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.

COPY

SEP 2015

NEW MEXICO ENVIRONMENT DEPARTMENT'S 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 Notice of Intent to Present Technical Testimony at the Environmental Improvement Board ("Board") hearing on October 15, 2015, regarding the Bureau's proposed amendments to 20.2.77, 20.2.78, and 20.2.82 NMAC.

1. Entity Represented by the Technical Witness

The witness will testify for the Air Quality Bureau of the Environmental Protection Division of the Department.

2. Name and Qualifications of the Technical Witness

Cindy Hollenberg. Cindy Hollenberg is an Environmental Analyst in the Control Strategies Section of the Air Quality Bureau. She is responsible for preparing state reports and plans, analyzing proposed regulations, and writing regulations for air quality. She has been employed by the Bureau since August 2013. Ms. Hollenberg holds a Bachelor of Science degree in Biology Teaching from Purdue University, a Master of Arts degree in International Peace

Studies from the University of Notre Dame, and a Master of Public Administration degree in Environmental Science and Policy from Columbia University. Her resume is attached as Exhibit NMED 1.

Rita Bates. Rita Bates is the Section Chief of the Planning Section of the Air Quality Bureau. She has 25 years of experience in the environmental field, including 17 years with the Department. In addition to her work for the Air Quality Bureau, Ms. Bates has worked as an environmental coordinator and in environmental consulting as a project manager. Ms. Bates holds a Bachelor of Science degree in Biology from Humboldt State University. Her resume is attached as Exhibit NMED 2.

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

A copy of the written direct testimony of Cindy Hollenberg is attached as Exhibit NMED 3. Ms. Hollenberg 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 from the Board if necessary.

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, 20.2.78, and 20.2.82 NMAC as contained in the Department's petition submitted on April 22, 2015, without any modifications. The regulatory changes proposed in that petition are replicated in Exhibits NMED 4, NMED 5, and NMED 6, for the convenience of the Board.

5. **List and Description of Exhibits**

The Department submits the following exhibits:

NMED Exhibit #	Title of Exhibit
1	Resume of Cindy Hollenberg
2	Resume of Rita Bates
3	Written Testimony of Cindy Hollenberg
4	Proposed Amendments to 20.2.77 NMAC
5	Proposed Amendments to 20.2.78 NMAC
6	Proposed Amendments to 20.2.82 NMAC
7	Table of Relevant Federal Register Notices with Brief Explanations of Each
8	Table of the Number of Facilities Potentially Affected by the Federal Regulation Changes
9	Table of Specific Changes to 40 CFR Parts 60, 61, and 63 Regarding Source Testing of Emissions and Operations
10	Court Decision Invalidating and Vacating the Clean Air Mercury Rule
11	40 CFR Part 60, Subpart QQQQ – *Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces*
12a	1985 Delegation of Authority Letter (NSPS and NESHAP)
12b	1995 Delegation of Authority Letter (MACT)
13a	Affidavit of Publication (New Mexico Register)
13b	Affidavit of Publication (Albuquerque Journal, English)
13c	Affidavit of Publication (Albuquerque Journal, Spanish)
14	Notice of Rulemaking Hearing sent to Air Quality Bureau Listserv
15	Letter to Small Business Regulatory Advisory Commission, dated July 29, 2015
16	Clean Air Act, §§ 111(c) and 112(l) (42 U.S.C. §§ 7411 and 7412)
17	Federal Register Notices Relevant to Amendments (on CD only)
18	Proposed Statement of Reasons for Adoption of Rules

6. **Reservation of Rights**

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,

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

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.

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 – *Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces*	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

Cindy Hollenberg

Education

Columbia University, New York, New York
MPA, Environmental Science and Policy (2012)

University of Notre Dame, South Bend, Indiana
MA, International Peace Studies (1995)

Purdue University, Fort Wayne, Indiana
BS, Biology Teaching (1987)

Experience

New Mexico Environment Department, Air Quality Bureau, Planning Section
2013 – present, Environmental Analyst, Control Strategies

Responsibilities for the Control Strategies group include analysis for proposed rule changes, including research and documentation of proposals' economic, environmental, social and implementation effects. Responsibilities also include preparation of reports to the US EPA, data visualization and mapping using GIS, assisting with affirmative defense reviews for excess emissions, and environmental impact reviews.

EnviroLogic, Inc.
2012 – 2013, Research Associate

I collected data from various agencies and organizations for hydrologic modeling, as well as prepared data for inclusion in GIS applications. In addition, I contributed to reports for international clients regarding nuclear safety case issues (using WIPP as a case study) and completed modeling parameter analysis for testimony preparation.

Mountainair Public Schools
2004 – 2011, Educator and Program Coordinator

I developed and implemented curricula for 10 high school and middle school science laboratory classes, 3 levels of Spanish, and Communications and managed the high school Chemistry / Physics lab. Coordination responsibilities included the high school Student Assistance Team and the Anti-Bullying Program, which I helped develop for the school system.

Fort Wayne Community Schools, South Side High School
2001 – 2004, Educator and Program Coordinator

I developed and implemented curricula for 4 levels of Chemistry, taught department-developed curricula for Biology and Earth Science, and managed the Chemistry lab. I also co-coordinated the International Baccalaureate Program for the school.

Previous experience included mainly pro bono work for a start-up company and myriad organizations.

Exhibit NMED 1

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.

Exhibit NMED 2

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)

Exhibit NMED 3
Written Testimony of Cindy Hollenberg
Environmental Analyst
New Mexico Environment Department
Air Quality Bureau

I. Witness Qualifications

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

II. Proposed Amendments

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

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

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

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

> Regulations adopted by the environmental improvement board or the local board may:
> ...
> (2) prescribe standards of performance for sources and emission standards for hazardous air pollutants that, except as provided in this subsection:
> (a) shall be no more stringent than but at least as stringent as required by federal standards of performance; and

Exhibit NMED 3

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

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

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

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

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

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

III. Effect of Incorporation

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

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

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

IV. Public Outreach

The public notices for this proposal and hearing were published in the New Mexico Register (Exhibit NMED 13a) and in the Albuquerque Journal in both English (Exhibit NMED 13b) and Spanish (Exhibit NMED 13c) on August 14, 2015. The public notices included an option to request an informational Open House; however, no requests were received. Further, notice of the proposed changes were posted on the Department web site (https://www.env.nm.gov/aqb/prop_regs.html) on July 31, 2015 and sent to approximately 1200 recipients through the Air Quality Bureau listserv on August 14, 2015 (Exhibit NMED 14). A letter was sent to the Small Business Regulatory Advisory Committee on July 29, 2015 (Exhibit NMED 15). At the time of this filing, the Department has received no substantive comments regarding the proposal.

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

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

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

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

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

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

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

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

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

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

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

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

IX. Effect on Small Business

Pursuant to the Small Business Regulatory Relief Act, NMSA 1978, § 14-4A-1 *et seq.*, the Bureau has determined that the regulatory changes proposed in this action will not have an adverse effect on small business. This determination is based on the fact that the proposed amendment will not impose additional substantive requirements on facilities, but will simply retain implementation authority with the State of New Mexico rather than the EPA. Nonetheless, the Department provided the Small Business Regulatory Advisory Commission with notice of this hearing, via the letter attached as Exhibit NMED 15. Additionally, the New Mexico Environment Department Small Business Environmental Assistance Program provides ongoing technical assistance for small businesses regarding new and existing environmental regulatory requirements.

X. CONCLUSION

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

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

This is an amendment to 20.2.77 NMAC, Sections 2, 9, 10,and 11, effective XX/XX/15.

20.2.77.2 SCOPE: Any stationary source constructing or modifying and which is subject to the requirements of 40 CFR Part 60, as amended through [~~September 23, 2013~~] September 15, 2015.
[06/16/95, 11/19/97, 09/08/99; 20.2.77.2 NMAC - Rn, 20 NMAC 2.77.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/15/07; A, 08/17/09; A, 09/02/11; A, 12/19/13; A, XX/XX/15]

20.2.77.9 ADOPTION OF 40 CFR PART 60: Except as otherwise provided, the new source performance standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the Federal Register through [~~September 23, 2013~~] September 15, 2015 are hereby incorporated into this part [20.2.77 NMAC].
[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, 06/13/03; A, 06/15/07; A, 08/17/09; A, 09/02/11; A, 12/19/13; A, XX/XX/15]

20.2.77.10 MODIFICATIONS AND EXCEPTIONS: The following modifications or exceptions are made to the incorporated federal standards[~~.~~]:

A. Amend 40 CFR Part 60, Section 60.2, Definitions, as follows: For the purposes of delegation of authority which the administrator of the United States environmental protection agency may, [~~in his~~] at the administrator's discretion, delegate to the secretary of the New Mexico environment department, "administrator" means the secretary of the department or [~~his~~] the secretary's authorized representative.

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

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

D. [~~Exclude 40 CFR Part 60, Subpart HHHH, Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units.~~] Exclude 40 CFR Part 60, Subpart QQQQ – Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces.
[06/16/95; 20.2.77.10 NMAC - Rn, 20 NMAC 2.77.108 06/23/00; A, 06/15/07; A, XX/XX/15]

20.2.77.11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the New Mexico environment department, air quality bureau [~~, 1301 Siler Road, Building B, Santa Fe NM, 87507~~].
[06/16/95; 20.2.77.11 NMAC - Rn, 20 NMAC 2.77.109 06/23/00; A, 08/17/09; A, XX/XX/15]

Exhibit NMED 4

This is an amendment to 20.2.78 NMAC, Sections 2, 9, 10,and 11, effective XX/XX/15.

20.2.78.2 SCOPE: All sources emitting hazardous air pollutants which are subject to the requirements of 40 CFR Part 61, as amended through [~~December 31, 2010~~]September 15, 2015.
[06/16/95, 11/19/97, 09/08/99; 20.2.78.2 NMAC - Rn 20 NMAC 2.78.101 & A, 06/23/00; A, 02/18/02; A, 06/08/07; A, 08/17/09; A, 09/02/11; A, XX/XX/15]

20.2.78.9 ADOPTION OF 40 CFR PART 61: Except as otherwise provided, the national emission standards for hazardous air pollutants as promulgated by the United States environmental protection agency, 40 CFR Part 61, as amended in the Federal Register through [~~December 31, 2010~~]September 15, 2015 are hereby incorporated into this part [20.2.78 NMAC].
[06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.78.9 NMAC - Rn 20 NMAC 2.78.107 & A, 06/23/00; A, 02/18/02; A, 06/08/07; A, 08/17/09; A, 09/02/11; A, XX/XX/15]

20.2.78.10 MODIFICATIONS AND EXCEPTIONS: The following modifications or exceptions are made to the incorporated federal standards:

A. amend 40 CFR Part 61, Section 61.02, Definitions, as follows: For the purposes of delegation of authority which the Administrator of the United States environmental protection agency may, [~~in his~~]at the administrator's discretion, delegate to the secretary of the New Mexico environment department, "administrator" means the secretary or [~~his~~]the secretary's authorized representative.

B. exclude 40 CFR Part 61, Subparts B (National Emission Standards for Radon Emissions from Underground Uranium Mines), H (National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities), I (National Emission Standards for Radionuclide Emissions from Facilities Licensed by the NRC and Federal Facilities not covered by Subpart H), K ([-]National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants), Q (National Emission Standards for Radon Emissions from Department of Energy Facilities), R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks), T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings), and W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

C. the federal emission standards incorporated by this regulation shall not be subject to NMSA 1978, Section 74-2-8 [Variances]
[06/16/95; 20.2.78.9 NMAC - Rn, 20 NMAC 2.78.108 06/23/00; A, XX/XX/15]

20.2.78.11 DOCUMENTS: Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau[~~, 1301 Siler Road, Building B, Santa Fe NM, 87507~~].
[06/16/95; 20.2.78.11 NMAC - Rn, 20 NMAC 2.78.109 06/23/00; A, 08/17/09; A, XX/XX/15]

Exhibit NMED 5

This is an amendment to 20.2.82 NMAC, Sections 2, 6, 8, 10,and 11, effective XX/XX/15.

20.2.82.2 SCOPE: All sources emitting hazardous air pollutants, which are subject to the requirements of 40 CFR Part 63, as amended through [~~August 29, 2013~~]September 15, 2015.
[Rn, 20 NMAC 2.82.2, 08/14/98; A, 08/14/98; A, 09/08/99; 20.2.82.2 NMAC - Rn, 20 NMAC 2.82.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/08/07; A, 08/17/09; A, 09/02/11; A, 12/19/13; A, XX/XX/15]

20.2.82.6 OBJECTIVE: The objective of this part is to adopt or establish state authority to implement emission standards for hazardous air pollutants for the source categories in New Mexico subject to federal standards. The [~~US EPA~~]United States environmental protection agency requires New Mexico to adopt such standards in order to implement requirements in Section 112 of the Clean Air Act.
[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; A, XX/XX/15]

20.2.82.8 ADOPTION OF 40 CFR PART 63: Except as otherwise provided in section 20.2.82.10 NMAC (below), the national emission standards for hazardous air pollutants for source categories as promulgated by the [~~US EPA~~]United States environmental protection agency, 40 CFR Part 63, as amended in the Federal Register through [~~August 29, 2013~~]September 15, 2015 are hereby incorporated into this part (20.2.82 NMAC).
[Rn, 20 NMAC 2.82.7, 08/14/98; A, 08/14/98; A, 09/08/99; 20.2.82.8 NMAC - Rn, 20 NMAC 2.82.106 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/08/07; A, 08/17/09; A, 09/02/11; A, 12/19/13; A, XX/XX/15]

20.2.82.10 MODIFICATIONS AND EXCEPTIONS: The following modifications or exceptions are made to the incorporated federal standards:

A. general provisions: Amend 40 CFR Part 63, Subpart A - General Provisions, Section 63.2, Definitions, as follows: For the purposes of delegation of authority which the Administrator of the [~~US EPA~~]United States environmental protection agency may, [~~in his or her~~]at the administrator's discretion, delegate to the secretary of the New Mexico environment department, "administrator" means the secretary or [~~his/her~~]the secretary's authorized representative.

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

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

[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; A, XX/XX/15]

20.2.82.11 DOCUMENTS: Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau[~~, 1301 Siler Road, Building B, Santa Fe NM, 87507~~].
[08/14/98; 20.2.82.11 NMAC - Rn, 20 NMAC 2.82.110 06/23/00; A, 08/17/09; A, XX/XX/15]
[As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Suite 1, Santa Fe NM, 87505]

Exhibit NMED 6

List of Amendments to 40 CFR 60, 61 and 63 Published in the Federal Register from last date of incorporation to 9/15/2015

PDF name (FR Date)	Effective Date	40 CFR Part (Subpart)	Title	Summary of Changes	# pages in PDF
2013-29731 (12/19/2013)	3/19/2014	60 (Ja)	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced after May 14, 2007	Amends definition of "delayed coking unit"	4
2013-31267 (1/3/2014)	3/4/2014	63 (X)	National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting	Clarifies compliance dates; amends provisions related to negative pressure in total enclosures; corrects toxic equivalency factors	6
2014-02704 (2/27/2014)	2/27/2014	60 (A, Db, Ec, H, O, BB, GG, KK,LL, UU, NNN, IIII, JJJJ, Appendices A-1 through A-8, B, F), 61 (A, C, D, E, N, Appendix B), 63 (A, G, N, O, Y, GG, GGG, RRR, CCCC, UUUU, ZZZZ, Appendix A)	Revisions to Test Methods and Testing Regulations	Corrections for Source testing of emissions and operations (numerous - see separate table)	68

Exhibit NMED 7

List of Amendments to 40 CFR 60, 61 and 63 Published in the Federal Register from last date of incorporation to 9/15/2015

PDF name (FR Date)	Effective Date	40 CFR Part (Subpart)	Title	Summary of Changes	# pages in PDF
2014-04305 (3/27/2014)	3/27/2014	63 (JJJ, MMM, PPP)	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production	Finalizes residual risk and technology review for 9 source categories: removes exemption for emissions during startup, shutdown and malfunction; promulgates standards for previously unregulated organic HAPs sources; requires monitoring of pressure relief devices; and requires electronic reporting of performance test results	44
2014-06719 (4/4/2014)	4/4/2014	60 (BB)	Kraft Pulp Mills NSPS Review	Revised standards for kraft pulp mills, including particulate matter emission limits for recovery furnaces, smelt dissolving tanks and lime kilns, and opacity limits for recovery furnaces and lime kilns with electrostatic precipitators. For units constructed or modified after 5/23/13. Removes exemption for SSM. Includes revisions to testing, monitoring, recordkeeping and reporting.	22
C1-2012-19691 (5/6/2014)	8/14/2012 (correction)	60 (Ga)	New Source Performance Standards Review for Nitric Acid Plants	Correction of Equation 1 (incorrect equation in 2012-19691 published 8/14/2012)	2
2014-11226 (5/16/2014)	11/12/2014	60 (Appendix F)	Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources	QA/QC procedures (Procedure 3) for continuous opacity monitoring systems (Appendix F of 40 CFR part 60): instrument zeroing; upscale drift checks; daily status indicator checks; performance audits; annual zero alignments; and corrective action for malfunctions	6
2014-18734 (8/15/2014)	8/15/2014	63 (III)	National Emission Standards for Hazardous Air Pollutants Residual Risk and Technology Review for Flexible Polyurethane Foam Production	Revisions to provisions for emissions during SSM; addition of electronic reporting requirements; prohibition of HAP or HAP-based products as auxiliary blow agents for slabstock; clarifications to leak detection methods allowed for diisocyanate storage vessels; schedule for delay of leak repairs	18

Exhibit NMED 7

List of Amendments to 40 CFR 60, 61 and 63 Published in the Federal Register from last date of incorporation to 9/15/2015

PDF name (FR Date)	Effective Date	40 CFR Part (Subpart)	Title	Summary of Changes	# pages in PDF
2014-23099 (10/8/2014)	10/8/2014	63 (OOO)	National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards; and Manufacture of Amino-Phenolic Resins	Finalizes residual risk and technology review for Acrylic and Modacrylic Fibers Production, Amino/Phenolic Resins Production and Polycarbonate Production source categories. Addresses emissions during SSM. Adds standards for previously unregulated HAP emissions for certain emission points. Clarifies provisions for open-ended valves and lines. Adds requirements for electronic reporting of test results.	39
2014-27125 (11/19/2014)	11/19/2014	60 (Da), 63 (UUUUU)	Reconsideration of Certain Startup/Shutdown 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	Finalizes work practice standards during startup periods and shutdown periods in the 2/16/2012 MATS and Utility NSPS. For the Utility NSPS, the provisions are related to particulate matter.	19
2014-27126 (11/19/2014)	1/5/2015	63 (UUUUU)	National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units	Amends reporting requirements in MATS rule: temporarily requires sources to submit required emissions and compliance reports to EPA through Emissions Collection and Monitoring Plan System (ECMPS) Client Tool; temporarily suspends requirement for some reporting using the Electronic Reporting Tool and the Compliance and Emissions Data Reporting Interface (CEDRI)	5

List of Amendments to 40 CFR 60, 61 and 63 Published in the Federal Register from last date of incorporation to 9/15/2015

PDF name (FR Date)	Effective Date	40 CFR Part (Subpart)	Title	Summary of Changes	# pages in PDF
2014-30630 (12/31/2014)	12/31/2014	60 (OOOO)	Oil and Natural Gas Sector: Reconsideration of Additional Provisions of New Source Performance Standards	Amends final (August 2012) NSPS for oil and natural gas sector: (1) Provide clarity for handling of gas and liquids during well completion operations; (2) Finalize definition of "low pressure gas well;" (3) Clarify storage vessel provisions related to PTE; (4) Allow additional closed vent systems mechanisms (other than weighted lid thief hatches); (5) Clarify notification requirements for storage vessels removed from service; (6) Clarify that storage vessels removed from service are no longer affected facilities; (7) Allow routing emissions from rod packing on reciprocating compressors through a negative pressure collection system; (8) Correct inadvertent omission for exemption from routine leak detection; (9) Amend definition of "equipment," (10) Change "responsible official" to "certifying official" to avoid confusion with Title V permitting terms; (11) Provide for delegation of authority from certain facilities; and (12) Remove affirmative defense provision.	25
2015-01922 (2/4/2015)	3/30/2015	63 (DDDDDD)	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources Wastewater Limit Withdrawal	Withdraw the total non-vinyl chloride organic hazardous air pollutant process wastewater emission standards for new and existing polyvinyl chloride and copolymers area sources	4
2015-03733 (3/16/2015)	5/15/2015	60 (AAA, QQQQ-new)	Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces	Updates emission limits for new residential wood heaters, eliminates various exemptions for several residential wood combustion devices, strengthens test methods and streamlines the certification process.	83

List of Amendments to 40 CFR 60, 61 and 63 Published in the Federal Register from last date of incorporation to 9/15/2015

PDF name (FR Date)	Effective Date	40 CFR Part (Subpart)	Title	Summary of Changes	# pages in PDF
2015-05463 (3/18/2015)	3/18/2015	63(DD)	National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations	Finalizes risk and technology reviews; corrects provisions related to SSM emissions; adds requirements for testing and electronic reporting; clarifies provisions for open-ended valves; adds monitoring requirements for pressure relief devices; clarifies certain test methods and procedures; and makes other minor clarifications.	37
2015-06152 (3/24/2015)	3/24/2015	63 (UUUUU)	National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units	Replaces existing reporting requirements from 11/19/2014 final rule. (See above) Temporarily requires owners/operators to submit compliance reports through Emissions Collection and Monitoring Plan System Client Tool, rather than Compliance and Emissions Data Reporting Interface.	6
2015-09232 (4/21/2015)	7/1/2014 (correction)	63 (N)	National Emission Standards for Hazardous Air Pollutants for Source Categories	Corrects compliance provisions for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	1
2015-15481 (6/24/2015)	7/1/2014 (correction)	63 (YYYYY)	National Emission Standards for Hazardous Air Pollutants for Source Categories	Reinstates a paragraph requiring monitoring, record-keeping and reporting for capture systems and PM control devices on electric arc furnaces and argon-oxygen decarburization vessels at certain steel production facilities; clarifies that exemption in 40 CFR 64.2(b)(1)(i) does not apply	1
2015-15038 (6/30/2015)	6/30/2015	63 (XXX)	National Emissions Standards for Hazardous Air Pollutants: Ferroalloys Production	Revises PM standards for electric arc furnaces, metal oxygen refining processes and crushing and screening operations; finalizes opacity limits and requires digital campera opacity monitoring; finalizes emissions standards for 4 HAPs - formaldehyde, hydrogen chloride, mercury and polycyclic aromatic hydrocarbons	37

List of Amendments to 40 CFR 60, 61 and 63 Published in the Federal Register from last date of incorporation to 9/15/2015

PDF name (FR Date)	Effective Date	40 CFR Part (Subpart)	Title	Summary of Changes	# pages in PDF
2015-16385 (7/7/2015)	7/7/2015	60 (Appendix B)	Performance Specification 18 - Performance Specifications and Test Procedures for Hydrogen Chloride Continuous Emission Monitoring Systems at Stationary Sources	Finalizes performance specifications and test procedures for HCl continuous emission monitoring systems, including requirements for initial acceptance, instrument accuracy and stability assessmants; finalizes quality assurance procedures used for compliance determination at stationary sources; offers an alternative to PS-15 when facilities are required to continuously monitor HCl	25
C1-2015-16385 (7/17/2015)	7/7/2015 (correction)	60 (Appendix B)	Performance Specification 18 - Performance Specifications and Test Procedures for Hydrogen Chloride Continuous Emission Monitoring Systems at Stationary Sources	Corrects typographical error (+5 to ±5 on page 38646)	1
2015-16811 (7/27/2015)	7/27/2015	60 (F), 63 (LLL)	National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants	Removes affirmative defense for violations due to malfunctions; clarifies changes and corrections to 2013 final rule (definitions, table of emission limits, equation correction, provides alternative for certain sources, add temperature parameter to startup and shutdown requirements, clarify values for Hg and HCl measurements, typographical corrections)	23
2015-16643 (7/29/2015)	7/29/2015	63 (DDD)	National Emissions Standards for Hazardous Air Pollutants for Mineral Wool Production and Wool Fiberglass Manufacturing	Establishes pollutant-specific emissions limits previously regulated under a surrogate or previously unregulated;finalizes first-time generally available control technologies standards for glass-melting furnaces; amends provisions related to emissions during startup, shutdown and malfunction; adds electronic reporting requirements; makes minor clarifications and corrections	60
2015-19733 (8/12/2015)	8/12/2015	60 (OOOO)	Oil and Natural Gas Sector: Definitions of Low Pressure Gas Well and Storage Vessel	Amends definitions of "low pressure gas well" and "storage vessel"; removes provisions concerning storag vessels connected in parallel	7

List of Amendments to 40 CFR 60, 61 and 63 Published in the Federal Register from last date of incorporation to 9/15/2015

PDF name (FR Date)	Effective Date	40 CFR Part (Subpart)	Title	Summary of Changes	# pages in PDF
2015-19732 (8/19/2015)	8/19/2015	60(T, U), 63 (AA)	Phosphoric Acid Manufacturing and Phosphate Fertilizer Production RTR and Standards of Performance for Phosphate Processing	Finalizes residual risk and technology review and 8-year review of NSPS for 5 source categories; Determined no numeric revisions to emission limits for performance standards; Phosphoric Acid Mfg - added limit for Hg and total fluoride, added work practice standards for HF from gypsum dewatering stacks and cooling ponds, clarified applicability and monitoring requirements, removed SSM exemptions, revised recordkeeping and reporting requirements during SSM; Phosphate Fertilizer Production - clarified applicability and monitoring requirements, removed exemptions for SSM, adopted work practice standards during SSM, revised recordkeeping and reporting for SSM	76
2015-22945 (9/11/2015)	9/9/2015	63 (LLL)	National Emission Standards for Hazardous Air pOllutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants; Correction	Corrections (technical and typographical) of errors in 8/27/15 publication of final rule related to data substitution and timing of performance tests.	2
				TOTAL NUMBER OF PAGES	621

TABLE OF POTENTIALLY AFFECTED FACILITIES (TEMPO Database queried 6/26/2015)

NSPS, NESHAP or MACT applicable to NM facilities	Number of NM facilities
40 CFR 60 Subpart A	912
40 CFR 60 Subpart AA	1
40 CFR 60 Subpart AAA	1
40 CFR 60 Subpart CC	1
40 CFR 60 Subpart D	1
40 CFR 60 Subpart DA	4
40 CFR 60 Subpart DB	9
40 CFR 60 Subpart Dc	28
40 CFR 60 Subpart DD	1
40 CFR 60 Subpart GG	44
40 CFR 60 Subpart GGG	5
40 CFR 60 Subpart GGGa	2
40 CFR 60 Subpart HH	16
40 CFR 60 Subpart I	69
40 CFR 60 Subpart III	2
40 CFR 60 Subpart iiii	149
40 CFR 60 Subpart J	4
40 CFR 60 Subpart Ja	2
40 CFR 60 Subpart JJJ	1
40 CFR 60 Subpart JJJJ	570
40 CFR 60 Subpart K	5
40 CFR 60 Subpart KA	6
40 CFR 60 Subpart KB	71
40 CFR 60 Subpart KKK	33
40 CFR 60 Subpart KKKK	16
40 CFR 60 Subpart LL	2
40 CFR 60 Subpart LLL	4
40 CFR 60 Subpart NNN	2
40 CFR 60 Subpart O	1
40 CFR 60 Subpart OOO	204
40 CFR 60 Subpart OOOO	493
40 CFR 60 Subpart QQQ	4
40 CFR 60 Subpart UU	1
40 CFR 60 Subpart UUU	1
40 CFR 60 Subpart VV	2
40 CFR 60 Subpart WW	1
40 CFR 60 Subpart WWW	10
40 CFR 60 Subpart XX	2
40 CFR 60 Subpart Y	4
40 CFR 61 Subpart A	19
40 CFR 61 Subpart B	2
40 CFR 61 Subpart C	1
40 CFR 61 Subpart FF	4
40 CFR 61 Subpart H	1
40 CFR 61 Subpart M	15
40 CFR 61 Subpart Q	1
40 CFR 61 Subpart V	3
40 CFR 63 Subpart A	728
40 CFR 63 Subpart AA	3
40 CFR 63 Subpart AAAA	2
40 CFR 63 Subpart B	1
40 CFR 63 Subpart BBBBBB	3
40 CFR 63 Subpart CC	4
40 CFR 63 Subpart CCCCCC	7

Exhibit NMED 8

40 CFR 63 Subpart DDDD	1
40 CFR 63 Subpart DDDDD	16
40 CFR 63 Subpart DDDDDDD	1
40 CFR 63 Subpart EEEE	1
40 CFR 63 Subpart EEEEE	1
40 CFR 63 Subpart GGGGG	2
40 CFR 63 Subpart HH	146
40 CFR 63 Subpart HHH	1
40 CFR 63 Subpart HHHHHH	1
40 CFR 63 Subpart IIII	4
40 CFR 63 Subpart IIIII	4
40 CFR 63 Subpart JJ	1
40 CFR 63 Subpart JJJJ	15
40 CFR 63 Subpart JJJJJ	2
40 CFR 63 Subpart KKKK	2
40 CFR 63 Subpart MMMM	1
40 CFR 63 Subpart MMMMM	1
40 CFR 63 Subpart O	1
40 CFR 63 Subpart OOO	7
40 CFR 63 Subpart OOOO	21
40 CFR 63 Subpart Q	1
40 CFR 63 Subpart R	3
40 CFR 63 Subpart T	1
40 CFR 63 Subpart UUU	3
40 CFR 63 Subpart UUUUU	1
40 CFR 63 Subpart VV	1
40 CFR 63 Subpart WWWW	1
40 CFR 63 Subpart YYYY	6
40 CFR 63 Subpart ZZZZ	919

SUMMARY OF CHANGES in FEDERAL REGISTER NOTICE 2014-02704
Technical and editorial corrections for source testing of emissions and operations

Part	Subpart #	Subpart Topic/Title
60 Standards of Performance for New Stationary Sources	A	General Provisions
	Db	Industrial-Commercial-Institutional Steam Generating Units
	Ec	Hospital/Medical/Infectious Waste Incinerators
	H	Sulfuric Acid Plants
	O	Sewage Treatment Plants
	BB	Kraft Pulp Mills
	GG	Stationary Gas Turbines
	KK	Lead-Acid Battery Manufacturing Plants
	LL	Metallic Mineral Processing Plants
	UU	Asphalt Processing and Asphalt Roofing Manufacture
	NNN	Volatile Organic Chemical (VOC) Emissions from Synthetic Organic Compound Manufacturing Industry (SOCMI) Distillation Operations
	IIII	Stationary Compression Ignition Internal Combustion Engines
	JJJJ	Stationary Spark Ignition Internal Combustion Engines
	Appendix A-1	Method 1, 2, 2A, 2B, 2D
	Appendix A-2	Method 3A, 3C
	Appendix A-3	Method 4, 5, 5A, 5E, 5H
	Appendix A-4	Method 6, 6C, 7, 7A, 7E, 8, 10, 10A, 10B
	Appendix A-5	Method 11, 12, 14A
	Appendix A-6	Method 16A, 16C, 18
	Appendix A-7	Method 23, 24, 25, 25C, 25D
	Appendix A-8	Method 26, 26A, 29, 30B
	Appendix B	Performance Specification 3, 4, 4B, 7, 11, 12B, 15, 16
	Appendix F	Procedure 1, 2, 5
61 National Emissions Standards for Hazardous Air Pollutants	A	General Provisions
	C	Beryllium
	D	Beryllium Rocket Motor Firing
	E	Mercury
	N	Inorganic Arsenic Emissions from Glass Manufacturing Plants
	Appendix B	Method 101, 101A, 102, 104, 108, 108A
63 National Emission Standards for Hazardous Air Pollutants for Source Categories	A	General Provisions
	GG	Synthetic Organic Chemical Manufacturing Industry
	N	Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
	O	Ethylene Oxide Emissions Standards for Sterilization Facilities
	Y	Marine Tank Vessel Loading
	GG	Aerospace Manufacturing and Rework Facilities
	GGG	Pharmaceuticals Production
	RRR	Secondary Aluminum Production
	CCCC	Manufacturing of Nutritional Yeast
	UUUU	Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
	ZZZZ	Stationary Reciprocating Internal Combustion Engines
	Appendix A	Method 306, 306A, 308, 315, 316, 321

Exhibit NMED 9

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued December 6, 2007 Decided February 8, 2008

No. 05-1097

STATE OF NEW JERSEY, ET AL.,
PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY,
RESPONDENT

UTILITY AIR REGULATORY GROUP, ET AL.,
INTERVENORS

Consolidated with Nos.
05-1104, 05-1116, 05-1118, 05-1158, 05-1159, 05-1160, 05-1162, 05-1163, 05-1164, 05-1167, 05-1174, 05-1175, 05-1176, 05-1183, 05-1189, 05-1263, 05-1267, 05-1270, 05-1271, 05-1275, 05-1277, 06-1211, 06-1220, 06-1231, 06-1287, 06-1291, 06-1293, 06-1294

On Petitions for Review of the Final Action of the Environmental Protection Agency

---

Exhibit NMED 10

James S. Pew argued the cause for Environmental Petitioners. With him on the briefs were *John D. Walke*, *Jon Devine*, *Scott Edwards*, *Jon A. Mueller*, *Ann Brewster Weeks*, *Jonathan F. Lewis*, *Brad Kuster*.

Vanya S. Hogen, *Colette Routel*, *Sarah I. Wheelock*, *Riyaz A. Kanji*, *Philip E. Katzen*, and *Ann Tweedy* were on the briefs for petitioners National Congress of American Indians and Treaty Tribes. *Brian B. O'Neill* entered an appearance.

Bart E. Cassidy and *Meredith DuBarry Huston* were on the briefs for petitioner ARIPPA. *Carol F. McCabe* entered an appearance.

Scott C. Oostdyk, *Neal J. Cabral*, *Grant F. Crandall*, *Judith Ellen Rivlin*, and *Eugene M. Trisko* were on the briefs for petitioners American Coal for Balanced Mercury Regulation, et al. and United Mine Workers of America, AFL-CIO.

James B. Vasile, *Brian R. Gish*, *Susan E. Reeves*, and *Robert K. Reges* were on the briefs for petitioner Alaska Industrial Development and Export Authority.

Anne Milgram, Attorney General, Attorney General's Office of the State of New Jersey, *Christopher D. Ball* and *Ruth E. Carter*, Deputy Attorneys General, *Edmund G. Brown, Jr.*, Attorney General, Attorney General's Office of the State of California, *Susan Durbin*, Deputy Attorney General, *Richard Blumenthal*, Attorney General, Attorney General's Office of the State of Connecticut, *Matthew Levine*, Assistant Attorney General, *Joseph R. Biden, III*, Attorney General, Attorney General's Office of the State of Delaware, *Valerie S. Csizmadia*, Deputy Attorney General, *Lisa Madigan*, Attorney General, Attorney General's Office of the State of Illinois, *Ann Alexander*, Assistant Attorney, *G. Steven Rowe*, Attorney

General, Attorney General's Office of the State of Maine, *Gerald D. Reid*, Assistant Attorney General, *Douglas F. Gansler*, Attorney General, Attorney General's Office of the State of Maryland, *Kathy M. Kinsey* and *Judah Prero*, Assistant Attorneys General, *Martha Coakley*, Attorney General, Attorney General's Office of the Commonwealth of Massachusetts, *William L. Pardee*, Assistant Attorney General, *Michael A. Cox*, Attorney General, Attorney General's Office of the State of Michigan, Michigan Department of Environmental Quality, *Thomas L. Casey*, Solicitor General, *Alan F. Hoffman* and *Neil D. Gordon*, Assistant Attorneys General, *Lori Swanson*, Attorney General, Attorney General's Office of the State of Minnesota, *Alan C. Williams*, Assistant Attorney General, *Kelly A. Ayotte*, Attorney General, Attorney General's Office of the State of New Hampshire, *Maureen D. Smith*, Senior Assistant Attorney General, *Gary King*, Attorney General, Attorney General's Office of the State of New Mexico, *Karen L. Reed*, Assistant Attorney General, *Andrew M. Cuomo*, Attorney General, Attorney General's Office of the State of New York, *Jacob Hollinger*, Assistant Attorney General, *Robert A. Reiley*, Assistant Counsel, Commonwealth of Pennsylvania, Department of Environmental Protection, *Patrick C. Lynch*, Attorney General, Attorney General's Office of the State of Rhode Island, *Terence Tierney*, Special Assistant Attorney General, *William H. Sorrell*, Attorney General, Attorney General's Office of the State of Vermont, *Kevin O. Leske*, Assistant Attorney General, *J.B. Van Hollen*, Attorney General, Attorney General's Office of the State of Wisconsin, *Thomas J. Dawson*, Assistant Attorney General, and *William R. Phelan, Jr.*, Attorney, for the City of Baltimore, Maryland, were on the briefs for Government Petitioners. *Jean P. Reilly* and *Kevin P. Auerbacher*, Assistant Attorneys General, Attorney General's Office of the State of New Jersey, *Peter H. Lehner*, Assistant Attorney General, Attorney General's Office of the State of Connecticut, *Christopher D. Coppin*, Assistant Attorney General, Attorney

General's Office of the State of New Mexico, *Gerald T. Karr*, Assistant Attorney General, Attorney General's Office of the State of Illinois, entered appearances.

Henry V. Nickel, *F. William Brownell*, *David G. Scott*, and *Lee B. Zeugin* were on the briefs for petitioner Utility Air Regulatory Group.

Eric G. Hostetler, Attorney, U.S. Department of Justice, argued the cause for respondent. With him on the brief were *John C. Cruden*, Deputy Assistant Attorney General, *Jon M. Lipshultz* and *Matthew R. Oakes*, Attorneys, and *Carol S. Holmes* and *Howard J. Hoffman*, Counsel, U.S. Environmental Protection Agency. *Wendy L. Blake*, Attorney, U.S. Environmental Protection Agency, entered an appearance.

Lee B. Zeugin argued the cause for Industry State Intervenors and State *Amici Curiae*. With him on the briefs were *Troy King*, Attorney General, Attorney General's Office of the State of Alabama, *Milt E. Belcher*, Assistant Attorney General, *Wayne Stenehjem*, Attorney General, Attorney General's Office of the State of North Dakota, *Paul Seby*, Special Assistant, *Lyle Witham*, Solicitor General, *Steve Carter*, Attorney General, Attorney General's Office of the State of Indiana, *Thomas M. Fisher*, Assistant Attorney General, *Lawrence E. Long*, Attorney General, Attorney General's Office of the State of South Dakota, *Roxanne Giedd*, Deputy Attorney General, *Mark J. Rudolph*, Senior Counsel, State of West Virginia, Department of Environmental Protection, *Peter H. Wyckoff*, *Henri D. Bartholomot*, *Jon C. Bruning*, Attorney General, Attorney General's Office of the State of Nebraska, *Jodi Fenner*, Assistant Attorney General, *Patrick Crank*, Attorney General, Attorney General's Office of the State of Wyoming, *Nancy Vehr*, Assistant Attorney General, *Henry V. Nickel*, *F. William Brownell*, *Lee B. Zeugin*, *William M.*

Bumpers, *Debra J. Jezouit*, and *Peter Glaser*. *Valerie M. Tachtiris*, Assistant Attorney General, Attorney General's Office of State of Indiana, *Jay A. Jerde* and *Vicci M. Colgan*, Assistant Attorneys General, Attorney General's Office of State of Wyoming, *Kevin C. Newsom*, *Harold P. Quinn, Jr.*, and *Claudia M. O'Brien* entered appearances.

Leah W. Casey was on the brief for intervenor for petitioner Adirondack Mountain Club.

Charles H. Knauss, *Sandra P. Franco*, and *David G. Scott, II* were on the brief for intervenors Producers for Electric Reliability and West Associates. *Karma B. Brown* entered an appearance.

John T. Suttles, Jr. was on the brief for intervenors Physicians for Social Responsibility, et al.

Peter Glaser, Daniel J. Popeo, and *Paul D. Kamenar* were on the brief for *amicus curiae* Washington Legal Foundation in support of respondent.

Before: ROGERS, TATEL and BROWN, *Circuit Judges*.

Opinion for the Court by *Circuit Judge* ROGERS.

ROGERS, *Circuit Judge*: Before the court are petitions for review of two final rules promulgated by the Environmental Protection Agency regarding the emission of hazardous air pollutants ("HAPs") from electric utility steam generating units ("EGUs"). The first rule removes coal- and oil-fired EGUs from the list of sources whose emissions are regulated under section 112 of the Clean Air Act ("CAA"), 42 U.S.C. § 7412. *Revision of December 2000 Regulatory Finding* ("Delisting Rule"), 70 Fed. Reg. 15,994 (Mar. 29, 2005). The second rule

sets performance standards pursuant to section 111, 42 U.S.C. § 7411, for new coal-fired EGUs and establishes total mercury emissions limits for States and certain tribal areas, along with a voluntary cap-and-trade program for new and existing coal-fired EGUs. *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* ("CAMR"), 70 Fed. Reg. 28,606 (May 18, 2005).

Petitioners contend that the Delisting Rule is contrary to the plain text and structure of section 112. In response, EPA and certain intervenors rely on section 112(n), which sets special conditions before EGUs can be regulated under section 112, to justify the rule. We hold that the delisting was unlawful. Section 112 requires EPA to regulate emissions of HAPs. Section 112(n) requires EPA to regulate EGUs under section 112 when it concludes that doing so is "appropriate and necessary." In December 2000, EPA concluded that it was "appropriate and necessary" to regulate mercury emissions from coal- and oil-fired power plants under section 112 and listed these EGUs as sources of HAPs regulated under that section. In 2005, after reconsidering its previous determination, EPA purported to remove these EGUs from the section 112 list. Thereafter it promulgated CAMR under section 111. EPA's removal of these EGUs from the section 112 list violates the CAA because section 112(c)(9) requires EPA to make specific findings before removing a source listed under section 112; EPA concedes it never made such findings. Because coal-fired EGUs are listed sources under section 112, regulation of existing coal-fired EGUs' mercury emissions under section 111 is prohibited, effectively invalidating CAMR's regulatory approach. Accordingly, the court grants the petitions and vacates both rules.

I.

In 1970, Congress added section 112 to the CAA. Pub. L. No. 91-604, § 4(a), 84 Stat. 1676, 1685 (1970). In its original form, section 112 required EPA to list HAPs that should be regulated because they could "cause, or contribute to, an increase in mortality or an increase in serious irreversible[] or incapacitating reversible[] illness." *Id.* § 112(a)(1). Over the next eighteen years, however, EPA listed only eight HAPs, established standards for only seven of these and as to these seven addressed only a limited selection of possible pollution sources. *See Nat'l Mining Ass'n v. EPA*, 59 F.3d 1351, 1353 n.1 (D.C. Cir. 1995); S. COMM. ON ENV'T & PUB. WORKS, CLEAN AIR ACT AMENDMENTS OF 1989, S. REP. NO. 101-228, at 131 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3516.

In 1990, Congress, concerned about the slow pace of EPA's regulation of HAPs, altered section 112 by eliminating much of EPA's discretion in the process. *See, e.g., Nat'l Lime Ass'n.* v. *EPA*, 233 F.3d 625, 633-34 (D.C. Cir. 2000). Three aspects of the amendments are relevant here.

First, Congress required EPA to regulate more than one hundred specific HAPs, including mercury and nickel compounds. CAA § 112(b)(1). Further, EPA was required to list and to regulate, on a prioritized schedule, *id.* § 112(e)(1)-(3), "all categories and subcategories of major sources and areas sources" that emit one or more HAPs, *id.* § 112(c)(1). In seeking to ensure that regulation of HAPs reflects the "maximum reduction in emissions which can be achieved by application of [the] best available control technology," S. REP. NO. 101-228, at 133, *reprinted in* 1990 U.S.C.C.A.N. at 3518; *see, e.g.*, CAA § 112(g)(2)(A), Congress imposed specific, strict pollution control requirements on both new and existing sources of HAPs. Congress specified that new sources must

adopt at minimum "the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator." *Id.* § 112(d)(3). Existing sources (with certain exceptions) must adopt emission controls equal to the "average emission limitation achieved by the best performing 12 percent of the existing sources." *Id.* § 112(d)(3)(A).

Second, Congress restricted the opportunities for EPA and others to intervene in the regulation of HAP sources. For HAPs that result in health effects other than cancer, as is true of mercury, Congress directed that the Administrator "may delete any source category" from the section 112(c)(1) list only after determining that "emissions from no source in the category or subcategory concerned . . . exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source." *Id.* § 112(c)(9). Third parties may not challenge the Administrator's decision to add a pollutant to the list under section 112(b) or a source category or subcategory to the list under section 112(c) until "the Administrator issues emission standards for such pollutant or category." *Id.* § 112(e)(4).

Third, Congress required the Administrator to evaluate regulatory options with care and to meet certain conditions before listing EGUs as an HAP source under section 112(c)(1). Specifically:

> [t]he Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by [EGUs] of pollutants listed under subsection (b) of this section after imposition of the requirements of this chapter. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the

> Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. *The Administrator shall regulate [EGUs] under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.*

Id. § 112(n)(1)(A) (emphasis added).

The study of public health hazards required by section 112(n)(1)(A) was finally completed in 1998. This study found "a plausible link between anthropogenic releases of mercury from industrial and combustion sources in the United States and methylmercury in fish" and that "mercury emissions from [EGUs] may add to the existing environmental burden." EPA, OFFICE OF AIR QUALITY PLANNING AND STANDARDS, STUDY OF HAZARDOUS AIR POLLUTANT EMISSIONS FROM ELEC. UTIL. STEAM GENERATING UNITS--FINAL REPORT TO CONG. 7-1, 45 (1998). On December 20, 2000, the Administrator announced — in light of the study mandated by section 112(n)(1)(A), as well as subsequent information and consideration of alternative feasible control strategies — that it was "appropriate and necessary" to regulate coal- and oil-fired EGUs under section 112 because, as relevant, mercury emissions from EGUs, which are the largest domestic source of mercury emissions, present significant hazards to public health and the environment. *Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units*, 65 Fed. Reg. 79,825, 79,827 (Dec. 20, 2000) ("2000 Determination"). "As a result the source category for Coal- and Oil-Fired [EGUs] was added to the list of source categories under section 112(c)" on December 20, 2000. *National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List Under Section 112 of the Clean Air Act*

("2002 Notice of Listing"), 67 Fed. Reg. 6521, 6522, 6524 (Feb. 12, 2002).

In early 2004, EPA proposed two regulatory alternatives to control emissions from coal- and oil-fired EGUs. The first was similar to EPA's proposal in 2000 — regulation under section 112 through issuance of Maximum Achievable Control Technology standards, *see, e.g.*, CAA § 112(g)(2)(A), or implementation of a cap-and-trade system. The second proposed removing EGUs from the list of HAP sources prepared pursuant to section 112(c)(1) and instead regulating their emissions under section 111.[1] *Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units*, 69 Fed. Reg. 4652, 4659-61, 4683, 4689 (Jan. 30, 2004). After receiving public comment, EPA chose the second alternative, announcing in March 2005 that it was removing EGUs from the section 112(c)(1) list, Delisting Rule, 70 Fed. Reg. at 16,002-08, 16,032, and regulating mercury emissions from coal-fired EGUs under section 111, CAMR, 70 Fed. Reg. at 28,610, 28,624-32.

---

[1] Section 111 requires the Administrator to "establish[] . . . standards of performance," CAA § 111(b)(1)(B), for pollutants from new sources that in the Administrator's judgment "cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." *Id.* § 111(b)(1)(A). "Standards of performance" are designed to limit emissions to reflect "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." *Id.* § 111(a)(1). Existing sources of pollutants are regulated under section 111(d).

EPA justified its decision to delist EGUs by explaining that it "reasonably interprets section 112(n)(1)(A) as providing [] authority to remove coal- and oil-fired units from the section 112(c) list at any time that it makes a negative appropriate and necessary finding under the section." Delisting Rule, 70 Fed. Reg. at 16,032. It based this interpretation on the "entirely different structure and predicate for assessing whether [EGUs] should be listed for regulation under section 112" as set forth in section 112(n)(1)(A), *id.*, and on the absence of a temporal "deadline" for deciding "whether regulation of [EGUs was] appropriate and necessary" under section 112, *id.* at 16,001. It also interpreted "section 112(c)(9) [delisting] criteria . . . not [to] apply" to EGUs because their inclusion in the list established by section 112(c)(1) was not a "final agency action[]," and claimed, contrary to the 2000 Determination, that "the source category at issue did not meet the statutory criteria for listing at the time of listing." *Id.* at 16,033.

Having decided that it possessed the authority to delist EGUs without making the findings required by section 112(c)(9), EPA explained that the delisting of EGUs was justified because their regulation under section 112 was neither "appropriate" nor "necessary." The potential mercury emissions reductions achievable under CAMR figured prominently in EPA's explanation of its delisting of coal-fired EGUs, *id.* at 16,005, which EPA promulgated in May 2005. CAMR established plant-specific "standards of performance" for mercury emissions from new coal-fired EGUs under section 111(b). 70 Fed. Reg. at 28,613-16. Relying on sections 111(b) and (d), it also established a national mercury emissions cap for new and existing EGUs, allocating each state and certain tribal areas a mercury emissions budget. This was supplemented by a voluntary cap-and-trade program. *Id.* at 28,616, 28,622,

28,629.[2]

II.

New Jersey and fourteen additional States, the Michigan Department of Environmental Quality, the Pennsylvania Department of Environmental Protection, the City of Baltimore ("Government Petitioners"), and various environmental organizations ("Environmental Petitioners") contend that EPA violated Section 112's plain text and structure when it did not comply with the requirements of section 112(c)(9) in delisting EGUs. Because we agree, we do not reach their alternative contention that even if this delisting was lawful, EPA was arbitrary and capricious in reversing its determination that regulating EGUs under section 112 was "appropriate and necessary." Government and Environmental Petitioners further contend that CAMR is inconsistent with provisions of section 111, and that both the Delisting Rule and CAMR should be vacated. Certain intervenors — including various industry representatives, States, and state agencies — join EPA in urging the lawfulness of the two rules.

The court reviews the challenges to the final rules to determine whether EPA's promulgation of them was arbitrary or capricious, an abuse of discretion, or otherwise not in

---

[2] Upon reconsideration, EPA made no substantive change to the Delisting Rule but revised CAMR's State mercury allocations and the statistical analysis used for new source performance standards; EPA declined to stay CAMR. *Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration*, 71 Fed. Reg. 33,388, 33,388-89, 33,395-96 (June 9, 2006).

accordance with law. *See* CAA § 307(d)(9)(A), 42 U.S.C. § 7607(d)(9)(A). Challenges to EPA's interpretation of the CAA itself are governed by the familiar two-pronged test of *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Under step one, the court asks "whether Congress has directly spoken to the . . . issue." *Id.* at 842. If Congress's intent "is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. However, if the court determines that "Congress has not directly addressed the precise question at issue," then, under step two, "the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. The agency's interpretation need not be the only permissible reading of the statute, nor the interpretation that the court might have originally given the statute. *Id.* at 843 n.11.

Petitioners contend that once the Administrator determined in 2000 that EGUs should be regulated under Section 112 and listed them under section 112(c)(1), EPA had no authority to delist them without taking the steps required under section 112(c)(9). We agree.[3]

Section 112(c)(9) provides that:

---

[3] Certain intervenors also contend, citing *Thomas v. New York*, 802 F.2d 1443, 1446-47 (D.C. Cir. 1986), that the Administrator's determination in December 2000 to list EGUs as a source under section 112(c)(1) was not binding for lack of notice and comment and, consequently, that EPA was never required to comply with section 112(c)(9)'s delisting process for EGUs. We need not consider this contention, however, because EPA has steadfastly refused to join it. *See New York v. Reilly*, 969 F.2d 1147, 1154 n.11 (D.C. Cir. 1992); *see also Util. Air Regulatory Group v. EPA*, No. 01-1074, 2001 WL 936363, at *1 (D.C. Cir. July 26, 2001).

> The Administrator may delete *any* source category from the [section 112(c)(1) list] . . . whenever the Administrator . . . [determines] that emissions from no source in the category or subcategory concerned . . . exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source. [emphasis added]

EPA concedes that it listed EGUs under section 112. Thus, because section 112(c)(9) governs the removal of "*any* source category" (emphasis added) from the section 112(c)(1) list, and nothing in the CAA exempts EGUs from section 112(c)(9), the only way EPA could remove EGUs from the section 112(c)(1) list was by satisfying section 112(c)(9)'s requirements. Yet EPA concedes that it never made the findings section 112(c)(9) would require in order to delist EGUs. EPA's purported removal of EGUs from the section 112(c)(1) list therefore violated the CAA's plain text and must be rejected under step one of *Chevron*.

EPA offers several arguments in an attempt to evade section 112(c)(9)'s plain text, but they are not persuasive. First, EPA seeks to reach step two of *Chevron* and obtain judicial deference to its interpretation by maintaining that section 112(n)(1) makes section 112(c)(9) ambiguous because "[l]ogically, if EPA makes a determination under section 112(n)(1)(A) that power plants should not be regulated at all under section 112 . . . [then] this determination *ipso facto* must result in removal of power plants from the section 112(c) list." Resp't Br. at 26. But this simply does not follow. Section 112(n)(1) governs how the Administrator decides whether to list EGUs; it says nothing about delisting EGUs, and the plain text of section 112(c)(9) specifies that it applies to the delisting of "any source." In the context of the CAA, "the word 'any' has an expansive

meaning." *New York v. EPA*, 443 F.3d 880, 885 (D.C. Cir. 2006) (citations omitted); *see also id.* at 885-86. Moreover, where Congress wished to exempt EGUs from specific requirements of section 112, it said so explicitly. For example, section 112(c)(6) expressly exempts EGUs from the strict deadlines imposed on other sources of certain pollutants. Furthermore, EPA concedes that listing EGUs under section 112(c) triggered application of some subparts of section 112, *see, e.g.*, 2002 Notice of Listing, 67 Fed. Reg. at 6521, 6524, 6535 n.b; CAA § 112(c)(2), but provides no persuasive rationale for why the comprehensive delisting process of section 112(c)(9) does not also apply. Its brief states only that previous applications of section 112 provisions in response to EGUs' listing were undertaken "based on the fact that [EPA] had made a positive 'appropriate and necessary' finding that was still in place. EPA has now reversed that finding." Resp't Br. at 28. This explanation deploys the logic of the Queen of Hearts, substituting EPA's desires for the plain text of section 112(c)(9). Thus, EPA can point to no persuasive evidence suggesting that section 112(c)(9)'s plain text is ambiguous. It is therefore bound by section 112(c)(9) because "for [] EPA to avoid a literal interpretation at *Chevron* step one, it must show either that, as a matter of historical fact, Congress did not mean what it appears to have said, or that, as a matter of logic and statutory structure, it almost surely could not have meant it," *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075, 1089 (D.C. Cir. 1996), showings EPA has failed to make.

Second, EPA maintains that it possesses authority to remove EGUs from the section 112 list under the "fundamental principle of administrative law that an agency has inherent authority to reverse an earlier administrative determination or ruling where an agency has a principled basis for doing so." Resp't Br. at 22 (citing *Williams Gas Processing-Gulf Coast Co. v. FERC*, 475 F.3d 319, 326 (D.C. Cir. 2006); *Dun & Bradstreet*

Corp. Found. v. USPS, 946 F.2d 189, 193 (2d Cir. 1991)). An agency can normally change its position and reverse a decision, and prior to EPA's listing of EGUs under section 112(c)(1), nothing in the CAA would have prevented it from reversing its determination about whether it was "appropriate and necessary" to do so. Congress, however, undoubtedly can limit an agency's discretion to reverse itself, and in section 112(c)(9) Congress did just that, unambiguously limiting EPA's discretion to remove sources, including EGUs, from the section 112(c)(1) list once they have been added to it. This precludes EPA's inherent authority claim for "EPA may not construe [a] statute in a way that completely nullifies textually applicable provisions meant to limit its discretion." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 485 (2001). As this court has observed, "when Congress has provided a mechanism capable of rectifying mistaken actions . . . it is not reasonable to infer authority to reconsider agency action." *Am. Methyl Corp. v. EPA*, 749 F.2d 826, 835 (D.C. Cir. 1984). Indeed, EPA's position would nullify section 112(c)(9) altogether, not just with regard to EGUs, for EPA is unable to explain how, if it were allowed to remove EGUs from the section 112 list without regard to section 112(c)(9), it would not also have the authority to remove any other source by ignoring the statutory delisting process.

Finally, EPA states in its brief that it has previously removed sources listed under section 112(c) without satisfying the requirements of section 112(c)(9). But previous statutory violations cannot excuse the one now before the court. "[W]e do not see how merely applying an unreasonable statutory interpretation for several years can transform it into a reasonable interpretation." *F.J. Vollmer Co. v. Magaw*, 102 F.3d 591, 598 (D.C. Cir. 1996). EPA suggests that it would be "anomalous" for it to be forced to await a court order to correct "its own mistake" in listing coal- and oil-fired EGUs as a source under section 112(c)(1). Resp't Br. at 32; *see also id.* at 33 (citing

Cleveland Nat'l Air Show, Inc. v. DOT, 430 F.3d 757, 765 (6th Cir. 2005)). However Congress was not preoccupied with what EPA considers "anomalous," but rather with the fact that EPA had failed for decades to regulate HAPs sufficiently. *See, e.g.*, *Nat'l Lime Ass'n*, 233 F.3d at 634 (citing S. REP. NO. 101-228, at 128, *reprinted in* 1990 U.S.C.C.A.N. at 3513). In the context of this congressional concern, EPA's disbelief that it would be prevented from correcting its own listing "errors" except through section 112(c)(9)'s delisting process or court-sanctioned vacatur cannot overcome the plain text enacted by Congress.

Accordingly, in view of the plain text and structure of section 112, we grant the petitions and vacate the Delisting Rule. *See Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146, 150-51 (D.C. Cir. 1993). This requires vacation of CAMR's regulations for both new and existing EGUs. EPA promulgated the CAMR regulations for existing EGUs under section 111(d), but under EPA's own interpretation of the section, it cannot be used to regulate sources listed under section 112; EPA thus concedes that if EGUs remain listed under section 112, as we hold, then the CAMR regulations for existing sources must fall. Resp't Br. at 99, 101-02; *see also* Delisting Rule, 70 Fed. Reg. at 16,031. EPA promulgated the CAMR regulations for new sources under section 111(b) on the basis that there would be no section 112 regulation of EGU emissions and that the new source performance standards would be accompanied by a national emissions cap and a voluntary cap-and-trade program. *See* CAMR, 70 Fed. Reg. at 28,608-10, 28,614-15, 28,619, 28,622; *see also id.* at 28,616. Given that these vital assumptions were incorrect, the court must vacate CAMR's new source performance standards and remand them to EPA for reconsideration, for "[s]everance and affirmance of a portion of an administrative regulation is improper if there is 'substantial doubt' that the agency would have adopted the severed portion on its own." *Davis County Solid Waste Mgmt.*

v. EPA, 108 F.3d 1454, 1459 (D.C. Cir. 1997) (citations omitted). In view of our disposition, the court does not reach other contentions of petitioners or intervenors.

ELECTRONIC CODE OF FEDERAL REGULATIONS

View past updates to the e-CFR.
Click here to learn more.

e-CFR data is current as of September 2, 2015

Title 40: Protection of Environment
PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces

Contents

§60.5472 Am I subject to this subpart?
§60.5473 What definitions must I know?
§60.5474 What standards and requirements must I meet and by when?
§60.5475 What compliance and certification requirements must I meet and by when?
§60.5476 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?
§60.5477 What procedures must I use for EPA approval of a test laboratory or EPA approval of a third-party certifier?
§60.5478 What requirements must I meet for permanent labels, temporary labels (hangtags), and owner's manuals?
§60.5479 What records must I keep and what reports must I submit?
§60.5480 What activities are prohibited under this subpart?
§60.5481 What hearing and appeal procedures apply to me?
§60.5482 Who implements and enforces this subpart?
§60.5483 What parts of the General Provisions do not apply to me?

SOURCE: 80 FR 13715, Mar. 16, 2015, unless otherwise noted.

§60.5472 Am I subject to this subpart?

(a) You are subject to this subpart if you manufacture, sell, offer for sale, import for sale, distribute, offer to distribute, introduce or deliver for introduction into commerce in the United States, or install or operate a residential hydronic heater, forced-air furnace or other central heater manufactured on or after May 15, 2015, except as provided in paragraph (c) of this section.

(b) Each residential hydronic heater, forced-air furnace or other central heater must comply with the provisions of this subpart unless exempted under paragraphs (b)(1) through (b)(3) of this section. These exemptions are determined by rule applicability and do not require additional EPA notification or public notice.

(1) Affected residential hydronic heaters, forced-air furnaces or other central heaters manufactured in the United States for export are exempt from the applicable emission limits of §60.5474 and the requirements of §60.5475.

Exhibit NMED 11

(2) Affected residential hydronic heaters, forced-air furnaces or other central heaters used for research and development purposes that are never offered for sale or sold and that are not used to provide heat are exempt from the applicable emission limits of §60.5474 and the requirements of §60.5475. No more than 12 affected residential central heaters manufactured per model line may be exempted for this purpose.

(3) Appliances that do not burn wood or wood pellets or wood chips (such as coal-only central heaters that meet the definition in §60.5473 or corn-only central heaters) are exempt from the applicable emission limits of §60.5474 and the requirements of §60.5475 provided that all advertising and warranties clearly denote that wood burning is prohibited in these appliances.

(c) The following are not affected central heaters and are not subject to this subpart:

(1) Residential wood heaters subject to subpart AAA of this part.

(2) Residential masonry heaters as defined in §60.5473.

§60.5473 What definitions must I know?

As used in this subpart, all terms not defined herein have the same meaning given them in the Clean Air Act and subpart A of this part.

Approved test laboratory means a test laboratory that is approved for central heater certification testing under §60.5477 or is an independent third-party test laboratory that is accredited under ISO-IEC Standard 17025 to perform testing using the test methods specified in §60.5476 by an accreditation body that is a full member signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement and approved by the EPA for conducting testing under this subpart.

Catalytic combustor means a device coated with a noble metal used in a wood heater to lower the temperature required for combustion.

Central heater means a fuel-burning device designed to burn wood or wood pellet fuel that warms spaces other than the space where the device is located, by the distribution of air heated by the furnace through ducts or liquid heated in the device and distributed typically through pipes. Unless otherwise specified, these devices include, but are not limited to, residential forced-air furnaces (small and large) and residential hydronic heaters.

Chip wood fuel means wood chipped into small pieces that are uniform in size, shape, moisture, density and energy content.

Coal-only hydronic heater or forced-air furnace means an enclosed, coal-burning appliance capable of space heating or domestic water heating that has all of the following characteristics:

(1) Installation instructions, owner's manual and marketing information that state that the use of wood in the appliance, except for coal ignition purposes, is prohibited by law; and

(2) The model is listed by a nationally recognized safety-testing laboratory for coal use only, except for coal ignition purposes.

Commercial owner means any person who owns or controls a residential hydronic heater, forced-air furnace or other affected central heater in the course of the business of the manufacture, importation, distribution, or sale of the unit.

Large residential forced-air furnace means a residential forced-air furnace that is capable of a heat output of 65,000 BTU per hour or greater.

Manufactured means completed and ready for shipment (whether or not assembled or packaged) for purposes of determining the date of manufacture.

Manufacturer means any entity that constructs or imports into the United States a central heater.

Model line means all central heaters offered for sale by a single manufacturer that are similar in all material respects that would affect emissions as defined in this section.

Particulate matter (PM) means total particulate matter including coarse particulate (PM_{10}) and fine particulate ($PM_{2.5}$).

Pellet fuel means refined and densified solid wood shaped into small pellets or briquettes that are uniform in size, shape, moisture, density and energy content.

Representative affected wood or central heater means an individual heater that is similar in all material respects that would affect emissions as defined in this section to other heaters within the model line it represents.

Residential forced-air furnace means a fuel burning device designed to burn wood or wood pellet fuel that warms spaces other than the space where the furnace is located, by the distribution of air heated by the furnace through ducts.

Residential hydronic heater means a fuel burning device designed to burn wood or wood pellet fuel for the purpose of heating building space and/or water through the distribution, typically through pipes, of a fluid heated in the device, typically water or a water and antifreeze mixture.

Residential masonry heater means a factory-built or site-built wood-burning device in which the heat from intermittent fires burned rapidly in the firebox is stored in the refractory mass for slow release to building spaces. Masonry heaters are site-built (using local materials or a combination of local materials and manufactured components) or site-assembled (using factory-built components), solid fuel-burning heating appliances constructed mainly of refractory materials (*e.g.*, masonry materials or soapstone. They typically have an interior construction consisting of a firebox and heat exchange channels built from refractory components, through which flue gases are routed. ASTM E1602 "Standard Guide for Construction of Solid Fuel Burning Masonry Heaters" provides design and construction information for the range of masonry heaters most commonly built in the United States. The site-assembled models are generally listed to UL-1482.

Sale means the transfer of ownership or control, except that a transfer of control of an affected central heater for research and development purposes within the scope of §60.5472(b)(2) is not a sale.

Similar in all material respects that would affect emissions means that the construction materials, exhaust and inlet air system, and other design features are within the allowed tolerances for components identified in §60.5475(k).

Small residential forced-air furnace means a residential forced-air furnace that is only capable of a maximum heat output of less than 65,000 BTU per hour.

Sold at retail means the sale by a commercial owner of a central heater to the ultimate purchaser/user or noncommercial purchaser.

Third-party certifier (sometimes called third-party certifying body or product certifying body) means an independent third party that is accredited under ISO-IEC Standards 17025 and 17065 to perform certifications, inspections and audits by an accreditation body that is a full member signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement and approved by the EPA for conducting certifications, inspections and audits under this subpart.

Unseasoned wood means wood with an average moisture content of 20 percent or more.

Valid certification test means a test that meets the following criteria:

(1) The Administrator was notified about the test in accordance with §60.5476(h);

(2) The test was conducted by an approved test laboratory as defined in this section;

(3) The test was conducted on a central heater similar in all material respects that would affect emissions as defined in this section to other central heaters of the model line that is to be certified; and

(4) The test was conducted in accordance with the test methods and procedures specified in §60.5476.

Wood heater under this subpart means an enclosed, wood burning-appliance capable of and intended for residential central heating or central heating and domestic water heating. Unless otherwise specified, these devices include, but are not limited to, hydronic heaters and forced-air furnaces.

§60.5474 What standards and requirements must I meet and by when?

(a) *Standards*. Unless exempted under §60.5472, no person is permitted to:

(1) On or after May 15, 2015, manufacture, import into the United States or sell at retail a residential hydronic heater unless it has been certified to meet the 2015 particulate matter emission limits in paragraph (b)(1) of this section, except that a residential hydronic heater that was manufactured on or before May 15, 2015 may be imported into the United States and/or sold at retail on or before December 31, 2015.

(2) On or after May 15, 2020 manufacture or sell at retail a residential hydronic heater unless it has been certified to meet the 2020 particulate matter emission limit in paragraph (b)(2) or (b)(3) of this section.

(3) On or after May 15, 2015, manufacture or sell at retail a residential forced-air furnace unless it complies with the work practice and operating standards in paragraphs (d), (e), (f) and (g) of this section and the owner's manual requirements in Appendix I.

(4) On or after May 16, 2016, manufacture or sell at retail a small residential forced-air furnace unless it has been certified to meet the 2016 particulate matter emission limits in paragraph (b)(4) of this section

(5) On or after May 15, 2017 manufacture or sell at retail a large forced-air furnace unless it has been certified to meet the 2017 particulate matter emission limits in paragraph (b)(5) of this section.

(6) On or after May 15, 2020 manufacture or sell at retail a small or large residential forced-air furnace unless it has been certified to meet the 2020 particulate matter emission limit in paragraph (b)(6) of this section.

(b)(1) 2015 residential hydronic heater particulate matter emission limit: A weighted average of 0.32 lb/mmBtu (0.137 g/MJ) heat output and a maximum per individual burn rate of 18.0 g/hr (0.041 lb/hr) as determined by the test methods and procedures in §60.5476 or an alternative crib wood or cord wood test method approved by the Administrator.

(2) 2020 residential hydronic heater particulate matter emission limit: 0.10 lb/mmBtu (0.026 g/MJ) heat output per individual burn rate as determined by the crib wood test methods and procedures in §60.5476 or an alternative crib wood test method approved by the Administrator .

(3) 2020 residential hydronic heater cord wood alternative compliance option for particulate matter emission limit: 0.15 lb/mmBtu (0.026 g/MJ) heat output per individual burn rate as determined by the cord wood test methods and procedures in §60.5476 or an alternative cord wood test method approved by the Administrator.

(4) 2016 small forced-air furnace particulate matter emission limit: A weighted average of 0.93 lb/mmBtu (0.40 g/MJ) heat output as determined by the test methods and procedures in §60.5476.

(5) 2017 large forced-air furnace particulate matter emission limit: A weighted average of 0.93 lb/mmBtu (0.40 g/MJ) heat output as determined by the test methods and procedures in §60.5476.

(6) 2020 forced-air furnace particulate matter emission limit: 0.15 lb/mmBtu (0.026 g/MJ) heat output per individual burn rate as determined by the cord wood test methods and procedures in §60.5476 or cord wood test methods approved by the Administrator.

(c) [Reserved]

(d) *Chip wood fuel requirements.* Operators of wood central heaters, including hydronic heaters and forced-air furnaces, that are certified to burn chip wood fuels may only burn wood chips that have been specified in the owner's manual. The chip wood fuel must meet the following minimum requirements:

(1) Moisture content: Less than 35 percent,

(2) Inorganic fines: Less than or equal to 1 percent;

(3) Chlorides: Less than or equal to 300 parts per million by weight;

(4) Ash content: No more than 2 percent;

(5) No demolition or construction waste; and

(6) Trace metals: Less than 100 mg/kg.

(e) *Pellet fuel requirements.* Operators of wood central heaters, including outdoor residential hydronic heaters, indoor residential hydronic heaters, and residential forced-air furnaces, that are certified to burn pellet fuels may only burn pellets that have been graded under a licensing agreement with a third-party organization approved by the EPA. The Pellet Fuels Institute, ENplus and CANplus are initially deemed to be approved third-party organizations for this purpose, and additional organizations may apply to the Administrator for approval. The pellet fuel must meet the following minimum requirements as assured through a quality assurance program licensed by a third-party organization approved by the EPA:

(1) Density: Consistent hardness and energy content with a minimum density of 38 pounds/cubic foot;

(2) Dimensions: Maximum length of 1.5 inches and diameter between 0.230 and 0.285 inches;

(3) Inorganic fines: Less than or equal to 1 percent;

(4) Chlorides: Less than or equal to 300 parts per million by weight; and

(5) Ash content: No more than 2 percent.

(6) Contains no demolition or construction waste;

(7) Trace metals: Less than 100 mg/kg; and

(8) None of the prohibited fuels in paragraph (f) of this section.

(f) *Prohibited fuel types.* No person is permitted to burn any of the following materials in an outdoor residential hydronic heater, indoor residential hydronic heater, residential forced-air furnace or other affected central heater:

(1) Residential or commercial garbage;

(2) Lawn clippings or yard waste;

(3) Materials containing rubber, including tires;

(4) Materials containing plastic;

(5) Waste petroleum products, paints or paint thinners, or asphalt products;

(6) Materials containing asbestos;

(7) Construction or demolition debris;

(8) Paper products; cardboard, plywood or particleboard. The prohibition against burning these materials does not prohibit the use of fire starters made from paper, cardboard, saw dust, wax and similar substances for the purpose of starting a fire in an affected central heater;

(9) Railroad ties or pressure treated lumber;

(10) Manure or animal remains;

(11) Salt water driftwood or other or other previously salt water saturated materials;

(12) Unseasoned wood;

(13) Any materials that are not included in the warranty and owner's manual for the subject heater or furnace; or

(14) Any materials that were not included in the certification tests for the subject heater or furnace.

(g) *Operation of affected wood heaters.* A user must operate an outdoor residential hydronic heater, indoor residential hydronic heater, residential forced-air furnace or other affected central heater in a

manner consistent with the owner's manual. The owner's manual must clearly specify that operation in a manner inconsistent with the owner's manual would void the warranty.

(h) *Temperature sensor requirement.* An affected wood heater equipped with a catalytic combustor must be equipped with a temperature sensor that can monitor combustor gas stream temperatures within or immediately downstream [within 2.54 centimeters (1 inch)] of the catalytic combustor surface.

§60.5475 What compliance and certification requirements must I meet and by when?

(a) *Certification requirement.* (1) Each affected residential hydronic heater, forced-air furnace and other central heater must be certified to be in compliance with the applicable emission standards and other requirements of this subpart. For each model line manufactured or sold by a single entity, *e.g.*, company or manufacturer, compliance with applicable emission standards of §60.5474 must be determined based on testing of representative affected central heaters within the model line. If one entity licenses a model line to another entity, each entity's model line must be certified. If an entity intends to change the name of the entity or the name of the model, the manufacturer must apply for a new certification 60 days before making the change.

(2) The manufacturer of each model line must submit the information required in paragraph (b) of this section and follow either the certification process in paragraphs (c) through (e) of this section (for forced-air furnaces) or the certification procedure specified in paragraph (f) of this section.

(3) Models qualified as meeting the Phase 2 emission levels under the 2011 EPA hydronic heater partnership agreement are automatically deemed to have a certificate of compliance for the 2015 particulate matter emission standards and be valid until the effective date for the 2020 particulate matter emission standards.

(4) Models certified by the New York State Department of Environment and Conservation to meet the emission levels in §60.5474(b) are automatically deemed to have a certificate of compliance for the 2015 particulate matter emission standards and be valid until the effective date for the 2020 particulate matter emission standards.

(5) Models approved by the New York State Energy Research and Development Authority under the Renewable Heat New York (RHNY) Biomass Boiler Program are automatically deemed to have a certificate of compliance for the 2015 particulate matter emission standards and be valid until the effective date for the 2020 particulate matter emission standards provided that they comply with the thermal storage requirements in the RHNY program.

(6) Small forced-air furnace models that are certified under CSA B415.1-10 (IBR, see §60.17), by an EPA approved third-party certifier, to meet the 2016 particulate matter emission level will be automatically deemed to have a certificate of compliance for the 2016 particulate matter emission standards and be valid until the effective date for the 2020 particulate matter emission standards.

(7) Large forced-air furnace models that are certified under CSA B415.1-10 (IBR, see §60.17), by an EPA approved third-party certifier, to meet the 2017 particulate matter emission level will be automatically deemed to have a certificate of compliance for the 2017 particulate matter emission standards and be valid until the effective date of the 2020 particulate matter emission standards.

(b) *Application for a certificate of compliance.* Any manufacturer of an affected residential hydronic heater or forced-air furnace or other central heater must apply to the Administrator for a certificate of compliance for each model line. The application must be submitted to: *WoodHeaterReports@epa.gov.* The application must be signed by a responsible representative of the manufacturer or an authorized representative and must contain the following:

(1) The model name and/or design number. The model name and/or design number must clearly distinguish one model from another. The name and/or design number cannot include the EPA symbol or logo or name or derivatives such as "EPA."

(2) Engineering drawings and specifications of components that may affect emissions (including specifications for each component listed in paragraph (k) of this section). Manufacturers may use assembly or design drawings that have been prepared for other purposes, but must designate on the drawings the dimensions of each component listed in paragraph (k) of this section. Manufacturers must identify dimensions of components listed in paragraph (k)(2) of this section that are different from those specified in that paragraph, and show that such differences cannot reasonably be anticipated to cause central heaters in the model line to exceed the applicable emission limits. The drawings must identify how the emission critical parts, such as air tubes and catalyst, can be readily inspected and replaced.

(3) A statement whether the firebox or any firebox component (including the materials listed in paragraph (k)(3) of this section) will be composed of material different from the material used for the firebox or firebox component in the central heater on which certification testing was performed and a description of any such differences and demonstration that any such differences may not reasonably be anticipated to adversely affect emissions or efficiency.

(4) Clear identification of any claimed confidential business information (CBI). Submit such information under separate cover to the EPA CBI Office; Attn: Residential Wood Heater Compliance Program Lead, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Note that all emissions data, including all information necessary to determine emission rates in the format of the standard, cannot be claimed as CBI.

(5) All documentation pertaining to a valid certification test, including the complete test report and, for all test runs: Raw data sheets, laboratory technician notes, calculations and test results. Documentation must include the items specified in the applicable test methods. Documentation must include discussion of each test run and its appropriateness and validity, and must include detailed discussion of all anomalies, whether all burn rate categories were achieved, any data not used in the calculations and, for any test runs not completed, the data collected during the test run and the reason(s) that the test run was not completed. The documentation must show that the burn rate for the low burn rate category is no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer. The test report must include a summary table that clearly presents the individual and overall emission rates, efficiencies and heat outputs. Submit the test report and all associated required information according to the procedures for electronic reporting specified in §60.5479(f).

(6) A copy of the warranties for the model line, which must include a statement that the warranties are void if the unit is used to burn materials for which the unit is not certified by the EPA and void if not operated according to the owner's manual.

(7) A statement that the manufacturer will conduct a quality assurance program for the model line that satisfies the requirements of paragraph (m) of this section.

(8) A statement describing how the tested unit was sealed by the laboratory after the completion of certification testing and asserting that such unit will be stored by the manufacturer in the sealed state until 5 years after the certification test.

(9) Statements that the central heater manufactured under this certificate will be—

(i) Similar in all material respects that would affect emissions as defined in this subpart to the central heater submitted for certification testing, and

(ii) Labeled as prescribed in §60.5478.

(iii) Accompanied by an owner's manual that meets the requirements in §60.5478. In addition, a copy of the owner's manual must be submitted to the EPA and be available to the public on the manufacturer's Web site.

(10) A statement that the manufacturer has entered into contracts with an approved laboratory and an approved third-party certifier that satisfy the requirements of paragraph (f) of this section.

(11) A statement that the approved laboratory and approved third-party certifier are allowed to submit information on behalf of the manufacturer, including any claimed to be CBI.

(12) A statement that the manufacturer will place a copy of the certification test report and summary on the manufacturer's Web site available to the public within 30 days after the Administrator issues a certificate of compliance.

(13) A statement of acknowledgment that the certificate of compliance cannot be transferred to another manufacturer or model line without written approval by the Administrator.

(14) A statement acknowledging that it is unlawful to sell, distribute, or offer to sell or distribute an affected wood heater without a valid certificate of compliance.

(15) Contact information for the responsible representative of the manufacturer and all authorized representatives, including name, affiliation, physical address, telephone number and email address.

(c) *Administrator approval process.* (1) The Administrator may issue a certificate of compliance for a model line if the Administrator determines, based on all information submitted by the applicant and any other relevant information available, that:

(i) A valid certification test demonstrates that the representative affected central heater complies with the applicable emission standards in §60.5474;

(ii) Any tolerances or materials for components listed in paragraph (k)(2) or (3) of this section that are different from those specified in those paragraphs may not reasonably be anticipated to cause central heaters in the model line to exceed the applicable emission limits; and

(iii) The requirements of paragraph (b) of this section have been met.

(2) The Administrator will deny certification if the Administrator determines that the criteria in paragraph (c)(1) of this section have not been satisfied. Upon denying certification under this paragraph, the Administrator will give written notice to the manufacturer setting forth the basis for this determination.

(d) *Level of compliance certification.* The Administrator will issue the certificate of compliance for the most stringent particulate matter emission standard that the tested representative central heater meets under §60.5474.

(e) *Conditional, temporary certificate of compliance.* A conditional, temporary certificate of compliance with the Step 1 p.m. emission standards may be granted by the Administrator until May 16, 2016 for small or large forced-air furnaces based on the manufacturer's submittal of a complete certification application meeting all requirements in §60.5475(b). The application must include the full test report by an EPA-approved laboratory and all required compliance statements by the manufacturer with the exception of a certificate of conformity by an EPA approved third-party certifier. The conditional, temporary approval would allow early marketing of forced-air furnaces as having a conditional, temporary

certificate of compliance with the Step 1 p.m. emission standards until May 16, 2016 or until the Administrator completes the review of the application, whichever is earlier.

(f) *Third-party certifier-based application process.* (1) Any manufacturer of an affected central heater must apply to the Administrator for a certificate of compliance for each model line. The manufacturer must meet the following requirements:

(i) The manufacturer must contract with a third-party certifier for certification services. The contract must include regular (at least annual) unannounced audits under ISO-IEC Standard 17065 to ensure that the manufacturer's quality assurance plan is being implemented. The contract must also include a report for each audit under ISO-IEC Standard 17065 that fully documents the results of the audit. The contract must include authorization and requirement for the third-party certifier to submit all such reports to the Administrator and the manufacturer within 30 days of the audit. The audit report must identify deviations from the manufacturer's quality assurance plan and specify the corrective actions that need to be taken to address each identified deficiency.

(ii) The manufacturer must submit the materials specified in paragraph (b) of this section and a quality assurance plan that meets the requirements of paragraph (m) of this section to the third-party certifier. The quality assurance plan must ensure that units within a model line will be similar in all material respects that would affect emissions to the wood heater submitted for certification testing, and it must include design drawings for the model line.

(iii) The manufacturer must apply to the third-party certifier for a certification of conformity with the applicable requirements of this subpart for the model line.

(A) After testing by an approved test laboratory is complete, certification of conformity with the emission standards in §60.5474 must be performed by the manufacturer's contracted third-party certifier.

(B) The third-party certifier may certify conformity if the emission tests have been conducted per the appropriate guidelines: The test report is complete and accurate; the instrumentation used for the test was properly calibrated; the test report shows that the representative affected central heater meets the applicable emission limits specified in §60.5474; and the quality assurance plan is adequate to ensure that units within the model line will be similar in all material respects that would affect emissions to the central heater submitted for certification testing, and that the affected heaters would meet all applicable requirements of this subpart.

(iv) The manufacturer must then submit to the Administrator an application for a certificate of compliance that includes the certification of conformity, quality assurance plan, test report and all supporting documentation specified in paragraph (b) of this section.

(v) The submission also must include a statement signed by a responsible official of the manufacturer or authorized representative that the manufacturer has complied with and will continue to comply with all requirements of this subpart for certificate of compliance and that the manufacturer remains responsible for compliance regardless of any error by the test laboratory or third-party certifier.

(2) The Administrator will issue to the manufacturer a certificate of compliance for a model line if it is determined, based on all of the information submitted in the application for certification and any other relevant information, that:

(i) A valid certification of conformity has demonstrated that the representative affected central heater complies with the applicable emission standards in §60.5474;

(ii) Any tolerances or materials for components listed in paragraph (k)(2) or (3) of this section that are different from those specified in those paragraphs may not be reasonably anticipated to cause central heaters in the model line to exceed the applicable emission limits;

(iii) The requirements of paragraphs (b) of this section have been met; and

(iv) A valid certificate of conformity for the model line has been prepared and submitted.

(3) The Administrator will deny certification if the Administrator determines that the criteria in paragraph (f)(2) of this section have not been satisfied. Upon denying certification under this paragraph, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(g) *Waiver from submitting test results.* An applicant for certification may apply for a potential waiver of the requirement to submit the results of a certification test pursuant to paragraph (b) of this section, if the central heater meets either of the following conditions:

(1) The central heaters of the model line are similar in all material respects that would affect emissions, as defined in §60.5473 and paragraph (k) of this section, to another model line that has already been issued a certificate of compliance. A manufacturer that seeks a waiver of certification testing must identify the model line that has been certified, and must submit a copy of an agreement with the owner of the design permitting the applicant to produce central heaters of that design.

(2) The manufacturer has previously conducted a valid certification test to demonstrate that the central heaters of the model line meet the applicable standard specified in §60.5474.

(h) *Certification period.* Unless revoked sooner by the Administrator, a certificate of compliance will be valid for 5 years from the date of issuance or until a more stringent standard comes into effect, whichever is sooner.

(i) *Renewal of certification.* (1) The manufacturer must renew a model line's certificate of compliance or recertify the model line every 5 years, or the manufacturer may choose to no longer manufacture or sell that model line after the expiration date. If the manufacturer chooses to no longer manufacture that model line, then the manufacturer must submit a statement to the Administrator to that effect.

(2) A manufacturer of an affected residential hydronic heater or forced-air furnace or other central heater may apply to the Administrator for potential renewal of its certificate of compliance by submitting the material specified in paragraph (b) and following the procedures specified in paragraph (f) of this section, or by affirming in writing that the central heaters in the model line continue to be similar in all material respects that would affect emissions to the representative central heater submitted for testing on which the original certificate of compliance was based and requesting a potential waiver from certification testing. The application must include a copy of the review of the draft application and approval by the third-party certifier.

(3) If the Administrator grants a renewal of certification, the Administrator will give written notice to the manufacturer setting forth the basis for the determination and issue a certification renewal.

(4) If the Administrator denies the request for a renewal of certification, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(5) If the Administrator denies the request for a renewal of certification, the manufacturer and retailer must not manufacture or sell the previously-certified central heaters after the expiration date of the certificate of compliance.

(j) [Reserved]

(k) *Recertification.* (1) The manufacturer must recertify a model line whenever any change is made in the design submitted pursuant to paragraph (k)(2) of this section that affects or is presumed to affect the particulate matter emission rate for that model line. The manufacturer of an affected central heater must apply to the Administrator for potential recertification by submitting the material specified in paragraph (b) of this section and following the procedures specified in paragraph (f) of this section or by affirming in writing that the change will not cause the central heaters in the model line to exceed applicable emission limits and requesting a waiver from certification testing. The application for recertification must be reviewed and approved by the contracted third-party certifier and a copy of the review and approval must be included. The Administrator may waive this requirement upon written request by the manufacturer, if the manufacturer presents adequate rationale and the Administrator determines that the change may not reasonably be anticipated to cause central heaters in the model line to exceed the applicable emission limits. The granting of such a waiver does not relieve the manufacturer of any compliance obligations under this subpart.

(2) Any change in the design tolerances of any of the following components (where such components are applicable) is presumed to affect particulate matter and carbon monoxide emissions and efficiency if that change exceeds ±0.64 cm (±1/4 inch) for any linear dimension and ±5 percent for any cross-sectional area relating to air introduction systems and catalyst bypass gaps unless other dimensions and cross-sectional areas are previously approved by the Administrator under paragraph (c)(1)(ii) of this section:

(i) Firebox: Dimensions;

(ii) Air introduction systems: Cross-sectional area of restrictive air inlets and outlets, location and method of control;

(iii) Baffles: Dimensions and locations;

(iv) Refractory/insulation: Dimensions and location;

(v) Catalyst: Dimensions and location;

(vi) Catalyst bypass mechanism and catalyst bypass gap tolerances (when bypass mechanism is in closed position): Dimensions, cross-sectional area, and location;

(vii) Flue gas exit: Dimensions and location;

(viii) Door and catalyst bypass gaskets: Dimensions and fit;

(ix) Outer thermal shielding and thermal coverings: Dimensions and location;

(x) Fuel feed system: For central heaters that are designed primarily to burn wood pellet fuel or wood chips and other central heaters equipped with a fuel feed system, the fuel feed rate, auger motor design and power rating, and the angle of the auger to the firebox; and

(xi) Forced air combustion system: For central heaters so equipped, the location and horsepower of blower motors and the fan blade size.

(3) Any change in the materials used for the following components is presumed to affect particulate matter emissions and efficiency:

(i) Refractory/insulation; or

(ii) Door and catalyst bypass gaskets.

(4) A change in the make, model, or composition of a catalyst is presumed to affect particulate matter and carbon monoxide emissions and efficiency, unless the change has been requested by the central heater manufacturer and has been approved in advance by the Administrator, based on test data that demonstrate that the replacement catalyst is equivalent to or better than the original catalyst in terms of particulate matter emission reduction.

(l) *Criteria for revocation of certification.* (1) The Administrator may revoke certification of a product line if it is determined that the central heaters being manufactured or sold in that model line do not comply with the requirements of this subpart. Such a determination will be based on all available evidence, including but not limited to:

(i) Test data from retesting of the original unit on which the certification test was conducted on a unit that is similar in all material respects that would affect emissions;

(ii) A finding that the certification test was not valid. The finding will be based on problems or irregularities with the certification test or its documentation, but may be supplemented by other information;

(iii) A finding that the labeling of the central heater model line or the owner's manual or the associated marketing information does not comply with the requirements of §60.5478;

(iv) Failure by the manufacturer to comply with the reporting and recordkeeping requirements of §60.5479;

(v) Physical examination showing that a significant percentage (as defined in the quality assurance plan approved pursuant to paragraph (m) of this section, but no larger than 1 percent) of production units inspected is not similar in all material respects that would affect emissions to the representative affected central heater submitted for certification testing; or

(vi) Failure of the manufacturer to conduct a quality assurance program in conformity with paragraph (m).

(vii) Failure of the approved laboratory to test the central heater using the methods specified in §60.5476.

(2) Revocation of certification under this paragraph (l) of this section will not take effect until the manufacturer concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity to request a hearing under §60.5481.

(m) *Quality assurance program.* On or after May 16, 2016, for each certified model line, the manufacturer must conduct a quality assurance program that satisfies the requirements of paragraphs (m)(1) through (5) of this section.

(1) The manufacturer must prepare and operate according to a quality assurance plan for each certified model line that includes specific inspection and testing requirements for ensuring that all units within a model line are similar in all material respects that would affect emissions to the central heater submitted for certification testing and meet the emissions standards in §60.5474.

(2) The quality assurance plan must be approved by the third-party certifier as part of the certification of conformity process specified in paragraph (f) of this section.

(3) The quality assurance plan must include regular (at least annual) unannounced audits by the third-party certifier under ISO-IEC Standard 17065 to ensure that the manufacturer's quality assurance plan is being implemented.

(4) The quality assurance plan must include a report for each audit under ISO-IEC Standard 17065 that fully documents the results of the audit. The third-party certifier must be authorized and required to submit all such reports to the Administrator within 30 days of the audit. The audit report must identify deviations from the manufacturer's quality assurance plan and specify the corrective actions that need to be taken to address each identified deficiency.

(5) Within 30 days after receiving each audit report, the manufacturer must report to the third-party certifier and to the Administrator its corrective actions and responses to any deficiencies identified in the audit report. No such report is required if an audit report did not identify any deficiencies.

(n) *EPA compliance audit testing.* (1)(i) The Administrator may select by written notice central heaters or model lines for compliance audit testing to determine compliance with the emission standards in §60.5474.

(ii) The Administrator will transmit a written notification of the selected central heaters or model line(s) to the manufacturer, which will include the name and address of the laboratory selected to perform the audit test and the model name and serial number of the central heater(s) or central heater model line(s) selected to undergo audit testing.

(2)(i) The Administrator may test, or direct the manufacturer to have tested, the central heater(s) from the model line(s) selected under paragraph (n)(1)(i) of this section in a laboratory approved under §60.5477. The Administrator may select any approved test laboratory or federal laboratory for this audit testing.

(ii) The expense of the compliance audit test is the responsibility of the central heater manufacturer.

(iii) The test must be conducted using the same test method used to obtain certification. If the certification test consisted of more than one particulate matter sampling test method, the Administrator may direct the manufacturer and test laboratory as to which of these methods to use for the purpose of audit testing. The Administrator will notify the manufacturer at least 30 days prior to any test under this paragraph, and allow the manufacturer and/or his authorized representatives to observe the test.

(3) *Revocation of certification.* (i) If emissions from a central heater tested under paragraph (n)(2) of this section exceed the applicable emission standard by more than 50 percent using the same test method used to obtain certification, the Administrator will notify the manufacturer that certification for that model line is suspended effective 72 hours from the receipt of the notice, unless the suspension notice is withdrawn by the Administrator. The suspension will remain in effect until withdrawn by the Administrator, or the date 30 days from its effective date if a revocation notice under paragraph (n)(3)(ii) of this section is not issued within that period, or the date of final agency action on revocation, whichever occurs earliest.

(ii)(A) If emissions from a central heater tested under paragraph (n)(2) of this section exceed the applicable emission limit, the Administrator will notify the manufacturer that certification is revoked for that model line.

(B) A notice under paragraph (n)(3)(ii)(A) of this section will become final and effective 60 days after the date of written notification to the manufacturer, unless it is withdrawn, a hearing is requested under §60.5481(a)(2), or the deadline for requesting a hearing is extended.

(C) The Administrator may extend the deadline for requesting a hearing for up to 60 days for good cause.

(D) A manufacturer may extend the deadline for requesting a hearing for up to 6 months, by agreeing to a voluntary suspension of certification.

(iii) Any notification under paragraph (n)(3)(i) or (ii) of this section will include a copy of a preliminary test report from the approved test laboratory or federal test laboratory. The test laboratory must provide a preliminary test report to the Administrator within 14 days of the completion of testing, if a central heater exceeds the applicable emission limit in §60.5474. The test laboratory must provide the Administrator and the manufacturer, within 30 days of the completion of testing, all documentation pertaining to the test, including the complete test report and raw data sheets, laboratory technician notes, and test results for all test runs.

(iv) Upon receiving notification of a test failure under paragraph (n)(3)(ii) of this section, the manufacturer may request that up to four additional central heaters from the same model line be tested at the manufacturer's expense, at the test laboratory that performed the emissions test for the Administrator.

(v) Whether or not the manufacturer proceeds under paragraph (n)(3)(iv) of this section, the manufacturer may submit any relevant information to the Administrator, including any other test data generated pursuant to this subpart. The manufacturer must bear the expense of any additional testing.

(vi) The Administrator will withdraw any notice issued under paragraph (n)(3)(ii) of this section if tests under paragraph (n)(3)(iv) of this section show either—

(A) That exactly four additional central heaters were tested for the manufacturer and all four met the applicable emission limits; or

(B) That exactly two additional central heaters were tested for the manufacturer and each of them met the applicable emission limits and the average emissions of all three tested heaters (the original audit heater and the two additional heaters) met the applicable emission limits.

(vii) If the Administrator withdraws a notice pursuant to paragraph (n)(3)(vi) of this section, the Administrator will revise the certification values for the model line based on the test data and other relevant information. The manufacturer must then revise the labels and marketing information accordingly.

(viii) The Administrator may withdraw any proposed revocation, if the Administrator finds that an audit test failure has been rebutted by information submitted by the manufacturer under paragraph (n)(3)(iv) of this section and/or (n)(3)(v) of this section or by any other relevant information available to the Administrator.

§60.5476 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

Test methods and procedures specified in this section or in appendices of this part, except as provided under §60.8(b), must be used to determine compliance with the standards and requirements for certification under §§60.5474 and 60.5475 and for reporting carbon monoxide emissions and efficiency. The EPA will post all approved alternative test methods on the EPA Web site. The manufacturer or the

manufacturer's authorized representative must submit a summary and the full test report with all supporting information, including detailed discussion of all anomalies, whether all burn rate categories were properly achieved, any data not used in the calculations and, for any test runs not completed, the data that were collected and the reason that the test run was not completed. The burn rate for the low burn rate category must be no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer.

(a) Canadian Standards Administration (CSA) Method B415.1-10, sections 13.7-13.10 (IBR, see §60.17), must be used to measure the thermal efficiency and CO emissions of outdoor and indoor residential hydronic heaters and forced-air furnaces, except that the burn rates specified in Method 28WHH must be used for hydronic heaters.

(b) Testing conducted with continuously fed biomass as the fuel(s) must be conducted according to the relevant section of the ASTM E2618-13 (IBR, see §60.17) or adaptations approved by EPA. The EPA will post all approved alternative test methods on the EPA Web site.

(c)(1) For outdoor and indoor residential hydronic heaters to be tested under the 2015 particulate matter emission standards in §60.5474(b)(1), the manufacturer must have an EPA-approved test laboratory use:

(i) Method 28WHH;

(ii) Method 28WHH PTS;

(iii) ASTM E2618-13 (IBR, see §60.17) (using crib wood); or

(iv) EN 303-5 (IBR, see §60.17), only for units sold with thermal storage.

(2) For outdoor and indoor residential hydronic heaters to be tested under the 2020 particulate matter emission standards in §60.5474(b)(2), the manufacturer must have an EPA-approved test laboratory use:

(i) Method 28WHH;

(ii) Method 28WHH PTS; or

(iii) ASTM E2618-13 (IBR, see §60.17) (using crib wood).

(3) If the heater is equipped with full or partial heat storage, the manufacturer, retailer and installer must not sell or install the heater with less heat storage capacity than is used in the certification test.

(4) The manufacturer and approved laboratory must make the following adjustments to the methods listed in paragraphs (a), (c)(1) and (2) of this section:

(i) For ASTM E2618-13 (IBR, see §60.17), the burn rate categories specified in Method 28WHH must be used;

(ii) For EN 303-5 (IBR, see §60.17), the organic compounds must be included as part of the PM.

(iii) For ASTM 2618-13 (IBR, see §60.17) Appendix A1 for full thermal storage certification tests, the test must use the large scale as required in the test method unless the manufacturer requests a variance, in advance of testing, contingent upon measuring flue gas temperature, oxygen and CO, using a simple

electronic spreadsheet calculator to estimate efficiency and conducting a comparison to the delivered efficiency to determine if a more detailed examination should be made.

(5) For particulate matter emission concentrations measured with ASTM E2515-11 (IBR, see §60.17), four-inch filters and Teflon membrane filters or Teflon-coated glass fiber filters may be used.

(6) For all tests conducted using ASTM 2515-11 (IBR, see §60.17) pursuant to this section, the manufacturer and approved test laboratory must also measure the first hour of particulate matter emissions for each test run using a separate filter in one of the two parallel trains. The manufacturer and approved test laboratory must report the test results for the first hour separately and also include them in the total particulate matter emissions per run.

(d)(1) For hydronic heaters subject to the 2020 cord wood alternative compliance option specified in §60.5474(b)(3), the manufacturers must have the approved laboratory conduct cord wood testing using the test methods listed below:

(i) Method 28WHH;

(ii) Method 28WHH PTS; or

(iii) ASTM E2618-13 (IBR, see §60.17) (using cord wood).

(2) If the heater is equipped with full or partial heat storage, the manufacturer, retailer and installer must not sell or install the heater with less heat storage capacity than is used in the certification test.

(3) The manufacturer and approved laboratory must make the following adjustments to the methods listed in (d)(1) of this section:

(i) For ASTM E2618-13 (IBR, see §60.17), use the burn rate categories specified in Method 28WHH;

(ii) For all methods, report the results separately per burn rate category.

(e) For forced-air furnaces, use CSA Method B415.1-10 (IBR, see §60.17) to measure the heat output (mmBtu/hr) and particulate matter emission rate (lb/mmBtu heat output), except use the burn rate categories in Method 28WHH for the 2020 particulate matter emission standards. For the 2020 particulate matter emission standards, report the particulate matter, efficiency and CO emission results separately per burn rate category.

(f) For affected wood heaters subject to the particulate matter emission standards, emission concentrations must be measured with ASTM E2515-11 (IBR, see §60.17), except for the 2015 certification tests using EN303-5 (IBR, see §60.17). As required in paragraph (c)(4)(ii) of this section, the manufacturer and approved laboratory must add the organic gases to the PM for EN 303-5. Four-inch filters and Teflon membrane filters or Teflon-coated glass fiber filters may be used in ASTM E2515-11. Method 5H is not allowed for certification testing.

(g) Douglas fir may be used in ASTM E2618-13 and CSA B415.1-10 (IBR, see §60.17).

(h) The manufacturer of an affected central heater model line must notify the Administrator of the date that certification testing is to begin, by email, to *WoodHeaterReports@epa.gov*. This notice must be at least 30 days before the start of testing. The notification of testing must include the manufacturer's name and physical and email addresses, the approved test laboratory's name and physical and email addresses, third-party certifier name, the model name and number (or, if unavailable, some other way to

distinguish between models), and the dates of testing. The laboratory may substitute certification testing of another affected central heater on the original date in order to ensure regular laboratory testing operations.

(i) The approved test laboratory must allow the manufacturer, the manufacturer's approved third-party certifier, the EPA and delegated state regulatory agencies to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test after the pretest burn has begun. Communications between the manufacturer and laboratory or third-party certifier personnel regarding operation of the central heater must be limited to written communications transmitted prior to the first pretest burn of the certification series. During certification tests, the manufacturer may communicate with laboratory personnel only in writing and only to notify them that the manufacturer has observed a deviation from proper test procedures. All communications must be included in the test documentation required to be submitted pursuant to §60.5475(b)(5) and must be consistent with instructions provided in the owner's manual required under §60.5478(f), except to the extent that they address details of the certification tests that would not be relevant to owners or regulators.

§60.5477 What procedures must I use for EPA approval of a test laboratory or EPA approval of a third-party certifier?

(a) *Test laboratory approval.* (1) A laboratory must apply to the Administrator for approval to test under this rule by submitting documentation that the laboratory is accredited by a nationally recognized accrediting entity under ISO-IEC Standard 17025 to perform testing using the test methods specified under §60.5476. Laboratories accredited by EPA prior to May 15, 2015 may have until May 15, 2018 to submit documentation that they have accreditation under ISO-IEC Standard 17025 to perform testing using the test methods specified under §60.5476. ISO accreditation is required for all other laboratories performing hydronic heater testing beginning on May 15, 2015, and performing forced-air furnace testing beginning on November 16, 2015.

(2) As part of the application, the test laboratory must:

(i) Agree to participate biennially in an independently operated proficiency testing program with no direct ties to the laboratories participating;

(ii) Agree to allow the Administrator, regulatory agencies and certifying bodies access to observe certification testing;

(iii) Agree to comply with calibration, reporting and recordkeeping requirements that affect testing laboratories; and

(iv) Agree to perform a compliance audit test at the manufacturer's expense at the testing cost normally charged to such manufacturer if the laboratory is selected by the Administrator to conduct the compliance audit test of the manufacturer's model line. The test laboratory must provide a preliminary audit test report to the Administrator within 14 days of the completion of testing, if a central heater exceeds the applicable emission limit in §60.5474. The test laboratory must provide the Administrator and the manufacturer, within 30 days of the completion of audit testing, all documentation pertaining to the test, including the complete test report and raw data sheets, laboratory technician notes, and test results for all test runs.

(v) Have no conflict of interest and receive no financial benefit from the outcome of certification testing conducted pursuant to §60.5475.

(vi) Agree to not perform initial certification tests on any models manufactured by a manufacturer for which the laboratory has conducted research and development design services within the last 5 years.

(vii) Agree to seal any wood heater on which it performed certification tests, immediately upon completion or suspension of certification testing, by using a laboratory-specific seal.

(viii) Agree to immediately notify the Administrator of any suspended tests through email and in writing, giving the date suspended, the reason(s) why, and the projected date for restarting. The laboratory must submit the operation and test data obtained, even if the test is not completed.

(3) If the EPA approves the laboratory, the Administrator will provide the test laboratory with a certificate of approval for testing under this rule. If the EPA does not approve the laboratory, the Administrator will give written notice to the laboratory setting forth the basis for the determination.

(b) *Revocation of test laboratory approval.* (1) The Administrator may revoke the EPA laboratory approval if it is determined that the laboratory:

(i) Is no longer accredited by the accreditation body;

(ii) Does not follow required procedures or practices;

(iii) Has falsified data or otherwise misrepresented emission data;

(iv) Failed to participate in a proficiency testing program, in accordance with its commitment under paragraph (a)(2)(i) of this section; or

(v) Failed to seal the central heater in accordance with paragraph (a)(2)(vii) of this section.

(2) Revocation of approval under this paragraph (b) will not take effect until the laboratory concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a hearing under §60.5481. However, if revocation is ultimately upheld, all tests conducted by the laboratory after written notice was given will, at the discretion of the Administrator, be declared invalid.

(c) *Period of test laboratory approval.* (1) With the exception of laboratories meeting the provisions of paragraph (c)(2) of this section, and unless revoked sooner, a certificate of approval for testing under this rule is valid for 5 years from the date of issuance.

(2) Laboratories accredited by the EPA by May 15, 2015, under the provisions of §60.535 as in effect prior to that date may continue to be EPA accredited and deemed EPA approved for testing under this subpart until May 15, 2018, at which time the EPA accreditation and approval ends unless the laboratory has obtained accreditation under §60.5477 as in effect on that date.

(d) *Third-party certifier approval.* (1) A Third-party certifier may apply to the Administrator for approval to be an EPA-approved third-party certifier by submitting credentials demonstrating that it has been accredited by a nationally recognized accrediting entity to perform certifications and inspections under ISO-IEC Standard 17025, ISO-IEC Standard 17065 and ISO-IEC Standard 17020.

(2) As part of the application, the third-party certifier must:

(i) Agree to offer to contract with central heater manufacturers to perform third-party certification activities according to the requirements set out in this subpart.

(ii) Agree to periodically conduct audits as described in §60.5475(m) and the manufacturer's quality assurance program;

(iii) Agree to comply with reporting and recordkeeping requirements that affect approved central heater testing laboratories and third-party certifiers;

(iv) Have no conflict of interest and receive no financial benefit from the outcome of certification testing conducted pursuant to §60.5475;

(v) Agree to make available to the Administrator supporting documentation for each central heater certification and audit; and

(vi) Agree to not perform initial certification reviews on any models manufactured by a manufacturer for which the third-party certifier has conducted research and development design services within the last 5 years.

(3) If approved, the Administrator will provide the third-party certifier with a certificate of approval. The approval will expire 5 years after being issued unless renewed by the third-party certifier. If the EPA denies the approval, the Administrator will give written notice to the third-party certifier for the basis for the determination.

(e) *Revocation of third-party certifier approval.* (1) The Administrator will revoke the third-party certifier's EPA approval if it is determined that the certifier:

(i) Is no longer accredited by the accreditation body;

(ii) Does not follow required procedures or practices; or

(iii) Has falsified certification data or otherwise misrepresented emission data.

(2) Revocation of approval under this paragraph (e) will not take effect until the certifier concerned is given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a hearing under §60.5481. However, if revocation is upheld, all certifications by the certifier after written notice was given will, at the discretion of the Administrator, be declared invalid.

§60.5478 What requirements must I meet for permanent labels, temporary labels (hangtags), and owner's manuals?

(a) *General permanent label requirements.* (1) Each affected central heater manufactured or sold on or after the date the applicable standards come into effect as specified in §60.5474, must have a permanent label affixed to it that meets the requirements of this section.

(2) The permanent label must contain the following information:

(i) Month and year of manufacture of the individual unit;

(ii) Model name and number;

(iii) Certification test emission value, test method, and standard met; and

(iv) Serial number.

(3) The permanent label must:

(i) Be affixed in a readily visible or accessible location in such a manner that it can be easily viewed before and after the appliance is installed (a easily removable façade can be used for aesthetic purposes);

(ii) Be at least 8.9 cm long and 5.1 cm wide (3 1/2 inches long and 2 inches wide);

(iii) Be made of a material expected to last the lifetime of the central heater;

(iv) Present the required information in a manner so that it is likely to remain legible for the lifetime of the central heater; and

(v) Be affixed in such a manner that it cannot be removed without damage to the label.

(4) The permanent label may be combined with any other label, as long as the required information is displayed, the integrity of the permanent label is not compromised, and the permanent label meets the requirements of §60.5478(a)(3).

(5) Any label statement under paragraph (b) of this section constitutes a representation by the manufacturer as to any central heater that bears it:

(i) That a certification of compliance was in effect at the time the central heater left the possession of the manufacturer;

(ii) That the manufacturer was, at the time the label was affixed, conducting a quality assurance program in conformity with §60.5475(m); and

(iii) That all the central heaters individually tested for emissions by the manufacturer under its quality assurance program pursuant to §60.5475(m) met the applicable emissions limit.

(b) *Permanent label requirements for central heaters.* If a central heater belongs to a model line certified under §60.5475, and no unit in the model line has been found to exceed the applicable emission limits or tolerances through quality assurance testing, one of the following statements, as appropriate, must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2015 particulate emission standards. Not approved for sale after May 15, 2020" or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2016 particulate emission standards. Not approved for sale after May 15, 2020" or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2017 particulate emission standards. Not approved for sale after May 15, 2020" or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2020 particulate emission standards using crib wood." or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2020 particulate emission standards using cord wood."

(c) *Additional permanent label content.* The permanent label for all certified central heaters must also contain the following statement on the permanent label:

"This appliance needs periodic inspection and repair for proper operation. Consult owner's manual for further information. It is against federal regulations to operate this appliance in a manner inconsistent with operating instructions in the owner's manual."

(d) *Permanent label requirements for affected wood heaters with exemptions under §60.5472(b).* (1) If an affected central heater is manufactured in the United States for export as provided in §60.5472(b)(1), the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Export appliance. May not be sold or operated in the United States."

(2) If an affected central heater is manufactured for use for research and development purposes as provided in §60.5472(b)(2), the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Not certified. Research Appliance. Not approved for sale or for operation other than for research."

(3) If an affected central heater is a non wood-burning central heater exclusively as provided in §60.5472(b)(3), the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY This appliance is not certified for wood burning. Use of any wood fuel is a violation of federal regulations."

(e) *Temporary label (hangtag) voluntary options.* (1) Each model line certified to meet the 2020 particulate emission standards prior to May 15, 2020 may display the hangtags specified in section 3 of appendix I of this part. The electronic template will be provided by the Administrator upon approval of the certification.

(2) The hangtags in paragraph (e)(1) of this section end upon May 15, 2020.

(3) Each model certified to meet the 2020 Cord Wood Alternative Compliance Option may display the cord wood temporary label specified in section 3 of appendix I of this part. The electronic template will be provided by the Administrator upon approval of the certification.

(f) *Owner's manual requirements.* (1) Each affected central heater offered for sale by a commercial owner must be accompanied by an owner's manual that must contain the information listed in paragraph (f)(2) of this section (pertaining to installation), and paragraph (f)(3) of this section (pertaining to operation and maintenance). Such information must be adequate to enable consumers to achieve optimal emissions performance. Such information must be consistent with the operating instructions provided by the manufacturer to the approved test laboratory for operating the central heater during certification testing, except for details of the certification test that would not be relevant to the ultimate user. The commercial owner must also make current and historical owner's manuals available on the company Web site and upon request to the EPA.

(2) Guidance on proper installation information, including stack height, heater location and achieving proper draft.

(3) Proper operation and maintenance information, including minimizing visible emissions.

(i) Fuel loading and re-loading procedures, recommendations on fuel selection and warnings on what fuels not to use, such as unseasoned wood, treated wood, colored paper, cardboard, solvents, trash and garbage;

(ii) Fire starting procedures;

(iii) Proper use of air controls, including how to establish good combustion and how to ensure good combustion at the lowest burn rate for which the heater is warranted;

(iv) Ash removal procedures;

(v) Instructions for replacement of gaskets and other parts that are critical to the emissions performance of the unit and other maintenance and repair instructions;

(vi) For catalytic models, information on the following pertaining to the catalytic combustor: Procedures for achieving and maintaining catalyst activity, maintenance procedures, procedures for determining deterioration or failure, procedures for replacement and information on how to exercise warranty rights;

(vii) For catalytic models, the following statement—

"This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. It is against federal regulations to operate this wood heater in a manner inconsistent with operating instructions in this manual, or if the catalytic element is deactivated or removed"; and

(viii) For noncatalytic models, the following statement—

"This wood heater needs periodic inspection and repair for proper operation. It is against federal regulations to operate this wood heater in a manner inconsistent with operating instructions in this manual."

(4) Any manufacturer using the EPA-recommended language contained in appendix I of this part to satisfy any requirement of this paragraph (f) will be considered to be in compliance with that requirement, provided that the particular model language is printed in full, with only such changes as are necessary to ensure accuracy for the particular model line.

(g) Central heaters that are affected by this subpart, but that have been owned and operated by a noncommercial owner, are not subject to paragraphs (e) and (f) of this section when offered for resale.

§60.5479 What records must I keep and what reports must I submit?

(a)(1) Each manufacturer who holds a certificate of compliance pursuant to §60.5475(a)(2) for a model line must maintain records containing the information required by paragraphs (a)(2) through (4) of this section with respect to that model line for at least 5 years.

(2) All documentation pertaining to the certification test used to obtain certification, including the full test report and raw data sheets, laboratory technician notes, calculations, and the test results for all test runs, and discussions of the appropriateness and validity of all test runs, including runs attempted but not completed. The retained certification test documentation must include, as applicable, detailed discussions of all anomalies, whether all burn rate categories were properly achieved, any data not used in the calculations and, for any test runs not completed, the data that were collected and the reason that the test run was not completed. The retained certification test also must include documentation that the burn rate for the low burn category was no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer.

(3) Results of the quality assurance program inspections required pursuant to §60.5475(m).

(4) For emissions tests conducted pursuant to the quality assurance program required by §60.5475(m), all test reports, data sheets, laboratory technician notes, calculations, and test results for all test runs, the corrective actions taken, if any, and any follow-up actions such as additional testing.

(b) Each approved test laboratory and third-party certifier must maintain records consisting of all documentation pertaining to each certification test, quality assurance program inspection and audit test,

including the full test report and raw data sheets, technician notes, calculations, the test results for all test runs. Each approved test laboratory must submit accreditation credentials and all proficiency test results to the Administrator. Each third-party certifier must submit each certification test, quality assurance program inspection report and ISO-IEC accreditation credentials to the Administrator.

(c) Each manufacturer must retain each central heater upon which certification tests were performed and certification granted under §60.5475(a)(2) at the manufacturer's facility for 5 years after the certification test. Each central heater must remain sealed and unaltered. Any such central heater must be made available upon request to the Administrator for inspection and testing.

(d) Each manufacturer of an affected central heater model line certified pursuant to §60.5475(a)(2) must submit a report to the Administrator every 2 years following issuance of a certificate of compliance for each model line. This report must include the sales for each model by state and certify that no changes in the design or manufacture of the model line have been made that require recertification pursuant to §60.5475(k).

(e)(1) Unless otherwise specified, all records required under this section must be maintained by the manufacturer, commercial owner of the affected central heater, approved test laboratory or third-party certifier for a period of no less than 5 years.

(2) Unless otherwise specified, all reports to the Administrator required under this subpart must be made to: *WoodHeaterReports@epa.gov.*

(f) Within 60 days after the date of completing each performance test (*e.g.*, initial certification test, tests conducted for quality assurance and tests for renewal or recertification), each manufacturer must submit performance test data electronically to *WoodHeaterReports@epa.gov.* Owners or operators who claim that some of the information being submitted for performance tests is CBI (*e.g.*, design drawings) must submit a complete file, including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives), by mail, and the same file with the CBI omitted, electronically. The compact disk must be clearly marked as CBI and mailed to U.S. EPA, OECA CBI Office, Attention: Residential Wood Heater Compliance Program, Washington, DC 20004. Emission data and all information necessary to determine compliance, except sensitive engineering drawings and sensitive detailed material specifications, cannot be claimed as CBI.

(g) Within 30 days of receiving a certification of compliance for a model line, the manufacturer must make the full non-CBI test report and the summary of the test report available on the manufacturer's Web site.

(h) Each manufacturer who uses the exemption for R&D heaters under §60.5472(b)(2) must maintain records for at least 5 years documenting where the heaters were located, that the heaters were never offered for sale or sold and that the heaters were not used for the purpose of heating.

§60.5480 What activities are prohibited under this subpart?

(a) No person is permitted to advertise for sale, offer for sale, sell or operate an affected residential hydronic heater or forced-air furnace or other central heater that does not have affixed to it a permanent label pursuant to §60.5478(b) through (d), as applicable.

(b) No person is permitted to advertise for sale, offer for sale, or sell an affected central heater labeled under §60.5478(d)(1) except for export. No person is permitted to operate an affected central heater in the United States if it is labeled under §60.5478(d)(1).

(c)(1) No commercial owner is permitted to advertise for sale, offer for sale, or sell an affected central heater permanently labeled under §60.5478(b) unless:

(i) The affected appliance has been certified to comply with the particulate emission standards pursuant to §60.5474 as applicable; and

(ii) The commercial owner provides any purchaser or transferee with an owner's manual that meets the requirements of §60.5478(f), a copy of the warranty and a moisture meter.

(2) A commercial owner other than a manufacturer complies with the requirements of paragraph (c)(1) of this section if the commercial owner:

(i) Receives the required documentation from the manufacturer or a previous commercial owner; and

(ii) Provides that documentation unaltered to any person to whom the central heater that it covers is sold or transferred.

(d)(1) In any case in which the Administrator revokes a certificate of compliance either for the knowing submission of false or inaccurate information or other fraudulent acts, or based on a finding under §60.5475(l)(1)(ii) that the certification test was not valid, the Administrator may give notice of that revocation and the grounds for it to all commercial owners.

(2) On and after the date of receipt of the notice given under paragraph (d)(1) of this section, no commercial owner is permitted to sell any central heater covered by the revoked certificate (other than to the manufacturer) unless the model line has been recertified in accordance with this subpart.

(e) No person is permitted to install or operate an affected central heater except in a manner consistent with the instructions on its permanent label and in the owner's manual pursuant to §60.5478(f), including only using fuels for which the unit is certified.

(f) No person is permitted to operate, sell or offer for sale an affected central heater that was originally equipped with a catalytic combustor if the catalytic element is deactivated or removed.

(g) No person is permitted to operate, sell or offer for sale an affected central heater that has been physically altered to exceed the tolerance limits of its certificate of compliance, pursuant to §60.5475(k).

(h) No person is permitted to alter, deface, or remove any permanent label required to be affixed pursuant to §60.5478(a) through (d), as applicable.

(i) If a temporary label is affixed to the central heater, retailers may not sell or offer for sale that central heater unless the temporary label affixed is in accordance with §60.5478(e), as applicable.

§60.5481 What hearing and appeal procedures apply to me?

(a)(1) The affected manufacturer, laboratory or third-party certifier may request a hearing under this section within 30 days following receipt of the required notification in any case where the Administrator—

(i) Denies an application for a certificate of compliance under §60.5475 (a)(2);

(ii) Denies an application for a renewal of certification under §60.5475(i);

(iii) Issues a notice of revocation of certification under §60.5475(l);

(iv) Denies an application for laboratory approval under §60.5477(a);

(v) Issues a notice of revocation of laboratory approval under §60.5477(b).

(vi) Denies an application for third-party certifier approval under §60.5477(d); or

(vii) Issues a notice of revocation of third-party certifier approval under §60.5477(e).

(2) In any case where the Administrator issues a notice of revocation under §60.5475(n)(3)(ii), the manufacturer may request a hearing under this section with the time limits set out in §60.5475(n)(3)(ii).

(b) Any hearing request must be in writing, must be signed by an authorized representative of the petitioning manufacturer or laboratory, and must include a statement setting forth with particularity the petitioner's objection to the Administrator's determination or proposed determination.

(c)(1) Upon receipt of a request for a hearing under paragraph (a) of this section, the Administrator will request the Chief Administrative Law Judge to designate an Administrative Law Judge as Presiding Officer for the hearing. If the Chief Administrative Law Judge replies that no Administrative Law Judge is available to perform this function, the Administrator will designate a Presiding Officer who has not had any prior responsibility for the matter under review, and who is not subject to the direct control or supervision of someone who has had such responsibility.

(2) The hearing will commence as soon as practicable at a time and place fixed by the Presiding Officer.

(3)(i) A motion for leave to intervene in any proceeding conducted under this section must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c)(3)(iii) of this section within 10 days after service of the motion for leave to intervene.

(ii) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference or, in the absence of a prehearing conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (c)(3)(i) of this section, a statement of good cause for the failure to file in a timely manner. The intervener shall be bound by any agreements, arrangements and other matters previously made in the proceeding.

(iii) A motion for leave to intervene may be granted only if the movant demonstrates that his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties, and that movant may be adversely affected by a final order. The intervener will become a full party to the proceeding upon the granting of leave to intervene.

(iv) Persons not parties to the proceeding may move for leave to file amicus curiae briefs. The movant must state his interest and the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator will issue an order setting the time for filing such brief. An amicus curia may participate in any briefing after his motion is granted, and will be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(4) In computing any period of time prescribed or allowed in this subpart, the day of the event from which the designated period begins to run will not be included. Saturdays, Sundays, and federal legal

holidays will be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period will be extended to include the next business day.

(d)(1) Upon his appointment the Presiding Officer must establish a hearing file. The file will consist of the notice issued by the Administrator under §60.5475(c)(2), §60.5475(f)(3), §60.5475(i)(4), §60.5475(l)(2), §60.5475(n)(3)(ii)(A), §60.5477(a)(3), §60.5477(b)(2), §60.5477(d)(3) or §60.5477(e)(2), together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification or approval, or the proposed revocation of either.

(2) The hearing file must be available for inspection by any party, to the extent authorized by law, at the office of the Presiding Officer, or other place designated by him.

(e) Any party may appear in person, or may be represented by counsel or by any other duly authorized representative.

(f)(1) The Presiding Officer, upon the request of any party, or at his discretion, may order a prehearing conference at a time and place specified by him to consider the following:

(i) Simplification of the issues;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute; and

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference must be reduced to writing by the Presiding Officer and made part of the record.

(g)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer will call to the attention of witnesses that their statements may be subject to penalties under title 18 U.S.C. 1001 for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings must be recorded verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations and similar data offered in evidence at the hearings must, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy and materiality, be received in evidence and will constitute a part of the record.

(h)(1) The Presiding Officer will make an initial decision which must include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions and written decision must be provided to the parties and made a part of the record. The initial decision will become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator. Except as provided in paragraph (h)(3) of this section, any such appeal must be taken within 20 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision the Administrator will have all the powers which he would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator must include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

(3) In any hearing requested under paragraph (a)(2) of this section the Presiding Officer must render the initial decision within 60 days of that request. Any appeal to the Administrator must be taken within 10 days of the initial decision, and the Administrator must render a decision in that appeal within 30 days of the filing of the appeal.

§60.5482 Who implements and enforces this subpart?

(a) Under section 111(c) of the Clean Air Act, the Administrator may delegate the following implementation and enforcement authority to a state, local or tribal authority upon request:

(1) Enforcement of prohibitions on the installation and operation of affected central heaters in a manner inconsistent with the installation and owner's manual;

(2) Enforcement of prohibitions on operation of catalytic central heaters where the catalyst has been deactivated or removed;

(3) Enforcement of prohibitions on advertisement and/or sale of uncertified model lines;

(4) Enforcement of prohibitions on advertisement and/or sale of affected central heaters that do not have required permanent label;

(5) Enforcement of proper labeling of affected central heaters;

(6) Enforcement of compliance with other labeling requirements for affected central heaters.

(7) Enforcement of certification testing procedures;

(8) Enforcement of requirements for sealing of the tested central heaters and meeting parameter limits; and

(9) Enforcement of compliance requirements of EPA-approved laboratories.

(b) Delegations shall not include:

(1) Decisions on certification;

(2) Revocation of certification;

(3) Establishment or revision of standards;

(4) Establishment or revision of test methods;

(5) Laboratory and third-party certifier approvals and revocations;

(6) Enforcing provisions governing content of owner's manuals; and

(7) Hearings and appeals procedures.

(c) Nothing in these delegations will prohibit the Administrator from enforcing any applicable requirements.

(d) Nothing in these delegations will limit delegated entities from using their authority under section 116 of the Clean Air Act to adopt or enforce more restrictive requirements.

§60.5483 What parts of the General Provisions do not apply to me?

The following provisions of subpart A of part 60 do not apply to this subpart:

(a) Section 60.7;

(b) Section 60.8(a), (c), (d), (e), (f) and (g); and

(c) Section 60.15(d).

3/25/85 Advise ?

Chris - ~~Certified~~ Mail
File EPA Correspondence
TA FYI

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

84-05-10

3/7/85
3/27/8
EIIC

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.

Exhibit NMED 12a

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

Exhibit NMED 12a

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

Exhibit NMED 12a

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.

Exhibit NMED 12a

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.

Dick Whittington, P.E.
Regional Administrator
Region 6
U.S. Environmental Protection Agency
Dallas, Texas

March 15, 1985
Date

Exhibit NMED 12a

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

AUG 1995
Received
Air Pollution
Control

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

Recycled/Recyclable

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.

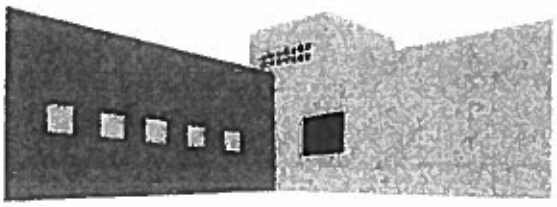
Region 6 is pleased that the NMED is actively pursuing delegation of federally promulgated MACT standards and looks forward to working closely with you to accomplish this goal. If you have any questions or comments regarding the contents of this letter, please contact Ms. Adele Cardenas at (214) 665-7210.

Sincerely yours,

A. Stanley Meiburg
Acting Regional Administrator

cc: Mr. Bill Blankenship
New Mexico Environment Department

Exhibit NMED 12b



NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe 87507 US
(505) 476-7913

Invoice

RECEIVED
AUG 20 2015
Air Quality Bureau

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

INVOICE #	DATE	TOTAL DUE	DUE DATE	ENCLOSED
1125	08/17/2015	$55.00	08/17/2015	

ISSUE	PUBLICATION	P.O. NUMBER
15	8/14/2015	66700-0000024960

DATE	ACTIVITY	QTY	RATE	AMOUNT
08/17/2015	**Columnar Inch - N.M. Register, Vol. XXVI, Notice** Notice of Rulemaking Hearing	22	2.50	55.00

I, Matthew 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: _____, Publisher New Mexico Register

Subscribed, sworn and acknowledged before me this 17 day of August 2015.

Notary Public
My Commission Expires: 5/5/2019

OFFICIAL SEAL
Amanda N. Lopez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 5/5/2019

Exhibit NMED 13a

New Mexico Register / Volume XXVI, Issue 15 / August 14, 2015

NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 15, 2015 at 9:00 a.m. in Room 307 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 September 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:

RECEIVED
AUG 28 2015
Air Quality Bureau

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.

Exhibit NMED 13a

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 October 5, 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.

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
County of Bernalillo SS

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:

August 14, 2015

Linda C MacEachen

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 14 day of August of 2015

OFFICIAL SEAL
Sandra B. Gutierrez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires 2-18-17

Sandra B Gutierrez

PRICE 122.23

Statement to come at end of month.

ACCOUNT NUMBER 1007554

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 15, 2015 at 9:00 a.m. in Room 307 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) 476-4358 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.

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 September 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 October 5, 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.
Journal: August 14, 2015

RECEIVED
SEP 10 2015
Air Quality Bureau

Exhibit NMED 13b

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
County of Bernalillo SS

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:

August 14, 2015

Linda MacEachen

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 14th day of August of 2015.

OFFICIAL SEAL
Sandra B. Gutierrez
NOTARY PUBLIC
STATE OF NEW MEXICO
2-18-19

Sandra B. Gutierrez

PRICE $144.51

Statement to come at end of month.

ACCOUNT NUMBER 1007594

LA JUNTA DE MEJORA AMBIENTAL DE NUEVO MEXICO NOTIFICACION DE AUDIENCIA PÚBLICA DE REGLAMENTACIÓN

La Junta de Mejora Ambiental de Nuevo México (Junta) llevará a cabo una audiencia pública el 15 de octubre del 2015 a las 9:00 am en el edificio del Capitolio del Estado, sala 307, localizado en 490 Old Santa Fe Trail, Santa Fe, Nuevo México. El motivo de la audiencia es para poner a consideración 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 México (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 México (NMED).

El motivo de la audiencia pública 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 México, o en el sitio web https://www.env.nm.gov/aqb/prop_regs.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 pública 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 pública 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 a 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 septiembre 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 5469
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 5 de Octubre 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 Relevo de Nuevo México al 1-800-659-8331.

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: August 14, 2015

RECEIVED
SEP 10 2015
Air Quality Bureau

Exhibit NMED 13c

From:	Hollenberg, Cindy, NMENV
To:	Hollenberg, Cindy, NMENV
Subject:	Rule Changes to Incorporate by Reference Federal Standards
Date:	Friday, August 14, 2015 10:52:23 AM
Attachments:	powerphplist.png

Air Quality Bureau
Announcement Regarding

Regulatory and State Implementation Plan Developments and Actions

The New Mexico Environmental Improvement Board (EIB) will hold a public hearing on October 15, 2015 at 9:00 a.m. in Room 307 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.

New Mexico Environment Department
Air Quality Bureau
525 Camino de los Marquez, Suite 1
Santa Fe, New Mexico, 87505-1816
Proposed Air Quality Regulations and Plans
(505) 476-4300

To unsubscribe from from this AQB list, or subscribe to another one, visit this link.

If you would like to opt out of ALL of the AQB lists and not receive any more emails from this listserve, visit Unsubscribe.

NEW MEXICO
ENVIRONMENT DEPARTMENT

Harold Runnels Building
1190 Saint Francis Drive (87505)
PO Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-2990 Fax (505) 827-1628
www.nmenv.state.nm.us

SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

OFFICE OF GENERAL COUNSEL

July 29, 2015

Small Business Regulatory Advisory Commission
New Mexico Economic Development Department
P.O. Box 20003
Santa Fe, New Mexico 87504-5003

Via U.S. Postal Service

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

Dear Members of the Small Business Regulatory Advisory Commission:

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 October 15, 2015, at 9:00 a.m. in Room 307 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.env.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

Exhibit NMED 15

Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations

42 U.S.C. §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.

(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. 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii) [1] 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) [1] 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 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.

* * * *

42 U.S.C. §7412. Hazardous air pollutants

* * * *

(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

(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.

(2) Guidance

Not later than 12 months after November 15, 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) of this section in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b) of this section.

(3) Technical assistance

The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 7403 of this title to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

(4) Grants

Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (k) of this section.

(5) Approval or disapproval

Not later than 180 days after receiving a program submitted by a State, and after notice and opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that—

> (A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section;

Exhibit NMED 16

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this chapter.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and resubmit the proposed program for review and approval pursuant to the provisions of this subsection.

(6) Withdrawal

Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action which will assure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless the State shall have been notified and the reasons for withdrawal shall have been stated in writing and made public.

(7) Authority to enforce

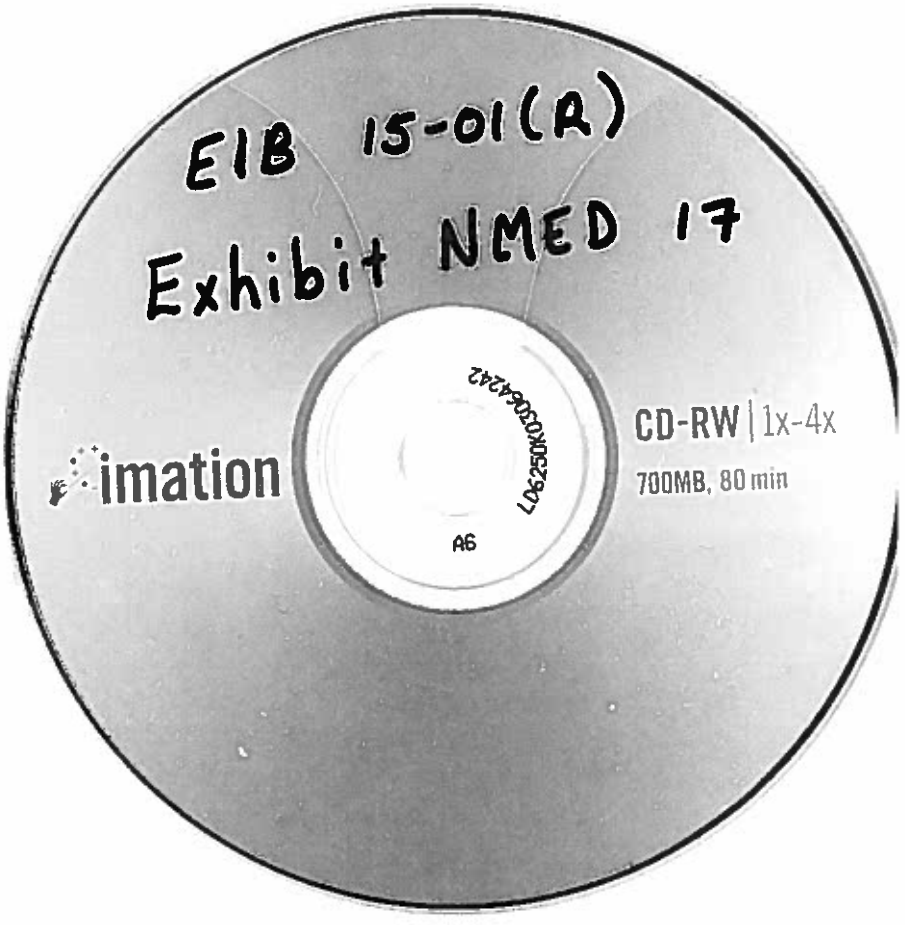
Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard or requirement under this section.

(8) Local program

The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection and any such agency implementing an approved program may take any action authorized to be taken by a State under this section.

(9) Permit authority

Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under subchapter V of this chapter.


EIB 15-01(R)
Exhibit NMED 17
imation
CD-RW | 1x-4x
700MB, 80 min
A6

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 October 15, 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 October 15, 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.

EXHIBIT NMED 18

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 3, Testimony of Cindy Hollenberg, at 3.

9. The Department may choose to exclude from delegation certain federal rules. *See* Exhibit NMED 3, Testimony of Cindy Hollenberg, at 2. The proposed amendment at

EXHIBIT NMED 18

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 3, 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.

EXHIBIT NMED 18

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. No other parties filed NOIs.

18. A hearing in this matter was held in Santa Fe, New Mexico on October 15, 2015, at which a reasonable opportunity for all persons to be heard was provided.

19. 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.

20. 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).

21. 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).

22. 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).

EXHIBIT NMED 18

23. 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).

24. 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.

25. 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, 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.

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

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

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

EXHIBIT NMED 18

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 October 15, 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.

_____ Dated: _____

On Behalf of the Board

EXHIBIT NMED 18