AUG 2016
Received
Environmental Improvement Board

STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REPEAL OF: **No. EIB 16-02 (R)**
20.2.37 NMAC – *Petroleum Processing facilities*

ORDER AND STATEMENT OF REASONS
FOR REPEAL OF 20.2.37 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 repeal 20.2.37 NMAC – *Petroleum Processing Facilities*. A public hearing was held in Santa Fe, New Mexico on August 12, 2016, 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 August 12, 2016, the Board deliberated and voted to adopt the proposed repeal for the reasons that follow:

I. STATEMENT OF REASONS

1. 20.2.37 NMAC, *Petroleum Processing Facilities* ("Part 37") specifies emissions limits and other operating requirements for existing (constructed prior to July 1, 1974) and new petroleum refineries and natural gas processing facilities.
2. Part 37 regulates a wide range of pollutant species and processes: mercaptan and hydrogen sulfide (H_2S); volatile organic compounds (VOC); carbon monoxide (CO); particulate matter (PM); ammonia; hydrocarbon separation facilities; and petroleum processing facilities (storage, handling, pumping, and blowdown systems).
3. Most of the requirements in Part 37 are covered by corresponding state permit regulations under 20.2.72 NMAC or federal requirements that are at least as stringent as Part 37;

however, there are four sections/subsections of the rule that pertain to H_2S and mercaptan, volatile organic compounds (VOC), particulate matter (PM) and ammonia emissions that do not have duplicative federal standards. An evaluation was conducted by the Department for these exceptions which showed that Part 37 could still be repealed without an adverse effect on air quality.

4. Part 37 was adopted in 1974 at a time when Continuous Emissions Monitoring Systems (CEMS) were not widely in use. This results in enforceability issues due to a lack of monitoring requirements.

5. Part 37 is not part of the State Implementation Plan (SIP) under the federal Clean Air Act, and therefore is not federally enforceable by the EPA. In comparison, federal regulations require more robust monitoring and recordkeeping, which provides for more effective enforcement of the emission limits.

6. Repeal of Part 37 would benefit the state by removing outdated, mostly redundant requirements since federal regulations are in place for the majority of requirements. The requirements not covered by corresponding federal rules are in many cases covered by other requirements or are not significant. The repeal of Part 37 is not expected to relax emissions controls or negatively affect air quality.

7. Pursuant to 20.1.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.

8. On February 15, 2016, NMED filed a petition with the Board for a public hearing in this matter. The petition proposed that Part 37 be repealed.

9. On April 8, 2016, 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 August 12, 2016.

10. Public notice of the hearing was published on the NMED Air Quality Bureau (AQB) website on May 26, 2016, on the NMED AQB electronic mail list on May 26, 2016, in the Albuquerque Journal (in English and Spanish) on May 31, 2016, and in the New Mexico Register on May 31, 2016. 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.

11. NMED filed a Notice of Intent to Present Technical Testimony (NOI) on July 22, 2016, in accordance with 20.1.1.302 NMAC.

12. No other parties filed NOIs.

13. A hearing in this matter was held in Santa Fe, New Mexico on August 12, 2016, at which a reasonable opportunity for all persons to be heard was provided.

14. The Board has the authority to adopt the proposed amendments pursuant to NMSA 1978, Sections 74-2-5.B & C.

15. 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.

16. The proposed amendments do not cause injury or interfere with health, welfare, visibility and property, in accordance with NMSA 1978, 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 1978, Section 74-2-5.E(3).

17. In addition, in accordance with NMSA 1978, Section 74-2-5.E(2), the Board concludes that the public interest will be served by the repeal of Part 37. Specifically, repeal of Part 37 would benefit the state by removing outdated, redundant requirements. Since federal regulations or permit limits are in place for the majority of Part 37's requirements, a repeal of Part 37 would not negatively affect air quality.

18. The Board concludes that the factors specified by NMSA 1978, Section 74-2-5.E all weigh in favor of adopting the proposed amendments.

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

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

II. ORDER

By unanimous vote of a quorum of the Board members, the proposed revisions to New Mexico's Air Quality Regulations, to repeal 20.2.37 NMAC– *Petroleum Processing Facilities*, as contained in NMED's February 15, 2016 petition and request for hearing, were approved by the Board on August 12, 2016.

Dated: 8/22/16

On Behalf of the Board

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Order and Statement of Reasons for Repeal of 20.2.37 NMAC** was sent via the stated methods below to the following parties on August 26, 2016:

Via hand delivery:

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