EXHIBIT A

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF
PETITION TO REPEAL EXISTING RULE 20.11.104 NMAC, *EMISSION STANDARDS FOR NEW MOTOR VEHICLES,* AND ADOPT PROPOSED REPLACEMENT RULE 20.11.104 NMAC, *NEW MOTOR VEHICLE EMISSION STANDARDS*

AQCB PETITION NO. _____

CITY OF ALBUQUERQUE
ENVIRONMENTAL HEALTH DEPARTMENT,

PETITIONER.

STATEMENT OF REASONS

The City of Albuquerque ("City") Environmental Health Department ("EHD") hereby provides to the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board") this Statement of Reasons, Exhibit A to EHD's Petition to Repeal Existing Rule 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*, and Adopt Proposed Replacement Rule 20.11.104 NMAC, *New Motor Vehicle Emission Standards* (hereinafter the "Petition"), in support of the proposed regulatory changes in the Petition. *See* 20.11.82.18(B) NMAC.

I. AUTHORITY, HISTORY, BACKGROUND, AND IMPETUS

Clean Air Act Authority for Clean Car Regulation in New Mexico

1. Section 209 of the Clean Air Act prohibits States or political subdivisions thereof from adopting or attempting "to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines." 42 U.S.C. § 7543(a). Section 209 of the Clean Air Act states more fully in relevant part that:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Id.

2. The State of California, and only California, is exempt from this general prohibition. 42 U.S.C. § 7543(b). California may adopt and enforce its own motor vehicle emission standards provided that (i) such standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, and (ii) a waiver of preemption has been granted by the U.S. Environmental Protection Agency ("EPA"). *Id*.

3. However, Section 177 of the Clean Air Act allows any state with nonattainment plan provisions in its EPA-approved State Implementation Plan to adopt and enforce its own motor vehicle emission standards, provided that such standards are (i) identical to the California motor vehicle emission standards for which a waiver has been granted and (ii) adopted at least two years before the start of the model year to which they apply. 42 U.S.C. § 7507. Section 177 of the Clean Air Act states in relevant part that:

> Notwithstanding section 7543(a) of this title, any *State* which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—
>
> > (1) such standards are identical to the California [motor vehicle emission] standards for which a waiver has been granted for such model year, and
> >
> > (2) California and *such State* adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Id. (emphases added). A State may only adopt California's motor vehicle emission standards; it may not set its own, independent standards.

4. The Clean Air Act definition for the term "State" does not include municipalities. 42 U.S.C. § 7602(d) ("The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands."); *compare* 42 U.S.C. § 7602(f) (the Clean Air Act defines municipality separately as "a city, town, borough, county, . . . or other public body created by or pursuant to State law.").

5. Only a "State" meeting the requirements of Section 177 of the Clean Air Act can adopt California's motor vehicle emission standards. 42 U.S.C. § 7507; *see* 42 U.S.C. § 7602(d); *compare* 42 U.S.C. § 7602(f). Thus, an entire State must adopt the California motor vehicle emission standards and political subdivisions are prohibited from adopting or enforcing their own vehicle emission standards when not part of a statewide program. In most states, this is relatively simple procedurally: a state board adopts the California motor vehicle emission standards for a single, statewide air quality jurisdiction. EPA approval is not required for States to adopt their own motor vehicle emission standards under the terms of Section 177 of the Clean Air Act. *See generally* 42 U.S.C. Ch. 85 (§§ 7401-7671q).

6. New Mexico has two separate air quality jurisdictions. One jurisdiction encompasses the City and Bernalillo County ("County") (excluding tribal lands within the County). Air Quality Control Act, NMSA 1978, § 74-2-4(A); Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 ("City Ordinance"), § 9-5-1-3(A); Bernalillo County Code, Art. II ("County Code"), § 30-32(a). The other jurisdiction encompasses the rest of New Mexico (excluding tribal lands outside the County). NMSA 1978, § 74-2-3(B). The Air

Board is responsible for adopting rules for the City and the County. NMSA 1978, § 74-2-4(A)(1); § 74-2-5(B);[1] City Ordinance, § 9-5-1-4(B) (substantially similar); County Code, § 30-33(b)(1) (substantially similar to Air Quality Control Act; same as City Ordinance). The New Mexico Environmental Improvement Board is responsible for adopting rules for the rest of the state. NMSA 1978, § 74-2-3(B); § 74-2-5(B)(1).

7. The City and County, over which the Air Board has jurisdiction, are not a "State" under the Clean Air Act. *See* Statement of Reasons, ⁋ 4. The City and County have local authority under the Air Quality Control Act, so the Environmental Improvement Board's jurisdiction does not encompass the entire state. *See* Statement of Reasons, ⁋ 6. Since the Clean Air Act requires that the entire state adopt California's motor vehicle emission standards, Statement of Reasons, ⁋ 5, for New Mexico to adopt California's motor vehicle emission standards, both the Air Board and the Environmental Improvement Board must adopt the standards for a single, statewide motor vehicle emission program.

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[1] Section 74-2-5(B) of the Air Quality Control Act states in relevant part that:

> The environmental improvement board or the local board shall (1) adopt, promulgate, publish, amend and repeal rules and standards consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution, including:
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> > (a) rules prescribing air standards within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction or any part thereof; and
> >
> > * * *
>
> (2) adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction or any part thereof.

History of Clean Car Regulation in New Mexico, under EPA, and in California

8. The Air Board and the Environmental Improvement Board adopted California's motor vehicle emission standards once before. During a joint hearing in 2007, the Air Board adopted existing rule 20.11.104 NMAC and the Environmental Improvement Board adopted nearly identical rule 20.2.88 NMAC. These rules adopted California's new motor vehicle emission standards for model year 2011 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles. At the time, the California motor vehicle emission standards were more stringent than federal standards, which did not include greenhouse gas or zero-emission vehicle standards.

9. In 2010, EPA adopted the first-ever federal light-duty vehicle greenhouse gas emission standards for model years 2012 to 2016. 75 Fed. Reg. 25324-25728 (May 7, 2010) (Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards). These standards were designed such that they achieved the same reductions by 2016 as the California motor vehicle emission standards, thereby enabling manufacturers to build a single light-duty national fleet that satisfied both the federal and California standards. In response, the Environmental Improvement Board amended 20.2.88 NMAC, adding a provision waiving the rule's requirements until 2016. The Air Board did not make the same change and its rule still read as going into effect for model year 2011. However, for the City and County, the Environmental Improvement Board's change made the requirements in existing rule 20.11.104 NMAC legally inoperable because the Clean Air Act bars political subdivisions from adopting or enforcing their own vehicle emission standards when not part of a statewide program. *See* Statement of Reasons, ¶ 5.

10. In 2012, the California Air Resources Board adopted Advanced Clean Cars, a

coordinated package of regulations that included more stringent criteria pollutant and greenhouse gas emission standards beginning in 2015 and 2017, respectively, and new zero-emission vehicle standards beginning in 2018. California Regulatory Notice Register 2012, No. 33-Z (August 17, 2012). Later that year, EPA adopted identical federal greenhouse gas emission standards beginning in 2017. 77 Fed. Reg. 62624-63200 (Oct. 15, 2012) (2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards).

11. In 2013, pursuant to Section 209 of the Clean Air Act, EPA granted a waiver of Clean Air Act preemption for California's Advanced Clean Car program. 78 Fed. Reg. 2112-2145 (Jan. 9, 2013) (California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's Advanced Clean Car Program and a Within the Scope Confirmation for California's Zero Emission Vehicle Amendments for 2017 and Earlier Model Years). Later that year, EPA proposed nearly identical federal "Tier 3" criteria pollutant emission standards, also beginning in 2017. 78 Fed. Reg. 29816-30191 (May 21, 2013) (Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards).

12. In late 2013, in response to EPA's regulatory action, the Environmental Improvement Board repealed 20.2.88 NMAC. The New Mexico Environment Department ("NMED") recommended the action, reasoning that the administrative burdens of implementing the rule outweighed the potential benefits given the harmonization that was then occurring between the federal and California motor vehicle emission standards. This action rendered 20.11.104 NMAC legally invalid and unenforceable as a matter of law, but 20.11.104 NMAC was never repealed and it remains on the books today.

Continued History of Clean Car Policy and Regulation

13. In 2018, City Mayor Tim Keller signed a pledge joining the Mayors National Climate Action Agenda and committing the City to the goals of the Paris Climate Agreement. *See* CITY OF ALBUQUERQUE, *Mayor News Releases, Mayor Tim Keller Pledges to Meet Paris Climate Agreement Goals*, https://www.cabq.gov/mayor/news/mayor-tim-keller-pledges-to-meet-paris-climate-agreement-goals (last visited Jan. 18, 2022). Since then, Mayor Keller has pressed an ambitious climate agenda and taken various steps aimed at reducing transportation-related greenhouse gas emissions, including signing an Executive Instruction mandating that the City develop and implement a plan to transition its vehicle fleet to electric, hybrid, and alternative fuel vehicles, doubling the number of electric vehicle charging stations operated by the City, and purchasing the first electric buses for the City's bus fleet. *See* Executive Instruction No. 34 (Sept. 7, 2019) (Reduced Emission Light and Heavy-Duty City Vehicles); *see also* CITY OF ALBUQUERQUE, *Environmental Health, News, City of Albuquerque Ribbon Cutting on 18 New Electric Vehicle Charging Stations*, https://www.cabq.gov/environmentalhealth/news/city-of-albuquerque-ribbon-cutting-on-18-new-electric-vehicle-charging-stations (last visited Jan. 19, 2022); CITY OF ALBUQUERQUE, *Transit, News, ABQ RIDE Debuts Electric Bus January 30, 2021*, https://www.cabq.gov/transit/news/abq-ride-debuts-electric-bus-january-30-2021-1 (last visited Jan. 19, 2022).

14. In 2019, New Mexico Governor Michelle Lujan Grisham signed an Executive Order establishing an interagency Climate Change Task Force and directing it to "evaluate policies and regulatory strategies to achieve reductions in greenhouse gas pollution . . . across all categories of emission sources." *See* Executive Order 2019-03 (Jan. 29, 2019) (Executive Order on Addressing Climate Change and Energy Waste Prevention). Executive Order 2019-03 further

directs that such policies and regulatory strategies shall include: "Adoption of approaches to reduce greenhouse gas and criteria pollutant emissions from light-duty vehicles sold in state, including Low Emission Vehicle (LEV) emission standards and Zero Emission Vehicle (ZEV) performance standards."[2] *Id*.

15. Later in 2019, EPA withdrew the waiver it had previously provided to California for the greenhouse gas and zero-emission vehicle standards included in its Advanced Clean Car program. 84 Fed. Reg. 51310-51363 (Sept. 27, 2019) (The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program); *see* Statement of Reasons, ¶ 11.

16. In 2020, EPA rolled back federal greenhouse gas emission standards for model years 2021 to 2026. 85 Fed. Reg. 24174-25278 (April 30, 2020) (The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks). This action undid the harmonization between the federal and California motor vehicle emission standards.

17. As a result of this action, California's motor vehicle emission standards were once again more stringent than federal standards but because EPA had revoked the waiver for California's greenhouse gas and zero-emission vehicle standards, they could not be implemented or enforced. EPA's regulatory change had no impact on California's criteria pollutant motor vehicle emission standards.

18. On December 1, 2021, NMED petitioned the Environmental Improvement Board to adopt proposed rule 20.2.91 NMAC. The Environmental Improvement Board authorized a

[2] Low emission vehicle emission standards limit emissions of criteria pollutants, certain hazardous air pollutants, and greenhouse gases. Zero-emission vehicle performance standards mandate the sale of an increasing number of zero-emission vehicles (*e.g.*, battery electric, plug-in hybrid, and fuel cell vehicles) over time.

hearing on NMED's petition during its December 17, 2021 meeting.

Most Recent EPA and California Action on Clean Cars

19. California is currently developing new motor vehicle emission standards (*i.e.*, Advanced Clean Cars II or ACC II). CALIFORNIA AIR RESOURCES BOARD, *Advanced Clean Cars II Draft Regulation Language Posted* (Dec. 9, 2021), https://content.govdelivery.com/accounts/CARB/bulletins/3002404 (last visited Jan. 25, 2022). The motor vehicle emission standards contained in proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC are identical to the current California motor vehicle emission standards. *See* Statement of Reasons, ¶ 33, below. EHD and NMED are carefully tracking and analyzing this development, and EHD will advise the Air Board if California's efforts impact the proposed rules.

20. On December 30, 2021, EPA reversed most of its rollback of federal greenhouse gas emission standards for light-duty vehicles model years 2023 to 2026. 86 Fed. Reg. 74434-74526 (Dec. 30, 2021) (Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards); *see* Statement of Reasons, ¶ 16. This regulatory change occurred after NMED submitted its petition to the Environmental Improvement Board asking it to adopt proposed rule 20.2.91 NMAC. *See* Statement of Reasons, ¶ 18. EPA's regulatory change does not become effective until February 28, 2022,[3] which is after EHD's filing of this Petition. *See* 86 Fed. Reg. 74434. Therefore, this Petition does not address EPA's new greenhouse gas emission standards regulation. However, EHD and NMED are carefully tracking and analyzing this development, and EHD will advise the Air Board if EPA's new regulation impacts the proposed rules.

[3] Additionally, EPA's regulatory change may be challenged 60 days from the date the final rule is published in the Federal Register. *See* 42 U.S.C. § 7607(b)(1). As of the date of filing this Petition, the final rule has not been challenged.

21. In support of Mayor Keller's climate agenda and in response to Governor Lujan Grisham's Executive Order, EHD and NMED are proposing rules adopting California's current new motor vehicle emission standards for model year 2026 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles. EHD's proposed replacement rule, 20.11.104 NMAC, *New Motor Vehicle Emission Standards*, would replace existing rule 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*. NMED's proposed rule, 20.2.91 NMAC, *New Motor Vehicle Emission Standards*, is a new rule.

Impetus for Proposed Replacement Rule 20.11.104 NMAC

22. The transportation sector is a major contributor to elevated ground-level ozone concentrations in the City and County. EPA data for the County indicates that on-road vehicles are the largest source of nitrogen oxides and the second-largest source of anthropogenic volatile organic compounds in the County. U.S. ENVIRONMENTAL PROTECTION AGENCY, *2017 National Emissions Inventory (NEI) Data*, https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data (last updated Jan. 14, 2022) (on-road vehicle contributions are derived from the point, on-road, nonroad, and non-point inventories). Nitrogen oxides and volatile organic compounds are precursor pollutants that form ozone through chemical reactions that occur in the atmosphere in the presence of sunlight. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Ground-level Ozone Basics*, https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics#formation (last updated May 5, 2021). Reducing emissions of these ozone precursors will help improve ozone levels in the City and County.

23. The transportation sector is also a significant source of greenhouse gas emissions in the City, County, and State of New Mexico. According to the City's 2020 Greenhouse Gas Inventory, transportation is the second largest source of greenhouse gas emissions in the City (after

stationary energy), with on-road travel producing the majority of all transportation-related emissions. *See* CITY OF ALBUQUERQUE, ENVIRONMENTAL HEALTH DEPARTMENT, *2020 Greenhouse Gas Inventory* at 5, 10 (2020), available at https://www.cabq.gov/sustainability/documents/city-of-albuquerque-ghg-inventory-3.pdf (last visited Jan. 19, 2022). In 2017, on-road travel contributed nearly two million (2,000,000) metric tons of carbon dioxide equivalent in the City, eighty percent (80%) of transportation-related emissions, and thirty-three percent (33%) of all emissions that year. *Id*. at 10. Similarly, according to the New Mexico Greenhouse Gas Emissions Inventory and Forecast, the transportation sector is the second largest source of greenhouse gas emissions in the state (after oil and gas activities), contributing upwards of sixteen million (16,000,000) metric tons of carbon dioxide equivalent in 2018. *See* Energy and Environmental Economics, Inc., *New Mexico Greenhouse Gas Emissions Inventory and Forecast* at 4 (Oct. 27, 2020), available at https://cnee.colostate.edu/wp-content/uploads/2021/01/New-Mexico-GHG-Inventory-and-Forecast-Report_2020-10-27_final.pdf (last visited Jan. 19. 2022) (hereinafter the "NM Report"). The NM Report forecasts that adopting California's zero-emission vehicle requirements would, on its own, reduce annual carbon dioxide equivalent emissions in New Mexico by almost one million (1,000,000) metric tons in 2030 and one and a half million (1,500,000) metric tons in 2050. *Id*. at 36, 45. The greenhouse gas exhaust emission standards included in the proposed rules will achieve further reductions in greenhouse gases.

Legal Authority under New Mexico Law

24. The Air Board is authorized to repeal existing motor vehicle emissions standards and to adopt new motor vehicle emissions standards pursuant to its authority to repeal and adopt regulations to "prevent or abate air pollution." NMSA 1978, § 74-2-5(B); *see* City Ordinance, §

9-5-1-4(B); County Code, § 30-33.

25. "Air pollution" is defined as "the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more *air contaminants* in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property." NMSA 1978, § 74-2-2(B) (emphasis added); City Ordinance, § 9-5-1-2; County Code, § 30-31; *see* 20.11.1.7(F) NMAC (substantially similar).

26. "Air contaminant" is defined as "a substance, including any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof." NMSA 1978, § 74-2-2(A); *see* City Ordinance, § 9-5-1-2; County Code, § 30-31; *see also* 20.11.1.7(E) NMAC.

27. Under the definition of air contaminant, common pollutants, such as nitrogen oxides, particulate matter, carbon monoxide, and volatile organic compounds, as well as greenhouse gases, such as carbon dioxide, are "air contaminants." Emission of these air contaminants constitutes "air pollution" because they may injure human health or animal or plant life or may unreasonably interfere with the public welfare.

28. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC regulate the emission of air contaminants from motor vehicles.

II. REQUIREMENTS UNDER SECTION 177 OF THE CLEAN AIR ACT ARE MET

29. New Mexico has nonattainment plan provisions in its EPA-approved State Implementation Plan. *See* U.S. ENVIRONMENTAL PROTECTION AGENCY, *New Mexico EPA-Approved State Air Quality Implementation Plan (SIP)*, https://www.epa.gov/sips-nm (last updated June 15, 2021). Therefore, Section 177 of the Clean Air Act authorizes New Mexico to

adopt its own motor vehicle emission standards, provided that those standards are identical to California's standards and are adopted at least two years before the start of the model year to which they apply. 42 U.S.C. § 7507 ("any State which has plan provisions approved under this part may adopt and enforce" California's motor vehicle emission standards).

30. The provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC subject to the waiver requirement will not become effective until California has a valid waiver. *See* Statement of Reasons, ¶¶ 51-54, below.

31. The identicality requirement is intended to prevent a state from adopting standards that have the effect of creating a "third vehicle," *i.e.*, a vehicle other than one required to satisfy the federal or California vehicle emission standards. 42 U.S.C. § 7507(2).

32. Section 177 of the Clean Air Act does, however, allow states to adopt provisions "for administration and enforcement" that are different than California's, provided that these provisions are not so onerous that they create an "undue burden" on the manufacturers. *See* EPA Opinion on Issues Raised by *Am. Auto. Mfrs. Ass'n v. Massachusetts Dept of Evntl Protection*, 163 F.3d 74 (1st Cir. 1998); *see Am. Auto. Mfrs. Ass'n v. Cahill*, 152 F.3d 196, 197 (2d Cir. 1998).

33. The motor vehicle emission standards contained in proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC are identical to the current California motor vehicle emission standards, which is achieved by incorporating the relevant sections of the California Code of Regulations by reference.

34. The administration and enforcement provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC are identical to the California provisions in many respects but to the extent that they differ, they do not create an undue burden for manufacturers.

35. The motor vehicle emission standards contained in proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC apply to new vehicles beginning with model year 2026. If the Air Board adopts proposed replacement rule 20.11.104 NMAC and it becomes effective in the New Mexico Administrative Code before December 31, 2022, then the effective date complies with the requirement under Section 177 of the Clean Air Act that manufacturers be given at least two full model years to prepare their fleets to meet the standards. 42 U.S.C. § 7507 ("Notwithstanding section 7543(a) of this title, any State . . . may adopt and enforce for any model year standards . . . identical to the California [motor vehicle emission] standards . . . [provided that] such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator)."); *see* NMSA 1978, § 74-2-6(F) ("No regulations or emission control requirement adopted by the environmental improvement board or the local board shall become effective until thirty days after its filing under the State Rules Act"); City Ordinance, § 9-5-1-6(F) (similar); County Code, § 30-35(f) (substantially similar to City Ordinance).

III. REPEAL OF EXISTING RULE 20.11.104 NMAC

36. Existing rule 20.11.104 NMAC is an outdated regulation. When the Environmental Improvement Board repealed 20.2.88 NMAC in 2013, existing rule 20.11.104 NMAC became legally invalid and unenforceable. *See* Statement of Reasons, ⁋ 12. This occurred by operation of law because the Clean Air Act does not provide for political subdivisions to adopt or enforce their own vehicle emission standards when not part of a statewide program. *See* Statement of Reasons, ⁋ 1; 42 U.S.C. § 7507. Existing rule 20.11.104 NMAC is also obsolete because California adopted more stringent standards a few years after the Air Board adopted the rule. *See* Statement of Reasons, ⁋⁋ 10-11. This resulted in the standards in existing rule 20.11.104 NMAC no longer

being identical to California's standards, as required by the Clean Air Act. *See* Statement of Reasons, ¶ 12.

37. The Air Board must repeal existing rule 20.11.104 NMAC before adopting proposed replacement rule 20.11.104 NMAC.

IV. GENERAL PROVISIONS OF PROPOSED REPLACEMENT RULE 20.11.104 NMAC AND PROPOSED RULE 20.2.91 NMAC

38. To meet the Section 177 of the Clean Air Act requirement that a "State" adopt the California motor vehicle emission standards, NMED is tasked with administration and enforcement of proposed replacement rule 20.11.104 NMAC to create a statewide program to ensure statewide compliance. *See* Statement of Reasons, ¶ 7. Thus, NMED will administer and enforce proposed replacement rule 20.11.104 NMAC within the City and County, with certain authorities reserved to EHD and the Air Board, as part of the statewide program to ensure statewide compliance.

39. Under the provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, beginning with model year 2026, all new passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, and motor vehicle engines delivered for sale, offered for sale, sold, imported, delivered, purchased, rented, leased, or received within New Mexico, or registered with the New Mexico Motor Vehicle Division must comply with the California motor vehicle emission standards.

40. Under the provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, starting with model year 2026, manufacturers must deliver for sale a fleet of passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles that complies with fleet average non-methane organic gas plus oxides of nitrogen exhaust emission

standards, fleet average greenhouse gas emission standards, and per-vehicle particulate matter emission standards.

41. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC exempt certain motor vehicles, including vehicles for which the standards would be technically or economically infeasible, conflict with national security or public safety, have been transferred from one person to another person under legal processes, or would not provide a substantive benefit to the statewide program. The exemptions are consistent with those adopted by California and other Section 177 States.

42. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC contain two mechanisms for determining compliance with the emission standards: (1) a credit banking system through which manufacturers must equalize accrued credits and debits over a specified time period; and (2) reporting requirements for manufacturers.

43. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC establish a requirement, beginning with model year 2026, that manufacturers deliver for sale enough zero-emission vehicles to earn a specified number of zero-emission vehicle credits,[4] and report delivery details to NMED and to the zero-emission vehicle credit bank. The zero-emission vehicle credit bank allows manufacturers to accumulate credits that can banked for future use or be traded or sold to other manufacturers who require additional credits for compliance. This requirement is identical to the California zero-emission vehicle credit requirements.

44. Under the provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, a manufacturer may earn early action credits for the delivery for sale of

[4] Zero-emission vehicles earn a varying number of credits depending on their all electric range. Credits are capped at four credits per vehicle.

vehicles that qualify for zero-emission vehicle credits for model years 2023, 2024, and 2025 by reporting the total delivery of such zero-emission vehicles to NMED by March 1 following the end of each of these three model years. These early action credits can be used for meeting zero-emission vehicle credit requirements in model year 2026 and subsequent model years.

45. Under the provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, all manufacturers shall be provided onetime credits by scaling the manufacturer's California zero-emission vehicle credit balance in model year 2025 to the ratio of New Mexico model year 2025 vehicle sales to California model year 2025 vehicle sales. These onetime credits will be available for use for meeting zero-emission vehicle credit requirements beginning in model year 2027.

46. The zero-emission vehicle early action and onetime credits discussed above in paragraphs 44 and 45 are consistent with the provisions established by other states adopting the California zero-emission vehicle standards and are distinct from the non-methane organic gas plus oxides of nitrogen and greenhouse gas emission credit systems.

47. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC contain recordkeeping and reporting requirements for manufacturers to ensure compliance with the requirements established in the rules.

48. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC establish a registration and fee system for manufacturers covered by the rules. The cumulative fees for intermediate and large-volume manufacturers will defray NMED's costs for implementing the emissions standards statewide program. EHD bears no responsibility for implementing the statewide program and therefore will not receive any of the fee monies collected.

49. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC

allow EHD and NMED to request documentation necessary for the effective administration and enforcement of the rules and to inspect motor vehicles and relevant records related to motor vehicles subject or potentially subject to the rules.

V. EFFECTIVE DATE OF RULE PROVISIONS

50. The Air Board must adopt proposed replacement rule 20.11.104 NMAC in time for it to become effective in the New Mexico Administrative Code before December 31, 2022, for the rule to apply to model year 2026 and thereafter motor vehicles. *See* Statement of Reasons, ¶ 35 (Section 177 of the Clean Air Act requires that States give manufacturers at least two full model years to prepare their fleets to meet the standards).

51. In 2019, EPA withdrew its waiver for California's current greenhouse gas emission standards and zero-emission vehicle standards. Statement of Reasons, ¶ 15. As a result, California and other states that have adopted the current California greenhouse gas emission standards and zero-emission vehicle standards are currently unable to enforce them.[5] Later that year, California and numerous other states and cities filed a petition for reconsideration.

52. In 2021, EPA published notice that it was reconsidering the prior action that withdrew the waiver for purposes of rescinding that action. 86 Fed. Reg. 22421-22430 (Apr. 28, 2021) (California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Opportunity for Public Hearing and Public Comment). Such action would reinstate the waiver granted in 2013. *See* Statement of Reasons, ¶ 11.

53. New Mexico (*i.e.*, the Air Board and the Environmental Improvement Board

[5] The waiver revocation was specific to the California greenhouse gas emission standards and zero-emission vehicle standards, and, thus, has no bearing on California's motor vehicle emission standards for criteria pollutants, including particulate matter.

together) may adopt the requirements of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC now for the proposed effective date of July 1, 2022. However, the rules will not become effective until EPA rescinds the prior action that withdrew the waiver. *See* 42 U.S.C. § 7507.

54. The provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC subject to the waiver requirement will automatically become effective on July 1, 2022, or when EPA rescinds the prior action that withdrew the waiver, whichever is later.

VI. PROJECTED BENEFITS OF THE RULES

55. Reducing toxic and smog-forming pollutants will improve air quality and public health in the County, including the City, and New Mexico.

56. Compliance modeling conducted by Shulock Consulting projects that the adoption and implementation of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will result in the following annual criteria pollutant emission reductions:

[continued on next page]

TABLE 1. County Projected Annual Criteria Pollutant Emission Reductions[6]

Pollutant	**Annual Reductions (Tons)**	
	2030	**2040**
Volatile Organic Compounds	32.1	83.6
Oxides of Nitrogen	8.6	26.9
Carbon Monoxide	35.7	162.5
Particulate Matter ≤2.5 microns	2.1	9.7
Particulate Matter ≤10 microns	4	9.9
Sulfur Dioxide	0.4	12.8

TABLE 2. Statewide Projected Annual Criteria Pollutant Emission Reductions

Pollutant	**Annual Reductions (Tons)**	
	2030	**2040**
Volatile Organic Compounds	153	398
Oxides of Nitrogen	41	128
Carbon Monoxide	170	774
Particulate Matter ≤2.5 microns	10	46
Particulate Matter ≤10 microns	19	47
Sulfur Dioxide	2	61

57. Compliance modeling conducted by Shulock Consulting projects that the adoption and implementation of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will result in the following annual hazardous air pollutant emission reductions:

[6] The projected County emission reductions shown in Tables 1, 3, and 5 are derived by attributing twenty-one percent (21%) of the projected statewide emission reductions shown in Tables 2, 4, and 6, respectively, to the County. This fraction was chosen based on (i) the County's share of statewide vehicle miles travelled for calendar years 2016 through 2020, as provided by the New Mexico Department of Transportation (21.1%); and (ii) the EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool projection of the County's share of statewide tailpipe criteria pollutant emissions and electricity generation emissions for calendar year 2028 (17% to 23% depending on the pollutant).

TABLE 3. County Projected Annual Hazardous Air Pollutant Emission Reductions[7]

Pollutant	**Annual Reductions (Tons)**	
	2030	**2040**
Benzene	0.3	0.8
Formaldehyde	0.1	0.2

TABLE 4. Statewide Projected Annual Hazardous Air Pollutant Emission Reductions

Pollutant	**Annual Reductions (Tons)**	
	2030	**2040**
Benzene	1.2	3.7
Formaldehyde	0.3	1.0

58. These criteria pollutant and hazardous air pollutant emission reductions will, in turn, reduce ambient concentrations of the pollutants shown.

59. Compliance modeling conducted by Shulock Consulting projects that the adoption and implementation of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will result in the following greenhouse gas emission reductions: [8]

[continued on next page]

[7] *See* Statement of Reasons n. 6.

[8] Reductions of greenhouse gases include carbon dioxide (CO_2), methane (CH_4), and nitrous oxide (N_2O). These gases were weighted by their global warming potential to determine total projected greenhouse gas emission reductions.

TABLE 5. County Projected Greenhouse Gas Emission Reductions[9]

Pollutant	Annual Reductions (Tons)		Cumulative Reductions (Tons)	
	2030	**2040**	**2030**	**2040**
Greenhouse Gases	57,000	147,000	103,000	294,000

TABLE 6. Statewide Projected Greenhouse Gas Emission Reductions

Pollutant	Annual Reductions (Tons)		Cumulative Reductions (Tons)	
	2030	**2040**	**2030**	**2040**
Greenhouse Gases	270,000	700,000	490,000	1,400,000

60. A screening analysis conducted by Shulock Consulting using the EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool projects that the adoption and implementation of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will provide health benefits to City, County, and New Mexico residents. The EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool calculates the impact of user-specified emission reductions on ambient particulate matter concentrations, provides high and low estimates of the health impacts of reduced ambient particulate matter, and monetizes the results. U.S. ENVIRONMENTAL PROTECTION AGENCY, *How Does COBRA Work?*, https://www.epa.gov/cobra/how-does-cobra-work-0 (last updated April 12, 2021). Health impacts from particulate matter exposure include mortality, heart attacks, chronic lung disease, bronchitis, and asthma. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Health and Environmental Effects of Particulate Matter (PM)*, https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm (last updated May 26, 2021). The monetized health benefits in New

[9] *See* Statement of Reasons n. 6.

Mexico, as calculated by the EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool, are as follows:

TABLE 7. County Monetized Health Benefits[10]

	2028		**2035**	
	Low	**High**	**Low**	**High**
Annual Health Benefits ($Millions)	$0.11	$0.26	$0.74	$1.7

TABLE 8. Statewide Monetized Health Benefits

	2028		**2035**	
	Low	**High**	**Low**	**High**
Annual Health Benefits ($Millions)	$0.18	$0.40	$1.1	$2.5

61. The emission reductions associated with proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC are expected to improve visibility and compliance with federal Regional Haze requirements.

62. The provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will also lead to cost savings for individual vehicle purchasers and for the state as a whole. Manufacturers will comply with these provisions by selling more zero-emission vehicles and employing more-efficient powertrains in the gasoline-powered fleet. Compliance modeling conducted by Shulock Consulting projects that average lifetime savings per vehicle under the

[10] The EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool provides health impacts by county, so the results shown here are the modeled Bernalillo County results rather than a scaled fraction of statewide impacts. The County accounts for about sixty-seven percent (67%) of statewide monetized health benefits in 2028 and sixty-three percent (63%) in 2035, much larger than its twenty-one percent (21%) share of emission reductions. This disparity is due to the fact that population density is a key factor in the EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool's health impact estimates (a given ambient particulate matter level has more significant health impacts in an area with greater population density).

regulations will be about one thousand and three hundred dollars ($1,300) in Model Year 2026 and one thousand and seven hundred dollars ($1,700) in Model Year 2030.

V. Compliance with Statutory Rulemaking Requirements

63. Repeal of existing rule 20.11.104 NMAC will allow the Air Board to adopt proposed replacement rule 20.11.104 NMAC in accordance with the Air Quality Control Act, NMSA 1978, Sections 74-2-5(E) to (G). *See* City Ordinance, § 9-5-1-4(D)-(E); County Code, § 30-33(d)-(e); 20.11.82.32(A) NMAC.

64. Proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is at least as stringent as federal law relating to control of motor vehicle emissions. *See* NMSA 1978, § 74-2-5(E); s*ee also* City Ordinance, § 9-5-1-4(D); County Code, § 30-33(d).

65. Proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is more protective of public health and the environment than current federal regulations. *See* NMSA 1978, § 74-2-5(G).

66. Adoption of proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is justified given the character and degree of injury to or interference with health, welfare, visibility, and property caused by the sources of air contaminants involved. *See* NMSA 1978, § 74-2-5(F)(1); *see also* City Ordinance, § 9-5-1-4(E)(1); County Code, § 30-33(e)(1); 20.11.82.32(A)(1) NMAC.

67. Adoption of proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is in the public interest, including when considering the social and economic value of the sources and subjects of air contaminants involved. *See* NMSA 1978, § 74-2-5(F)(2); *see also* City Ordinance, § 9-5-1-4(E)(2); County Code, § 30-33(e)(2); 20.11.82.32(A)(2) NMAC.

68. Proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is technically practicable and economically reasonable in the methods the rule employs with proposed rule 20.2.91 NMAC to reduce or eliminate air contaminants from the sources involved. *See* NMSA 1978, § 74-2-5(F)(3); *see also* City Ordinance, § 9-5-1-4(E)(3); County Code, § 30-33(e)(3); 20.11.82.32(A)(3) NMAC.

69. Adoption of proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is justified given prior experience with the equipment and the methods that are available to control the air contaminants involved. *See* NMSA 1978, § 74-2-5(F)(3); *see also* City Ordinance, § 9-5-1-4(E)(3); County Code, § 30-33(e)(3); 20.11.82.32(A)(3) NMAC.

70. Therefore, proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, compliance with the statutory rulemaking requirements.