July 1, 2013

Dear Air Quality Stakeholder,

For the past 30 years, the New Mexico Environment Department (NMED) has taken delegation for implementation and enforcement of many of the federal air quality standards adopted under Chapter 40 of the Code of Federal Regulations (CFR), Parts 60 (New Source Performance Standards, or NSPS), 61 (Emission Standards for Hazardous Air Pollutants, or NESHAP) and 63 (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants, or MACT). These federal rules are incorporated by reference in the following state air quality rules: 20.2.77 New Mexico Administrative Code (NMAC) – New Source Performance Standards; 20.2.78 NMAC – Emission Standards for Hazardous Air Pollutants; and 20.2.82 NMAC - Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants, respectively.

In each case, the federal rules that are in effect by a specified date are incorporated by reference into the state rules, unless specifically excluded. Regardless of whether the state accepts delegation for implementation of the federal rules, the affected facilities in New Mexico are subject to those rules because the U.S. Environmental Protection Agency (EPA) will directly implement those standards not delegated. The NMED periodically requests that the Environmental Improvement Board (EIB) amend the state rules to advance the specified date to include new or amended federal rules to 8/29/2013. These state rules were last amended in 2011 to incorporate the date 12/31/2010.

NMED intends to request that the EIB hold a hearing in November 2013 to consider and update the specified dates in 20.2.77 NMAC and 20.2.82 NMAC, so that federal rules under 40 CFR Parts 60 and 63, respectively, that have been finalized by 7/30/2013 will be incorporated by reference into the state regulations. We are not requesting that 20.2.78 NMAC be updated, as there have been no amendments to the related federal rule (40 CFR Part 61) since the last time our rules were updated.

Given that the delegation of the federal rules to the state does not alter the requirements that apply to facilities in this state, the periodic updates of the delegation rules have seldom stirred any interest. However, this update occurs while the EPA is in the process of reconsidering parts of 40 CFR Part 60 (NSPS) Subpart OOOO, a federal rule that applies to many New Mexico sources. It is unlikely that EPA will complete all of its revisions to NSPS Subpart OOOO by 8/29/2013. As a result, differences may occur between the federal revision of NSPS Subpart
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OOOOO and the version of that rule to be incorporated by reference in the state rule 20.2.77 NMAC.

Although it is not uncommon that EPA revises rules after the EIB has adopted revisions to the NMAC, NMED is committed to minimizing the potential confusion that could occur in such an event. As a result, after EPA has completed its modifications of the federal rule, NMED will request that the EIB reopen 20.2.77 NMAC to incorporate those modifications, in conjunction with incorporating other new or modified NSPS, NESHAPs or MACTs. An alternative approach would be to not accept delegation of NSPS Subpart OOOO at all until after EPA completes its modifications of that rule. However, NMED has determined that taking delegation of NSPS Subpart OOOO as it is now in effect is the most appropriate option. This will avoid confusion to sources about who has authority over which parts of OOOO, and where to send reports required by the NSPS. The Department will also meet with interested parties this summer to discuss the available options for implementing NSPS Subpart OOOO.

If you wish to make comments regarding the updates of 20.2.77 NMAC and 20.2.82 NMAC, or to be notified of the hearing at which EIB will take comments and consider these rules, please contact Lany Weaver at (505) 476-4322 or lany.weaver@state.nm.us. If you wish to comment on NMED’s evaluation of the available options for implementing NSPS Subpart OOOO, please contact Ted Schooley at (505) 476-4334 or ted.schooley@state.nm.us, or Elizabeth Bisbey-Kuehn at (505)476-4338 or Elizabeth.Kuehn@state.nm.us.

Thank you for your interest in New Mexico’s Air Quality.

Sincerely,

Richard L. Goodyear, P.E.
Bureau Chief