

**STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**



**IN THE MATTER OF REVISIONS TO:  
20.2.12 NMAC – *Cement Kilns***

**No. EIB 14-02 (R)**

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

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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 of 20.2.12 NMAC. 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 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. New Mexico incorporates the federal standards contained in 40 C.F.R Parts 60 into the New Mexico Administrative Code (“NMAC”) at 20.2.77.
5. The New Mexico Environment Department (“NMED”) periodically petitions the Board to update the dates of incorporation of the federal standards in 20.2.77, in order to incorporate recently promulgated revisions to the federal standards. *See* Exhibit NMED 3, Test. of Michael Baca, at 2.
6. Pursuant to 20.1.1.300.A NMAC, any person may petition the Board for repeal of regulations within the jurisdiction of the Board.
7. On February 20, 2104, NMED filed a petition with the Board for a public hearing in this matter. *See* petition in Record Proper.
8. 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.
9. On April 30, 2014, Notice of Hearing was published in the New Mexico Register. *See* NMED Exhibit 9.
10. On April 30, 2014, Notice of Hearing was published in the Albuquerque Journal (in English and Spanish). *See* NMED Exhibit 9.
11. NMED filed a Notice of Intent to Present Technical Testimony (“NOI”) on June 11, 2014, in accordance with 20.1.1.302 NMAC.
12. A hearing was held in this matter on July 11, 2014, in Santa Fe, New Mexico.
13. The Board has the authority to repeal this regulation pursuant to NMSA 1978, § 74-2-5.B.

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 federal NSPS are established by the EPA based on the best system of emission reductions which the Administrator of the EPA has determined has 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).
16. The federal MACT 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 such emissions, where achievable, that the Administrator of the EPA has determined, 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).

17. In making its regulations pursuant to §74-2-5.E NMSA, the Board has given the weight it deems appropriate to all relevant facts and circumstances, including the NSPS and MACT standards established by the EPA, and 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.
18. Because the NSPS and MACT have been incorporated by reference in 20.2.77 NMAC and 20.2.82 NMAC, respectively, this repeal will not result in substantial economic hardship for sources or any increase in air contaminant emissions, but will increase the efficiency of implementation of the regulations. See NMED Exhibit 3, Testimony of Rita Bates. This repeal will remove potentially confusing requirements for cement kilns and provide regulatory certainty while retaining the public health protections afforded under NSPS should a cement kiln be constructed within the Department's jurisdiction. See *Id.* This serves the public interest.
19. According to Richard Goodyear, Chief, Air Quality ("Bureau"): "In consultation with the Bureau's permitting staff and after searching its database of facilities, it was found that no cement kilns exist in New Mexico outside of Bernalillo County or on Tribal Lands. Further, external sources of information from the United States Geological Survey and trade publications support this determination. The Bureau's permitting staff confirmed

that no permit applications for cement kilns are on record and they do not anticipate any in the near future.” NMED Exhibit 8.

20. The proposed repeal therefore satisfies the statutory requirements of the Air Quality Control Act, NMSA 1978, § 74-2-5.E.
21. The notice and hearing requirements of NMSA 1978 Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.
22. 20.2.12 NMAC is hereby repealed 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 July 11, 2014. Notice of the repeal of 20.2.12 NMAC 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.

SIGNED this 18<sup>th</sup> day of July, 2014.



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