

STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD

COPY



IN THE MATTER OF: )  
 )  
PROPOSED REPEAL OF )  
EMISSION STANDARDS FOR )  
NEW MOTOR VEHICLES, )  
PART 20.2.88 NMAC, )  
 )  
NEW MEXICO ENVIRONMENT )  
DEPARTMENT, )  
 )  
Petitioner. )  
\_\_\_\_\_ )

No. EIB 13-06 (R)

**NEW MEXICO ENVIRONMENT DEPARTMENT'S  
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY**

Pursuant to the Rulemaking Procedures, section 20.1.1.302 NMAC, the New Mexico Environment Department ("Department") hereby submits its Notice of Intent to Present Testimony at the public hearing on the rulemaking to repeal the Emission Standards for New Motor Vehicles, part 20.2.88 NMAC. The Department filed a Petition to Repeal Regulations with the Environmental Improvement Board ("Board") on June 24, 2013, asking the Board to repeal part 20.2.88 NMAC. Attached to the petition, as Exhibit A, was a copy of the proposed regulations.

In accordance with the Board's Rulemaking Procedures, section 20.1.1.302.A NMAC, the Department states as follows:

1. The person for whom the witnesses will testify is the New Mexico Environment Department.
2. The Department intends to call the following technical witnesses at the hearing:

a. The Department's first and primary witness will be Lany Weaver. Ms. Weaver is an Environmental Analyst in the Planning Section of the Department's Air Quality Bureau, a position she has held for the past twelve years. She has worked for the Air Quality Bureau for a total of 23 years. Previously she worked in the Bureau's Control Strategies Section as an Environmental Engineering Specialist and a Health Program Manager. Throughout this time, her duties have included developing air quality implementation plans, preparing regulatory proposals and reports, and providing testimony regarding the air quality plans and regulations. From 1981 through 1984 she worked as an Air Resources Engineer with the California Air Resources Board in Sacramento. Ms. Weaver holds a Bachelor of Sciences degree in Mechanical Engineering from the University of California at Davis. A copy of her my resume is attached as NMED Exhibit 3.

b. The Department's second witness will be Rita Bates. Ms. Bates will not present direct testimony, but will be available to answer questions during cross-examination. Ms. Bates is Chief of the Planning Section in the Department's Air Quality Bureau, a position she has held since March 2005. She has worked for the Bureau for 15 years, since August 1998. Before becoming Section Chief, she worked as Program Manager, Environmental Specialist, and Environmental Scientist. Ms. Bates holds a Bachelor of Sciences degree in Biology from Humboldt State University in Arcata, California. A copy of her resume is attached as NMED Exhibit 12.

c. The Department reserves the right to call additional witnesses in rebuttal.

3. The Department anticipates that the hearing will be held entirely in Santa Fe. Ms. Weaver and Ms. Bates will be present in Santa Fe.

4. The direct written testimony of Lany Weaver is included as NMED Exhibit 2.

5. The text of the regulation proposed for repeal is included as NMED Exhibit 1.

6. The Department intends to offer the following exhibits at the hearing:

Exhibit 1. Proposed Repeal of the Emission Standards for New Motor Vehicles, Part 20.2.88 NMAC (9 pages).

Exhibit 2. Written Direct Testimony of Lany Weaver (8 pages).

Exhibit 3. Resume of Lany Weaver (1 page).

Exhibit 4. Letter from Glen L. Dennis, Division Manager, Vehicle Pollution Management Division, City of Albuquerque Environmental Health Department, to Steve Douglas, Senior Director for Environmental Affairs, Alliance of Automobile Manufacturers, dated February 14, 2011 (2 pages).

Exhibit 5. Letter from Richard L. Goodyear, P.E., Chief, Air Quality Bureau, New Mexico Environment Department, to Air Quality Stakeholders, dated June 5, 2013, and attached *Regulatory Options for 20.2.88 NMAC – Emission Standards for New Motor Vehicles 2010* (6 pages).

Exhibit 6. Public notice and affidavit of publication in the *New Mexico Register* (2 pages).

Exhibit 7. Public notice and affidavit of publication in the *Albuquerque Journal* (6 pages).

Exhibit 8. Letter from Richard L. Goodyear, P.E., Chief, Air Quality Bureau, New Mexico Environment Department, to Air Quality Stakeholders, dated July 1, 2013, and list of recipients (4 pages).

Exhibit 9. Electronic message from Lany Weaver to stakeholders, dated August 12, 2013 (1 page).

Exhibit 10. Letter from John M. Cabaniss, Jr., Director of Environment and Energy, Association of Global Automakers, Inc., to Richard L. Goodyear, Bureau Chief, Air Quality Bureau, New Mexico Environment Department, dated July 11, 2013 (2 pages).

Exhibit 11. Proposed Order and Statement of Reasons (5 pages).

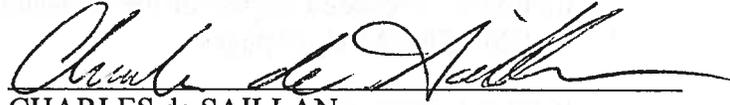
Exhibit 12. Resume of Rita Bates (1 page).

Each of these exhibits is attached hereto.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

October 18, 2013



CHARLES de SAILLAN

Assistant General Counsel

New Mexico Environment Department

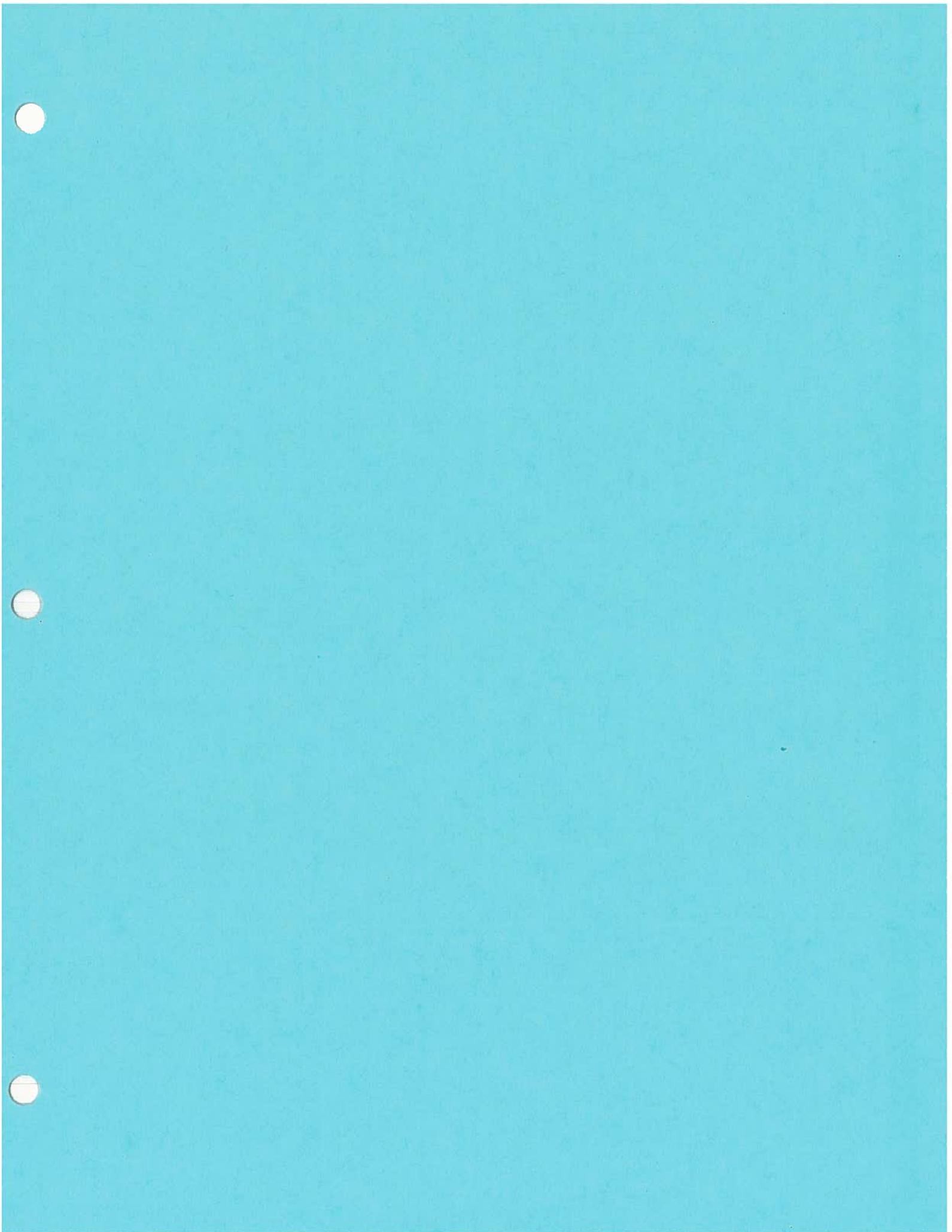
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1 **TITLE 20 ENVIRONMENTAL PROTECTION**  
2 **CHAPTER 2 AIR QUALITY (STATEWIDE)**  
3 **PART 88 EMISSION STANDARDS FOR NEW MOTOR VEHICLES**  
4

5 ~~[This part was repealed on [INSERT DATE]]~~

6  
7 ~~20.2.88.1 ISSUING AGENCY. Environmental Improvement Board.~~  
8 ~~[20.2.88.1 NMAC N, 12/31/07]~~

9  
10 ~~20.2.88.2 SCOPE. All persons who deliver for sale, offer for sale, sell, import, deliver, purchase, rent,~~  
11 ~~lease, or register new passenger cars, light duty trucks, medium-duty passenger vehicles, and medium-duty motor~~  
12 ~~vehicles within the jurisdiction of the environmental improvement board.~~  
13 ~~[20.2.88.2 NMAC N, 12/31/07]~~

14  
15 ~~20.2.88.3 STATUTORY AUTHORITY. Environmental Improvement Act, NMSA 1978, Section 74-1-~~  
16 ~~8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq.~~  
17 ~~[20.2.88.3 NMAC N, 12/31/07]~~

18  
19 ~~20.2.88.4 DURATION. Permanent.~~  
20 ~~[20.2.88.4 NMAC N, 12/31/07]~~

21  
22 ~~20.2.88.5 EFFECTIVE DATE. 12/31/07 except where a later date is cited at the end of a section.~~  
23 ~~[The latest effective date of any section in this part is 01/31/11.]~~  
24 ~~[20.2.88.5 NMAC N, 12/31/07]~~

25  
26 ~~20.2.88.6 OBJECTIVE. The objective of this part is to establish emission standards for new motor~~  
27 ~~vehicles subject to this part.~~  
28 ~~[20.2.88.6 NMAC N, 12/31/07]~~

29  
30 ~~20.2.88.7 DEFINITIONS. In addition to the terms defined in 20.2.88.7 NMAC (Definitions), and the~~  
31 ~~definitions in California code of regulations ("CCR"), Title 13, sections incorporated by reference, the following~~  
32 ~~definitions apply to this part, except that "California" shall mean "New Mexico" unless otherwise specified or~~  
33 ~~clearly inappropriate. If a term is defined in this subsection and CCR, Title 13, Section 1900, the definition in this~~  
34 ~~subsection shall apply.~~

35 ~~A. "Air contaminant emission control system" means the equipment designed for installation on a~~  
36 ~~motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor~~  
37 ~~vehicle or motor vehicle engine or a system or engine modification on a motor vehicle which causes a reduction of~~  
38 ~~air contaminants emitted from the motor vehicle engine, including but not limited to exhaust control systems, fuel~~  
39 ~~evaporative control systems and crankcase ventilating systems.~~

40 ~~B. "Business" means an occupation, profession or trade; a person or partnership or corporation~~  
41 ~~engaged in commerce, manufacturing, or a service; or a profit-seeking enterprise or concern.~~

42 ~~C. "CARB" means California air resources board.~~

43 ~~D. "CCR" means California code of regulations, Title 13.~~

44 ~~E. "California certified" means a vehicle having a valid executive order stating that the vehicle~~  
45 ~~meets all applicable requirements under the applicable sections of CCR and approved for sale in California by~~  
46 ~~CARB.~~

47 ~~F. "California standards" means those emission standards for motor vehicles and new motor~~  
48 ~~vehicle engines that the state of California has adopted and for which it has received a waiver from the United States~~  
49 ~~environmental protection agency pursuant to the authority of 42 U.S.C. Section 7543 and which other states are~~  
50 ~~permitted to adopt pursuant to 42 U.S.C. Section 7507.~~

51 ~~G. "Certification" means a finding by CARB that a motor vehicle, motor vehicle engine, or air~~  
52 ~~contaminant emission control system satisfies the criteria adopted by CARB for the control of specified air~~  
53 ~~contaminants from motor vehicles.~~

54 ~~H. "Clean Air Act" or "CAA" means the federal Clean Air Act, 42 U.S.C. Sections 7401 et seq.~~

1 ~~\_\_\_\_\_ I. "Dealer" means any person actively engaged in the business of offering to sell, solicit or advertise~~  
2 ~~the sale, purchase, transfer, lease, sale or exchange of a new motor vehicle and who has an established place of~~  
3 ~~business.~~

4 ~~\_\_\_\_\_ J. "Department" means the New Mexico environment department.~~

5 ~~\_\_\_\_\_ K. "Emergency vehicle" means any publicly owned vehicle operated by a peace officer in the~~  
6 ~~performance of his duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire~~  
7 ~~calls, any publicly owned authorized emergency vehicle used by an emergency medical technician or paramedic, or~~  
8 ~~any ambulance used by a private entity under contract with a public agency.~~

9 ~~\_\_\_\_\_ L. "Emission standards" means specified limitations on the discharge of air contaminants into the~~  
10 ~~atmosphere.~~

11 ~~\_\_\_\_\_ M. "Executive order" means a document issued by CARB certifying that a specified test group or~~  
12 ~~model year vehicle has met all applicable requirements adopted by CARB pursuant to the applicable sections of~~  
13 ~~CCR for the control of specified air contaminants from motor vehicles.~~

14 ~~\_\_\_\_\_ N. "Fleet average greenhouse gas emission requirement" means the limitations on greenhouse gas~~  
15 ~~exhaust mass emission values from passenger cars, light duty trucks and medium duty passenger vehicles as set~~  
16 ~~forth in CCR, section 1961.1.~~

17 ~~\_\_\_\_\_ O. "Fleet wide average non-methane organic gas exhaust emission requirement" means a motor~~  
18 ~~vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this~~  
19 ~~regulation sold in New Mexico in any model year based on the calculation in CCR, Section 1960.1(g)(2).~~

20 ~~\_\_\_\_\_ P. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum~~  
21 ~~loaded weight of a single vehicle.~~

22 ~~\_\_\_\_\_ Q. "Light duty truck" means any model year 2000 and subsequent motor vehicle certified to the~~  
23 ~~standards in CCR, section 1961(a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle~~  
24 ~~rated at 6,000 pounds or less, which is designed primarily for the purposes of transportation of property, is a~~  
25 ~~derivative of such vehicles, or is available with special features enabling off-street or off-highway operation and use.~~

26 ~~\_\_\_\_\_ R. "Low emission vehicle" or "LEV" means a motor vehicle which has been certified by CARB.~~

27 ~~\_\_\_\_\_ S. "Medium duty passenger vehicle" or "MDPV" means any medium-duty vehicle with a gross~~  
28 ~~vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The~~  
29 ~~medium-duty passenger vehicle definition does not include any vehicle which:~~

30 ~~\_\_\_\_\_ (1) is an "incomplete truck"; i.e., is a truck that does not have primary load-carrying device or~~  
31 ~~container attached; or~~

32 ~~\_\_\_\_\_ (2) has a seating capacity of more than 12 persons; or~~

33 ~~\_\_\_\_\_ (3) is designed for more than 9 persons in seating rearward of the driver's seat; or~~

34 ~~\_\_\_\_\_ (4) is equipped with an open cargo area of 72.0 inches in interior length or more; a covered box not~~  
35 ~~readily accessible from the passenger compartment shall be considered an open cargo area for the purpose of this~~  
36 ~~definition.~~

37 ~~\_\_\_\_\_ T. "Medium-duty vehicle" means any pre-1995 model year heavy-duty vehicle having a~~  
38 ~~manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 through 2006 model year heavy-duty~~  
39 ~~low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in~~  
40 ~~CCR, section 1960.1(h)(2) having a manufacturer's gross vehicle weight rating of 14,000 pounds or less; and any~~  
41 ~~2000 and subsequent model heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-~~  
42 ~~emission vehicle certified to the standards in CCR, Sections 1961(a)(1) or 1962 having a manufacturer's gross~~  
43 ~~weight rating between 8,501 and 14,000 pounds.~~

44 ~~\_\_\_\_\_ U. "Model year" means the manufacturer's annual production period which includes January 1, or if~~  
45 ~~the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two~~  
46 ~~or more stages, the time of manufacture shall be the date of completion of the chassis.~~

47 ~~\_\_\_\_\_ V. "Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or~~  
48 ~~may be transported otherwise than by muscular power, except motorized bicycles and devices that run only on rails~~  
49 ~~or tracks.~~

50 ~~\_\_\_\_\_ W. "Motor vehicle engine" means an engine that is used to propel a motor vehicle.~~

51 ~~\_\_\_\_\_ X. "New vehicle" means any vehicle with 7,500 miles or fewer on its odometer.~~

52 ~~\_\_\_\_\_ Y. "Non-methane organic gas" or "NMOG" means the sum of non-oxygenated and oxygenated~~  
53 ~~hydrocarbons contained in a gas sample as measured in accordance with the "California non-methane organic gas~~  
54 ~~test procedures", which is incorporated herein by reference.~~

55 ~~\_\_\_\_\_ Z. "Passenger car" means any motor vehicle designed primarily for transportation of persons and~~  
56 ~~having a design capacity equal to or less than 12 individuals.~~

1 ~~AA. "Person" means an individual, public or private corporation, company, partnership, firm,~~  
2 ~~association, society or joint stock company, municipality, state, interstate body, the United States, or any board,~~  
3 ~~commission, employee, agent, officer or political subdivision, or a state, an interstate body or the United States.~~

4 ~~BB. "Placed in service" means having been sold to an ultimate purchaser and not to a dealer or other~~  
5 ~~entity in the distribution chain, and having been individually registered for on road use by the New Mexico motor~~  
6 ~~vehicle division.~~

7 ~~CC. "Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle~~  
8 ~~engine to the ultimate purchaser.~~

9 ~~DD. "State" means:~~

10 ~~(1) for purposes of referring to a governing entity, the state of New Mexico; or~~

11 ~~(2) for purposes of referring to a geographic area, all geographic areas within the jurisdiction of the~~  
12 ~~environmental improvement board.~~

13 ~~EE. "Test group" means a grouping of vehicles as defined by 40 CFR 86.1827-01.~~

14 ~~FF. "Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle~~  
15 ~~engine, the first person whom in good faith purchases a new motor vehicle or new motor vehicle engine for a~~  
16 ~~purpose other than resale.~~

17 ~~GG. "Vehicle identification number" or "VIN" means a unique, 17 digit, alphanumeric code that the~~  
18 ~~vehicle manufacturer assigns to a vehicle.~~

19 ~~HH. "ZEV credit bank" means a system designated by the department that records and tracks the~~  
20 ~~generation, verification, transfer, voluntary retirement, use, and invalidation of vehicle credits.~~

21 ~~{20.2.88.7 NMAC - N, 12/31/07}~~

22  
23 ~~20.2.88.8 DOCUMENTS. Documents incorporated and cited in this part may be viewed at the New~~  
24 ~~Mexico environment department air quality bureau offices in Santa Fe.~~

25 ~~{20.2.88.8 NMAC - N, 12/31/07}~~

26 ~~{The current address for the New Mexico environment department air quality bureau is 1301 Siler Road, Building B,~~  
27 ~~Santa Fe, NM 87507}~~

28  
29 ~~20.2.88.9 SEVERABILITY. If any provision of this part, or the application of such provision to any~~  
30 ~~person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or~~  
31 ~~circumstances other than those as to which it is held invalid, shall not be affected thereby.~~

32 ~~{20.2.88.9 NMAC - N, 12/31/07}~~

33  
34 ~~20.2.88.10 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.~~

35 ~~{20.2.88.10 NMAC - N, 12/31/07}~~

36  
37 ~~20.2.88.11 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any~~  
38 ~~administrative or judicial action initiated under those prior versions.~~

39 ~~{20.2.88.11 NMAC - N, 12/31/07}~~

40  
41 ~~20.2.88.12 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve~~  
42 ~~a person from the responsibility to comply with any other applicable federal, state, or local regulations.~~

43 ~~{20.2.88.12 NMAC - N, 12/31/07}~~

44  
45 ~~20.2.88.13 LIMITATION OF DEFENSE. The existence of a valid permit under this part shall not~~  
46 ~~constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.~~

47 ~~{20.2.88.13 NMAC - N, 12/31/07}~~

48  
49 ~~20.2.88.14 WAIVER OF PART REQUIREMENTS. All requirements of this part are waived from January~~  
50 ~~31, 2011 through January 1, 2016.~~

51 ~~{20.2.88.14 NMAC - N, 01/31/11}~~

52  
53 ~~20.2.88.15 to 20.2.88.99 {RESERVED}~~

54  
55 ~~20.2.88.100 APPLICABILITY. Except as provided in 20.2.88.103 NMAC (Exemptions), no motor vehicle~~  
56 ~~manufacturer, dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease,~~

1 acquire, receive, or register a new model year 2011 or subsequent model year passenger car, light-duty truck,  
2 medium-duty passenger vehicle, or medium-duty vehicle unless the vehicle has been certified by CARB and  
3 received a CARB executive order.

4 ~~[20.2.88.100 NMAC - N, 12/31/07]~~

5  
6 **20.2.88.101 — REQUIREMENTS TO MEET CALIFORNIA STANDARDS.**

7 ~~———— A. ——— Starting with model year 2011 and each model year thereafter, no motor vehicle manufacturer,~~  
8 ~~dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire,~~  
9 ~~receive or register a new passenger car, light-duty truck, or medium-duty passenger vehicle, or medium-duty vehicle~~  
10 ~~unless such vehicle is certified to the California standards.~~

11 ~~———— B. ——— Each motor vehicle manufacturer shall comply with the fleet average emission requirements and~~  
12 ~~the warranty, recall, reporting, and other applicable requirements contained in this part.~~

13 ~~———— C. ——— Each motor vehicle dealer and rental car agency shall comply with the department's inspection~~  
14 ~~and information requests issued pursuant to 20.2.88.112 (Inspections and Information Requests).~~

15 ~~[20.2.88.101 NMAC - N, 12/31/07]~~

16  
17 **20.2.88.102 — INCORPORATION BY REFERENCE.**

18 ~~———— A. ——— For the purpose of applying the incorporated sections of CCR "California" means "New Mexico"~~  
19 ~~and "CARB" means New Mexico environment department, unless otherwise specified or clearly inappropriate.~~

20 ~~———— B. ——— Each manufacturer of a new model year 2011 and subsequent model year passenger car, light-duty~~  
21 ~~truck, medium-duty passenger vehicle, or medium-duty vehicle must comply with each applicable standard in the~~  
22 ~~CCR as incorporated by reference herein. The department shall maintain copies of these sections for public~~  
23 ~~inspection.~~

24 ~~———— (1) ——— Section 1900: Definitions. California effective date 1/1/2006.~~

25 ~~———— (2) ——— Section 1956.8(g) and (h): Exhaust Emission Standards and Test Procedures—1985 and~~  
26 ~~Subsequent Model Heavy Duty Engines and Vehicles. California effective date 11/15/06.~~

27 ~~———— (3) ——— Section 1960.1: Exhaust Emission Standards and Test Procedures—1981 and through 2006 Model~~  
28 ~~Passenger Cars, Light Duty and Medium-Duty Vehicles. California effective date 3/26/04.~~

29 ~~———— (4) ——— Section 1961: Exhaust Emission Standards and Test Procedures—2004 and Subsequent Model~~  
30 ~~Passenger Cars, Light Duty Trucks and Medium-Duty Vehicles. California effective date 2/17/2007.~~

31 ~~———— (5) ——— Section 1961.1: Greenhouse Gas Exhaust Emission Standards and Test Procedures—2009 and~~  
32 ~~Subsequent Model Passenger Cars, Light Duty Trucks and Medium-Duty Vehicles. California effective date~~  
33 ~~01/01/06.~~

34 ~~———— (6) ——— Section 1962: Zero-Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars,~~  
35 ~~Light Duty Trucks and Medium-Duty Vehicles. California effective date 3/26/04.~~

36 ~~———— (7) ——— Section 1962.1: Electric Vehicle Charging Requirements. California effective date 7/24/02.~~

37 ~~———— (8) ——— Section 1965: Emission Control and Smog Index Labels—1979 and Subsequent Model Year~~  
38 ~~Vehicles. California effective date 12/04/03.~~

39 ~~———— (9) ——— Section 1968.2: Malfunction and Diagnostic System Requirements—2004 and Subsequent Model~~  
40 ~~Year Passenger Cars, Light Duty Trucks and Medium-Duty Vehicles. California effective date 04/21/03.~~

41 ~~———— (10) ——— Section 1968.5: Enforcement of Malfunction and Diagnostic System Requirements for 2004 and~~  
42 ~~Subsequent Model Year Passenger Cars, Light Duty Trucks, and Medium-Duty Vehicles and Engines. California~~  
43 ~~effective date 04/21/03.~~

44 ~~———— (11) ——— Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.~~  
45 ~~California effective date 2/17/07.~~

46 ~~———— (12) ——— Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. California~~  
47 ~~effective date 2/17/07.~~

48 ~~———— (13) ——— Section 2035: Purpose, Applicability and Definitions. California effective date 12/26/90.~~

49 ~~———— (14) ——— Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger~~  
50 ~~Cars, Light Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles. California~~  
51 ~~effective date 11/27/99.~~

52 ~~———— (15) ——— Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Year~~  
53 ~~Passenger Cars, Light Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such.~~  
54 ~~California effective date 11/27/99.~~

55 ~~———— (16) ——— Section 2039: Emission Control System Warranty Statement. California effective date 12/26/90.~~

56 ~~———— (17) ——— Section 2040: Vehicle Owner Obligations. California effective date 12/26/90.~~

- ~~1 (18) Section 2041: Mediation; Finding of Warrantable Condition. California effective date 12/26/90.~~
- ~~2 (19) Section 2046: Defective Catalyst. California effective date 2/15/79.~~
- ~~3 (20) Section 2109: New Vehicle Recall Provisions. California effective date 12/30/83.~~
- ~~4 (21) Section 2111: Applicability. California effective date 12/13/06.~~
- ~~5 (22) Section 2112: Definitions. California effective date 11/15/03.~~
- ~~6 (23) Section 2113: Initiation and Approval of Voluntary and Influenced Recalls. California effective~~
- ~~7 date 1/26/95.~~
- ~~8 (24) Section 2114: Voluntary and Influenced Recall Plans. California effective date 11/27/99.~~
- ~~9 (25) Section 2115: Eligibility for Repair. California effective date 1/26/95.~~
- ~~10 (26) Section 2116: Repair Label. California effective date 1/26/95.~~
- ~~11 (27) Section 2117: Proof of Correction Certificate. California effective date 1/26/95.~~
- ~~12 (28) Section 2118: Notification. California effective date 1/26/95.~~
- ~~13 (29) Section 2119: Record keeping and Reporting Requirements. California effective date 11/27/99.~~
- ~~14 (30) Section 2120: Other Requirements Not Waived. California effective date 1/26/95.~~
- ~~15 (31) Section 2121: Penalties~~
- ~~16 (32) Section 2122: General Provisions. California effective date 1/26/95.~~
- ~~17 (33) Section 2123: Initiation and Notification of Ordered Emission-Related Recalls. California~~
- ~~18 effective date 1/26/95.~~
- ~~19 (34) Section 2124: Availability of Public Hearing. California effective date 1/26/95.~~
- ~~20 (35) Section 2125: Ordered Recall Plan. California effective date 1/26/95.~~
- ~~21 (36) Section 2126: Approval and Implementation of Recall Plan. California effective date 1/26/95.~~
- ~~22 (37) Section 2127: Notification of Owners. California effective date 1/26/95.~~
- ~~23 (38) Section 2128: Repair Label. California effective date 1/26/95.~~
- ~~24 (39) Section 2129: Proof of Correction Certificate. California effective date 1/26/95.~~
- ~~25 (40) Section 2130: Capture Rates and Alternative Measures. California effective date 11/27/99.~~
- ~~26 (41) Section 2131: Preliminary Tests. California effective date 1/26/95.~~
- ~~27 (42) Section 2132: Communication with Repair Personnel. California effective date 1/26/95.~~
- ~~28 (43) Section 2133: Record keeping and Reporting Requirements. California effective date 1/26/95.~~
- ~~29 (44) Section 2135: Extension of Time. California effective date 1/26/95.~~
- ~~30 (45) Section 2137: Vehicle and Engine Selection. California effective date 12/28/2000.~~
- ~~31 (46) Section 2138: Restorative Maintenance. California effective date 11/27/99.~~
- ~~32 (47) Section 2139: Testing. California effective date 8/21/2002.~~
- ~~33 (48) Section 2140: Notification and Use of Test Results. California effective date 8/21/2002.~~
- ~~34 (49) Section 2141: General Provisions. California effective date 12/28/00.~~
- ~~35 (50) Section 2142: Alternative Procedures. California effective date 2/23/90.~~
- ~~36 (51) Section 2143: Failure Levels Triggering Recall. California effective date 11/27/99.~~
- ~~37 (52) Section 2144: Emission Warranty Information Report. California effective date 11/27/99.~~
- ~~38 (53) Section 2145: Field Information Report. California effective date 11/27/99.~~
- ~~39 (54) Section 2146: Emissions Information Report. California effective date 11/27/99.~~
- ~~40 (55) Section 2147: Demonstration of Compliance with Emission Standards. California effective date~~
- ~~41 8/21/02.~~
- ~~42 (56) Section 2148: Evaluation of Need for Recall. California effective date 11/27/99.~~
- ~~43 (57) Section 2149: Notification of Subsequent Action. California effective date 2/23/90.~~
- ~~44 (58) Section 2151: New Motor Vehicle Dealer Surveillance. California effective date 12/13/83.~~
- ~~45 (59) Section 2235: Requirements. California effective date 9/17/91.~~

[20.2.88.102 NMAC - N, 12/31/07]

**20.2.88.103 EXEMPTIONS.** The following vehicles are not subject to this part.

- ~~49 A. Military tactical vehicles.~~
- ~~50 B. Vehicles sold for registration and use in a state that is not subject to the California vehicle~~
- ~~51 emission standards.~~
- ~~52 C. Previously registered vehicles with more than 7,500 miles, provided that for vehicle dealers, the~~
- ~~53 mileage at the time of sale is determined by the odometer statement when the dealer acquired the vehicle.~~
- ~~54 D. Vehicles available only for rent to a final destination in a state that is not subject to the California~~
- ~~55 vehicle emission standards.~~
- ~~56 E. Vehicles transferred by inheritance or as a result of divorce, dissolution, or legal separation.~~

1 ~~\_\_\_\_\_ F. \_\_\_\_\_ Emergency vehicles when a public safety agency has demonstrated to the department's~~  
2 ~~satisfaction that a vehicle that shall meet the agency's needs is not otherwise reasonably available.~~

3 ~~\_\_\_\_\_ G. \_\_\_\_\_ A vehicle acquired by a New Mexico resident to replace a vehicle registered to such resident that~~  
4 ~~was stolen, damaged or failed beyond reasonable repair while out of state, provided that such replacement vehicle is~~  
5 ~~acquired out of state when the previously owned vehicle was stolen, damaged, or failed beyond reasonable repair.~~

6 ~~\_\_\_\_\_ H. \_\_\_\_\_ A vehicle with a right hand drive configuration that is not available in a California certified~~  
7 ~~model, purchased by a rural route postal carrier and used primarily for work.~~

8 ~~\_\_\_\_\_ I. \_\_\_\_\_ Vehicles purchased by a nonresident before establishing residency in New Mexico, regardless of~~  
9 ~~the mileage on the vehicle.~~

10 ~~[20.2.88.103 NMAC - N, 12/31/07]~~

11  
12 ~~**20.2.88.104 — FLEET AVERAGE NON METHANE ORGANIC GAS EXHAUST EMISSION**~~  
13 ~~**REQUIREMENTS AND REPORTING.**~~

14 ~~\_\_\_\_\_ A. \_\_\_\_\_ Fleet average requirement. Effective model year 2011 and each model year thereafter, each motor~~  
15 ~~vehicle manufacturer's NMOG fleet average emissions from passenger cars, light duty trucks and medium-duty~~  
16 ~~vehicles delivered for sale in New Mexico shall not exceed the Fleet Average NMOG Exhaust Emission~~  
17 ~~Requirement set forth in CCR, Section 1961. Compliance shall be based on the number of vehicles, subject to this~~  
18 ~~part, delivered for sale in New Mexico.~~

19 ~~\_\_\_\_\_ B. \_\_\_\_\_ Fleet average NMOG exhaust emission credits and debits. Effective model year 2011 and each~~  
20 ~~model year thereafter, each motor vehicle manufacturer may accrue NMOG emission credits and debits and use~~  
21 ~~credits in accordance with the procedures in CCR, Section 1961. Debits and credits accrued and used shall be based~~  
22 ~~on the number of vehicles subject to this part that are produced and delivered for sale in New Mexico.~~

23 ~~\_\_\_\_\_ C. \_\_\_\_\_ Reporting. Effective model year 2011 and for each model year thereafter, each motor vehicle~~  
24 ~~manufacturer shall submit a report to the department no later than March 1, that follows the procedures in CCR,~~  
25 ~~section 1961 and in the same format used to report such information to CARB.~~

26 ~~[20.2.88.104 NMAC - N, 12/31/07]~~

27  
28 ~~**20.2.88.105 — ZEV SALES.**~~

29 ~~\_\_\_\_\_ A. \_\_\_\_\_ Effective model year 2011 and each model year thereafter, manufacturers subject to this part shall~~  
30 ~~produce and deliver for sale in New Mexico vehicles that comply with the ZEV sales requirement set forth in CCR,~~  
31 ~~Section 1962.~~

32 ~~\_\_\_\_\_ B. \_\_\_\_\_ An intermediate volume or large volume manufacturer of ZEVs, ATPZEVs or PZEVs may use~~  
33 ~~previously earned credits in accordance with CCR, Section 1962 to offset the ZEV sales requirement in Subsection~~  
34 ~~A of this section.~~

35 ~~[20.2.88.105 NMAC - N, 12/31/07]~~

36  
37 ~~**20.2.88.106 — ZEV CREDIT BANK AND REPORTING.**~~

38 ~~\_\_\_\_\_ A. \_\_\_\_\_ Manufacturers shall establish a ZEV credit bank with New Mexico on or before January 1, 2011,~~  
39 ~~and establish reporting procedures to report additions and deletions to that bank in accordance with CARB~~  
40 ~~manufacturers advisory correspondence (MAC) #06-03 zero emission vehicle (ZEV) credit reporting and tracking~~  
41 ~~system and Subsections B, C, D, and E of this section.~~

42 ~~\_\_\_\_\_ B. \_\_\_\_\_ The department shall set aside a number of New Mexico ZEV credits proportionally equivalent to~~  
43 ~~the number of ZEV credits possessed by the requesting manufacturer for use in the state of California at the~~  
44 ~~beginning of the 2011 model year. This transfer shall be performed only after all credit obligations for model years~~  
45 ~~2010 and earlier have been satisfied in California. Each manufacturer's California credit balances shall be~~  
46 ~~multiplied by the ratio of the average number of PCs and LDTs produced and delivered for sale in New Mexico to~~  
47 ~~the combined average number of PCs and LDTs produced and delivered for sale in California in model years 2003~~  
48 ~~through 2005, or, alternatively, by the ratio of PCs and LDTs produced and delivered for sale in New Mexico to the~~  
49 ~~combined number of PCs and LDTs produced and delivered for sale in California in model year 2011. In either~~  
50 ~~case, the time period used to determine the credit transfer ratio shall be used to determine model year 2011 ZEV~~  
51 ~~sales requirements in New Mexico. The department shall establish ZEV compliance accounts for each manufacturer~~  
52 ~~and allocate the credits calculated under this subsection to such compliance accounts, including separate accounts~~  
53 ~~for PZEV, AT PZEV, NEV, Type 0 ZEVs, Type I ZEVs, Type II ZEVs, Type III ZEVs, transportation system, and~~  
54 ~~extended service. The department shall notify each manufacturer of the number of ZEV credits available for use by~~  
55 ~~July 31, 2011. Credits issued pursuant to this subsection may only be used in New Mexico for compliance with the~~  
56 ~~ZEV provisions subject to the same requirements and limitations on credit use set forth in CCR, section 1962,~~

1 ~~adjusted for New Mexico specific vehicle numbers. Each manufacturer operating in accordance with this subsection~~  
2 ~~shall do the following.~~

3 ~~(1) By May 1, 2011, provide the department with the total number of PC and LDT1 vehicles~~  
4 ~~produced and delivered for sale in New Mexico and California for 2003 through 2005 model years.~~

5 ~~(2) Alternatively, by May 1, 2011, provide the department with the total number of PC and LDT1~~  
6 ~~vehicles to be produced and delivered for sale in New Mexico and California in model year 2011. By March 1,~~  
7 ~~2012, provide the department with actual model year 2011 PC and LDT1 vehicles produced and delivered for sale in~~  
8 ~~New Mexico and California. By May 31, 2012, the department shall adjust and notify each manufacturer of the~~  
9 ~~number of ZEV credits established based on actual model year 2011.~~

10 ~~(3) By May 1, 2011, provide the department with the total number of banked California credits after~~  
11 ~~all model year 2010 and earlier obligations have been met.~~

12 ~~C. In addition to the credits transferred in accordance with subsection B of this section,~~  
13 ~~manufacturers may also generate and deposit credits for vehicles delivered for sale in New Mexico during the 2009~~  
14 ~~through 2010 model years, a manufacturer shall open an account with the ZEV credit bank and submit an~~  
15 ~~appropriate notice of credit generation to the department by the time such vehicles are delivered.~~

16 ~~D. A manufacturer with an account in the ZEV credit bank may acquire credits from another~~  
17 ~~manufacturer with an account in the ZEV credit bank, provided that if the credits are to be used for future~~  
18 ~~compliance with the ZEV sales requirement in 20.2.88.105 NMAC (ZEV Sales), the transaction shall be recorded in~~  
19 ~~the ZEV credit bank and certified by both parties to the transaction.~~

20 ~~E. A vehicle equivalent credit shall not constitute or convey a property right.~~  
21 ~~[20.2.88.106 NMAC - N, 12/31/07]~~

22  
23 **20.2.88.107 FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSIONS AND REPORTING.**

24 ~~A. Effective model year 2011 and each model year thereafter, each manufacturer subject to this part~~  
25 ~~shall comply with emissions standards, fleet average greenhouse gas exhaust mass emission requirements for~~  
26 ~~passenger car, light duty truck, medium-duty passenger vehicle weight classes, and other requirements of CCR,~~  
27 ~~Section 1961.1, for vehicles produced and delivered for sale in New Mexico.~~

28 ~~B. Requirements for large volume manufacturers. The fleet average greenhouse gas exhaust emission~~  
29 ~~standards for passenger cars, light duty trucks, and medium-duty passenger vehicles produced and delivered for sale~~  
30 ~~in New Mexico by a large volume manufacturer for model year 2011 and each model year thereafter are set forth in~~  
31 ~~CCR, Section 1961.1.~~

32 ~~C. Requirements for small, intermediate, and independent manufacturers. The fleet average~~  
33 ~~greenhouse gas exhaust emission requirements for passenger cars, light duty trucks, and medium-duty passenger~~  
34 ~~vehicles delivered for sale in New Mexico by small volume, intermediate volume and independent low volume~~  
35 ~~manufacturers for model year 2016 and each model year thereafter are set forth in CCR, Section 1961.1.~~

36 ~~D. Greenhouse gas emission credits and debits. Greenhouse gas credits and debits may be accrued~~  
37 ~~and used based on each manufacturer's sale of vehicles in New Mexico as set forth in CCR, Section 1961.1.~~

38 ~~E. Optional alternative compliance with greenhouse gas emission standards. Greenhouse gas vehicle~~  
39 ~~test groups that are certified pursuant to CCR, Section 1961.1(a)(1)(B)2.a in the state of California may obtain~~  
40 ~~equivalent credit if delivered for sale and use in New Mexico.~~

41 ~~F. Alternative compliance credit. To receive the credit authorized by subsection E, a manufacturer~~  
42 ~~shall submit to the department the data set forth in CCR, Section 1961.1(a)(1)(B)2.a.i for New Mexico specific sale~~  
43 ~~and use.~~

44 ~~G. Reporting on greenhouse gas requirements. Effective model year 2011 and for each model year~~  
45 ~~thereafter, each manufacturer shall submit by March 31 a report to the department that includes end-of model year~~  
46 ~~data that calculates the fleet average greenhouse gas emissions for the model year just ended; the report shall include~~  
47 ~~the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to CCR, Section~~  
48 ~~1961.1; the report shall follow the procedures in CCR, Section 1961.1 and be in the same format used to report such~~  
49 ~~information to CARB.~~

50 ~~[20.2.88.107 NMAC - N, 12/31/07]~~

51  
52 **20.2.88.108 ADDITIONAL REPORTING.**

53 ~~A. To determine compliance with this part, the department may require a motor vehicle manufacturer~~  
54 ~~to submit any documentation that the department deems necessary to the effective administration and enforcement~~  
55 ~~of this part, including all certification materials submitted to CARB.~~

1 ~~\_\_\_\_\_ B. \_\_\_\_\_ In addition to the reporting requirements in 20.2.88.106 NMAC (ZEV Credit Bank and Reporting)~~  
2 ~~and NMAC 20.2.88.111 (Registration and Fees), beginning with the 2011 model year and each model year~~  
3 ~~thereafter, each manufacturer of a vehicle subject to 20.2.88.100 NMAC (Applicability) shall submit annually to the~~  
4 ~~department, no later than March 31 following the close of the model year, a report documenting the total deliveries~~  
5 ~~for sale in New Mexico of vehicles in each test group during that model year.~~  
6 ~~[20.2.88.108 NMAC - N, 12/31/07]~~  
7

8 **20.2.88.109 — WARRANTIES.**

9 ~~\_\_\_\_\_ A. \_\_\_\_\_ For model year 2011 and each model year thereafter, each manufacturer of a vehicle subject to~~  
10 ~~20.2.88.100 NMAC (Applicability) shall warrant to the ultimate purchaser and each subsequent purchaser that the~~  
11 ~~vehicle shall comply over its period of warranty coverage with all requirements of CCR, Sections 2035 through~~  
12 ~~2038, 2040, and 2041.~~

13 ~~\_\_\_\_\_ B. \_\_\_\_\_ For model year 2011 and each model year thereafter, a manufacturer of a vehicle subject to this~~  
14 ~~part shall include an emission control system warranty statement that complies with the requirements in CCR,~~  
15 ~~Section 2039, except that a manufacturer may modify the statement for the sole purposes of informing the owner of~~  
16 ~~the warranty's applicability and including a telephone number for owners to obtain answers to questions regarding~~  
17 ~~the warranty.~~

18 ~~\_\_\_\_\_ C. \_\_\_\_\_ Upon the department's request, a manufacturer of a vehicle subject to this part shall submit a~~  
19 ~~failure of emission related component report, or copy of the report submitted to CARB, to the department as defined~~  
20 ~~in CCR, Section 2144.~~

21 ~~[20.2.88.109 NMAC - N, 12/31/07]~~  
22

23 **20.2.88.110 — RECALLS.**

24 ~~\_\_\_\_\_ A. \_\_\_\_\_ Any order issued or enforcement action taken by CARB to correct noncompliance with any~~  
25 ~~section of CCR, Title 13, that results in the recall of a vehicle pursuant to CCR, sections 2109 through 2135, shall be~~  
26 ~~prima facie evidence concerning noncompliance for a vehicle registered in New Mexico. If the manufacturer~~  
27 ~~demonstrates to the department's satisfaction that the order or action is not applicable to a vehicle registered in New~~  
28 ~~Mexico, the department shall not pursue a recall of that vehicle.~~

29 ~~\_\_\_\_\_ B. \_\_\_\_\_ A voluntary or influenced emission-related recall campaign initiated by a manufacturer pursuant to~~  
30 ~~CCR, Sections 2113 through 2121 shall include all affected vehicles registered in New Mexico.~~

31 ~~\_\_\_\_\_ C. \_\_\_\_\_ For any vehicle subject to an order or action under Subsection A of this section, each manufacturer~~  
32 ~~shall send to each owner of a vehicle registered in New Mexico a notice that complies with the requirements in~~  
33 ~~CCR, Sections 2118 or 2127, including a telephone number for owners to obtain answers to questions regarding the~~  
34 ~~recall.~~

35 ~~[20.2.88.110 NMAC - N, 12/31/07]~~  
36

37 **20.2.88.111 — REGISTRATION AND FEES.**

38 ~~\_\_\_\_\_ A. \_\_\_\_\_ After January 1, 2010, no large volume or intermediate volume vehicle manufacturer shall deliver~~  
39 ~~for sale, offer for sale, sell, import, deliver, rent, or lease a motor vehicle subject or potentially subject to this part~~  
40 ~~without first obtaining a registration from the department.~~

41 ~~\_\_\_\_\_ B. \_\_\_\_\_ The registration shall have a term no more than 10 years and shall be subject to an annual fee.~~

42 ~~\_\_\_\_\_ C. \_\_\_\_\_ The department shall assess an annual registration fee of \$10,000 to each large and intermediate-~~  
43 ~~volume manufacturer for the period beginning July 1 and ending June 30 of the subsequent year.~~

44 ~~\_\_\_\_\_ D. \_\_\_\_\_ Each large and intermediate volume manufacturer shall remit the specified amount payable to the~~  
45 ~~New Mexico environment department by April 1, annually.~~

46 ~~[20.2.88.111 NMAC - N, 12/31/07]~~  
47

48 **20.2.88.112 — INSPECTIONS AND INFORMATION REQUESTS.**

49 ~~\_\_\_\_\_ A. \_\_\_\_\_ For the purpose of determining compliance with this part, the department may inspect any new~~  
50 ~~and used motor vehicle, and may inspect and copy relevant, non-financial records, including records documenting~~  
51 ~~vehicle origin, certification, delivery, or sales, and any record of emission-related part repairs performed under~~  
52 ~~warranty.~~

53 ~~\_\_\_\_\_ B. \_\_\_\_\_ For the purpose of determining compliance with this part, the department may require a vehicle~~  
54 ~~dealer or rental car agency to submit relevant, non-financial documentation related to a motor vehicle subject or~~  
55 ~~potentially subject to this part, except that this subsection shall not be construed to require the creation of a new~~  
56 ~~record.~~

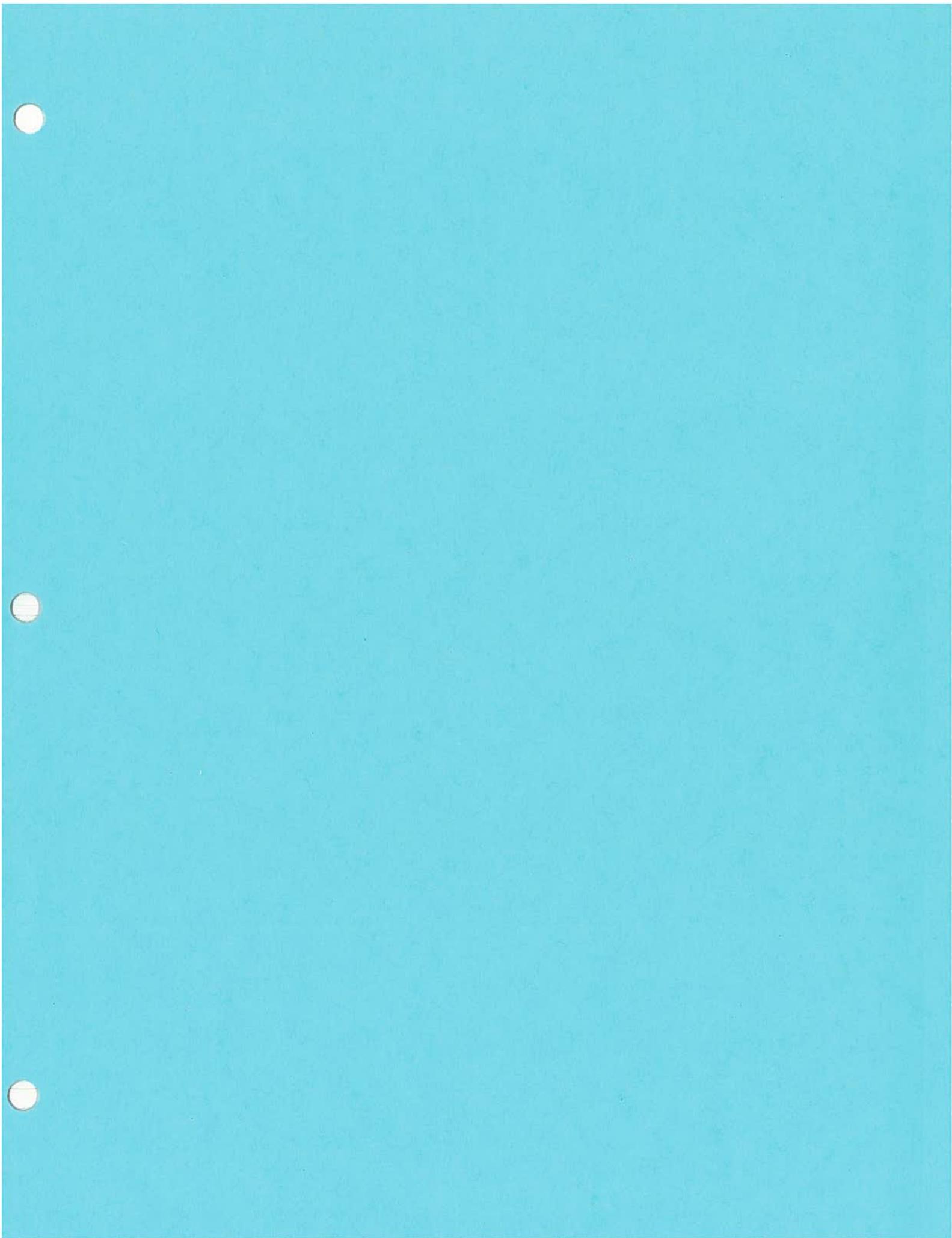
1 ~~C. A vehicle dealer or rental car agency may assert a claim for a record or documentation requested~~  
2 ~~pursuant to this section in accordance with 20.2.1.115 NMAC (Confidential Information Protection).~~  
3 ~~[20.2.88.112 NMAC – N, 12/31/07]~~  
4

5 **HISTORY OF 20.2.88 NMAC: [RESERVED]**

6 History of Repealed Material:

7  
8 20.2.88 NMAC, Emission Standards for New Motor Vehicles, filed 12/31/07 – Repealed effective [INSERTDATE].







**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>PROPOSED REPEAL OF</b>	)	<b>No. EIB 13-06 (R)</b>
<b>EMISSION STANDARDS FOR</b>	)	
<b>NEW MOTOR VEHICLES,</b>	)	
<b>PART 20.2.88 NMAC,</b>	)	
	)	
<b>NEW MEXICO ENVIRONMENT</b>	)	
<b>DEPARTMENT,</b>	)	
	)	
<b>Petitioner.</b>	)	
<hr/>		

**WRITTEN DIRECT TESTIMONY OF LANY WEAVER**

**1 Introduction**

2 My name is Lany Weaver, and I am an Environmental Analyst in the Planning  
3 Section, Air Quality Bureau, of the New Mexico Environment Department. I am  
4 presenting this written testimony on behalf of the Department in the proceeding on the  
5 repeal of the Air Quality Regulation 20.2.88 NMAC – *Emission Standards for New*  
6 *Motor Vehicles*. A copy of the regulation proposed for repeal is marked as **NMED**  
7 **Exhibit 1**. My written testimony is marked as **NMED Exhibit 2**.

**8 Qualifications and Experience**

9 I have served in the Control Strategies Section of the Air Quality Bureau for more  
10 than 23 years. I have worked as an Environmental Engineering Specialist, a Health  
11 Program Manager, and for the past 12 years as an Environmental Analyst. Throughout  
12 this time, my duties have included developing air quality implementation plans, preparing  
13 regulatory proposals and reports, and providing testimony regarding the air quality plans  
14 and regulations.

1 Prior to joining the Air Quality Bureau in New Mexico, I worked for three years,  
2 from 1981 through 1984, as an Air Resources Engineer with the California Air Resources  
3 Board in Sacramento.

4 I hold a Bachelor of Sciences degree in Mechanical Engineering from the  
5 University of California at Davis. A copy of my resume is marked as **NMED Exhibit 3**.

## 6 **Historical Background**

### 7 **a. 2007 Adoption of Part 20.2.88 NMAC**

8 The regulation, part 20.2.88 NMAC – Emission Standards for New Motor  
9 Vehicles, was first adopted in 2007 to apply the California motor vehicle emissions  
10 standards, or “California standards,” within New Mexico beginning with model year  
11 2011. The regulation applies to the sale, delivery, purchase, rent, lease, and registration  
12 of new light- and medium-duty motor vehicles in the State of New Mexico.

13 The Albuquerque-Bernalillo County Air Quality Control Board, which held a  
14 joint hearing with the Environmental Improvement Board, adopted part 20.11.104  
15 NMAC with similar requirements for their jurisdiction. The purpose of the joint hearing  
16 was to insure that both rules were the same and that they would take effect at the same  
17 time.

18 Part 20.2.88 NMAC takes advantage of the “California waiver” under the federal  
19 Clean Air Act. Because the Clean Air Act provides for federal emission standards for  
20 new motor vehicles, section 209(a) of the Act, 42 U.S.C. § 7543(a), generally preempts  
21 states from adopting their own emissions standards for new motor vehicles. However,  
22 under section 209(b) of the federal Act, the State of California is allowed to adopt  
23 standards that are different from the federal standards – and the federal preemption can be

1 waived – if the California standards are at least as stringent as the federal standards.  
2 Section 177 of the Clean Air Act, 42 U.S.C. § 7507, allows other states to adopt the  
3 California standards as long as those state standards are identical to the California  
4 standards. In addition, the standards in section 177 must be adopted at least two years  
5 before the start of the model year to which they apply. Part 20.2.88 NMAC met these  
6 provisions by incorporating portions of the California rules by reference and setting an  
7 effective date of 2011. New Mexico was one of fourteen states and the District of  
8 Columbia to adopt the California standards under Section 177.

9 The California standards consist of three separate sets of standards. The first are  
10 standards applicable to air pollutants, including non-methane organic gases (NMOG),  
11 known as the Low Emission Vehicle program (LEV). The second are standards requiring  
12 that a percentage of each manufacturer's total sales consist of zero emission vehicles  
13 (ZEV). The third are emissions standards for carbon dioxide (a greenhouse gas),  
14 measured in grams per mile. Additional provisions address emissions credits (and their  
15 banking), control equipment warranties, recalls, registration, and labeling. Part 20.2.88  
16 NMAC incorporated these California standards and other provisions into the New  
17 Mexico regulations.

18 In addition, in order to cover the costs of staffing the program, part 20.2.88  
19 NMAC levied annual fees on large- and intermediate-volume automakers. Although the  
20 fees were initially collected from automakers, those fees were reimbursed after the  
21 waiver was adopted, as explained below.

22 At the time that part 20.2.88 NMAC was adopted, the California standards were  
23 more stringent than the federal standards for emissions of conventional air pollutants

1 from motor vehicles, including non-methane organic gases (NMOG), carbon monoxide,  
2 oxides of nitrogen, formaldehyde, and particulates. There was not a comparable federal  
3 standard for motor vehicle greenhouse gas emissions. In addition, the federal program  
4 did not include a ZEV standard. As a result of having to meet federal and California  
5 standards, automakers frequently produced more than one version of a model of car.

6 The California standards should not be confused with the federal Corporate  
7 Average Fuel Economy (CAFE) standards first established in 1975 to increase fuel  
8 economy. States do not have authority under federal law to establish fuel efficiency  
9 standards for motor vehicles. However, the technologies incorporated into a model's  
10 "clean car" version also increase fuel efficiency and result in lower operating costs for the  
11 vehicle owner.

12 **b. 2010 Waiver of Part 20.2.88 NMAC**

13 On April 1, 2010, the U.S. Environmental Protection Agency (EPA) and the U.S.  
14 Department of Transportation, National Highway Traffic Safety Administration adopted  
15 a national regulatory program designed to reduce greenhouse gas emissions through  
16 maximum emission standards, and to increase fuel economy through the federal CAFE  
17 standards, for all new motor vehicles sold in the United States.<sup>1</sup> This program applies  
18 increasingly stringent emissions limits from model years 2012 to 2016, with the federal  
19 standards achieving the same reduction in 2016 as the California standards. This  
20 approach has allowed manufacturers to build a single light-duty national fleet that  
21 satisfies the standards adopted by the federal government, the State of California, and the  
22 states that implemented the California standards. With the adoption of these federal

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<sup>1</sup> 75 Fed. Reg. 25,324 (May 7, 2010), Final Standards for Greenhouse Gas Emissions from Cars and Light Trucks for Model Years 2012 through 2016.

1 rules, the same emissions reduction can be achieved in New Mexico without incurring the  
2 additional expense of implementing a State program.

3         Given the adoption of federal standards to apply through model year 2016, in July  
4 2010 the Environment Department petitioned the Board to reopen part 20.2.88 NMAC.  
5 The Department proposed adding a new provision, section 20.2.88.14 NMAC, to waive  
6 all requirements in the regulation until January 1, 2016. There was no opposition to this  
7 proposal. On December 6, 2010, the Board adopted the proposal. Fees that had been  
8 collected from automakers were reimbursed, and the Bureau was able to conserve its  
9 resources for other work.

10         In February 2011, the Albuquerque-Bernalillo County Air Quality Control Board  
11 and the Albuquerque Environmental Health Department determined that the adoption of  
12 the waiver in part 20.2.88 NMAC effectively also waived the Albuquerque-Bernalillo  
13 County Clean Car rule, part 20.11.104 NMAC. A copy of the letter from the City of  
14 Albuquerque announcing this determination is marked as **NMED Exhibit 4**.

15         **c. Harmonization of Federal and California Vehicle Standards**

16         In July 2011, automakers, the State of California, and the federal government  
17 committed to a series of actions that would harmonize the federal and California  
18 standards for motor vehicles for model years 2017 to 2025<sup>2</sup>. Such harmonization will  
19 allow automakers to continue to produce one version of a vehicle for nationwide sale and  
20 establish federal greenhouse gas emissions limits for vehicles. In May of this year, EPA  
21 proposed federal regulations – the so-called Tier 3 rules<sup>3</sup> – that will be comparable to the

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<sup>2</sup> 77 Fed. Reg. 62,624 (October 15, 2012), Final Standards for Greenhouse Gas Emissions from Cars and Light Trucks for Model Years 2017 through 2025.

<sup>3</sup> 78 Fed. Reg. 29,816 (May 21, 2013), Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards; Proposed Rule.

1 most recent (December 2012) version of the California standard (LEV III). These  
2 regulations are scheduled to be finalized by the end of this year. They have received  
3 strong support from automakers. The federal and California standards will continue to  
4 differ in their requirements for zero emissions vehicles (ZEV). In addition, state-specific  
5 average fleet emissions limits, and the reporting that verifies state-specific limits, apply  
6 only in states that implement the California standards under section 177.

### 7 **Current Proposal**

8 To comply with the Clean Air Act, the Board must take action on part 20.2.88  
9 NMAC this year. As stated previously, any state provisions related to motor vehicle  
10 standards must be identical to the California standards. Part 20.2.88 NMAC incorporates  
11 by reference the California rules that were in effect in 2007, and since that time the  
12 California regulations have been significantly revised. As a result, part 20.2.88 NMAC  
13 cannot be implemented in its current form. The waiver incorporated into part 20.2.88  
14 NMAC will not expire until January 1, 2016; however, any state rule that incorporates the  
15 California standards must be adopted or revised at least two years prior to the date that  
16 the state rule becomes effective. As a result, part 20.2.88 NMAC must be considered this  
17 year so that any revisions to the regulation will be in effect by January 1, 2014.

18 The three options available to the Board are to repeal part 20.2.88 NMAC, extend  
19 the waiver of its requirements, or update it to match California's current standards. As  
20 explained below, the Department has concluded that repeal of the regulation is the  
21 preferable approach. On June 5, 2013, the Department released and widely distributed a  
22 paper titled *Regulatory Options for 20.2.88 NMAC – Emission Standards for New Motor*  
23 *Vehicles*. This paper, which is marked as **NMED Exhibit 5**, outlined the pros and cons

1 of each of these options, and stated the Department's intent to propose that the Board  
2 repeal the rule. I was one of the authors of that paper.

3 If part 20.2.88 NMAC is repealed, the emissions from new autos delivered to the  
4 State would only be subject to federal requirements (as is currently the case because of  
5 the waiver). If the federal Tier 3 rules are finalized in their existing form, federal  
6 requirements will be comparable to the most current California standards. The benefits  
7 of repealing part 20.2.88 NMAC would be to avoid the potential administrative burdens  
8 to automakers and the Department from implementing the rule. Automakers would not  
9 be required to register or pay fees under this rule or track and report the anticipated State-  
10 specific emissions from the vehicle fleet. The potential disadvantages are that the  
11 regulatory incentives for the delivery of zero emissions vehicles to the State would be  
12 lost. In addition, the State would no longer have a backstop in the event that the federal  
13 regulations are significantly weakened in the administrative process, delayed, or  
14 successfully challenged in the courts.

15 After careful consideration, the Department has determined that the administrative  
16 burdens of implementing the Clean Cars regulation now outweigh the potential benefits  
17 of the State program.

### 18 **Public Notice and Outreach**

19 A public notice of this proposal was published in the *New Mexico Register* on  
20 August 30, 2013 and in the *Albuquerque Journal*, in both English and Spanish, on August  
21 28, 2013. Copies of these notices of the proposal are marked **NMED Exhibit 6** and  
22 **NMED Exhibit 7**. The Department conducted additional outreach on July 5, 2013 by  
23 sending a letter and options paper to an extensive list of public interest and industry

1 stakeholders informing them of this proposal. A copy of the letter, and the mailing list of  
2 recipients, is marked as **NMED Exhibit 8**. A follow-up email was sent on August 12,  
3 2013, informing the same stakeholders of the hearing date and providing a link to the  
4 Department's website where hearing documents have been posted. A copy of the email  
5 is marked as **NMED Exhibit 9**. The Department received comments from only one  
6 person, the Association of Global Automakers, Inc., an international trade association  
7 representing automobile manufacturers and equipment suppliers. The Association  
8 supports the proposal. A copy of the comment letter is marked as **NMED Exhibit 10**.

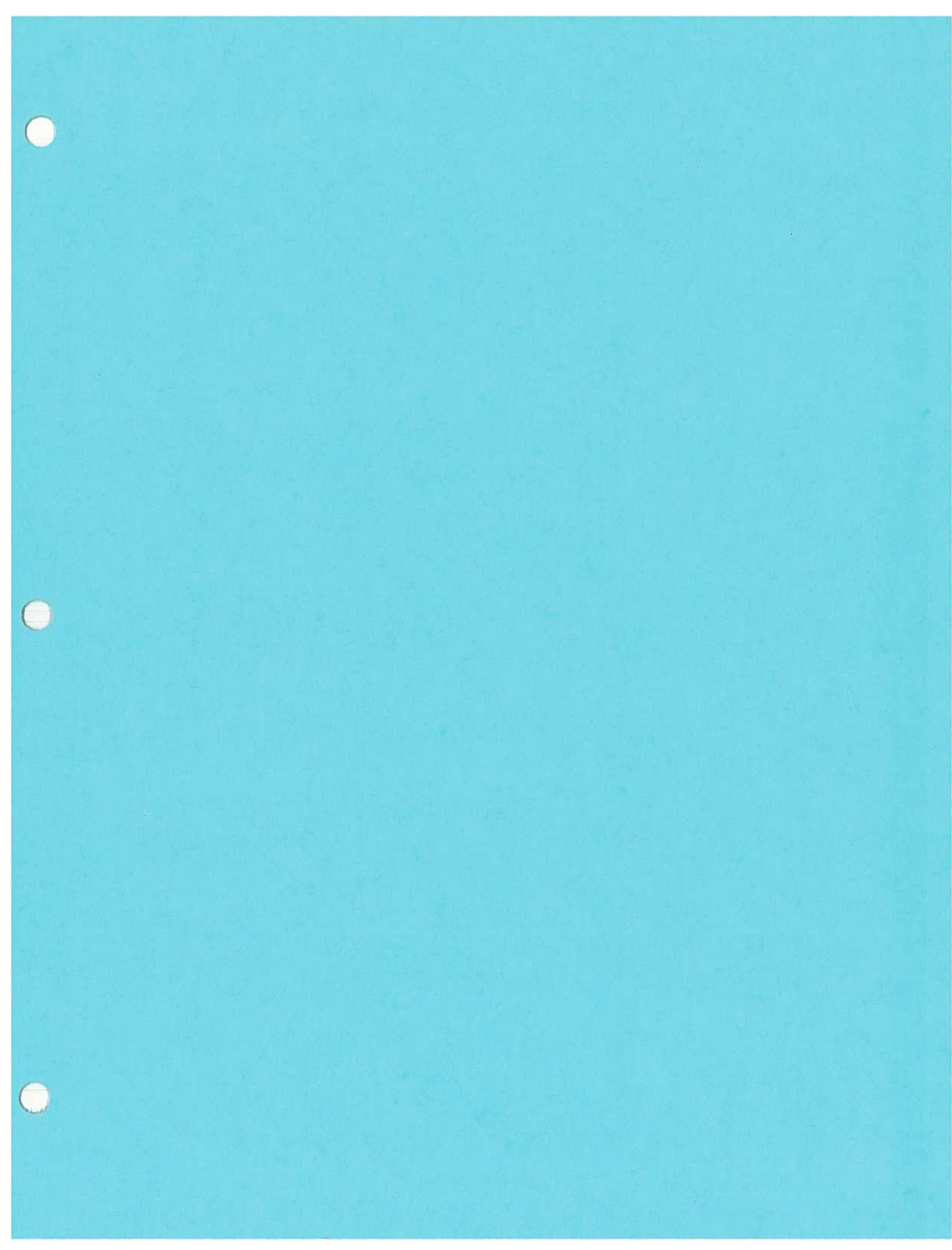
9 **Effect on Small Business**

10 Pursuant to the Small Business Regulatory Relief Act, 1978 NMSA § 14-4A-1 to  
11 14-4A-6, the Department has determined that the regulatory changes proposed in this  
12 action will not have an adverse effect on small business. This determination is based on  
13 the fact that the proposed repeal will not impose additional substantive requirements on  
14 businesses and will reduce State requirements on businesses. Under this proposed rule, if  
15 adopted, only federal new car standards will apply in New Mexico.

16 **Statement of Reasons**

17 For the convenience of the Board, we are submitting a proposed statement of  
18 reasons supporting the proposed repeal of part 20.2.88 NMAC. It is marked as **NMED**  
19 **Exhibit 11**.

20 Thank you. That concludes my direct testimony.





# LANY WEAVER

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## EDUCATION

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UNIVERSITY OF CALIFORNIA AT DAVIS  
*B.S., Mechanical Engineering, 1981.*

## EXPERIENCE

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STATE OF NEW MEXICO, ENVIRONMENT DEPARTMENT  
AIR QUALITY BUREAU

*Environmental Analyst, Planning Section, May 2001 – present*  
*Health Program Manager, Control Strategies Section, May 1993 – May 2001*  
*Environmental Engineering Specialist, April 1990 – May 1993*

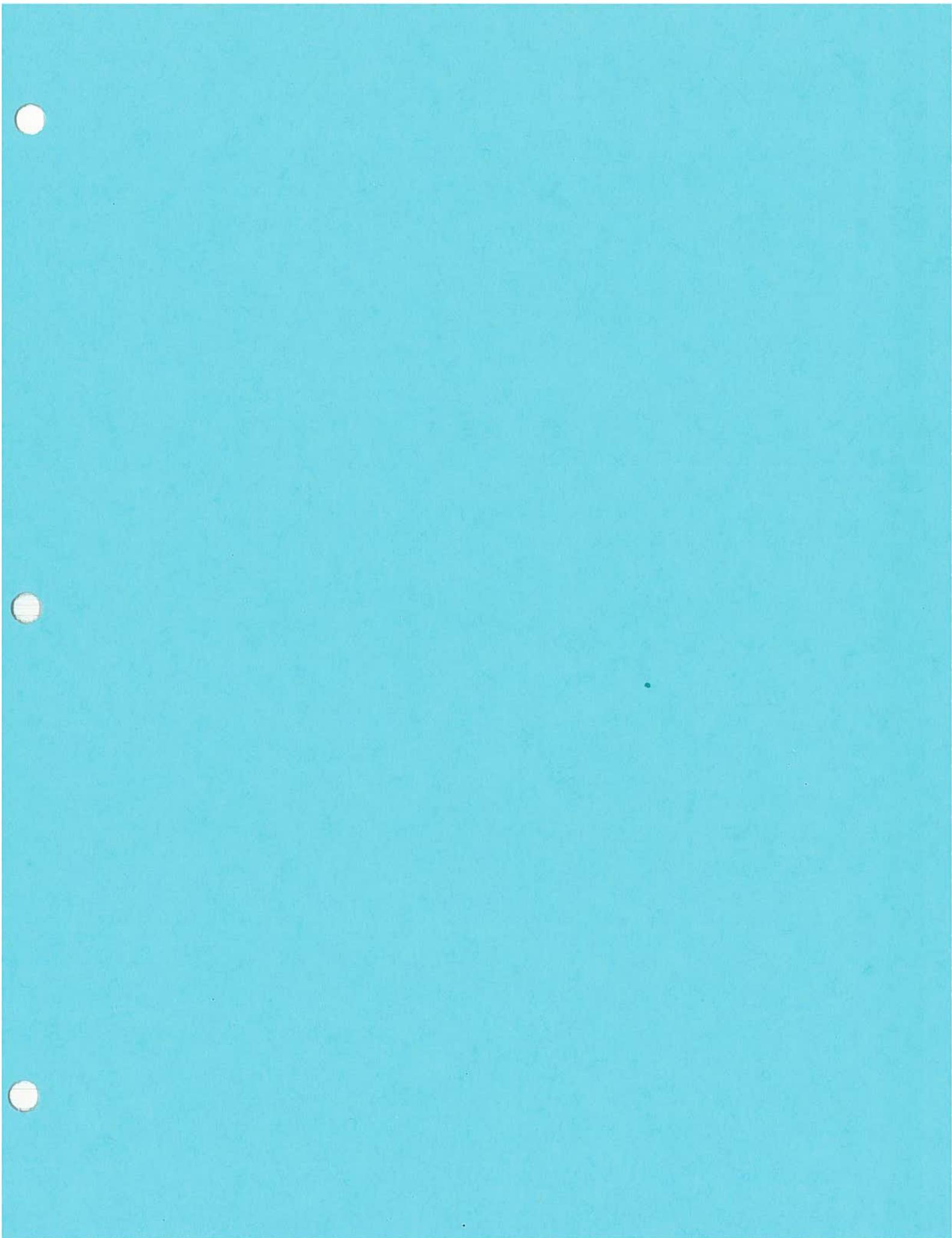
The Control Strategy Section (now the Control Strategies Unit of the Planning Section) of the Air Quality Bureau is responsible for preparing state implementation plans, policies, and regulations for air quality. During the time that I was Health Program Manager, the section also included the Small Business Assistance Program. In addition to developing and providing testimony regarding numerous air quality plans and regulations, I have developed a digital air quality regulatory archive tool to increase the accessibility of historical hearing records for staff and the public.

CALIFORNIA AIR RESOURCES BOARD  
Sacramento, California

*Air Resources Engineer, CARB Stationary Sources Division, April 1981 – March 1984*

The staff of the California Air Resources Board develops statewide air quality regulations and plans, as well as model regulations for consideration by local Air Quality Management Districts, under the direction of the Board. To this end, CARB staff develops supporting documents and reports, conducts outreach, hosts workshops, and provides technical testimony at Board hearings when the regulations and plans are considered. As a staff member in the Stationary Sources Division, I participated in the development of several reports and regulations, including revisions to the limitations for lead in gasoline and sulfur in diesel fuel.







# CITY OF ALBUQUERQUE



Steve Douglas  
Senior Director, Environmental Affairs  
Alliance of Automobile Manufacturers  
1415 L Street, Suite 1190  
Sacramento, CA 95814

Subject: New Mexico Clean Car Program

February 14, 2011

Mr. Douglas

I understand that you are concerned about the Albuquerque Bernalillo County Air Quality Control Board (Air Board) Clean Car regulations at 20.11 104 NMAC (Part 104). The state New Mexico Environmental Improvement Board (EIB) adopted a change to the state's Clean Car regulation at 20.2.88 NMAC (Part 88) which waives application of the regulations for the model years (MY) 2011-2016. You wanted to know if the City of Albuquerque, with Vehicle Pollution Management Division (VPMD) as the responsible entity, was going to change Part 104 to be consistent with the state.

VPMD is not planning to petition the Air Board for a hearing on Part 104 to affect any change to Part 104. It is our position that Part 104 cannot, and does not, authorize a stand-alone clean car program, for reasons discussed below. Once the Part 88 waiver expires, Part 104 will be enforceable as part of the statewide New Mexico Clean Car program in concert with Part 88. VPMD's position and reasoning was presented to the Air Board on February 09, 2011. The Air Board, and its attorney, concur with VPMD's position on the matter.

## ANALYSIS.

The Clean Air Act bars political subdivisions from setting motor vehicle standards when not part of a statewide program. (42 USC Sec. 7543(a)). Section 177 of the Clean Air Act allows a state to adopt California standards. The definition of "state" in the Clean Air Act, generally, does not include political subdivisions.

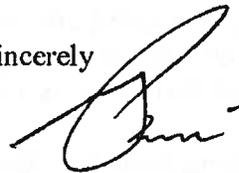
New Mexico is unique in that it has two separate, but equal, air quality programs and jurisdictions. The cleanest approach to becoming a "Section 177" state was a concurrent joint adoption of the California regulations into the regulations of the two jurisdictions. The only difference was that the Albuquerque Bernalillo County regulations did not set up accounting programs or auto manufacturers fleet reporting requirements; rather, Part 104 **authorizes** vehicles delivered for sale in Albuquerque Bernalillo County to be included in the statewide fleet accounting and auto manufacturer reporting to the state agency. The state agency fleet accounting and manufacturing reporting program is mandated in Part 88.

Therefore, Part 104 is not currently valid or enforceable for two reasons. The Clean Air Act does not provide authority for Part 104 to be good law by itself because

Part 104 is a law of a political subdivision and therefore, alone, does not meet the requirement of Section 177. Secondly, because of the waiver language in Part 88, there is no New Mexico Clean Car program or program accounting, and so there is no program that vehicles delivered to Albuquerque can be made part of. When the Part 88 waiver expires, Part 104 will again provide the authority to have a statewide Section 177 program, including Albuquerque Bernalillo County, with the state agency performing the accounting functions and accepting the auto manufacturing reporting.

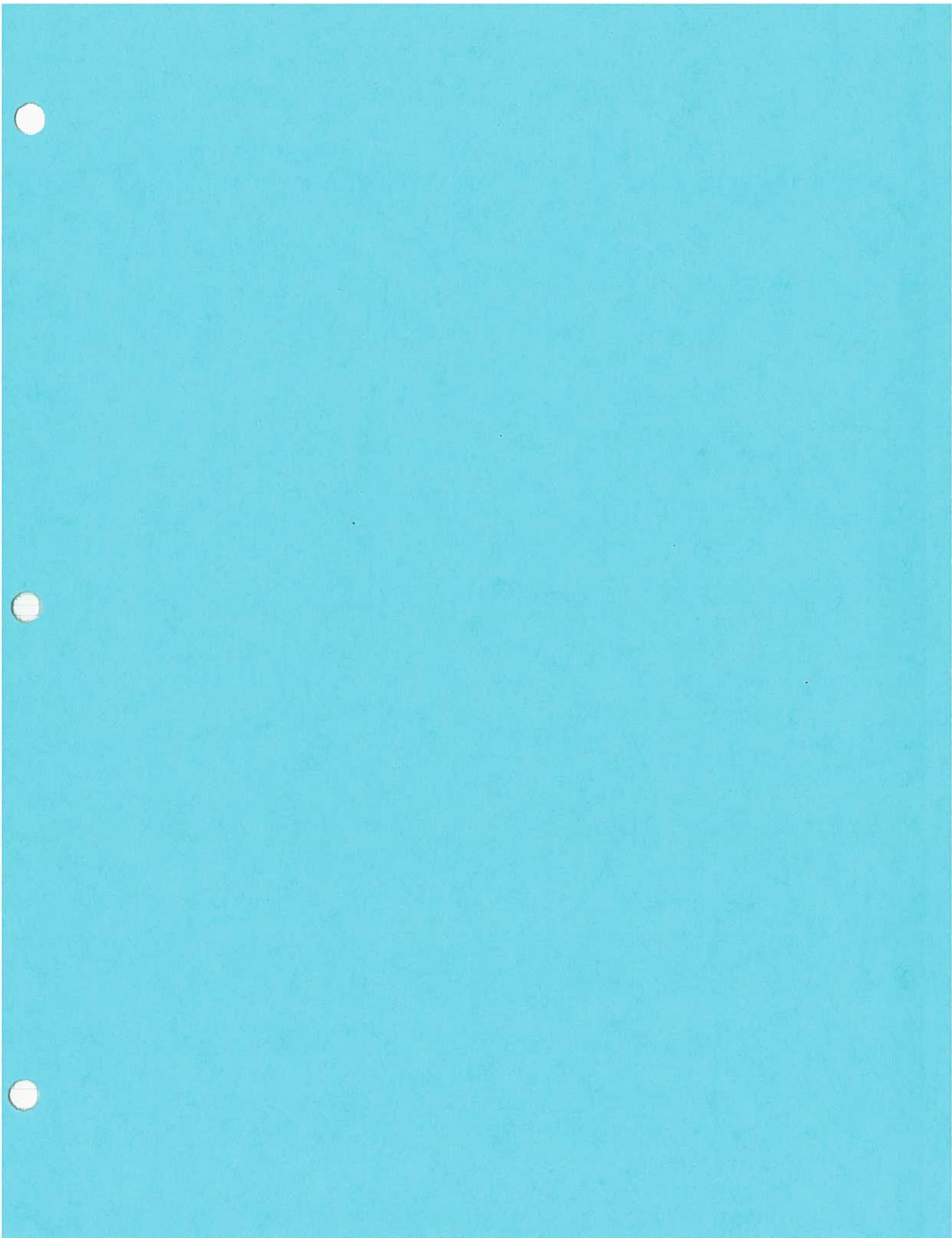
For these reasons, VPMD sees no reason to spend the time or money to hold a public hearing to insert the Part 88 waiver language into Part 104. I hope this satisfies your concerns. If not, any interested party may petition the Air Board to modify regulations under its jurisdiction. The procedures to submit a petition to the Air Board can be found at 20.11.82 NMAC.

Sincerely

A handwritten signature in black ink, appearing to read "Glen Dennis", written over a light blue circular stamp.

Glen Dennis

Glen L. Dennis, Division Manager  
Vehicle Pollution Management Division  
Albuquerque Environmental Health Department  
1500 Broadway Blvd. NE  
Albuquerque, NM 87102







SUSANA MARTINEZ  
Governor  
JOHN A. SANCHEZ  
Lieutenant Governor

NEW MEXICO  
ENVIRONMENT DEPARTMENT

*Air Quality Bureau*

525 Camino de los Marquez  
Suite 1  
Santa Fe, New Mexico, 87505  
Phone (505) 476-4300 Fax (505) 476-4375  
[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)



RYAN FLYNN  
Cabinet Secretary-designate  
BUTCH TONGATE  
Deputy Secretary

June 5, 2013

Dear Air Quality Stakeholder,

In 2007, the New Mexico Environmental Improvement Board (EIB) adopted the regulation 20.2.88 NMAC – Emission Standards for New Motor Vehicles. Under the requirements of the federal Clean Air Act, any state provisions related to motor vehicle standards must be identical to those approved from California, and so 20.2.88 NMAC incorporated by reference the California rules that were in effect at that time. In 2010, the EIB reopened and added a new section 20.2.88.14 NMAC, waiving all requirements until January 1, 2016.

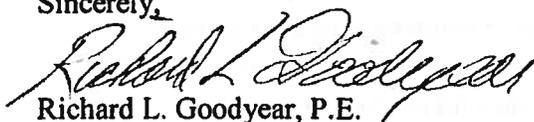
Federal law requires that the EIB reopen and take further action on 20.2.88 NMAC before the end of this year. Because the California standards have been significantly revised since 2007, New Mexico would be in violation of the federal Clean Air Act if 20.2.88 NMAC remains as it is; it would come into effect in 2016 incorporating standards that are no longer identical to California's. The regulatory action must be taken by the end of this year because the Clean Air Act also requires that any change to the rule must occur at least 2 years prior to implementation. In order to achieve this deadline we will be asking the EIB in July to set a hearing in November.

The EIB has several options with regards to reconsideration of 20.2.88 NMAC. Attached is a summary of those options and the pros and cons of each. As indicated in the summary, the New Mexico Environment Department, Air Quality Bureau, after reviewing the options, is planning to recommend to the EIB that the regulation be rescinded. However, we welcome your comments regarding this recommendation. In addition, the regulatory process assures that you will have the opportunity to provide comments to the EIB when it considers this regulation.

If you would like to make comments to the New Mexico Environment Department Air Quality Bureau, or be added to (or removed from) the list of persons who will be notified of activities related to this regulatory action, please contact Lany Weaver at (505) 476-4322 or [lany.weaver@state.nm.us](mailto:lany.weaver@state.nm.us).

Thank you for your interest in New Mexico's Air Quality.

Sincerely,

  
Richard L. Goodyear, P.E.  
Bureau Chief

NMED  
Exhibit 5

## Regulatory Options for

### 20.2.88 NMAC – *Emission Standards for New Motor Vehicles*

June 5, 2013

#### Executive Summary

This rule was first adopted in 2007 to apply the California motor vehicle emissions standards within New Mexico. At the request of the New Mexico Environment Department Air Quality Bureau, the rule's requirements were waived in 2010 and have not taken effect. Due to the upcoming expiration of the waiver and certain provisions in the federal Clean Air Act, the Environmental Improvement Board (EIB) is required to reconsider 20.2.88 NMAC by the end of this year. Although the federal and California motor vehicle emissions standards are in the process of becoming synchronized until 2025, they will remain different with regards to requirements for 'zero emissions' vehicles and state-specific average fleet emissions. Three regulatory options are described for the rule; to rescind, update, or continue to waive the rule's requirements. The recommendation of the Environment Department Air Quality Bureau is to rescind the rule. A timeline is provided, which meets the statutory requirements for hearings and includes additional stakeholder involvement.

#### The Background and Requirements of 20.2.88 NMAC

The regulation 20.2.88 NMAC – *Emission Standards for New Motor Vehicles* was first adopted in 2007 to apply the California motor vehicle emissions standards, or "California standards", within New Mexico beginning with model year 2011. The regulation applied to the sale, delivery, purchase, rent, lease, and registration of new light- and medium-duty motor vehicles in the State of New Mexico. Under Section 177 of the federal Clean Air Act (CAA), states may adopt and enforce the new motor vehicle emissions standards only if they are identical to the California standards, and 20.2.88 NMAC met this provision by incorporating portions of the California rules by reference. New Mexico was one of fourteen states and the District of Columbia to adopt the California standards under Section 177.

The adoption of 20.2.88 NMAC was part of a broader package of initiatives to reduce greenhouse gas emissions under Governor Richardson's Executive Order 2006-069 – *New Mexico Climate Change Action*, which directed the New Mexico Environment Department to submit to the EIB new motor vehicle emissions standards consistent with the California clean car standards no later than the end of calendar year 2007. In a joint hearing, the Albuquerque-Bernalillo County Air Quality Control Board adopted the same requirements for their jurisdiction.

The California standards actually consist of three separate sets of standards: (1) standards applicable to air pollutants, including non-methane organic gases, known as the Low Emission Vehicle program (LEV); (2) standards requiring a percentage of total sales for each manufacturer to consist of zero emission vehicles (ZEV); and (3) emissions standards for greenhouse gases. Additional provisions address emissions credits (and their banking), control equipment warranties, recalls, registration and labeling. In order to cover staffing needs for the program, 20.2.88 NMAC levied annual fees on large and intermediate-volume automakers.

At the time that 20.2.88 NMAC was adopted, the California standards were more stringent than the federal motor vehicle emissions standards with regards to emissions of conventional air pollutants, including non-methane organic gases (NMOG), carbon monoxide, oxides of nitrogen, formaldehyde, and particulates. There was not a comparable federal standard for motor vehicle greenhouse gas emissions. In addition, the federal program did not include a ZEV standard. As a result of having to meet federal and California standards, automakers frequently produced more than one version of a model of car. The technologies incorporated into a model's 'clean car' version also increased fuel efficiency, resulting in lower operating costs for the vehicle owner.

Since New Mexico's adoption of 20.2.88 NMAC, the Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) adopted a national clean cars program designed to reduce GHG emissions and increase fuel economy (CAFE standards) for all new motor vehicles sold in the United States. This program, typically referred to as the Light-Duty Vehicle Rule and promulgated on April 1, 2010, applied increasingly stringent emissions limits from model years 2012 to 2016, with the federal standards achieving the same reduction in 2016 as the California standards. This approach has allowed manufacturers to build a single light-duty national fleet that satisfies the standards adopted by the federal government, the State of California, and the states that implemented the California standards.

With adoption of the federal Light-Duty Vehicle Rule, the same emissions reduction could be achieved in New Mexico without incurring the additional expense of implementing a state program. At the request of the New Mexico Environment Department Air Quality Bureau, the EIB reopened 20.2.88 NMAC in 2010 and added a new section, 20.2.88.14 NMAC, to waive all requirements in the regulation until January 1, 2016. There was no opposition to this proposal. Fees that had been collected from automakers were reimbursed, and the Bureau was able to conserve its resources for other more pressing work.

In July 2011, automakers, California and the federal government committed to a series of actions that would harmonize the federal and California standards for motor vehicles for model years 2017 to 2025. Such harmonization will allow automakers to continue to produce one version of a vehicle for nationwide sale and establish federal greenhouse gas emissions limits for vehicles. The current version of the California standard (LEV III) is comparable to proposed federal standards (Tier 3) which are scheduled to be finalized by the end of this year. The proposed federal Tier 3 rules have received strong support from automakers. The federal and California standards continue to differ with regards to requirements for 'zero emissions' vehicles. In addition, state-specific average fleet emissions limits, and the reporting that verifies state-specific limits, apply only to states that implement the California standards under Section 177.

### **Why the EIB Must Address 20.2.88 NMAC This Year**

Under Section 177(1) of the CAA, any state provisions related to motor vehicle standards must be identical to the California standards. When adopted in 2007, 20.2.88 NMAC incorporated by reference the California rules that were in effect at that time. Since then, the California regulations have been significantly revised. As a result, 20.2.88 NMAC cannot be implemented in its current form.

Under Section 177(2) of the CAA, a state rule that incorporates the California standards must be adopted or revised at least 2 years prior to when that state rule becomes effective. Under the current section 20.2.88.14 NMAC, all requirements in the rule are waived until January 1, 2016. However, if the rule were to become effective on January 1, 2016, it would have to be identical to the updated California standards by January 1, 2014.

In June, the New Mexico Environment Department Air Quality Bureau will submit a request that the EIB, at its July meeting, set a November hearing date to reconsider and take action on 20.2.88 NMAC. The three regulatory options described below are to rescind the rule, update it, or extend the waiver of its requirements.

### **Regulatory Option 1: Rescind 20.2.88 NMAC**

The simplest regulatory action the EIB can take on this rule is to rescind it. In doing so, the emissions from new autos delivered to the state (outside of Bernalillo County) would only be subject to federal requirements (as is currently the case). If the federal Tier 3 rules are finalized in their existing form, federal requirements will be comparable to the California standards. By rescinding 20.2.88 NMAC, the potential administrative burdens to automakers and the New Mexico Environment Department Air Quality Bureau from implementing 20.2.88 NMAC would not occur. Automakers would not be required to register or pay fees under this rule, or track and report the anticipated emissions from the auto fleet delivered to this state.

In the event that the proposed federal Tier 3 regulations to harmonize federal and California standards until 2025 are not finalized or are weakened in the future, the potential for less efficient, higher emitting vehicles being delivered to the state may increase. In addition, regulatory incentives for the delivery of zero emissions vehicles would not occur.

### **Regulatory Option 2: Update 20.2.88 NMAC and Implement the Regulation**

Updating 20.2.88 NMAC would involve:

- In Section 14 – Waiver of Part Requirements: After the phrase “January 31, 2011 through January 1, 2016” add the phrase “and for model years 2016 and earlier.” This amendment clarifies a discrepancy introduced in 2010. Note that this change would also delay implementation of the standards for an additional year in order to synchronize with the proposed federal Tier 3 rule and to allow time to set up the credit banks.
- In Section 102 – Incorporation by Reference: Update the effective dates associated with 24 of the 59 Code of California Regulations (CCR) sections currently incorporated by reference in this section, and add 4 additional CCR rule sections (1961.2, 1961.3, 1962.2, and 1962.3) that have been adopted since 2007.
- Correct any cites to CCR sections 1961.1 and 1962.1 to the extent that the referenced requirements have been moved to other CCR sections during California’s revisions of their regulations.

Implementation of 20.2.88 NMAC would serve as a backstop in the event that the proposed federal Tier 3 rule is not adopted or is weakened or rescinded in the future, and would increase the regulatory

incentives for the delivery of zero emissions vehicles to New Mexico. However, in the likely event that federal Tier 3 standards are adopted, the federal standard would be comparable with California's LEV III standard, rendering the standards in 20.2.88 NMAC redundant.

Implementing 20.2.88 NMAC would place administrative and logistical burdens on automakers and the New Mexico Environment Department Air Quality Bureau. Automakers would be required to register, pay annual fees, and track and report the anticipated emissions from the vehicle fleet delivered to this state. The Bureau would be required to establish and maintain credit banks, and monitor compliance with the rule, an effort that would entail hiring additional staff.

### **Regulatory Option 3: Extend the Waiver in Section 20.2.88.14 NMAC**

Under this option, the EIB would amend the section that it added in 2010. Note, however, that because some of the requirements in 20.2.88 NMAC are triggered by dates and others are triggered by model years, the expiration of the waiver would need to be based on both a date and a (subsequent) model year. This issue was not addressed in the 2010 amendment.

The advantage to this option is that the rule would place none of the burdens of its implementation on the automakers or the Mexico Environment Department Air Quality Bureau, and yet would remain in place as a backstop in the event that the federal program is weakened or rescinded. However, a future burden would be placed on the Bureau and EIB to spend time and resources to evaluate the vehicle standards existing at that time and take regulatory action, regardless of whether such resources would be better spent on other issues. In addition, such a backstop would be weak in that 20.2.88 NMAC could not automatically come into effect; its implementation could not occur without first updating it to the California standards in effect at that time. The waiver can place no obligation on the future members of the EIB to take that action.

### **Air Quality Bureau Recommendation to Rescind 20.2.88 NMAC**

After consideration of the regulatory options, the Air Quality Bureau intends to recommend that the EIB rescind 20.2.88 NMAC. Given the likely continued harmonization between the federal and California standards, the administrative burdens of implementing 20.2.88 NMAC clearly outweigh the potential benefits. In addition, extending the waiver would not constitute a meaningful backstop in the event that the federal standards are weakened, because the waiver could not assure that 20.2.88 NMAC would actually be updated and implemented when the waiver expires.

### **Timeline for Regulatory Action**

**June 5:** Release this document and inform potential stakeholders of the upcoming regulatory action. With this release, the informal comment period begins. From this point until the hearing, the New Mexico Environment Department Air Quality Bureau will take comments from and, if requested, meet with interested parties regarding the regulatory proposal.

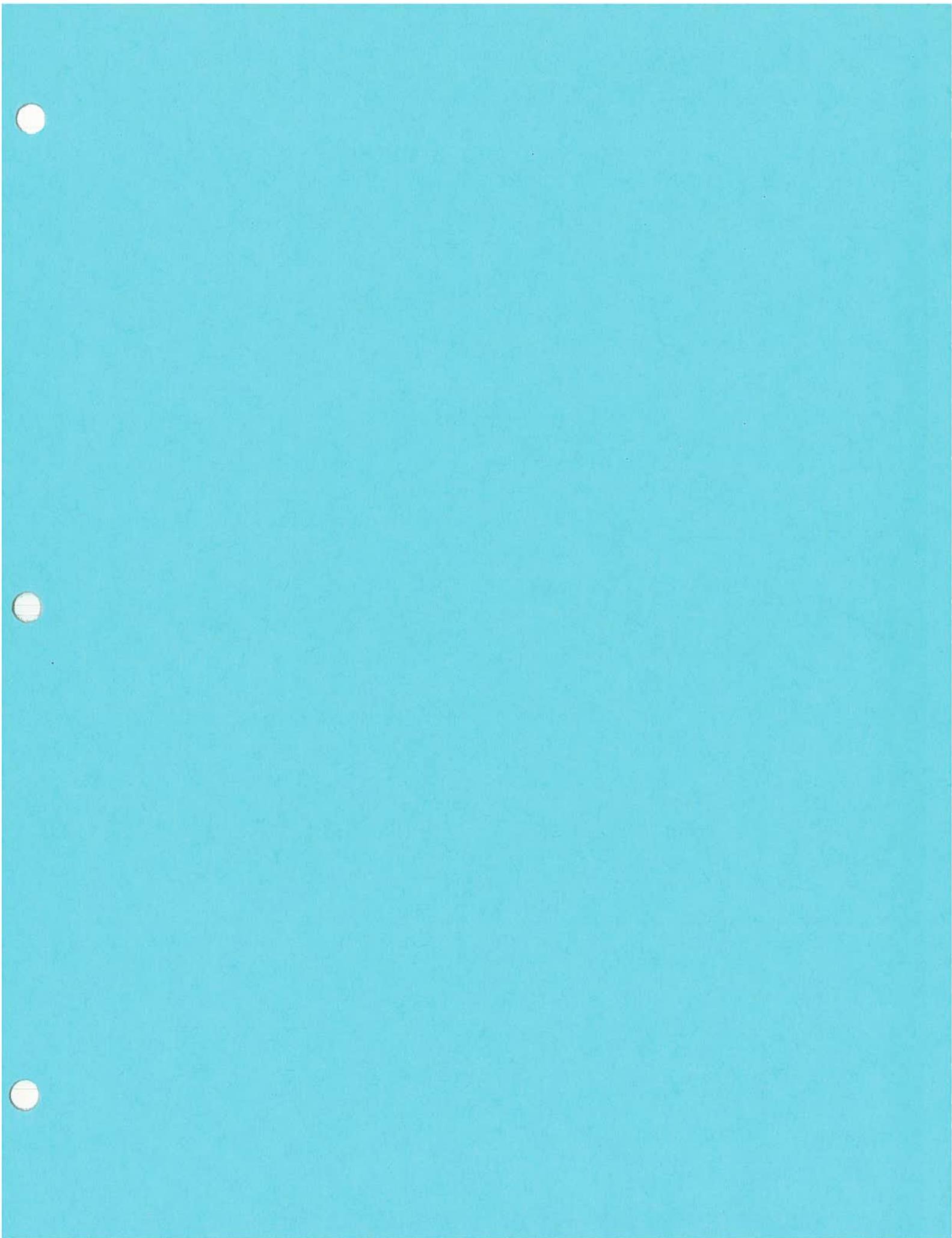
**June 17:** Deadline for the New Mexico Environment Department Air Quality Bureau to submit a request to be placed on the July EIB meeting agenda. The request must include a hearing request package that contains the Bureau's proposed regulatory revision.

**July 8:** July meeting of the EIB. The New Mexico Environment Department Air Quality Bureau will request that the EIB schedule a November hearing to consider 20.2.88 NMAC.

**July 16:** Deadline to submit the public notice of the hearing for publication in the New Mexico Register and newspapers.

**July 31:** Publication of Hearing Notice in NM Register. The formal public comment period for the EIB hearing begins on this day and continues until the hearing. Formal public comments must be submitted directly to the EIB.

**November:** EIB hearing to consider 20.2.88 NMAC. After the hearing is completed the EIB may take action on the regulation. After the EIB has taken action and approved the Statement of Reasons for that action, it is filed with the State Records Center. The regulatory action becomes effective 30 days after filing with the State Records Center.







**New Mexico Commission of Public Records  
Administrative Law Division**

1205 Camino Carlos Rey  
Santa Fe, NM 87507  
505-476-7907

**Affidavit of Publication in the *New Mexico Register***

I, Art Bransford, certify that the agency noted below has published legal notices or rules in the New Mexico Register, and that payment has been assessed by invoice for said legal notice or publication, which appeared on the date and in the volume and issue number noted below.

**Date of Publication:** 8/30/2013

**Volume:** XXIV **Issue #:** 16

**Invoice #:** NMR-2014- 38

**Amount:** \$80.00

**Agency:**

Environment Department - Air Quality

Contact: Lany Weaver

525 camino de Los Marquez #1

Santa Fe, NM 87505-

**Description:**

Notice

Notice of Rulemaking Hearing

Notice

Notice of Rulemaking Hearing

State of New Mexico, County of Santa Fe

Signed and affirmed before me on Tuesday, September 03, 2013

by Art Bransford

**Notary Public:**

Louise Wood

[My commission expires: 5 15 17]

**Affiant:**

Art Bransford  
Publisher, *New Mexico Register*

**Date:** 9/3/2013

- Copies of the published material documented in this affidavit are enclosed -

(seal)

Form SRC-2002-01 Revised July 2007

**NMED  
Exhibit 6**

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

#### ENERGY CONSERVATION AND MANAGEMENT DIVISION

#### NOTICE OF PUBLIC HEARING AND RULEMAKING OF THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division will hold a public hearing on proposed rule changes to the Sustainable Building Tax Credit Program at 9:15 a.m. on Tuesday, September 17, 2013 in Porter Hall, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico.

EMNRD is proposing changes to the following rules: 3.4.16 NMAC, Sustainable Building Tax Credit for Residential Buildings, Corporate Income Taxes; 3.4.17 NMAC, Sustainable Building Tax Credit for Commercial Buildings, Corporate Income Taxes; 3.3.29 NMAC, Sustainable Building Tax Credit for Residential Buildings, Personal Income Taxes; and 3.3.30 NMAC, Sustainable Building Tax Credit for Commercial Buildings, Personal Income Taxes. Proposed changes to 3.4.16 NMAC include addition of definitions and the lowering of the annual cap for tax credits for residential buildings to reflect statutory changes. Proposed changes to 3.4.17 NMAC include the addition of multifamily dwellings to the definition of commercial building, streamlining of the tax credit application process and the lowering of the annual cap for tax credits for residential buildings to conform to statutory changes. Proposed changes to 3.3.29 NMAC include addition of definitions and the lowering of the annual cap for residential building to reflect statutory changes. Proposed changes to 3.3.20 NMAC include the addition of multifamily dwellings to the definition of commercial building, streamlining of the tax credit application process and the lowering of the annual cap for commercial buildings to conform to statutory changes.

Copies of the proposed rule changes are available from EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, NM 87505; at [www.cleanenergy.nm.org](http://www.cleanenergy.nm.org); or by contacting Ken Hughes at [khughes@state.nm.us](mailto:khughes@state.nm.us); telephone (505) 476-3320.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

Those wishing to submit written statements in lieu of providing oral testimony at the hearing, may submit the written statements by September 10, 2013 by 5:00 p.m. by mail or e-mail. Please mail written comments to Ken Hughes, EMNRD, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail to [khughes@state.nm.us](mailto:khughes@state.nm.us). EMNRD will accept no statements after the conclusion of the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ken Hughes at least one week prior to the hearing or as soon as possible.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on November 7, 2013 at 10:00 a.m. in Room 311 at the State Capitol, located at 490 Old Santa Fe Trail in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 13-06(R), proposed repeal of Air Quality Control Regulation 20.2.88 New Mexico Administrative Code (Emission Standards for New Motor Vehicles) ("20.2.88 NMAC").

The proponent of these regulatory amendments is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to repeal 20.2.88 NMAC. This regulation, sometimes called "Clean Cars," was first adopted in 2007 to apply the California motor vehicle emissions standards, or "California standards," within New Mexico beginning with model year 2011. The start date was later revised to 2016. At the time that the Board adopted the Clean Cars regulation, the California standards were more stringent than the federal motor vehicle emissions standards. However, since that time the federal

programs have been revised to achieve the same emissions reduction as the California standards. As a result, the administrative burdens of implementing the Clean Cars regulation now outweigh the potential benefits of having a State program.

The text of the regulation proposed for repeal may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Lany Weaver at (505) 476-4322 or [lany.weaver@state.nm.us](mailto:lany.weaver@state.nm.us).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, §74-1-9, the Air Quality Control Act, NMSA 1978, §74-2-6, and any applicable procedural orders.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony in narrative form of each technical witness;
- (4) list and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed regulatory change.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on October 18, 2013 and should reference the docket number, EIB 13-06(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room 2100-S  
Santa Fe, NM 87505  
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may

testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact the J.C. Borrego of the NMED Human Resources Bureau by October 18, 2013 at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502-5469, telephone 505-827-0424. TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on November 7, 2013 at 10:00 a.m. in Room 311 at the State Capitol, located at 490 Old Santa Fe Trail in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 13-07(R), proposed amendments to Air Quality Control Regulations 20.2.77 New Mexico Administrative Code (New Source Performance Standards) ("20.2.77 NMAC") and 20.2.82 New Mexico Administrative Code (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants) ("20.2.82 NMAC").

The proponent of these regulatory amendments is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to amend 20.2.77 MAC and 20.2.82 NMAC. The purpose of the proposed amendments is to incorporate by reference the new rules, corrections, revisions, and amendments to the federal New Source Performance Standards

("NSPS") and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants ("MAC"), which were promulgated by the U.S. Environmental Protection Agency ("EPA") and published in the Federal Register from January 1, 2011 to August 29, 2013.

The proposed revised regulations, and the text of the federal standards to be incorporated by reference, may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Lany Weaver at (505) 476-4322 or [lany.weaver@state.nm.us](mailto:lany.weaver@state.nm.us).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, §74-1-9, the Air Quality Control Act, NMSA 1978, §74-2-6, and any applicable procedural orders.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony in narrative form of each technical witness;
- (4) list and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed regulatory change.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on October 18, 2013 and should reference the docket number, EIB 13-07(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room 2100-S  
Santa Fe, NM 87505  
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may

testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact the J.C. Borrego of the NMED Human Resources Bureau by October 18, 2013 at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502-5469, telephone 505-827-0424. TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

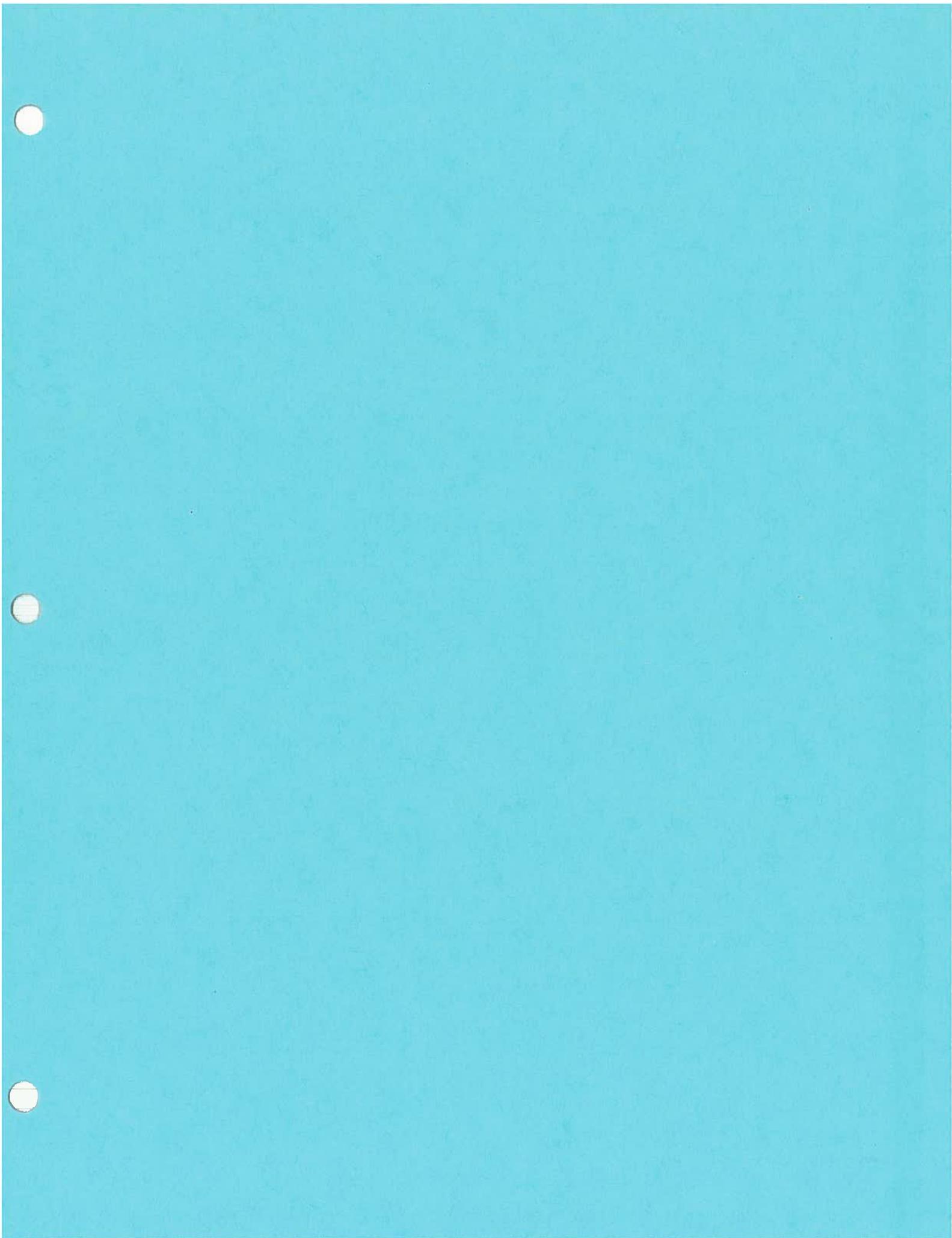
## NEW MEXICO HIGHER EDUCATION DEPARTMENT

### NEW MEXICO HIGHER EDUCATION DEPARTMENT

The Higher Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at 2048 Galisteo Street, Santa Fe, NM 87505-2100, on October 1, 2013, from 10:00 a.m. to 12:00 p.m. The purpose of the public hearing will be to obtain input on the following rule(s):

[Continued on page 583]







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Ad Size : 1.0 X 173 Li  
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Run Dates 8/28/2013

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Affidavits  
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**NEW MEXICO ENVIRONMENTAL  
 IMPROVEMENT BOARD  
 NOTICE OF RULEMAKING  
 HEARING**

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on November 7, 2013 at 10:00 a.m. in Room 311 at the State Capitol, located at 490 Old Santa Fe Trail in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 13-06(R), proposed repeal of Air Quality Control Regulation 20.2.88 New Mexico Administrative Code (Emission Standards for New Motor Vehicles) ("20.2.88 NMAC").

The proponent of these regulatory amendments is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to repeal 20.2.88 NMAC. This regulation, sometimes called "Clean

**NMED  
 Exhibit 7**

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 (505) 823-7777



**NEW MEXICO ENVIRONMENTAL  
 IMPROVEMENT BOARD  
 NOTICE OF RULEMAKING  
 HEARING**

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on November 7, 2013 at 10:00 a.m. in Room 311 at the State Capitol, located at 490 Old Santa Fe Trail in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 13-06(R), proposed repeal of Air Quality Control Regulation 20.2.88 New Mexico Administrative Code (Emission Standards for New Motor Vehicles) ("20.2.88 NMAC").

The proponent of these regulatory amendments is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to repeal 20.2.88 NMAC. This regulation, sometimes called "Clean Cars," was first adopted in 2007 to apply the California motor vehicle emissions standards, or "California standards," within New Mexico beginning with model year 2011. The start date was later revised to 2016. At the time that the Board adopted the Clean Cars regulation, the California standards were more stringent than the federal motor vehicle emissions standards. However, since that time the federal programs have been revised to achieve the same emissions reduction as the California standards. As a result, the administrative burdens of implementing the Clean Cars regulation now outweigh the potential benefits of having a State program.

The text of the regulation proposed for repeal may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, on NMED's web site at [www.nmed.state.nm.us](http://www.nmed.state.nm.us), or by contacting Lany Weaver at (505) 476-4322 or [lany.weaver@state.nm.us](mailto:lany.weaver@state.nm.us).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, §74-1-9, the Air Quality Control Act, NMSA 1978, §74-2-6, and any applicable procedural orders.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent

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- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony in narrative form of each technical witness;
- (4) list and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed regulatory change.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on October 18, 2013 and should reference the docket number, EIB 13-06(F), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda,  
Board Administrator  
Office of the Environmental  
Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr.,  
Room 2100-S  
Santa Fe, NM 87506  
Phone: (505) 827-2425,  
Fax (505) 827-2838

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact the J.C. Borrego of the NMED Human Resources Bureau by October 18, 2013 at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502-5469, telephone 505-827-0424. TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.  
Journal: August 28, 2013

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**DIRECCIÓN DE MEJORAS  
 MEDIOAMBIENTALES DE  
 NUEVO MÉXICO  
 AVISO DE AUDIENCIA DE  
 REGLAMENTACIÓN**

La Dirección de Mejoras Medioambientales de Nuevo México ("Dirección") tendrá una audiencia pública el 7 de noviembre del 2013, a las 10:00 a. m., en la sala 311 del Capitolio Estatal, situado en 490 Old Santa Fe Trail en Santa Fe, Nuevo México. El propósito de la audiencia es considerar el asunto de la EIB 13-06(R), propuesta derogación de la norma de Control de la Calidad del Aire 20.2.88 del Código Administrativo de Nuevo México (Estándares de emisiones para vehículos motorizados nuevos) ("20.2.88 NMAC").

El Departamento del Medio Ambiente de Nuevo México ("NMED", por sus siglas en inglés) es el que propone estas enmiendas normativas.

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**DIRECCIÓN DE MEJORAS  
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 NUEVO MÉXICO  
 AVISO DE AUDIENCIA DE  
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El Departamento del Medio Ambiente de Nuevo México ("NMED", por sus siglas en inglés) es el que propone estas enmiendas normativas.

El propósito de la audiencia pública es considerar y tomar una posible acción sobre una petición del NMED para derogar la 20.2.88 NMAC. Esta norma, a veces llamada de "Carros Limpios", se adoptó por primera vez en el 2007 para aplicar los estándares de emisiones de vehículos motorizados de California, o "Estándares de California", dentro de Nuevo México, empezando con el modelo del año 2011. Esta fecha de inicio se cambió después al 2016. Al momento en que la Dirección adoptó la norma de Carros Limpios, los estándares de California eran más estrictos que los estándares de emisiones de vehículos motorizados federales. Sin embargo, desde ese entonces los programas federales han sido modificados para conseguir la misma reducción de emisiones de los estándares de California. Como resultado, las responsabilidades administrativas de implementar las normas de Carros Limpios ahora son mayores que los posibles beneficios de tener un programa estatal.

El texto de la norma propuesta para derogación se puede revisar en horas hábiles, en el Air Quality Bureau del NMED, 525 Camino de los Marquez, Suite 1, Santa Fe, Nuevo México, en el sitio electrónico del NMED: [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), o comunicándose con Lany Weaver en el (505) 476-4322 o por correo electrónico: [lany.weaver@state.nm.us](mailto:lany.weaver@state.nm.us).

La audiencia se llevará a cabo de acuerdo con la 20.1.1 NMAC (Procedimientos de Reglamentación - Dirección de Mejoras Medioambientales), la Ley de Mejoras Medioambientales, NMSA 1978, 574-1-9, la Ley de Control de la

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Calidad del Aire, NMSA 1978, §74-2-5, y cualquier orden de procedimiento pertinente.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas pertinentes, información, puntos de vista y argumentos, en forma oral o escrita, para someter pruebas e interrogar a testigos. Las personas que deseen dar testimonio técnico deben presentar un aviso por escrito a la Dirección indicando su intención de hacerlo. El aviso de intención debe:

- (1) identificar a la persona por quien el testigo (los testigos) dará(n) testimonio;
- (2) identificar a cada testigo técnico que la persona presentará e indicar la capacidad del testigo e incluir una descripción de su educación y antecedentes profesionales;
- (3) incluir una copia de las declaraciones directas en forma de narración de cada testigo técnico;
- (4) dar una lista de las pruebas que la persona vaya a presentar en la audiencia y adjuntar cada una de las pruebas; y
- (5) adjuntar el texto de cualquier modificación recomendada para el cambio normativo propuesto.

Los avisos de intención para la audiencia deben recibirse en la oficina de la Dirección a más tardar el 18 de octubre del 2013 a las 5:00 p. m. y deben hacer referencia al número del caso, EIB 13-06 (R), y la fecha de la audiencia. Los avisos de intención de presentar testimonios técnicos deben presentarse a:

Pam Castañeda,  
Board Administrator  
Office of the Environmental  
Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr.,  
Room 2100-S  
Santa Fe, NM 87505  
Tel.: (505) 827-2425,  
Fax (505) 827-2836

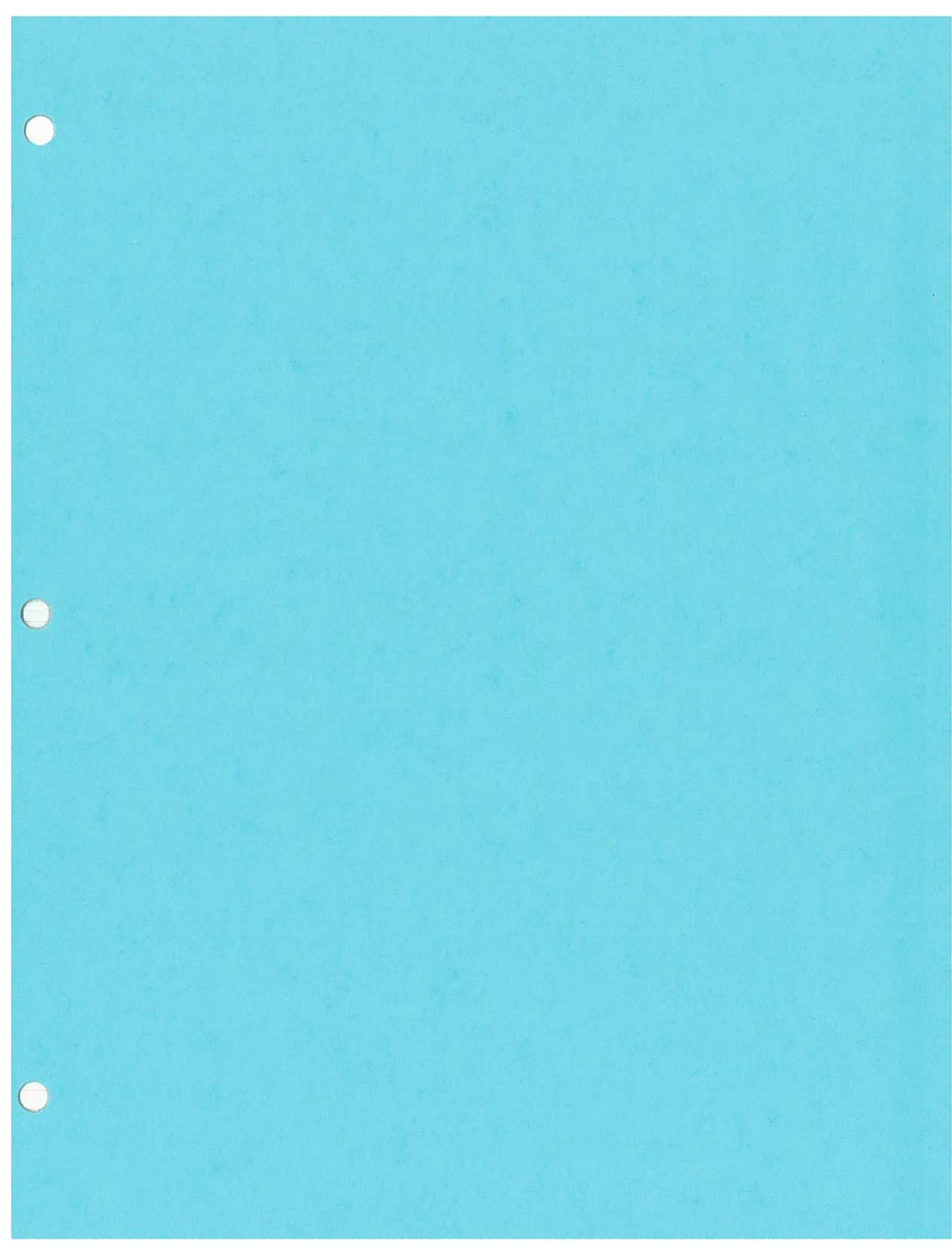
Cualquier miembro del público en general puede dar declaraciones en la audiencia. No es necesario avisar previamente para dar declaraciones que no sean técnicas en la audiencia. También, cualquier persona puede ofrecer pruebas con relación a su testimonio, siempre y cuando dichas pruebas no sean exageradamente repetitivas del testimonio.

Un miembro del público en general que en lugar de hacer declaraciones orales en la audiencia desee presentar una declaración por escrito para que conste en el acta, deberá registrar la declaración por escrito antes de la audiencia o la puede entregar en la audiencia.

Las personas con discapacidades y que necesiten ayuda para participar en esta audiencia deben comunicarse con J. C. Borrego, del NMED Human Resources Bureau a más tardar el 18 de octubre del 2013, por correo: P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, Nuevo México, 87502-5469; o teléfono: 505-827-0424. Los usuarios de TDY pueden acceder a su número por el New Mexico Relay Network en el 1-800-659-8331.

La Dirección puede tomar una decisión sobre las propuestas normas modificadas al concluir la audiencia, o puede convocar a una reunión en una fecha posterior para considerar la acción sobre la propuesta.

Journal: August 28, 2013







SUSANA MARTINEZ  
Governor

JOHN A. SANCHEZ  
Lieutenant Governor

NEW MEXICO  
ENVIRONMENT DEPARTMENT

*Air Quality Bureau*

525 Camino de los Marquez  
Suite I

Santa Fe, New Mexico, 87505

Phone (505) 476-4300 Fax (505) 476-4375

[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)



RYAN FLYNN  
Cabinet Secretary-designate

BUTCH TONGATE  
Deputy Secretary

July 1, 2013

Dear Air Quality Stakeholder,

For the past 30 years, the New Mexico Environment Department (NMED) has taken delegation for implementation and enforcement of many of the federal air quality standards adopted under Chapter 40 of the Code of Federal Regulations (CFR), Parts 60 (New Source Performance Standards, or NSPS), 61 (Emission Standards for Hazardous Air Pollutants, or NESHAP) and 63 (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants, or MACT). These federal rules are incorporated by reference in the following state air quality rules: 20.2.77 New Mexico Administrative Code (NMAC) – *New Source Performance Standards*; 20.2.78 NMAC – *Emission Standards for Hazardous Air Pollutants*; and 20.2.82 NMAC - *Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants*, respectively.

In each case, the federal rules that are in effect by a specified date are incorporated by reference into the state rules, unless specifically excluded. Regardless of whether the state accepts delegation for implementation of the federal rules, the affected facilities in New Mexico are subject to those rules because the U.S. Environmental Protection Agency (EPA) will directly implement those standards not delegated. The NMED periodically requests that the Environmental Improvement Board (EIB) amend the state rules to advance the specified date to include new or amended federal rules to 8/29/2013. These state rules were last amended in 2011 to incorporate the date 12/31/2010.

NMED intends to request that the EIB hold a hearing in November 2013 to consider and update the specified dates in 20.2.77 NMAC and 20.2.82 NMAC, so that federal rules under 40 CFR Parts 60 and 63, respectively, that have been finalized by 7/30/2013 will be incorporated by reference into the state regulations. We are not requesting that 20.2.78 NMAC be updated, as there have been no amendments to the related federal rule (40 CFR Part 61) since the last time our rules were updated.

Given that the delegation of the federal rules to the state does not alter the requirements that apply to facilities in this state, the periodic updates of the delegation rules have seldom stirred any interest. However, this update occurs while the EPA is in the process of reconsidering parts of 40 CFR Part 60 (NSPS) Subpart OOOO, a federal rule that applies to many New Mexico sources. It is unlikely that EPA will complete all of its revisions to NSPS Subpart OOOO by 8/29/2013. As a result, differences may occur between the federal revision of NSPS Subpart

July 1, 2013

Page 2

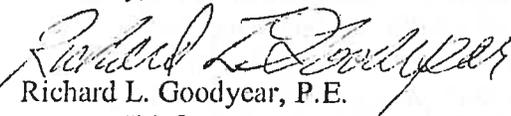
OOOO and the version of that rule to be incorporated by reference in the state rule 20.2.77 NMAC.

Although it is not uncommon that EPA revises rules after the EIB has adopted revisions to the NMAC, NMED is committed to minimizing the potential confusion that could occur in such an event. As a result, after EPA has completed its modifications of the federal rule, NMED will request that the EIB reopen 20.2.77 NMAC to incorporate those modifications, in conjunction with incorporating other new or modified NSPS, NESHAPs or MACTs. An alternative approach would be to not accept delegation of NSPS Subpart OOOO at all until after EPA completes its modifications of that rule. However, NMED has determined that taking delegation of NSPS Subpart OOOO as it is now in effect is the most appropriate option. This will avoid confusion to sources about who has authority over which parts of OOOO, and where to send reports required by the NSPS. The Department will also meet with interested parties this summer to discuss the available options for implementing NSPS Subpart OOOO.

If you wish to make comments regarding the updates of 20.2.77 NMAC and 20.2.82 NMAC, or to be notified of the hearing at which EIB will take comments and consider these rules, please contact Lany Weaver at (505) 476-4322 or [lany.weaver@state.nm.us](mailto:lany.weaver@state.nm.us). If you wish to comment on NMED's evaluation of the available options for implementing NSPS Subpart OOOO, please contact Ted Schooley at (505) 476-4334 or [ted.schooley@state.nm.us](mailto:ted.schooley@state.nm.us), or Elizabeth Bisbey-Kuehn at (505)476-4338 or [Elizabeth.Kuchn@state.nm.us](mailto:Elizabeth.Kuchn@state.nm.us).

Thank you for your interest in New Mexico's Air Quality.

Sincerely,

  
Richard L. Goodyear, P.E.  
Bureau Chief

## **NMED Stakeholder Contact List for EIB 13-06**

This list includes the stakeholders that have expressed an interest in regulatory proposals in general, and adds additional entities that have participated in previous 20.2.88 NMAC hearings or have shown an interest in this proposal. While the Department has made every effort to contact each of these stakeholders, we were not able to find current email addresses for all of them.

### **Public Interest**

Amigos Bravos  
Center for Climate and Energy Policy  
Coalition for Clean Affordable Energy  
Conservation Voters New Mexico  
Environment New Mexico  
Environmental Defense Fund  
High Desert Energy + Environmental Law  
League of Women's Voters  
The Nature Conservancy  
Natural Resources Defense Council  
New Energy Economy  
New Mexico Environmental Law Center  
Oil and Gas Accountability Project  
Southwest Research and Information Center  
Sierra Club  
Western Environmental Law Center  
Western Resource Advocates  
Wild Earth Guardians  
Wildlife Federation

### **The Coalition of Public Interest Groups that Testified Under the Title "Clean Air Advocacy Groups" or "CAAG" at the 2007 Hearing when 20.2.88 NMAC was Adopted**

1000 Friends of New Mexico  
The American Lung Association of New Mexico's ("ALA NM")  
Conservation Voters New Mexico ("CVNM")  
The Consumer Federation of America ("CFA")  
Environment New Mexico  
Environmental Defense  
The Land Of Enchantment Clean Cities Coalition ("LOECCC")  
The Natural Resources Defense Council ("NRDC")  
New Energy Economy ("NEE")  
The New Mexico Chapter of the American College Of Physicians ("ACP")  
The New Mexico Conference of Churches ("NMCC")  
New Mexico Interfaith Power and Light ("NMIPL")  
The New Mexico Medical Society ("NMMS")  
The New Mexico Pediatric Society  
New Mexico Physicians for Social Responsibility ("PSR")  
The New Mexico Public Interest Research Group ("NMPIRG")  
The New Mexico Thoracic Society ("NMTS")

New Voice Of Business ("NVOB")  
Renewable Energy Partners of New Mexico ("REP")  
The Sierra Club  
The Southwest Energy Alliance ("SWEA")  
The Union of Concerned Scientists ("UCS")  
The Partnership for Earth Spirituality

## **INDUSTRY**

### **Agriculture**

New Mexico Farm and Livestock Bureau  
Cattle Growers of New Mexico  
Dairy Producers

### **Oil and Gas**

Agave Energy Company  
British Petroleum  
Chevron North America  
Conoco Phillips  
Devon Energy  
Independent Petroleum Association of NM  
Mack Energy  
Navajo Refining  
New Mexico Oil and Gas Association  
Western Refining  
Williams Field Services

### **Utilities**

El Paso Electric  
New Mexico Rural Electric Coop Association  
Public Service Company of New Mexico  
Tri-State Electric and Transmission  
Xcel Energy

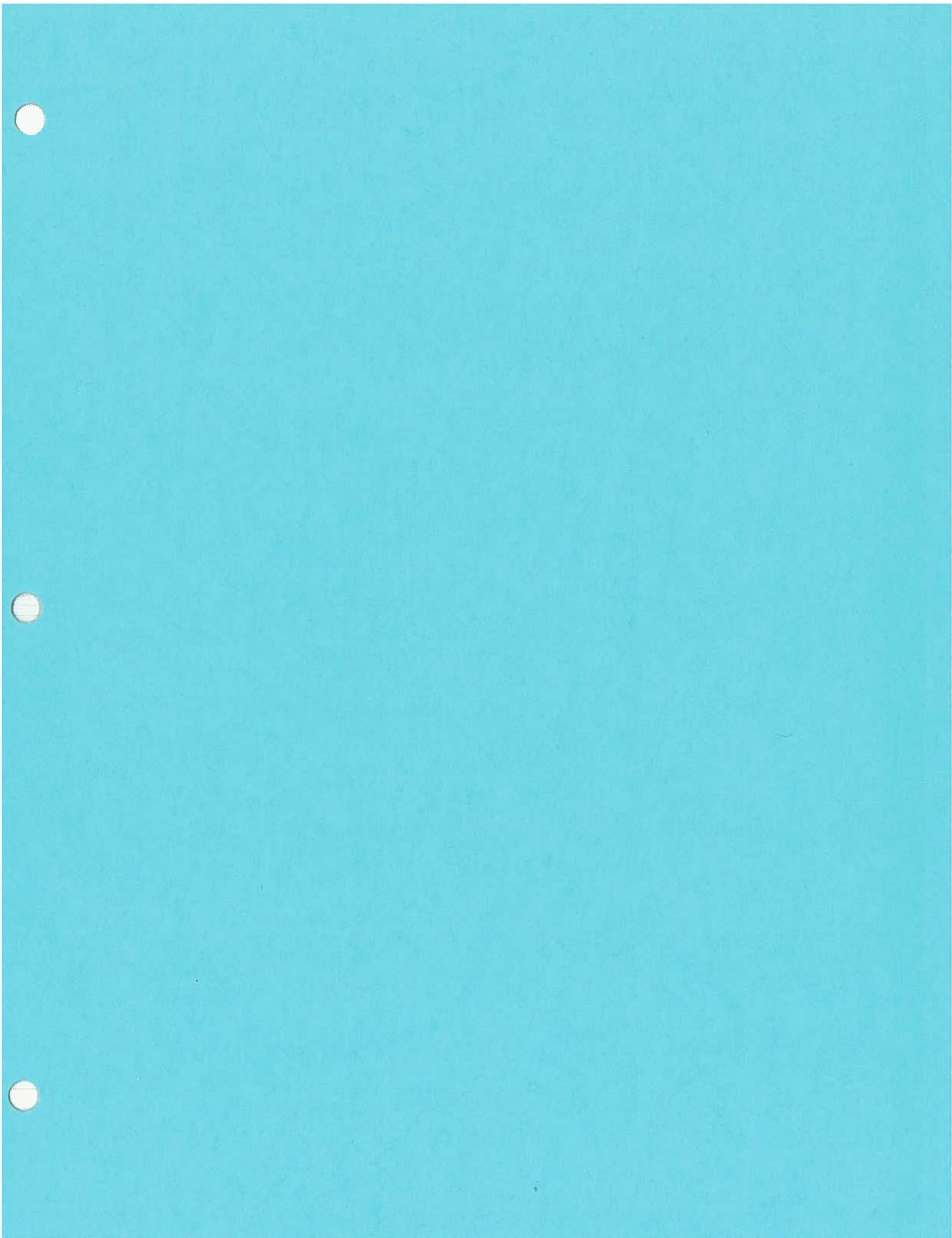
### **Other Industry**

Association of Commerce and Industry  
Intel  
New Voices for Business  
Waste Management  
NM Automotive Dealers Association  
Alliance of Automotive Manufacturers  
Association of Global Automakers

## **GOVERNMENT**

City of Albuquerque  
California Air Resources Board  
Northeast States for Coordinated Air Use Management (NESCAUM)  
Washington Department of Ecology  
Navajo Nation EPA  
New Mexico Association of Counties  
New Mexico Municipal League







**Weaver, Lany, NMENV**

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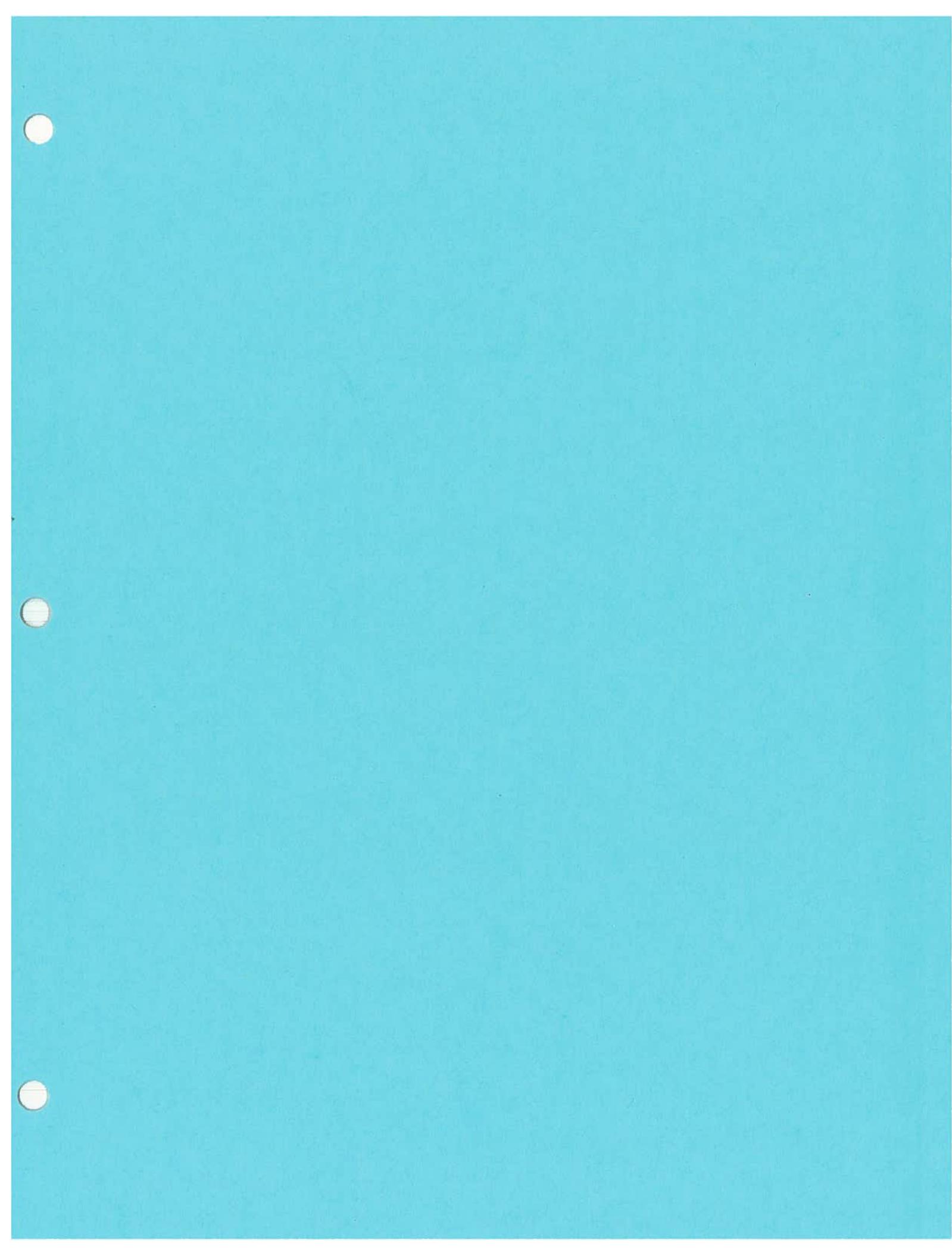
**From:** Weaver, Lany, NMENV  
**Sent:** Monday, August 12, 2013 12:39 PM  
**To:** Weaver, Lany, NMENV  
**Subject:** Hearing set for repeal of 20.2.88 NMAC - Emission Standards for New Motor Vehicles

The New Mexico Environmental Improvement Board (EIB) will hold a public hearing on November 7, 2013 in Santa Fe to consider the proposed repeal of Air Quality Control Regulation 20.2.88 NMAC – Emission Standards for New Motor Vehicles. The hearing notice, with the hearing location and information regarding public participation, is now posted on the bureau’s web page at [http://www.nmenv.state.nm.us/aqb/prop\\_regs.html](http://www.nmenv.state.nm.us/aqb/prop_regs.html) and will be published in the New Mexico Register on August 30.

If you do not wish to receive additional updates regarding this topic, or if you have been forwarded this email and would like to be included in future updates, please let me know.

Lany Weaver  
New Mexico Environment Department  
Air Quality Bureau  
(505) 476-4322







July 11, 2013

SUBMITTED VIA LANY.WEAVER@STATE.NM.US

Richard L. Goodyear  
Bureau Chief, Air Quality Bureau  
New Mexico Environment Department  
525 Camino de los Marquez, Suite 1  
Santa Fe, New Mexico, 87505

Re: Regulatory Options for 20.2.88 NMAC – *Emission Standards for New Motor Vehicles*

Dear Mr. Goodyear:

The Association of Global Automakers, Inc. (Global Automakers)<sup>1</sup> appreciates the opportunity to provide comments to the New Mexico Environment Department's Air Quality Bureau (Bureau) regarding the document, "Regulatory Options for 20.2.88 NMAC – *Emission Standards for New Motor Vehicles*." The current regulations have been waived until January 1, 2016, but given California's recent adoption of the Advanced Clean Car regulations, the Bureau is evaluating three options on how to proceed with its program: (1) rescind 20.2.88 NMAC, (2) update 20.2.88 NMAC and implement the regulation, or (3) extend the waiver in Section 20.2.88.14 NMAC. As we describe in the following, Global Automakers supports the Bureau's recommendation for option 1, rescinding 20.2.88 NMAC.

Global Automakers supports a single, harmonized program for reducing greenhouse gases (GHG)/fuel economy and criteria pollutant emissions and has been actively engaged in promoting harmonization between the U.S. Environmental Protection Agency (EPA), National Highway Traffic Safety Administration (NHTSA), and California Air Resources Board (ARB). The result of this effort is that these agencies have agreed to a landmark program, providing significant GHG benefits to the entire nation starting with model year (MY) 2012 and achieving an average 54.5 miles per gallon (mpg) in MY 2025. The overall benefits of this program are projected to save 5.8 billion barrels of oil and reduce GHG emissions by nearly three billion metric tons.<sup>2</sup> These benefits will be realized across the U.S., including New Mexico, and will be achieved regardless of adoption of regulations in New Mexico.

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<sup>1</sup> The Association of Global Automakers, Inc. represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our members' market share of both U.S. sales and production is 40 percent and growing. We work with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policy that improves motor vehicle safety, encourages technological innovation and protects our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. For more information, please visit [www.globalautomakers.org](http://www.globalautomakers.org).

<sup>2</sup> Composite results from EPA's Fact Sheets for the MY 2012-2016 and the MY 2017-2025 GHG programs; "EPA and NHTSA Finalize First-Ever National Program to Reduce Greenhouse Gas Emissions and Improve Fuel Economy For Cars and Trucks" and "EPA and NHTSA Set Standards to Reduce Greenhouse Gases and Improve Fuel Economy for Model Years 2017-2025 Cars and Light Trucks." <http://www.epa.gov/otaq/climate/regs-light-duty.htm>.

Furthering the goal of harmonization, to facilitate the sale of a single fleet of vehicles across the United States, EPA recently proposed and will soon adopt Tier 3 emissions standards that closely mirror California's newest Low Emission Vehicle (LEV III) standards. The Tier 3 emission standards will provide nationwide benefits, reducing non-methane organic gases (NMOG) and nitrogen oxides (NOx) emissions by approximately 80% and particulate matter (PM) by additional 70% compared to today's standards.<sup>3</sup>

Another important part of the Tier 3 proposal is the national gasoline quality improvements to reduce sulfur in gasoline and more closely align national fuel with California's cleaner fuels. California's gasoline pool average sulfur content is about one-third of the current average sulfur content of gasoline in the other 49 States. As in the past, we continue to support the need to treat vehicles and fuels as a system to achieve the greatest environmental benefits. Ultra-low sulfur gasoline is necessary for automobiles to achieve more stringent criteria pollutant emissions standards. It will also enable advanced engine technologies needed to meet stringent GHG emissions standards and result in significant and immediate emissions reductions from the existing vehicle fleet. We believe harmonization for emissions standards and fuels will maximize environmental benefits, while streamlining reporting and other compliance efforts for both industry and agencies.

EPA hopes to finalize the Tier 3 rule by the end of 2013. Assuming that EPA meets this timing, the Tier 3 standards would apply starting in MY 2017, generally corresponding with the timeframe when New Mexico's regulatory waiver would expire. We have further hopes that California will adopt a "deem-to-comply" provision, similar to that under the GHG program, for the LEV III and Tier 3 programs, demonstrating equivalent program stringency and harmonization. In light of the harmonization between EPA's and California's program for both GHG program for 2012-2025 and the upcoming harmonization under LEV III and Tier 3, application of a California program in New Mexico would not result in any additional GHG or other emissions benefits, only the expenditure of unnecessary resources to administer the program in the State. Therefore, we support the Bureau's recommendation to rescind the program and urge adoption of this recommendation by the Environmental Improvement Board.

Thank you for your consideration of our comments. We look forward to working with New Mexico going forward. If you have any questions regarding the comments, I can be contacted at (202) 650-5562 or [jcabaniss@globalautomakers.org](mailto:jcabaniss@globalautomakers.org).

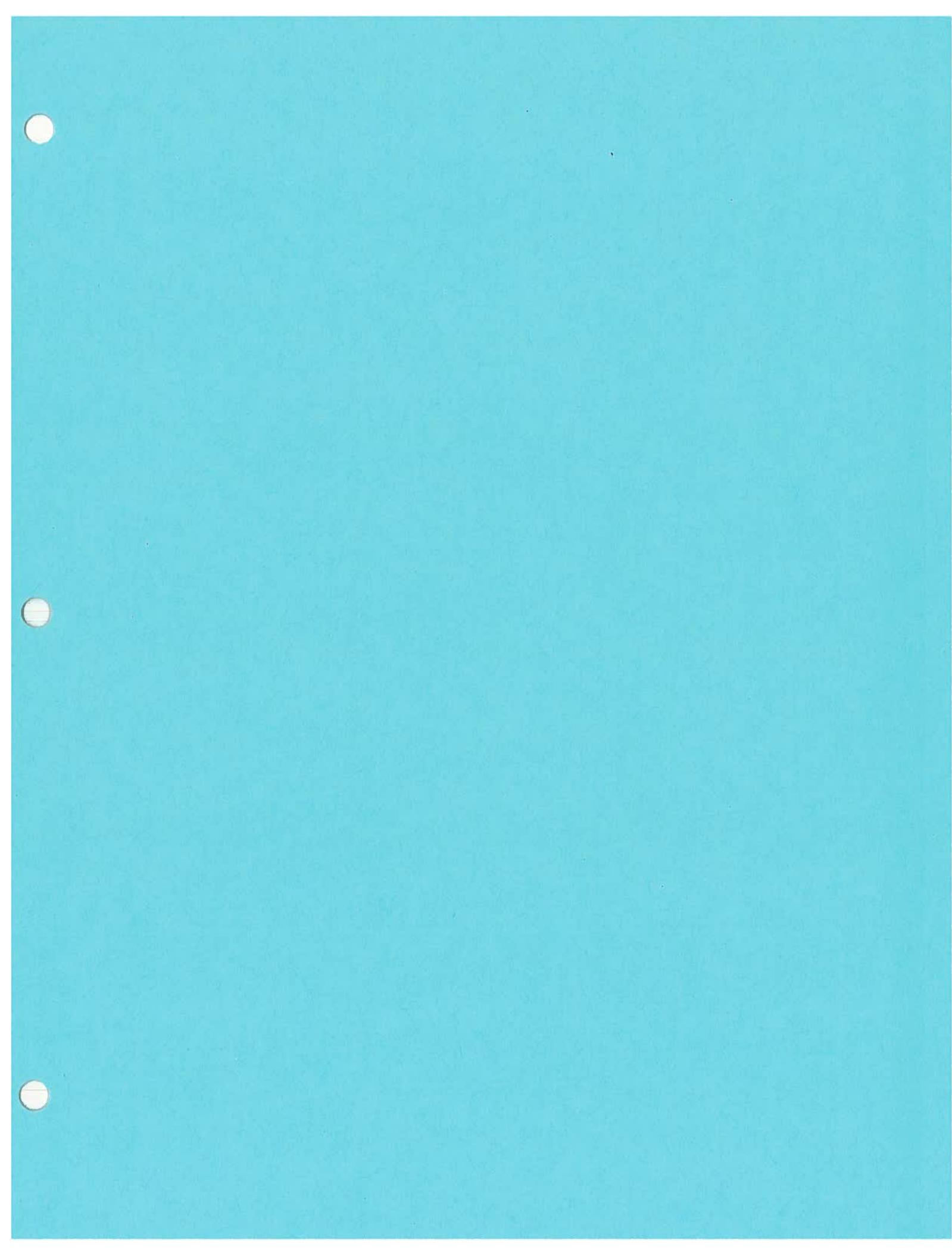
Sincerely,



John M. Cabaniss, Jr.  
Director, Environment & Energy

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<sup>3</sup> EPA Fact Sheet: "Regulatory Announcement: EPA Proposes Tier 3 Motor Vehicle Emission and Fuel Standards." <http://www.epa.gov/otaq/documents/tier3/420f13016a.pdf>.





**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>PROPOSED REPEAL OF</b>	)	<b>No. EIB 13-06 (R)</b>
<b>EMISSION STANDARDS FOR</b>	)	
<b>NEW MOTOR VEHICLES,</b>	)	
<b>PART 20.2.88 NMAC,</b>	)	
	)	
<b>NEW MEXICO ENVIRONMENT</b>	)	
<b>DEPARTMENT,</b>	)	
	)	
<b>Petitioner.</b>	)	
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**ORDER AND STATEMENT OF REASONS**

This matter comes before the Environmental Improvement Board (“Board”) upon a petition filed by the New Mexico Environment Department (“Department”), filed on June 24, 2013, proposing the repeal of the Emission Standards for New Motor Vehicles, part 20.2.88 NMAC. The Board heard sworn testimony from the Department and admitted exhibits into the record. On November 7, 2013, the Board deliberated and voted to adopt the proposed repeal for the following reasons:

**Statement of Reasons**

1. Section 202(a)(1) of the federal Clean Air Act requires the United States Environmental Protection Agency (“EPA”) to prescribe standards for the emission of air pollutants from new motor vehicles or new motor vehicle engines. 42 U.S.C. § 7521(a)(1). Section 209(a) of the Act generally preempts states from adopting their own emissions standards for new motor vehicles. 42 U.S.C. § 7543(a). However, under section 209(b) of the Act, the State of California is allowed to adopt standards that are different from the federal standards –

federal preemption is effectively waived – if they are at least as stringent as the federal standards. 42 U.S.C. § 7543(b).

2. Section 177 of the Clean Air Act allows other states to adopt the California standards. 42 U.S.C. § 7507. Such other state standards must be identical to the California standards. Such other state standards also must be adopted at least two years before the start of the model year to which they apply.

3. The State of California first adopted standards for greenhouse gas emissions from new motor vehicles in 2005. *See* CAL. CODE REGS. tit. 13. (2007). As of 2007, however, EPA had not promulgated any standards for emissions of greenhouse gases from motor vehicles.

4. In the absence of federal standards for greenhouse emissions from new motor vehicles, the State of New Mexico took advantage of the so-called California waiver and adopted State standards for such emissions. On July 20, 2007, the Department filed a rulemaking petition with the Board, No. AQCB 2007-3 (R). The Board held a hearing on the proposal, and adopted the Emission Standards for New Motor Vehicles, part 20.2.88 NMAC, which became effective on December 31, 2007. This rule applied the California motor vehicle emissions standards within New Mexico beginning with model year 2011. As of January 31, 2011, the Board postponed the effective date of the requirements until January 1, 2016.

5. In May 2010, the EPA and the United States Department of Transportation, National Highway Traffic Safety Administration, adopted a national program establishing federal emission standards for greenhouse gas emissions and fuel efficiency standards that will achieve the same emissions reduction as the California emission standards by 2016. 75 Fed.

Reg. 25,324 (May 7, 2010) (final standards for greenhouse gas emissions from cars and light trucks for model years 2012 through 2016).

6. The State of California has revised its standards significantly since 2007. These revisions have not been adopted in New Mexico.

7. To comply with the Clean Air Act, the Board must either repeal the Emission Standards for New Motor Vehicles, part 20.2.88 NMAC, in which case the new federal standards would apply in New Mexico, or amend part 20.2.88 NMAC to conform to the California standards as they have been revised.

8. Repealing the Emission Standards for New Motor Vehicles, part 20.2.88 NMAC, would avoid the potential administrative burdens to automakers and to the Department from implementing the rule. Automakers would not be required to register or pay fees under this rule or track and report the anticipated State-specific emissions from the vehicle fleet. The Department would not need to incur the time, expense, and resources necessary to administer the program.

9. Repeal of the Emission Standards for New Motor Vehicles, part 20.2.88 NMAC, is in the public interest.

10. The Board's Rulemaking Procedures, part 20.1.1 NMAC, provide that any person may petition the Board for amendment of regulations within the jurisdiction of the Board. 20.1.300.A NMAC.

11. On June 24, 2013, in accordance with section 20.1.1.300.B NMAC, the Department filed with the Board a Petition to Repeal Regulation, seeking repeal of the Emission Standards for New Motor Vehicles, part 20.2.88 NMAC. As required by the Air Quality Control

Act, NMSA 1978, § 74-2-6(B), the Department also requested that the Board hold a public hearing on the proposed repeal.

12. On July 15, 2013, in a meeting conducted in compliance with the Open Meetings Act, NMSA 1978, §§ , and other applicable requirements, the Board scheduled a hearing on the matter for November 7, 2013.

13. In August 2013, in accordance with section 20.1.1.301 NMAC, the Department arranged for a notice of the hearing to be published in the *New Mexico Register* on August 30, 2013, and in the *Albuquerque Journal* on August 28, 2013.

14. On October 18, 2013, in accordance with section 20.1.1.302.A NMAC, the Department filed with the Board a Notice of Intent to Present Technical Testimony.

15. On November 7, 2013, the Board held a public hearing in this matter in Santa Fe, New Mexico.

16. The Board has the authority to approve the proposed repeal of the part 20.2.88 NMAC pursuant to the Air Quality Control Act, NMSA 1978, § 74-2-5(C).

17. The proposed repeal satisfies the requirements of the Air Quality Control Act, NMSA 1978, § 74-2-5(E), in that the Board has given the weight it deems appropriate to all the facts and circumstances, including but not limited to:

- a. the character and degree of injury to or interference with health, welfare, visibility, and property;
- b. the public interest, including the social and economic value of the sources and subjects of air contaminants; and

c. technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

18. The notice and hearing requirements of the Air Quality Control Act, NMSA 1978, § 74-2-6, and of the Rulemaking Procedures, 20.1.1 NMAC, have been satisfied in this rulemaking process.

19. The proposed repeal of the Emission Standards for New Motor Vehicles, part 20.2.88 NMAC, is adopted for the reasons stated above.

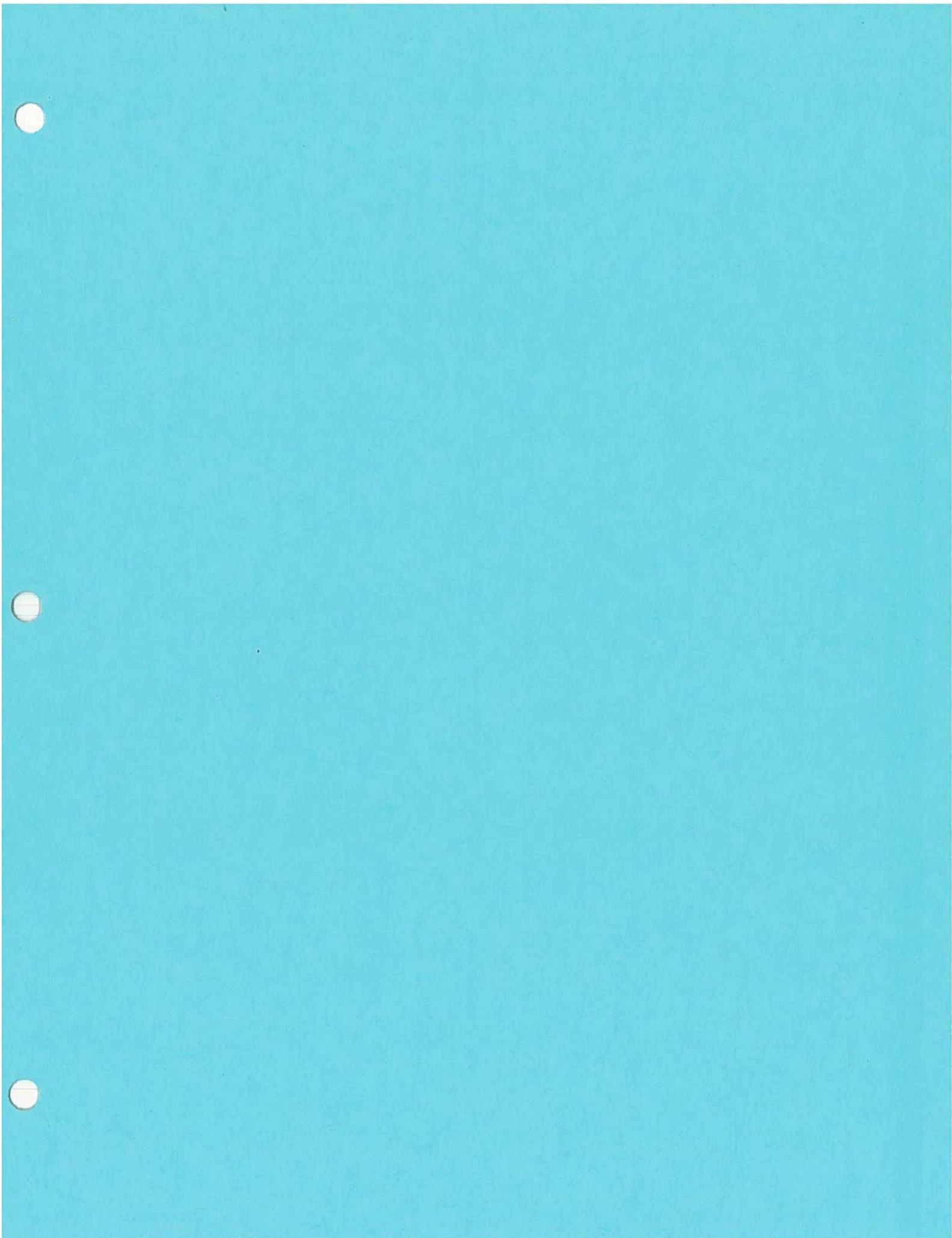
### **Order**

By unanimous vote of a quorum of the Board members, the proposed repeal of the Emission Standards for New Motor Vehicles, part 20.2.88 NMAC, is approved by the Board on November 7, 2013. The repeal of part 20.2.88 NMAC shall be filed with the New Mexico State Records Center, and submitted to EPA for appropriate action.

Dated: \_\_\_\_\_

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Deborah A. Peacock, Chair  
On Behalf of the Board







# RITA BATES

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## EDUCATION

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HUMBOLDT STATE UNIVERSITY, ARCATA, CALIFORNIA  
*B.S., Biology, 1990. Minor in Botany, emphasis in Ecology. Attendance dates 1986-1990.*

## EXPERIENCE

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STATE OF NEW MEXICO, ENVIRONMENT DEPARTMENT  
AIR QUALITY BUREAU, PLANNING & POLICY SECTION

*Section Chief, March 2005 – present*  
*Program Manager (Natural Sciences Manager-2), March 2000 – March 2005*  
*Environmental Specialist, December 1998 – March 2000*  
*Environmental Scientist, August 1998 – December 1998*

The Planning & Policy section of the Air Quality Bureau is responsible for the control strategy, dispersion modeling, emission inventory and small business assistance programs in the Air Quality Bureau. The control strategy section of the Air Quality Bureau is responsible for preparing state implementation plans, policies, and regulations for air quality. The modeling section ensures that all air dispersion modeling analyses submitted to our agency are accurate and complete. The Small Business Assistance Program assists small businesses in meeting air quality regulatory requirements.

EMPIRE GROUP, LLC  
Empire, Nevada

*Environmental Coordinator, June 1996 – July 1998*

Empire Group, LLC is the parent company for several entities which own and operate a geothermal power plant, an onion and garlic dehydration plant, several ranches, and a garlic seed operation. In my position as environmental coordinator, I was responsible for permitting at all facilities.

JBR ENVIRONMENTAL CONSULTANTS, INC.  
Reno, Nevada

*Environmental Analyst IV, Reno Office Coordinator/Manager, July 1994 – July 1996*  
*Environmental Analyst III, July 1993 – July 1994*  
*Environmental Analyst I, June 1990 – July 1993*

As the manager of the Reno office, I supervised seven technical staff and one administrative employee. During my employment with JBR, I worked on and managed numerous NEPA, environmental permitting and baseline projects.

