FORM #4

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

RE: P2015-02. Amendments to NAC 445B.22097, "Standards of quality for ambient air," to adopt the federal $PM_{2.5}$ ambient air quality standard as the Nevada state standard and related matters.

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 $PM_{2.5}$ 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.

It is important to note that the fine particulate matter ($PM_{2.5}$) standard is a federal regulation 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 key 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 revised federal annual primary air quality standard for $PM_{2.5}$. The environmental evaluation requires an air dispersion analysis 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 $PM_{2.5}$ standard into the model analysis that they are already performing for the existing $PM_{2.5}$ standard. Currently, a facility is not required to model if it has the potential to emit less than 25 tons per year of a regulated pollutant (NAC 445B.310(1)(a)), or in the case of the NO_2 and SO_2 1-hour standards, less than 40 tons per year (NAC 445B.311(5)). These regulatory provisions provide relief for many small businesses. When industry does not model, the NDEP performs the modeling for them. Additionally, if a facility is required to model, pursuant to NAC 445B.310(2), the facility may request that the NDEP perform the modeling exercise free of charge. The NDEP has never denied a modeling request, and routinely performs this service for industry.

The NDEP has conducted an actual emissions inventory analysis of the businesses that emit $PM_{2.5}$ 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. The NDEP analyzed the 2011 National Emissions Inventory data for Nevada and identified 16 non-Prevention of Significant Deterioration (PSD) facilities[1] with 2011 emissions greater than the 25 tons per year threshold for $PM_{2.5}$ or the 40 tons per year thresholds for NO_2 and SO_2 ($PM_{2.5}$ precursors) that would require modeling analyses by industry. Of these 16 facilities, only four have been identified as small businesses. Currently there are more than one thousand active air quality permits within the NDEP's jurisdiction (the actual number on Dec 17, 2014 was 1061). 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.

Additionally, the regulation proposes to repeal the annual PM_{10} standard as a Nevada ambient air quality standard, as there is no longer a corresponding federal standard. The repeal relieves small businesses from the burden of having to model for compliance with the annual PM_{10} standard in permit applications. The definitions of $PM_{2.5}$ and PM_{10} clarify that direct condensable particulate matter emissions are included in the definitions, as required by federal regulation. There is no economic impact from adding these definitions.

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 amendments are no more stringent than the

[1] PSD facilities by definition have the potential to emit 250 tons per year or more of a criteria pollutant or 100 tons per year or more of a criteria pollutant for certain source categories after implementing controls. These facilities are required by federal law to conduct air dispersion modeling when applying for a new permit or a major modification to an existing permit.

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.

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.

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 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 was solicited through a workshop held in Carson City and video conferenced to Las Vegas on June 10, 2015. Notices of the workshop and an invitation for comments were 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. Comments were 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/main/hear0000.htm under the heading for the October 7, 2015 SEC Hearing.

2. The manner in which the analysis was conducted.

Answer: To determine if small businesses would be impacted by adopting the federal $PM_{2.5}$ standard as the State standard, the NDEP conducted an emission inventory analysis of the 2011 National Emissions Inventory data for all facilities that would emit greater than 25 tons per year of $PM_{2.5}$ or greater than 40 tons per year of the $PM_{2.5}$ precursors, SO_2 and NO_x, but would fall below the thresholds for PSD. The NDEP surveyed the facilities and companies identified in the review of the emissions data to determine which ones are small businesses. The analyses performed by the NDEP show that the vast majority of Nevada's more than one thousand regulated companies and facilities will not be impacted by the new requirement. Only 16 facilities under the NDEP's jurisdiction emit greater than 25 tons per year of $PM_{2.5}$ or 40 tons per year of $PM_{2.5}$ precursors (SO_2 and NO_x) only four of which have been identified as small businesses. Notably, regardless of whether the NDEP enacts the NAAQS as part of the State 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 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.

The NAAQS 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. 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.[2]

Additionally, the regulation proposes to repeal the current primary annual PM_{10} State standard, as there is no longer a corresponding federal standard. This will have a beneficial economic impact on small businesses by relieving them from the burden of having to model for compliance with that standard in permit applications.

b. Direct and indirect effects. The cost, if any, to small businesses will be the direct cost for implementing control measures for $PM_{2.5}$. However, businesses are likely to experience indirect beneficial effects in terms of cost savings due to health benefits derived from cleaner air, such as fewer sick days used by employees. Furthermore, any costs associated with demonstrating compliance with the annual PM_{10} standard are eliminated.

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. The repeal of the annual PM_{10} State standard aligns the Nevada ambient air quality standards with the federal standards and simplifies the State regulation.

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

Answer: Currently, a facility is not required to model if it has the potential to emit less than 25 tons per year for each pollutant standard, or in the case of the NO_2 and SO_2 1-hour standards, less than 40 tons per year. In those cases, as a service to the industry, the NDEP performs the modeling 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.

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[2] 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 December 10, 2014).

Answer: While the proposed regulatory amendments do not address fees, 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.)*

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 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.

Colleen Cripps, Ph.D.
Administrator, NDEP

5/18/15
Date