

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED
AMENDMENTS TO AIR QUALITY REGULATIONS
20.2.77 AND 20.2.82 NMAC

No. EIB 13-07(R)



**NEW MEXICO ENVIRONMENT DEPARTMENT'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY**

Pursuant to 20.1.1.302.A NMAC, the New Mexico Environment Department ("NMED" or "Department") hereby submits its Notice of Intent to present technical testimony in this proceeding.

1. Person Represented By the Technical Witnesses.

The New Mexico Environment Department, Environmental Protection Division, Air Quality Bureau.

2. Name and Qualifications of Each Technical Witness.

Lany Weaver. Ms. Weaver is an Environmental Analyst in the Control Strategies Unit of the Planning Section of the Department's Air Quality Bureau. She is responsible for preparing state implementation plans, policies, and regulations for air quality. She has also served as the Bureau's Health Program Manager, with oversight over the Small Business Assistance Program. Prior to coming to the Department, Ms. Weaver served as an Air Resources Engineer with the California Air Resources Board.

Rita Bates. Rita Bates is the Section Chief of the Planning Section of the Air Quality Bureau. She has more than 20 years of experience in the environmental field, including fourteen years with the Department. In addition to her work for the Air Quality Bureau, Ms. Bates has

worked in industry as an environmental coordinator and in environmental consulting as a project manager. Ms. Bates holds a B.S. in Biology from Humboldt State University. Her resume is attached as Exhibit 2.

3. A Copy of the Direct Testimony of Each Witness in Narrative Form.

A copy of the direct testimony of Ms. Weaver is attached as Exhibit NMED 3. Ms. Weaver will provide a brief summary of her testimony during the hearing. The Department does not intend to present direct testimony by Rita Bates, but may present her as a rebuttal witness, and will make her available to assist in answering questions that may go beyond the expertise of the direct witnesses.

4. Text of Recommended Modifications to the Proposed Regulatory Change

The Department recommends that the Board adopt the proposed regulatory changes to 20.2.77 and 20.2.82 NMAC as contained in Exhibit 4 & 5, respectively. Exhibit 4 contains a change in the proposed date of incorporation of the federal standards into 20.2.77 NMAC, as compared to the request in the Department's petition. Specifically, the Department requests that that date be September 23, 2013, rather than August 29, 2013. Exhibit 5 contains proposed changes to 20.2.82 NMAC that are identical to those proposed in the Department's petition.

5. List and Description of Exhibits

The Department submits the following exhibits:

- | | |
|--------|---|
| NMED 1 | Resume of Lany Weaver |
| NMED 2 | Resume of Rita Bates |
| NMED 3 | Written Testimony of Lany Weaver |
| NMED 4 | Proposed Revised Amendments to 20.2.77 NMAC |

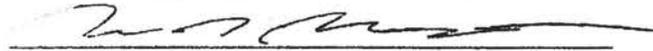
- NMED 5 Proposed Amendments to 20.2.82 NMAC
- NMED 6 List of Recent FR Notices under Part 77 (40 CFR 60) and Part 82 (40 CFR 63)
- NMED 7 1985 Delegation of Authority Letter (NSPS and NESHAP)
- NMED 8 1995 Delegation of Authority Letter (MACT)
- NMED 9a Public Notice (New Mexico Register)
- NMED 9b Public Notice (Albuquerque Journal, Spanish/English)
- NMED 10 July 1, 2013 NMED Letter to Stakeholders
- NMED 11 September 23, 2013 Email to Stakeholders
- NMED 12 August 30, 2013 EPA Memo on Inadvertent Errors
- NMED 13 Excerpts from Clean Air Act §§ 111 & 112
- NMED 14 Proposed Statement of Reasons for Adoption of Rules
- NMED 15 Federal Register Notices (on CD only)
- NMED 16 Letter to Small Business Regulatory Advisory Commission

6. Reservation of Rights

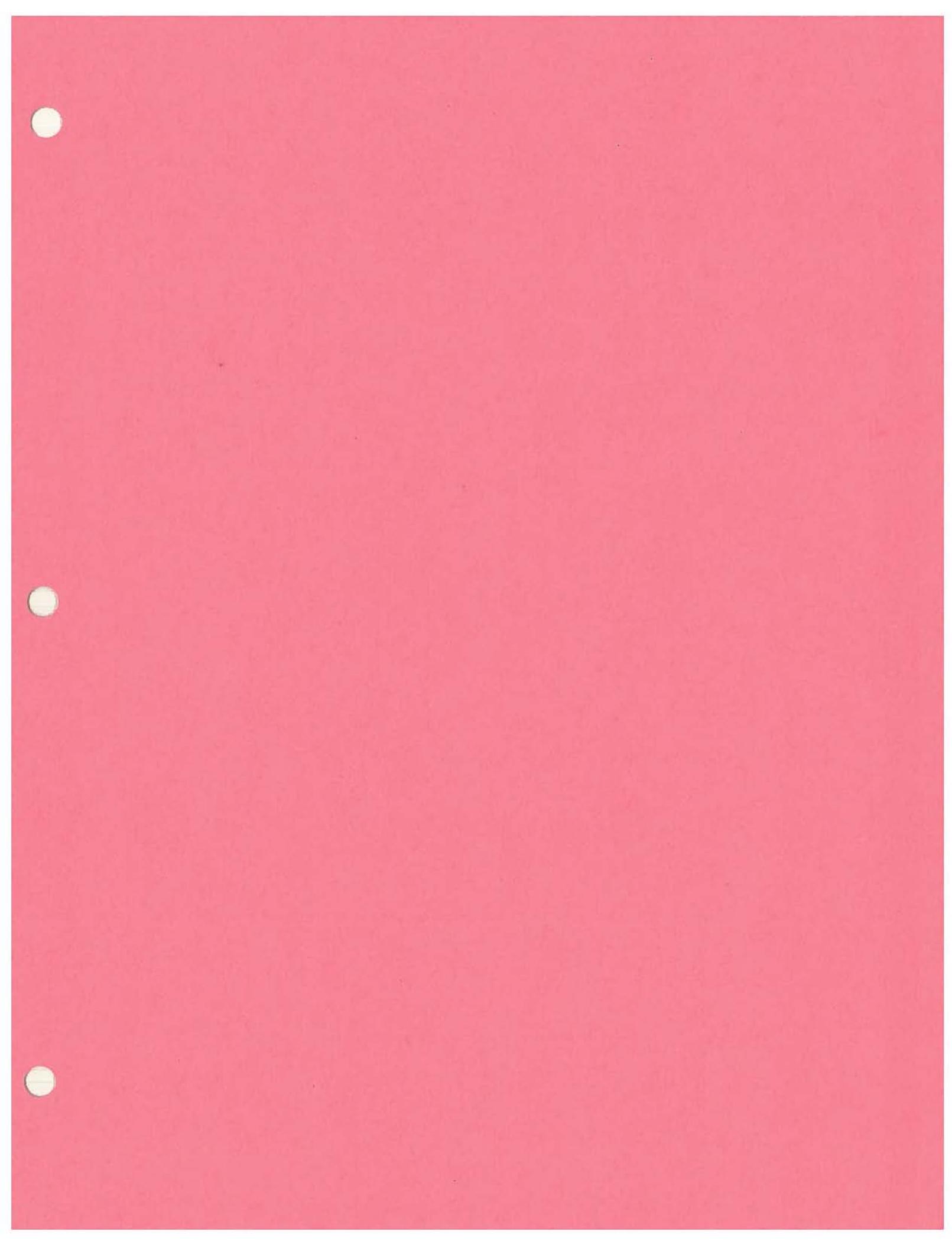
This Notice of Intent to Present Technical Testimony is based on the Department's petition. The Department reserves the right to call any person to testify and to present any exhibit in response to another notice of intent or public comment filed in this matter or to any testimony or exhibit offered at the public hearing. The Department also reserves the right to call any person as a rebuttal witness and to present any exhibit in support thereof.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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Assistant General Counsel
New Mexico Environment Department
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Santa Fe, New Mexico 87505
505.222.9594
bill.grantham@state.nm.us





LANY WEAVER

EDUCATION

UNIVERSITY OF CALIFORNIA AT DAVIS
B.S., Mechanical Engineering, 1981.

EXPERIENCE

STATE OF NEW MEXICO, ENVIRONMENT DEPARTMENT
AIR QUALITY BUREAU

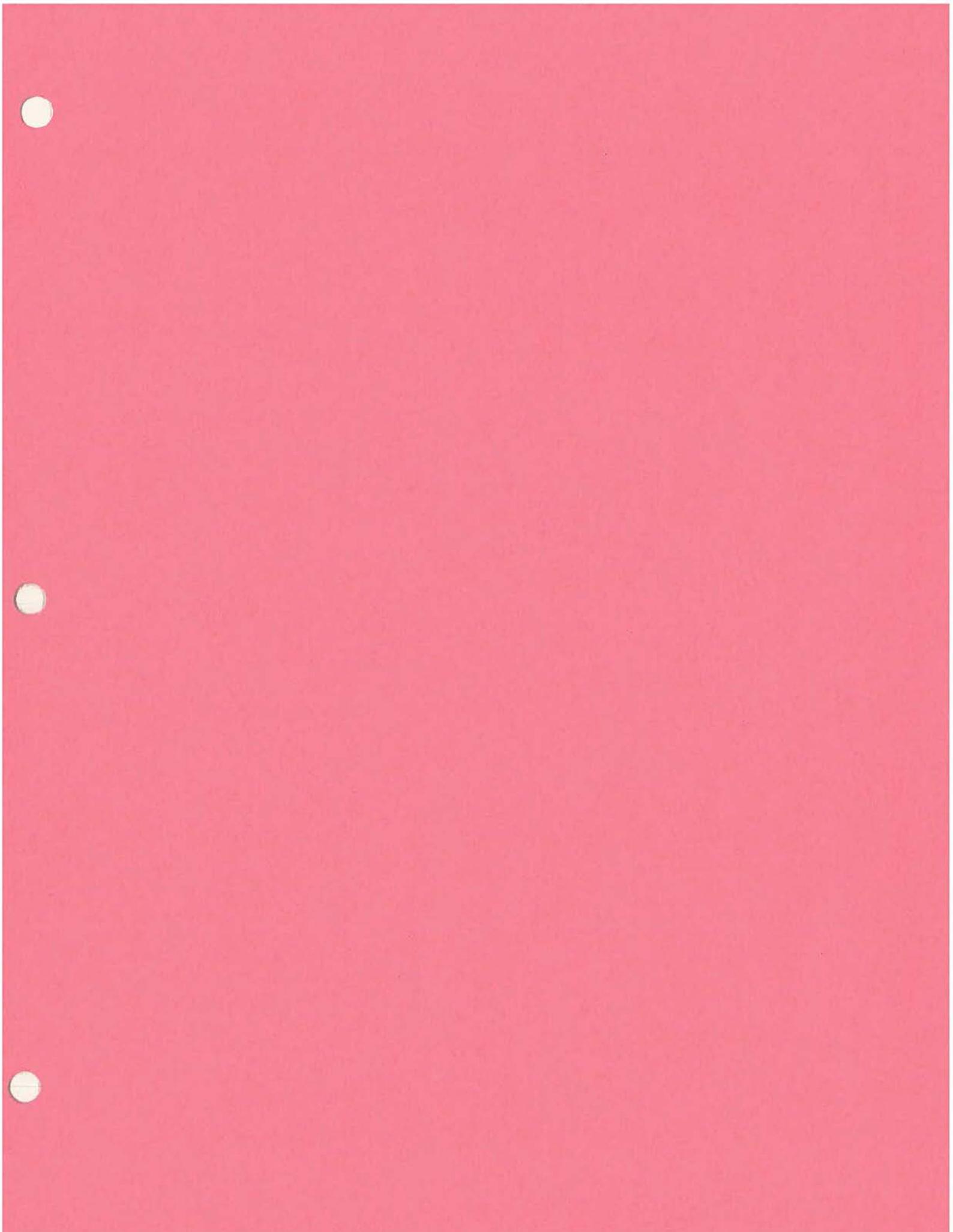
Environmental Analyst, Planning Section, May 2001 – present
Health Program Manager, Control Strategies Section, May 1993 – May 2001
Environmental Engineering Specialist, April 1990 – May 1993

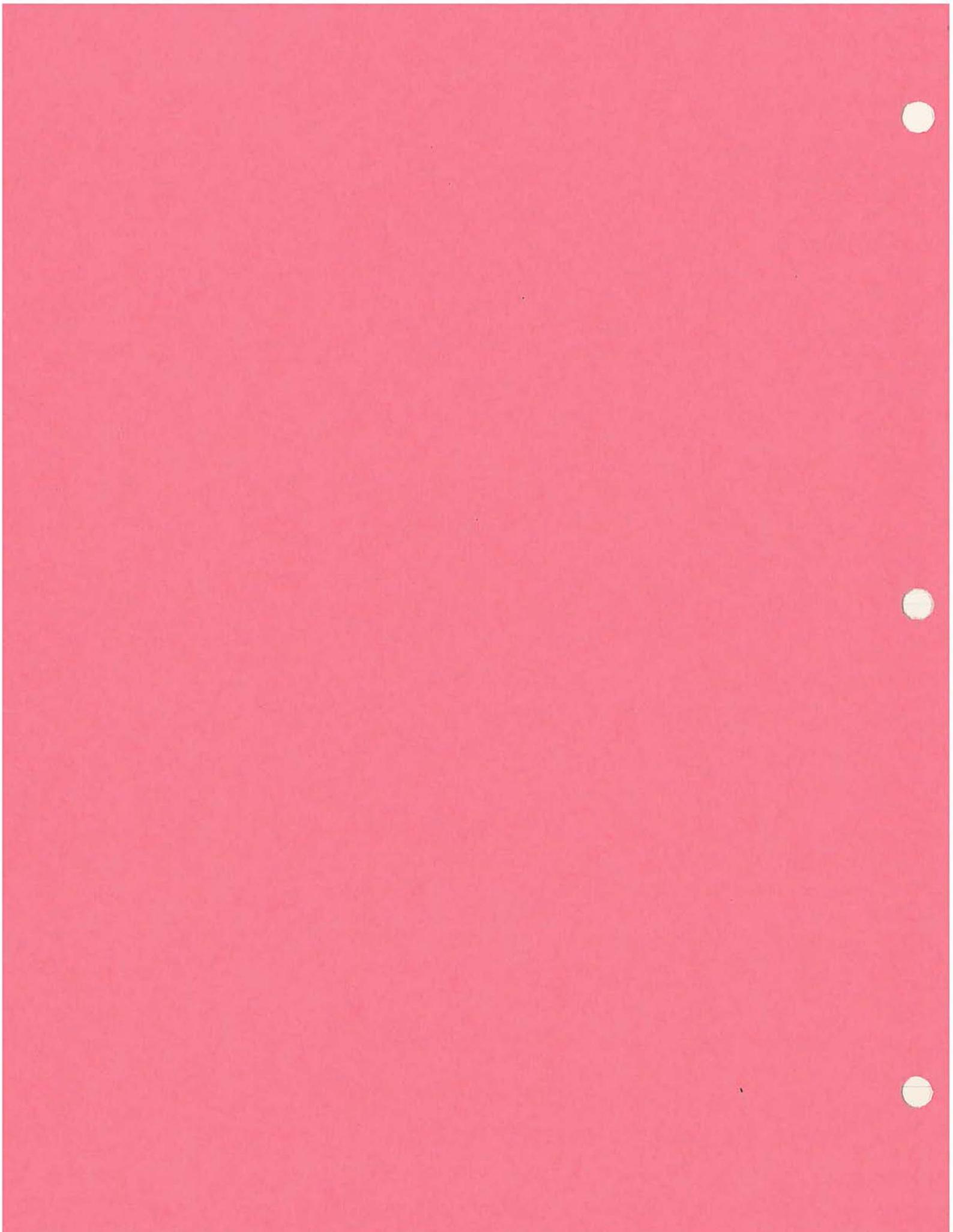
The Control Strategy Section (now the Control Strategies Unit of the Planning Section) of the Air Quality Bureau is responsible for preparing state implementation plans, policies, and regulations for air quality. During the time that I was Health Program Manager, the section also included the Small Business Assistance Program. In addition to developing and providing testimony regarding numerous air quality plans and regulations, I have developed a digital air quality regulatory archive tool to increase the accessibility of historical hearing records for staff and the public.

CALIFORNIA AIR RESOURCES BOARD
Sacramento, California

Air Resources Engineer, CARB Stationary Sources Division, April 1981 – March 1984

The staff of the California Air Resources Board develops statewide air quality regulations and plans, as well as model regulations for consideration by local Air Quality Management Districts, under the direction of the Board. To this end, CARB staff develops supporting documents and reports, conducts outreach, hosts workshops, and provides technical testimony at Board hearings when the regulations and plans are considered. As a staff member in the Stationary Sources Division, I participated in the development of several reports and regulations, including revisions to the limitations for lead in gasoline and sulfur in diesel fuel.





RITA BATES

EDUCATION

HUMBOLDT STATE UNIVERSITY, ARCATA, CALIFORNIA
B.S., Biology, 1990. Minor in Botany, emphasis in Ecology. Attendance dates 1986-1990.

EXPERIENCE

STATE OF NEW MEXICO, ENVIRONMENT DEPARTMENT
AIR QUALITY BUREAU, PLANNING & POLICY SECTION

Section Chief, March 2005 – present
Program Manager (Natural Sciences Manager-2), March 2000 – March 2005
Environmental Specialist, December 1998 – March 2000
Environmental Scientist, August 1998 – December 1998

The Planning & Policy section of the Air Quality Bureau is responsible for the control strategy, dispersion modeling, emission inventory and small business assistance programs in the Air Quality Bureau. The control strategy section of the Air Quality Bureau is responsible for preparing state implementation plans, policies, and regulations for air quality. The modeling section ensures that all air dispersion modeling analyses submitted to our agency are accurate and complete. The Small Business Assistance Program assists small businesses in meeting air quality regulatory requirements.

EMPIRE GROUP, LLC
Empire, Nevada

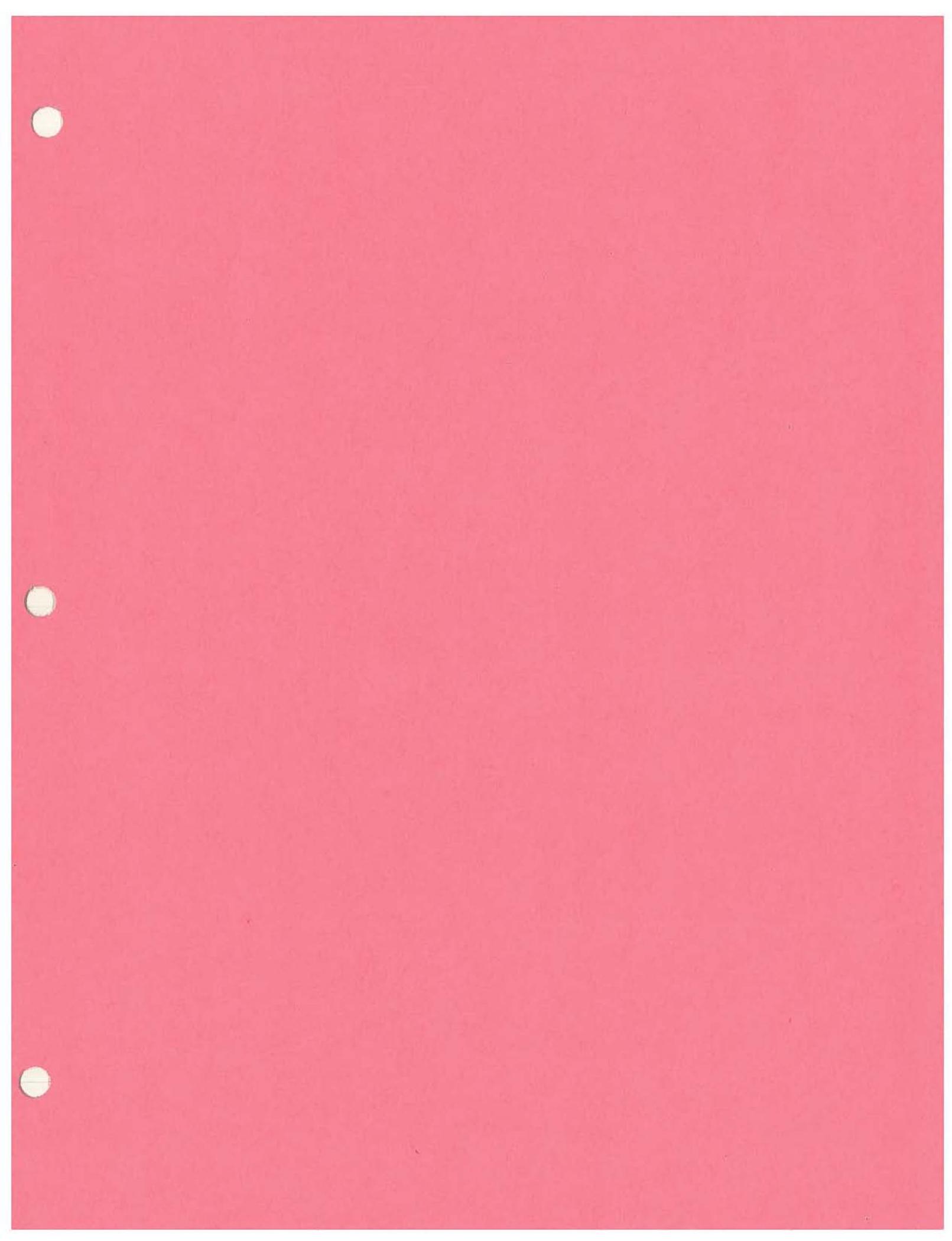
Environmental Coordinator, June 1996 – July 1998

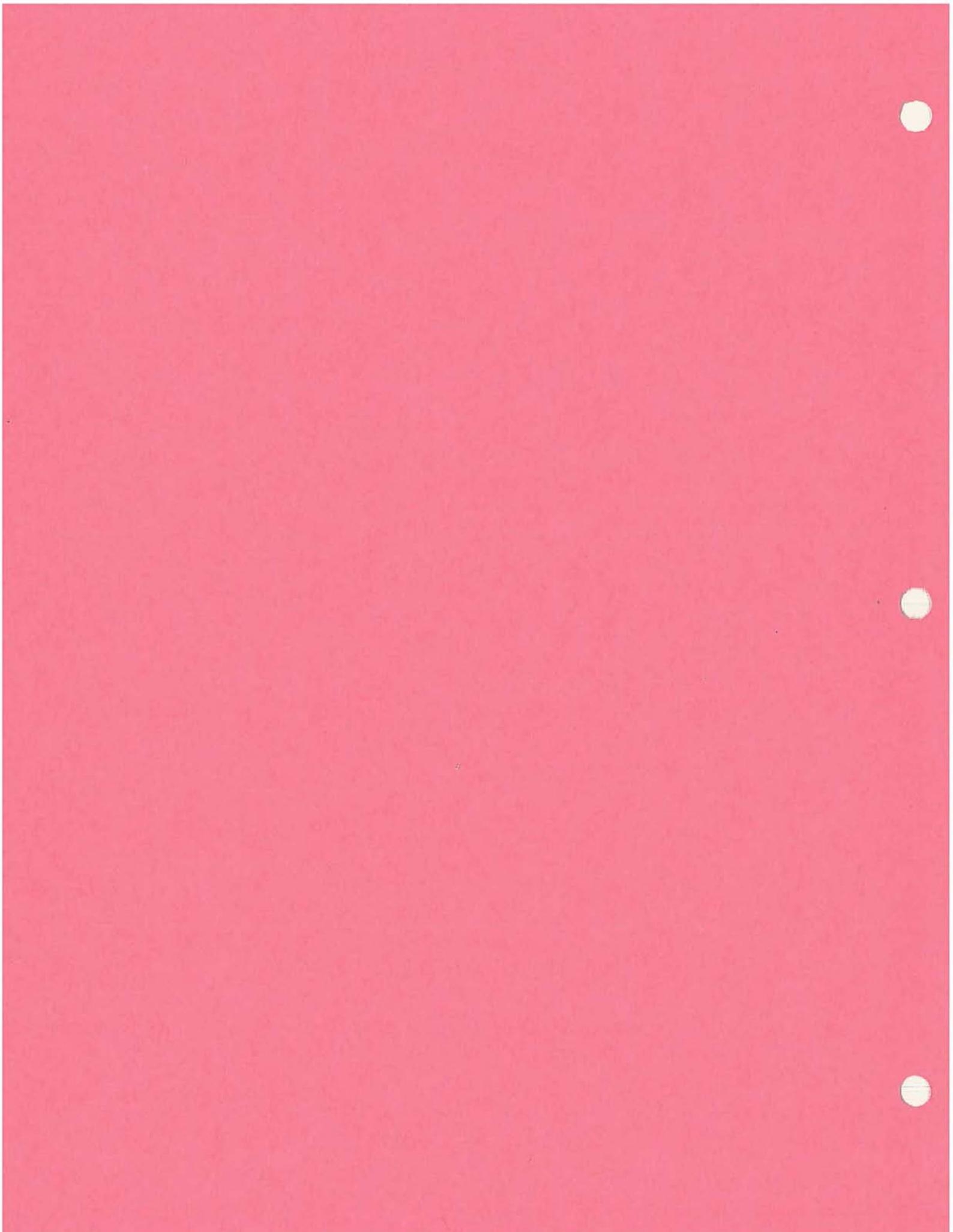
Empire Group, LLC is the parent company for several entities which own and operate a geothermal power plant, an onion and garlic dehydration plant, several ranches, and a garlic seed operation. In my position as environmental coordinator, I was responsible for permitting at all facilities.

JBR ENVIRONMENTAL CONSULTANTS, INC.
Reno, Nevada

Environmental Analyst IV, Reno Office Coordinator/Manager, July 1994 – July 1996
Environmental Analyst III, July 1993 – July 1994
Environmental Analyst I, June 1990 – July 1993

As the manager of the Reno office, I supervised seven technical staff and one administrative employee. During my employment with JBR, I worked on and managed numerous NEPA, environmental permitting and baseline projects.





**IN THE MATTER OF PROPOSED
AMENDMENTS TO AIR QUALITY REGULATIONS
20.2.77 AND 20.2.82 NMAC**

No. EIB 13-07 (R)

**Exhibit NMED 3
Written Testimony of Lany Weaver
Environmental Analyst
New Mexico Environment Department
Air Quality Bureau**

Proposed Revisions

1 The Air Quality Bureau proposes amendments to the Air Quality Regulations at 20.2.77
2 NMAC – *New Source Performance Standards* (“NSPS”) and 20.2.82 NMAC – *Maximum*
3 *Achievable Control Technology Standards for Source Categories of Hazardous Air*
4 *Pollutants* (“MACT”). Copies of the proposed amendments, including a revised
5 amendment, are included as Exhibits NMED 4 and 5.
6

7 Adoption of performance and emissions standards is authorized by the Air Quality
8 Control Act (AQCA), which provides at 1978 NMSA § 74-2-5.C:
9

10 Regulations adopted by the environmental improvement board or the local board
11 may:

12 (2) prescribe standards of performance for sources and emission standards for
13 hazardous air pollutants that, except as provided in this subsection:

14 (a) shall be no more stringent than but at least as stringent as required by federal
15 standards of performance; and

16 (b) shall be applicable only to sources subject to such federal standards of
17 performance;
18

19 Incorporation by reference of the federal standards is the best way to ensure that New
20 Mexico’s standards comply with all provisions of § 74-2-5.C. The proposed amendments
21 to Parts 77 and 82 include NSPS rules published in the Federal Register from January 1,
22 2011 to September 23, 2013, and MACT rules published in the Federal Register from
23 January 1, 2011 to August 29, 2013. A list of relevant Federal Register notices is
24 included as Exhibit NMED 6.
25

26 **Effect of Incorporation**
27

28 Under the federal Clean Air Act (“CAA”), authority to implement and enforce the NSPS
29 and MACT standards may be delegated to states. The EPA, however, retains the
30 authority to enforce the standards directly. See CAA § 111(c) and § 112(l)(7). New
31 Mexico has sought and obtained implementation authority. The EPA initially delegated
32 authority to New Mexico for the NSPS program on March 15, 1985 in a letter to the

1 governor (Exhibit NMED 7). New Mexico was granted authority to implement and
2 enforce the Maximum Achievable Control Technology (MACT) Standards for Source
3 Categories of Hazardous Air Pollutants by the EPA on July 27, 1995 (Exhibit NMED 8).
4 The Department periodically requests that the Board update the date of incorporation in
5 the New Mexico Administrative Code in order to include new rules and amendments
6 made to the federal regulations.

7
8 Implementation of the standards by the Department is more efficient and effective than
9 reliance on federal implementation. Department personnel routinely inspect affected
10 sources to determine compliance, and Department permit writers develop permit
11 conditions for new and modified sources. Therefore, the Department is well positioned
12 to determine which standards are applicable to sources and to determine source
13 compliance. While EPA retains oversight authority through the Region 6 offices in
14 Dallas, EPA does not have the staff and resources to perform day-to-day implementation.
15 Generally, both the EPA and the regulated community prefer that the Department
16 implement and enforce the air quality regulations.

17 18 **Public Outreach**

19
20 The public notices for this proposal and hearing were published in the New Mexico
21 Register (Exhibit NMED 9a) and in the Albuquerque Journal in both English and Spanish
22 (Exhibit NMED 9b). NMED conducted additional outreach directly to potential
23 stakeholders¹. On July 1, 2013 we sent a letter (Exhibit NMED 10) informing them of
24 this proposal, and on September 23, 2013 we sent a follow-up email (Exhibit NMED 11)
25 informing them of NMED's plan to amend our proposal for Part 77. At the time of this
26 filing, NMED has received no substantive comments regarding the proposal.

27 28 **Proposed Changes to Part 77**

29
30 The EIB first adopted New Source Performance Standards (NSPS) by reference in 1984.
31 These federal standards are contained within Title 40 of the Code of Federal Regulations
32 Part 60 (40 CFR Part 60). In the Department's hearing request, we proposed that 20.2.77
33 NMAC be amended to incorporate by reference the federal requirements pertaining to
34 NSPS promulgated by the EPA from January 1, 2011 to August 29, 2013. There were
35 twenty four (24) NSPS changes during this time period for proposed incorporation.

36
37 The amendment of one additional NSPS, referred to as Subpart OOOO or "quad O", was
38 finalized and released to the public on August 2, 2013, but not published in the Federal
39 Register until September 23, 2013. During that delay, EPA corrected inadvertent errors
40 in the final rule but made no substantive changes (Exhibit NMED 12). Because this rule
41 is of particular interest to the oil and gas industry and was available almost a month
42 before the beginning of the public comment period for this hearing began, the
43 Department is requesting that the date "August 29, 2013" in the proposed rule be
44 amended to "September 23, 2013" (See Exhibit NMED 4). Doing so would result in only

¹ The stakeholder list includes industry organizations, consultants, public interest groups, and all companies with air quality permits.

1 one additional item, the amendments to NSPS Subpart OOOO, to the list of those
2 incorporated by reference in Part 77. On September 23, 2013, the Department informed
3 stakeholders of this amendment to the Department's proposal. See Exhibit NMED 11.

4 5 **Proposed Changes to Part 82**

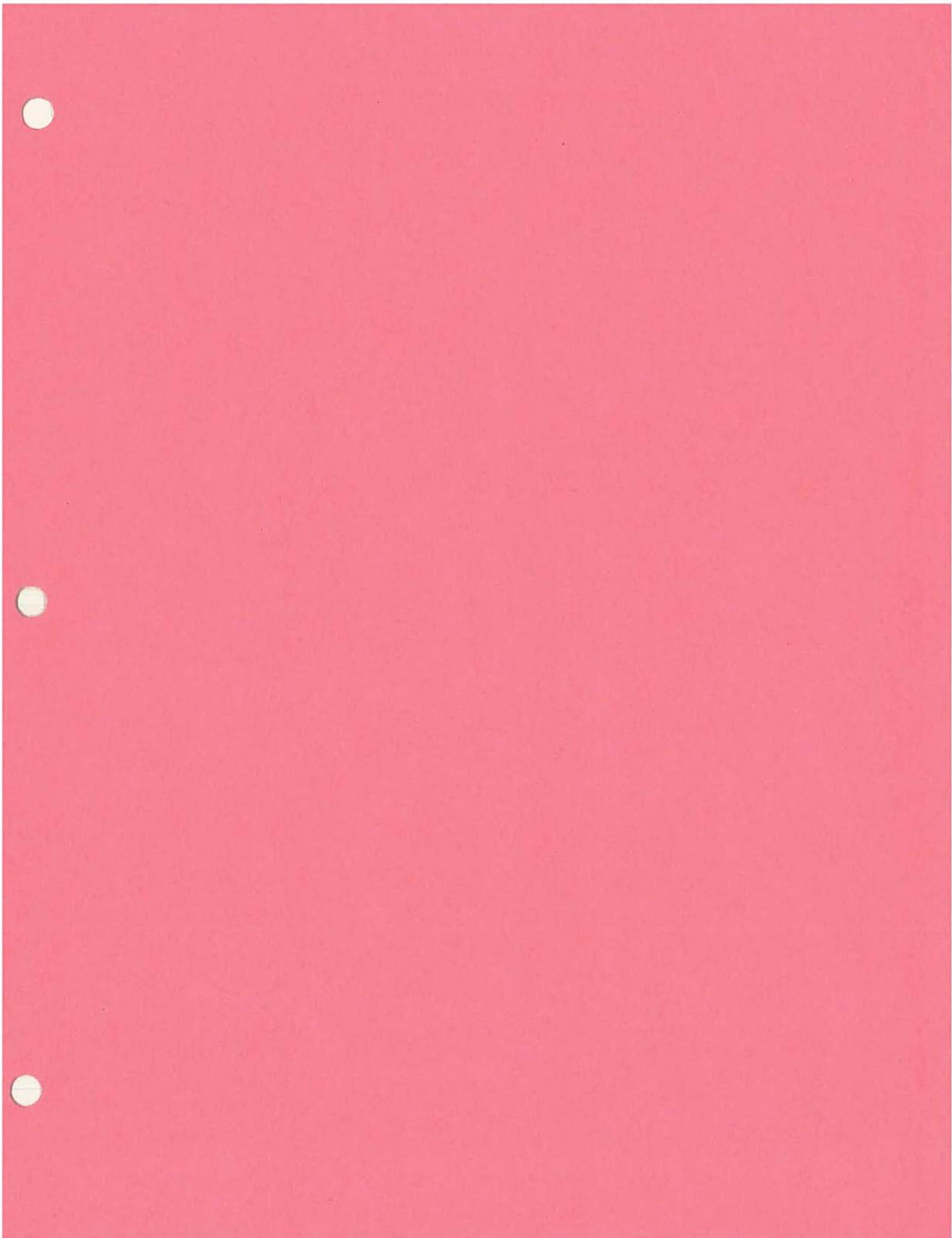
6
7 The EIB first adopted Maximum Achievable Control Technology Standards for Source
8 Categories of Hazardous Air Pollutants by reference in 1994. These federal standards are
9 contained within Title 40 of the Code of Federal Regulations Part 63 (40 CFR Part 63).
10 The Department is proposing that 20.2.82 NMAC be amended to incorporate by
11 reference the federal requirements pertaining to MACT standards promulgated by the
12 EPA from January 1, 2011 to August 29, 2013. There were thirty (30) MACT changes
13 during this time period for proposed incorporation. Nine (9) of the changes involved
14 changes to an NSPS as well as a MACT rule.

15 16 **Federal Register Notices for Revisions to 40 CFR Parts 60 and 63**

17 The Federal Register Notices are formal announcements of new or revised regulations,
18 including New Source Performance Standards and Maximum Achievable Control
19 Technology Standards for Source Categories of Hazardous Air Pollutants. As previously
20 noted, Exhibit NMED 6 is a list of the notices announcing the amendments being
21 incorporated in this proposal, including the date of publication, the Part(s) of CFR Title
22 40 (either Part 60, Part 63 or both) amended, and the title of the notice. NSPS Subpart
23 OOOO, published on September 23, 2013, is highlighted, as it would not be included if
24 the Board adopts Part 77 as originally proposed. If printed, these notices would total
25 1660 pages. As a result, the full text Federal Register Notices are included on the CD
26 only as Exhibit NMED 15. The file name for each rule corresponds to the file name
27 listed in Exhibit NMED 6.

28 29 **Effect on Small Business**

30
31 Pursuant to the Small Business Regulatory Relief Act, 1978 NMSA § 14-4A-1, *et seq.*,
32 the Bureau has determined that the regulatory changes proposed in this action will not
33 have an adverse effect on small business. This determination is based on the fact that the
34 proposed amendment will not impose additional substantive requirements on facilities,
35 but will simply retain implementation authority with the State of New Mexico rather than
36 the U.S. EPA. Additionally, the New Mexico Environment Department-Small Business
37 Environmental Assistance Program provides ongoing technical assistance for small
38 businesses regarding new and existing environmental regulatory requirements.





1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 2 AIR QUALITY (STATEWIDE)**
3 **PART 77 NEW SOURCE PERFORMANCE STANDARDS**
4

5 **20.2.77.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.
6 [06/16/95; 20.2.77.1 NMAC - Rn, 20 NMAC 2.77.100 06/23/00]
7

8 **20.2.77.2 SCOPE:** Any stationary source constructing or modifying and which is subject to the
9 requirements of 40 CFR Part 60, as amended through [~~December 31, 2010~~] September 23, 2013.
10 [06/16/95, 11-19-97, 9-8-99; 20.2.77.2 NMAC - Rn 20 NMAC 2.77.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03;
11 A, 06/15/07; A, 08/17/09; A, 09/02/11; A, xx/xx/xx]
12

13 **20.2.77.3 STATUTORY AUTHORITY:** The environmental improvement board "shall promulgate
14 regulations and standards in...air quality management" (NMSA 1978, Section 74-1-8.A) and "regulations adopted
15 by the environmental improvement board...shall...ensure that regulations and standards under...the federal act will
16 not be violated." (NMSA 1978, Section 74-2-7.B).
17 [06/16/95; 20.2.77.3 NMAC - Rn, 20 NMAC 2.77.102 06/23/00]
18

19 **20.2.77.4 DURATION:** Permanent.
20 [06/16/95; 20.2.77.4 NMAC - Rn, 20 NMAC 2.77.103 06/23/00]
21

22 **20.2.77.5 EFFECTIVE DATE:** June 16, 1995, except where a later date is cited at the end of a section or
23 paragraph.
24 [06/16/95, 08/02/96; 20.2.77.5 NMAC - Rn, 20 NMAC 2.77.104 6/23/00]
25 [The latest effective date of any section in this part is xx-xx-xx]
26

27 **20.2.77.6 OBJECTIVE:** The objective of Part 77 of Chapter 2 is to adopt or establish state authority to
28 implement new source performance standards for stationary sources in New Mexico subject to 40 CFR Part 60.
29 [06/16/95; 20.2.77.6 NMAC - Rn, 20 NMAC 2.77.105 06/23/00]
30

31 **20.2.77.7 DEFINITIONS:** [RESERVED]
32 [20.2.77.7 NMAC - N, 06/23/00]
33

34 **20.2.77.8 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:** This part amends and
35 supersedes Air Quality Control Regulation (AQCR) 750, last filed on April 10, 1994. All references to AQCR 750
36 in any other rule shall be understood as a reference to this part.
37 [06/16/95; 20.2.77.8 NMAC - Rn, 20 NMAC 2.77.106 06/23/00]
38

39 **20.2.77.9 ADOPTION OF 40 CFR PART 60:** Except as otherwise provided, the new source performance
40 standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the
41 Federal Register through [~~December 31, 2010~~] September 23, 2013 are hereby incorporated into this part [20.2.77
42 NMAC].
43 [06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.77.9 NMAC - Rn 20 NMAC 2.77.107 & A, 06/02/00; A, 02/18/02; A,
44 06/13/03; A, 06/15/07; A, 08/17/09; A, 09/02/11; A, xx/xx/xx]
45

46 **20.2.77.10 MODIFICATIONS AND EXCEPTIONS:** The following modifications or exceptions are made
47 to the incorporated federal standards.

48 **A.** Amend 40 CFR Part 60, Section 60.2, Definitions, as follows: For the purposes of delegation of
49 authority which the administrator of the United States environmental protection agency may, in his discretion,
50 delegate to the secretary of the New Mexico environment department, "administrator" means the secretary of the
51 department or his authorized representative.

52 **B.** Exclude 40 CFR - Part 60, Subpart AAA - Standards of Performance for New Residential Wood
53 Heaters.

54 **C.** The federal standards of performance incorporated by this regulation shall not be subject to
55 NMSA 1978, Section 74-2-8 (Variances).

1 **D.** Exclude 40 CFR Part 60, Subpart HHHH, Emission Guidelines and Compliance Times for Coal-
2 Fired Electric Steam Generating Units.
3 [06/16/95; 20.2.77.10 NMAC - Rn, 20 NMAC 2.77.108 06/23/00; A, 06/15/07]

4
5 **20.2.77.11 DOCUMENTS:** Documents incorporated and cited in this Part may be viewed at the New
6 Mexico environment department, air quality bureau, 1301 Siler Road, Building B, Santa Fe NM, 87507.
7 [06/16/95; 20.2.77.11 NMAC - Rn, 20 NMAC 2.77.109 06/23/00; A, 08/17/09]

8
9 **HISTORY OF 20.2.77 NMAC:**

10 **Pre-NMAC History:** The material in this part was derived from that previously filed with the Commission of
11 Public Records-State Records Center and Archives.

12 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 07/24/84.

13 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 08/18/87.

14 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 07/07/88.

15 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/27/89.

16 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 05/29/90.

17 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/22/91.

18 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/14/92.

19 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/21/93.

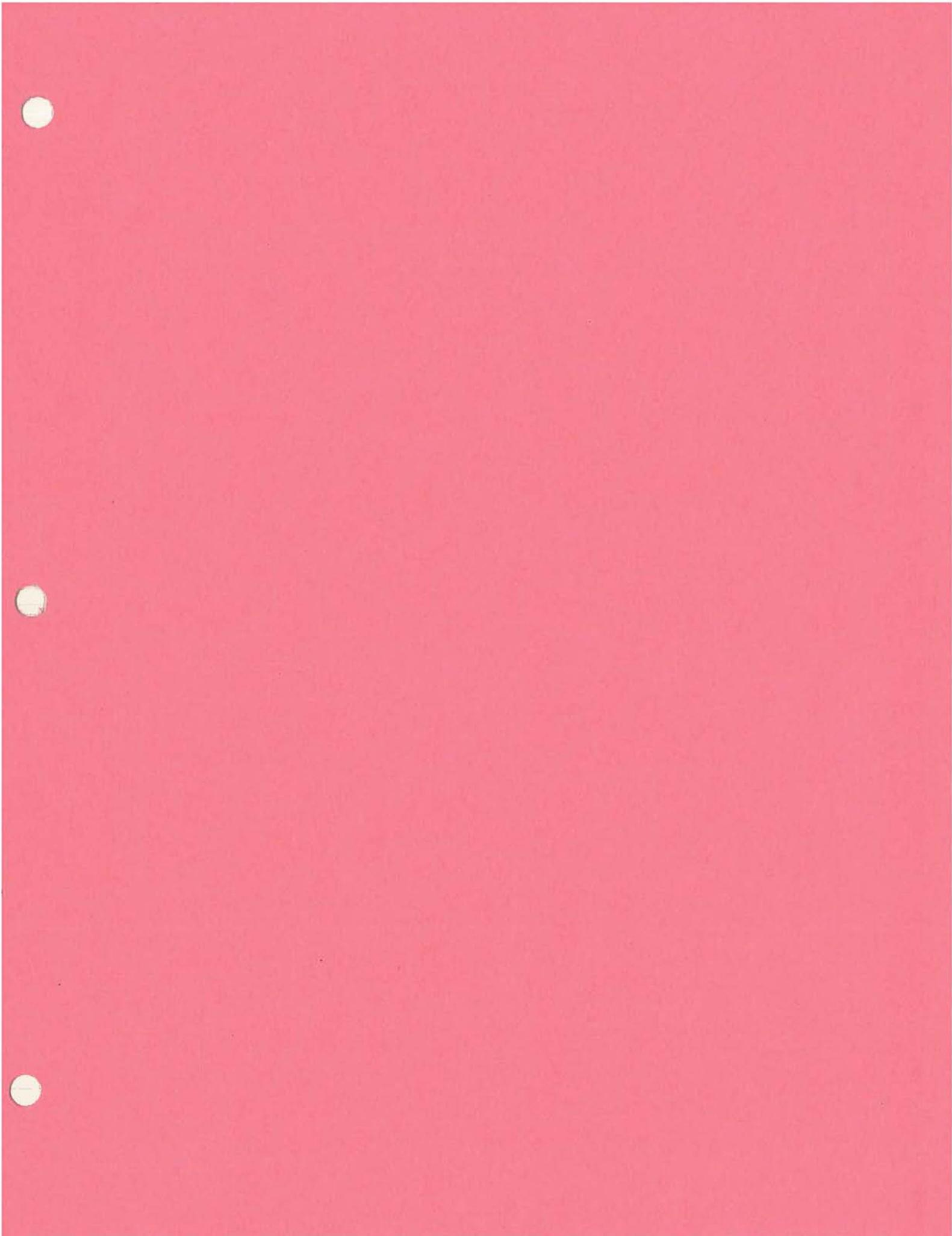
20 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/12/94.

21
22 **History of Repealed Material:** [RESERVED]

23
24 **Other History:**

25 EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, filed 04/12/94 was
26 **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.77, New Source
27 Performance Standards, filed 05/17/95.

28 20 NMAC 2.77, New Source Performance Standards, filed 05/17/95, was **renumbered, reformatted, amended**
29 **and replaced** by 20.2.77 NMAC, New Source Performance Standards, effective 06/23/00.
30





1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 2 AIR QUALITY (STATEWIDE)**
3 **PART 82 MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY STANDARDS FOR SOURCE**
4 **CATEGORIES OF HAZARDOUS AIR POLLUTANTS**

5
6 **20.2.82.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.
7 [Rn, 20 NMAC 2.82.1, 08/14/98; 20.2.82.1 NMAC - Rn, 20 NMAC 2.82.100 06/23/00]

8
9 **20.2.82.2 SCOPE:** All sources emitting hazardous air pollutants, which are subject to the requirements of
10 40 CFR Part 63, as amended through [~~December 31, 2010~~] August 29, 2013.
11 [Rn, 20 NMAC 2.82.2, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.2 NMAC - Rn 20 NMAC 2.82.101 & A, 06/23/00;
12 A, 02/18/02; A, 06/13/03; A, 06/08/07; A, 08/17/09; A, 09/02/11]

13
14 **20.2.82.3 STATUTORY AUTHORITY:** Environmental Improvement Act, NMSA 1978, Section 74-1-8
15 (A) (4) and (7), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section
16 74-2-5 (A), (B) and (C). Section 74-2-5 (C) provides that "regulations adopted by the environmental improvement
17 board may prescribe standards of performance for sources and emissions standards for hazardous air pollutants..."
18 [Rn, 20 NMAC 2.82.3, 08/14/98; A, 08/14/98; 20.2.82.3 NMAC - Rn, 20 NMAC 2.82.102 06/23/00]

19
20 **20.2.82.4 DURATION:** Permanent.
21 [Rn, 20 NMAC 2.82.4, 08/14/98; 20.2.82.4 NMAC - Rn, 20 NMAC 2.82.103 06/23/00]

22
23 **20.2.82.5 EFFECTIVE DATE:** November 27, 1994, except where a later date is cited at the end of a
24 section or paragraph.
25 [Rn, 20 NMAC 2.82.5, 08/14/98; A, 08/14/98; 20.2.82.5 NMAC - Rn, 20 NMAC 2.82.104 06/23/00]
26 [The latest effective date of any section in this part is September 2, 2011]

27
28 **20.2.82.6 OBJECTIVE:** The objective of this part is to adopt or establish state authority to implement
29 emission standards for hazardous air pollutants for the source categories in New Mexico subject to federal standards.
30 The US EPA requires New Mexico to adopt such standards in order to implement requirements in Section 112 of the
31 Clean Air Act.
32 [Rn, 20 NMAC 2.82.6, 08/14/98; A, 08/14/98; 20.2.82.6 NMAC - Rn, 20 NMAC 2.82.105 06/23/00]

33
34 **20.2.82.7 DEFINITIONS:** [Reserved]
35 [20.2.82.7 NMAC - Rn, 20 NMAC 2.82.107 06/23/00]

36
37 **20.2.82.8 ADOPTION OF 40 CFR PART 63:** Except as otherwise provided in section 20.2.82.10 NMAC
38 (below), the national emission standards for hazardous air pollutants for source categories as promulgated by the US
39 EPA, 40 CFR Part 63, as amended in the Federal Register through [~~December 31, 2010~~] August 29, 2013 are hereby
40 incorporated into this part (20.2.82 NMAC).
41 [Rn, 20 NMAC 2.82.7, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.8 NMAC - Rn 20 NMAC 2.82.106 & A, 06/23/00;
42 A, 02/18/02; A, 06/13/03; A, 06/08/07; A, 08/17/09; A, 09/02/11]

43
44 **20.2.82.9 SOURCES SUBJECT TO 40 CFR 63.40 - 63.44 OF SUBPART B (Constructed and**
45 **Reconstructed Major Sources of Hazardous Air Pollutants):** The owner or operator of a source subject to these
46 provisions, that will be constructing or reconstructing after June 29, 1999, shall not construct or reconstruct unless:
47 A. the source has received a maximum achievable control technology (MACT) determination and
48 approval from the department under this part; and
49 B. the MACT determination and approval has been incorporated into a permit under 20.2.72 NMAC
50 - Construction Permits or 20.2.70 NMAC - Operating Permits.
51 [08/14/98; 20.2.82.9 NMAC - Rn, 20 NMAC 2.82.108 06/23/00]

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53 **20.2.82.10 MODIFICATIONS AND EXCEPTIONS:** The following modifications or exceptions are made
54 to the incorporated federal standards:
55 A. general provisions: Amend 40 CFR Part 63, Subpart A - General Provisions, Section 63.2,

1 Definitions, as follows: For the purposes of delegation of authority which the Administrator of the US EPA may, in
2 his or her discretion, delegate to the secretary of the New Mexico environment department, "administrator" means
3 the secretary or his/her authorized representative.

4 **B.** variances: The federal emission standards incorporated by this Part shall not be subject to NMSA
5 1978, Section 74-2-8 (Variances).

6 **C.** constructed and reconstructed major sources: The effective date for incorporation of 40 CFR
7 63.40 - 63.44 of Subpart B under 20.2.82.8 NMAC shall be June 29, 1999.

8 [Rn, 20 NMAC 2.82.8, 08/14/98; A, 08/14/98; 20.2.82.10 NMAC - Rn, 20 NMAC 2.82.109 06/23/00]

9
10 **20.2.82.11 DOCUMENTS:** Documents incorporated and cited in this part may be viewed at the New
11 Mexico environment department, air quality bureau, 1301 Siler Road, Building B, Santa Fe NM, 87507.
12 [08/14/98; 20.2.82.11 NMAC - Rn, 20 NMAC 2.82.110 06/23/00; A, 08/17/09]

13
14 **HISTORY OF 20.2.82 NMAC:**

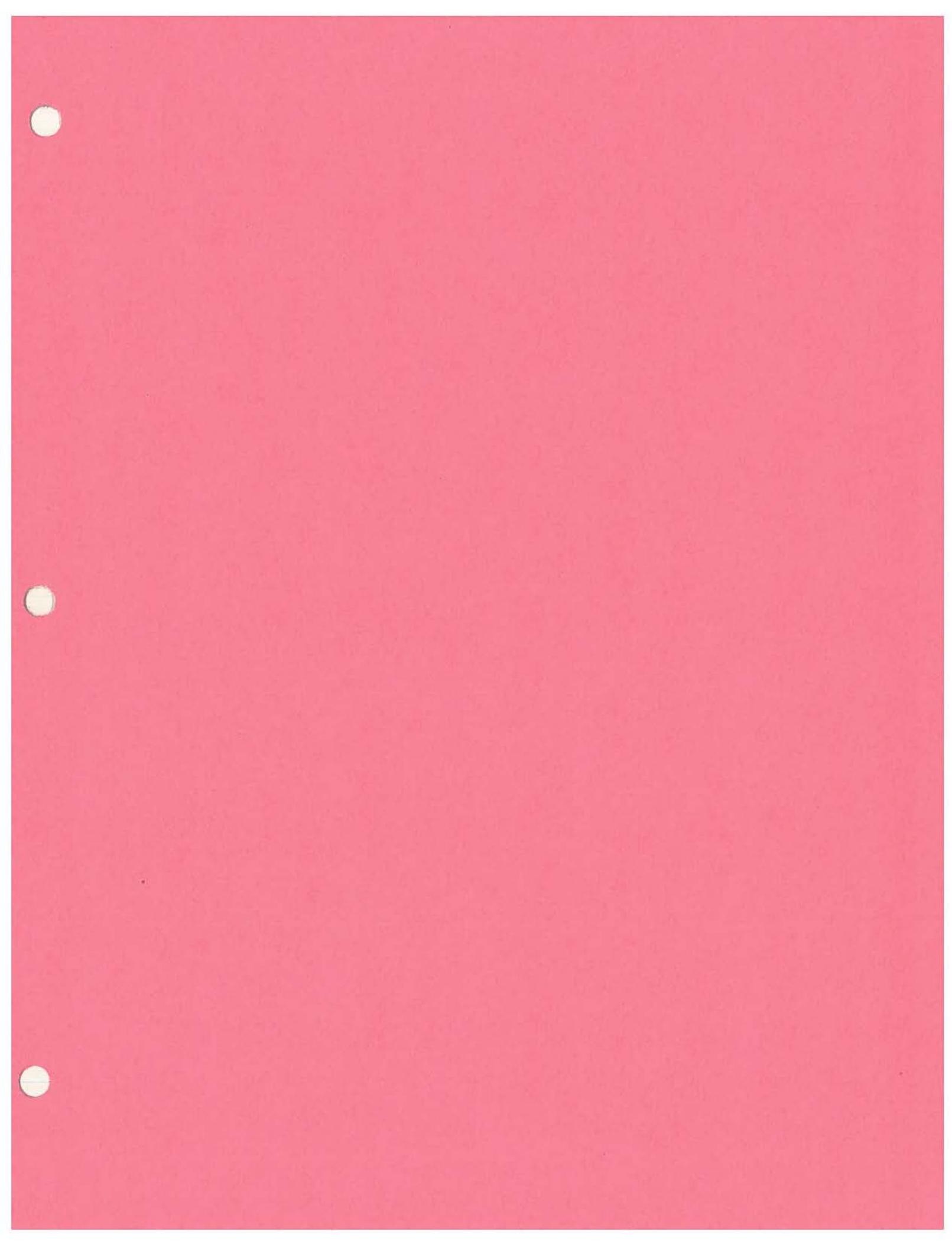
15 **Pre-NMAC History:** None.

16
17 **History of Repealed Material:** [RESERVED]

18
19 **Other History:**

20 20 NMAC 2.82, Maximum Achievable Control Technology Standards For Source Categories Of Hazardous Air
21 Pollutants, effective 11/27/94.

22 20 NMAC 2.82, Maximum Achievable Control Technology Standards For Source Categories Of Hazardous Air
23 Pollutants (filed 10/28/94) was **renumbered, reformatted, amended and replaced** by 20.2.82 NMAC, Maximum
24 Achievable Control Technology Standards For Source Categories Of Hazardous Air Pollutants, effective 06/23/00.





PDF name	Date of Federal Register	40 CFR Part(s)	Title	# pages
2011-1008	1/20/2011	60	Standards of Performance for Fossil-Fuel-Fired, Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units	8
2011-759	1/18/2011	60 and 63	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants	6
2011-906	1/24/2011	63	National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities	31
2011-2608	2/17/2011	63	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category; and Addition to Source Category List for Standards	41
2011-4310	2/25/2011	60	Standards of Performance for New Stationary Sources; Correction	1
2011-5196	3/9/2011	63	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines	11
2011-5778	3/14/2011	63	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources	2
2011-4491	3/21/2011	60	Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units	84
2011-4493	3/21/2011	63	National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers	54
2011-4494	3/21/2011	63	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters	96
2011-4495	3/21/2011	60	Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units	88
2011-7899	4/4/2011	60	Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators	9

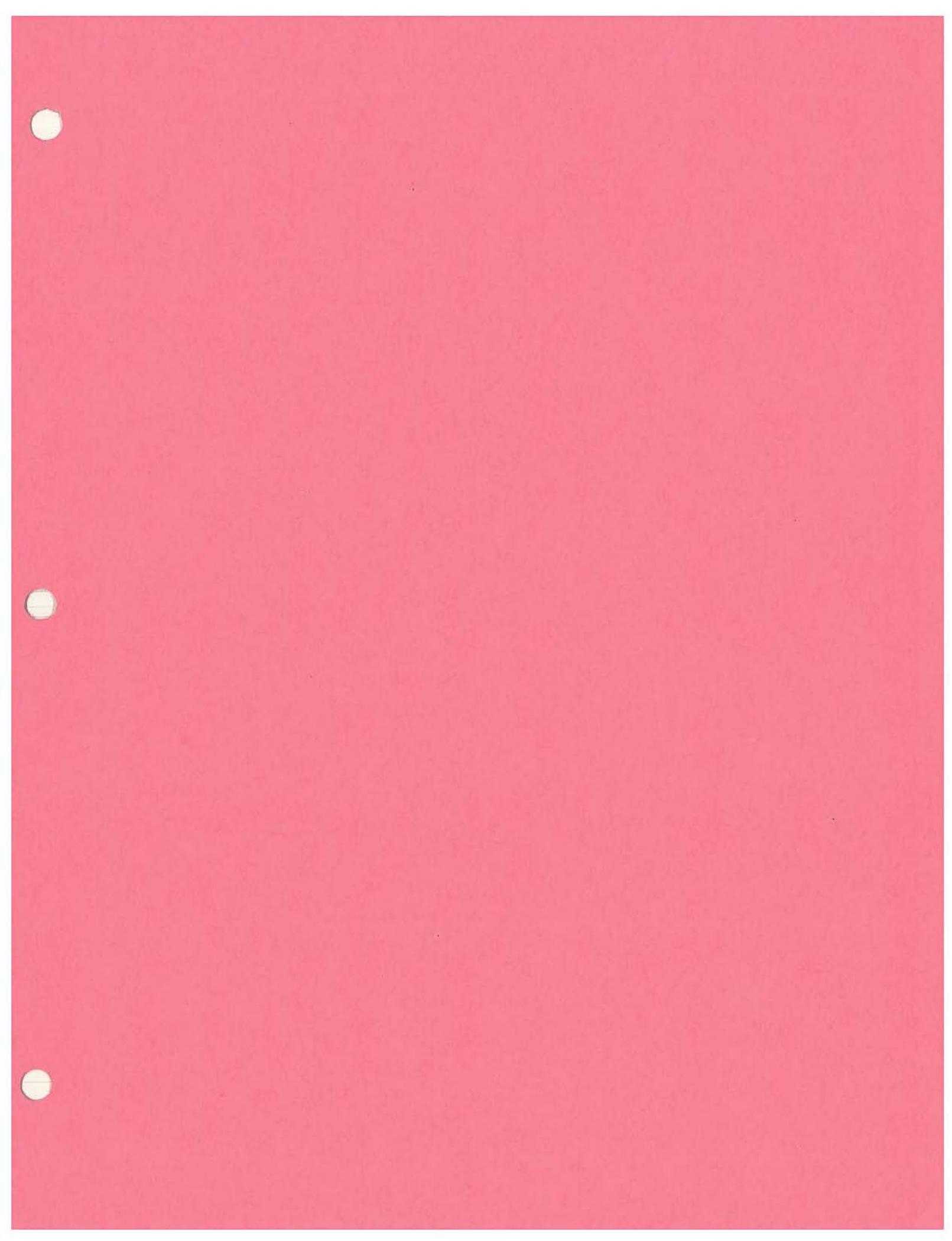
Exh. NMED 6

PDF name	Date of Federal Register	40 CFR Part(s)	Title	# pages
2011-8168	4/21/2011	63	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry	38
2011-12095	5/17/2011	60 and 63	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants	9
2011-12308	5/18/2011	60 and 63	Industrial, Commercial, and Institutional Boilers and Process Heaters and Commercial and Industrial Solid Waste Incineration Units	3
2011-15274	6/20/2011	63	Amendments to National Emission Standards for Hazardous Air Pollutants for Area Sources: Plating and Polishing	10
2011-15004	6/28/2011	60	Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines	26
2011-16462	6/29/2011	60	Standards of Performance for New Stationary Sources; Correction	3
2011-17901	7/18/2011	63	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries; Partial Withdrawal of Final Rule	4
2011-23806	9/19/2011	63	Amendments to National Emission Standards for Hazardous Air Pollutants for Area Sources: Plating and Polishing	11
2011-29287	11/15/2011	63	National Emission Standards for Hazardous Air Pollutant Emissions for Primary Lead Processing	27
2011-29457	11/21/2011	63	National Emission Standards for Hazardous Air Pollutant Emissions for Shipbuilding and Ship Repair (Surface Coating); National Emission Standards for Wood Furniture Manufacturing Operations	27
2011-32835	12/23/2011	63	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Prepared Feeds Manufacturing; Amendments	6
2011-32933	1/5/2012	63	National Emissions Standards for Hazardous Air Pollutants From Secondary Lead Smelting	37
2012-712	1/18/2012	60	Incorporation of Revised ASTM Standards That Provide Flexibility in the Use of Alternatives to Mercury-Containing Industrial Thermometers	11

PDF name	Date of Federal Register	40 CFR Part(s)	Title	# pages
2012-806	2/16/2012	60 and 63	National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units	211
2012-6421	4/17/2012	63	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production	102
2012-8703	4/19/2012	60 and 63	National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units; Correction	11
2012-18513	7/30/2012	60	Method 16C for the Determination of Total Reduced Sulfur Emissions From Stationary Sources	7
2012-19691	8/14/2012	60	New Source Performance Standards Review for Nitric Acid Plants	16
2012-16806	8/16/2012	60 and 63	Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews	112
2012-20501	9/11/2012	63	National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry	18
2012-20866	9/12/2012	60	Standards of Performance for Petroleum Refineries; Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007	60
2012-20642	9/19/2012	63	National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants	35
2012-30698	12/21/2012	63	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources	26
2013-01288	1/30/2013	60 and 63	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines	52
2012-31646	1/31/2013	63	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters	77

PDF name	Date of Federal Register	40 CFR Part(s)	Title	# pages
2012-31645	2/1/2013	63	National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers	36
2012-31632	2/7/2013	60	Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste	103
2012-31633	2/12/2013	60 and 63	National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants	50
2013-01288-correction	3/6/2013	60 and 63	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines; Correction	1
2013-24073	4/24/2013	60 and 63	Final Rule; Reconsideration of Certain New Source Issues: National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Steam Generating Units	22
2013-28052	5/13/2013	60	Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed On or Before December 1, 2008, and Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators; Final Rule	28
2013-14624	6/20/2013	63	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries	16
2013-22010	9/23/2013	60	Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards [Subpart OOOO]	34

Total number of pages: 1660







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI
1201 ELM STREET
DALLAS, TEXAS 75270

3/25/85
Deine?

*Classified Mail
File EPA
Correspondence*

TA FYI

84-05-10

3/15
3/27/8
EHL

March 15, 1985

Honorable Toney Anaya
Governor of New Mexico
Santa Fe, New Mexico 87503

Dear Governor Anaya:

In response to your letter of October 19, 1984, I am pleased to grant your request for delegation of authority for implementation and enforcement of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants to the New Mexico Environmental Improvement Division.

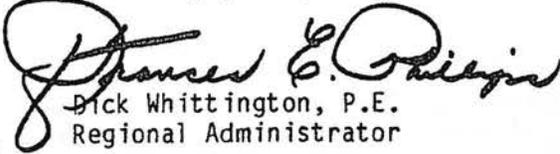
The pertinent laws of the State of New Mexico and the rules and regulations of the New Mexico Environmental Improvement Division have been reviewed and have been found to provide an adequate and effective procedure for implementation and enforcement of the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants by the New Mexico Environmental Improvement Division and the State of New Mexico. The resources and capabilities of the New Mexico Environmental Improvement Division have been found to be adequate to implement and enforce these programs.

Therefore, I am delegating authority to the New Mexico Environmental Improvement Division to implement and enforce New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, promulgated by the Environmental Protection Agency (EPA) through March 14, 1984, and December 9, 1983, respectively. This delegation of authority is granted pursuant to Sections 111(c) and 112(d) of the Clean Air Act, and is subject to the conditions and limitations stated in the delegation. Except as specifically limited in this letter, all of the authority and responsibilities of the Administrator or the Regional Administrator which are found in 40 CFR Part 60 and 40 CFR Part 61 as of the date of this letter are delegated to the New Mexico Environmental Improvement Division. Any of such authority and responsibilities may be redelegated by the Division to its Director or staff.

In addition, the New Mexico Environmental Improvement Division will maintain partial delegation of authority for the technical and administrative review of New Source Performance Standards promulgated or revised after March 14, 1984, and of National Emission Standards for Hazardous Air Pollutants promulgated or revised after December 9, 1983. This partial delegation of authority is also subject to the conditions and limitations stated in the delegation.

Since this delegation is effective immediately, there is no requirement that the State notify the EPA of its acceptance. Unless the EPA receives from the State of New Mexico a written notice of objection within ten days of the date of receipt of this letter, the State of New Mexico and the New Mexico Environmental Improvement Division will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,


Dick Whittington, P.E.
Regional Administrator

Enclosure

cc: Denise Fort, Director
New Mexico Environmental Improvement Division
P. O. Box 968, Crown Building
Santa Fe, New Mexico 87504-0968

PROVISIONS

for

FULL DELEGATION

for the

NATIONAL EMISSION STANDARDS FOR

HAZARDOUS AIR POLLUTANTS (NESHAP) AUTHORITY

and

NEW SOURCE PERFORMANCE STANDARDS (NSPS) AUTHORITY

to the

STATE OF NEW MEXICO

(40 CFR Parts 60 and 61)

EFFECTIVE DATE:

March 15, 1985

Introduction

On October 19, 1984, the Governor of New Mexico requested that the U.S. Environmental Protection Agency (EPA) delegate full authority to New Mexico for the New Source Performance Standards (NSPS) program and for the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. The Governor based his request upon the adoption by the New Mexico Environmental Improvement Board of Air Quality Control Regulation 750 (New Source Performance Standards), and Air Quality Control Regulation 751 (Emission Standards for Hazardous Air Pollutants) on July 13, 1984.

Under the New Mexico Air Quality Control Act, the City of Albuquerque and Bernalillo County have established a program for the local administration and enforcement of the Air Quality Control Act, in lieu of the New Mexico Environmental Improvement Board. The authority delegated in this document excludes those sources located within the boundaries of Bernalillo County.

Full Delegation

EPA has reviewed the Governor's request, Air Quality Control Regulations 750 and 751, and all other available information on the New Mexico Environmental Improvement Division (NMEID), including its implementation of the partial delegation of these programs. EPA finds that the NMEID has an adequate and effective procedure for implementing and enforcing the NSPS and NESHAP programs in the State of New Mexico, except for Indian lands, as defined at 18 U.S.C. §1151. Therefore, EPA hereby delegates the following authority for the implementation and enforcement of the NSPS and NESHAP to the State of New Mexico, subject to the conditions and limitations specified below:

1. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to the NSPS promulgated in 40 CFR Part 60 through March 14, 1984.
2. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to the NESHAP promulgated in 40 CFR Part 61 through December 9, 1983.

Conditions and Limitations

1. Implementation and enforcement of NSPS and NESHAP in the State of New Mexico, outside Indian lands, will be the primary responsibility of the NMEID. If the State of New Mexico or the NMEID determines that such implementation or enforcement is not possible or feasible, either with respect to an individual source, a class of sources, or generally, the NMEID shall, within 30 days, notify EPA Region 6 of such impossibility or infeasibility so that EPA may timely exercise its concurrent authority with respect to sources within the State of New Mexico.
2. Acceptance of this delegation constitutes agreement by the State of New Mexico and the NMEID to follow all interpretations, past and future, made by EPA of 40 CFR Parts 60 and 61, including determinations of appli-

cability. Prior EPA concurrence shall be obtained on any matter involving the interpretation of Sections 111 or 112 of the Clean Air Act or 40 CFR Parts 60 or 61 to the extent that application, implementation, administration, or enforcement of these sections have not been covered by prior EPA determinations or guidance.

3. The State of New Mexico and the NMEID are not authorized to approve or disapprove any application, exemption, variance, or grant waiver of compliance with any provision of 40 CFR Part 61. The State of New Mexico or the NMEID are, however, authorized to receive, review, evaluate, and recommend to EPA approval or disapproval of an application, exemption, variance or waiver.

4. The Federal NSPS regulations in 40 CFR Part 60, as amended, do not have provisions for granting waivers by class of testing requirements or variances, hence this delegation does not convey to the State of New Mexico or the NMEID authority to grant waivers by class of testing requirements or variances from NSPS regulations.

5. The State of New Mexico and the NMEID shall utilize the methods specified in applicable Appendices and Subparts of 40 CFR Parts 60 or 61 in determining compliance with the regulations, including requiring tests at the times required by the regulations.

Authority is delegated to approve minor modifications to the reference test methods in 40 CFR Parts 60 and 61, during either a pre-test meeting or the actual sampling period. These minor modifications would have to produce results essentially identical to the reference method results. Approval of these minor modifications should be based on sound engineering judgment. Under no circumstances are modifications to be used which might result in the non-uniform application of the standards.

6. If at any time there is a conflict between any State regulation and any provision of 40 CFR Parts 60 or 61, the Federal regulation must be applied to the extent that it is more stringent than that of the State. If the State of New Mexico or the NMEID does not have the authority to enforce the more stringent Federal regulation, the NMEID shall immediately notify EPA Region 6 pursuant to Condition 1 above. This delegation may be revoked by EPA, in whole or in part, in the event any such conflict makes implementation or enforcement of NSPS or NESHAP administratively impractical.

7. If a claim of confidentiality or any other reason should ever legally prevent the State of New Mexico and the NMEID from providing to EPA any or all information required by or pertaining to the implementation of NSPS and NESHAP, the NMEID shall, upon request, assist EPA Region 6 in obtaining that information directly from the source. At a minimum, such assistance shall consist of providing to EPA an identification of the nature of the information which the State cannot provide. In the absence of such a legal reason, the State and the NMEID shall make available to any designated representative of EPA upon request all records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of 40 CFR Parts 60 or 61.

8. All matters in process at the time of delegation of authority may be processed through to completion by EPA Region 6, or may, at the request of the NMEID and at the discretion of EPA, be transferred to the NMEID for completion. Appropriate reproduction of pertinent file material in the EPA Region 6 files in relation to source regulation under NSPS and NESHAP shall be provided through mutual cooperation of the staffs of the respective offices.

9. Existing monthly reports normally submitted to EPA Region 6 for the Compliance Data System (CDS) shall be expanded to contain pertinent information relating to the status of sources subject to 40 CFR Parts 60 or 61. As a minimum, the following information must be provided to EPA: the name, address, type and size of each facility; date that operation at the facility commenced and dates of most recent compliance test; the compliance status of each facility with accompanying explanations of noncompliance where applicable; notice of enforcement actions brought against facilities because of violations of 40 CFR Parts 60 or 61; surveillance actions undertaken for each facility; and the results of all reports relating to emissions data, including excess emissions reports.

10. Emission data, as defined in 40 CFR 2.301(a)(2), shall be made available to the public. Emission data is to be correlated with applicable emission limitations or other measures in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions which are allowable under the applicable emission limitations. If any information which is defined as emission data is found to be not available to the public by reason of State law or other legal requirement, the NMEID shall so notify EPA, Region 6, so that EPA may take the action necessary to release such data.

11. No authority is granted to the State or the NMEID to take any action which would require rulemaking by EPA. This limit on authority includes the grant of a waiver of testing requirements for any class of sources.

Partial Delegation

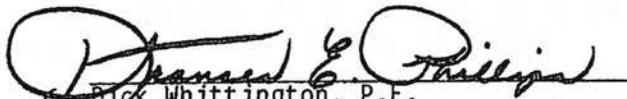
The NMEID has requested that it have partial delegation for sources for which new regulations or revised regulations are promulgated, except for sources in Indian lands, as defined at 18 U.S.C. §1151. EPA hereby delegates the following partial authority for the implementation of the NSPS and NESHAP to the State of New Mexico subject to the following conditions and limitations:

1. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NSPS promulgated in 40 CFR Part 60 after March 14, 1984, for which full delegation has not been granted above.
2. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NESHAP promulgated in 40 CFR Part 61 after December 9, 1983, for which full delegation has not been granted above.
3. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NSPS for which full delegation is granted above, when part or all of that NSPS has been revised after March 14, 1984.
4. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NESHAP for which full delegation is granted above, when part or all of that NESHAP has been revised after December 9, 1983.

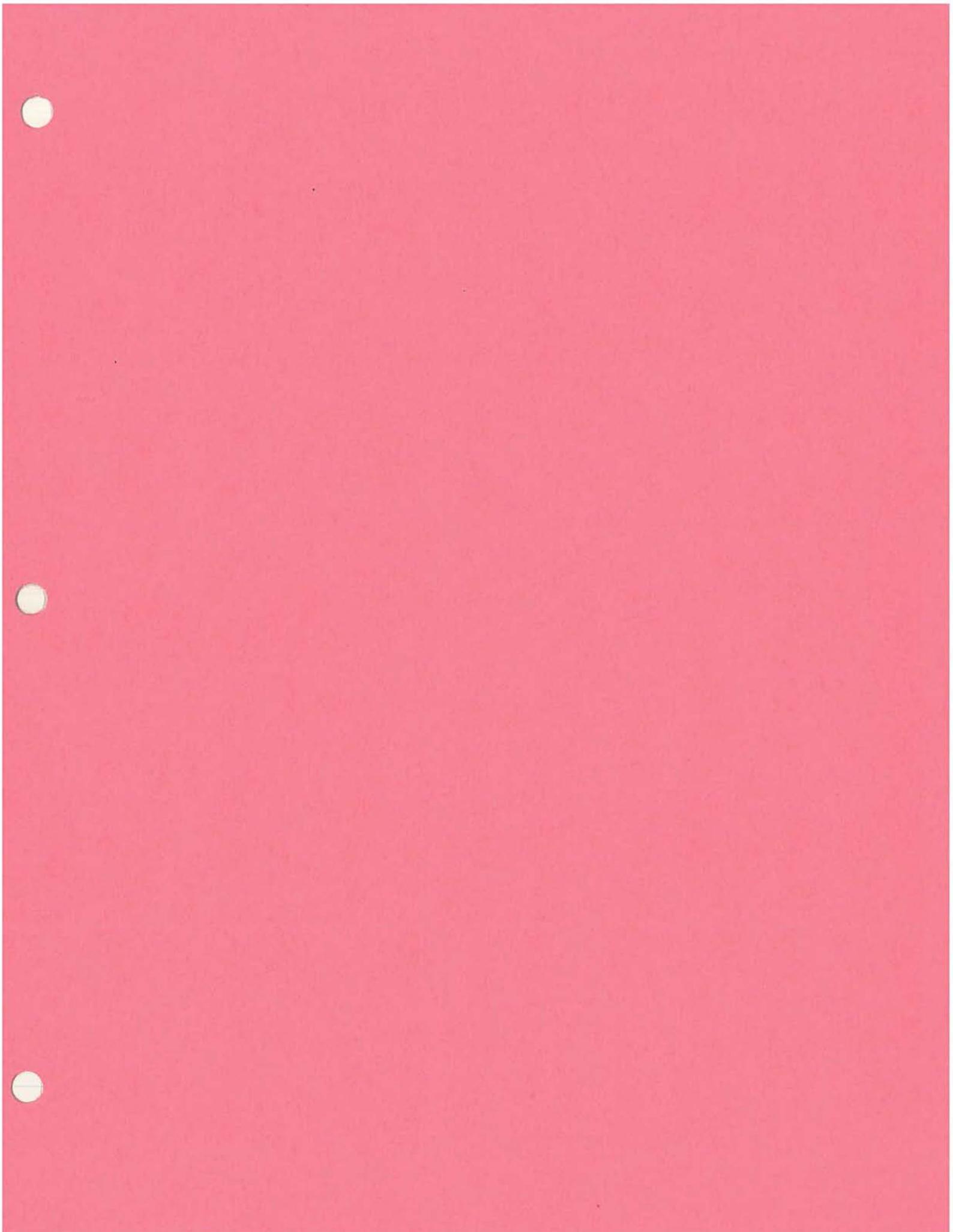
Conditions and Limitations

1. The NMEID shall conduct only the technical and administrative review including determination of applicability, review and evaluation of NSPS and NESHAP applications, review and evaluation of requests for waivers of compliance under 40 CFR 61.11 and/or waivers of emission tests under 40 CFR 61.13, performance and evaluation of inspections, and observance and evaluation of compliance tests and continuous emission monitoring tests.
2. All conditions and limitations specified above for full delegation apply also to this partial delegation.

A notice of this delegation of authority will be published in the Federal Register in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the Federal NSPS and NESHAP by sources located in the State of New Mexico should be submitted to the New Mexico Health and Environment Department, Environmental Improvement Division, P. O. Box 968, Crown Building, Santa Fe, New Mexico, 87504-0968. Any such reports which may be received by EPA, Region 6, after the effective date of this delegation will be promptly transmitted to the NMEID.


James E. Phillips
Regional Administrator
Region 6
U.S. Environmental Protection Agency
Dallas, Texas

March 15, 1985
Date







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JUL 27 1995



Mr. Mark Weidler
Secretary
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502-6110

Dear Mr. Weidler:

Our office has completed review of your November 9, 1994, submittal for delegation of authority under 40 Code of Federal Regulations (CFR) Part 63, Subpart E to implement and enforce the following regulations: the New Mexico Air Quality Control Regulation (AQCR) 780, since renamed as 20 New Mexico Administrative Code (NMAC) 2.82 - Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants; and the New Mexico AQCR 755, since renamed 20 NMAC 2.83 - Construction or Modification of Major Sources of Hazardous Air Pollutants and amendments to AQCR 702.

Specifically, your submittal seeks delegation of authority to implement and enforce the following Federal standards:

- 1) the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories: General Provisions for 40 CFR Part 63, Subpart A, promulgated March 16, 1994;
- 2) NESHAP for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks - Hazardous Organic NESHAP, 40 CFR Part 63, Subparts F, G, H, and I promulgated April 22, 1994, and subsequent correction notices;
- 3) NESHAP for Source Categories: Coke Oven Batteries promulgated October 27, 1994, and subsequent correction notice, January 13, 1994;
- 4) NESHAP for Source Categories: Perchloroethylene Dry Cleaning Facilities promulgated September 22, 1993, and the associated amendment published on December 20, 1993.

Your submittal was found to be complete with respect to the information necessary to grant authority to implement and enforce these Maximum Achievable Control Technology (MACT) standards and

General Provisions; thus with this letter, we are delegating to the New Mexico Environment Department the authority to implement and enforce these standards as they apply to major sources in New Mexico.

Your letter also requests that the Environmental Protection Agency (EPA) grant the New Mexico Environment Department (NMED) full authority to implement and enforce the requirements of section 112(g) of the Clean Air Act Amendments of 1990 which was adopted to govern modifications to hazardous air pollutant (HAP) sources. Your submittal includes 20 NMAC 2.83 which addresses the modification, construction, and reconstruction of HAP sources.

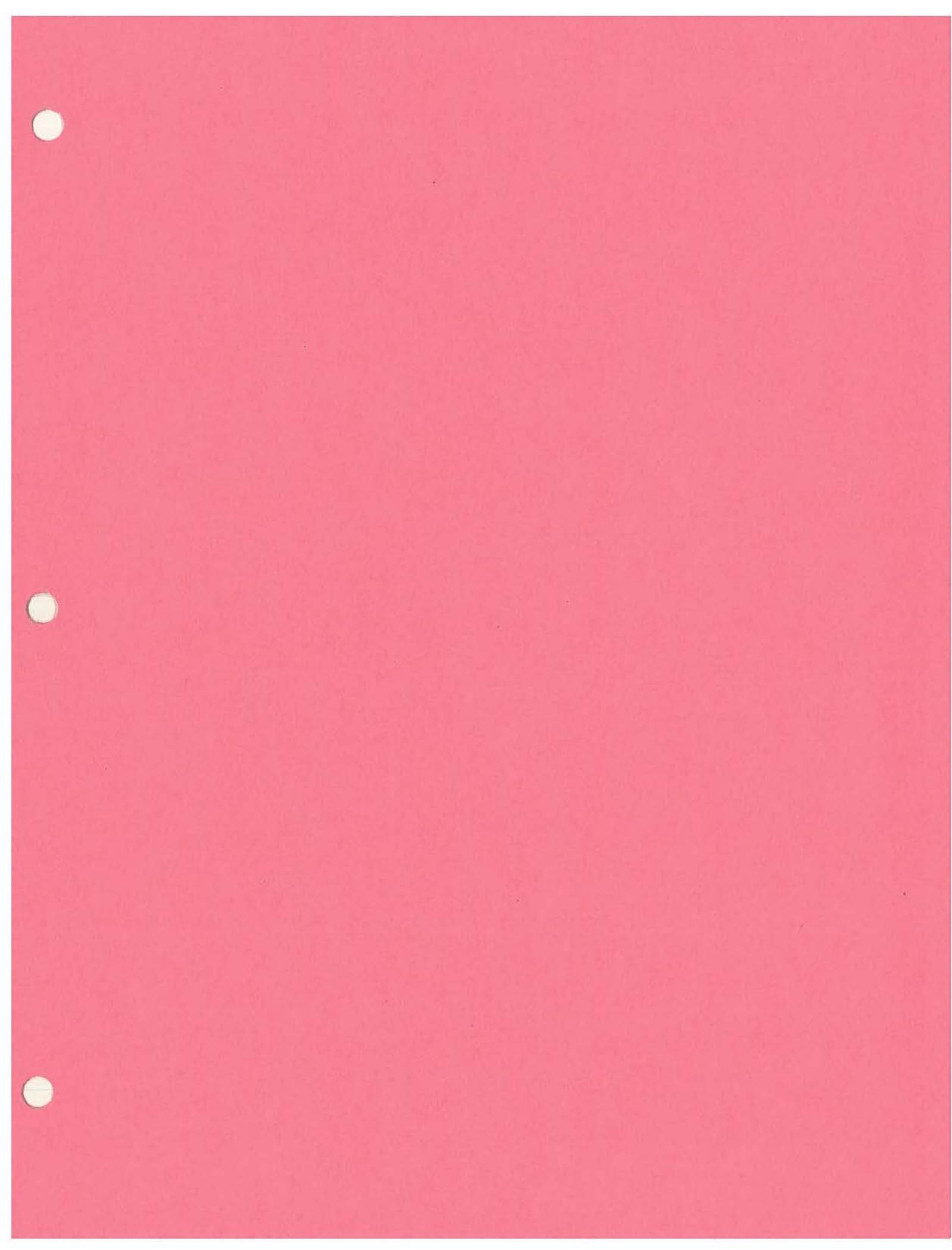
On February 14, 1995, an Interpretive Notice regarding the 112(g) rule was published in the Federal Register. This interpretive ruling postpones the effective date of section 112(g) until after the EPA has promulgated a rule addressing that provision. As a result, it is EPA's understanding that the NMED has decided not to promulgate this regulation and has withdrawn this rule from EPA's consideration. Therefore, Region 6 is returning the 20 NMAC 2.83 rule to the NMED for future action by the State.

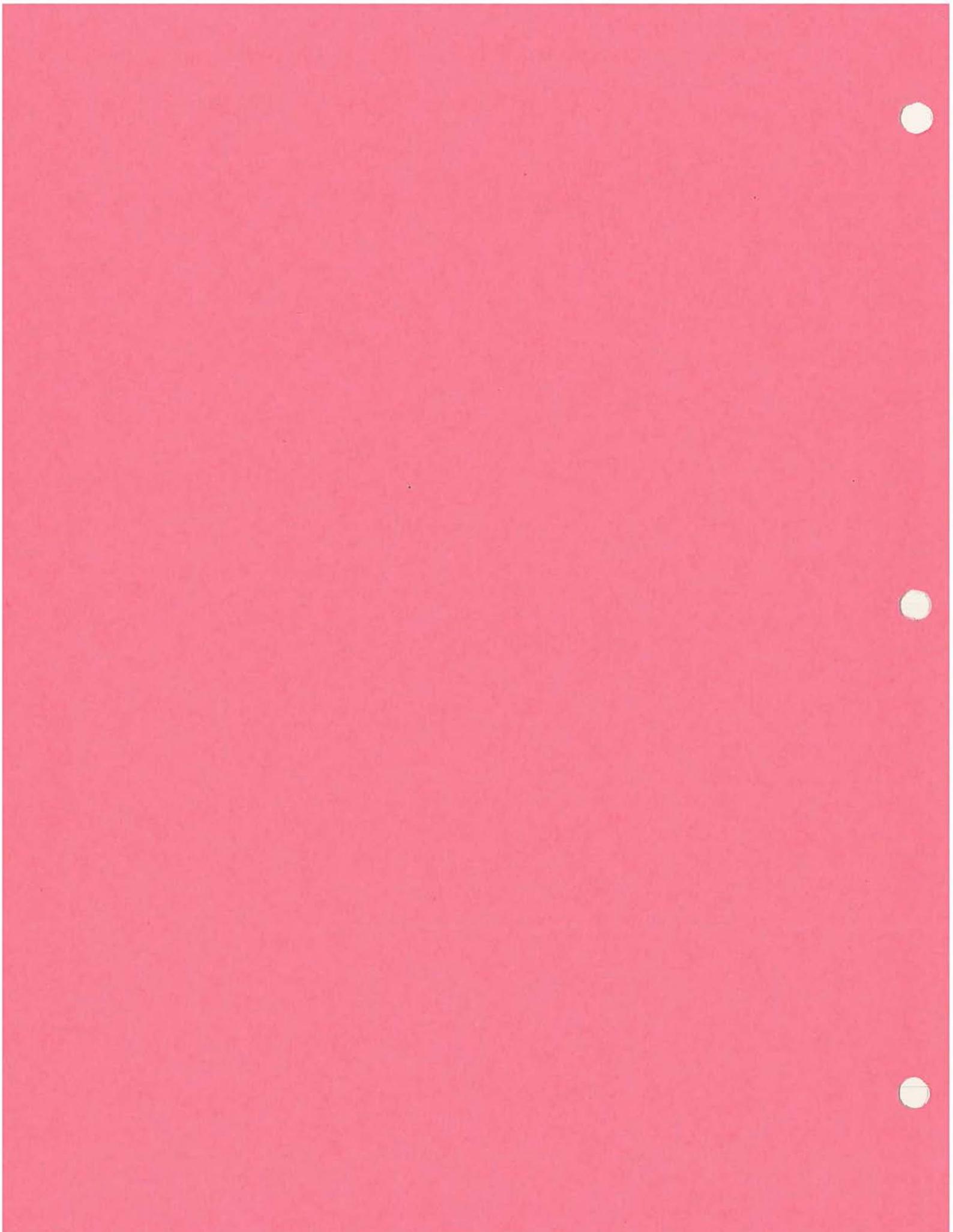
Region 6 is pleased that the NMED is actively pursuing delegation of federally promulgated MACT standards and looks forward to working closely with you to accomplish this goal. If you have any questions or comments regarding the contents of this letter, please contact Ms. Adele Cardenas at (214) 665-7210.

Sincerely yours,

A. Stanley Meiburg
Acting Regional Administrator

cc: Mr. Bill Blankenship
New Mexico Environment Department ✓







**New Mexico Commission of Public Records
Administrative Law Division**

1205 Camino Carlos Rey
Santa Fe, NM 87507
505-476-7907

Affidavit of Publication in the *New Mexico Register*

I, Art Bransford, certify that the agency noted below has published legal notices or rules in the New Mexico Register, and that payment has been assessed by invoice for said legal notice or publication, which appeared on the date and in the volume and issue number noted below.

Date of Publication: 8/30/2013

Volume: XXIV **Issue #:** 16

Invoice #: NMR-2014- 38

Amount: \$80.00

Agency:

Environment Department - Air Quality

Contact: Lany Weaver

525 camino de Los Marquez #1

Santa Fe, NM 87505-

Description:

Notice

Notice of Rulemaking Hearing

Notice

Notice of Rulemaking Hearing

State of New Mexico, County of Santa Fe

Signed and affirmed before me on Tuesday, September 03, 2013

by Art Bransford

Notary Public: Louise Wood

Louise Wood [My commission expires: 5 15 17]

Affiant: Art Bransford

Publisher, *New Mexico Register*

Date: 9/3/2013

~Copies of the published material documented in this affidavit are enclosed~

(seal)

Form SRC-2002-04 Revised July 2007

Exh. NMED 9a

Notices of Rulemaking and Proposed Rules

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ENERGY CONSERVATION AND MANAGEMENT DIVISION

NOTICE OF PUBLIC HEARING AND RULEMAKING OF THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division will hold a public hearing on proposed rule changes to the Sustainable Building Tax Credit Program at 9:15 a.m. on Tuesday, September 17, 2013 in Porter Hall, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico.

EMNRD is proposing changes to the following rules: 3.4.16 NMAC, Sustainable Building Tax Credit for Residential Buildings, Corporate Income Taxes; 3.4.17 NMAC, Sustainable Building Tax Credit for Commercial Buildings, Corporate Income Taxes; 3.3.29 NMAC, Sustainable Building Tax Credit for Residential Buildings, Personal Income Taxes; and 3.3.30 NMAC, Sustainable Building Tax Credit for Commercial Buildings, Personal Income Taxes. Proposed changes to 3.4.16 NMAC include addition of definitions and the lowering of the annual cap for tax credits for residential buildings to reflect statutory changes. Proposed changes to 3.4.17 NMAC include the addition of multifamily dwellings to the definition of commercial building, streamlining of the tax credit application process and the lowering of the annual cap for tax credits for residential buildings to conform to statutory changes. Proposed changes to 3.3.29 NMAC include addition of definitions and the lowering of the annual cap for residential building to reflect statutory changes. Proposed changes to 3.3.30 NMAC include the addition of multifamily dwellings to the definition of commercial building, streamlining of the tax credit application process and the lowering of the annual cap for commercial buildings to conform to statutory changes.

Copies of the proposed rule changes are available from EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, NM 87505; at www.cleanenergy.nm.org; or by contacting Ken Hughes at khughes@state.nm.us; telephone (505) 476-3320.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

Those wishing to submit written statements in lieu of providing oral testimony at the hearing, may submit the written statements by September 10, 2013 by 5:00 p.m. by mail or e-mail. Please mail written comments to Ken Hughes, EMNRD, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail to khughes@state.nm.us. EMNRD will accept no statements after the conclusion of the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ken Hughes at least one week prior to the hearing or as soon as possible.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on November 7, 2013 at 10:00 a.m. in Room 311 at the State Capitol, located at 490 Old Santa Fe Trail in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 13-06(R), proposed repeal of Air Quality Control Regulation 20.2.88 New Mexico Administrative Code (Emission Standards for New Motor Vehicles) ("20.2.88 NMAC").

The proponent of these regulatory amendments is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to repeal 20.2.88 NMAC. This regulation, sometimes called "Clean Cars," was first adopted in 2007 to apply the California motor vehicle emissions standards, or "California standards," within New Mexico beginning with model year 2011. The start date was later revised to 2016. At the time that the Board adopted the Clean Cars regulation, the California standards were more stringent than the federal motor vehicle emissions standards. However, since that time the federal

programs have been revised to achieve the same emissions reduction as the California standards. As a result, the administrative burdens of implementing the Clean Cars regulation now outweigh the potential benefits of having a State program.

The text of the regulation proposed for repeal may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, on NMED's web site at www.nmenv.state.nm.us, or by contacting Lany Weaver at (505) 476-4322 or lany.weaver@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, §74-1-9, the Air Quality Control Act, NMSA 1978, §74-2-6, and any applicable procedural orders.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony in narrative form of each technical witness;
- (4) list and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed regulatory change.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on October 18, 2013 and should reference the docket number, EIB 13-06(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room 2100-S
Santa Fe, NM 87505
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may

testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact the J.C. Borrego of the NMED Human Resources Bureau by October 18, 2013 at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502-5469, telephone 505-827-0424. TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on November 7, 2013 at 10:00 a.m. in Room 311 at the State Capitol, located at 490 Old Santa Fe Trail in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 13-07(R), proposed amendments to Air Quality Control Regulations 20.2.77 New Mexico Administrative Code (New Source Performance Standards) ("20.2.77 NMAC") and 20.2.82 New Mexico Administrative Code (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants) ("20.2.82 NMAC").

The proponent of these regulatory amendments is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to amend 20.2.77 NMAC and 20.2.82 NMAC. The purpose of the proposed amendments is to incorporate by reference the new rules, corrections, revisions, and amendments to the federal New Source Performance Standards

("NSPS") and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants ("MACT"), which were promulgated by the U.S. Environmental Protection Agency ("EPA") and published in the Federal Register on January 1, 2011 to August 29, 2013.

The proposed revised regulations, and the text of the federal standards to be incorporated by reference, may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, on NMED's web site at www.nmenv.state.nm.us, or by contacting Lany Weaver at (505) 476-4322 or lany.weaver@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, §74-1-9, the Air Quality Control Act, NMSA 1978, §74-2-6, and any applicable procedural orders.

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Office of the Environmental Improvement Board
Harold Runnels Building
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Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may

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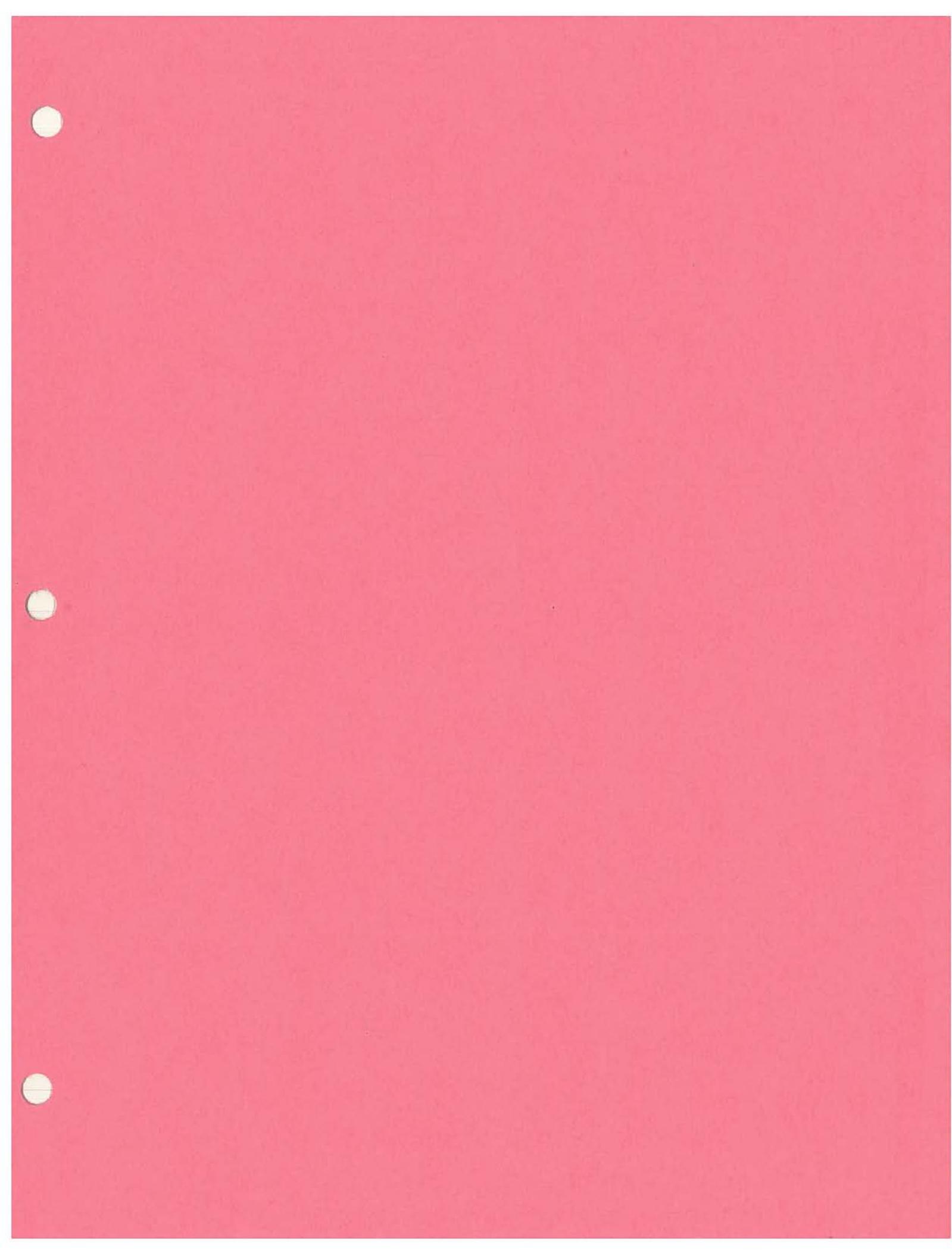
The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

NEW MEXICO HIGHER EDUCATION DEPARTMENT

The Higher Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at 2048 Galisteo Street, Santa Fe, NM 87505-2100, on October 1, 2013, from 10:00 a.m. to 12:00 p.m. The purpose of the public hearing will be to obtain input on the following rule(s):

[Continued on page 583]





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SANTA FE NM 87507

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Ad Cost \$109.62 Sales Rep pnorman
Tax Amount \$7.67 Order Taken by: pnorman
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Amount Due \$117.29 Payment Amount \$0.00

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Affidavits
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NEW MEXICO ENVIRONMENTAL
IMPROVEMENT BOARD
NOTICE OF RULEMAKING
HEARING

The New Mexico Environmental
Improvement Board ('Board') will
hold a public hearing on November
7, 2013 at 10:00 a.m. in Room
311 at the State Capitol, located at
490 Old Santa Fe Trail in Santa
Fe, New Mexico. The purpose of
the hearing is to consider the mat-
ter of EIB 13-07(R), proposed
amendments to Air Quality Control
Regulations 20.2.77 New Mexico
Administrative Code (New Source
Performance Standards) ("20.2.77
NMAC") and 20.2.82 New Mexico
Administrative Code (Maximum
Achievable Control Technology
Standards for Source Categories
of Hazardous Air Pollutants)
("20.2.82 NMAC").

The proponent of these regulatory
amendments is the New Mexico
Environment Department
("NMED").

Exh. NMED 9b

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**NEW MEXICO ENVIRONMENTAL
 IMPROVEMENT BOARD
 NOTICE OF RULEMAKING
 HEARING**

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The proponent of these regulatory amendments is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to amend 20.2.77 NMAC and 20.2.82 NMAC. The purpose of the proposed amendments is to incorporate by reference the new rules, corrections, revisions, and amendments to the federal New Source Performance Standards ("NSPS") and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants ("MACT"), which were promulgated by the U.S. Environmental Protection Agency ("EPA") and published in the Federal Register from January 1, 2011 to August 29, 2013.

The proposed revised regulations, and the text of the federal standards to be incorporated by reference, may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, on NMED's web site at www.nmedv.state.nm.us, or by contacting Lany Weaver at (505) 478-4322 or lany.weaver@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, §74-1-9, the Air Quality Control Act, NMSA 1978, §74-2-6, and any applicable procedural orders.

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shall:

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Pam Castañeda,
Board Administrator
Office of the Environmental
Improvement Board
Harold Runnels Building
1190 St. Francis Dr.,
Room 2100-S
Santa Fe, NM 87505
Phone: (505) 827-2425,
Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

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The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.
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Affidavits
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**DIRECCIÓN DE MEJORAS
 MEDIOAMBIENTALES DE
 NUEVO MÉXICO
 AVISO DE AUDIENCIA DE
 REGLAMENTACION**

La Dirección de Mejoras Medioambientales de Nuevo México ("Dirección") tendrá una audiencia pública el 7 de noviembre del 2013, a las 10:00 a. m., en la sala 311 del Capitolio Estatal, situado en 400 Old Santa Fe Trail en Santa Fe, Nuevo México. El propósito de la audiencia es considerar el asunto de la EIB 13-07(R), propuestas enmiendas a las Normas del Control de la Calidad del Aire 20.2.77 Código Administrativo de Nuevo México (Estándares de Rendimiento de Fuentes Nuevas) ("20.2.77 NMAC") y 20.2.82 Código Administrativo de Nuevo México (Estándares de Tecnología de Máximo Control Alcanzable para Categorías del Origen de los Contaminantes Nocivos del Aire) ("20.2.82 NMAC").

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**DIRECCIÓN DE MEJORAS
 MEDIOAMBIENTALES DE
 NUEVO MÉXICO
 AVISO DE AUDIENCIA DE
 REGLAMENTACIÓN**

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El Departamento del Medio Ambiente de Nuevo México ("NMED", por sus siglas en inglés) es el que propone estas enmiendas normativas.

El propósito de la audiencia pública es considerar y tomar una posible acción sobre una petición del NMED para enmendar la 20.2.77 NMAC y la 20.2.82 NMAC. El propósito de las propuestas enmiendas es incorporar por referencia las nuevas normas, correcciones, revisiones y enmiendas a los Estándares de Rendimiento de Fuentes Nuevas ("NSPS", por sus siglas en inglés) y los Estándares de Tecnología de Máximo Control Posible para Categorías del Origen de los Contaminantes Nuevos del Aire ("MACT", por sus siglas en inglés), que fueron promulgados por la Agencia de Protección Ambiental de Estados Unidos ("EPA", por sus siglas en inglés) y publicados en el Registro Federal del 10 de enero del 2011 al 29 de agosto del 2013.

Las propuestas normas modificadas y el texto de los estándares federales a incorporarse por referencia, se pueden revisar en horas hábiles en el Air Quality Bureau del NMED, 525 Camino de los Marquez, Suite 1, Santa Fe, Nuevo México, en el sitio electrónico del NMED: www.nmedv.state.nm.us, o comunicándose con Lary Weaver en el (505) 476-4322 o por correo electrónico: lary.weaver@state.nm.us.

La audiencia se llevará a cabo de acuerdo con la 20.1.1 NMAC (Procedimientos de Reglamentación - Dirección de Mejoras Medioambientales), la Ley de Mejoras Medioambientales NMSA 197B.

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§74-1-9, la Ley de Control de la Calidad del Aire, NMSA 1978, §74-2-6, y cualquier orden de procedimiento pertinente.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas pertinentes, información, puntos de vista y argumentos, en forma oral o escrita, para someter pruebas e interrogar a testigos. Las personas que deseen dar testimonio técnico deben presentar un aviso por escrito a la Dirección indicando su intención de hacerlo. El aviso de intención debe:

- (1) identificar a la persona por quien el testigo (los testigos) dará(n) testimonio;
- (2) identificar a cada testigo técnico que la persona presentará e indicar la capacidad del testigo e incluir una descripción de su educación y antecedentes profesionales;
- (3) incluir una copia de las declaraciones directas en forma de narración de cada testigo técnico;
- (4) dar una lista de las pruebas que la persona vaya a presentar en la audiencia y adjuntar cada una de las pruebas; y
- (5) adjuntar el texto de cualquier modificación recomendada para el cambio normativo propuesto.

Los avisos de intención para la audiencia deben recibirse en la oficina de la Dirección a más tardar el 18 de octubre del 2013 a las 5:00 p. m. y deben hacer referencia al número del caso, EIB 13-07 (R), y la fecha de la audiencia. Los avisos de intención de presentar testimonios técnicos deben presentarse a:

Pam Casañeda,
Board Administrator
Office of the Environmental
Improvement Board
Harold Runnels Building
1190 St. Francis Dr.,
Room 2100-S
Santa Fe, NM 87505
Tel.: (505) 827-2425,
Fax (505) 827-2836

Cualquier miembro del público en general puede dar declaraciones en la audiencia. No es necesario avisar previamente para dar declaraciones que no sean técnicas en la audiencia. También, cualquier persona puede ofrecer pruebas con relación a su testimonio, siempre y cuando dichas pruebas no sean exageradamente repetitivas del testimonio.

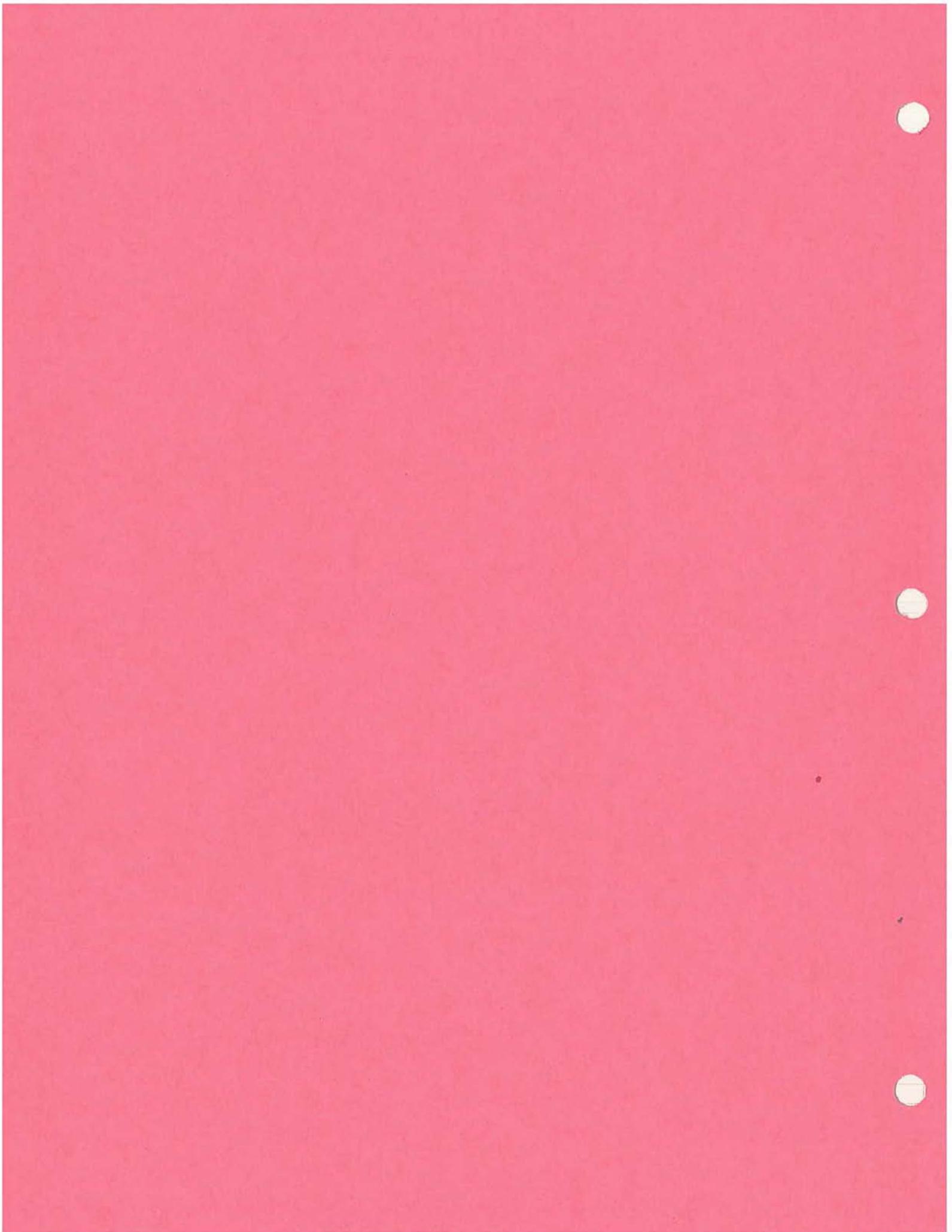
Un miembro del público en general que en lugar de hacer declaraciones orales en la audiencia desee presentar una declaración por escrito para que conste en el acta, deberá registrar la declaración por escrito antes de la audiencia o la puede entregar en la audiencia.

Las personas con discapacidades y que necesiten ayuda para participar en esta audiencia deben comunicarse con J. C. Borrego, del NMED Human Resources Bureau a más tardar el 18 de octubre del 2013, por correo: P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, Nuevo México, 87502-5469; o teléfono: 505-827-0424. Los usuarios de TDY pueden acceder a su número por el New Mexico Relay Network en el 1-800-669-8331.

La Dirección puede tomar una decisión sobre las propuestas normativas modificadas al concluir la audiencia, o puede convocar a una reunión en una fecha posterior para considerar la acción sobre la propuesta.

Journal: August 28, 2013







SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Air Quality Bureau

525 Camino de los Marquez
Suite 1
Santa Fe, New Mexico, 87505
Phone (505) 476-4300 Fax (505) 476-4375
www.nmenv.state.nm.us



RYAN FLYNN
Cabinet Secretary-designate

BUTCH TONGATE
Deputy Secretary

July 1, 2013

Dear Air Quality Stakeholder,

For the past 30 years, the New Mexico Environment Department (NMED) has taken delegation for implementation and enforcement of many of the federal air quality standards adopted under Chapter 40 of the Code of Federal Regulations (CFR), Parts 60 (New Source Performance Standards, or NSPS), 61 (Emission Standards for Hazardous Air Pollutants, or NESHAP) and 63 (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants, or MACT). These federal rules are incorporated by reference in the following state air quality rules: 20.2.77 New Mexico Administrative Code (NMAC) – *New Source Performance Standards*; 20.2.78 NMAC – *Emission Standards for Hazardous Air Pollutants*; and 20.2.82 NMAC – *Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants*, respectively.

In each case, the federal rules that are in effect by a specified date are incorporated by reference into the state rules, unless specifically excluded. Regardless of whether the state accepts delegation for implementation of the federal rules, the affected facilities in New Mexico are subject to those rules because the U.S. Environmental Protection Agency (EPA) will directly implement those standards not delegated. The NMED periodically requests that the Environmental Improvement Board (EIB) amend the state rules to advance the specified date to include new or amended federal rules to 8/29/2013. These state rules were last amended in 2011 to incorporate the date 12/31/2010.

NMED intends to request that the EIB hold a hearing in November 2013 to consider and update the specified dates in 20.2.77 NMAC and 20.2.82 NMAC, so that federal rules under 40 CFR Parts 60 and 63, respectively, that have been finalized by 7/30/2013 will be incorporated by reference into the state regulations. We are not requesting that 20.2.78 NMAC be updated, as there have been no amendments to the related federal rule (40 CFR Part 61) since the last time our rules were updated.

Given that the delegation of the federal rules to the state does not alter the requirements that apply to facilities in this state, the periodic updates of the delegation rules have seldom stirred any interest. However, this update occurs while the EPA is in the process of reconsidering parts of 40 CFR Part 60 (NSPS) Subpart OOOO, a federal rule that applies to many New Mexico sources. It is unlikely that EPA will complete all of its revisions to NSPS Subpart OOOO by 8/29/2013. As a result, differences may occur between the federal revision of NSPS Subpart

July 1, 2013

Page 2

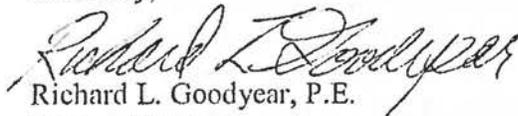
OOOO and the version of that rule to be incorporated by reference in the state rule 20.2.77 NMAC.

Although it is not uncommon that EPA revises rules after the EIB has adopted revisions to the NMAC, NMED is committed to minimizing the potential confusion that could occur in such an event. As a result, after EPA has completed its modifications of the federal rule, NMED will request that the EIB reopen 20.2.77 NMAC to incorporate those modifications, in conjunction with incorporating other new or modified NSPS, NESHAPs or MACTs. An alternative approach would be to not accept delegation of NSPS Subpart OOOO at all until after EPA completes its modifications of that rule. However, NMED has determined that taking delegation of NSPS Subpart OOOO as it is now in effect is the most appropriate option. This will avoid confusion to sources about who has authority over which parts of OOOO, and where to send reports required by the NSPS. The Department will also meet with interested parties this summer to discuss the available options for implementing NSPS Subpart OOOO.

If you wish to make comments regarding the updates of 20.2.77 NMAC and 20.2.82 NMAC, or to be notified of the hearing at which EIB will take comments and consider these rules, please contact Lany Weaver at (505) 476-4322 or lany.weaver@state.nm.us. If you wish to comment on NMED's evaluation of the available options for implementing NSPS Subpart OOOO, please contact Ted Schooley at (505) 476-4334 or ted.schooley@state.nm.us, or Elizabeth Bisbey-Kuehn at (505)476-4338 or Elizabeth.Kuehn@state.nm.us.

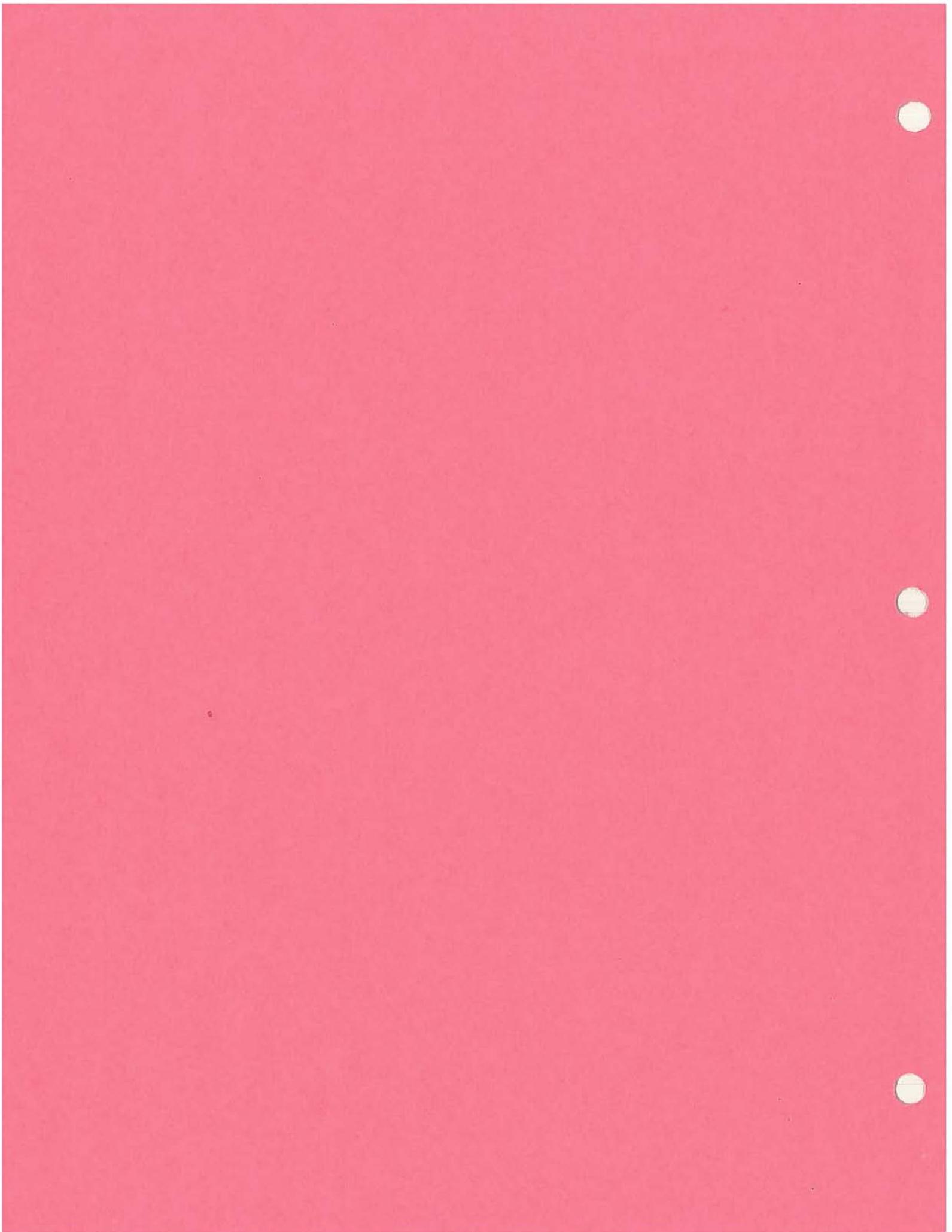
Thank you for your interest in New Mexico's Air Quality.

Sincerely,



Richard L. Goodyear, P.E.
Bureau Chief





Weaver, Lany, NMENV

From: Weaver, Lany, NMENV
Sent: Monday, September 23, 2013 5:33 PM
To: Goodyear, Richard, NMENV
Subject: RE: NSPS and MACT Updates - UPDATE

This is to provide an update regarding the upcoming regulatory hearing at which NMED will be requesting updates to 20.2.77 NMAC and 20.2.82 NMAC, the rules by which we take delegation for federal NSPS and MACT standards, respectively. The Environmental Improvement Board has set the hearing for November 11, 2013 in Santa Fe. Details regarding location and the process of submitting testimony or comments to the Board are in the hearing notice, which along with other documents related to the hearing is available on NMED's website at http://www.nmenv.state.nm.us/aqb/prop_regs.html.

Please note that NMED is planning to request an amendment to our proposal. As proposed, 20.2.77 NMAC would state that we will take delegation of federal NSPS standards that are published in the Federal Register through August 29, 2013. This date was chosen because it was the day prior to publication of the hearing notice in the New Mexico Register; using that date would allow any interested party to review new and revised federal rules for at least 60 days prior to the EIB hearing. Because NSPS Subpart OOOO was finalized on August 6, we expected that it would be published well before August 29. Unfortunately, EPA was delayed in publishing OOOO in the Federal Register until today (<http://www.gpo.gov/fdsys/pkg/FR-2013-09-23/pdf/2013-22010.pdf>). As a result, NMED will be requesting that our proposal for 20.2.77 NMAC be amended to use the date September 23, 2013 instead. We believe this is appropriate because the finalized Subpart OOOO has been available for review throughout the public comment period, and no other NSPS were published in the Federal Register between August 29 and September 23.

If you have any comments or concerns regarding the Department's planned request to amend our proposal, please let me know.

Thank you,

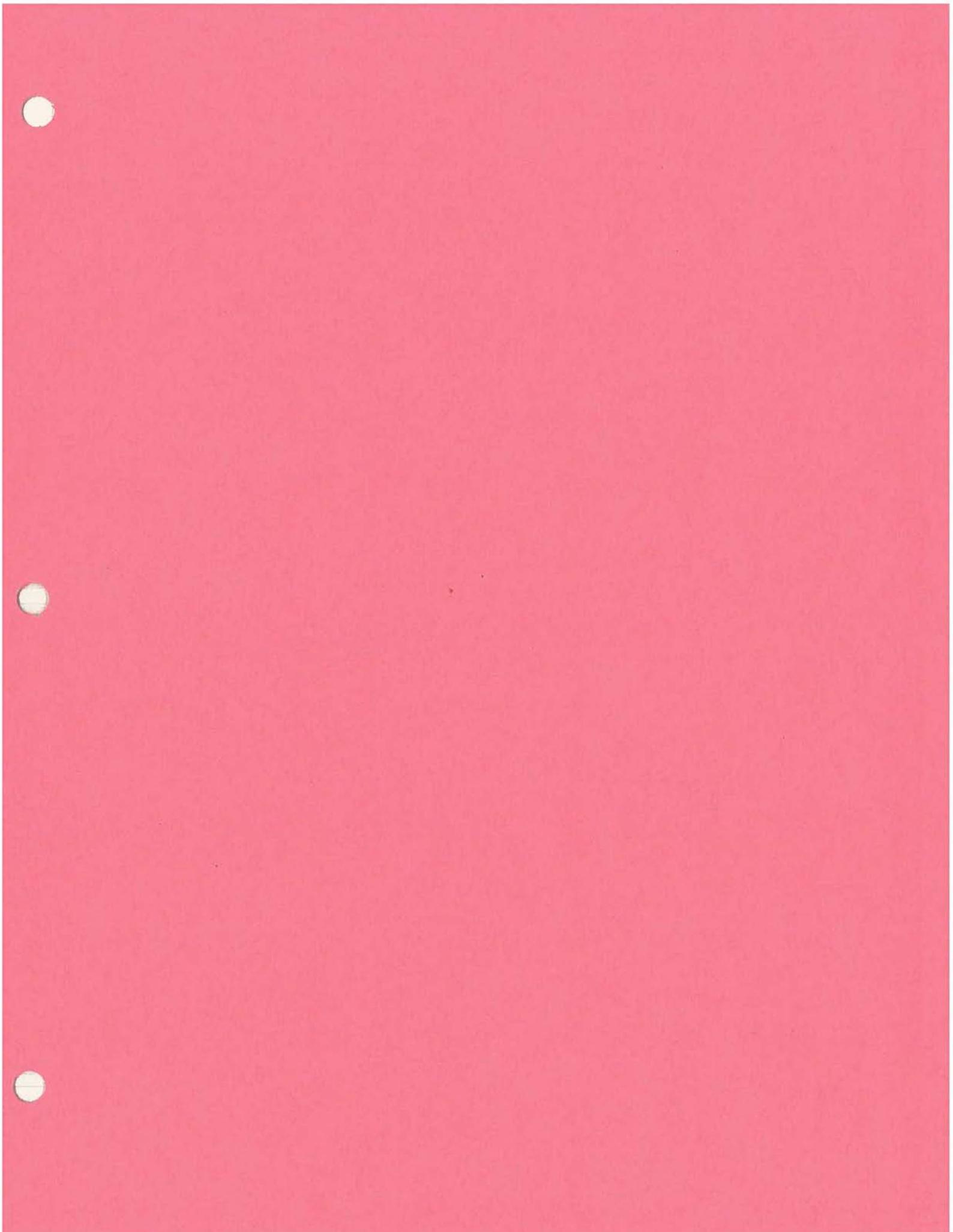
Lany Weaver
New Mexico Environment Department
Air Quality Bureau
(505) 476-4322

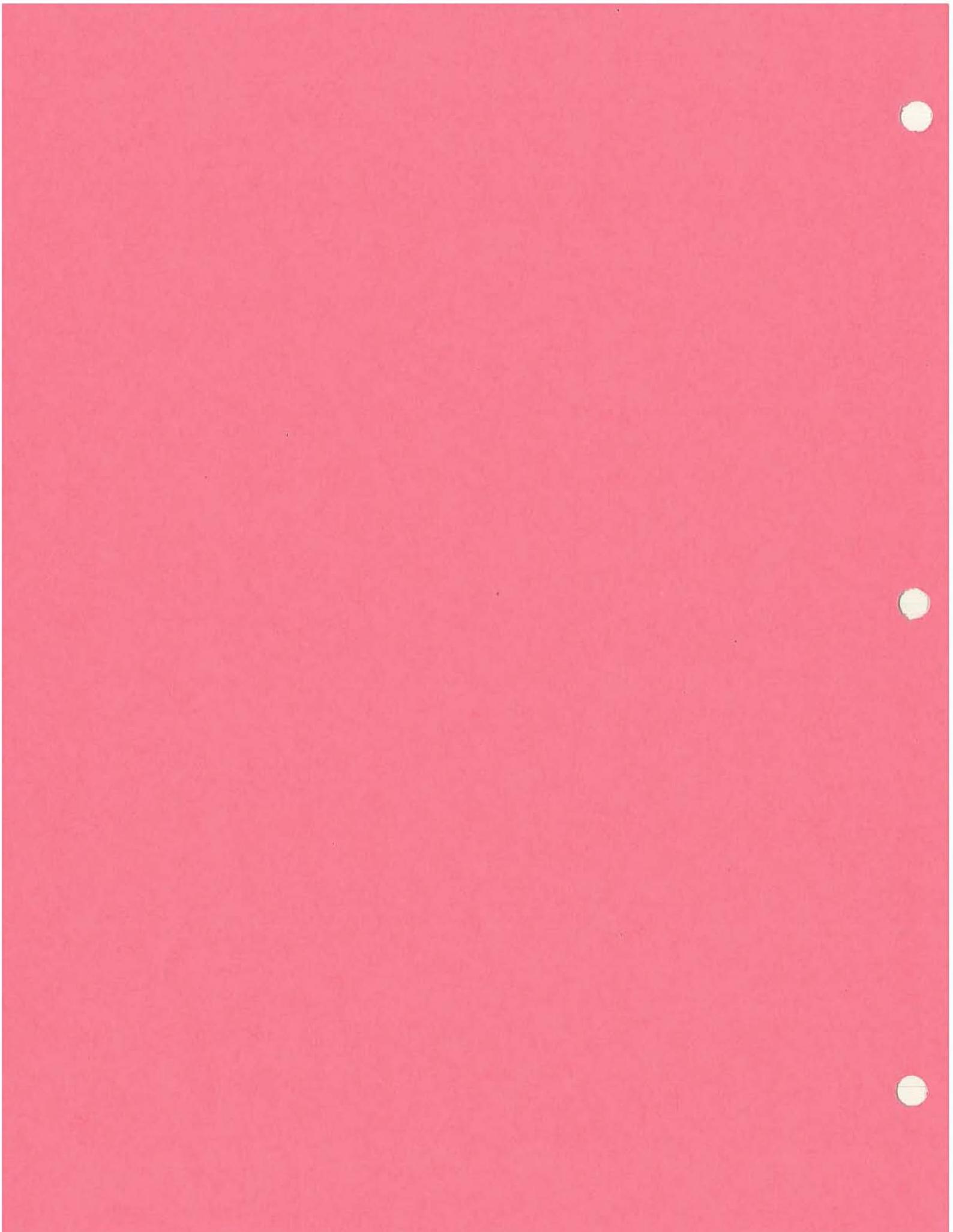
From: Weaver, Lany, NMENV
Sent: Monday, July 01, 2013 4:24 PM
To: Goodyear, Richard, NMENV
Subject: NSPS and MACT Updates

Please find attached a letter from Richard Goodyear, NMED Air Quality Bureau Chief, regarding the upcoming updates to the state delegation of federal NSPS and MACT rules. If you wish to make comments regarding the updates (to be reflected in 20.2.77 NMAC and 20.2.82 NMAC) or to be notified of the hearing at which EIB will take comments and consider these rules, please contact me at this address or the phone number below. If you wish to comment on NMED's evaluation of the available options for implementing NSPS Subpart OOOO, please contact Ted Schooley at (505) 476-4334 or ted.schooley@state.nm.us, or Elizabeth Bisbey-Kuehn at (505) 476-4338 or Elizabeth.Kuehn@state.nm.us.

Thank you,

Lany Weaver
New Mexico Environment Department







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 30 2013

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Inadvertent Errors in the Final Rule, Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards (Tier 3, SAN 5693, RIN 2060-AR75) - **Correction of Inadvertent Errors**

FROM: Janet G. McCabe *JGM*
Acting Assistant Administrator

THRU: Lorie Schmidt *LS*
Associate General Counsel
Office of General Counsel (2344A)

Michael Goo *MG*
Associate Administrator
Office of Policy (1806A)

TO: Gina McCarthy
EPA Administrator (1101A)

Three inadvertent errors were made in the process of preparing the signature package for the final rule, Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards, which was signed on August 2, 2013. The attached red-line/strike-out version of the preamble and rule identifies these errors and shows the corrected text. These corrections are described below.¹

Preamble:

- Page 27, first paragraph, is amended by changing "October 15, 2015" to "April 15, 2015" to state correctly that all Group 1 storage vessel affected facilities must meet the control requirements by April 15, 2015. The regulatory text correctly presents this date in §60.5395(d)(1)(ii) on page 120. This change corrects the inadvertent error in the preamble.

¹ Note that the page number cited refers to the redline/strikeout version of the preamble and rule; the corrections could occur earlier or later in the corrected version.

Exh. NMED 12

Regulatory text:

- Page 114, “§60.5365 Am I subject to this subpart?” paragraph (e), third sentence, is amended by inserting the word “average” between “maximum” and “daily.” Our intent is to allow owners and operators to determine emissions based on the average throughput over the number of days for which throughput can be determined using information already available (e.g., records of crude oil or condensate collected from the storage vessel) during a 30-day period, regardless of the frequency of such collections within the 30-day period. The existing text could be interpreted to mean that daily throughput measurements are required, which was not our intent. This change corrects that inadvertent error.
- Page 115, “§60.5365 Am I subject to this subpart?” paragraph (e), third sentence, is amended by changing “the 30-day period” to “a 30-day period.” As written, the text could be interpreted to require that the period over which the determination of maximum average daily throughput is the 30 days immediately preceding the applicable compliance deadline, which was not our intent. We made our intent clear on page 38 of the preamble where we state, “If the VOC PTE of the Group 1 storage vessel is 6 tpy or greater on October 15, 2013 (or an earlier date if the owner or operator chooses to make the determination prior to October 15, 2013), then the storage vessel is a Group 1 storage vessel affected facility. . .” The change described above corrects that inadvertent error in the regulatory text.

We recommend correction of these inadvertent errors.

Attachment



Gina McCarthy,
Administrator.

AUG 30 2013

Date





Exhibit NMED 13
Selected Provisions of CAA §§ 111 & 112

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7411

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

(7) The term "technological system of continuous emission reduction" means--

(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

Exhibit NMED 13

Selected Provisions of CAA §§ 111 & 112

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C.A. § 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C.A. § 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii) of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one year after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h) of this section, nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii) of this section shall be promulgated not later than one year after August 7, 1977. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall

Exhibit NMED 13
Selected Provisions of CAA §§ 111 & 112

delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

* * * *

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7412

§ 7412. Hazardous air pollutants

Effective: August 5, 1999

* * * *

(d) Emission standards

(1) In general

The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section in accordance with the schedules provided in subsections (c) and (e) of this section. The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) of this section as the result of the authority provided by this sentence.

(2) Standards and methods

Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which--

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h) of this section, or

Exhibit NMED 13
Selected Provisions of CAA §§ 111 & 112

(E) are a combination of the above.

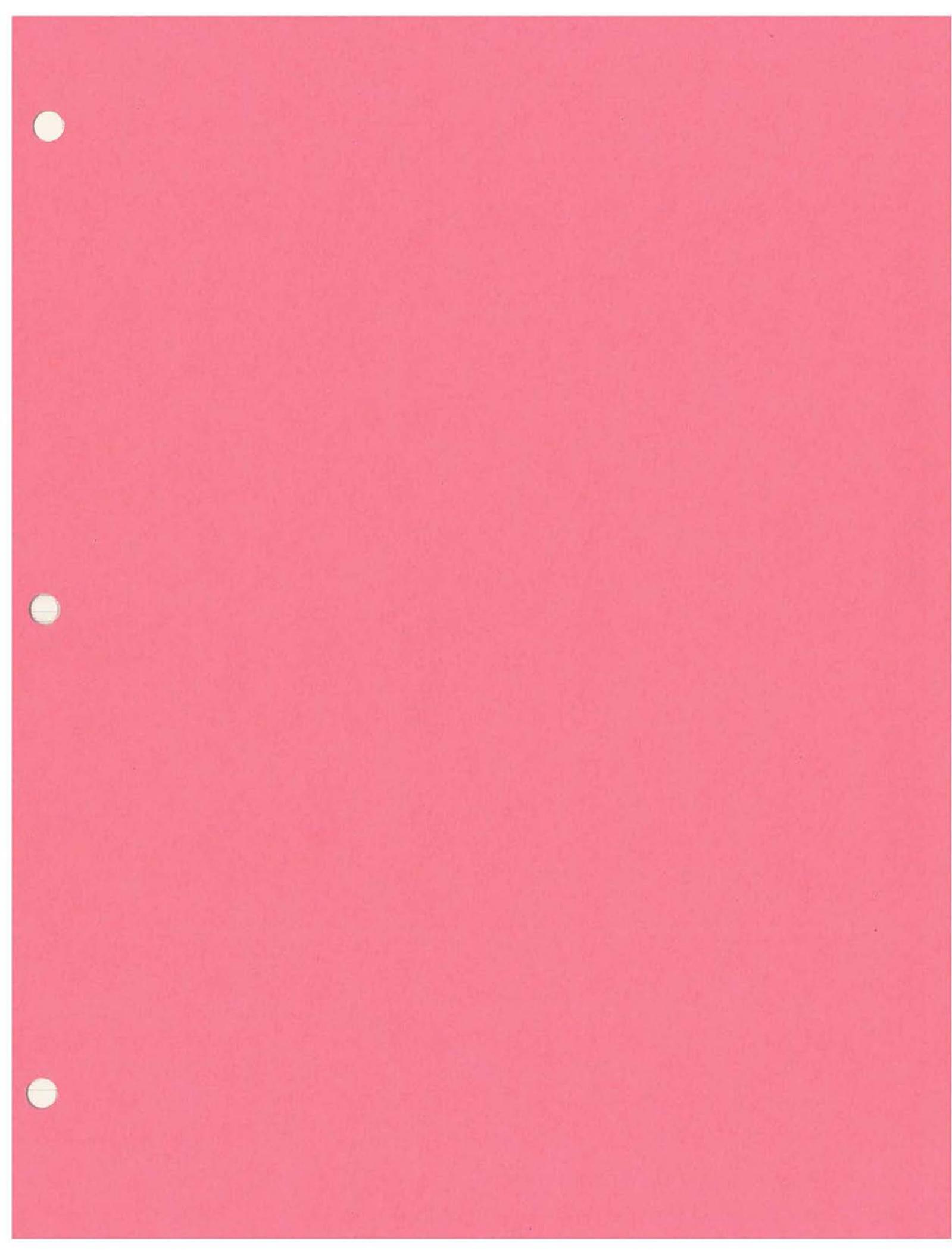
None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 7414(c) of this title, in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

* * * *

(l) State programs

(1) In general

Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (r) of this section. A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements but shall not include authority to set standards less stringent than those promulgated by the Administrator under this chapter.





**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED
AMENDMENTS TO AIR QUALITY REGULATIONS
20.2.77 AND 20.2.82 NMAC**

No. EIB No. 13-07 (R)

**ORDER AND STATEMENT OF REASONS
FOR REGULATORY CHANGES**

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by the New Mexico Environment Department (“NMED” or “Department”), proposing revisions to 20.2.77 and 20.2.82 NMAC. The Board heard testimony from the Department and admitted exhibits into the record. On November 7, 2013, the Board deliberated and voted to adopt the proposed amendments for the reasons that follow:

STATEMENT OF REASONS

1. The federal Clean Air Act (“CAA”) requires the U.S. Environmental Protection Agency (“EPA”) to promulgate standards of performance for new stationary sources. CAA § 111 (42 U.S.C. § 7411). Regulations promulgated under this authority are known as New Source Performance Standards (“NSPS”) and are contained in 40 C.F.R. Part 60.
2. CAA § 111(c) provides for delegation to states of the authority to implement and enforce the standard promulgated under Section 111. 42 U.S.C. § 7411(c).
3. CAA § 112 requires the EPA to promulgate regulations governing hazardous air pollutants. 42 U.S.C. § 7412. Regulations promulgated under this section are known as National Emission Standards for Hazardous Air Pollutants (“NESHAP”), contained in 40 C.F.R. Part 61; and Maximum Achievable Control Technology (“MACT”) standards for hazardous air pollutants, contained in 40 C.F.R. Part 63.

4. CAA § 112 (l)(1) provides for delegation to states of authority to implement and enforce standards promulgated under Section 112. 42 U.S.C. § 7412(l)(1).
5. In 1985, the EPA approved delegation of authority to New Mexico to implement and enforce the NSPS and NESHAP. *See* Exhibit NMED 7.
6. In 1995, the EPA approved delegation of authority to New Mexico to implement and enforce the MACT standards. *See* Exhibit NMED 8.
7. New Mexico incorporates the federal standards contained in 40 C.F.R Parts 60 and 63 into the New Mexico Administrative Code (“NMAC”) at 20.2.77 and 20.2.82 NMAC, respectively.
8. The New Mexico Environment Department (“NMED”) periodically petitions the Board to update the dates of incorporation of the federal standards in 20.2.77, and 20.2.82 NMAC, in order to incorporate recently promulgated revisions to the federal standards. *See* Exhibit NMED 3, Test. of Lany Weaver, at 2.
9. Pursuant to 20.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.
10. On June 24, 2013, NMED filed a petition with the Board for a public hearing in this matter. *See* petition in Record Proper.
11. On July 15, 2013, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Department’s request for a hearing.
12. On August 30, 2013, Notice of Hearing was published in the New Mexico Register. *See* NMED Exhibit 9a.
13. On August 28, 2013, Notice of Hearing was published in the Albuquerque Journal (in English and Spanish). *See* NMED Exhibit 9b.

14. NMED filed a Notice of Intent to Present Technical Testimony (“NOI”) on October 18, 2013, in accordance with 20.1.1.302 NMAC.
15. A hearing was held in this matter on November 7, 2013, in Santa Fe, New Mexico.
16. The Board has the authority to approve these proposed amendments pursuant to NMSA 1978, § 74-2-5.C.
17. The standards adopted by this regulatory change are federal standards, and therefore by definition are no more stringent but at least as stringent as the federal standards, in compliance with NMSA 1978, § 74-2-5.C (2).
18. In considering the proposed SIP revisions, the Board is required by the Air Quality Control Act, NMSA 1978, § 74-2-5.E 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, visibility 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 available to control the air contaminants involved.
19. The federal NSPS are established by the EPA based on the best system of emission reductions which have been adequately demonstrated, taking into account the costs of achieving such reductions and any nonair quality health and environmental impact and energy requirements. 42 U.S.C. § 7411(a)(1).
20. The federal MACT are established by the EPA for categories and subcategories of sources of emissions of hazardous air pollutants, based on the maximum degree of reduction of emissions achievable, taking into consideration the cost of achieving the

- reductions, any nonair quality health and environmental impacts and energy requirements. 42 U.S.C. § 7412(d)(2).
21. EPA's determination of NSPS and MACT standards therefore considers the character and degree of injury to or interference with health, and welfare; the public interest, including the social and economic value of the sources and subjects of air contaminants; and the technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved.
 22. Incorporation by reference of the federal standards into the New Mexico Administrative Code does not change the substantive standards applicable to affected sources in New Mexico because the EPA retains authority for direct enforcement of the regulations. *See* Exhibit NMED 3, Test. of Lany Weaver, at 1. Accordingly, this rulemaking will not result in any increase in economic hardship for sources or any increase in air contaminant emissions, but will increase the efficiency of implementation of the regulations. *See Id.* at 2. This serves the public interest.
 23. The proposed amendments therefore satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, § 74-2-5.E.
 24. The notice and hearing requirements of NMSA 1978 Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.
 25. The proposed amendments are adopted for any or all of the reasons stated above.

ORDER

By _____ vote of a quorum of the Board members, the proposed regulatory revisions were approved by the Board on November 7, 2013. Amendments to 20.2.77 and 20.2.82 NMAC, with any appropriate corrections of typographical errors, or formatting shall be

filed with the New Mexico State Records Center, and shall be submitted as expeditiously as possible by the Department to the EPA for approval of delegation authority.

On Behalf of the Board

Dated: _____













SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Office of General Counsel

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RYAN FLYNN
Cabinet Secretary-Designate
BUTCH TONGATE
Deputy Secretary

Jeffrey M. Kendall
General Counsel

October 17, 2013

New Mexico Economic Development Department
Small Business Regulatory Advisory Commission
1100 St. Francis Drive
Santa Fe, New Mexico 87501

Via U.S Postal Service & E-Mail

Re: Proposed Amendments to Air Quality Regulations 20.2.77 and 20.2.82 NMAC;

Dear Chairman and Members of the Small Business Regulatory Advisory Commission:

This letter is to provide you with notice of an upcoming hearing in the above captioned matter. It involves updates to the incorporation by reference of federal New Source Performance Standards, and Maximum Achievable Control Technology standards. The Air Quality Bureau does not believe that the proposed revisions will have an adverse effect on small businesses. Under the federal Clean Air Act, Sections 111 and 112, the U.S. EPA retains the authority to enforce these standards regardless of whether a state chooses to implement them. Therefore adoption of these standards as state regulations does not add to the regulatory burden of industry, but rather enables the state to assume the primary role in implementing the standards.

The hearings in this matter will be held at the regularly scheduled meeting of the Environmental Improvement Board on November 7, 2013, at 10:00 a.m. in Room 311 at the State Capital in Santa Fe, New Mexico. More information on the proposed revisions may be found at: http://www.nmenv.state.nm.us/aqb/prop_regs.html. Please feel free to contact me with any questions.

Sincerely,

Bill Grantham
Assistant General Counsel

