

STATE OF NEW MEXICO

ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF:) EIB NO.:
)
PROPOSED REPEAL AND) 25-10(R)
REPLACEMENT OF 20.7.70)
NMAC - OPERATING)
PERMITS AND TITLE V)
PROGRAM REVISIONS.)

**CERTIFIED
TRANSCRIPT**

BEFORE THE HONORABLE KAREN GARCIA

FRIDAY, JULY 18, 2025

9:23 A.M.

REPORTED BY:

DAVID M. LEE, RMR, CCR,
Certificate Number 50391
New Mexico CCR Number 537
Cumbre Court Reporting Services,
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25-10(R)



UNIVERSITY OF TORONTO
 Faculty of Education

REPEAL AND REPLACEMENT OF 20.7.70 NMAC
HEARING

07/18/2025

25-10(R)

Page 6				Page 8			
1	NMED	Document Depicting	16	1	Santa Fe, New Mexico		
2	Exhibit 12b	Posting of rulemaking information on the NMED "Public Notices" website, May 6, 2025		2	July 18, 2025		
3				3	9:23 a.m.		
4	NMED	Document Depicting	16	4			
5	Exhibit 12c	Posting of rulemaking information on the NM Sunshine Portal, April 24, 2025		5	VICE CHAIRWOMAN TRUJILLO: This		
6				6	is a Hearing in the matter of Proposed		
7	NMED	Rulemaking information made available in NMED's district field offices (English and Spanish), April 23, 2025	16	7	Repeal and Reemployment of 20.20.70		
8	Exhibit 12d			8	NMAC Operating Permits and Title V		
9				9	Program Revision.		
10				10	I will now be turning the		
11	NMED	Document Depicting	16	11	hearing over to Member Garcia; she is		
12	Exhibit 12e	Rulemaking information made available via List Serve (English and Spanish), April 21, 2025		12	going to act as our Hearing Officer		
13				13	for this matter.		
14	NMED	Document Depicting	16	14	HEARING OFFICER GARCIA: Thank		
15	Exhibit 12f	Rulemaking information provided to the NM Legislative Council Service, for distribution to appropriate interim and standing legislative committees, April 23, 2025		15	you, Madam Vice Chair. Let's go ahead		
16				16	and get started.		
17				17	The Hearing will now come to		
18				18	order:		
19				19	Today is Friday, July 18,		
20	NMED	Document Depicting	16	20	2025. My name is Karen Garcia. I		
21	Exhibit 12g	Notice of Proposed Rulemaking published in the Albuquerque Journal (English and Spanish), May 4, 2025		21	have been appointed by the Board to		
22				22	act as Hearing Officer for this		
23	NMED	Document Depicting	16	23	Hearing. I will be advised by Eduardo		
24	Exhibit 12h	Notice of Proposed Rulemaking published in the NM Register (English and Spanish), May 6, 2025		24	Ugarte from the New Mexico Department		
25				25	of Justice.		

Page 7				Page 9			
1	NMED	Document Depicting	16	1	We have already done a roll		
2	Exhibit 12i	Notice of Proposed Rulemaking provided to the NM Land Grant Council, (English and Spanish), April 23, 2025		2	call, so we know that we have a Quorum		
3				3	for this Hearing today.		
4				4	This is a Hearing in EIB		
5	NMED	Document Depicting	16	5	25-10(R) to consider the Proposed		
6	Exhibit 12j	Notice of Proposed Rulemaking provided to the Pueblos, Nations, and Tribes, April 23, 2025		6	Amendments to 20.2.70 NMAC Operating		
7				7	Permits.		
8				8	The Petitioner in this matter		
9	NMED	Document Depicting	16	9	is the New Mexico Environment		
10	Exhibit 13	Letter sent to the Small Business Regulatory Advisory Commission, dated May 13, 2025, to comply with the Small Business Regulatory Relief Act, at 14-4A-1 NMSA 1978		10	Department Air Quality Bureau.		
11				11	Nicholas Maxwell filed a		
12				12	Notice of Appearance and is a party to		
13				13	this proceeding, but did not file a		
14	NMED	Document Depicting	16	14	Notice of Intent to Present Technical		
15	Exhibit 14	Written Direct Testimony of Neal Butt		15	Testimony, nor did he offer any		
16				16	Technical Witnesses.		
17	NMED	Document Depicting	16	17	Jeremy Nichols represents the		
18	Exhibit 15	Proposed floor amendments to Public Review Draft		18	Center for Biological Diversity, and		
19	NMED	Document Depicting	17	19	has also filed a Notice of Appearance,		
20	Exhibit 16	Resumé of Eric Peters		20	but did not file an Intent to Present		
21				21	Technical Testimony, nor any Technical		
22	NMED	Document Depicting	17	22	Witnesses.		
23	Exhibit 17	Written Direct Testimony of Eric Peters		23	Members of the general public		
24				24	may present statements or Non-		
25				25	Technical Testimony at the end of the		
		OPENING STATEMENT BY MR. VIGIL	17				



<p style="text-align: right;">Page 10</p> <p>1 Hearing before the record closes. 2 This Hearing will be 3 conducted in accordance with: 4 The Open Meetings Act; 5 The State Rules Act; 6 The environmental improvement 7 act, and, 8 With the Board's Rulemaking 9 procedures. 10 The Hearing is being recorded 11 by David Lee from Cumbre Court 12 Reporting Services. Any parties 13 interested in obtaining a copy of the 14 transcript may contact the Court 15 Reporter directly at the conclusion of 16 the Hearing. 17 Copies of the Proposed 18 Amendments have been available on the 19 Department's website and at the 20 Department's office, as well as to 21 interested parties upon request. 22 The Hearing will be conducted 23 in a fair and impartial manner to 24 assure that the relevant facts are 25 fully elicited, and to provide a</p>	<p style="text-align: right;">Page 12</p> <p>1 rule on any objections to evidence and 2 will admit any relevant evidence, 3 unless I determine that the evidence 4 is incompetent or unduly repetitious. 5 Petitioner will present its 6 Direct Testimony on the Proposed 7 Amendments. Petitioner's witnesses 8 may stand for Cross-Examination by 9 Mr. Maxwell, Mr. Nichols, the Board, 10 and any other person in attendance. 11 Mr. Maxwell and Mr. Nichols will then 12 have an opportunity to present an 13 Opening Statement as well. 14 If any other persons, 15 including members of the public, wish 16 to present Non-Technical Testimony 17 about the Proposed Amendments, they 18 may testify as called upon. 19 If you are a member of the 20 public, please e-mail the Board's 21 Administrator at pamela.jones@state. 22 nm.us, to notify us that you intend to 23 present Non-Technical Testimony, and 24 include any exhibits being offered. 25 Because this Hearing is being</p>
<p style="text-align: right;">Page 11</p> <p>1 reasonable opportunity for all persons 2 to be heard without making the Hearing 3 unreasonably lengthy or burdening the 4 record with unnecessary repetition. 5 The Rules of Civil Procedure 6 and Evidence shall not apply to this 7 Hearing. 8 As Hearing Officer I will 9 make such orders as may be necessary 10 to preserve decorum and to protect the 11 orderly Hearing process. To that end 12 I ask that all persons at the Hearing 13 please silence their cell phones. If 14 appearing virtually, please be sure to 15 mute yourself until you wish to speak 16 to help minimize background noise. 17 The Hearing shall proceed as 18 follows: 19 The Board staff will present 20 Prefiled Exhibits. Exhibits admitted 21 into evidence are available for review 22 by the public. 23 All testimony will be taken 24 under oath. 25 As Hearing Officer I will</p>	<p style="text-align: right;">Page 13</p> <p>1 transcribed, please remember that only 2 one person may speak at any one time. 3 Please direct your testimony 4 and answers to questions to the Board 5 Members. 6 Any person who testifies is 7 subject to Cross-Examination on the 8 subject matter of his or her 9 testimony, and on matters affecting 10 his or her credibility. 11 The Petitioner has the option 12 of presenting its witnesses as a panel 13 for purposes of Cross-Examination. 14 Cross-Examination by any other party 15 will be conducted at the conclusion of 16 each presentation, followed by 17 questions by the Board Members, the 18 Hearing Officer, and followed by any 19 questions by the public. 20 Any person who wishes to make 21 a brief Closing Statement may do so at 22 the conclusion of the Hearing in the 23 same order as the Direct Testimony. 24 We will now proceed: 25 Does the Board staff have any</p>



<p style="text-align: right;">Page 14</p> <p>1 Exhibits to introduce as evidence? 2 MS. JONES: Madam Hearing 3 Officer, I received the New Mexico 4 Environment Department's Notice of 5 Intent to Present Testimony and 18 6 exhibits. 7 HEARING OFFICER GARCIA: Okay. 8 Thank you. 9 Are there any other exhibits 10 that anyone wishes to enter into the 11 record? 12 Are there any -- 13 Yes, go ahead. 14 MR. VIGIL: Yes. If there is no 15 objection, the Environment Department 16 moves to enter NMED Exhibits 1 through 17 18 into the record. 18 HEARING OFFICER GARCIA: Thank 19 you, Mr. Vigil. 20 Are there any objections to 21 these being entered into the record? 22 Okay. If there are no 23 objections, these exhibits are hereby 24 entered into the record as Exhibits 1 25 through 18.</p>	<p style="text-align: right;">Page 16</p> <p>1 received in evidence.) 2 (NMED Exhibit 12b was 3 received in evidence.) 4 (NMED Exhibit 12c was 5 received in evidence.) 6 (NMED Exhibit 12d was 7 received in evidence.) 8 (NMED Exhibit 12e was 9 received in evidence.) 10 (NMED Exhibit 12f was 11 received in evidence.) 12 (NMED Exhibit 12g was 13 received in evidence.) 14 (NMED Exhibit 12h was 15 received in evidence.) 16 (NMED Exhibit 12i was 17 received in evidence.) 18 (NMED Exhibit 12j was 19 received in evidence.) 20 (NMED Exhibit 13 was received 21 in evidence.) 22 (NMED Exhibit 14 was received 23 in evidence.) 24 (NMED Exhibit 15 was received 25 in evidence.)</p>
<p style="text-align: right;">Page 15</p> <p>1 (NMED Exhibit 1 was received 2 in evidence.) 3 (NMED Exhibit 2 was received 4 in evidence.) 5 (NMED Exhibit 3 was received 6 in evidence.) 7 (NMED Exhibit 4 was received 8 in evidence.) 9 (NMED Exhibit 5 was received 10 in evidence.) 11 (NMED Exhibit 6 was received 12 in evidence.) 13 (NMED Exhibit 7 was received 14 in evidence.) 15 (NMED Exhibit 8 was received 16 in evidence.) 17 (NMED Exhibit 8a was received 18 in evidence.) 19 (NMED Exhibit 9 was received 20 in evidence.) 21 (NMED Exhibit 10 was received 22 in evidence.) 23 (NMED Exhibit 11 was received 24 in evidence.) 25 (NMED Exhibit 12a was</p>	<p style="text-align: right;">Page 17</p> <p>1 (NMED Exhibit 16 was received 2 in evidence.) 3 (NMED Exhibit 17 was received 4 in evidence.) 5 (NMED Exhibit 18 was received 6 in evidence.) 7 HEARING OFFICER GARCIA: We'll 8 begin with Technical Testimony from 9 the Petitioner. 10 If the Petitioner wishes to 11 make an Opening Statement, a brief 12 Opening Statement, go right ahead. 13 MR. VIGIL: Thank you, madam 14 Hearing Officer, Madam Vice Chair, 15 Members of the Board: 16 Before I give my Opening 17 Statement we have 3 witnesses, and 18 typically we have our witnesses sit as 19 a panel for Cross-Examination. If the 20 Board doesn't have any objection, I 21 would like to propose that we have our 22 witnesses sit here (indicating). Is 23 that okay? 24 HEARING OFFICER GARCIA: Yes, 25 that would be fine.</p>



<p style="text-align: right;">Page 18</p> <p>1 MR. VIGIL: Thank you so much.</p> <p>2 HEARING OFFICER GARCIA: Thank</p> <p>3 you.</p> <p>4 MR. VIGIL: Madam Hearing</p> <p>5 Officer, Madam Vice Chair, Members of</p> <p>6 the Board:</p> <p>7 The Department is here today</p> <p>8 requesting that the Board --</p> <p>9 HEARING OFFICER GARCIA: Excuse</p> <p>10 me. Excuse me. Sorry to interrupt.</p> <p>11 If you could identify</p> <p>12 yourself, please.</p> <p>13 MR. VIGIL: Oh, so sorry.</p> <p>14 Chris Vigil, Assistant</p> <p>15 General Counsel, New Mexico</p> <p>16 Environment Department.</p> <p>17 HEARING OFFICER GARCIA: Thank</p> <p>18 you.</p> <p>19 MR. VIGIL: Madam Hearing</p> <p>20 Officer, Madam Vice Chair, Members of</p> <p>21 the Board:</p> <p>22 The Department is here today</p> <p>23 requesting that the Board Repeal and</p> <p>24 Replace 20.2.70 NMAC Operating</p> <p>25 Permits, and to authorize the</p>	<p style="text-align: right;">Page 20</p> <p>1 neither did Mr. Nichols, so the</p> <p>2 Department assumes that both are here</p> <p>3 to protect the public interest with</p> <p>4 regard to any irregularities that may</p> <p>5 occur, and we welcome them.</p> <p>6 On a final note, the Board</p> <p>7 may hear Public Comment today</p> <p>8 regarding SSM Litigation Group v EPA,</p> <p>9 Case Number 23-1267, a United States</p> <p>10 Circuit Court case from the District</p> <p>11 of Columbia which is awaiting a</p> <p>12 decision.</p> <p>13 In summary, the SSM</p> <p>14 Litigation Group is challenging the</p> <p>15 EPA's mandate to remove Affirmative</p> <p>16 Defense provisions because the courts</p> <p>17 have not specifically authorized the</p> <p>18 EPA to do so. There seems to be some</p> <p>19 hope that the courts will require the</p> <p>20 EPA to rescind the mandate. However,</p> <p>21 the United States, which, you know,</p> <p>22 represents the current Presidential</p> <p>23 Administration, is defending the</p> <p>24 mandate, and SSM's claims to the</p> <p>25 challenge seem unlikely to succeed.</p>
<p style="text-align: right;">Page 19</p> <p>1 Department to submit the regulatory</p> <p>2 changes to the Environmental</p> <p>3 Protection Agency, or EPA, for</p> <p>4 approval as a Proposed Revision to the</p> <p>5 New Mexico Title V Permit program.</p> <p>6 The Department proposes to</p> <p>7 Repeal and Replace 20.2.70 NMAC to</p> <p>8 address a mandate by the United States</p> <p>9 Environmental Protection Agency</p> <p>10 directing the removal of certain</p> <p>11 Affirmative Defense provisions in the</p> <p>12 New Mexico Title V Permit program at</p> <p>13 20.2.70.304 NMAC, "Emergency</p> <p>14 Provision."</p> <p>15 The detail of the EPA's</p> <p>16 mandate and communications between the</p> <p>17 EPA and the Department will be set</p> <p>18 forth in detail by the Department's</p> <p>19 witnesses Neal Butt, Eric Peters, and</p> <p>20 Julia Kuhn.</p> <p>21 The Department has received</p> <p>22 no Public Comments on the Petition,</p> <p>23 nor has any party entered an</p> <p>24 appearance in opposition. Mr. Maxwell</p> <p>25 did not file a Notice of Intent, and</p>	<p style="text-align: right;">Page 21</p> <p>1 The Department is asking the</p> <p>2 Board to adopt the Petition today. In</p> <p>3 the unlikely event that the courts</p> <p>4 require the EPA to rescind the</p> <p>5 mandate, it will almost certainly head</p> <p>6 to the Supreme Court, where the</p> <p>7 outcome might not be known for years.</p> <p>8 The Department thanks the</p> <p>9 Board for granting this Hearing today,</p> <p>10 and the Department calls its first</p> <p>11 witness, Neal Butt.</p> <p>12 HEARING OFFICER GARCIA: And</p> <p>13 Mr. Butt, you will be sworn in the by</p> <p>14 the Court Reporter.</p> <p>15 THE CERTIFIED REPORTER: Thank</p> <p>16 you.</p> <p>17 Mr. Butt, will you please</p> <p>18 raise your right hand:</p> <p>19 You solemnly swear the</p> <p>20 testimony you're about to give in the</p> <p>21 matter now pending shall be the truth,</p> <p>22 the whole truth, and nothing but the</p> <p>23 truth so help you God?</p> <p>24 THE WITNESS: I do.</p> <p>25 THE CERTIFIED REPORTER: Thank</p>



<p style="text-align: right;">Page 22</p> <p>1 you, sir.</p> <p>2 Go ahead please, Counsel.</p> <p>3 MR. VIGIL: Thank you.</p> <p>4</p> <p>5 NEAL BUTT,</p> <p>6 after having been first duly sworn,</p> <p>7 was examined and testified as follows:</p> <p>8</p> <p>9 DIRECT EXAMINATION</p> <p>10 BY MR. VIGIL:</p> <p>11 Q. Can you state your name for the</p> <p>12 record, please.</p> <p>13 A. Neal Butt.</p> <p>14 Q. Mr. Butt, I just want to remind</p> <p>15 you to speak slowly, and as much as</p> <p>16 you can, and I know in these</p> <p>17 environments it can be a little nerve</p> <p>18 racking, but we want to make sure that</p> <p>19 we're going slowly for the Court</p> <p>20 Reporter.</p> <p>21 Where do you work?</p> <p>22 A. I work in the Control Strategies</p> <p>23 Unit of the Air Quality Bureau, in the</p> <p>24 Environmental Protection Division of</p> <p>25 the New Mexico Environment Department.</p>	<p style="text-align: right;">Page 24</p> <p>1 Bernalillo County under the</p> <p>2 jurisdiction of Albuquerque Bernalillo</p> <p>3 County Control Board or air Board.</p> <p>4 Q. What is your educational</p> <p>5 background?</p> <p>6 A. I hold a Masters of Science</p> <p>7 Degree in Biology from the University</p> <p>8 of North Dakota;</p> <p>9 A Bachelor of Science Degree</p> <p>10 in Biology;</p> <p>11 A Bachelor of Arts Degree in</p> <p>12 Environmental Planning and Design from</p> <p>13 UNM;</p> <p>14 An Associate of Applied</p> <p>15 Science in Environmental Protection</p> <p>16 Technology; and,</p> <p>17 An Associate of Applied</p> <p>18 Science in Criminal Justice from CNM.</p> <p>19 My background and</p> <p>20 qualifications are set forth in my</p> <p>21 Resumé which is marked as NMED</p> <p>22 Exhibit 1.</p> <p>23 Q. Did you provide written</p> <p>24 testimony for inclusion in the Notice</p> <p>25 of Intent to Present Technical</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. What do you do for the Air</p> <p>2 Quality Bureau?</p> <p>3 A. I am an Environmental Analyst.</p> <p>4 I develop air quality regulations and</p> <p>5 State implementation plans, or SIPs,</p> <p>6 to regulate air pollution emissions in</p> <p>7 New Mexico.</p> <p>8 I also research assigned air</p> <p>9 pollution topics, analyze data,</p> <p>10 prepare reports, and present summaries</p> <p>11 and conclusions to management.</p> <p>12 Q. How long have you held this</p> <p>13 position?</p> <p>14 A. Since March of 2014.</p> <p>15 Q. What did you do before taking</p> <p>16 this position with NMED?</p> <p>17 A. I worked for the City of</p> <p>18 Albuquerque in the Environmental</p> <p>19 Health Department for 17 years of the</p> <p>20 last 13 years, of which were as an</p> <p>21 Environmental Health Scientist in the</p> <p>22 Air Quality Division.</p> <p>23 I served as the lead for</p> <p>24 promulgating air quality regulations</p> <p>25 and SIPs governing air quality in</p>	<p style="text-align: right;">Page 25</p> <p>1 Testimony?</p> <p>2 A. Yes, it was included as NMED</p> <p>3 Exhibit 14.</p> <p>4 Q. Do you have any changes or</p> <p>5 corrections you wish to make to that</p> <p>6 testimony now?</p> <p>7 A. No.</p> <p>8 Q. Do you adopt that testimony as</p> <p>9 your own under oath here today?</p> <p>10 A. Yes.</p> <p>11 Q. Would you present a summary of</p> <p>12 your written testimony, please.</p> <p>13 A. Yes.</p> <p>14 Madam Hearing Officer, Madam</p> <p>15 Vice Chair, and Members of the Board:</p> <p>16 I am here to present the</p> <p>17 Department's Proposed Repeal and</p> <p>18 Replacement of 20.2.70 NMAC Operating</p> <p>19 Permits, which I will refer to as</p> <p>20 "Part 70," the concomitant Title V</p> <p>21 Program Revision.</p> <p>22 The public review draft of</p> <p>23 Part 70 is shown as attachment 2 of</p> <p>24 NMED's Petition for Rulemaking, and</p> <p>25 shows the Department's Proposed</p>



<p>Page 26</p> <p>1 Amendments to Part 70 in redline- 2 strikeout format. 3 Additional non-substantive 4 edits to this draft are shown as Floor 5 Amendments in NMED Exhibit 15. 6 The Department proposed to 7 Repeal and Replace Part 70 to comply 8 with a mandate from the United States 9 Environmental Protection Agency, or 10 EPA, directing the removal of certain 11 Affirmative Defense provisions from ex 12 New Mexico's Title V Permit program at 13 Section 304, Emergency Provision. 14 In addition, EPA made a 15 comment to the Department indicating 16 that one of the elements listed under 17 the definition of "Applicable 18 Requirement," cited at 40 C.F.R. 70.2 19 "Definitions," is missing from the 20 corresponding definition of 21 "Applicable Requirement" in Part 70. 22 To address this deficiency, 23 new text identical to Paragraph 7 24 under the definition of "Applicable 25 Requirement" at 40 C.F.R 70.2, is</p>	<p>Page 28</p> <p>1 The limits for Maximum 2 Allowable Concentrations of TSP in the 3 ambient air previously stipulated by 4 20.2.3 NMAC, Ambient Air Quality 5 Standards, at 20.2.3.109 "Total 6 Suspended Particulates" were repealed 7 effective November 30, 2018. 8 Furthermore, the Department 9 must update the regulations to meet 10 current New Mexico Administrative Code 11 requirements at Subsection C of 12 1.24.11.9 NMAC, which stipulates that: 13 "When an agency amends a 14 part that was not filed in 15 the current style and format, 16 it will reformat the entire 17 part and officially adopt the 18 current style and format 19 requirements in conjunction 20 with the amendment." 21 The Department will need to 22 address the changes at the same time 23 that the Affirmative Defense 24 provisions are removed. 25 Q. Could you please provide some</p>
<p>Page 27</p> <p>1 proposed to be inserted as a new 2 Paragraph 7 under the definition of 3 "Applicable Requirement" in Subsection 4 E in the "Definitions" sections of 5 part 70. 6 The Department has also 7 identified an incongruity between one 8 of the other elements of the 9 definition of "Applicable Requirement" 10 cited at 40 C.F.R 70.2 "Definitions," 11 and the definition of "Applicable 12 Requirement" in Part 70, specifically 13 paragraphs (11) and (12). To address 14 this error, paragraphs (11) and (12) 15 are proposed to be combined into a 16 single paragraph. 17 In addition, the definition 18 of "Regulated Air Pollutant" in 19 Subsection AC of the "Definitions" 20 section of Part 70, is proposed to be 21 amended to remove "Total Suspended 22 Particulate Matter," or "TSP," from 23 the current list of regulated air 24 pollutants under this definition 25 because it is obsolete.</p>	<p>Page 29</p> <p>1 background on the Title V program? 2 A. In 1990 Congress amended the 3 Clean Air Act and established, among 4 other things, Title V of the Clean Air 5 Act, which contains a National 6 Operating Permit Program for certain 7 stationary sources of air pollution. 8 It was intended to consolidate into a 9 single comprehensive enforceable 10 document, called the Operating Permit, 11 all applicable requirements from 12 "major sources." 13 Under Title V a "source" may 14 be considered to be "major" if 15 directly emits, or has the potential 16 to emit, 100 or more tons per year of 17 any air pollutant subject to 18 regulation, such as Nitrogen Oxides, 19 Sulfur Dioxide, Carbon Monoxide, and 20 Particulate Matter; or, that emits, or 21 has the potential to emit, 10 tons or 22 more per year of any Hazardous Air 23 Pollutant which has been listed 24 pursuant to Section 112(b) of the 25 Clean Air Act; or, finally, 25 or more</p>



<p style="text-align: right;">Page 30</p> <p>1 tons per year of any combination of 2 such Hazardous Air Pollutants. 3 On July 21, 1992, the EPA 4 adopted regulations establishing the 5 minimum requirements for state Title V 6 Operating Permit programs codified at 7 40 C.F.R. Part 70. 8 Q. Can you describe the proposed 9 changes to the emergency Affirmative 10 Defense provisions? 11 A. On July 12, 2023, the EPA 12 removed the "Emergency" Affirmative 13 Defense provisions from the Clean Air 14 Act Operating Permit Program, Title V 15 regulations, at Paragraph (g) 16 "Emergency Provision" of 40 C.F.R 70.6 17 "Permit Content," which is applicable 18 to state, local, and tribal permitting 19 authorities, as well as Paragraph (g) 20 "Emergency Provision" of 40 C.F.R 71.6 21 "Permit Content," which is applicable 22 when the EPA is the permitting 23 authority. 24 These provisions establish an 25 Affirmative Defense that stationary</p>	<p style="text-align: right;">Page 32</p> <p>1 Appeals for the D.C. Circuit, 2 primarily the Court's 2014 decision in 3 Natural Resources Defense Council v. 4 EPA: 5 "... State, Local and 6 Tribal permitting authorities 7 whose Title V programs 8 contain impermissible 9 Affirmative Defense 10 provisions must submit 11 Program Revisions to the EPA, 12 to remove such impermissible 13 provisions from their 14 EPA-approved Title V 15 programs... 16 "The EPA expects that 17 states with Title V programs 18 containing impermissible 19 Affirmative Defense 20 provisions will submit to the 21 EPA either a Program 22 Revision, or a Request For 23 Extension of Time, within 24 12 months of the effective 25 date of the final rule"; that</p>
<p style="text-align: right;">Page 31</p> <p>1 sources could have asserted to avoid 2 liability in enforcement cases brought 3 for noncompliance with technology- 4 based emission limits contained in the 5 source's Title V Permit provided that 6 the source demonstrated that excess 7 emissions occurred due to qualifying 8 "Emergency" circumstances. 9 These Emergency Affirmative 10 Defense provisions have never been 11 required elements of state Operating 12 Permit Programs or individual 13 Operating Permits. Nonetheless some 14 state, local and tribal programs have 15 adopted such provisions and include 16 these Affirmative Defenses in their 17 Title V Permits. 18 The EPA is removing the 19 Emergency Affirmative Defense 20 provisions in 40 C.F.R 70.6(g) and 21 71.6(g) because they are inconsistent 22 with EPA's current interpretation of 23 the enforcement structure of the Clean 24 Air Act in light of prior court 25 decisions from the U.S. Court of</p>	<p style="text-align: right;">Page 33</p> <p>1 is, by August 21, 2024. 2 To this end the Department 3 submitted a letter to EPA on 4 August 21, 2024, requesting an 5 extension of this deadline until 6 August 21, 2025. On September 17, 7 2024, this request was granted by EPA. 8 States must also remove 9 Title-V-based Affirmative Defense 10 provisions contained in individual 11 Operating Permits. The EPA encourages 12 states to remove these provisions at 13 their earliest convenience. EPA 14 expects that any necessary Permit 15 changes should occur in the ordinary 16 course of business as states process 17 periodic Permit removals, or other 18 unrelated Permit modifications. 19 At the latest, states must 20 remove Affirmative Defense provisions 21 from individual Permits during the 22 next Permit revision or periodic 23 Permit removal for the source that 24 occurs following either: 25 (1): The effective date of</p>



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<p>1 EPA's rule; that is, August 21, 2023; 2 or, 3 (2): The EPA's approval of 4 state program revisions. 5 "... the EPA expects that 6 Program Revisions to remove 7 Title V Emergency 8 [Affirmative] Defense 9 provisions will include, at a 10 minimum: 11 "(1): A redline document 12 identifying the State's 13 Proposed Revisions to its 14 Part 70 program; 15 "(2): A brief statement 16 of the legal authority 17 authorizing the revision; 18 and, 19 "(3): A schedule and 20 description of the State's 21 plans to remove Affirmative 22 Defense provisions from 23 individual Operating 24 Permits." 25 The Department proposes the</p>	<p>1 removed over the years, they will be 2 issued using the new template that 3 does not contain the removed language. 4 Q. Thank you. 5 What Public Notification and 6 Outreach was provided for the proposed 7 rule amendment? 8 A. A preliminary review draft was 9 shared with EPA in September of 2024, 10 as I mentioned earlier in my testimony 11 they have commented that one of the 12 elements listed under the definition 13 of "Applicable Requirement," cited at 14 40 C.F.R 70.2 "Definitions," was 15 missing from the definition of 16 "Applicable Requirement" in Part 70. 17 To address this deficiency 18 new texts identical to Paragraph 7 of 19 the definition of "Applicable 20 Requirement" at 40 C.F.R 70.2 is 21 proposed to be inserted as a new 22 Paragraph 7 under the definition of 23 "Applicable Requirement" at Subsection 24 E of the "Definitions" section of Part 25 70.</p>	
	Page 35	Page 37
<p>1 following steps to remove Affirmative 2 Defense provisions from existing and 3 future individual Permits: 4 Step 1: Promulgate 5 amendments to 20.2.70 NMAC Operating 6 Permits: 7 Step 2: The Proposed Amended 8 Rule requirements would become new 9 applicable requirements, and 10 facilities must comply with these new 11 applicable requirements; 12 Step 3: The Permitting 13 Section will update their Operating 14 Permit template shown as NMED 15 Exhibit 7, to remove language in PART 16 B, "GENERAL CONDITIONS," Section B114 17 "Emergencies," on page this B-18 18 through B-19 of "GENERAL CONDITIONS," 19 which is identical to the language at 20 20.2.70.304 NMAC "Emergency 21 Provisions" proposed to be repealed. 22 This will ensure that new Permits do 23 not include the repealed language; 24 and, 25 Step 4: As Permits are</p>	<p>1 Stakeholder outreach was 2 initiated on February 3, 2025, with a 3 "Notice of Availability of a 4 Stakeholder Review Draft - Proposed 5 Amendments to the 20.2.70 NMAC 6 Operating Permits" be sent to 7 potentially affected parties and other 8 stakeholders via Listserve. This 9 outlined the Air Quality Bureau's 10 proposal and solicited comments. 11 The Distribution List 12 includes 2,490 recipients who have 13 expressed an interest in receiving 14 updates from the Air Quality Bureau 15 regarding the various programs, such 16 as regulation and SIP development, 17 permitting, construction industries, 18 small businesses, et cetera. 19 This message was also run on 20 February 5, 2025, in the Los Alamos 21 Daily Post, the official newspaper of 22 record in Los Alamos County. 23 One comment was resolved by 24 the advertised March 3, 2025, deadline 25 from the State Records Center and</p>	



<p style="text-align: right;">Page 38</p> <p>1 Archives. The State Records Center 2 and Archives is requiring that: 3 1: When the rule is filed, 4 the "History Notes" for each section 5 shall reflect that this rule change is 6 a "Repeal and Replace"; 7 2: The text "NMSA 1978" 8 should be added to the end of the last 9 sentence of 20.2.70.3 NMAC "Statutory 10 Authority"; and, 11 3: The "Effective Date" at 12 20.2.70.5 NMAC will need to be 13 undated. 14 Comments 1 and 3 will be 15 addressed when the rule is filed with 16 the State Records Center. Comment 2 17 has already been incorporated into the 18 Public Review Draft attached to the 19 Petition. A proposed version of the 20 rule to be filed without any redline 21 strikeout is shown as NMED Exhibit 10. 22 On March 17, 2025, the Air 23 Quality Bureau announced via Listserve 24 the availability of the Public Review 25 Draft of Part 70 in conjunction with</p>	<p style="text-align: right;">Page 40</p> <p>1 The Notice of Proposed 2 Rulemaking was provided as shown in 3 NMED Exhibits: 4 12a: Posting Notice in 5 English and Spanish on the Air Quality 6 Bureau's "Proposed Air Quality 7 Regulations and Plans" website, as 8 well as the posting of the Stakeholder 9 Review Draft, Petition, and a 10 hyperlink to the "Comment Portal"; 11 12b: Posting notice in 12 English and Spanish on the NMED 13 "Public Notices" website, as well as 14 the posting of the PIP and a link to 15 the Hearing Docket on May 6, 2025; 16 12c: Posting on the New 17 Mexico Sunshine Portal on April 24, 18 2025; 19 12d: Notice in English and 20 Spanish made available in New Mexico 21 Environment Department's District 22 Field Offices located in 20 towns and 23 cities spread across New Mexico on 24 April 23, 2025; 25 12e: Notice in English and</p>
<p style="text-align: right;">Page 39</p> <p>1 the filing of the "Petition for 2 Regulatory Change." 3 The Air Quality Bureau 4 complied with all Public Notice 5 requirements, including the 6 requirement to "provide to the Public" 7 Notice of Proposed Rulemaking 8 stipulated by 20.1.1 NMAC "Rulemaking 9 Procedures - Environmental Improvement 10 Board," and requirements for "Notice 11 of Proposed Rulemaking and Public 12 Participation, Comments, and Rule 13 Hearings" stipulated by the State 14 Rules Act at 14-4-1 through 14-4-11 15 NMSA 1978. 16 Additional outreach was 17 conducted as outlined in the "Public 18 Involvement Plan for the Proposed 19 Repeal and Replacement of 20.2.70 20 NMAC, Operating Permits and Title V 21 Permit Program Revision" dated 22 February 24, 2025. This is sometimes 23 referred to as a "PIP," which is 24 posted on NMED's Public Notices 25 website.</p>	<p style="text-align: right;">Page 41</p> <p>1 Spanish distributed via Listserve on 2 April 21, 2025; 3 12f: Notice in English and 4 Spanish provided to the New Mexico 5 Legislative Council Service for 6 distribution to appropriate interim 7 and standing Legislative committees on 8 April 23, 2025; 9 12g: Publication in the 10 Albuquerque Journal in English and 11 Spanish on May 4, 2025; 12 12h: Publication in the New 13 Mexico Register in English and Spanish 14 on May 6, 2025; 15 12i: Notice in English and 16 Spanish provided to the New Mexico 17 Land Grant Council on April 23, 2025; 18 and, 19 12j: The Listserve notice 20 provided to the Pueblos, Nations, and 21 Tribes, on April 23, 2025. 22 EPA reviewed the Proposed 23 Amendments and did not have any 24 further comments. 25 On May 13, 2025, the</p>



<p style="text-align: right;">Page 42</p> <p>1 Department sent a letter to the Small 2 Business Regulatory Advisory 3 Commission to comply with the Small 4 Business Regulatory Relief Act at 5 14-4A-1 NMSA 1978. This Act 6 establishes a review process, not a 7 standard or outcome. 8 The Department must consider 9 the effect of the Proposed Rule Repeal 10 and Replacement on small businesses. 11 If the Department identifies an 12 adverse effect, it must consider the 13 available methods to reduce the 14 effect, but even if there are no such 15 methods, the Board may approve the 16 Proposed Rule Amendments to accomplish 17 the objectives of the applicable law. 18 The Department does not 19 perceive that the Proposed Amendments 20 to Part 70 will have an adverse impact 21 on the citizens or businesses of New 22 Mexico. 23 Awareness of EPA's mandate to 24 remove "Emergency" Affirmative Defense 25 provisions from the Clean Air Act</p>	<p style="text-align: right;">Page 44</p> <p>1 the New Mexico State Records Center as 2 outlined earlier in my testimony, and 3 shown as NMED Exhibit 9. In addition, 4 non-substantive changes are shown as 5 Floor Amendments in NMED Exhibit 15. 6 Q. Have there been any new 7 developments since the filing of the 8 Department's Notice of Intent? 9 A. No. 10 Q. Based on those developments is 11 NMED recommending any changes to the 12 Rule as proposed in the Notice of 13 Intent? 14 A. No. 15 Q. Does this Amendment meet the 16 statutory burden? 17 A. Yes. The Board has the 18 authority to "Repeal and Replace" 19 20.2.70 NMAC pursuant to the Air 20 Quality Control Act, Sections 74-2-5, 21 and 74-2-6 NMSA 1978. And the 22 Environmental Improvement Act, Section 23 74-1-8 NMSA 1978. 24 In considering the proposed 25 amendments the Board is required by</p>
<p style="text-align: right;">Page 43</p> <p>1 Operating Permit program (Title V) 2 regulations was also raised by the 3 City of Albuquerque's Environmental 4 Health Department Air Quality Program 5 through Public Notice and Hearing. 6 The Air Quality Program acts as the 7 administrative agency for the 8 Albuquerque-Bernalillo County Air 9 Quality Control Board, or "Air Board," 10 which exercises air quality regulatory 11 jurisdiction over the City of 12 Albuquerque and Bernalillo County. 13 On October 9, 2024, the Air 14 Board adopted a revision to their 15 Operating Permits rule to remove the 16 "Emergency Affirmative Defense" 17 provision at Subsection E of 18 20.11.42.12 NMAC, "Emergency 19 Provision," effective November 5, 20 2024. 21 The Department did not 22 receive any comments from the public. 23 Q. Are there any additional changes 24 to be made to the proposed rule? 25 A. Yes. Comments were received by</p>	<p style="text-align: right;">Page 45</p> <p>1 the Air Quality Control Act in 2 Paragraphs (1) through (3) of 3 Subsection F, of Section 74-2-5 NMSA 4 1978: 5 "... to give weight it 6 deems appropriate to all 7 facts and circumstances, 8 including: 9 "(1): Character and 10 degree of injury to, or 11 interference with health, 12 welfare, visibility, and 13 property; 14 "(2): The public 15 interest, including the 16 social and economic value of 17 the sources and subjects of 18 air contaminants; and, 19 "(3): Technical 20 practicability and economic 21 reasonableness of reducing or 22 eliminating air contaminants 23 from the sources involved and 24 previous experience with 25 equipment and methods</p>



<p style="text-align: right;">Page 46</p> <p>1 available to control the air 2 contaminants involved." 3 The Proposed Amendments will 4 not cause injury or interfere with 5 health, welfare, visibility, and 6 property, in accordance with Paragraph 7 (1). 8 In addition, in conformance 9 with Paragraph (2), the Department 10 believes that public interest will be 11 served through the adoption of the 12 Proposed Amendments by aligning 13 20.2.70 NMAC with 40 C.F.R Part 70, 14 which will provide regulatory 15 certainty, and ensure the ability of 16 the Department to implement and 17 administer the Title V program in a 18 manner consistent with federal law. 19 Finally, the proposed 20 amendments require no new technology 21 and, with no anticipated costs 22 associated with the amendments, are 23 economically reasonable pursuant to 24 Paragraph (3). 25 The Department finds that the</p>	<p style="text-align: right;">Page 48</p> <p>1 truth, the whole truth, and nothing 2 but the truth so help you God? 3 THE WITNESS: I affirm to tell 4 the truth, the with whole truth, and 5 nothing but the truth. 6 THE CERTIFIED REPORTER: Thank 7 you. 8 9 ERIC PETERS, 10 after having been first duly sworn, 11 was examined and testified as follows: 12 13 DIRECT EXAMINATION 14 BY MR. VIGIL: 15 Q. Please state your name for the 16 record. 17 A. Eric Peters; E-R-I-C 18 P-E-T-E-R-S. 19 Q. Could you briefly describe your 20 educational background? 21 A. I hold Bachelor of Science 22 degrees in Mechanical Engineering and 23 Biology from the University of 24 Illinois; and, 25 A Master of Science degree in</p>
<p style="text-align: right;">Page 47</p> <p>1 factors specified by Paragraphs (1) 2 through (3) of Subsection F of 74-2-5 3 NMSA 1978 all weigh in favor of 4 adopting the proposed amendments. 5 This concludes my testimony 6 on the Proposed Repeal and Replacement 7 of Part 70, and revision to the Title 8 V Permit Program. I respectfully 9 request that the Board adopt the 10 Proposed Repeal and Replacement of 11 Part 70 and concomitant revision to 12 the Title V Permit Program at the 13 conclusion of this Hearing. Thank 14 you. 15 MR. VIGIL: Thank you. 16 I have no further questions. 17 If it pleases the Board, the 18 Department calls its next witness, 19 Eric Peters. 20 THE CERTIFIED REPORTER: And 21 Mr. Peters, will you please raise your 22 right hand: 23 You do solemnly swear that 24 the testimony you're about to give in 25 the matter now pending shall be the</p>	<p style="text-align: right;">Page 49</p> <p>1 Environmental Engineering from the 2 University of Kansas. 3 Q. Can you briefly describe your 4 current employment? 5 A. I work for the Air Quality 6 Bureau, or "aqb," of the New Mexico 7 Environment Department, which I will 8 call "the Department." 9 I have been an employee of 10 aqb for over 27 years. I've spent 11 many years reviewing compliance with 12 ambient Air Quality Standards and 13 Prevention of Significant 14 Deterioration increments; 15 I have been the Control 16 Strategies Manager since May 11, 2024. 17 In my current position I oversee staff 18 that are responsible for the 19 development of Air Quality Plans and 20 regulations for New Mexico. The New 21 Mexico Operating Permit rule is 22 included in the significant projects 23 that I oversee. 24 Q. Did you submit your Resumé? 25 A. Yes, it is NMED Exhibit 16.</p>



<p style="text-align: right;">Page 50</p> <p>1 Q. Did you submit your written 2 testimony? 3 A. Yes, my written testimony is 4 NMED Exhibit 17. 5 Q. Do you have any corrections to 6 make to your written testimony? 7 A. No. 8 Q. And do you adopt the testimony 9 in its entirety? 10 A. Yes. 11 Q. What are the topics of your 12 testimony? 13 A. Madam Hearing Officer, Madam 14 Vice Chair, and Members of the Board: 15 My testimony will address the 16 proposed changes to applicable 17 requirements regarding Air Quality 18 Standards and Prevention of 19 Significant Deterioration increments. 20 Q. What type of changes are being 21 made to the applicable requirements? 22 A. Two types of changes are 23 proposed to the applicable 24 requirements definition for: 25 Air Quality Standards;</p>	<p style="text-align: right;">Page 52</p> <p>1 sources. My written testimony 2 contains the exact language for each 3 to offer a comparison. 4 In the existing NMAC language 5 the sentence containing both "Air 6 Quality Standards" and "Increments" 7 was separated into 2 separate 8 requirements without including 9 language to limit the air quality 10 standard applicable to temporary 11 sources. This makes the National 12 Ambient Air Quality Standards an 13 applicable requirement for all Title V 14 sources, instead of the limited 15 circumstances when it is appropriate 16 to address this within the context of 17 an Operating Permit. 18 Q. Why are "Air Quality Standards" 19 applicable requirements for General 20 Permit -- excuse me. 21 Why are "Air Quality 22 Standards" applicable requirements for 23 general "Permits for Temporary 24 Sources," but not for permanent 25 sources?</p>
<p style="text-align: right;">Page 51</p> <p>1 Increments; and, 2 Visibility requirements. 3 One is to bring the language 4 in line with the U.S. Environmental 5 Protection Agency, or "EPA," 6 requirements. 7 The second is to provide 8 clarifying language to help explain 9 the meaning of the requirement without 10 requiring people to cross-reference 11 and analyze federal regulations. 12 Q. Can you describe the difference 13 between the existing NMAC Definitions 14 and EPA requirements? 15 A. Existing NMAC language lists 16 "any National Ambient Air Quality 17 Standard" alone, as an applicable 18 requirement, without any language to 19 limit the scope of the requirement. 20 Code of Federal Regulations 21 "40 C.F.R Section 70.2" specifies that 22 National Ambient Air Quality Standards 23 are only applicable requirements for 24 the types of General Operating Permits 25 created for classes of temporary</p>	<p style="text-align: right;">Page 53</p> <p>1 A. EPA relies on states to ensure 2 compliance with Air Quality Standards 3 through all the requirements 4 incorporated into the State 5 Implementation Plan. 6 "Air Quality Standards" are 7 intended to protect areas that include 8 multiple sources, rather than the 9 partial contribution of one single 10 source to cumulative air impacts. 11 An individual source does not 12 have the authority to control the 13 emissions of nearby competitors, the 14 public, or other sources of air 15 pollution. It is up to the State to 16 develop a plan to address these 17 cumulative impacts. 18 Operating Permits are issued 19 to sources that already exist. In New 20 Mexico, modeling is required before 21 new sources are constructed to ensure 22 that Air Quality Standards will not be 23 violated. 24 Once sources already exist, 25 planning to consider the cumulative</p>



<p style="text-align: right;">Page 54</p> <p>1 impacts of sources should be used if 2 there is a problem with compliance 3 with Air Quality Standards. The 4 exception would be for "Temporary 5 Portable Sources" issued under the 6 Operating Permit program. Those 7 Permits are for sources that are new 8 to an area, so consideration must be 9 taken in the development of such a 10 Permit to ensure compliance with Air 11 Quality Standards. 12 In summary, proposed sources 13 normally do work to demonstrate the 14 surrounding area will be in compliance 15 with Air Quality Standards before they 16 are allowed to construct. After 17 sources are constructed, which would 18 be the time when Operating Permits are 19 issued, it falls upon the State to 20 ensure compliance in an area with Air 21 Quality Standards through use of 22 ambient monitoring, through ensuring 23 facilities comply with Air Quality 24 Permits, and through regional planning 25 if other measures fail to keep air</p>	<p style="text-align: right;">Page 56</p> <p>1 To help people understand 2 what it means without needing to 3 cross-reference multiple sources, we 4 are proposing to add a clarifying 5 statement: 6 "This means that General 7 Permits for Temporary Sources 8 must consider these 9 requirements, but they are 10 not applicable for other 11 Operating Permits under this 12 Part." 13 EPA has approved this 14 statement. The language referred to 15 by the definition is included in my 16 written testimony. 17 Q. What are your conclusions? 18 A. The proposed changes to the 19 applicable requirement definitions 20 make the rule more consistent with EPA 21 requirements and more clear to people 22 reading the rule. 23 I recommend that EIB adopt 24 New Mexico's proposed changes to 25 20.2.70 NMAC.</p>
<p style="text-align: right;">Page 55</p> <p>1 concentrations below Air Quality 2 Standards. 3 Within the Operating Permit 4 program of 20.2.70, New Mexico 5 Administrative Code, only general 6 "Permits For Temporary Sources" would 7 have an applicable requirement for 8 ambient Air Quality Standards because 9 other sources would either already 10 have done work to ensure such 11 compliance, or would fall under 12 regional compliance issues that are 13 much more complicated than individual 14 source contributions. 15 Q. Can you describe the clarifying 16 language that's being added to the 17 definition? 18 A. Many people have been confused 19 about the meaning of the language: 20 "... under Part C of Title 21 I of the federal Act, but 22 only as it would apply to 23 temporary sources permitted 24 pursuant to Section 504(e) of 25 the federal Act."</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. VIGIL: Thank you. I have 2 no further questions. 3 Madam Hearing Officer, Madam 4 Vice Chair, Members of the Board, the 5 Department offers its witnesses, 6 including Ms. Kuhn, for Cross- 7 Examination by members of the public, 8 any parties, and questions from the 9 Board. Thank you. 10 HEARING OFFICER GARCIA: Thank 11 you. 12 First I'll ask Mr. Maxwell, 13 do you have any questions for any of 14 the members on the panel? 15 MR. MAXWELL: Madam Hearing 16 Officer, I do not have questions. 17 Thank you. 18 HEARING OFFICER GARCIA: And 19 Mr. Nichols, do you have any questions 20 for any members on the panel? 21 MS. JONES: I don't believe he 22 is on the platform. 23 HEARING OFFICER GARCIA: Okay. 24 I'll take that as a "No." 25 Okay. How about Board</p>

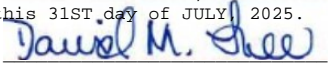


<p style="text-align: right;">Page 58</p> <p>1 Members:</p> <p>2 Do any of the Board Members</p> <p>3 have any questions for members of the</p> <p>4 panel?</p> <p>5 MEMBER ELY: I do, Madam Hearing</p> <p>6 Officer; just one.</p> <p>7 I appreciate your testimony,</p> <p>8 Mr. Peters, because you clarified that</p> <p>9 paragraph.</p> <p>10 HEARING OFFICER GARCIA: Excuse</p> <p>11 me, Member Ely; one item I would like</p> <p>12 to clarify:</p> <p>13 I'm not sure the other member</p> <p>14 of the witnesses was identified.</p> <p>15 MR. VIGIL: Yes, that's correct.</p> <p>16 That is Ms. Julia Kuhn.</p> <p>17 HEARING OFFICER GARCIA: Okay.</p> <p>18 She is an employee of?</p> <p>19 MR. VIGIL: Ms. Kuhn was</p> <p>20 identified in the Statement of Intent.</p> <p>21 She is sitting just in an advisory</p> <p>22 position to answer any questions for</p> <p>23 the Board, but she didn't present</p> <p>24 written testimony.</p> <p>25 HEARING OFFICER GARCIA: Okay.</p>	<p style="text-align: right;">Page 60</p> <p>1 sources in New Mexico, or do we have</p> <p>2 General Permits for Title V sources in</p> <p>3 New Mexico?</p> <p>4 A. BY MR. PETERS: Yes, we have</p> <p>5 General Operating Permits for</p> <p>6 the -- I'm forgetting the name of the</p> <p>7 boxes where -- the Air Curtain</p> <p>8 Incinerators. Those are basically</p> <p>9 dumpsters with air curtains that blow</p> <p>10 to make the combustion of wood have</p> <p>11 low emissions. Those are used to help</p> <p>12 areas such that they don't need to do</p> <p>13 as many prescribed burns or other</p> <p>14 clean up.</p> <p>15 MEMBER ELY: Thank you. That's</p> <p>16 all.</p> <p>17 HEARING OFFICER GARCIA: Thank</p> <p>18 you.</p> <p>19 Any other Board Members have</p> <p>20 any questions for the witnesses?</p> <p>21 All right. At this time I'll</p> <p>22 ask if there are any members of the</p> <p>23 public either on the platform or in</p> <p>24 the room who have any questions for</p> <p>25 the witnesses.</p>
<p style="text-align: right;">Page 59</p> <p>1 If she is going to answer any</p> <p>2 questions then she probably needs to</p> <p>3 be sworn in.</p> <p>4 MR. VIGIL: Yes.</p> <p>5 THE CERTIFIED REPORTER: And</p> <p>6 Ms. Kuhn, would you please raise your</p> <p>7 right hand:</p> <p>8 You do solemnly swear that</p> <p>9 the testimony you're about to give in</p> <p>10 the matter now pending shall be the</p> <p>11 truth, the whole truth, and nothing</p> <p>12 but the truth so help you God?</p> <p>13 MS. KUHN: I do.</p> <p>14 THE CERTIFIED REPORTER: Thank</p> <p>15 you.</p> <p>16 HEARING OFFICER GARCIA: Thank</p> <p>17 you very much.</p> <p>18 Member Ely, go ahead.</p> <p>19 EXAMINATION</p> <p>20 BY MEMBER ELY:</p> <p>21 Q. Thank you for your testimony; it</p> <p>22 was clear and very helpful. I just</p> <p>23 have one question for Mr. Peters:</p> <p>24 Has the Air Quality Bureau</p> <p>25 issued any General Permits for Title V</p>	<p style="text-align: right;">Page 61</p> <p>1 It doesn't look like any</p> <p>2 members of the public have any</p> <p>3 questions for the witnesses.</p> <p>4 All right. Then any person</p> <p>5 who testified and who wishes to make a</p> <p>6 brief Closing Statement may do so in</p> <p>7 the same order as the Direct</p> <p>8 Testimony.</p> <p>9 Mr. Vigil.</p> <p>10 MR. VIGIL: The Department does</p> <p>11 not have a Closing Statement. Thank</p> <p>12 you.</p> <p>13 HEARING OFFICER GARCIA: All</p> <p>14 right.</p> <p>15 How about Mr. Maxwell.</p> <p>16 MR. MAXWELL: I do not have a</p> <p>17 Closing Statement. I have not made an</p> <p>18 Opening Statement, and I would just</p> <p>19 simply say my name is Nicholas</p> <p>20 Maxwell, one of the people of Lea</p> <p>21 County. I do not oppose this Petition</p> <p>22 today. Thank you.</p> <p>23 HEARING OFFICER GARCIA: Thank</p> <p>24 you, Mr. Maxwell.</p> <p>25 We'll check and see if</p>



<p style="text-align: right;">Page 62</p> <p>1 Mr. Nichols has joined us and if he 2 would like to make a Closing Statement 3 of any kind. 4 No. 5 MS. JONES: He is not on the 6 platform. 7 HEARING OFFICER GARCIA: Okay. 8 All right. 9 All right then. If there is 10 no one who has any other questions, I 11 would like to thank the Board and 12 everyone present today for their 13 attendance and participation. I also 14 want to thank the Court Reporter. 15 Just for the record, we did 16 have a Quorum attending the Hearing. 17 Does anyone see any reason 18 not to close the Hearing record at 19 this time? 20 All right. Let the record 21 reflect that the Hearing was adjourned 22 at 10:14, on July 18, 2025. Thank you 23 very much. 24 I'll now turn it over to Vice 25 Chair Trujillo.</p>	<p style="text-align: right;">Page 64</p> <p>1 interests of complying with the 2 Extension, we ought to move today, 3 yeah. 4 VICE CHAIRWOMAN TRUJILLO: And 5 Member Ely. 6 MEMBER ELY: No further comment. 7 VICE CHAIRWOMAN TRUJILLO: Okay. 8 Thank you. 9 Member Garcia. 10 HEARING OFFICER GARCIA: No 11 comment. Thank you. 12 VICE CHAIRWOMAN TRUJILLO: I 13 will go on record and say I agree with 14 the thoughts and considerations of my 15 fellow Board Members. 16 Unless there is any other 17 comments, we probably need to have a 18 Motion. 19 Member Honker. 20 MEMBER HONKER: I will move that 21 we approve the proposed changes as 22 presented by the Department In the 23 Matter of Proposed Repeal and 24 Replacement of 20.2.70 NMAC Operating 25 Permits and Title V Program Revisions</p>
<p style="text-align: right;">Page 63</p> <p>1 (The Evidentiary Hearing 2 recessed from 10:14 a.m. to 10:15 3 a.m.) 4 VICE CHAIR TRUJILLO: All right. 5 At this time does any member wish to 6 make any statements regarding the 7 Proposed Repeal and Replacement of 8 20.2.70 NMAC, Operating Permits and 9 Title V Program Revision? 10 Member Honker. 11 MEMBER HONKER: I do believe it 12 is important to clarify any 13 inaccuracies and misunderstandings. 14 It sound straightforward and well- 15 defended. The Department went through 16 public involvement, and there were no 17 other comments from other parties who 18 were interested or had any objections. 19 I am supportive of the changes as 20 proposed. 21 VICE CHAIRWOMAN TRUJILLO: And 22 Member Bitzer. 23 MEMBER BITZER: If I recall we 24 missed the original deadline and we 25 got an Extension, so I think in the</p>	<p style="text-align: right;">Page 65</p> <p>1 as presented today based on the 2 written and oral testimony, and the 3 other information in the record that 4 we have considered. 5 MEMBER BITZER: Can I get a 6 point of clarification from Counsel? 7 Is that an acceptable form of 8 the Motion? 9 MR. UGARTE: Madam Vice Chair 10 and Member, yes. 11 MEMBER BITZER: I'll second that 12 Motion then. 13 VICE CHAIRWOMAN TRUJILLO: Okay. 14 Great. 15 Ms. Jones, can we get a vote? 16 MS. JONES: Yes. 17 On Member Honker's Motion to 18 Approve the Proposed Changes: 19 Member Bitzer how do you 20 vote? 21 MEMBER BITZER: I vote yes. 22 MS. JONES: Member Ely. 23 MEMBER ELY: Yes. 24 MS. JONES: Member Garcia. 25 MEMBER GARCIA: Yes.</p>



<p>1 HEARING OFFICER GARCIA: Member 2 Honker. 3 MEMBER HONKER: Yes. 4 MS. JONES: Vice Chair Trujillo. 5 VICE CHAIRWOMAN TRUJILLO: Yes. 6 MS. JONES: The motion passes. 7 VICE CHAIRWOMAN TRUJILLO: All 8 right. Thank you all for your time 9 today. I appreciate it. 10 MR. VIGIL: Thank you very much. 11 VICE CHAIRWOMAN TRUJILLO: Thank 12 you for all the hard work you put into 13 your presentation today. 14 If there is nothing else, I 15 believe we can adjourn at this time. 16 Thank you. 17 (The Evidentiary Hearing 18 adjourned at 10:18 a.m.) 19 20 21 22 23 24 25</p>	<p>Page 66</p>
<p>1 STATE OF NEW MEXICO 2 ENVIRONMENTAL IMPROVEMENT BOARD 3 4 IN THE MATTER OF:) EIB NO.: 5) 6 PROPOSED REPEAL AND) 25-10(R) 7 REPLACEMENT OF 20.7.70) 8 NMAC - OPERATING PERMITS) 9 AND TITLE V PROGRAM) 10 REVISIONS.) 11) 12 BEFORE THE HONORABLE KAREN GARCIA 13 FRIDAY, JULY 18, 2025 14 9:23 A.M. 15 REPORTER'S CERTIFICATE 16 I, DAVID M. LEE, RMR, CRR, 17 CERTIFICATE NUMBER 50391, NEW MEXICO 18 CCR NUMBER 537, DO HEREBY CERTIFY that 19 on FRIDAY, JULY 18, 2025, the 20 Proceedings in the above-captioned 21 matter were taken before me, and that 22 I did report in stenographic shorthand 23 the Proceedings set forth herein. The 24 foregoing pages are a true and correct 25 transcription, all done to the best of my ability. I FURTHER CERTIFY that I am neither employed by, nor related to, nor contracted with (unless excepted by the rules) any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court. DATED at Santa Fe, New Mexico, this 31ST day of JULY, 2025.  DAVID M. LEE, RMR, CCR New Mexico Certificate Number License Expires: 12/31/2025</p>	<p>Page 67</p>



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