

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO AMEND TITLE 20, CHAPTER 11 OF THE NEW
MEXICO ADMINISTRATIVE CODE TO REQUIRE REVIEW AND CONSIDERATION OF
HEALTH, ENVIRONMENT AND EQUITY IMPACTS

AQCB Petition No.

Mountain View Neighborhood Association,
Mountain View Community Action.
Friends of Valle de Oro,

Petitioners.

The Mountain View Neighborhood Association, Mountain View Community Action and Friends of Valle de Oro (collectively “Mountain View Coalition”), respectfully petition the Albuquerque-Bernalillo County Air Quality Control Board (“Board”) to hear and adopt the following proposed regulatory amendments to Title 20, Chapter 11 of the New Mexico Administrative Code, pursuant to its authority under the New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-1 *et seq.* (the “Act”), as amended, its implementing regulations, and NMAC 20.11.82.1 *et seq.* The proposed regulatory change is attached as Exhibit A.

The Mountain View Coalition submits this Petition and proposed rule change because public health and environmental impacts from air pollution in Albuquerque and Bernalillo County are heavily concentrated in low-income and neighborhoods of color causing increased risk of disease and lower life expectancy in those neighborhoods. In order to begin to address the profound inequalities in exposure to pollutants and attendant adverse health outcomes, the proposed rule requires that the Albuquerque Environmental Health Department, Air Quality Division (“Department”) consider the health, environmental and equity impacts of any new operation permitted under the Act and allow the Department to approve appropriate mitigation of those impacts. In support of its petition, the Mountain View Coalition STATES:

THE BOARD HAS THE LEGAL AUTHORITY TO ENACT THE PROPOSED RULE

1. The Board is authorized to adopt the proposed changes to the Board’s regulations pursuant to NMSA 1978, § 74-2-5(B)(1) and 20.11.82.1 *et seq.* NMAC.

2. Section 74-2-5(B)(1) specifically allows the Board to “adopt, promulgate ... and amend” regulations, consistent with the Act.

3. Further, the Act provides that Board regulations “shall prevent or abate air pollution.” NMSA 1978, § 74-2-5(B)(1).

4. The Act defines “air pollution” as emitting air contaminants into the outdoor atmosphere “in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare ... or the reasonable use of property.” *Id.* at § 74-2-2(B).

5. Any regulation the Board promulgates must be consistent with the Act. § 74-2-5(B)(1). *See, Wylie Bros. Contracting Co. v. Albuquerque-Bernalillo County Air Quality Control Board*, 1969-NMCA-089 ¶ 54, 80 N.M. 633, 644 (Local board regulations need not be identical to state regulations adopted by the state board, only consistent with statutory language).

6. The proposed regulation is consistent with the Act because it is intended to allow the Department and Board to evaluate the health and environmental equity impacts of air emissions from any proposed source on the environment, property and human health, assisting the Department and Board in preventing and abating air pollution.

7. Moreover, the proposed regulation is authorized by the Act. To achieve the goal of preventing and abating air pollution, the Act gives the Board the authority to require “any person” emitting “any air contaminant” to install, use and maintain emission monitoring devices,

sample emissions, and “provide ... reasonable information relating to the emission of air contaminants.” NMSA 1978, § 74-2-5(C)(6).

8. The Act also provides that the Board may adopt rules more stringent than the federal Clean Air Act or federal regulations or regulate areas, which are not regulated pursuant to the Clean Air Act or federal regulations, provided those rules will be more protective of public health and the environment. *Id.* at § 74-2-5(G).

9. In promulgating its regulations, the Board must give the weight it deems appropriate to all facts and circumstances including the “character and degree of injury to or interference with health, welfare, visibility and property,” “the public interest,” and the “technical practicability and economic reasonableness of reducing or eliminating air contaminants.” *Id.* at § 74-2-5(F).

10. Clean Air Act is the federal law that serves as the authority for the New Mexico Air Quality Control Act. Congress declared that the Clean Air Act was intended “to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1). As such, the rule also furthers the purposes of the Clean Air Act as it allows the Board to protect and promote public health.

OTHER JURISDICTIONS HAVE ENACTED HEALTH, ENVIRONMENTAL AND EQUITY IMPACTS ANALYSES

11. Other jurisdictions have acknowledged the health and environmental problems associated with the disparate impacts of pollution on low-income communities and communities of color, and have enacted rules to address those disparities.

12. In 2008, Minnesota’s legislature amended the Minnesota Environmental Policy Act to allow the Minnesota Pollution Control Agency (“MPCA”) to evaluate and address the

cumulative air impacts in a specific area of Minneapolis. Ellickson, Kristie, *et al.*, *Cumulative Risk Assessment and Environmental Equity in Air Permitting: Interpretation, Methods, Community Participation and Implementation of a Unique Statute*, 8 Int. J. Environ. Res. Public Health 4140 (2011).

13. The amendment was enacted specifically to address the disproportionate impacts of air pollution in a low-income and minority area of Minneapolis that contained dense concentrations of polluting industry. *Id.* at 4142.

14. The statute requires not only that the MPCA consider the cumulative risks associated with sources of air pollution, but also environmental equity, i.e., the fairness of placing a polluting source in neighborhoods already burdened by air pollution.

15. The state of New Jersey has also enacted legislation, with implementing regulations pending, that is intended to remedy disproportionate air pollution impacts on communities of color. N.J. Rev. Stat. §§ 13:1d-157 – 161 (2021).

16. New Jersey’s statute requires that an applicant for certain permits, including air emission permits, in an overburdened community complete an “environmental justice impact statement” that discloses and evaluates the environmental stressors of the proposed facility and existing environmental stressors. *Id.* at §13:1d-160a.

17. New Jersey’s statute also requires the New Jersey Department of Environmental Quality to deny a permit application if it finds that the cumulative environmental stressors in an overburdened community are disproportionate compared to communities within the state that are not overburdened. *Id.* at § 13:1d-160c.

THE HEALTH, ENVIRONMENT AND EQUITY IMPACTS ANALYSIS RULE IS NECESSARY IN ALBUQUERQUE AND BERNALILLO COUNTY TO PREVENT AND ABATE AIR POLLUTION AND PROTECT PUBLIC HEALTH, THE ENVIRONMENT AND PROPERTY

18. This rule is necessary because the impacts of air pollution on low-income communities and communities of color in Bernalillo County are significant. The proposed regulation provides information necessary for the Department and Board to make decisions that better protect residents' health, environment and property.

19. Air pollution is associated with a range of health problems, including cancer, heart disease and respiratory illnesses, among other diseases. *See, e.g.,* Morello-Frosch, R. and Jesdale, B., *Separate and Unequal: Residential Segregation and Estimated Cancer Risks Associated with Ambient Air Toxics in U.S. Metropolitan Areas*, 114 *Environmental Health Perspectives* 386 (2006); Kampa, Marilena and Castanas, Elias, *Human Health Effects of Air Pollution*, 151 *Environmental Pollution* 362 (Jan. 2008); Straif, K., *et al.*, eds., *Air Pollution and Cancer*, International Agency for Research on Cancer, Scientific Publication No. 161 (2013), available at: <http://www.iarc.fr/en/publications/books/sp161/index.php>; Danesh Yadzi, *et al.*, *Long-Term Association of Air Pollution and Hospital Admissions Among Medicare Participants Using a Doubly Robust Additive Model*, 143 *Circulation* 1584 (April 20, 2021).

20. The health impacts of air pollution also negatively impact the economy, such that this rule promotes a robust and functional economy in Bernalillo County. *See, e.g.* Benjamin EJ, Virani SS, Callaway CW, *et al.*, *Heart disease and stroke statistics—2018 update: a report from the American Heart Association*, 137 *Circulation* (2018); *see also*, Centers for Disease Control and Prevention, *Health and Economic Costs of Chronic Diseases*, available at: <https://www.cdc.gov/chronicdisease/about/costs/index.htm#ref3>.

21. Low-income and communities of color are particularly vulnerable to the effects of air pollution. *See, e.g.,* Morello-Frosch, *et al.*, *Environmental Justice and Regional Inequality in Southern California: Implications for Future Research*, 110 *Environmental Health Perspectives* 149 (2002); Stewart, John, *et al.*, *Environmental Justice and Health Effects of Urban Air Pollution*, 107 *J. of the Nat'l Med. Ass'n* 50 (Feb. 2015); Pastor, Manuel, *et al.*, *The Air is Always Cleaner on the Other Side: Race, Space, and Ambient Air Toxics Exposures in California*, 27 *J. of Urban Affairs* 127 (Dec. 2, 2016).

22. Low-income communities and communities of color are also particularly vulnerable to adverse health impacts of air pollution because polluting industries disproportionately locate in those communities. *Environmental Justice and Regional Inequality in Southern California: Implications for Future Research*, at 151-152.

23. In addition to being overburdened by polluting industry, low-income and communities of color have less access to health care and nutritious food than more advantaged communities. *See, e.g.,* Riley, Wayne J., *Health Disparities: Gaps in Access, Quality and Affordability of Medical Care*, 123 *Transactions of the Am. Clinical and Climatological Ass'n* 167 (2012); Bower, Kelly M., *et al.*, *The Intersection of Neighborhood Racial Segregation, Poverty and Urbanicity and its Impact on Food Store Availability in the United States*, 58 *Preventative Medicine* 33 (Jan. 2014).

24. These “social determinants of health,” or the conditions in places where people live, work and play that affect health, collectively amplify the health impacts of concentrated air emissions on overburdened communities. *See, e.g.,* Cook, Quindelyn, *et al.*, *The Impact of Environmental Injustice and Social Determinants of Health on the Role of Air Pollution in*

Asthma and Allergic Diseases in the United States, 148 J. of Allergy and Clinical Immunology 1089 (Nov. 2021).

25. As a result, public health professionals have recommended analyzing the cumulative health effects of multiple air contaminants from multiple sources. *Environmental Justice and Regional Inequality in Southern California: Implications for Future Research* at 149.

26. Like similar communities elsewhere in the United States, low-income communities and communities of color in Albuquerque and Bernalillo County are disproportionately impacted by air pollution and suffer disproportionate health problems because of those impacts.

27. A 2012 study on public health, pollution exposure, poverty and race demonstrates that low-income and minority communities in Bernalillo County have a greater risk than more affluent and non-minority communities to being exposed to environmental pollutants. Joint Center for Political and Economic Studies, *Place Matters for Health in Bernalillo County: Ensuring Opportunities for Good Health for All* (Sept. 2012) at 17-18 (“Good Health for All Study”). A copy of that study is attached as Exhibit B.

28. The Good Health for All Study examined the racial and economic data for census tracts in Bernalillo County and compared those data to data about life expectancy and sources of environmental pollution in the census tracts studied. *Id.* at 2.

29. The Good Health for All Study found that neighborhoods with higher populations of Latinos and recent immigrants with high levels of poverty are more likely to contain dense concentrations of polluting facilities. *Id.* at 16; Map 11.

30. These neighborhoods are located primarily in Downtown, the Southeast Heights, the South Valley and the North Valley. *Id.*

31. Further, people in these “high risk neighborhoods” have an elevated risk for adverse health impacts and a shorter life expectancy. *Id.* at 17-19; 18, Figs. 6, 7.

32. Conversely, neighborhoods with higher proportions of White and wealthy residents have a lower concentration of toxic facilities and a longer life expectancy, and are considered “low risk neighborhoods”. *Id.*

33. Indeed, the difference in life expectancy between high risk neighborhoods and low risk neighborhoods is dramatic. The residents of high risk neighborhoods can expect to live an average of 5.2 fewer years than residents living in low risk neighborhoods. *Id.* at 1,13, Fig. 5.

34. The Good Health for All Study recommends several kinds of impact analyses as ways to address increased pollution risks in low-income and minority communities. *Id.* at 19-20.

35. Both the recommended impact assessments include evaluating the cumulative and combined impacts of multiple pollution sources. *Id.*

36. The Good Health for All Study recommendations echo those of the 2007 Environmental Justice Task Force (“Task Force”) that the Board created to review and evaluate the Board’s air quality permitting policies and practices.

37. The Task Force found that the Board’s policies, procedures and regulations, which are still in effect today, do not adequately address environmental and public health issues in communities disproportionately burdened by air pollution. Environmental Justice Task Force, Final Report Submitted to Albuquerque-Bernalillo County Air Quality Control Board at 5 (2008).

38. The Task Force recommended that the Board adopt cumulative environmental impact assessment provisions. *Id.*

39. For all the above reasons, the Mountain View Coalition requests that the Board hear and adopt the proposed health, environmental and equity impact regulation because the regulation will allow the Board to address the cumulative and disparate burden of air pollution on Bernalillo County residents living in lower income communities of color. Petitioners anticipate a hearing on this Petition will take approximately five (5) days.

Respectfully submitted this 21st day of November, 2022.

NEW MEXICO ENVIRONMENTAL LAW
CENTER

By: _____

Eric Jantz
Maslyn Locke
722 Isleta Boulevard SE
Albuquerque, New Mexico 87105
(505) 989-9022
ejantz@nmelc.org
mlocke@nmelc.org

Attorneys for Petitioners