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**November 30, 2018**

**Notice of Adoption of Final Rule 20.1.9 NMAC**

Pursuant to his authority to adopt rules and regulations necessary to carry out the functions and duties of the New Mexico Environment Department ("NMED"), NMSA 1978, Sections 3-29-9, 9-7A-6(D), 14-4-5.8, the Secretary of NMED appointed an administrative law judge who held a public hearing on October 12, 2018, to consider the repeal and replacement of 20.1.9 NMAC, Rulemaking Procedures - Environment Department. The notice requirements for a public rulemaking were properly met pursuant to NMSA 1978, Sections 14-4-2(E) and 14-4-5.2 as well as 20.1.9.12.B NMAC. Public notice was published in the New Mexico Register in English and Spanish on September 11, 2018. Public notice was also published in the Albuquerque Journal on September 11, 2018, in English and Spanish.

In 2017, the New Mexico Legislature passed House Bill 58 ("HB 58") addressing public participation in the rulemaking process. 2017 N.M. Laws, ch. 137 § 3. HB 58's amendments to the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 ("SRA"), establish requirements for executive agency rulemaking notices, post-hearing steps, and maintenance of and access to the rulemaking record.

The Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -15, establishes specific rulemaking requirements for rules issued by the Secretary of NMED. See NMSA 1978, § 9-7A-6(D). The Sanitary Projects Act likewise establishes specific procedures for rulemakings. See NMSA 1978, § 3-29-9. The SRA allows agencies to adopt their own or continue existing procedures that provide at least as much opportunity for public participation as the New Mexico Attorney General's default rules found at 1.24.25 NMAC. NMSA 1978, § 14-4-5.8. Because the Attorney General's default rules cannot fully comply with the Department of Environment Act and the Sanitary Projects Act and be generally applicable for a diverse group of executive agencies, the Secretary of NMED revised 20.1.9 NMAC to comply with the SRA on November 19, 2018. The Secretary of NMED's order and statement of reasons for adoption of the final rule are herein incorporated by reference. In the statement of reasons, the Secretary of NMED determined that the proposed revisions will provide at least as much opportunity for public participation as the Attorney General's default rules.

The order and statement of reasons is the final decision of the Secretary. 20.1.9.13.E NMAC. Due to procedural considerations, 20.1.9 NMAC is repealed, and the rules discussed in the Secretary's final order and statement of reasons are incorporated into a replacement 20.1.9 NMAC. The final rule can be obtained by visiting <https://www.env.nm.gov/public-notices/>.