

FORM #4

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

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: This regulation is being promulgated 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 have to be done by the USEPA rather than the State, which may result in delays for the regulated industry.

On October 29, 2012, the USEPA made a formal determination that the Nevada Division of Environmental Protection (NDEP), which is the state agency with authority to implement the federal NAAQS, is deficient in its implementation of the 2006 fine particulate matter (PM_{2.5}) NAAQS. The NDEP has two years to address the deficiency or be subject to a federal implementation plan. The USEPA has further put the NDEP on notice that it must also address the 2010 1-hour nitrogen dioxide (NO₂) and sulfur dioxide (SO₂) standards. Thus, it is mandatory that the NDEP amend its air emissions permitting program to avoid federal sanctions and a federal implementation plan.

It is important to note that the PM_{2.5}, NO₂ and SO₂ standards are federal regulations with which small business must comply regardless of whether the NDEP or USEPA implements them. If USEPA must implement the standards, it will do so remotely, in a unilateral manner, with little experience of Nevada's industry and without the NDEP's commitment to support economic development. In contrast, the NDEP has active working relationships with several industry sectors and is well positioned to develop Nevada-specific implementation strategies with industry

that are effective and as unobtrusive as possible.

This regulation is not likely to impact small businesses. The regulation amends the minor source permitting portion of Nevada's air quality regulations (NAC chapter 445B) to address implementation of the federal air quality standards for PM_{2.5}, NO₂ and SO₂. Adoption of the federal standards as Nevada ambient air quality standards would require applicants for air quality permits to supplement their environmental evaluation for the existing standards with the three new standards. The environmental evaluation requires an air dispersion analysis for each pollutant standard. Adoption of the federal standards would require that applicants add the three new standards to the model analysis that they are already performing for the existing pollutant standards. A facility is exempt from the modeling requirement if it has the potential to emit less than 25 tons per year for each pollutant standard (NAC 445B.310(1)(a)). This regulatory provision will provide relief for many small businesses. If a facility is required to model, pursuant to NAC 445B.310(2), a facility may request that the NDEP perform the model exercise free of charge. The NDEP has never denied a model request, and routinely performs this service for industry.

The NDEP has performed a state-wide emissions contribution analysis that demonstrates that minor sources (which by definition emit less than 250 tons per year of a criteria pollutant or less than 100 tons per year of a criteria pollutant for certain source categories), contribute only 1.8% of the state's emissions inventory for PM_{2.5}, 4.3% for SO₂ and 5.4% for NO₂. Small business is not a large contributor of PM_{2.5}, SO₂ and NO₂ in Nevada.

Similarly, the NDEP has conducted an actual emissions inventory analysis of the businesses that emit PM_{2.5}, SO₂ and NO₂ and found that only a small number of facilities emit more than the 25 tons per year threshold that would require a modeling analysis or emit in quantities likely to exceed a 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 operating procedures and emissions control options to implement the most cost-effective controls to reduce emissions.

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 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.

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.

B. Attach the Small Business Impact Statement as part of Form #4 upon submission of the proposed regulation to the State Environmental Commission 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 was solicited through a stakeholder meeting in Carson City on November 6, 2013 and will be solicited at a workshop to be held in Carson City and video conferenced to Las Vegas on November 26, 2013. Comments were also invited via e-mail and telephone. A summary of the small business comments will be posted on the SEC web site at <http://sec.nv.gov/main/hear0000.htm> under the heading for the February 12, 2014 Hearing.

2. The manner in which the analysis was conducted.

Answer: To determine if small businesses would be impacted by the regulation, the NDEP conducted emission inventories and modeling analyses. The NDEP reviewed its permit files for all facilities that would emit greater than 25 tons per year of PM_{2.5}, NO₂, and SO₂. The NDEP does not track the number of employees employed by the facilities and companies that it regulates. Nonetheless, the analyses performed by the NDEP showed that the majority of regulated companies and facilities would not be impacted by the new requirements. Of the 211 facilities that emit NO₂, only 25 of them emit NO₂ in quantities greater than 25 tons per year. Similarly, of the 210 facilities emitting SO₂, only 12 facilities emitted greater than 25 tons per year. Finally, only 12 of 298 facilities emit greater than 25 tons per year of PM_{2.5}. Notably, regardless of whether the NDEP enacts the NAAQS as part of its ambient air quality standards, the regulated companies must abide by the federal standards.

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

Answer: a. Adverse and beneficial effects. The economic effect of this regulation 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 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.

The NAAQS will have beneficial effects in terms of improved health and welfare. The NAAQS are established to protect against adverse effects of polluted air on human health. The cleaner the emissions are, the less health effects will be experienced by those persons downwind of the facility. In addition, the emissions reductions will also benefit public welfare. Such benefits include improved visibility and less damage to materials and ecosystems. In California, for example, which is nonattainment for PM_{2.5}, the costs of installing controls and changing operating procedures is estimated to be between \$53 million and \$350 million, while the corresponding benefits (decreased mortality rates, fewer hospital admissions) are estimated to be

\$3.6 billion to \$8.2 billion.¹ For NO₂, the USEPA estimated that the annualized average cost to install controls sufficient to go from nonattainment to attainment was in the range of \$3,000 to \$6,000 per ton of NO₂ removed.² The USEPA was unable to determine direct health benefits, but it did analyze the co-benefits derived from reducing NO₂ as a precursor to the formation of PM_{2.5}. The USEPA estimates that the benefit-per-ton removed ranges from \$5,200-\$13,000/ton based on a discount rate of 3%.³ The USEPA performed a similar analysis for the 1-hour SO₂ standard, which shows a range of control costs and health benefits depending on the level of attainment achieved by the state.⁴

b. Direct and indirect effects. The cost, if any, to small businesses will be direct. Such businesses are likely to experience indirect effects in terms of cost savings due to health benefits derived from cleaner air, such as fewer sick days used by employees.

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.)*

Answer:

A. Simplification of the proposed regulation. The regulation will be simple and concise.

B. Establishment of different standards of compliance for a small business. The agency considered all options suggested by stakeholders. This included establishing emission thresholds for each subject pollutant below which an environmental evaluation would not be required and allowing administrative flexibility to determine whether modeling is required on a case-by-case basis. A facility is exempt from the modeling requirement if it has the potential to emit less than 25 tons per year for each pollutant standard. Additionally, a facility may request that the NDEP perform the model exercise free of charge.

C. Modification of fees or other monetary interests that a small business is authorized to pay a lower fee. The NDEP has 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.)*

¹ Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division (Feb. 28, 2013), available at <http://www.epa.gov/ttnecas1/regdata/RIAs/finalria.pdf> (last viewed Nov. 7, 2013).

² Final Regulatory Impact Analysis (RIA) for the NO₂ National Ambient Air Quality Standards (NAAQS), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Health and Environmental Impact Division, Air Benefit-Cost Group (January 2010) at 3-5 (available at <http://www.epa.gov/ttnecas1/regdata/RIAs/FinalNO2RIAfulldocument.pdf>) (last viewed Nov. 7, 2013).

³ *Id.* at 4-12.

⁴ Final Regulatory Impact Analysis (RIA) for the SO₂ National Ambient Air Quality Standards (NAAQS), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Health and Environmental Impact Division, Air Benefit-Cost Group (June 2010) at ES-9 (available at <http://www.epa.gov/ttn/ecas/regdata/RIAs/fso2ria100602full.pdf>) (last viewed Nov. 7, 2013).

Answer: The regulation will require the NDEP to conduct and review additional modeling analyses and will increase the number of compliance inspections. However, the NDEP anticipates that the recently approved FTEs will be able to manage the increased workload. Therefore, there will be no additional cost to the agency.

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 modeling and inventory analyses conducted by the agency (see Part 1, #1 and Part 2, #s2, 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.


Sr. Colleen Cripps, Ph.D.
Administrator, NDEP

11/8/13
Date