



September 1, 2021

State of New Mexico Legislative Finance Committee
Representative Patricia A. Lundstrom, Chair
Senator George K. Munoz, Vice Chair
Representative Randal S. Crowder, Ranking Member
Senator Steven P. Neville, Ranking Member
325 Don Gaspar, Suite 101
Santa Fe, New Mexico 87501

Re: August 25, 2021 LFC Letter Regarding the New Mexico Environment Department's Proposed Ozone Precursor Rule

Dear Chairwoman Lundstrom, Vice Chair Munoz, Ranking Member Crowder, and Ranking Member Neville:

Thank you for your letter dated August 25, 2021, regarding the economic impact of the New Mexico Environment Department's ("Department") proposed ozone precursor rule for the oil and natural gas industry.

Specifically, your letter raises concerns related to the economic impact of the proposed rule as outlined in the economic analysis undertaken by John Dunham & Associates ("JDA Analysis") on behalf of the New Mexico Oil and Gas Association ("NMOGA"). This document was submitted by NMOGA on July 28, 2021 as part of its direct technical testimony in the rulemaking proceeding currently before the New Mexico Environmental Improvement Board ("Board") on the Department's proposed regulations at 20.2.50 NMAC targeting ozone precursor emissions from the oil and gas industry in New Mexico.

The New Mexico Air Quality Control Act ("AQCA") requires the Board to take action to address rising ozone levels in the State. *See* NMSA 1978, § 74-2-5(C). This is a non-discretionary duty. As the agency tasked with implementing ozone regulations for purposes of compliance with the health-based federal National Ambient Air Quality Standards, the Department has the role of proposing a plan, including regulations, for the Board's consideration to meet the statutory requirements. Due to severe general fund budget cuts, sweeping of special revenue funds, and the resulting loss of staff, the Department was unable to fulfill these responsibilities under the previous administration. Again, prior to this administration, the Department was unable to engage in any meaningful compliance assurance activities such as inspections of the rapidly expanding oil and gas industry in the State and enforcement for violations of state and federal laws.

With the Governor's and Legislature's fiscal support, the Department began an extensive stakeholder process in 2019 to develop the proposed rules currently before the Board in furtherance of the mandatory duties to regulate ozone concentrations for the protection of public health and the environment. Further, regardless of the Board's actions, it is a fact that ozone levels are rising in New Mexico due in part to oil and gas operations, and that several monitors, including in Eddy County, are registering concentrations far in excess of the federal standard. In addition, the U.S. Environmental

Protection Agency (“EPA”) and the Department continue to identify widespread non-compliance with air quality requirements across New Mexico’s San Juan and Permian Basins which further aggravates our rising ozone concentrations.¹ If the State does not take mandatory steps under the AQCA to address this situation, the U.S. EPA will ultimately force New Mexico to do so under the federal Clean Air Act.

Per the AQCA, economic impacts are a central component that the Board must consider in any rulemaking, and will be the subject of extensive substantive testimony presented to the Board in the rulemaking on the proposed ozone precursor rule. To that end, the Department provided detailed analysis and data on its cost estimates for the proposed rule in the written direct testimony that it filed with the Board on July 28, 2021.

The parties to the rulemaking, which include NMOGA, are currently preparing written rebuttal technical testimony in response to the direct testimony that was filed at the end of July. This rebuttal testimony is due on September 7, 2021. As part of its rebuttal filings, the Department will present detailed expert testimony on the methods, data, and findings of the JDA Analysis. Further elaboration on the economic and environmental dimensions of the proposed rule will occur at the hearing itself via live witness summaries of the pre-filed written testimony, additional witness testimony, and questioning of witnesses by the parties and the Board. This process will ensure that all aspects of the proposed rule and its impacts on the State are fully developed and presented to the Board in a comprehensive and transparent manner. Given the process and considerations outlined above, the Board will not rely on a single, deeply flawed economic study conducted and paid for by the regulated community, and I ask that Legislative Finance Committee not do so either.

With economists forecasting New Mexico will receive close to \$1.4 billion more than expected in revenues, New Mexicans can continue to enjoy a strong economy and public health protections. Our economy and the environment are not mutually exclusive outcomes.

Sincerely,

James C. Kenney
Cabinet Secretary
New Mexico Environment Department

Cc: Members, Legislative Finance Committee

¹ *Significant emission increases from oil and gas operations confirm need for stronger rules and enforcement, greater industry compliance* - <https://www.env.nm.gov/wp-content/uploads/2020/12/2020-12-21-Flyovers-reveal-high-leak-rates-in-Permian.pdf>