a) Continuous monitoring systems for measuring opacity of emissions must be capable of measuring, with a confidence level of 95 percent, emission levels within ± 20 percent of the mean value of the data obtained using the applicable reference method set forth in terms of the units of the emission standard. The calibration drift test and associated calculation procedures set forth in Performance Specification 1 in Appendix B of 40 C.F.R. Part 60 must be used for demonstrating compliance with this specification. (b) Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide must be capable of measuring, with a confidence level of 95 percent, emission levels within ± 20 percent of the mean value of the data obtained using the applicable reference method set forth in terms of the units of the emission standard. The calibration drift test, the relative accuracy test and associated operating and calculation procedures set forth in Performance Specification 2 in Appendix B of 40 C.F.R. Part 60 must be used for demonstrating compliance with this specification. 2. Owners or operators of all continuous monitoring systems installed on an affected facility before October 6, 1975, are not required to conduct tests under paragraphs (a) and (b) of subsection 1 unless requested by the Director. 3. All continuous monitoring systems referred to in subsection 1 must be upgraded or replaced, if necessary, with new continuous monitoring systems, and such improved systems must be demonstrated to comply with applicable performance specifications under NAC 445B.259 by September 11, 1979. [Environmental Comm'n, Air Quality Reg. §§ 2.17.3.2 & 2.17.3.3, eff. 12-4-76; A 12-4-77]—(NAC A by R151-06, 9-18-2006)	(c)(62)(i)(A)(1)) 72FR19801 4/20/2007
	445B.261 (Superseded 445.688)	Monitoring systems: Adjustments. Owners or operators of all continuous monitoring systems installed in accordance with the provisions of NAC 445B.256 to 445B.267, inclusive, shall check the zero and span drift at least once daily in accordance with the method prescribed by the manufacturer of the systems unless the manufacturer recommends adjustments at shorter intervals, in which case the recommendations must be followed. The zero and span must, as a minimum, be adjusted whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in Appendix B of 40 C.F.R. § 60 are exceeded. [Environmental Comm'n, Air Quality Reg. part § 2.17.4, eff. 12-4-76; A 12-15-77]—(Substituted in revision for NAC 445.688)	(c)(56)(i)(A) 71FR71486 12/11/2006

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	445B.262 (Superseded 445.689)	<p>Monitoring systems: Measurement of opacity.</p> <p>1. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases must be cleaned before performing the zero or span drift adjustments, except that for systems using automatic zero adjustments, the optical surfaces must be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity. Unless otherwise approved by the director, the following procedures, as applicable, must be followed:</p> <p>(a) For extractive continuous monitoring systems measuring gases, minimum procedures must include introducing applicable zero and span gas mixtures into the measurement system as near the probe as is practical. Span and zero gases certified by their manufacturer to be traceable to National Institute of Standards and Technology reference gases must be used whenever these reference gases are available. The span and zero gas mixtures must be the same composition as specified in Appendix B of 40 C.F.R. Part 60. Every 6 months after the date of manufacture, span and zero gases must be reanalyzed by conducting triplicate analyses with Reference Methods 6 for SO₂, 7 for NO, and 3 for O₂ and CO₂, respectively. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.</p> <p>(b) For nonextractive continuous monitoring systems measuring gases, minimum procedures include upscale checks using a certified calibration gas cell or test cell which is functionally equivalent to a known gas concentration. The zero check may be performed by computing the zero value from upscale measurements or by mechanically producing a zero condition.</p> <p>(c) For continuous monitoring systems measuring opacity of emissions, minimum procedures include a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. These procedures must provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.</p> <p>2. Notwithstanding the provisions of subsection 1, the Director shall not approve an equivalent method or alternative method to determine compliance with a standard or emission limitation contained in Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations for:</p> <p>(a) An emission unit that is subject to a testing requirement pursuant to Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations; or</p> <p>(b) An affected source.</p> <p>[Environmental Comm'n, Air Quality Reg. part § 2.17.4, eff. 12-4-76; § 2.17.4.1, eff. 12-4-76; A 12-15-77; §§ 2.17.4.2 & 2.17.4.3, eff. 12-4-76]—(NAC A by R065-03, 10-30-2003)</p>	(c)(56)(i)(A) 71FR71486 12/11/2006
	445B.263 (Superseded 445.690)	<p>Monitoring systems: Frequency of operation. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required by NAC 445B.261, all continuous monitoring systems must be in continuous operation and meet minimum frequency of operation requirements as follows:</p> <p>1. All continuous monitoring systems referred to in NAC 445B.259 and 445B.260 for measuring opacity of emissions must complete a minimum of one cycle of operation (sampling, analyzing and data recording) for each successive 10-second period.</p> <p>2. All continuous monitoring systems referred to in NAC 445B.259 for measuring oxides of nitrogen, sulfur dioxide,</p>	(c)(56)(i)(A) 71FR71486 12/11/2006

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		<p>carbon dioxide or oxygen must complete a minimum of one cycle of operation (sampling, analyzing and data recording) for each successive 15-minute period.</p> <p>3. All continuous monitoring systems referred to in NAC 445B.260, except opacity, must complete a minimum of one cycle of operation (sampling, analyzing and data recording) for each successive 1-hour period.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 2.17.5-2.17.5.3, eff. 12-4-76]—(Substituted in revision for NAC 445.690)</p>	
	445B.264 (Superseded 445.691)	<p>Monitoring systems: Recordation of data. 1. Owners or operators of all continuous monitoring systems for the measurement of opacity shall reduce all data to 6-minute averages and for systems other than opacity to 1-hour averages.</p> <p>2. For systems other than opacity, 1-hour averages must be computed from four or more data points equally spaced over each 1-hour period.</p> <p>3. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments must not be included in the data averages computed under this section. An arithmetic or integrated average of all calibrated data must be used. The data output of all continuous monitoring systems may be recorded in reduced or nonreduced form, e.g., ppm pollutant and percent O₂ or lb/million Btu of pollutant.</p> <p>4. All excess emissions must be converted into units of the standard using the applicable conversion procedures specified in NAC 445B.001 to 445B.3497, inclusive. After conversion into units of the standard, the data may be rounded to the same number of significant digits used in those sections to specify the applicable standard, e.g., rounded to the nearest 1 percent opacity.</p> <p>5. As used in this section, “calibrated data” means data which is precise and accurate within a stated acceptance criteria for the instrument.</p> <p>[Environmental Comm'n, Air Quality Reg. § 2.17.8, eff. 12-4-76]—(NAC A 10-22-87; R118-00, 9-25-2000)</p>	(c)(56)(i)(A) 71FR71486 12/11/2006
	445B.265 (Superseded 445.692)	<p>Monitoring systems: Records; reports.</p> <p>1. Any owner or operator subject to the provisions of NAC 445B.256 to 445B.267, inclusive, shall maintain records of the occurrence and duration of any start-up, shutdown or malfunction in the operation of an affected facility and any malfunction of the air pollution control equipment or any periods during which a continuous monitoring system or monitoring device is inoperative.</p> <p>2. Each owner or operator required to install a continuous monitoring system shall submit a written report of excess emissions to the director for every calendar quarter. All quarterly reports must be postmarked by the 30th day following the end of each calendar quarter and must include the following information:</p> <p>(a) The magnitude of excess emissions computed in accordance with NAC 445B.256 to 445B.267, inclusive, any conversion factors used, and the date and time of commencement and completion of each time period of excess emissions.</p> <p>(b) Specific identification of each period of excess emissions that occurs during start-ups, shutdowns and malfunctions of the affected facility.</p> <p>(c) The nature and cause of any malfunction, if known, the corrective action taken or preventative measures adopted.</p> <p>(d) Specific identification of each period during which the continuous monitoring system was inoperative, except for zero</p>	(c)(56)(i)(A) 71FR71486 12/11/2006

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		<p>and span checks, and the nature of any repairs or adjustments that were made.</p> <p>➔ When no excess emissions have occurred and the continuous monitoring system has not been inoperative, repaired or adjusted, such information must be included in the report.</p> <p>3. Any owner or operator subject to the provisions of NAC 445B.256 to 445B.267, inclusive, shall maintain a file of all measurements, including:</p> <ul style="list-style-type: none"> (a) Continuous monitoring systems, monitoring devices and performance testing measurements; (b) All continuous monitoring system performance evaluations; (c) All continuous monitoring systems or monitoring device calibration checks; (d) Adjustments and maintenance performed on these systems or devices; and (e) All other information required by NAC 445B.256 to 445B.267, inclusive, recorded in a permanent form suitable for inspection. <p>➔ The file must be retained for at least 2 years following the date of the measurements, maintenance, reports and records.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 2.16.2-2.16.4, eff. 12-4-76]—(NAC A 7-2-84)—(Substituted in revision for NAC 445.692)</p>	
	445B.267 (Superseded 445.693)	<p>Alternative monitoring procedures or requirements.</p> <p>1. Upon written application by an owner or operator, the director may approve alternatives to any monitoring procedures or requirements of NAC 445B.256 to 445B.267, inclusive, including, but not limited to, the following:</p> <ul style="list-style-type: none"> (a) Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by those sections would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases. (b) Alternative monitoring requirements when the affected facility is infrequently operated. (c) Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions. (d) Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements. (e) Alternative methods of converting regulated air pollutant concentration measurements to units of the standards. (f) Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells. (g) Alternatives to the test methods of the American Society for Testing and Materials or sampling procedures specified by any provision of NAC 445B.256 to 445B.267, inclusive. (h) Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1, Appendix B of 40 C.F.R. Part 60, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The director may require that such demonstration be performed for each affected facility. 	(c)(56)(i)(A) 71FR71486 12/11/2006

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		<p>(i) Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.</p> <p>2. Notwithstanding the provisions of subsection 1, the Director shall not approve an equivalent method or alternative method to determine compliance with a standard or emission limitation contained in Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations for:</p> <p>(a) An emission unit that is subject to a testing requirement pursuant to Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations; or</p> <p>(b) An affected source.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 2.17.9-2.17.9.7, eff. 12-4-76; § 2.17.9.8, eff. 12-4-76; A 12-15-77]—(NAC A 10-30-95; R065-03, 10-30-2003)</p>	
	445B.275 (Superseded 445.696)	<p>Violations: Acts constituting; notice.</p> <p>1. Failure to comply with any requirement of <u>NAC 445B.001 to 445B.3791</u>, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by <u>NRS 445B.450</u>, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:</p> <p>(a) Failure to apply for and obtain an operating permit;</p> <p>(b) Failure to construct a stationary source in accordance with the application for an operating permit as approved by the Director;</p> <p>(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;</p> <p>(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 <u>NAC 445B.001 to 445B.3497</u>, inclusive, or a mercury operating permit to construct as required by <u>NAC 445B.3611 to 445B.3689</u>, inclusive;</p> <p>(e) Failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit; or</p> <p>(f) Failure to pay fees as required by <u>NAC 445B.327</u> or <u>445B.3689</u>.</p> <p>2. The written notice must specify the provision of <u>NAC 445B.001 to 445B.3791</u>, inclusive, the condition of the operating permit or the applicable requirement that is being violated.</p> <p>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.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 2.3.1 & 2.9.5-2.9.7, eff. 11-7-75; + § 13.1.8, eff. 11-7-75; A 12-15-77]—(NAC A 8-22-86; 10-22-87; 12-8-89; 12-13-93; 10-30-95; R103-02, 12-17-2002; R189-05, 5-4-2006)</p>	(c)(66)(i)(A) 73FR19144 4/9/2008
	445B.277 (Superseded 445.697)	<p>Stop orders.</p> <p>1. The Director shall issue a stop order if:</p> <p>(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</p>	(c)(66)(i)(A) 73FR19144 4/9/2008

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		<p>approved by the Director as a condition of the operating permit; or</p> <p>(b) The design material or the construction itself is of such a nature that it patently cannot bring the stationary source into compliance with <u>NAC 445B.001 to 445B.3791</u>, inclusive.</p> <p>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 <u>NAC 445B.001 to 445B.3791</u>, inclusive, any applicable requirement or any condition of the operating permit.</p> <p>3. A person served with a stop order:</p> <p>(a) Shall immediately stop all activities specified in the stop order.</p> <p>(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.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 3.3.1-3.3.5, eff. 11-7-75]—(NAC A 10-22-87; 9-19-90; 12-13-93; 10-30-95; R189-05, 5-4-2006)</p>																					
	445.694	<p>Emission discharge information.</p> <p>Emission discharge information, as correlated to mass emission rates or ambient air quality regulations related to all registration certificates and operating permits, will be maintained by the director as public information at 201 South Fall Street, Capitol Complex, Carson City, Nevada 89710.</p> <p>[Environmental Comm'n, Air Quality Reg. 3.1.9.1, eff. 11-7-75; A 12-4-76]</p>	(c)(25)(i)(A)																				
	445.699	<p>Violations: Administrative fines.</p> <p>1. Any violation of NAC 445.430 to 445.846, inclusive, except NAC 445.622 and 445.721 to 445.724, inclusive, as they pertain to the internal combustion engine, is subject to an administrative fine levied by the commission or an approved local control agency of not more than \$5,000 per violation.</p> <p>2. Unless otherwise provided, all violations are classified as major violations and a fine up to \$5,000 per occurrence may be levied.</p> <p>3. Violations of NAC 445.734, 445.753, 4445.754, 445,844 and 445.846 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 12 consecutive months.</p> <p>4. The schedule for fines for minor violations is as follows:</p> <table border="0" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 15%;">First Offense</th> <th style="width: 15%;">Second Offense</th> <th style="width: 10%;">Third Offense</th> </tr> </thead> <tbody> <tr> <td>NAC 445.753, open burning</td> <td>\$25</td> <td>\$50</td> <td>\$100</td> </tr> <tr> <td>NAC 445.754, incinerator burning,</td> <td></td> <td>50</td> <td>100</td> </tr> <tr> <td style="padding-left: 20px;">equal to or less than 25 lbs (11 kg) per hour</td> <td>25</td> <td></td> <td></td> </tr> <tr> <td style="padding-left: 20px;">greater than 25 lbs (11 kg) per hour</td> <td>50</td> <td>100</td> <td></td> </tr> </tbody> </table>		First Offense	Second Offense	Third Offense	NAC 445.753, open burning	\$25	\$50	\$100	NAC 445.754, incinerator burning,		50	100	equal to or less than 25 lbs (11 kg) per hour	25			greater than 25 lbs (11 kg) per hour	50	100		(c)(25)(i)(A)
	First Offense	Second Offense	Third Offense																				
NAC 445.753, open burning	\$25	\$50	\$100																				
NAC 445.754, incinerator burning,		50	100																				
equal to or less than 25 lbs (11 kg) per hour	25																						
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		<p>NAC 445.734, fugitive dust 50 100 200</p> <p>NAC 445.846, organic solvents and other volatile compounds 50 100 200</p> <p>NAC 445.844, odors 50 100 200</p> <p>5. All minor violations become major violations upon the occurrence of the fourth violation within a period of 12 consecutive months. [Environmental Comm'n, Air Quality Reg. §§ 2.8.1-2.8.4, eff. 11-7-75; A 12-4 76]</p>	
	445.764	<p>Reduction of employees' pay because of use of system prohibited. If the owner or operator of a source uses a supplemental or intermittent control system, or other control system designed to vary with atmospheric conditions, for the purpose of meeting the requirements of an order issued pursuant to § 113(d) or 119 which relates to primary nonferrous smelters in the Act, he may not temporarily reduce the pay of any of his employees because of his use of that system. [Environmental Comm'n, Air Quality Reg. 14.1, eff. 8-17-81]</p>	(c)(25)(i)(A)
Operating Permits Generally			
	445B.287 (Superseded 445.704)	<p>Operating permits: General requirements; exception; restrictions on transfers.</p> <p>1. Except as otherwise provided in subsection 2 and in <u>NAC 445B.288</u>, an operating permit, operating permit to construct or permit to construct is required for each stationary source and:</p> <p>(a) If a stationary source is a Class I source:</p> <p>(1) A revision of the operating permit or the permit to construct is required pursuant to the requirements of <u>NAC 445B.3425</u>, <u>445B.344</u> or <u>445B.3441</u> before the stationary source may be modified; or</p> <p>(2) A revision of the operating permit to construct is required pursuant to the requirements of paragraph (a) of subsection 1 of <u>NAC 445B.3361</u> before the stationary source may be modified,</p> <p>↳ as appropriate.</p> <p>(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 <u>NAC 445B.3465</u> before the stationary source may be modified.</p> <p>(c) If a stationary source is a Class III source, a revision of the operating permit is required pursuant to the requirements of <u>NAC 445B.3493</u> before the stationary source may be modified.</p> <p>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</p>	77FR59321 9/27/2012

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		<p>obtain a Class I operating permit at the time that the new standard is adopted.</p> <p>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 <u>NAC 445B.319</u>.</p> <p>4. As used in this section:</p> <p>(a) "Permit to construct" means a document issued and signed by the Director before November 1, 1995, certifying that:</p> <p>(1) Adequate empirical data for a stationary source has been received and constitutes approval of location; or</p> <p>(2) All portions of <u>NAC 445B.305 to 445B.314</u>, inclusive, and <u>445B.3395</u>, and any other provisions of <u>NAC 445B.001 to 445B.3689</u>, inclusive, have been complied with and constitute approval of location and for construction.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 3.1.1-3.1.3, eff. 11-7-75; A 12-15-77; § 3.1.9, eff. 11-7-75; A 12-4-76]— (NAC A 7-29-82; 10-22-87; 12-15-88; 12-13-93; 10-30-95; R105-97, 3-5-98; R117-00, 6-1-2001; R040-01, 10-25-2001; R103-02, 12-17-2002; R125-04, 9-24-2004; R189-05, 5-4-2006; R162-06, 9-18-2006; R040-10, eff. 7-22-2010)</p>	
	445B.288 (supersedes 445.705)	<p>Operating permits: Exemptions from requirements; insignificant activities.</p> <p>1. The following categories of sources are not required to obtain an operating permit:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>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:</p> <p>(a) Any equipment or other contrivance used exclusively for the processing of food for human consumption.</p> <p>(b) An incinerator which has a rated burning capacity that is less than 25 pounds per hour.</p> <p>(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.</p> <p>(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.</p> <p>(e) Except as otherwise provided in paragraphs (f), (g) and (h), air-conditioning equipment or fuel-burning equipment that,</p>	77FR59321 9/27/2012

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		<p>individually, has a rating which is:</p> <p>(1) Less than 4,000,000 Btu's per hour; or</p> <p>(2) Equal to or greater than 4,000,000 Btu's per hour if the equipment operates less than 100 hours per calendar year.</p> <p>(f) A portable internal combustion engine that has a rating for output which is:</p> <p>(1) Less than 500 horsepower; or</p> <p>(2) Equal to or greater than 500 horsepower if the engine operates less than 100 hours per calendar year.</p> <p>(g) A stationary internal combustion engine that has a rating for output which is:</p> <p>(1) Less than 250 horsepower; or</p> <p>(2) Equal to or greater than 250 horsepower if the engine operates less than 100 hours per calendar year.</p> <p>(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 stationary 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.</p> <p>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.</p> <p>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:</p> <p>(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:</p> <p>(1) Emissions of a hazardous air pollutant that exceed 1 pound per hour or 1,000 pounds per year, as appropriate;</p> <p>(2) Emissions of regulated air pollutants that exceed 4,000 pounds per year;</p> <p>(3) Emissions of regulated air pollutants that exceed any other limitation on emissions pursuant to any other applicable requirement; or</p> <p>(4) Emissions of regulated air pollutants that adversely impact public health or safety, or exceed any ambient air quality standards; and</p> <p>(b) The emissions from the emission unit are not relied on to avoid any other applicable requirements.</p> <p>➤ 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.</p> <p>5. Except as otherwise provided in <u>NAC 445B.094</u>, emissions from insignificant activities, as determined pursuant to this</p>	

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		<p>section, must be included in any determination of whether a stationary source is a major source.</p> <p>6. A stationary source is not required to obtain an operating permit pursuant to <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive, 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 <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive, relating to the operation of the emission unit determined to be an insignificant activity.</p> <p>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 <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive, relating to the operation of the stationary source or any insignificant activity that is a part of the stationary source.</p> <p>8. The provisions of this section do not apply to a thermal unit that emits mercury.</p> <p>9. As used in this section, “thermal unit that emits mercury” has the meaning ascribed to it in <u>NAC 445B.3643</u>. [Environmental Comm’n, Air Quality Reg. § 3.1.8, eff. 11-7-75]—(NAC A 10-22-87; 12-8-89; 9-19-90; 11-23-92; 12-13-93, eff. 11-15-94; 3-29-94, eff. 11-15-94; 10-30-95; R117-00, 6-1-2001; R189-05, 5-4-2006; R142-07, 4-17-2008)</p>	
	445B.295	<p>Application: General requirements. Except as otherwise provided in <u>NAC 445B.33637</u>, an application for an operating permit must include:</p> <ol style="list-style-type: none"> 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. A description of the stationary source’s processes and products by Standard Industrial Classification Code, including any processes and products associated with an alternative operating scenario identified by the owner or operator; 3. A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each emission unit which is a part of the stationary source; 4. An identification and a description of any equipment for the control of air pollution and any devices or activities for monitoring compliance with emission limitations; 5. Limitations on the operation of the stationary source or any standards for work practices which affect emissions for all regulated air pollutants at the stationary source; 6. An explanation of any proposed exemption from any applicable requirement; 7. The location of any records that the applicant must keep pursuant to the requirements of the operating permit, if the records are kept at a location other than the emitting facility; and 8. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements. <p>(Added to NAC by Environmental Comm’n, 12-13-93, eff. 1-11-96; A 10-30-95, eff. 1-11-96; 5-3-96; A by R117-00, 6-1-</p>	77FR59321 9/27/2012

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		2001; R103-02, 12-17-2002; R125-04, 9-24-2004; R139-06, 9-18-2006)	
	445B.297 (Superseded Article 3.1.6)	<p>Application: Submission; certification; additional information.</p> <p>1. An applicant for an operating permit must:</p> <p>(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.</p> <p>(b) Submit supplementary facts or corrected information upon discovery.</p> <p>(c) Provide any additional information, in writing, that the Director requests within the time specified in the Director's request.</p> <p>(Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94; A 10-30-95; R125-04, 9-24-2004; R189-05, 5-4-2006; R139-06, 9-18-2006)</p>	77FR59321 9/27/2012
	445B.298 (Superseded 445.706)	<p>Application: Official date of submittal. Except as otherwise provided in <u>NAC 445B.3364</u>, <u>445B.3395</u>, <u>445B.3457</u>, <u>445B.3487</u>, or <u>445B.3683</u>, the official date of submittal of an application for:</p> <ol style="list-style-type: none"> 1. An operating permit; 2. An operating permit to construct; 3. A revision of an existing operating permit; or 4. A revision of an existing operating permit to construct, <p>↪ is the date on which the Director determines that the application is complete.</p> <p>[Environmental Comm'n, Air Quality Reg. §§ 3.1.4 & 3.1.7, eff. 11-7-75]—(NAC A 10-22-87; 9-19-90; 12-13-93; R105-97, 3-5-98; R198-03, 4-26-2004; R125-04, 9-24-2004; R162-06, 9-18-2006; R040-10, eff. 7-22-2010)</p>	77FR59321 9/27/2012
	445B.305	<p>Operating permits: Imposition of more stringent standards for emissions. The Director may impose standards for emissions on a proposed stationary source that are more stringent than those found in <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive, as a condition of approving an operating permit for the proposed stationary source.</p> <p>(Added to NAC by Environmental Comm'n, eff. 9-19-90; A 12-13-93, eff. 11-15-94; 10-30-95; R040-10, eff. 7-22-2010)</p>	77FR59321 9/27/2012
	445B.308	<p>Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan.</p> <p>1. In any area designated as attainment or unclassifiable for a regulated air pollutant, before an operating permit or a revision of an operating permit may be issued:</p> <ol style="list-style-type: none"> (a) For a new or modified stationary source; (b) For a plantwide applicability limitation; or (c) To allow a plantwide applicability limitation to expire and not be renewed, <p>↪ in accordance with <u>NAC 445B.308</u> to <u>445B.314</u>, inclusive, the applicant must submit to the Director an environmental evaluation and any other information the Director determines is necessary to make an independent air quality impact assessment.</p>	77FR59321 9/27/2012

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		<p>2. The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the environmental evaluation submitted by the applicant shows, or if the Director determines, in accordance with the provisions of this section, that the stationary source:</p> <p>(a) Will prevent the attainment and maintenance of the state or national ambient air quality standards. For the purposes of this paragraph, only those ambient air quality standards that have been established in <u>NAC 445B.22097</u> need to be considered in the environmental evaluation.</p> <p>(b) Will cause a violation of the applicable state implementation plan.</p> <p>(c) Will cause a violation of any applicable requirement.</p> <p>3. The Director shall not issue an operating permit or a revision of an operating permit for any stationary source if the Director determines, in accordance with subsection 3 of NAC 445B.311, that the degree of emission limitation required for control of an air pollutant under this section is affected by that amount of the stack height of any source as exceeds good engineering practice stack height, including a good engineering practice stack height demonstrated by a fluid model or a field study approved by the Director in accordance with paragraph (c) of subsection 1 of NAC 445B.083, or any other dispersion technique.</p> <p>6. To be issued an operating permit or a revision of an operating permit, the owner or operator of a major stationary source or major modification who proposes to construct in any area designated as attainment or unclassifiable under 42 U.S.C. § 7407(d) must comply with the provisions of 40 C.F.R. § 52.21, as adopted by reference in <u>NAC 445B.221</u>.</p> <p>7. The Director may impose any reasonable conditions on his approval, including conditions requiring the owner or operator of the stationary source to:</p> <p>(a) Conduct monitoring of the quality of the ambient air at the facility site for a reasonable period before the commencement of construction or modification and for any specified period after operation has begun at the stationary source; and</p> <p>(b) Meet standards for emissions that are more stringent than those found in <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive.</p> <p>8. If a proposed stationary source located on contiguous property is constructed or modified in phases which individually are not subject to review as provided in <u>NAC 445B.308</u> to <u>445B.314</u>, inclusive, all phases occurring since November 7, 1975, must be added together for determining the applicability of those sections.</p> <p>9. Approval and issuance of an operating permit or a revision of an operating permit for any stationary source does not affect the responsibilities of the owner or owners to comply with any other portion of the applicable state implementation plan. [Environmental Comm'n, Air Quality Reg. § 13.1.1, eff. 11-7-75; A 8-28-79; § 13.1.3, eff. 11-7-75; A 8-28-79; 2-28-80; §§ 13.1.4-13.1.7, eff. 11-7-75]—(NAC A 10-22-87; 9-19-90; 11-23-92; 12-13-93, eff. 11-15-94; 3-29-94, eff. 11-15-94; 10-30-95; R105-97, 3-5-98; R103-02, 12-17-2002; R125-04, 9-24-2004; R096-05, 10-31-2005; R139-06 & R151-06, 9-18-2006; R142-07, 4-17-2008)</p>	
13.1		General Provisions for the Review of New Sources	(c)(16)(viii)
13.1.1		Prior to the issuance of any registration certificates in accordance with this Article the applicant shall submit to the Director an	(c)(16)(viii)

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		environmental evaluation and any other information the Director may deem necessary to make an independent air quality impact assessment.	
13.1.3		The Director shall not issue a registration certificate for any point source if: 2. The source is located in any designated nonattainment area and: a. The lowest achievable emission rate for each nonattainment pollutant from the source is not defined and adopted as an emission limitation for the source; b. Any other source within this state which is owned, operated or controlled by the applicant is not in compliance or on a schedule of compliance with these regulations and all other applicable emission limitations or variances as provided in NRS 445.506 to 445.521, inclusive; c. The total allowable emissions of each nonattainment pollutant from (1) the existing sources in the area, (2) those sources in the area which have received their respective registration certificates and (3) the proposed source will not be sufficiently less, by the time the proposed source is to commence operation, than the total emissions from (1) the existing sources and (2) those sources in the area which have received their respective registration certificates before the proposed source makes application for its registration certificate, so that reasonable further progress is achieved; d. The emissions from the source will cause or contribute to emission levels which exceed the allowance permitted for such a pollutant for the nonattainment area.	(c)(18)(i)
13.2		A user of any of the following new single sources or modifications to an existing single source which would cause increases to existing single sources as specified below shall submit an evaluation with its application or applications for registration.	(c)(16)(viii)
13.2.1		Any single source which is allowed an emission of an air contaminant of greater than 10.5 kilograms (23 pounds) per hour.	(c)(16)(viii)
13.2.2		Any combination of single sources located at a single premise which is allowed emission of an air contaminant of greater than 10.5 kilograms (23 pounds) per hour	(c)(16)(viii)
	445B.310	Environmental evaluation: Applicable sources and other subjects; exemption. 1. An applicant for an operating permit, a revision to an operating permit or a request for a change of location, which is not subject to the provisions of 40 C.F.R. § 52.21, as adopted by reference in <u>NAC 445B.221</u> , must submit with the application an environmental evaluation for: (a) A new stationary source which emits, or has the potential to emit, greater than 25 tons of a regulated air pollutant per year; (b) A modification to an existing stationary source that meets the following criteria: (1) The existing stationary source has the potential to emit greater than 25 tons of a regulated air pollutant per year; and (2) The proposed modification has the potential to emit greater than 10 tons of a regulated air pollutant per year; (c) The approval of a plantwide applicability limitation or the approval to allow a plantwide applicability limitation to expire and not be renewed; or (d) Upon written notice from the Director, any other source or combination of sources. 2. An owner or operator of a Class II source may request an exemption from the requirement to submit an environmental	77FR59321 9/27/2012

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		<p>evaluation with the application. Within 30 days after receipt of a written request for an exemption, the Director shall grant or deny the request and notify the owner or operator in writing of his determination. If such an exemption is granted, the Director shall perform the environmental evaluation.</p> <p>[Environmental Comm'n, Air Quality Reg. § 13.3, eff. 11-7-75; A 12-15-77; renumbered as § 13.2, 8-28-79; § 13.3.1, eff. 11-7-75; A 12-15-77; renumbered as § 3.2.1, 8-28-79; § 13.3.2, eff. 11-7-75; A 12-15-77; renumbered as § 13.2.2, 8-28-79; § 13.3.3, eff. 11-7-75; renumbered as § 13.2.3, 8-28-79]—(NAC A 9-19-90; R 12-13-93, eff. 11-15-94; A 10-30-95; R105-97, 3-5-98; R125-04, 9-24-2004; R096-05, 10-31-2005; R139-06, 9-18-2006)</p>	
	445B.311 (Superseded Article 13.3)	<p>Environmental evaluation: Contents; consideration of good engineering practice stack height.</p> <p>1. An environmental evaluation which is required for a new or modified stationary source pursuant to <u>NAC 445B.308</u> to <u>445B.314</u>, inclusive, or as required by the Director must contain a careful and detailed assessment of the environmental aspects of the proposed stationary source and must also contain:</p> <ul style="list-style-type: none"> (a) The name and address of the applicant; (b) The name, address and location of the stationary source; (c) A description of the proposed stationary source, including the normal hours of operation of the facility and the general types of activities to be performed; (d) A map showing the location of the stationary source and the topography of the area, including existing principal streets, roads and highways within 3 miles of the stationary source; (e) A site plan showing the location and height of buildings on the site; (f) Any additional information or documentation which the Director deems necessary to determine the effect of the stationary source on the quality of the ambient air, including measured data on the quality of the ambient air and meteorological conditions at the proposed site before construction or modification; and (g) A dispersion analysis of each regulated air pollutant. <p>2. Where approval is sought for stationary sources to be constructed in phases, the information required by subsection 1 must be submitted for each phase of the construction project.</p> <p>3. An environmental evaluation must also consider good engineering practice stack height. If the Director considers an analysis of a source based on a good engineering practice stack height that exceeds the height specified in paragraph (a) or (b) of subsection 1 of <u>NAC 445B.083</u>, the Director shall:</p> <ul style="list-style-type: none"> (a) Notify the public of the availability of the demonstration study performed pursuant to paragraph (c) of subsection 1 of <u>NAC 445B.083</u>; and (b) Provide an opportunity for a public hearing on the demonstration study in accordance with the requirements for a Class I operating permit set forth in subsections 7, 9 and 10 of <u>NAC 445B.3395</u>. <p>4. A dispersion analysis used to determine the location and estimated value of the highest concentration of each regulated air pollutant must include:</p> <ul style="list-style-type: none"> (a) A dispersion model based on the applicable models, bases and other requirements specified in the "Guideline on Air 	77FR59321 9/27/2012

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		<p>Quality Models,” which is Appendix W of 40 C.F.R. Part 51, as adopted by reference in <u>NAC 445B.221</u>, except that the Director may authorize the modification of a model specified in the “Guideline on Air Quality Models” or the use of a model not included in the “Guideline on Air Quality Models” if the Director:</p> <ol style="list-style-type: none"> (1) Determines that the modification or use is appropriate; (2) Obtains written approval of the modification or use from the Administrator; and (3) Provides notice of and establishes a 30-day period for comment in accordance with the applicable provisions of <u>NAC 445B.3364, 445B.3395, 445B.3447, 445B.3457 or 445B.3477</u>; <p>(b) A narrative report describing:</p> <ol style="list-style-type: none"> (1) If applicable, assumptions and premises used in the analysis, including, without limitation: <ol style="list-style-type: none"> (I) Model options chosen; (II) Urban versus rural selection; (III) Background concentrations; (IV) Characterization of emission sources as point, area or volume; (V) Emission discharge points; and (VI) Rate of emission from each emission unit; and (2) The geographic area considered in the analysis, including, without limitation, information concerning: <ol style="list-style-type: none"> (I) The nearest significant terrain features; (II) The receptor grid or grids; and (III) Restrictions on public access to the stationary source; and <p>(c) Valid meteorological information pursuant to the provisions of Appendix W of 40 C.F.R. Part 51, as adopted by reference in <u>NAC 445B.221</u>, which:</p> <ol style="list-style-type: none"> (1) For sources that are not subject to the permitting requirements of 40 C.F.R. § 52.21, as adopted by reference in <u>NAC 445B.221</u>: <ol style="list-style-type: none"> (I) Is site specific, if the information exists pursuant to subsection 1 of this section or subsection 7 of <u>NAC 445B.308</u>, and which covers a period of not less than 1 year; (II) Has been obtained from an off-site location representative of the proposed site and which covers a period of not less than 1 year; (III) Represents the worst-case meteorological conditions, as approved by the Director for synthetic data; or (IV) Has been obtained over the last 5 years at the nearest National Weather Service site; or (2) For sources that are subject to the permitting requirements of 40 C.F.R. § 52.21, as adopted by reference in <u>NAC 445B.221</u>, is representative of the source site location and source emissions and which covers a period of not less than 1 year. <p>[Environmental Comm’n, Air Quality Reg. § 13.4.1, eff. 11-7-75; A 12-15-77; renumbered as § 13.3.1, 8-28-79; § 13.4.1.1, eff. 11-7-75; A 12-15-77; renumbered as § 13.3.1.1, 8-28-79; § 13.4.1.4, eff. 11-7-75; renumbered as § 13.3.1.2, 8-28-79]—(NAC A 10-30-95; R103-02, 12-17-2002; R096-05, 10-31-2005; R151-06, 9-18-2006; R126-10, 12-16-2010)</p>	

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	445B.313	<p>Method for determining maximum heat input: Class I sources. For the purposes of determining the effects of Class I sources on the quality of ambient air and determining the applicability of a federally enforceable standard or requirement to an emission unit, the maximum heat input will be determined by:</p> <ol style="list-style-type: none"> 1. Multiplying the maximum fuel rate as determined by the manufacturer by the total calorific value of the fuel as determined by using the appropriate method of ASTM International; or 2. An alternative method specified by the Director as a condition contained in the operating permit of the Class I source. [Environmental Comm'n, Air Quality Reg. § 13.3.4, eff. 12-15-77; renumbered as § 13.2.4, 8-28-79]—(NAC A 9-19-90; 3-29-94, eff. 1-11-96; 10-30-95; R040-01, 10-25-2001; R103-02, 12-17-2002; R142-07, 4-17-2008; R126-10, 12-16-2010) 	77FR59321 9/27/2012
	445B.3135	<p>Method for determining heat input: Class II sources. For the purposes of determining the effects of a Class II source on the quality of ambient air pursuant to <u>NAC 445B.308</u>, <u>445B.310</u> and <u>445B.311</u>, the heat input is the aggregate heat content of all combusted fuels, or the guaranteed maximum input of the manufacturer or designer of the equipment, whichever is greater. The total heat input of all fuel-burning units in a plant or on the premises must be used to determine the maximum amount of a regulated air pollutant which may be emitted.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002)</p>	77FR59321 9/27/2012
	445B.314	<p>Method for determining heat input: Class III sources. For the purposes of determining the effects of a Class III source on the quality of ambient air pursuant to <u>NAC 445B.308</u>, <u>445B.310</u> and <u>445B.311</u>, the heat input is the aggregate heat content of all combusted fuels, or the guaranteed maximum input of the manufacturer or designer of the equipment, whichever is greater. The total heat input of all fuel-burning units in a plant or on the premises must be used to determine the maximum amount of a regulated air pollutant which may be emitted.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002)</p>	77FR59321 9/27/2012
	445B.315	<p>Contents of operating permits: Exception for operating permits to construct; required conditions.</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> (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 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: 	77FR59321 9/27/2012

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		<p>(1) An action for noncompliance;</p> <p>(2) Revising, revoking, reopening and revising, or terminating the operating permit by the Director; or</p> <p>(3) Denial of an application for a renewal of the operating permit by the Director.</p> <p>(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.</p> <p>(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the operating permit for cause.</p> <p>(g) The operating permit does not convey any property rights or any exclusive privilege.</p> <p>(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 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.</p> <p>(i) The holder of the operating permit shall pay fees to the Director in accordance with the provisions set forth in <u>NAC 445B.327 and 445B.331</u>.</p> <p>(j) The holder of the operating permit shall allow the Director or any authorized representative, upon presentation of credentials, to:</p> <p>(1) Enter upon the premises of the holder of the operating permit where:</p> <p>(I) The stationary source is located;</p> <p>(II) Activity related to emissions is conducted; or</p> <p>(III) Records are kept pursuant to the conditions of the operating permit;</p> <p>(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the operating permit;</p> <p>(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</p> <p>(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the operating permit or applicable requirements.</p> <p>(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.</p> <p>(Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 10-30-95, eff. 1-11-96; R105-97, 3-5-98; R103-02, 12-17-2002; R189-05, 5-4-2006)</p>	
	445B.318 (Superseded 445.707(1) and (2); 445.712;	<p>Operating permits: Requirement for each source; form of application; issuance or denial; posting.</p> <p>1. An operating permit is required for each new or existing stationary source.</p> <p>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.</p> <p>3. An operating permit must be granted if the Director finds from a stack emission test or other appropriate test and other</p>	77FR59321 9/27/2012

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	445.714)	<p>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, 61 and 63, adopted by reference in <u>NAC 445B.221</u>.</p> <p>4. A denial of an application for an operating permit must be accompanied by a statement of the reasons for the denial, 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.</p> <p>5. Operating permits must be posted conspicuously at or near the stationary source. [Environmental Comm'n, Air Quality Reg. part § 3.4.1 & §§ 3.4.2, 3.4.3, 3.4.5 & 3.4.6, eff. 11-7-75; § 3.4.7, eff. 11-7-75; A 8-28-79]—(NAC A 10-22-87; 12-15-88; 9-19-90; R 12-13-93, eff. 11-15-94; A 10-30-95; R189-05, 5-4-2006; R151-06, 9-18-2006)</p>	
	445B.319	<p>Operating permits: Administrative amendment.</p> <p>1. The holder of an operating permit may request or the Director may initiate an administrative amendment of an operating permit to:</p> <ul style="list-style-type: none"> (a) Correct typographical errors; (b) Identify a change in the name, address or telephone number of any person identified in the operating permit, or provide a similar minor administrative change at the stationary source; (c) Require more frequent monitoring or reporting by the holder of the operating permit; (d) Add the serial numbers of specific pieces of equipment which were not available at the time of the issuance of or revision of the operating permit; or (e) Allow for a change in ownership or operational control of a stationary source if the Director determines that no other change in the operating permit is necessary. A person who requests an administrative amendment pursuant to this paragraph must submit to the Director a written agreement specifying a date for the transfer of responsibility for the operating permit and an agreement between the current and the new holder of the operating permit regarding insurance coverage and liability. <p>2. A holder of an operating permit must request an administrative amendment on an application provided by the Director. The application must be accompanied by a fee in the amount specified in <u>NAC 445B.327</u>.</p> <p>3. The Director shall:</p> <ul style="list-style-type: none"> (a) Issue or deny an application for an administrative amendment within 30 days after receipt of the application. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 11-15-94; A 3-29-94, eff. 11-15-94; 10-30-95; R105-97, 3-5-98; R019-99, 9-27-99; R125-04, 9-24-2004) 	77FR59321 9/27/2012
	445B.325 (Superseded 445.715)	<p>Operating permits: Termination, reopening and revision, revision, or revocation and reissuance.</p> <p>2. An operating permit may be terminated, reopened and revised, revised, or revoked and reissued if:</p> <ul style="list-style-type: none"> (a) The Director or the Administrator determines that the operating permit contains a material mistake or is based on inaccurate statements; (b) The Director or the Administrator determines that the operating permit, as written, does not ensure compliance with all applicable requirements; or 	77FR59321 9/27/2012

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		<p>(c) The Director determines that there has been a violation of any of the provisions of <u>NAC 445B.001 to 445B.3689</u>, inclusive, any applicable requirement, or any condition contained in the operating permit.</p> <p>5. If the Director reopens an operating permit, he shall revise only those portions of the operating permit for which cause exists.</p> <p>6. The reopening of an operating permit pursuant to this section must comply with all of the relevant requirements for the issuance or revision of a permit, including the requirements related to the content of the permit and the requirements for notice, public participation and comment, and a review by any affected states.</p> <p>(Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 3-29-94, eff. 1-11-96; 10-30-95, eff. 1-11-96; R105-97, 3-5-98; R162-06, 9-18-2006; R040-10, eff. 7-22-2010)</p>	
	445B.331 (Superseded 445.716)	<p>Request for change of location of emission unit. A request for a change of the location of an emission unit must be made in writing to the Director and submitted with the fee for each operating permit at least 10 days before each change of location. An owner or operator must not operate the emission unit at the new location until the Director approves the location.</p> <p>(Added to NAC by Environmental Comm'n, eff. 12-15-88; A 9-13-91; 11-23-92; 12-13-93; 12-13-93, eff. 7-1-94; 10-30-95; 5-3-96; R019-99, 9-27-99; R117-00, 6-1-2001; R103-02, 12-17-2002; R151-06, 9-18-2006)</p>	77FR59321 9/27/2012
Class I Operating Permits			
	445B.3361	<p>General requirements.</p> <p>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:</p> <p>(a) Apply for and obtain a new or revised:</p> <p>(1) Operating permit to construct pursuant to <u>NAC 445B.001 to 445B.3689</u>, inclusive; or</p> <p>(2) Class I operating permit pursuant to <u>NAC 445B.001 to 445B.3689</u>, inclusive; and</p> <p>2. 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 <u>NAC 445B.001 to 445B.3689</u>, inclusive. 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 <u>NAC 445B.001 to 445B.3689</u>, inclusive.</p> <p>3. Except as otherwise provided in subsection 5, 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.</p> <p>4. Except as otherwise provided in this subsection and subsections 5 and 6, 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</p>	77FR59321 9/27/2012

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		<p>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 Class I operating permit to construct for the approval of a plantwide applicability limitation.</p> <p>5. 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 subparagraph (2) of paragraph (a) of subsection 1, the owner or operator must concurrently:</p> <p>(a) For the construction or change in operation of the existing Class I stationary source:</p> <p>(1) Obtain a Class I operating permit to construct; or</p> <p>(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 <u>NAC 445B.3611 to 445B.3689</u>, inclusive; and</p> <p>(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 <u>NAC 445B.3441</u> before commencing with the construction or change in operation of the existing Class I stationary source.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; A by R125-04, 9-24-2004; R189-05, 5-4-2006; R139-06 & R162-06, 9-18-2006; R040-10, eff. 7-22-2010)</p>	
	445B.3363	<p>Operating permit to construct: Application.</p> <p>1. Except as otherwise provided in <u>NAC 445B.33637</u>, in addition to the information required pursuant to <u>NAC 445B.295</u>, an application for a Class I operating permit to construct or for a revision of a Class I operating permit to construct must include:</p> <p>(a) Descriptions of all emissions of any regulated pollutants for which the source is defined as a major source.</p> <p>(b) A description of all emissions of regulated air pollutants from all emission units.</p> <p>(c) An identification and a description of all points of emissions and all activities which may generate emissions of the regulated air pollutants described pursuant to paragraph (a) in sufficient detail to establish the basis for the applicability of standards and fees.</p> <p>(d) The emission rates of all regulated air pollutants that are subject to an emissions limitation pursuant to an applicable requirement. The emission rates must be described in tons per year and in such terms as are necessary to establish compliance using the applicable standard reference test method.</p> <p>(e) Any other information required by any applicable requirement.</p> <p>(f) The calculations on which the information described in this subsection are based.</p> <p>(g) Citations to and a description of all applicable requirements.</p> <p>(h) A reference to any applicable test method used for determining compliance with each applicable requirement.</p> <p>2. Except as otherwise provided in <u>NAC 445B.33637</u>, in addition to the information required pursuant to subsection 1, an application for a Class I operating permit to construct must contain:</p> <p>(a) For a proposed new major stationary source, a proposed major modification to an existing stationary source or a major</p>	77FR59321 9/27/2012

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		<p>modification at an existing major stationary source:</p> <ul style="list-style-type: none"> (1) All information required pursuant to 40 C.F.R. § 52.21; (2) A description of all emissions of each regulated pollutant: <ul style="list-style-type: none"> (I) For which the source is a major stationary source; or (II) That will, because of the major modification, result in a significant emissions increase or a significant net emissions increase in accordance with 40 C.F.R. § 52.21(a)(2); (3) A description of all emissions of each regulated pollutant associated with the major modification; (4) A description of each hydrographic area that may be triggered for increment consumption; and (5) Any other information that the Director determines is necessary to process the application. <p>(b) For a proposed new major source or a proposed modification which is not a major modification:</p> <ul style="list-style-type: none"> (1) All information required by <u>NAC 445B.308</u> to <u>445B.311</u>, inclusive; (2) Any other information that the Director determines is necessary to process the application; and (3) For stationary sources subject to the provisions regarding new source review set forth in 42 U.S.C. §§ 7501 to 7515, inclusive, all information required by 42 U.S.C. § 7503. <p>(c) For a source, or proposed source, subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive:</p> <ul style="list-style-type: none"> (1) All information required by 40 C.F.R. § 63.43(e); and (2) Any other information that the Director determines is necessary to process the application. <p>(d) For a source, or proposed source, subject to the requirements of 40 C.F.R. §§ 63.50 to 63.56, inclusive:</p> <ul style="list-style-type: none"> (1) All information required by 40 C.F.R. § 63.53; and (2) Any other information that the Director determines is necessary to process the application. <p>3. Except as otherwise provided in <u>NAC 445B.33637</u>, in addition to the information required pursuant to subsections 1 and 2, an application for a Class I operating permit to construct for a modification at an existing major stationary source that is not a major modification must contain:</p> <ul style="list-style-type: none"> (a) All applicable information required to determine whether the project or modification will result in a significant emissions increase or a significant net emissions increase in accordance with 40 C.F.R. § 52.21(a)(2); (b) A description of the project or modification, including all emission units; (c) A description of the applicable procedures used to determine that the project or modification is not a major modification pursuant to the provisions of 40 C.F.R. § 52.21(a)(2); (d) All calculations associated with the procedures required to make the determinations pursuant to 40 C.F.R. § 52.21(a)(2), including detailed information for expected and highest projections of any business activities in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(a); (e) Calculations of emissions in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(b); and (f) Detailed information used to demonstrate that emissions increases associated with any increased utilization that an emission unit could have accommodated during the baseline emission period is unrelated to the proposed project or 	

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		<p>modification, including any increased utilization due to product demand growth, in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(c).</p> <p>↪ In lieu of paragraphs (d), (e) and (f), the application must contain information on the potential of the unit to emit in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(d).</p> <p>4. Except for a source, or proposed source, subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive, or 40 C.F.R. §§ 63.50 to 63.56, inclusive, in addition to the information required pursuant to subsections 1, 2 and 3, an application for an operating permit to construct must include an environmental evaluation pursuant to <u>NAC 445B.308</u>, <u>445B.310</u> and <u>445B.311</u>.</p> <p>5. As used in this section, “project” has the meaning established in 40 C.F.R. § 52.21, as adopted by reference in <u>NAC 445B.221</u>.</p> <p>(Added to NAC by Environmental Comm’n by R103-02, eff. 12-17-2002; A by R125-04, 9-24-2004; R139-06 & R151-06, 9-18-2006; A by R147-09, eff. 1-28-2010)</p>	
	445B.33637	<p>Operating permit to construct for approval of plantwide applicability limitation: Application.</p> <p>1. In addition to the requirements set forth in subsection 1 of <u>NAC 445B.297</u>, an application for a Class I operating permit to construct for the approval of a plantwide applicability limitation for a major stationary source must contain:</p> <p>(a) All the information required pursuant to 40 C.F.R. § 52.21(aa)(3) and all the information necessary to establish the plantwide applicability limitation in accordance with the requirements of 40 C.F.R. § 52.21(aa)(4);</p> <p>(b) A description of each pollutant for which the owner or operator is requesting a plantwide applicability limitation;</p> <p>(c) For each pollutant described in paragraph (b), the proposed plantwide applicability limitation for the entire major stationary source;</p> <p>(d) A monitoring plan that will be used to make an accurate determination of the plantwide emissions subject to the plantwide applicability limitation as specified in 40 C.F.R. § 52.21(aa)(12). The monitoring plan must identify, without limitation:</p> <ol style="list-style-type: none"> (1) The monitoring approach proposed for each emission unit; (2) The minimum performance requirements of each such approach; (3) The basis for any emissions factors proposed; and (4) Any emission unit for which the owner or operator cannot demonstrate a correlation between the monitored parameters and the plantwide applicability limitation at all operating points; <p>(e) If the owner or operator cannot demonstrate a correlation between the monitored parameters and the plantwide applicability limitation at all operating points as identified in paragraph (d) and the owner or operator requests to establish default values for determining compliance with the plantwide applicability limitation, any proposed default values to be used for determining compliance with the plantwide applicability limitation based on the highest potential emissions potentially operated for each emission unit;</p> <p>(f) A description of the calculation procedures that the source will use to convert monitored data into monthly emissions on</p>	77FR59321 9/27/2012

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		<p>a 12-month rolling period;</p> <p>(g) A description of any emission units that were permanently shut down after the baseline actual emissions period and the associated emissions;</p> <p>(h) A description of any emission units for which construction began after the baseline actual emissions period and the associated emissions; and</p> <p>(i) Any other requirements or information that the Director determines is necessary to implement and enforce the plantwide applicability limitation.</p> <p>2. An application for a Class I operating permit to construct to allow a plantwide applicability limitation to expire and not be renewed must contain:</p> <p>(a) A description of the proposed distribution of the emissions allowed by the plantwide applicability limitation for each emission unit or group of emission units at the major stationary source; and</p> <p>(b) A description of the proposed methods for complying with the distribution of the allowable emissions provided in paragraph (a).</p> <p>3. In addition to the information required pursuant to subsection 1, an application for a Class I operating permit to construct for the renewal of a plantwide applicability limitation must contain the information required pursuant to 40 C.F.R. § 52.21(aa)(10) for each plantwide applicability limitation pollutant.</p> <p>4. In addition to the information required pursuant to subsection 1, an application for a Class I operating permit to construct for increasing a plantwide applicability limitation must contain all the information required pursuant to 40 C.F.R. § 52.21(aa)(11).</p> <p>(Added to NAC by Environmental Comm'n by R125-04, eff. 9-24-2004)</p>	
	445B.3364 (Superseded 445.707(3)- (5))	<p>Operating permit to construct: Action by Director on application; notice; public comment and hearing.</p> <p>1. Except for sources that are subject to the permitting requirements set forth in 40 C.F.R. § 52.21 or sources subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive, or 40 C.F.R. §§ 63.50 to 63.56, inclusive, within 45 days after the date of receipt of an application for a Class I operating permit to construct or for the revision of a Class I operating permit to construct, the Director shall determine if the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. 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 45 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 46th day after the date of receipt, whichever is earlier. Within 90 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny a Class I operating permit to construct or a revision of a Class I operating permit to construct.</p> <p>2. For sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 30 days after the date of receipt of an application for a Class I operating permit to construct or for the revision of a Class I operating permit to construct, the</p>	77FR59321 9/27/2012

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		<p>Director shall determine whether the application contains adequate information to process the application. The official date of submittal of the application shall be deemed to be 31 days after the date of receipt, unless the Director determines before that date that substantial additional information is required. If the Director determines that substantial additional information is required, the Director shall return the application to the applicant. The Director shall require the applicant to submit a new application, or the applicant may formally withdraw the application. Within 180 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny an operating permit to construct or a revision of an operating permit to construct. For the purposes of 40 C.F.R. § 52.21, the application shall be deemed to be complete on the date that the Director makes the preliminary determination to issue or deny a Class I operating permit to construct or a revision of an operating permit to construct.</p> <p>3. For sources subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive, or 40 C.F.R. §§ 63.50 to 63.56, inclusive, within 30 days after the date of receipt of an application for a Class I operating permit to construct or for the revision of a Class I 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, whichever is earlier. Within 180 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny the Class I operating permit to construct or the revision of the Class I operating permit to construct.</p> <p>4. For the submittal of an application for a Class I operating permit to construct for the approval of a plantwide applicability limitation, within 30 days after the date of receipt of such an application, the Director shall determine if the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. 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, whichever is earlier. Within 120 days after the official date of submittal, the Director shall make a preliminary determination to issue or deny the Class I operating permit to construct for the approval of a plantwide applicability limitation.</p> <p>5. 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 operation will comply with all of the requirements set forth in <u>NAC 445B.001 to 445B.3689</u>, inclusive. 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.</p>	

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		<p>6. The Director’s review and preliminary intent to issue or deny an operating permit to construct or a revision of an operating permit to construct and the proposed conditions for the 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 89701-5249 and in the air quality region where the source is located for 30 days to enable public and EPA participation and comment.</p> <p>7. The Director shall:</p> <p>(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;</p> <p>(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;</p> <p>(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public;</p> <p>(d) Provide a copy of the Director’s preliminary intent to issue or deny the operating permit to construct and the proposed operating permit to construct to the Administrator;</p> <p>(e) Provide a copy of the Director’s preliminary intent to issue or deny the operating permit to construct to each affected local air pollution control agency;</p> <p>(f) Establish a 30-day period for comment from the public and the EPA; and</p> <p>(g) If the application is for an administrative revision to a Class I operating permit, provide written notice to each affected state.</p> <p>8. In addition to the requirements set forth in subsection 7, the notice required for a Class I operating permit to construct or for a revision of a Class I operating permit to construct must:</p> <p>(a) Identify the affected facility and the name and address of the applicant;</p> <p>(b) Identify the name and address of the authority processing the Class I operating permit to construct;</p> <p>(c) Identify the activity or activities involved in the Class I operating permit to construct and the change of emissions involved in any revision of the Class I operating permit to construct;</p> <p>(d) State that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable;</p> <p>(e) Include 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 Class I operating permit to construct, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the Class I operating permit to construct and which are relevant to the determination of the issuance of the Class I operating permit to construct;</p> <p>(f) Include 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; and</p> <p>(g) If applicable, include a description of any revisions to a Class I operating permit resulting from an administrative revision to the Class I operating permit.</p>	

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		<p>9. All comments concerning the Director’s review and the preliminary intent for the issuance or denial of a Class I operating permit to construct or of a revision of a Class I operating permit to construct must be submitted in writing to the Director within 30 days after the public announcement. 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.</p> <p>10. Except as otherwise provided in subsections 11 to 14, inclusive, within 180 days after the official date of submittal of an application for an operating permit to construct or for the revision of an operating permit to construct, the Director shall issue or deny the new Class I operating permit to construct or the new revision of a Class I operating permit to construct. The Director shall make his decision by taking into account:</p> <p>(a) Written comments from the public;</p> <p>(b) Comments made during public hearings concerning the application and the Director’s preliminary determination for issuance or denial;</p> <p>(c) Information submitted by proponents of the project; and</p> <p>(d) The effect of such a facility on the maintenance of the state and national ambient air quality standards contained in <u>NAC 445B.22097</u> and the applicable state implementation plan.</p> <p>11. Except as otherwise provided in subsection 12, for sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 12 months after the official date of submittal of an application for an operating permit to construct or for the revision of an operating permit to construct, the Director shall issue or deny the new Class I operating permit to construct or the new revision of a Class I operating permit to construct.</p> <p>12. The Director shall issue or deny a Class I operating permit to construct for the approval of a plantwide applicability limitation within 30 days after the close of the period for public participation or 30 days after the hearing, if a hearing is scheduled pursuant to this section, whichever occurs later.</p> <p>13. For a source, or proposed source, subject to the requirements of 40 C.F.R. §§ 63.40 to 63.44, inclusive, or 40 C.F.R. §§ 63.50 to 63.56, inclusive, within 12 months after the official date of submittal of an application for an operating permit to construct or for the revision of an operating permit to construct, the Director shall issue or deny the new Class I operating permit to construct or the new revision of a Class I operating permit to construct.</p> <p>14. The Director shall not issue an administrative revision to a Class I operating permit if the Administrator objects to the issuance of the administrative revision in writing within 45 days after the Administrator’s receipt of the proposed revision conditions for the Class I operating permit and the necessary supporting information.</p> <p>15. Any person may petition the Administrator to request that the Administrator object to the issuance of an administrative revision to a Class I operating permit as provided in 40 C.F.R. § 70.8(d).</p> <p>16. If, on his own or pursuant to a request by a person pursuant to subsection 15, the Administrator objects to the issuance of an administrative revision to a Class I operating permit, the Director shall submit revised proposed conditions for the Class I operating permit in response to the objection within 90 days after the date on which he is notified of the objection.</p>	

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		(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; A by R198-03, 4-26-2004; R125-04, 9-24-2004; R139-06 & R151-06, 9-18-2006; R142-07, 4-17-08; R147-09, 1-28-2010)	
	445B.3365	<p>Operating permit to construct: Contents; noncompliance with conditions. Except as otherwise provided in <u>NAC 445B.33656</u>:</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> (a) The expiration date of the operating permit to construct must be defined as described in <u>NAC 445B.3366</u>. (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: <ol style="list-style-type: none"> (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 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: <ol style="list-style-type: none"> (1) Enter upon the premises of the holder of the operating permit to construct where: <ol style="list-style-type: none"> (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; 	77FR59321 9/27/2012

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		<p>(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</p> <p>(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.</p> <p>(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.</p> <p>3. An operating permit to construct must contain:</p> <p>(a) All applicable requirements, emission limits and standards;</p> <p>(b) Monitoring methods adequate to show compliance;</p> <p>(c) Adequate recordkeeping and reporting requirements as deemed by the Director; and</p> <p>(d) Any other requirements deemed necessary by the Director.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; A by R125-04, 9-24-2004; R189-05, 5-4-2006; R139-06, 9-18-2006)</p>	
	445B.33656	<p>Operating permit to construct for approval of plantwide applicability limitation: Contents; noncompliance with conditions.</p> <p>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.</p> <p>2. A Class I operating permit to construct for the approval of a plantwide applicability limitation must contain the following conditions:</p> <p>(a) The expiration date of the Class I operating permit to construct must be determined in accordance with subsection 5 of <u>NAC 445B.3366</u>.</p> <p>(b) The holder of the Class I operating permit to construct shall retain records pursuant to 40 C.F.R. § 52.21(aa)(13).</p> <p>(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.</p> <p>(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:</p> <p>(1) An action for noncompliance;</p> <p>(2) The revoking and reissuing, or the terminating, of the Class I operating permit to construct by the Director; or</p> <p>(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.</p> <p>(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.</p> <p>(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the Class I operating permit to construct</p>	77FR59321 9/27/2012

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		<p>for cause.</p> <p>(g) The Class I operating permit to construct does not convey any property right or exclusive privilege.</p> <p>(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 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.</p> <p>(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:</p> <p>(1) Enter upon the premises of the holder of the Class I operating permit to construct where:</p> <p>(I) The stationary source is located;</p> <p>(II) Activity related to emissions is conducted; or</p> <p>(III) Records are kept pursuant to the conditions of the Class I operating permit to construct;</p> <p>(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;</p> <p>(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</p> <p>(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.</p> <p>(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.</p> <p>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 <u>NAC 445B.221</u>.</p> <p>(Added to NAC by Environmental Comm'n by R125-04, eff. 9-24-2004; A by R189-05, 5-4-2006; R139-06, 9-18-2006)</p>	
	445B.3366 (Superseded NAC 445 .707(6))	<p>Expiration and extension of operating permit to construct; expiration and renewal of plantwide applicability limitation.</p> <p>1. If construction will occur in one phase, an operating permit to construct for a new or modified stationary source expires if construction is not commenced within 18 months after the date of issuance thereof or construction of the facility 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.</p> <p>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. An 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</p>	77FR59321 9/27/2012

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		<p>showing that the extension is justified.</p> <p>3. An operating permit to construct issued to a new major stationary source or issued for a major modification to an existing stationary source that is subject to the permitting requirements set forth in 40 C.F.R. § 52.21 is subject to the expiration requirements established in 40 C.F.R. § 52.21(r)(2).</p> <p>4. Except as otherwise provided in this subsection, an operating permit to construct expires if a complete application for a Class I operating permit or modification of an existing Class I operating permit is not submitted within 12 months after the date of initial start-up. The provisions of this subsection do not apply to a Class I operating permit to construct for the approval of a plantwide applicability limitation.</p> <p>5. A plantwide applicability limitation expires at the end of the plantwide applicability limitation effective period in accordance with 40 C.F.R. § 52.21(aa)(9), unless the plantwide applicability limitation is renewed pursuant to subsection 3 of <u>NAC 445B.33637</u>. If the owner or operator is not going to renew the plantwide applicability limitation, the operating permit for the Class I stationary source must be revised to incorporate the redistribution of the emissions allowed by the plantwide applicability limitation that is expiring in accordance with subsection 2 of <u>NAC 445B.33637</u>. For the purposes of this subsection, “plantwide applicability limitation effective period” means the “PAL effective period” as that term is defined in 40 C.F.R. § 52.21(aa)(2)(vii).</p> <p>(Added to NAC by Environmental Comm’n by R103-02, eff. 12-17-2002; A by R125-04, 9-24-2004; R139-06, 9-18-2006)</p>	
	445B.3368	<p>Additional requirements for application; exception.</p> <p>1. The information otherwise required by this section is not required if the owner or operator applied for an operating permit to construct and no changes have been made to the facility. The information provided in the application for the operating permit to construct must be resubmitted as part of the Class I operating permit application.</p> <p>2. In addition to the information required pursuant to <u>NAC 445B.295</u>, an application for a Class I operating permit must include:</p> <p>(a) Descriptions of all emissions of any pollutants for which the source is major and all emissions of regulated air pollutants from all emission units.</p> <p>(b) An identification and a description of all points of emissions and all activities which may generate emissions of the regulated air pollutants described pursuant to paragraph (a) in sufficient detail to establish the basis for the applicability of standards and fees.</p> <p>(c) The emission rates of all regulated air pollutants that are subject to an emissions limitation pursuant to an applicable requirement. The emission rates must be described in tons per year and in such terms as are necessary to establish compliance using the applicable standard reference test method.</p> <p>(d) Any other information required by any applicable requirement.</p> <p>(e) The calculations on which the information in this subsection and subsection 1 are based.</p> <p>(f) Citations to and a description of all applicable requirements.</p> <p>(g) A reference to any applicable test method used for determining compliance with each applicable requirement.</p>	77FR59321 9/27/2012

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		<p>(h) A compliance plan that contains the following:</p> <p>(1) A description of the compliance status of the stationary source with respect to all applicable requirements.</p> <p>(2) A description that includes the following:</p> <p>(I) For the applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with those requirements.</p> <p>(II) For the applicable requirements that may become effective during the term of the permit, a statement that the stationary source will comply with those requirements on a timely basis.</p> <p>(III) For each applicable requirement with which the stationary source will not be in compliance at the time that a permit will be issued, a narrative description of how the stationary source will achieve compliance with each such requirement.</p> <p>(3) Schedules of compliance as follows:</p> <p>(I) For the applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with those requirements.</p> <p>(II) For the applicable requirements that may become effective during the term of the permit, a statement that the stationary source will comply with those requirements on a timely basis, unless the applicable requirement expressly requires a more detailed schedule for compliance.</p> <p>(III) For each applicable requirement with which the stationary source will not be in compliance at the time that a permit will be issued, a schedule of compliance for each applicable requirement. Such a schedule must include a schedule of remedial measures, including, without limitation, an enforceable sequence of actions with milestones, leading to compliance with the applicable requirements with which the stationary source is not in compliance. If the stationary source is subject to a judicial consent decree or an administrative order regarding its noncompliance, the schedule must resemble and be at least as stringent as any schedule contained in the decree or order. Such a schedule of compliance must be supplemental to, and must not sanction noncompliance with, the applicable requirements on which it is based.</p> <p>(4) A schedule for the submission of certified progress reports at least once every 6 months for a schedule of compliance to remedy a violation. Such progress reports must contain the following:</p> <p>(I) Dates for performing activities or achieving milestones or compliance required in the schedule of compliance, and the dates when the activities, milestones or compliance occurred or were achieved; and</p> <p>(II) An explanation as to why any dates in the schedule of compliance were not or will not be met, and any preventative or corrective measures adopted.</p> <p>➤ The content requirements of the compliance plan specified in this paragraph apply and must be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations adopted pursuant to Title IV of the Act with regard to the schedule and methods the source will use to achieve compliance with the emissions limitations relating to acid rain.</p> <p>(i) Requirements for compliance certification, including:</p> <p>(1) A certification of compliance with all applicable requirements by a responsible official, consistent with this section</p>	

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		<p>and 42 U.S.C. § 7414(a)(3);</p> <p>(2) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements, and methods of testing;</p> <p>(3) A schedule for submission of certifications of compliance during the term of the permit to be submitted not less frequently than annually, or more frequently if so specified by the underlying applicable requirement or the permitting authority; and</p> <p>(4) A statement indicating the status of compliance by the stationary source with any applicable enhanced monitoring and compliance certification requirements of the Act.</p> <p>3. In addition to the information required pursuant to subsections 1 and 2, a Class I-B application for a Class I operating permit must contain:</p> <p>(a) For a proposed new major stationary source or a proposed major modification to an existing stationary source:</p> <p>(1) All information required pursuant to 40 C.F.R. § 52.21;</p> <p>(2) A description of all emissions of each regulated pollutant for which the source is a major stationary source or that will increase by a significant amount as a result of the major modification;</p> <p>(3) A description of all emissions of each regulated pollutant associated with the major modification;</p> <p>(4) A description of each hydrographic area that may be triggered for increment consumption; and</p> <p>(5) Any other information that the Director determines is necessary to process the application.</p> <p>(b) For a proposed new major source or a proposed significant revision to an existing stationary source:</p> <p>(1) All information required by <u>NAC 445B.308</u> to <u>445B.313</u>, inclusive;</p> <p>(2) Any other information that the Director determines is necessary to process the application; and</p> <p>(3) For stationary sources subject to the provisions regarding new source review set forth in 42 U.S.C. §§ 7501 to 7515, inclusive, all information required by 42 U.S.C. § 7503.</p> <p>(c) For a proposed new major source or a proposed significant revision to an existing stationary source which is subject to the requirements of 42 U.S.C. § 7412 regarding hazardous air pollutants:</p> <p>(1) All information required by <u>NAC 445B.308</u> to <u>445B.313</u>, inclusive;</p> <p>(2) For a source subject to the requirements of 42 U.S.C. § 7412(g), all information required by 40 C.F.R. § 63.43(e);</p> <p>(3) For a source subject to the requirements of 42 U.S.C. § 7412(j), all information required by 40 C.F.R. § 63.53; and</p> <p>(4) Any other information that the Director determines is necessary to process the application.</p> <p>(d) For a revision to a Class I operating permit for a modification at an existing major stationary source that is not a major modification:</p> <p>(1) All applicable information required to make the determinations pursuant to 40 C.F.R. § 52.21(a)(2);</p> <p>(2) A description of the project or modification, including all emission units;</p> <p>(3) A description of the applicable procedures used to determine that the project or modification is not a major modification pursuant to the provisions of 40 C.F.R. § 52.21(a)(2);</p>	

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		<p>(4) All calculations associated with the procedures required to make the determinations pursuant to 40 C.F.R. § 52.21(a)(2), including detailed information for expected and highest projections of any business activities in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(a);</p> <p>(5) Calculations of emissions in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(b); and</p> <p>(6) Detailed information used to demonstrate that emissions increases associated with any increased utilization that an emission unit could have accommodated during the baseline emission period is unrelated to the proposed project or modification, including any increased utilization due to product demand growth, in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(c).</p> <p>➤ In lieu of subparagraphs (4), (5) and (6), the application must contain information on the potential of the unit to emit in accordance with 40 C.F.R. § 52.21(b)(41)(ii)(d).</p> <p>4. As used in this section, “project” has the meaning established in 40 C.F.R. § 52.21 as adopted by reference in <u>NAC 445B.221</u>.</p> <p>(Added to NAC by Environmental Comm’n by R103-02, eff. 12-17-2002; A by R125-04, 9-24-2004; R147-09, eff. 1-28-2010)</p>	
	445B.3375	<p>Class I-B application: Filing requirement.</p> <p>1. Except as otherwise provided in subsections 5 and 6 of <u>NAC 445B.3361</u>, an owner or operator of a stationary source must file a Class I-B application, on a form provided by the Director, and obtain a Class I operating permit before commencing the construction, reconstruction or modification of:</p> <p>(a) A Class I existing stationary source;</p> <p>(b) A proposed modification for which a revision of an operating permit is requested pursuant to <u>NAC 445B.3425</u> or <u>445B.344</u> to a Class I stationary source;</p> <p>(c) A modification to a Class II source that results in total emissions of any regulated air pollutant above the thresholds defined in <u>NAC 445B.094</u> for a major source;</p> <p>(d) A proposed new Class I stationary source;</p> <p>(e) A proposed new Class I stationary source subject to a standard, a limitation or any other requirement adopted pursuant to 42 U.S.C. § 7411 or 7412, unless the Class I stationary source is subject only to the requirements of 42 U.S.C. § 7412(r); or</p> <p>(f) A proposed new stationary source which is included in a category of sources designated by the Administrator pursuant to 42 U.S.C. § 7661a(a).</p> <p>(Added to NAC by Environmental Comm’n, 12-13-93, eff. 1-11-96; A 3-29-94, eff. 1-11-96; 10-30-95, eff. 1-11-96; R105-97, 3-5-98; R117-00, 6-1-2001; R125-04, 9-24-2004; R139-06 & R162-06, 9-18-2006)</p>	77FR59321 9/27/2012
	445B.3395 (Superseded 445.707(3)- (6))	<p>Action by Director on application; notice; public comment and hearing; objection by Administrator; expiration of permit.</p> <p>1. Except for sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21 and as otherwise provided in this subsection, within 60 days after the date on which an application for a Class I operating permit or for the significant</p>	77FR59321 9/27/2012

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		<p>revision of a Class I operating permit is received, 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 that the application is complete. Unless the Director determines that the application is incomplete within 60 days after the date of receipt, the official date of submittal shall be deemed to be the date on which the Director determines that the application is complete or 61 days after the date of receipt, whichever is earlier.</p> <p>2. For sources subject to the permitting requirements set forth in 40 C.F.R. § 52.21, within 30 days after the date of receipt of an application for a Class I operating permit or for the revision of a Class I operating permit, the Director shall determine whether the application contains adequate information to process the application. The official date of submittal of the application shall be deemed to be 31 days after the date of receipt, unless the Director determines before that date that substantial additional information is required. If the Director determines that substantial additional information is required, the Director shall return the application to the applicant. The Director shall require the applicant to submit a new application or the applicant may formally withdraw the application.</p> <p>3. If, after the official date of submittal, the Director discovers that additional information is required to act on the application, the Director may request such additional information that is necessary to determine whether the proposed operation will comply with all the requirements set forth in <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive. 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 pursuant to subsection 1 or 2.</p> <p>4. Except as otherwise provided in this section, within 180 days after the official date of submittal of an application for a Class I operating permit or for the revision of a Class I operating permit, the Director shall make a preliminary determination to issue or deny the Class I operating permit or the revision of the Class I operating permit. The Director shall give preliminary notice of his intent to issue or deny the Class I operating permit or the revision of the Class I operating permit within 180 days after the official date of submittal.</p> <p>5. Within 10 working days after the receipt of an application for a minor revision of a Class I operating permit, the Director shall determine whether the application is complete. If substantial additional information is required, the Director shall determine the application to be 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 10 working days after the date on which the Director receives the application, the official date of submittal is the date on which the Director determines that the application is complete or 11 working days after the date of receipt, whichever is earlier.</p> <p>6. The Director's review and preliminary intent to issue or deny a Class I operating permit or the revision of a Class I operating permit and the proposed conditions for the Class I operating permit 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 89701-5249 and in</p>	

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		<p>the air quality region where the source is located for 30 days to enable public participation and comment and a review by any affected states.</p> <p>7. The Director shall:</p> <p>(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the Class I stationary source is located or in a state publication designed to give general public notice;</p> <p>(b) Provide written notice to:</p> <p>(1) Persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;</p> <p>(2) Any affected state; and</p> <p>(3) Any affected local air pollution control agency;</p> <p>(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public and affected states;</p> <p>(d) Provide a copy of the Director's review of the application, the Director's preliminary intent to issue or deny the Class I operating permit or the revision of a Class I operating permit, and the proposed Class I operating permit to the Administrator; and</p> <p>(e) Establish a 30-day period for public comment.</p> <p>8. The provisions of subsections 6 and 7 do not apply to:</p> <p>(a) An administrative amendment to a Class I operating permit made pursuant to <u>NAC 445B.319</u>;</p> <p>(b) A change without revision to a Class I operating permit made pursuant to <u>NAC 445B.342</u>; or</p> <p>(c) A minor revision of a Class I operating permit made pursuant to <u>NAC 445B.3425</u>, if the Director determines that the minor revision does not result in a significant change in air quality at any location where the public is present on a regular basis.</p> <p>9. The notice required for a Class I operating permit or for a revision of a Class I operating permit pursuant to subsection 7 must:</p> <p>(a) Identify the affected facility and the name and address of the applicant;</p> <p>(b) Identify the name and address of the authority processing the Class I operating permit;</p> <p>(c) Identify the activity or activities involved in the Class I operating permit and the emissions change involved in any revision of the Class I operating permit;</p> <p>(d) State that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable;</p> <p>(e) Include 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 Class I operating permit, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the Class I operating permit and which are relevant to the determination of the issuance of the Class I operating permit; and</p> <p>(f) Include 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.</p>	

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		<p>10. All comments on the Director’s review and preliminary intent for the issuance or denial of a Class I operating permit or a revision of a Class I operating permit must be submitted in writing to the Director within 30 days after the public announcement. 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.</p> <p>11. Except as otherwise provided in subsection 12 and <u>NAC 445B.319, 445B.342 and 445B.3425</u>, within 12 months after the official date of submittal of a Class I-B application for an operating permit or revision of an operating permit, the Director shall issue or deny the operating permit or revision of the operating permit. The Director shall make his decision by taking into account:</p> <ul style="list-style-type: none"> (a) Written comments from the public, affected states and the Administrator; (b) Comments made during public hearings concerning the application and the Director’s preliminary determination for issuance or denial; (c) Information submitted by proponents of the project; and (d) The effect of such a facility on the maintenance of the state and national ambient air quality standards contained in <u>NAC 445B.22097</u> and the applicable state implementation plan. <p>➔ The Director shall send to the Administrator a copy of the final operating permit issued by the Director after approving the Class I-B application.</p> <p>12. For stationary sources subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, adopted by reference pursuant to <u>NAC 445B.221</u>, the Director shall issue or deny an application for a Class I operating permit, or the revision or renewal of a Class I operating permit, within 12 months after the official date of submittal of an application for a new Class I operating permit or the revision of a Class I operating permit. The application shall be deemed to be complete for the purposes of 40 C.F.R. § 52.21 on the date that the Director makes the preliminary determination to issue or deny the Class I operating permit or the revision of the Class I operating permit.</p> <p>16. If construction will occur in one phase, a Class I operating permit or the revision of a Class I operating permit for a new or modified stationary source, other than a stationary source subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, expires if construction is not commenced within 18 months after the date of issuance thereof or construction of the facility 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.</p> <p>17. 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 Class I operating permit or the revision of a Class I operating permit for a new or modified stationary source, other than a stationary source subject to the provisions of 40 C.F.R. § 52.21 regarding the prevention of significant deterioration of air quality, 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</p>	

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		justified. [Environmental Comm'n, Air Quality Reg. § 3.2.1, eff. 11-7-75; A 12-4-76; § 3.2.2, eff. 11-7-75; A 12-15-77; 8-28-79; §§ 3.2.3 & 3.2.4, eff. 11-7-75; § 3.2.5, eff. 11-7-75; A 12-4-76; § 3.2.6, eff. 11-7-75; + § 13.1.2, eff. 11-7-75; A 12-4-76; 8-28-79]—(NAC A 10-22-87; 12-15-88; 12-8-89; 9-19-90; 9-13-91; 11-23-92; 12-13-93, eff. 1-11-96; 3-29-94, eff. 1-11-96; 10-30-95, eff. 1-11-96; R105-97, 3-5-98; R022-99, 9-27-99; R040-01, 10-25-2001; R103-02, 12-17-2002; R198-03, 4-26-2004; R125-04, 9-24-2004; R151-06, 9-18-2006; R142-07, 4-17-2008)	
	445B.340	Prerequisites to issuance, revision or renewal of permit. The Director may issue a Class I operating permit, or a revision of or a renewal of a Class I operating permit, if: 1. The Director has: (a) Received a complete application for a Class I operating permit or for a revision of or a renewal of a Class I operating permit; (b) Completed all requirements regarding public participation and comment pursuant to <u>NAC 445B.3395</u> ; and (c) Notified and responded to all comments from affected states; 2. The conditions of the operating permit provide for compliance with the requirements of <u>NAC 445B.001 to 445B.3689</u> , inclusive, and any other applicable requirements; and (Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 10-30-95, eff. 1-11-96; R105-97, 3-5-98; A by R142-07, 4-17-2008)—(Substituted in revision for NAC 445B.306)	77FR59321 9/27/2012
	445B.342	Certain changes authorized without revision of permit; notification of authorized changes. 1. The owner or operator of a stationary source operating in compliance with an operating permit may make changes which contravene an express term of the operating permit without a revision of the operating permit if the changes do not: (a) Constitute modifications pursuant to any provision of 42 U.S.C. §§ 7401 to 7515, inclusive, or constitute a modification as that term is defined in <u>NAC 445B.099</u> ; (b) Violate any provision of <u>NAC 445B.001 to 445B.3689</u> , inclusive, or any other applicable requirement; or (c) Exceed the allowable emissions set forth in the operating permit for any emissions unit. 2. Any conditions of an operating permit that are requirements for monitoring, methods of testing, recordkeeping, reporting or compliance certification may not be changed pursuant to this section. 3. For each change made pursuant to this section, the holder of the operating permit shall provide a written notification to the Director and the Administrator at least 7 days before making the change. This notification must include: (a) A detailed description of the change; (b) The date on which the change will occur; (c) Any change in emissions, as determined in accordance with <u>NAC 445B.001 to 445B.3689</u> , inclusive; (d) Any condition of the operating permit which will no longer apply because of the change; and 4. The holder of the operating permit, the Director and the Administrator, as appropriate, shall attach a copy of the written notification to his respective copy of the permit.	77FR59321 9/27/2012

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		(Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 3-29-94, eff. 1-11-96; 10-30-95, eff. 1-11-96; R105-97, 3-5-98; R040-01, 10-25-2001; R096-05, 10-31-2005)	
	445B.3425	<p>Minor revision of permit.</p> <p>1. A minor revision may be made to a Class I operating permit if the revision:</p> <ul style="list-style-type: none"> (a) Does not violate any applicable requirement; (b) Does not involve significant changes to the existing requirements for monitoring, reporting or recordkeeping; (c) Does not require or change: <ul style="list-style-type: none"> (1) A determination of an emission limitation or other standard on a case-by-case basis; (2) A determination of the ambient impact for any temporary source; or (3) A visibility or increment analysis; (d) Does not establish or change a condition of the operating permit for which there is no corresponding underlying applicable requirement and which was requested in order to avoid an applicable requirement, including: <ul style="list-style-type: none"> (1) A federally enforceable emissions cap; or (2) An alternative emission limitation pursuant to 42 U.S.C. § 7412(i)(5); (e) Is not a modification pursuant to any provision of 42 U.S.C. §§ 7401 to 7515, inclusive; (f) Does not result in an increase in allowable emissions that exceeds any of the following specified thresholds: <ul style="list-style-type: none"> (1) Carbon monoxide, 100 tons per year; (2) Nitrogen oxides, 40 tons per year; (3) Sulfur dioxide, 40 tons per year; (4) PM₁₀, 15 tons per year; (5) Ozone, 40 tons per year of volatile organic compounds; (6) Sulfuric acid mist, 7 tons per year; and (7) Hydrogen sulfide (H₂S), 10 tons per year; and (g) Is not a major modification at an existing major stationary source. <p>2. An owner or operator must request a minor revision on an application form provided by the Director. The application must include:</p> <ul style="list-style-type: none"> (a) A description of the modification; (b) A description of the emissions resulting from the modification; (c) An identification of any new applicable requirements that will apply because of the modification; (d) Suggested conditions of the operating permit; (e) Certification by a responsible official of the stationary source that the proposed modification complies with the criteria for a minor revision set forth in subsection 1; and (f) Any relevant information concerning the proposed change which is required by <u>NAC 445B.295</u> and <u>445B.3368</u>. <p>3. The Director shall:</p>	77FR59321 9/27/2012

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		<p>(a) Determine, in accordance with subsection 5 of <u>NAC 445B.3395</u>, whether the application for a minor revision is complete.</p> <p>(b) Transmit the application to the Administrator within 10 working days after the official date of submittal of the application.</p> <p>(c) Provide notice to any affected state within 10 working days after the official date of submittal of the application for a minor revision.</p> <p>(d) Unless the application is for a minor revision described in subsection 8 of <u>NAC 445B.3395</u>, enable public participation and comment and provide notice to the public concerning the application for a minor revision in the manner set forth in subsections 6 and 7 of <u>NAC 445B.3395</u>.</p> <p>(e) Provide a 30-day period for comment by any affected state and the public, if applicable, concerning the application.</p> <p>(f) Within 45 days after the official date of submittal of the application:</p> <ol style="list-style-type: none"> (1) Determine whether the proposed minor revision meets the criteria for a minor revision set forth in this section; (2) Determine whether the proposed conditions of the operating permit are adequate; and (3) If the Director determines that the proposed modification does not meet the criteria for a minor revision, deny the proposed revision and notify the applicant and the Administrator. <p>(g) If the Director determines that the applicant's proposed conditions of the operating permit are not adequate, draft appropriate conditions for the operating permit. Proposed conditions drafted by the Director must be submitted to the Administrator for review.</p> <p>(h) Notify the Administrator of any recommendations from an affected state which the Director does not accept.</p> <p>4. The Director may issue the minor revision upon notification by the Administrator that the Administrator does not object to the minor revision. If the Administrator does not notify the Director within 45 days after the date on which the Administrator received the notification pursuant to this section or within 45 days after the date on which the Administrator receives the Director's proposed conditions, whichever is later, the Administrator shall be deemed to have not objected to the minor revision.</p> <p>5. If the Administrator objects to the minor revision, the Director shall:</p> <ol style="list-style-type: none"> (a) Deny the application for the minor revision; (b) Determine whether the minor revision should be reviewed under the procedures for a significant revision; or (c) Revise the proposed revision of the operating permit and forward it to the Administrator for review. <p>6. The Director shall take action pursuant to subsection 4 or 5 within 90 days after the official date of submittal of an application for a minor revision or within 15 days after the Administrator's 45-day review period ends, whichever is later. (Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 3-29-94, eff. 1-11-96; 10-30-95, eff. 1-11-96; 5-3-96; R105-97, 3-5-98; R036-98, 4-17-98; R103-02, 12-17-2002; R198-03, 4-26-2004; R125-04, 9-24-2004)</p>	
	445B.344	<p>Significant revision of permit.</p> <p>1. The holder of an operating permit may request a significant revision of a Class I operating permit if it does not qualify</p>	77FR59321 9/27/2012

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		<p>as a change that may be made pursuant to <u>NAC 445B.342</u>, or as an administrative amendment or a minor revision. A significant revision includes, but is not limited to, a revision:</p> <p>(a) Of an existing condition of the operating permit relating to monitoring or making the requirements for reporting or recordkeeping less stringent;</p> <p>(b) Which requires or changes:</p> <p>(1) A determination of an emission limitation on a case-by-case basis;</p> <p>(2) A determination of ambient impact for any temporary source; or</p> <p>(3) A visibility or increment analysis;</p> <p>(c) Which would establish or change a condition of the operating permit and which is requested or assumed by the owner or operator of the stationary source in order to avoid any applicable requirement;</p> <p>(d) Subject to 40 C.F.R. § 52.21 or 40 C.F.R. Part 60, as adopted pursuant to <u>NAC 445B.221</u>; or</p> <p>(e) Subject to 42 U.S.C. § 7412.</p> <p>2. An application for a significant revision must comply with the requirements for an application for a Class I operating permit set forth in <u>NAC 445B.295</u>, <u>445B.297</u> and <u>445B.3368</u>, including public participation and comment and a review by any affected states and the Administrator pursuant to <u>NAC 445B.3395</u>.</p> <p>3. An application for a significant revision must be accompanied by the fee set forth in <u>NAC 445B.327</u>.</p> <p>(Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 3-29-94, eff. 1-11-96; 10-30-95, eff. 1-11-96; R105-97, 3-5-98; R103-02, 12-17-2002)</p>	
	445B.3441	<p>Administrative revision of permit to incorporate conditions of certain permits to construct.</p> <p>1. To modify a Class I stationary source in accordance with subsection 5 of <u>NAC 445B.3361</u>, the owner or operator of the Class I stationary source must submit an application for an administrative revision to a Class I operating permit to incorporate the conditions of a Class I operating permit to construct into the existing Class I operating permit for the Class I stationary source.</p> <p>2. The Director shall issue a revised Class I operating permit or deny the application for an administrative revision to a Class I operating permit within the timelines established for processing an application for a Class I operating permit to construct as specified in <u>NAC 445B.3364</u>.</p> <p>3. An application for an administrative revision to a Class I operating permit must comply with the requirements for an application for a Class I operating permit set forth in <u>NAC 445B.295</u>, <u>445B.297</u> and <u>445B.3368</u>, and the requirements relating to public participation and comment and a review by any affected states and the Administrator pursuant to <u>NAC 445B.3395</u>.</p> <p>4. An application for an administrative revision to a Class I operating permit must be accompanied by the appropriate fee set forth in <u>NAC 445B.327</u>.</p> <p>(Added to NAC by Environmental Comm'n by R125-04, eff. 9-24-2004; A by R139-06, 9-18-2006)</p>	77FR59321 9/27/2012
	445B.3443 (Superseded)	<p>Renewal of permit.</p> <p>1. All Class I operating permits must be renewed 5 years after the date of issuance.</p>	77FR59321 9/27/2012

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	445.713)	<p>2. A complete application for the renewal of a Class I operating permit must be submitted to the Director on the form provided by the Director with the appropriate fee at least 240 days, but not earlier than 18 months, before the expiration date of the current Class I operating permit for stationary sources.</p> <p>3. Applications for the renewal of a Class I operating permit must comply with all requirements for the issuance of an initial Class I operating permit as specified in <u>NAC 445B.3395</u>.</p> <p>4. If an application for the renewal of a Class I operating permit is submitted in accordance with subsection 2, the stationary source may continue to operate under the conditions of the existing Class I operating permit until the Class I operating permit is renewed or the application for renewal is denied.</p> <p>5. If an application for the renewal of a Class I operating permit is not submitted in accordance with subsection 2:</p> <p>(a) The stationary source may be required to cease operation when the Class I operating permit expires; and</p> <p>(b) The owner or operator of the stationary source:</p> <p>(1) Must apply for the issuance of a new Class I operating permit pursuant to NAC 445B.3375; and</p> <p>(2) May not recommence the operation until the new Class I operating permit is issued.</p> <p>6. The fee for the issuance of a new Class I operating permit or the renewal of a Class I operating permit is specified in <u>NAC 445B.327</u>.</p> <p>[Environmental Comm'n, Air Quality Reg. part § 3.4.1 & §§ 3.4.4 & 3.4.8, eff. 11-7-75]—(NAC A 12-15-88; 12-13-93, eff. 1-11-96; 3-29-94, eff. 1-11-96; 10-30-95, eff. 1-11-96; R040-01, 10-25-2001; R103-02, 12-17-2002; R198-03, 4-26-2004; R191-08, 12-17-2008)</p>	
	445B.3447 (Superseded 445.707(3)- (6); 445.713)	<p>Class I general permit.</p> <p>1. The Director may issue a Class I general permit covering numerous similar stationary sources.</p> <p>2. A Class I general permit must set forth the criteria by which stationary sources may qualify for the Class I general permit.</p> <p>3. A Class I general permit which covers stationary sources that would otherwise be required to be covered by a Class I operating permit must:</p> <p>(a) Ensure compliance with all applicable requirements; and</p> <p>(b) Not be granted until the requirements for public participation and comment and a review by any affected states and the Administrator pursuant to <u>NAC 445B.3395</u> have been completed.</p> <p>5. After the effective date of a Class I general permit, the owner or operator of any stationary source that meets the criteria set forth in the Class I general permit may request authority to operate under the Class I general permit. The request must be in writing and must include all the information required by the Class I general permit.</p> <p>6. The Director shall grant or deny authority to operate under a Class I general permit within 30 days after his receipt of a request for such authority. The Director's decision to grant or deny an application for authority to operate under the terms of a Class I general permit is not subject to the requirements of <u>NAC 445B.3395</u>.</p> <p>7. A person may challenge the provisions of a Class I general permit only at the time the Class I general permit is issued.</p>	77FR59321 9/27/2012

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		<p>The Director's grant or denial of authority to operate under a Class I general permit to a stationary source or stationary sources does not provide an opportunity for an administrative review or a judicial review of the Class I general permit.</p> <p>8. The Director shall not grant authority to operate under a Class I general permit to an affected source.</p> <p>9. The term of a Class I general permit is 5 years.</p> <p>10. The authority to operate under a Class I general permit expires after 5 years. An owner or operator of a stationary source operating under the authority of a Class I general permit shall apply to renew his authority to operate under the Class I general permit at least 30 days before his authorization expires.</p> <p>11. A stationary source which obtains authorization to operate under a Class I general permit but is later determined not to qualify under the conditions of the Class I general permit may be subject to an action enforcing the prohibition against operating without a permit.</p> <p>(Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 3-29-94, eff. 1-11-96; 10-30-95, eff. 1-11-96; R103-02, 12-17-2002)—(Substituted in revision for NAC 445B.335)</p>	
Class II Operating Permits			
	445B.3453	<p>Application: General requirements.</p> <p>1. Except as otherwise provided in subsection 3, an owner or operator of any stationary source that is not subject to the requirements of <u>NAC 445B.337</u> or <u>445B.3375</u> must submit an application for and obtain a Class II operating permit or, if applicable, a Class III operating permit pursuant to <u>NAC 445B.3485</u>.</p> <p>2. For a proposed stationary source or a proposed modification to a stationary source that is not subject to the requirements of <u>NAC 445B.337</u> or <u>445B.3375</u>, 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 <u>NAC 445B.3485</u>, before commencing construction of the proposed stationary source or the proposed modification.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; A by R189-05, 5-4-2006)</p>	77FR59321 9/27/2012
	445B.3457 (Supersedes 445.707(3)- (6))	<p>Action by Director on application; notice; public comment and hearing; expiration of permit.</p> <p>1. Except as otherwise provided in <u>NAC 445B.319</u> and <u>445B.342</u>, within 10 working days after the date of receipt of an application for a Class II operating permit or for the revision of a Class II operating permit, accompanied by the applicable fee, the Director shall determine if the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. 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 10 working 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 11 working days after the date of receipt, whichever is earlier.</p> <p>2. If, after the official date of submittal, the Director discovers that additional information is required to act on the application, the Director may request additional information necessary to determine whether the proposed operation will</p>	77FR59321 9/27/2012

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		<p>comply with all of the requirements set forth in <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive. 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.</p> <p>3. If notice to the public is not required pursuant to subsection 5, the Director shall issue or deny a Class II operating permit or the revision of a Class II operating permit within 60 days after the official date of submittal of the application for the Class II operating permit or for the revision of the Class II operating permit.</p> <p>4. The Director shall:</p> <p>(a) Make a preliminary determination to issue or deny a Class II operating permit or the revision of a Class II operating permit within 15 days after the official date of submittal of the application for the Class II operating permit or for the revision of the Class II operating permit;</p> <p>(b) Take such action as is necessary to ensure compliance with the provisions of subsections 6, 7 and 8, as applicable; and</p> <p>(c) Issue or deny the Class II operating permit or the revision of the Class II operating permit taking into account:</p> <p>(1) Written comments from the public;</p> <p>(2) Information submitted by proponents of the project; and</p> <p>(3) The effect of such a facility on the maintenance of the state and national ambient air quality standards contained in <u>NAC 445B.22097</u> and the applicable state implementation plan.</p> <p>5. Public notice is required for an application for:</p> <p>(a) A Class II operating permit for a stationary source that has not previously held a Class I operating permit or Class II operating permit; or</p> <p>(b) The revision of a Class II operating permit for which the Director determines that the change to the stationary source results in an increase in allowable emissions that exceeds any of the following thresholds:</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: left;">Pollutant</th> <th style="text-align: right;">Threshold in tons per year</th> </tr> </thead> <tbody> <tr> <td>Carbon monoxide.....</td> <td style="text-align: right;">40</td> </tr> <tr> <td>Nitrogen oxides.....</td> <td style="text-align: right;">40</td> </tr> <tr> <td>Sulfur dioxide.....</td> <td style="text-align: right;">40</td> </tr> <tr> <td>PM₁₀.....</td> <td style="text-align: right;">15</td> </tr> <tr> <td>Ozone measured as VOC.....</td> <td style="text-align: right;">40</td> </tr> <tr> <td>Lead.....</td> <td style="text-align: right;">0.6</td> </tr> </tbody> </table> <p>6. For the notice required pursuant to subsection 5 and at the time the Director makes a preliminary determination to issue or deny a Class II operating permit or the revision of a Class II operating permit pursuant to subsection 4, the Director shall:</p>	Pollutant	Threshold in tons per year	Carbon monoxide.....	40	Nitrogen oxides.....	40	Sulfur dioxide.....	40	PM ₁₀	15	Ozone measured as VOC.....	40	Lead.....	0.6	
Pollutant	Threshold in tons per year																
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		<p>(a) Make the preliminary determination public and maintain it on file with the Director during normal business hours at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249, for 30 days to enable public participation and comment;</p> <p>(b) Cause to be published on an Internet website designed to give general public notice an electronic copy of the Director's notice of proposed action;</p> <p>(c) Provide written notification of the Director's proposed action to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;</p> <p>(d) Provide notice of the Director's proposed action and a copy of the application to a public library in the area in which the proposed new Class II source or the proposed modification to the existing Class II source is located for posting to ensure that adequate notice is given to the public;</p> <p>(e) Provide notice of the Director's proposed action and a copy of the application to the Administrator and to any local air pollution control agency having jurisdiction in the area in which the proposed new Class II source or the proposed modification to the existing Class II source is located; and</p> <p>(f) Establish a 30-day period for public participation.</p> <p>7. The notice required pursuant to subsection 5 must include:</p> <p>(a) The name of the affected facility and the name and address of the applicant;</p> <p>(b) The name and address of the state agency processing the Class II operating permit or the revision of the Class II operating permit;</p> <p>(c) The name, address and telephone number of a representative from the state agency that is processing the Class II operating permit or the revision of the Class II operating permit;</p> <p>(d) A description of the proposed new Class II source or the proposed modification to the existing Class II source and a summary of the emissions involved;</p> <p>(e) The date by which comments must be submitted to the Director;</p> <p>(f) A summary of the analysis of the effect of the proposed new Class II source or the proposed modification to the existing Class II source on the quality of air, as analyzed by the state agency processing the Class II operating permit or the revision of the Class II operating permit;</p> <p>(g) A statement indicating that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable; and</p> <p>(h) A brief description of the procedures for public participation.</p> <p>8. All comments concerning the applications for which notice to the public is required to be provided pursuant to this section must be submitted in writing to the Director within the time specified in the notice. 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.</p> <p>9. If construction will occur in one phase, a Class II operating permit or the revision of a Class II operating permit for a new or modified stationary source expires if construction is not commenced within 18 months after the date of issuance thereof</p>	

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		<p>or construction of the facility is delayed for 18 months or more after the construction begins. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.</p> <p>10. If construction will occur in more than one phase, the projected date of commencement of construction of each phase must be approved by the Director. A Class II operating permit or the revision of a Class II operating permit for a new or modified stationary source 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.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; A by R198-03, 4-26-2004; R151-06, 9-18-2006; R142-07, 4-17-2008; R006-11, 10-26-2011)</p>	
	445B.346	<p>Required contents of permit. In addition to the conditions set forth in <u>NAC 445B.315</u>, Class II operating permits must contain, as applicable:</p> <ol style="list-style-type: none"> 1. Emission limitations and standards, including those operational requirements and limitations that ensure compliance with the conditions of the operating permit. 2. All requirements for monitoring, testing and reporting that apply to the stationary source. 3. A requirement that the owner or operator of the stationary source promptly report any deviations from any requirements of the operating permit. 4. The terms and conditions for any reasonably anticipated alternative operating scenarios identified by the owner or operator of the stationary source in his application and approved by the Director. Such terms and conditions must require the owner or operator to keep a contemporaneous log of changes from one alternative operating scenario to another. 5. A schedule of compliance for stationary sources that are not in compliance with any applicable requirement or <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive, at the time the operating permit is issued, including: <ol style="list-style-type: none"> (a) Semiannual progress reports and a schedule of dates for achieving milestones; (b) Prior notice of and explanations for missed deadlines; and (c) Any preventive or corrective measures taken. <p>(Added to NAC by Environmental Comm'n, 12-13-93, eff. 1-11-96; A 10-30-95, eff. 1-11-96)—(Substituted in revision for NAC 445B.317)</p>	77FR59321 9/27/2012
	445B.3465	<p>Application for revision.</p> <ol style="list-style-type: none"> 1. The owner or operator of a stationary source with a Class II operating permit may request, on an application form provided by the Director, a revision of the operating permit to allow for a modification to the stationary source. 2. An application for a revision of a Class II operating permit must include: <ol style="list-style-type: none"> (a) The name and address of the owner or operator of the stationary source; (b) The location of the stationary source; (c) A description of: <ol style="list-style-type: none"> (1) The existing emission units undergoing the modification and the applicable control systems; and 	77FR59321 9/27/2012

Approved Reference:		State Implementation Plan Text of Regulations and Articles:	Cite: 40 CFR 52.1490 and or FR ²
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		<p>(2) The proposed modification to such emission units;</p> <p>(d) The emission rates from the existing emission units of each regulated air pollutant to which a standard applies which exist at the time of the application before the modification and which would exist after the modification takes place;</p> <p>(e) A description of any proposed new emission units and applicable control systems;</p> <p>(f) The potential to emit of the proposed new emission units for each regulated air pollutant to which a standard applies;</p> <p>(g) A description of the procedures and methods used to determine the emission rates;</p> <p>(h) A discussion of all applicable requirements to which the new or modified operations will be subject;</p> <p>(i) An explanation of any proposed exemption from any applicable requirement;</p> <p>(j) An environmental evaluation conducted in accordance with <u>NAC 445B.308, 445B.310, 445B.311 and 445B.3135</u>; and</p> <p>(k) Any other information that the Director determines is necessary to process the application and issue a Class II operating permit pursuant to <u>NAC 445B.001 to 445B.3689</u>, inclusive.</p> <p>(Added to NAC by Environmental Comm'n by R105-97, eff. 3-5-98; A by R103-02, 12-17-2002; R096-05, 10-31-2005)</p>	
	445B.3473 (Superseded 445.713)	<p>Renewal of permit.</p> <p>1. All Class II operating permits must be renewed 5 years after the date of issuance.</p> <p>2. A complete application for renewal of a Class II operating permit must be submitted to the Director on the form provided by the Director with the appropriate fee at least 70 days before the expiration date of the current Class II operating permit.</p> <p>3. An application for the renewal of a Class II operating permit must comply with all requirements for the issuance of an initial Class II operating permit as specified in <u>NAC 445B.3457</u>.</p> <p>4. If an application for the renewal of a Class II operating permit is submitted in accordance with subsection 2, the stationary source may continue to operate under the conditions of the existing Class II operating permit until the permit is renewed or the application for renewal is denied. If such an application is not submitted in accordance with subsection 2, the stationary source may be required to cease operation when the Class II operating permit expires and may not recommence the operation until the Class II operating permit is renewed.</p> <p>5. If an application for the renewal of a Class II operating permit is not submitted in accordance with subsection 2:</p> <p>(a) The stationary source may be required to cease operation when the Class II operating permit expires; and</p> <p>(b) The owner or operator of the stationary source:</p> <p>(1) Must apply for the issuance of a new Class II operating permit pursuant to NAC 445B.3453; and</p> <p>(2) May not recommence the operation until the new Class II operating permit is issued.</p> <p>6. The fee for the issuance of a new Class II operating permit or the renewal of a Class II operating permit is specified in <u>NAC 445B.327</u>.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; A by R198-03, 4-26-2004; R191-08, 12-17-2008)</p>	77FR59321 9/27/2012
	445B.3477	Class II general permit.	77FR59321

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Article #	NAC #		
	(Superseded 445.707(3)-(5); 445.713)	<p>1. The Director may issue a Class II general permit covering numerous similar stationary sources.</p> <p>2. Before issuing a Class II general permit, the proposed conditions for the Class II general permit 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 89701-5249, for 30 days to enable public participation and comment. The Director shall:</p> <ul style="list-style-type: none"> (a) Cause to be published a notice in one or more newspapers of general circulation in the area in which the Class II general operating permit is applicable; (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 public participation. <p>3. The notice required pursuant to subsection 2 must include, without limitation:</p> <ul style="list-style-type: none"> (a) The name and address of the state agency processing the Class II general permit; (b) The name, address and telephone number of a representative from the state agency that is processing the Class II general permit from whom interested persons may obtain additional information, including copies of: <ul style="list-style-type: none"> (1) The proposed conditions for the Class II general permit; (2) All relevant supporting materials; and (3) All other materials which are available to the state agency that is processing the Class II general permit and which are relevant to the determination of the issuance of the Class II general permit; (c) A description of the proposed Class II general permit and a summary of the emissions involved; (d) The date by which comments must be submitted to the Director; (e) A summary of the impact of the proposed Class II general permit on the quality of the air; (f) A statement indicating that the affected facility has the potential to emit 5 or more tons per year of lead, if applicable; and (g) A brief description of the procedures for public participation and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing. <p>4. All comments concerning the proposed Class II general permit for which notice to the public is required to be provided pursuant to this section must be submitted in writing to the Director within the time specified in the notice. The Director shall give notice of any public hearing scheduled pursuant to this section at least 30 days before 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.</p> <p>5. The Director may issue the Class II general permit after considering:</p> <ul style="list-style-type: none"> (a) Written comments from the public; (b) The comments made during public hearings concerning the proposed Class II general permit; (c) Information submitted by proponents of the Class II general permit; and (d) The effect of the Class II general permit on the maintenance of the state and national ambient air quality standards 	9/27/2012

Approved Reference:		State Implementation Plan Text of Regulations and Articles:	Cite: 40 CFR 52.1490 and or FR ²
Article #	NAC #		
		<p>contained in NAC 445B.22097 and the applicable state implementation plan.</p> <p>6. A Class II general permit must set forth the criteria by which stationary sources may qualify for the Class II general permit.</p> <p>7. After the effective date of a Class II general permit, the owner or operator of any stationary source that meets the criteria set forth in the Class II general permit may request authority to operate under the Class II general permit. The request must be in writing and must include all the information required by the Class II general permit.</p> <p>8. The Director shall grant or deny authority to operate under a Class II general permit within 30 days after his receipt of a request for such authority. The Director's decision to grant or deny an application for authority to operate under the terms of a Class II general permit is not subject to the requirements of <u>NAC 445B.3457</u>.</p> <p>9. A person may challenge the provisions of a Class II general permit only at the time the Class II general permit is issued. The Director's grant or denial of authority to operate under a Class II general permit to a stationary source or stationary sources does not provide an opportunity for an administrative review or a judicial review of the Class II general permit.</p> <p>10. The Director shall not grant authority to operate under a Class II general permit to an affected source.</p> <p>11. The term of a Class II general permit is 5 years.</p> <p>12. The authority to operate under a Class II general permit expires after 5 years. An owner or operator of a stationary source operating under the authority of a Class II general permit shall apply to renew his authority to operate under the Class II general permit at least 30 days before his authorization expires.</p> <p>13. A stationary source which obtains authorization to operate under a Class II general permit but is later determined not to qualify under the conditions of the Class II general permit may be subject to an action enforcing the prohibition against operating without a permit.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; R142-07, 4-17-2008)</p>	
Class III Operating Permits			
	445B.3485	<p>Application: General requirements.</p> <p>1. If a stationary source operating under a Class II operating permit meets the requirements for a Class III source, the owner or operator of the stationary source may submit an application with the appropriate fee and obtain a Class III operating permit for the stationary source.</p> <p>2. If a new stationary source meets the requirements for a Class III source, the owner or operator of the new stationary source may submit an application with the appropriate fee and obtain a Class III operating permit for the new stationary source. An operating permit must be obtained before commencing construction on a new stationary source.</p> <p>3. An owner or operator of a proposed modification to a stationary source that meets the requirements for a Class III source may submit an application with the appropriate fee and obtain a revised Class III operating permit for the proposed modification to the stationary source. Such an owner or operator shall not commence construction of the proposed modification to the stationary source before filing an application for and obtaining a revised Class III operating permit.</p> <p>(Added to NAC by Environmental Comm'n by R040-01, eff. 10-25-2001; A by R103-02, 12-17-2002; R151-06, 9-18-</p>	77FR59321 9/27/2012

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		2006)	
	445B.3487 (Superseded 445.707(3), (5) and (6))	<p>Action by Director on application; expiration of permit.</p> <p>1. Except as otherwise provided in <u>NAC 445B.319</u> and <u>445B.342</u>, within 10 working days after the date of receipt of an application for a Class III operating permit or for the revision of a Class III operating permit, the Director shall determine if the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. 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 10 working 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 11 working days after the date of receipt, whichever is earlier. The Director shall issue or deny a Class III operating permit or the revision of a Class III operating permit within 30 days after the official date of submittal of the application.</p> <p>2. If, after the official date of submittal, the Director discovers that additional information is required to act on the application, the Director may request additional information necessary to determine whether the proposed operation will comply with all of the requirements set forth in <u>NAC 445B.001</u> to <u>445B.3689</u>, inclusive. 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.</p> <p>3. If construction will occur in one phase, a Class III operating permit or the revision of a Class III operating permit for a new or modified stationary source expires if construction is not commenced within 18 months after the date of issuance thereof or construction of the facility is delayed for 18 months or more after the construction begins. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.</p> <p>4. If construction will occur in more than one phase, the projected date of commencement of construction of each phase must be approved by the Director. A Class III operating permit or the revision of a Class III operating permit for a new or modified stationary source 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.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; A by R151-06, 9-18-2006)</p>	77FR59321 9/27/2012
	445B.3489	<p>Required contents of permit. In addition to the conditions set forth in <u>NAC 445B.315</u>, Class III operating permits must contain, as applicable:</p> <ol style="list-style-type: none"> 1. Emission limitations and standards, including those operational requirements and limitations that ensure compliance with the conditions of the Class III operating permit. 2. All requirements for monitoring, testing and reporting that apply to the stationary source. 3. A requirement that the owner or operator of the stationary source promptly report any deviations from any requirements of the Class III operating permit. 	77FR59321 9/27/2012

Approved Reference:		State Implementation Plan Text of Regulations and Articles:	Cite: 40 CFR 52.1490 and or FR ²
Article #	NAC #		
		<p>4. The terms and conditions for any reasonably anticipated alternative operating scenarios identified by the owner or operator of the stationary source in his application and approved by the Director. Such terms and conditions must require the owner or operator to keep a contemporaneous log of changes from one alternative operating scenario to another.</p> <p>5. A schedule of compliance for stationary sources that are not in compliance with any applicable requirement or <u>NAC 445B.001 to 445B.3689</u>, inclusive, at the time the Class III operating permit is issued, including:</p> <ul style="list-style-type: none"> (a) Semiannual progress reports and a schedule of dates for achieving milestones; (b) Prior notice of and explanations for missed deadlines; and (c) Any preventive or corrective measures taken. <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; A by R151-06, 9-18-2006)</p>	
	445B.3493	<p>Application for revision.</p> <ol style="list-style-type: none"> 1. The owner or operator of a stationary source with a Class III operating permit may apply, on a form provided by the Director, for a revision of the operating permit. 2. An application for a revision of a Class III operating permit for a stationary source must include: <ul style="list-style-type: none"> (a) The name and address of the owner or operator of the stationary source; (b) The location of the stationary source; (c) A description of: <ol style="list-style-type: none"> (1) The existing emission units undergoing modification and the applicable control systems; and (2) The proposed modifications to those emission units; (d) A description of any proposed new emission units and applicable control systems; (e) The potential to emit for each proposed new and existing emission unit for each regulated air pollutant to which a standard applies; and (f) Any other information that the Director determines is necessary to process the application and issue a revised Class III operating permit in accordance with <u>NAC 445B.001 to 445B.3689</u>, inclusive. <p>(Added to NAC by Environmental Comm'n by R040-01, eff. 10-25-2001)—(Substituted in revision for NAC 445B.348)</p>	77FR59321 9/27/2012
	445B.3497 (Superseded 445.713)	<p>Renewal of permit.</p> <ol style="list-style-type: none"> 1. All Class III operating permits must be renewed 5 years after the date of issuance. 2. A complete application for renewal of a Class III operating permit must be submitted to the Director on the form provided by the Director with the appropriate fee at least 40 days before the expiration date of the current permit for the Class III source. 3. An application for the renewal of a Class III operating permit must comply with all requirements for the issuance of an initial Class III operating permit as specified in <u>NAC 445B.3487</u>. 4. If an application for the renewal of a Class III operating permit is submitted in accordance with subsection 2, the stationary source may continue to operate under the conditions of the existing Class III operating permit until the permit is renewed or the application for the renewal of the Class III operating permit is denied. If an application is not submitted in 	77FR59321 9/27/2012

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		<p>accordance with subsection 2, the stationary source may be required to cease operation when the Class III operating permit expires and may not recommence the operation until the Class III operating permit is renewed.</p> <p>5. If an application for the renewal of a Class III operating permit is not submitted in accordance with subsection 2:</p> <p>(a) The stationary source may be required to cease operation when the Class III operating permit expires; and</p> <p>(b) The owner or operator of the stationary source:</p> <p>(1) Must apply for the issuance of a new Class III operating permit pursuant to NAC 445B.3485; and</p> <p>(2) May not recommence the operation until the new Class III operating permit is issued.</p> <p>6. The fee for the issuance of a new Class III operating permit or the renewal of a Class III operating permit is specified in <u>NAC 445B.327</u>.</p> <p>(Added to NAC by Environmental Comm'n by R103-02, eff. 12-17-2002; A by R198-03, 4-26-2004; R191-08, 12-17-2008)</p>	

APPENDIX E

Ambient Air Monitoring Network Plan 2012

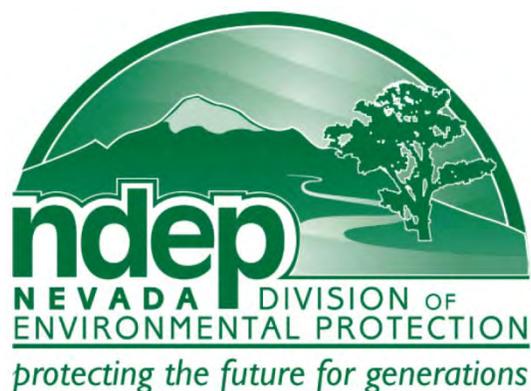
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C.1 AMBIENT AIR QUALITY NETWORK PLAN 2012

C.2 EPA FEBRUARY 28, 2013 REVIEW LETTER

AMBIENT AIR MONITORING NETWORK PLAN

2012



STATE OF NEVADA DIVISION OF ENVIRONMENTAL PROTECTION BUREAU OF AIR QUALITY PLANNING

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Acronyms and Abbreviations

CAA:	Clean Air Act
AQS:	Air Quality System
BAQP:	Bureau of Air Quality Planning
BAM:	Beta Attenuation Monitor
CFR:	Code of Federal Regulations
CO:	Carbon Monoxide
DCNR:	Department of Conservation and Natural Resources
FEM:	Federal Equivalent Method
FRM:	Federal Reference Method
IMPROVE:	Interagency Monitoring of Protected Visual Environments
NAAQS:	National Ambient Air Quality Standard
NAC:	Nevada Administrative Code
NDEP:	Nevada Division of Environmental Protection
O ₃ :	Ozone
PM:	Particulate Matter (2.5 or 10 microns)
SLAMS:	State and Local Air Monitoring Station
SPMS:	Special Purpose Monitoring Station
USEPA:	United States Environmental Protection Agency

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Overview

The monitoring program of the Nevada Division of Environmental Protection (NDEP) operates an ambient air quality monitoring network of gaseous and particulate pollutant monitors. The monitors are located in small communities throughout rural Nevada. In the metropolitan areas of Reno and Las Vegas; the Washoe County District Health Department, Air Quality Management Division and the Clark County Department of Air Quality and Environmental Management operate and maintain their respective monitoring networks separate from NDEP and submit their Network Plan independently to the United States Environmental Protection Agency (USEPA).

NDEP regulates air quality to protect public health and the environment. Monitoring data is a crucial component of regulations used to determine compliance with the USEPA primary and secondary air quality standards. Other important uses of these monitors include: support and issuance of air quality forecasts, support of long-term health assessments, and tracking long-term air quality both to gauge effectiveness of emission control and abatement strategies and to quantify accuracy of ambient pollutant monitoring.

Goals

NDEP created an ambient air quality monitoring program to provide useful and accurate information on air quality, which is used to evaluate the success of the State's air quality programs. The Clean Air Act of 1970, and subsequent amendments, defines air quality standards for various air pollutants necessary to protect the public from injurious pollution concentrations. Air pollution concentrations that exceed the National Ambient Air Quality Standard (NAAQS) can cause a public health hazard, nuisance, annoyance, or damage to flora, fauna and personal property.

The NAAQS, published by the USEPA, can be found in 40 Code of Federal Regulations (CFR) Part 50, which defines the levels of air quality necessary to protect human health and welfare. An area is considered to be in nonattainment for a pollutant if it has violated the NAAQS for that pollutant. The CFR includes procedures for evaluating measured air quality

against the NAAQS. State air quality standards can be found in Nevada Administrative Code (NAC) 445B.22097.

Background

The State of Nevada has three jurisdictions which independently manage their own air programs as designated by statute: Department of Conservation and Natural Resources (DCNR), Division of Environmental Protection (NDEP), Bureau of Air Quality Planning (BAQP); Washoe County District Health Department, Air Quality Management Division; and Clark County Department of Air Quality and Environmental Management.

State agencies that conduct ambient air monitoring using State and Local Air Monitoring Stations (SLAMS) or Special Purpose Monitoring Stations (SPMS), must use Federal Reference Methods (FRM) or Federal Equivalent Methods (FEM) that comply with federal quality assurance requirements listed in 40 CFR 58, Appendix A. In conjunction with the Network Plan, a BAQP quality assurance plan was developed to form the framework for planning, implementing, assessing and reporting work performed by the BAQP and for implementing quality assurance and quality control protocols.

The Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP) was developed to address quality management as well as quality assurance. The QAPP defines the policies, procedures, specifications, standards, and documentation necessary to: 1) provide data of adequate quality to meet monitoring objectives, and 2) minimize loss of air quality data due to malfunctions or out-of-control conditions. As part of the QAPP, the Quality Management Plan (QMP) describes the organizational structure, functional responsibilities of management and staff, lines of authority, and required interfaces between planning, implementing, assessing and reporting activities involving environmental data operations.

Additionally, the BAQP has developed ambient monitoring guidelines in order to ensure that ambient air quality data collected, at regulated facilities in the State, are of the highest quality and conform to federal requirements for quality assurance listed under 40 CFR 58.

Ambient air quality monitoring data must be certified on an annual basis as accurate and complete. The certification process begins with the complete submittal of all SLAMS data to the federal Air Quality System (AQS) for the calendar year. Submittal of data into AQS for 2010 has been accomplished. BAQP is planning on completing the entry of 2011 data into AQS by the May 1, 2012, deadline. Precision and accuracy reports and certification of that data should also be submitted within that time frame.

Network Design

There are currently nine ambient air quality monitoring stations in Nevada under the jurisdiction of NDEP. Air quality monitoring is represented entirely by SLAMS. The ozone monitoring conducted by NDEP is done on a seasonal basis from April 1 to October 31 of each year. The EPA's approval of a seasonal ozone monitoring schedule for NDEP is documented in Appendix A. There are two meteorological stations, one in Carson City and the other in Pahrump. These are used to confirm the local meteorological data from the monitoring stations.

In addition to these three independent monitoring networks, air quality monitoring is conducted through the Interagency Monitoring of Protected Visual Environments (IMPROVE) network by the federal land management agencies. There are two IMPROVE monitoring sites in Nevada, at the Jarbidge Wilderness area and Great Basin National Park, Lehman Caves.

The following table shows the locations and types of monitors operated by NDEP.

Table 1: NDEP’S Ambient Air Monitoring Network

Location	Ozone	Carbon Monoxide	PM10
Elko			1 (SLAMS)
Fallon	1 (SLAMS)		
Stateline- Harvey’s		1 (SLAMS)	
Fernley	1 (SLAMS)		
Carson City-5th Street	1(SLAMS)		
Pahrump-Church Site			1 (SLAMS)
Pahrump-Manse Elementary			1 (SLAMS)
Pahrump-Glen Oaks			1 (SLAMS)
Pahrump-Linda Street			1 (SLAMS)
Total	3	1	5

SLAMS – State and Local Air Monitoring Station

Minimum Monitoring Requirements

The USEPA provides minimum site requirements for ozone and particulate matter based on metropolitan statistical area (MSA) population. The NDEP’s air monitoring network meets or, in most cases, exceeds the minimum network requirements. The monitors currently required in the NDEP monitoring network by the USEPA are located in Stateline (CO), Carson City (O₃), Fallon (O₃), Fernley (O₃) and Pahrump (PM₁₀). The Stateline monitoring site is a continuation of a highest concentration site started by the California Air Resources Board (CARB). Through a Maintenance Plan with USEPA, monitoring and maintenance of this site was assumed by NDEP in August 2006. The four PM₁₀ monitoring sites in Pahrump are required through a Memorandum of Understanding (MOU) between NDEP, USEPA, Nye County and the Town of Pahrump. Otherwise, according to 40 CFR Part 58 Appendix D: Tables D-4 and D-5; sections 4.2, 4.3.2, 4.3.3, 4.4.2 and 4.5, additional monitoring for criteria pollutants is not presently required. The following table outlines the minimum required monitors within the NDEP ambient air monitoring network.

Table 2: Minimum Monitoring Requirements by Pollutant

Pollutant	Minimum # of Monitors Required	# of Monitors Active	# of Monitors needed	Location	MSA/CSA	County(ies)	County Pop. (2009)	Design Values
Ozone	3	3	0	Carson City	Carson City MSA	Carson City	55,176	66 ppb (2009-2011)
				Fallon	Fallon MSA	Churchill	24,897	59 ppb (2009-2011)
				Fernley	Rural	Lyon	52,641	64 ppb (2009-2011)
CO	1	1	0	South Lake Tahoe	Sacramento-Arden-Truckee CSA	Douglas	45,464	3.1 ppm (2010-2011)
Lead*	0	0	0	N/A	N/A	N/A	N/A	N/A
SO2*	0	0	0	N/A	N/A	N/A	N/A	N/A
NO2*	0	0	0	N/A	N/A	N/A	N/A	N/A
PM10	4	5	0	Elko (1)	Elko MSA	Elko	47,896	0.8 (2009-2011)
				Pahrump (4)	Pahrump MSA/Las Vegas-Paradise-Pahrump CSA	Nye	44,324	Manse = 2.5 Church = 0.0 Glen Oaks = N/A Linda Street = 0.0 (2009-2011)
Total	8	9	0					

*Based on 40 CFR Part 58 Appendix D: Tables D-4 and D-5; sections 4.2, 4.3.2, 4.3.3, 4.4.2 and 4.5, additional monitoring for criteria pollutants is not presently required. Additionally, based on the 2008 Lead NAAQS Final Rule, 2010 SO₂ NAAQS Final Rule and the 2010 NO₂ NAAQS Final Rule, NDEP is not required to monitor for these criteria pollutants.

Changes in Monitoring Network

Over the next 12 months, two significant changes will occur throughout the monitoring network that will impact data submittal for the 2012 year. NDEP will be relocating the ozone monitor currently located at the Carson City Maintenance Yard, to a comparable location 2.5 miles west at a vacant lot with access from Carson Street. This move is necessitated by the city of Carson City re-purposing use of this location. Currently, there are plans and agreements for NDEP to begin moving equipment to this new site with objective to gain 9 months of collocated data until March 2013, which is the approximate date that the NDEP must move from the Carson City Maintenance Yard. The USEPA will be notified when data collection and submittal at the new monitoring site is commenced. The second change will be the removal of the Stateline CO monitor. The NDEP plans to discontinue CO monitoring

at Stateline (located at Harvey's Resort and Hotel on Hwy 50) by June 30, 2012. The NDEP concludes that 33 years of clean data, all of it under 80 percent of the NAAQS and most recently at 34 percent, with on-going downward trends is sufficient evidence of continued attainment through 2024 and satisfies 40 CFR 58.14 requirements for discontinuance.

In 2011, NDEP was informed that we had to relocate our PM₁₀ monitor located at the Manse School in Pahrump due to the school closing. In February 2011, NDEP submitted a letter to the EPA requesting approval to relocate the monitor. In March of 2011, NDEP received approval to move the existing monitor to the Nye County School District building. However, the Pahrump School District found a new use for the school allowing NDEP to remain at the existing site. At this time, NDEP will continue to monitor at the Manse School. If needed, NDEP has access to the Nye County School District building for our back-up site.

For the next year, NDEP will be evaluating the need to establish a PM_{2.5} monitoring network. Over the next five years, through 2017, NDEP will evaluate our current network to determine if any new sites or monitors need to be added to the existing monitoring network.

Purpose of Monitors

The purpose of the Nevada Air Monitoring Network is to provide useful and accurate information on air quality, which is used to evaluate the success of the State's air quality programs. To accomplish this task, the NAAQS is used to identify the criteria pollutants: CO (Carbon Monoxide), Pb (Lead), NO₂ (Nitrogen Dioxide), O₃ (Ozone), particulate matter (PM₁₀ and PM_{2.5}), and SO₂ (Sulfur Dioxide). Measuring pollutant concentrations in outdoor air and comparing the measured concentrations to corresponding standards help to classify ambient air quality status of an area as either attainment or nonattainment. The NAAQS is broken down into primary and secondary standards. Primary standards are those established to protect public health. Secondary standards are those established to protect the public welfare from adverse pollution effects on soils, water, vegetation, man-made materials, animals, weather, visibility, climate, property, and the economy. The scientific criteria upon which the standards are based are reviewed periodically by the USEPA, who may reestablish or change the standards according to its findings.

A pollutant measurement that is greater than the ambient air quality standard for its specific averaging time is called an exceedance. This is not necessarily a synonym for a violation; for each pollutant there are specific rules about how many exceedances are allowed in a given time period before a pattern of exceedances is considered to be a violation of the NAAQS. A violation may result in regulatory action to clean-up the area's air. Exceptions are made to allow for certain limited exceedances of the standard that may occur, for example, during an unusual weather pattern or wildfire (exceptional events). Regulatory action is typically reserved for cases where the exceedances are too large or too frequent.

Historically, ambient air quality monitoring by BAQP has looked at trends in air quality to aid in the local planning process. Traffic, wood burning stoves, and growth related activities have prompted air quality monitoring in specific areas around the State. Data from these sites has led to public education and outreach to communities identifying the potential health effects caused by air pollutants in the environment. Ordinances controlling surface area disturbances and other related activities that produce dust have also been implemented with the help of the monitoring sites.

Overview of Monitored Parameters

Carbon Monoxide (CO)

CO is a poisonous gas that, when introduced into the bloodstream, inhibits the delivery of oxygen to body tissue. The health risk is greatest for individuals with cardiovascular disease.

Ozone (O₃)

Ground-level ozone, or photochemical smog, is not emitted into the atmosphere as ozone, but rather is formed by the reactions of other pollutants. The primary pollutants entering into this reaction, VOCs and oxides of nitrogen, create ozone in the presence of sunlight. Ozone is a strong irritant of the upper respiratory system and also causes damage to crops.

Particulate Matter (PM₁₀)

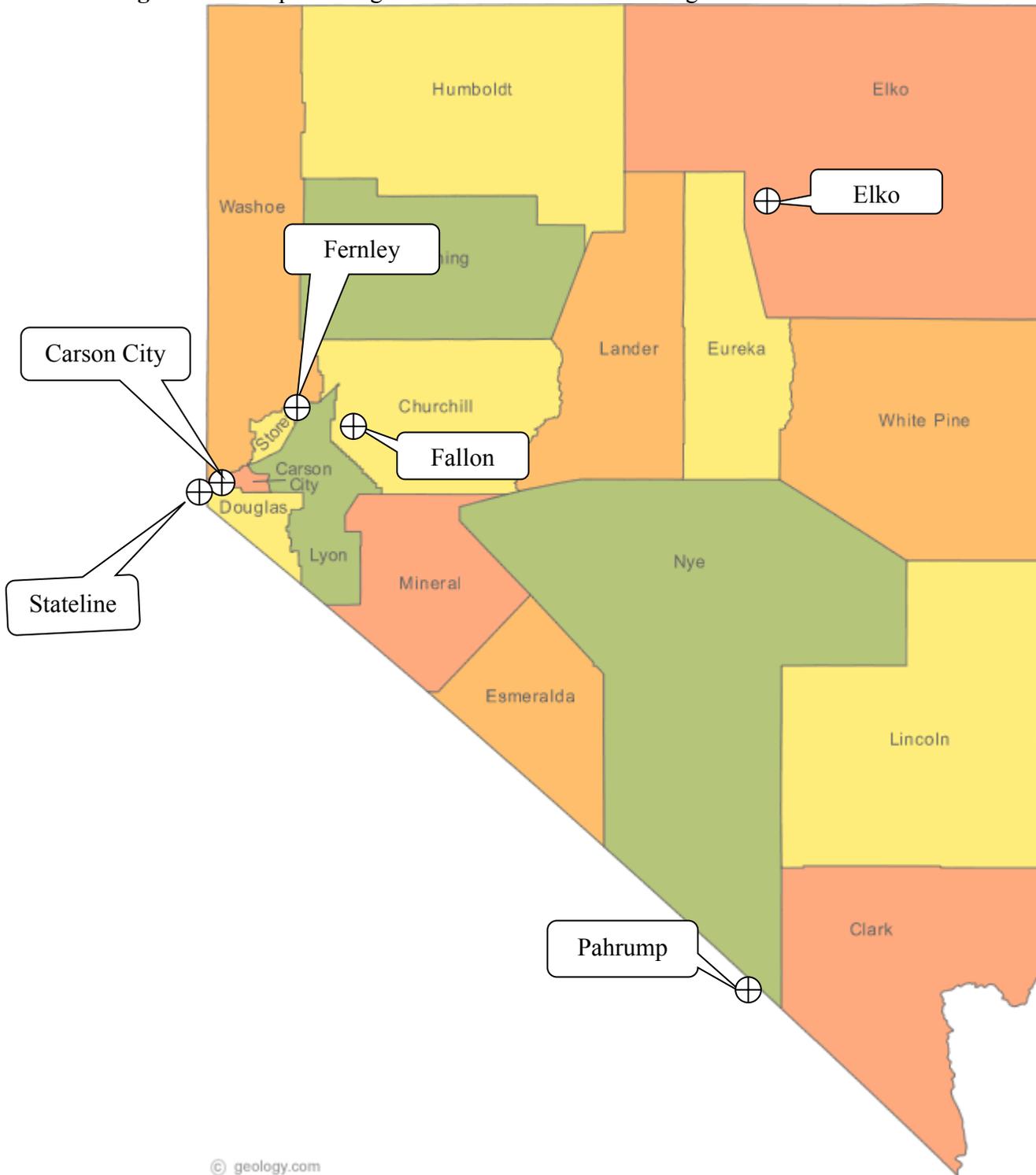
Particulate matter with an aerodynamic diameter of 10 microns or less is emitted from transportation and industrial sources. Exposure to particle pollution is linked to a variety of significant health problems ranging from aggravated asthma to premature death in people with heart and lung disease.

Fine Particulate Matter (PM_{2.5})

Fine particulate matter with a diameter of 2.5 microns or less is created primarily from industrial processes and fuel combustion. These particles are breathed deeply into the lungs. Exposure to particle pollution is linked to a variety of significant health problems ranging from aggravated asthma to premature death in people with heart and lung disease.

Site Map

Figure 1: A map showing the locations of the monitoring stations maintained in NDEP's network.



¹ Map template from:
<http://geology.com/state-map/maps/nevada-county-map.gif>

Elko: Detailed Site Information

Prior to 1992 the location for this sampler was the fire station at 723 Railroad Street (ID #32-007-003) in a commercial area. In November of 1992 this continuous PM₁₀ monitoring site was relocated to the roof of the State offices at 850 Elm Street in a predominantly residential area. The monitoring objective was to determine typical concentration/population oriented. The manual sampler was replaced with a continuous (TEOM) PM₁₀ monitor in December 1998. In September 2008, the TEOM monitor was closed and a new BAM 1020 monitor was sited at the Elko Grammar School #2.

Site Name	Elko
AQS ID	32-007-0005
GIS Coordinates	Lat +40.838350 Long -115.766029
Location	Elko Grammar School #2
Address	1055 7th Street
County	Elko
Distance to Road	18 Meters
Traffic Count	1400 AADT (2009) Station #0070203
Groundcover	Asphalt
Representative Area	Elko MSA
Pollutant	PM10 /81102
Monitor Objective	Typ. Conc./Population Oriented
Spatial Scale	Neighborhood
Sampling Method	Met One BAM-1020
Analysis Method	EQPM-0798-122
Start Date	09/25/2008
Operation Schedule	Continuous
Sampling Season	All Year
Probe Height	2.6 Meters
Dist. fm. supporting structure	Vertical Distance =1.2 meters
Dist. fm. obstructions on roof	N/A
Distance fm. trees	27 Meters
Distance to furnace or incinerator flue	N/A
Unrestricted airflow	360 degrees
Probe material	N/A
Residence time	N/A
Changes in the next 18 months?	No
Suitable for PM 2.5 comparison?	N/A
Frequency of flow rate verification	Monthly
Frequency of one point QC check (gaseous)	N/A
Last Annual Performance Evaluation (Gaseous)	N/A
Last two semi-annual flow rate audits for PM	12/12/11 05/02/2012

Figure 2: Elko Grammar School #2, 1055 7th Street, Elko, NV. PM 10 Monitor

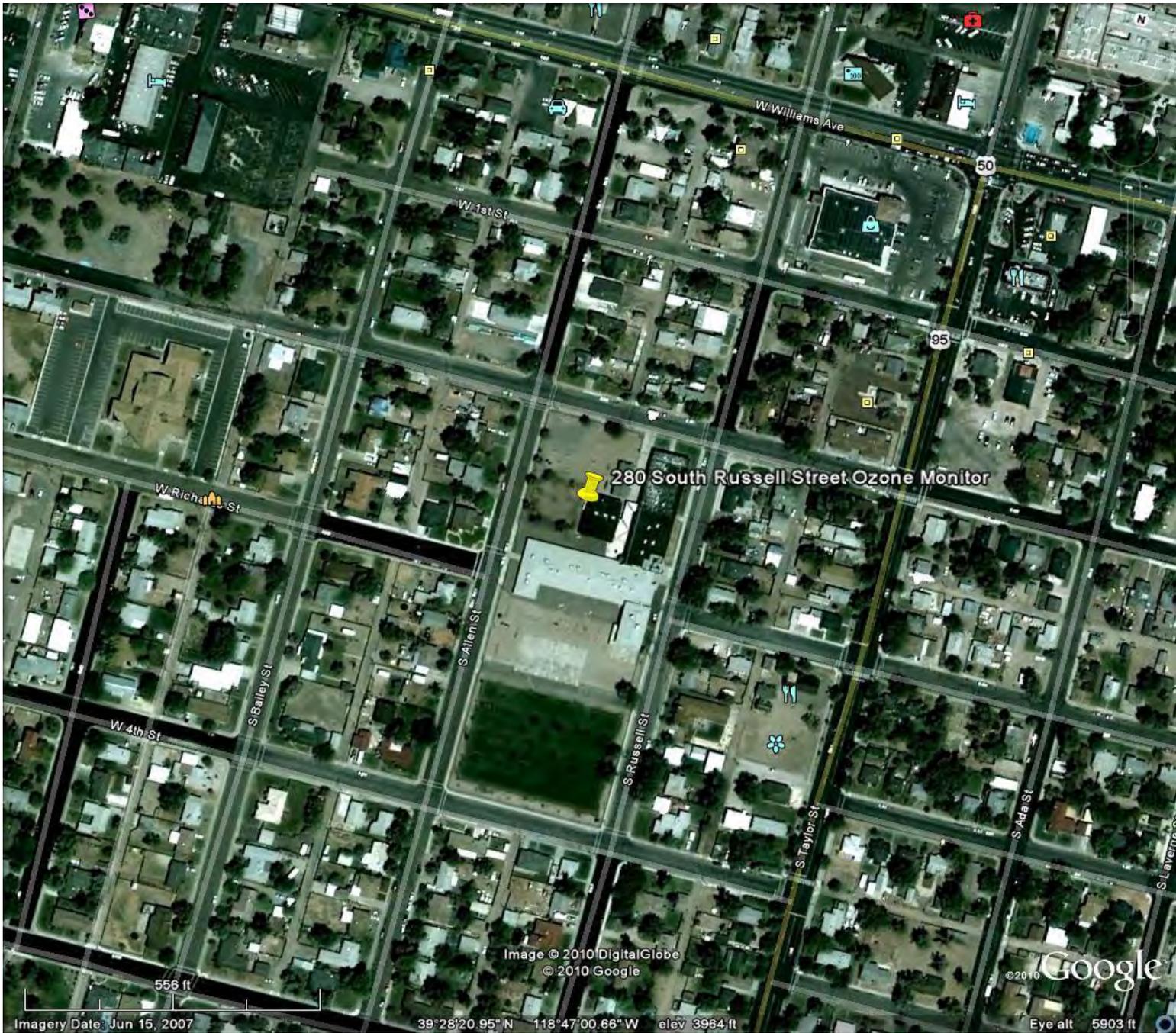


Fallon: Detailed Site Information

The ozone monitoring site at 280 South Russell Street is at the West End Elementary School in a residential neighborhood that may be affected by agricultural operations surrounding the City of Fallon. The monitoring objective is to determine typical concentration/population orientation. PM₁₀ sampling commenced at this site in May 1993 and was discontinued at the end of June 1998. Monitoring for ozone began in October 1999 as an ozone transport site downwind of Reno and Fernley

Site Name	Fallon
AQS ID	32-001-0002
GIS Coordinates	Lat +39.472471 Long -118.783624
Location	West End of Elementary School
Address	280 South Russell Street
County	Churchill
Distance to Road	65 Meters
Traffic Count	410 AADT (2009) Station #0010135
Groundcover	Dirt and Gravel
Representative Area	Fallon MSA
Pollutant	O3/44201
Monitor Objective	Typ. Conc./Population Oriented
Spatial Scale	Neighborhood
Sampling Method	Teledyne API Model 400E
Analysis Method	EQOA-0992-087
Start Date	10/01/1999
Operation Schedule	Seasonal
Sampling Season	April thru October
Probe Height	3.2 Meters
Dist. fm. supporting structure	1 meter from wall
Dist. fm. obstructions on roof	N/A
Distance fm. Trees	Greater than 10 meters
Distance to furnace or incinerator flue	N/A
Unrestricted airflow	180 Degrees
Probe material	Teflon
Residence time	10 seconds
Changes in the next 18 months?	No
Suitable for PM 2.5 comparison?	N/A
Frequency of flow rate verification	N/A
Frequency of one point QC check (gaseous)	Semi-monthly
Last Annual Performance Evaluation (Gaseous)	09/22/2011
Last two semi-annual flow rate audits for PM	N/A

Figure 3: West End Elementary School, 280 S. Russell Street, Fallon, NV. Ozone Monitor



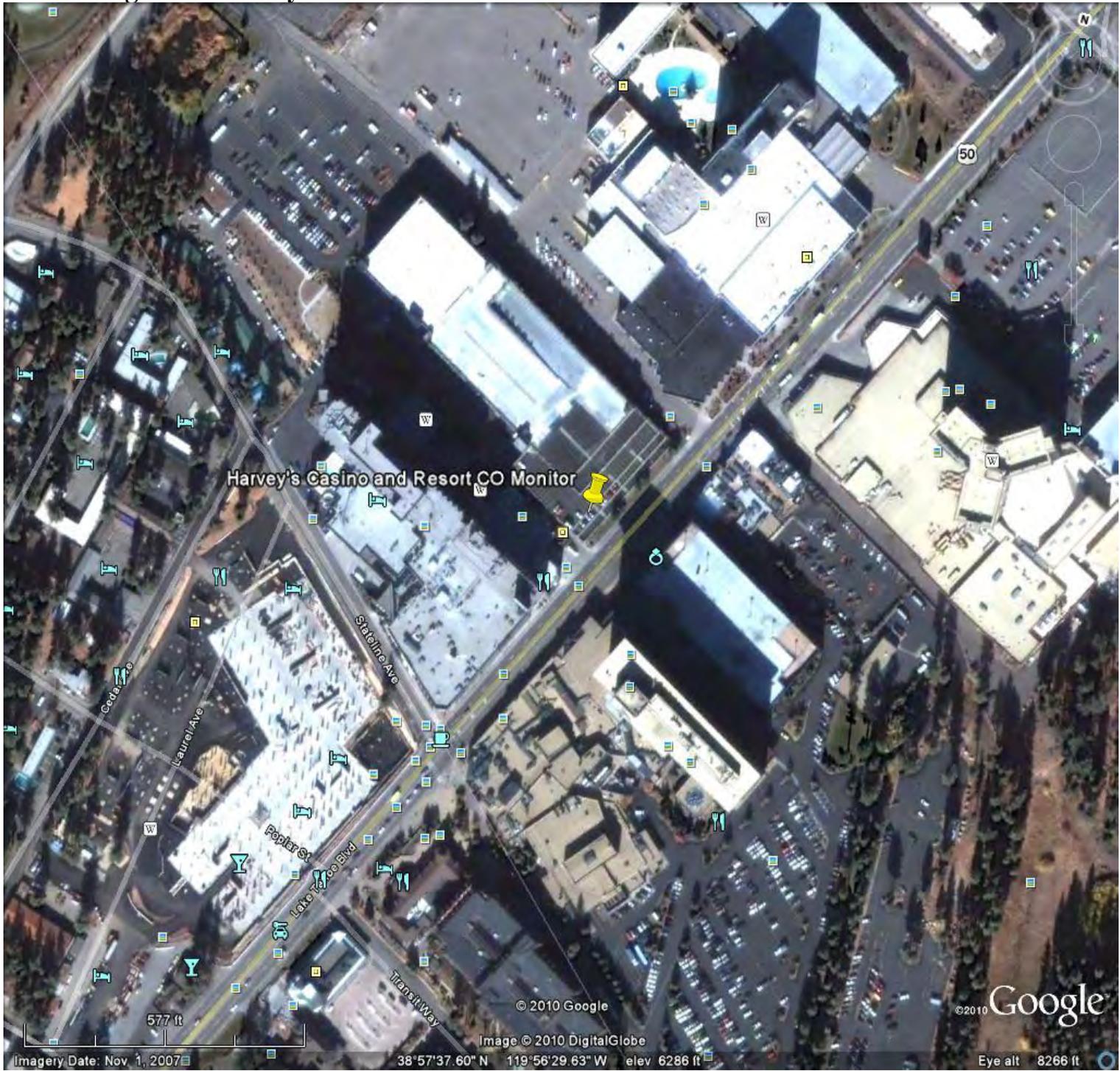
Harvey's Casino and Resort: Detailed Site Information

This is a "micro-scale" monitoring site for carbon monoxide in the core of the Stateline casino hotel area at Lake Tahoe. The site is designed to monitor the highest CO concentrations at Lake Tahoe, and is, taken to be representative of the California and Nevada sides of the south shore casino district. Monitoring at this site began in October 1999 and was previously conducted by the California Air Resources Board by multi-agency cooperative agreement. Starting in July of 2006, NDEP took over the monitoring responsibility for this site under a maintenance agreement with EPA.

Site Name	Harvey's Casino and Resort
AQS ID	32-005-0009
GIS Coordinates	Lat +38.960579 Long -119.941351
Location	1st Level of parking garage facing HWY
Address	Stateline NV 89449
County	Douglas
Distance to Road	9 Meters
Traffic Count	24,000 AADT (2009) Station # 0050044
Groundcover	Paved, asphalt and grass
Representative Area	Sacramento-Arden Arcade-Truckee CSA or rural MSA

Pollutant	CO/42101
Monitor Objective	Highest Concentration
Spatial Scale	Micro
Sampling Method	API Teledyne 300M
Analysis Method	N/A
Start Date	10/01/1999
Operation Schedule	Continuous
Sampling Season	All Year
Probe Height	2.5 Meters
Dist. fm. supporting structure	1 Meter Horizontally
Dist. fm. obstructions on roof	N/A
Distance fm. trees	4 Meters
Distance to furnace or incinerator flue	N/A
Unrestricted airflow	180 Degrees
Probe material	Teflon
Residence time	5 Seconds
Changes in the next 18 months?	Yes (Discontinuation)
Suitable for PM 2.5 comparison?	N/A
Frequency of flow rate verification	N/A
Frequency of one point QC check (gaseous)	Semi-monthly
Last Annual Performance Evaluation (Gaseous)	03/26/2012
Last two semi-annual flow rate audits for PM	N/A

Figure 4: Harvey's Casino and Resort Lake Tahoe NV. CO Monitor



Fernley Intermediate School: Detailed Site Information

Ozone monitoring is done at the Fernley Intermediate School which is located at 320 Hardie Lane. This is an area of mainly residential and agricultural use. There has recently been a large growth of industry both upwind and downwind of this site. Monitoring for PM₁₀ at this site commenced on May 1995, to determine the agricultural and industrial source impacts and population exposure. PM₁₀ sampling was discontinued in November 1998. Ozone monitoring began at this site July 2007. However, ozone monitoring (SPMS) was previously conducted at the Fernley Volunteer Fire Department starting in October 1997 and discontinued on October 2003.

Site Name	Fernley
AQS ID	32-019-0006
GIS Coordinates	Lat +39.602787 Long -119.247741
Location	Fernley Intermediate School
Address	320 Hardie Lane
County	Lyon
Distance to Road	119 Meters
Traffic Count	1300 AADT (2009) Station # 0190119
Groundcover	Paved, cement, gravel and dirt
Representative Area	Rural (Micropolitan Statistical Area)
Pollutant	O3/44201
Monitor Objective	Typ. Conc./Population Oriented
Spatial Scale	Urban
Sampling Method	Teledyne API Model 400E
Analysis Method	EQOA-0992-087
Start Date	07/06/2007
Operation Schedule	Continuous
Sampling Season	April to October
Probe Height	7 Meters
Dist. fm. supporting structure	Vertical Distance above 2.1 Meters
Dist. fm. obstructions on roof	N/A
Distance fm. trees	15 Meters
Distance to furnace or incinerator flue	N/A
Unrestricted airflow	360 Degrees
Probe material	Teflon
Residence time	4 Seconds
Changes in the next 18 months?	No
Suitable for PM 2.5 comparison?	N/A
Frequency of flow rate verification	N/A
Frequency of one point QC check (gaseous)	Semi-monthly
Last Annual Performance Evaluation (Gaseous)	09/22/2011
Last two semi-annual flow rate audits for PM	N/A

Figure 5: Fernley Intermediate School, 320 Hardie Lane Fernley NV PM 2.5/Ozone Monitor

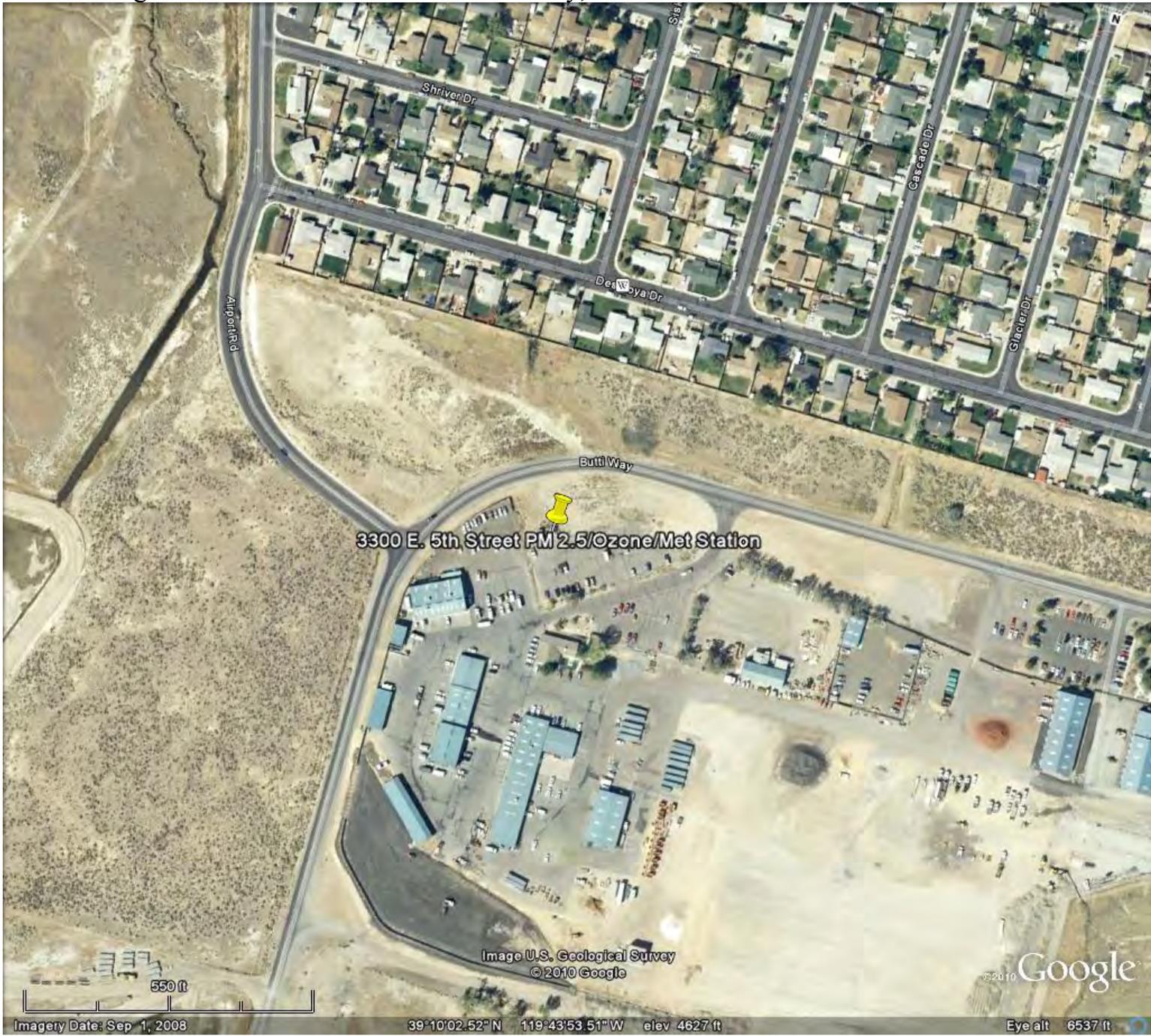


3300 E. 5th Street: Detailed Site Information

This site is located at 3300 East Fifth Street near the Carson City Public Works Department maintenance yard in a transition area, adjacent to wetlands, the City yard, sewage treatment plant, residential neighborhood and the new highway extension of US 395. The pollutants monitored included carbon monoxide and ozone (through 1989) and PM₁₀ (March 1991- February 1997). The monitoring objective is to determine typical concentration/population oriented. In 2007, an existing meteorological station was restarted, and as previously stated, the ozone monitor from Long Street site was relocated to East Fifth Street. At the end of 2009, the PM_{2.5} was relocated to this monitoring site.

Site Name	East 5th. Street	
AQS ID	32-510-0002	
GIS Coordinates	Lat +39.167247 Long -119.731702	
Location	Carson City	
Address	3300 East 5th Street	
County	Carson	
Distance to Road	10 Meters	
Traffic Count	3,500 AADT (2009) Station #0250116	
Groundcover	Dirt – Asphalt Parking Lot	
Representative Area	Carson City MSA	
Pollutant	Ozone/44201	
Monitor Objective	Typ. Conc./ Population Oriented	
Spatial Scale	Neighborhood	
Sampling Method	Teledyne API Model 400E	
Analysis Method	EQOA-0992-087	
Start Date	1/1/1989	
Operation Schedule	April – October	
Sampling Season	Seasonal	
Probe Height	10 Meters	
Dist. fm. supporting structure	Vertical distance above 7 meters	
Dist. fm. obstructions on roof	N/A	
Distance fm. trees	N/A	
Distance to furnace or incinerator flue	N/A	
Unrestricted airflow	360 Degrees	
Probe material	Teflon	
Residence time	6 Seconds	
Changes in the next 18 months?	Yes	
Suitable for PM 2.5 comparison?	N/A	
Frequency of flow rate verification	N/A	
Frequency of one point QC check (gaseous)	Semi-monthly	
Last Annual Performance Evaluation (Gaseous)	9/28/2011	
Last two semi-annual flow rate audits for PM	N/A	

Figure 6: 3300 E. Fifth Street Carson City, NV Ozone/Met Site



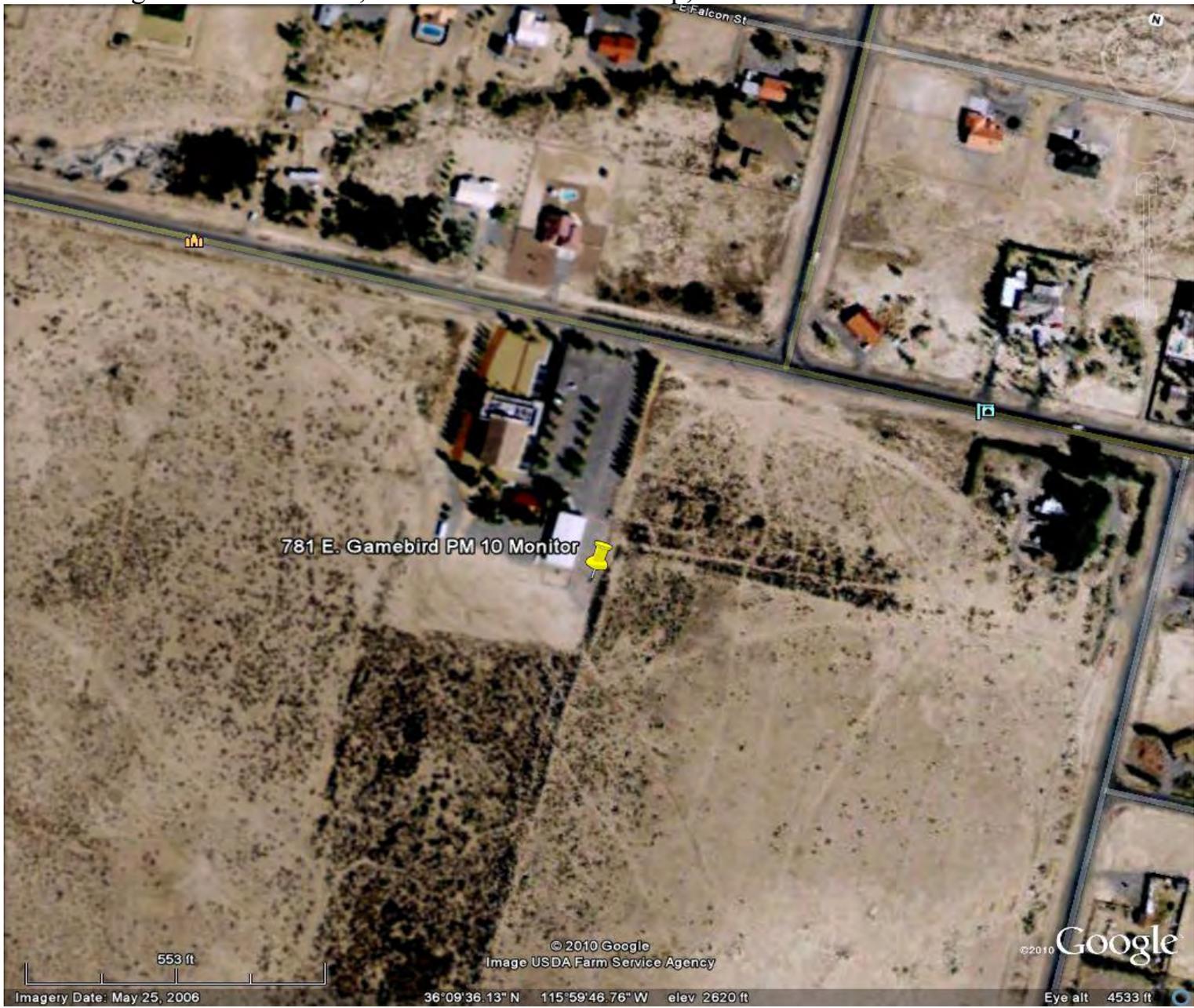
Church: Detailed Site Information

The Church Site began operation in 2004 to complement the existing three other sites in the Pahrump monitoring network. Monitoring is accomplished with a continuous beta attenuated monitor located in the southeast corner of the Catholic Church. This site represents the southern-most monitoring in Pahrump Valley. The monitoring objective of this site is a significant source of PM₁₀. The surrounding area represents residential with little commercial, some native desert with a mix of dirt and paved roads.

Site Name	Church
AQS ID	32-023-0013
GIS Coordinates	Lat + 36.159639 Long -115.996263
Location	Pahrump
Address	781 E. Gamebird
County	Nye
Distance to Road	100 Meters
Traffic Count	1,100 AADT (2009) Station #0230010
Groundcover	Desert
Representative Area	Pahrump MSA; Las Vegas – Paradise – Pahrump MSA

Pollutant	PM10/81102
Monitor Objective	Significant Sources – Dry lake bed 6 miles to the south
Spatial Scale	Urban
Sampling Method	Met One BAM 1020
Analysis Method	EQPM-0798-122
Start Date	2/14/2004
Operation Schedule	Continuous
Sampling Season	All Year
Probe Height	4 Meters
Dist. fm. supporting structure	Vertical distance above 2 meters
Dist. fm. obstructions on roof	N/A
Distance fm. trees	50Meters
Distance to furnace or incinerator flue	N/A
Unrestricted airflow	360 Degrees
Probe material	Aluminum
Residence time	N/A
Changes in the next 18 months?	No
Suitable for PM 2.5 comparison?	N/A
Frequency of flow rate verification	Monthly
Frequency of one point QC check (gaseous)	N/A
Last Annual Performance Evaluation (Gaseous)	N/A
Last two semi-annual flow rate audits for PM	11/3/2011 5/7/2012

Figure 7: Church Site, 781 E. Gamebird Pahrump, NV PM 10 Monitor



Manse Elementary: Site Detailed Information

The Manse site represents the monitoring objective for highest concentrations of PM₁₀ in Pahrump. This site replaces the Community Pool site, which at the time it was operating, represented the highest concentrations of PM₁₀ in Pahrump. Located at 1020 E. Wilson Road, the Manse Elementary site is located on the roof of the school and monitors for PM₁₀ using the continuous beta attenuation monitor. The area adjacent to this site represents mostly commercial, some residential, and is adjacent to the busiest activity area of Pahrump. This site is located downwind from residential construction developments that have cleared large parcels of ground for building, as well as agricultural areas that cultivate large areas of farm-ground and raise livestock. Roads surrounding this site are both paved and dirt.

Site Name	Manse Elementary
AQS ID	32-023-0014-81102-1
GIS Coordinates	Lat +36.212787 Long -115.994802
Location	Pahrump
Address	1020 E. Wilson Road
County	Nye
Distance to Road	50 Meters
Traffic Count	11,000 AADT (2006) Station #0230006
Groundcover	Gravel Schoolyard
Representative Area	Pahrump MSA; Las Vegas – Paradise – Pahrump MSA

Pollutant	PM10/81102
Monitor Objective	Highest Concentrations
Spatial Scale	Neighborhood
Sampling Method	Met One BAM 1020
Analysis Method	EQPM-0798-122
Start Date	11/17/2005
Operation Schedule	Continuous
Sampling Season	All Year
Probe Height	3.0 Meters
Dist. fm. supporting structure	Vertical distance above 1 meter
Dist. fm. obstructions on roof	N/A
Distance fm. trees	10 Meters
Distance to furnace or incinerator flue	N/A
Unrestricted airflow	360 Degrees
Probe material	Aluminum
Residence time	N/A
Changes in the next 18 months?	No
Suitable for PM 2.5 comparison?	N/A
Frequency of flow rate verification	Monthly
Frequency of one point QC check (gaseous)	N/A
Last Annual Performance Evaluation (Gaseous)	N/A
Last two semi-annual flow rate audits for PM	11/3/2011 5/7/2012

Figure 8: Manse Elementary, 1020 E. Wilson Road Pahrump, NV PM 10 Monitor



Glen Oaks: Site Detailed Information

The Willow Creek site was started in 2003 and was located at 1500 Red Butte on the roof of a building in which irrigation equipment for the golf course is housed. The monitoring objective of this site was to measure typical concentrations/population oriented of PM₁₀ using the beta attenuated monitor. The surrounding area adjacent to this site is fairway/golf course and residential structures. Due to closure of the golf course, the Willow Creek site was relocated to the Glen Oaks sewer treatment plant in 2009. The Glen Oaks site is a short distance away from the existing golf course site and the monitoring objective did not change.

Site Name	Glen Oaks
AQS ID	32-023-0012
GIS Coordinates	Lat +36.193469 Long -116.007584
Location	Pahrump
Address	145 Glen Oaks St.
County	Nye
Distance to Road	200 Meters
Traffic Count	1,100 AADT (2009) Station #0230010
Groundcover	Grass/Gravel
Representative Area	Pahrump MSA; Las Vegas – Paradise – Pahrump MSA

Pollutant	PM10/81102
Monitor Objective	Typ. Conc./ Population Oriented
Spatial Scale	Neighborhood
Sampling Method	Met One BAM 1020
Analysis Method	EQPM-0798-122
Start Date	11/20/2003
Operation Schedule	Continuous
Sampling Season	All Year
Probe Height	6.0 Meters
Dist. fm. supporting structure	Vertical distance above 2 meters
Dist. fm. obstructions on roof	N/A
Distance fm. trees	12 Meters
Distance to furnace or incinerator flue	N/A
Unrestricted airflow	360 Degrees
Probe material	Aluminum
Residence time	N/A
Changes in the next 18 months?	No
Suitable for PM 2.5 comparison?	N/A
Frequency of flow rate verification	Monthly
Frequency of one point QC check (gaseous)	N/A
Last Annual Performance Evaluation (Gaseous)	N/A
Last two semi-annual flow rate audits for PM	11/3/2011 5/7/2012

Figure 9: 145 Glen Oaks St., Pahrump, NV PM10 Monitor



Linda Street: Site Detailed Information

The Linda Street site was started in 2003 and is located at 8825 North Linda Street. The beta attenuated monitor is located on the roof of an old railroad box car and represents not only the northern-most site in the Pahrump monitoring network, but the most rural area. There is some residential surrounding this site, but mainly native desert vegetation with little or no surface disturbances. The monitoring objective for this site is general background levels of PM₁₀ in Pahrump.

Site Name	Linda Street
AQS ID	32-023-0011-81102-1
GIS Coordinates	Lat +36.349408 Long -116.031976
Location	Pahrump
Address	8825 N. Linda
County	Nye
Distance to Road	20 Meters
Traffic Count	2,200 AADT (2008) Station #0230008
Groundcover	Desert
Representative Area	Pahrump MSA; Las Vegas – Paradise – Pahrump MSA

Pollutant	PM10/81102
Monitor Objective	General Background
Spatial Scale	Urban
Sampling Method	Met One BAM 1020
Analysis Method	EQPM-0798-122
Start Date	5/3/2003
Operation Schedule	Continuous
Sampling Season	All Year
Probe Height	6.7 Meters
Dist. fm. supporting structure	Vertical distance above roof 3 meters
Dist. fm. obstructions on roof	N/A
Distance fm. trees	10 Meters
Distance to furnace or incinerator flue	N/A
Unrestricted airflow	360 Degrees
Probe material	Aluminum
Residence time	N/A
Changes in the next 18 months?	No
Suitable for PM 2.5 comparison?	N/A
Frequency of flow rate verification	Monthly
Frequency of one point QC check (gaseous)	N/A
Last Annual Performance Evaluation (Gaseous)	N/A
Last two semi-annual flow rate audits for PM	11/3/2011 5/7/2012

Figure 10: 8825 N. Linda Pahrump, NV PM 10 Monitor



Appendix A.
Ozone Seasonality Approval Letter



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

FEBRUARY 6, 2002

Mr. Chester Sergent, Supervisor
Ambient Air Monitoring Branch
Bureau of Air Quality Planning
Division of Environmental Protection
Department of Conservation and Natural Resources
333 W. Nye Lane, Room 138
Carson City, NV 89706

Dear Mr. ^{Chest}Sergent:

I have received your letter of January 29, 2002 requesting permission to adjust the ozone monitoring season from year round to April 1 through October 31. We have reviewed the information you provided and approve your request to reduce the ozone monitoring season.

One issue that needs to be addressed is ensuring that EPA's AIRS database is updated to reflect this change in the ozone monitoring season. Failure to do so will result in AIRS showing incomplete ozone data capture rates for the Carson City, Fernley and Fallon monitoring sites. Please have your staff contact our AIRS database manager, Jim Forrest, at (415) 947-4135 to discuss the appropriate procedure for making this change. Please feel free to contact me at (415) 947-4128 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "R. S. Pallarino".

Robert S. Pallarino
Technical Support Office
Air Division

cc: Colleen Cripps, DCNR/DEP
Jim Forrest, US EPA

STEVE

RECEIVED
FEB 13 2002
AIR DIVISION

**Appendix B.
Manse PM10 Monitor Relocation Approval**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901
MAR 22 2011

Nevada
Environmental Protection

MAR 25 2011

BAPC/BAQP

RECEIVED

MAR 25 2011

ENVIRONMENTAL PROTECTION

Mr. Daren Winkelman, Supervisor
Ambient Air Quality Monitoring Program
Bureau of Air Quality Planning
Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, NV 89701

RE: Response to discontinuation and relocation request of Manse Elementary SLAMS PM₁₀ monitor (AQS ID: 32-023-0014-81102-1)

Dear Mr. Winkelman: ^{Daren}

On February 24, 2011 we received your official request for the discontinuation of the PM₁₀ monitor at Manse Elementary School (AQS ID: 32-023-0014-81102-1) and the subsequent relocation of the PM₁₀ monitor to the nearby Nye County School District office.

After a visit to the proposed relocation site and upon our review of the documentation you have provided, pursuant to 40 CFR 58.14, we approve your selection of the Nye School District building for replacement of the current Manse Elementary School site. Specifically, we have determined that your request meets the provisions under 40 CFR 58.14(c)(6), namely that logistical problems beyond NDEP's control make it impossible to continue operation at the current site and that the replacement site is a nearby location with the same scale of representation. We request that you list the official site address as 208 Dahlia Street, Pahrump, NV 89048 with GPS coordinates (in decimal degrees): 36.212989, -115.996875.

Thank you for your cooperation throughout this process and please feel free to contact Elfego Felix (415) 947-4141 from my staff or myself (415) 972-3851 with any questions or concerns in regards to this matter.

Sincerely,

Matthew Lakin, Manager
Air Quality Analysis Office

Appendix C. Comment Submittal Information

The proposed 2012 Ambient Air Monitoring Network Plan is posted on the NDEP website for review and comment for thirty (30) days.

Comments may be emailed to
Daren Winkelman (dwinkelman@ndep.nv.gov)
or mailed to,
Daren Winkelman
Ambient Monitoring Program
Bureau of Air Quality Planning
901 S. Stewart Street, Suite 4001
Carson City, Nevada 89701



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

February 28, 2013

Mr. Rob Bamford, Chief
Bureau of Air Quality Planning
Nevada Division of Environmental Protection
901 S. Stewart, Suite 4001
Carson City, NV 89701

Dear Mr. Bamford:

Thank you for your submission of the State of Nevada, Division of Environmental Protection, Bureau of Air Quality Planning's 2012 Ambient Air Monitoring Network Plan in July 2012. Based on the information provided in the Plan, EPA approves NDEP's 2012 Plan, except for the five specific items listed in Attachment B where we are not taking action. On December 11, 2012 EPA also approved and provided a separate notification for the relocation of State and Local Air Monitoring Station (SLAMS) ozone monitoring at 3300 E. 5th Street (Site ID: 32-510-0002) to 2601 S. Carson Street in Carson City, NV.

Annual network plans are important documents for regulatory purposes (e.g., State Implementation Plans, designations and redesignations) and public information, in addition to the myriad uses by the air districts. EPA is revising the review process for annual network plans to specifically check and document the comprehensive set of items that are required to be included in the annual network plans per 40 CFR 58.10 in a consistent manner. We have created a checklist that lists all these items and have included it as Attachment A. While the items in the checklist are required by EPA regulations, we acknowledge that we have not specifically requested some of this information in previous annual network plan reviews. We recognize that your plan may not have all the items that we have currently identified and hope to work with you on the inclusion of these items in future plans. To facilitate these changes, EPA has provided detailed feedback in the checklist where information should be included or revised in next year's plan.

Please note that we cannot approve portions of the annual network plan for which the information in the plan is insufficient to judge whether the requirement has been met, or for which the information, as described, does not meet the requirements as specified in 40 CFR 58.10 and the associated appendices. Accordingly, we are not acting on the specific portions of your agency's annual network plan listed in Attachment B.

In addition to the checklist and list of specific plan elements where EPA Region 9 is not taking action, enclosed are additional detailed comments on the plan (Attachment C). All of the comments in Attachments A, B, and C should be addressed in next year's network plan.

EPA also received the comments provided on NDEP's plan by Mr. John Mosley, Environmental Director of the Pyramid Lake Paiute Tribe. EPA supports Mr. Mosley's suggestion that in NDEP's evaluation of their PM_{2.5} network, it would be a good idea to examine concentrations from nearby monitoring that has recently been conducted. Although this suggestion does not require a change to NDEP's current network plan, we recommend addressing the recommendation as part of NDEP's next 5-year network assessment.

If you have any questions regarding this letter or the enclosed comments, please feel free to contact me at (415) 972-3851 or Elfego Felix at (415) 947-4141.

Sincerely,

/s/

Matthew Lakin, Manager
Air Quality Analysis Office

Enclosures:

- A. Annual Air Monitoring Network Plan Checklist
- B. Elements where EPA is Not Taking Action
- C. Additional Detailed Comments

cc: Daren Winkelman, NDEP
Mike Elges, NDEP

Attachment A: Annual Air Monitoring Network Plan Checklist

Year: 2012

Agency: Nevada Division of Environmental Protection: Bureau of Air Quality Planning

40 CFR 58.10(a)(1) requires that each Annual Network Plan (ANP) include information regarding the following types of monitors: SLAMS monitoring stations including FRM, FEM, and ARM monitors that are part of SLAMS, NCore stations, STN stations, State speciation stations, SPM stations, and/or, in serious, severe and extreme ozone nonattainment areas, PAMS stations, and SPM monitoring stations.

40 CFR 58.10(a)(1) further directs that, "The plan shall include a statement of purposes for each monitor and evidence that siting and operation of each monitor meets the requirements of appendices A, C, D, and E of this part, where applicable." On this basis, review of the ANPs is based on the requirements listed in 58.10 along with those in Appendices A, C, D, and E.

Please note that this checklist summarizes many of the requirements of 40 CFR Part 58, but does not substitute for those requirements, nor do its contents provide a binding determination of compliance with those requirements. The checklist is subject to revision in the future and we welcome comments on its contents and structure.

Key:

White = meets the requirement

Grey = Requirement not applicable for this year's plan

Yellow = does not meet or cannot judge the requirement – action requested in next year's plan or outside the ANP process

Green = meets the requirement but action requested to improve next year's plan

	ANP requirement	Citation within 40 CFR 58	Was the info submitted? ¹ If yes, page #s. Flag if incorrect ² ?	Does the information provided ³ meet the req? ⁴	Notes
1.	Submit plan by July 1 st	58.10 (a)(1)	Yes	Yes.	Electronic plan submitted on July 2, please aim to submit by or prior to July 1.
2.	Statement of purpose for each monitor	58.10 (a)(1)	Yes, p.10-26	Yes	
3.	30-day public comment / inspection period	58.10 (a)(1), 58.10 (a)(2)	Yes, cover letter & p.30	Yes	
4.	Modifications to SLAMS network – case when we are not approving actual system modifications (i.e., we will do it outside the ANP process ⁵)	58.10 (a)(2) 58.10(e)	Yes, p.5-6	Yes	-At this time, EPA is not acting on the approval of the Harvey's Stateline CO monitor closure because it is the last monitor in the maintenance area and under 40 CFR 58.14(c)(3), a SIP with a specific reproducible approach to monitoring must first be approved. -EPA approves the Carson City site relocation from 3300 East 5 th Street to 2601 S. Carson Street. A separate letter documenting this approval was emailed on 12/12/2012 and should be referenced in next year's plan.
5.	Modifications to SLAMS network – case when we are approving actual system modifications per 58.14(c)	58.10 (a)(2) 58.10 (b)(5) 58.10(e) 58.14 (c)	N/A	N/A- no such modifications were found in EPA's review.	
6.	Does plan include documentation (e.g., attached approval letter) for system modifications that have been approved since last ANP approval?		Yes, p.29	Yes	
7.	NCore plan submitted to Admin. by 7/1/2009	58.10 (a)(3)	N/A		
8.	NCore site operational by 1/1/2011	58.10 (a)(3)	N/A	N/A- NDEP does not operate an NCore site.	
9.	Pb plan for ≥1.0 tpy sources submitted by 7/1/2009	58.10 (a)(4)	N/A		

¹ Response options: N/A (Not Applicable), Yes, No, Incomplete, Incorrect. The responses "Incomplete" and "Incorrect" assume that some information has been provided.

² To the best of our knowledge.

³ Assuming the information is correct

⁴ Response options: N/A (Not Applicable) – [reason], Yes, No, Insufficient to Judge.

⁵ See 58.14(c)

	ANP requirement	Citation within 40 CFR 58	Was the info submitted?¹ If yes, page #s. Flag if incorrect²?	Does the information provided³ meet the req?⁴	Notes
10.	Pb site for ≥ 1.0 tpy sources operational by 1/1/2010	58.10 (a)(4)	N/A		
11.	Pb plan for 0.5-1.0 tpy submitted by 7/1/2011	58.10 (a)(4)	N/A		
12.	Pb site for 0.5-1.0 tpy sources operational by 12/27/2011	58.10 (a)(4)	N/A	N/A- no Pb monitoring requirement.	
13.	NO ₂ plan for area-wide and RA40 sites submitted by 7/1/2012	58.10 (a)(5)	N/A	N/A- no requirement for NO ₂ monitoring.	
14.	NO ₂ area-wide and RA40 sites operational by 1/1/2013	58.10 (a)(5)	N/A		
15.	NO ₂ plan for near-road sites submitted by 7/1/2012	58.10 (a)(5)	N/A	N/A- no requirement for NO ₂ monitoring.	
16.	NO ₂ near-road sites operational by ? (N/A until 2013 or 2014 plans)	58.10 (a)(5)	N/A		
17.	SO ₂ plan for PWEI sites submitted by 2011	58.10 (a)(6)	N/A		
18.	SO ₂ sites operational by 1/1/2013	58.10 (a)(6) and 58.13(d)	N/A		
19.	CO plan for 2015 near-road sites submitted by 7/1/2014	58.10 (a)(7) and 58.13(e)(1)	N/A		
20.	CO sites for first phase of CO monitors operational by 1/1/2015	58.10 (a)(7) and 58.13(e)(1)	N/A		
21.	CO plan for 2017 near-road sites by 7/1/2016	58.10 (a)(7) and 58.13(e)(2)	N/A		
22.	CO sites for first phase of CO monitors operational by 1/1/2017	58.10 (a)(7) and 58.13(e)(2)	N/A		
23.	AQS site identification number for each site	58.10 (b)(1)	Yes, p.10-26	Yes	
24.	Location of each site: street address and geographic coordinates	58.10 (b)(2)	Yes, p.10-26	Yes	Please include a street address for Harvey's Casino and Resort site on p.14.
25.	Sampling and analysis method(s) for each measured parameter	58.10 (b)(3)	Yes, p.10-26	Yes	The CO SLAMS monitor at Harvey's Casino listed on p.14 does not appear to report an accurate FRM or FEM instrument code. Upon follow-up

	ANP requirement	Citation within 40 CFR 58	Was the info submitted? ¹ If yes, page #s. Flag if incorrect ² ?	Does the information provided ³ meet the req? ⁴	Notes
					clarification with the agency, EPA has verified that a typo was reported for the CO monitor and that it is indeed a designated FRM or FEM. Please ensure this typo is corrected in next year's plan.
26.	Operating schedule for each monitor (see items 62-66)	58.10 (b)(4)	Yes	Yes	(see items 62-66)
27.	Any proposals to remove or move a monitoring station within a period of 18 months following plan submittal	58.10 (b)(5)	Yes	Yes	
28.	Scale of representativeness for each monitor as defined in Appendix D	58.10(b)(6); App D	Yes, p.10-26	Yes	
29.	Identification of sites suitable and sites not suitable for comparison to the annual PM2.5 NAAQS as described in Part 58.30	58.10 (b)(7)	N/A	N/A- No PM _{2.5} monitors identified.	
30.	MSA, CBSA, CSA or other area represented by the monitor	58.10 (b)(8)	Yes, 10-26	Yes	-For Elko and Fallon, please clarify that MSA stands for Micropolitan Statistical Area (p.10 & 12) -For Harvey's Casino and Resort, please modify "rural MSA" to read "Gardnerville Ranchos Micropolitan Statistical Area"(p.14) -Fernley should be Reno-Sparks-Fernley CSA and Fernley Micropolitan Statistical Area (p.16) -For the Carson City site, please clarify the MSA stands for Metropolitan Statistical Area (p.18) -For Pahrump sites, please clarify that Pahrump is a Micropolitan Statistical Area and that Las Vegas-Paradise-Pahrump is a CSA (p.20-26)
31.	Designation of any Pb monitors as either source-oriented or non-source-oriented	58.10 (b)(9)	N/A	N/A- no current requirement	
32.	Any source-oriented Pb site for which a waiver has been granted by EPA RA	58.10 (b)(10)	N/A	N/A- no current requirement	
33.	Any Pb monitor for which a waiver has been requested or granted by EPA RA for us of Pb-PM10 in lieu of Pb-TSP	58.10 (b)(11)	N/A	N/A- no current requirement	
34.	Identification of required NO2 monitors as either near-road or area-wide	58.10 (b)(12)	N/A		
35.	Document how states and local agencies provide for	58.10 (c)	N/A	N/A- No PM _{2.5}	

	ANP requirement	Citation within 40 CFR 58	Was the info submitted?¹ If yes, page #s. Flag if incorrect²?	Does the information provided³ meet the req?⁴	Notes
	the review of changes to a PM2.5 monitoring network that impact the location of a violating PM2.5 monitor. ⁶			monitors identified.	
36.	Plan to modify the network that complies with findings of the 5-year network assessment. [Note: recommended to be submitted on year of network assessment or year after.]	58.10 (e) 58.14 (a)	N/A- Only applies to year of or after 5-year network assessment		
37.	Precision/Accuracy reports submitted to AQS	58.16(a); App A, 1.3 and 5.1.1	Yes, p.3	Yes	NDEP states that they intend to submit this information for the 2011 data year by May 1, 2012.
38.	Annual data certification submitted	58.15 App. A 1.3	Yes, p.3	Yes	
39.	Frequency of flow rate verification for manual PM samplers audit	App A 3.3.2	N/A	N/A- No PM _{2.5} monitors identified.	All PM10 monitoring done with continuous instruments.
40.	Frequency of flow rate verification for automated PM analyzers audit	App A 3.2.3	Yes, p.10, 20, 22, 24, 26	Yes	
41.	Frequency of one-point flow rate verification for Pb samplers audit	App A 3.3.4.1	N/A		
42.	Frequency of one-point QC check (gaseous)	App. A 3.2.1	Yes, p.12, 14, 16, 18.	Yes	EPA found all gaseous sites are listed as having semi-monthly one-point QC checks. Checks are required at least once every two weeks unless agencies have been approved for an alternative schedule. Upon further follow-up with NDEP, the agency has clarified that these checks do occur at least once every two weeks. Please adjust next's year's plan to report the accurate schedule.
43.	Date of last Annual Performance Evaluation (gaseous)	App. A 3.2.2	Yes, p.12, 14, 16, 18	Yes	
44.	Dates of last two semi-annual flow rate audits for PM monitors	App A, 3.2.4 and 3.3.3	Yes, p.10, 20, 22, 24, 26	Yes	
45.	Dates of last two semi-annual flow rate audits for Pb	App A	N/A	N/A- no current	

⁶ The affected state or local agency must document the process for obtaining public comment and include any comments received through the public notification process within their submitted plan.

	ANP requirement	Citation within 40 CFR 58	Was the info submitted? ¹ If yes, page #s. Flag if incorrect ² ?	Does the information provided ³ meet the req? ⁴	Notes
	monitors	3.3.4.1		requirement	
46.	PM2.5 co-location	App A 3.2.5	N/A	N/A- No PM _{2.5} monitors identified.	
47.	Distance between co-located monitors	App. A 3.2.5.6	N/A	N/A- No collocated monitors identified.	
48.	Manual PM10 method co-location met? (note: continuous PM10 does not have this requirement)	App A 3.3.1	N/A	N/A- no current requirement	NDEP currently operates all continuous instruments
49.	Pb co-location	App A 3.3.4.3	N/A	N/A- no current requirement	
50.	PM10-2.5 co-location (note: only applies to Fresno and Phoenix NCore sites)	App A 3.3.6	N/A	N/A- no current requirement	
51.	Required # of PM2.5 PEP audits	App A 3.2.7	N/A	Yes - EPA requirement ⁷	
52.	Required # of Pb PEP audits	App A 3.3.4.4	N/A	Yes - EPA requirement ⁸	
53.	Required # of NPAP audits (or approved equivalent)	App A 2.4		Yes - EPA requirement ⁹	
54.	Instrument/monitoring method code for each monitor: is it reported properly? Is it reported correctly (i.e., appropriate method code for regulatory monitors)?	App C 2.4.1.2	Yes, p.10-26	Yes	Method codes lists for FEM & FRM instruments are published on EPA AMTIC website available at: http://www.epa.gov/ttnamti1/files/ambient/criteria/reference-equivalent-methods-list.pdf
55.	Placeholder for: Optional request to have PM2.5 continuous instruments treated as non-FEMs and therefore not comparable to NAAQS?	Proposed rule and memo			
56.	Start date for each monitor	Required to determine if other req. (e.g., min # and co-lo) are met	Yes, p.10-22	Yes	
57.	Instrument monitor type for each monitor	Required to	Yes, p.4	Yes	

⁷ EPA has reviewed EPA documentation to confirm that these requirements have been met for the area in question.

⁸ EPA has reviewed EPA documentation to confirm that these requirements have been met for the area in question.

⁹ EPA has reviewed EPA documentation to confirm that these requirements have been met for the area in question.

	ANP requirement	Citation within 40 CFR 58	Was the info submitted? ¹ If yes, page #s. Flag if incorrect ² ?	Does the information provided ³ meet the req? ⁴	Notes
		determine if other req. (e.g., min # and co-lo) are met			
58.	Monitoring objective for each instrument	App D 1.1 58.10 (b)(6)	Incorrect, p.10-26	Insufficient to judge.	The current "Monitor Objective" rows should be changed to "Site Type." Monitor Objective refers to one or more of three basic monitoring objectives: (1) provide air pollution data to the general public in a timely manner, (2) support compliance with ambient air quality standards and emissions strategy development, and (3) support air pollution research studies. See attachment D of the 2012 Annual Monitoring Network Plan memo sent by EPA R9 for further guidance. Please add correct monitor objective for each monitor in next year's plan.
59.	Site type for each instrument	App D 1.1.1	Yes, p.10-26	Yes	-Information was submitted as "Monitor Objective." Please change row name to "Site Type." -Church site on p.20 should be changed to "Source Oriented" site type if the purpose of the monitor is targeted to capture the dry lake bed source described in the plan. -See related check#58 above.
60.	Instrument parameter code for each instrument	Required to determine if other req. (e.g., min # and co-lo) are met	Yes, p.10-26	Yes	Recommend modifying "Pollutant" row name to read "Pollutant/Parameter Code" in order to clarify that the Parameter code is also being reported.
61.	Instrument parameter occurrence code for each instrument	Required to determine if other req. (e.g., min # and co-lo) are met	N/A	N/A- NDEP operates one parameter at each site.	EPA recommends the reporting of Parameter Occurrence Code (POC) as separate line in the detailed site information tables. This will be especially useful for any collocations that may be established in the future.

	ANP requirement	Citation within 40 CFR 58	Was the info submitted? ¹ If yes, page #s. Flag if incorrect ² ?	Does the information provided ³ meet the req? ⁴	Notes
					See Attachment C of the 2012 Annual Monitoring Network Plan memo sent by EPA R9 for suggested format to report POC.
62.	Sampling season for ozone (note: date of waiver approval must be included if the sampling season deviates from requirement)	App D, 4.1(i)	Yes, p.12, 16, 18, 28	Yes	"Operation Schedule" row should be adjusted to "continuous" for current ozone monitors. "Sampling Season" row should be adjusted to "April 1 – October 31" for current ozone monitors at Carson City, Fernley, and Fallon.
63.	Sampling schedule for PM2.5 - applies to year-round and seasonal sampling schedules (note: date of waiver approval must be included if the sampling season deviates from requirement)	58.12(d) App D 4.7	N/A	N/A- No PM _{2.5} monitors identified.	
64.	Sampling schedule for PM10	58.12(e) App D 4.6	Yes, p.10, 20, 22, 24, 26	Yes	
65.	Sampling schedule for Pb	58.12(b) App D 4.5	N/A	N/A- no current requirement	
66.	Sampling schedule for PM10-2.5	58.12(f) App D 4.8	N/A	N/A- no current requirement	
67.	Minimum # of monitors for O3 [Note: should be supported by MSA ID, MSA population, DV, # monitors, and # required monitors]	App D, 4.1(a) and Table D-2	Yes, p.5	Yes	
68.	Identification of max. conc. O3 monitor(s)	App D 4.1 (b)	Yes, p.5	Yes	Ozone design values are reported for each of the sites in NDEP's network, however a site capturing maximum ozone concentration for the Carson City MSA is not currently specified. Please label the site with the highest design value as the maximum concentration in next year's plan. For this year's plan for example, that site would be the Carson City 5 th Street site.
69.	Minimum monitoring requirements met for near-road NO2	App D 4.3.2	N/A		
70.	Minimum monitoring requirements met for area-wide NO2	App D 4.3.3	N/A		
71.	Minimum monitoring requirements met for RA-40 NO2	App D 4.3.4	N/A		
72.	Minimum monitoring requirements met for SO2	App D 4.4	N/A	N/A- no current	

	ANP requirement	Citation within 40 CFR 58	Was the info submitted?¹ If yes, page #s. Flag if incorrect²?	Does the information provided³ meet the req?⁴	Notes
				requirement	
73.	Minimum monitoring requirements met for CO	App D 4.2	N/A		
74.	Minimum monitoring requirements met for Pb	App D 4.5 58.13(a)	N/A	N/A- no current requirement	
75.	Minimum # of monitors for PM2.5 [Note: should be supported by MSA ID, MSA population, DV, # monitors, and # required monitors]	App D, 4.7.1(a) and Table D-5	No	Insufficient to judge	-PM2.5 minimum monitoring requirements are not specified. The Carson City Metropolitan Statistical Area is above the 50,000 population threshold and may require a SLAMS site. Please specify PM2.5 minimum monitoring requirements and include supporting information in next year's plan. -Please also include detailed site information for any SPM PM2.5 monitoring.
76.	Required PM2.5 sites represent community-wide air quality at neighborhood or urban scale	App D 4.7.1(b)	N/A	N/A- No PM _{2.5} monitors identified.	
77.	For PM2.5, is at least one site in a population-oriented area of expected maximum concentration	App D 4.7.1(b)(1)	N/A	N/A- No PM _{2.5} monitors identified.	
78.	If >1 SLAMS PM2.5 required, is there a site in an area of poor air quality	App D 4.7.1(b)(2)	N/A	N/A- No PM _{2.5} monitors identified.	
79.	Minimum monitoring requirements for continuous PM2.5	App D 4.7.2	N/A	N/A- No PM _{2.5} monitors identified.	
80.	Requirements for PM2.5 background and transport sites	App D 4.7.3	No	Insufficient to judge	-This requirement may be met by sites operated by other agencies in Nevada or outside of the state if comparable. Please clarify how this requirement is being met in next year's plan.
81.	Are PM2.5 Chemical Speciation requirements met for official STN sites?	App D 4.7.4	N/A	N/A- no current requirement	
82.	Spatial Averaging for comparison to Annual NAAQS: are intended CMZs defined and met criteria in 40 CFR 50 App N?	App D 4.7.5	N/A		
83.	Minimum # of monitors for PM10	App D, 4.6 (a) and Table D-4	Yes, p.5	Yes	
84.	Minimum monitoring requirements met for PM10-2.5 mass	App D 4.8	N/A	N/A- no current requirement	
85.	Distance of site from nearest road	App E 6	Yes, p.10-26	Yes	
86.	Traffic count of nearest road	App E	Yes, p.10-26	Yes	

	ANP requirement	Citation within 40 CFR 58	Was the info submitted? ¹ If yes, page #s. Flag if incorrect ² ?	Does the information provided ³ meet the req? ⁴	Notes
87.	Groundcover	App E 3(a)	Yes, p.10-26	Yes	
88.	Probe height	App E 2	Yes, p.10-26	Yes	
89.	Distance from supporting structure	App E 2	Yes, p.10-26	Yes	
90.	Distance from obstructions on roof	App E 4(b)	Yes, p.10-26	Yes	For future obstructions that may exist, please include distance and height of obstruction.
91.	Distance from obstructions not on roof	App E 4(a)	No	Insufficient to judge	Please include in next year's network plan information on any potential obstructions not on roof. Please ensure that distance and height for any potential obstruction is specified.
92.	Distance from trees	App E 5	Yes, p.10-26	No for CO monitor at Harvey's. Yes- all others	90% of the monitoring path must be at least 10 meters or further from the drip line of trees. The trees at Harvey's are only 4 meters away. Per 40 CFR 58, App.E 5(c) please clarify whether any trees or shrubs are located between the probe and the roadway.
93.	Distance to furnace or incinerator flue	App E 3(b)	Yes, p.10-26	Yes	
94.	Unrestricted airflow	App E, 4(a) and 4(b)	Yes, p.10-26	Yes	
95.	Probe material (if applicable)	App E 9	Yes, p.10-26	Yes	
96.	Residence time (if applicable)	App E 9	Yes, p.10-26	Yes	

Public Comments on Annual Network Plan

Were comments submitted to the S/L/T agency during the public comment period?

Yes. John Mosley, Environmental Director, Pyramid Lake Paiute Tribe

Were any of the comments substantive?

No, with respect to the annual network plan, however EPA believes Pyramid Lake raises a good suggestion to NDEP with their #3 listed comment. In NDEP's evaluation of their PM2.5 monitoring network, as part of the next 5-year network assessment, it would be a good idea to examine concentrations from nearby monitoring.

Attachment B: Annual Air Monitoring Network Plan Items where EPA is Not Taking Action

We are not acting on the portions of annual network plans where either EPA Region 9 lacks the authority to approve specific items of the plan, or EPA has determined that a requirement is either not met or information in the plan is insufficient to judge whether the requirement has been met.

- System modifications (e.g., site closures or moves) are subject to approval per 40 CFR 58.14(c). Information provided in the plan was insufficient for EPA to approve the following system modification listed in the plan per the applicable requirement: discontinuation of the Stateline CO monitor (page 5-6). Therefore, we are not taking action on this item as part of this year’s annual network plan.
- EPA identified items in you agency’s annual network plan where a requirement was not being met or information in the plan was insufficient to judge whether the requirement was being met based on 40 CFR 58.10 and the associated appendices. Therefore, we are not acting on of the following items:

Item	Checklist Row (Attachment A)	Issue
Minimum # of monitors for PM2.5	75	Insufficient information to judge
Requirements for PM2.5 background and transport sites	80	Insufficient information to judge
Monitoring objective for each instrument	58	Insufficient information to judge
Distance from obstructions not on roof	91	Insufficient information to judge
Distance from trees	92	Not meeting requirement in one instance

Additional information for each of these items is included in Attachment A.

Attachment C: Additional Detailed Comments

- [Item 24] A numbered street address was not specified for the Harvey's monitor. EPA suggests providing the address of the building the monitor resides on top of.
- [Item 25] Please correct the typo for the sampling and analysis method reported for the CO monitor at Harvey's (p.14) in order to clarify that the instrument is of FRM or FEM designation.
- [Item 30] Please clarify when MSA stands for Micropolitan Statistical Area versus Metropolitan Statistical Area. Please also include relevant CSA when appropriate.
- [Item 42] Please adjust next year's one-point gaseous instrument QC checks to reflect the accurate schedule that should be listed as at least once every two weeks. Currently, the schedule is reported as semi-monthly.
- [Item 59] Although information describing site type is provided in the plan, this is mislabeled as "Monitor Objective." Please re-label these rows in next year's plan to read Site Type. For further guidance on the monitoring objective versus site type, please refer to Attachment D of the Annual Network Plan Memo sent by EPA Region 9 in May 2012.
- [Item 60] In order to clarify that both the pollutant and parameter code are reported in the detailed site tables (p.10-26), EPA recommends that the rows labeled "Pollutant" get re-labeled to read "Pollutant/Parameter code." A separate row to report only the parameter code may also be an option.
- [Item 61] It is suggested that the parameter occurrence code for each instrument at each monitoring site is specified in next year's plan.
- [Item 62] The rows labeled as "Operation Schedule" for the ozone monitoring sites should be adjusted from "seasonal" to read "continuous." The rows labeled "Sampling Season" should specify the days of the sampling season (i.e. April 1st – October 31st).
- [Item 68] NDEP's plan reports ozone design values for each of their SLAMS ozone sites in operation (see page 5). Based on the design values reported, the Carson City 5th Street site should be labeled as the maximum concentration site in the network. Please ensure future plans specify the maximum concentration site for ozone. This maximum/highest concentration designation should be reported as the Site Type.
- [Items 90 & 91] For future plans, as necessary, report any obstructions (on and off the roof) by providing a distance from the probe/inlet, as well as height of the obstruction.
- [General] EPA recommends that NDEP report detailed information for meteorology tower parameters operated by the agency and incorporate the details into the site tables found on pages 10-26. Examples of helpful detailed site information to provide include:

instrument manufacturer and model, start date, siting, and QA/QC information, as applicable.

APPENDIX D

Element (D)(i)(I) Support Documents

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APPENDIX D

Element (D)(i)(I) Support Documents

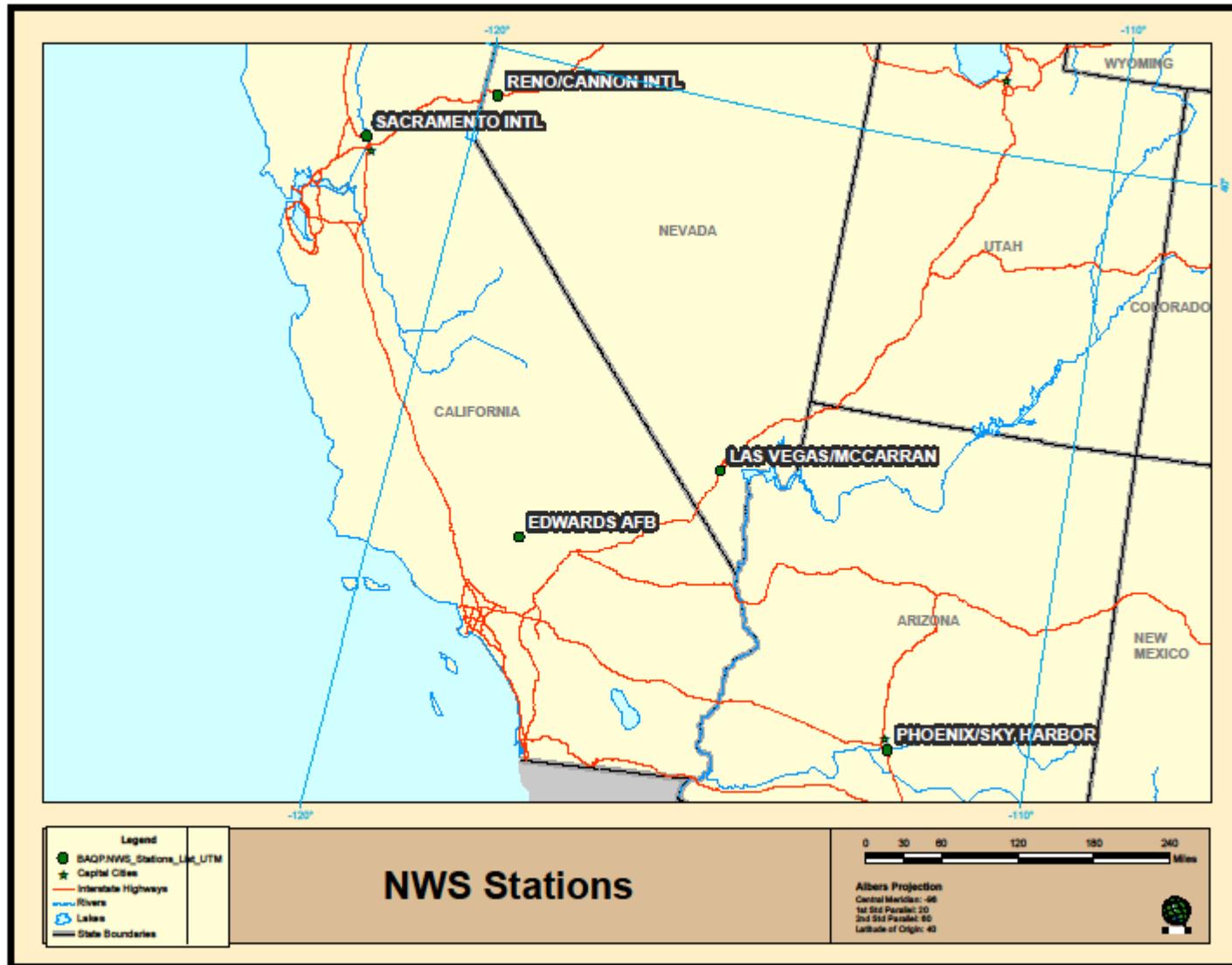
U.S. Environmental Protection Agency map of nonattainment areas as of July 2012:

8-Hour Ozone Nonattainment Areas (2008 Standard)

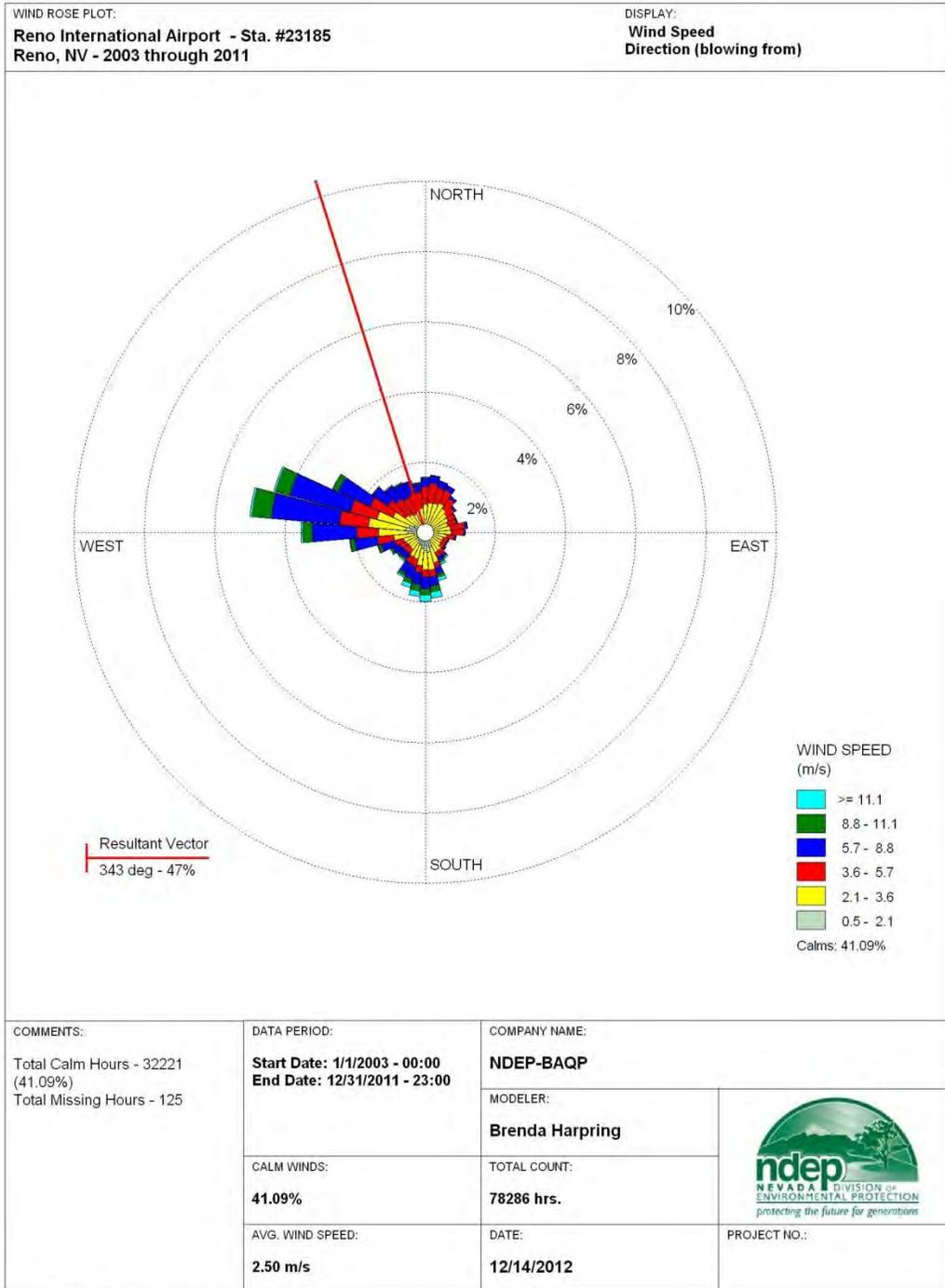


Source: http://www.epa.gov/oar/oaqps/greenbk/map/map8hr_2008.pdf

Map of airport locations where wind rose plots were created:

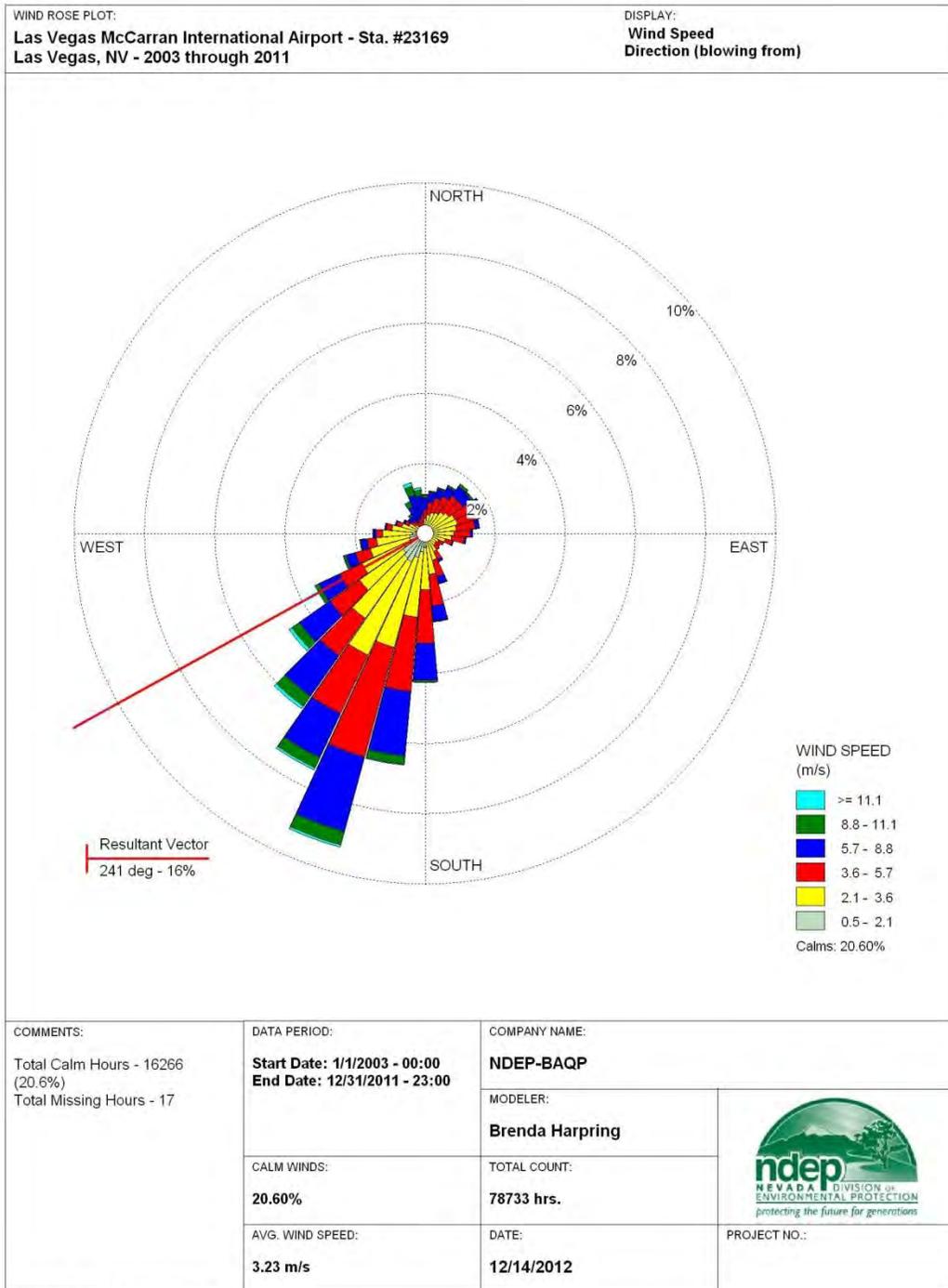


Reno, Nevada wind rose plot, 2003-2011:

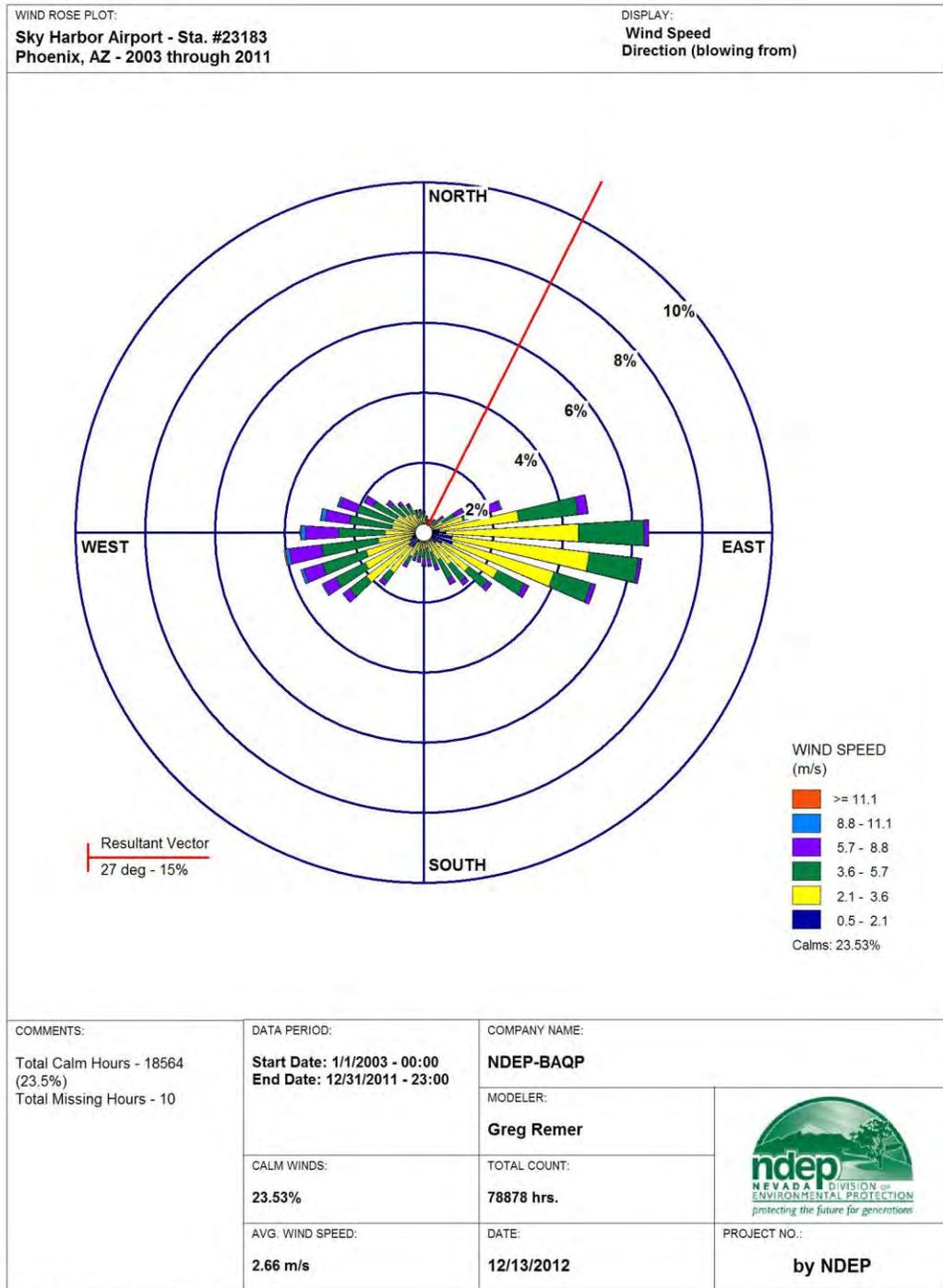


WRPLOT View - Lakes Environmental Software

Las Vegas, Nevada wind rose plot, 2003-2011:

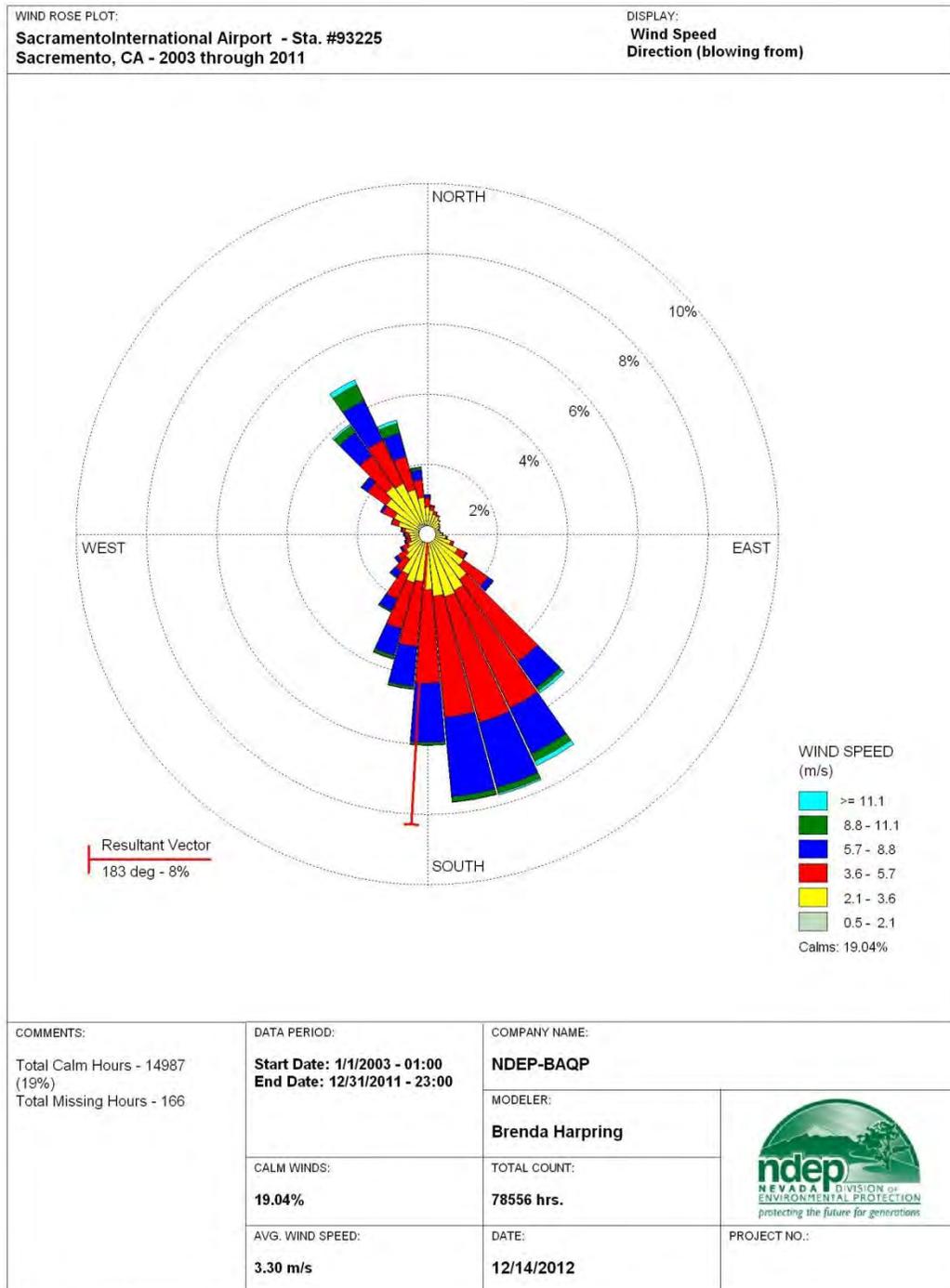


Phoenix, Arizona wind rose plot, 2003-2011:

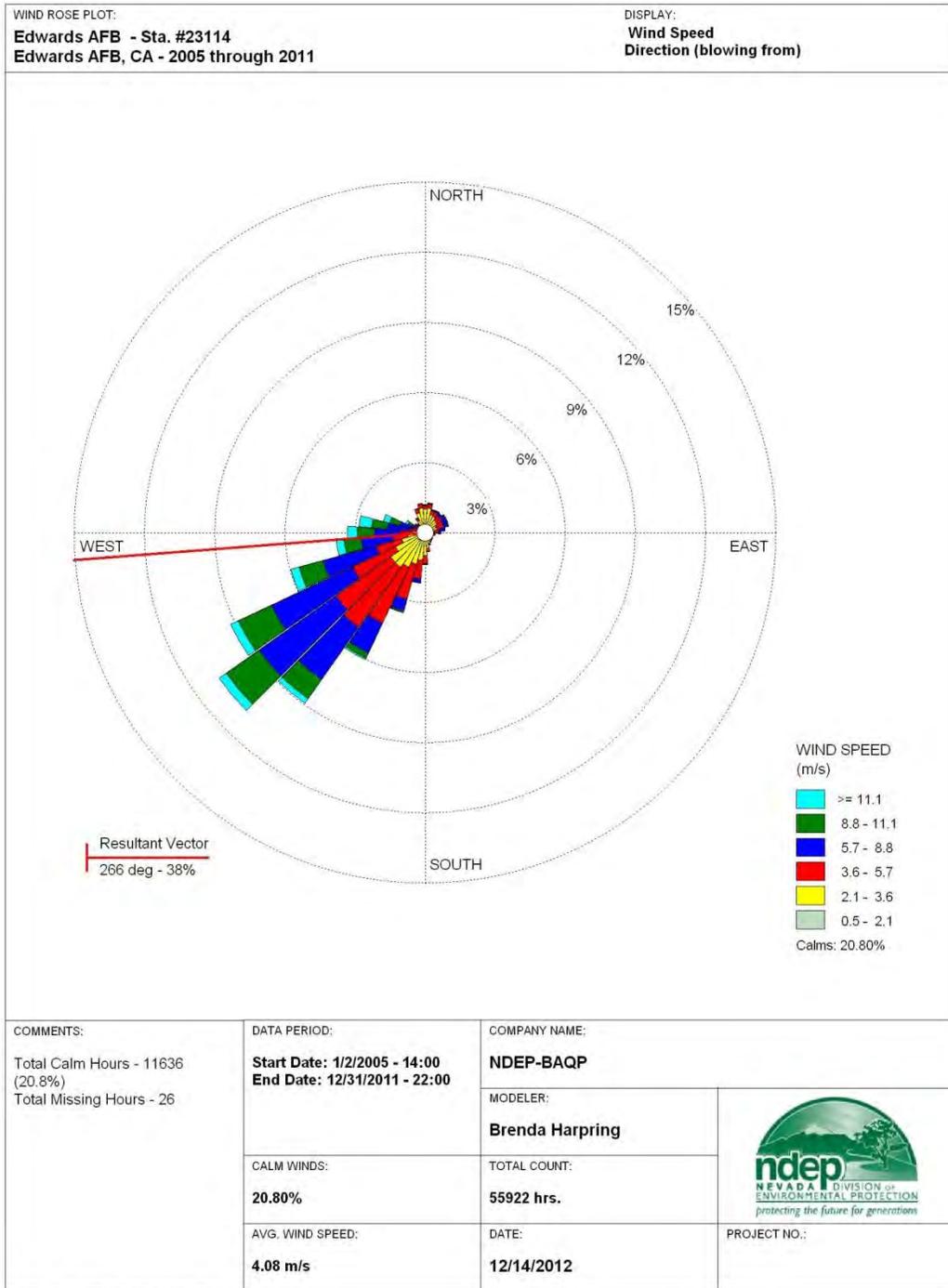


WRPLOT View - Lakes Environmental Software

Sacramento, California wind rose plot, 2003-2011:



Edwards Air Force Base, California wind rose plot, 2005-2011:



WRPLOT View - Lakes Environmental Software

APPENDIX E

May 30, 2007 letter to the US EPA Region 9 Administrator

ALLEN BIAGGI
Director

JIM GIBBONS
Governor

KAY SCHERER
Deputy Director

State of Nevada
Department of Conservation and Natural Resources
Office of the Director
Richard H. Bryan Building
901 S. Stewart Street, Suite 5001
Carson City, Nevada 89701
Telephone (775) 684-2700
Facsimile (775) 684-2715
www.dcnr.nv.gov



Division of Conservation Districts
Division of Environmental Protection
Division of Forestry
Division of State Lands
Division of State Parks
Division of Water Resources
Natural Heritage Program
Wild Horse Program

STATE OF NEVADA
Department of Conservation and Natural Resources
OFFICE OF THE DIRECTOR

May 30, 2007

Wayne Natri
Regional Administrator
ORA-1, USEPA Region 9
75 Hawthorne Street
San Francisco CA 94105

Dear Mr. Natri:

Nevada Revised Statutes 445B.205 designates the Department of Conservation and Natural Resources (Department) as the air pollution control agency for the State of Nevada for the purposes of the Clean Air Act insofar as it pertains to State programs. Within the Department, the Division of Environmental Protection has responsibility to manage the air quality planning and air pollution control programs for the State of Nevada. Therefore, pursuant to Nevada Administrative Code 445B.053, I am hereby assigning the Administrator of the Nevada Division of Environmental Protection, or the Deputy Administrator acting on his behalf, to be my official designee for the purposes of the Clean Air Act, including, but not limited to, adoption, revision and submittal of state plans and state implementation plans.

Sincerely,

Handwritten signature of Allen Biaggi in black ink, with a stylized flourish at the end.

Allen Biaggi
Director

cc Michael Dayton, Chief of Staff, Office of the Governor
Jodi Stephens, Deputy Chief of Staff, Office of the Governor
Leo Drozdoff, Administrator, NDEP
Colleen Cripps, Deputy Administrator, NDEP
Tom Porta, Deputy Administrator, NDEP
Deborah Jordan, Director, EPA Air Division, Region IX
Jefferson Wehling, ORC, EPA Region IX

APPENDIX F

Non-SIP Provisions Cited in Elements A and J

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APPENDIX F

Non-SIP Provisions Cited in Elements A and J

Nevada Administrative Code

Chapter 445B, Air Controls (August 2012 codification):

NAC 445B.221 Adoption by reference and applicability of certain provisions of federal law and regulations. ([NRS 445B.210](#))

1. Title 40 C.F.R. §§ 51.100(s), 51.100(nn) and 51.301 and Appendix S of 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2010.
2. Title 40 C.F.R. § 51.165 is hereby adopted by reference as it existed on July 1, 2002.
3. Appendices M and W of 40 C.F.R. Part 51 are hereby adopted by reference as they existed on July 1, 2010.
4. Title 40 C.F.R. § 52.21 is hereby adopted by reference as it existed on July 18, 2011.
5. Appendix E of 40 C.F.R. Part 52 is hereby adopted by reference as it existed on July 1, 2011.
6. The following subparts of 40 C.F.R. Part 60 are hereby adopted by reference:
 - (a) Subpart A, except §§ 60.4, 60.8(b)(2), 60.8(b)(3), 60.8(g) and 60.11(e), as it existed on July 1, 2011;
 - (b) Section 60.21 of Subpart B, as it existed on July 1, 2011;
 - (c) 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, VVa, WW, XX, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, DDDD, EEEE, FFFF and KKKK as they existed on July 1, 2011;
 - (d) Subpart HHHH, except §§ 60.4105(b)(2), 60.4106, 60.4120 to 60.4142, inclusive, 60.4153(a) and (b) and 60.4176, as it existed on June 9, 2006; and
 - (e) Subparts IIII and JJJJ as they existed on August 29, 2011.
7. Appendices A, B and F of 40 C.F.R. Part 60 are hereby adopted by reference:
 - (a) Appendix A as it existed on July 1, 2010; and
 - (b) Appendices B and F as they existed on July 1, 2011.
8. Subparts A, C, D, E, F, H, I, J, K, L, N, O, P, Q, R, T, V, W, Y, BB and FF of 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, 2010.
9. Appendix B of 40 C.F.R. Part 61 is hereby adopted by reference as it existed on July 1, 2010.
10. The following subparts of 40 C.F.R. Part 63 are hereby adopted by reference:
 - (a) Subpart A as it existed on July 1, 2010;
 - (b) Subparts B, C, 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, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, JJJJ, KKKK, LLLL, MMMM, NNNN, PPPP, QQQQ, SSSS, WWWWW, YYYYY, ZZZZ, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, JJJJ, LLLL, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, VVVV, XXXXX, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEE, as they existed on July 1, 2011; and
 - (c) Subpart WWWWW as it existed on October 19, 2011.
11. Appendix A of 40 C.F.R. Part 63 is hereby adopted by reference as it existed on July 1, 2011.
12. Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, 2011. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in [NAC 445B.001](#) to [445B.3689](#), inclusive, the provisions of 40 C.F.R. Part 72 apply.

13. Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, 2011. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in [NAC 445B.001](#) to [445B.3689](#), inclusive, the provisions of 40 C.F.R. Part 76 apply.

14. Title 42 of the United States Code, section 7412(b), List of Hazardous Air Pollutants, is hereby adopted by reference as it existed on October 1, 1993.

15. 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, free of charge, from the United States Department of Labor at the Internet address <http://www.dol.gov>.

16. A copy of the publications which contain the provisions adopted by reference in subsections 1 to 14, inclusive, may be obtained from the:

(a) Division of State Library and Archives of the Department of Administration for 10 cents per page.

(b) Government Printing Office, free of charge, at the Internet address <http://www.gpoaccess.gov/nara/index.html>.

17. The following standards of ASTM International are hereby adopted by reference:

(a) ASTM D5504, "Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence," set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D5504 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of \$40.

(b) ASTM D2234 and D2234M, "Standard Practice for Collection of a Gross Sample of Coal," set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D2234 and D2234M is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of \$40.

(c) ASTM D2013, "Standard Practice for Preparing Coal Samples for Analysis," set forth in Volume 05.06 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D2013 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of \$46.

(d) ASTM D6784, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)," set forth in Volume 11.07 of the *2008 Annual Book of ASTM Standards*. A copy of ASTM D6784 is available by mail from ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (610) 832-9585 or at the Internet address <http://www.astm.org>, for the price of \$46.

(e) ASTM D2015, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter," dated April 10, 2000. A copy of ASTM D2015 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of \$56.

(f) ASTM D3286, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter," dated July 10, 1996. A copy of ASTM D3286 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of \$56.

(g) ASTM D1989, "Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Isoperibol Calorimeters," dated July 10, 1997. A copy of ASTM D1989 is available for purchase at the IHS Standards Store, 15 Inverness Way East, M/S A110B, Englewood, Colorado 80112, or at the Internet address <http://global.ihs.com>, for the price of \$56.

18. For the purposes of the provisions of 40 C.F.R. Parts 60, 61 and 63, adopted by reference pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

19. Except as otherwise provided in subsections 12 and 13, the provisions adopted by reference in this section supersede the requirements of [NAC 445B.001](#) to [445B.3689](#), inclusive, for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

20. For the purposes of this section, "administrator" as used in the provisions of 40 C.F.R. Part 60, except Subpart B § 60.21 and Subpart HHHH §§ 60.4101 to 60.4105, inclusive, 60.4107 to 60.4114, inclusive, 60.4151 to 60.4173, inclusive, and 60.4175, and Parts 61 and 63, adopted by reference pursuant to this section, means the Director.

(Added to NAC by Environmental Comm'n, eff. 10-19-83; A 12-5-84; 10-15-85; 8-22-86; 10-22-87; 10-18-88; 9-19-90; 9-4-92; 10-29-93; 12-13-93; 3-29-94; 10-30-95; R105-97, 3-5-98; R126-98, 11-2-98; R022-99, 9-27-99; R103-02, 12-17-2002; R198-03, 4-26-2004; R125-04, 9-24-2004; R037-05, 10-31-2005; R189-05 & R206-05, 5-4-2006; R151-06 & R162-06, 9-18-2006; R057-07, 10-31-2007; R143-07, 1-30-2008; R076-08, 8-26-2008; R190-08, 4-23-2009; R088-09, 11-25-2009; R040-10, 7-22-2010; R014-11 & R015-11, 10-26-2011; R129-11, 5-30-2012)

Nevada Revised Statutes

Title 18 Chapter 233B, Nevada Administrative Procedure Act:

NRS 233B.060 Notice of adoption, amendment or repeal of permanent or temporary regulation; adoption of permanent regulation after adoption of temporary regulation.

1. Except as otherwise provided in subsection 2 and [NRS 233B.061](#), before adopting, amending or repealing:
 - (a) A permanent regulation, the agency must, after receiving the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to [NRS 233B.063](#), give at least 30 days' notice of its intended action, unless a shorter period of notice is specifically permitted by statute.
 - (b) A temporary regulation, the agency must give at least 30 days' notice of its intended action, unless a shorter period of notice is specifically permitted by statute.
2. Except as otherwise provided in subsection 3, if an agency has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt, after providing a second notice and the opportunity for a hearing, a permanent regulation, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation must be approved by the Legislative Commission or the Subcommittee to Review Regulations appointed pursuant to subsection 6 of [NRS 233B.067](#).
3. If the Public Utilities Commission of Nevada has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt a substantively equivalent permanent regulation without further notice or hearing, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation must be approved by the Legislative Commission or the Subcommittee to Review Regulations.

(Added to NRS by 1965, 964; A 1973, 621; 1975, 1157, 1413; 1977, 1386, 1547, 1549; 1981, 186; 1983, 1123, 1244; 1995, 130; [1997, 1973](#); [2007, 871](#); [2009, 2284](#))

NRS 233B.0603 Contents and form of notice of intent to adopt, amend or repeal permanent or temporary regulation; solicitation of comments from public or affected businesses.

1. The notice of intent to act upon a regulation required pursuant to [NRS 233B.060](#) must:
 - (a) Include:
 - (1) A statement of the need for and purpose of the proposed regulation.
 - (2) If the proposed regulation is a temporary regulation, either the terms or substance of the proposed regulation or a description of the subjects and issues involved.
 - (3) If the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to [NRS 233B.063](#).
 - (4) A statement of the estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:
 - (I) Both adverse and beneficial effects; and
 - (II) Both immediate and long-term effects.
 - (5) A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of [NRS 233B.0608](#).
 - (6) The estimated cost to the agency for enforcement of the proposed regulation.
 - (7) A description of any regulations of other state or local governmental 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 notice must include the name of the regulating federal agency.
 - (8) If the regulation is required pursuant to federal law, a citation and description of the federal law.

(9) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

(10) The time when, the place where and the manner in which interested persons may present their views regarding the proposed regulation.

(b) If the proposed regulation is a temporary regulation, state each address at which the text of the proposed regulation may be inspected and copied.

(c) Include an exact copy of the provisions of subsection 2 of [NRS 233B.064](#).

(d) Include a statement indicating whether the regulation establishes a new fee or increases an existing fee.

(e) Be mailed to all persons who have requested in writing that they be placed upon a mailing list, which must be kept by the agency for that purpose.

(f) Be submitted to the Legislative Counsel Bureau for inclusion in the Register of Administrative Regulations created pursuant to [NRS 233B.0653](#). The publication of a notice of intent to act upon a regulation in the Register does not satisfy the requirements for notice set forth in paragraph (e).

2. The Attorney General may by regulation prescribe the form of notice to be used.

3. In addition to distributing the notice to each recipient of the agency's regulations, the agency shall also solicit comment generally from the public and from businesses to be affected by the proposed regulation.

(Added to NRS by 1983, 1124; A 1995, 130, 239; [1997, 184](#), [1390](#); [2005, 1479](#); [2007, 872](#))

NRS 233B.061 Proposed permanent or temporary regulation: Public comment; workshop; public hearing; applicability of Open Meeting Law.

1. All interested persons must be afforded a reasonable opportunity to submit data, views or arguments upon a proposed regulation, orally or in writing.

2. Before holding the public hearing required pursuant to subsection 3, an agency shall conduct at least one workshop to solicit comments from interested persons on one or more general topics to be addressed in a proposed regulation. Not less than 15 days before the workshop, the agency shall provide notice of the time and place set for the workshop:

(a) In writing to each person who has requested to be placed on a mailing list; and

(b) In any other manner reasonably calculated to provide such notice to the general public and any business that may be affected by a proposed regulation which addresses the general topics to be considered at the workshop.

3. With respect to substantive regulations, the agency shall set a time and place for an oral public hearing, but if no one appears who will be directly affected by the proposed regulation and requests an oral hearing, the agency may proceed immediately to act upon any written submissions. The agency shall consider fully all written and oral submissions respecting the proposed regulation.

4. An agency shall not hold the public hearing required pursuant to subsection 3 on the same day that the agency holds the workshop required pursuant to subsection 2.

5. Each workshop and public hearing required pursuant to subsections 2 and 3 must be conducted in accordance with the provisions of [chapter 241](#) of NRS.

(Added to NRS by 1983, 1125; A 1989, 571; [1997, 185](#); [2005, 1407](#); [2007, 873](#); [2009, 2284](#))

Title 40 Chapter 445B, Air Pollution:

NRS 445B.100 Declaration of public policy.

1. It is the public policy of the State of Nevada and the purpose of [NRS 445B.100](#) to [445B.640](#), inclusive, to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the State.

2. It is the intent of [NRS 445B.100](#) to [445B.640](#), inclusive, to:

(a) Require the use of reasonably available methods to prevent, reduce or control air pollution throughout the State of Nevada;

(b) Maintain cooperative programs between the State and its local governments; and

(c) Facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within a single jurisdiction.

3. The quality of air is declared to be affected with the public interest, and [NRS 445B.100](#) to [445B.640](#), inclusive, are enacted in the exercise of the police power of this State to protect the health, peace, safety and general welfare of its people.

4. It is also the public policy of this State:

(a) To provide for the integration of all programs for the prevention of accidents in this State involving chemicals, including, without limitation, accidents involving hazardous air pollutants, highly hazardous chemicals, highly hazardous substances and extremely hazardous substances; and

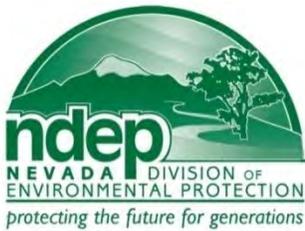
(b) Periodically to retire a portion of the emission credits or allocations specified in [NRS 445B.235](#) that may otherwise be available for banking or for sale pursuant to that section.

(Added to NRS by 1971, 1191; A 1993, 2851; [2007, 1023, 3311](#))

APPENDIX G

EVIDENCE OF PUBLIC PARTICIPATION; PUBLIC COMMENTS AND NEVADA'S RESPONSES

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STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

NOTICE OF PUBLIC COMMENT PERIOD BEGINNING FEBRUARY 1, 2013 AND A PUBLIC HEARING ON MARCH 6, 2013, IF REQUESTED

Conducted by the
Nevada Division of Environmental Protection, Bureau of Air Quality Planning

Pursuant to the public hearing requirements in Title 40 of the Code of Federal Regulations Part 51 section 102, the Nevada Division of Environmental Protection (NDEP) is issuing the following notice and is taking comment on a proposal to certify that the existing Nevada State Implementation Plan (SIP) is adequate for implementation of the 2008 8-hour ozone national ambient air quality standards (NAAQS).

On March 27, 2008, the United States Environmental Protection Agency (US EPA) revised the 8-hour primary and secondary ozone NAAQS to a level of 0.075 parts per million (ppm) (73 FR 16436). When US EPA promulgates a new standard or revises an existing standard, Clean Air Act (CAA) section 110(a)(1) requires each state to submit a plan showing it has the authority and programs needed to implement, maintain, and enforce the standard, regardless of designation status; section 110(a)(2) lists the elements that must be addressed in the plan. Because many of the section 110(a)(2) elements relate to the general information and authorities that constitute the infrastructure of a state's air quality management program, the 110(a) plans are generally referred to as "infrastructure SIPs." Nevada's 2008 ozone NAAQS infrastructure SIP is a compilation of Nevada's existing authorities and programs to demonstrate that Nevada has a plan in place to address the 2008 ozone NAAQS. Nevada's ozone infrastructure SIP will be submitted to US EPA in April 2013.

The NDEP is responsible for developing and implementing state plans in the 15 rural counties of Nevada. Clark County and Washoe County have their own air quality agencies, which are responsible for their respective counties. The NDEP's portion of the Nevada ozone infrastructure SIP and related materials are available on the NDEP website at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning." Access to the draft document may also be obtained by contacting Adele Malone at NDEP, 901 S. Stewart Street, Suite 4001, Carson City, NV 89701; (775) 687-9356; or e-mail to amalone@ndep.nv.gov.

Persons wishing to comment on the draft plan or to request a public hearing should submit their comments or request **in writing** either in person or by mail or fax to Adele Malone at the above address or by fax at (775) 687-6396. **A request for a hearing must be received by February 26, 2013. Written comments will be received by the NDEP until 5:00 PM PST, March 6, 2013 and will be retained and considered.**

Upon receipt of a valid written request, the NDEP will hold a public hearing in Carson City on:

**March 6, 2013
10:00 a.m. to 12:00 p.m.
Great Basin Conference Room, 4th Floor
901 South Stewart Street
Carson City, Nevada**

An agenda will be posted on the NDEP web site at least 3 working days before the hearing. Oral comments will be received at the Hearing. If no request for a public hearing is received by February 26, 2013, the hearing will be cancelled. Persons may check on the status of the hearing on the NDEP web site at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning," or you may call the NDEP Bureau of Air Quality Planning at (775) 687-9349.

This notice has been published in the Las Vegas Review-Journal and the Reno Gazette Journal newspapers. It has been posted at the NDEP offices in Carson City and Las Vegas, at the State Library in Carson City and at County libraries throughout Nevada. Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify Adele Malone or Cathy Douglas (775-687-9349) no later than 3 working days before the hearing.

01/29/2013

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CARSON CITY NV 89701-5267

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CARSON CITY NV 89701-5267

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AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS:

Stacey M. Lewis, being 1st duly sworn, deposes and says: That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for,

NV DIVISION ENVIRONMENTAL PROTECTION 6879350DIV 8333697

was continuously published in said Las Vegas Review-Journal and / or Las Vegas Sun in 1 edition(s) of said newspaper issued from 02/01/2013 to 02/01/2013, on the following days:

02/01/2013

NOTICE OF PUBLIC COMMENT PERIOD BEGINNING FEBRUARY 1, 2013 AND A PUBLIC HEARING ON MARCH 6, 2013, IF REQUESTED

Conducted by the Nevada Division of Environmental Protection, Bureau of Air Quality Planning

Pursuant to the public hearing requirements in Title 40 of the Code of Federal Regulations Part 51 section 102, the Nevada Division of Environmental Protection (NDEP) is issuing the following notice and is taking the comment on a proposal to certify that the existing Nevada State Implementation Plan (SIP) is adequate for implementation of the 2008 8-hour ozone national ambient air quality standards (NAAQS).

On March 27, 2008, the United States Environmental Protection Agency (US EPA) revised the 8-hour primary and secondary ozone NAAQS to a level of 0.075 parts per million (ppm) (73 FR 16436). When US EPA promulgates a new standard or revises an existing standard, Clean Air Act (CAA) section 110(a)(1) requires each state to submit a plan showing it has the authority and programs needed to implement, maintain, and enforce the standard, regardless of designation status; section 110(a)(2) lists the elements that must be addressed in the plan. Because many of the section 110(a)(2) elements relate to the general information and authorities that constitute the infrastructure of a state's air quality management program, the 110(a) plans are generally referred to as "infrastructure SIPs." Nevada's 2008 ozone NAAQS infrastructure SIP is a compilation of Nevada's existing authorities and programs to demonstrate that Nevada has a plan in place to address the 2008 ozone NAAQS. Nevada's ozone infrastructure SIP will be submitted to US EPA in April 2013.

The NDEP is responsible for developing and implementing state plans in the 15 rural counties of Nevada. Clark County and Washoe County have their own air quality agencies, which are responsible for their respective counties. The NDEP's portion of the Nevada ozone infrastructure SIP and related materials are available on the NDEP website at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning." Access to the draft document may also be obtained by contacting Adele Malone at NDEP, 901 S. Stewart Street, Suite 4001, Carson City, NV 89701; (775) 687-9356; or e-mail to amalone@ndep.nv.gov.

Persons wishing to comment on the draft plan or to request a public hearing should submit their comments or request in writing either in person or by mail or fax to Adele Malone at the above address or by fax at (775) 687-6396. A request for a hearing must be received by February 26, 2013. Written comments will be received by the NDEP until 5:00 PM PST, March 6, 2013 and will be retained and considered.

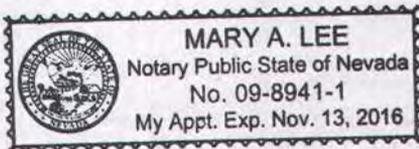
Upon receipt of a valid written request, the NDEP will hold a public hearing in Carson City on:

MARCH 6, 2013
10:00 a.m. to 12:00 p.m.
Great Basin Conference Room,
4th Floor
901 South Stewart Street
Carson City, Nevada

An agenda will be posted on the NDEP web site at least 3 working days before the hearing. Oral comments will be received at the Hearing. If no request for a public hearing is received by February 26, 2013, the hearing will be cancelled. Persons may check on the status of the hearing on the NDEP web site at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning," or you may call the NDEP Bureau of Air Quality Planning at (775) 687-9349.

This notice has been published in the Las Vegas Review-Journal and the Reno Gazette Journal newspapers. It has been posted at the NDEP offices in Carson City and Las Vegas, at the State Library in Carson City and at County libraries throughout Nevada. Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify Adele Malone or Cathy Douglas (775-687-9349) no later than 3 working days before the hearing, 01/29/2013

PUB: February 1, 2013
LV Review-Journal



Signed: Stacey M. Lewis

SUBSCRIBED AND SWORN BEFORE ME THIS, THE
10th day of Feb, 2013.

Mary Lee
Notary Public

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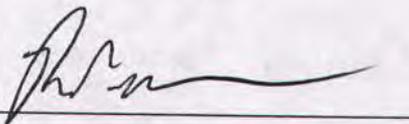
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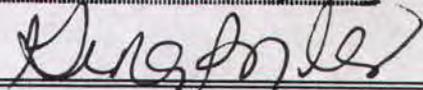
STATE OF NEVADA
COUNTY OF WASHOE

Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper of general circulation published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: **02/01/2013 - 02/01/2013**, for exact publication dates please see last line of Proof of Publication below.

Subscribed and sworn to before me

Signed: 





FEB 01 2013

Proof of Publication

NOTICE OF PUBLIC COMMENT PERIOD BEGINNING FEBRUARY 1, 2013 AND A PUBLIC HEARING ON MARCH 6, 2013, IF REQUESTED Conducted by the Nevada Division of Environmental Protection, Bureau of Air Quality Planning Pursuant to the public hearing requirements in Title 40 of the Code of Federal Regulations Part 51 section 102, the Nevada Division of Environmental Protection (NDEP) is issuing the following notice and is taking comment on a proposal to certify that the existing Nevada State Implementation Plan (SIP) is adequate for implementation of the 2008 8-hour ozone national ambient air quality standards (NAAQS). On March 27, 2008, the United States Environmental Protection Agency (US EPA) revised to the 8-hour primary and secondary ozone standard NAAQS to a level of 0.075 parts per million (ppm), (73 FR 16436). When US EPA promulgates a new standard or revises an existing standard, Clean Air Act (CAA) section 110(a)(1) requires each state to submit a plan showing it has the authority and programs needed to implement, maintain, and enforce the standard, regardless of designation status.; section 110(a)(2) lists the elements that must be addressed in the plan. Because many of the section 110(a)(2) elements relate to the general information and authorities that constitute the infrastructure of a state's air quality management program, the 110(a) plans are generally referred to as an "infrastructure SIPs." Nevada's 2008

**NOTICE OF PUBLIC COMMENT PERIOD BEGINNING
FEBRUARY 1, 2013
AND A PUBLIC HEARING ON MARCH 6, 2013, IF
REQUESTED**

Conducted by the
Nevada Division of Environmental Protection, Bureau of
Air Quality Planning

Pursuant to the public hearing requirements in Title 40 of the Code of Federal Regulations Part 51 section 102, the Nevada Division of Environmental Protection (NDEP) is issuing the following notice and is taking comment on a proposal to certify that the existing Nevada State Implementation Plan (SIP) is adequate for implementation of the 2008 8-hour ozone national ambient air quality standards (NAAQS).

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Persons wishing to comment on the draft plan or to request a public hearing should submit their comments or request in writing either in person or by mail or fax to Adele Malone at the above address or by fax at (775) 687-6396. A request for a hearing must be received by February 28, 2013. Written comments will be received by the NDEP until 5:00 PM PST, March 5, 2013 and will be retained and considered.

Upon receipt of a valid written request, the NDEP will hold a public hearing in Carson City on:

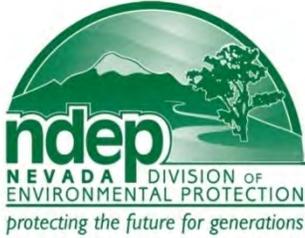
March 6, 2013
10:00 a.m. to 12:00 p.m.
Great Basin Conference Room, 4th Floor
901 South Stewart Street
Carson City, Nevada

An agenda will be posted on the NDEP web site at least 3 working days before the hearing. Oral comments will be received at the hearing. If no request for a public hearing is received by February 26, 2013, the hearing will be cancelled. Persons may check on the status of the hearing on the NDEP web site at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning," or you may call the NDEP Bureau of Air Quality Planning at (775) 687-9349.

This notice has been published in the Las Vegas Review-Journal and the Reno Gazette Journal newspapers. It has been posted at the NDEP offices in Carson City and Las Vegas, at the State Library in Carson City and at County libraries throughout Nevada. Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify Adele Malone or Cathy Douglas (775-687-9349) no later than 3 working days before the hearing.

No. 794274 Feb. 1, 2013

ozone NAAQS infrastructure SIP is a compilation of Nevada's existing authorities and programs to demonstrate that Nevada has a plan in place to address the 2008 ozone NAAQS. Nevada's ozone infrastructure SIP will be submitted to US EPA in April 2013. The NDEP is responsible for developing and implementing state plans in the 15 rural counties of Nevada. Clark County and Washoe County have their own air quality agencies, which are responsible for their respective counties. The NDEP's portion of the Nevada ozone infrastructure SIP and related materials are available on the NDEP website at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning." Access to the draft document may also be obtained by contacting Adele Malone at NDEP, 901 S. Stewart Street, Suite 4001, Carson City, NV 89701; (775) 687-9356; or e-mail to amalone@ndep.nv.gov. Persons wishing to comment on the draft plan or to request a public hearing should submit their comments or request in writing either in person or by mail or fax to Adele Malone at the above address or by fax at (775) 6876396. A request for a hearing must be received by February 26, 2013. Written comments will be received by the NDEP until 5:00 PM PST, March 6, 2013 and will be retained and considered. Upon receipt of a valid written request, the NDEP will hold a public hearing in Carson City on: March 6, 2013 10:00 a.m. to 12:00 p.m. Great Basin Conference Room, 4th Floor 901 South Stewart Street Carson City, Nevada An agenda will be posted on the NDEP web site at least 3 working days before the hearing. Oral comments will be received at the Hearing. If no request for a public hearing is received by February 26, 2013, the hearing will be cancelled. Persons may check on the status of the hearing on the NDEP web site at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning," or you may call the NDEP Bureau of Air Quality Planning at (775) 687-9349. This notice has been published in the Las Vegas ReviewJournal and the Reno Gazette Journal newspapers. It has been posted at the NDEP offices in Carson City and Las Vegas, at the State Library in Carson City and at County libraries throughout Nevada. Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify Adele Malone or Cathy Douglas (775-687-9349) no later than 3 working days before the hearing. No. 794274 Feb 1, 2013



STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

NOTICE OF CANCELLATION OF PUBLIC HEARING ON March 6, 2013

Nevada Division of Environmental Protection
Bureau of Air Quality Planning

Pursuant to the public hearing provisions in Title 40 of the Code of Federal Regulations Part 51 section 102, the Nevada Division of Environmental Protection (NDEP) is cancelling the following public hearing because no request for a hearing was received:

March 6, 2013

10:00 a.m. to 12:00 p.m.

Great Basin Conference Room, 4th Floor

901 South Stewart Street

Carson City, Nevada

The NDEP's draft Ozone Infrastructure State Implementation Plan (SIP) and related materials are available on the NDEP website at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning." Persons may also check on the status of Nevada's Ozone Infrastructure SIP revision by telephone at (775) 687-9356.

Public Comments and Nevada's Responses
(Only one comment was received)

ELIZABETH TOBA PEARLMAN

1523 27th Street, NW, Washington, DC 20007 • (202) 643-4068 • etplaw@gmail.com

March 7, 2013

Adele Malone
Nevada Division of Environmental Protection
901 South Stewart Street
Suite 4001
Carson City, Nevada 89701

Nevada
Environmental Protection

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RE: The Nevada Division of Environmental Protection Portion of the Nevada Infrastructure State Implementation Plan for the 2008 Ozone NAAQS

Dear Ms. Malone:

As per our e-mail and phone discussion from March 5 to March 6, 2013, please find enclosed the Comments and Exhibits regarding the Nevada Division of Environmental Protection Portion of the Nevada Infrastructure State Implementation Plan for the 2008 Ozone NAAQS. I also sent them via e-mail on March 6, 2013 to your e-mail address, amalone@ndep.nv.gov.

Thank you for your understanding. If you have any questions, please do not hesitate to contact me at etplaw@gmail.com or (202) 643-4068.

Sincerely,

s/ Elizabeth Toba Pearlman

Elizabeth Toba Pearlman



March 6, 2013

VIA FAX TO (775) 687-6369 AND E-MAIL TO AMALONE@NDEP.NV.GOV

Adele Malone
Nevada Division of Environmental Protection
901 South Stewart Street
Suite 4001
Carson City, Nevada 89701

RE: The Nevada Division of Environmental Protection Portion of the Nevada Infrastructure State Implementation Plan for the 2008 Ozone NAAQS

Dear Ms. Malone:

On behalf of the Sierra Club and its thousands of members who are adversely impacted by Nevada sources of ozone pollution, we submit the following comments on the proposed rule on the Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan ("SIP") for the 2008 Ozone National Ambient Air Quality Standards ("NAAQS"): Demonstration of Adequacy, ("SIP Proposal"). As explained in detailed below, Nevada must revise its SIP Proposal in order to meet the requirements of the Clean Air Act ("CAA").

As the United States Environmental Protection Agency ("EPA") recognizes, breathing air containing ozone can reduce lung function and increase respiratory symptoms, including aggravating asthma and other respiratory conditions. Ozone may also contribute to premature death, especially in people with heart and lung disease. Moreover, ozone damages vegetation and trees, including forests, parks, and crops. EPA estimates that the 2008 8-hour ozone NAAQS has the potential to avoid 260-2,000 premature deaths annually as of 2020. All of these benefits in ozone reduction are estimated to save \$3 to \$17 billion per year.¹ In fact, 2011 and 2012 ozone ambient monitoring data indicate that these estimates of the health benefits of reducing ozone exposure by EPA may have been low.

¹ EPA, FACT SHEET: FINAL REVISIONS TO THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE, 1-3 (2008), http://www.epa.gov/glo/pdfs/2008_03_factsheet.pdf.

I. THE INFRASTRUCTURE SIP MUST INCLUDE ENFORCEABLE EMISSION LIMITS TO ENSURE ATTAINMENT AND MAINTENANCE OF THE NAAQS IN COUNTIES, WHICH CURRENTLY VIOLATE THE NAAQS.

Clark County has design values above the 2008 ozone NAAQS, 0.075 parts per million (“ppm”), according to EPA’s Air Quality System (“AQS”) data, yet this county is currently designated attainment. Nevada fails to address the increasing ozone levels in Clark County that EPA has determined are unhealthy and potentially deadly in its SIP Proposal. If attainment areas are violating the NAAQS, it logically follows that the SIP lacks adequate emission limits to attain and maintain the NAAQS. In particular, Clean Air Act Section 110(a)(2)(A) requires that each SIP must “include enforceable emission limits and other control measures, means, or techniques... as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.” In other words, the Nevada’s SIP Proposal fails the most basic Clean Air Act requirement, to ensure that air pollution levels meet or are below the NAAQS.

In particular, Clark County, which has a population of close to two million people, is currently violating the 2008 8-hour ozone standard based on 2010 - 2012 design values as evidenced by the data in EPA’s Air Monitor Reports.² Nevada has not specified how it plans to address this violating county, which is designated attainment, and specifically has not proposed additional enforceable emission limits to be added to its SIP to address these violations. The 2008 8-hour ozone monitor values are listed below for the violating county from 2010 to 2012.

² See EPA, NEVADA MONITOR VALUES REPORTS FOR OZONE FOR 2010-2012, http://www.epa.gov/airdata/ad_rep_mon.html (last visited Mar. 2, 2013), attached hereto as Exhibit 1.

**Fourth Highest Monitor Values from Clark County and Three-Year Averages
from 2010 to 2012 over 0.075 ppm**

County (Monitor)	2010	2011	2012	Average
Clark (#320030043)	0.07	0.078	0.077	0.075
Clark (#320030071)	0.073	0.077	0.078	0.076
Clark (#320030073)	0.071	0.077	0.078	0.075
Clark (#320030075)	0.074	0.077	0.079	0.076
Clark (#320031019)	0.074	0.074	0.077	0.075
Clark (#320037771)	0.079	0.079	0.085	0.081

³

Nevada cannot avoid its obligation to implement the 2008 ozone NAAQS by claiming the 2012 data are not technically final. First, these numbers will become final no later than May 1, which is less than two months away. Because of this short time period, it is not likely that Nevada will submit its Infrastructure SIP to EPA until after the data are final. In addition, it will certainly be after May 1, 2013 by the time EPA takes final action on Nevada's SIP Proposal. Therefore, Nevada and EPA will not be able to rationally hide behind the May 1, 2013 date for certification of annual ambient monitoring data for 2012.

Second, because it is clear from EPA data that Clark County will be violating the 2008 8-hour ozone NAAQS, Nevada should complete its quality assurance/quality control ("QA/QC") work on the 2012 data now, to the extent it has not done so, and submit its findings as a response to these comments. Nevada should not try to "game the system" by choosing to wait to perform QA/QC analysis until after it takes final action on this Infrastructure SIP, especially when such a game can result in the death of vulnerable Nevadans.

Third, the 2012 values used above are from the first three quarters of 2012. The form of the 2008 ozone NAAQS is the fourth highest 8-hour daily maximum, not an annual average or a percentage. Thus, if a fourth highest value occurs in the first three quarters of a year to push the design value over the NAAQS, the monitoring values in the fourth quarter cannot change that. That is the situation here. Clark County has 2010 – 2012 design values above the 2008 NAAQS using data from the first three quarters of 2012. The first three quarters of 2012 have

³ *Id.*

final data. It is only annual averages which may not become final until May 1, 2013. Thus, Nevada has no justification to allow the people in Clark County with 2010 – 2012 design values above the NAAQS to continue to be exposed to dangerous air pollution with no hope of regulatory action.

Importantly, Nevada could cost effectively alleviate these harmful levels of ozone, thereby preventing damage to human health and the environment, by requiring pollution control devices and placing limits on electric generating units (“EGUs”). Nitrogen Oxides (“NO_x”), a precursor to ozone, can be reduced cost-effectively through installation of selective catalytic reduction (“SCR”) technology at EGUs that do not already have SCR technology and by imposing short-term stringent emission limits on all EGUs. In fact, all EGUs should have emission limits of 0.03 pound per MBtu based on an eight-hour averaging time that applies at all times, including during startup and shut down. This limit is based on actual emission rates that at least two coal-fired EGUs, the Ghent and Trimble power plants, have achieved when the operators chose to achieve these low emission rates. This would be especially useful in Clark County, which is suffering from dangerously high ozone limits. An emission limit of 0.03 pounds per MBtu could be placed on Reid Gardner Generating Station, resulting in significant NO_x reductions in Clark County.

II. THE INFRASTRUCTURE SIP FAILS TO PREVENT NEVADA FROM SIGNIFICANTLY CONTRIBUTING TO NONATTAINMENT, AND INTERFERING WITH THE MAINTENANCE OF THE 2008 OZONE NAAQS IN OTHER STATES.

Nevada fails to sufficiently address how it plans to prevent its emissions from significantly contributing to nonattainment, and from interfering with the maintenance of the 2008 ozone NAAQS in other states. This requirement is commonly known as the Good Neighbor Provision and is found in Section 110(a)(2)(D)(i)(I) of the CAA. Nevada’s Infrastructure SIP must prohibit any source or other type of emission activity in one state from contributing significantly to nonattainment or interfering with maintenance of the NAAQS in another state.⁴ Nevada does not provide an adequate analysis that it is not contributing to other states’ ozone emission levels and that its emission reduction programs are adequate to redress any significant contribution to other states. Nevada’s SIP Proposal is inadequate and must be revised to satisfy its requirement under Section 110(a)(2)(D)(i).

More specifically, Nevada incorrectly holds that EPA must inform the state of its pollution contribution to downwind states before it must take any action. Nevada relies upon a memorandum by Gina McCarthy regarding the

⁴ See 42 U.S.C. 7410(a)(2)(D)(i)(I).

D.C. Circuit's decision in *EME Homer City Generation, LP v. EPA* ("Homer City").⁵ On August 21, 2012, the D.C. Circuit vacated the Cross-State Air Pollution Rule ("CSPAR").⁶ In response, Ms. McCarthy wrote while EPA considers the decision wrongly decided and petitioned for rehearing, EPA will not be making findings that states failed to meet their requirements under Section 110(a)(2)(D)(i)(II).⁷ EPA's proposed reliance, and thereby Nevada's reliance, on *Homer City* is misplaced for several reasons.

First, this rulemaking only impacts sources of pollution in Nevada. Therefore, any final action on this rulemaking should be appealable to the Ninth Circuit, not the D.C. Circuit. EPA should not engage in "forum shopping" by sending a rule that only impacts polluters in Nevada to the D.C. Circuit rather than the Ninth Circuit. Thus, Nevada should not voluntarily follow *Homer City*, which EPA has said was incorrectly decided.

Indeed, *Homer City* was incorrectly decided. The majority opinion in *Homer City* reached a conclusion that was inconsistent with previous D.C. Circuit decisions and ignored the plain language of the statute. Therefore, it is not binding, nor persuasive with regard to Nevada's SIP Proposal. The D.C. Circuit wrongly held that EPA cannot promulgate a Federal Implementation Plan ("FIP") to address the requirements of the Good Neighbor Provisions until sometime after EPA has quantified emissions for all states that must be prohibited under the provision.⁸

The *Homer City* opinion conflicts with the D.C. Circuit's decision in *North Carolina* which held that upwind states' obligations under Section 110(a)(2)(D)(i) must be harmonized with the NAAQS attainment deadlines for downwind states.⁹ The *North Carolina* court required EPA to "decide what date, whether 2015 or earlier, is as expeditious as practicable for states to eliminate their significant contributions to downwind nonattainment."¹⁰ And in the court's subsequent remand decision, it made clear that it did "not intend to grant an indefinite stay" for EPA to correct Clean Air Interstate Rule's ("CAIR") flaws.¹¹ In response to *North Carolina's* mandate, EPA incorporated a FIP into the Transport

⁵ See SIP PROPOSAL at 5; *Homer City*, 696 F.3d 7, 11 (D.C. Cir. 2012).

⁶ *Homer City*, F.3d at 11.

⁷ See Gina McCarthy, *Memo to EPA Air Division Directors, Regions 1-10, Next Steps for Pending Redesignation Request State Implementation Plan Actions Affected by Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule*, 2-3 (Nov. 19 2012), http://www.epa.gov/airtransport/pdfs/CSAPR_Memo_to_Regions.pdf, [hereinafter McCarthy Memorandum]. Sierra Club is currently challenging the McCarthy Memorandum in court.

⁸ *Homer City*, 696 F.3d at 28.

⁹ See *North Carolina v. EPA*, 531 F.3d 896, 912, *on rehearing*, 550 F.3d 1176 (2008).

¹⁰ *Id.* at 930.

¹¹ See *North Carolina*, 550 F.3d at 1178.

Rule pursuant to Section 110(c).¹² In disallowing this approach, the panel's decision and EPA's action here would conflict with the text of the Act¹³ and *North Carolina*.¹⁴ If EPA finalized its proposal, it would be "granting an indefinite stay" of the three-year deadline in CAA Section 110(a)(1) and the two-year deadline in Section 110(c)(1). Not only is this illegal, but it leaves the ozone transport issue unresolved, which will result in millions of people being subject to dangerous and unhealthy ozone levels, which can cause health problems, death, economic harm, and environmental damage.

Homer City also concluded that EPA violated the CAA by not calculating the required emissions reductions on a proportional basis as between upwind states.¹⁵ This conclusion is contrary to *North Carolina's* holding that EPA need not determine each state's individualized air quality impact on downwind states "relative to other upwind states."¹⁶

Second, Nevada claims that regardless of the *Homer City* decision and the McCarthy Memorandum, Nevada's current SIP does prevent significant contributions to nonattainment and interference with maintenance in downwind states. Nevada's analysis in support of this claim is flawed.

Nevada's reliance on CAIR is misplaced and does not satisfy its obligations under the Good Neighbor provision. CAIR was meant to address the less stringent 1997 ozone NAAQS. When Nevada revises its Good Neighbor obligations, Nevada cannot rely upon CAIR. CAIR does not address the requirements of Section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. It was not intended to address the 2008 ozone NAAQS but instead was intended to address the less stringent 1997 ozone NAAQS. Thus, Nevada's Proposed SIP is inadequate, because it cannot rely on CAIR for emission reductions to meet the 2008 ozone NAAQS.¹⁷

¹² See 42 U.S.C. 7410(c)(1) (requiring EPA to promulgate a FIP "at any time" within 2 years after a state fails to meet its SIP obligations).

¹³ *Homer City*, 696 F.3d at 45 (Rogers, J. dissenting).

¹⁴ The court's erroneous ruling that states' obligations to avoid significant contributions to nonattainment in other states must await the end of EPA rulemaking is wrong for reasons the dissent set out, and is especially harmful to the statutory program for ensuring timely attainment of air quality standards. As *North Carolina* recognized, but the panel overlooked, Congress recognized that time is of the essence when essential public health protections are at stake.

¹⁵ *Homer City*, 696 F.3d at 26-27

¹⁶ *North Carolina*, 531 F.3d at 908. See also *Michigan v. EPA*, 213 F.3d 663, 679 (D.C. Cir. 2000) (permitting use of uniform cost thresholds and the "ineluctabl[e]" result that small and large contributors could have the same amount of emissions reductions); *Homer City*, 696 F.3d at 59 (Rogers, J. dissenting).

¹⁷ See Proposed Rule on Kentucky's 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-hour Ozone National Ambient Air Quality Standards (NAAQS)

Furthermore, in 2008, the D.C. Circuit vacated CAIR, because it failed to require sufficient and timely reductions to meet the needs of neighboring downwind states.¹⁸ The D.C. Circuit has allowed CAIR to remain only until a replacement is created, because the court reasoned CAIR had clear benefits for public health and the environment that the court did not want to sacrifice.¹⁹ However, the D.C. Circuit clearly held that CAIR does not satisfy a state's obligations under the Good Neighbor Provisions.²⁰ Nevada cannot rely on any reductions from CAIR for any pollutant. Therefore, Nevada must correct this error before submitting its Infrastructure SIP to EPA.

Third, Nevada's cursory analysis of whether its pollution affects other states is not sufficient to satisfy CAA Section 110(a)(2)(D)(i)(I). Nevada only performed a qualitative analysis. It should have performed a more substantive, quantitative analysis, using photochemical modeling, to demonstrate that it does not contribute significantly to nonattainment or interfere with maintenance of the NAAQS in another state. Throughout its perfunctory analysis, Nevada failed to assess whether it is contributing to pollution in other states. One obvious problem in Nevada's analysis is its reliance on "prevailing winds" to determine if Nevada's air pollution is affecting other states' pollution levels.²¹ Relying on prevailing winds presents two problems for determining whether a state contributes to another state's downwind pollution. The prevailing winds method reflects only what typically occurs and not variations. However, minor variations in wind patterns will affect the 8-hour ozone standard because a design value is made up of only 32 hours a year, i.e., 0.3% of the hours per year. Thus, even if the prevailing winds blew in one direction 99.7% of the time, they still would not demonstrate that Nevada is not significantly contributing to another state's emission levels. Additionally, prevailing winds are recorded at very high altitudes, much higher than the typical stacks heights where the majority of ozone precursors are emitted. This means that Nevada's analysis fails to consider where the pollution is being emitted and where the wind is blowing at these lower heights. These omissions in Nevada's analysis render it arbitrary and thus not legally approvable by EPA.

"Infrastructure" State Implementation Plan ("SIP"), 78 Fed. Reg. 3867 (Jan. 17, 2013) (disapproving in part Kentucky's Infrastructure SIP for reliance on CAIR to satisfy requirements for the 2008 ozone NAAQS).

¹⁸ See *North Carolina*, 531 F.3d at 906 (stating CAIR had "more than several fatal flaws").

¹⁹ See *North Carolina*, 550 F.3d at 1777-8.

²⁰ *Id.*

²¹ PROPOSED SIP at 6.

III. THE INFRASTRUCTURE SIP MUST PROTECT VISIBILITY IN OTHER STATES.

In order for Nevada to meet its obligations under “Prong 4” of the Good Neighbor Provision, Nevada must protect visibility in other states.²² However Nevada fails to do so, because Nevada inappropriately relies on a FIP Best Available Retrofit Technology (“BART”) emission limits for NO_x at the Reid Gardner Generating Station (“Reid Gardener’s FIP”) to help satisfy this requirement. This FIP is legally insufficient. The technology chosen for Reid Gardner Generating Station in the FIP was a vastly inferior technology and does not meet the standard of BART. Because it does not meet the required standard, Nevada’s reliance on Reid Gardener’s FIP to help protect visibility in other states is misplaced. We incorporate all arguments made on this matter in Brief of Petitioners, *Moapa Band of Paiute Indians v. EPA*, No. 12-73388 (9th Cir. filed Feb. 28, 2013) which fully explains why the Reid Gardener’s FIP is inadequate.²³ For these same reasons, Nevada’s reliance on Reid Gardener’s FIP in support of CAA Section 110(a)(2)(D)(i)(II) is also inappropriate.

IV. THE INFRASTRUCTURE SIP MUST CONTAIN THE 2008 OZONE NAAQS.

The 2008 ozone NAAQS imposed a new 8-hour primary ozone standard of 0.075 ppm and a new secondary 8-hour standard to the level of .075 ppm based on the 3-year average of the annual 4th-highest daily maximum. Despite these new NAAQS, Nevada’s SIP approved regulations do not reflect the new standards.

²² See 42 U.S.C. 7410(a)(2)(D)(i)(II).

²³ Attached hereto as Exhibit 2.

V. CONCLUSION

For the reasons described above, the Nevada SIP is currently inadequate to achieve and maintain compliance with the 2008 ozone NAAQS. Nevada must correct these faults in order to be in compliance with the Clean Air Act.

If you have any questions, we would be happy to discuss them with you. Thank you for considering these comments. We look forward to working with you to improve the air quality of Nevada.

Respectfully Submitted,

/s Robert Ukeiley
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Exhibit 1

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2010

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	4950	0.064	0.063	0.062	0.062	0	0.00	214	206	96	0	None	1	320010002	280 South Russell Street	Fallon	Churchill	NV	09
8-HR RUN AVG BEGIN HOUR	6044	0.074	0.068	0.067	0.067	0	0.00	365	249	68	0	None	1	320030020	4701 Mitchell Street	North Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	6175	0.074	0.073	0.069	0.068	0	0.00	365	257	70	0	None	1	320030022	Ne Of City-12101 Hwy 93/115	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	6249	0.067	0.066	0.065	0.063	0	0.00	365	258	71	0	None	1	320030023	465 E. Old Mill Road, Mesquite, Nv	Mesquite	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8730	0.073	0.071	0.07	0.07	0	0.00	365	364	100	0	None	1	320030043	4525 New Forest Drive	Spring Valley	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8567	0.077	0.074	0.073	0.073	1	1.00	365	355	97	0	Included	1	320030071	7701 Ducharme Ave	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	2760	0.07	0.069	0.066	0.061	0	0.00	365	114	31	0	None	1	320030072	3525 N Valadez Street	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8677	0.074	0.071	0.071	0.071	0	0.00	365	360	99	0	None	1	320030073	333 Pavilion Center Drive	Las Vegas	Clark	NV	09

Get detailed information about this report, including column descriptions, at http://www.epa.gov/airquality/airdata/ad_about_reports.html#mon

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 6, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2010

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	8657	0.082	0.075	0.074	0.074	1	1.00	365	360	99	0	Included	1	320030075	6651 W. Azure Ave	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8721	0.073	0.071	0.069	0.068	0	0.00	365	363	99	0	None	2	320030538	5483 Clubhouse Dr-Winterwood, Las Vegas	Sunrise Manor	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	6292	0.074	0.072	0.07	0.069	0	0.00	365	259	71	0	None	1	320030601	1005 Industrial Road	Boulder City	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8694	0.075	0.074	0.074	0.074	0	0.00	365	361	99	0	None	1	320031019	T25s R59e S10	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	2681	0.068	0.067	0.064	0.06	0	0.00	365	112	31	0	None	1	320031021	1562 Katie Ave	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8710	0.076	0.069	0.069	0.068	1	1.00	365	363	99	0	Included	1	320032002	1301b East Tonopah	North Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	3071	0.084	0.083	0.081	0.079	9	25.70	365	128	35	0	None	1	320037771	Ries Rd, Spring Mountain Youth Camp, Mt. Charleston	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	3062	0.075	0.073	0.071	0.068	0	0.00	365	127	35	0	None	1	320037772	668 Gretta Ln, Indian Springs	Not in a city	Clark	NV	09

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 6, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2010

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	2692	0.08	0.074	0.074	0.073	1	3.30	365	112	31	0	None	1	320037773	11357 N. Decatur Blvd., Las Vegas	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	2013	0.074	0.074	0.073	0.072	0	0.00	365	83	23	0	None	1	320037775	11480 Mt. Potosi Canyon Rd., Las Vegas	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	1974	0.071	0.07	0.07	0.069	0	0.00	365	81	22	0	None	2	320037775	11480 Mt. Potosi Canyon Rd., Las Vegas	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	4610	0.071	0.065	0.063	0.063	0	0.00	214	189	88	0	None	1	320190006	320 Hardie Lane	Fernley	Lyon	NV	09
8-HR RUN AVG BEGIN HOUR	8492	0.071	0.069	0.067	0.067	0	0.00	365	353	97	0	None	1	320310016	301 A State Street, Reno, Nv 89502	Reno	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8680	0.069	0.069	0.069	0.067	0	0.00	365	361	99	0	None	1	320310020	4110 De Lucci Lane, Reno Nv 89502	Reno	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8662	0.077	0.074	0.07	0.07	1	1.00	365	359	98	0	None	1	320310025	684a State Route 341, Reno Nv 89521	Reno	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8730	0.073	0.069	0.069	0.068	0	0.00	365	365	100	0	None	1	320311005	750 4th St, Sparks, Nv 89431	Sparks	Washoe	NV	09

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 6, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2010

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	8743	0.067	0.063	0.062	0.062	0	0.00	365	365	100	0	None	1	320312002	855 Alder Drive, Incline Village, Nv 89451	Incline Village-Crystal Bay	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8718	0.073	0.07	0.069	0.068	0	0.00	365	363	99	0	None	1	320312009	325 Patrician Dr, Lemmon Valley, Nv 89506	Lemmon Valley-Golden Valley	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8263	0.077	0.069	0.069	0.069	1	1.10	365	338	93	0	None	1	320330101	Great Basin National Park	Lehman Caves National Monument	White Pine	NV	09
8-HR RUN AVG BEGIN HOUR	4552	0.067	0.066	0.065	0.064	0	0.00	214	187	87	0	None	2	325100002	3300 East Fifth St (City Yard)	Carson City	Carson City	NV	09

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 6, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2011

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	5019	0.063	0.056	0.054	0.054	0	0.00	214	209	98	0	None	1	320010002	280 South Russell Street	Fallon	Churchill	NV	09
8-HR RUN AVG BEGIN HOUR	2997	0.078	0.074	0.071	0.07	1	2.90	365	125	34	0	Included	1	320030022	Ne Of City-12101 Hwy 93/115	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	3342	0.067	0.061	0.059	0.059	0	0.00	365	139	38	0	None	1	320030023	465 E. Old Mill Road, Mesquite, Nv	Mesquite	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8687	0.09	0.082	0.079	0.078	6	6.10	365	361	99	0	Included	1	320030043	4525 New Forest Drive	Spring Valley	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8695	0.089	0.079	0.079	0.077	6	6.00	365	362	99	0	Included	1	320030071	7701 Ducharme Ave	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8720	0.088	0.081	0.08	0.077	4	4.00	365	361	99	0	Included	1	320030073	333 Pavilion Center Drive	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8533	0.079	0.079	0.077	0.077	8	8.30	365	353	97	0	Included	1	320030075	6651 W. Azure Ave	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8630	0.076	0.075	0.073	0.073	1	1.00	365	357	98	0	Included	2	320030538	5483 Clubhouse Dr-Winterwood, Las Vegas	Sunrise Manor	Clark	NV	09

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 2, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2011

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	8377	0.075	0.075	0.074	0.073	0	0.00	365	345	95	0	None	1	320030540	4250 Karen Ave	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8635	0.081	0.071	0.07	0.07	1	1.00	365	358	98	0	Included	1	320030601	1005 Industrial Road	Boulder City	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8715	0.083	0.08	0.079	0.074	3	3.00	365	362	99	0	Included	1	320031019	T25s R59e S10	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8632	0.073	0.072	0.072	0.072	0	0.00	365	358	98	0	None	1	320032002	1301b East Tonopah	North Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	5858	0.084	0.083	0.082	0.079	10	15.00	365	244	67	0	None	4	320037771	Ries Rd, Spring Mountain Youth Camp, Mt. Charleston	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	3008	0.082	0.082	0.08	0.08	8	23.40	365	125	34	0	None	4	320037776	Mt. Pass, State Hwy 160 Way To Pahrump	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	3238	0.072	0.07	0.066	0.066	0	0.00	365	135	37	0	None	4	320037777	650 Quartz	Sandy Valley	Clark	NV	09

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 2, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2011

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	3036	0.086	0.084	0.083	0.083	18	52.10	365	126	35	0	None	4	320037778	Southeast Of Las Vegas, Near Comm Towers In Henderson, Nv	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	4743	0.08	0.079	0.074	0.072	2	2.20	214	194	91	0	None	1	320190006	320 Hardie Lane	Fernley	Lyon	NV	09
8-HR RUN AVG BEGIN HOUR	8703	0.073	0.069	0.063	0.062	0	0.00	365	362	99	0	None	1	320310016	301 A State Street, Reno, Nv 89502	Reno	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8734	0.073	0.07	0.067	0.066	0	0.00	365	365	100	0	None	1	320310020	4110 De Lucci Lane, Reno Nv 89502	Reno	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8750	0.072	0.069	0.066	0.064	0	0.00	365	365	100	0	None	1	320310025	684a State Route 341, Reno Nv 89521	Reno	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8755	0.081	0.076	0.068	0.067	2	2.00	365	365	100	0	None	1	320311005	750 4th St, Sparks, Nv 89431	Sparks	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8731	0.068	0.064	0.062	0.059	0	0.00	365	362	99	0	None	1	320312002	855 Alder Drive, Incline Village, Nv 89451	Incline Village-Crystal Bay	Washoe	NV	09

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 2, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2011

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	8703	0.075	0.072	0.068	0.066	0	0.00	365	362	99	0	None	1	320312009	325 Patrician Dr, Lemmon Valley, Nv 89506	Lemmon Valley-Golden Valley	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8634	0.075	0.075	0.073	0.072	0	0.00	365	357	98	0	None	1	320330101	Great Basin National Park	Lehman Caves National Monument	White Pine	NV	09
8-HR RUN AVG BEGIN HOUR	4888	0.069	0.069	0.065	0.064	0	0.00	214	195	91	0	None	2	325100002	3300 East Fifth St (City Yard)	Carson City	Carson City	NV	09

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 2, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2012 (Annual statistics for 2012 are not final until May 1, 2013)

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	4979	0.055	0.054	0.053	0.052	0	0.00	214	205	96	0	None	1	320010002	280 South Russell Street	Fallon	Churchill	NV	09
8-HR RUN AVG BEGIN HOUR	4372	0.081	0.08	0.076	0.076	5	10.00	366	183	50	0	Included	1	320030022	Ne Of City-12101 Hwy 93/115	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	4358	0.072	0.071	0.071	0.069	0	0.00	366	181	49	0	None	1	320030023	465 E. Old Mill Road, Mesquite, Nv	Mesquite	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8735	0.082	0.079	0.078	0.077	5	5.00	366	364	99	0	Included	1	320030043	4525 New Forest Drive	Spring Valley	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8722	0.079	0.078	0.078	0.078	4	4.10	366	360	98	0	Included	1	320030071	7701 Ducharme Ave	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8682	0.081	0.079	0.079	0.078	6	6.10	366	360	98	0	Included	1	320030073	333 Pavilion Center Drive	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8714	0.089	0.081	0.08	0.079	11	11.20	366	361	99	0	Included	1	320030075	6651 W. Azure Ave	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8745	0.08	0.078	0.076	0.074	3	3.00	366	363	99	0	Included	2	320030538	5483 Clubhouse Dr-Winterwood, Las Vegas	Sunrise Manor	Clark	NV	09

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 2, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2012 (Annual statistics for 2012 are not final until May 1, 2013)

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	8730	0.078	0.077	0.076	0.073	3	3.00	366	363	99	0	Included	1	320030540	4250 Karen Ave	Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8709	0.078	0.078	0.077	0.077	7	7.10	366	360	98	0	Included	1	320030601	1005 Industrial Road	Boulder City	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8747	0.083	0.082	0.08	0.077	6	6.00	366	364	99	0	Included	1	320031019	T25s R59e S10	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	8730	0.079	0.079	0.077	0.076	4	4.00	366	363	99	0	Included	1	320032002	1301b East Tonopah	North Las Vegas	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	6457	0.091	0.089	0.086	0.085	14	19.20	366	267	73	0	None	4	320037771	Ries Rd, Spring Mountain Youth Camp, Mt. Charleston	Not in a city	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	4413	0.072	0.069	0.068	0.067	0	0.00	366	184	50	0	None	4	320037774	Top Of Frenchman Mountain Comm Tower	Sunrise Manor	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	3668	0.081	0.08	0.079	0.076	7	16.70	366	153	42	0	None	4	320037778	Southeast Of Las Vegas, Near Comm Towers In Henderson, Nv	Not in a city	Clark	NV	09

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Generated: March 2, 2013

Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2012 (Annual statistics for 2012 are not final until May 1, 2013)

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	3645	0.074	0.074	0.074	0.073	0	0.00	366	152	42	0	None	4	320037779	101 Laughlin Civic Drivelaughlin	Laughlin	Clark	NV	09
8-HR RUN AVG BEGIN HOUR	5092	0.076	0.072	0.072	0.071	1	1.00	214	212	99	0	None	1	320190006	320 Hardie Lane	Fernley	Lyon	NV	09
8-HR RUN AVG BEGIN HOUR	7263	0.075	0.073	0.073	0.072	0	0.00	366	301	82	0	None	1	320310016	301 A State Street, Reno, Nv 89502	Reno	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	7315	0.075	0.073	0.073	0.072	0	0.00	366	305	83	0	None	1	320310020	4110 De Lucci Lane, Reno Nv 89502	Reno	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	6020	0.072	0.068	0.067	0.067	0	0.00	366	249	68	0	None	1	320310025	684a State Route 341, Reno Nv 89521	Reno	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	7261	0.075	0.072	0.072	0.071	0	0.00	366	302	83	0	None	1	320311005	750 4th St, Sparks, Nv 89431	Sparks	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8035	0.071	0.066	0.066	0.065	0	0.00	366	335	92	0	None	1	320312002	855 Alder Drive, Incline Village, Nv 89451	Incline Village-Crystal Bay	Washoe	NV	09
8-HR RUN AVG BEGIN HOUR	8027	0.077	0.077	0.073	0.071	2	2.20	366	334	91	0	None	1	320312009	325 Patrician Dr, Lemmon Valley, Nv 89506	Lemmon Valley-Golden Valley	Washoe	NV	09

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Monitor Values Report

Geographic Area: Nevada

Pollutant: Ozone

Year: 2012 (Annual statistics for 2012 are not final until May 1, 2013)

Exceptional Events: Included (if any)

Duration Description=8-HR RUN AVG BEGIN HOUR

Duration Description	Obs	First Max	Second Max	Third Max	Fourth Max	Actual Exc	Est Exc	Required Days	Valid Days	Percent Days	Missing Days	Exc Events	Monitor Number	Site ID	Address	City	County	State	EPA Region
8-HR RUN AVG BEGIN HOUR	8289	0.08	0.078	0.077	0.076	4	4.30	366	339	93	0	None	1	320330101	Great Basin National Park	Lehman Caves National Monument	White Pine	NV	09
8-HR RUN AVG BEGIN HOUR	4988	0.074	0.073	0.073	0.072	0	0.00	214	205	96	0	None	2	325100002	3300 East Fifth St (City Yard)	Carson City	Carson City	NV	09

Get detailed information about this report, including column descriptions, at http://www.epa.gov/airquality/airdata/ad_about_reports.html#mon

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Source: U.S. EPA AirData <<http://www.epa.gov/airdata>>

Generated: March 2, 2013

Exhibit 2

No. 12-73388

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOAPA BAND OF PAIUTE INDIANS, NATIONAL PARKS
CONSERVATION ASSOCIATION, AND SIERRA CLUB,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA P.
JACKSON, Administrator, United States Environmental Protection Agency,

Respondents,

and

NEVADA POWER COMPANY and STATE OF NEVADA, DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES, DIVISION OF
ENVIRONMENTAL PROTECTION,

Intervenor Respondents.

**BRIEF OF PETITIONERS MOAPA BAND OF PAIUTE INDIANS,
NATIONAL PARKS CONSERVATION ASSOCIATION, AND SIERRA
CLUB**

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CORPORATE DISCLOSURE STATEMENT

Petitioners National Parks Conservation Association and Sierra Club are nonprofit conservation organizations. The Moapa Band of Paiute Indians is a sovereign tribe. None of the petitioners has a parent corporation and no publicly held corporation owns a 10-percent or greater ownership interest in any of the petitioning organizations.

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GLOSSARY

Act	Clean Air Act, 42 U.S.C. §§ 7410 <i>et seq.</i>
AFUDC	allowance for funds used to during construction
APA	Administrative Procedure Act, 5 U.S.C. §§ 551 <i>et seq.</i>
BART	best available retrofit technology
CAA	Clean Air Act, 42 U.S.C. §§ 7410 <i>et seq.</i>
CCM	Cost Control Manual
EPA	United States Environmental Protection Agency
FIP	federal implementation plan
lb/MMBtu	pounds per million British thermal units
LNB	low-nitrogen oxides burners
NDEP	Nevada Division of Environmental Protection
NO _x	nitrogen oxides
NPS	National Park Service
OFA	over-fire air
RGGS	Reid Gardner Generating Station
SCR	selective catalytic reduction
SIP	state implementation plan
SNCR	selective non-catalytic reduction
URP	uniform rate of progress

INTRODUCTION

This case involves long-overdue air pollution controls for the aging Reid Gardner Generating Station (“Reid Gardner”), a coal-fired power plant that impairs visibility in five national parks, including the Grand Canyon.

Recognizing the widespread visibility problem in our national parks and wilderness areas, Congress enacted the Clean Air Act’s (“Act”) regional haze program, which mandates the restoration of natural visibility conditions in our national parks and other pristine “Class I” areas by 2064. The statute requires industrial polluters including Reid Gardner—the largest single visibility-impairing source in the State of Nevada—to install the “best available retrofit technology,” or “BART.” Under governing regulations, BART is the “best system of continuous emission control” considering, among other factors, visibility improvement and cost.

When the U.S. Environmental Protection Agency (“EPA”) evaluated what constitutes BART for Reid Gardner, it correctly found that selective catalytic reduction, or “SCR” technology, far outperforms its next best competitor, selective non-catalytic reduction, or “SNCR” technology, which, on average, is only half as effective at reducing nitrogen oxides pollution. EPA further found the superior SCR technology to be cost-effective, and otherwise viable in light of the remaining statutory regional haze factors.

Despite these findings, EPA ultimately chose the inferior (SNCR) technology as the “best system of continuous emission reduction” for Reid Gardner, asserting that the visibility benefits achievable with SCR are not sufficient to justify its incrementally higher costs. There is no basis in the record for this conclusion. Just the opposite; the record shows that EPA knowingly overestimated the costs of SCR and underestimated the visibility benefits it would provide. Specifically, with respect to costs, EPA inflated SCR’s expense by 30 to 40 percent at the same time it significantly underestimated the cost of the competing SNCR technology. With respect to visibility improvement, EPA failed to account for the full extent of emissions reductions that SCR can achieve and failed to consider the cumulative benefit of SCR across all five of the Class I areas that are impacted by Reid Gardner’s pollution. In short, EPA exaggerated the costs of SCR and discounted its benefits and then concluded that the benefits of SCR could not possibly warrant the costs. Without a fair accounting of both costs and benefits, EPA could not reasonably reach this conclusion.

What is apparent from EPA’s arbitrary treatment of costs and benefits is EPA’s immovable commitment to the inferior SNCR technology, regardless of what any principled analysis of the statutory regional haze factors would show. To reach its predetermined outcome, EPA abandoned its customary methods of assessing best available retrofit technology and skewed its analysis to reject the

best performing control. If this decision is allowed to stand, it will not only undermine achievement of the Clean Air Act's visibility goals at the Grand Canyon and other treasured public lands that are marred by pollution from Reid Gardner, it will give EPA a free pass to impose lax pollution control standards that will hobble efforts to restore visibility as Congress intended. For all of these reasons, Petitioners Moapa Band of Paiute Indians, National Parks Conservation Association, and Sierra Club (collectively, the "Environmental Coalition") respectfully request that this Court invalidate the challenged BART determination.

JURISDICTIONAL STATEMENT

I. SUBJECT MATTER JURISDICTION

This Court has jurisdiction pursuant to 42 U.S.C. § 7607(b)(1), which provides that petitions for judicial review of EPA final "action in approving or promulgating any implementation plan under section 7410 . . . which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit." Venue is proper in this Circuit because this case concerns EPA's partial approval of a state implementation plan, and promulgation of a federal implementation plan, containing emission limits for the Reid Gardner Generating Station in Nevada.

Petitioners filed their petition for review on October 19, 2012, which is within 60 days of August 23, 2012, the date of publication of the final rule. *See* 77

Fed. Reg. 50,936 (Aug. 23, 2012). Accordingly, the petition for review was timely filed. *See* 42 U.S.C. § 7607(b)(1) (“Any petition for review under this subsection shall be filed within 60 days from the date notice of such promulgation, approval, or action appears in the Federal Register.”).

II. STANDING

The organizations comprising the Environmental Coalition have standing to challenge EPA’s approval of the regional haze plan for Reid Gardner, which directly affects the health and aesthetic interests of their members. An organization has standing to bring an action on behalf of its members if: (1) neither the claim asserted nor the relief requested requires its members to participate directly in the lawsuit; (2) it is seeking to protect interests that are germane to its purpose; and (3) its members would have standing to sue individually. *See Hunt v. Wash. State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977).

Here, direct participation of the members of the Environmental Coalition’s organizations is unnecessary. Second, the Environmental Coalition’s interests in this litigation fall squarely within each of their organization’s missions. *See* Declarations of William Anderson at ¶ 1; Jane Feldman at ¶ 4; Lynn Davis at ¶ 3. (all declarations are provided in Attachment A to Petitioners’ accompanying Motion for Leave to File Standing Declarations). Third, these organizations each

have members with standing to bring this suit individually.¹ To satisfy this final prong of the test, Petitioners must show that (1) at least one of its members has suffered an “injury in fact;” (2) the injury is fairly traceable to EPA’s illegal conduct; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs., Inc.*, 528 U.S. 167, 180-81 (2000).

Petitioners’ members satisfy the “injury in fact” requirement. Aesthetic injury suffices to confer standing. *Laidlaw*, 528 U.S. at 183. To satisfy this requirement, a party need not show actual harm; “an increased risk of harm can itself be injury in fact sufficient for standing.” *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1151 (9th Cir. 2000); *see also Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 860 (9th Cir. 2004) (injury in fact existed where agency’s issuance of a permit authorizing an oil company to build an addition to its oil refinery dock increased the risk of an oil spill, an event that would harm plaintiffs’ interests).

Petitioners’ members allege concrete injuries because, as residents of communities near Reid Gardner and as visitors to the region’s national parks, their aesthetic enjoyment of their natural surroundings is impaired by Reid Gardner’s

¹ Only one Petitioner need establish standing. *Mass. v. EPA*, 549 U.S. 497, 518 (2007); *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 809 n.3 (9th Cir. 2005).

pollution. Members of Sierra Club and NPCA, who regularly visit and fly over the national parks affected by Reid Gardner—such as the Grand Canyon, Bryce Canyon, and Zion—experience injury from degraded scenic vistas in those iconic places. Sierra Club member Jane Feldman has witnessed haze-obscured views in the Grand Canyon and Zion during family trips organized to enjoy the scenic beauty of these places. Feldman Decl. at ¶ 13. Steven Conner, a pilot and amateur outdoor photographer, is similarly harmed by hazy views when he visits and flies over these famed parks. Conner Decl. at ¶¶ 5-7. On a recent flight over the Grand Canyon, Mr. Conner was “shocked” by the “haze that had settled into the canyon,” obscuring the bottom of the canyon in places *Id.* at ¶ 3.

The Moapa Band of Paiutes, who live next to Reid Gardner and who regularly breathe the plant’s pollution, are also injured by Reid Gardner’s excess emissions. Anderson Decl. at ¶¶ 4-12. This Court has upheld standing when, as here, a plaintiff “will suffer injury if compelled to breathe air less pure than that mandated by the Clean Air Act.” *Natural Res. Def. Council v. EPA*, 507 F.2d 905, 910 (9th Cir. 1974); *see Hall v. Norton*, 266 F.3d 969, 976 (9th Cir. 2001) (“evidence of a credible threat to the plaintiff’s physical well-being from airborne pollutants” establishes injury in fact). Chairman Anderson, who suffers from respiratory problems that are exacerbated by exposure to excess pollution from Reid Gardner, is concerned about the effects of Reid Gardner’s pollution on his

health, the health of his family and the health of other members of his tribe. *Id.* at ¶¶4-9.

The organizations comprising the Environmental Coalition also satisfy the traceability requirement for standing. The physical and aesthetic harms suffered by their members are traceable to EPA's illegal conduct. Had EPA imposed stronger pollution controls on Reid Gardner, as required by the Clean Air Act, emissions from the power plant would significantly decrease below pollution levels that currently are authorized by EPA, thus reducing risk to public health and improving visibility in the region's national park and wilderness areas. *See, e.g., NRDC v. Sw. Marine, Inc.*, 236 F.3d 985, 994-95 (9th Cir. 2000) (to satisfy traceability requirement, defendant's conduct need only cause or contribute to alleged injury).

Finally, a favorable order by this Court will provide redress to the Environmental Coalition for the illegal and harmful effects of EPA's violations of the Clean Air Act. An order requiring EPA to engage in a new public process that complies with the Clean Air Act is likely to result in stronger pollution controls and to cure the above-described harm to the Environmental Coalition. *See, e.g., Ctr. for Energy and Econ. Dev. v. EPA*, 398 F.3d 653, 657 (D.C. Cir. 2005) (holding that "the redressability requirement may be satisfied . . . by . . . giving the

aggrieved party the opportunity to participate in a new rulemaking”) (quotations omitted).

STATEMENT OF ISSUES

1. Whether EPA properly rejected SCR technology in favor of the inferior SNCR technology in determining the “best system of continuous emission control” for nitrogen oxides pollution from Reid Gardner based on the governing law and the facts in the record.
2. Whether EPA’s cost estimates for the two competing technologies—SCR and SNCR—have a rational basis under the relevant law.
3. Whether EPA’s estimated visibility gains from the two competing technologies—SCR and SNCR—have a rational basis under the relevant law.
4. Whether the undisputed errors in EPA’s cost-benefit analysis rendered the agency’s ultimate conclusion favoring SNCR arbitrary and capricious.

Pursuant to Ninth Circuit Rule 28-2.7, pertinent authorities are reproduced in an addendum to this brief.

STATEMENT OF THE CASE

The Clean Air Act requires each state to submit a regional haze plan to EPA in order to eliminate haze pollution in national parks and wilderness areas. *See* 42 U.S.C. § 7491(b)(2). EPA reviews plans submitted by the states and must approve

plans that comply with all applicable requirements of the Clean Air Act; however, if a state plan does not meet the requirements of the Act, EPA must disapprove the plan submission and promulgate a federal implementation plan that remedies the shortcomings. *Id.* § 7410(c), (k).

On November 18, 2009, the State of Nevada submitted a regional haze plan for EPA's review. 76 Fed. Reg. 36,450, 36,451 (June 22, 2011). In light of public comments pointing out multiple flaws in the State's analysis, EPA concluded that the information provided by the State was not sufficient for EPA to take final action on Nevada's nitrogen oxide BART determination for Reid Gardner. 77 Fed. Reg. 17,334, 17,335 (Mar. 26, 2012). EPA therefore delayed taking final action on the nitrogen oxide BART determination for Reid Gardner in order to conduct additional analysis.

EPA proposed to approve in part and disapprove in part the NO_x BART determination for Reid Gardner on April 12, 2012. 77 Fed. Reg. at 21,896 (Apr. 12, 2012). EPA finalized the rule on August 23, 2012. 77 Fed. Reg. at 50,936 (Aug. 23, 2012). In the final rule, EPA rejected the most effective technology for removing nitrogen oxide pollutants, SCR, in favor of a less-effective control technology, SNCR.

Pursuant to 42 U.S.C. § 7607(b)(1), Petitioners Moapa Band of Paiute Indians, National Parks Conservation Association, and Sierra Club filed this

petition for judicial review on October 19, 2012. Nevada Power Company, the owner and operator of the Reid Gardner Generating Station, and the Nevada Division of Environmental Protection were granted leave to intervene on behalf of the Respondents.

STATEMENT OF FACTS

I. THE CLEAN AIR ACT'S REGIONAL HAZE PROGRAM

Visible air pollution or “haze” has long marred the otherwise spectacular scenic landscapes in our nation’s treasured parks and wilderness areas. As explained by EPA, “[r]egional haze is visibility impairment that is produced by a multitude of sources and activities which emit fine particles and their precursors and which are located across a broad geographic area.” 64 Fed. Reg. 35,714, 35,715 (July 1, 1999). The primary pollutants that cause haze are sulfur dioxide and nitrogen oxides (“NO_x”), although particulate matter, volatile organic compounds, and other substances contribute to haze formation as well. *Id.*; *see also* 76 Fed. Reg. 36,450, 36,456-59 (June 22, 2011). In addition to impairing visibility, sulfur dioxide and nitrogen oxides also cause a range of serious health effects. Exposure to sulfur dioxide pollution can contribute to lung and heart ailments, including premature death. 75 Fed. Reg. 35,520, 35,525-28 (June 22, 2010). Nitrogen oxides contribute to ground-level ozone, or smog, which can cause or exacerbate respiratory diseases, asthma attacks, and decreased lung

function; in other regional haze actions, EPA has recognized that reducing nitrogen oxides emissions will reduce the incidence of asthma and other respiratory conditions. 78 Fed. Reg. 8,274, 8,292 (Feb. 5, 2013).

In Nevada, air pollution severely limits visibility in the Jarbridge Wilderness Area. 76 Fed. Reg. at 36,456-58, 36,464-65. Moreover, air pollution that originates in Nevada disperses to neighboring states, where it impairs visibility in 24 national parks and wilderness areas—including the Grand Canyon National Park and Sycamore Canyon Wilderness Area in Arizona, Joshua Tree National Park in California, and Zion and Bryce Canyon National Parks in Utah. *Id.* at 36,455, 36,460.

In 1977, Congress set “as a national goal” clearing the nation’s parks and wilderness areas of anthropogenic visible air pollution. 42 U.S.C. § 7491(a). EPA has interpreted the statute to set a presumptive goal of attaining natural visibility conditions by 2064. 40 C.F.R. §51.308(d)(1)(i)(B). To achieve the statutory goal, each state must create a state implementation plan (“SIP”) carrying out the regional haze program’s requirements. 42 U.S.C. §§ 7410(a), 7491(b)(2). EPA evaluates the SIP and either approves or disapproves it in whole or in part. *Id.* § 7410(k)(3). If EPA’s evaluation reveals that a SIP does not comply with the Clean Air Act, EPA must promulgate a federal implementation plan (“FIP”) that remedies the shortcomings. *Id.* § 7410(c)(1).

Each state's regional haze SIP must include emissions limits on sources of air pollution within the state as necessary to protect visibility at all impacted Class I areas, both inside and outside the state. *See* 42 U.S.C. § 7491(a)(4), 7491(b)(2). In particular, a SIP must include emissions limits reflecting installation and operation of best available retrofit technology, or "BART". *Id.* § 7491(b)(2)(A). BART is an essential component of the regional haze program as it compels emissions reductions from older, disproportionately polluting sources that often have escaped control under other Clean Air Act programs.

BART is required at eligible sources² that are reasonably anticipated to cause or contribute to visibility impairment at national parks, wilderness areas, wildlife refuges and other "Class I areas" where air quality should be pristine. *Id.* BART is defined as "an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility." 40 C.F.R. § 51.301. The Clean Air Act requires consideration of five factors when determining BART for a particular facility: (1) "the costs of compliance," (2) the time necessary for compliance," (3) the "energy and non-air quality environmental

² A source is BART-eligible if it is a stationary source within one of 26 enumerated categories, was not in operation before August 7, 1962, but was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any pollutant. 42 U.S.C. § 7491(b)(2)(A); *id.* § 7491(g)(7).

impacts of compliance,” (4) “the remaining useful life” of the source, (5) and “the degree of improvement in visibility” from the control technology. 42 U.S.C. § 7491(g)(2).

Ultimately, BART limits in combination with other SIP measures must achieve “reasonable progress” toward the achievement of visibility goals. *See* 42 U.S.C. § 7491(b)(2); 40 C.F.R. § 51.308(d)(1). To this end, each state’s regional haze SIP must set “reasonable progress” goals, expressed in deciviews, for each Class I area located within the state. 40 C.F.R. § 51.308(d)(1)(i)(B), (d)(1)(ii). Further, to keep states on the so-called “glide path” toward restoration of natural visibility by 2064, states and EPA calculate the uniform rate of progress (“URP”): the total amount of improvement needed divided by the number of years until 2064. *Id.* § 51.308 (d)(1)(i)(B).

Taken together, both the reasonable progress goals and the uniform rate of progress require small, incremental visibility improvement each year. The URP for Nevada’s only Class I area, the Jarbridge Wilderness Area, is .07 deciviews per year. 76 Fed. Reg. at 36,456-58, 36,464-65. If all sources reduced emissions enough to improve visibility by .07 deciviews per year, Jarbridge would achieve the statutory goal of natural visibility conditions in 2064. For the Class I areas outside of Nevada that are affected by air pollution from Reid Gardner, other State SIPs have established similar URPs. For instance, the URP for the Grand Canyon

National Park is .07 deciviews³ per year. 77 Fed. Reg. at 75,704, 75,714 (Dec. 12, 2012). The uniform rate of progress is .14 deciviews per year for the Sycamore Canyon Wilderness Area, *see* 77 Fed. Reg. at 75,714, and .20 deciviews per year for Joshua Tree National Park. 76 Fed. Reg. 13,944, 13,951 (Mar. 15, 2011), finalized by 76 Fed. Reg. 34,608 (June 14, 2011).⁴

These small incremental changes contemplated by the URP underscore the importance of making small improvements at multiple facilities in order to meet the statutory goal of natural visibility. EPA has consistently emphasized that Congress intended to require modest emissions reductions at multiple sources that, when aggregated, would result in significant visibility improvement. *See, e.g.*, 70 Fed. Reg. 39,104, 39,129-30 (July 6, 2005) (“Even though the visibility improvement from an individual source may not be perceptible, it should still be considered in setting BART because the contribution to haze may be significant relative to other source contributions in the Class I area.”); Consolidated Brief of Respondent EPA at 71-72, No. 12-1844, *North Dakota v. EPA* (8th Cir. brief filed

³ Both the reasonable progress goals and the uniform rate of progress are calculated for both the 20 percent of days with the worst visibility, and the 20 percent of days with the best visibility. The URP values cited in this paragraph are for the 20 percent worst days.

⁴ The reasonable progress goal for the 20 percent worst days is .014 deciviews per year for Zion National Park and .02 deciviews per year for Bryce Canyon National Park. 77 Fed. Reg. 28,825, 28,834 (May 16, 2012), finalized by 77 Fed. Reg. 74,355 (Dec. 14, 2012).

Dec. 10, 2012) (“[I]n order to achieve the goal of remedying man-made impairments to visibility, States and EPA have to consider emission controls at numerous sources that on an individual basis may not yield perceptible improvements, but may be significant relative to other sources’ contributions and can collectively yield detectable improvements.”).

II. THE REID GARDNER GENERATING STATION

The Reid Gardner Generating Station is a coal-fired electric power plant that sits next to the Moapa reservation outside of Las Vegas, Nevada. Three of Reid Gardner’s units were built in the 1960s and 1970s and are subject to BART. 77 Fed. Reg. at 21,900. The three units have a combined capacity of 300 megawatts. *Id.* Reid Gardner, which emits more than 7,000 tons of NO_x per year and more than 1,000 tons of sulfur dioxide per year, is a large source of pollution. 76 Fed. Reg. at 36,459. Excluding the Mohave Generating Station, which no longer operates, Reid Gardner has the highest total emissions and causes the greatest visibility impacts of any source subject to BART in Nevada. *See id.* Reid Gardner’s pollution impairs visibility in several neighboring national parks and wilderness areas, including the Grand Canyon, Bryce Canyon, Joshua Tree, and Zion National Parks, and the Sycamore Canyon Wilderness Area. H. Andrew Gray, Modeling for the Reid Gardner Generating Station: Visibility Impacts in Class I Areas at 9-10, 13 (Aug. 2011) [hereinafter August 2011 Gray Report],

attachment to Letter from Gloria Smith, Sierra Club to Thomas Webb, EPA Region 9 (Aug. 22, 2011) [JA]; *see also* 76 Fed. Reg. at 36,460. Currently, Reid Gardner operates without effective controls for nitrogen oxides pollution. While the plant operates with low-NOx burners with over-fire air, 77 Fed. Reg. at 21,900, this system removes only between 6.5 percent and 23.7 percent of the plant's nitrogen oxide emissions. *Id.* at 21,900, 21,902. Readily available, cost-effective controls, such as SCR, can remove between four and ten times more pollution from nitrogen oxides emissions. *Id.*

III. EPA'S REVIEW AND FINAL ACTION ON NEVADA'S SIP SUBMISSION

Nevada has long been subject to Clean Air Act requirements to address Reid Gardner's contribution to haze pollution. All states had a December 17, 2007 deadline to submit their regional haze plans to EPA for approval. 40 C.F.R. § 51.308(b). The State of Nevada missed this deadline by nearly 2 years. 76 Fed. Reg. at 36,451.

When it finally submitted its regional haze plan in November of 2009, the State determined that three units at Reid Gardner were subject to the Clean Air Act's best available retrofit technology, or BART, requirements. *Id.* at 36,463. The State evaluated several pollution control technologies, ranging from the least effective existing controls, low NOx burners and over-fire air, to the most effective control, selective catalytic reduction ("SCR"), which is typically guaranteed by its

vendors to achieve a 90 percent pollutant removal efficiency. 77 Fed. Reg. at 21,900, 21,903.

Ultimately, the State rejected SCR, which it conceded is the best performing technology, on the grounds that the incremental costs of SCR did not justify the allegedly “small” incremental visibility benefits it would achieve. *Id.* at 21,898. The State instead proposed a less effective control, selective non-catalytic reduction (“SNCR”), that achieves a pollutant removal efficiency of 38 to 59 percent. 76 Fed. Reg. at 36,463 (proposing an emission limit of .20 lb/MMBtu for units 1 and 2, and .28 lb/MMBtu for unit 3, based on a 12-month rolling average). EPA reviewed the State’s plan and initially proposed to approve it in its entirety. 76 Fed. Reg. at 36,450.

The National Park Service and the Environmental Coalition submitted comments criticizing EPA’s proposed approval of the Nevada haze plan. The Environmental Coalition (the Petitioners in this case) demonstrated that the State had committed several errors, such as overestimating the costs of SCR; underestimating the cost of less effective technologies; and underestimating the visibility improvement from SCR. *See* Letter from Gloria Smith, Sierra Club to Thomas Webb, EPA Region 9 (Aug. 22, 2011) [JA]. The National Park Service echoed these criticisms of the State’s analysis. Letter from Carol McCoy, National Park Service to Thomas Webb, EPA Region 9 at Attachment, p. 5 (Aug.

17, 2011) [JA] (“NDEP did not follow the BART guidelines because it did not properly evaluate the effectiveness, costs, and degree of visibility improvement of adding SCR to RGGGS [Reid Gardner].”). The National Park Service concluded that once these multiple errors were corrected, “EPA should require SCR on RGGGS [Reid Gardner] units 1, 2, and 3 for BART.” *Id.* [JA].

Acknowledging the concerns raised in public comments, EPA declined to take a final action on Nevada’s nitrogen oxide BART limits for Reid Gardner, stating that:

We are taking no action in today’s rule on the portion of the Nevada SIP that contains the BART determination at RGGGS for NO_x. Following our review of the public comments on this issue, we performed additional analysis of Nevada’s NO_x BART determination for RGGGS. As a result, we no longer consider the currently available information to be sufficient for us to take final action on the Nevada Division of Environmental Protection’s [] determination that rotating overfire air [] with Rotamix [] is the NO_x control technology that represents BART.

77 Fed. Reg. 17,334, 17,335 (Mar. 26, 2012).

After further investigation, EPA found that the nitrogen oxides portion of Nevada’s regional haze plan for Reid Gardner was deficient, thus triggering EPA’s obligation to prepare a federal haze plan. 77 Fed. Reg. at 21,897 (“[I]f we find that a state’s required submittal is incomplete or unapprovable, then we must promulgate a FIP to fill this regulatory gap”). To remedy the shortcomings in the State’s analysis, EPA conducted its own analysis of the costs and visibility benefits

of SCR compared to SNCR. EPA's independent evaluation of the cost of controls led EPA to conclude that:

We agree that NDEP included inappropriate costs and our analysis excludes those costs that are not allowed by the CCM [cost control manual]. Therefore, we have revised these cost calculations and adjusted the value of specific variables to conform to values allowed by the CCM.

77 Fed. Reg. at 21,901. EPA corrected the costs which the State of Nevada had included but which are not allowed under EPA's Cost Control Manual. EPA's revised calculations indicated that the State of Nevada had mistakenly inflated the average and incremental cost-effectiveness of SCR by between 25 and 28 percent, as shown in the following tables. *Id.* Average cost-effectiveness is calculated as "the total annualized costs of control divided by annual emissions reductions." 40 C.F.R. pt. 51, App. Y § IV(D)(4)(e). Average cost effectiveness indicates how much money it costs to remove each ton of pollution. Incremental cost-effectiveness is calculated as the difference between the cost of a control compared to the next control option divided by the difference in annual emissions reductions between the two controls. *Id.* § IV(D)(4)(e). Incremental cost-effectiveness indicates how much more money it costs to remove an additional ton of pollutants beyond what the less-effective technology removes.

Table 1: EPA’s revised estimate of the average cost effectiveness of SCR

Reid Gardner unit	Nevada’s cost estimate ⁵	EPA’s revised cost estimate ⁶	Percentage reduction in costs
Unit 1	\$2827	\$2110	25%
Unit 2	\$2627	\$1967	25%
Unit 3	\$2932	\$2183	25%

Table 2: EPA’s revised estimate, the incremental cost effectiveness of SCR

Reid Gardner unit	Nevada’s cost estimate ⁷	EPA’s revised cost estimate ⁸	Percentage reduction in costs
Unit 1	\$6370	\$4534	28%
Unit 2	\$6080	\$4330	28%
Unit 3	\$3856	\$2756	28%

Having calculated that SCR would cost significantly less than the State had estimated, EPA concluded that SCR would be cost-effective. 77 Fed. Reg. at 21,901. However, once EPA corrected enough errors to find that SCR would be cost-effective, EPA refused to correct other errors in the State’s cost analysis. *Id.* (“[W]e did not account for these additional discrepancies in our revised cost estimate.”).

⁵ 77 Fed. Reg. at 21,901.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Specifically, EPA refused to correct errors such as the discount that vendors provide when they install pollution controls on multiple units at a facility, which typically reduces overall costs by at least 5 percent; and EPA refused to correct the State's analysis to reflect that SNCR uses more ammonia than the higher-performing SCR, which greatly impacts costs because ammonia is between 24 percent and 40 percent of the total operating costs of the controls. *Id.*; *see also* Petra Pless, Bill Powers, Review of EPA's Proposed Approval of the Revision to the State of Nevada's State Implementation Plan to Implement a Regional Haze Program at 24, 29 (Aug. 22, 2011) [hereinafter Pless/Powers Report], attachment to Letter from Gloria Smith, Sierra Club to Thomas Webb, EPA Region 9 (Aug. 22, 2011) [JA]. The Pless/Powers Report indicated that fixing all errors in calculating costs would reduce the incremental cost effectiveness of SCR even further, to levels significantly below EPA's revised cost estimates, as indicated in the following table:

Table 3: Incremental Cost Effectiveness of SCR

Reid Gardner Unit	Nevada’s cost estimate, assuming 78-81% control efficiency ⁹	EPA’s revised cost estimate, assuming 85% control efficiency ¹⁰	Pless/Powers Report cost estimate, assuming 78-81% control efficiency ¹¹	Pless/Powers Report cost estimate, assuming 90% control efficiency ¹²
Unit 1	\$6370	\$4534	\$3713	\$2745
Unit 2	\$6080	\$4330	\$3552	\$2656
Unit 3	\$3856	\$2756	\$2554	\$1971

With respect to visibility benefits, EPA also conducted its own modeling of the best performing technology, SCR, but the agency chose to limit its focus to visibility improvement at the Grand Canyon exclusively, ignoring improvements at other Class I areas. As Reid Gardner contributes to haze in at least five Class I areas (the Grand Canyon, Joshua Tree, Zion, and Bryce Canyon National Parks, and Sycamore Canyon Wilderness Area), the National Park Service and the Environmental Coalition urged EPA to follow the direction that EPA itself has routinely given to other states to consider the cumulative visibility improvement at

⁹ *Id.*

¹⁰ *Id.*

¹¹ Pless/Powers Report at 35 [JA].

¹² *Id.*

all impacted areas. EPA nevertheless declined to consider cumulative impacts. 77 Fed. Reg. at 21,904 (summarizing visibility impacts at only the Grand Canyon); *see also* 77 Fed. Reg. at 50,945. EPA found that installation of SCR would improve visibility by .38 deciviews at the Grand Canyon and provided no projections regarding benefits at other Class I Areas. 77 Fed. Reg. at 21,903-04. However, modeling commissioned by the Environmental Coalition indicated that installing SCR at Reid Gardner would improve visibility cumulatively by 3.12 deciviews at all affected Class I areas. H. Andrew Gray, Modeling for the Reid Gardner Generating Station: Visibility Impacts in Class I Areas at 11 (Aug. 2011), Attachment to Letter from Gloria Smith, Sierra Club to Thomas Webb, EPA Region 9 (Aug. 22, 2011) [JA].

The Environmental Coalition and the National Park Service further alerted EPA to the problem that it had estimated visibility improvements from SCR on the assumption that SCR would achieve only a 85 percent pollutant removal efficiency, whereas SCR vendors typically guarantee and EPA typically assumes that SCR will achieve at least a 90 percent removal efficiency. 77 Fed. Reg. at 21,903. By correcting EPA's assumption of a lower removal rate as well as other anomalies in EPA's analysis, the National Park Service calculated SCR's visibility benefit to be *184 percent greater* than EPA's estimate. National Park Service June

4, 2012 Comments on EPA's Proposed Federal Plan at 16 [hereinafter NPS June 4, 2012 Comments] [JA].

Finally, the Environmental Coalition raised the concern that neither Nevada nor EPA had evaluated the visibility improvement from SCR in light of the amount of visibility improvement needed at the Class I areas polluted by Reid Gardner. As discussed above, for many of these Class I areas, improving visibility by small amounts each year would be sufficient to achieve EPA's goal of returning these areas to natural visibility conditions by 2064; for example, improving visibility by only .07 deciviews a year would enable the Grand Canyon to attain natural visibility conditions by 2064. 77 Fed. Reg. at 75,704, 75,714.

Notwithstanding the concerns raised by the Environmental Coalition and the National Park Service, EPA's final rule was largely unchanged from the proposal. Without correcting fundamental errors in the calculation of both pollution control costs and visibility benefits, EPA chose the inferior SNCR as the "best system of continuous emission control" for Reid Gardner on the grounds that the State had properly weighed costs and benefits. 77 Fed. Reg. at 50,937 (Aug. 23, 2012) (approving as BART for control of nitrogen oxides an emission limit of .02 lb/MMBtu at units 1, 2, and 3, which could be achieved through installation of SNCR).

SUMMARY OF THE ARGUMENT

EPA's federal haze plan for controlling nitrogen oxides pollution from Reid Gardner fails to meet the basic requirements of the Clean Air Act. With the goal of restoring clean air to national parks and wilderness areas, the Act requires coal-fired power plants, such as Reid Gardner, to install "best available retrofit technology" or "BART." The governing requirements define BART to be the "best system of continuous emission control," based on a five-factor analysis that includes the evaluation of visibility benefits and costs.

Although there is no dispute that selective catalytic reduction, or "SCR," technology is the most effective pollution control system for nitrogen oxides, EPA arbitrarily rejected this technology in favor of the inferior selective noncatalytic reduction, or "SNCR" technology. EPA based its conclusion on a fundamentally flawed cost-benefit analysis that artificially inflated the cost and artificially reduced the benefits of SCR. At the same time, EPA gave the inferior SNCR an unfair competitive advantage by underestimating its costs. Despite acknowledging glaring errors in its cost analysis, EPA refused to correct them, and instead claimed, with no rational basis, that such a correction would not change the result. EPA thus revealed a predetermined commitment to SNCR, despite the facts in the record. EPA's arbitrary and capricious selection of this inferior pollution control system invalidated the agency's regional haze determination for Reid Gardner.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews EPA's rule according to "the general standard of review for agency actions set forth in the [APA], 5 U.S.C. §§ 701–06." *Sierra Club v. EPA*, 671 F.3d 955, 961 (9th Cir. 2012) (citing *Latino Issues Forum v. EPA*, 558 F.3d 936, 941 (9th Cir. 2009)). Pursuant to the APA, EPA's final rule must be overturned if the agency's decision was arbitrary, capricious, an abuse of discretion, or otherwise inconsistent with the Clean Air Act and implementing regulations. *See* 5 U.S.C. § 706(2); 42 U.S.C. § 7607(d)(9); *Sierra Club*, 671 F.3d at 961. The Court examines whether "the agency articulated a rational connection between the facts found and the choice made." *Ariz. Cattle Growers Ass'n v. U.S. Fish & Wildlife*, 273 F.3d 1229, 1236 (9th Cir. 2001). The Court "'may not rubberstamp . . . administrative decisions that [are] inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute. . . .'" *Sierra Club*, 671 F.3d at 961 (quoting *Ariz. Cattle Growers Ass'n*, 273F.3d at 1236); *see also Mont. Sulphur & Chem. Co. v. EPA*, 666 F.3d 1174, 1183 (9th Cir. 2012).

Courts have found agency actions to be arbitrary and capricious where the agency merely cited technical evidence but did not explain why the data led the agency to arrive at its decision. *Nw. Coal. for Alts. to Pesticides v. EPA*, 544 F.3d

1043, 1052 (9th Cir. 2008) (vacating a final decision that cited toxicological data but offered no clear explanation as to how the data led the agency to select a particular safety factor as opposed to other safety factors); *see also Ass'n of Private Coll. & Univ. v. Duncan*, 870 F. Supp. 2d 133, 154 (D.D.C. 2012) (“That this explanation could be used to justify any determination at all demonstrates its arbitrariness.”). If the agency failed to provide a rational explanation at the time of its decision, the agency’s action must be overturned; the court cannot invent its own explanation or rely on *post-hoc* rationalizations by the agency. *Wilderness Watch, Inc. v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1038-40 (9th Cir. 2010). Finally, if an agency relies on cost-benefit analysis, the analysis is arbitrary and capricious if it fails to properly calculate a value that could significantly alter the analysis. *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1202 -03 (9th Cir. 2008). In other words, “it cannot put a thumb on the scale by undervaluing the benefits and overvaluing the costs of more stringent standards.” *Id.* at 1198.

II. BOTH NEVADA AND EPA ARBITRARILY UNDERESTIMATED THE VISIBILITY IMPROVEMENT FROM SCR.

There is no dispute that SCR technology is the most advanced control technology for NO_x pollution; SCR is, on average, twice as effective as the next best technology (SNCR) at controlling NO_x pollution. 77 Fed. Reg. at 21,900, 21,902. EPA nonetheless chose the inferior SNCR technology as BART, claiming

that the relative visibility gains from SCR did not justify its higher cost. In arriving at this erroneous conclusion, EPA abandoned its standard cumulative approach to measuring visibility improvement, thus underestimating the visibility benefit offered by SCR and thwarting the visibility goal of the Clean Air Act as a result. The agency further failed to assume the standard 90 percent control efficiency for SCR, thus skewing its analysis even further. These anomalies represent unjustified deviations from the agency's standard analytical approach and are the hallmark of arbitrary action.

A. EPA Ignored the Cumulative Benefit of SCR in Its Analysis.

EPA failed to consider the cumulative visibility benefit of SCR across all five national park and wilderness areas¹³ affected by Reid Gardner's pollution and instead focused on the technology's impact on a single park—the Grand Canyon. According to the National Park Service, which used EPA's own modeling methodology, the cumulative benefit of SCR across all five areas is nearly two deciviews. NPS June 4, 2012 Comments at 16 [JA]. The Environmental Coalition's modeling similarly showed a significant cumulative visibility benefit from SCR. August 2011 Gray Report at 11 [JA]. These analyses of cumulative benefits indicate that the incremental costs of SCR are warranted, but EPA summarily declined to consider them. In fact, EPA itself modeled the

¹³ Grand Canyon National Park, Zion National Park, Bryce National Park, Joshua Tree National Park, and Sycamore Canyon Wilderness Area

cumulative benefit of SCR across all five affected areas, but inexplicably chose not to include the results of its cumulative modeling in its proposed action or to consider the cumulative benefit of SCR in its ultimate decision. EPA's disavowal of SCR's cumulative benefit is plainly inconsistent with the statute and with the agency's own statements and approach elsewhere.

A cumulative approach to measuring visibility is consistent with the Act's basic regional haze goal—natural visibility conditions in *all* national park and wilderness areas. 42 U.S.C. § 7491(a)(1). This is because visibility impairment in any given area may be due to the cumulative effect of pollution from various sources, even if each of those sources appears to have only a minor contribution when viewed in isolation. EPA itself acknowledged that a cumulative approach to visibility is necessary to meeting the statute's goals in other rulemakings. 77 Fed. Reg. 51,620, 51,631-32 (Aug. 24, 2012) (“EPA believes that it is important to consider the visibility impact on multiple Class I areas. The goal of the visibility program is to remedy visibility impairment at all Class I areas. CAA 169A(a)(1).”); 76 Fed. Reg. 52,388, 52,430 (Aug. 22, 2011) (“Given that the national goal of the program is to improve visibility at all Class I areas, it would be short-sighted to limit the evaluation of the visibility benefits of a control to only the most impacted Class I area.”). This case is no exception; visibility impairment in the region's Class I areas, including the Grand Canyon, results from the

combined effect of multiple sources of pollution. By failing to acknowledge and remedy Reid Gardner's contribution to the visibility problem in all five surrounding Class I areas, EPA's action is inconsistent with the Clean Air Act's goal of achieving natural visibility conditions in those areas. When an agency's interpretation of a statute thus conflicts with clear congressional intent, it is not entitled to deference and cannot be upheld. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 n.9, 844 (1984).

EPA's exclusive focus on Reid Gardner's impact on a single national park not only frustrates the Act's goal of eliminating manmade haze, but is also inconsistent with EPA's established policy and approach elsewhere. *See W. States Petroleum Ass'n v. EPA*, 87 F.3d 280, 285 (9th Cir. 1996) [hereinafter "*WSPA*"] ("We need not defer to the EPA because the EPA has abused its discretion in departing from its own prior standards."). Specifically, in its regional haze determination for the San Juan Generating Station, EPA explained that:

In fully considering the visibility benefits anticipated from the use of an available control technology as one of the factors in selection of [best available retrofit technology for nitrogen oxides pollution], it is appropriate to account for visibility benefits across all affected Class I areas. . . . Where a source . . . significantly impacts so many Class I areas on so many days, the cumulative 'total [deciview]' metric is one way to take magnitude of the impacts of the source into account. . . . Given that the national goal of the program is to improve visibility at all Class I areas, it would be short-sighted to limit the evaluation of the visibility benefits of a control to only the most impacted Class I area.

76 Fed. Reg. 52,388, 52,430 (Aug. 22, 2011). EPA thus cautioned against the statute-defeating effect of failing to consider cumulative impacts. The agency's regional haze rule for the neighboring Four Corners Power Plant confirmed the importance of considering the cumulative benefit of a particular control technology as follows: "EPA believes that it is important to consider the visibility impact on multiple Class I areas. The goal of the visibility program is to remedy visibility impairment at all Class I areas. CAA 169A(a)(1)." 77 Fed. Reg. 51,620, 51,631-2 (Aug. 24, 2012). Responding to criticism of its cumulative analysis for Oklahoma, EPA explained that, "[c]learly, visibility benefits from . . . emission reductions will be spread among all affected Class I areas, not only the most affected area, and should be considered in evaluation of benefits from proposed reductions." 76 Fed. Reg. 81,728, 81,736 (Dec. 28, 2011). In its regional plan for Montana, the agency stated, "we considered the visibility improvement at all Class I areas within 300 km of the subject [polluting source]." 77 Fed. Reg. 57,864, 57,869 (Sept. 18, 2012). And, most recently, EPA included a cumulative impact analysis for its proposed regional haze determination for Navajo Generating Station. 78 Fed. Reg. 8,274, 8,286 (Feb. 5, 2013) ("Also shown are the cumulative deciview impacts, which are the simple sum of impacts or improvements over all the Class I areas. Table 10 shows the average number of days with a baseline impact or improvement of at least 0.5 dv[.]").

EPA has taken the same view in evaluating the legal and factual sufficiency of state regional haze plans. The agency faulted Arizona for not considering cumulative benefits as follows:

[I]nstallation of more stringent controls . . . would result in visibility benefits at multiple Class I areas, yet [Arizona] chose to consider the benefits only at the most impacted area. Where, as here, the benefits of controls have been modeled for a number of surrounding areas and consideration of these benefits is useful in determining the appropriate level of controls, EPA does not agree that these benefits may be ignored. . . . EPA disagrees that state flexibility extends to categorically excluding consideration of visibility improvements occurring at multiple Class I areas.

77 Fed. Reg. 72,512, 72,519 (Dec. 5, 2012). EPA also required a cumulative impact approach in its review of New York's regional haze plan. 77 Fed. Reg. 24,794, 24,814 (Apr. 25, 2012) ("In making BART determinations, EPA also recommends the consideration of cumulative impacts and improvements that could occur at all of the Class I areas a particular facility might impact.")¹⁴ EPA echoed this view to the State of Nebraska. 77 Fed. Reg. 40,150, 40,156 (July 6, 2012)("[A] cumulative impacts analysis is a useful tool for examining the impact of a BART-subject source and the visibility improvement to be gained by the addition of emission controls.") And, as the National Park Service pointed out in its comments on the EPA action at issue in this case, EPA also required the State of

¹⁴ The agency similarly considered cumulative benefits in reviewing New Hampshire's regional haze plan. 77 Fed. Reg. 50,602, 50,603 (Aug. 22, 2012).

Colorado to provide the agency with a cumulative analysis. NPS June 14, 2012 Comments at 15 [JA].

Despite EPA’s clear and consistent approach requiring a cumulative impact analysis elsewhere, EPA failed to consider the cumulative benefit of SCR here. While the agency claimed to have considered the cumulative benefit of SCR, 77 Fed. Reg. at 50,938, 50,943-44 it acknowledged that it “focused largely on the benefits at [the Grand Canyon] in our proposed action and *placed little weight* on the benefits at the remaining four Class I areas.” *Id.* at 50,945 (emphasis added). In fact, there is no evidence supporting EPA’s claim that it considered the cumulative visibility improvement in its cost-benefit analysis of SCR. Moreover, there is no justification for dismissing cumulative benefits at other Class I areas given the agency’s own practice of requiring cumulative benefits elsewhere. *See WSPA*, 87 F.3d at 285 (agency’s “broad discretionary power” is not “an adequate basis to support its otherwise arbitrary treatment” of a single case) (internal citations omitted). Reversal of EPA’s action is appropriate when, as here, “the EPA has failed to offer a sufficient explanation for its differential treatment of” a particular state under the Clean Air Act.” *WSPA*, 87 F.3d at 285; *McClaskey v. U.S. Dep’t of Energy*, 720 F.2d 583, 587 (9th Cir. 1983).

B. EPA Assumed an Unreasonably Low Pollution Control Performance for SCR.

In assessing visibility benefits, EPA compounded its apparent bias against SCR by underestimating the technology's expected performance. An accurate estimate of the visibility gains from a particular pollution control technology necessarily requires an accurate estimate of that technology's effectiveness. Here, contrary to its own policy governing cost analysis, EPA significantly underestimated SCR's pollution control performance by incorrectly assuming that SCR would remove only 85 percent of Reid Gardner's nitrogen oxides emissions despite the fact that the established industry standard for SCR assumes a minimum pollution removal of 90 percent. This assumption defies EPA's own guidelines, which counsel states to "make reasonable and supportable assumptions regarding control efficiencies. An unrealistically low assessment of the emission reduction potential of a certain technology could result in inflated cost-effectiveness figures." 70 Fed. Reg. 39,104, 39,168 (July 6, 2005) (revising the regional haze rule and issuing guidelines for BART determinations). EPA itself found that simply assuming a 5 percent increase in control efficiency (to 90 percent) would correspond to a 10 percent increase in visibility benefit to the Grand Canyon. 77 Fed. Reg. at 50,943.

In its proposed action, EPA acknowledged that SCR vendors typically *guarantee* a 90 percent removal rate. 77 Fed. Reg. 21,903 ("Typical SCR catalyst

vendor guarantees can indicate 90 percent [nitrogen oxides] reduction.”). This point was reiterated by both the Environmental Coalition and the National Park Service in their comments on EPA’s action. Letter from Suma Peesapati, Earthjustice to Thomas Webb, EPA Region 9 at 7 (June 4, 2012) [hereinafter Environmental Coalition 2012 Comments] [JA]; NPS June 4, 2012 Comments [JA]. As explained in the expert report accompanying the Environmental Coalition’s comments on EPA’s initial action, it is reasonable to assume a 90 percent control of nitrogen oxides by SCR for Reid Gardner given the impressive and growing track record of successful SCR installations (over 300 in operation in the United States alone) and the low sulfur content of the coal fired at Reid Gardner (0.29 percent-0.57 percent). Pless/Powers Report at 5-20 [JA]. EPA’s own experts have assumed a 90 percent (and even higher) removal efficiency for SCR in other regional haze determinations and did not dispute the fact that in 2011 alone, 21 coal-fired electrical generating units achieved a control efficiency of 90 percent or better using SCR and that 11 of those units were dry-bottom, wall-fired units like Reid Gardner’s units. 77 Fed. Reg. at 50,943.

Despite the overwhelming evidence in the record, including EPA’s own acknowledgment that a 90 percent removal efficiency is assumed for modern SCR systems, EPA reached the arbitrary conclusion that that an 85 percent removal

efficiency should be assumed for SCR at this power plant. EPA's only explanation for its anomalous assumption in this case was as follows:

The coal composition is also an important component of estimating the [nitrogen oxides] emissions rate that a facility can achieve. [Reid Gardner] is capable of purchasing coal on the spot market so there is likely to be variability in the [nitrogen oxides] emissions rate that would be achievable with SCR or SNCR. As previously discussed in the response to Comment 2, [Reid Gardner] receives its coal by rail line and has access to different ranked coals with varying nitrogen content, which influence the [nitrogen oxides] concentration in the exhaust going to either SNCR or SCR controls. EPA's policy is to set an emission limit that would reasonably accommodate the various coal sources under these circumstances.

Id.

This response, offered for the first time in EPA's final action, rings hollow. First, the agency makes no attempt to identify the potential sources of Reid Gardner's coal supply, or show that the specific range of nitrogen content in Reid Gardner's "variable" supply somehow distinguishes this power plant from the multitude of coal plants that have achieved lower levels of controlled nitrogen oxides emissions elsewhere. Any concern about fuel-bound nitrogen is particularly implausible given that western coals, which likely comprise the lion's share of Reid Gardner's coal supply, are not known to have a high nitrogen content. Second, EPA's response ignores the fact that the nitrogen content in the coal itself is only partially responsible for the plant's production of nitrogen oxides pollution; the combustion temperature in the coal unit's boiler and nitrogen levels in the

ambient air surrounding the plant are also key factors in the formation of this pollutant. Third, while EPA claimed that a higher amount of nitrogen oxides pollution entering the SCR translates to a higher amount of controlled emissions that exit the SCR,¹⁵ EPA provided no evidence showing that the nitrogen content of coal affects the *percentage* of nitrogen oxides pollution removed by SCR technology. For all these reasons, EPA offers no rational basis for its 85 percent removal assumption for SCR instead of the standard 90 percent removal typically guaranteed by the technology's vendors.

The Ninth Circuit has stated that it will “not defer to an agency decision that ‘is without substantial basis in fact.’” *Tucson Herpetological Soc’y v. Salazar*, 566 F.3d 870, 878 (9th Cir. 2009) (internal citations omitted). This is because deference to the Agency is not appropriate when the type of “generalized” discussion, like the one offered by EPA in this case, does not “explain how the Agency arrived at the *specific* conclusion” that an 85 percent removal efficiency for SCR is a rational assumption. *Bluewater Network v. EPA*, 370 F. 3d 1, 21 (D.C. Cir. 2004)(emphasis in original). “[I]n order to determine whether [the Agency’s] decision reflects a ‘rational connection between the facts found and the choice made,’ a reasonable explanation of the specific analysis and evidence upon which

¹⁵ “The coal composition is also an important component of estimating the [nitrogen oxides] emissions rate that a facility can achieve.” 77 Fed. Reg. at 50,943.

the Agency relied is necessary.” *Id.* Courts do not “simply accept whatever conclusion an agency proffers merely because the conclusion reflects the agency’s judgment. In order to survive judicial review . . . an agency action must be supported by ‘reasoned decisionmaking.’” *Tripoli Rocketry Ass’n v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 437 F.3d 75, 76 (D.C. Cir. 2006) (internal citations omitted). Applying these principles to this case, EPA’s action cannot survive judicial review because its unjustified rejection of SCR’s standard removal efficiency lacks a reasoned basis and thus fails to reflect “reasoned decisionmaking.” *Id.* For all of the above reasons, EPA severely underestimated the benefit of SCR, which, in turn, resulted in an arbitrary determination that the benefits of SCR did not justify the technology’s relatively higher cost.

III. EPA’S REGIONAL HAZE DETERMINATION RESTS ON AN ARBITRARY ANALYSIS OF COSTS.

EPA’s treatment of costs in its cost-benefit analysis was similarly skewed in favor of SNCR. EPA improperly biased its cost analysis in this case by artificially inflating the cost of best technology (SCR) and artificially depressing the cost of the next best technology (SNCR). Although Nevada had the initial obligation to consider costs in proposing a BART determination, EPA was responsible for ensuring that the State complied with the Clean Air Act and properly considered costs. 42 U.S.C. §§ 7410(k), 7491(g)(2). EPA corrected some of the errors in Nevada’s analysis, but refused to correct all of them, even though correcting all of

the errors would have reduced the agency's cost estimate of SCR by 30-40 percent. EPA then reaffirmed its approval of Nevada's cost-benefit analysis, notwithstanding the facts. EPA thus abdicated its responsibility under the Clean Air Act to critically review a SIP submission when it uncritically accepted the State's assertion that the costs of SCR do not justify the benefits—an assertion lacking any meaningful explanation in the record.

A. EPA Overestimated the Cost of SCR and Underestimated the Cost of SNCR.

In their 2011 comments, the Environmental Coalition, the National Park Service, and the United States Fish and Wildlife Service demonstrated that Nevada's cost estimates were deeply flawed. *See* 77 Fed. Reg. at 21,901 n.14. EPA agreed, and conducted an independent analysis to remedy some of the errors—namely, the State's inclusion of costs that should not be considered under EPA's Cost Control Manual. *Id.* at 21,901 (“We agree that NDEP included inappropriate costs and our analysis excludes those costs that are not allowed by the CCM.”). The State's errors were significant; EPA's revised estimate of the average cost effectiveness of SCR was 25 percent below the State's estimates, and EPA's revised incremental cost-effectiveness figures were 28 percent below the State's figures. *Id.*

However, EPA did not correct all of Nevada's erroneous cost calculations. In view of Ninth Circuit law rejecting a cost-benefit analysis premised on a faulty

monetization, the Environmental Coalition submitted comments to EPA urging the agency to correct remaining errors in its cost analysis. *See Ctr. for Biological Diversity*, 538 F.3d at 1202-03; Letter from Suma Peesapati, Earthjustice to Thomas Webb, EPA Region 9 at 4-7 (June 4, 2012) [JA 10] (“The EPA’s revised SCR cost analysis excluded certain inappropriate costs (owners cost, AFUDC, surcharges), but did not incorporate all of our recommended revisions – namely, to include multiple units discounts, and use the correct capital recovery factor, all of which would further reduce cost and improve cost effectiveness of SCR compared SNCR.”). The Pless/Powers Report determined that if all of the State’s errors were corrected, the incremental cost-effectiveness of SCR would be significantly lower than EPA indicated. For Unit 1, the incremental cost effectiveness of SCR is \$2745, which is nearly 40 percent lower than EPA’s estimate; for Unit 2, the incremental cost effectiveness of SCR is \$2656, nearly 40 percent lower than EPA’s estimate; and for Unit 3, the incremental cost effectiveness of SCR is \$1971, nearly 30 percent lower than EPA’s estimate. Pless/Powers Report at 35 [JA 10].¹⁶

¹⁶ These figures assume that SCR removes 90 percent of pollutants. The Pless/Powers Report also calculated these figures using the State’s assumption that SCR removes between 78 percent and 82 percent of pollutants and found that the incremental cost effectiveness of SCR would be \$3713, \$3552 and \$2554 for Units 1, 2, and 3 respectively. Pless/Powers Report at 35 [JA 10]. These figures are nearly 20 percent below EPA’s estimates for Units 1 and 2 and nearly 10 percent below EPA’s estimate for Unit 3. *Compare id. with* 77 Fed. Reg. at 21,901.

EPA agreed with the Environmental Coalition that additional, uncorrected errors remained in Nevada's cost estimates. "We agree that the record does not support the positions that [Nevada] has taken on these cost items." 77 Fed. Reg. at 21, 901. EPA then proceeded to ignore these errors on the grounds that correcting them was unnecessary because EPA already had determined that SCR was cost-effective contrary to the State's conclusion:

Aside from these items, other commenters allege that aspects of [Nevada]'s cost estimates were unjustified or overestimated, such as a failure to account for multiple unit discounts and overestimated reagent costs. We agree that the record does not support the positions that [Nevada] has taken on these cost items. However, we did not account for these additional discrepancies in a revised cost estimate since disallowing those costs not in the [cost control manual] resulted in our finding that SCR is cost-effective.

Id. In the final rule, EPA again freely admitted that the cost estimates contained errors that EPA had not corrected. *Id.* at 50,942 ("Our proposal noted that we did not revise the cost-effectiveness calculation to adjust for all the discrepancies with the CCM [cost control manual] because on our initial adjustments we found that SCR was not cost-prohibitive."). EPA failed to correct errors that would significantly affect the costs of the pollution controls at issue. The remaining errors in the cost calculations improperly biased the agency's cost-benefit analysis against SCR.

EPA exacerbated its skewed cost analysis by failing to correct the errors in Nevada's estimates of the cost of SNCR, the competing control ultimately selected

as BART. The Environmental Coalition submitted evidence that the State underestimated the amount of ammonia used for SNCR, and did not properly account for the increased maintenance costs from use of ammonia. Environmental Coalition 2012 Comments at 5-6 [JA]. Ammonia is a major operating expense for SNCR. EPA responded to these concerns in the same way it responded to criticisms of the SCR cost calculations: by saying that it did not need to fix all of the State’s errors in order to approve the State’s decision. In response to Comment 11, “the cost of SCR is overestimated and the cost of SNCR is underestimated,” EPA responded that “[e]ven if the average and incremental cost-effectiveness between SCR and SNCR were somewhat different, NDEP’s BART determination would still be approvable based on its reasonable weighing of the cost and visibility improvement factors.” 77 Fed. Reg. at 50,941.

In short, EPA acknowledged that the State of Nevada significantly overestimated the cost of SCR, which skewed the decision-making process in favor of less effective controls. EPA corrected some of the State’s mistakes, but conceded that EPA did not correct all of them. As a result, when EPA made its final decision, EPA did not know the actual costs—or even the true range of costs—of SCR. If EPA had corrected all the State’s mistakes, the incremental cost effectiveness of SCR would be nearly 40 percent lower than EPA’s revised estimates for Units 1 and 2, and nearly 30 percent lower for Unit 3. It was

arbitrary and capricious for EPA to approve the State of Nevada's weighing of costs against benefits without correcting errors that would significantly change the relative costs of controls.

As EPA itself has proclaimed, EPA must critically review SIP submissions; EPA is not a rubber stamp and cannot approve a state plan that relies on "faulty cost data or relies on erroneous mathematical calculations that materially overstate or understate the cost of controls." Consolidated Brief of Respondent EPA at 42, *North Dakota v. EPA*, No. 12-1844 (8th Cir. brief filed Dec. 10, 2012); *see also* *Mont. Sulphur & Chem. Co. v. EPA*, 666 F.3d 1174, 1181 (9th Cir. 2012); *Mich. Dept. of Env'tl. Quality v. Browner*, 230 F.3d 181, 183 (6th Cir. 2000). In taking final action on the State's proposal, EPA had an obligation to articulate a rational explanation for its final decision. *Wilderness Watch, Inc.*, 629 F.3d at 1038-39.

Rather than provide the requisite explanation and support its findings with facts, EPA was explicit in its intent to approve Nevada's choice of technology *regardless* of the actual cost data: "[e]ven if the average and incremental cost-effectiveness between SCR and SNCR were somehow different, NDEP's BART determination would still be approvable based on its reasonable weighing of the cost and visibility improvement factors." *Id.* at 50,941. EPA provided—and could provide—no reason why this should be so. Undisputed evidence in the record demonstrates that the cost differential between SCR and SNCR changes very

considerably when all of the acknowledged errors in the State's analysis are corrected. Absent an explanation why SCR should not be identified as BART in light of these adjusted costs, EPA's ultimate BART determination is indefensible. In short, EPA freely admits to using significantly inflated costs in the cost-benefit analysis that determined the outcome of its regional haze analysis. This arbitrary approach necessarily renders its haze determination invalid. *See Ctr. for Biological Diversity*, 538 F.3d at 1202-03.

B. The Record Does Not Support EPA's Rejection of the Most Effective Control.

EPA failed to support its conclusion that the incremental costs of SCR do not justify the incremental visibility benefits this superior technology would achieve. In evaluating a state plan's consistency with all applicable requirements, EPA must articulate "a rational connection between the facts found and the choice made." *Ariz. Cattle Growers Ass'n*, 273 F.3d at 1236. It is not sufficient for EPA to simply place incorrect data in the record and then pick a result at random. For example, in *Nw. Coal. for Alts. to Pesticides v. EPA*, the agency considered extensive data regarding the toxicological effects of pesticides in order to select a 'safety factor'—a margin of exposure to pesticides that would protect people from adverse effects. 544 F.3d at 1052. But while the agency considered extensive data, EPA failed to explain the connection between the data and its decision. *Id.* EPA failed to explain why the data led the agency to select a particular safety

factor, rather than any other safety factor, leading the court to conclude that “[a]s far as we can tell from the record,” EPA had reached its decision “arbitrarily.” *Id.*; *see also Ass’n of Private Coll. & Univ.*, 870 F. Supp. 2d at 154 (“That this explanation could be used to justify any rate at all demonstrates its arbitrariness.”). Similarly, here, EPA failed to explain or support its determination that Nevada’s cost-benefit analysis was accurate and satisfied the Act’s regional haze requirements.

This evidentiary void is particularly stark given the record-based evidence showing that the visibility improvement from SCR would be significant. Nevada calculated the visibility improvement needed each year to eliminate all anthropogenic haze pollution by 2064 at the Jarbridge Wilderness Area, Nevada’s only Class I area. 76 Fed. Reg. at 36,456-58, 36,464-65. The URP for Jarbridge is .07 deciviews per year; this means that if all sources inside and outside Nevada reduce emissions so as to improve visibility by .07 deciviews per year, Jarbridge will attain natural visibility conditions by 2064. *Id.* at 36,456.

The URP is similar for the national parks most impaired by Reid Gardner’s pollution. For example, Arizona calculated that to achieve natural visibility conditions in the Grand Canyon by 2064, visibility would need to improve by .07 deciviews per year. 77 Fed. Reg. at 75,704, 75,714 (Dec. 12, 2012). But in practice, Arizona expects to achieve emissions reductions that will yield only .03

deciviews improvement per year. *Id.* The URP for Sycamore Canyon Wilderness Area is .14 deciviews per year, *see* 77 Fed. Reg. at 75,714, and the URP for Joshua Tree National Park is .20 deciviews per year. 76 Fed. Reg. at 13,951 (Mar. 15, 2011), finalized by 76 Fed. Reg. 34,608.

According to EPA, installing SCR at Reid Gardner would improve visibility at the Grand Canyon by .38 deciviews, and .1 deciview more than the next-most-effective control. 77 Fed. Reg. at 21,904. Putting aside the Environmental Coalition's arguments about the accuracy of this estimate, even this artificially low estimate of SCR's benefits greatly exceeds the yearly improvement needed from all sources (.07 deciviews) to achieve the statutory goal of natural visibility at the Grand Canyon.

This cursory examination of the uniform rate of progress for Class I areas demonstrates that the assessment of visibility improvement relative to costs must be anchored to the fundamental goal of achieving reasonable progress toward visibility goals. In other words, the visibility improvement from controls must be judged in relation to the amount of improvement needed to satisfy the statutory goal of attaining natural visibility conditions. *See* 42 U.S.C. § 7491(a)(1). Judged in that light, "small" numbers may be important because small, yearly improvement in visibility may be adequate to achieve the statutory mandate. Moreover, the visibility benefits from SCR are far larger than EPA estimated; the

cumulative visibility benefit from SCR are as much as 184 percent higher than that estimated by EPA and greatly exceed the small improvement needed to make reasonable progress. NPS June 4, 2012 Comments at 16[JA].

EPA never explained why the visibility benefits associated with installing SCR at Reid Gardner would be insufficient to warrant the costs of the SCR retrofit. According to the agency, there is no “bright line for cost-effectiveness.” 77 Fed. Reg. at 50,941. However, in the absence of any articulated standard or any explanation of its cost benefit calculus, EPA was simply acting on an unsupported “belief” that the visibility improvement from SCR does not justify its cost. *Id.* In *Chem. Mfg. Ass’n v. EPA*, the D.C. Circuit summarily rejected a similar “belief”-based conclusion by EPA, characterizing it as “add[ing] nothing to the agency’s defense of its thesis except perhaps the implication that it was committed to its position regardless of any facts to the contrary.” 28 F.3d 1259, 1266 (D.C. Cir. 1994).

Simply labeling the costs as “high” and the benefits “small” does not discharge EPA’s obligation to provide a rational explanation for its rule. Instead, the agency must provide some basic explanation for the process it used to weigh costs against benefits. The record contains abundant detail regarding how the State and EPA calculated costs and benefits. But the crucial, dispositive stage of the decision-making was taking those costs and benefits and weighing them. And for

that crucial, dispositive stage of the rulemaking, the record goes dark. *See Nw. Coal. for Alts. to Pesticides*, 544 F.3d at 1052 (“As far as we can tell from the record,” the State and EPA rejected SCR “arbitrarily.”).

Nevada simply asserted that the costs do not justify the benefits, and EPA accepted that assertion. Given that Nevada did not explain how it weighed costs against benefits, and given EPA’s rejection of the cost and visibility estimates underlying Nevada’s cost-benefit analysis, EPA could not simply accept the State’s threadbare assertion without abdicating the agency’s responsibility to critically review SIP submissions. *See* 42 U.S.C. § 7410(k); *Mont. Sulphur & Chem. Co.*, 666 F.3d at 1181; *Mich. Dept. of Env’tl. Quality*, 230 F.3d at 183; Consolidated Brief of Respondent EPA at 42.

IV. EPA’S ANALYTICAL PROCESS DEFIES THE AGENCY’S OWN REGULATIONS AND PAST PRACTICE, AS WELL AS THE BASIC GOAL OF THE ACT’S REGIONAL HAZE PROGRAM.

EPA’s bias favoring SNCR and against SCR subverts the Clean Air Act regional haze program’s fundamental purpose to eliminate human-caused visibility impairment in Class I areas. Haze plans that compel installation only of controls with “lower” incremental costs and “large” incremental visibility benefits (whatever those might be) threaten the goal of attaining natural conditions in the Class I areas. The level of visibility improvement that can be achieved through reduction of emissions from any one source might always be deemed too small to

justify the cost of controls, in which case that last increment of haze pollution will forever be “too small” to justify additional control measures.

The Clean Air Act is designed to prevent this outcome by requiring consistent, reasonable progress toward elimination of manmade pollution and by imposing the requirement to retrofit some of the most polluting sources with the best system of controls. 42 U.S.C. § 7491(a)(1), (b)(2). The Act requires major sources that “cause or contribute” to visibility impairment at Class I areas to install the “best available retrofit technology” or “BART,” which is “an emission limitation based on the degree of reduction achievable through the application of the *best system of continuous emission reduction* for each pollutant which is emitted by an existing stationary facility.” 40 C.F.R. § 51.301 (emphasis added).

This definition reflects the appropriate framework for conducting a regional haze BART analysis. First, the agency identifies the “best system of continuous emission reduction” or the best technology, for each relevant pollutant. *Id.* Once the best technology is selected, the agency then applies the following five-factor test to determine the best emission limitation achievable by that technology:

The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, [1] the costs of compliance, [2] the energy and nonair quality (sic) environmental impacts of compliance, [3] any pollution control equipment in use or in existence at the source, [4] the remaining useful life of the source, and [5] the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

40 C.F.R. § 51.301; 42 U.S.C. § 7491(g)(2). Only after determining that a technology is not viable in light of one of these five factors is a particular control option and associated BART limit eliminated in favor of the next best control option and limit. *Id.*; 70 Fed. Reg. 39,127, 39,164 (July 6, 2005) (“one or more of the available control options may be eliminated from consideration because they are demonstrated to be technically infeasible or to have unacceptable energy, cost, or non-air quality environmental impacts on a case-by-case (or site-specific) basis.”).

Here, EPA did not follow this so-called top-down analysis required under its own guidelines. *Id.* It first identified all of the possible controls and ranked them from least effective to most effective. EPA then deviated from its own procedure by failing to pick from this list the “best system of continuous emission reduction” as its starting point and subjecting its achievable emission limits to a five-factor test. It instead used the inferior SNCR technology as the starting point for its analysis and subjected better options to heightened scrutiny using the five-factor analysis. This flawed approach resulted in an improper bias in favor of the inferior SNCR technology and against the best technology—SCR.

When commenters objected to the agency’s failure to observe its own guidelines in this case, EPA responded that “for power plants that are smaller than 750 [megawatts], our regulations allow the state to conduct a five-factor analysis

that does not conform in all respects to our BART Guidelines for larger sources.” 77 Fed Reg. 50, 938. However, this response ignores the fact that EPA *chose* to use the guidelines and premised its findings and analysis for Reid Gardner on application of the guidelines. 77 Fed. Reg. 50, 936, 50,942 (citing to its guidelines as the claimed basis for EPA’s assumed performance for SCR). *Id.* at 50,942 n.12 (explaining that EPA relied on its guidelines because “the BART guidelines do provide useful guidance in setting appropriate BART limits.”). *Id.* at 50,940 (offering an extensive discussion of its guidelines to justify the cost-benefit analysis underlying its regional haze determination for Reid Gardner). Moreover, EPA cited to Nevada’s failure to comply with the guidelines as the basis for rejecting the State’s plan. 77 Fed. Reg. at 21,905 (“We find certain elements of the emission limits established for [Reid Gardner] in [Nevada’s regional haze plan] as either unsupported by the record or inconsistent with BART Guidelines.”); *id.* (rejecting Nevada’s emission limits for Reid Gardner because the State’s “use of a rolling 12-month averaging period instead of a rolling 30-day average [was] inconsistent with BART Guidelines.”) EPA’s arbitrary treatment of its own guidelines—cherry-picking certain elements of its guidelines while ignoring other elements—lacks transparency and falls short of the agency’s basic obligation to engage in a “reasoned evaluation of the relevant factors.” *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944, 954(9th Cir. 2003) (internal citations omitted).

EPA's analytical approach in this case is not only incoherent, but is also inconsistent with the agency's approach elsewhere. EPA has followed the correct procedure in its regional haze determinations for other power plants. For example, for the San Juan Generating Station, the agency identified SCR as "the most stringent level of controls" in its analysis. In justifying its analytical approach in that case to the Tenth Circuit, EPA cited to 70 Fed. Reg. at 39,164, n. 12, which states that the agency "must identify the most stringent option and a reasonable set of options for analysis" EPA's Final Answering Brief of Respondent EPA at 77, *WildEarth Guardians v. EPA*, No. 11-9552 (10th Cir. brief filed Sept. 25, 2012). EPA then went on to explain to the Tenth Circuit that after identifying the most stringent option, the agency then applies the remaining four steps of the BART analysis to that option before proceeding to the next best option. *Id.* As EPA itself correctly stated:

[S]teps in the BART analysis may only be skipped if the most stringent controls for a BART source are already in place and "made federally enforceable for the purpose of implementing BART" or when "a source commits to a BART determination that consists of the most stringent controls available." 70 Fed. Reg. at 39,165.

Id. at 64-65. Thus, after identifying the "best" technology for San Juan Generating Station, EPA conducted the five-factor regional haze analysis and, on that basis, determined that SCR could not be eliminated. *Id.* at 64-66. . . . When it was criticized for choosing SCR in its regional haze plan for the Four Corners Power

Plant, EPA responded that it properly began its analysis with the most stringent controls. 77 Fed. Reg. at 51,624. As explained by the agency itself,

EPA approached the five factor analysis using a top-down method. A top-down analysis entails ranking the control options in descending order starting with the most stringent option. The top control option is evaluated and if eliminated based on one of the five factors, the next most stringent option is considered, and so on.

75 Fed. Reg. at 64,225. In its final rule, EPA further explained that “[i]f the analysis shows no outstanding issues regarding cost or energy and non-air quality environmental impacts, the analysis is concluded and the *top level* of technically feasible controls is identified as the ‘best system of continuous emission reduction.’” 77 Fed. Reg. at 51,624 (emphasis added). When it rejected Arkansas’s regional haze plan for failing to identify and analyze a range of control options, including the most stringent control option, EPA described the “top-down” analysis for regional haze as “very similar to the [best available control technology] review as described in the New Source Review Workshop Manual (Draft, October 1990),” which requires a “top-down” analysis of available technologies. *Id.* at 14,612.

In yet another rulemaking, EPA imposed a federal plan for Arizona after criticizing the state’s regional haze plan for choosing a technology that “provides the lowest visibility benefit of any of the controls modeled.” 77 Fed. Reg. at 42,846. EPA very recently took the same approach, starting with the most

stringent controls, in its proposed regional haze determination for Navajo Generating Station. 78 Fed. Reg. at 8,280.

Similar to the above examples, the Reid Gardner record indisputably supports the conclusion that the most stringent or “best” system of continuous nitrogen oxides emission reduction for this power plant is SCR coupled with low-nitrogen oxides burners and overfire air. *See, e.g.*, 77 Fed. Reg. at 21,902, Table 4. And, a top-down analysis here would yield an estimated visibility benefit of 0.7 deciviews at the Grand Canyon alone. NPS June 4, 2012 Comments at 16 [JA]. This visibility gain is more than that deemed significant in Arizona’s plan. 77 Fed. Reg. at 42,846 (“By contrast, SCR would provide an improvement of more than 0.5 [deciviews] at a single Class I Area.”). Had EPA maintained consistency with its previous actions, the agency would have used SCR as the starting point for its regional haze analysis in this case. An agency’s interpretation of a statute or regulation that conflicts with its prior interpretation is entitled to “considerably less deference” than a consistently held agency view. *Watt v. Alaska*, 451 U.S. 259, 273 (1981).

While EPA seeks to justify its departure from its own top-down approach by claiming that states enjoy flexibility in crafting regional haze plans that are submitted to EPA for approval, 77 Fed. Reg. at 50, 937-38, this response falls flat for at least two reasons. First, EPA disapproved Nevada’s regional haze plan for

failing to comply with the Clean Air Act’s applicable requirements, which triggered EPA’s duty to issue the *federal* plan at issue in this case. 77 Fed. Reg. at 21,905 (disapproving Nevada’s regional haze plan because it was “unsupported by the record or inconsistent with BART Guidelines.”). Second, even if it were appropriate for EPA to rely on the analysis contained in a rejected state plan—which it is not—a state’s interpretation of federal law is not entitled to deference. *Safe Air for Everyone v. EPA*, 488 F.3d 1088, 1097 (9th Cir. 2007)(“[a] state’s interpretation of [EPA-approved regulations], even if binding as a matter of state law, is not directly dispositive of the meaning of [those federal regulations.]”) EPA thus failed to provide any rational reason for deviating from its standard top-down analytical approach in this case.

CONCLUSION

For the foregoing reasons, the Environmental Coalition respectfully requests the Court to find that EPA’s final decision is arbitrary, capricious, and not in accordance with law. The Environmental Coalition further requests the Court to remand EPA’s regional haze determination for Reid Gardner for reconsideration.

Respectfully submitted this 28th day of February, 2013.

s/ Suma Peesapati
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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached opening brief is proportionately spaced, has a typeface of 14 points or more, and contains 12,928 words.

Dated: February 28, 2013

s/ Suma Peesapati
SUMA PEESAPATI

STATEMENT OF RELATED CASES

Petitioners are aware of one other case that arises out of the same final agency action at issue in this case: *Nevada Power Company v. EPA*, No. 12-73411 (9th Cir. filed Oct. 22, 2012). Additionally, the following case raises legal issues that are similar to the legal issues in this case: *National Parks Conservation Association v. EPA*, No. 12-73710 (9th Cir. filed Nov. 14, 2012).

CERTIFICATE OF SERVICE

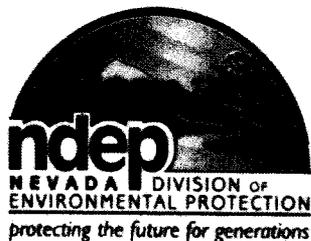
I hereby certify that on February 28, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participant:

Scott C. Fulton, General Counsel
Correspondence Control Unit
Office of the General Counsel
United States Environmental Protection Agency
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Mail Code 2310A
Washington, D.C. 20460

Dated: February 28, 2013

s/ Suma Peesapati
SUMA PEESAPATI



STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

April 4, 2013

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RE: Comments on the Nevada Division of Environmental Protection Portion of the Nevada Infrastructure State Implementation Plan for the 2008 Ozone NAAQS

Dear Mr. Ukeiley and Ms. Pearlman:

The Nevada Division of Environmental Protection (NDEP) received the Sierra Club's comments on the NDEP portion of the Nevada Infrastructure State Implementation Plan (i-SIP) for the 2008 Ozone NAAQS on March 6, 2013 via e-mail with hard copy received on March 8, 2013. The NDEP's response to each of the Sierra Club's four comments follows.

I. The Sierra Club's first comment pertains to the Clark County ozone planning area. Generally, the Clark County Department of Air Quality (CCDAQ) is the responsible planning agency in that area, with the exception of fossil-fuel fired electricity generating stations. NV Energy's Reid Gardner Generating Station (RGGS) is the only facility regulated by the NDEP in Clark County. See comment III for the NDEP's discussion of nitrogen dioxide (NO₂) controls at RGGS.

The public comment opportunity to which you responded concerns the NDEP portion of Nevada's ozone i-SIP (as noted in the subject line and first sentence of your comment letter), which applies to the NDEP's jurisdiction and excludes Clark County. The public comment period for the Clark County portion of the Nevada ozone i-SIP was held from December 30, 2012 to January 29, 2013; a public announcement of this comment period was published in the Las Vegas Review-Journal and/or Las Vegas Sun on December 29, 2012 and on the CCDAQ web site. The Clark County portion of the Nevada ozone i-SIP was approved by the Clark County Board of Commissioners on February 19, 2013.

The Sierra Club comments that Clark County is monitoring exceedances of the 2008 ozone national ambient air quality standards (NAAQS) and will likely have a design value greater than 0.075 ppm based on 2010 to 2012 data. The U.S. Environmental Protection Agency (USEPA)

and the CCDAQ are aware of the monitoring data the Sierra Club cites and have begun discussions on how to address these events with respect to the NAAQS in order to reduce ozone levels in Clark County. Furthermore, as the Sierra Club also points out, Clark County is currently designated attainment/unclassifiable for the 1997 and 2008 ozone NAAQS.

II. The Sierra Club's second comment pertains to the NDEP's response to the Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) requirement. This section comprises the "good neighbor" provisions, which require states to ensure that emissions from sources within a state do not contribute significantly to nonattainment in, or interfere with maintenance by, any other state.

Based on a November 19, 2012 guidance memo from Gina McCarthy to EPA Regional Air Directors, the NDEP concluded it is not obligated to address the CAA section 110(a)(2)(D)(i)(I) requirement at this time. The McCarthy memo communicated USEPA's intent to act in accordance with the Court's decision on the 2011 Cross-State Air Pollution Rule and not make findings of failure if states did not submit SIPs to comply with this sub-element. (Gina McCarthy, *Memo to EPA Air Division Directors, Regions 1-10, Next Steps for Pending Redesignation Request State Implementation Plan Actions Affected by Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule*, pp. 2-3. Nov. 19 2012.)

On August 21, 2012, the D.C. Circuit Court decided in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012) ("*Homer City*") that:

The regulated entities – here, the upwind States – need more precise guidance to know how to conform their conduct to the law. A SIP logically cannot be deemed to lack a "required submission" or deemed to be deficient for failure to meet the good neighbor obligation before EPA quantifies the good neighbor obligation.

Homer City, 696 F.3d at 32 (D.C. Cir. 2012). The Sierra Club argues that *Homer City* was incorrectly decided and that neither the USEPA nor the State of Nevada should rely on it. Nonetheless, the *Homer City* decision is the current, enforceable interpretation of the law. Unless the *Homer City* decision is overturned, it is appropriate to act in accordance with that decision.¹ USEPA concludes that as well.

Nevertheless, the NDEP did submit an interstate transport analysis for ozone. The Sierra Club argues that Nevada's transport analysis is flawed and is not sufficient to satisfy CAA section 110(a)(2)(D)(i)(I). It faults the NDEP's analysis for relying on the Clean Air Interstate Rule (CAIR) for emission reductions. The NDEP's analysis does not rely on CAIR for emission reductions. It simply points out that USEPA's modeling analyses for CAIR support the NDEP's position that emissions from Nevada do not impact nonattainment or maintenance areas in any other state (William Harnett, *Guidance for State Implementation Plan (SIP) Submissions to Meet*

¹ The NDEP recognizes that the Sierra Club, among other parties, has petitioned the United States Supreme Court for a writ of certiorari regarding this decision.

Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards, p.5. August 15, 2006).

The Sierra Club's position that the NDEP "should have" performed a quantitative analysis using photochemical modeling is unsupported by the CAA or USEPA guidance. The CAA is not specific as to how states demonstrate that they do not contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state. In fact, USEPA guidance suggests that the level of the interstate transport evaluation should be determined by the state.

Finally, the Sierra Club's statement that, "... prevailing winds are recorded at very high altitudes, much higher than the typical stacks heights where the majority of ozone precursors are emitted ..." is erroneous. The wind roses used in the NDEP's analysis are from data recorded at airport meteorological stations operated by the National Weather Service (NWS), which are typically at heights of 10 meters.

III. The third comment relates to the CAA requirement for Nevada's SIP to contain measures that prevent emissions from Nevada from interfering with any other states' visibility protection program. USEPA guidance provides that this requirement may be satisfied by a combination of a fully approved reasonably attributable visibility impairment SIP, prevention of significant deterioration of air quality SIP and regional haze (RH) SIP. USEPA further asserts that if a state lacks any of these SIPs and instead has a federal implementation plan (FIP) in place, the FIP will satisfy the requirement.

Nevada's RH SIP was fully approved with the exception of certain requirements for Best Available Retrofit Technology (BART) for NO_x at RGGGS (77 FR 17334). On August 23, 2012, US EPA approved in part and disapproved in part the remaining portion of Nevada's regional haze SIP, promulgating a FIP to replace the disapproved provisions of the State plan (77 FR 50936). While Nevada recognizes that the Moapa Band has filed suit regarding its contention that the FIP is legally insufficient, USEPA and Nevada maintain that the BART determination for RGGGS is sound and meets all criteria for BART analyses. . The Sierra Club requests Nevada to operate as if the Sierra Club's interpretation of the law were already in effect. It would be inappropriate for a state or federal agency to disregard the existing binding rules embodied in the FIP and SIP absent a court decision to the contrary.

Nevada continues to hold that emissions from the State do not interfere with visibility protection in any other state. For perspective, an emission limit of 0.03 lb/MMBtu (espoused by the Sierra Club) versus 0.20 lb/MMBtu (the BART emission limit) for NO_x at RGGGS yields a NO_x reduction of 2,600 tpy. Emissions in Maricopa County, where the Phoenix marginal 8-hour ozone nonattainment area is located, were greater than 120,000 tpy in 2002. Phoenix is 300 miles from Las Vegas and prevailing winds, based on the NWS surface meteorology, do not blow from Las Vegas toward Phoenix. A reduction in emissions equal to two percent of the locally generated emissions, at a distance of 300 miles from the target area, will not lower monitored concentrations at the target regardless of the prevailing wind direction.

IV. The Sierra Club's fourth comment seems to suggest that Nevada must adopt the 2008 ozone NAAQS into its SIP. The NDEP disagrees. Nowhere does the CAA require a state to adopt a NAAQS into state regulation. Rather, it requires that states *adopt a plan* to implement, maintain and enforce any new or revised NAAQS (CAA section 110(a)(1)). Further, CAA section 110(a)(2) requires that the plan include enforceable emission limitations and other control measures, means or techniques to meet CAA requirements. The Sierra Club does not point specifically to any state regulations, or lack thereof, that would curtail the NDEP's ability to implement, maintain, and enforce the revised ozone NAAQS. The NDEP concludes that it has demonstrated a plan to address protection of the 2008 ozone NAAQS, and, therefore, the CAA requirement is satisfied.

The Sierra Club's comments arguing that the SIP is inadequate hinge primarily on cases that have not been resolved in the manner that the Sierra Club advocates. It would be inappropriate for the State of Nevada to submit a SIP based on the Sierra Club's projections of future law; rather, the State must abide by existing law and regulations in its SIP. In addition, absent specific comments based on existing law as to how Nevada's SIP is allegedly deficient, the NDEP finds no basis in the Sierra Club's comments to revise Nevada's 2008 ozone NAAQS infrastructure SIP. Thank you for your comments.

Sincerely,



Rob Bamford, Chief
Bureau of Air Pollution Control

cc: Lewis Wallenmeyer, Director, Clark County Department of Air Quality

cc: Adele Malone, Supervisor, Planning and Modeling Branch
Jasmine Mehta, Deputy Attorney General

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