

**PROPOSED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R075-24**

May 13, 2024

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

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

A REGULATION relating to operating permits; repealing provisions authorizing a holder of an operating permit to assert an affirmative defense to an action brought for noncompliance under certain emergency circumstances; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law authorizes the State Environmental Commission to adopt regulations to require a person operating or responsible for the existence of an air contaminant to apply for and obtain an operating permit for the source. (NRS 445B.210, 445B.300) Existing regulations authorize a holder of an operating permit to assert an affirmative defense to an action brought for noncompliance with a technology-based emission limitation under certain emergency circumstances. (NAC 445B.326) This regulation repeals the provisions authorizing such an affirmative defense, thereby precluding a holder of an operating permit from seeking such relief for noncompliance in the event of such emergency circumstances.

**Section 1.** NAC 445B.326 is hereby repealed.

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**TEXT OF REPEALED SECTION**

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**445B.326 Operating permits: Assertion of emergency as affirmative defense to action for noncompliance. (NRS 445B.210, 445B.300)**

1. A holder of an operating permit may assert an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in the operating permit if the holder of the operating permit demonstrates through signed, contemporaneous operating logs or other relevant evidence, that:

(a) An emergency occurred and the holder of the operating permit can identify the cause of the emergency;

(b) The facility was being properly operated at the time of the emergency;

(c) During the emergency, the holder of the operating permit took all reasonable steps to minimize excess emissions; and

(d) The holder of the operating permit submitted notice of the emergency to the Director within 2 working days after the emergency. The notice must contain a description of the emergency, any steps taken to mitigate emissions, and any corrective actions taken to restore the normal operation of the facility.

2. In any action for noncompliance, the holder of an operating permit who asserts the affirmative defense of an emergency has the burden of proof.