

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R162-06

Effective September 18, 2006

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

AUTHORITY: §§1-51, NRS 445B.210 and 445B.300.

A REGULATION relating to air pollution; establishing policies and procedures to carry out a program in Nevada in compliance with the federal Clean Air Mercury Rule; requiring owners or operators of certain stationary sources to apply for and obtain Clean Air Mercury Rule operating permits to construct before beginning construction of certain stationary coal-fired boilers or stationary coal-fired combustion turbines; authorizing owners and operators who hold such permits to apply for revisions to the permits; establishing fees for applicants for Clean Air Mercury Rule permits to construct and applicants for revisions to such permits; providing for the creation and management of mercury allowance tracking system accounts by the Director of the State Department of Conservation and Natural Resources; adopting by reference certain provisions of certain federal regulations concerning the mercury allowance tracking system accounts; and providing other matters properly relating thereto.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 42, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 42, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 27, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Clean Air Mercury Rule operating permit to construct,” abbreviated as “CAMR operating permit to construct,” means a legally binding document that is issued by the Director pursuant to section 31 of this regulation, including, without limitation, a permit*

revision, specifying the requirements of the mercury budget trading program which are applicable to:

- 1. A mercury budget source;*
- 2. Each mercury budget unit at the mercury budget source; and*
- 3. The owners, operators and mercury designated representatives of the mercury budget source and of each mercury budget unit at the mercury budget source.*

Sec. 4. “Compliance account” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.

Sec. 5. “Control period” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.

Sec. 6. “Emissions” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.

Sec. 7. “Excess emissions” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.

Sec. 8. “Existing mercury budget unit” means a mercury budget unit that commenced construction or reconstruction on or before January 30, 2004.

Sec. 9. “Low emitting unit/Integrated gasification combined cycle allocation account,” abbreviated as “LEU/IGCC allocation account,” means a mercury allowance tracking system account for a mercury budget unit which meets the criteria set forth in subsection 2 of section 40 of this regulation.

Sec. 10. “Mercury allowance” means an “Hg allowance” as defined in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.

Sec. 11. *“Mercury allowance tracking system” means an “Hg Allowance Tracking System” as defined in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 12. *“Mercury allowance tracking system account” means an “Hg Allowance Tracking System account” as defined in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 13. *“Mercury baseline emission period” means a period of operation of a new mercury budget unit of 36 consecutive months determined from measured emissions from the new mercury budget unit.*

Sec. 14. *“Mercury budget source” means an “Hg Budget source” as defined in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 15. *“Mercury budget trading program” means an “Hg Budget Training Program” as defined in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 16. *“Mercury budget unit” means an “Hg Budget unit” as defined in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 17. *“Mercury designated representative” means an “Hg designated representative” as defined in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 18. *“Monitoring system” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 19. *“New mercury budget unit” means a mercury budget unit that commenced construction or reconstruction after January 30, 2004.*

Sec. 20. *“New source allocation account” means a mercury allowance tracking system account for a mercury budget unit that has not established a mercury baseline emission period.*

Sec. 21. *“Operator” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 22. *“Ounce” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 23. *“Owner” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 24. *“Recordation” or “recorded” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 25. *“Source” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 26. *“Special allocation account” means a mercury allowance tracking system account in which mercury allowances that are not otherwise allocated are recorded for a control period.*

Sec. 27. *“Unit” has the meaning ascribed to it in 40 C.F.R. § 60.4102, as adopted by reference in NAC 445B.221.*

Sec. 28. *In addition to obtaining a Class I, Class II or Class III operating permit as required pursuant to NAC 445B.287 to 445B.3497, inclusive, an owner or operator of a mercury budget source that has a new mercury budget unit or existing mercury budget unit shall:*

1. Submit to the Director, on a form provided by the Director, an application for a CAMR operating permit to construct for the mercury budget unit on or before July 1, 2008, or 18 months before the date on which the mercury budget unit commences operation, whichever occurs later; and

2. Obtain a CAMR operating permit to construct for the mercury budget unit.

Sec. 29. An owner or operator of a mercury budget source who has a CAMR operating permit to construct may submit to the Director, on a form provided by the Director, an application for a revision of the CAMR operating permit to construct.

Sec. 30. An application for a CAMR operating permit to construct submitted pursuant to section 28 of this regulation or an application for a revision of a CAMR operating permit to construct submitted pursuant to section 29 of this regulation must include, without limitation:

1. Information to identify the applicant, including, without limitation:

(a) The name and address of the company that is applying for the CAMR operating permit to construct or revision of a CAMR operating permit to construct, or the name and address of the mercury budget source if it is different from the name and address of the company;

(b) The name of the owner of the company and his agent; and

(c) The name and telephone number of the manager of the mercury budget source or another appropriate person to contact;

2. An identification of each mercury budget unit located at the mercury budget source;

3. The location of any records that the applicant must keep pursuant to the requirements of the CAMR operating permit to construct, if the records are kept at a location other than the emitting mercury budget source;

4. A mercury monitoring plan, the content of which is consistent with the appropriate provisions of 40 C.F.R. Parts 60 and 75; and

5. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

Sec. 31. 1. *Within 30 days after the date of receipt of an application for a CAMR operating permit to construct or an application for a revision of a CAMR 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. 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 occurs earlier.*

2. *If, after the official date of submittal of an application pursuant to subsection 1, the Director discovers that additional information is required to act on the application, the Director may request additional information necessary to determine whether the proposed construction or operation will comply with all of the requirements set forth in sections 2 to 42, inclusive, of this regulation. The applicant must provide in writing any additional information that the Director requests within the time specified by 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.*

3. *Within 12 months after the official date of submittal of an application for a CAMR operating permit to construct or an application for revision of a CAMR operating permit to construct, the Director shall issue or deny the CAMR operating permit to construct or the proposed revision of a CAMR operating permit to construct.*

Sec. 32. *For each mercury budget unit:*

1. Described in a CAMR operating permit to construct, the Director shall cite the legal authority for each condition contained in the CAMR operating permit to construct.

2. The CAMR operating permit to construct for the mercury budget unit must contain the following conditions:

(a) Each of the conditions and requirements of the CAMR operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect.

(b) The holder of the CAMR operating permit to construct must comply with all conditions of the CAMR operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the CAMR operating permit to construct by the Director; or

(3) The reopening or revising of the CAMR operating permit to construct by the holder of the CAMR operating permit to construct as directed by the Director.

(c) The need to halt or reduce activity to maintain compliance with the conditions of the CAMR operating permit to construct is not a defense to noncompliance with any condition of the CAMR operating permit to construct.

(d) The Director may revise, revoke and reissue, reopen or terminate the CAMR operating permit to construct for cause.

(e) The CAMR operating permit to construct does not convey any property rights or any exclusive privilege.

(f) The holder of the CAMR 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 CAMR operating permit to construct, or to determine compliance with the conditions of the CAMR operating permit to construct.

(g) The holder of the CAMR operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the CAMR operating permit to construct where:

(I) The mercury budget unit is located;

(II) Activity related to the mercury budget unit is conducted; or

(III) Records are kept pursuant to the conditions of the CAMR 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 CAMR operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including, without limitation, any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the CAMR operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the CAMR operating permit to construct or applicable requirements.

(h) A mercury designated representative of the mercury budget source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any

document required to be submitted pursuant to any condition of the CAMR operating permit to construct are true, accurate and complete.

(i) The owners and operators, and the mercury designated representative, of each mercury budget source and each mercury budget unit at the mercury budget source shall comply with the monitoring, reporting and recordkeeping requirements of 40 C.F.R. §§ 60.4170 to 60.4176, inclusive. The emissions measurements recorded and reported in accordance with 40 C.F.R. §§ 60.4170 to 60.4176, inclusive, must be used to determine compliance by each mercury budget source with the mercury budget emissions limitations set forth in paragraphs (j) to (o), inclusive.

(j) Not later than the deadline for allowance transfer for a control period, the owners and operators of each mercury budget source and each mercury budget unit at the mercury budget source shall hold, in the mercury budget source's compliance account, mercury allowances available for compliance deductions for the control period under 40 C.F.R. § 60.4154(b) in an amount not less than the ounces of total mercury emissions for the control period from all mercury budget units at the mercury budget source, as determined in accordance with 40 C.F.R. §§ 60.4170 to 60.4176, inclusive.

(k) A mercury budget unit is subject to the requirements of paragraph (j) beginning on January 1, 2010, or the deadline for meeting the unit's monitor certification requirements under 40 C.F.R. § 60.4170(b)(1) or (2), whichever occurs later.

(l) A mercury allowance must not be deducted for compliance with the requirements of paragraph (j) for a control period in a calendar year before the year for which the mercury allowance was allocated.

(m) Mercury allowances must be held in, deducted from or transferred into or among mercury allowance tracking system accounts in accordance with 40 C.F.R. §§ 60.4160, 60.4161 and 60.4162.

(n) A mercury allowance is a limited authorization to emit one ounce of mercury in accordance with the mercury budget trading program. No provision of the mercury budget trading program, the application for a CAMR operating permit to construct, the CAMR operating permit to construct, an exemption under 40 C.F.R. § 60.4105 or any provision of law shall be construed to limit the authority of this State or the United States to terminate or limit such authorization.

(o) Upon recordation by the Administrator pursuant to 40 C.F.R. §§ 60.4150 to 60.4162, inclusive, every allocation or transfer of a mercury allowance to or deduction of a mercury allowance from the compliance account of a mercury budget unit is incorporated automatically into any CAMR operating permit to construct of the mercury budget source that includes the mercury budget unit.

(p) If a mercury budget source emits mercury during any control period in excess of the mercury budget emissions limitation:

(1) The owners and operators of the mercury budget source and each mercury budget unit at the mercury budget source shall surrender the mercury allowances required for deduction pursuant to 40 C.F.R. § 60.4154(d)(1) and pay any fine, penalty or assessment or comply with any other remedy imposed, for the same violation of the mercury budget emissions limitation under the Act or applicable state law; and

(2) Each ounce of such excess emissions and each day of such control period constitutes a separate violation of 40 C.F.R. Part 60, Subpart HHHH, the Act and applicable state law.

(q) Unless otherwise provided, the owners and operators of the mercury budget source and each mercury budget unit at the mercury budget source shall keep on-site at the mercury budget source each of the documents described in subparagraphs (1) to (4), inclusive, for a period of 5 years after the date on which the document is created. This period may be extended for cause, at any time before the end of the 5-year period, in writing by the Director or the Administrator. The owners and operators of the mercury budget source and each mercury budget unit at the mercury budget source shall keep on-site at the mercury budget source:

(1) The certificate of representation issued pursuant to 40 C.F.R. § 60.4113 for the mercury designated representative for the mercury budget source and each mercury budget unit at the mercury budget source and documents that demonstrate the truth of the statements in the certificate of representation, provided that the certificate and documents must be retained on-site at the mercury budget source beyond the 5-year period described in this paragraph until such documents are superseded because of the submission of a new certificate of representation pursuant to 40 C.F.R. § 60.4113 changing the mercury designated representative.

(2) All emissions monitoring information required by 40 C.F.R. §§ 60.4170 to 60.4176, inclusive, provided that to the extent that 40 C.F.R. §§ 60.4170 to 60.4176, inclusive, provide for a 3-year period for recordkeeping, the 3-year period will apply.

(3) Copies of all reports, compliance certifications and other submissions, and all records made or required pursuant to the provisions of the mercury budget trading program.

(4) Copies of all documents used to complete an application for a CAMR operating permit to construct and any other submission under the mercury budget trading program or to demonstrate compliance with the requirements of the mercury budget trading program.

(r) The mercury designated representative of a mercury budget source and each mercury budget unit at the mercury budget source must submit the reports required by the mercury budget trading program, including, without limitation, those reports required pursuant to 40 C.F.R. §§ 60.4170 to 60.4176, inclusive.

(s) Each mercury budget source and each mercury budget unit at the mercury budget source must meet the requirements of the mercury budget trading program regarding liability, including, without limitation, that:

(1) Any provision of the mercury budget trading program regarding liability that applies to a mercury budget source or the mercury designated representative of a mercury budget source must also apply to the owners and operators of such source and of the mercury budget units at the mercury budget source; and

(2) Any provision of the mercury budget trading program regarding liability that applies to a mercury budget unit or the mercury designated representative of a mercury budget unit must also apply to the owners and operators of such unit.

(t) No provision of the mercury budget trading program, an application for a CAMR operating permit to construct, a CAMR operating permit to construct or an exemption under 40 C.F.R. § 60.4105 shall be construed as exempting or excluding the owners and operators and the mercury designated representative of a mercury budget source or mercury budget unit at the mercury budget source from compliance with any other provision of the applicable state implementation plan, a federally enforceable permit or the Act.

(u) The owner or operator of the mercury budget unit shall comply with the mercury monitoring plan which is required to be submitted pursuant to subsection 4 of section 30 of this regulation.

(v) Any other requirements which the Director determines are necessary.

Sec. 33. *For a new mercury budget unit or a modified mercury budget unit:*

1. Except as otherwise provided in this subsection, if construction will occur in one phase, a CAMR operating permit to construct for a new mercury budget unit or modified mercury budget unit expires if construction is not commenced within 18 months after the date of issuance of the permit or if construction of the mercury budget unit is delayed for at least 18 months after initiated. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.

2. If construction will occur in more than one phase, the projected date of the commencement of construction of each phase of construction must be approved by the Director. Except as otherwise provided in this subsection, a CAMR operating permit to construct expires if the initial phase of construction is not commenced within 18 months after the projected date of the commencement of construction approved by the Director. The Director may extend only the date on which the initial phase of construction may be commenced upon a showing that the extension is justified.

Sec. 34. *1. The trading budget for annual allocations of mercury allowances for Nevada for:*

(a) Control periods 2010 to 2017, inclusive, is 0.285 tons (9120 ounces/allowances) per control period; and

(b) Control period 2018 and each control period thereafter, is 0.112 tons (3584 ounces/allowances) per control period.

2. The Director shall not allocate mercury allowances in excess of the trading budget allowances for Nevada as set forth in subsection 1.

Sec. 35. *The Director shall submit to the Administrator the mercury allowance allocations, in a format prescribed by the Administrator and in accordance with section 37 of this regulation, for:*

1. Control periods 2010, 2011 and 2012, by November 17, 2006; and

2. Control period 2013 and each control period thereafter, by October 31, 2009, and October 31 of each year thereafter, respectively, for each mercury budget unit that has established a mercury baseline emissions period.

Sec. 36. 1. *The Director shall establish the mercury allowance tracking system accounts as follows:*

(a) For a new source allocation account:

(1) For control periods 2010 to 2017, inclusive, 800 mercury allowances; and

(2) For control period 2018 and each control period thereafter, 112 mercury allowances.

(b) For a LEU/IGCC allocation account:

(1) For control periods 2010 to 2017, inclusive, 3,200 mercury allowances; and

(2) For control period 2018 and each control period thereafter, 112 mercury allowances.

(c) For a special allocation account, for control period 2010 and each control period thereafter, all allowances not otherwise allocated pursuant to paragraphs (a) and (b) and section 37 of this regulation.

2. The Director shall notify the Administrator of the allocation distribution for each control period.

Sec. 37. 1. For control periods 2010, 2011 and 2012, the Director shall determine the mercury allowance allocation for each mercury budget unit that commenced operation before January 1, 2001, based on:

(a) Mercury emissions factors determined from testing performed at the mercury budget source;

(b) The highest calendar year of gross megawatts output achieved by each mercury budget unit for control periods 2003, 2004 and 2005; and

(c) The corresponding capacity factor for the year determined from paragraph (b), as reported to the Public Utilities Commission of Nevada.

2. For control period 2013 and each control period thereafter, the Director shall determine the mercury allowance allocation for each mercury budget unit that commenced operation before January 1, 2001, and any other mercury budget unit that has established a mercury baseline emission period, based on actual mercury emissions data measured and as reported for each mercury budget unit for control period 2009 and each year thereafter and:

(a) Each mercury budget unit's capacity factors, as contained in the resource plan approved by the Public Utilities Commission of Nevada; or

(b) An 80 percent capacity factor for a mercury budget unit that does not have a resource plan approved by the Public Utilities Commission of Nevada.

3. If necessary, the allocation will be prorated with other mercury budget units that have established a mercury baseline emission period using the total gross megawatts for the preceding 36-month period of operation.

4. The Director shall not allocate mercury allowances to any mercury budget source or mercury budget unit that is permanently retired and that is exempted under 40 C.F.R. § 60.4105(a), or which has an expired CAMR operating permit to construct.

5. As used in this section, “resource plan” has the meaning ascribed to it in NAC 704.9156.

Sec. 38. *1. Except as otherwise provided in subsection 4, on or before 15 business days before June 1, 2011, and June 1 of each year thereafter, for each mercury budget source that has been provided allocations in excess of the total actual emissions for all mercury budget units at the mercury budget source for the preceding control period, the mercury designated representative shall submit a request to the Administrator to transfer from the compliance account of the mercury budget source to the LEU/IGCC allocation account the amount of mercury allowances that exceeds actual mercury emissions from all mercury budget units at the mercury budget source.*

2. On or before 5 business days before February 28, 2011, and February 28 of each year thereafter, for each mercury budget source that has been allocated mercury allowances in an amount less than that of the total actual emissions for all mercury budget units at the mercury budget source for the preceding control period, the Director shall submit a request to the Administrator to transfer from the special allocation account to the compliance account of the mercury budget source the amount of mercury allowances necessary to balance the mercury budget source’s actual mercury emissions for the control period. If the amount of mercury allowances in the special allocation account is less than the balance necessary to equal the actual mercury emissions from all the mercury budget sources for the control period, the

Director shall prorate mercury allowances using the total gross megawatts from all eligible mercury budget units for the control period.

3. The Director shall not allocate mercury allowances to any mercury budget unit to cover allowances needed by the mercury budget source pursuant to 40 C.F.R. § 60.4154(d).

4. A mercury budget source may retain allocations in excess of the total actual emissions that result from the voluntary installation and operation of pollution control equipment or enhancement of operation of process equipment which results in mercury emissions reductions. Mercury allowances will be allocated only for the control period in which the pollution control equipment began operating or an enhancement to the process equipment occurred. The retention of mercury allowances will not be allowed for pollution control projects resulting from a settlement for noncompliance with any local, state or federal regulatory proceeding.

Sec. 39. 1. *For each new source allocation account, the mercury designated representative of a mercury budget source shall submit, in a format specified by the Director, a request to the Director for mercury allowance allocations starting with control period 2010 or the control period in which a new mercury budget unit commences commercial operation, whichever occurs later, until the first control period after the mercury budget source has established a mercury baseline emission period for which the unit is allocated mercury allowances under section 38 of this regulation. The mercury allowance allocation request must be based on an 80 percent capacity factor. The mercury allowance allocation request must be submitted on or before July 1 of the first control period for which the mercury allowances are requested and after the date on which the mercury budget unit commences commercial operation.*

2. *In reviewing each mercury allowance allocation requested pursuant to subsection 1, the Director shall:*

(a) Accept an allowance allocation request only if the request meets, or is adjusted by the Director as necessary to meet, the requirements of subsection 1.

(b) Determine the sum of the mercury allowances requested in all allowance allocation requests accepted pursuant to paragraph (a) for the control period. If the number of mercury allowances in the new source allocation account is:

(1) Equal to or greater than the sum of mercury allowances requested, the Director shall allocate to the mercury budget source a number of mercury allowances equal to the number requested.

(2) Less than the sum of mercury allowances requested, the Director shall allocate mercury allowances to the mercury budget source on a prorated basis, using the total gross megawatts from all eligible mercury budget units for the preceding control period.

(c) Notify each mercury designated representative of a mercury budget source that submitted an allowance allocation request of the amount of mercury allowances allocated for the control period to the mercury budget source for each new mercury budget unit covered by the request.

3. *On or before 15 business days before June 1, 2011, and June 1 of each year thereafter, for each mercury budget source that has been provided allocations in excess of the total actual emissions for all new mercury budget units at the mercury budget source for the preceding control period, the mercury designated representative shall submit a request to the Administrator to transfer from the compliance account of the mercury budget source to the*

LEU/IGCC allocation account the amount of allocations that exceeds actual mercury emissions from all new mercury budget units at the mercury budget source.

4. On or before 5 business days before February 28, 2011, and February 28 of each year thereafter, for each mercury budget source that has been provided allocations in an amount less than that of the total actual emissions for all new mercury budget units at the mercury budget source for the preceding control period, the Director shall submit a request to the Administrator to transfer from the special allocation account to the compliance account of the mercury budget source the amount of allocations necessary to balance the mercury budget source's actual mercury emissions for the control period.

5. On or before October 31, 2010, and October 31 of each year thereafter, the Director shall submit a request to the Administrator to transfer the number of mercury allowances determined in paragraph (b) of subsection 2 from the new source allocation account to the compliance account of each mercury budget source.

6. The Director shall not allocate mercury allowances to any mercury budget unit to cover allowances needed by the mercury budget source pursuant to 40 C.F.R. § 60.4154(d).

7. Mercury allowances not transferred pursuant to subsection 5 will accrue for control periods 2010 to 2017, inclusive. On or before February 1, 2018, the Director shall submit a request to the Administrator to transfer all remaining unallocated allowances for control periods 2010 to 2017, inclusive, to the LEU/IGCC allocation account.

8. For control period 2018 and each year thereafter, mercury allowances not transferred pursuant to subsection 5 will accrue in the new source allocation account until allocated pursuant to subsection 2.

Sec. 40. 1. *The mercury designated representative of a mercury budget unit qualifying as a level I or level II mercury emission unit pursuant to the provisions of subsection 2 may submit, in a format specified by the Director, an application to the Director requesting mercury allowances from the LEU/IGCC allocation account for each qualifying mercury budget unit, on or before February 1 of the calendar year following the applicable control period.*

2. *The Director must accept a request for mercury allowances from the LEU/IGCC allocation account made pursuant to subsection 1 if the mercury budget unit meets the following level I or level II criteria requirements during the applicable control period:*

<i>Level I mercury budget unit</i>	
<i>For existing mercury budget units operated</i>	<i>Mercury emission rate not to exceed:</i>
<i>on the following fuels:</i>	
<i>Bituminous coal</i>	<i>21 x 10⁻⁶ lb/MWh</i>
<i>Sub-bituminous coal with wet FGD</i>	<i>61 x 10⁻⁶ lb/MWh</i>
<i>Sub-bituminous coal with dry FGD</i>	<i>61 x 10⁻⁶ lb/MWh</i>
<i>For new mercury budget units operated on</i>	
<i>the following fuels:</i>	
<i>Bituminous coal</i>	<i>6 x 10⁻⁶ lb/MWh</i>
<i>Sub-bituminous coal with wet FGD</i>	<i>20 x 10⁻⁶ lb/MWh</i>
<i>Sub-bituminous coal with dry FGD</i>	<i>20 x 10⁻⁶ lb/MWh</i>
<i>IGCC (coal gasification) technology</i>	<i>20 x 10⁻⁶ lb/MWh</i>

Level II mercury budget unit

*For existing mercury budget units operated Mercury emission rate not to exceed:
on the following fuels:*

<i>Bituminous coal</i>	<i>24 x 10⁻⁶ lb/MWh</i>
<i>Sub-bituminous coal with wet FGD</i>	<i>66 x 10⁻⁶ lb/MWh</i>
<i>Sub-bituminous coal with dry FGD</i>	<i>97 x 10⁻⁶ lb/MWh</i>

*For new mercury budget units operated on
the following fuels:*

<i>Bituminous coal</i>	<i>16 x 10⁻⁶ lb/MWh</i>
<i>Sub-bituminous coal with wet FGD</i>	<i>53 x 10⁻⁶ lb/MWh</i>
<i>Sub-bituminous coal with dry FGD</i>	<i>78 x 10⁻⁶ lb/MWh</i>

3. On or before 15 business days before June 1 of the year following the applicable control period, the Director shall submit a request to the Administrator to transfer mercury allowances for the previous control period as determined in accordance with subsections 4 and 5. Emission rates must be verified through certified monitoring systems and relevant plant records as set forth in the mercury monitoring plan pursuant to subsection 4 of section 30 of this regulation.

4. First priority for distribution of allowances from the LEU/IGCC allocation account must be provided to mercury budget units qualifying as level I units. The mercury allowance distribution must be based on the actual mercury emissions for the prior control period of the qualifying level I unit. If sufficient mercury allowances are not available in the LEU/IGCC allocation account to cover all level I allocation requests, the Director shall prorate mercury

allowances using the total gross megawatts for the preceding control period for all qualifying level I units. In no case will mercury allowance distributions exceed the actual emissions of the qualifying level I mercury emission unit.

5. Mercury budget units qualifying as level II units become eligible for any remaining unallocated allowances in the LEU/IGCC allocation account after the level I allocation distribution made pursuant to subsection 4. The mercury allowance distribution must be based on the actual mercury emissions for the prior control period of the qualifying level II unit. In this subsection, if sufficient mercury allowances are not available in the LEU/IGCC allocation account to cover all level II allocation requests, the Director shall prorate mercury allowances using the total gross megawatts for the preceding control period for all qualifying level II units. In no case will mercury allowance distributions exceed the actual emissions of the qualifying level II mercury emission unit.

6. Any unallocated allowances remaining in the LEU/IGCC allocation account after level I and level II allocation distributions are made pursuant to subsections 4 and 5 must be retained for the next control period.

7. The Director shall reevaluate the LEU/IGCC allocation account emission rates, as established pursuant to subsection 2, to determine if the emission rates established are appropriate levels for the LEU/IGCC allocation account. The reevaluation must be conducted following control periods 2010, 2011 and 2012, and every 3 years thereafter.

8. If the owner or operator of an existing mercury budget unit installs pollution control equipment which results in mercury emissions reductions pursuant to an action for noncompliance with any local, state or federal requirement, that mercury budget unit will not qualify as a level I or II mercury budget unit.

9. *As used in subsection 2:*

(a) *“FGD” means flue gas desulfurization.*

(b) *“MWh” means Megawatt hours.*

Sec. 41. *For mercury allowances in the special allocation account, the Director:*

1. *Shall allocate such mercury allowances in accordance with the provisions of sections 37 to 40, inclusive, of this regulation.*

2. *May auction or offer for sale such mercury allowances, with the proceeds being deposited in the State General Fund for credit to the Account for the Management of Air Quality created pursuant to NRS 445B.590.*

3. *May bank for future use or permanently retire such mercury allowances.*

Sec. 42. 1. *The fee for a CAMR operating permit to construct or a revised CAMR operating permit to construct is \$2,000. An applicant must pay the entire fee when he submits the application to the Director pursuant to section 28 or 29 of this regulation.*

2. *The owner or operator of a mercury budget source must submit an annual maintenance fee for each mercury budget unit. The annual maintenance fee must be determined as follows:*

(a) *For the fiscal year ending on June 30, 2008, the fee for each mercury budget unit must be determined in an amount, in dollars, that is equal to the amount calculated by dividing 300,000 by the total number of mercury budget units. The Director shall determine the total number of mercury budget units to be charged pursuant to this paragraph on or before May 1, 2007.*

(b) *For each fiscal year after the fiscal year ending on June 30, 2008, the fee for each mercury budget unit must be determined in an amount, in dollars, that is equal to the amount*

calculated by dividing 250,000 by the total number of mercury budget units which have previously obtained a mercury operating permit to construct. The Director shall determine the total number of mercury budget units to be charged pursuant to this paragraph each year on or before May 1 of the immediately preceding fiscal year.

3. The State Department of Conservation and Natural Resources shall collect all fees required pursuant to this section not later than July 1 of each year.

4. Except as otherwise provided in this subsection, the owner or operator of a source who does not pay the annual fee installments within 30 days after the date on which payment becomes due will be assessed a late penalty in the amount of 25 percent of the amount of the fees due. The late penalty must be paid in addition to the annual fees. The late penalty set forth in this subsection does not apply if, at the time that the late fee would otherwise be assessed, the owner or operator is in negotiations with the Director concerning the annual fees.

Sec. 43. NAC 445B.001 is hereby amended to read as follows:

445B.001 As used in NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 42, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445B.002 to 445B.211, inclusive, have the meanings ascribed to them in those sections.

Sec. 44. NAC 445B.123 is hereby amended to read as follows:

445B.123 “Operating permit” has the meaning ascribed to it in NRS 445B.145. Unless otherwise specifically stated, the term includes:

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 NAC 445B.3625 ~~and~~; *and*

4. A CAMR operating permit to construct, as defined in section 3 of this regulation.

Sec. 45. NAC 445B.156 is hereby amended to read as follows:

445B.156 “Responsible official” means:

1. For a corporation:

(a) A president;

(b) A vice president in charge of a principal business function;

(c) A secretary;

(d) A treasurer; or

(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.

2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

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.

4. For an affected source, the designated representative or his alternate, as defined in 42 U.S.C. § 7651a(26).

5. For a mercury budget source, as defined in section 14 of this regulation, the mercury designated representative, as defined in section 17 of this regulation, or his alternate.

Sec. 46. NAC 445B.221 is hereby amended to read as follows:

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

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

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

4. ~~[Except as otherwise provided in subsection 5, the]~~ *The* following subparts of ~~[Title]~~ 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) and 60.11(e), as it existed on July 1, ~~[2005;]~~ *2006;*

(b) *Section 60.21 of subpart B, as it existed on July 1, 2006;*

(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, WW, XX, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, ~~[and]~~ AAAA, *CCCC, DDDD, EEEE and FFFF*, as they existed on July 1, ~~[2005; and~~

~~—(c) Subparts CCCC and DDDD of Title 40 C.F.R. Part 60]~~ *2006; and*

(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 set forth in Volume 70 of the Federal Register at pages ~~[55568]~~ *28606* et seq., ~~[September 22, 2005, are hereby adopted by reference.~~

~~—5.—The amendments to subpart Da of Title 40 C.F.R. Part 60 set forth in Volume 70 of the Federal Register at pages 51266 et seq., August 30, 2005, are]~~ *May 18, 2005, and the amendments to Subpart HHHH as set forth in Volume 71 of the Federal Register at pages 33388 et seq., June 9, 2006.*

5. *Appendix B of 40 C.F.R. Part 60 is* hereby adopted by reference ~~[]~~ *as it existed on July 1, 2006.*

6. Subparts A, C, D, E, F, H, I, J, K, L, N, O, P, Q, R, T, V, W, Y, BB and FF of ~~[Title]~~ 40 C.F.R. Part 61 are hereby adopted by reference as they existed on July 1, ~~[2003.]~~ 2006.

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

(a) A, B, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, EEEE, GGGG, HHHH, JJJJ, KKKK, MMMM, NNNN, OOOO, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCCC, DDDDD, EEEEE, FFFFF, JJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ and SSSSS, as they existed on July 1, ~~[2005.]~~ 2006; and

(b) Subpart FFFF as set forth in Volume 70 of the Federal Register at pages 38553 et seq., July 1, 2005, and pages 51269 et seq., August 30, 2005.

8. The amendments to:

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

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

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

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

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

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

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

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

↪ are hereby adopted by reference.

9. Title 40 C.F.R. Part 72 is hereby adopted by reference as it existed on July 1, ~~[2003.]~~ **2006**. If the provisions of 40 C.F.R. Part 72 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 42, inclusive, of this regulation*, the provisions of 40 C.F.R. Part 72 apply.

10. Title 40 C.F.R. Part 76 is hereby adopted by reference as it existed on July 1, ~~[2003.]~~ **2006**. If the provisions of 40 C.F.R. Part 76 conflict with or are not included in NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 42, inclusive, of this regulation*, the provisions of 40 C.F.R. Part 76 apply.

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

12. The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the *United States Department of Labor at the* Internet ~~at the following website:~~ *address* http://www.osha.gov/pls/imis/sic_manual.html.

13. A copy of the publications which contain ~~these~~ *the* provisions *adopted by reference in subsections 1 to 10, inclusive*, may be obtained from the:

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

The price is:

(1) For the volume containing §§ 51.100(s), 51.100(hh) to 51.100(kk), inclusive, 51.100(nn) and 51.165 and Appendices S and W of Part 51	\$45
(2) For § 52.21	61
(3) For Part 60 (Sections 60.1 to end).....	58
(4) For Part 60 (Appendices)	57
(5) For Parts 61—62 <i>Part 61</i>	45
(6) For Part 63 (Sections 63.1 to 63.599).....	58
(7) For Part 63 (Sections 63.600 to 63.1199).....	50
(8) For Part 63 (Sections 63.1200 to 63.1439).....	50
(9) For Part 63 (Sections 63.1440 to 63.6175).....	32
(10) For Part 63 (Sections 63.6580 to 63.8830).....	32
(11) For Part 63 (Sections 63.8980 to end).....	35
(12) For the volume containing Parts 72 and 76.....	62

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

(c) *Government Printing Office, free of charge, at the* Internet ~~[at the following website:]~~
address <http://www.gpoaccess.gov/nara/index.html>.

14. For the purposes of the provisions of *40 C.F.R.* Parts 60, 61 and 63, ~~[Chapter I, Title 40, Code of Federal Regulations]~~ adopted *by reference* pursuant to this section, the Director may not approve alternate or equivalent test methods or alternative standards or work practices.

15. Except as otherwise provided in subsections 9 and 10, the provisions adopted by reference in this section supersede the requirements of NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 42, inclusive, of this regulation* for all stationary sources subject to the provisions adopted by reference only if those requirements adopted by reference are more stringent.

16. For the purposes of this section, “administrator” as used in the provisions of *40 C.F.R.* Parts 60, 61 and 63, ~~[Chapter I, Title 40, Code of Federal Regulations]~~ adopted *by reference* pursuant to this section, means the Director.

Sec. 47. NAC 445B.287 is hereby amended to read as follows:

445B.287 1. Except as otherwise provided in subsection 2 and in NAC 445B.288, an operating permit, operating permit to construct or permit to construct is required for each stationary source and:

(a) If a stationary source is a Class I source:

(1) A revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3425, 445B.344 or 445B.3441 before the stationary source may be modified; or

(2) A revision of the operating permit to construct is required pursuant to the requirements of paragraph (a) of subsection 1 of NAC 445B.3361 before the stationary source may be modified,

↳ as appropriate.

(b) If a stationary source is a Class II source, a revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3465 before the stationary source may be modified.

(c) If a stationary source is a Class III source, a revision of the operating permit is required pursuant to the requirements of NAC 445B.3493 before the stationary source may be modified.

(d) If a stationary source maintains one or more thermal units that emit mercury, the owner or operator of a thermal unit that emits mercury shall comply with the provisions set forth in NAC 445B.3611 to 445B.3689, inclusive.

(e) If a mercury budget source maintains one or more mercury budget units, the owner or operator of a mercury budget unit shall comply with the provisions set forth in sections 2 to 42, inclusive, of this regulation.

2. A Class I source is not subject to the provisions of subparagraph (1) of paragraph (a) of subsection 1 if the source is not a major source, an affected source or a solid waste incineration unit required to obtain a permit pursuant to 42 U.S.C. § 7429(e). For a Class I source which is not a major source and which subsequently becomes subject to a standard or other requirement under 42 U.S.C. § 7411 or 7412, the Administrator will determine whether to exempt the source from the requirement to obtain a Class I operating permit at the time that the new standard is adopted.

3. An operating permit, operating permit to construct or permit to construct may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment reflecting a change of ownership or the name of the stationary source for the effective time remaining on the original operating permit pursuant to NAC 445B.319.

4. As used in this section:

(a) *“Mercury budget unit” has the meaning ascribed to it in section 16 of this regulation.*

(b) *“Operator” has the meaning ascribed to it in section 21 of this regulation, with respect to a CAMR operating permit to construct.*

(c) *“Owner” has the meaning ascribed to it in section 23 of this regulation, with respect to a CAMR operating permit to construct.*

(d) “Permit to construct” means a document issued and signed by the Director before November 1, 1995, certifying that:

(1) Adequate empirical data for a stationary source has been received and constitutes approval of location; or

(2) All portions of NAC 445B.305 to 445B.314, inclusive, and 445B.3395, and any other provisions of NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 42, inclusive, of this regulation*, have been complied with and constitute approval of location and for construction.

~~(b)~~ (e) “Thermal unit that emits mercury” has the meaning ascribed to it in NAC 445B.3643.

Sec. 48. NAC 445B.298 is hereby amended to read as follows:

445B.298 Except as otherwise provided in NAC 445B.3364, 445B.3395, 445B.3457 ~~for 445B.3487,]~~, *445B.3487 or 445B.3683 or section 31 of this regulation*, the official date of submittal of an application for:

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,

↪ is the date on which the Director determines that the application is complete.

Sec. 49. NAC 445B.325 is hereby amended to read as follows:

445B.325 1. ~~[A]~~ *Except as otherwise provided in subsection 2, a* Class I operating permit must be reopened and revised to incorporate any additional applicable requirement adopted pursuant to the Act if, on the effective date of the applicable requirement, the operating permit has a remaining term of 3 or more years. The reopening must be completed ~~[no]~~ *not* later than 18 months after the effective date of the applicable requirement.

2. *A Class I operating permit is not required to be reopened for a mercury budget unit.*

The owner or operator of a mercury budget unit shall comply with the provisions of sections 2 to 42, inclusive, of this regulation. As used in this subsection:

(a) “Mercury budget unit” has the meaning ascribed to it in section 16 of this regulation.

(b) “Operator” has the meaning ascribed to it in section 21 of this regulation.

(c) “Owner” has the meaning ascribed to it in section 23 of this regulation.

3. An operating permit may be terminated, reopened and revised, revised, or revoked and reissued if:

(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

(c) The Director determines that there has been a violation of any of the provisions of NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 42, inclusive, of this regulation*, any applicable requirement, or any condition contained in the operating permit.

~~{3.}~~ 4. The Director shall notify the holder of the operating permit at least 30 days before he terminates, reopens and revises, revises, or revokes and reissues the operating permit. The notice must be made by certified mail and must contain the legal authority, the jurisdiction and the reasons for the action taken.

~~{4.}~~ 5. If the Administrator notifies the Director and the holder of the operating permit that cause exists to reopen the operating permit, the Director shall forward to the Administrator a proposed determination of the reopening and revision, the revision of, or the revocation and reissuance of the operating permit within 90 days after receipt of the notice from the Administrator.

~~{5.}~~ 6. If the Director reopens an operating permit, he shall revise only those portions of the operating permit for which cause exists.

~~{6.}~~ 7. 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.

Sec. 50. NAC 445B.3361 is hereby amended to read as follows:

445B.3361 1. To establish a new Class I stationary source or modify an existing Class I stationary source, the owner or operator of a proposed new Class I stationary source or the existing Class I stationary source must:

(a) Apply for and obtain a new or revised:

(1) Operating permit to construct pursuant to NAC 445B.001 to 445B.3689, inclusive ~~[;]~~, *and sections 2 to 42, inclusive, of this regulation;* or

(2) Class I operating permit pursuant to NAC 445B.001 to 445B.3689, inclusive ~~[; and]~~, *and sections 2 to 42, inclusive, of this regulation;*

(b) If the owner or operator of the Class I stationary source operates a thermal unit that emits mercury, apply for and obtain a new or revised mercury operating permit to construct for the thermal unit that emits mercury and comply with the provisions set forth in NAC 445B.3611 to 445B.3689, inclusive ~~[;]~~; *and*

(c) If the owner or operator of the Class I stationary source operates a mercury budget unit, apply for and obtain a CAMR operating permit to construct or revised CAMR operating permit to construct and comply with the provisions of sections 2 to 42, inclusive, of this regulation.

2. To obtain a designation for an emission unit as a clean unit, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the designation of a clean unit pursuant to NAC 445B.001 to 445B.3689, inclusive ~~[;]~~, *and sections 2 to 42, inclusive, of this regulation.*

3. To obtain the approval of a pollution control project as specified in 40 C.F.R. § 52.21(z)(1), the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of a pollution control project pursuant to

NAC 445B.001 to 445B.3689, inclusive, *and sections 2 to 42, inclusive, of this regulation* before the owner or operator begins actual construction of the pollution control project.

4. To establish a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of the plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3689, inclusive ~~H~~, *and sections 2 to 42, inclusive, of this regulation*. To revise or renew a Class I operating permit to construct for the approval of a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a revised or renewed Class I operating permit to construct for the approval of a plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3689, inclusive ~~H~~, *and sections 2 to 42, inclusive, of this regulation*.

5. Except as otherwise provided in subsection 7, if an owner or operator obtains an operating permit to construct, the owner or operator is not required to obtain an operating permit or revised operating permit before commencing initial construction, start-up and operation of the proposed new Class I stationary source or the modification to the existing Class I stationary source.

6. Except as otherwise provided in this subsection and subsections 7 and 8, if an owner or operator has a valid operating permit to construct, the owner or operator may continue to operate a new Class I stationary source or modifications to an existing Class I stationary source under that operating permit to construct if the owner or operator submits a complete application for a Class I operating permit within 12 months after the date of initial start-up of the new Class I stationary source or modifications to the existing Class I stationary source. The provisions of this subsection do not apply to:

(a) A Class I operating permit to construct for the designation of a clean unit. A Class I operating permit to construct for the designation of a clean unit must be incorporated into the Class I operating permit pursuant to 40 C.F.R. § 52.21(y)(8).

(b) A Class I operating permit for the approval of a pollution control project.

(c) A Class I operating permit to construct for the approval of a plantwide applicability limitation.

7. If the conditions of an existing Class I operating permit would prohibit the construction or change in operation of the existing Class I stationary source and the owner or operator is not seeking to revise the Class I operating permit at the Class I stationary source pursuant to *subparagraph (2) of* paragraph ~~[(b)]~~ (a) of subsection 1, the owner or operator must concurrently:

(a) For the construction or change in operation of the existing Class I stationary source:

(1) Obtain a Class I operating permit to construct; or

(2) If the construction or change in operation involves mercury emissions from a thermal unit that emits mercury, obtain a mercury operating permit to construct pursuant to NAC 445B.3611 to 445B.3689, inclusive; and

(b) Obtain an administrative revision to an operating permit to incorporate the conditions of the Class I operating permit to construct into the existing Class I operating permit pursuant to NAC 445B.3441 before commencing with the construction or change in operation of the existing Class I stationary source.

8. If an owner or operator has a valid ~~[mercury]~~ :

(a) *Mercury* operating permit to construct, the owner or operator may continue to operate the thermal unit that emits mercury which is located at an existing Class I stationary source if the

owner or operator submits a complete application to revise the existing Class I operating permit within 12 months after the determination of the NvMACT contained in the mercury operating permit to construct by the Director.

(b) CAMR operating permit to construct, the owner or operator may continue to operate the mercury budget unit located at an existing Class I stationary source:

(1) If the owner or operator of an existing mercury budget unit submits a complete application to revise the existing Class I operating permit on or before January 1, 2010; or

(2) If the owner or operator of a new mercury budget unit submits a complete application at the time the owner or operator is required to file the initial Class I operating permit application.

9. As used in this section:

(a) “CAMR operating permit to construct” has the meaning ascribed to it in section 3 of this regulation.

(b) “Existing mercury budget unit” has the meaning ascribed to it in section 8 of this regulation.

(c) “Mercury budget unit” has the meaning ascribed to it in section 16 of this regulation.

(d) “Mercury emissions” has the meaning ascribed to it in NAC 445B.3623.

~~(b)~~ *(e) “Mercury operating permit to construct” has the meaning ascribed to it in NAC 445B.3625.*

~~(e)~~ *(f) “New mercury budget unit” has the meaning ascribed to it in section 19 of this regulation.*

(g) “NvMACT” has the meaning ascribed to it in NAC 445B.3629.

~~(d)~~ (h) “Thermal unit that emits mercury” has the meaning ascribed to it in NAC 445B.3643.

Sec. 51. NAC 445B.3375 is hereby amended to read as follows:

445B.3375 1. Except as otherwise provided in ~~[subsection]~~ *subsections 7 and 8* of NAC 445B.3361, 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:

- (a) A Class I existing stationary source;
 - (b) A proposed modification for which a revision of an operating permit is requested pursuant to NAC 445B.3425 or 445B.344 to a Class I stationary source;
 - (c) A modification to a Class II source that results in total emissions of any regulated air pollutant above the thresholds defined in NAC 445B.094 for a major source;
 - (d) A proposed new Class I stationary source;
 - (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
 - (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).
2. If a new stationary source becomes subject to the requirements of a Class I stationary source, the owner or operator of the new stationary source must submit a Class I-B application to the Director within 12 months after the date on which the new stationary source becomes subject to the requirements for Class I sources.

3. An affected source that is not a major source and is not otherwise subject to the requirements of paragraph (f) of subsection 1 may apply for a Class II operating permit. If an affected source obtains a Class II operating permit pursuant to this subsection, the affected source must file with the Director:

(a) A completed application for an acid rain permit before the source commences operation;
and

(b) A Class I-B application within 12 months after the date on which the Class II operating permit was issued to the affected source.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R162-06

The State Environmental Commission adopted regulations assigned LCB File No. R162-06 which pertain to chapter 445B of the Nevada Administrative Code on September 6, 2006.

Notice date: 8/7/2006
Hearing date: 9/6/2006

Date of adoption by agency: 9/6/2006
Filing date: 9/18/2006

INFORMATIONAL STATEMENT

This new permanent regulation will modify NAC 445B.001 to 445B.3689. The regulation establishes a Nevada Clean Air Mercury Rule Program to control air emissions of mercury from coal-fired electric utility steam generating units (EGUs). This action is in response to a federal requirement for states to control annual mercury emissions from coal-fired power plants.

In May 2005, the U.S. Environmental Protection Agency (EPA) issued the Clean Air Mercury Rule (CAMR). Under CAMR each state receives an annual budget (cap) for mercury emissions from coal-fired EGUs; a nationwide cap is set as well. The program developed by the State of Nevada modifies the EPA "Cap and Trade" program from CAMR and tailors it to the unique needs of the state.

The Nevada CAMR Program requires power plants with coal-fired EGUs to obtain a mercury operating permit to construct. Through the permitting process, the NDEP will allocate annual mercury emission allowances to existing power plants based on projected actual emissions, beginning in 2010. Remaining annual allowances from the state budget will be maintained in a pool to be administered by the NDEP. The pool will be used for new power plants, for incentive programs and by the NDEP to support program needs; or allowances may be retired. The major objective of Nevada's CAMR Program is to encourage mercury reductions beyond the federal requirements at existing facilities and to encourage new facilities to install "Low Emitting Units" or "Integrated Gasification Combined Cycle" units.

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

NDEP's Bureaus of Air Quality Planning and Air Pollution Control held a public workshop on the above referenced regulation at the following location.

Reno Workshop
August 10, 2006
Nevada Division of Wildlife
1100 Valley Road
1:00 PM to 3:00 PM

The workshop was attended by 10 individuals; seven persons provided oral comments at the workshop; no adverse comments were received.

The State Environmental Commission (SEC) held a public hearing to consider this regulation on September 6, 2006 at the Nevada Division of Wildlife in Reno, Nevada.

The hearing agenda was posted at the following locations: the Nevada Department of Wildlife building in Reno, the Grant Sawyer Office Building in Las Vegas, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of the agenda, the public notice, and the proposed regulation noted above were made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the hearing was published on August 15, 2006, August 22, 2006 and August 29, 2006 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at http://sec.nv.gov/main/hearing_0906.htm.

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

- (a) Attended September 6, 2006 hearing; 70
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: 8

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

Comments were solicited from affected businesses as indicated in number 1 above. The workshop notice was sent by direct mail to every permitted facility in Nevada – over 600 – and to all interested persons on the Air Quality ground-based and electronic mailing lists. In addition to the public workshop and the SEC regulatory hearing, the NDEP held numerous meetings with representatives from the affected industry during regulation development and incorporated stakeholder comments into the regulation as it was drafted.

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

Changes to the regulation were proposed at the hearing by NDEP staff and a consensus on the proposed changes were agreed to and adopted at the hearing by the Commission. The changes made to the regulation were not considered substantive in content or scope with regard to implementation of the Nevada Clean Air Mercury Rule Program.

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

Regulated Business/Industry. The new regulation will have an economic impact on new and existing coal-fired electric utility steam generating units (EGUs) at power plants in Nevada. Power plants with coal-fired EGUs will be required to install and operate continuous emissions monitoring systems, and if their EGUs do not meet their mercury emission allowance, they may be required to put on additional controls. These companies will also be subject to the Nevada CAMR permitting program and applicable fees (see #9 below).

Public. These proposed amendments may have an economic effect on electricity customers if the affected industry elects to pass on the costs of monitoring and additional emissions control equipment/systems.

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

There will be additional costs to the NDEP for implementing this regulation. The agency will need to hire two additional staff to implement the NV CAMR program and purchase one vehicle. Those costs will be covered entirely by new permit fees and other revenue generated by the program.

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

The regulation does not overlap or duplicate any regulations of other state, federal or local agencies. The proposed regulations are necessary to comply with the federal Clean Air Mercury Rule, which requires states to submit a State Plan to control mercury emissions from coal-fired power plants by November 17, 2006.

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

The State regulation is no more stringent than what is established by federal law, but it does modify the federal rule (see introduction above).

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

The proposed amendments do address fees: The fee for a new or revised CAMR operating permit to construct is \$2000; an annual maintenance fee will also be assessed for each coal-fired EGU. Any fees collected will be used to support the program.