

**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED ADOPTION OF:**

*Section 111(d) State Plan for Implementing  
Municipal Solid Waste Landfills  
Emission Guidelines*

**No. EIB 16-06 (R)**

**AND PROPOSED AMENDMENTS TO:**

**20.2.64 NMAC – *Municipal Solid Waste Landfills***

**PROPOSED 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 adoption of a State Plan for implementing municipal solid waste landfill emission guidelines, pursuant to Section 111(d) of the Clean Air Act, and adoption of necessary amendments to 20.2.64 NMAC – *Municipal Solid Waste Landfills*. 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 plan and amendments for the reasons that follow.

**I. STATEMENT OF REASONS**

1. The federal Clean Air Act (“CAA”) at Section 111 requires the United States Environmental Protection Agency (“EPA”) to promulgate standards of performance for new stationary sources. 42 U.S.C. § 7411. Regulations promulgated under this authority are known as New Source Performance Standards (“NSPS”), and are contained in 40 C.F.R. Part 60.

2. Section 111(d) of the CAA authorizes EPA to update emission guidelines for existing sources of pollutants that are neither criteria pollutants subject to national ambient air quality standards, nor hazardous air pollutants under Section 112 of the CAA. These emission guidelines are also contained in 40 C.F.R. Part 60.

3. On August 29, 2016, the U.S. Environmental Protection Agency (“EPA”) issued new emission guidelines (“Emission Guidelines”) for existing municipal solid waste landfills (“MSWLs”), codified at 40 C.F.R. Part 60, Subpart Cf. The Emission Guidelines are effective as of October 28, 2016. *See* 81 Fed. Reg. 59,276.

4. In developing the Emission Guidelines, EPA reviewed the previous emission guidelines and identified a number of advances in technology and operating practices for reducing emissions of landfill gas (“LFG”) and its components, including methane. *Id.* at 59,277.

5. The Emission Guidelines apply to all landfills that have accepted waste since 1987 and that were constructed before July 17, 2014. *Id.* at 59,313.

6. The Emission Guidelines include requirements for calculating emissions; monitoring, record-keeping and reporting; when and how control technologies must be installed at MSWLs; and requirements for operating control systems.

7. Section 111(d) of the Clean Air Act requires states to adopt and submit plans to EPA to implement the Emission Guidelines. 42 U.S.C. § 7411(d).

8. If New Mexico fails to submit a State Plan, or if its State Plan fails to satisfy the required elements, EPA may prescribe a plan for the State. 42 U.S.C. § 7411(d)(2).

9. State plans must be adopted within nine (9) months of EPA’s adoption of the Guidelines. *See* 40 C.F.R. § 60.23(a).

10. State plans must contain specific information and legal mechanisms necessary to implement the Emission Guidelines. The minimum requirements, referred to herein as “plan elements,” are as follows:

- Identification of enforceable State mechanisms selected by the State for implementing the Emission Guidelines;
- A demonstration of the State’s legal authority to carry out the Section 111(d) State plan as submitted;
- An inventory of existing MSWLs in the State affected by the Emission Guidelines. An existing MSWL may be active (currently accepting waste or having additional capacity available to accept waste), locked (no longer accepting waste but not yet officially closed), or closed (no longer accepting waste nor having available capacity for future waste deposition);
- An inventory of emissions from existing active MSWLs in the State that are affected by the Emission Guidelines;
- Emission standards for existing MSWLs that are no less stringent than those in the Emission Guidelines;
- A State process for state review and approval of site-specific gas collection and control system design plans;
- Compliance schedules, extending no later than 30 months after the date that annual emissions of nonmethane organic compounds reach the emission rate specified in the Emission Guidelines;
- Testing, monitoring, recordkeeping, and reporting requirements;
- A record of public hearing(s) on the State plan; and
- Provision for annual State progress reports to EPA on implementation of the State plan.

See EPA guidance document entitled “Municipal Solid Waste Landfills, Volume 2: Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfills Emission Guidelines,” at 3-1 to 3-2 (1998) (*available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000F3BG.pdf>*).

11. Under the New Mexico Air Quality Control Act (“Air Act”), NMSA 1978, §§ 74-2-1 to -17, The Department is authorized to develop the State Plan, and present it to the Board for the Board’s consideration and approval. *See* NMSA 1978, § 74-2-5.2; NMSA 1978, § 74-2-5.

12. The State Plan proposed by the Department (“Proposed State Plan”) to implement the Emission Guidelines includes all ten plan elements required in the EPA Guidance Document. *See* NMED Exhibit 4, Testimony of Cindy Hollenberg, at 4 – 7; NMED Exhibit 11, Revised Proposed State Plan, at 1.

13. Prior to submitting a State Plan for EPA approval, New Mexico must hold a public hearing on the plan, with reasonable notice at least 30 days prior to the hearing. *See* 42 U.S.C. § 7411(d)(1); 40 U.S.C. § 60.23. This requirement was met via the hearing on this Petition under the Board’s rulemaking procedures at 20.1.1 NMAC.

14. To meet the requirement that there must be an enforceable State mechanism to implement the Guidelines, the New Mexico regulations governing Municipal Solid Waste Landfills at 20.2.64 NMAC must be amended.

15. The proposed amendments to 20.2.64 NMAC require compliance with 40 C.F.R. Part 60 Subpart XXX (new MSWLs) and 40 C.F.R. Part 60 Subpart Cf (existing MSWLs), and include new definitions, reporting requirements, and compliance schedules for construction and installation of control systems. *See* NMED Exhibit 4, Hollenberg Testimony, at 7 – 10.

16. Because the revisions to 20.2.64 NMAC are substantial, the Department proposes to repeal and replace the rule, rather than amending it. *See Id.* at 10.

17. An additional correction to the EPA promulgation date is included in the proposed replacement to 20.2.64 NMAC. *See Id.* at 10.

18. Pursuant to Subsection A of 20.1.1.300 NMAC, any person may petition the Board to adopt, amend, or repeal regulations within the jurisdiction of the Board.

19. On December 22, 2016, NMED filed a petition with the Board for a public hearing in this matter.

20. 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 Member Matthew Holt as the Hearing Officer.

21. On February 14, 2017, public notice of the hearing was published in the New Mexico Register in English and Spanish. *See* NMED Exhibit 20. On February 16, 2017, public notice of the hearing was published in the Albuquerque Journal in English and Spanish. *See* NMED Exhibit 21. The published notices stated that the Board may make a decision on the proposed State Plan and rule revisions at the conclusion of the hearing, or may convene at a later date to consider action on the proposal.

22. NMED filed its Notice of Intent to Present Technical Testimony ("NOI") on April 8, 2017, in accordance with 20.1.1.302 NMAC.

23. No other parties filed NOIs.

24. A hearing in this matter was held in Santa Fe, New Mexico on April 28, 2017, at which a reasonable opportunity for all persons to be heard was provided.

25. Pursuant to Section 74-2-5 of the Air Quality Control Act, NMSA 1978, §§ 74-2-1 to -22 (1967, as amended through 2009), the Board is authorized to adopt the Department's proposed amendments.

26. The standards adopted by this regulatory change are federal standards, and therefore are no more stringent, but at least as stringent, as the federal standards, as required under NMSA 1978, Section 74-2-5(C)(2).

27. In considering the proposed amendments, the Board must give the weight it deems appropriate to all facts and circumstances, including but not limited to: (1) the 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).

28. The Board has considered all facts and circumstances, and has concluded that the proposed amendments will not cause injury to or interfere with health, welfare, visibility and property. The Board finds the proposed amendments to be technically practical, economically reasonable, and in the public interest.

29. The Emission Guidelines, codified under the federal NSPS, are established by EPA based on the best system of emission reductions which have been adequately demonstrated, taking into account the costs of achieving such reductions and any non-air quality health and environmental impact and energy requirements. *See* 42 U.S.C. §7411(a)(1).

30. EPA's determination of NSPS 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.

31. Adoption of the proposed New Mexico State Plan implementing the Emission Guidelines 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 4, Testimony of Cindy Hollenberg, at 11. Accordingly, this rulemaking will not result in any increase in economic hardship for affected sources, or any increase in air contaminant emissions, but will instead increase the efficiency of implementation of the regulations. *See Id.* at 12. This serves the public interest.

32. The Proposed State Plan and rule amendments satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5(E).

33. The notice and hearing requirements set forth in Section 74-2-6 of the AQCA, and the Board's rulemaking regulations at 20.1.1 NMAC, were satisfied in this rulemaking process.

## **II. ORDER**

By a majority vote of a quorum of the Board members, the proposed State Plan implementing the federal Emission Guidelines for municipal solid waste landfills, and the corresponding proposal to repeal and replace Part 20.2.64 NMAC, were approved by the Board on April 28, 2017, as contained in NMED’s Notice of Intent to Present Technical Testimony. The repeal and replacement of 20.2.64 NMAC, along with any appropriate corrections of typographical errors or formatting, shall be filed with the New Mexico State Records Center and submitted by the Department to the EPA for approval of the State Plan.

\_\_\_\_\_  
JOHN VOLKERDING, CHAIR  
On Behalf of the Board

Dated: \_\_\_\_\_