

STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD



IN THE MATTER OF REVISIONS TO:  
**20.2.74 NMAC – Permits – Prevention of Significant  
Deterioration (PSD)**

No. EIB 14-01 (R)

---

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

---

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 revisions to 20.2.74 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”) § 109 requires the U.S. Environmental Protection Agency (“EPA”) to promulgate regulations prescribing national ambient air quality standards (“NAAQS”) and national secondary ambient air quality standards for each air pollutant for which air quality criteria have been issued. 42 U.S.C. § 7409.
2. CAA § 110(a)(1) requires each state to adopt and submit to the EPA a plan providing for implementation, maintenance, and enforcement of NAAQS and incorporate new or revised NAAQS within three years of federal promulgation. 42 U.S.C. § 7410(a)(1).
3. CAA § 161 requires that each state implementation plan contain emission limitations to prevent significant deterioration (“PSD”) of air quality in each attainment or

unclassifiable area. 42 U.S.C. § 7471. The relevant regulations promulgated under this section are contained in 40 C.F.R. Part 51, Subpart I.

4. CAA § 107 delegates primary responsibility for implementation and maintenance of NAAQS to each state. 42 U.S.C. § 7407.
5. On October 20, 2010, the EPA published a final rule establishing PSD provisions to implement increments, significant impact levels (“SILs”) and a significant monitoring concentration (“SMC”) for PM<sub>2.5</sub>. *See* NMED Exhibit 4, Federal Register, Vol. 75 No. 202, 64864-64907.
6. New Mexico adopted regulations, in accordance with NMSA 1978, § 74-2-5.C, addressing PSD that are at least as stringent, but no more stringent, as the federal act and regulations; this included PM<sub>2.5</sub> SIL and SMC provisions found in 40 CFR §51.166(k)(2) and 40 CFR § 51.165(e)(2). *See* 20.2.72, 74, and 79 NMAC and NMED Exhibit 13, Testimony of Gail Cooke, at 4.
7. The EPA’s October 2010 rules, 40 CFR §§ 51.166(k)(2) and 51.165(e)(2), were subsequently challenged and ultimately vacated in regard to the PM<sub>2.5</sub> SIL and SMC. *See* NMED Exhibit 5, Federal Register, Vol. 78, No. 236, 73698-73702 and Sierra Club v. E.P.A., 705 F. 3d458 (D.C. Cir. 2013).
8. EPA requests that state implementation plans should be updated to reflect that EPA no longer has the authority to allow use of the affected SIL and SMC provisions vacated by the Court’s decision. *See* NMED Exhibit 5, 78 Fed. Reg. 73698, at 73699.
9. Pursuant to 20.1.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.

10. On February 20, 2014, NMED filed a petition with the Board for a public hearing in this matter. *See* petition in Record Proper.
11. 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.
12. On April 30, 2014, Notice of Hearing was published in the New Mexico Register. *See* NMED Exhibit 10.
13. On April 30, 2014, Notice of Hearing was published in the Albuquerque Journal (in English and Spanish). *See* NMED Exhibit 10.
14. NMED filed a Notice of Intent to Present Technical Testimony ("NOI") on June 11, 2014, in accordance with 20.1.1.302 NMAC.
15. A hearing was held in this matter on July 11, 2014, in Santa Fe, New Mexico.
16. 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.
17. The federal PSD Program applies to any new, or modification to, any major stationary source located in a designated attainment or unclassifiable area for any NSR pollutant. *See* NMED Exhibit 5, 78 Fed. Reg. 73698, at 73698.

18. The federal PSD program requires, among other things, compliance with emission limitations achievable through installation of best achievable control technology, an air quality analysis to show that the newly constructed source or modification will not cause or contribute to a violation of any NAAQS or applicable PSD increment (including an impacts analysis). *See Id.* at 73698-73699.
19. The purpose of the PSD program is to protect public health and welfare; preserve, protect, and enhance air quality in areas of special national or regional natural, recreation, scenic, or historic value; to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources; to assure emissions will not interfere with any portion of the state's implementation plan to prevent PSD; and to assure careful evaluation of all the consequences and informed public participation in the decision-making process. 42 U.S.C. § 7470.
20. EPA's PSD program regulations and standards therefore consider 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.
21. The revisions adopted by this regulatory change incorporate a change to federal screening tools, 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).
22. Amendment of New Mexico's PSD regulations to remove the SIL and SMC screening tools, in conformance with EPA direction, does not change the substantive standards applicable to affected sources in New Mexico because these provisions could never be

relied upon in New Mexico. *See* Exhibit NMED 13, Test. of Gail Cooke, at 4.

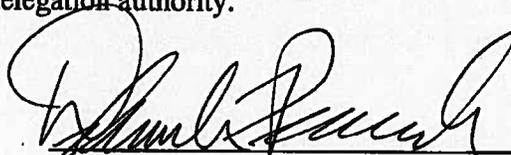
Accordingly, this rulemaking will not substantially increase economic hardship for sources or result in any increase in air contaminant emissions, but will ensure the efficacy of New Mexico's regulations by removing unenforceable provisions and avoiding implementation of a federal implementation plan. *See Id.* at 2. This serves the public interest.

23. The proposed amendments therefore satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, § 74-2-5.E.
24. The Board has the authority to approve these proposed amendments pursuant to NMSA 1978, § 74-2-5.C.
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 5 to 1 majority vote of a quorum of the Board members, the proposed regulatory revisions were approved by the Board on July 11, 2014. Amendments to 20.2.74 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.

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



DEBORAH PEACOCK, CHAIR  
New Mexico Environmental Improvement Board  
1190 St. Francis Drive, Suite N4050  
Santa Fe, New Mexico 87505  
505-827-2855