

# NMAC

## Transmittal Form

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2019 JAN 25 AM 10:20

Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No.

Issuing agency name and address:

Agency DFA code:

New Mexico Environment Department, Air Quality Bureau 525 Camino de los Marquez, Suite 1, Santa Fe, NM

667

Contact person's name:

Phone number:

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Type of rule action:

(ALD Use Only)

Most recent filing date:

New ☐ Amendment ☐ Repeal ☒ Emergency ☐ Renumber ☐

Title number:

Title name:

20

Environmental Protection

Chapter number:

Chapter name:

2

Air Quality (Statewide)

Part number:

Part name:

20

Lime Manufacturing Plants - Particulate Matter

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Please list attachments or Internet sites if applicable.

Yes ☐ No ☒

If materials are attached, has copyright permission been received?

Yes ☐

No ☐

Public domain ☐

### Concise Explanatory Statement For Rulemaking Adoption:

#### Specific statutory or other authority authorizing rulemaking:

The Environmental Improvement Act NMSA 1978, Section 74-1-8 (2000) and the Air Quality Control Act, NMSA 1978, Section 74-2-5 (2007) provide authority to the Environmental Improvement Board to amend air quality regulations after proper public notice and public hearing.

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

8/28/18

11/30/18; 1/25/19

1/25/19

2/25/19

#### Findings required for rulemaking adoption:

##### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Continued on reverse side

7/1/2018

## Findings required for rulemaking adoption:

continued

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In accordance with the authority vested in it by Section 74-2-5(B) NMSA 1978 to adopt regulations necessary to carry out the purpose and intent of the Air Quality Control Act, the Environmental Improvement Board held a public hearing during the course of its regularly scheduled meeting on November 30, 2018, to adopt a revision to the New Mexico State Implementation Plan (SIP) and repeal 20.2.20 NMAC, Lime Manufacturing Plants - Particulate Matter. Due to the lack of a quorum on 11/30/18, the vote to repeal 20.2.20 NMAC was postponed to 1/25/19.

20.2.20 NMAC establishes limits for particulate matter (PM) emissions from lime manufacturing plants and lime hydrators. The majority of the emissions standards for lime manufacturing plants cited in this rule were incorporated from the federal Standards of Performance for Lime Manufacturing Plants (40 CFR 60, Subpart HH) promulgated in 1978, which has changed significantly since the State rule was first adopted. In addition to relaxing the limits for PM emissions and opacity for rotary lime kilns, the revisions made to the New Source Performance Standard (NSPS) in 1984 eliminated the performance standards regulating lime hydrators that are cited in the State rule.

The Department petitioned the Environmental Improvement Board to repeal 20.2.20 NMAC, which is part of the SIP. The Environmental Improvement Board issued an Order and Statement of Reasons adopting the repeal. This repeal would eliminate a rule that is outdated and inconsistent with federal performance standards regulating lime manufacturing. Lime manufacturing would continue to be regulated by the respective NSPS Subpart HH, and the National Emissions Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (40 CFR 63, Subpart AAAAA), as well as through continued federally-enforceable permit conditions pursuant to 20.2.72 NMAC, Construction Permits.

The Department has determined that the repeal of 20.2.20 NMAC will not negatively impact the attainment status of the State's Particulate Matter (PM) attainment areas, the Anthony PM10 nonattainment area, or any other Clean Air Act requirement.

No comments were received during the official public comment period. The Board provided notice in the New Mexico Register in English and Spanish on August 28, 2018, in the Albuquerque Journal in English and Spanish on August 26, 2018 and in the Valencia County News Bulletin on August 23, 2018.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

John Volkerding

Check if authority has been delegated

☒

Title:

Chair

Signature: (BLACK ink only)

Date signed:

*John Volkerding* on behalf of J. Volkerding

1/25/19

2019 JAN 25 AM 10:20

**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED REPEAL OF:**

**20.2.20 NMAC – *Lime Manufacturing Plants – Particulate Matter***

**No. EIB 18-07(R)**

**FINAL ORDER AND STATEMENT OF REASONS  
FOR REPEAL OF 20.2.20 NMAC**

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by the Air Quality Bureau of the New Mexico Environment Department (“Department”) proposing the repeal of 20.2.20 NMAC – *Lime Manufacturing Plants – Particulate Matter* (“Part 20”). The Board heard testimony from the Department and admitted exhibits into the record. On January 25, 2019, the Board deliberated and voted to repeal the Rule for the following reasons:

**STATEMENT OF REASONS**

1. The Department filed a Petition to repeal Part 20 on July 5, 2018, in accordance with 20.1.1.300 NMAC.
2. 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 set the hearing for November 30, 2018.
3. The Department complied with all the applicable legal notice requirements by publishing notice of the hearing in English and Spanish in the New Mexico Register and the Albuquerque Journal, publishing in the Velencia County New Bulletin, as well as with the

Legislative Council Service and on the New Mexico Sunshine Portal. *See* First Amended NOI, Exhibit 6.

4. The Department also sent notice to the applicable listserv, to Indian tribes, pueblos, and nations, to land grants within a 4-mile radius of the Lhoist facility, to NMED field offices, to previous commenters, and to Belen and Valencia County administrations. *See* First Amended NOI, Exhibit 6.

5. On September 14, 2018, in compliance with the Small Business Regulatory Relief Act, NMSA 1978, Sections 14-4A-1 to -6, the Department sent a letter to the Small Business Advisory Commission requesting comment on the proposed repeal of Part 20. *See* First Amended NOI, Exhibit 12.

6. The Department filed a Notice of Intent to Present Technical Testimony on November 9, 2018 in accordance with 20.1.1.302 NMAC.

7. The Department filed a First Amended Notice of Intent to Present Technical Testimony on November 19, 2018.

8. The Board met on November 30, 2018 to conduct a hearing on the proposed repeal. The hearing was conducted in accordance with the procedures found at 20.1.1 NMAC, and was transcribed.

9. During the hearing, the Board heard technical testimony from and questioned the Department's witnesses and admitted the Department's exhibits. No other party filed a Notice of Intent to Present Technical Testimony pursuant to 20.1.1 NMAC.

10. The Board has the authority to repeal Part 20 pursuant to NMSA 1978, Section 74-2-5(B).



11. The proposed repeal satisfies the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5(E).

12. The notice and hearing requirements of NMSA 1978, Sections 74-2-6 and 14-4-5.2 and 20.1.1 and 20.1.9 NMAC were satisfied in this rulemaking process.

13. Part 20 was one of several State rules identified in the *Improving Environmental Permitting* report as ones that should be evaluated for potential repeal. See First Amended NOI, Exhibit 2, p. 1.

14. Repeal of Part 20 would eliminate a rule that is outdated and inconsistent with federal performance standards regulating lime manufacturing. Id.

15. Lime manufacturing would continue to be regulated by the respective New Source Performance Standard (NSPS), and National Emission Standard for Hazardous Air Pollutants (NESHAP), as well as through continued federally enforceable permit conditions. Id.

16. Repeal of Part 20 is not expected to relax emissions controls or negatively affect air quality in New Mexico. Id.

17. The Department has made the required demonstration under Section 110(l) of the federal Clean Air Act that the proposed repeal and subsequent removal of Part 20 from New Mexico's State Implementation Plan will not interfere with the attainment or maintenance of any National Ambient Air Quality Standard, or other applicable federal air quality standard.

18. Part 20 is repealed for any or all of the reasons stated above.

#### **ORDER**

By 4-0 vote of a quorum of the Board members, the Rule was repealed by the Board on January 25, 2019. A statement of repeal of 20.2.20 NMAC shall be filed with the New Mexico State Records Center as expeditiously as possible by the Department.

IT IS SO ORDERED.

  
 JOHN VOLKERDING  
Chair, New Mexico Environmental Improvement Board

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20.2.20 NMAC, Lime Manufacturing Plants – Particulate Matter, filed 10/31/02 is hereby repealed, effective 2/25/19. The New Mexico Environmental Improvement Board adopted this change during their 1/25/19 regular meeting.