

## The New Mexico Clean Car Program

The New Mexico Clean Car program is a joint effort between the Albuquerque Air Quality Division (AQD), through its Vehicle Pollution Control Division (VPMD) and the New Mexico Environment Department (NMED) and was created by adoption of nearly parallel regulations in 2007.

$$\begin{aligned} & 20.2.88 \text{ NMAC (NMED regs) – Emission Standards for New Motor Vehicles} \\ + & \underline{20.11.104 \text{ NMAC (VPMD regs) – Emission Standards for New Motor Vehicles}} \\ & = \text{The New Mexico Clean Car Program} \end{aligned}$$

Section 177 of the Clean Air Act allows any State to adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines standards other than the federal EPA emission standards if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year.

Part 88 and Part 104 simply adopted the California standards by reference and together are considered a “state” for purposes of Section 177. “State” in section 177 does not include political subdivisions.

### **Part 88 + Part 104 = Section 177 CAA state = California Clean Car Program**

California entered into an agreement with the federal government to stay its greenhouse gas program until 2016. Therefore the NM program GHG portion is stayed until 2016. However, the rest of CA clean car program remained - NMOG, LEV and ZEV reporting and banking. NMED did not initiate the Clean Car reporting and banking in MY 2011 and in December 2010, NMED inserted this language into Part 88

“all requirements of this part are waived with respect to model year 2011 thru and including model year 2016.”

Therefore, there is no operable Part 88 until 2016. Without Part 88, there is no NM Clean Car program, and there is no Section 177 CAA state. Therefore, Part 100 cannot be administered or enforced because the Clean Air Act does not allow anything less than a full state to operate a California equivalent program.

It is my opinion that Part 104 is unenforceable at this time through operation of law. Based on this opinion, VPMD is not planning to petition the Board for any change in the language of Part 104.