

Mountain View Coalition

Mountain View Neighborhood Association • Mountain View Community Action •
Friends of Valle de Oro National Wildlife Refuge



For Immediate Release

Friday, January 12, 2024

Media Contacts:

- Lauro Silva, President, Mountain View Neighborhood Association, alcoat1944@gmail.com, (505) 720-4539
- Marla Painter, President, Mountain View Community Action, marladesk@gmail.com, (505) 220-3969
- Forest Graber, President, Friends of Valle de Oro NWR, forest@friendsofvallledeoro.org, (505) 269-0108
- Eric Jantz, Legal Director, NMELC, ejantz@nmelc.org, (505) 980-5239
- Maslyn Locke, Senior Staff Attorney, NMELC, mlocke@nmelc.org, (505) 231-7130
- Dr. Sofia Martinez, Co-Coordinator, Los Jardines Institute, florecermucho1953@gmail.com, 505-573-1904

CITY COUNCIL INTIMIDATION RESULTS IN RUSHED AIR BOARD REGULATION HEARING

New HEEI Rule Unlikely to Protect Overburdened Communities

ALBUQUERQUE, NM —The new Health, Environment, and Equity Impacts (HEEI) regulation passed by the Air Quality Control Board last month on December 11th has finally been [published](#) on the Joint Albuquerque-Bernalillo County Air Quality Control Board docket. (See Docket No. 242, pp. 22-23).

The Mountain View Coalition, represented by the New Mexico Environmental Law Center, continues to have questions about what the new rule means, how it will work, and most importantly, whether it will, in fact, protect predominantly low-income and People of Color communities like Mountain View that have been targeted with toxic and polluting industry for decades in Bernalillo County.

Unlike the rule proposed by the Coalition, which would have required Albuquerque's Environmental Health Department to deny air pollution permits in overburdened neighborhoods in some instances, the rule passed by the Air Board only requires polluters to utilize "Best Available Control Technology" under certain circumstances and does not require permit denial in areas that are already overburdened with significant health-related impacts from air pollution.

The two-page regulation defines an overburdened area as the "twenty percent of census block groups in Bernalillo County that experience the highest cumulative environmental and public health stressors (using the most recent version of the Environmental Protection Agency's Environmental Justice (EJ) Screen and New Mexico Department of Health's New Mexico Indicator Based Information Systems (NMIBIS) as online resources, considering at least the following: environmental factors, health indicators, and social determinants of health indicators as defined in this regulation."

NMELC Senior Staff Attorney Maslyn Locke said, "While we can't say for certain the impacts of the final rule passed by the Air Board, what we do know is that **the deliberation on the final**

rule was unnecessarily rushed due to the unprecedented actions taken by the City Council to intimidate a highly qualified Board and stop a legal rulemaking, likely resulting in a rule that does not address the concerns impacted community members brought forward at the hearing.”

The Air Board heard testimony and public comment for six days from Dec. 4 through Dec. 11 at the public hearing held at the Albuquerque Convention Center. Along with the Mountain View Coalition (made up of three local groups—the Mountain View Neighborhood Association, Mountain View Community Action, and Friends of Valle de Oro National Wildlife Refuge), represented by NMELC, other parties in support of the HEEI included Dr. Sofia Martinez, Co-Coordinator of Los Jardines Institute, and Manuel Criollo, a community member, both represented by the UNM Natural Resources & Environmental Law Clinic, as well as the Pueblo of Isleta. Opposition parties included the University of New Mexico and deep-pocketed industrial polluters such as the National Nuclear Safety Administration, Kirtland Air Force Base, Sandia Labs and multiple industrial corporations and associations.

More than 100 members of the public spoke during public comment in person and over Zoom, virtually unanimously in favor of the community-driven, historic and potentially precedent-setting cumulative impacts regulation that was filed by the Mountain View Coalition in November 2022.

The Air Board, however, only spent a few hours deliberating on the final rule in a process that was often confusing and rushed, because the City Council’s deadline that would purge the Board of public health professionals and scientists was looming.

After the first day of the hearing, the City Council voted to override the Mayor's veto of two bills designed to stop the hearing and prevent the environmental justice regulation from being adopted. After the vote, on the second day of the hearing, City Councilor Dan Lewis and a City Attorney disrupted public comment and [announced](#) from the podium that they considered the hearing illegal.

One member of the Air Board responded to Lewis by saying that his incorrect and misleading statements about the Air Board on the Council website and in the local newspaper had [endangered](#) her family. **These intimidation tactics undoubtedly put tremendous pressure on the Air Board to conclude the hearing swiftly, before the bills went into effect.**

Eric Jantz, NMELC Legal Director, said, "Although the Air Board's decision falls short of our expectations, we appreciate its effort under tremendously difficult circumstances. **The City Council's authoritarian and likely illegal interference with an ongoing rulemaking proceeding authorized by state law was, and continues to be, an unprecedented overreach of its authority.** Fueled by local yellow journalism, emphasizing sensationalism rather than facts, the Council's actions undeniably affected the Air Board's ability to carry out its duties as directed by the New Mexico Legislature."

On January 8th, Councilor Lewis was elected president of the Albuquerque City Council. His job at the time of the hearing, according to his LinkedIn account, was Director of Operations for DavidsonTeal, a fuel transport company that is present in the Mountain View community. Interestingly, Councilor Lewis has a [new job](#) as Executive Director of the Asphalt Pavement Association of New Mexico, which stands to benefit financially from lax air quality regulations and enforcement.

The new air permitting regulation now sits in legal limbo. There are 3 pending challenges to the validity of the Dan Lewis bills passed by the City Council, which put a moratorium on the Air Board's actions through February 2024 and removed four City-appointed Air Board members, including members that Councilor Lewis voted to confirm: The Air Board vs. City Council, the Mountain View Coalition vs. City Council, and GCC Rio Grande Cement vs. the Air Board. It is unclear whether any of the parties to the rulemaking will file an appeal of the new rule.

Lauro Silva, President, Mountain View Neighborhood Association, said, "The Health, Environment, and Equity Impacts (HEEI) regulation was submitted as a petition to the Albuquerque-Bernalillo County Air Quality Board (Air Board) after many years of research and collaboration with community groups concerned with air pollution in their respective neighborhoods. Utilizing the Community Based Participatory Research (CBPR) process, the Mountain View Coalition drafted its cumulative impacts, community-driven document and requested legal assistance from the New Mexico Environmental Law Center (NMELC) and presented its petition to the Air Board. The overburdened communities are predominantly 80 percent-plus communities of color—Hispanic, Mexican-American, Chicano and Native American. Local governmental policies have for many decades sent hazardous toxic pollutants into these communities in Bernalillo County via the permitting process. **Intentionally submitting contaminants into our communities is not simply an environmental justice matter, but is objectively environmental racism.**"

Marla Painter, President of Mountain View Community Action, said, "After support from respected organizations such as the American Lung Association, the New Mexico Health Department, the South Valley Coalition of Neighborhood Associations, notable academics in the field of environmental health, and hundreds of Bernalillo County residents, the Board was given three hours to deliberate about a comprehensive proposed regulation. Communities in Bernalillo County that are disproportionately burdened with local sources of air pollution were not rendered any form of justice, due process, or consideration after months of community effort to obtain a proper hearing. The process and product of the hearings are deeply disappointing. This is not a political issue, it is a health and equity issue that needed to be given a proper hearing. Instead, it was used as an opportunity for a political circus instigated by some City Councilors, led by Councilor Dan Lewis.

Dr. Virginia Necochea, Executive Director, NMELC, said, "It is disappointing to share that we remain unclear how the new rule passed by the Air Quality Control Board will better protect communities who have for far too long been overburdened and harmed by industrial pollution. The Air Board's new rule is a step in the right direction but it is evident that there is a long road ahead of us in achieving environmental justice for our clients and communities who remain the most disproportionately impacted by industrial pollution in their backyards. NMELC is strongly committed to addressing and disrupting environmental racism and environmental harm and will continue to explore other options in continuing to protect everyone's fundamental human right to clean air."

Richard Moore, Co-coordinator of Los Jardines Institute, said, "Although justice is long and coming, this HEEI Rulemaking is an important step in protecting overburdened communities and addressing historical injustices."

To add to the confusion, it remains unclear who is currently serving on the Air Board and when they will be meeting next. There are no upcoming meetings scheduled on their [website](#). Bernalillo County and the City of Albuquerque have both indicated interest in creating a working

group to improve the Air Board. The County Commission created a working group, and Chair Barbara Baca and Commissioner Eric Olivas have been appointed to serve on it. They will be meeting with the Air Quality Division and holding listening meetings with stakeholders to make recommendations to the Commission, according to Commissioner Olivas. The City Council passed a similar bill establishing an Air Board Working Group, but the proposal was [vetoed](#) by Mayor Keller in December, again due to the Council's failure to work with the County to address perceived issues with the Joint Albuquerque-Bernalillo County Air Board.

Additionally, the Director of the Environmental Health Department (EHD), Angel Martinez, has been [replaced](#) by an Interim Director, [Paul Rogers](#), who has extensive law enforcement experience but no public health or environmental protection background. The City has put out a [request](#) for nominations for four new Air Board members, with specific areas of expertise requested. There is no slot for members of affected communities.

Despite it all, the Mountain View Coalition will continue to strive to protect their community, including by taking a close look at any maps EHD creates pursuant to the new rule, which is intended to show where overburdened areas exist in Bernalillo County. EHD has until 2025 to create such a map and must consider community impact in doing so.

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