

AGENDA ITEM DEVELOPMENT REPORT

**OFFICE OF THE COUNTY MANAGER
CLARK COUNTY, NEVADA**

AIDR No.: 3679

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Date: 7/8/21

Agenda Date: 7/20/21

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Issue: Conduct a public hearing to authorize the Chair to sign an ordinance to amend Clark County Air Quality Regulations Sections 0, 12.3, and 12.4 governing major stationary sources of regulated air pollutants and authorize the submission of the ordinance and related materials to the State of Nevada and U.S. EPA for approval into the Nevada State Implementation Plan

Subject/Title:

Supplemental information to establish the administrative record for this ordinance to explain the reasons for the proposed revisions to Clark County Air Quality Regulations (AQRs) Sections 0, 12.3, and 12.4, to provide the comments made during the May 23, 2021, through June 21, 2021, public comment period and the proposed responses to those comments, and to describe and summarize the notice, review, and comment process that occurred prior to the public hearing scheduled July 20, 2021.

Recommended Action:

Conduct a public hearing and approve, adopt, and authorize the Chair to sign an ordinance to amend Clark County Air Quality Regulations Section 0 to revise and add definitions; repeal and adopt a new Section 12.3 ("Permit Requirements for Major Sources in Nonattainment Areas") to remove obsolete definitions, add portable source permitting terms, and incorporate language based on U.S. Environmental Protection Agency (EPA) guidance and federal case law; and repeal and adopt a new Section 12.4 ("Authority to Construct Application and Permit Requirements for Part 70 Sources") to restructure, clarify permitting requirements (including timing of extension requests, terminations for cause, public participation, and the applicability of reasonably available control technology), amend definitions, add portable source provisions, and streamline certain permitting procedures; provide for other matters properly related thereto; and authorize the Director to submit the adopted ordinance and all related documentation to the Nevada Division of Environmental Protection for EPA approval into the Nevada State Implementation Plan.

Summary:

1. Reasons for Proposed Revisions to Section 0, 12.3, and 12.4

Section 0 – “Definitions”

- “Authority to Construct Permit” is proposed to be revised to include the following clarifying statement. *“After initial issuance of the Part 70 operating permit for a new Part 70 source, or revision of the Part 70 permit for an existing Part 70 source to incorporate an issued Authority to Construct Permit, the Authority to Construct Permit only authorizes operation to the extent that the Part 70 source also maintains a valid Part 70 permit.”*
- “Commence” or Commencement” is proposed to be revised by adding the word “either” to make the statement “and either has.” to clarify that it means (a) or (b).
- “New Location” is added as a newly defined term to clarify that a location is not “new,” for the purposes of portable sources, unless the source has not operated at the location within the past year.
- “Potential to Emit” is revised to include the acronym “PTE.”
- “Synthetic Minor Source” is added as a newly defined term to resolve questions about which sources qualify as synthetic minor sources.

Section 12.3 – “Permit Requirements for Major Sources in Nonattainment Areas”

- Paragraph 12.3.1.2 replaces the previous summarized statement about the construction of major sources and modifications with more detailed language that is consistent with the federal New Source Review (NSR) rule.
- Paragraph 12.3.1.3 is proposed to be revised to address sources that operate in more than one location and to clarify that the relocating portable source has satisfied the requirement to obtain an Authority to Construct (ATC) by complying with Section 12.4.3.1(e).
- Clarifying language is added to 12.3.1.4(a) and (b) to more closely follow the federal requirements. Paragraph (c) is added to clarify that (b) can be used to determine if the modification is a major modification after construction is completed. Paragraph (f) is revised to clarify that it applies to emission decreases as well as increases.
- Paragraph 12.3.1.5(b) was added to clarify that a stationary source with a plant-wide applicability limit (PAL) must comply with Section 12.3.9, whereas one that does not have a PAL will be subject to Section 12.3.1.2(b) or Section 12.3.1.6.
- Paragraph 12.3.1.6(a)(1) now requires the owner or operator to provide a reason for undertaking the project and an explanation of whether it will increase an existing emissions unit's availability, utility, or capacity. Paragraphs (a)(2) and (a)(3) are revised for clarity, and to account for emissions increases and decreases for each emission unit. Paragraph (b) clarifies that if the project involves an existing emissions unit, that project does not require an ATC before beginning actual construction. Paragraph (c)

was amended to require records of emissions to be maintained. Paragraph (d) was revised to change “calendar year” to “12-month period.”

- The definitions in Section 12.3.2:
 - (1) “Allowable emissions,” “Commerce,” “Complete,” “Construction,” “Electric Utility Steam Generating Unit,” “Federally Enforceable,” “Federal Land Manager,” “Fugitive Emissions,” “Permanent” and “Potential to Emit (PTE)” have been removed because they are already defined in Section 0.
 - (2) “Constructed Emissions Unit” and “Portable source” have been added because these terms have specific meanings as used in this section.
 - (3) The following definitions are amended: “Major Stationary Source” to include “Major Source”; “Projected Actual Emissions” to include “PAE”; “Regulated NSR Pollutant” to (1) remove nitrogen oxides or any volatile organic compounds, (2) add “and for which pollutant the area is designated nonattainment,” (3) remove “general” and add “regulated under paragraph (b) of this definition,” and (4) remove “general” and add “criteria air” to clarify which pollutants.
- Paragraph 12.3.6.3(b) is proposed to be removed in its entirety due to a recent federal court case and EPA’s draft guidance. Deletion of this paragraph will disallow the use of interpollutant trading to meet offset requirements in an ozone nonattainment area.

Section 12.4 – “Authority to Construct Application and Permit Requirements for Part 70 Sources”

- Applicability – Move multiple applicability paragraphs and definitions to the opening paragraph and clarify that the rule applies when an affected facility or affected source becomes “newly subject” to Part 60 or Part 63 emissions standards.
- Construction Deadline Extensions – Under the current rule, the source must begin actual construction within 18 months and cannot discontinue construction for a period greater than 18 months. The proposed change will require that a written request to extend the 18-month period must be received by the Control Officer at least 30 days before the end of the 18-month period to keep the Authority to Construct authorization in effect, if (1) the owner or operator commences the construction, modification, or reconstruction of the Part 70 source within 18 months after the date of issuance of an Authority to Construct Permit; (2) such activity is not discontinued for a period greater than 18 months; and (3) the Control Officer does not revoke and reissue, or terminate, the Authority to Construct Permit for cause.
- RACT – The applicability of reasonably available control technology (RACT) is based on emission increases exceeding a minor NSR significant threshold. The revised rule would clarify that if an applicant previously avoided the RACT requirement in a permit issued within the last five years because of an emissions limitation, the applicability of RACT needs to be reevaluated with any request to increase that emissions limitation.
- Interface with Part 70 Permit Program – The revised rule would more clearly state that applying for and receiving a valid ATC is an ongoing obligation, without which a Part 70

source may not construct and operate emission units subject to the rule except in limited circumstances.

- Using Part 70 to Authorize or Revise Section 12.4 Construction Requirements – The revised rule would add new sections to the rule to clarify the intersection of Part 70 and Section 12.4 requirements: (1) a Part 70 source may elect to follow appropriate Part 70 procedures to obtain or revise the ATC; (2) if construction activity qualifies for a Part 70 minor permit revision, then a permit applicant may rely on Section 12.5.2.14(a)(6) to begin actual construction before obtaining the ATC and Part 70 permit revision; or (3) in lieu of issuing or revising an ATC, the Department of Environment and Sustainability (DES) may authorize construction by incorporating Section 12.4 applicable requirements directly into a Part 70 Operating Permit.
- Portable Sources – Add provisions to clarify permitting and public participation requirements for portable sources.
 - (1) Portable sources may operate in new locations authorized under an existing permit, but must receive approval from DES to operate in the new location.
 - (2) DES may disapprove the relocation if emissions would interfere with National Ambient Air Quality Standards compliance or cause an unreasonable risk to public health or safety.
 - (3) If the portable source would locate to within 1,000 feet of a hospital, school, or residential area, then DES must publicly notice the proposed relocation and provide a 30-day comment period before approving the relocation.
 - (4) DES can issue an order to allow restricted operations in the new location when the portable source agrees with the restrictions.
- Public Participation – Clarify how public participation requirements apply to ATC permit issuance.
 - (1) Public participation would not be required for permitting triggered by new Part 60 or Part 63 requirements, unless those rules otherwise require public participation (e.g., Sections 112(g) and (j)).
 - (2) The new Section 12.4 would not transfer the Section 12.1 requirement for public notice based solely on locating within 1,000 feet of a hospital, school, or residential area because this requirement is already fulfilled by Part 70 procedures for Part 70 sources subject to Section 12.4.
 - (3) The new rule would clarify that DES can provide public participation on any permit application if it believes doing so will inform its decision on the permit.
- Definitions – Added the definitions for “Affected emission unit,” “Constructed emissions unit,” and “Portable source.” Revised the definitions for “Existing Part 70 Source” and “Modification” or “Modify.” Removed the definitions for “Preconstruction review applicability criteria” and “Project.”

- Permit Application, Issuance, and Revision Procedures

- (1) "As built" and other operation changes are allowed through minor revisions to the ATC through administrative amendment to reconcile the "as built" configuration with the preconstruction authorization. The rule would allow DES to process changes to the ATC before operation using administrative amendment procedures where the change would not affect the amount or type of emissions authorized; relocate a stack closer to a property boundary; change applicability of Sections 12.2 or 12.3; or reduce recordkeeping, reporting, or monitoring of emissions.
- (2) Consolidated repetitive requirements. Currently, the rule repeats the application submission requirements for major NSR sources and other sources in two separate sections; the revised rule would consolidate the requirements for permit applications under one heading and delete repetitive paragraphs.

2. Comments and Proposed Responses to Those Comments

No comments have been received.

3. Additional Procedural Steps, Including Notices, Workshops, and Introduction of the Ordinance

Additional opportunities for comment occurred on Tuesday, June 8, 2021, at 10:00 a.m. at a virtual/live workshop convened by DES at the presentation room located on the first floor of the Clark County Building Services Building. The workshop was noticed by email to all affected stationary sources potentially impacted by these rule changes, and to other interested parties who had registered for continuing notices through the ListServ email service available to anyone on the DES website. At these workshops, the 27 individuals who attended heard a summary of the proposed rule revisions and were given the opportunity to ask questions and provide comments. Additionally, these rules have been posted on the DES website and all affected sources in the regulated community were contacted by email, notifying them about the proposed rule changes and directing them to the associated documents.

Notice of the public hearing was published in the Las Vegas Review-Journal on May 23, May 30, and June 6, 2021. At the Clark County Board of County Commissioners meeting on July 6, 2021, the ordinance was introduced, and the public hearing was set for July 20, 2021, at 10:00 a.m.


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County Manager