

**NOTICE OF THE ENVIRONMENTAL IMPROVEMENT BOARD'S  
DECISION TO AMEND RULE RELATED TO  
RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ILLNESSES AND  
FATALITIES (11.5.1.16 NMAC)**

The Environmental Improvement Board (“Board”) voted 4-2 in favor of adopting the amendment to 11.5.1.16 NMAC as proposed by the New Mexico Environment Department (“NMED”) in Exhibit 1 to the NMED’s Notice of Intent to Present Technical Testimony filed in docketed rulemaking EIB 20-55. Chair Volkerding signed the Order reflecting the adoption of the above-stated amendment on January 5, 2021.

**CONCISE EXPLANATORY STATEMENT**

(1) Date the Board Adopted the Rules:

January 5, 2021

(2) Statutory Authority for Rule Promulgation:

The Environmental Improvement Act, at NMSA 1978, Sections 74-1-8(A)(9) and 74-1-9, provides authority to the Board to promulgate rules and standards in the area of occupational health and safety as provided in the Occupational Health and Safety Act (“OHSA”) after proper public notice and a hearing. The OHSA, at NMSA 1978, Sections 50-9-7 and 50-9-12, further allows regulations to be amended after a public hearing by the Board.

(3) Reasons for Adopting Rule:

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].” NMSA 1978, § 50-9-2 (1993); *see also* NMSA 1978, § 50-9-19 (1993) (OHSA requires every employer to “submit reports of occupational injuries and illnesses as prescribed by [NMED].”). NMED 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. NMED has proposed the amendment in response to the novel coronavirus (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 NMED’s Occupational Health and Safety Bureau (“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 to the workplace.

The Board considered all facts and circumstances and concluded that the amendment does not cause injury or interference with health, welfare, animal and plant life, property and the environment. The Board found the proposed amendment is technically practical, economically reasonable, and in the public interest.