

**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**



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

**No. EIB No. 13-07 (R)**

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

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

**STATEMENT OF REASONS**

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

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

14. NMED filed a Notice of Intent to Present Technical Testimony (“NOI”) on October 18, 2013, in accordance with 20.1.1.302 NMAC.
15. A hearing was held in this matter on November 7, 2013, in Santa Fe, New Mexico.
16. The Board has the authority to approve these proposed amendments pursuant to NMSA 1978, § 74-2-5.C.
17. The standards adopted by this regulatory change are federal standards, and therefore by definition are no more stringent but at least as stringent as the federal standards, in compliance with NMSA 1978, § 74-2-5.C (2).
18. The proposed revisions satisfy the requirements of the Air Quality Control Act, NMSA 1978, § 74-2-5.E in that the Board has given the weight it deems appropriate to all facts and circumstances, including but not limited to (1) character and degree of injury to or interference with health, welfare, visibility and property; (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and (3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.
19. The federal NSPS are established by the EPA based on the best system of emission reductions which have been adequately demonstrated, taking into account the costs of achieving such reductions and any nonair quality health and environmental impact and energy requirements. 42 U.S.C. § 7411(a)(1).
20. The federal MACT 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 nonair quality health and environmental impacts and energy requirements. 42 U.S.C. § 7412(d)(2).

21. EPA's determination of NSPS and MACT standards therefore considers the character and degree of injury to or interference with health, and welfare; the public interest, including the social and economic value of the sources and subjects of air contaminants; and the technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved.
22. Incorporation by reference of the federal standards into the New Mexico Administrative Code does not change the substantive standards applicable to affected sources in New Mexico because the EPA retains authority for direct enforcement of the regulations. See 42 U.S.C. § 7411(c)(2) and 42 U.S.C. § 7412(l)(7). Accordingly, this rulemaking will not result in any substantial increase in economic hardship for sources or any increase in air contaminant emissions, but will increase the efficiency of implementation of the regulations. See *Id.* at 2.
23. The Department testified regarding its plan to implement the proposed amendments in a careful, efficient, and conservative manner, specifically as it relates to the OOOO standards to petroleum storage tanks and the oil and gas industry. It specifically referred to its plan to utilize the thresholds set forth in the general construction contract to assist industry in easily complying with such rules. For this reason the Board determined that the proposed amendments do not substantially impact the State of New Mexico's economy or are unduly burdensome for industry. In addition, efficient and conservative implementation of the standards by the Department serves the public interest.

24. In addition to EPA's own determination, based on the evidence set forth above, the Board has independently determined that the proposed amendments therefore satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, § 74-2-5.E.
25. The notice and hearing requirements of NMSA 1978 Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.
26. The proposed amendments are adopted for any or all of the reasons stated above.

**ORDER**

By a unanimous vote of a quorum of the Board members, the proposed regulatory revisions were approved by the Board on November 7, 2013. Amendments to 20.2.77 and 20.2.82 NMAC, with any appropriate corrections of typographical errors, or formatting shall be filed with the New Mexico State Records Center, and shall be submitted as expeditiously as possible by the Department to the EPA for approval of delegation authority.



Deborah A. Peacock, Chair  
On Behalf of the Board

Dated: 12/17/13