

Petition for Hearing:
Repeal Section 20.11.90.12 NMAC, *Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance*;
Replace With 20.11.49 NMAC, *Excess Emissions*;
Amend 20.11.65 NMAC, *Volatile Organic Compounds*, &
20.11.69 NMAC, *Pathological Waste Destructors*;
Submit to EPA

AQCB Petition No. 2009-4

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Reasons for Proposed Repeal & Replacement of 20.11.90.12 NMAC

I. AQCB Language Out Compliance With EPA Guidance

- ❖ March 2, 1981, EPA to APCD:
 - ❖ Regulation No. 19, “provides automatic exemptions from emission limitations for excess emissions during scheduled maintenance; but according to EPA guidance, all emissions that exceed emission limitations during startup, shut down, breakdown, or maintenance are a violation of the SIP unless there is a sudden and unavoidable malfunction that is totally beyond the control of the owner and/or operator”
 - ❖ The Air Quality Division evaluated the need for a SIP revision; However, because a SIP revision was not mandated by EPA, this effort was never completed.’

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II. Extensive Guidance Has Been Developed By EPA Since Local Rule Was Adopted

- On September 28, 1982, September 20, 1999, and again on December 5, 2001, the EPA issued guidance on how states should address excess emissions during malfunction, startup and shutdown in their State Implementation Plan

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III. Air Quality Bureau Notified By EPA That Their Rule Language Is Out Of Compliance

- *“Section 20.2.7.109 NMAC is not consistent with CAA as outlined in 1999 memorandum, entitled ‘State Implementation Plans: Policy Regarding Excess Emissions During Malfunction, Startup, and Shutdown’ . . . because the provision can be interpreted to exempt emissions from compliance with SIP limits.*
- *EPA views all excess emissions as violations of the applicable emission limitation*
- *The State or EPA can exercise enforcement discretion to refrain from taking enforcement action in certain circumstances; and to provide an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction, startup, and shutdown episodes*

Reasons for Proposed Repeal & Replacement of 20.11.90.12 NMAC

IV. To Follow New Mexico's Lead In Bringing Their Rule Into Alignment With Federal Guidance

- The Environmental Improvement Board Adopted The Air Quality Bureau's proposed repeal and replacement of 20.2.7 NMAC, *Excess Emissions*, effective 8/1/08
- Proposed rule tightened notification requirements, established criteria for affirmative defenses, and required "root cause" and "corrective action" analysis

Reasons for Proposed Repeal & Replacement of 20.11.90.12 NMAC

V. Extant Rule Is Obsolete

- ❖ *Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance*, first adopted as “Section 11 of Resolution No. 1”; filed on 8/6/1971
- ❖ Subsequent amendments replaced the terms: “upset” with “abnormal operating conditions”, “Secretary” with “Director” and changed the title from “Section 11” to “Section 19
- ❖ Rule filed on 3/21/1977 submitted to EPA for inclusion into the SIP approved by EPA on 4/10/1980, and made effective that same day
- ❖ The name of the rule was changed from “Section 19” to “Regulation 19”, and filed on 3/24/1982
- ❖ The rule was reformatted twice [Filed 10/27/1995 & 10/1/2002] to conform to the New Mexico Administrative Code.
- ❖ Except for formatting differences and phraseology, this rule has not changed substantively since 1971

Reasons for Proposed Repeal & Replacement of 20.11.90.12 NMAC

VI. Extant Rule Is Out Of Compliance With EPA Guidance

- EPA considers startup, shutdown and scheduled maintenance, as part of a facility's normal operation, and as such, should be accounted for in the planning, design and implementation of operating procedures for the source's process and control equipment. Therefore, excess emissions should only occur under exceptional circumstances, and not during scheduled maintenance, startup or shutdown
- Current language at 20.11.90.12 NMAC regarding startup, shutdown, and scheduled maintenance is out of compliance with EPA guidance, and needs to be removed. The proposed rule prohibits excess emissions for startup or shutdown unless they are the result of unavoidable and unforeseeable malfunctions.1971

Reasons for Proposed Repeal & Replacement of 20.11.90.12 NMAC

VII. Inclusion of 'Root Cause Analysis' as a Planning Tool

- ❖ Detailed technical analysis of excess emission events that determines the underlying reason(s) that the event occurred and all contributing factors to the malfunction, to the extent possible
- ❖ Analysis would also require an evaluation of alternative measures (if any) that can be implemented to reduce the likelihood of a recurrence of such an incident
- ❖ Minimizing the likelihood of excess emissions from malfunctions will reduce the reporting burden for both facilities and the Air Quality Division.

Reasons for Proposed Repeal & Replacement of 20.11.90.12 NMAC

VIII. Account For Changes In Cross-Referencing

- ❖ The cross-references made to 20.11.90.12 NMAC, found at 20.11.65.7.A NMAC and at 20.11.69.25.A NMAC, are proposed to be changed to reference the new 20.11.49 NMAC instead

Request

- Hearing before Albuquerque-Bernalillo County Air Quality Control Board (Board) to:
 - Repeal Section 20.11.90.12 NMAC, *Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance* and replace with a new rule, 20.11.49 NMAC, *Excess Emissions*
 - Amend 20.11.65 NMAC, *Volatile Organic Compounds*, and 20.11.69 NMAC, *Pathological Waste Destructors*, to correct cross-referencing
 - Submit the new 20.11.49 NMAC, the amended 20.11.90 NMAC, and the amended 20.11.65 NMAC to EPA as a revision to the state implementation plan (SIP).
- Provide A Court Reporter & Hearing Officer

Authority

- The New Mexico Air Quality Control Act (Air Act), NMSA 1978, Sections 74-2-4 and 74-2-5.B(1) [1967 as amended through 2007] authorizes and requires the Board to adopt, amend, or replace air quality regulations and to adopt air quality plans (SIPs) under NMSA 1978, Section 74-2-5.B(2).

A close-up photograph of a turkey's face, showing its dark, textured feathers and a large, prominent eye with a reddish-brown iris. The turkey is looking slightly to the left. In the upper right corner, there is a light blue, cloud-shaped thought bubble with a black outline, containing the word "QUESTIONS?" in bold, black, uppercase letters. Several small, light blue circles are scattered across the turkey's face, suggesting a trail of thought or a sequence of questions.

QUESTIONS?