New Mexico Environment Department Testimony in EIB 21-27 (R)

Susan Day, Brian Palmer

and

Elizabeth Bisbey Kuehn

Small Business Facilities
Sections 20.2.50.7 and 125

Data Analysis for Small Business Facility Definition

- Provides NMED with information on the revenues and employment for the global ultimate parent companies of the well owners/operators that would be subject to the proposed new ozone rules
- Started with a list of 535 owner/operators provided by NMED, which was compiled from the NMED Equipment Data and NM Oil Conservation Division data

Data Analysis for Small Facility Definition (cont'd)

- Identify the highest level of ownership in the corporate structure, which is the global ultimate parent company
- NAICS Association LLC employed to match NM owner/operators to their global ultimate parent using Dun and Bradstreet Numbers

Federal Small Business Administration (SBA) Size Standard

- Created to identify companies that qualify for Federal assistance programs
- Vary by industry type as defined by a NAICS code to reflect the unique competitive characteristics of different industries
- Can be based on revenues or employment

Federal Small Business Administration (SBA) Size Standard (cont'd)

- Global ultimate parent company information identified for each owner/operator to determine how that global ultimate parent would be classified based on the SBA size definition
- 406 unique ultimate parent companies had both revenue and employment data
- Of the 406 unique global ultimate parent companies, 355 (87%) meet the SBA definition of "small business", and 51 (13%) do not meet that definition

Revenues per well and total gas/oil value per well

- Used oil and gas well production data for New Mexico owner/operators and other affected facilities from the GO-TECH website
- Method 1: estimated average revenue per well for each owner/operator by dividing the global ultimate parent revenues associated with the owner/operator by the total number of wells reported in the GO-TECH data for that owner/operator.
- Method 2: estimated the average value of the oil and gas production per well for each owner/operator using dollars per barrel for oil, and dollars per million BTU for gas.
  - New Mexico Crude Oil First Purchase Price - $45 per barrel (24 Month average over the period of February 2019 to January 2021)
  - Henry Hub Natural Gas Spot Price - $2.39 per million BTU (24 Month average over the period of March 2019 to February 2021)

Definition of Small Business Facility

- Under the proposed rule, a small business facility is defined as a source that is independently owned or operated by a company that is a not a subsidiary or a division of another business, that employs no more than 10 employees at any time during the calendar year, and that has a gross annual revenue of less than $250,000. Employees include part-time, temporary, or limited-service workers.

Overview of Part 50 Requirements

- Part 50 is structured such that there is a baseline set of requirements applicable to all owners and operators, and a tiered set of requirements that apply based upon the equipment or source type, the PTE of the equipment or source, and whether a facility meets the definition of a small business facility as defined in this rule.
- Everyone required to calculate the PTE of equipment and have that calculation certified by a professional or inhouse engineer, and conduct equipment leak monitoring and repair of leaking components by specified deadlines. The monitoring frequency is determined by the facility PTE.

Overview of Requirements for Small Business Facilities

- An owner or operator of a facility that meets the definition of a small business facility must comply with the requirements of Sections 20.2.50.111 and 125. If a facility does not meet the definition of a small business facility, the owner or operator must comply with the other sections of Part 50 applicable to the particular sources at the facility.

Summary of Why the Definition is Appropriate

- Small business facility definition recognizes the unique challenges smaller independent operators may face in determining applicability and financing the initial and ongoing costs of compliance with Part 50.
- Federal Clean Air Act and the Board's air quality construction permit fee regulations at 20.2.75 NMAC contain provisions to assist small businesses by providing compliance assistance and a tiered fee schedule that gives a 50% reduction in initial and annual permit fees.
- These programs were developed because small businesses frequently lack the financial resources necessary to evaluate complex regulations, to finance the initial and ongoing compliance requirements, and to pay the full cost of recurring permitting fees.

Basis for Proposed Definition

- The proposed definition is based upon three principal criteria that help delineate between small, independent businesses and large, vertically integrated companies.
- The first criterion is ownership structure, which was used to distinguish companies that are independently owned and operated and are not a subsidiary or division of another company from larger corporations.
- The differences between small and large companies include the size of the business, number of employees, revenue, legal structures, and financing and tax requirements.
- Small and large companies may both operate within the same industrial sector, however, the differences in how these companies operate, their ability to access and finance capital, and their overall size affect their operations.

Basis for Proposed Definition Continued

- The second criterion is the total number of staff employed by the company, which is an indication of the company's personnel and staff resource capacity to interpret and implement the requirements of the rule.
- Larger companies have the financing capacity to employ dedicated environmental, health, and safety specialists; these staff typically monitor the company's compliance with numerous state and federal environmental regulations.
- Small companies employing fewer numbers of employees typically do not have the staffing or funding capacity to finance dedicated environmental compliance specialists.

Basis for Proposed Definition Continued

- The third criterion is annual revenue. NMED recognizes that the cost of complying with Part 50 may disproportionately impact the smallest companies and may result in early abandonment of small business-owned wells, which, in turn, may result in increased uncontrolled air emissions from abandoned wells.

How the Thresholds Were Determined

- The Department evaluated the report prepared by ERG and sorted the companies by the annual Global Ultimate (GULT) Parent revenue and staffing levels.
- The proposed thresholds were chosen because the data compiled by ERG indicated that those thresholds balanced the costs of compliance with Part 50 against a company's ability to finance the costs of compliance, and would not put the majority of companies at risk of becoming insolvent and therefore cause wells to be abandoned without remediation.

Summary of the Department's Analysis – Cost of Compliance for Representative Facility

- The Department estimated the annual average cost of compliance for a representative well site to determine the number of companies that could finance those compliance costs.
- Representative facility was assumed to have emissions greater than 15 TPY VOC, requiring quarterly LDAR monitoring; a storage vessel emitting greater than 2 TPY, requiring a control device, and an annual inspection of the storage vessel.
- The annual average cost of compliance for the representative facility was estimated at $37,945 (based on an average cost of $32,400 to control a storage vessel, $4,385 for quarterly LDAR monitoring, and $1,160 for an annual inspection).

Summary of the Department's Analysis – Cost of Compliance

- NMED ranked the companies by GULT revenue from highest to lowest revenue and screened the companies that reported $1,000,000 or less and $250,000 or less to determine how many of those companies had per well site revenue less than the cost of compliance for the representative facility. Based on this review, NMED determined that 96 companies reporting a GULT revenue of $1,000,000 and less had a calculated revenue per well less than $37,945.
- These 96 companies operate approximately 9,277 wells or 18% of the total wells.
- NMED determined that 54 companies reporting a GULT revenue of $250,000 and less had a calculated revenue per well less than $37,945. These companies operate approximately 4,638 wells or 9% of the total wells.

Summary of the Department's Analysis – Cost of Compliance for Small Business Facility

- NMED determined the average annual cost of compliance for a facility meeting the small business definition at $4,385 (based on a conservative quarterly LDAR monitoring requirement). According to the report, few companies have a revenue of less than $4,385 per well.
- NMED proposed $250,000 as the revenue threshold to meet the small business definition.

Summary of Results and Comparison to Estimated Total Revenue

- 82 companies that operate 4,638 wells would qualify as small business facilities under the thresholds established in the rule.
- 15% of the total number of companies (82/535) subject to Part 50 would be considered owners/operators of small business facilities, and 9% of the total number of wells (4,638/50,866) would be considered small business facilities.
- The estimated revenue from a well producing 7.5 bbl of oil per day, (7.5 bbl oil/day * 365 days/year * $60.00/bbl of crude oil) as $164,250 per year (or $450 per day).
- Comparing this estimated revenue with the estimated cost of complying with the small business provisions of Part 50 (estimated at $4,385), it would cost companies approximately 2.6% of total revenue to comply. The estimated cost of compliance for the representative facility (estimated at $37,945) as a percentage of the total estimated revenue is approximately 23% of total revenue.

20.2.50.125 Small Business Facilities

OO~~OO~~. **"Small business facility"** means, for the purposes of this Part, a source that is independently owned or operated by a company that is a not a subsidiary or a division of another business, that employs no more than 10 employees at any time during the calendar year, and that has a gross annual revenue of less than $250,000 Employees include part-time, temporary, or limited service workers.

20.2.50.125 SMALL BUSINESS FACILITIES

A. Applicability: Small business facilities as defined in this Part are subject to the requirements of 20.2.50.125 NMAC.

B. General requirements:

(1) The owner or operator shall ensure that all equipment is operated and maintained consistent with manufacturer specifications, and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications and maintenance practices on file and make them available to the department upon request.

(2) The owner or operator shall calculate the VOC and NO_x emissions from the facility on an annual basis. The calculation shall be based on the actual production or processing rates of the facility.

(3) The owner or operator shall maintain a database of company-wide VOC and NO_x emission calculations for all subject facilities and associated equipment and shall update the database annually.

(4) The owner or operator shall comply with Paragraph (9~~10~~) of Subsection A of 20.2.50.112 NMAC if requested by the department.

C. Monitoring requirements: The owner or operator shall comply with the requirements in Subsections C or D of 20.2.50.116 NMAC.

D. Repair requirements: The owner or operator shall comply with the requirements of Subsection E of 20.2.50.116 NMAC.

20.2.50.125 Small Business Facilities

E. **Recordkeeping requirements:** The owner or operator shall maintain the following electronic records for each facility:

(1) annual certification that the small business facility meets the definition in this Part;

(2) calculated annual VOC and NO_x emissions from each facility and the company-wide annual VOC and NO_x emissions for all subject facilities; and

(3) records as required under Subsection F of 20.2.50.116 NMAC.

F. **Reporting requirements:** The owner or operator shall submit to the department an initial small business certification within sixty days of the effective date of this Part, and by March 1 each calendar year thereafter. The certification shall be made on a form provided by the department. The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.