

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

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

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. As of January 31, 2011, the Board postponed the effective date of the requirements until January 1, 2016.

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

8. To be consistent 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, or further extend the waiver under 20.2.88.14 NMAC.

9. 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.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

17. 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).

18. 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

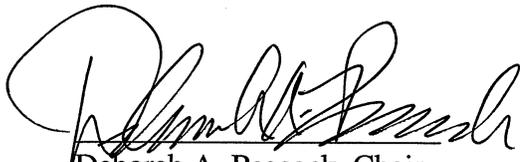
c. technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

19. 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.

20. 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.


Deborah A. Peacock, Chair
On Behalf of the Board

Dated: 11/12/13