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STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 15-01(R)

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

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

Petitioner.

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 18th day of
December, 2015, the above-entitled matter came on for
hearing and deliberation before the New Mexico
Environmental Improvement Board, taken at the State
Capitol Building, Room 322, 490 Old Santa Fe Trail,
Santa Fe, New Mexico, at the hour of 9:40 a.m.

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A P P E A R A N C E S

For the Environmental Improvement Board:

JOHN MICHAEL VOLKERDING, Chair, Hearing Officer
TIMOTHY L. MORROW
CHRISTOPHER TIMM
MATTHEW HOLT
JAMES R. CASCIANO (by telephone)

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KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

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4	Exhibit 9R. Table of Specific Changes to 40	
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1	E X H I B I T S (Continued)	
2		ADMITTED
3	NMED (Continued):	
4	Exhibit 15. Letter to Small Business	
5	Regulatory Advisory Commission, dated	
6	July 29, 2015	22
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8	and 112(l) (42 USC Section 7411 and	
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23	Rulemaking Hearing sent to Air Quality	
24	Bureau LISTSERV	22
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E X H I B I T S (Continued)

ADMITTED

NMED (Continued):

Exhibit 21. Letter to Small Business

Regulatory Advisory Commission, dated

November 17, 2015

22

Exhibit 22. Revised Written Testimony of

Cindy Hollenberg

22

Exhibit 23. Revised Proposed Statement of

Reasons for Adoption of Rules

22

1 MR. VOLKERDING: Okay. Agenda item 7,
2 Hearing, EIB 15-01. Ms. Bonza.

3 All right. I will be the Hearing Officer this
4 time. So I will start with my spiel and turn it over to
5 you.

6 I would like to call this hearing to order.

7 My name is John Volkerding, and I was
8 designated by the Environmental Improvement Board to act
9 as Hearing Officer in this matter.

10 This hearing is being held to consider the
11 regulatory change of Air Quality Regulations 20.2.77,
12 20.2.78 and 20.2.82 NMAC. The rulemaking petition was
13 filed by the Environment Department and docketed by the
14 administrator as EIB 15-01(R).

15 The hearing will be conducted in accordance
16 with the Board's rulemaking procedures set out in 20.1.1
17 NMAC. Pursuant to those procedures, I will conduct the
18 hearing so as to provide reasonable opportunity for all
19 persons to be heard without making the hearing
20 unreasonably lengthy.

21 The Rules of Civil Procedure and the Rules of
22 Evidence do not apply, but I will make whatever orders
23 are necessary to preserve decorum.

24 All testimony will be taken under oath, and
25 all persons giving testimony will be subject to

1 cross-examination by any other persons in attendance on
2 the subject matter of their testimony and on matters
3 affecting their credibility. I may limit
4 cross-examination, if necessary, to avoid harassment,
5 intimidation or repetition.

6 The hearing is being recorded and transcribed
7 by Cheryl Arreguin of Kathy Townsend Court Reporters.
8 You may obtain a copy of the transcript directly from
9 the court reporter. It also eventually becomes public
10 record, viewable in the office of the Board
11 administrator.

12 If you've not signed in, please do so,
13 regardless on whether you wish to present testimony.

14 If you have a phone or pager -- Mr. Timm --
15 please silence it now.

16 Board members, the file contains the petition
17 for hearing, the Department's notice of intent to
18 present technical testimony. And no other parties have
19 filed a motion.

20 There will be an opportunity for comment by
21 members of the public. If any members of the public
22 would like to comment, please sign in so we can
23 calculate the amount of time needed.

24 And with that, Ms. Bonza, please make your
25 appearance and introduce your witnesses.

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1 MS. BONZA: Chair Volkerding, members of the
2 Board, I'm Kay Bonza. I'm an attorney with the New
3 Mexico Environment Department.

4 And with me is Cindy Hollenberg, environmental
5 analyst in the Control Strategies Section of the Air
6 Quality Bureau, and Rita Bates, the Planning Section
7 chief of the Air Quality Bureau.

8 The Air Quality Bureau is proposing amendments
9 to three sections of the air quality regulations today
10 in order to incorporate by reference new rules
11 promulgated by the US Environmental Protection Agency
12 from the last date of incorporation through
13 September 15, 2015.

14 Ms. Hollenberg is our only witness today, and
15 Ms. Bates will be available to answer any questions from
16 the Board if they go beyond the scope of
17 Ms. Hollenberg's testimony.

18 And with that I'd like to move to examination
19 of my witness.

20 (Oath administered to Cindy Hollenberg
21 and Rita Bates.)

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CINDY HOLLENBERG

having been first duly sworn or affirmed, was
examined and testified as follows:

DIRECT EXAMINATION

BY MS. BONZA:

Q. Please state your name for the record.

A. Chairman Volkerding, members of the Board,
good morning.

My name is Cindy Hollenberg.

Q. Can you tell us about your educational and
work background?

A. I am an environmental analyst with the Air
Quality Bureau for the New Mexico Environment
Department. I will refer to that simply as the
Department.

I've been an analyst since August of 2013. In
that capacity I review and analyze existing and new
regulations, I help prepare state reports and plans, and
I write regulations for air quality.

I received a master of public administration
from Columbia University in environmental science and
policy.

And my full resume can be found as Exhibit
NMED 1.

Q. Did you prefile testimony in this case?

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(505) 243-5018 - Fax (505) 243-3606

1 A. Yes. My revised testimony is found as Exhibit
2 NMED 22.

3 Q. And do you have any changes to make to your
4 prefiled testimony?

5 A. Yes, I do. I have two minor corrections.

6 The first correction refers to Exhibit NMED 8.
7 This exhibit is a table of -- of the estimated number of
8 facilities subject to each subpart of the federal
9 NSPSes, the NESHAPs and the MACTs.

10 The correction is under 40 CFR 60 Subpart J.
11 The number of active refineries is only three.
12 Bloomfield is incorrectly included as active in the
13 database used to create this report. So the correct
14 number of facilities subject to Subpart J is only three.

15 The second correction refers to Exhibit NMED
16 9. This is a table of subparts for federal NSPSes,
17 NESHAPs and MACTs affected by the technical and
18 editorial corrections in Federal Register Notice
19 2014-02704.

20 The very last section of the table lists two
21 Subparts GG. The first Subpart GG should only be
22 Subpart G. This is a typographical error. Subpart G
23 deals with synthetic organic chemical manufacturing
24 industry.

25 Q. Has the Department prepared revised exhibits

1 to reflect the changes that you just mentioned?

2 A. Yes, we have.

3 MS. BONZA: Chair Volkerding, I would like to
4 provide these to the Board.

5 MR. VOLKERDING: Please.

6 Q. (BY MS. BONZA) Ms. Hollenberg, do you adopt
7 your prefiled testimony under oath today?

8 A. With these corrections, I do.

9 Q. Can you please describe NMED's proposed
10 amendments?

11 A. The Department proposes to amend three
12 regulations in the New Mexico Administrative Code. I
13 will refer to these as NMACs.

14 The first is 20.2.77 NMAC, New Source
15 Performance Standards. I will also refer to this as
16 Part 77.

17 The second is 20.2.78 NMAC, Emission Standards
18 for Hazardous Air Pollutants. I will refer to this as
19 Part 78.

20 The third is 20.2.82 NMAC, Maximum Achievable
21 Control Technology Standards for Source Categories of
22 Hazardous Air Pollutants. I will refer to this as Part
23 82.

24 The proposed amendments, which are not part of
25 the State Implementation Plan but are federally

1 enforceable under Sections 111 and 112 of the Clean Air
2 Act, are included as Exhibits NMED 4, NMED 5 and NMED 6.

3 The primary purpose of the proposal is to
4 incorporate by reference the federal rules pertaining to
5 New Source Performance Standards, or NSPS, National
6 Emission Standards for Hazardous Air Pollutants, or
7 NESHAP, and National Emission Standards for Hazardous
8 Air Pollutants for Source Categories, which are commonly
9 referred to as MACT.

10 These are found in Title 40 of the Code of
11 Federal Regulations, and I will refer to that as 40 CFR
12 Parts 60, 61 and 63, respectively.

13 Incorporation by reference is accomplished by
14 changing the through dates in several sections of each
15 proposed amendment. This indicates that New Mexico
16 accepts delegation for implementing and enforcing these
17 federal rules.

18 The Department has tracked relevant Federal
19 Register notices of final rules for 40 CFR Parts 60, 61
20 and 63 since the last amendment to the NMACs and
21 proposes to extend the through date to September 15th,
22 2015.

23 If you look at Exhibit -- excuse me -- Exhibit
24 NMED 7, you'll see a summary of these notices.

25 The summary includes the PDF name, the Federal

1 Register date, the effective date of each of those
2 regulations, the subpart -- the part and subpart
3 affected by the Federal Register notice, the title of
4 the Federal Register notice, and then a very brief
5 summary of that change.

6 Exhibit NMED 8, or 8R, lists the estimate of
7 the New Mexico facilities possibly affected by the
8 changes. If you'll look at the revised list, the change
9 is due to Bloomfield being an inactive facility.

10 The revised list shows the Federal
11 Register's -- the Code of Federal Regulations part and
12 the subpart. In the right-hand column it lists the
13 approximate number of facilities in New Mexico that are
14 affected by each of those subparts.

15 Exhibit NMED 9, and 9R, is simply a table with
16 greater detail on a particular Federal Register notice,
17 2014-02704. This is titled Revisions to Test Methods
18 and Testing Regulations.

19 Exhibit 9 lists the Federal Register part and
20 the subpart, also the subpart topic or title. All of
21 these are technical and editorial corrections for source
22 testing of emissions and operations.

23 From September 24th, 2013, to September 15th,
24 2015, thirteen new or amended NSPSES were promulgated.
25 There was one amended NESHAP and seventeen new or

1 amended MACTs. Several of these changes involved
2 multiple parts, NSPSes, NESHAPs and/or MACTs.

3 Exhibit NMED 17 is a CD that contains the full
4 text of all of the applicable Federal Register notices
5 which, if printed, would have been 621 pages.

6 There are some other substantive changes
7 included in the proposal.

8 In Part 77, and I'm referring to NMED --
9 Exhibit NMED 4, the Department proposes to remove the
10 exception for Subpart HHHH. This is commonly referred
11 to as the Clean Air Mercury Rule. This rule was
12 invalidated and vacated in 2008. It was removed from
13 the Code of Federal Regulations in 2012.

14 Exhibit NMED 10 shows the full text of that
15 court decision.

16 We also propose to add an exception to Part 77
17 for Subpart QQQQ. This refers to new residential
18 hydronic heaters and forced-air furnaces. EPA does not
19 require that states accept delegation, and the Air
20 Quality Bureau does not regulate residential sources.

21 Exhibit NMED 11 shows the QQQQ rule text with
22 delegation authority information highlighted.

23 Other proposed amendments to Parts 77, 78 and
24 82 include -- include removing an outdated address for
25 the Air Quality Bureau, adjusting the language to make

1 it gender neutral, and also a couple of minor
2 nonsubstantive corrections.

3 Q. Ms. Hollenberg, what are the effects of
4 incorporation by reference?

5 A. Incorporation by reference allows states to
6 accept delegation of implementation and enforcement
7 authority for federal NSPS, NESHAP and MACT rules. EPA
8 retains the authority to enforce those standards
9 directly. This is authorized in Sections 111 and 112 of
10 the Clean Air Act.

11 Exhibit NMED 16 shows the specific authorizing
12 text.

13 In addition, Exhibits NMED 12a and NMED 12b
14 include the delegation letters granting New Mexico this
15 authority. As you'll see in 12a, we received authority
16 in 1985 for the NSPS and NESHAPs, and in 1995 in 12b
17 for -- for the MACTs. These delegations currently
18 remain in effect.

19 Amending the through dates periodically
20 signals to EPA and the regulated community that the
21 state has accepted the authorized delegation.

22 Delegation of authority to states is more
23 efficient and effective than relying on federal
24 implementation and enforcement. The Department is in a
25 better position to determine which standards are

1 applicable to sources and to write permit conditions.

2 Additionally, the Department is in a better
3 position to determine compliance through inspections.
4 Both EPA and the regulated community generally prefer
5 that the Department implement and enforce these federal
6 air quality regulations.

7 Pursuant to the Small Business Regulatory
8 Relief Act, the Department determined that the proposed
9 regulatory changes will not have an adverse effect on
10 small businesses. There are no additional requirements
11 imposed on facilities, and these changes only allow the
12 state to implement and enforce the federal rules.

13 The Department's Small Business Environmental
14 Assistance Program additionally provides ongoing
15 technical assistance for small business on new and
16 existing environmental regulation requirements.

17 Q. Can you please describe the Department's
18 public outreach for this proposed action?

19 A. Of course. The original public notices were
20 published in the New Mexico Register and the Albuquerque
21 Journal and also through the Air Quality Bureau E-mail
22 distribution list in August.

23 Those can be seen in Exhibits NMED 13a, 13b,
24 13c and 14.

25 The proposed changes were posted on the Air

1 Quality Bureau website in July. The original letter
2 sent to the Small Business Regulatory Advisory Committee
3 was also sent in July.

4 That's Exhibit NMED 15.

5 When the Department received notice of the
6 continuation to December 18th, another round of public
7 notice occurred. First, a notice of cancellation was
8 sent to the E-mail distribution list on September 30th.
9 The Air Quality Bureau website was also updated on
10 September 30th. The notice for this hearing was sent
11 out on the E-mail distribution list on October 15th.

12 That's shown in Exhibit NMED 20.

13 Public notices for the rescheduled hearing
14 were published in the Albuquerque Journal in both
15 English and Spanish on October 9th.

16 See Exhibits NMED 19b and 19c.

17 An additional public notice was published in
18 the New Mexico Register on October 15th.

19 That can be shown on -- as Exhibit NMED 19a.

20 Both the original and the new notices included
21 an option to request an informational open house, but
22 none were received. Another letter was mailed to the
23 Small Business Regulatory Advisory Committee on
24 November 17th, 2015.

25 That's included as Exhibit NMED 21.

1 No comments beyond requesting information have
2 been received.

3 Q. Do you understand the proposed amendments to
4 be practical, economically reasonable and in the public
5 interest as required by the Board?

6 A. Yes. The federal NSPSes, NESHAPs and MACTs
7 were established by the EPA. The NSPSes are based on
8 the best system of emission reductions which have been
9 adequately demonstrated. The NESHAPs and the MACTs are
10 based on the maximum degree of emissions reduction
11 achievable. All of these determinations take into
12 account costs, nonair quality health and environmental
13 impacts, as well as energy requirements.

14 Therefore, EPA's determination of NSPS, NESHAP
15 and MACT standards consider the required elements,
16 including the character and degree of injury to or the
17 interference with health and welfare, the public
18 interest, including the social and economic value of the
19 sources and subjects of air contaminants, and the
20 technical practicability and economic reasonableness of
21 reducing or eliminating air contaminants from the
22 sources involved.

23 This proposed rulemaking will not result in
24 any increase in economic hardship for sources or any
25 increase in air contaminant emissions since the federal

1 standards currently apply in New Mexico. They will
2 increase the efficiency of implementation of the
3 regulations by allowing the Department to enforce the
4 standards. This serves the public interest.

5 Q. Please share any additional information that
6 you think is applicable to this hearing.

7 A. Additional exhibits were included with the
8 notices of intent to present technical testimony. An
9 exhibit index accompanies the actual Exhibits NMED 1
10 through NMED 23. This index describes each exhibit and
11 by whom each was prepared.

12 And this concludes my testimony. I
13 respectfully request that the Board adopt these
14 non-State Implementation Plan proposed revisions at the
15 conclusion of this hearing.

16 MS. BONZA: Thank you.

17 That concludes our testimony.

18 MR. VOLKERDING: Okay. Thank you.

19 And so you move the Exhibits 1 through 23 with
20 the two amended exhibits given to us today being
21 entered?

22 MS. BONZA: I do.

23 MR. VOLKERDING: Okay.

24 MS. BONZA: Thank you, Mr. --

25 MR. VOLKERDING: So accepted.

1 (Exhibits NMED 1 through 23, inclusive,
2 admitted into evidence.)

3 MR. VOLKERDING: Do you have a closing
4 statement?

5 MS. BONZA: In conclusion, the Department
6 respectfully requests that the Board adopt the proposed
7 amendments to Parts 77, 78 and 82 of the air quality
8 regulations.

9 MR. VOLKERDING: Okay. Thank you.
10 Is there any reason to leave the record open?

11 MR. HOLT: Public comment?

12 MR. VOLKERDING: What's that?

13 MR. HOLT: Is there public comment?

14 MR. VOLKERDING: Oh, yeah.

15 Is there anyone from the public who would like
16 to make comment?

17 Yes, please.

18 MS. PORTER: Good morning.

19 My name is Leslie Porter. I'm the director of
20 the Office of Business Advocacy for the New Mexico
21 Economic Development Department. I also administer the
22 Small Business Regulatory Advisory Commission.

23 At its last meeting the commission heard
24 testimony from the Environment Department regarding
25 this -- these proposed rule changes, and after hearing

1 this testimony, it feels confident that it will not
2 affect small business in New Mexico.

3 I also submitted a letter to that effect.

4 MR. VOLKERDING: Okay. Thank you.

5 MS. PORTER: Thank you.

6 MR. VOLKERDING: Any other public comment?

7 Okay.

8 MR. HOLT: Accept the letter as part of the
9 record?

10 MR. VOLKERDING: Is there any objection from
11 the Department that the letter be accepted into the
12 record?

13 MS. BONZA: No objection, Mr. Hearing Officer.

14 MR. VOLKERDING: Then we'll accept it into the
15 record.

16 Any other reason to leave the record open at
17 this time, then?

18 If not, the record is closed, and the hearing
19 is concluded. Thank you.

20 (Hearing concluded.)

21 MR. VOLKERDING: I will turn it over to the
22 Board for deliberation.

23 Comments?

24 MR. TIMM: Well, it's pretty much pro forma to
25 catch us up with all the rules that have been

1 promulgated by the EPA, the changes, and it doesn't
2 appear to have any negative impacts certainly upon
3 either the board -- the air quality board to protect our
4 air or the ability of the people in the state to comply.

5 So I think it's well presented.

6 MR. VOLKERDING: Thank you.

7 I would -- I would agree.

8 Any other comments?

9 Motion?

10 MR. MORROW: I move.

11 MR. VOLKERDING: You might want to rephrase.

12 So we --

13 MR. MORROW: You want me to read all the
14 numbers? Is that what you want me to do?

15 MR. TIMM: Just the petition number, can't
16 you?

17 MR. VOLKERDING: Yeah. We can read just the
18 petition number.

19 MR. HOLT: Move to accept Petition 15-01
20 Revised with regard to the proposed amendments of
21 20.2.77, 20.2.78 and 20.2.82.

22 If that motion is interpreted to include
23 adopting the statement of reasons, I would want to
24 propose a small change, or do you want to do that
25 separately?

1 MR. VOLKERDING: No. Go ahead and make your
2 change, please.

3 MR. HOLT: The proposed statement of reasons,
4 paragraph 25 accurately sets forth the things we're
5 supposed to consider, but nothing says we did consider
6 them.

7 So I would add a paragraph 26, "The Board has
8 considered all of the facts and circumstances including
9 those enumerated above," and then renumber what is
10 currently 26 and 27 as 27 and 28.

11 MR. VOLKERDING: And 29, 30, 31, 32, et
12 cetera.

13 MR. HOLT: Looking for them.

14 Yes.

15 MR. VOLKERDING: Okay.

16 Second?

17 MR. MORROW: I guess I'll second, then.

18 MR. VOLKERDING: All in favor -- or any
19 discussion?

20 All in favor?

21 (Simultaneous responses.)

22 MR. VOLKERDING: Passes unanimous.

23 The petition's approved with the changes to
24 the Exhibit 23, order and statement of reasons, as
25 outlined in the motion.

1 MS. BONZA: Thank you.

2 MR. VOLKERDING: Thank you.

3 And so we will need a revised --

4 MS. BONZA: Sure.

5 MR. VOLKERDING: Yeah.

6 MS. BONZA: Chair Volkerding, I'll send that
7 to Ms. Castaneda and follow up as well with the
8 transmittal forms.

9 MR. VOLKERDING: Perfect. Thank you.

10 I'll take a survey from the Board.

11 You want to take a short break before the next
12 hearing, or do you want to keep going?

13 THE REPORTER: I'd like a break.

14 MR. VOLKERDING: Okay. Court reporter would
15 like a break. I'm sure her fingers are tired.

16 Ten minutes.

17 (Proceedings adjourned at 10:04 a.m.)

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1 STATE OF NEW MEXICO)
2) ss.
3 COUNTY OF BERNALILLO)
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5

6 I, CHERYL ARREGUIN, the officer before whom the
7 foregoing proceeding was taken, do hereby certify that
8 the witnesses whose testimony appears in the foregoing
9 transcript were duly sworn or affirmed; that I
10 personally recorded the testimony by machine shorthand;
11 that said transcript is a true record of the testimony
12 given by said witnesses; that I am neither attorney nor
13 counsel for, nor related to or employed by any of the
14 parties to the action in which this proceeding is taken,
15 and that I am not a relative or employee of any attorney
16 or counsel employed by the parties hereto or financially
17 interested in the action.

18
19 _____
20 NOTARY PUBLIC
21 CCR License Number: 21
22 Expires: 12/31/2016

23
24
25 My Commission Expires: 12/12/19

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