

FORM #4

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

**RE:** P2019-04. Amendments to NAC 445B.327, "Fees; late penalty."

**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: Yes, the proposed regulation will directly impact small businesses. While the proposed amendments will have a direct economic impact on small businesses, the NDEP has strived to minimize the economic burden based on the proposed fee structure.

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. Small businesses may continue to apply for and operate under an NDEP air quality operating permit.

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 SEC when Form #1 (petition to the Commission) is submitted.

Answer: Please see the attached document.

## **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: Two webinars were held on August 6 to explain the proposed regulatory changes. Notices were emailed and letters were mailed to all regulated facilities affected by the proposed regulatory changes. Each email and letter included a description of all the proposed fee changes and a detailed estimate of the change in annual maintenance fees for each individual facility. An NDEP email address was setup exclusively to receive and respond to concerns over this proposal. Notices of the meetings and webinars were posted on the NDEP website. A workshop will be held in Carson City and video conferenced to Las Vegas on September 5, 2019. Notices of the workshop and an invitation for comments will be posted in all county public libraries, the NDEP buildings in Carson City and Las Vegas, the NDEP website, the Legislative Council Bureau's website, and the official State website. The workshop notice will be also emailed to an extensive distribution list maintained by the NDEP Bureau of Air Quality Planning. 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 October 2, 2019 SEC Hearing.

2. The manner in which the analysis was conducted.

Answer: The NDEP performed an analysis to assess how small businesses will be impacted by the proposed changes to the air program fee structure (see attachment). Annual maintenance fees were identified as having potentially the greatest financial impact on small businesses due to their annual recurrence. It is estimated that no small businesses currently hold Class I permits, but small businesses do make up greater than an estimated 50% of Class II permit holders<sup>1</sup>. The proposed annual maintenance fee increase for small business Class II permit holders was compared to expected fee increases for medium to large-sized businesses. The analysis confirmed that small businesses would be more likely to incur a smaller fee increase than medium to large-sized businesses. Secondly, the new fee structure would align fees more in proportion to the number emission units at permitted facilities. This would place more of the fee burden to medium and large-sized businesses that are more likely to have operations with multiple emission units.

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

Answer: a. Adverse and beneficial effects. The adverse effect is the increase in permit application fees and annual maintenance fees for permitted facilities. Beneficially, small

businesses can expect timely application processing and outreach opportunities to assist in compliance and regulatory certainty.

b. Direct and indirect effects. Any economic impacts will be directly associated with the proposed fee increases. Application fees will be proportionate to the number of emission units that are included in the application. This provides for an equitable distribution of costs associated with operating permit application processing. Maintenance fees will be based on the number of emission units regulated by the operating permit, their potential to emit regulated pollutants, and the size of any disturbed area.

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 proposed regulation is simple and concise. The proposed regulation is in table format making the process of determining which fees apply to facilities easier to understand.

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

Answer: The proposed regulation does not establish standards of compliance.

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

Answer: In 2017, permitting requirements for Class III and Class IV stationary sources were eliminated, reducing the regulatory burden and associated resources of the Air Program, for 300 small business. Several remaining small businesses that formerly held a Class III permit were required to apply for a Class II operating permit. With the proposed fee changes, application fees will be proportionate to the number of emission units that are included in the application, and maintenance fees will be proportionate to the number of emission units operated by the business. Because of this proposed fee structure, the fee burden would shift to medium and large-sized businesses that are more likely to have operations with multiple emission units.

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: There will be no change in the cost to the agency for enforcement of the proposed regulation. The cost of enforcement is factored into the fees charged for an application and maintenance of an air quality operating permit.

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 regulations propose increased fees and a revised fee structure. The total Air

Program budget is estimated at \$8,500,000, with total revenue from fees estimated at \$4,500,000 with the proposed fee structure

The revenue collected will be used to both administer the current air pollution permit program and air quality planning functions, and to build back a budget reserve that meets Nevada Department of Administration, Budget Division guidelines. Revenue will be used to help fully fund existing staff positions, to purchase necessary equipment, and to maintain acceptable levels of staff training and certification. The current air program budget reserve is approximately 20% of annual budget expenditures. An additional goal of the regulation amendment is to build a budget reserve of 50 to 100% of annual budget expenditures in a 6 to 7-year time frame.


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.

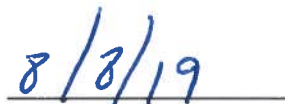
Answer: The regulation does not duplicate nor is it more stringent than any existing federal, state or local regulations.

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 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

  
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Date

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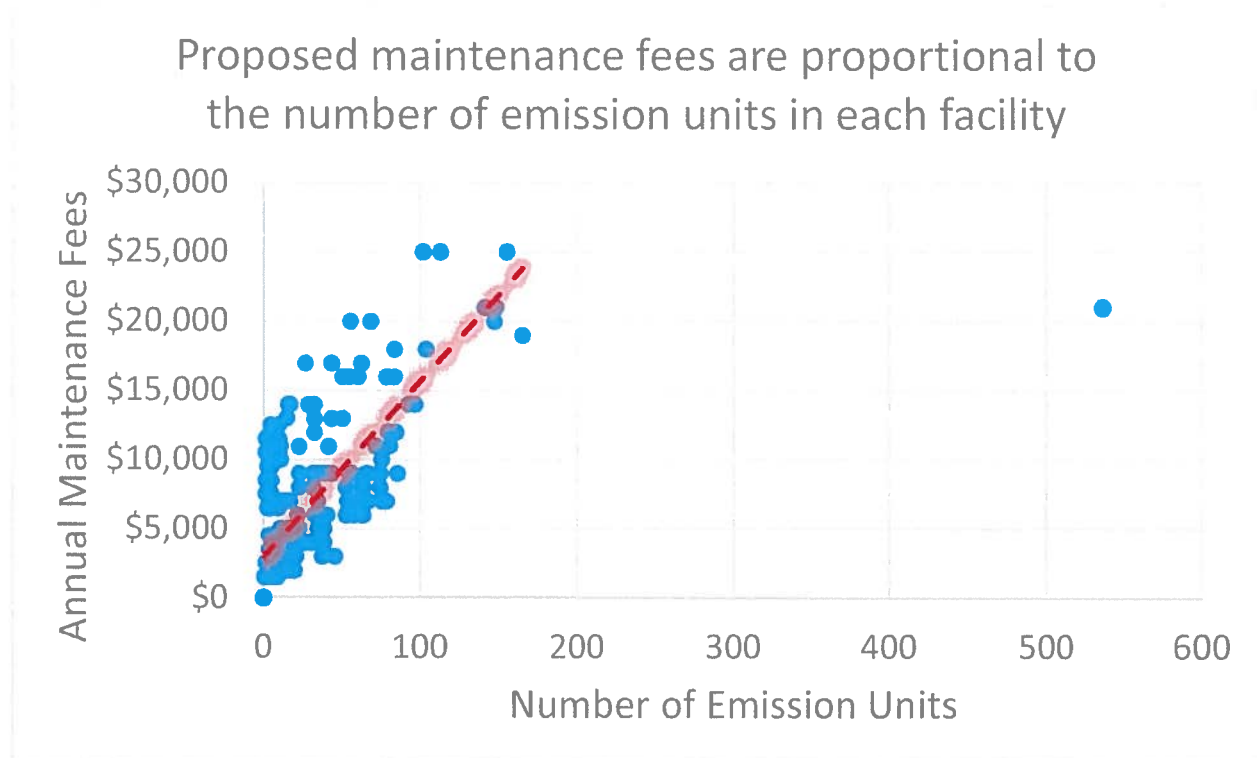
<sup>1</sup> Estimates of the number of small businesses potentially impacted by proposed regulations were made by consulting labor statistics provided by the Nevada Department of Employment, Training, and Rehabilitation, the Nevada Department of Business & Industry, and online research on individual corporations.

## Analysis Small Business Impacts

### Potential Air Program Fee Increase

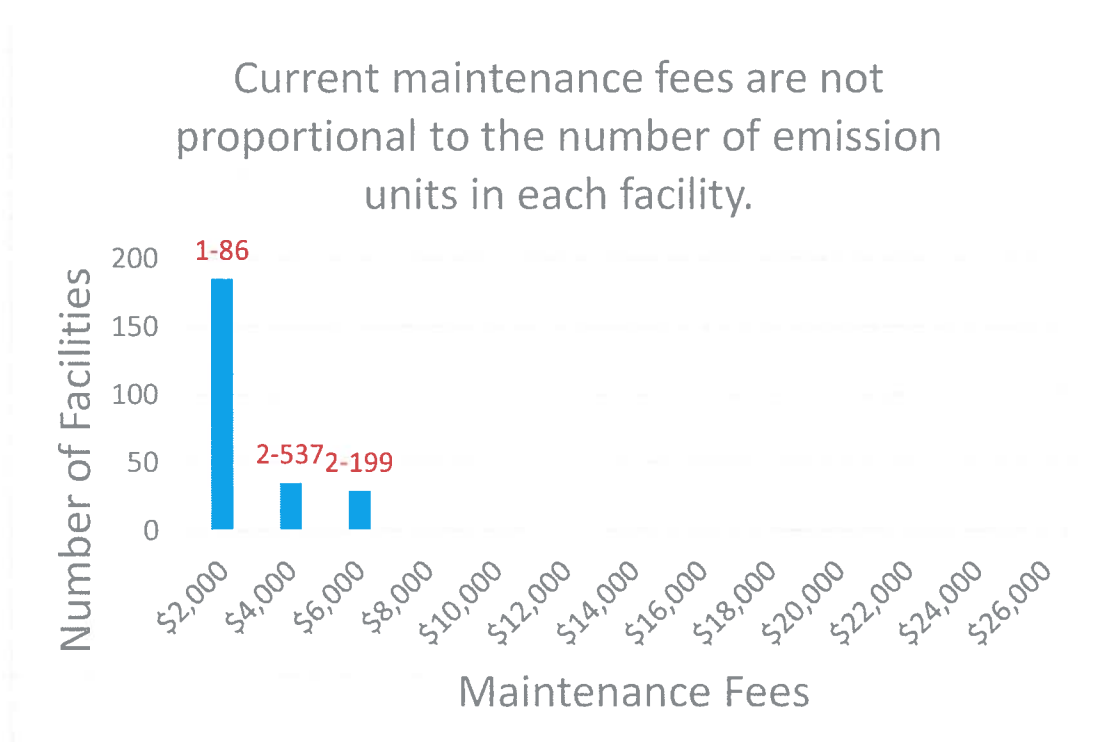
The Nevada Revised Statute defines small business as a “business conducted for profit which employs fewer than 150 full-time or part-time employees” (NRS 233B.0382). However, information on the number of employees is not always readily available. NDEP estimated that more than 50% of Class II permit holders fit the definition of small businesses. For this analysis, NDEP conservatively included all businesses holding a Class II permits, with the exclusion of those businesses for which employee numbers were confirmed to be larger than 150 and national or multinational corporations.

The following plot shows the proposed annual maintenance fees in relation to the number of emission units in the permit of each facility, which is one of the three indicators used to identify the ‘size’ of the stationary source (the other two being the size of disturbed surface areas and the potential to emit for the highest emitted pollutant). Maintenance fees clearly increase with the number of emissions at facilities. The proposed fee revision seeks to better redistribute the fees across the permitted minor sources to reflect workload and resources required to implement NDEP’s Air Program. The best fit red line (which purposely excludes the outlier facility with more than 500 emission units) confirms that facilities with a higher number of emission units will experience higher maintenance fees.



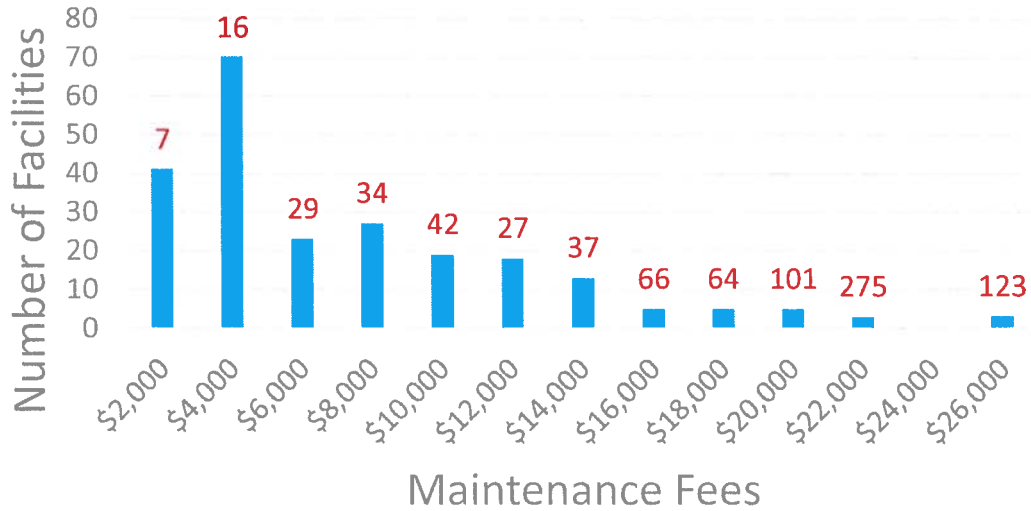
Another way to look at the impact of the proposed maintenance fees over small business is to display the distribution of the fees across the regulated facilities.

The following three graphs display the number of Class II businesses incurring a specific range of annual fees. For all graphs, the range of the x-axis (fees) has been kept the same to allow a better comparison between current and proposed fees. The first graph describes the current maintenance fee structure; red numbers are the range of number of emission units (min – max) found in the facilities incurring the given fee range. It is clear for the graph that the current schedule does not properly differentiate among 'size' of facilities, as small facilities (for instance, 1 to 10 emission units) are present in all fee categories.



The second and the third graph describe the proposed maintenance fee structure. Out of approximately 250 Class II facilities, approximately 130 will incur maintenance fees less than \$8,000. Only 16 facilities will incur annual maintenance fees larger than \$15,000. In addition to the distribution, the graphs also show the average number of emission units (first graph) and the Potential to Emit (PTE, second graph) for all the facilities included in each fee category. It is evident that with the proposed fee structure, the distribution of fees follows more properly the number of emission units and the potential to emit (in tons per year) of the highest pollutant in each facility. Class II businesses incurring in maintenance fees of \$20,000 or more have on average more than 100 emission units and a potential to emit larger than 80 tons per year (the EPA definition of a synthetic minor facility; 100 tons per year or more is the threshold for a Class I permit).

The new maintenance fee schedule distributes fees proportionally to the size of each facility. (here represented by the average number of emission units)



Facilities with higher potential to emit air pollutants will incur higher maintenance fees

