

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF 20.2.98 NMAC – CONFORMITY
OF GENERAL FEDERAL ACTIONS TO THE
STATE IMPLEMENTATION PLAN**

EIB 13-04(R)

ORDER AND STATEMENT OF REASONS

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 repeal of Part 98 of 20.2 NMAC. The Board heard testimony from the Department and admitted exhibits into the record. On October 8, 2013 the Board deliberated and voted to adopt the proposed repeal for the reasons that follow:

STATEMENT OF REASONS

1. The purpose of the “General Conformity” provisions of the federal Clean Air Act (“CAA”) is to ensure that federally supported activities (other than transportation projects) will not cause or contribute to violations of the national ambient air quality standards (“NAAQS”).
2. Prior to 2005, CAA § 176 (c) required among other things that states include in their state implementation plans (“SIPs”) criteria and procedures to assure the “conformity” of federal activities to the SIP, and to submit this “General Conformity” SIP to the U.S. Environmental Protection Agency (“EPA”) for approval.
3. New Mexico’s General Conformity provisions are codified at Part 98 of 20.2 NMAC, which was approved as a SIP revision by EPA in 1999.

4. In 2005, Congress enacted legislation entitled the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (“SAFETEA-LU”), which, among other things deleted the requirement that states adopt and submit General Conformity SIPs to EPA.
5. Pursuant to the SAFETEA-LU amendments, in 2010 EPA revised the regulations governing General Conformity SIPs at 40 C.F.R. Part 51, Subpart W, in order to make adoption of General Conformity SIPs optional.
6. In a state that does not have a General Conformity SIP, the conformity of federal activities to the state’s SIP is governed by 40 C.F.R. Part 93, which contains requirements that essentially duplicate those specified for SIPs in 40 C.F.R. Part 51, Subpart W. The absence of a General Conformity SIP therefore does change the substantive requirements applicable to federal actions.
7. General Conformity requirements apply only in NAAQS non-attainment areas. CAA § 176(c)(5).
8. New Mexico contains only one geographically small non-attainment area, for particulate matter. Application of the General Conformity provisions has not been triggered due to the lack of any federal facilities or lands in that area.
9. Adopting periodic revisions to Part 98 of 20.2 NMAC to stay current with federal requirements imposes administrative burdens on the Board and the Department but does not result in any increased protection to the environment.
10. Repeal of Part 98 of 20.2 NMAC is in the public interest.
11. Pursuant to 20.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.

12. On June 24, 2013 NMED filed a petition with the Board for a public hearing in this matter.
13. 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.
14. On July 31, 2013, Notice of Hearing was published in the Albuquerque Journal (in English and Spanish), and in the New Mexico Register.
15. NMED filed a Notice of Intent to Present Technical Testimony (NOI) on September 18, 2013, in accordance with 20.1.1.302 NMAC.
16. A hearing was held in this matter on October 8, 2013 in Silver City, New Mexico.
17. The Board has the authority to approve these proposed amendments pursuant to NMSA 1978 § 74-2-5.C.
18. The proposed amendments satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5.E, namely the Board has given 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 notice and hearing requirements of NMSA 1978 Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.
20. The proposed amendments are adopted for any or all of the reasons stated above.

ORDER

By unanimous vote of a quorum of the Board members, the proposed regulatory revisions were approved by the Board on October 8, 2013. The repeal of 20.2.98 NMAC shall be filed with the New Mexico State Records Center, and submitted to the U.S. EPA for appropriate

action.



Deborah A. Peacock, Chair
On Behalf of the Board

Dated: 10/8/13