

STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED
AMENDMENT OF 11.5.1.16 NMAC

No. 20-55 (R)

Environmental Protection Division,
Occupational Health and Safety Bureau,
New Mexico Environment Department,

Petitioner.

NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

Pursuant to section 20.1.1.302 NMAC, the Occupational Health and Safety Bureau ("Bureau") within the Environmental Protection ("Division") of the New Mexico Environment Department ("Department") files this Notice of Intent to Present Technical Testimony for the hearing in this matter currently scheduled for December 18, 2020, and continuing if necessary for additional dates, and submits to the Environmental Improvement Board ("EIB") the following:

1. Identify the party for whom the witness will testify.

The New Mexico Environment Department.

2. Identify each technical witness(es).

Robert Genoway. Mr. Genoway's qualifications and background are set forth in his resume, which is attached hereto as Exhibit 3.

3. Hearing Location(s).

The EIB will hold a public hearing December 18, 2020 beginning at 9:00 a.m. via internet (Cisco WebEx, Microsoft Lync, and Microsoft Skype for Business), via telephone, and, comments will also be received via email through the conclusion of the hearing.

The WebEx Meeting number (access code) is: 133 444 1276; and the WebEx Meeting password is: ZjsZPmdT358; or, join the WebEx meeting link: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=mae8a7ecbe62daeedb9e755ac4ef09166>.

To join by phone or mobile device: +1-415-655-0001 US Toll; Access Code 133 444 1276.

To join from a video system or application, Dial: 1334441276@nmed-oit.webex.com; You may also dial 173.243.2.68 and enter the Meeting number: 133 444 1276.

To join using Microsoft Lync or Microsoft Skype for Business, Dial: 1334441276.nmed-oit@lync.webex.com.

To comment via email, send correspondence to: Public.Facilitation@state.nm.us.

4. Include a copy of the direct testimony of each technical witness in narrative form.

A copy of Mr. Genoway's direct testimony of each technical witness in narrative form is attached hereto as Exhibit 4.

5. The text of any recommended modifications to the proposed regulatory change.

At present, there are no recommended modifications to the Proposed Amendment as detailed in the Attachment A of the Petition to Amend 11.5.1.16 NMAC of [the] Occupational Health and Safety Regulations and Request for Hearing filed with the Board on September 4, 2020.

6. List and attach all exhibits anticipated to be offered by the technical witness at the hearing, including the Department's proposed Statement of Reasons for Adoption of Rule.

A complete list of exhibits the Department intends to offer into evidence in this matter, including the Department's proposed Statement of Reasons for Adoption of Rule, is attached to this Notice. The Department reserves the right to introduce and move for admission of any additional direct testimony at the hearing including other exhibits for the purpose of rebuttal.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

/s/ Joshua A. Spencer
Joshua A. Spencer
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Ave. NE, Ste. 1000
Albuquerque, NM 87102-3400
Phone: (505) 827-2990
Fax: (505) 383-2064
Email: joshua.spencer@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2020, a true and correct copy of the foregoing Notice of Intent to Present Technical Testimony was served via electronic mail or hand-delivered to the following:

Karla Soloria
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504
svigil@nmag.gov
Counsel for the Environmental Improvement Board

Pamela Jones
Administrator of Boards and Commissions
Environmental Improvement Board
Harold Runnels Building
1 J 90 St. Francis Drive, Rm. 2100
P.O. Box 5469
Santa Fe, NM 87502
Pamela.Jones@state.nm.us

/s/ Joshua A. Spencer
Joshua A. Spencer, Esq.

This is an amendment to 11.5.1. NMAC, Section 16, effective 12/04/2020.

11.5.1.16 RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ILLNESSES AND FATALITIES:

A. General: Except as otherwise provided in Subsection B of this section, the provisions of 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (internet: www.osha.gov), are hereby incorporated into this section.

B. Exception: Work-related injuries, illnesses and fatalities which are required to be reported by 29 CFR Part 1904.39 shall be reported, by email, telephone or facsimile machine, to the bureau in lieu of the location specified in 29 CFR Part 1904.39. The bureau's address, email, and telephone/facsimile numbers are: occupational health and safety bureau, New Mexico environment department, P.O. Box 5469, Santa Fe, NM 87502, email: nmenv-osha@state.nm.us, Tel: (505) 476-8700, Fax: (505) 476-8734.

C. Reporting [~~COVID-19 cases~~novel coronavirus: Within four [~~(4)~~]hours of [~~learning~~]notice that an employee tested positive for the novel coronavirus [disease 2019 (COVID-19)], each employer shall report the positive test to the bureau [~~at the email, telephone or facsimile number~~]as specified in Subsection B of this section[.] or as otherwise directed by the bureau.

[10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A, 12/04/2020]

[11.5.1.16 NMAC - N, 12/04/2020] [The department has provided the Rapid Response Submission portal that may be used to satisfy the reporting requirements of Subsection (C). The Rapid Response Submission portal is available on the bureau's website at <https://nmgov.force.com/rapidresponse/s/>.]

This is an amendment to 11.5.1. NMAC, Section 16, effective XX/XX/2020.

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C. Reporting novel coronavirus: Within four hours of notice that an employee tested positive for the novel coronavirus, each employer shall report the positive test to the bureau as specified in Subsection B of this section or as otherwise directed by the bureau.

[10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A, XX/XX/2020]

[11.5.1.16 NMAC - N, 12/04/2020] [The department has provided the Rapid Response Submission portal that may be used to satisfy the reporting requirements of Subsection (C). The Rapid Response Submission portal is available on the bureau's website at <https://nmgov.force.com/rapidresponse/s/>.]

ROBERT GENOWAY

525 Camino de los Marquez
Santa Fe, New Mexico 87505
Phone (505) 476-8700

Summary of Qualifications

- Sixteen years of experience in managing and supervising staff, performance and budgets for governmental occupational health and safety regulatory programs.
- Twenty years of experience interpreting and applying occupational health and safety statutes and regulations, including 29 CFR 1904, 1910 and 1926 for all industries in New Mexico.
- Twenty-two years of occupational health and safety experience including field sampling as an industrial hygienist and analysis as an environmental/IH chemist.

Professional Experience

December 2000 – Current New Mexico OSHA, Santa Fe, NM

Bureau Chief (May 2012–Current)

- Managing Occupational Health and Safety Bureau programs to meet departmental goals and objectives consistent with federal and state laws and regulations, including oversight of administrative, financial and technical services.
- Managing all Bureau programs including Administrative, Compliance, Cooperative Programs, and Labor Statistics.
- Providing oversight of the Bureau, consisting of 30 managers, supervisors, technical and administrative staff members.
- Directing Bureau financial activities, including securing and expending federal grants and state funds to ensure compliance with all applicable policies and regulations for a budget of more than \$2.5 million.
- Working with federal auditors to review Bureau performance and state program effectiveness in the delivery of enforcement, consultative and financial activities.
- Evaluating the performance of section managers, through State Personnel Office Manager Evaluations, to drive continued improvement of processes and service delivery.
- Conducting manager and staff meetings to solicit input for programmatic improvement and communicate management expectations, policy and procedural changes to Bureau personnel.
- Conducting administrative reviews to settle contested cases while ensuring fair and effective enforcement of regulations and coordinating litigation of cases with legal staff.

ROBERT GENOWAY

Résumé • Page 2

Professional Experience (continued)

Bureau Chief (Acting) (May 2012–October 2012, continued)

- Overseeing the development of performance and strategic plans, and worked closely with federal OSHA representatives on the review and submittal of plans.
- Providing responses to inquiries from federal and state government, media and public representatives regarding program administration and activities.
- Representing the Bureau at Environment Department, federal OSHA and nationwide state OSHA programs meetings.

Compliance Program Manager (November 2004–May 2012)

- Managing Occupational Health and Safety Bureau programs to meet departmental goals and objectives consistent with federal and state laws and regulations, including oversight of administrative, financial and technical services.
- Managed staff and performance of the Bureau's Compliance Section, including staff of 11 compliance officers conducting more than 500 inspections per year.
- Completed grant proposals and managed section budgets to ensure enforcement goals were met and funds appropriately spent.
- Directed all enforcement activities involving industrial accidents and communicated with victims' families.
- Reviewed all compliance inspection reports for quality assurance and legal sufficiency; worked closely with department counsel in preparing cases for litigation.
- Conducted more than 400 informal administrative reviews with employers and opposing counsel and wrote subsequent settlement agreements.
- Negotiated settlements involving complex technical issues related to health and safety management systems.
- Testified at all hearings before the New Mexico Occupational Health and Safety Review Commission.
- Developed and implemented bureau performance plans; set goals and emphasis programs aimed at reducing injuries, illnesses and fatalities statewide.
- Provided analysis of draft legislation involving occupational health and safety during legislative sessions.
- Represented the Bureau at quarterly meetings, annual meetings and conferences with federal OSHA.
- Represented New Mexico at national conferences for OSHA state plans and gave presentations on New Mexico OSHA activities.
- Provided oversight of Bureau activities and represented the Bureau at department meetings as acting Bureau Chief during the Bureau Chief's absence.

ROBERT GENOWAY

Résumé • Page 3

Professional Experience (continued)

Consultation Program Manager (Acting) (January 2004–November 2004)

- Managing Occupational Health and Safety Bureau programs to meet departmental goals and objectives consistent with federal and state laws and regulations, including oversight of administrative, financial and technical services.
- Managed staff and performance of Consultation section of bureau, including staff of 5 consultants conducting more than 250 visits per year.
- Developed and implemented bureau performance plans; completed grant proposals and managed section budgets.
- Reviewed all consultation visit reports for quality assurance and adherence to policies and procedures.
- Represented the Bureau at national conferences for state consultation programs.
- Represented the Bureau at meetings and conferences with federal OSHA.

SHARP/VPP Coordinator (October 2002–January 2004)

- Managing Occupational Health and Safety Bureau programs to meet departmental goals and objectives consistent with federal and state laws and regulations, including oversight of administrative, financial and technical services.
- Managed Bureau's **Safety and Health Achievement Recognition Program (SHARP)** and **Zia Star Voluntary Protection Program (VPP)** and staff through evaluation of onsite activity performance and review of reports.
- Supervised audit team personnel consisting of as many as 10 compliance officers and consultants during onsite reviews at SHARP and VPP sites.
- Developed and implemented the New Mexico SHARP and VPP programs.
- Established performance goals and review procedures for SHARP and VPP activities, and conducted programmatic reviews of performance.
- Determined financial needs and proposed budget expenditures for training, materials and program activities.
- Represented the Bureau at national and regional VPP conferences.

Health and Safety Consultant (June 2001–October 2002)

- Provided occupational health and safety program assistance, including program development, to general industry and construction employers.
- Trained employers and employees on health & safety issues in the workplace; presented information to various organizations using presentations such as MS PowerPoint and other forms of media.
- Selected and maintained industrial hygiene sampling and respiratory fit testing equipment.

ROBERT GENOWAY

Résumé • Page 4

Professional Experience (continued)

Compliance Officer (December 2000–June 2001)

- Inspected workplaces to evaluate health and safety hazards and identify violations of the New Mexico OHS Act under 29 CFR 1910 and 1926.
- Prepared complex inspection reports and citations to ensure legal sufficiency for enforcement and remove workers from hazards.
- Conducted onsite monitoring as an industrial hygienist for noise and chemical hazards and advised employers on methods for eliminating or controlling exposure.

September 1997 – December 2000 Clean Harbors Environmental Services, Kimball, NE

Chemist

- Developed Standard Operating Procedures for EPA and OSHA compliant analyses.
- Prepared and analyzed environmental and industrial hygiene samples for various contaminants.
- Operated and maintained laboratory instrumentation including GCMS and AAS.
- Interpreted analytical data using software including MS ChemStation.
- Prepared reports and case narratives using MS Excel and MS Word.

Education

1994 Colorado State University, Fort Collins, CO

B.S. in Biological Sciences

- Concentration in Microbiology

2000 – 2015 OSHA Training Institute Certificates

- Safety and Health Trainer - General Industry
- Safety and Health Trainer - Construction Industry
- Safety and Health Program Assessment
- Excavation, Trenching and Soil Mechanics
- Process Safety Management - General Industry
- Hazardous Materials
- Electrical Standards
- Fire Protection and Life Safety
- Permit Required Confined Space
- 40-hour Hazwoper

**IN THE MATTER OF PROPOSED AMENDMENTS TO
OCCUPATIONAL HEALTH AND SAFETY REGULATIONS 11.5.16 NMAC**

No. EIB 20-55 (R)

**Exhibit NMED 3
Written Testimony of Robert Genoway
Bureau Chief
New Mexico Environment Department
Occupational Health and Safety Bureau**

1 **Witness Qualifications**

2
3 My name is Robert Genoway. I am the Bureau Chief for the New Mexico Occupational
4 Health and Safety Bureau, also known as New Mexico OSHA. I have been employed by
5 the Bureau for the past 20 years, starting as an Industrial Hygiene Compliance Officer in
6 December of 2000. During my tenure with New Mexico OSHA, I received a number of
7 promotions through positions including Compliance Officer, Health and Safety
8 Consultant, Consultation Program Manager, and Compliance Program Manager. I have
9 been in my current position as Bureau Chief since May 2012, where I oversee each of the
10 Bureau's programs, have responsibility for managing budgets and performance, and act
11 as the point of contact for federal OSHA and other states with their own OSHA
12 programs. Prior to coming to the Bureau, I worked as a chemist in the private sector,
13 where I performed analyses for environmental and industrial hygiene chemical
14 contaminants. I hold a B.S. Degree in Biology from Colorado State University, and
15 multiple training certificates from the OSHA Training Institute in Chicago. *See Exhibit 3.*

16
17 **Background**

18
19 The purpose of my testimony today is to provide a brief overview of the operational
20 status of the Bureau, its relationship with the U.S. Department of Labor, Occupational
21 Safety and Health Administration (federal OSHA), and the reasons why the state program
22 is proposing a rule requiring employers to report all cases of COVID-19 among
23 employees.

24
25 The federal Occupational Safety and Health Act of 1970 (federal Act) covers most
26 private sector employers and workers in all 50 states, the District of Columbia, and other
27 U.S. jurisdictions either directly through federal OSHA or through an OSHA-approved
28 State Plan. State Plans are OSHA-approved job safety and health programs operated by
29 individual states instead of federal OSHA. Section 18 of the federal Act encourages states
30 to develop and operate their own programs and precludes state enforcement of OSHA
31 standards unless the state has an OSHA-approved program. OSHA approves and
32 monitors all State Plans and provides as much as fifty percent of the funding for each
33 program through federal grants. State-run safety and health programs must be at least as
34 effective as the federal OSHA program. Under the provisions of Section 18 of the federal

1 Act, New Mexico is one of 21 states with an OSHA-approved State Plan that covers both
2 private and public sector workers. New Mexico gained federal approval for operational
3 status, through the Agreement Under Section 18(e) of the Occupational Safety and Health
4 Act of 1970, dated October 5, 1981. Available online at [https://www.env.nm.gov/wp-](https://www.env.nm.gov/wp-content/uploads/sites/18/2018/11/NMOperationalStatusAgreement.pdf)
5 [content/uploads/sites/18/2018/11/NMOperationalStatusAgreement.pdf](https://www.env.nm.gov/wp-content/uploads/sites/18/2018/11/NMOperationalStatusAgreement.pdf)
6

7 The Bureau derives its state-level statutory operational authority from the New Mexico
8 Occupational Health and Safety Act, NMSA 1978 Sections 50-9-2 to -25 (1953, as
9 amended through 2017) (“Act”). The state Act designates the Environmental
10 Improvement Board as the promulgating authority for regulations “that are and will
11 continue to be at least as effective as standards promulgated pursuant to the federal
12 Occupational Safety and Health Act of 1970 to prevent or abate detriment to the health
13 and safety of employees.” The state program enforces predominantly federal OSHA
14 standards incorporated within state rules contained in Title 11, Chapter 5 of the New
15 Mexico Administrative Code. New Mexico has also promulgated, through the EIB,
16 several state-specific rules for public sector firefighting, agricultural work, and
17 convenience store worker security.
18

19 The Bureau, with a combined staff of 29 employees, is comprised of several sections
20 including Compliance, Cooperative Programs, Administration, and Discrimination
21 Investigations. The Compliance Section consists of a manager and 11 compliance
22 officers, responsible for enforcing the Act and regulations through inspections and
23 investigations at worksites within state jurisdiction. The Cooperative Programs Section
24 consists of a manager, 5 Consultants, and 2 Compliance Assistance Specialists,
25 responsible for providing assistance to employers and workers, either one-on-one or
26 through groups such as industry associations. The Bureau’s Administrative Section has a
27 manager and 7 staff members who support the other programs and collect labor statistics.
28 Finally, the Bureau has a single Discrimination Investigator who investigates allegations
29 of whistleblower retaliation and reports directly to the Bureau Chief. The Bureau’s
30 mission is “to assure every employee safe and healthful working conditions.” We firmly
31 believe that a balanced approach, which includes consistently strong but fair enforcement
32 and effective assistance, is necessary to achieve our mission.
33

34 With respect to incorporated federal requirements for recording and reporting workplace
35 injuries and illnesses, the Bureau has historically engaged in a balanced approach
36 between enforcement and assistance. One of my early assignments as a Bureau consultant
37 was to provide outreach and training to employers statewide for a January 2001, federal
38 register revision to the incorporated federal recordkeeping rule, 29 CFR 1904, which
39 included updated forms and requirements for recording injuries and illnesses. 66 FR
40 5916.
41

42 By working with small business administration offices, local chambers of commerce, and
43 community colleges, the Bureau was able to educate many New Mexico employers
44 regarding the new requirements.
45

46 **Effect of Incorporation**

1
2 Federal OSHA rules for recordkeeping and reporting of occupational illnesses and
3 injuries contained in the Code of Federal Regulations, 29 CFR 1904, are incorporated in
4 New Mexico through 11.5.1.16 NMAC. Part 1, Section 16, Subsection A contains the
5 provisions for incorporating the federal rule, and Subsection B contains an exception for
6 reporting accidents to the state rather than to federal OSHA. *See* Exhibit 2. Federal
7 amendments to 29 CFR 1904 have historically been incorporated by reference within the
8 NMAC, with effective dates identical to those contained within the federal register
9 notices.

10
11 **Proposed Changes to Part 1, Section 16**

12
13 The Novel Coronavirus Disease 2019 (“COVID-19”) is a communicable disease not
14 previously circulated in humans but has adapted to humans such that it is contagious and
15 easily spread from one person to another. COVID-19 is a public health emergency which
16 poses a threat to the health, safety, wellbeing and property of the residents of the State of
17 New Mexico. *See* Exec. Order 2020-04 (March 11, 2020), available online at
18 <https://cv.nmhealth.org/wp-content/uploads/2020/03/Executive-Order-2020-004-r.pdf>.
19 COVID-19 presents a severe danger to the health of workers in New Mexico and there is
20 an urgent need to adopt rules requiring employers to report an employee’s positive test
21 result for the novel coronavirus. Having immediate knowledge of an employee’s positive
22 test for the novel coronavirus is useful to the Bureau in order to allocate resources, limit
23 transmission, and otherwise respond effectively and efficiently to the novel coronavirus.
24

25 On May 26, 2020, the New Mexico Department of Health (DOH) began reporting
26 positive COVID-19 cases among workers to the Bureau. Upon receipt of each
27 notification of a positive case, the Bureau initiates what is called a rapid response
28 wherein the Bureau immediately contacts the employer to ensure protection of workers.
29 A rapid response includes ensuring the positive case is isolated, close contact employees
30 of the positive case are identified and quarantined, the employer ceases operations as
31 needed to isolate and disinfect contaminated work areas, and COVID-Safe Practices are
32 in place at the establishment.
33

34 On August 5, 2020, the Secretary of Environment adopted an emergency rule amending
35 11.5.1.16 NMAC, thereby requiring employers report all cases of COVID-19 among
36 employees within 4 hours of learning an employee tested positive for the disease. After
37 the department adopted the emergency rule, the time between an employer becoming
38 aware of a positive COVID-19 employee and the Bureau initiating a rapid response
39 decreased significantly from an average of more than 3 days to less than 1.5 days. This
40 reduction in response time has allowed the Bureau to more quickly ensure protection of
41 employees from transmission of the virus. As of November 16, 2020, the Bureau
42 conducted more than 8,000 rapid responses to positive cases among workers in New
43 Mexico.
44

45 The Bureau is requesting that the Board amend 11.5.1.16 NMAC to: (1) add the Bureau’s
46 email address to Subsection B as a method of reporting workplace injuries and illnesses;

1 (2) add a Subsection C, reporting novel coronavirus, which would require that, “Within
2 four hours of notice that an employee tested positive for the novel coronavirus, each
3 employer shall report the positive test to the Bureau as specified in Subsection B of this
4 section or as otherwise directed by the Bureau;” and (3) add a note to 11.5.1.16 that
5 would read, “The department has provided the Rapid Response Submission portal that
6 may be used to satisfy the reporting requirements of Subsection (C). The Rapid Response
7 Submission portal is available on the Bureau’s website at
8 <https://nmgov.force.com/rapidresponse/s/>.”
9

10 The requested changes to the rule will help to ensure that the Bureau can quickly respond
11 to positive cases of COVID-19 in workplaces to protect workers and reduce occupational
12 illness and death.

13
14 **Effect on Small Business**

15
16 Pursuant to the Small Business Regulatory Relief Act, 1978 NMSA § 14-4A-1, *et seq.*,
17 the Bureau has determined that the regulatory changes proposed in this action will not
18 have an adverse effect on small business. This determination is based on the fact that the
19 proposed amendment will result in minimal additional cost to employers, consistent with
20 the findings contained in the federal register. The Bureau sent a letter to the New Mexico
21 Economic Development Department’s Small Business Regulatory Advisory Committee,
22 announcing this hearing and explaining the requested revision, on October 7, 2020. *See*
23 Exhibit 9.
24

**NEW MEXICO ENVIRONMENT IMPROVEMENT BOARD
NOTICE OF SCHEDULED PUBLIC HEARING TO CONSIDER
PROPOSED AMENDMENTS TO 11.5.1.16 NMAC
EIB 20-55**

The Environmental Improvement Board (“EIB”) will hold a public hearing December 18, 2020 beginning at 9:00 a.m. via internet (Cisco WebEx, Microsoft Lync, and Microsoft Skype for Business), via telephone, and, comments will also be received via email through the conclusion of the hearing.

The WebEx Meeting number (access code) is: 133 444 1276; and the WebEx Meeting password is: ZjsZPmdT358; or, join the WebEx meeting link: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=mae8a7ecbe62daeedb9e755ac4ef09166>.

To join by phone or mobile device: +1-415-655-0001 US Toll; Access Code 133 444 1276.

To join from a video system or application, Dial: 1334441276@nmed-oit.webex.com; You may also dial 173.243.2.68 and enter the Meeting number: 133 444 1276.

To join using Microsoft Lync or Microsoft Skype for Business, Dial: 1334441276.nmed-oit@lync.webex.com.

To comment via email, send correspondence to: Public.Facilitation@state.nm.us.

The hearing is being held via internet, email and telephonic means due to the concerns surrounding the Novel Coronavirus 2019 (“COVID-19”) and in accord with Governor Michelle Lujan Grisham’s Declaration of a Public Health Emergency in [Executive Order 2020-004](#), and subsequent executive orders; various the Public Health Emergency Orders limiting mass gatherings due to COVID-19; and the Office of the Attorney General’s Open Government Division’s [Guidance to Public Entities Regarding the Open Meetings Act and Inspection of Public Records Act Compliance During COVID-19 State of Emergency](#).

At the public hearing the EIB will consider proposed amendments to the Recording and Reporting Occupational Injuries, Illness and Fatalities, 11.5.1.16 NMAC, as proposed in the [Petition to Amend 11.5.1.16 NMAC of \[the\] Occupational Health and Safety Regulations and Request for Hearing](#) (“Petition”), EIB Docket Number 20-55, September 4, 2020. The Petition has been filed by the Occupational Health and Safety Bureau (“Bureau”) of the New Mexico Environment Department (“Department”). The Bureau has proposed the amendment in response to COVID-19, which presents a grave danger to the public health and workplace safety. The amendment’s purpose is to require employers to report an employee’s positive novel coronavirus test to the Bureau within 4 hours of notice. This 4-hour reporting requirement allows the Bureau to rapidly respond and allocate resources in order to limit the transmission of the novel coronavirus in the workplace. The full text of the proposed amendment is attached hereto. To obtain a physical or electronic copy of the proposed amendments contact:

Pamela Jones, Board Administrator, at the New Mexico State Capitol Building, 409 Old Santa Fe Trail, Santa Fe, New Mexico; Public.Facilitation@state.nm.us; (505) 660-4305.

In your correspondence reference docket number EIB 20-55. In addition, copies of the proposed amendments are posted on the NMED website at <https://www.env.nm.gov/environmental-improvement/eib-20-55-r/>

The Department undertakes this rulemaking pursuant to its duty to protect the health and safety of employees arising out of and in the course of employment. NMSA 1978, § 50-9-8(A) (1993). The proposed amendment is consistent with the Department’s further obligations “to assure every employee safe and healthful working conditions by providing for appropriate job-related accident and illness reporting procedures that will help achieve the objectives of the Occupational Health and Safety Act (“OHSA”). NMSA 1978, § Section 50-9-2(D) (1993), *see also*, § 50-9-19 (1993) (OHSA requires every employer to “submit reports of occupational injuries and illnesses as prescribed by the [D]epartment.”). In order to carry out the purpose and the statutorily imposed duties of the OHSA, the EIB must

promulgate and the Department must enforce occupational health and safety regulations. § 50-9-2(A), (B). The EIB has previously issued regulations regarding recording and reporting occupational injuries, illnesses, and fatalities. 11.5.1.16 NMAC. Finally, the EIB has the authority to amend the Occupational Health and Safety Regulations under NMSA 1978, Section 59-9-12 (1993).

The hearing will be conducted in accordance with EIB's Rulemaking Procedures found at 20.1.1.1 – 501 NMAC, the Occupational Health and Safety Regulations under NMSA 1978, Section 59-9-12 (1993), and other applicable procedures and procedural orders. Written comments regarding the proposed revisions may be obtained from Pamela Jones, Board Administrator, at the contact information listed above.

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. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of hearing.

Persons wishing to present technical testimony must file with the EIB a written notice of intent to do so. The requirements for a notice of intent can be found in 20.1.1.302 NMAC. Notices of intent for the hearing must be received by the EIB by 5:00 pm on November 27, 2020, and should reference the name of the regulation (Recordkeeping and Reporting Occupational Injuries, Illnesses and Fatalities), the date of the hearing (December 18, 2020), and docket number EIB 20-55.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g., sign language interpreter, to participate in any aspect of this process, please contact the Department's Human Resources Bureau by November 27, 2020. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, and (505) 827-9769. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The EIB may make a decision on the proposed regulatory changes at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal.

STATEMENT OF NON-DISCRIMINATION

If any person requires assistance, an interpreter or auxiliary aid to access documents, please contact 505.476.8700 (Relay users please access the number via the New Mexico Relay Network) or nmenv-osh@state.nm.us.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations.

NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, if you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kristine Yurdin, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us.

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

This is an amendment to 11.5.1. NMAC, Section 16, effective XX/XX/2020.

11.5.1.16 RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ILLNESSES AND FATALITIES:

A. General: Except as otherwise provided in Subsection B of this section, the provisions of 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (internet: www.osha.gov), are hereby incorporated into this section.

B. Exception: Work-related injuries, illnesses and fatalities which are required to be reported by 29 CFR Part 1904.39 shall be reported, by email, telephone or facsimile machine, to the bureau in lieu of the location specified in 29 CFR Part 1904.39. The bureau's address, email, and telephone/facsimile numbers are: occupational health and safety bureau, New Mexico environment department, P.O. Box 5469, Santa Fe, NM 87502, email: nmenv-osh@state.nm.us, Tel: (505) 476-8700, Fax: (505) 476-8734.

C. Reporting novel coronavirus: Within four hours of notice that an employee tested positive for the novel coronavirus, each employer shall report the positive test to the bureau as specified in Subsection B of this section or as otherwise directed by the bureau.

[10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A, XX/XX/2020]

[11.5.1.16 NMAC - N, 12/04/2020] [The department has provided the Rapid Response Submission portal that may be used to satisfy the reporting requirements of Subsection (C). The Rapid Response Submission portal is available on the bureau's website at <https://nmgov.force.com/rapidresponse/s/>.]

**JUNTA DE MEJORA DEL MEDIO AMBIENTE DE NUEVO MÉXICO
AVISO DE AUDIENCIA PÚBLICA PROGRAMADA PARA CONSIDERAR
ENMIENDAS PROPUESTAS A 11.5.1.16 NMAC
EIB 20-55**

La Junta de Mejora del Medio Ambiente ("EIB" por sus siglas en inglés) celebrará una audiencia pública el 18 de diciembre de 2020 a partir de las 9:00 de la mañana por Internet (Cisco WebEx/Microsoft Lync, y Microsoft Skype para empresas) y por teléfono, y también se recibirán comentarios por correo electrónico hasta la conclusión de la audiencia.

El número de la reunión de WebEx (código de acceso) es: 133 144 1276; y la contraseña de la reunión de WebEx es: ZjsZPmdT358;

A unirse de WebEx: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=mae8a7ecbe62daeedb9e755ac4ef09166>;

A unirse de Microsoft Lync or Microsoft Skype para empresas, marca: 1334441276.nmed-oit@lync.webex.com;

A unirse de una sistema de vídeo o aplicación, marca: 1334441276@nmed-oit.webex.com; o puede marca 173.243.2.68; código de acceso: 133 444 1276; o

A unirse de teléfono o dispositivo móvil: +1-415-655-0001; código de acceso: 133 444 1276.

Para comentario por correo electrónico, enviar correspondencia a: Public.Facilitation@state.nm.us.

La audiencia se celebrará a través de Internet, correo electrónico y medios telefónicos debido a las preocupaciones en torno al nuevo coronavirus 2019 ("COVID-19") y de acuerdo con la declaración de emergencia de salud pública de la gobernadora Michelle Lujan Grisham en la Orden Ejecutiva 2020-004, y órdenes ejecutivas posteriores; órdenes de emergencia de salud pública que limitan las reuniones masivas debido a la COVID-19; y Guía para las Entidades Públicas sobre el Cumplimiento de la Ley de Reuniones Abiertas y la Ley de Inspección de Registros

Públicos durante el Estado de Emergencia por COVID-19 de la División de Gobierno Abierto de la Procuraduría general ("Guía OGD").

En la audiencia pública, la EIB considerará las enmiendas propuestas para el Registro y Presentación de Informes de Lesiones, Enfermedades y Muertes Ocupacionales, 11.5.1.16 NMAC, como se propone en la Petición de Enmienda 11.5.1.16 NMAC de [los] Reglamentos de Seguridad y Salud Ocupacional y la Solicitud de Audiencia ("Petición"), Número de Expediente EIB 20-55, 4 de septiembre de 2020. La Petición ha sido presentada por la Oficina de Seguridad y Salud Ocupacional ("Oficina") del Departamento de Medio Ambiente de Nuevo México ("Departamento"). La Oficina ha propuesto la enmienda en respuesta a la COVID-19, que presenta un grave peligro para la salud pública y la seguridad en el lugar de trabajo. El propósito de la enmienda es requerir que los empleadores reporten a la Oficina cada resultado positivo de las pruebas del nuevo coronavirus de los empleados dentro de las 4 horas siguientes a la notificación. Este requisito de reporte de 4 horas permite a la Oficina responder rápidamente y asignar recursos para limitar la transmisión del nuevo coronavirus en el lugar de trabajo. El texto completo de la enmienda propuesta se adjunta al presente aviso. Para obtener una copia impresa o electrónica de las enmiendas propuestas comuníquese con:

Pamela Jones, administradora de la junta, New Mexico State Capitol Building, 409 Old Santa Fe Trail, Santa Fe, NM; Public.Facilitation@state.nm.us; (505) 660-4305.

En su correspondencia, haga referencia al número de expediente EIB 20-55. Además, se han publicado copias de las enmiendas propuestas en el sitio web del NMED en <https://www.env.nm.gov/environmental-improvement/eib-20-55-r/>.

El Departamento se encarga de esta reglamentación en cumplimiento de su deber de proteger la salud y la seguridad de los empleados que surjan de y en el curso del empleo. NMSA 1978, § 50-9-8(A) (1993). La enmienda propuesta es coherente con las obligaciones adicionales del Departamento de "garantizar a todos los empleados condiciones de trabajo seguras y saludables mediante el establecimiento de procedimientos adecuados de notificación de accidentes y enfermedades relacionados con el trabajo que ayuden a lograr los objetivos de la Ley de Seguridad y Salud Ocupacional ("OHSA" por sus siglas en inglés)". NMSA 1978, § Sección 50-9-2(D) (1993), *véase también* § 50-9-19 (1993) (la OHSA exige que todo empleador "presente informes sobre lesiones y enfermedades laborales según lo prescrito por el Departamento". A fin de cumplir el propósito y los deberes impuestos por la OHSA, la EIB debe promulgar y el Departamento debe hacer cumplir los reglamentos de seguridad y salud en el trabajo. § 50-9-2 (A), (B). La EIB ha publicado anteriormente reglamentos relativos al registro y presentación de informes de lesiones, enfermedades y muertes en el trabajo. 11.5.1.16 NMAC. Por último, la EIB está facultada para enmendar el Reglamento de Seguridad y Salud en el Trabajo en virtud de NMSA 1978, Sección 59-9-12 (1993).

La audiencia se llevará a cabo de conformidad con los procedimientos de elaboración de normas de la EIB que se encuentran en 20.1.1.1 - 501 NMAC, el Reglamento de Seguridad y Salud Ocupacional bajo NMSA 1978, Sección 59-9-12 (1993), y otros procedimientos y órdenes de procedimiento aplicables. Los comentarios por escrito sobre las revisiones propuestas pueden obtenerse de Pamela Jones, administradora de la junta, en la información de contacto que figura más arriba.

En la audiencia se dará a todas las personas interesadas una oportunidad razonable de presentar evidencias, datos, opiniones y argumentos pertinentes, oralmente o por escrito, presentar documentos u objetos de pruebas e interrogar a los testigos. Toda persona que desee presentar una declaración por escrito de carácter no técnico para que conste en acta en lugar de un testimonio oral deberá presentar dicha declaración antes del cierre de la audiencia.

Las personas que deseen presentar un testimonio de carácter técnico deberán presentar a la EIB un aviso por escrito de su intención de hacerlo. Los requisitos para un aviso de intención se encuentran en 20.1.1.302 NMAC. Los avisos de intención para la audiencia deberán ser recibidos por la EIB antes de las 5:00 de la tarde del 27 de noviembre de 2020, y deberán hacer referencia al nombre del reglamento (Registro y Presentación de Informes de

Lesiones, Enfermedades y Muertes Laborales), la fecha de la audiencia (18 de diciembre de 2020), y el número de expediente EIB 20-55.

Si usted tiene una discapacidad y necesita asistencia o ayuda auxiliar, por ejemplo, un intérprete de lenguaje de señas, para participar en cualquier aspecto de este proceso, póngase en contacto con la Oficina de Recursos Humanos del Departamento a más tardar hasta el 27 de noviembre de 2020. La Oficina se encuentra en Departamento de Medio Ambiente de Nuevo México, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, teléfono (505) 827-9769. Los usuarios de TDD o TDY pueden acceder a este número a través de la Red de Retransmisión de Nuevo México (los usuarios de TDD de Albuquerque: (505) 275-7333; fuera de Albuquerque: 1-800-659-1779).

La EIB puede tomar una decisión sobre los cambios reglamentarios propuestos al concluir la audiencia o puede convocar una reunión después de la audiencia para considerar una acción sobre la propuesta.

DECLARACIÓN DE NO DISCRIMINACIÓN

Si alguna persona necesita asistencia, un intérprete o ayuda auxiliar para acceder a los documentos llame al 505.476.8700 (los usuarios del servicio de retransmisión pueden acceder al número a través de la Red de Retransmisión de Nuevo México) o nmenv-osha@state.nm.us.

El NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigen las leyes y regulaciones aplicables. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas sobre los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas de la Ley de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o alguno de los programas, políticas o procedimientos de no discriminación de NMED o si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con:

Kristine Yurdin, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, teléfono (505) 827-2855, correo electrónico nd.coordinator@state.nm.us.

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con la coordinadora de no discriminación identificada anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para aprender cómo y dónde presentar una denuncia por discriminación.

Esta es una enmienda a 11.5.1 NMAC, Sección 16, efectiva el XX/XX/2020.

11.5.1.16 REGISTRO Y PRESENTACIÓN DE INFORMES DE LESIONES, ENFERMEDADES Y MUERTES LABORALES:

A. General: Salvo que se disponga otra cosa en la subsección B de esta sección, se incorporan a la presente sección las disposiciones del 29 CFR, parte 1904, Registro y Presentación de Lesiones y Enfermedades Laborales (Internet: www.osha.gov).

B. Excepción: Las lesiones, enfermedades y muertes relacionadas con el trabajo que deben notificarse en virtud del artículo 29 CFR, parte 1904.39 se comunicarán, por correo electrónico, teléfono o fax, a la oficina en lugar del lugar especificado en el artículo 29 CFR, parte 1904.39. La dirección de la oficina, el correo electrónico y los números de teléfono y fax son: Oficina de Seguridad y Salud Ocupacional, Departamento de Medio Ambiente de Nuevo México, P.O. Box 5469, Santa Fe, NM 87502, correo electrónico: nmenv-osha@state.nm.us, Tel: (505) 476-8700, Fax: (505) 476-8734.

C. Notificación del nuevo coronavirus: Dentro de las cuatro horas siguientes a la notificación de que un empleado ha dado positivo en la prueba del nuevo coronavirus, cada empleador deberá informar de la prueba positiva a la oficina según lo especificado en la subsección B de esta sección o según lo indicado por la oficina. [10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A, XX/XX/2020] [11.5.1.16 NMAC - N, 12/04/2020] [El Departamento ha proporcionado el portal de Presentación de Respuesta Rápida que puede utilizarse para satisfacer los requisitos de presentación de informes de la Subsección (C). El portal de Presentación de Respuesta Rápida se puede consultar en el sitio web de la Oficina en [https://nmgov.force.com/rapidresponse/s/.](https://nmgov.force.com/rapidresponse/s/)]

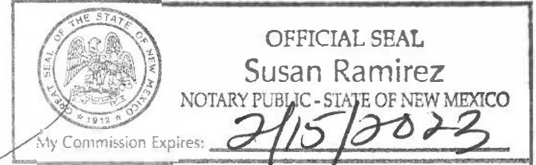
AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Elise Rodriguez, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 3 time(s) on the following date(s):

10/16/2020, 10/17/2020, 10/18/2020



Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 18 day of October of 2020

PRICE \$3,647.47

Statement to come at the end of month.

ACCOUNT NUMBER 1009602

**NEW MEXICO ENVIRONMENT
IMPROVEMENT BOARD**
**NOTICE OF SCHEDULED PUBLIC HEARING TO CONSIDER
PROPOSED AMENDMENTS TO 11.5.1.16 NMAC EIB 20-55**

borf2



JUNTA DE MEJORA DEL MEDIO AMBIENTE DE NUEVO MÉXICO
**AVISO DE AUDIENCIA PÚBLICA PROGRAMADA PARA
CONSIDERAR ENMIENDAS PROPUESTAS A 11.5.1.16 NMAC
EIB 20-55**

The Environmental Improvement Board ("EIB") will hold a public hearing December 18, 2020 beginning at 9:00 a.m. via internet (Cisco WebEx, Microsoft Lync, and Microsoft Skype for Business), via telephone, and, comments will also be received via email through the conclusion of the hearing.

The WebEx Meeting number (access code) is: 133 444 1276; and the WebEx Meeting password is: ZjsZPmdT358; or, join the WebEx meeting link: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=mae8a7ecbe62daeedb9e755ac4ef09166>.

To join by phone or mobile device: +1-415-655-0001 US Toll; Access Code 133 444 1276.

To join from a video system or application, Dial: [1334441276@nmed-oit.webex.com](tel:1334441276); You may also dial 173.243.2.68 and enter the Meeting number: 133 444 1276.

To join using Microsoft Lync or Microsoft Skype for Business, Dial: [1334441276.nmed-oit@lync.webex.com](tel:1334441276).

To comment via email, send correspondence to: Public.Facilitation@state.nm.us.

The hearing is being held via internet, email and telephonic means due to the concerns surrounding the Novel Coronavirus 2019 ("COVID-19") and in accord with Governor Michelle Lujan Grisham's Declaration of a Public Health Emergency in Executive Order 2020-004, and subsequent executive orders; various the Public Health Emergency Orders limiting mass gatherings due to COVID-19; and the Office of the Attorney General's Open Government Division's Guidance to Public Entities Regarding the Open Meetings Act and Inspection of Public Records Act Compliance During COVID-19 State of Emergency.

At the public hearing the EIB will consider proposed amendments to the Recording and Reporting Occupational Injuries, Illness and Fatalities, 11.5.1.16 NMAC, as proposed in the Petition to Amend 11.5.1.16 NMAC of [the] Occupational Health and Safety Regulations and Request for Hearing ("Petition"), EIB Docket Number 20-55, September 4, 2020. The Petition has been filed by the Occupational Health and Safety Bureau ("Bureau") of the New Mexico Environment Department ("Department"). The Bureau has proposed the amendment in response to COVID-19, which presents a grave danger to the public health and workplace safety. The amendment's purpose is to require employers to report an employee's positive novel coronavirus test to the Bureau within 4 hours of notice. This 4-hour reporting requirement allows the Bureau to rapidly respond and allocate resources in order to limit the transmission of the novel coronavirus in the workplace. The full text of the proposed amendment is attached hereto. To obtain a physical or electronic copy of the proposed amendments contact:

Pamela Jones, Board Administrator, at the New Mexico State Capitol Building, 409 Old Santa Fe Trail, Santa Fe, New Mexico; Public.Facilitation@state.nm.us; (505) 660-4305.

In your correspondence reference docket number EIB 20-55. In addition, copies of the proposed amendments are posted on the NMED website at <https://www.env.nm.gov/environmental-improvement/eib-20-55-r/>

The Department undertakes this rulemaking pursuant to its duty to protect the health and safety of employees arising out of and in the course of employment. NMSA 1978, § 50-9-8(A) (1993). The proposed amendment is consistent with the Department's further obligations "to assure every employee safe and healthful working conditions by providing for appropriate job-related accident and illness reporting procedures that will help achieve the objectives of the Occupational Health and Safety Act ("OHSa"). NMSA 1978, § Section 50-9-2(D) (1993), *see also*, § 50-9-19 (1993) (OHSa requires every employer to "submit reports of occupational injuries and illnesses as prescribed by the [D]epartment."). In order to carry out the purpose and the statutorily imposed duties of the OHSa, the EIB must promulgate and the Department must enforce occupational health and safety regulations. § 50-9-2(A), (B). The EIB has previous issued regulations regarding recording and reporting occupational injuries, illnesses, and fatalities. 11.5.1.16 NMAC. Finally, the EIB has the authority to mend the Occupational Health and Safety Regulations under NMSA 1978, Section 59-9-12 (1993).

The hearing will be conducted in accordance with EIB's Rulemaking Procedures found at 20.1.1.1 - 501 NMAC, the Occupational Health and Safety Regulations under NMSA 1978, Section 59-9-12 (1993), and other applicable procedures and procedural orders. Written comments regarding the proposed revisions may be obtained from Pamela Jones, Board Administrator, at the contact information listed above.

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. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of hearing.

Persons wishing to present technical testimony must file with the EIB a written notice of intent to do so. The requirements for a notice of intent can be found in 20.1.1.302 NMAC. Notices of intent for the hearing must be received by the EIB by 5:00 pm on November 27, 2020, and should

La Junta de Mejora del Medio Ambiente ("EIB" por sus siglas en inglés) celebrará una audiencia pública el 18 de diciembre de 2020 a partir de las 9:00 de la mañana por Internet (Cisco WebEx/Microsoft Lync, y Microsoft Skype para empresas) y por teléfono, y también se recibirán comentarios por correo electrónico hasta la conclusión de la audiencia.

El número de la reunión de WebEx (código de acceso) es: 133 444 1276; y la contraseña de la reunión de WebEx es: ZjsZPmdT358;

A unirse de WebEx: <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=mae8a7ecbe62daeedb9e755ac4ef09166>;

A unirse de Microsoft Lync or Microsoft Skype para empresas, marca: [1334441276.nmed-oit@lync.webex.com](tel:1334441276);

A unirse de una sistema de vídeo o aplicación, marca: [1334441276@nmed-oit.webex.com](tel:1334441276); o puede marca 173.243.2.68; código de acceso: 133 444 1276; o

A unirse de teléfono o dispositivo móvil: +1-415-655-0001; código de acceso: 133 444 1276.

Para comentario por correo electrónico, enviar correspondencia a: Public.Facilitation@state.nm.us.

La audiencia se celebrará a través de Internet, correo electrónico y medios telefónicos debido a las preocupaciones en torno al nuevo coronavirus 2019 ("COVID-19") y de acuerdo con la declaración de emergencia de salud pública de la gobernadora Michelle Lujan Grisham en la Orden Ejecutiva 2020-004, y órdenes ejecutivas posteriores; órdenes de emergencia de salud pública que limitan las reuniones masivas debido a la COVID-19; y Guía para las Entidades Públicas sobre el Cumplimiento de la Ley de Reuniones Abiertas y la Ley de Inspección de Registros Públicos durante el Estado de Emergencia por COVID-19 de la División de Gobierno Abierto de la Procuraduría general ("Guía OGD").

En la audiencia pública, la EIB considerará las enmiendas propuestas para el Registro y Presentación de Informes de Lesiones, Enfermedades y Muertes Ocupacionales, 11.5.1.16 NMAC, como se propone en la Petición de Enmienda 11.5.1.16 NMAC de [los] Reglamentos de Seguridad y Salud Ocupacional y la Solicitud de Audiencia ("Petición"), Número de Expediente EIB 20-55, 4 de septiembre de 2020. La Petición ha sido presentada por la Oficina de Seguridad y Salud Ocupacional ("Oficina") del Departamento de Medio Ambiente de Nuevo México ("Departamento"). La Oficina ha propuesto la enmienda en respuesta a la COVID-19, que presenta un grave peligro para la salud pública y la seguridad en el lugar de trabajo. El propósito de la enmienda es requerir que los empleadores reporten a la Oficina cada resultado positivo de las pruebas del nuevo coronavirus de los empleados dentro de las 4 horas siguientes a la notificación. Este requisito de reporte de 4 horas permite a la Oficina responder rápidamente y asignar recursos para limitar la transmisión del nuevo coronavirus en el lugar de trabajo. El texto completo de la enmienda propuesta se adjunta al presente aviso. Para obtener una copia impresa o electrónica de las enmiendas propuestas comuníquese con:

Pamela Jones, administradora de la junta, New Mexico State Capitol Building, 409 Old Santa Fe Trail, Santa Fe, NM; Public.Facilitation@state.nm.us; (505) 660-4305.

En su correspondencia, haga referencia al número de expediente EIB 20-55. Además, se han publicado copias de las enmiendas propuestas en el sitio web del NMED en <https://www.env.nm.gov/environmental-improvement/eib-20-55-r/>.

El Departamento se encarga de esta reglamentación en cumplimiento de su deber de proteger la salud y la seguridad de los empleados que surjan de y en el curso del empleo. NMSA 1978, § 50-9-8(A) (1993). La enmienda propuesta es coherente con las obligaciones adicionales del Departamento de "garantizar a todos los empleados condiciones de trabajo seguras y saludables mediante el establecimiento de procedimientos adecuados de notificación de accidentes y enfermedades relacionados con el trabajo que ayuden a lograr los objetivos de la Ley de Seguridad y Salud Ocupacional ("OHSa" por sus siglas en inglés)". NMSA 1978, § Sección 50-9-2(D) (1993), véase también § 50-9-19 (1993) (la OHSa exige que todo empleador "presente informes sobre lesiones y enfermedades laborales según lo prescrito por el Departamento". A fin de cumplir el propósito y los deberes impuestos por la OHSa, la EIB debe promulgar y el Departamento debe hacer cumplir los reglamentos de seguridad y salud en el trabajo. § 50-9-2 (A), (B). La EIB ha publicado anteriormente reglamentos relativos al registro y presentación de informes de lesiones, enfermedades y muertes en el trabajo. 11.5.1.16 NMAC. Por último, la EIB está facultada para enmendar el Reglamento de Seguridad y Salud en el Trabajo en virtud de NMSA 1978, Sección 59-9-12 (1993).

La audiencia se llevará a cabo de conformidad con los procedimientos de elaboración de normas de la EIB que se encuentran en 20.1.1.1 - 501 NMAC, el Reglamento de Seguridad y Salud Ocupacional bajo NMSA 1978, Sección 59-9-12 (1993), y otros procedimientos y órdenes de procedimiento aplicables. Los comentarios por escrito sobre las revisiones propuestas pueden obtenerse de Pamela Jones, administradora de la junta, en la información de contacto que figura más arriba.

En la audiencia se dará a todas las personas interesadas una oportunidad razonable de presentar

reference the name of the regulation (Recordkeeping and Reporting Occupational Injuries, Illnesses and Fatalities), the date of the hearing (December 18, 2020), and docket number EIB 20-55.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g., sign language interpreter, to participate in any aspect of this process, please contact the Department's Humans Resources Bureau by November 27, 2020. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, and (505) 827-9769. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The EIB may make a decision on the proposed regulatory changes at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal.

STATEMENT OF NON-DISCRIMINATION

If any person requires assistance, an interpreter or auxiliary aid to access documents, please contact 505.476.8700 (Relay users please access the number via the New Mexico Relay Network) or nmenv-osh@state.nm.us.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations.

NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, if you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kristine Yurdin, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us.

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

This is an amendment to 11.5.1. NMAC, Section 16, effective XX/XX/2020.

11.5.1.16 RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ILLNESSES AND FATALITIES:

A. General: Except as otherwise provided in Subsection B of this section, the provisions of 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (internet: www.osha.gov), are hereby incorporated into this section.

B. Exception: Work-related injuries, illnesses and fatalities which are required to be reported by 29 CFR Part 1904.39 shall be reported, by email, telephone or facsimile machine, to the bureau in lieu of the location specified in 29 CFR Part 1904.39. The bureau's address, email, and telephone/facsimile numbers are: occupational health and safety bureau, New Mexico environment department, P.O. Box 5469, Santa Fe, NM 87502, email: nmenv-osh@state.nm.us, Tel: (505) 476-8700, Fax: (505) 476-8734.

C. Reporting novel coronavirus: Within four hours of notice that an employee tested positive for the novel coronavirus, each employer shall report the positive test to the bureau as specified in Subsection B of this section or as otherwise directed by the bureau.

[10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A, XX/XX/2020]

[11.5.1.16 NMAC - N, 12/04/2020] [The department has provided the Rapid Response Submission portal that may be used to satisfy the reporting requirements of Subsection (C). The Rapid Response Submission portal is available on the bureau's website at <https://nmgov.force.com/rapidresponse/s/>]

En la audiencia de esta o cuales las personas involucradas una oportunidad razonable de presentar evidencias, datos, opiniones y argumentos pertinentes, oralmente o por escrito, presentar documentos u objetos de pruebas e interrogar a los testigos. Toda persona que desee presentar una declaración por escrito de carácter no técnico para que conste en acta en lugar de un testimonio oral deberá presentar dicha declaración antes del cierre de la audiencia.

Las personas que deseen presentar un testimonio de carácter técnico deberán presentar a la EIB un aviso por escrito de su intención de hacerlo. Los requisitos para un aviso de intención se encuentran en 20.1.1.302 NMAC. Los avisos de intención para la audiencia deberán ser recibidos por la EIB antes de las 5:00 de la tarde del 27 de noviembre de 2020, y deberán hacer referencia al nombre del reglamento (Registro y Presentación de Informes de Lesiones, Enfermedades y Muertes Laborales) la fecha de la audiencia (18 de diciembre de 2020), y el número de expediente EIB 20-55.

Si usted tiene una discapacidad y necesita asistencia o ayuda auxiliar, por ejemplo, un intérprete de lenguaje de señas, para participar en cualquier aspecto de este proceso, póngase en contacto con la Oficina de Recursos Humanos del Departamento a más tardar hasta el 27 de noviembre de 2020. La Oficina se encuentra en Departamento de Medio Ambiente de Nuevo México, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, teléfono (505) 827-9769. Los usuarios de TDD o TDY pueden acceder a este número a través de la Red de Retransmisión de Nuevo México (los usuarios de TDD de Albuquerque: (505) 275-7333; fuera de Albuquerque: 1-800-659-1779).

La EIB puede tomar una decisión sobre los cambios reglamentarios propuestos al concluir la audiencia o puede convocar una reunión después de la audiencia para considerar una acción sobre la propuesta.

DECLARACIÓN DE NO DISCRIMINACIÓN

Si alguna persona necesita asistencia, un intérprete o ayuda auxiliar para acceder a los documentos llame al 505.476.8700 (los usuarios del servicio de retransmisión pueden acceder al número a través de la Red de Retransmisión de Nuevo México) o nmenv-osh@state.nm.us.

El NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigen las leyes y regulaciones aplicables. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas sobre los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas de la Ley de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o alguno de los programas, políticas o procedimientos de no discriminación de NMED o si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con:

Kristine Yurdin, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, teléfono (505) 827-2855, correo electrónico nd.coordinator@state.nm.us.

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con la coordinadora de no discriminación identificada anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para aprender cómo y dónde presentar una denuncia por discriminación.

Esta es una enmienda a 11.5.1 NMAC, Sección 16, efectiva el XX/XX/2020.

11.5.1.16 REGISTRO Y PRESENTACIÓN DE INFORMES DE LESIONES, ENFERMEDADES Y MUERTES LABORALES:

A. General: Salvo que se disponga otra cosa en la subsección B de esta sección, se incorporan a la presente sección las disposiciones del 29 CFR, parte 1904, Registro y Presentación de Lesiones y Enfermedades Laborales (Internet: www.osha.gov).

B. Excepción: Las lesiones, enfermedades y muertes relacionadas con el trabajo que deben notificarse en virtud del artículo 29 CFR, parte 1904.39 se comunicarán, por correo electrónico, teléfono o fax, a la oficina en lugar del lugar especificado en el artículo 29 CFR, parte 1904.39. La dirección de la oficina, el correo electrónico y los números de teléfono y fax son: Oficina de Seguridad y Salud Ocupacional, Departamento de Medio Ambiente de Nuevo México, P.O. Box 5469, Santa Fe, NM 87502, correo electrónico: nmenv-osh@state.nm.us, Tel: (505) 476-8700, Fax: (505) 476-8734.

C. Notificación del nuevo coronavirus: Dentro de las cuatro horas siguientes a la notificación de que un empleado ha dado positivo en la prueba del nuevo coronavirus, cada empleador deberá informar de la prueba positiva a la oficina según lo especificado en la subsección B de esta sección o según lo indicado por la oficina.

[10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A, XX/XX/2020]

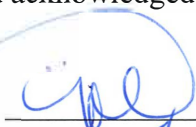
[11.5.1.16 NMAC - N, 12/04/2020] [El Departamento ha proporcionado el portal de Presentación de Respuesta Rápida que puede utilizarse para satisfacer los requisitos de presentación de informes de la Subsección (C). El portal de Presentación de Respuesta Rápida se puede consultar en el sitio web de la Oficina en <https://nmgov.force.com/rapidresponse/s/>]

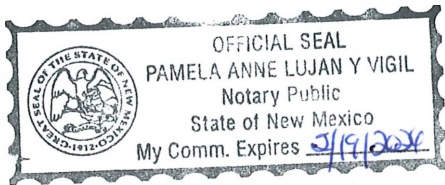
Affidavit of Publication in New Mexico Register

I, Matthew Ortiz, certify that the agency noted on Invoice # 5089 has published legal notice of rulemaking or rules in the NEW MEXICO REGISTER, VOLUME XXXI, that payment has been assessed for said legal notice of rulemaking or rules, which appears on the publication date and in the issue number noted on Invoice # 5089, and that Invoice # 5089 has been sent electronically to the person(s) listed on the *Billing Information Sheet* provided by the agency.

Affiant: 
Matthew Ortiz

Subscribed, sworn and acknowledged before me this 14th day of October, 2020.

Notary Public: 
My Commission Expires: 5/19/2024



1205 Camino Carlos Rey | Santa Fe, NM 87507 | nmcpr.state.nm.us

Hon. Hector Balderas
Attorney General

Hon. Brian S. Colón
State Auditor

Hon. Maggie Toulouse Oliver
Secretary of State

Debra García y Griego
Department of Cultural Affairs

Kenneth Ortiz
General Services Department

Daniel Cordova
Interim Director, NM State Law Library

From: [Spencer, Joshua, NMENV](#)
To: ["Vandestreek, Joanne"](#)
Cc: [Genoway, Robert, NMENV](#); [Hower, Jennifer, NMENV](#); [Napolitano, Mia, NMENV](#)
Subject: Notice of Public Hearing 11.5.1.16
Date: Wednesday, October 7, 2020 3:58:16 PM
Attachments: [Notice of Hearing 11.5.1.16 NMAC .pdf](#)

Ms. Vanderstreek,

As we discuss via email on September 21, 2020, this email with the attached Notice of Public Hearing has been served upon the Legislative Council Service. Please note, both the English and Spanish versions of the Notice are contained in the one pdf file.

Please let me know if you require any additional information.

Joshua A. Spencer
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Ave. NE, Suite 1000
Albuquerque, NM 87102
Office: (505) 827-2990
Cell: (505) 490-5388
Fax: (505) 383-2064
E-mail: joshua.spencer@state.nm.us
<https://www.env.nm.gov/>
Twitter: @NMEnvDep | #IamNMED

From: [Nelson, Johanna, EDD](#)
To: [Spencer, Joshua, NMENV](#)
Subject: Notice of Public Hearing 11.5.1.16
Date: Thursday, October 8, 2020 8:09:19 AM
Attachments: [2020-10-08 Letter to Small Business Regulatory Advisory Commission \(signed - JAS\).pdf](#)
[Notice of Hearing 11.5.1.16 NMAC .pdf](#)

Hello, no adverse findings for small businesses were reported from the group.

Thank you,
Johanna Nelson

From: Spencer, Joshua, NMENV
Sent: Wednesday, October 7, 2020 4:20 PM
To: Nelson, Johanna, EDD <Johanna.Nelson@state.nm.us>
Cc: Genoway, Robert, NMENV <robert.genoway@state.nm.us>; Hower, Jennifer, NMENV <Jennifer.Hower@state.nm.us>; Napolitano, Mia, NMENV <Mia.Napolitano@state.nm.us>
Subject: Notice of Public Hearing 11.5.1.16

Ms. Nelson,

Pursuant to your email of September 22, 2020, this email with the letter of today's date and Notice of Public Hearing has been served upon the Small Business Regulatory Advisory Commission. Please note, both the English and Spanish versions of the Notice are contained in the pdf file titled, "Notice of Hearing 11.5.1.16 NMAC."

Please let me know if you require any additional information.

Joshua A. Spencer
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Ave. NE, Suite 1000
Albuquerque, NM 87102
Office: (505) 827-2990
Cell: (505) 490-5388
Fax: (505) 383-2064
E-mail: joshua.spencer@state.nm.us
<https://www.env.nm.gov/>
Twitter: @NMEnvDep | #IamNMED



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Telephone (505) 827-2855
www.env.nm.gov



James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

October 7, 2020

Johanna Nelson, Administrator
Small Business Regulatory Advisory Commission
1100 St. Francis Drive Suite 1242
Santa Fe, New Mexico 87505

Re: Proposed Amendments to the Occupational Health and Safety – General Provisions - 11.5.1.16 NMAC

Dear Chair and members of the Small Business Regulatory Advisory Commission:

The New Mexico Environment Department ("Department") hereby provides notice to the Small Business Regulatory Advisory Commission, pursuant to the Small Business Regulatory Relief Act, NMSA 1978 Section 14-4A-1 to -6 (2005), that the Environmental Protection Division, Occupational Health and Safety Bureau of the Department has petitioned the Environmental Improvement Board ("EIB") for regulatory amendments to 11.5.1.16 NMAC.

The purpose of the regulatory amendments are to address workplace safety as it relates to the Novel Coronavirus 2019 ("COVID-19"), a public health emergency which poses a threat to the health, safety, wellbeing and property of the residents of the State of New Mexico. The proposed regulatory amendments require all employers to report an employee's positive test result for the novel coronavirus to the Department within 4 hours of notice. Legal authority authorizing the regulatory amendments is found at NMSA 1978, Section 50-9-2(D) (1993), Section 50-9-11(A) (1993), and Section 50-9-19(A). Further, the legal authority for adopting this rule is found at Section 50-9-12 (1993).

The amendment was presented to the EIB at its September 25, 2020 meeting. The EIB consented to the amendments as proposed with some minor grammatical corrections. The regulatory amendment will apply to small businesses and current licensees, the regulatory amendments do not pose an economic burden or any negatively impact. The text of the proposed amendment is attached hereto in line number format

If you have further questions, comments, or would like to have responsible staff meet and discuss this rule change, please feel free to contact me at (505) 827-2990 or preferably via email at joshua.spencer@state.nm.us.

Joshua
Spencer
Joshua A. Spencer, Esq.
Assistant General Counsel

Digitally signed by
Joshua Spencer
Date: 2020.10.07
16:04:40 -06'00'

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED
AMENDMENT OF 11.5.1.16 NMAC**

No. 20-55 (R)

**Environmental Protection Division,
Occupational Health and Safety Bureau,
New Mexico Environment Department,**

Petitioner.

ORDER AND STATEMENT OF REASONS

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by the New Mexico Environment Department (“Department”) on September 4, 2020, to amend 11.5.1.16 NMAC. A public hearing was held via internet (Cisco WebEx, Microsoft Lync, and Microsoft Skype for Business), via telephone, and, email December 19, 2020 with a quorum of the Board present during the hearing. The Board heard technical testimony from the Department and admitted exhibits into the record. On December 19, 2020, the Board deliberated and voted to amend 11.5.1.16 NMAC as drafted in Attachment A of the Department’s September 4, 2020, Petition to Amend 11.5.1.16 NMAC of [the] Occupational Health and Safety Regulations and Request for Hearing (“Petition and Request for Hearing”), for the following reasons:

I. STATEMENT OF REASONS

1. Pursuant to 20.1.1.300.A NMAC, any person may petition the Board to adopt, amend, or repeal any regulation within the jurisdiction of the Board.
2. On September 4, 2020, the Department filed its Petition and Request for Hearing -with the Board for a public hearing in this matter.

3. On September 25, 2020, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Department's request for a public hearing and scheduled the hearing for December 18, 2020, and continuing thereafter as necessary.
4. The Department prepared "Notice of Scheduled Public Hearing to Consider Proposed Amendments to 11.5.1.16 NMAC" ("Public Notice") in both English and Spanish that complies with the requirements set forth in 20.1.1.301 NMAC. See Exhibit 5. The Public Notice stated, "[t]he [Board] may make a decision on the proposed regulatory changes at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal." *Id.*
5. The Public Notice was published in the Albuquerque Journal on October 16, 2020 through October 18, 2020. See Exhibit 6.
6. The Public Notice was published in the New Mexico Register, Volume XXXI, Issue 19, on October 13, 2020. See Exhibit 7.
7. As enumerated in 20.1.1.7(N) NMAC, the Department has "provid[ed] to the public" proper notice of the proposed rulemaking by:
 - a. Posting the Public Notice on the Environment Improvement Board's website on October 15, 2020. Available online at <https://www.env.nm.gov/environmental-improvement/wp-content/uploads/sites/8/2019/09/Notice-of-Public-Hearing-FINAL.docx>;
 - b. Posting the Public Notice on the New Mexico Sunshine Portal on October 16, 2020. Available via public online search at http://statenm.force.com/public/SSP_RuleHearingSearchPublic;
 - c. Due to COVID-19 and the subsequent closure of the Department's district, field, and regional offices, the Department was unable to make copies of the Public Notice available.

This deviation from 20.1.1.7(N) was unavoidable and reasonable in light of the COVID-19 pandemic.

- d. As of the date of this Order, no person has made a written request for notice of announcements addressing the subject of this rulemaking proceeding.
 - e. As of the date of this Order, no person who participated in the rulemaking has provided an email address to the board administrator regarding this rulemaking.
 - f. The Department's written Public Notice includes at a minimum, an internet and street address where the information may be found by persons who provide a postal address; and
 - g. The Public Notice was provided to Legislative Council for distribution via email on October 7, 2020. *See Exhibit 8.*
8. As required by NMSA 1978, Section 14-4A-4 (2005) of the Small Business Regulatory Relief Act, the Public Notice was provided to the Small Business Regulatory Advisory Commission via email on October 7, 2020. *See Exhibit 9.*
9. As required by 20.1.1.301(A) NMAC, the Department provided the public proper notice of the proposed rulemaking at least 60 days prior to the December 18, 2020, public hearing.
10. The Department filed a Notice of Intent to Present Technical Testimony ("NOI") on November 24, 2020 in accordance with 20.1.1.302 NMAC.
11. A hearing in this matter was held via internet (Cisco WebEx, Microsoft Lync, and Microsoft Skype for Business), via telephone, and email on December 18, 2020, at which all persons had a reasonable opportunity to be heard.
12. One of the purposes of the Occupational Health and Safety Act, NMSA Section 50-9-2 to -25 (1953, as amended through 2017) (OHSa) is "to assure every employee safe and healthful working

conditions by providing for . . . appropriate job-related accident and illness reporting procedures that will help achieve the objectives of the [OHSA].” § 50-9-2 (1993).

13. The Department has issued regulations regarding recording and reporting occupational injuries, illnesses, and fatalities, but has not issued a permanent rule regarding reporting positive test results related to the novel coronavirus. 11.5.1.16 NMAC.
14. Pursuant to Section 50-9-12, on August 5, 2020, the Department Secretary adopted an emergency amendment to 11.5.1.16 NMAC which required employers to report positive test results related to the novel coronavirus in the workplace within a specified amount of time (“Emergency Amendment”). The current Emergency Amendment to 11.5.1.16 NMAC is due to expire on or about December 4, 2020.
15. The EIB has the authority to amend the Occupational Health and Safety Regulations under NMSA 1978, Section 59-9-12 (1993).
16. It is necessary to amend 11.5.1.16 NMAC to include reporting an employee’s positive test of the novel coronavirus to the Department.
17. The Board being fully advised on the premises of the Department’s proposed amendments to 11.5.1.16 and having considered the facts and circumstances in relation thereto, have concluded the proposed amendments to 11.5.1.16 will assist the Department to fulfill the purpose of the OHSA, namely, to assure every employee safe and healthful working conditions. § 50-9-2.
18. The Board finds the proposed amendments are appropriate “job-related accident and illness reporting procedures that will help achieve the objectives of the [OHSA].” *Id.* (D).
19. The Board finds the December 18, 2020 hearing was conducted in a fair and equitable manner, 20.1.1.6 (D) NMAC

20. The notice and hearing requirements of Section 50-9-12 and 20.1.1 NMAC were satisfied in this rulemaking process.

21. The Board hereby amends 11.5.1.16 NMAC for the reasons stated above.

ORDER

By _____ vote of a quorum of the Board members, the proposed amendment as contained in Attachment A of the Petition and Request for Hearing were approved by the Board on _____, 2020. The amendment, with any appropriate corrections of typographical errors or formatting, shall be filed with the New Mexico State Records Center as expeditiously as possible by the Department.

SIGNED this ____ day of December, 2020.

John Volkerding, Chair
New Mexico Environmental Improvement Board
1190 St. Francis Drive, Suite S2100
Santa Fe, New Mexico 87505
(505) 827-2428
(505) 827-0628 Fax