

## **Frequently Asked Questions Regarding 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources* and 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources***

### **What is the rationale for amending 20.11.63 NMAC and 20.11.64 NMAC?**

The primary purpose is to update these two regulations to incorporate by reference the most up-to-date New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) that have been promulgated by the U.S. Environmental Protection Agency (EPA), in the Federal Register, since August 29, 2011 (last update) and through September 16, 2013 (see [http://www.cabq.gov/airquality/air-quality-control-board/documents/NSPSNESHAPsPromulgated\\_83011\\_to\\_91613.pdf](http://www.cabq.gov/airquality/air-quality-control-board/documents/NSPSNESHAPsPromulgated_83011_to_91613.pdf)). If the Board adopts the proposed updates and amendments to 20.11.63 NMAC and 20.11.64 NMAC, the Division will transmit the adopted and filed regulations to the EPA along with an updated request to renew their delegation of authority to enforce these important emission standards.

### **What are the Clean Air Act requirements for NSPS and NESHAPs?**

The Clean Air Act as amended requires under Section 111, *Standards of Performance of New Stationary Sources* that performance standards be set for source categories which in the judgment of the Administrator cause or contribute significantly to air pollution. This Section includes the NSPS found in 40 CFR Part 60, *Standards of Performance for New Stationary Sources*, which is incorporated by reference within 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*. Section 112, *National Emission Standards for Hazardous Air Pollutants*, requires that emission standards be established for hazardous air pollutants. This Section includes the standards for hazardous air pollutants promulgated within 40 CFR 61, *National Emission Standards for Hazardous Air Pollutants* and 40 CFR 63, *National Emission Standards for Hazardous Air Pollutants for Source Categories*, which are both incorporated by reference within 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants For Stationary Sources*. In addition, Sections 111(c) and 112(d) of the Clean Air Act provide the Administrator of the EPA with the authority to delegate to State agencies the implementation and enforcement of both these standards.

### **What are the requirements for delegation of authority?**

In order to delegate its authority, EPA must make a finding that the State's procedures for implementing and enforcing NSPS and NESHAPs are adequate. There are nine elements that must be considered in order to support a finding that a State agency can implement and enforce the NSPS and NESHAPs programs effectively. These elements are: 1. Emission limits consistent with Federal regulations; 2. Test methods consistent with Federal regulations; 3. Reporting and monitoring requirements; 4. Enforcement program; 5. Waiver (variance) procedures; 6. Surveillance capability; 7. Public notification and

disclosure of information; 8. Resources adequate to implement and enforce all aspects of the rule, program, or requirement; and 9. Reporting to EPA.

The Division is required by EPA to periodically update its' delegation of authority to enforce 40 CFR Parts 60, 61, & 63, and with each delegation renewal, the Division reaffirms that they have the resources and ability to comply with these nine elements.

The Air Board first adopted 20.11.63 NMAC and 20.11.64 NMAC in 1985, and have approved periodic updates throughout the years, with the most recent re-delegation hearing being held on November 9, 2011. Generally the EPA reviews the Division's proposed amendments to 20.11.63 NMAC and 20.11.64 NMAC and accompanying letter requesting re-delegation, and then if the updated regulations and the Division's commitment to implement and enforce delegated programs meet their approval, they will publish a notice of delegated authority in the Federal Register. This authority was last delegated on December 9, 2005 in the Federal Register effective 2/7/2006 [Vol. 70, No. 236, 73138-48].

### **What are the benefits of having local delegation of authority?**

The Air Quality Division is proposing to incorporate by reference the Federal Emissions Standards found in Title 40 of the United States Code of Federal Regulations (CFR), under Parts 60, 61 and 62, promulgated since August 29, 2011 through September 16, 2013. The reason that the Division incorporates these standards by reference is that the Division, as agent for the Albuquerque - Bernalillo County Air Quality Control Board (Air Board), is locally delegated by the EPA to administer and enforce these federal provisions within Bernalillo County. These standards are enforceable by EPA, irrespective of whether the Division incorporates them by reference into the Air Board's regulations or not. However, it is beneficial to the local businesses and industries to be able to work through the Division, as the local agency, when obtaining air quality permits, rather than having to go through EPA Region 6 in Dallas. Assuming the proposed amendments are adopted by the Air Board, the Division will request re-authorization of their delegation of authority to enforce all standards promulgated through September 16, 2013.

### **FOR MORE INFORMATION**

The Stakeholder - EPA Review Draft is posted at <http://www.cabq.gov/airquality/air-quality-control-board/regulation-development/stakeholder-review-drafts> . Please provide your comments by September 13, 2013 to Neal Butt at [nbutt@cabq.gov](mailto:nbutt@cabq.gov) or (505) 768-2660.