

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

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**IN THE MATTER OF PETITION TO:
ADOPT A STATE PLAN FOR CONTROL
OF CERTAIN EMISSIONS FROM
EXISTING MUNICIPAL SOLID WASTE
LANDFILLS;**

AND TO AMEND:

**20.11.63 NMAC, *NEW SOURCE PERFORMANCE
STANDARDS FOR STATIONARY SOURCES;***

AQCB Petition No.2017-1

**20.11.64 NMAC, *EMISSION STANDARDS FOR
HAZARDOUS AIR POLLUTANTS FOR
STATIONARY SOURCES;* AND**

**20.11.71 NMAC, *MUNICIPAL SOLID WASTE
LANDFILLS***

**Environmental Health Department,
City of Albuquerque, Petitioner.**

**ENVIRONMENTAL HEALTH DEPARTMENT'S PETITION
TO:**

**ADOPT A STATE PLAN FOR CONTROL OF CERTAIN EMISSIONS
FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS;**

AND TO AMEND:

**20.11.63 NMAC, *NEW SOURCE PERFORMANCE STANDARDS
FOR STATIONARY SOURCES;***

**20.11.64 NMAC, *EMISSION STANDARDS FOR HAZARDOUS
AIR POLLUTANTS FOR STATIONARY SOURCES;***

AND

20.11.71 NMAC, *MUNICIPAL SOLID WASTE LANDFILLS.*

The City of Albuquerque's Environmental Health Department ("EHD") petitions the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board") to authorize a hearing on EHD's proposed regulatory change to (1) adopt a state plan under Section 111(d) of the federal Clean Air Act for the control of methane emissions from designated municipal solid waste landfills and (2) amend three local air quality regulations. Drafts of EHD's proposed state plan and proposed amended regulations are attached to this petition. *See* Ex. A (Plan); Ex. B (20.11.71 NMAC); Ex. C (20.11.63 NMAC); and Ex. D (20.11.64 NMAC).

As EHD explains below, these regulatory changes are necessary because of recent actions by the United States Environmental Protection Agency ("EPA") regarding municipal solid waste landfills. EPA has, first, promulgated New Source Performance Standards for newly constructed, reconstructed, or modified landfills and, second, required state and local air quality jurisdictions to adopt a state plan and regulations implementing federal emissions guidelines for existing landfills. Along with a response to these EPA actions, EHD is also proposing to amend certain local regulations so that they incorporate updated federal air quality standards, beyond those affecting landfills. In conjunction with these proposed amendments, EHD requests that the Air Board authorize EHD to request that EPA update EHD's delegated authority to implement and enforce the incorporated and updated federal standards.

1. A municipal solid waste landfill ("landfill") is an area of land used for permanent disposal, on or below a land surface, of different types of materials discarded after use in households, industry, commerce, or certain other economic activities.¹ Landfills can emit air pollutants known as "landfill gasses," which are primarily composed of carbon dioxide, methane, and non-methane organic compounds (NMOC).² NMOC, which are less than 1% of landfill

¹ The formal EPA definition of "municipal solid waste landfill" or "MSW landfill" is more detailed and extensive. The definition states that an MSW landfill is "a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes...such as commercial solid waste, nonhazardous sludge, conditionally exempt small generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion." 80 Fed. Reg. 59,329 to 59,330 (August 29, 2016). EPA further defines "landfill" as "an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under § 257.2 of this title [Title 40, Code of Federal Regulations]." EPA *Id.* at 59,329. EPA also provides detailed definitions of "commercial solid waste," "household waste" and "industrial waste," among other key terms. *Id.* at 59,329 to 59,330.

² 80 Fed. Reg. at 59,281.

gasses, are composed of a variety of volatile organic compounds and hazardous air pollutants (HAPs) as defined by EPA.³

2. Since 1996, EPA has required states and localities to implement emission controls for landfill gasses, focusing primarily on NMOCs ("NMOC").⁴

3. EPA first approved the Albuquerque – Bernalillo County regulation implementing EPA's landfill gas emission standards in 2006.⁵

4. On August 29, 2016, EPA issued two final rules amending its standards for both new and existing landfills.⁶ The amended standards update various provisions in federal regulations in order to strengthen controls on methane emissions at new and existing landfills that meet certain criteria.⁷ The EPA standards require certain larger landfills that accepted waste during specified time periods and reach specified emission levels of NMOC or surface methane must install a gas collection and control system to control such emissions.⁸ The EPA standard

³ *Id.*

⁴ 61 Fed. Reg. 9917 (March 12, 1996). The 1996 EPA rule acknowledged that controls imposed by the rule would also help limit emissions of methane.

⁵ 71 Fed. Reg. 67,807 (November 24, 2006).

⁶ 80 Fed. Reg. 59,276 (adopting emission guidelines for existing solid waste landfills, codified at 40 CFR Part 60, Subpart Cf, under authority of Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d)); 80 Fed Reg. 59,332 (adopting standards of performance for new solid waste landfills, codified at 40 CFR Part 60, Subpart XXX, under authority of Section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b)).

⁷ See the Federal Register publications cited in footnote 6, above, for details on the updated standards and the criteria for landfills that are subject to them. In sum, the EPA standards apply to larger landfills that accept certain types of waste. If such a landfill emits more than 34 megagrams per year of NMOC (used as a proxy measurement for methane emissions), the landfill must install a gas collection and control system to limit its emissions.

⁸ One EPA rule affects new landfills, defined as those that commenced construction, reconstruction, or modification after July 17, 2014. The other EPA rule affects existing landfills, defined for purposes of the rule as those that commenced construction, reconstruction, or modification on or before July 17, 2014 and accepted certain types of waste during any time period after November 8, 1987 or has additional design capacity available for future waste deposition. For both new and existing landfills, a landfill is affected by the EPA standards if it has a design capacity of 2.5 million megagrams by mass or 2.5 million cubic meters by volume. If a landfill meets the foregoing criteria it is subject to the EPA standards even if it is closed. For both new and existing landfills, an affected facility must install a gas collection and control system meeting specified technical and operational requirements if the

sets technical and operational requirements that the gas collection and control system must meet, as well as various other provisions on compliance schedules, testing, monitoring, reporting, and recordkeeping. The overall purpose of the standards is to strengthen controls on emissions of methane, a potent greenhouse gas.

5. The August 29, 2016 EPA rules require state and local air quality jurisdictions to implement the updated landfill emission standards. State and local jurisdictions with delegated authority to implement federal standards for new sources under Section 111 of the Clean Air Act must implement and enforce the updated standard for new landfills. The same jurisdictions must submit a state plan for implementing the updated standard for existing landfills, with appropriate revisions to state or local regulations, no later than May 30, 2017.⁹

6. To comply with the requirements in the EPA landfill rules, this EHD petition requests that the Air Board address EPA requirements on existing landfills by adopting a state plan for these facilities, Ex. A, and amending 20.11.71 NMAC, *Municipal Solid Waste Landfills*, Ex. B. EHD also requests that the Air Board address EPA requirements on new landfills by amending 20.11.63, NMAC, *New Source Performance Standards for Stationary Sources*. Ex. C. These proposals are described in more detail below.

7. Further, EHD's petition addresses additional federal air quality standards, beyond those for landfills, through proposed amendments not only to 20.11.63 NMAC but also to

facility emits more than 34 million megagrams of NMOC annually or if certain monitoring techniques show a surface methane emission concentration of 500 million parts per million methane or greater. Details on applicability of the federal standards and their specific emission control requirements are provided in 40 CFR Part 60, Subpart XXX for new landfills and 40 CFR Part 60, Subpart Cf for existing landfills.

⁹ See the Federal Register publications cited in footnote 6, above, for details on implementation requirements that state and local air quality jurisdictions must meet. See also 42 U.S.C. 7411(c), (d) and 40 CFR Part 60, Subpart B.

20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*. Ex. D.

8. As required by 20.11.82.18(B) NMAC, *Rulemaking Procedures – Air Quality Control Board*, EHD's proposed state plan and amendments to 20.11.63 NMAC, 20.11.64 NMAC, and 20.11.71 NMAC are attached to this petition, with regulatory changes indicated in legislative edit format, by strikeouts and underlines as appropriate and individual line numbers included.

9. EHD's proposed state plan for existing landfills details how Albuquerque – Bernalillo County would, upon the plan's adoption by the Air Board, implement the EPA standard for these facilities, which is set forth in 40 CFR Part 60, Subpart Cf. The proposed state plan complies with all provisions in the EPA standard, as well as general EPA requirements for any state plan for existing sources under Section 111(d) of the Clean Air Act, as set forth in 40 CFR Part 60, Subpart B. Ex. A.

10. The state plan for existing landfills lists and describes the three landfills in Albuquerque and Bernalillo County that meet EPA criteria which make them subject to the EPA standard for such landfills. These facilities are: Cerro Colorado, South Broadway and Kirtland Air Force Base.

11. In addition to adoption of the state plan for existing landfills, EHD proposes to address the EPA standard by amending 20.11.71 NMAC, *Municipal Solid Waste Landfills*. Ex. B. EHD's proposed amendments would incorporate by reference the provisions of the federal standard and, where necessary, add additional details to facilitate compliance by local regulated sources. *See* EHD's proposed amended 20.11.71 NMAC, Ex. B (p. 1, ln 11-17, 19, 24, 27-31, 40-41, 43-45, 47-56; p. 2, ln 1-29, 31-33, 35-42, 44-45, 48-50; p. 3, ln 28-56, p. 4, ln 1).

12. Any new landfill that might be constructed, reconstructed, or modified in Albuquerque and Bernalillo County in the future will be subject to the EPA standard on new landfills. EHD proposes to incorporate this standard into local regulations by reference through the proposed amendments to 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*. See EHD's proposed amended 20.11.63 NMAC, Ex. C (p. 1, ln 11, 18, 21, and 24-27; p. 2, ln 5 and 7).

13. EHD's proposed amendments to 20.11.63 NMAC would also incorporate by reference virtually all¹⁰ of the federal New Source Performance Standards, not just the standard for new landfills, adopted by EPA pursuant to Section 111 of the Clean Air Act as of January 23, 2017 and codified at 40 CFR, Part 60. The Air Board's current 20.11.63 NMAC only incorporates by reference EPA standards as of September 13, 2013. See 20.11.63.11 NMAC. EHD proposes to update this incorporation by reference as a routine update of its delegated authority from EPA to implement and enforce the latest federal standards.

14. EHD further proposes amendments to 20.11.64 NMAC, Ex. D (p. 1, ln 12, 33, 36, and 39-42; and p. 2, ln 21, 24, 29 and 32). These amendments would not affect landfills subject to the recently promulgated EPA standards for such facilities described above. However, EHD customarily amends 20.11.63 and 20.11.64 NMAC in tandem. Doing so incorporates by reference the most recent federal standards for each regulation¹¹ and updates EHD's delegated implementation and enforcement authority from EPA. 20.11.64 NMAC incorporates by reference National Emission Standards for Hazardous Air Pollutants and National Emission Standards for Hazardous Air Pollutants for Source Categories. These federal standards are

¹⁰ The only exception is 40 CFR Part 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters.

¹¹ Part 64 excludes regulations in 40 CFR Part 61 that regulate various radioactivity related sources. See 20.11.64.2(B) NMAC.

codified at 40 CFR Parts 61 and 63. The amendments to 20.11.64 NMAC proposed by EHD would incorporate by reference these federal standards, which have been adopted by EPA pursuant to Section 112 of the Clean Air Act, through January 23, 2017. The current 20.11.64 NMAC incorporates only such standards adopted by EPA through September 13, 2013. *See* 20.11.64.11 and 12 NMAC.

15. If the Air Board adopts the above described state plan and regulatory amendments, EHD also petitions the Air Board to authorize EHD to submit the plan and amended regulations to EPA for approval under Sections 111 and 112 of the Clean Air Act and to request that EPA update local delegated authority to implement and enforce federal standards.

16. The Air Board is authorized to adopt this proposed regulatory change under NMSA 1978 § 74-2-5(B)(1), Revised Ordinances of the City of Albuquerque § 9-5-1-4, and Bernalillo County Ordinances § 30-33.

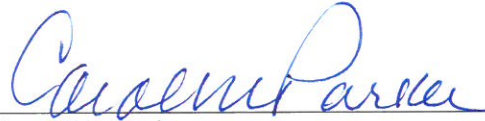
17. EHD estimates that the hearing will take no more than one hour.

WHEREFORE, EHD requests that the Air Board,

- a. Schedule a hearing to consider the merits of EHD's petition;
- b. Authorize EHD to provide a court reporter for the hearing;
- c. Designate a hearing officer for the hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that an original and fifteen copies of this Petition to Adopt EHD's Landfill Plan and to Amend 20.11.63, 20.11.64 and 20.11.71 NMAC were hand-delivered on

January 23, 2017, to:

Andrew Daffern, Hearing Clerk
Albuquerque-Bernalillo County Air Quality Control Board
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103



Carol M. Parker
Assistant City Attorney

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