

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

**IN THE MATTER OF PROPOSED AMENDMENTS TO:
20.2.1 NMAC – *General Provisions***

EIB 14-05(R)



**ORDER AND STATEMENT OF REASONS
FOR ADOPTION OF AMENDMENTS TO 20.2.1 NMAC**

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 amendments to New Mexico’s Air Quality Regulations, in order to authorize and require the electronic submittal of data, reports and permit applications in lieu of paper submittals. A public hearing was held in Santa Fe, New Mexico on January 23, 2015, with a quorum of the Board present during the hearing. The Board heard technical testimony from the Department and other parties and admitted exhibits into the record. On January 23, 2015, the Board deliberated and voted to adopt the proposed amendments for the reasons that follow:

I. STATEMENT OF REASONS

1. The U.S. Environmental Protection Agency (“EPA”) requires state agencies which currently accept required submittals electronically, in lieu of paper submittals, to comply with the federal Cross-Media Electronic Reporting Rule (“CROMERR”). 40 C.F.R. Part 3.
2. The Air Quality Bureau (“AQB”) of the Department has several electronic submittal programs that require EPA approval. Therefore, it was obligated to submit a CROMERR application to EPA.

3. The AQB submitted a CROMERR application to EPA in August, 2012, and received comments in March, 2013.
4. Requiring electronic submissions is not expressly prohibited by any state law or regulation. The New Mexico Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -22 (1967, as amended through 2009), does not specify the manner in which reports and applications must be submitted to the AQB.
5. The Uniform Electronic Transactions Act (UETA), NMSA 1978, Sections 14-16-1 to -21 (2001, as amended through 2013), allows state agencies to issue rules relating to electronic transactions.
6. A certification from the State Attorney General or his designee that the NMED has sufficient regulatory authority to accept and require electronic submittals is required for EPA to issue final approval of the AQB's application. 40 C.F.R. § 3.1000(b)(1)(i).
7. In order to remove any question as to whether the NMED has the authority to accept and require electronic submissions, on advice from the Attorney General's designee in this matter, the NMED proposed the rule amendment at 20.2.1.117.A NMAC, as contained in their September 16, 2014 petition and request for hearing.
8. The AQB is working with EPA to ensure that the AQB's electronic reporting system is adequate, and complies with the requirements of CROMERR, 40 C.F.R. § 3.2000. In addition, the Department has proposed amendments at 20.2.1.117.B NMAC, to accommodate computer system or network failure on the part of the AQB or the regulated entity.
9. Additionally, the Department proposed amendments at 20.2.1.108 NMAC, to correct a grammatical error; at 20.2.1.111 NMAC, to remove outdated and inaccurate information

regarding physical addresses from the rule language; and at 20.2.1.116 NMAC, to reformat the Section's hierarchy in a more logical fashion without any change to the rule language itself.

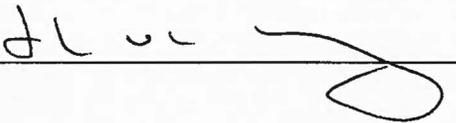
10. Pursuant to 20.1.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.
11. On September 16, 2014 NMED filed a petition with the Board for a public hearing in this matter. The petition proposed a new section 20.2.1.117 be added to the existing General Provisions of the Air Quality Regulations.
12. On October 23, 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 and scheduled the hearing for January 23, 2015. The Board appointed member John Volkerding as the Hearing Officer.
13. Public notice of the hearing was published on the NMED AQB website on November 12, 2014, on the NMED AQB electronic mail list on November 10, 2014, in the Albuquerque Journal (in English and Spanish) on November 2, 2014 and in the New Mexico Register on November 13, 2014. The 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.
14. NMED filed a Notice of Intent to Present Technical Testimony (NOI) on December 24, 2014, in accordance with 20.1.1.302 NMAC.
15. No other parties filed NOIs.
16. A hearing in this matter was held in Santa Fe, New Mexico on January 23, 2015, at which a reasonable opportunity for all persons to be heard was provided.

17. The Board has the authority to adopt the proposed amendments pursuant to NMSA 1978, §§ 74-2-5.B & C.
18. In considering the proposed amendments, the Board is required by the Air Quality Control Act, NMSA 1978, Section 74-2-5.E, to give 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 proposed amendments do not cause injury or interfere with health, welfare, visibility and property, in accordance with NMSA, Section 74-2-5.E(1); nor do they relate to the technical practicability and economic reasonableness of reducing or eliminating air contaminants, in accordance with NMSA, Section 74-2-5.E(3).
20. In addition, in accordance with NMSA, Section 74-2-5.E(2), the Board concludes that the public interest will be served by implementation of the proposed amendments. Specifically, implementation of the electronic reporting system as authorized by this amendment will reduce the burden and operating costs incurred by Department staff required to transfer data contained in paper reports, reduce the economic and environmental cost to the regulated source of printing and mailing, foster more rapid and accurate environmental reporting and posting of compliance information, and make reporting and application submission simpler and more efficient.

21. The Board concludes that the factors specified by NMSA 1978, Section 74-2-5.E all weigh in favor of adopting the proposed amendments.
22. The notice and hearing requirements of NMSA 1978 Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.
23. 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 revisions to New Mexico's Air Quality Regulations, in order to authorize and require the electronic submittal of data, reports and permit applications in lieu of paper submittals, as contained in NMED's September 16, 2014 petition and request for hearing, were approved by the Board on January 23, 2015.



Dated: 1/23/15

On Behalf of the Board