

Form #1

Petition to Adopt, Amend, or Repeal Commission Regulations

Approved 10-3-1995



NEVADA
STATE ENVIRONMENTAL
COMMISSION

1. Name, address, telephone number, and signature:

Name: Nevada Division of Environmental Protection

Address: 901 South Stewart Street, Suite 4001

E-mail Address: atucker@ndep.nv.gov

Telephone Number: (775) 687-9340

Date of Petition: TBD

Representative capacity and signature of petitioner, authorized individual, officer or attorney:

A handwritten signature in black ink, appearing to be "AT" or similar initials.

Chief, Bureau of Air Quality Planning

2. Specific type of petitioner (individual, partnership, corporation, government agency, or other) and the exact occupation or business, including a description of the occupation or business if necessary:

The Nevada Division of Environmental Protection (NDEP) is a division of the Nevada Department of Conservation and Natural Resources of the State of Nevada. The NDEP is an environmental regulatory agency.

3. Exact and specific nature of changes sought, including delineation of the regulations, statutory provisions of Commission decisions involved. May include a statement of the written term or substance of the proposed regulatory action, or a description of the subjects and issues involved:

NDEP is proposing to amend Nevada Administrative Code (NAC) 445B by removing NAC 445B.326, which pertains to an affirmative defense for an action brought for noncompliance with a technology-based emission limitation contained in the operating permit.

Nevada Revised Statutes (NRS) 445B.210 establishes the authority of the State Environmental Commission (SEC) to adopt regulations consistent with the intent and purpose of NRS 445B.100 to NRS 445B.640, inclusive, to prevent, abate and control air pollution.

4. A statement of the need for and purpose of the proposed regulations:

The U.S Environmental Protection Agency has adopted federal regulations that remove the affirmative defense provisions from the Title V program regulations because these provisions are inconsistent with the EPA's interpretation of the enforcement structure of the Clean Air Act. The regulations require that states remove affirmative defense provision from their regulations by August 21, 2024 to comply with Clean Air Act requirements.

This regulation removes the ability for facilities to use affirmative defense for an action brought for noncompliance with a technology-based emission limitation contained in the operating permit.

5. A statement of the:

(a) Estimated economic effect of the regulation on the business which it is to regulate:

Not applicable (see Small Business Impact Statement #2).

(1) Both adverse and beneficial effects:

Not applicable (see Small Business Impact Statement #2).

(2) Both immediate and long-term effects:

Not applicable (see Small Business Impact Statement #2).

(b) Estimated economic effect on the public:

Not applicable (see Small Business Impact Statement #2).

(1) Both adverse and beneficial effects:

Not applicable (see Small Business Impact Statement #2).

(2) Both immediate and long-term effects:

Not applicable (see Small Business Impact Statement #2).

(c) Estimated cost by the agency for enforcement of the proposed regulation:

The regulation does not impose functions on the agency that it does not already provide as a matter of policy, so no additional costs beyond what the agency would normally incur are expected.

6. A description of any regulations for other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:

Not applicable, the proposed amendments are only to repeal existing regulations.

7. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions. The statement must include the specific citation of the federal statute or regulation requiring such adoption:

Not applicable, the proposed amendments do not include requirements that are more stringent than federal regulations.

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

Not applicable, the proposed regulatory action does not provide for any new fees or increases to existing fees.

Supporting Documents



When submitting this form, attach a second document to your email with your proposed regulatory language. Include other supporting documents as needed.

Form #4

Small Business Impact Disclosure and Statement

Approved 5-2-2014



NEVADA
**STATE ENVIRONMENTAL
COMMISSION**

The purpose of this form is to provide a framework pursuant to NRS 233B.0608 for drafting and submitting a Small Business Impact Statement (SBIS) to the State Environmental Commission (SEC) and to determine whether a SBIS is required to be noticed and available at the public workshop. A SBIS must be completed and submitted to the Legislative Counsel Bureau for ALL adopted regulations.

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

To determine whether a SBIS must be noticed and available at the public workshop, answer the following questions:

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 on the SBIS and simply referred to; and if yes, reference the attached SBIS)*

There are no economic impacts associated with this action. The removal of the provisions does not have a material impact on the obligation for sources to comply with current existing standards, or the ability of the NDEP to enforce standards.

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 on the SBIS and simply referred to; and if yes, reference the attached SBIS)*

No, the removal of the provisions does not have a material impact on the obligation for sources to comply with current existing standards, or the ability of the NDEP to enforce standards; however, a small business impact statement was prepared.

If **Yes** to either of question 1 & 2, a SBIS must be noticed and available at the public workshop.

FORM 4: SMALL BUSINESS IMPACT STATEMENT (NRS 233B.0609)
(Provide attachments as needed)

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 identified as a small business.)*

Comment will be solicited through a workshop held in Carson City and video conferenced to Las Vegas. Notices of the workshop and an invitation for comments will be posted in county public libraries, the Nevada Division of Environmental Protection (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 also be emailed to an extensive distribution list maintained by NDEP's Bureau of Air Quality Planning. A summary of the workshop will be posted on the SEC website at <http://sec.nv.gov/meetings> when notice is posed for this proposed regulation to go before the SEC as an item for action.

2. The manner in which the analysis was conducted (if an impact was determined).

The agency determined that small business would not be impacted (see Small Business Impact Disclosure #1 and #2).

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

Not applicable (see Small Business Impact Statement #2).

a. Both adverse and beneficial effects:

Not applicable (see Small Business Impact Statement #2).

b. Both direct and indirect effects:

Not applicable (see Small Business Impact Statement #2).

4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of the methods. (Include a discussion of any considerations of the methods listed below.)

Not applicable (see Small Business Impact Statement #2).

A. Simplification of the proposed regulation:

Not applicable (see Small Business Impact Statement #2).

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

Not applicable (see Small Business Impact Statement #2).

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

Not applicable (see Small Business Impact Statement #2).

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

The regulation does not impose functions on the agency that it does not already provide as a matter of policy, so no additional costs beyond what the agency would normally incur are expected.

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.

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 such duplicative or more stringent provisions are necessary.

Not applicable, the proposed amendments do not include requirements that are more stringent than federal regulations.

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

The regulation does not impose any requirements, burdens, or fees on any businesses.

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 the information contained in this statement was prepared properly and is accurate.


Jennifer Carr (Apr 8, 2024 16:21 PDT)

Administrator, NDEP

04/08/24

Date

Supporting Documents



Attach copies of the comments received and copies of any workshop attendance sheets, noting which are identified as a small business.

<http://www.leg.state.nv.us/Statutes/77th2013/Stats201314.html#Stats201314page2304>

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

P2024-01

April 5, 2024

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

AUTHORITY: §1, NRS 445B.210.

A PERMANENT REGULATION relating to air pollution and providing other matters properly relating thereto.

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

TEXT OF REPEALED SECTIONS

NAC 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.