DEC 2015
Received
Environmental Improvement Board

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED AMENDMENTS TO AIR QUALITY REGULATIONS 20.2.77, 20.2.78 AND 20.2.82 NMAC

No. EIB 15-01 (R)

Air Quality Bureau,
Environmental Protection Division of the
New Mexico Environment Department,

Petitioner.

ORDER AND STATEMENT OF REASONS FOR ADOPTION OF AMENDMENTS TO 20.2.77, 20.2.78 AND 20.2.82 NMAC

This matter comes before the New Mexico Environmental Improvement Board ("Board") upon a petition filed by the Air Quality Bureau ("Bureau") of the New Mexico Environment Department ("NMED" or "Department"), proposing revisions to 20.2.77, 20.2.78, and 20.2.82 NMAC to incorporate newly promulgated federal standards within programs for which authority has been delegated to New Mexico by the U.S. Environmental Protection Agency ("EPA"). A public hearing was held in Santa Fe, New Mexico on December 18, 2015, with a quorum of the Board present during the hearing. The Board heard technical testimony from the Department and admitted exhibits into the record. On December 18, 2015, the Board deliberated and voted to adopt the proposed amendments for the reasons that follow:

I. STATEMENT OF REASONS

1. The federal Clean Air Act ("CAA") requires the 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 Section 111(c) provides for delegation to states of the authority to implement and enforce the standards promulgated under Section 111. 42 U.S.C. § 7411(c).

3. CAA Section 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 National Emission Standards for Hazardous Air Pollutants for Source Categories (also known as Maximum Achievable Control Technology or "MACT" standards), contained in 40 C.F.R. Part 63.

4. CAA Section 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 12a.

6. In 1995, the EPA approved delegation of authority to New Mexico to implement and enforce the MACT standards. *See* Exhibit NMED 12b.

7. New Mexico incorporates the federal standards contained in 40 C.F.R. Parts 60, 61, and 63 into the New Mexico Administrative Code ("NMAC") at 20.2.77, 20.2.78, and 20.2.82 NMAC, respectively.

8. The Department periodically petitions the Board to update the dates of incorporation of the federal standards in 20.2.77, 20.2.78, and 20.2.82 NMAC, in order to incorporate recently promulgated revisions to federal standards. *See* Exhibit NMED 22, Revised Testimony of Cindy Hollenberg, at 3.

9. The Department may choose to exclude from delegation certain federal rules. *See* Exhibit NMED 22, Revised Testimony of Cindy Hollenberg, at 2. The proposed amendment at

20.2.77.10(D) NMAC excludes from delegation Subpart QQQQ – *Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces* – because the Bureau does not regulate residential applications of air quality standards. *See Id.* at 2.

10. The proposed amendment at 20.2.77.10(D) NMAC also removes an exception to delegation of Subpart HHHH, the Clean Air Mercury Rule, which no longer exists as a federal rule. *See Id.* at 2; *see also* Exhibit NMED 10.

11. Remaining proposed amendments from the Department remove an outdated address for the Bureau and insert gender-neutral language to describe the EPA Administrator. *See* Exhibit NMED 22, Revised Testimony of Cindy Hollenberg, at 2.

12. Pursuant to 20.1.1.300(A) NMAC, any person may petition the Board to adopt, amend, or repeal regulations within the jurisdiction of the Board.

13. On April 22, 2015, NMED filed a petition with the Board for a public hearing in this matter. *See* petition in Record Proper.

14. On May 15, 2015, 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 and scheduled the hearing for October 15, 2015. The Board appointed John Volkerding as the Hearing Officer.

15. On August 14, 2015, public notice of the hearing was published in the New Mexico Register and in the Albuquerque Journal, in English and Spanish. *See* Exhibits NMED 13a, 13b, and 13c. The public notice stated that the Board may make a decision on the proposed amendments at the conclusion of the hearing, or may convene at a later date to consider action on the proposal.

16. NMED filed a Notice of Intent to Present Technical Testimony ("NOI") on September 25, 2015, in accordance with 20.1.1.302 NMAC.

17. On October 5, 2015, the Board issued an Order to Vacate and Continue Hearing due to the unavailability of Board members to meet the quorum requirements under the New Mexico Open Meetings Act, NMSA 1978, Sections 10-15-1 to –4.

18. On October 6, 2015, the Board issued an Amended Order to Vacate and Continue Hearing, setting the new hearing date for December 18, 2015, in Room 322 of the State Capitol. The Amended Order set the deadline for filing a Notice of Intent to Present Technical Testimony and entering an appearance in this matter for November 30, 2015.

19. On October 15, 2015, public notice of the new hearing date was published in the New Mexico Register, and on October 9, 2015, public notice of the new hearing date was published in the Albuquerque Journal, in English and Spanish. *See* Exhibits NMED 19a, 19b, and 19c. The public notice stated that the Board may make a decision on the proposed amendments at the conclusion of the hearing, or may convene at a later date to consider action on the proposal.

20. On November 19, 2015, the Department filed a Supplement to its Notice of Intent to Present Technical Testimony, to provide supplemental exhibits demonstrating that the Department properly noticed the public of the new hearing date. In addition, Cindy Hollenberg's testimony was revised to account for the additional public outreach efforts of the Department as a result of the new hearing date.

21. No other parties filed NOIs.

22. A hearing in this matter was held in Santa Fe, New Mexico on December 18, 2015, at which a reasonable opportunity for all persons to be heard was provided.

23. Pursuant to Section 74-2-5 of the Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -22 (1967, as amended through 2009), the Board has the authority to adopt the proposed NMED amendments.

24. The standards adopted by this regulatory change are federal standards, and therefore are no more stringent but at least as stringent as the federal standards, in compliance with NMSA 1978, Section 74-2-5(C)(2).

25. In considering the proposed amendments, the Board is required 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. NMSA 1978, § 74-2-5(E) (2007).

26. The Board considered all facts and circumstances, and concluded that the proposed amendments do not cause injury to or interfere with health, welfare, visibility and property. The Board found the proposed amendments to be technically practical, economically reasonable, and in the public interest.

27. 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 non-air quality health and environmental impact and energy requirements. 42 U.S.C. § 7411(a)(1).

28. The federal NESHAP and 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 non-air quality health and environmental impacts and energy requirements. 42 U.S.C. § 7412(d)(2).

29. EPA's determination of NSPS, NESHAP, 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.

30. 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* Exhibit NMED 22, Revised Testimony of Cindy Hollenberg, at 2. Accordingly, this rulemaking will not result in any 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 3. This serves the public interest.

31. The proposed amendments therefore satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5(E).

32. The notice and hearing requirements of NMSA 1978, Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.

33. The proposed amendments are adopted for any or all of the reasons stated above.

II. ORDER

By majority vote of a quorum of the Board members, the proposed amendments to New Mexico's Air Quality Regulations, to incorporate newly promulgated federal standards within programs for which authority has been delegated to New Mexico by the EPA, were approved by the Board on December 18, 2015, as contained in NMED's Notice of Intent to Present Technical Testimony. Amendments to 20.2.77, 20.2.78, and 20.2.82 NMAC, along 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.

/s/ John Volkerding
JOHN VOLKERDING, CHAIR
On Behalf of the Board

Dated: December 22, 2015

Electronic Signature executed by email authorization dated 12/22/2015

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF:
PROPOSED AMENDMENTS TO AIR QUALITY
REGULATIONS 20.2.77, 20.2.78 AND 20.2.82 NMAC No. EIB 15-01 (R)

AIR QUALITY BUREAU,
Environmental Protection Division of the
New Mexico Environment Department,

Petitioner.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Order and Statement of Reasons for Adoption of Amendments to 20.2.77, 20.2.78, and 20.2.82 NMAC** was served on the following parties on December 23, 2015, via the stated delivery methods below:

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For Pam Castañeda, Administrator