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

**IN THE MATTER OF:
PROPOSED AMENDMENTS
TO 20.2.79 NMAC –*Permits – Nonattainment Areas***

No. EIB 21- 07 (R)

**New Mexico Environment Department,
*Petitioner.***

FINAL ORDER AND STATEMENT OF REASONS

1. The Air Quality Bureau of the New Mexico Environment Department ("Department") proposed to amend 20.2.79 NMAC, *Permits - Nonattainment Areas* ("Part 79"), to make technical and administrative corrections to the rule in connection with the United States Environmental Protection Agency's ("EPA") designation of an area near Sunland Park New Mexico as a Marginal Nonattainment Area for the 2015 National Ambient Air Quality Standard ("NAAQS") for ozone. The state implementation plan ("SIP") must include an enforcement program, emission limitations, and control measures. 42 U.S.C § 7410(a)(2)(C).

2. Part 79 sets forth permitting requirements for new major stationary sources or major modifications of existing sources if those sources will be:

a. located within a nonattainment area designated pursuant to Section 107 of the federal Clean Air Act; or

b. located within an area designated attainment or unclassifiable pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which the source is major and the ambient impact of such pollutant would exceed any of the significance levels identified in Subsection 20.2.79.119.A NMAC at any location that does not meet any NAAQS for the same pollutant.

3. A source subject to Part 79 must submit a permit application to the Department and cannot construct or operate the new source or modification until it receives a permit or permit revision.

4. On October 1, 2015, the EPA revised the 8-hour ozone primary and secondary NAAQS downward from 0.075 parts per million (ppm) to 0.070 ppm to provide increased protection of public health and the environment. See 80 Fed. Reg. 65292 (October 26, 2015). The primary standards are set to protect human health, while secondary standards are set to protect public welfare.

5. Upon promulgation of a new or revised NAAQS, EPA is required to designate all areas of a state as either attainment/unclassifiable or nonattainment for the standard. Accordingly, the EPA designated the southeastern part of Doña Ana County known as Sunland Park as a Marginal Nonattainment Area for the 2015 O₃ NAAQS on August 3, 2018. NAAQS. 42 U.S.C § 7410(a)(1).

6. In December 2018, EPA promulgated the 2015 ozone NAAQS implementation rule, which specifies nonattainment area State Implementation Plan ("SIP") requirements. See 83 Fed. Reg. 62998 (December 6, 2018). This final rule, referred to as the 2015 Ozone SIP Requirements Rule ("2015 Ozone SRR"), is largely an update to the previous implementing regulations promulgated for the 2008 ozone NAAQS, and does not contain significant revisions from that previous rule.

7. The 2015 Ozone SRR addresses a range of nonattainment area SIP requirements New Mexico must meet for implementation of the 2015 ozone NAAQS, including transportation conformity, nonattainment new source review ("NNSR"),

emissions inventories, and emissions statement deadlines for SIP submissions and compliance with emission control measures in the SIP.

8. Pursuant to the 2015 Ozone SRR, NMED submitted a baseline Emissions Inventory and Emissions Statement to EPA by the specified deadline of August 3, 2020.

9. A determination of adequacy of Part 79 is due to EPA by August 3, 2021.

10. As part of the effort to comply with the 2015 Ozone SRR, the Department analyzed Part 79 to determine if it was adequate to implement and enforce the applicable portions of the 2015 Ozone SRR. Part 79 was compared with the federal Clean Air Act regulations at 40 C.F.R. § 51.165, Permit Requirements, which is incorporated into Part 79, and certain inconsistencies and errors were identified; the majority of these are not substantive, however some are.

11. The non-substantive changes in the proposed amendments include five cross-reference errors (20.2.79.7.Z.(1)(b) NMAC; 20.2.79.109.E.(1) NMAC; 20.2.79.109.E.(2) NMAC; 20.2.79.109.K NMAC; and 20.2.79.120.I.(5) NMAC), and two text omissions (20.2.79.109.L NMAC; and 20.2.79.115.F.(1) NMAC).

12. The substantive changes include:

a. The revision of the definition of "Nonattainment Area" at 20.2.7.AA NMAC.

"Nonattainment area" means, for any air pollutant an area which is ~~[shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national ambient air quality standard for such pollutant]~~ designated "nonattainment" with respect to that pollutant within the meaning of Section 107(d) of the federal Clean Air Act. [Such term includes any area identified under Subparagraphs (A) through (C) of Section 107(d)(1) of the federal Clean Air Act.];

b. The addition of the sentence “Secondary emissions do not count in determining the PTE of a stationary source.” under the definition of “Potential to Emit” at 20.2.79.7.AE NMAC. **“Potential to emit”** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the PTE of a stationary source.

c. A revision to permit applicability at 20.2.79.109.A.(2) NMAC. “the major stationary source or major modification will be located within an area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the federal Clean Air Act, when it would cause or contribute to a violation of any national ambient air quality standard. ~~[and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant]~~ A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed any of the significance levels in Subsection A of 20.2.79.119 NMAC at any location that does not or would not meet [any national ambient air quality standard for the same pollutant] the applicable national standard. (See Subsection D of 20.2.79.109 NMAC).”; and

d. A correction to the specifications for the fugitive emissions source category of “fossil fuel boiler”, at 20.2.79.119.B.(7) NMAC. “fossil fuel boiler (or combination thereof) totaling more than [50] 250 million Btu/hr heat input”.

13. The Environmental Improvement Board (Board) held a virtual hearing on June 25, 2021 pursuant to 20.1.1 NMAC to consider the proposed amendments to Part 79. The hearing was conducted in accordance with the procedures found in 20.1.1 NMAC. All public notice requirements were met, and a reasonable opportunity was provided for all persons to be heard.

14. During the hearing, the Board heard testimony from witnesses from the Department. The Board received public comment, however the Board determined that the commenter's suggested rule language would not make the rule more effective and could jeopardize approval by the EPA of the Department's proposed SIP Revision.

15. At the conclusion of the public hearing, the administrative record was closed. After deliberation, and by unanimous vote, the Board decided to adopt the amendments as proposed by the Department.

WHEREFORE, the Department's proposed amendments to 20.2.79 NMAC as shown in Exhibit 1 to the Petition are hereby adopted.

IT IS SO ORDERED



Phoebe Suina, Chair
Environmental Improvement Board



Date