



This document is scheduled to be published in the Federal Register on 05/24/2012 and available online at <http://federalregister.gov/a/2012-12497>, and on [FDsys.gov](http://FDsys.gov)

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2007-0154; FRL- 9672-7]

### Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Fees for Permits and Administrative Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions which repeal and replace existing rules, and revisions to the applicable State Implementation Plan (SIP) for New Mexico Albuquerque/Bernalillo County, which relate to fee requirement regulations. The repeal and replace and SIP revisions approved today will address Clean Air Act (the Act or CAA) requirements related to fees for, in part, reviewing and acting on specific permit applications received by the City of Albuquerque/Bernalillo County Environmental Health Department (EHD or Department); fees to partially offset the administrative cost of permit-related administrative hearings; funding for small business stationary sources; and fees to cover administrative expenses incurred by the Department in implementing the New Mexico Air Quality Control Act, the joint Air Quality Control Board (AQCB) ordinances, and the Albuquerque/Bernalillo County AQCB regulations of the New Mexico Statutes Annotated (NMSA) 1978. EPA finds that these rules and revisions comply with applicable provisions of the CAA and is approving them into the SIP. This action is being taken under section 110 of the Act.

**DATES:** This final rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2007-0154. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The New Mexico submittals are also available for public inspection at the County Air Agency listed below during official business hours by appointment:

Air Quality Division, Environmental Health Department, 3rd Floor, Suite 3023, One Civic Plaza NW, Albuquerque, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7289; fax number (214) 665-6762; e-mail address mohr.ashley@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA. This supplementary information section is arranged as follows:

- I. What is the Background for This Action?
- II. What Final Action is EPA Taking?
- III. Statutory and Executive Order Reviews

#### **I. What is the Background for This Action?**

The background for today’s action is discussed in detail in our November 4, 2011, proposal (76 FR 68385). In that notice, we proposed to approve four submittals from the State of New Mexico that apply in Bernalillo County, pursuant to the CAA, that address the fee requirements specified in the CAA section 110(a)(2). Specifically, the SIP revisions address section 110(a)(2) Clean Air Act (the Act or CAA) requirements related to fees for, in part, reviewing and acting on specific permit applications received by the City of

Albuquerque/Bernalillo County Environmental Health Department (EHD or Department); fees to partially offset the administrative cost of permit-related administrative hearings; funding for small business stationary sources; and fees to cover administrative expenses incurred by the Department in implementing the New Mexico Air Quality Control Act, the joint Air Quality Control Board (AQCB) ordinances, and the Albuquerque/Bernalillo County AQCB regulations of the New Mexico Statutes Annotated (NMSA) 1978. New Mexico's SIP submittals are dated May 24, 2011, September 7, 2004, February 2, 2007, and December 15, 2010.

Our November 4, 2011, proposal provides a detailed description of the submittals and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on December 5, 2011, and we did not receive any comments.

## **II. What Final Action is EPA Taking?**

We are fully approving the New Mexico SIP revisions submitted on May 24, 2011, September 7, 2004, February 2, 2007, and December 15, 2010, relating to permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit. This action is being taken under section 110 of the CAA.

## **III. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60**

**days from date of publication of this document in the Federal Register].** Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 3, 2012.

Samuel Coleman, P.E.  
Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

**PART 52 - [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart GG – New Mexico**

1. The second table in § 52.1620(c) entitled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” is amended as follows:

a. Removing the heading “Albuquerque/Bernalillo County, Air Quality Control Regulations” and removing the entry for Section 21, Permit Fees; and

b. Adding a new entry for Part 2 (20.11.2 NMAC) in numerical order by part number to read as follows.

**§ 52.1620 Identification of plan**

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(c) \* \* \*

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
* * * * *	* * *			
Part 2 (20.11.2 NMAC)	Fees	1/10/2011	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	NOT in SIP: references to Operating Permits (20.11.42 NMAC) in subsection (A) of 20.11.2.2, subsection (B) of 20.11.2.11, subsection (B) of 20.11.2.12, subsections (A) and (B) of 20.11.2.13, and subsection (B) of 20.11.2.21.
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[FR Doc. 2012-12497 Filed 05/23/2012 at 8:45 am; Publication Date: 05/24/2012]