

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED AMENDMENTS TO
20.2.77 NMAC – New Source Performance Standards (NSPS);
20.2.78 NMAC – Emissions Standards for Hazardous Air
Pollutants (NESHAP); and 20.2.82 NMAC – Maximum
Achievable Control Technology for Source Categories of
Hazardous Air Pollutants (MACT)**

No. EIB 23-52 (R)

**Air Quality Bureau,
Environmental Protection Division
New Mexico Environment Department,**

Petitioner.

FINAL ORDER AND STATEMENT OF REASONS

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon an amended petition filed by the Air Quality Bureau (“Bureau”) of the Environmental Protection Division (“Division”) of the New Mexico Environment Department (“Department”) on July 5, 2023, to amend 20.2.77 NMAC – New Source Performance Standards (NSPS); 20.2.78 NMAC – Emissions Standards for Hazardous Air Pollutants (NESHAP); and 20.2.82 NMAC – Maximum Achievable Control Technology for Source Categories of Hazardous Air Pollutants (MACT).

A public hearing was held on November 17, 2023, with a quorum of the Board present during the hearing. The public hearing was held at 525 Camino de Los Marquez, Santa Fe, New Mexico 87505, and also via the virtual platform Webex.

The Board heard technical testimony from the Department and admitted exhibits into the record. On November 17, 2023, the Board deliberated and voted to amend the regulations for the reasons that follow:

STATEMENT OF REASONS

1. Pursuant to 20.1.1.300(A) NMAC, any person may petition the Board to adopt, amend, or repeal any regulation within the jurisdiction of the Board.
2. On July 5, 2023, the Bureau filed a petition with the Board for a public hearing in this matter. On August 18, 2023, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Bureau’s request for a hearing and scheduled the hearing for November 17, 2023, and continuing thereafter as necessary.
3. As required by 20.1.1.301(A) NMAC, the Department provided the public with proper notice of the proposed rulemaking at least 60 days prior to the November 17, 2023, public hearing.
4. NMED filed a Notice of Intent to Present Technical Testimony (“NOI”) on October 27, 2023, in accordance with 20.1.1.302 NMAC.
5. At the hearing, a reasonable opportunity was provided for all persons to be heard.
6. The Department was represented by Christopher Vigil of the Department’s Office of General Counsel.
7. The Board is authorized to adopt the proposed amendments pursuant to the New Mexico Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -17 (“AQCA”). Section 74-2-5(A) of the AQCA broadly provides that the Board “shall prevent or abate air pollution.” Section 74-2-5(B)(1) states that the Board shall “adopt, promulgate, publish, amend, and

repeal rules and standards consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution.”

8. The amendments to 20.2.77, 20.2.78, and 20.2.82 NMAC incorporate NSPS, NESHAP, and MACT rules published in the Federal Register from January 16, 2017 to June 28, 2023. In addition, the amendments incorporate the 2021 statutory authority reference updates to Section 3 of Parts 78 and 82 of 20.2 NMAC to Subsection (D) of NMSA 1978, Section 74-2-5 from Subsection (C) of NMSA 1978, Section 74-2-5.
9. In considering the proposed amendments, the Board is required by NMSA 1978, Section 74-2-5(F), to give the weight it deems appropriate to all facts and circumstances, including but not limited to:
 - (1) character and degree of injury to or interference with health, welfare, animal and plant life, and property; (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and (3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods to control the air contaminants involved.
10. The Board considered all facts and circumstances and concluded that the proposed amendments do not cause injury to or interfere with health, welfare, animal, and plant life, property, and the environment. The Board found the proposed revisions to be technically practical, economically reasonable, and in the public interest. The Board concludes that the factors specified by Section 74-2-5 all weigh in favor of adopting the proposed revisions.
11. Adoption of the amendments to 20.2.77 NMAC, 20.2.78 NMAC, and 20.2.82 NMAC will allow New Mexico to become compatible with the current federal regulations and will provide consistency between the federal and state regulations.

12. The notice and hearing requirements of NMSA 1978, Section 14-4-5.2, Section 74-2-6, Section 14-4A-4, and 20.1.1 NMAC were satisfied in this rulemaking process. (**NMED Exhibits 11, 12, & 13**)
13. The Board hereby approves of the proposed amendments to 20.2.77 NMAC, 20.2.78 NMAC, and 20.2.82 NMAC as they are written in **NMED Exhibit 15**, for the reasons stated above.

ORDER

By a unanimous vote of a quorum of the Board members, the proposed adoption of the amendments to 20.2.77 NMAC, 20.2.78 NMAC, and 20.2.82 NMAC as contained in NMED Exhibit 15 of the Department's October 27, 2023, Notice of Intent to Present Technical Testimony, were approved by the Board on November 17, 2023. Annotations to 20.2.77 NMAC, 20.2.78 NMAC, and 20.2.82 NMAC, with any appropriate corrections of typographical errors or formatting, shall be filed with the New Mexico State Records Center as expeditiously as possible by the Department.

SIGNED this 15 day of December, 2023.



Phoebe Suina, Chair
New Mexico Environmental Improvement Board

Certificate of Service

I hereby certify that on December 16, 2023, a copy of the **Final Order and Statement of Reasons** was sent via electronic mail to the persons listed below. A hard copy will be mailed upon request.

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