

2018 OCT 31



STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED AMENDMENTS TO
20.2.3 NMAC – *Ambient Air Quality Standards*

Air Quality Bureau
Environmental Protection Division
New Mexico Environment Department,

No. EIB 18-04 (R)

Petitioner.

ENVIRONMENTAL IMPROVEMENT BOARD'S
FINAL ORDER AND STATEMENT OF REASONS

1. The Board met with a quorum on September 28, 2018 to conduct a hearing on amendments to 20.2.3 NMAC – *Ambient Air Quality Standards* (the “Rule”) proposed by the New Mexico Environment Department (“Department”). The hearing was conducted in accordance with the procedures found at 20.1.1 NMAC and was transcribed by Kathy Townsend Court Reporters.

2. The public notice requirements of 20.1.1 NMAC were met through publication of notices in English and Spanish in the Albuquerque Journal, the Las Cruces Sun News, the Deming Headlight, and the New Mexico Register, informing the public of the proposed changes and the date, time and location of the public hearing.

3. 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.

4. After Deliberation, the Board voted 4 to 0 to adopt the amendments as proposed by the Department in Exhibit 1 of the Petition.

5. 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 Board to amend the air quality regulations after proper public notice and a hearing.

6. The purpose of the proposed revision to 20.2.3 NMAC is to remove Section 109 of the regulation, containing ambient air quality standards for total suspended particulate matter that are no longer consistent with modern air quality regulation.

7. The Air Quality Bureau has conducted a thorough analysis of the particulate standards in 20.2.3.109 NMAC and has concluded that the standards can be repealed without a relaxation of emissions controls or an adverse effect on air quality.

8. The Air Quality Bureau has concluded that the particulate standards in 20.2.3.109 NMAC are not necessary to maintain the National Ambient Air Quality Standards for particulate matter in New Mexico.

9. Repeal of the standards in Section 109 will not impact the attainment status of the New Mexico's particulate matter (PM) attainment areas or any other Clean Air Act (CAA) requirement.

10. The New Mexico ambient air quality standards for total suspended particulates have not been revised since their original promulgation.

11. The current federal air quality standards using PM₁₀ (particulate matter 10 microns or less in diameter) and PM_{2.5} (particulate matter 2.5 microns or less in diameter) as indicators are better suited to address health concerns than standards based on total suspended particulates, such as 20.2.3.109 NMAC.

12. The U.S. EPA has not made any nonattainment designations related to total suspended particulates for many years.

13. Section 20.2.3.109 NMAC is an artifact that is no longer consistent with modern air quality regulation.

14. Many other air quality rules are currently in place that limit and control emissions of particulate matter. These rules include enforceable emission limits, control measures, permits, fees, and compliance schedules.

15. The Department discontinued ambient monitoring for total suspended particulates in April 1998.

16. The Department is developing a fugitive dust rule that will be applicable in areas of the state requiring a mitigation plan in accordance with federal regulations found at 40 CFR Part 51.930.

17. The New Source Review and Title V permitting programs include source-specific emission limits and stringent operating, monitoring, recordkeeping and reporting requirements designed to minimize fugitive emissions of particulates.

18. The General Construction Permits issued under 20.2.72 NMAC for the aggregate handling and construction industries all include best management practice conditions limiting fugitive emissions, including restrictions on visible emissions crossing the perimeter of the Restricted (non-publicly accessible) Area, material handling requirements to limit the generation of fugitive emissions, control requirements for haul roads, and a requirement to cease operations during atmospheric conditions under which emissions cannot be controlled.

19. New Source Review permits issued under 20.2.72 NMAC for mineral processing facilities include conditions requiring control of fugitive emissions from material storage and handling and haul roads, general housekeeping, and fugitive dust control plans.


20. Similarly, permits issued under 20.2.70 NMAC for solid waste landfills include conditions to control fugitive dust from actively used cells and cells under construction, to control fugitive dust from haul roads, and a requirement to develop fugitive dust plans.

21. The conditions limiting total suspended particulates that are contained in existing permits will remain in force following this repeal until the permittee requests a permit revision.

22. The Department has concluded that sufficient rules and procedures other than Section 109 are in place to assure compliance with the particulate matter national ambient air quality standards and to address nuisance particulate matter.

WHEREFORE, the Board hereby adopts the amendments to 20.2.3 NMAC as proposed by the Department in Exhibit 1 to the Petition.

IT IS SO ORDERED.



JOHN VOLKERDING
Chair, New Mexico Environmental Improvement Board

Date: 10/26/18

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Environmental Improvement Board's Final Order and Statement of Reasons** 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

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This is an amendment to 20.2.3 NMAC, repealing Section 109, effective 11/30/2018.

20.2.3.109 **TOTAL SUSPENDED PARTICULATES:** The maximum allowable concentrations of total suspended particulate in the ambient air are as follows:

- ~~_____ A. _____ 24 hour average: _____ 150 ug/m³;~~
- ~~_____ B. _____ seven day average: _____ 110 ug/m³;~~
- ~~_____ C. _____ 30 day average: _____ 90 ug/m³;~~
- ~~_____ D. _____ annual geometric mean: _____ 60 ug/m³. **[RESERVED]**~~

[11/30/95; 20.2.3.109 NMAC - Rn, 20 NMAC 2.3.109 10/31/02; Repealed, 11/30/18]

Transmittal Form

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

Issuing agency name and address:

Environment Dept. Air Quality Bureau, 525 Camino de los Marquez, Suite 1, Santa Fe, NM 87505

Agency DFA code:

667

Contact person's name:

Kerwin Singleton

Phone number:

505.476.4350

E-mail address:

kerwin.singleton@state.nm.us

Type of rule action:

New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐

(ALD Use Only)
Most recent filing date:

Title number:

20

Title name:

Environmental Protection

Chapter number:

2

Chapter name:

Air Quality (Statewide)

Part number:

3

Part name:

Ambient Air Quality Standards

Amendment description (If filing an amendment):

Repealing one section

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

Section 109 of 20.2.3 NMAC

Are there any materials incorporated by reference?

Yes ☐ No ☒

Please list attachments or Internet sites if applicable.

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):

06/26/18

Hearing date(s):

09/28/18

Rule adoption date:

10/26/18

Rule effective date:

11/30/18

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 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 revision to the State Implementation Plan and repeal the New Mexico Ambient Air Quality Standards for Total Suspended Particulate (TSP) contained in Title 20, Chapter 2 of the New

Continued on next page

Findings required for rulemaking adoption:

continued

Mexico Administrative Code, Section 109. In 1987, the United State Environmental Protection Agency (EPA) published revisions to the National Ambient Air Quality Standards for particulate matter (PM), and replaced TSP as the indicator for PM with a new indicator, PM10. The EPA further revised the PM standards in 1997 to include an additional indicator, PM2.5, to provide the most effective protection from potential adverse health effects.

The Department has determined that the repeal of the New Mexico TSP standards will not negatively impact the attainment status of the State's 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 June 26, 2018, in the Albuquerque Journal on June 17, 2018, in the Deming Headlight on June 15, 2018, and in the Las Cruces Sun-News on June 15, 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