

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

**IN THE MATTER OF PROPOSED AMENDMENTS TO
20.2.77 NMAC – *New Source Performance Standards
(NSPS)*; 20.2.78 NMAC – *Emission Standards for Hazardous
Air Pollutants (NESHAP)*; and 20.2.82 NMAC – *Maximum
Achievable Control Technology Standards for Source Categories
of Hazardous Air Pollutants (MACT)***

No. EIB 16-04(R)

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

ORDER AND STATEMENT OF REASONS

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by the Air Quality Bureau (“Bureau”) of the New Mexico Environment Department (“NMED” or “Department”), proposing revisions to 20.2.77, 20.2.78, and 20.2.82 NMAC to incorporate newly promulgated federal standards within programs for which authority has been delegated to New Mexico by the U.S. Environmental Protection Agency (“EPA”). A public hearing was held in Santa Fe, New Mexico on April 28, 2017, 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 April 28, 2017, the Board deliberated and voted to adopt the proposed amendments for the reasons that follow:

I. STATEMENT OF REASONS

1. The federal Clean Air Act (“CAA”) requires the EPA to promulgate standards of performance for new stationary sources. CAA § 111 (42 U.S.C. § 7411). Regulations

- promulgated under this authority are known as New Source Performance Standards (“NSPS”) and are found at 40 C.F.R. Part 60.
2. CAA Section 111(c) provides for delegation to states of the authority to implement and enforce the standards promulgated under Section 111. 42 U.S.C. § 7411(c).
 3. CAA Section 112 requires the EPA to promulgate regulations governing hazardous air pollutants. 42 U.S.C. § 7412. Regulations promulgated under this section are known as National Emission Standards for Hazardous Air Pollutants (“NESHAP”), found at 40 C.F.R. Part 61; and National Emission Standards for Hazardous Air Pollutants for Source Categories, also known as Maximum Achievable Control Technology, or “MACT” standards, found at 40 C.F.R. Part 63.
 4. CAA Section 112(l)(1) provides for delegation to states of authority to implement and enforce standards promulgated under Section 112. 42 U.S.C. § 7412(l)(1).
 5. In 1985, the EPA approved delegation of authority to New Mexico to implement and enforce the NSPS and NESHAP. See NMED Exhibit 7.
 6. In 1995, the EPA approved delegation of authority to New Mexico to implement and enforce the MACT standards. See NMED Exhibit 8.
 7. NMED periodically submits updated regulations to EPA to receive delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT standards.
 8. New Mexico incorporates the federal standards found at 40 C.F.R. Parts 60, 61, and 63 into the New Mexico Administrative Code (“NMAC”) at 20.2.77, 20.2.78, and 20.2.82 NMAC, respectively.

9. The Department periodically petitions the Board to update the dates of incorporation of the federal standards in 20.2.77, 20.2.78, and 20.2.82 NMAC, to incorporate recently promulgated revisions to federal standards. See NMED Exhibit 9.
10. The most current EPA approval of our date change was February 2, 2015 for NSPS, NESHAP, and MACT standards. See NMED Exhibit 9.
11. Pursuant to Subsection A of 20.1.1.200 NMAC, any person may petition the Board to adopt, amend, or repeal regulations within the jurisdiction of the Board.
12. On December 12, 2016 NMED filed a petition with the Board for a public hearing in this matter. See Petition in Record Proper.
13. On January 13, 2017, 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 April 28, 2017. The Board appointed Matthew Holt as the hearing officer.
14. On February 14, 2017, public notice of the hearing was published in the New Mexico Register and in the Albuquerque Journal, in English and Spanish. See Exhibit 11. The public notice stated that the Board may decide on the proposed amendments after the hearing, or may convene later to consider action on the proposal.
15. NMED filed a Notice of Intent to Present Technical Testimony ("NOI") on April 6, 2017, in accordance with 20.1.1.302 NMAC.
16. No other party filed an NOI.
17. A hearing in this matter was held in Santa Fe, New Mexico on April 28, 2017, at which a reasonable opportunity was provided for all interested persons to be heard.

18. Pursuant to Section 74-2-5 of the Air Quality Control Act, NMSA 1978, Sections 74-2-1 and -22 (2009), the Board has the authority to adopt the proposed NMED amendments.
19. The standards adopted by the regulatory change are federal standards, in compliance with NMSA 1978, Section 74-2-5(C)(2).
20. In considering the proposed amendments, the Board is required 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. NMSA 1978, § 74-2-5(E) (2007).
21. The Board considered all facts and circumstances, and concluded that the proposed amendments do not cause injury to or interfere with health, welfare, visibility or property. The Board found the proposed amendments to be technically practical, economically reasonable, and in the public interest.
22. The federal NSPS are established by the EPA based on the best system of emission reductions which have been adequately demonstrated, considering the costs of achieving such reductions and any non-air quality health and environmental impact and energy requirements. 42 U.S.C. § 7411(a)(1).
23. The federal NESHAP and MACT standards are established by the EPA for categories and subcategories of sources of emissions of hazardous air pollutants, based on the maximum degree of reduction of emissions achievable, taking into consideration the cost of achieving

- the reductions, any non-air quality health and environmental impacts and energy requirements. 42 U.S.C. § 7412(d)(2).
24. EPA's determination of NSPS, NESHAP, and MACT standards therefore considers the character and degree of injury to or interference with health and welfare; the public interest, including the social and economic value of the sources and subjects of air contaminants; and the technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved.
 25. Incorporation by reference of the federal standards into the New Mexico Administrative Code does not change the substantive standards applicable to affected sources in New Mexico because the EPA retains authority for direct enforcement of the regulations. See NMED Exhibit 6. Accordingly, this regulatory change will not result in any additional economic hardship for sources or any increase in air contaminant emissions, but will increase the efficiency of implementation of the regulations. See *Id.* This serves the public interest.
 26. The proposed amendments therefore satisfy each of the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5(E).
 27. The notice and hearing requirements of NMSA 1978, Section 74-2-6 and of 20.1.1 NMAC were satisfied in this rulemaking process.
 28. The proposed amendments are adopted for any or all the reasons stated above.

II. ORDER

Unanimous JV
By ~~majority~~ vote of a quorum of the Board members, the proposed amendments to New Mexico's Air Quality Regulations, to incorporate newly promulgated federal standards within programs for which authority has been delegated to New Mexico by the EPA, were approved by the Board on April 28, 2017. Amendments to 20.2.77, 20.2.78, and 20.2.82 NMAC, along 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 for approval of delegation authority.



JOHN VOLKERDING
Chair, Environmental Improvement Board

Dated: 4/28/17

