

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD



**IN THE MATTER OF REPEAL AND
REPLACEMENT OF 20.2.99 NMAC –
CONFORMITY TO THE STATE
IMPLEMENTATION PLAN OF TRANSPORTATION
PLANS, PROGRAMS, AND PROJECTS.**

EIB 14-03 (R)

**NMED'S
ORDER AND STATEMENT OF REASONS
FOR ADOPTION OF SIP REVISIONS**

This matter came before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by the New Mexico Environment Department (“NMED” or “Department”), proposing repeal and replacement of 20.2.99 NMAC, *Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects*. The Board heard testimony from the Department and admitted exhibits into the record. On July 11, 2014, the Board deliberated and voted to adopt the proposed repeal and replacement for the reasons that follow:

STATEMENT OF REASONS

1. The federal Clean Air Act (“CAA”) at Section 176 requires that federally supported transportation plans, programs, and projects be consistent with (“conform to”) air quality implementation plans adopted or promulgated under section 110 of the Act. 42 U.S.C. § 7506(c)(1)(B).
2. CAA Section 176 further requires that the U.S. Environmental Protection Agency (“EPA”) promulgate regulations requiring states to include in their state implementation plans (“SIPs”) criteria and procedures for consultation, enforcement, and enforceability to

ensure the conformity of such transportation plans, programs and projects to the SIP. 42 U.S.C. 7506 (c)(1)(E).

3. Acting pursuant to the requirements of the CAA, the EPA promulgated the federal transportation conformity rule, codified at 40 CFR Part 93, in 1993. 58 Fed. Reg. 62188 (November 24, 1993).
4. Pursuant to CAA 176 and 40 C.F.R. Part 93, in 1994 New Mexico adopted regulations to assure conformity to the SIP of transportation plans, programs and projects, and has revised those regulations several times since to comply with revisions in the federal regulations. See 20.2.99 NMAC.
5. Although each state is required to adopt transportation conformity regulations in its SIP, conformity determinations are only required in areas that are in nonattainment with one of the national ambient air quality standards (“NAAQS”). 40 CFR §93.102(b)
6. No areas in New Mexico are currently designated as nonattainment for a NAAQS affecting the transportation conformity provisions. The only area in nonattainment of a NAAQS is Anthony, New Mexico, in Southern Doña Ana County, which is designated nonattainment for PM₁₀ due to high wind events, not for PM_{2.5} from transportation sources. Therefore Anthony is not subject to transportation conformity requirements.
7. The EPA has revised the transportation conformity rule several times since 1993. Recent revisions relevant to this proceeding were made in January 2008 (73 Fed. Reg. 4420, (Jan. 24, 2008)) (Exhibit NMED 7a) and March 2012 (77 Fed. Reg. 14979 (Mar. 14, 2012)) (Exhibit NMED 8).
8. In the 2008 revisions to 40 C.F.R. Part 93, EPA provided that states may submit SIPs addressing only three provisions within Part 93: 40 C.F.R. § 93.105, 40 C.F.R. §

93.122(a)(4)(ii), and 40 C.F.R. § 93.125(c). These changes were in response to amendments to the federal Clean Air Act that Congress made in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The SAFETEA-LU amendments eliminated the requirement that states include verbatim most sections of Part 93 in their SIPs. See 77 Fed. Reg. at 4430 – 4431. See also Exhibit NMED 4, Test. of Cindy Hollenberg, at p.4.

9. On September 26, 2012, NMED requested that EPA, in reviewing transportation conformity SIP revisions previously submitted by the Department, consider only the three portions of 40 C.F.R. Part 93 required for inclusion in SIPs by SAFETEA-LU. See Exhibit NMED 7b, Letter from David Martin to Ron Curry.
10. In the 2012 revisions to 40 C.F.R. Part 93, EPA revised the definition of national ambient air quality standard (“NAAQS”) at 40 C.F.R. § 93.101 by removing paragraphs 1-6 of that definition, which had listed pollutant-specific NAAQS. See 77 Fed. Reg. at 14986. This will reduce the need for updates to the rule each time a NAAQS is promulgated. 77 Fed. Reg. at 14981.
11. The revisions proposed by the Department in this rule-making are responsive to, and comply with, the January 24, 2008, and March 14, 2012 revisions to the federal transportation conformity rule.
12. The proposed revisions eliminate the replication of those parts of 40 C.F.R Part 93 no longer required to be included in SIPs, in light of SAFETEA-LU and the 2008 revisions to Part 93. Accordingly, 34 of the current 54 sections of 20.2.99 NMAC are eliminated. Due to the extent of the revisions, in accordance with the recommendation of the State

Records Center, the revisions are in the form of repeal and replacement of Part 99 in its entirety. See Exhibit NMED 4 at p. 5.

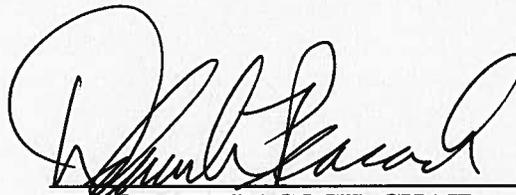
13. In accordance with the revisions to 40 C.F.R. § 93.101, the proposed revisions eliminate the listing of specific NAAQS under the definition of NAAQS, at proposed 20.2.99.7.Z NMAC.
14. In considering the proposed SIP revisions, the Board is required by the Air Quality Control Act, NMSA 1978, § 74-2-5.E 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.
15. The NAAQS are developed by EPA to protect the public health with an adequate margin of safety. 42 U.S.C. § 7409(b)(1). SIPs are developed by the states to assure attainment and maintenance of the NAAQS. 42 U.S.C. § 7410(a)(1). SIPs must “include enforceable emission limitations and other control measures, means, or techniques ... as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements” of the Clean Air Act. 42 U.S.C. § 7410(a)(2)(A).
16. Transportation conformity assures that transportation plans and projects are consistent with the SIP. Therefore, transportation conformity is designed to ensure that the NAAQS are achieved through the mix of emissions limitations and other control measures

- previously approved by the Board in New Mexico's SIP. The transportation conformity provisions are built upon, and help preserve, New Mexico's SIP.
17. The Board has considered the (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, in accordance with NMSA 1978, § 74-2.5.E (1) and (2).
 18. The transportation conformity regulations do not contemplate or require the application of technological controls on sources of air pollutants. To the extent that conformity determinations involve consideration of economic costs, that consideration will occur in the context of individual determinations, in accordance with NMSA 1978, § 74-2.5.E (3).
 19. The proposed regulatory revisions satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5.E.
 20. Proposed replacement 20.2.99 NMAC is neither more nor less stringent than federal regulations require.
 21. Pursuant to 20.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.
 22. On February 26, 2014, NMED filed a petition with the Board for a public hearing in this matter.
 23. On March 21, 2014, 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.
 24. On April 30, 2014, Notice of Hearing was published in the Albuquerque Journal (in English and Spanish). See Exhibit NMED 12 b and 12c.

ORDER

By a unanimous vote of a quorum of the Board members, the proposed regulatory revisions were approved by the Board on July 11, 2014. The Department shall submit replacement 20.2.99 NMAC to the Administrative Law Division of the New Mexico Commission of Public Records for compilation into the New Mexico Administrative Code, with any further revisions necessary to correct typographical errors and to reflect formatting required by the Commission. The Department shall submit the replacement regulations to the U.S. EPA for approval and incorporation into New Mexico's State Implementation Plan.

SIGNED this 17th day of July, 2014.



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