

FORM #4

NEVADA STATE ENVIRONMENTAL COMMISSION
SMALL BUSINESS IMPACT DISCLOSURE PROCESS
PURSUANT TO 233B “Nevada Administrative Procedures Act”

RE: P2017-05. Amendments to NAC 445B.22097, “Standards of quality for ambient air,” to adopt the federal ozone ambient air quality standard as the Nevada state standard and delete the “National Standards” and “Method” portions.

By: Nevada Division of Environmental Protection (NDEP), Bureaus of Air Pollution Control and Air Quality Planning

The purpose of this form is to provide a framework pursuant to NRS 233B.0608 to determine whether a small business impact statement is required for submittal of a proposed regulation before the State Environmental Commission (SEC).

Note: Small Business is defined as a “business conducted for profit which employs fewer than 150 full-time or part-time employees” (NRS 233B.0382).

Part 1

1. Does this proposed regulation impose a direct and significant economic burden upon a small business? *(state yes or no. If no, please explain and submit the applicable documentation, which can also be addressed in #8 and simply referred to; and if yes reference the small business impact statement as attached)*

Answer: No. The adoption of the federal ozone standard is being proposed because the State of Nevada is required to do so by federal law. Under the Clean Air Act, 42 U.S.C. § 7401 et seq., the U.S. Environmental Protection Agency (USEPA) establishes national ambient air quality standards (NAAQS) for certain pollutants, called criteria pollutants, which the states are then required to implement. If the State fails to timely implement the NAAQS, the USEPA may sanction the State by withholding federal highway funds and may implement the standards for the State. If the USEPA implements the NAAQS for the State, permitting decisions would be made by the USEPA rather than the State. This may result in delays for the regulated industry, since USEPA has no mandatory timeframe for issuing permits.

This regulation is not likely to impact small businesses. The regulation amends the General Provisions portion of Nevada’s air quality regulations (NAC chapter 445B) to address implementation of the revised federal annual primary air quality standard for ozone. NDEP’s analysis shows that it is unlikely that the 90 identified small businesses that currently hold air quality operating permits would violate the conditions of their permit, or would be required to conduct further technical analysis of their potential to emit, due to the adoption of this revised ozone standard.

The amendment also proposes to delete the “National Standards” and “Method” portions of the table in NAC 445B.22097. Both columns are included only for reference purposes, and are often out of date in the interim between when the USEPA updates them and Nevada adopts them. There is no economic impact to small businesses from deleting these portions of NAC

445B.22097, "Standards of quality for ambient air".

2. Does this proposed regulation restrict the formation, operation or expansion of a small business? *(state yes or no. If no, please explain and submit the applicable documentation, which can also be addressed in #8 and simply referred to; and if yes reference the small business impact statement as attached)*

Answer: No. Nationally, small business has been subject to pollution standards under the Clean Air Act for over 30 years. The proposed regulatory amendment is no more stringent than the federal regulation, which provides a level playing field nationally. The NDEP has experienced an increased amount of air quality operating permit activity in recent years due to new and expanded business activity. Pollution standards require consideration in a business model, but the NDEP strives to work with industry to encourage economic growth, while meeting pollution standards. The proposed deletions are not foreseen to restrict the formation, operation, or expansion of a small business.

3. If Yes to either of questions 1 & 2, the following action must be taken:

A. Was a small business impact statement prepared and was it available at the public workshop? *(yes or no, attach a copy of the statement or if a statement was not completed please explain)*

Answer: Yes; please see the attached. Although the NDEP replied "No" to questions 1 and 2, the NDEP conducted a workshop to inform the public of the proposed amendment and solicit comment, including from small businesses.

B. Attach the Small Business Impact Statement as part of Form #4 upon submission of the proposed regulation to the SEC when Form #1 (petition to the Commission) is submitted.

Part 2

SMALL BUSINESS IMPACT STATEMENT (NRS 233B.0609)

1. Describe the manner in which comment was solicited from affected small businesses, a summary of the response from small businesses and an explanation of the manner in which other interested persons may obtain a copy of the summary. *(Attach copies of the comments received and copies of any workshop attendance sheets noting which are small businesses.)*

Answer: Comment will be solicited by notices sent to all regulated parties, as well as other stakeholders who have requested to be on the NDEP's mailing list. In addition, comment will be solicited through a workshop held in Carson City and video conferenced to Las Vegas on December 6, 2017. Notices of the workshop and an invitation for comments will be posted on the NDEP website, the Legislative Council Bureau's website, and the official State website. Comments will also invited via e-mail and telephone. A summary of the workshop will be posted on the SEC web site at <http://sec.nv.gov/index.htm> under the heading for the February 7, 2018 SEC Hearing.

2. The manner in which the analysis was conducted.

Answer: To determine if small businesses would be impacted by adopting the federal ozone standard as the State standard, the NDEP identified 90 facilities as small business owned with precursor emissions of both NO_x and VOC and evaluated the ozone contribution of each facility to the ambient air (see Addendum to SEC Form 4, Part 2). The maximum ozone contribution is of 15 parts per billion (ppb) or approximately 20 percent of the federal ozone standard. However, the large majority of the facilities (nearly 80%) have a contribution below 10 ppb. The analysis performed by the NDEP shows that pre-cursor emissions from small business-owned facilities does not result in a significant impact on ambient air ozone concentration and therefore it is unlikely that small business will be affected by a reduction of the ozone NAAQS from 75 to 70 ppb.

3. The estimated economic effect of the proposed regulation on small businesses:

Answer: a. Adverse and beneficial effects. The economic effect of the adoption of the federal ozone standard can only be determined on a case-by-case basis for each small business. If the environmental analysis shows that the emissions from a small business are expected to exceed the NAAQS, the business must revise its permit, its operating procedures or install controls to reduce emissions. The cost will range from no cost to the cost of installing emission controls appropriate to the individual situation.

Adopting the lower ozone standard will have beneficial effects in terms of improved health and welfare. The primary NAAQS are established to protect against adverse effects of polluted air on human health while secondary NAAQS protect public welfare against the adverse effects of polluted air. Primary standards provide public health protection, including protection of "sensitive" populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage

to animals, crops, vegetation, and buildings.

Deletion of the “Federal Standards” and “Method” portion of NAC445B.22097 is not expected to have either an adverse or beneficial economic impact on small businesses.

b. Direct and indirect effects. The cost, if any, to small businesses will be the direct cost for implementing control measures for ozone precursors.

4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses. *(Include a discussion of any considerations of the methods listed below.)*

A. Simplification of the proposed regulation.

Answer: The regulation is simple and concise. Adoption of the federal ozone standard aligns the Nevada ambient air quality standards with the federal standards.

B. Establishment of different standards of compliance for a small business.

Answer: Currently, a stationary source is not required to apply for an air quality permit if it has the potential to emit less than 20 tons per year (tpy) of VOC or 5 tpy of NO_x. These regulatory provisions provide relief for many small businesses. For those facilities that require a permit, as a service to the industry, the NDEP performs the ozone portion of the required environmental evaluation for the facility. Additionally, regardless of the amount of its potential emissions, a facility may request that the NDEP perform the modeling free of charge.

C. Modification of fees or fines so that a small business is authorized to pay a lower fee or fine.

Answer: While the proposed regulatory amendments do not address fees, the NDEP has already established different categories of permits, depending on levels of annual emissions. The smaller the emissions, the lower the fee for obtaining a permit or a renewal.

5. The estimated cost to the agency for enforcement of the proposed regulation. *(Include a discussion of the methods used to estimate those costs.)*

Answer: Because the present regulation is proposing to adopt a federal standard, additional costs for the enforcement are a direct consequence of the change in the federal regulations. No additional costs are predicted for the enforcement of this proposed regulation on small businesses. The NDEP may incur additional costs to prove that ambient air in Nevada is in attainment of the new ozone NAAQS, but these costs are not quantifiable at this moment because they are associated with unpredictable events like wild fires. The regulation may require the NDEP to conduct and review additional modeling analyses and may increase the number of compliance inspections. However, the NDEP anticipates that it will be able to manage the increased workload with the current level of staffing.

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

Answer: The regulation does not address fees.


7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, provide an explanation of why the proposed regulation is duplicative or more stringent and why it is necessary.

Answer: The regulation does not duplicate nor is it more stringent than any existing federal, state or local regulations.


8. The reasons for the conclusions regarding the impact of a regulation on small businesses.

Answer: The conclusions regarding the impact of the regulation on small businesses are based on the inventory analyses conducted by the agency (see Part 1, #1 and Part 2, #s 2, 3 and 4) and outreach to the regulated community (see Part 2, #1).

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on a small business and that the information contained in this statement is accurate.



Greg Lovato
Administrator, NDEP



Date

Addendum to SEC Form 4, Part 2

An environmental evaluation is required for a new or modified stationary source for each pollutant standard (NAC 445B.311). Adoption of the federal standard as a Nevada ambient air quality standard would require applicants for air quality permits to incorporate the revised annual primary ozone standard into the environmental evaluation that they are already performing for the existing ozone standard. Ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO_x) and volatile organic compounds (VOC) in the presence of sunlight. NO_x and VOC are precursors of ozone formation.

Currently, a stationary source is not required to apply for an air quality operating permit if it has the potential to emit less than 20 tons per year (tpy) of VOC or 5 tpy of NO_x (Regulatory Petition R085-16, effective November 2, 2016). These regulatory provisions provide relief for many small businesses. Additionally, if a facility is required to perform an environmental evaluation, pursuant to NAC 445B.310(2), the facility may request that the NDEP perform the evaluation free of charge. The NDEP has never denied a modeling request, and routinely performs this service for industry.

The NDEP has 585 active air quality permits¹. Of these, 90 have been identified as small businesses with the potential to emit (PTE) both NO_x and VOC². Analysis of the precursor emissions from these facilities shows a maximum ozone contribution of 15 parts per billion (ppb) or approximately 20 percent of the federal ozone standard. The graph below shows that emissions from the majority of these small business-owned facilities, sixty one, result in ambient air ozone increment of 7 to 9 ppb (13 percent of the NAAQS). This suggests that most small businesses in Nevada do not emit enough precursor emissions (NO_x and VOC) to have a significant impact on the ozone NAAQS, even with the proposed stricter ambient standard. If an evaluation finds that an application for an operating permit, a renewal or a modification will cause an exceedance of the NAAQS, the NDEP works with the business to review its permit, operating procedures and emissions control options to identify the most cost-effective method to reduce emissions.

¹ Tally as of May 1, 2017: 53 Class I; 197 Class II; 37 Class II General; 7 Class II Partial; 168 Class II Surface Area Disturbance; 30 Class II Synthetic Minor; 65 Class III, and 28 Mercury Operating Permits to Construct.

² Number of employees per business was determined using publically available information (e.g., business tracking website such as Chamber of Commerce, Cortera.com, Dun & Bradstreet® Reports, and Better Business Bureau®)

Distribution of Small Business-Owned Facilities by their contribution to ambient air ozone

