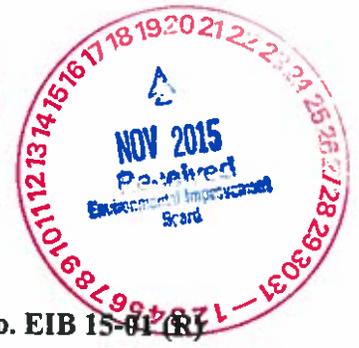


STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

COPY



No. EIB 15-01 (R)

IN THE MATTER OF PROPOSED
AMENDMENTS TO AIR QUALITY REGULATIONS
20.2.77, 20.2.78 AND 20.2.82 NMAC

Air Quality Bureau,
Environmental Protection Division of the
New Mexico Environment Department,

Petitioner.

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

Pursuant to 20.1.1.302(A) NMAC, the Air Quality Bureau (“Bureau”) of the Environmental Protection Division of the New Mexico Environment Department (“Department” or “NMED”) hereby files this Supplement to its September 25, 2015 Notice of Intent to Present Technical Testimony at the Environmental Improvement Board (“Board”) hearing on December 18, 2015, regarding the Bureau’s proposed amendments to 20.2.77, 20.2.78, and 20.2.82 NMAC.

The Bureau submits this Supplemental Notice of Intent as a result of the Board’s Amended Order to Vacate and Continue Hearing, filed on October 6, 2015. This matter was initially set for hearing on October 15, 2015, and was subsequently continued to December 18, 2015. As a result, the Department re-published notice of the new hearing date and now provides supplemental exhibits demonstrating that the Department properly noticed the public. In addition, the “Public Outreach” section of Cindy Hollenberg’s testimony has been revised to account for the steps the Department took to provide notice of the new date of the hearing (see Exhibit NMED 22, Section IV). Finally, the Department provides a revised Proposed Statement of Reasons that includes citations to the supplemental exhibits.

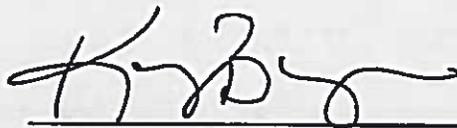
In addition to a revised Exhibit Index, this Supplemental Notice of Intent contains the following exhibits:

NMED Exhibit #	Title of Exhibit
19a	Affidavit of Publication of new hearing date (New Mexico Register)
19b	Affidavit of Publication of new hearing date (Albuquerque Journal, English)
19c	Affidavit of Publication of new hearing date (Albuquerque Journal, Spanish)
20	Notice of December 18, 2015 Rulemaking Hearing sent to Air Quality Bureau Listserv
21	Letter to Small Business Regulatory Advisory Commission, dated November 17, 2015
22	Revised Written Testimony of Cindy Hollenberg
23	Revised Proposed Statement of Reasons for Adoption of Rules

The Bureau reserves the right to introduce and to move for admission of any other exhibit in support of rebuttal testimony at the hearing.

Respectfully submitted,

AIR QUALITY BUREAU
NEW MEXICO ENVIRONMENT DEPARTMENT



Kay R. Bonza
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102
kay.bonza@state.nm.us
Telephone: 505-383-2062
Fax: 505-383-2064



1. The first part of the document discusses the importance of maintaining accurate records.

2. It then goes on to describe the various methods used to collect and analyze data.

3. The results of the study are presented in the following section, showing a clear trend.

4. Finally, the document concludes with a summary of the findings and their implications.

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6. This suggests that the factors being investigated are closely related to each other.

7. The study also highlights the need for further research in this area.

8. Overall, the findings provide valuable insights into the complex nature of the phenomenon.

9. The results are consistent with previous research, supporting the existing theory.

10. The study also identifies several limitations and areas for future investigation.

11. The data shows that the model used in the study is a good fit for the observed data.

12. This indicates that the theoretical framework is well-supported by the empirical evidence.

13. The study also explores the potential applications of the findings in practice.

14. The results suggest that the proposed interventions could have a positive impact.

15. The study concludes by emphasizing the importance of ongoing monitoring and evaluation.

16. The findings provide a solid foundation for further research and practical implementation.

17. The study also acknowledges the contributions of the research team and funding sources.

18. The results are presented in detail in the appendix, providing a comprehensive overview.

19. The study is a significant contribution to the field and offers valuable insights.

20. The findings are discussed in the context of current research and practice.

21. The study also provides a clear roadmap for future research and development.

22. The results are a testament to the power of rigorous scientific inquiry.

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED AMENDMENTS
TO AIR QUALITY REGULATIONS
20.2.77, 20.2.78 AND 20.2.82 NMAC**

No. EIB 15-01 (R)

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

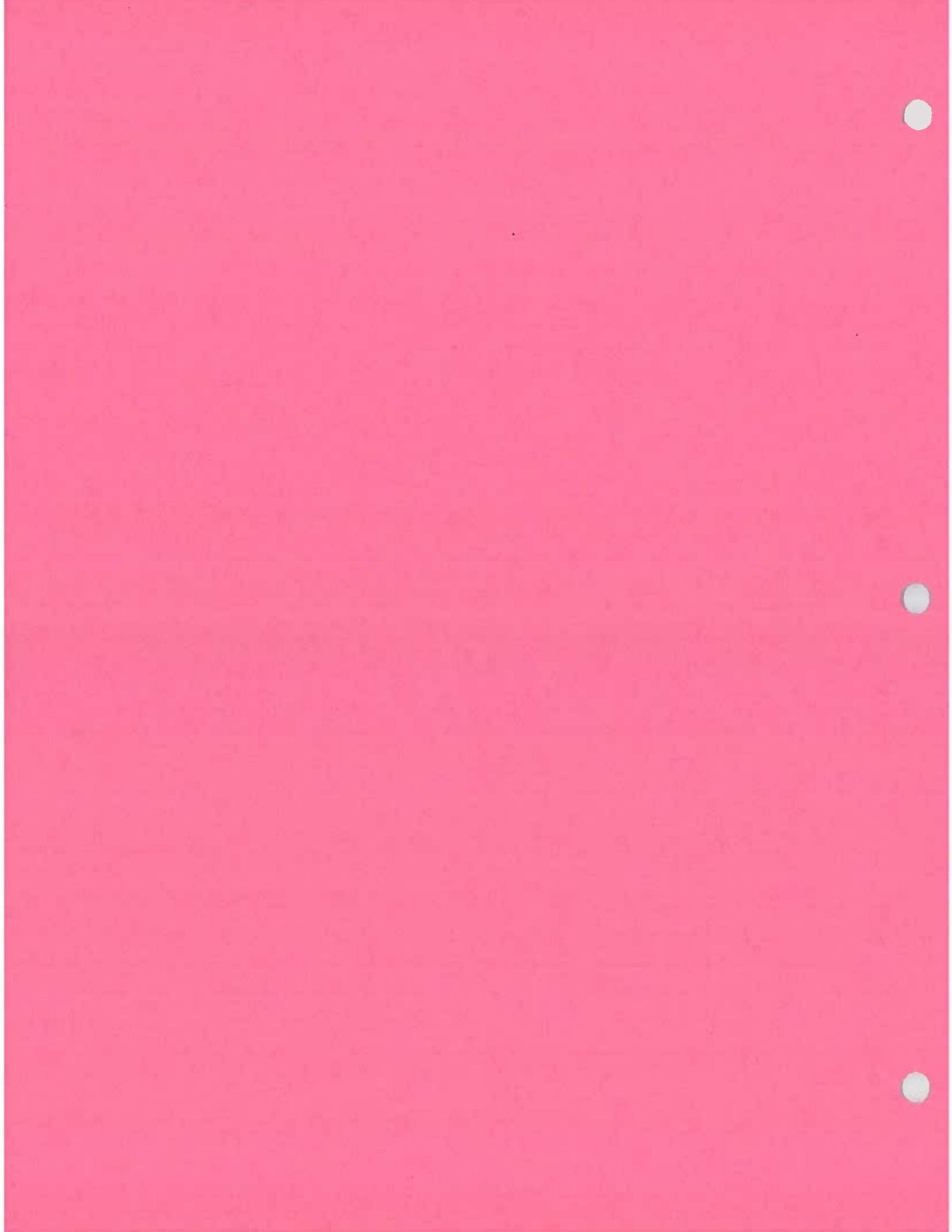
Petitioner.

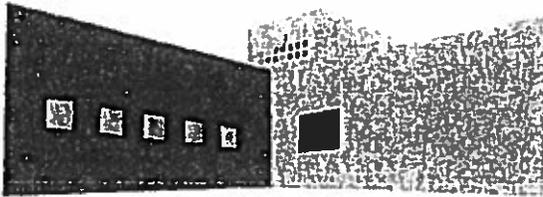
REVISED EXHIBIT INDEX

NMED Exhibit #	Title of Exhibit	Source
1	Resume of Cindy Hollenberg	Personal resume of Cindy Hollenberg
2	Resume of Rita Bates	Personal resume of Rita Bates
3	Written Testimony of Cindy Hollenberg	Prepared by NMED
4	Proposed Amendments to 20.2.77 NMAC	Prepared by NMED
5	Proposed Amendments to 20.2.78 NMAC	Prepared by NMED
6	Proposed Amendments to 20.2.82 NMAC	Prepared by NMED
7	Table of Relevant Federal Register Notices with Brief Explanations of Each	Prepared by NMED
8	Table of the Number of Facilities Potentially Affected by the Federal Regulation Changes	Prepared by NMED
9	Table of Specific Changes to 40 CFR Parts 60, 61, and 63 Regarding Source Testing of Emissions and Operations	Prepared by NMED
10	Court Decision Invalidating and Vacating the Clean Air Mercury Rule	Judicial Opinion from the U.S. Court of Appeals for the D.C. Circuit
11	40 CFR Part 60, Subpart QQQQ – <i>Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces</i>	Copied from Electronic Code of Federal Regulations
12a	1985 Delegation of Authority Letter (NSPS and NESHAP)	Letter from the U.S. EPA Regional Administrator to the New Mexico Governor, March 15, 1985
12b	1995 Delegation of Authority Letter (MACT)	Letter from the U.S. EPA Acting Regional Administrator to the Secretary of NMED, July 27, 1995

13a	Affidavit of Publication (New Mexico Register)	New Mexico Commission of Public Records, Administrative Law Division
13b	Affidavit of Publication (Albuquerque Journal, English)	The Albuquerque Journal
13c	Affidavit of Publication (Albuquerque Journal, Spanish)	The Albuquerque Journal
14	Notice of Rulemaking Hearing sent to Air Quality Bureau Listserv	Prepared by NMED
15	Letter to Small Business Regulatory Advisory Commission, dated July 29, 2015	Prepared by NMED
16	Clean Air Act, §§ 111(c) and 112(l) (42 U.S.C. §§ 7411 and 7412)	Excerpts from the United States Code, compiled by NMED
17	Federal Register Notices Relevant to Amendments (on CD only)	Federal Register Official Publications, compiled by NMED
18	Proposed Statement of Reasons for Adoption of Rules	Prepared by NMED
19a	Affidavit of Publication of new hearing date (New Mexico Register)	New Mexico Commission of Public Records, Administrative Law Division
19b	Affidavit of Publication of new hearing date (Albuquerque Journal, English)	The Albuquerque Journal
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NM Commission of Public Records
 1205 Camino Carlos Rey
 Santa Fe 87507 US
 (505) 476-7913

Invoice

RECEIVED

OCT 26 2015

Air Quality Bureau

BILL TO
 Cindy Hollenberg
 Air Quality Bureau
 Environment Department
 525 Camino de los Marquez
 Santa Fe, NM 87505-

INVOICE #	DATE	TOTAL DUE	DUE DATE	ENCLOSED
1257	10/16/2015	\$55.00	10/16/2015	

ISSUE	PUBLICATION P.O. NUMBER
19	Oct. 15, 2015 66700-0000024960

DATE	ACTIVITY	QTY	RATE	AMOUNT
10/16/2015	Columnar Inch - N.M. Register, Vol. XXVI, Notice Notice of Rulemaking Hearing	22	2.50	55.00

I, Matt Ortiz, certify that the agency noted above has published legal notices or rules in the NEW MEXICO REGISTER, VOL. XXVI, and that payment has been assessed for said legal notice or publication, which appears on the publication date and issue number noted above.

BALANCE DUE

\$55.00

Affiant: [Signature], Publisher New Mexico Register

Subscribed, sworn and acknowledged before me this 21 day of

October, 2015

[Signature]
 Notary Public



OFFICIAL SEAL
 Amanda N. Lopez
 NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 5/5/2019

My Commission Expires: May 5, 2019

Exhibit NMED 19a

New Mexico Register / Volume XXVI, Issue 19 / October 15, 2015

NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on December 18, 2015 at 9:00 a.m. in Room 322 at the State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 15-01(R), proposed amendments to the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.77 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).

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, 20.2.78 NMAC and 20.2.82 NMAC by incorporating by reference the new rules, corrections, revisions and amendments to the federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) 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 the most recent date of incorporation through September 15, 2015.

The proposed revised regulations and the list of 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 https://www.env.nm.gov/aqb/prop_regs.html, or by contacting Cindy Hollenberg at (505) 476-4356 or cindy.hollenberg@state.nm.us. You may also contact Cindy Hollenberg if interested in attending an informational open house on the proposed incorporation by reference.

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

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 of each technical witness in narrative form;
- (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 to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on November 25, 2015 and should reference the docket number, EIB 15-01(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator
Environmental Improvement Board
P. O. Box 5469
Santa Fe, NM 87502
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 that testimony as 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 accommodations to participate in this hearing process should contact Juan Carlos Borrego of the NMED Human Resources Bureau by December 8, 2015 at P. O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-0424 or email juancarlos.borrego@state.nm.us. 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 after the hearing to consider action on the proposal.

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AFFIDAVIT OF PUBLICATION

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NOV 12 2015

STATE OF NEW MEXICO
County of Bernalillo

SS

Air Quality Bureau

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on December 18, 2015 (postponed from October 15, 2015) at 9:00 a.m. in Room 322 at the State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 15-01(R), proposed amendments to the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.77 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).

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The proposed revised regulations and the list of 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 https://www.env.nm.gov/aqb/prop_regs.html, or by contacting Cindy Hollenberg at (505) 476-4356 or cindy.hollenberg@state.nm.us. You may also contact Cindy Hollenberg if interested in attending an informational open house on the proposed incorporation by reference.

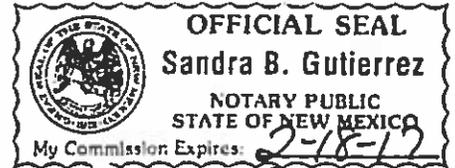
The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the Air Quality Control Act, NMSA 1978, Section 74-2-6, and other applicable procedures.

Linda MacEachen, being duly sworn, declares and says that she is Classified Advertising Manager of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 times on the following dates:

October 9, 2015

Linda MacEachen

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 7 day of October of 2015



Sandra B. Gutierrez

PRICE ¹⁵ 122.90

Statement to come at end of month.

ACCOUNT NUMBER 1007594

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:

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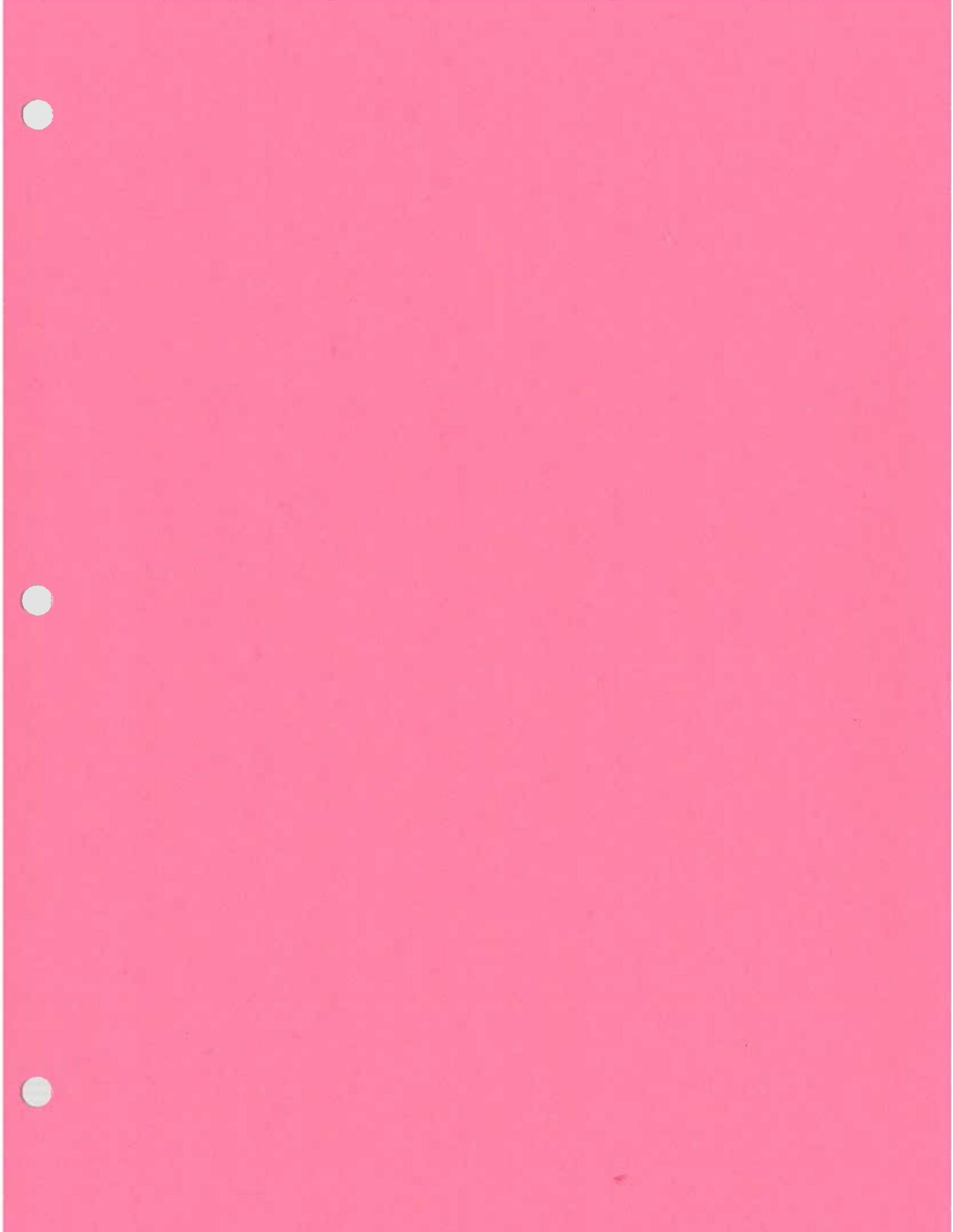
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Journal: October 9, 2015

Exhibit NMED 19b



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8. Overall, the findings provide valuable insights into the complex nature of the phenomenon.

9. The results are consistent with previous research, supporting the existing theory.

10. The study also identifies several limitations and areas for future investigation.

11. The data shows that the model used is effective in predicting the outcomes.

12. The findings have important implications for the field of study.

13. The study demonstrates the value of a systematic approach to data collection.

14. The results are statistically significant and provide strong evidence for the hypotheses.

15. The study also explores the underlying mechanisms of the observed effects.

16. The findings are discussed in the context of the broader literature.

17. The study contributes to the understanding of the complex system being investigated.

18. The results are presented in a clear and concise manner.

19. The study also addresses the practical applications of the findings.

20. The findings are supported by a robust theoretical framework.

21. The study provides a comprehensive overview of the research process.

22. The results are discussed in detail, highlighting the key findings.

23. The study concludes with a final summary of the research.

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NOV 12 2015

Air Quality Bureau

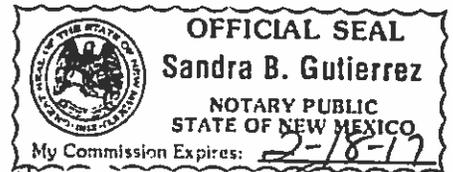
STATE OF NEW MEXICO
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October 9, 2015

Linda MacEachen

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 9th day of October of 2015



Sandra B. Gutierrez

PRICE 14383

Statement to come at end of month.

ACCOUNT NUMBER 1007594



LA JUNTA DE MEJORA AMBIENTAL DE NUEVO MEXICO
NOTIFICACION DE AUDIENCIA PUBLICA DE REGLAMENTACION

La Junta de Mejora Ambiental de Nuevo Mexico (Junta) llevara a cabo una audiencia publica el 18 de diciembre del 2015 (pospuesto del 15 de octubre) a las 9:00 am en el edificio del Capitolio del Estado, sala 322, localizado en 490 Old Santa Fe Trail, Santa Fe, Nuevo Mexico. El motivo de la audiencia es para poner a consideracion el asunto EIB 15-01, que consiste en una propuesta para enmendar las Normas de Control de Calidad de Aire del Código Administrativo de Nuevo Mexico (NMAC, por sus siglas en inglés) a 20.2.77 NMAC (Estándares de Rendimiento de Fuentes Nuevas), 20.2.78 NMAC (Estándares de Emisiones para Contaminantes Peligrosos de Aire) y 20.2.82 NMAC (Estándares de Tecnología de Control Máxima Alcanzable para Fuentes de Contaminantes Peligrosos de Aire).

El proponente de estas enmiendas reglamentarias es el Departamento del Medio Ambiente de Nuevo Mexico (NMED).

El motivo de la audiencia publica es para considerar y posiblemente tomar medidas, en la petición de NMED de modificar 20.2.77 NMAC, 20.2.78 NMAC y 20.2.82 NMAC, por medio de la incorporación en referencia a las nuevas normas, correcciones, revisiones y enmiendas federales a los Estándares de Rendimiento de Fuentes Nuevas (NSPS), Estándares de Emisiones para Contaminantes Peligrosos de Aire (NESHAP), y a los Estándares de Tecnología de Control Máxima Alcanzable para Fuentes de Contaminantes Peligrosos de Aire (MACT), las cuales fueron promulgadas por la Agencia de Protección Ambiental (EPA) y fueron publicadas en el Registro de la Federación desde la actualización más reciente hasta el 15 de septiembre del 2015.

Las propuestas revisiones a las normas y la lista de estándares federales que serán incorporadas en referencia pueden ser revisadas durante horas hábiles en las oficinas de la Agencia de Calidad de Aire de NMED, 525 Camino de Los Marquez, Suite 1, Santa Fe, Nuevo Mexico, o en el sitio web https://www.env.nm.gov/aq/prop_rege.html, o también se puede contactar a Cindy Hollenberg al número telefónico (505) 476-4356 o por correo electrónico a cindy.hollenberg@state.nm.us. También puede ponerse en contacto con Cindy Hollenberg si está interesado en asistir a una sesión informativa de la incorporación en referencia que afecta 20.2.77 NMAC, 20.2.78 NMAC y 20.2.82 NMAC.

La audiencia publica se llevará a cabo de acuerdo con 20.1.1 NMAC Procedimientos de Reglamentación, La Ley de Mejora Ambiental, NMSA 1978.

Sección 74-1-9, La Ley de Control de Calidad de Aire NMSA 1978, Sección 74.2.6, y otros procesos aplicables.

Durante la audiencia publica, todas las personas interesadas tendrán una oportunidad razonable de presentar pruebas relevantes, información, opiniones y argumentos, ya sea verbal o por escrito, para presentar pruebas documentales y para interrogar a testigos. Las personas interesadas en presentar testimonio técnico, deberán presentar una notificación por escrito a la Junta de la intención de hacerlo. La notificación de intento deberá:

- (1) Identificar a la persona para quien testificará(n) el(los) testigos;
- (2) Identificar cada testigo técnico que la persona desea presentar, y explicar las cualificaciones del testigo, incluyendo una descripción de su educación y su experiencia laboral;
- (3) Incluir una copia de la narrativa del testimonio de cada testigo técnico;
- (4) Enumerar y adjuntar cada prueba documental que esa persona vaya a ofrecer en la audiencia; y
- (5) Anexar el escrito de las recomendaciones para cualquiera de las nuevas propuestas o las regulaciones o para las revisiones.

Las notificaciones de intención a presentar testimonio técnico deberán ser recibidas en las oficinas de la Agencia a más tardar el 25 de noviembre del 2015 antes de las 5:00 PM y deberán hacer referencia al número de expediente EIB15-01(R) y la fecha de la audiencia. Las notificaciones de intento para presentar testimonios técnicos se deben de enviar a:

Pam Castañeda,
Administradora de la Junta
Oficina de la Junta de
Mejoramiento Ambiental
P.O. Box 5489
Santa Fe, NM 87502
Teléfono: (505) 827-2425,
Fax: (505) 827-0310

Cualquier miembro del público en general podrá atestiguar durante la audiencia. No se requiere notificación previa para presentar testimonio no-técnico durante la audiencia. Cualquiera de estos miembros, también podrán presentar pruebas documentales en relación con el testimonio, siempre y cuando las pruebas no sean excesivamente repetitivas del testimonio.

Miembros del público general que deseen presentar una declaración para el informe judicial, en lugar de proporcionar un testimonio verbal durante la audiencia, deberán presentar la declaración por escrito, antes de la audiencia, o también, se podrá presentar en la audiencia.

Personas con discapacidad y que necesiten ayuda para participar en este proceso de audiencia, deberán contactar Juan Carlos Borrego de la Oficina de Recursos Humanos de NMED antes del 8 de diciembre del 2015 al P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, NM 87502, teléfono 505-827-0424 o por correo electrónico juancarlos.borrego@state.nm.us. Los usuarios de TDY por favor comuníquense a su número por medio de la Red de Relevos de Nuevo Mexico al 1-800-859-8331. Al término de la audiencia, la Junta podrá tomar una decisión acerca de la revisión propuesta al reglamento, o también podrán acordar en otra reunión después de la audiencia para considerar acción sobre la propuesta.
Journal October 8, 2015



From: [New Mexico Environment Department](#)
To: [Hollenberg, Cindy, NMENV](#)
Subject: New Mexico Environment Department AQB Regulatory and SIP Announcements Update
Date: Thursday, October 15, 2015 8:01:47 AM

Banner



The New Mexico Environmental Improvement Board (EIB) will hold a public hearing on December 18, 2015 at 9:00 a.m. in Room 322 at the State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 15-01(R), proposed amendments to 20.2.77 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).

The New Mexico Environment Department is petitioning the EIB to amend these rules by incorporating by reference the new rules, corrections, revisions and amendments to the federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants (MACT) promulgated by the U.S. Environmental Protection Agency and published in the Federal Register from the most recent date of incorporation through September 15, 2015.

New Mexico has received authority to implement and enforce these federal rules after each new rule or change is incorporated by reference into the New Mexico Administrative Code (NMAC). EPA also retains the authority to implement and enforce these rules. Incorporation by reference does not change the requirements that sources must follow; it only allows the State to implement and enforce them. The New Mexico Environment Department requests that the NMAC rules be updated every 2 - 3 years by changing the "through" dates.

Other minor changes include:

- Omitting an exception, due to the federal rule being vacated and subsequently withdrawn;
- Adding an exception for residential heaters;
- Removing an outdated address for the Air Quality Bureau; and
- Revising certain language to make it gender-neutral.

The proposed revised regulations and the list of 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 https://www.env.nm.gov/aqb/prop_regs.html, or by contacting Cindy Hollenberg at (505) 476-4356 or cindy.hollenberg@state.nm.us. You may also contact Cindy Hollenberg if interested in attending an informational open house on the proposed incorporation by reference, or if you would like more information about providing testimony at the hearing.

Stay Connected with New Mexico Environment Department

Exhibit NMED 20

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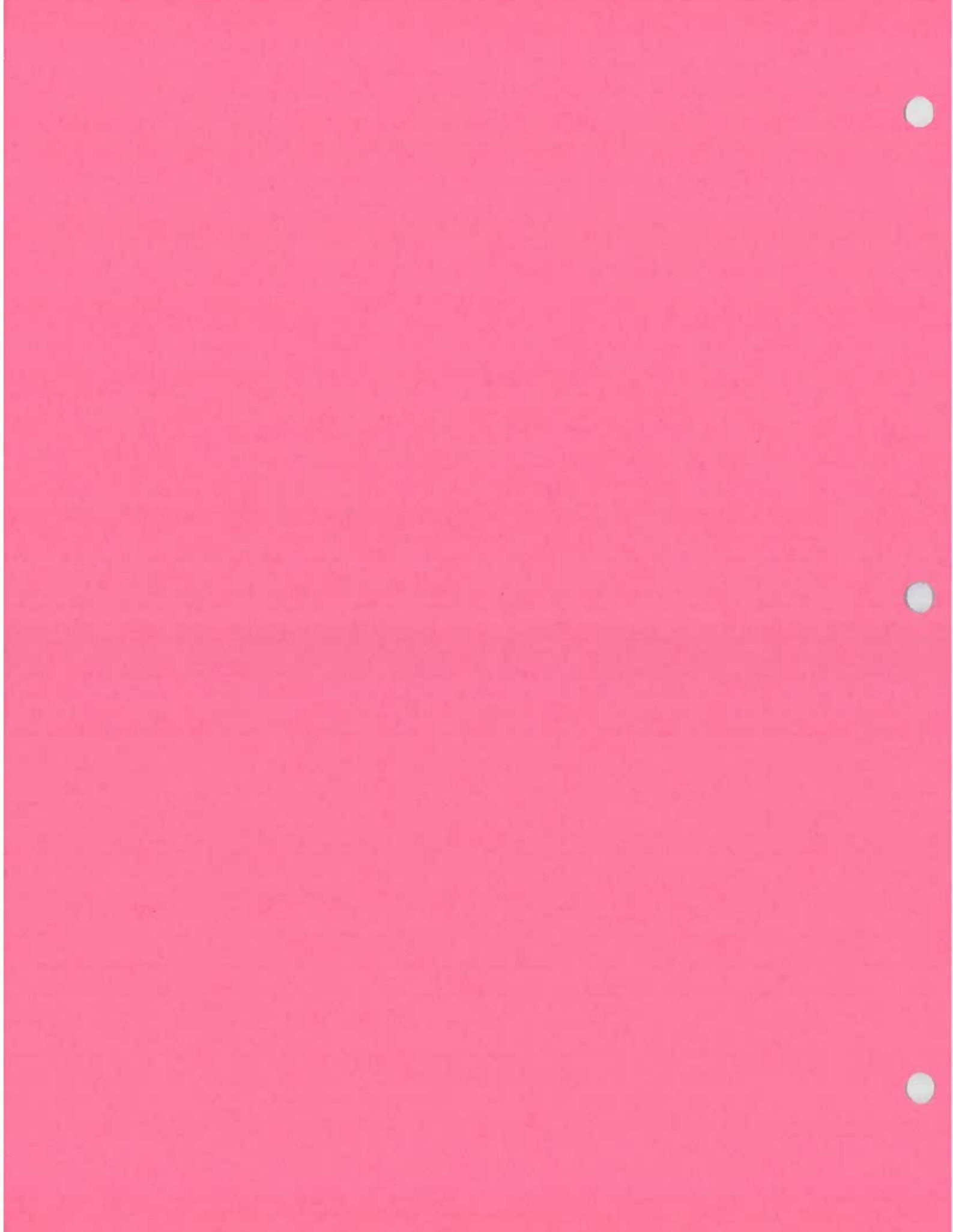
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NEW MEXICO
ENVIRONMENT DEPARTMENT



SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

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RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

OFFICE OF GENERAL COUNSEL

Via Electronic Mail: LeslieA.Porter@state.nm.us

November 17, 2015

Small Business Regulatory Advisory Commission
C/o Leslie Porter
New Mexico Economic Development Department
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505

Re: No. EIB 15-01(R) - Proposed Amendments to 20.2.77, 20.2.78 and 20.2.82 NMAC

Dear Ms. Porter:

Pursuant to NMSA 1978, Section 14-4A-4 (2005), this letter is to provide you with notice of an upcoming hearing in the above captioned matter. The Air Quality Bureau of the New Mexico Environment Department (Department) is proposing amendments to 20.2.77, 20.2.78 and 20.2.82 NMAC. The amendments are necessary to incorporate by reference new rules, corrections, and revisions to the federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants (MACT), promulgated by the U.S. Environmental Protection Agency (U.S. EPA) and published in the Federal Register from the most recent date of incorporation through September 15, 2015. The Department does not believe that the proposed amendments will have an adverse effect on small businesses since the U.S. EPA retains authority under the federal Clean Air Act 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.

A hearing in this matter will be held on December 18, 2015, at 9:00 a.m. in Room 322 of the State Capitol Building, 490 Old Santa Fe Trail, in Santa Fe, New Mexico. More information on the proposed amendments may be found at: https://www.cmv.nm.gov/aqb/prop_regs.html. Please feel free to contact me with any questions.

Sincerely,

Kay R. Bonza
Assistant General Counsel

Cc: Cindy Hollenberg, Environmental Analyst, NMED Air Quality Bureau



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Exhibit NMED 22
Revised Written Testimony of Cindy Hollenberg
Environmental Analyst
New Mexico Environment Department
Air Quality Bureau

1 **I. Witness Qualifications**

2 Cindy Hollenberg is an Environmental Analyst in the Control Strategies Section of the New
3 Mexico Environment Department (Department or NMED) Air Quality Bureau (Bureau). She is
4 responsible for preparing state reports and plans, analyzing proposed regulations, and writing
5 regulations for air quality. She has worked in the Air Quality Bureau since August 2013. Ms.
6 Hollenberg holds a Bachelor of Science degree in Biology Teaching from Purdue University, a
7 Master of Arts degree in International Peace Studies from the University of Notre Dame, and a
8 Master of Public Administration degree in Environmental Science and Policy from Columbia
9 University. Her resume is attached as Exhibit NMED 1.

10
11 **II. Proposed Amendments**

12
13 The Air Quality Bureau proposes amendments to the following air quality regulations codified in
14 the New Mexico Administrative Code (NMAC):

- 15 • 20.2.77 NMAC – *New Source Performance Standards (Part 77 or NSPS)*;
- 16 • 20.2.78 NMAC – *Emission Standards for Hazardous Air Pollutants (Part 78 or*
17 *NESHAP)*; and
- 18 • 20.2.82 NMAC – *Maximum Achievable Control Technology Standards for Source*
19 *Categories of Hazardous Air Pollutants (Part 82 or MACT)*.

20 Copies of the proposed amendments are included as Exhibits NMED 4, NMED 5 and NMED 6,
21 respectively. These rules are federally enforceable, but are not part of the State Implementation
22 Plan (SIP).

23
24 Adoption of performance and emission standards is authorized by the Air Quality Control Act
25 (AQCA), which provides at NMSA 1978, § 74-2-5(C):

26
27 Regulations adopted by the environmental improvement board or the local board
28 may:

29 ...

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

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

1 (b) shall be applicable only to sources subject to such federal standards of
2 performance;

3 ...
4

5 Incorporation by reference of the federal standards is the best way to ensure that New Mexico's
6 standards comply with all provisions of § 74-2-5(C). The proposed amendments to Parts 77, 78
7 and 82 include NSPS rules published in the Federal Register from September 24, 2013 to
8 September 15, 2015; NESHAP rules published in the Federal Register from January 1, 2011 to
9 September 15, 2015; and MACT rules published in the Federal Register from August 30, 2013 to
10 September 15, 2015. In order to accomplish this incorporation by reference, "through" dates
11 have been changed in several sections of each proposed rule. A table of relevant Federal Register
12 notices, with brief explanations for each, is included as Exhibit NMED 7. A table listing an
13 estimate of the number of facilities that may be affected by these federal rule changes is included
14 as Exhibit NMED 8. An additional table, listing the specific changes to Parts 60, 61 and 63
15 regarding source testing of emissions and operations as published in Federal Register notice
16 2014-02704, is included as Exhibit NMED 9.

17
18 Another proposed amendment removes an exception found at 20.2.77.10(D) NMAC. This
19 exception is no longer necessary because Subpart HHHH, the Clean Air Mercury Rule, was
20 invalidated and vacated by the U.S. Court of Appeals for the D.C. Circuit in 2008. The U.S.
21 Environmental Protection Agency (EPA) removed and reserved Subpart HHHH on February 16,
22 2012 (<http://www.gpo.gov/fdsys/pkg/FR-2012-02-16/pdf/2012-806.pdf>). The original Federal
23 Register notice for promulgation of Subpart HHHH can be found
24 at http://www.epa.gov/ttn/caaa/t3/fr_notices/27982camr111.pdf, and the court decision
25 invalidating and vacating the Clean Air Mercury Rule is included as Exhibit NMED 10.

26
27 A further proposed amendment adds an exception (Subpart QQQQ – *Standards of Performance*
28 *for New Residential Hydronic Heaters and Forced-Air Furnaces*) to 20.2.77.10(D) NMAC. The
29 Bureau does not regulate residential applications of air quality standards and EPA does not
30 require states to accept delegation of this federal rule. A copy of this rule from the electronic
31 code of federal regulations (<http://www.ecfr.gov/cgi-bin/ECFR?page=browse>) is included as
32 Exhibit NMED 11, with applicable (limited) delegation authority information highlighted.

33
34 The Bureau proposes to amend Section 11 of Parts 77, 78 and 82, to remove an outdated address
35 of the Air Quality Bureau. Instead of changing the address to the current address, the proposed
36 amendments add the current address as a note. This way, if the Air Quality Bureau should
37 change locations, a hearing will not be necessary to update the address.

38
39 The remaining proposed amendments are minor corrections and additions to allow for gender-
40 neutral language.

41 42 **III. Effect of Incorporation**

43
44 Under the federal Clean Air Act (CAA), authority to implement and enforce the NSPS, NESHAP
45 and MACT standards may be delegated to states. The EPA, however, retains the authority to
46 enforce the standards directly. See CAA § 111(c) and § 112(1)(7) (Exhibit NMED 16). New

1 Mexico has sought and obtained implementation authority. The EPA initially delegated authority
2 to New Mexico for the NSPS and NESHAP programs on March 15, 1985 in a letter to the
3 governor (Exhibit NMED 12a). EPA granted to New Mexico authority to implement and enforce
4 the MACT program on July 27, 1995 (Exhibit NMED 12b). The Department periodically
5 requests that the Environmental Improvement Board (Board) update the date of incorporation in
6 the New Mexico Administrative Code in order to include new rules and amendments made to the
7 federal regulations.

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

17 18 **IV. Public Outreach**

19
20 The public notices for this proposal and hearing were published in the New Mexico Register
21 (Exhibit NMED 19a) on October 15, 2015, and in the Albuquerque Journal in both English
22 (Exhibit NMED 19b) and Spanish (Exhibit NMED 19c) on October 9, 2015. The public notices
23 included an option to request an informational Open House; however, no requests were received.
24 Further, notice of the proposed changes were posted on the Department web site
25 (https://www.env.nm.gov/aqb/prop_regs.html) on July 31, 2015 and sent to recipients through
26 the Air Quality Bureau listserv on August 14, 2015 (Exhibit NMED 14). A cancellation notice
27 was sent to the listserv recipients, informing them that the October hearing date was vacated, and
28 an announcement with the new hearing date was sent to the listserv on October 15, 2015 (Exhibit
29 NMED 20). A letter was sent to the Small Business Regulatory Advisory Committee on
30 November 17, 2015 (Exhibit NMED 21). At the time of this filing, the Department has received
31 no substantive comments regarding the proposal.

32 33 **V. Proposed Changes to Part 77 (Exhibit NMED 4)**

34
35 The Board first adopted New Source Performance Standards by reference in 1984. These federal
36 standards are contained within Title 40 of the Code of Federal Regulations Part 60 (40 CFR Part
37 60). The Department proposes that 20.2.77 NMAC be amended to incorporate by reference the
38 federal requirements pertaining to NSPSs promulgated by the EPA from September 24, 2013 to
39 September 15, 2015. This involves changing the “as amended through” date to September 15,
40 2015 in Sections 2 and 9. There were thirteen (13) NSPS changes during this time period for
41 proposed incorporation. Four (4) of the changes involved changes to a NESHAP and/or MACT
42 as well as an NSPS rule.

43
44 Other changes proposed include amending Section 10 to: (1) allow for gender-neutral language;
45 (2) remove the exclusion for 40 CFR Part 60, Subpart HHHH as explained above; and (3) add an
46 exclusion for 40 CFR Part 60, Subpart QQQQ as explained above.

1
2 The final proposed amendment to Part 77 is to remove an outdated address for the Air Quality
3 Bureau.

4
5 **VI. Proposed Changes to Part 78 (Exhibit NMED 5)**

6
7 The Board first adopted National Emission Standards for Hazardous Air Pollutants by reference
8 in 1984. These federal standards are contained within Title 40 of the Code of Federal
9 Regulations Part 61 (40 CFR Part 61). The Department proposes that 20.2.78 NMAC be
10 amended to incorporate by reference the federal requirements pertaining to NESHAPs
11 promulgated by the EPA from September 24, 2013 to September 15, 2015. This involves
12 changing the “as amended through” date to September 15, 2015 in Sections 2 and 9. There was
13 one (1) NESHAP change during this time period for proposed incorporation. This change
14 involved changes to an NSPS and MACT rule as well as the NESHAP rule.

15
16 Other changes proposed include amending Section 10 to allow for gender-neutral language and
17 amending Section 11 to remove an outdated address for the Air Quality Bureau.

18
19 **VII. Proposed Changes to Part 82 (Exhibit NMED 6)**

20
21 The Board first adopted Maximum Achievable Control Technology Standards for Source
22 Categories of Hazardous Air Pollutants by reference in 1994. These federal standards are
23 contained with Title 40 of the Code of Federal Regulations Part 63 (40 CFR Part 63). The
24 Department is proposing that 20.2.82 NMAC be amended to incorporate by reference the federal
25 requirements pertaining to MACT standards promulgated by the EPA from September 24, 2013
26 to September 15, 2015. This involves changing the “as amended through” date to September 15,
27 2015 in Sections 2 and 8. There were seventeen (17) MACT changes during this time period for
28 proposed incorporation. Four (4) of the changes involved changes to an NSPS and/or NESHAP
29 as well as a MACT rule.

30
31 Other changes proposed include changing an acronym to the full title in Sections 6, 8, and 10,
32 amending Section 10 to allow for gender-neutral language, and amending Section 11 to remove
33 an outdated Bureau address.

34
35 **VIII. Federal Register Notices for Revisions to 40 CFR Parts 60, 61 and 63**

36
37 The Federal Register Notices are formal announcements of new or revised regulations, including
38 New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants
39 and Maximum Achievable Control Technology Standards for Source Categories of Hazardous
40 Air Pollutants. As previously noted, Exhibit NMED 7 is a table of the notices announcing the
41 amendments being incorporated in this proposal, including the date of publication, the effective
42 date of the amendments, the Part(s) of 40 CFR (Parts 60, 61 or 63) amended, the title of the
43 notice and a brief description of the changes. If printed, these notices would total 621 pages. For
44 this reason, the full text Federal Register Notices are included on CD only as Exhibit NMED 17.
45 The file name for each rule corresponds to the file name listed in Exhibit NMED 7.

1
2 **IX. Effect on Small Business**
3

4 Pursuant to the Small Business Regulatory Relief Act, NMSA 1978, § 14-4A-1 *et seq.*, the
5 Bureau has determined that the regulatory changes proposed in this action will not have an
6 adverse effect on small business. This determination is based on the fact that the proposed
7 amendment will not impose additional substantive requirements on facilities, but will simply
8 retain implementation authority with the State of New Mexico rather than the EPA. Nonetheless,
9 the Department provided the Small Business Regulatory Advisory Commission with notice of
10 this hearing, via the letter attached as Exhibit NMED 21. Additionally, the New Mexico
11 Environment Department Small Business Environmental Assistance Program provides ongoing
12 technical assistance for small businesses regarding new and existing environmental regulatory
13 requirements.
14

15 **X. CONCLUSION**
16

17 This concludes my testimony to the Environmental Improvement Board on the NMED proposed
18 amendments to 20.2.77 NMAC, 20.2.78 NMAC and 20.2.82 NMAC. I respectfully request that
19 the Board adopt these (non-SIP) proposed revisions at the conclusion of this hearing.
20

21 The Department also advises the Board that the rule revisions may be further revised to correct
22 any typographical errors and to reflect formatting changes required by the Administrative Law
23 Division of the New Mexico Commission of Public Records for compilation into the New
24 Mexico Administrative Code.



**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED AMENDMENTS
TO AIR QUALITY REGULATIONS
20.2.77, 20.2.78 AND 20.2.82 NMAC**

No. EIB 15-01 (R)

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

Petitioner.

**ORDER AND STATEMENT OF REASONS FOR ADOPTION OF
AMENDMENTS TO 20.2.77, 20.2.78 AND 20.2.82 NMAC**

This matter comes before the New Mexico Environmental Improvement Board ("Board") upon a petition filed by the Air Quality Bureau ("Bureau") of the New Mexico Environment Department ("NMED" or "Department"), proposing revisions to 20.2.77, 20.2.78, and 20.2.82 NMAC to incorporate newly promulgated federal standards within programs for which authority has been delegated to New Mexico by the U.S. Environmental Protection Agency ("EPA"). A public hearing was held in Santa Fe, New Mexico on December 18, 2015, with a quorum of the Board present during the hearing. The Board heard technical testimony from the Department and admitted exhibits into the record. On December 18, 2015, the Board deliberated and voted to adopt the proposed amendments for the reasons that follow:

I. STATEMENT OF REASONS

1. The federal Clean Air Act ("CAA") requires the 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 Section 111(c) provides for delegation to states of the authority to implement and enforce the standards promulgated under Section 111. 42 U.S.C. § 7411(c).

3. CAA Section 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 National Emission Standards for Hazardous Air Pollutants for Source Categories (also known as Maximum Achievable Control Technology or “MACT” standards), contained in 40 C.F.R. Part 63.

4. CAA Section 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 12a.*

6. In 1995, the EPA approved delegation of authority to New Mexico to implement and enforce the MACT standards. *See Exhibit NMED 12b.*

7. New Mexico incorporates the federal standards contained in 40 C.F.R. Parts 60, 61, and 63 into the New Mexico Administrative Code (“NMAC”) at 20.2.77, 20.2.78, and 20.2.82 NMAC, respectively.

8. The Department periodically petitions the Board to update the dates of incorporation of the federal standards in 20.2.77, 20.2.78, and 20.2.82 NMAC, in order to incorporate recently promulgated revisions to federal standards. *See Exhibit NMED 22, Revised Testimony of Cindy Hollenberg, at 3.*

9. The Department may choose to exclude from delegation certain federal rules. *See Exhibit NMED 22, Revised Testimony of Cindy Hollenberg, at 2.* The proposed amendment at

20.2.77.10(D) NMAC excludes from delegation Subpart QQQQ – *Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces* – because the Bureau does not regulate residential applications of air quality standards. *See Id.* at 2.

10. The proposed amendment at 20.2.77.10(D) NMAC also removes an exception to delegation of Subpart HHHH, the Clean Air Mercury Rule, which no longer exists as a federal rule. *See Id.* at 2; *see also* Exhibit NMED 10.

11. Remaining proposed amendments from the Department remove an outdated address for the Bureau and insert gender-neutral language to describe the EPA Administrator. *See* Exhibit NMED 22, Revised Testimony of Cindy Hollenberg, at 2.

12. Pursuant to 20.1.1.300(A) NMAC, any person may petition the Board to adopt, amend, or repeal regulations within the jurisdiction of the Board.

13. On April 22, 2015, NMED filed a petition with the Board for a public hearing in this matter. *See* petition in Record Proper.

14. On May 15, 2015, 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 and scheduled the hearing for October 15, 2015. The Board appointed John Volkerding as the Hearing Officer.

15. On August 14, 2015, public notice of the hearing was published in the New Mexico Register and in the Albuquerque Journal, in English and Spanish. *See* Exhibits NMED 13a, 13b, and 13c. The public notice stated that the Board may make a decision on the proposed amendments at the conclusion of the hearing, or may convene at a later date to consider action on the proposal.

16. NMED filed a Notice of Intent to Present Technical Testimony (“NOI”) on September 25, 2015, in accordance with 20.1.1.302 NMAC.

17. On October 5, 2015, the Board issued an Order to Vacate and Continue Hearing due to the unavailability of Board members to meet the quorum requirements under the New Mexico Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4.

18. On October 6, 2015, the Board issued an Amended Order to Vacate and Continue Hearing, setting the new hearing date for December 18, 2015, in Room 322 of the State Capitol. The Amended Order set the deadline for filing a Notice of Intent to Present Technical Testimony and entering an appearance in this matter for November 30, 2015.

19. On October 15, 2015, public notice of the new hearing date was published in the New Mexico Register, and on October 9, 2015, public notice of the new hearing date was published in the Albuquerque Journal, in English and Spanish. *See* Exhibits NMED 19a, 19b, and 19c. The public notice stated that the Board may make a decision on the proposed amendments at the conclusion of the hearing, or may convene at a later date to consider action on the proposal.

20. On November 19, 2015, the Department filed a Supplement to its Notice of Intent to Present Technical Testimony, to provide supplemental exhibits demonstrating that the Department properly noticed the public of the new hearing date. In addition, Cindy Hollenberg’s testimony was revised to account for the additional public outreach efforts of the Department as a result of the new hearing date.

21. No other parties filed NOIs.

22. A hearing in this matter was held in Santa Fe, New Mexico on December 18, 2015, at which a reasonable opportunity for all persons to be heard was provided.

23. Pursuant to Section 74-2-5 of the Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -22 (1967, as amended through 2009), the Board has the authority to adopt the proposed NMED amendments.

24. The standards adopted by this regulatory change are federal standards, and therefore are no more stringent but at least as stringent as the federal standards, in compliance with NMSA 1978, Section 74-2-5(C)(2).

25. In considering the proposed amendments, the Board is required 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. NMSA 1978, § 74-2-5(E) (2007).

26. 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 non-air quality health and environmental impact and energy requirements. 42 U.S.C. § 7411(a)(1).

27. The federal NESHAP and MACT standards 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 non-air quality health and environmental impacts and energy requirements. 42 U.S.C. § 7412(d)(2).

28. EPA's determination of NSPS, NESHAP, 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.

29. 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 22, Revised Testimony of Cindy Hollenberg, at 2. 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 3. This serves the public interest.

30. The proposed amendments therefore satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5(E).

31. The notice and hearing requirements of NMSA 1978, Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.

32. The proposed amendments are adopted for any or all of the reasons stated above.

II. ORDER

By majority vote of a quorum of the Board members, the proposed amendments to New Mexico's Air Quality Regulations, to incorporate newly promulgated federal standards within programs for which authority has been delegated to New Mexico by the EPA, were approved by the Board on December 18, 2015, as contained in NMED's Notice of Intent to Present Technical Testimony. Amendments to 20.2.77, 20.2.78, and 20.2.82 NMAC, along 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: _____

