

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

ENVIRONMENTAL HEALTH
15 FEB 20 PM 2:39

**IN THE MATTER OF THE PETITION TO AMEND 20.11.61 NMAC,
PREVENTION OF SIGNIFICANT DETERIORATION, AND SUBMIT THE
ADOPTED 20.11.61 NMAC TO THE U.S. ENVIRONMENTAL PROTECTION
AGENCY FOR PROPOSED INCORPORATION INTO THE NEW MEXICO
STATE IMPLEMENTATION PLAN FOR AIR QUALITY (SIP).**

AQCB Petition No. 2015-2

**Air Quality Program,
Environmental Health Department,
City of Albuquerque, Petitioner**

**Petition to amend 20.11.61 NMAC, *Prevention of Significant Deterioration*, and
submit the adopted 20.11.61 NMAC to the U.S. Environmental Protection Agency
for proposed incorporation into the New Mexico State Implementation Plan (SIP).**

1. The City of Albuquerque (“City”), by and through the Air Quality Program (AQP) of the Environmental Health Department (Department), asks the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) to adopt amendments to 20.11.61 NMAC, *Prevention Of Significant Deterioration*. The Amendments will be submitted to EPA as a revision to the SIP. This Petition includes a request for a hearing on these matters and permission to provide a court reporter and hearing officer for the hearing. 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 Air 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). As grounds, Petitioner states the following:

Background

2. The provisions governing state implementation of the Prevention of Significant Deterioration (PSD) permit program are contained in the CFR Title 40, *Protection of Environment, Part 51, Requirements for Submittal of Implementation Plans, Subpart I, Review of New Sources and Modifications, Section 166, Prevention of Significant Deterioration of Air Quality*. The provisions governing direct federal implementation of PSD are found at Title 40, *Protection of Environment, Part 52, Approval and Promulgation of Implementation Plans, Subpart A, General Provisions, Section 21, Prevention of Significant Deterioration of Air Quality*. Albuquerque - Bernalillo County's implementation of the PSD program is governed by 20.11.61 NMAC, *Prevention of Significant Deterioration*. Under the PSD program, when a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause "significant" deterioration in air quality.

3. On April 10, 2013, the Air Board approved amendments to 20.11.61 NMAC, Sections 2, 5, 6, 7, 10, 11, 12, 14, 15, 18, 20, 23, 24, 27, 29 and 30, effective May 13, 2013. These amendments were required by several EPA rulemakings related to PSD, which revised the Code of Federal Regulations and thus required revisions to the SIP.

4. On July 26, 2013, New Mexico Environment Secretary Ryan Flynn submitted the amendments to 20.11.61 NMAC to EPA as a proposed SIP revision. EPA review of the proposed revision is underway.

Statement of Reasons

5. On February 12, 2015, EPA informed the Air Quality Program that it is unable to approve two particular portions of the proposed 2013 SIP revision. These portions are found in the currently effective (locally) version of 20.11.61 NMAC, in particular 20.11.61.7(CCC) NMAC and 20.11.61.11(B) NMAC. EPA stated that these provisions are not consistent with current federal PSD regulations and policy. On February 17, 2015, EPA informed AQP that it is unable to approve an additional portion of the proposed 2013 SIP revision, affecting 20.11.61.11(C) NMAC. This provision also is not consistent with current federal PSD regulations and policy.

A) EPA notes that the currently effective version of 20.11.61.7(CCC) NMAC includes language deferring the date at which certain pollutant sources are subject to PSD regulation of greenhouse gasses. This deferral is applied to sources that emit carbon dioxide resulting from the combustion or decomposition of certain organic material, which EPA refers to as “biogas.” EPA notes that a federal court has vacated the biogas deferral regulation promulgated by EPA on July 20, 2011 (referenced in the list of Federal Register publications). The court decision was *Center for Biological Diversity v. Environmental Protection Agency*, 722 F.3d 401 (D.C. Cir. 2013). Because of this vacation of the rule, 20.11.61.7(CCC) NMAC is no longer consistent with federal regulations. Therefore, EPA has requested that this regulation be amended to remove language relating to a biogas deferral. The Air Quality Program’s proposed draft of a revised 20.11.61 NMAC will carry out this amendment as requested by EPA.

B) EPA states that the currently effective versions of 20.11.61.11(B) and 20.11.61 11(C) NMAC are inconsistent with federal regulations found in 40 CFR 51.166, regarding applicability of PSD regulations to a permitted source. EPA notes that the versions of 20.11.61.11(B) and (C) in effect prior to the Air Board's amendment on April 10, 2013 were consistent with the federal regulation. Therefore, EPA has requested that these two NMAC sections be revised accordingly, reverting to the prior versions. The Air Quality Program's proposed draft of a revised 20.11.61 will carry out this amendment as requested by EPA.

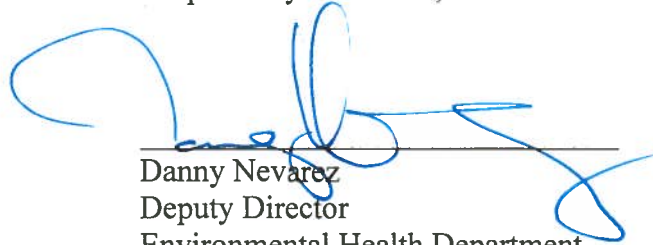
6. The amendments EPA has requested must be made in order for EPA to approve two other pending SIP revisions. One is an infrastructure SIP for the 2010 National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO₂), approved by the Air Board on June 12, 2013 and submitted to EPA on July 26, 2013. This submission is now under review by EPA. The second pending SIP revision is an infrastructure SIP for the 2010 NAAQS for sulfur dioxide. AQP is petitioning the Board separately for adoption of this proposed SIP submittal and, upon Board approval, anticipates submitting it to EPA for review in July of 2015.

7. In light of the foregoing, AQP now petitions the Air Board for a hearing to amend 20.11.61 NMAC to conform to federal regulation and policy. The amendments are incorporated into the proposed Public Review Draft, included with this petition.

8. It is anticipated that the hearing on these amendments will take approximately one hour or less.

9. The proposed Public Review Draft of 20.11.61 NMAC, *Prevention of Significant Deterioration* is attached as AQP Exhibit #1.

Respectfully submitted,



Danny Nevarez
Deputy Director
Environmental Health Department
City of Albuquerque
One Civic Plaza NW, Suite 3023
Albuquerque NM 87103
(505) 768-2706

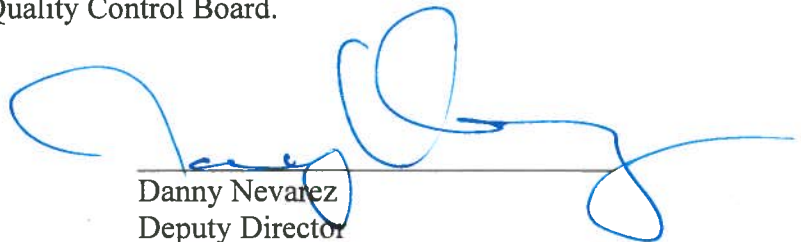
CERTIFICATION

I hereby certify that the original and 15 copies of this petition, entitled **Petition to Amend 20.11.61 NMAC, *Prevention of Significant Deterioration*, and submit the adopted 20.11.61 NMAC to the U.S. Environmental Protection Agency for proposed incorporation into the New Mexico State Implementation Plan (SIP)** were delivered to the following person on February 20, 2015:

Andrew Daffern
Air Quality Control Board Liaison
Environmental Health Department
One Civic Plaza, NW, Suite 3023
Albuquerque, New Mexico 87102

and that a copy was provided by email to:

Felicia Orth, Attorney to the Air Quality Control Board.



Danny Nevarez
Deputy Director
Environmental Health Department
City of Albuquerque