State of New Mexico

Susana Martinez
Governor

May 24, 2011

Dr. Alfredo Armendariz, Regional Administrator
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Subject: Request for Approval of Revision to the State Implementation Plan for Air Quality, for 20.11.2 NMAC, *Permit Fees* (AKA *Fees*)

Dear Dr. Armendariz,

I am writing to request approval of the attached documentation which will serve as the basis for a revision to the New Mexico State Implementation Plan for air quality (SIP). Specifically, I am submitting documentation for the proposed repeal of the regulation, 20 NMAC 11.02 and replacement by 20.11.2 NMAC, *Permit Fees* (AKA *Fees*), which applies to Bernalillo County, New Mexico, and was adopted in 2001.

The Albuquerque - Bernalillo County Air Quality Control Board (Air Board) repealed 20 NMAC 11.02 *Permit Fees* and replaced it with 20.11.2 NMAC, *Permit Fees*, on April 18, 2001, after a public comment period and corresponding public hearing held on February 14, 2001. The regulation was filed with the New Mexico State Records Center (NMSRC) on May 16, 2001 and became effective on July 1, 2001. We believe that the submitted materials provide adequate documentation to support the requested SIP revision.

The reasons for submitting an historical rule amendment as a revision to the SIP are as follows. Subsequent to adoption of the SIP revision before you, the Air Board adopted amendments to 20.11.2 NMAC on 1/14/04 regarding fees necessary in order to operate the fugitive dust program [20.11.20 NMAC] as well as other changes; these amendments were filed on 1/28/04, and became locally effective on 3/1/04. On 9/7/04 a request for a SIP revision was submitted to EPA under the Governor's signature. But before EPA finalized their approval for this revision, the Albuquerque Air Quality Division (AQD) had already begun work on the next revision. So EPA's review was postponed until the next SIP revision request was sent to them. The Air Board adopted this second set of amendments on 11/8/06, which reduced the hearing appeal fee from $1000.00 to $125.00. These amendments were filed on 11/15/06, and became effective locally on 12/16/06. A request for a SIP revision was submitted to EPA under the Governor's signature on 2/5/07.

20.11.2 NMAC has been amended numerous times since it was first adopted in 1977, with the penultimate hearing before the aforementioned 2004 and 2006 hearings, being held on 2/14/01. The Air Board adopted this repeal and replacement on 4/18/01. This replacement rule was filed on 5/16/01, and became effective locally on 7/1/01. The new rule addressed permit fees, potential to emit, State air toxics, and Title V. EPA reviewed these changes but there is no record of the 2001 amendment ever being submitted to EPA for inclusion into the SIP. Thus, EPA has not approved a SIP revision to include any of the amendments made to 20.11.2 NMAC in the intervening period since their initial approval in the Federal Register on April 10, 1980 [Vol. 45 No. 71, 24460-69].

Since the 20.11.2 NMAC SIP has not been revised at EPA since 1980, the locally effective version is completely different from that approved in the SIP. This raises two issues. First, the 2004 & 2006 (2007) SIP revisions will need to be compared to a "baseline" rule such as the 5/16/2001 replacement rule, since the 1980 rule is not comparable. Secondly, since the 2004, and 2006 (2007) amendments did not amend/update the language currently found in 20.11.2 NMAC, at Sections: 1, *Issuing Agency*; 4, *Duration*; 5, *Effective Date*, and 8, *Savings Clause*, these sections will need to be updated in the SIP as well. This will be done when the 2004 & 2006 (2007) SIP revisions are approved; or if the most recent amendments that were adopted on 12/8/2010, filed 12/10/2010, effective 1/10/2011, and submitted to EPA on 12/27/2010, are approved in the same federal register notice as the 2004 & 2006 (2007) revisions, then the update will take place at that time.

To facilitate your review and processing, the following materials are enclosed:

1) SIP Completeness Checklist pursuant to 40 CFR 51;

2) Hearing record, including transcript and exhibits;

3) Comments and responses;

4) The proposed SIP revision for 20.11.2 NMAC, *Permit Fees;* adopted by the AQCB; and

5) Other supporting documentation.

Your favorable consideration of this request is appreciated. If you have any questions, please contact Mary Lou Leonard, Director of the Albuquerque Environmental Health Department (EHD), at (505) 768-2631.

Sincerely,

Susana Martinez
Governor

cc: Mary Lou Leonard, Director, Albuquerque EHD
Richard Goodyear, Acting Chief, Air Quality Bureau, NM Environment Department
Margaret Menache, Chair, AQCB
Margaret Nieto, Control Strategies Section Supervisor, AQD

Enclosures