

NMAC

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Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: (ALD Use Only) Most recent filing date:
New ☒ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

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:

Environmental Improvement Act, NMSA 1978, Section 74-1-1 to 74-1-16, including specifically subsections 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-22, including specifically Subsections 74-2-5(A), (B) and (C).

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

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.

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 (the "Board") held a public hearing during the course of its regularly scheduled meeting on September 28, 2018, to adopt a new regulation into Title 20, Chapter 2 of the New Mexico Administrative Code for the control of fugitive dust sources ("Proposed Rule"). In 2016, the United States Environmental

Continued on next page

7/1/2018

Findings required for rulemaking adoption:

continued

Protection Agency published revisions to its Exceptional Events Rule (EER), 40 CFR Parts 50.1, 50.14 and 50.930. Under the revised EER, mitigation plans are required for areas with recurring events and in states requiring mitigation of such events the state must provide for implementation of appropriate measures to protect public health. This includes adoption of rules to mitigate fugitive dust from anthropogenic sources. For this reason, the Department petitioned the Board to adopt the Proposed Rule to control such dust sources and ensure compliance with the revised EER. The Board issued an order and statement of reasons adopting the Proposed Rule on October 26, 2018.

The Board provided notice in English and Spanish in the New Mexico Register on June 26, 2018, in the Deming Headlight and Las Cruces Sun-News on June 15, 2018, and in the Albuquerque Journal on June 17, 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:

10/26/18

2018 OCT 31 F 3 4



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

In the Matter of:

PETITION TO ADOPT NEW
REGULATIONS FOR THE PURPOSE
OF CONTROL OF FUGITIVE DUST
SOURCES, TITLE 20, CHAPTER 2
NMAC

No. EIB 18-05 (R)

**ORDER AND STATEMENT OF REASONS
FOR ADOPTION OF A PART IN TITLE 20, CHAPTER 2 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 adoption of a rule addressing fugitive dust control in Title 20, Chapter 2 NMAC ("Proposed Rule"). The Board heard testimony from the Department and admitted exhibits into the record. On October 26, 2018, the Board deliberated and voted to adopt the Proposed Rule for the following reasons:

STATEMENT OF REASONS

1. On October 3, 2016, the U.S. Environmental Protection Agency (EPA) published revisions to the Exceptional Events Rule ("EER"). The EER is codified at 40 C.F.R. Parts 50.1, 50.14 and 51.930. *See* NMED Exhibit 7.

2. The EER includes new mitigation-related language that requires the development of mitigation plans in areas with "historically documented" or "known seasonal" exceptional events of the same type and pollutant (i.e., high wind dust/PM₁₀) that recur annually or seasonally.

The EER provides air quality agencies regulatory relief in situations when exceptional events cause an exceedance of a National Ambient Air Quality Standards (NAAQS).

3. The EER requires states to prepare mitigation plans (40 CFR 51.930) for areas with recurring events (i.e., three similar events of the same type and pollutant in a three-year period). Luna County and the Anthony PM₁₀ nonattainment area (Doña Ana County) are included in the list of areas required to be covered by mitigation plans.

4. The mitigation plans must be submitted to EPA by September 30, 2018, within two years of EPA's publication of the EER. *See* 40 C.F.R. § 51.930(b)(3)(i).

5. Under the EER, for a state to mitigate exceptional events causing exceedances or violations of the NAAQS the state must "provide for the implementational of appropriate measures to protect public health" from such exceedances and the mitigation plans must set forth these measures. 40 C.F.R. § 51.930.

6. To implement measures to protect from exceedances as required by the EER, New Mexico must adopt a rule that applies to mitigate fugitive dust from anthropogenic sources to prevent these areas from exceeding federal standards and to protect the health and welfare of residents of these counties. The Proposed Rule addresses these issues and is therefore required for New Mexico to comply with the EER.

7. The Department filed a Petition to Adopt New Regulations on May 4, 2018, in accordance with 20.1.1.300 NMAC.

8. On May 25, 2018, 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 September 28, 2018.

9. Pursuant to the Board's authority set forth in 20.1.1.305 NMAC, the Board determined the hearing on the Petition should be held in Las Cruces, New Mexico. While applicable statewide, the Proposed Rule only goes into effect when an area of the state experiences recurring high wind events where the PM₁₀ and/or the PM_{2.5} federal standards are exceeded, which currently only includes Doña Ana and Luna counties.

10. The Department complied with all the applicable legal notice requirements by filing Notice of the Hearing in the New Mexico Register, in the Albuquerque Journal, Las Cruces Sun, Deming Headlight (English and Spanish), as well as with the Legislative Council Service and on the New Mexico Sunshine Portal. *See* NMED Exhibit 15.

11. The Department also sent the Proposed Rule to the applicable listserv. *See* NMED Exhibit 15.

12. The Department filed a Notice of Intent to Present Technical Testimony ("NOI") on September 7, 2018, in accordance with 20.1.1.302 NMAC.

13. On August 16, 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 Rule. *See* NMED NOI Exhibit 16.

14. A hearing was held in this matter on September 28, 2018, in Las Cruces, New Mexico.

15. The Board has the authority to approve the Proposed Rule pursuant to NMSA 1978, Section 74-2-5(B).

16. In considering the Proposed Rule, the Board is required by the Air Quality Control Act, NMSA 1978, Section 74-2-5(E) 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.

17. The EER was revised by the EPA to more efficiently and effectively address anthropogenic sources of dust that threaten public health and create visibility problems in areas with known seasonal exceptional events. *See* NMED Exhibit 3, Testimony of Michael Baca, at page 6. Fugitive dust that contributes to exceptional events impacts the health and welfare of the areas in which these events occur, and harms visibility and property as well. *See* NMSA 1978, § 74-2-5(E)(1). The EER requires mandatory or voluntary measures to abate or minimize contributing controllable sources of identified pollutants that are within the jurisdiction of NMED to be included in mitigation plans. The Proposed Rule demonstrates compliance with this requirement and protects the health and welfare of citizens in these areas of the State.

18. The Proposed Rule is not duplicative of other NMED air quality regulations as it only applies to currently unregulated sources of fugitive dust. *See* NMED Exhibit 6, Testimony of Michael Baca, at page 4.

19. The Best Available Control Measures to control fugitive dust sources utilized in the Proposed Rule have been used in other jurisdictions to control fugitive dust and are easily applied making their use by the owner of the fugitive dust source technically feasible. Accordingly, the Proposed Rule's requirements are technically practicable and the methods employed by the Proposed Rule are economically reasonable as demonstrated by previous use of such methods in

line with the statutory requirements of NMSA 1978, Section 74-2-5(E)(3). *See* NMED Exhibit 6, Testimony of Michael Baca, at page 4.

20. The Proposed Rule is in the public interest because it will reduce anthropogenic sources of fugitive dust in areas that experience high wind dust event that are both a public health and visibility threat. In addition, a nonattainment designation would negatively impact economic development in these two counties. *See* NMSA 1978, § 74-2-5(E)(2). *See* NMED Exhibit 6, Testimony of Michael Baca, at page 6.

21. The Proposed Rule therefore satisfies the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5(E).


22. 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.

23. The requirements of the Small Business Regulatory Relief Act, NMSA 1978, Sections 14-4A-1 to -6, have been satisfied.

24. The Proposed Rule is adopted for any or all of the reasons stated above.

ORDER

By 4-0 vote of a quorum of the Board members, the Proposed Rule was approved by the Board on October 26, 2018. The Proposed Rule, 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 to assure compliance with the EER.


By: _____
On Behalf of the Board

Date: 10/26/18

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Order and Statement of Reasons For Adoption of A Part in Title 20, Chapter 2 NMAC** was sent via the stated methods below on October 26, 2018:

Via hand delivery and email:

Andrew P. Knight
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Ave. NE, Ste. 1000
Albuquerque, New Mexico 87102-3400
Andrew.Knight@state.nm.us
Counsel for the New Mexico Environment Department

Via First Class U.S. Mail and email:

Gideon Elliot
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, New Mexico 87504
email gelliot@nmag.gov
Counsel for the Environmental Improvement Board


Pam Castañeda, Board Administrator

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 23 FUGITIVE DUST CONTROL

2018 OCT 31 P 5 4

20.2.23.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.23.1 NMAC - N, 01/01/2019]

20.2.23.2 SCOPE: All geographic areas within the jurisdiction of the Environmental Improvement Board.
[20.2.23.2 NMAC - N, 01/01/2019]

20.2.23.3 STATUTORY AUTHORITY: Environmental Improvement Act, Section 74-1-1 to 74-1-16 NMSA 1978, including specifically Paragraph (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to 74-2-22 NMSA 1978, including specifically Subsections A, B and C of Section 74-2-5 NMSA 1978.
[20.2.23.3 NMAC - N, 01/01/2019]

20.2.23.4 DURATION: Permanent.
[20.2.23.4 NMAC - N, 01/01/2019]

20.2.23.5 EFFECTIVE DATE: January 01, 2019.
[20.2.23.5 NMAC - N, 01/01/2019]

20.2.23.6 OBJECTIVE: The objective of this part is to limit human-caused emissions of fugitive dust into the ambient air by ensuring that control measures are utilized to protect human health and welfare.
[20.2.23.6 NMAC - N, 01/01/2019]

20.2.23.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC, as used in this part, the following definitions apply.

A. "Agricultural facility" means any land, building, structure, pond, impoundment, appurtenance, machinery or equipment that is used for the production of crops or livestock.

B. "Bulk material" means sand, gravel, soil, aggregate, pumice or any other inorganic or organic solid material capable of creating fugitive dust.

C. "Construction" or "construction activity" means any activity preparatory to, or related to building or demolishing a structure, road construction or maintenance, or altering, rehabilitating or improving land, including grading, excavation, loading, crushing, pavement milling, cutting, clearing, grubbing, topsoil removal, blading, shaping, dry sweeping, blasting and ground breaking.

D. "Control measure" means a technique, process, practice or procedure used to prevent or minimize the generation, emission, entrainment, suspension or airborne transport of fugitive dust, including those more fully described in 20.2.23.111 NMAC.

E. "Disturbed surface area" means an area of the earth's surface that may become a fugitive dust source or track-out due to construction or other activity.

F. "Dust suppressant" or "suppressant" means water, hygroscopic material, solution of water and chemical surfactant, foam, non-toxic chemical stabilizer or any other material, which is not prohibited for ground surface application by the U.S. environmental protection agency or the New Mexico environment department, or any applicable law, rule or regulation, as a treatment material for reducing fugitive dust emissions.

G. "Fugitive dust" means particulate matter emissions which may become entrained in the atmosphere due to mechanical or wind forces, or both; construction activity; materials handling, transfer or storage; disturbed surface areas; or similar commercial or industrial activities, and; which are not ducted through exhaust systems.

H. "Inactive disturbed surface area" means any disturbed surface area on which construction or other activity is not presently occurring, but which continues to be a potential fugitive dust source or track-out.

I. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the environmental improvement board.

J. "Paved" or "paving" means asphalt, recycled asphalt, concrete or asphaltic concrete, routinely maintained asphalt millings or combinations thereof, that covers a surface traveled or used by motor vehicles.

K. “Roadway” or “road” means any public or private paved or unpaved surface that can be entered or used with the primary purpose of public or private travel by motor vehicles or is used for maintenance of electrical or other transmission lines. This definition does not include roadways under construction or easements, rights of way, or access roads used in association with construction activity, bulk material handling and transport, disturbed surface areas or inactive disturbed surface areas.

L. “Source” or “fugitive dust source” means the origin of fugitive dust emissions.

M. “Stockpile” means the depositing of bulk material by mechanical means for the purpose of creating a pile formation on top of an existing or man-made surface.

N. “Track-out” means bulk material deposited by a motor vehicle or vehicles upon an unpaved or paved publicly or privately owned roadway if the bulk material can become airborne due to mechanical or wind action.

[20.2.23.7 NMAC - N, 01/01/2019]

20.2.23.8 CONSTRUCTION: This part shall be liberally construed to carry out its purpose.

[20.2.23.8 NMAC - N, 01/01/2019]

20.2.23.9 SAVINGS CLAUSE: Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.23.9 NMAC - N, 01/01/2019]

20.2.23.10 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local laws, rules or regulations, including more stringent controls on fugitive dust emissions.

[20.2.23.10 NMAC - N, 01/01/2019]

20.2.23.11-20.2.23.107 [RESERVED]

20.2.23.108 APPLICABILITY:

A. This part shall apply to persons owning or operating the following fugitive dust sources in areas requiring a mitigation plan in accordance with 40 CFR Part 51.930:

(1) disturbed surface areas or inactive disturbed surface areas, or a combination thereof, encompassing an area equal to or greater than one acre;

(2) any commercial or industrial bulk material processing, handling, transport or storage operations.

B. The following fugitive dust sources are exempt from this part:

(1) agricultural facilities, as defined in this part;

(2) roadways, as defined in this part;

(3) operations issued permits pursuant to the state of New Mexico Air Quality Control Act, Mining Act or Surface Mining Act; and

(4) lands used for state or federal military activities.

[20.2.23.108 NMAC - N, 01/01/2019]

20.2.23.109 GENERAL PROVISIONS: No person subject to this part, shall cause or allow visible emissions from fugitive dust sources that:

A. pose a threat to public health;

B. interfere with public welfare, including animal or plant injury or damage, visibility or the reasonable use of property.

[20.2.23.109 NMAC - N, 01/01/2019]

20.2.23.110 EMISSION LIMITATIONS:

A. No person shall cause or allow visible emissions from the following fugitive dust sources subject to this part to traverse any exterior property line of the property on which the source is located for more than a total of five minutes in any consecutive 60 minutes:

(1) construction or other activity, disturbed surface areas and inactive disturbed surface areas;

(2) bulk material handling; or

- (3) bulk material storage.
- B. Compliance with this condition shall be determined by a visible emissions test conducted in accordance with reference method 22 in 40 CFR Subpart 60, Appendix A.
- C. Alternative test methods to determine compliance including opacity observations, visible crust determinations and vegetation cover determinations, may be approved by the department on a case-by-case basis. [20.2.23.110 NMAC - N, 01/01/2019]

20.2.23.111 CONTROL MEASURES FOR FUGITIVE DUST SOURCES AND IMPLEMENTATION:

Every person subject to this part shall utilize one or more control measures included in 20.2.23.111 NMAC or one or more other control measure(s) for fugitive dust sources under their control as necessary to meet the requirements of 20.2.23.110 NMAC.

- A. **Implementation.** Control measures must be implemented before, after, and during any dust-generating operation, including during weekends, after work hours and on holidays.
- B. **Disturbed surface areas and inactive disturbed surface areas.** Control measures include:
 - (1) scheduling or phasing of active operations to include consideration of such factors as time of year and prevailing wind direction;
 - (2) limiting disturbance of natural vegetation;
 - (3) application and maintenance of mulch, dust suppressants or other control measures in accordance with manufacturer's specifications;
 - (4) geotextiles, plastic covers, or erosion control mats or blankets;
 - (5) wind fencing;
 - (6) landscaping to include xeriscaping, reseeding and conventional techniques;
 - (7) installing permanent perimeter and interior walls;
 - (8) restricting public access and use by fencing and signage;
 - (9) paving or application of gravel sufficient to prevent fugitive dust emissions;
 - (10) prevention, clean up and removal of track-out material;
 - (11) restricting vehicle speed;
 - (12) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion; and
 - (13) cessation of operations.
- C. **Bulk material handling.** Control measures include:
 - (1) use of spray bars;
 - (2) application of dust suppressants in accordance with manufacturer's specifications;
 - (3) reduced process rates;
 - (4) reduced drop heights; and
 - (5) cessation of operations.
- D. **Bulk material storage.** Control measures include:
 - (1) use of enclosures with at least three sides;
 - (2) application of dust suppressants in accordance with manufacturer's specifications;
 - (3) use of wind breaks; and
 - (4) limit stockpile height to no higher than 15 feet and limit surface area.

[20.2.23.111 NMAC - N, 01/01/2019]

20.2.23.112 DUST CONTROL PLAN: The owner or operator of a fugitive dust source shall develop and maintain a dust control plan. This plan shall be kept by the owner or operator and shall be available upon request to the department. A dust control plan shall, at a minimum, contain all of the following information:

- A. Name(s), address(es) and telephone numbers of person(s) responsible for the development and implementation of the dust control plan and responsible for the dust-generating operation.
- B. A drawing, on eight and one-half inch by eleven inch paper, that shows:
 - (1) the entire project site including property lines;
 - (2) the acreage to be disturbed with linear dimensions;
 - (3) the nearest public road(s);
 - (4) private roads within the project site; and
 - (5) the planned exit locations onto paved areas accessible to the public.
- C. Documentation of the control measure(s), as described in Section 20.2.23.111 NMAC, utilized to meet the requirements of 20.2.23.110 NMAC for every actual and potential dust-generating source or operation,

including, as applicable, the specific dust suppressants to be applied, together with the product specifications or label instructions for approved usage. The control measure(s) shall be documented in the dust control plan on a department approved form. The dust control plan shall include the following record keeping requirements for the use of control measure(s):

(1) for persons that utilize a control measure(s) requiring recurring application, operation or maintenance activities, including the use of dust suppressants or cleanup of track out, the date, time, frequency, quantity and location(s) of the actions taken to implement the control measure(s) shall be recorded on a weekly basis; and

(2) for persons that utilize a control measure(s) requiring a single action, including changes in operating procedure, cessation of operations, or installation of landscaping or fencing, the date, time and length of activities or changes in operations to implement the control measure(s) shall be recorded.

D. Specific surface treatment(s) or control measures implemented for material track-out and sedimentation where unpaved roadways or access points join paved areas accessible to the public.

E. The records required by this subpart shall be maintained for a period of two years after the date of collection.

F. The dust control plan shall be enforceable to the same extent as the provisions of this part.
[20.2.23.112 NMAC-N, 01/01/2019]

20.2.23.113 DUST CONTROL PLAN REVISIONS:

A. If the department determines that a dust control plan does not contain the minimum requirements of 20.2.23.112 NMAC, then the department may issue a written notice to the person identified in Subsection A of 20.2.23.112 NMAC explaining such determination.

B. If the department determines that a dust control plan meeting the requirements of 20.2.23.112 NMAC has been followed, yet fugitive dust emissions from any fugitive dust source still exceed the standards of 20.2.23.110 NMAC, then the department may issue a written notice to the person identified in the dust control plan explaining this determination.

C. Once notified that a dust control plan does not meet minimum requirements or that fugitive dust emissions still exceed the standards despite a dust control plan being in place, the owner or operator of a fugitive dust source shall make written revisions to the fugitive dust plan and submit such revised dust control plan to the department within 14 days of receipt of the department's written notice, unless such time period is extended by the department, upon request, for good cause. During the time that the owner or operator is preparing revisions to the dust control plan, such owner or operator shall still comply with all requirements of this part.

[20.2.23.113 NMAC-N, 01/01/2019]

HISTORY OF 20.2.23 NMAC: [RESERVED]

**PETITION TO ADOPT NEW
REGULATIONS FOR THE PURPOSE
OF CONTROL OF FUGITIVE DUST
SOURCES, TITLE 20, CHAPTER 2
NMAC**

No. EIB 18-05 (R)

ORDER AND STATEMENT OF REASONS
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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 adoption of a rule addressing fugitive dust control in Title 20, Chapter 2 NMAC (“Proposed Rule”). The Board heard testimony from the Department and admitted exhibits into the record. On October 26, 2018, the Board deliberated and voted to adopt the Proposed Rule for the following reasons:

STATEMENT OF REASONS

1. On October 3, 2016, the U.S. Environmental Protection Agency (EPA) published revisions to the Exceptional Events Rule (“EER”). The EER is codified at 40 C.F.R. Parts 50.1, 50.14 and 51.930. *See* NMED Exhibit 7.
2. The EER includes new mitigation-related language that requires the development of mitigation plans in areas with “historically documented” or “known seasonal” exceptional events of the same type and pollutant (i.e., high wind dust/PM₁₀) that recur annually or seasonally.

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4. The mitigation plans must be submitted to EPA by September 30, 2018, within two years of EPA's publication of the EER. *See* 40 C.F.R. § 51.930(b)(3)(i).

5. Under the EER, for a state to mitigate exceptional events causing exceedances or violations of the NAAQS the state must "provide for the implementational of appropriate measures to protect public health" from such exceedances and the mitigation plans must set forth these measures. 40 C.F.R. § 51.930.

6. To implement measures to protect from exceedances as required by the EER, New Mexico must adopt a rule that applies to mitigate fugitive dust from anthropogenic sources to prevent these areas from exceeding federal standards and to protect the health and welfare of residents of these counties. The Proposed Rule addresses these issues and is therefore required for New Mexico to comply with the EER.

7. The Department filed a Petition to Adopt New Regulations on May 4, 2018, in accordance with 20.1.1.300 NMAC.

8. On May 25, 2018, 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 September 28, 2018.

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10. The Department complied with all the applicable legal notice requirements by filing Notice of the Hearing in the New Mexico Register, in the Albuquerque Journal, Las Cruces Sun, Deming Headlight (English and Spanish), as well as with the Legislative Council Service and on the New Mexico Sunshine Portal. *See* NMED Exhibit 15.

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15. The Board has the authority to approve the Proposed Rule pursuant to NMSA 1978, Section 74-2-5(B).

16. In considering the Proposed Rule, the Board is required by the Air Quality Control Act, NMSA 1978, Section 74-2-5(E) 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.

17. The EER was revised by the EPA to more efficiently and effectively address anthropogenic sources of dust that threaten public health and create visibility problems in areas with known seasonal exceptional events. *See* NMED Exhibit 3, Testimony of Michael Baca, at page 6. Fugitive dust that contributes to exceptional events impacts the health and welfare of the areas in which these events occur, and harms visibility and property as well. *See* NMSA 1978, § 74-2-5(E)(1). The EER requires mandatory or voluntary measures to abate or minimize contributing controllable sources of identified pollutants that are within the jurisdiction of NMED to be included in mitigation plans. The Proposed Rule demonstrates compliance with this requirement and protects the health and welfare of citizens in these areas of the State.

18. The Proposed Rule is not duplicative of other NMED air quality regulations as it only applies to currently unregulated sources of fugitive dust. *See* NMED Exhibit 6, Testimony of Michael Baca, at page 4.

19. The Best Available Control Measures to control fugitive dust sources utilized in the Proposed Rule have been used in other jurisdictions to control fugitive dust and are easily applied making their use by the owner of the fugitive dust source technically feasible. Accordingly, the Proposed Rule's requirements are technically practicable and the methods employed by the Proposed Rule are economically reasonable as demonstrated by previous use of such methods in

line with the statutory requirements of NMSA 1978, Section 74-2-5(E)(3). *See* NMED Exhibit 6, Testimony of Michael Baca, at page 4.

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21. The Proposed Rule therefore satisfies the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5(E).

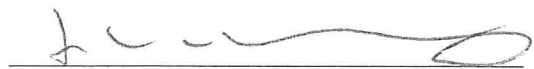
22. The notice and hearing requirements of NMSA 1978, Sections 74-2-6 and 14-4-5.2 and 20.1.1 and 20.1.9 NMAC were satisfied in this rulemaking process.

23. The requirements of the Small Business Regulatory Relief Act, NMSA 1978, Sections 14-4A-1 to -6, have been satisfied.

24. The Proposed Rule is adopted for any or all of the reasons stated above.

ORDER

By 4-0 vote of a quorum of the Board members, the Proposed Rule was approved by the Board on October 26, 2018. The Proposed Rule, 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 to assure compliance with the EER.



By:
On Behalf of the Board

Date: 10/26/18

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Order and Statement of Reasons For Adoption of A Part in Title 20, Chapter 2 NMAC** was sent via the stated methods below on October 26, 2018:

Via hand delivery and email:

Andrew P. Knight
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Ave. NE, Ste. 1000
Albuquerque, New Mexico 87102-3400
Andrew.Knight@state.nm.us
Counsel for the New Mexico Environment Department

Via First Class U.S. Mail and email:

Gideon Elliot
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, New Mexico 87504
email gelliot@nmag.gov
Counsel for the Environmental Improvement Board


Pam Castañeda, Board Administrator