

13R-1A-R06

ALBUQUERQUE

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Control Number: OCR-14-001-5132

Alternate Number:

Citizen Information

Citizen/Originator: 1). Jantz, Eric - 1405 Louisa Street, Santa Fe, NM 87505

Constituent:

Committee:

Sub-Committee:

Control Information

Status:	Pending	Received Date:	Sep 16, 2014
Letter Date:	Sep 15, 2014	Priority Code:	Normal
Contact Type:	LTR (Letter)	Addressee Org:	1200 Penn Avenue, N.W. WI
Addressee:	US/EPA Office Of Civil Rights (+)		

File Code: 108-025-08_497_a Discrimination Complaints - External Record Copy

Signature:

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Signature Date: Date

Primary Subject: Discrimination Complaint (+) *

Secondary Subject: (+)

Instructions: NRR-No Response Necessary (+) *

Instruction Notes:

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3 To

Recipient's Name Velveta Golightly-Hood Phone 202 564-7372

Company US EPA / office of Civil Rights

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* Call for Confirmation.

5 Packaging * Declared value limit: \$500

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Sender Acct. No. in Section 1 will be billed. Recipient Third Party Credit Card Cash/Check

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Total Charges

Credit Card Auth.

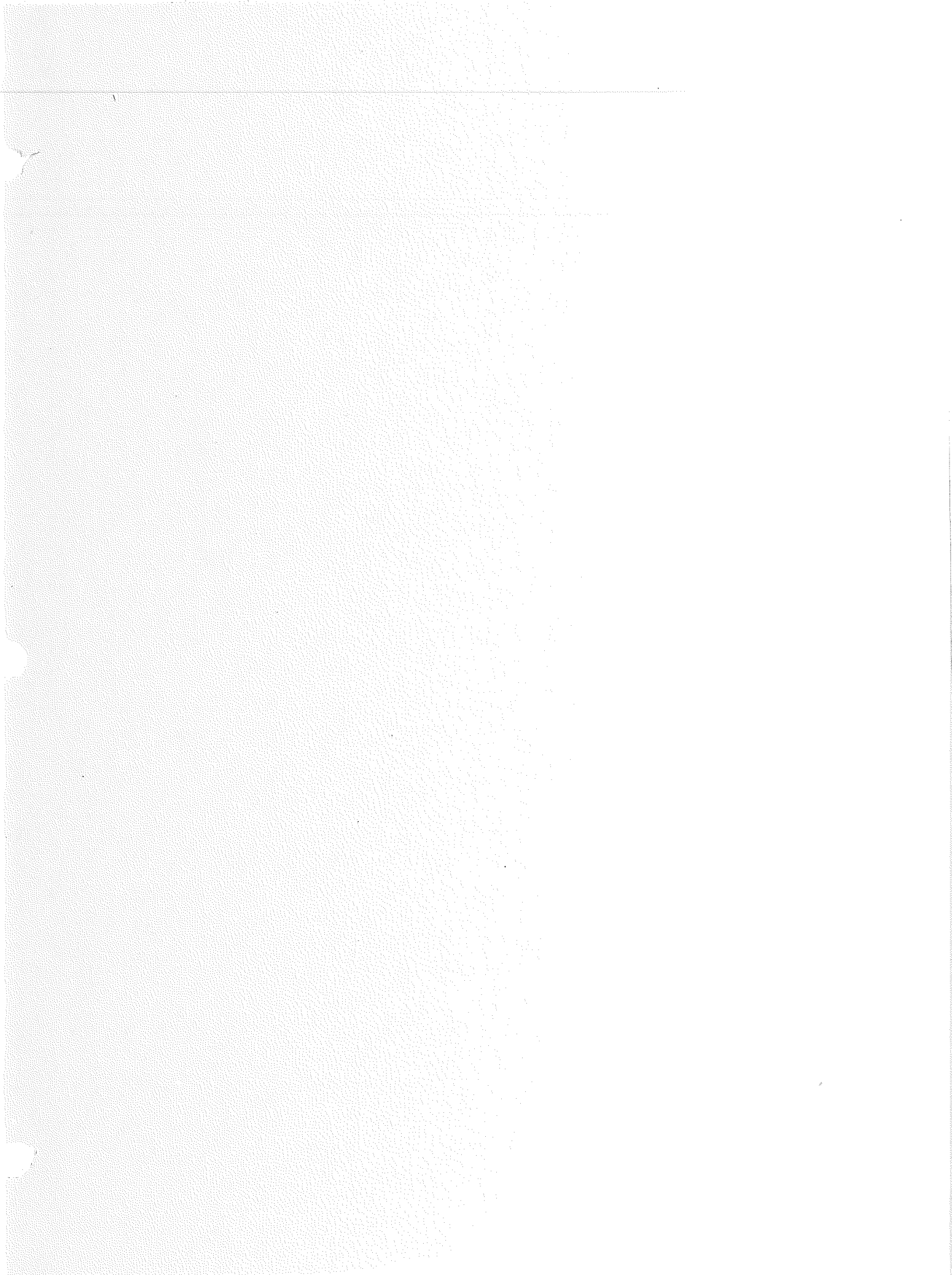
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New Mexico
Environmental Law Center

September 15, 2014

By email and Federal Express

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Re: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, 40 C.F.R.
Part 7

Dear Ms. McCarthy and Ms. Golightly-Howell:

Please find attached the SouthWest Organizing Project's complaint under Title VI of the 1964 Civil Rights Act and its implementing regulations, against the Albuquerque Air Quality Division and Albuquerque/Bernalillo County Air Quality Control Board. I look forward to your response and please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

Eric Jantz
Staff Attorney
ejantz@nmelc.org



**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

SouthWest Organizing Project)
)
 Complainants,)
)
 v.)
)
 Albuquerque Air Quality Division)
)
 and)
)
 Albuquerque/Bernalillo County Air)
 Quality Control Board)
)
 Respondents.)
)
 _____)

COMPLAINT UNDER TITLE VI
OF THE CIVIL RIGHTS ACT OF 1964,
42 U.S.C. §2000d and 40 C.F.R. PART 7

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Attorneys for Complainants

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I. INTRODUCTION

Communities of color and low-income communities in Albuquerque and Bernalillo County, New Mexico, have suffered disproportionate impacts of air pollution since the Clean Air Act, 42 U.S.C., §§ 7401 *et. seq.* was enacted in 1970. As a result, these communities suffer a higher risk and rate of disease and death than non-minority communities. The disparate impacts on minority and low-income communities are not accidental. They are the result of years of discriminatory policy choices by local government. The Albuquerque/Bernalillo County Air Quality Board (“Board”) and Air Quality Division (“Division”) have a demonstrated record of marginalizing minority communities so that they are exposed to an unequal burden of air pollution and the concomitant adverse health effects.

In order to demonstrate racial discrimination from disparate impacts under Title VI of the Civil Rights Act of 1964, 42. U.S.C. §§ 2000d *et. seq.* (“Civil Rights Act”) and the United States Environmental Protection Agency’s (“EPA”) implementing regulations, a complainant must satisfy four factors: 1) a state or local agency’s action has an adverse impact; 2) that the action is discriminatory on the basis of race, color or national origin, 3) the action is caused by a recipient of federal money and 4) the complaint is filed within the statute of limitations period.¹ The Complainants’ petition meets all these criteria, and the EPA should therefore grant their petition and the relief requested.

¹ The Board’s and Division’s conduct also violates the anti-discrimination provisions of the International Covenant on the Elimination of All Forms of Racial Discrimination (“CERD”), which the United States has ratified and by whose provisions all levels of government in the U.S. are bound. The United Nations committee overseeing implementation of the CERD recently expressed concern at the disproportionate impacts of pollution on minority communities in the U.S. Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, CERD/C/USA/CO/7-9 at ¶ 10 (2014), attached as Exhibit A. Moreover, the Committee called upon the U.S. to ensure that environmental laws were being enforced and implemented equally on state and local levels and that the U.S. undertake independent investigations of allegations of disparate impacts of pollution. *Id.* at ¶ 10(a), (b).

II. THE COMPLAINANTS

The SouthWest Organizing Project (“SWOP”) is a non-profit environmental and social justice organization based in Albuquerque, New Mexico. SWOP works primarily with low-income and minority communities toward community empowerment and equal treatment under existing laws. SWOP’s guiding principle is that every community has the right to a healthy and sustainable environment in which to live, work, and play.

SWOP and its members work hand in hand with communities disproportionately impacted by pollution to address both the physical and systemic sources of the pollution. Confronting environmental racism in this context includes organizing for political and social change, litigation, building relevant knowledge and skills within communities, and conducting citizen science.

III. FACTUAL AND PROCEDURAL BACKGROUND

Since 2010, SWOP, its members, and its community allies have been attempting to ensure that the Division equitably implements and enforces the New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-1 *et. seq.*, which is the state statute implementing the requirements of the Clean Air Act. Community attempts to address disparate air pollution impacts include challenging individual pollution permits and petitioning for regulatory changes.

A. Permit Challenges

It was over 30 years from the time the Clean Air Act was enacted before any community in Albuquerque or Bernalillo County challenged a permit issued under state laws implementing the Clean Air Act.² Once affected communities began challenging air permits, the difference in results has been stark, depending on the affected community’s demographics.

² It is unclear why the first community challenge to an air permit occurred over 30 years after the Clean Air Act was enacted. Given the Division’s and the Board’s lack of candor about Albuquerque’s and Bernalillo County’s air

1. *Vulcan Cement Plant*

The first ever community challenge to a permit that the Division issued pursuant to the New Mexico Air Quality Control Act was the Mountain View community. That challenge occurred in 2006. The Mountain View Neighborhood is located in Albuquerque's South Valley and is predominantly minority. According to Census 2010 data, the 87105 ZIP code, where the Mountain View Neighborhood is located, has a population that is 79.3% Latino,³ compared to 46.7 % for the whole of Albuquerque⁴ and 48.4% for Bernalillo County.⁵

The Mountain View Neighborhood Association, among other organizations and individuals, challenged the construction permit the Division issued to Vulcan Materials, Inc. for a concrete batch plant. The plant was to be located across the street from Mountain View Neighborhood's new community center. In issuing the permit, the Division found that Vulcan's operations would meet all the Clean Air Act's and New Mexico Air Quality Control Act's requirements.⁶

The Mountain View community challenged Vulcan's permit on several grounds; however, most significantly, the community challenged the Division's failure to use any air pollution data from the Mountain View neighborhood as the basis for background air quality conditions and the attendant failure to adequately assess cumulative air impacts. As a result of the Division's failure to take these critical factors into account, the Division significantly

quality, low-income and minority communities may not have felt like they had the resources to challenge that position. The Division's and Board's lack of outreach to low-income and minority communities could also have been a contributing factor. Other institutional obstacles, such as exorbitant filing fees to challenge an air permit, could have also contributed to such a long history of excluding minority community involvement in the state air pollution permitting process.

³ A copy of the U.S. Census 2010 data for ZIP Code 87105 is attached as Exhibit B.

⁴ A copy of the U.S. Census 2010 data for Albuquerque is attached as Exhibit C.

⁵ <http://quickfacts.census.gov/qfd/states/35/35001.html>

⁶ For reasons unrelated to its construction permit, the Vulcan plant never began operations.

underestimated the amount of pollution the Vulcan plant would produce. Despite the Mountain View community's challenge, the Board ultimately approved Vulcan's construction permit.

2. *American Cement Company*

After the Vulcan permit challenge, other predominantly minority neighborhoods in Albuquerque began to challenge permit applications. In 2009, the Greater Gardner Neighborhood Association and the North Valley Coalition of Neighborhood Associations challenged a construction permit modification to a cement plant located in the Greater Gardner neighborhood. The 87107 ZIP code where the Greater Gardner neighborhood is located is 56.6% Latino.⁷ The area also has five aggregate processing plants, three asphalt production facilities, six concrete production operations, and two cement distribution terminals, among other pollution sources. In Bernalillo County there are 939 permitted stationary sources of pollution which are permitted a total of 2388.62 tons per year of all suspended particulates.⁸ ZIP code 87107 (with 5% of the county population) contains 11% of the stationary sources of pollution and 17% of the permitted yearly tonnage of total suspended particulates.⁹ The American Cement transfer facility is located less than 2000 feet from La Luz Elementary School and less than 3000 feet from Mountain Mahogany Community School.¹⁰ The Division granted American Cement's permit modification application, but American Cement voluntarily agreed to certain operational conditions after negotiations with community members.

⁷ A copy of the U.S. Census 2010 data for ZIP code 87107 is attached as Exhibit D.

⁸ Petition for Review, *Greater Gardner Neighborhood Ass'n, et. al. v. City of Albuquerque Air Quality Division*, Permit Modification No. 0902 M3 at 2-3 (Nov. 2, 2009).

⁹ *Id.*

¹⁰ *Id.*

3. *Smith's Food and Drug*

In stark contrast to the Board's decisions to approve the Vulcan and American Cement construction permits, the Board reached a very different conclusion with respect to a permit modification to a gas station in the Summit Park neighborhood. The Summit Park neighborhood is located near the University of New Mexico. The 87106 ZIP code, where the Summit Park neighborhood is located, is 34.7% Latino and 50.7% non-Hispanic White.¹¹

In that case, Smith's Food & Drug sought a modification to an existing permit, which the Division granted, to increase the number of cars that could be served by its gas station. The Summit Park Neighborhood Association, among others, appealed the Division's decision to the Board. The Board decided, in keeping with its mandate to prevent and abate air pollution, to overturn the Divisions decision, and deny Smith's permit modification.¹² The Board based its decision on the rationale that increased traffic at the Smith's gas station would have cumulative impacts on the nearby neighborhood, adversely affecting its residents' quality of life.¹³

B. Community Policy Efforts

Because the Board and Division have repeatedly ignored predominantly minority community concerns in the context of pollution permit applications, minority and low-income communities and their allies, including SWOP, have undertaken several policy initiatives to address disparate pollution impacts in Albuquerque and Bernalillo County. There have been two primary efforts.

¹¹ A copy of the U.S. Census 2010 data for ZIP code 87106 is attached as Exhibit E.

¹² A copy of the Board's decision is attached as Exhibit F.

¹³ Id.

1. *Environmental Justice Task Force*

First, communities persuaded the Board to create an Environmental Justice Task Force (“Task Force”) that convened to identify environmental justice issues related to the Board and Division’s work and make recommendations for change to the Board.¹⁴ Unfortunately, from the very beginning of the Task Force process, legal counsel for the Board and Task Force members who were Division employees obstructed Task Force progress and none of the Task Force’s recommendations were ever implemented.

2. *Cumulative Impacts Ordinance*

Most recently, SWOP and its community partners asked the Board to consider a regulation that would have required permit applicants to disclose and analyze the environmental and public health impacts of their proposed operation when combined with emissions from existing and reasonably foreseeable operations in the area.¹⁵ This proposed regulation amendment would have also implemented a single Task Force recommendation.¹⁶ Despite significant community support, the Board refused to even hear SWOP’s petition.¹⁷

SWOP’s asked the Board to consider and pass its proposed ordinance because minority communities continue to suffer an unequal pollution burden from industrial activities. In addition to the individual permit challenges, described above, SWOP based its rulemaking petition on the fact that polluting activities are concentrated in a few minority communities.

¹⁴ A copy of the Task Force’s findings and recommendations is attached as Exhibit G.

¹⁵ See, http://www.cabq.gov/airquality/air-quality-control-board/documents/PetitiontoAmend20_11_72_NMACPortfolio.pdf (last reviewed 9/11/14).

¹⁶ Exhibit G at 5.

¹⁷ The order denying SWOP’s petition is attached as Exhibit H.

a. San Jose Neighborhood

For example, the San Jose neighborhood is within the 87105 ZIP code that is 79.3% Latino.¹⁸ San Jose is also host to a large concentration of industrial operations that create a disproportionate amount of pollution. Some of the polluting operations in San Jose as of 2012¹⁹ are: 1) Van, Waters & Rogers, Inc., a chemical distributor, which is permitted to emit 24 tons per year (“TPY”) of Hazardous Air Pollutants (“HAPs”) and 6 TPY of VOCs; Albuquerque Products Terminal, a petroleum bulk terminal, permitted to emit 51 TPY of VOCs and 12 TPY of HAPs; a General Electric Co. manufacturing plant, permitted to emit 25 TPY of VOCs, 7 TPY of HAPs, 20 TPY of PM₁₀, and 23.14 TPY of PM_{2.5}; Vecenergy Albuquerque Bulk Petroleum Terminal, permitted to emit 36 TPY of VOCs and 1 TPY of HAPs; CEI Enterprises, a manufacturing operation, permitted to emit 19 TPY of VOCs and 13 TPY of HAPs, and the Karsten Company, a wood manufacturing operation that is permitted to emit 21 TPY of VOCs.

b. Mountain View Neighborhood

As described above, Mountain View is a predominantly Latino neighborhood. Like San Jose, to which it is adjacent, it hosts many polluting industrial operations. Some of the polluting operations in Mountain View are: Duke Redi-Mix Concrete, which is permitted to emit 18 TPY of carbon, 2 TPY of VOCs, 37 TPY of PM₁₀, and 12.15 TPY of PM_{2.5}; Albuquerque Refined Products terminal, which is permitted to emit 97 TPY of VOCs and 13 TPY of HAPs; Albuquerque Redi-Mix Concrete, permitted to emit 1 TPY of VOCs, 2 TPY of PM₁₀, and 1.22 TPY of PM_{2.5}; and Conoco Phillips Pipeline Co., permitted to emit 21 TPY of Carbon, 10 TPY of Nitrogen Oxides (“NOx”), 94 TPY of VOCs, and 20 TPY of HAPs.

¹⁸ Exhibit B at 3.

¹⁹ All individual operation pollution information is from <http://www.arcgis.com/home/webmap/viewer.html?webmap=0a83a5e7e57c4a7f8fe1f091b52acdc7> (last reviewed 9/8/14).

c. Greater Gardner Neighborhood

Like San Jose and Mountain View, the Greater Gardner neighborhood is predominantly Latino. Like San Jose and Mountain View, it is also host to a disproportionate number of polluting activities. Some of the polluting operations in the Greater Gardner Neighborhood are: Holly Asphalt Company, permitted to emit 10 TPY of carbon, 12 TPY of NO_x, 12 TPY of VOCs, 1 TPY of HAPs, and 3 TPY of PM₁₀; J & B Manufacturing, permitted to emit 2 TPY of NO_x and 2 TPY of VOCs; and Earthgrains Baking Company, permitted to emit 6 TPY of carbon, 7 TPY of NO_x, 248 TPY of VOCs, and 2 TPY of HAPs.

d. Summit Park Neighborhood

The concentration of polluting sources and amount of pollution emitted in the above minority neighborhoods stands in dramatic contrast to the concentration of sources and emissions in the Summit Park neighborhood, also described above. In Summit Park, the polluting sources are a series of gas stations, with the Smith's gas station being the largest emitter at 22 TPY of VOCs. The Carl Mart emits 2TPY of VOCs and the Texaco gas station emits 9 TPY of VOCs. The concentration of polluting sources shown in the ARC map cited in this Complaint is consistent with the Division's analysis of source concentrations.²⁰

IV. SWOP'S COMPLAINT MEETS EPA'S JURISDICTIONAL REQUIREMENTS

A complaint under Title VI of the Civil Rights Act and the EPA's implementing regulations must show the following: 1) a state or local agency's action has an adverse impact; 2) that the action disproportionately impacts communities protected by Title VI on the basis of race, color or national origin, 3) the complaint meets EPA's jurisdictional criteria.

Based on EPA's Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits ("Draft Revised Investigation Guidance"), the EPA will accept

²⁰ A copy of that analysis is attached as Exhibit I.

and investigate a complaint if it meets the following jurisdictional criteria: 1) the complaint is written; 2) it identifies the entity that allegedly performed the discriminatory act and describes the alleged discriminatory acts that violate EPA's Title VI regulations (*i.e.*, an act of intentional discrimination or one that has the effect of discriminating on the basis of race, color, or national origin); 3) it is filed within 180 days of the discriminatory act; and 4) it is filed by a person who was allegedly discriminated against, or by party that is authorized to represent a person or specific class of people who were allegedly discriminated against in violation of EPA's Title VI regulations. Id., 65 Fed. Reg. 39,650, 39, 672 (June 27, 2000).

In this case, the Complainants have met all the jurisdictional requirements. This Complaint is written, it identifies the entities responsible for the discriminatory acts and describes the discriminatory acts, and SWOP is authorized to represent individuals in communities where the Board's and Division's discriminatory acts occurred.

Further, pursuant to 40 C.F.R. § 7.120(b)(2), a complaint is timely if it is filed within 180 days of the discriminatory act. In this case, the Albuquerque Air Quality Division's disparate enforcement of New Mexico Air Quality Control Act provisions, the state implementation plan ("SIP") and the Clean Air Act is ongoing. *See, e.g., Stanley v. Darlington Co. School Dist.*, 879 F. Supp. 1341, 1364 (D. S.C., 1995) (school district properly sued under Title VI for ongoing discrimination). Therefore, SWOP's Complaint is timely.

Additionally, the Albuquerque/Bernalillo County Air Quality Control Board rejected SWOP's most recent effort to eliminate disparate implementation and enforcement by refusing to hear SWOP's petition to require the Division to take into account cumulative air impacts. The Board's order refusing to hear SWOP's petition was issued on March 21, 2014. September 17, 2014 is 180 days from March 21, 2014. This Complaint is therefore timely.

V. THE BOARD AND DIVISION ARE FEDERALLY FUNDED ENTITIES THAT HAVE IMPLEMENTED AND ENFORCED THE STATE STATUTE IMPLEMENTING THE CLEAN AIR ACT IN A DISCRIMANATORY MANNER.

The EPA's regulations implementing the 1964 Civil Rights Act prohibit any program or activity receiving EPA assistance from discriminating on the basis of race, color, national origin or gender. 40 C.F.R. § 7.35(a)(1)-(3), (7)(b). In particular, Part 7 prohibits any recipient from using any:

criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin or sex.

Id. at § 7.35(7)(b). Additionally, recipient of Federal funds is prohibited from choosing a site or location of a facility that has the effect of discriminating against individuals based on race, color, national origin or gender. Id. at § 7.35(c).

In this case, both the Board and Division have received and continue to receive Federal assistance. Further, the Division's and Board's decisions and ongoing policy have the effect of discriminating against communities of individuals based on their race, color, or national origin. The Complainants have therefore established that the Board and Division have violated Title VI of the 1964 Civil Rights Act and their requests for relief should be granted.

A. The Albuquerque/Bernalillo County Air Quality Board and Albuquerque Air Quality Division Receive Federal Funds.

The Division and Board must comply with EPA's Title VI implementing regulations because both entities receive substantial financial assistance through EPA grants. 40 C.F.R. § 7.15. In fiscal year 2011, the Division and Board, through the City of Albuquerque, received

\$892,622 in EPA assistance.²¹ In fiscal year 2012, the last year for which data are available, the Division and Board received \$1,569,440 in EPA assistance.²² The Division's and Board's obligation to comply with Title VI's requirements is not limited to programs that are funded by EPA, although all the Division's and Board's activities implementing and enforcing the Clean Air Act are funded by EPA. "Program or activity" is defined as "all of the operations of" a department, agency, special purpose district or other instrumentality of a State or local government. 42 U.S.C. § 2000d-4a. Thus, by any measure, both the Division and the Board receive federal funds and are required to comply with Title VI's requirements.

B. The Division's and Board's Failure to Consider Cumulative Impacts in Permitting Decisions Under the Clean Air Act and Air Quality Control Act have Resulted in Adverse Health and Environmental Impacts on Communities of Color.

The EPA has determined that "exceedance of a concentration threshold ... have been identified as a significant concern, and expects to generally recognize such exceedances as adverse under Title VI." U.S. Environmental Protection Agency, Investigative Report, Case File No. 16R-99-R9 at 26 (Aug. 25, 2011) ("Investigative Report"). Moreover, EPA has also concluded that a complainant does not need to demonstrate actual harm to establish adverse impacts. *Id.* at 26-27. Instead, a complainant need only demonstrate a "reasonable cause for concern for the public health." *Id.*

²¹ *See,*

[http://usaspending.gov/search?form_fields={%22search_term%22%3A%22Albuquerque%22%2C%22spending_cat%22%3A\[%22g%22%2C%22c%22\]%2C%22dept%22%3A\[%226800%22\]%2C%22recipient_duns%22%3A\[%22007111891%22\]%2C%22fyear%22%3A\[%222011%22\]}&sort_by=dollars&per_page=25](http://usaspending.gov/search?form_fields={%22search_term%22%3A%22Albuquerque%22%2C%22spending_cat%22%3A[%22g%22%2C%22c%22]%2C%22dept%22%3A[%226800%22]%2C%22recipient_duns%22%3A[%22007111891%22]%2C%22fyear%22%3A[%222011%22]}&sort_by=dollars&per_page=25) (last reviewed 9/11/14).

²² *See,* [http://usaspending.gov/search?form_fields={%22search_term%22%3A%22Albuquerque%22%2C%22spending_cat%22%3A\[%22g%22%2C%22c%22\]%2C%22dept%22%3A\[%226800%22\]%2C%22recipient_duns%22%3A\[%22007111891%22\]%2C%22fyear%22%3A\[%222012%22\]}&sort_by=dollars&per_page=25](http://usaspending.gov/search?form_fields={%22search_term%22%3A%22Albuquerque%22%2C%22spending_cat%22%3A[%22g%22%2C%22c%22]%2C%22dept%22%3A[%226800%22]%2C%22recipient_duns%22%3A[%22007111891%22]%2C%22fyear%22%3A[%222012%22]}&sort_by=dollars&per_page=25)

[http://usaspending.gov/search?form_fields={%22search_term%22%3A%22Albuquerque%22%2C%22spending_cat%22%3A\[%22g%22%2C%22c%22\]%2C%22dept%22%3A\[%226800%22\]%2C%22recipient_duns%22%3A\[%22007111891%22\]%2C%22fyear%22%3A\[%222012%22\]}&sort_by=dollars&per_page=25](http://usaspending.gov/search?form_fields={%22search_term%22%3A%22Albuquerque%22%2C%22spending_cat%22%3A[%22g%22%2C%22c%22]%2C%22dept%22%3A[%226800%22]%2C%22recipient_duns%22%3A[%22007111891%22]%2C%22fyear%22%3A[%222012%22]}&sort_by=dollars&per_page=25) (last reviewed 9/11/14).

1. *The Division's and Board's Failure to Consider Cumulative Impacts has Resulted in Pollution Concentrations Above Regulatory Standards.*

The Division's and Board's failure to consider the cumulative impacts of their permitting decisions has resulted in increased risk of disease in minority communities as well as resulting in actual increases in mortality and morbidity. In the San Jose neighborhood, recent community air quality monitoring data show levels of the hazardous air pollutant chlorobenze, with a mean concentration over a year of 23.6 micrograms per cubic meter (" μ/m^3 "), exceeding the EPA's provisional Reference Concentration ("RfC") of $20 \mu/m^3$.^{23,24} Further, long-term mean concentrations of particulate matter less than 2.5 microns in diameter (" $PM_{2.5}$ "), which measured $18.9 \mu/m^3$, exceeded EPA's annual standard of $12 \mu/m^3$.²⁵

A 2005 study conducted by the South Valley Partners for Environmental Justice showed that several volatile organic compounds ("VOCs") in several minority neighborhoods, including Mountain View, exceeded EPA's cumulative risk levels. For instance, benzene concentrations in Mountain View were orders of magnitude greater than EPA's acceptable risk level.²⁶ Similar results were found for carbon tetrachloride, chloroform, and tetrachloroethylene.²⁷ Hence, based solely on the exceedances of regulated pollutants in San Jose and Mountain View, Complainants have demonstrated adverse impact. However, adverse impact can also be demonstrated because of the health risks posed by concentrated air pollution in minority neighborhoods.

²³ A copy of the report with those data is attached as Exhibit J.

²⁴ Id. at 5.

²⁵ Id. at 6.

²⁶ Attached as Exhibit K at 15.

²⁷ Id. at 16-18.

2. *The Division's and Board's Failure to Consider Cumulative Impacts has Resulted in Elevated Incidence of Disease and Mortality in Minority Communities.*

Communities of color in Albuquerque and Bernalillo County have higher than expected rates of disease associated with elevated air pollution concentrations. For example, in the 87017 ZIP code, where the Greater Gardner neighborhood is located, the death rate from asthma between 1990-2005 was nearly double that of Bernalillo County.²⁸ Further, between 1998 and 2002, the number of children under five hospitalized for acute asthma symptoms in the 87107 ZIP code was nearly 50% higher than for the rest of Bernalillo County.²⁹ Finally, life expectancy in the area of the Greater Gardner neighborhood is nearly 5 years less than the rest of Bernalillo County.³⁰

The Mountain View neighborhood is burdened by similar circumstances. As explained in Section III, above, Mountain View has elevated concentrations of VOCs. Not surprisingly, Mountain View also has higher than expected numbers of lung, bladder, brain and thyroid cancers, as well as higher than expected numbers of leukemia compared with the rest of Bernalillo County.³¹ All of these cancers are associated with exposure to VOCs. Thus, the Division's and Board's actions have resulted in a reasonable concern for public health and SWOP has established a showing of adverse impacts.

C. The Division's and the Board's Failure to Consider Cumulative Impacts Results in Disproportionate Adverse Impacts on Communities of Color.

As a result of the Board's and Division's failure to implement the Clean Air Act and Air Quality Control Act equally, minority and low income communities in Albuquerque bear a

²⁸ Attached as Exhibit L at 14.

²⁹ Id.

³⁰ Id. at 17.

³¹ Attached as Exhibit K at 24.

disproportionate burden of air pollution. The result is those communities suffer higher rates of disease and lower life expectancy.

Disparate impact is evaluated by comparing the adversely impacted community to a comparison population. Investigative Report at 30. The comparison population is chosen in order to evaluate whether there is a significant difference between them with respect to demographic characteristics or degree of impact. Id. Disparity between groups is evaluated on a case by case basis, but typically ranges from 20% to 100%. Id. at 31; Smith v. Xerox Corp., 196 F.3d 358, 365-366 (2nd Cir. 1999). In other words, if an adversely impacted community has 20% to 100% greater minority population than the comparison community, the disparity is significant.

In this case, the affected communities are predominantly minority communities including, but not limited to, the Mountain View community and the Greater Gardner community, where the Division and Board approved permits for operations that would increase air pollution in already burdened neighborhoods. The Comparison communities include, but are not limited to, primarily non-minority communities, such as the Summit Park neighborhood, where the Board denied an application for pollution permit modification under the Air Quality Control Act.

In the case of Mountain View, the Latino population for the ZIP code (87105) where that neighborhood is located is 79.3%. In the 87106 ZIP code, where the Summit Park neighborhood is located, the Latino population is 34.6%. Thus, the Mountain View neighborhood has a 44.7% larger Latino population, well within the range that would indicate significantly disparate treatment.

Likewise, the Greater Gardner neighborhood is located in the 87107 ZIP code, where the population is 58% Latino. Thus, the Greater Gardner neighborhood has a 23.4% larger Latino population than Summit Park. Again, the disparity between the two neighborhoods is significant.

These significant disparities are a pattern throughout Albuquerque. In a report entitled *Place Matters for Health in Bernalillo County*, the Joint Center for Political and Economic Studies determined that communities with higher percentages of Latinos and recent immigrants were much more likely to host industrial and other operations that increased adverse health impacts.³² There are significant data on pollution and demographics in Albuquerque and Bernalillo County indicating that minority communities bear a disproportionate burden of polluting industry.

VI. RELIEF REQUESTED

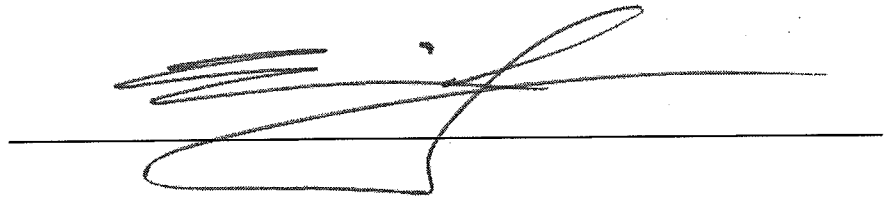
SWOP respectfully requests that the EPA grant the following relief:

- 1) Conduct an investigation into the Board's and Division's discriminatory implementation of the Clean Air Act by way of the provisions of the New Mexico Air Quality Control Act;
- 2) Require that the Board and Division use monitoring data from the neighborhood or neighborhoods that will be impacted by a proposed operation in determining background air quality for every permit the Board or Division considers;
- 3) Require that any air quality modeling the Board or Division uses to evaluate a permit application under the New Mexico Air Quality Control Act be calibrated against air quality monitoring data described in 2), above;

³² Attached as Exhibit M at 16-19.

- 4) Require that the Board adopt a regulation prohibiting Board members from being employed by any business that may seek a permit from the Division or Board;
- 5) Require the Board and Division to conduct extensive and regular outreach to minority and low-income neighborhoods regarding its permitting and policy initiatives;
- 6) Require that the Board adopt a regulation requiring disclosure and analysis of cumulative impacts of permit application operations;
- 7) If warranted, reduce or eliminate federal funding for the Board and Division.

Dated: September 15, 2014.

A handwritten signature in black ink, appearing to be 'Eric Jantz', is written over a horizontal line. The signature is stylized and somewhat abstract.

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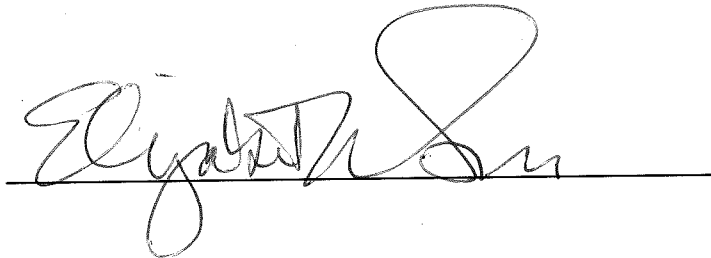
CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September 2014, I have delivered a copy of the foregoing pleading via electronic mail and/or Federal Express to the following:

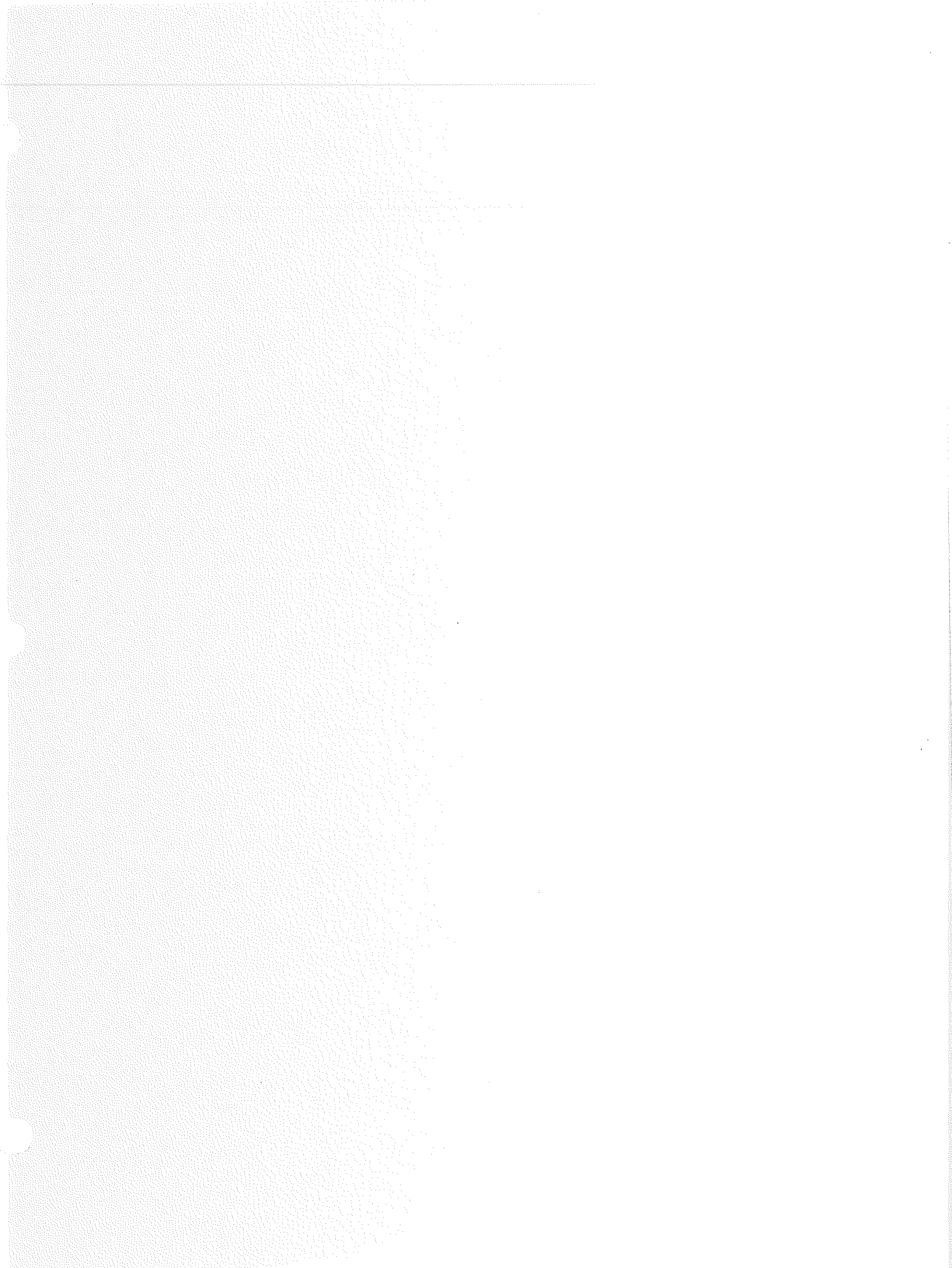
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A handwritten signature in black ink, appearing to read "Velveta Golightly-Howell", is written over a solid horizontal line. The signature is cursive and includes a large loop at the end.



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Committee on the Elimination of Racial Discrimination**Concluding observations on the combined seventh to ninth periodic reports of United States of America***

1. The Committee considered the seventh to ninth periodic reports of the United States of America, submitted in one document (CERD/C/USA/7-9), at its 2299th and 2300th meetings (CERD/C/SR.2299 and SR.2300), held on 13 and 14 August 2014. At its 2317th meeting, held on 26 August 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the combined seventh to ninth periodic reports submitted by the State party, which provides detailed information on the implementation of the previous recommendations of the Committee (CERD/C/USA/CO/6).

3. The Committee also welcomes the supplementary information provided orally by the large and diverse State party delegation to the issues raised by the Committee during the frank and constructive dialogue between the Committee and the delegation.

B. Positive aspects

4. The Committee notes with appreciation the legislative and policy developments in the State party to combat racial discrimination since its last report, including:

(a) The termination of the National Security Entry-Exit Registration System in April 2011, as recommended by the Committee in its previous concluding observations (CERD/C/USA/CO/6, para.14);

(b) The issuance of Executive Order 13583 to require agencies to develop strategies to identify and remove existing barriers to equal employment opportunity in Government recruitment, hiring, promotion, retention, professional development and training, as well as Executive Order 13515 in October 2009 to improve the participation of Asian Americans and Pacific Islanders in federal programmes and employment;

(c) The increased use of the "Systemic Initiative" by the Equal Employment Opportunity Commission to target "class-based recruitment and hiring practices that

* Adopted by the Committee at its eighty-fifth session (11-29 August 2014).

discriminate against racial and ethnic groups”, resulting in an increased number of systemic lawsuits and financial settlements;

(d) The adoption of the Fair Sentencing Act in August 2010, which has reduced, although not eliminated, the disparity between more lenient sentences for powder cocaine charges and more severe sentences for crack cocaine charges, which are more frequently brought against members of racial and ethnic minorities;

(e) The adoption of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in October 2009, which inter alia creates a new federal prohibition on hate crimes and simplifies the jurisdictional predicate for prosecuting violent acts undertaken because of actual or perceived race, colour, or national origin; and

(f) The enactment of the Lilly Ledbetter Fair Pay Act in January 2009, which overrides the Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.* and enables the 180-day statute of limitations for bringing a wage discrimination claim to be reset with each payment of wages, benefits, or other compensation.

C. Concerns and recommendations

Applicability of the Convention at the national level

5. While noting the applicability of the disparate impact doctrine in certain fields of life, the Committee remains concerned at its limited scope and applicability. It thus reiterates its previous concern that the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with article 1, paragraph 1 of the Convention, which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect (CERD/C/USA/CO/6, para.10). The Committee expresses further concern at the lack of progress achieved in withdrawing or narrowing the scope of the reservation to article 2 of the Convention and in prohibiting all forms of discriminatory acts perpetrated by private individuals, groups or organizations (CERD/C/USA/CO/6, para.11) (arts.1(1), 2 and 6).

The Committee underlines the responsibility of the federal state for the implementation of the Convention, and calls upon the State party to take concrete steps to:

(a) Prohibit racial discrimination in all its forms in federal and state legislation, including indirect discrimination, covering all fields of law and public life, in accordance with article 1, paragraph 1 of the Convention; and

(b) Consider withdrawing or narrowing its reservation to article 2 of the Convention, and broaden the protection afforded by law against all discriminatory acts perpetrated by private individuals, groups or organizations; and

(c) Improve the system of monitoring and response by federal bodies to prevent and challenge situations of racial discrimination.

National human rights institution

6. While taking note of the creation of the Equality Working Group, the Committee reiterates its concern at the lack of an institutionalized coordinating mechanism with capacities to ensure the effective implementation of the Convention at the federal, state and local levels (CERD/C/USA/CO/6, para.13). Noting the role that an independent national human rights institution can play in this regard, the Committee expresses regret at the lack

of progress in establishing a national human rights institution as recommended in its previous concluding observations (CERD/C/USA/CO/6, para.12) (art. 2).

The Committee recommends that the State party create a permanent and effective coordinating mechanism, such as a national human rights institution established in accordance with the principles relating to the status of national institutions (the "Paris Principles", General Assembly resolution 48/134, Annex), to ensure the effective implementation of the Convention throughout the State party and territories under its effective control; monitor compliance of domestic laws and policies with the provisions of the Convention; and systematically carry out anti-discrimination training and awareness-raising activities at the federal, state and local levels.

Special measures

7. Taking note of the Supreme Court decision of April 2014 in *Schuette v. Coalition to Defend Affirmative Action* and the measures adopted by several states against the use of affirmative action in school admissions, the Committee expresses concern at the increasing restrictions on the use of special measures as a tool to eliminate persistent disparities in the enjoyment of human rights and fundamental freedoms based on race or ethnic origin (art. 2(2)).

The Committee reiterates its previous recommendation to adopt and strengthen the use of special measures, which is an obligation arising from article 2, paragraph 2 of the Convention, when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms based on race or ethnic origin. In this regard, it recommends that the State party take into account the Committee's general recommendation No.32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination.

Racial profiling and illegal surveillance

8. While welcoming the acknowledgement made by the State party that racial or ethnic profiling is not effective law enforcement practice and is inconsistent with its commitment to fairness in the justice system, the Committee remains concerned at the practice of racial profiling of racial or ethnic minorities by law enforcement officials, including the Federal Bureau of Investigation (FBI), Transportation Security Administration, border enforcement officials, and local police (arts.2, 4(c) and 5(b)).

Recalling its general recommendation No. 31 (2001) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to intensify efforts to effectively combat and end the practice of racial profiling by federal, state and local law enforcement officials, including by:

(a) **Adopting and implementing legislation which specifically prohibits law enforcement officials from engaging in racial profiling, such as the End Racial Profiling Act;**

(b) **Swiftly revising policies insofar as they permit racial profiling, illegal surveillance, monitoring and intelligence gathering, including the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies;**

(c) **Ending immigration enforcement programmes and policies, which indirectly promote racial profiling, such as the Secure Communities programme and the 287(g) programme; and**

(d) Undertaking prompt, thorough and impartial investigations into all allegations of racial profiling, surveillance, monitoring and illegal intelligence-gathering; holding those responsible accountable; and providing effective remedies, including guarantees of non-repetition.

Racist hate speech and hate crimes

9. The Committee reiterates its concern at the lack of prohibition of racist hate speech except for instances amounting to incitement to imminent violence or "true threats" of violence, as well as the wide scope of the reservations to article 4 of the Convention (CERD/C/USA/CO/6, para.18). It is also concerned at the underreporting of instances of hate crimes by the victims to the police, as well as by law enforcement officials to the FBI given the voluntary nature to comply with the FBI's request for hate crime statistics (arts. 2 and 4).

The Committee recommends that the State party:

(a) Consider withdrawing or narrowing its reservation to article 4 of the Convention, taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, which outlines diverse measures to effectively combat racist hate speech while protecting the legitimate right to freedom of expression;

(b) Improve its data collection system for statistics on complaints of hate crimes, including by officially requiring all law enforcement agencies to record and transmit all such instances to the FBI, disaggregated by factors such as race, ethnicity, age and religion, and regularly publicize such information;

(c) Ensure that all law enforcement officials and all new recruits are provided with initial and ongoing in-service training on the investigation and reporting of complaints of hate crimes; and

(d) Provide statistical information concerning trends in instances of racist hate speech in its next periodic report so as to assess the impact of measures adopted by the State party in combating racist hate speech.

Disparate impact of environmental pollution

10. While welcoming the acknowledgment by the State party that low income and minority communities are exposed to an unacceptable amount of pollution, as well as the initiatives taken to address the issue, the Committee is concerned that individuals belonging to racial and ethnic minorities as well as indigenous peoples continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries. It also reiterates its previous concern regarding the adverse effects of economic activities related to the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the rights to land, health, environment and the way of life of indigenous peoples and minority groups living in these regions (CERD/C/USA/CO/6, para.30) (arts. 2 and 5(e)).

The Committee calls upon the State party to:

(a) Ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels;

(b) Undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected

communities, bring those responsible to account, and ensure that victims have access to appropriate remedies;

(c) Clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date; and

(d) Take appropriate measures to prevent the activities of transnational corporations registered in the State party which could have adverse effects on the enjoyment of human rights by local populations in other countries, especially by indigenous peoples and minorities.

Right to vote

11. The Committee is concerned at the obstacles faced by individuals belonging to racial and ethnic minorities and indigenous peoples to effectively exercise their right to vote, due inter alia to restrictive voter identification laws, district gerrymandering, and state-level felon disenfranchisement laws. It is also concerned at the Supreme Court decision in *Shelby County v. Holder*, which struck down Section 4(b) of the Voting Rights Act and made Section 5 inoperable, thus invalidating the procedural safeguards to prevent the implementation of voting regulations that may have discriminatory effect. It expresses further concern at the continued denial of the right of residents of the District of Columbia (D.C.), half of whom are African Americans, to vote for and elect representatives to the United States Senate and voting-members to the House of Representatives (arts. 2 and 5(c)).

The Committee recommends that the State party take effective measures to:

(a) Enforce federal voting rights law throughout the State party in ways that encourage voter participation, and adopt federal legislation to prevent the implementation of voting regulations which have discriminatory impact in light of the *Shelby County v. Holder* decision;

(b) Ensure that indigenous peoples can effectively exercise their right to vote and address their specific concerns;

(c) Ensure that all states reinstate voting rights to persons convicted of felony who have completed their sentences, provide inmates with information about their voting restoration options, and review automatic denial of the right to vote to imprisoned felons regardless of the nature of the offence; and

(d) Provide for the full voting rights of residents of Washington, D.C.

Criminalization of homelessness

12. While appreciating the measures taken by federal and some state and local authorities to address homelessness, the Committee is concerned at the high number of homeless persons, who are disproportionately from racial and ethnic minorities, particularly African Americans, Hispanic/Latino Americans and Native Americans, and at the criminalization of homelessness through laws that prohibit activities such as loitering, camping, begging, and lying in public spaces (arts.2 and 5(e)).

The Committee calls upon the State party to:

(a) Abolish laws and policies making homelessness a crime;

(b) **Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; and**

(c) **Offer incentives to decriminalize homelessness, including by providing financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize homelessness.**

Discrimination and segregation in housing

13. While acknowledging the positive steps taken by the State party to address discrimination in access to housing and to reverse historical patterns of segregation, the Committee remains concerned at: (a) the persistence of discrimination in access to housing on the basis of race, colour, ethnicity or national origin; (b) the high degree of racial segregation and concentrated poverty in neighbourhoods characterized by sub-standard conditions and services, including poor housing conditions, limited employment opportunities, inadequate access to health-care facilities, under-resourced schools and high exposure to crime and violence; and (c) discriminatory mortgage lending practices and the foreclosure crisis which disproportionately affected and continues to affect racial and ethnic minorities (arts. 3 and 5(e)).

The Committee urges the State party to intensify its efforts to eliminate discrimination in access to housing and residential segregation based on race, colour ethnicity or national origin, including by:

(a) **Ensuring the availability of affordable and adequate housing for all, including by effectively implementing the Affirmatively Furthering Fair Housing requirement by the Department of Housing and Urban Development and across all agencies administering housing programmes;**

(b) **Strengthening the implementation of legislation to combat discrimination in housing, such as the Fair Housing Act and Title VIII of the Civil Rights Act of 1968, including through the provision of adequate resources and increasing the capacity of the Department of Housing and Urban Development; and**

(c) **Undertaking prompt, independent and thorough investigation into all cases of discriminatory practices by private actors, including in relation to discriminatory mortgage lending practices, steering, and redlining; holding those responsible to account; and providing effective remedies, including appropriate compensation, guarantees of non-repetition and changes in relevant laws and practices.**

Education

14. While welcoming measures taken by the State party to address de facto racial segregation in education, such as the formation of the Equity and Excellence Commission in 2011, the Committee remains concerned that students from racial and ethnic minorities disproportionately continue to attend segregated schools with segregated or unequal facilities, and that even those who are enrolled in racially diverse schools are frequently assigned to "single-race" classes, denied equal access to advanced courses, and disciplined unfairly and disproportionately due to their race, including through referral to the criminal justice system. It also expresses concern at racial disparities in academic achievement, which contribute to unequal access to employment opportunities (arts.3 and 5(e)).

The Committee recommends that the State party intensify its efforts to ensure equal access to education, including by:

(a) **Developing and adopting a comprehensive plan to address racial segregation in schools and neighbourhoods with concrete goals, timelines and impact assessment mechanisms;**

(b) **Increasing federal funding for programmes and policies that promote racially integrated learning environments for students;**

(c) **Effectively implementing the recommendations contained in the report of the Equity and Excellence Commission published in February 2013;**

(d) **Reauthorizing the Elementary and Secondary Education Act with provisions that support and encourage solutions to address school segregation; and**

(e) **Continuing to work closely with state and local education authorities as well as civil society groups to strengthen measures to address the factors that contribute to the educational achievement gap.**

Right to health and access to health care

15. While commending the adoption of the Patient Protection and Affordable Care Act (ACA) in March 2010, the Committee is concerned that many states with substantial numbers of racial and ethnic minorities have opted out of the Medicaid expansion programme following the Supreme Court decision of June 2012 in the *National Federation of Independent Business v. Sebelius*, thus failing to fully address racial disparities in access to affordable and quality health care. It is also concerned at the exclusion of undocumented immigrants and their children from coverage under the Affordable Care Act, as well as the limited coverage of undocumented immigrants and immigrants residing lawfully in the United States for less than five years by Medicaid and Children's Health Insurance Programme, resulting in difficulties for immigrants in accessing adequate health care. It also reiterates its previous concern at the persistence of racial disparities in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among African American communities (CERD/C/USA/CO/6, para.33) (art. 5(e)).

The Committee recommends that the State party:

(a) **Take concrete measures to ensure that all individuals, and in particular racial and ethnic minorities who reside in states that have opted out of the ACA, undocumented immigrants, and immigrants and their families who have been residing lawfully in the United States for less than five years, have effective access to affordable and adequate health-care services;**

(b) **Eliminate racial disparities in the field of sexual and reproductive health and standardize the data collection system on maternal and infant deaths in all states to effectively identify and address the causes of disparities in maternal and infant mortality rates; and**

(c) **Improve monitoring and accountability mechanisms for preventable maternal mortality, including by ensuring that state maternal mortality review boards have sufficient resources and capacity.**

Gun violence

16. The Committee is concerned at the high number of gun-related deaths and injuries which disproportionately affect members of racial and ethnic minorities, particularly African Americans. It is also concerned at the proliferation of "Stand Your Ground" laws, which are used to circumvent the limits of legitimate self-defence in violation of the State

party's duty to protect life, and has a disproportionate and discriminatory impact on members of racial and ethnic minorities (arts. 2, 5(b) and 6).

The Committee urges the State party to take effective legislative and policy measures to fulfil its obligation to protect the right to life and to reduce gun violence, including by adopting legislation expanding background checks for all private firearm transfers and prohibiting the practice of carrying concealed handguns in public venues; increasing transparency concerning gun use in crime and illegal gun sales, including by repealing the Tiahrt Amendments; and reviewing the Stand Your Ground Laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when deadly force is used for self-defence.

Excessive use of force by law enforcement officials

17. While recognizing the efforts made by the State party to intensify the enforcement of relevant laws, the Committee reiterates its previous concern at the brutality and excessive use of force by law enforcement officials against members of racial and ethnic minorities, including against unarmed individuals, which has a disparate impact on African Americans and on undocumented migrants crossing the United States-Mexico border (CERD/C/USA/CO/6, para.25). It also remains concerned that despite the measures taken by the State party to prosecute law enforcement officials for criminal misconduct, impunity for abuses, in particular those committed by the Customs and Border Protection (CBP) against Hispanic/Latino Americans and undocumented migrants, remains a widespread problem (arts. 5(b) and 6).

The Committee urges the State party to:

(a) **Ensure that each allegation of excessive use of force by law enforcement officials is promptly and effectively investigated; that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; that investigations are re-opened when new evidence becomes available; and that victims or their families are provided with adequate compensation;**

(b) **Intensify its efforts to prevent the excessive use of force by law enforcement officials by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and ensure that the new CBP directive on the use of force is applied and enforced in practice;**

(c) **Improve the reporting of cases involving the excessive use of force, and strengthen oversight of and accountability for inappropriate use of force; and**

(d) **Provide, in its next periodic report, detailed information concerning investigations undertaken into allegations of excessive use of force by law enforcement officials, including the CBP, as well as their outcomes, including disciplinary or prosecutorial action taken against the perpetrator and remedies provided to victims or their families.**

Immigrants

18. The Committee is concerned at the increasingly militarized approach to immigration law enforcement, leading to the excessive and lethal use of force by the CBP personnel; increased use of racial profiling by local law enforcement agencies to determine immigration status and to enforce immigration laws; increased criminal prosecution for breaches of immigration law; mandatory detention of immigrants for prolonged periods of time; and deportation of undocumented immigrants without adequate access to justice. It is also concerned that workers entering the State party under the H-2B work visa programme are at high risk of becoming victims of trafficking and/or forced labour, and that some

children from racial and ethnic minorities, particularly Hispanic/Latino children, are employed in the agriculture industry and may harsh and dangerous conditions (arts. 2, 5 and 6).

The Committee calls upon the State party to ensure that the rights of non-citizens are fully guaranteed in law and in practice, including inter alia by:

(a) **Abolishing “Operation Streamline” and dealing with any breaches of immigration law through civil, rather than criminal immigration system;**

(b) **Undertaking thorough and individualized assessment for decisions concerning detention and deportation and guaranteeing access to legal representation in all immigration-related matters;**

(c) **Reviewing its laws and regulations in order to protect all migrant workers from exploitative and abusive working conditions, including by raising the minimum age for harvesting and hazardous work in agriculture under the Fair Labor Standards Act in line with international labour standards, and ensuring effective oversight of labour conditions; and**

(d) **Ratifying ILO Convention No.29 concerning Forced or Compulsory Labour and ILO Convention No.138 concerning Minimum Age for Admission to Employment.**

Violence against women

19. While acknowledging the measures taken by the State party to reduce the prevalence of violence against women, the Committee remains concerned at the disproportionate number of women from racial and ethnic minorities, particularly African American women, immigrant women, and American Indian and Alaska Native women, who continue to be subjected to violence, including rape and sexual violence. Additionally, it notes that while the Tribal Law and Order Act of 2010 increased the length of sentences tribal courts can issue in criminal cases, and that the Violence Against Women Reauthorization Act of 2013 expanded the jurisdiction of tribes over domestic violence and violence of protective orders committed on their lands, the jurisdiction is limited to those who live or work on the reservation, or to those who are married or are in partnership with a tribal member. The Committee thus reiterates its previous concern at the denial of indigenous women to access justice and to obtain adequate reparation or satisfaction for damages suffered (CERD/C/USA/CO/6, para.26) (arts. 5 and 6).

The Committee calls upon the State party to intensify its efforts to prevent and combat violence against women, particularly against American Indian and Alaska Native women, and ensure that all cases of violence against women are effectively investigated, perpetrators prosecuted and sanctioned, and victims provided with appropriate remedies. It also urges the State party to take effective measures to guarantee, in law and in practice, the right to access justice and effective remedies for all indigenous women who are victims of violence. It also reiterates its previous recommendation that the State party provide sufficient resources for violence prevention and service programmes; provide specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors, judges and medical personnel; and undertake awareness raising campaigns on the mechanisms and procedures available to seek remedies for violence against women.

Criminal justice system

20. While welcoming the measures taken by the State party to address racial disparities in the criminal justice system, such as the launch of the “Smart on Crime” initiative in

August 2013, the Committee remains concerned that members of racial and ethnic minorities, particularly African Americans, continue to be disproportionately arrested, incarcerated and subjected to harsher sentences, including life imprisonment without parole and the death penalty. It expresses concern that the overrepresentation of racial and ethnic minorities in the criminal justice system is exacerbated by the use of prosecutorial discretion, the application of mandatory minimum drug-offence sentencing policies, and the implementation of repeat offender laws. The Committee is also concerned at the negative impact of parental incarceration on children from racial and ethnic minorities (arts. 2, 5 and 6).

The Committee calls upon the State party to take concrete and effective steps to eliminate racial disparities at all stages of the criminal justice system, taking into account the Committee's general recommendation No.31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, including by:

(a) **Amending laws and policies leading to racially disparate impact in the criminal justice system at the federal, state and local levels, and implementing effective national strategies or plans of action aimed at eliminating structural discrimination;**

(b) **Imposing, at the federal level, a moratorium on the death penalty with a view to abolishing the death penalty; and**

(c) **Ensuring that the impact of incarceration on children and/or other dependents is taken into account when sentencing an individual convicted of a non-violent offence and promoting the use of alternatives to imprisonment.**

Juvenile justice

21. The Committee is concerned at racial disparities at all levels of the juvenile justice system, including the disproportionate rate at which youth from racial and ethnic minorities are arrested in schools and are referred to the criminal justice system, prosecuted as adults, incarcerated in adult prisons, and sentenced to life imprisonment without parole. It also remains concerned that despite the recent Supreme Court decisions which held that mandatory sentencing of juvenile offenders to life imprisonment without parole is unconstitutional, 15 states have yet to change their laws, and that discretionary life without parole sentences are still permitted for juveniles convicted of homicide (arts. 2, 5 and 6).

The Committee calls upon the State party to intensify its efforts to address racial disparities in the application of disciplinary measures, as well as the resulting "school-to-prison pipeline", throughout the State party, and ensure that juveniles are not transferred to adult courts and are separated from adults during pretrial detention and after sentencing. It also reiterates its previous recommendation to prohibit and abolish life imprisonment without parole for those under 18 at the time of the crime, irrespective of the nature and circumstances of the crime committed, and to commute the sentences for those currently serving such sentences.

Guantanamo Bay

22. While welcoming the commitment made by the President of the United States to close the detention facilities at Guantanamo Bay in January 2009, the Committee remains concerned that non-citizens continue to be arbitrarily detained without effective and equal access to the ordinary criminal justice system and at the risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment (arts. 2, 5 and 6).

The Committee urges the State party to end the system of administrative detention without charge or trial and ensure the closure of the Guantanamo Bay facility without further delay. Recalling its general recommendation No.30 (2004) on non-citizens and general recommendation No.31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, it also calls upon the State party to guarantee the right of detainees to a fair trial in compliance with international human rights standards, and to ensure that any detainee who is not charged and tried is released immediately.

Access to legal aid

23. While welcoming the steps taken by the State party to improve access to justice by indigent persons, such as the Access to Justice Initiative launched in March 2010, the Committee remains concerned at the ongoing challenges faced by indigent persons belonging to racial and ethnic minorities to effectively access legal counsel in criminal proceedings in practice. It also reiterates its concern at the lack of a generally recognized right to counsel in civil proceedings (CERD/C/USA/CO/6, para.22), which disproportionately affects indigent persons belonging to racial and ethnic minorities to seek an effective remedy in matters such as evictions, foreclosures, domestic violence, discrimination in employment, termination of subsistence income or medical assistance, loss of child custody, and deportation (art. 6).

The Committee reiterates its previous recommendation that the State party adopt all necessary measures to eliminate the disproportionate impact of systemic inadequacies in criminal defence programmes on indigent defendants belonging to racial and ethnic minorities, including by improving the quality of legal representation provided to indigent defendants and ensuring that public legal aid systems are adequately funded and supervised. It also recommends that the State party allocate sufficient resources to ensure effective access to legal representation for indigent persons belonging to racial and ethnic minorities in civil proceedings, particularly with regard to proceedings that have serious consequences for their security and stability, such as evictions, foreclosures, domestic violence, discrimination in employment, termination of subsistence income or medical assistance, loss of child custody, and deportation proceedings.

Rights of indigenous peoples

24. While acknowledging the steps taken by the State party to recognize the culture and traditions of indigenous peoples, including the support for the United Nations Declaration on the Rights of Indigenous Peoples announced by President Obama on 16 December 2010, the issuance of Executive Orders 13007 and 13175 and the high-level conferences organized by President Obama with tribal leaders, the Committee remains concerned at:

(a) Lack of concrete progress achieved to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policy-making and decisions that affect them;

(b) The ongoing obstacles to the recognition of tribes, including high costs and lengthy and burdensome procedural requirements;

(c) Insufficient measures taken to protect the sacred sites of indigenous peoples that are essential for the preservation of their religious, cultural and spiritual practices against polluting and disruptive activities, resulting inter alia from resource extraction, industrial development, construction of border fences and walls, tourism, and urbanization;

(d) The continued and previous removal of indigenous children from their families and communities through the United States child welfare system; and

(e) The lack of sufficient and adequate information provided by the State party on the measures taken to implement the recommendations of the Committee in its Decision 1(68) regarding the Western Shoshone peoples (CERD/C/USA/DEC/1) adopted under the Early Warning and Urgent Action Procedure in 2006, as well as the ongoing infringement of the rights of the Western Shoshone peoples (arts.5 and 6).

Recalling its general recommendation No. 23 (1997) on indigenous peoples, the Committee calls upon the State party to:

(a) **Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them based on their free, prior and informed consent;**

(b) **Take effective measures to eliminate undue obstacles to the recognition of tribes;**

(c) **Adopt concrete measures to effectively protect the sacred sites of indigenous peoples as a result of the State party's development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable;**

(d) **Effectively implement and enforce the Indian Child Welfare Act of 1978 to halt the removal of indigenous children from their families and communities; and**

(e) **Take immediate action to implement the recommendations contained in Decision 1(68) and provide comprehensive information to the Committee on concrete measures taken in this regard.**

National Action Plan to combat racial discrimination

25. While noting various measures taken by the State party to combat prejudice and promote understanding and tolerance, the Committee expresses concern at the absence of a National Action Plan to combat racial discrimination and to implement the recommendations of the Committee, as well as the lack of inclusion of human rights in the school curricula (art. 7).

The Committee recommends that the State party adopt a National Action Plan to combat structural racial discrimination, and to ensure that school curricula, textbooks and teaching materials be informed by and address human rights themes and seek to promote understanding among racial and ethnic minority groups.

D. Other recommendations

Request for further information

26. The Committee requests the State party to provide, in its next periodic report, detailed information on: (a) the implementation of the provisions of the Convention in non-autonomous territories administered by the United States; (b) the rate at which African American children in foster care are prescribed psychotropic drugs; (c) the use of non-consensual psychiatric treatment and other restrictive and coercive practices on racial and ethnic minorities in mental health services; and (d) the current status of political activists from the Civil Rights era who reportedly continue to be incarcerated.

Declaration under article 14

27. The committee recommends that the state party consider making a declaration in accordance with article 14 of the convention, recognizing the competence of the committee to receive and consider individual complaints.

Amendment to article 8 of the Convention

28. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Ratification of other treaties

29. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Covenant on Economic, Social and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Convention on the Rights of Persons with Disabilities (2006), and International Convention for the Protection of All Persons from Enforced Disappearance (2006).

Follow-up to the Durban Declaration and Programme of Action

30. While noting the position of State party concerning the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in September 2001, the Committee, in light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference held in Geneva in April 2009, invites the State party to take into account the elements considered pertinent in the Durban Declaration and Programme of Action as well as in the outcome document of the Durban Review Conference when implementing the Convention in its domestic legal order. The Committee requests the State party to include in its next periodic report specific information on action plans and other measures taken in this regard.

Consultations with organizations of civil society

31. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to these concluding observations.

Dissemination

32. The Committee recommends that the State party increase its efforts to raise public awareness and knowledge of the Convention throughout its territory, make the State party reports readily available and accessible to the public at the time of their submission, and widely publicize the concluding observations of the Committee in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

33. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information,

within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 17(a) and (b), 18 and 22 above.

Paragraphs of particular importance

34. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 8, 12, 16 and 24, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

35. The Committee recommends that the State party submit its tenth, eleventh and twelfth periodic reports in a single document by 20 November 2017, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).



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Profile of General Population and Housing Characteristics: 2010

2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>

Geography: ZCTA5 87105

Subject	Number	Percent
SEX AND AGE		
Total population	57,680	100.0
Under 5 years	4,243	7.4
5 to 9 years	4,420	7.7
10 to 14 years	4,292	7.4
15 to 19 years	4,414	7.7
20 to 24 years	3,964	6.9
25 to 29 years	3,902	6.8
30 to 34 years	3,507	6.1
35 to 39 years	3,456	6.0
40 to 44 years	3,611	6.3
45 to 49 years	4,204	7.3
50 to 54 years	4,001	6.9
55 to 59 years	3,486	6.0
60 to 64 years	3,098	5.4
65 to 69 years	2,237	3.9
70 to 74 years	1,850	3.2
75 to 79 years	1,340	2.3
80 to 84 years	938	1.6
85 years and over	717	1.2
Median age (years)	35.1	(X)
16 years and over	43,860	76.0
18 years and over	42,082	73.0
21 years and over	39,475	68.4
62 years and over	8,797	15.3
65 years and over	7,082	12.3
Male population		
Under 5 years	2,180	3.8
5 to 9 years	2,176	3.8
10 to 14 years	2,167	3.8
15 to 19 years	2,258	3.9
20 to 24 years	1,989	3.4
25 to 29 years	1,933	3.4
30 to 34 years	1,756	3.0
35 to 39 years	1,718	3.0
40 to 44 years	1,829	3.2
45 to 49 years	2,167	3.8
50 to 54 years	1,958	3.4
55 to 59 years	1,724	3.0
60 to 64 years	1,518	2.6
65 to 69 years	1,001	1.7
70 to 74 years	853	1.5

Exhibit B

Subject	Number	Percent
75 to 79 years	597	1.0
80 to 84 years	383	0.7
85 years and over	253	0.4
Median age (years)	34.3	(X)
16 years and over	21,503	37.3
18 years and over	20,609	35.7
21 years and over	19,276	33.4
62 years and over	3,929	6.8
65 years and over	3,087	5.4
Female population	29,220	50.7
Under 5 years	2,063	3.6
5 to 9 years	2,244	3.9
10 to 14 years	2,125	3.7
15 to 19 years	2,156	3.7
20 to 24 years	1,975	3.4
25 to 29 years	1,969	3.4
30 to 34 years	1,751	3.0
35 to 39 years	1,738	3.0
40 to 44 years	1,782	3.1
45 to 49 years	2,037	3.5
50 to 54 years	2,043	3.5
55 to 59 years	1,762	3.1
60 to 64 years	1,580	2.7
65 to 69 years	1,236	2.1
70 to 74 years	997	1.7
75 to 79 years	743	1.3
80 to 84 years	555	1.0
85 years and over	464	0.8
Median age (years)	35.9	(X)
16 years and over	22,357	38.8
18 years and over	21,473	37.2
21 years and over	20,199	35.0
62 years and over	4,868	8.4
65 years and over	3,995	6.9
RACE		
Total population	57,680	100.0
One Race	55,383	96.0
White	33,549	58.2
Black or African American	774	1.3
American Indian and Alaska Native	2,787	4.8
Asian	228	0.4
Asian Indian	29	0.1
Chinese	35	0.1
Filipino	67	0.1
Japanese	27	0.0
Korean	23	0.0
Vietnamese	23	0.0
Other Asian [1]	24	0.0
Native Hawaiian and Other Pacific Islander	21	0.0
Native Hawaiian	9	0.0
Guamanian or Chamorro	2	0.0
Samoan	1	0.0
Other Pacific Islander [2]	9	0.0
Some Other Race	18,024	31.2

Subject	Number	Percent
Two or More Races	2,297	4.0
White; American Indian and Alaska Native [3]	307	0.5
White; Asian [3]	83	0.1
White; Black or African American [3]	133	0.2
White; Some Other Race [3]	1,246	2.2
Race alone or in combination with one or more other races: [4]		
White	35,447	61.5
Black or African American	1,087	1.9
American Indian and Alaska Native	3,385	5.9
Asian	434	0.8
Native Hawaiian and Other Pacific Islander	100	0.2
Some Other Race	19,655	34.1
HISPANIC OR LATINO		
Total population	57,680	100.0
Hispanic or Latino (of any race)	45,762	79.3
Mexican	28,953	50.2
Puerto Rican	160	0.3
Cuban	172	0.3
Other Hispanic or Latino [5]	16,477	28.6
Not Hispanic or Latino	11,918	20.7
HISPANIC OR LATINO AND RACE		
Total population	57,680	100.0
Hispanic or Latino	45,762	79.3
White alone	25,019	43.4
Black or African American alone	241	0.4
American Indian and Alaska Native alone	705	1.2
Asian alone	80	0.1
Native Hawaiian and Other Pacific Islander alone	7	0.0
Some Other Race alone	17,829	30.9
Two or More Races	1,881	3.3
Not Hispanic or Latino	11,918	20.7
White alone	8,530	14.8
Black or African American alone	533	0.9
American Indian and Alaska Native alone	2,082	3.6
Asian alone	148	0.3
Native Hawaiian and Other Pacific Islander alone	14	0.0
Some Other Race alone	195	0.3
Two or More Races	416	0.7
RELATIONSHIP		
Total population	57,680	100.0
In households	57,145	99.1
Householder	19,562	33.9
Spouse [6]	8,714	15.1
Child	18,453	32.0
Own child under 18 years	12,098	21.0
Other relatives	6,832	11.8
Under 18 years	3,119	5.4
65 years and over	710	1.2
Nonrelatives	3,584	6.2
Under 18 years	300	0.5
65 years and over	172	0.3
Unmarried partner	1,876	3.3
In group quarters	535	0.9
Institutionalized population	56	0.1
Male	29	0.1

Subject	Number	Percent
Female	27	0.0
Noninstitutionalized population	479	0.8
Male	212	0.4
Female	267	0.5
HOUSEHOLDS BY TYPE		
Total households	19,562	100.0
Family households (families) [7]	14,221	72.7
With own children under 18 years	6,202	31.7
Husband-wife family	8,714	44.5
With own children under 18 years	3,611	18.5
Male householder, no wife present	1,782	9.1
With own children under 18 years	864	4.4
Female householder, no husband present	3,725	19.0
With own children under 18 years	1,727	8.8
Nonfamily households [7]	5,341	27.3
Householder living alone	4,239	21.7
Male	2,192	11.2
65 years and over	542	2.8
Female	2,047	10.5
65 years and over	934	4.8
Households with individuals under 18 years	7,733	39.5
Households with individuals 65 years and over	5,238	26.8
Average household size	2.92	(X)
Average family size [7]	3.39	(X)
HOUSING OCCUPANCY		
Total housing units	20,949	100.0
Occupied housing units	19,562	93.4
Vacant housing units	1,387	6.6
For rent	300	1.4
Rented, not occupied	17	0.1
For sale only	229	1.1
Sold, not occupied	44	0.2
For seasonal, recreational, or occasional use	75	0.4
All other vacants	722	3.4
Homeowner vacancy rate (percent) [8]	1.6	(X)
Rental vacancy rate (percent) [9]	5.3	(X)
HOUSING TENURE		
Occupied housing units	19,562	100.0
Owner-occupied housing units	14,175	72.5
Population in owner-occupied housing units	41,143	(X)
Average household size of owner-occupied units	2.90	(X)
Renter-occupied housing units	5,387	27.5
Population in renter-occupied housing units	16,002	(X)
Average household size of renter-occupied units	2.97	(X)

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000.

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South

American countries. It also includes general origin responses such as "Latino" or "Hispanic."

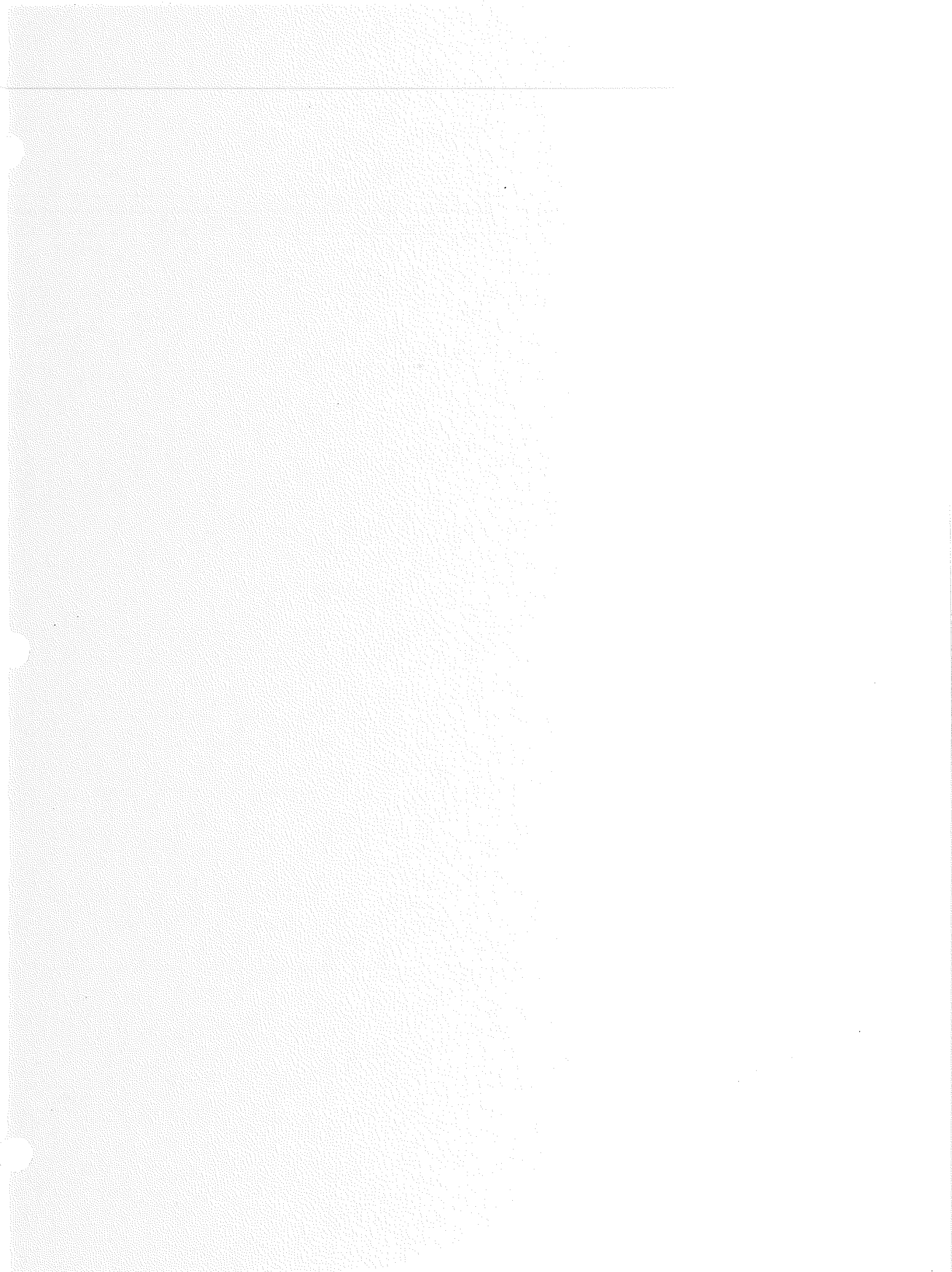
[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.



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Profile of General Population and Housing Characteristics: 2010

2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>.

Geography: Albuquerque city, New Mexico

Subject	Number	Percent
SEX AND AGE		
Total population	545,852 ^(r46987)	100.0
Under 5 years	38,000	7.0
5 to 9 years	36,883	6.8
10 to 14 years	34,878	6.4
15 to 19 years	37,104	6.8
20 to 24 years	42,276	7.7
25 to 29 years	43,986	8.1
30 to 34 years	38,875	7.1
35 to 39 years	35,392	6.5
40 to 44 years	34,664	6.4
45 to 49 years	37,817	6.9
50 to 54 years	37,269	6.8
55 to 59 years	33,790	6.2
60 to 64 years	29,019	5.3
65 to 69 years	20,110	3.7
70 to 74 years	14,741	2.7
75 to 79 years	12,025	2.2
80 to 84 years	9,463	1.7
85 years and over	9,560	1.8
Median age (years)	35.1	(X)
16 years and over	429,090	78.6
18 years and over	414,959	76.0
21 years and over	390,583	71.6
62 years and over	82,565	15.1
65 years and over	65,899	12.1
Male population		
Under 5 years	19,523	3.6
5 to 9 years	18,621	3.4
10 to 14 years	17,699	3.2
15 to 19 years	18,597	3.4
20 to 24 years	20,938	3.8
25 to 29 years	21,934	4.0
30 to 34 years	19,528	3.6
35 to 39 years	17,666	3.2
40 to 44 years	17,113	3.1
45 to 49 years	18,526	3.4
50 to 54 years	17,741	3.3
55 to 59 years	15,652	2.9
60 to 64 years	13,743	2.5
65 to 69 years	9,263	1.7
70 to 74 years	6,473	1.2

Exhibit C

Subject	Number	Percent
75 to 79 years	5,141	0.9
80 to 84 years	3,748	0.7
85 years and over	3,200	0.6
Median age (years)	33.8	(X)
16 years and over	205,694	37.7
18 years and over	198,538	36.4
21 years and over	186,535	34.2
62 years and over	35,685	6.5
65 years and over	27,825	5.1
Female population	280,746	51.4
Under 5 years	18,477	3.4
5 to 9 years	18,262	3.3
10 to 14 years	17,179	3.1
15 to 19 years	18,507	3.4
20 to 24 years	21,338	3.9
25 to 29 years	22,052	4.0
30 to 34 years	19,347	3.5
35 to 39 years	17,726	3.2
40 to 44 years	17,551	3.2
45 to 49 years	19,291	3.5
50 to 54 years	19,528	3.6
55 to 59 years	18,138	3.3
60 to 64 years	15,276	2.8
65 to 69 years	10,847	2.0
70 to 74 years	8,268	1.5
75 to 79 years	6,884	1.3
80 to 84 years	5,715	1.0
85 years and over	6,360	1.2
Median age (years)	36.5	(X)
16 years and over	223,396	40.9
18 years and over	216,421	39.6
21 years and over	204,048	37.4
62 years and over	46,880	8.6
65 years and over	38,074	7.0
RACE		
Total population	545,852 ⁽⁴⁶⁹⁸⁷⁾	100.0
One Race	520,693	95.4
White	380,552	69.7
Black or African American	17,933	3.3
American Indian and Alaska Native	25,087	4.6
Asian	14,450	2.6
Asian Indian	2,143	0.4
Chinese	2,877	0.5
Filipino	1,799	0.3
Japanese	921	0.2
Korean	1,143	0.2
Vietnamese	3,649	0.7
Other Asian [1]	1,918	0.4
Native Hawaiian and Other Pacific Islander	613	0.1
Native Hawaiian	249	0.0
Guamanian or Chamorro	142	0.0
Samoan	71	0.0
Other Pacific Islander [2]	151	0.0
Some Other Race	82,058	15.0



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2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>.

Geography: ZCTA5 87107

Subject	Number	Percent
SEX AND AGE		
Total population	31,183	100.0
Under 5 years	1,877	6.0
5 to 9 years	1,888	6.1
10 to 14 years	1,833	5.9
15 to 19 years	2,096	6.7
20 to 24 years	1,945	6.2
25 to 29 years	2,014	6.5
30 to 34 years	1,812	5.8
35 to 39 years	1,788	5.7
40 to 44 years	1,872	6.0
45 to 49 years	2,293	7.4
50 to 54 years	2,494	8.0
55 to 59 years	2,504	8.0
60 to 64 years	2,109	6.8
65 to 69 years	1,465	4.7
70 to 74 years	1,125	3.6
75 to 79 years	805	2.6
80 to 84 years	653	2.1
85 years and over	610	2.0
Median age (years)	40.8	(X)
16 years and over	25,162	80.7
18 years and over	24,289	77.9
21 years and over	23,076	74.0
62 years and over	5,861	18.8
65 years and over	4,658	14.9
Male population	15,257	48.9
Under 5 years	991	3.2
5 to 9 years	939	3.0
10 to 14 years	969	3.1
15 to 19 years	1,186	3.8
20 to 24 years	935	3.0
25 to 29 years	1,024	3.3
30 to 34 years	897	2.9
35 to 39 years	916	2.9
40 to 44 years	911	2.9
45 to 49 years	1,128	3.6
50 to 54 years	1,210	3.9
55 to 59 years	1,173	3.8
60 to 64 years	990	3.2
65 to 69 years	666	2.1
70 to 74 years	495	1.6

Exhibit D

Subject	Number	Percent
75 to 79 years	358	1.1
80 to 84 years	254	0.8
85 years and over	215	0.7
Median age (years)	38.8	(X)
16 years and over	12,138	38.9
18 years and over	11,644	37.3
21 years and over	10,985	35.2
62 years and over	2,545	8.2
65 years and over	1,988	6.4
Female population	15,926	51.1
Under 5 years	886	2.8
5 to 9 years	949	3.0
10 to 14 years	864	2.8
15 to 19 years	910	2.9
20 to 24 years	1,010	3.2
25 to 29 years	990	3.2
30 to 34 years	915	2.9
35 to 39 years	872	2.8
40 to 44 years	961	3.1
45 to 49 years	1,165	3.7
50 to 54 years	1,284	4.1
55 to 59 years	1,331	4.3
60 to 64 years	1,119	3.6
65 to 69 years	799	2.6
70 to 74 years	630	2.0
75 to 79 years	447	1.4
80 to 84 years	399	1.3
85 years and over	395	1.3
Median age (years)	42.9	(X)
16 years and over	13,024	41.8
18 years and over	12,645	40.6
21 years and over	12,091	38.8
62 years and over	3,316	10.6
65 years and over	2,670	8.6
RACE		
Total population	31,183	100.0
One Race	29,830	95.7
White	21,980	70.5
Black or African American	418	1.3
American Indian and Alaska Native	1,208	3.9
Asian	225	0.7
Asian Indian	27	0.1
Chinese	44	0.1
Filipino	38	0.1
Japanese	28	0.1
Korean	21	0.1
Vietnamese	35	0.1
Other Asian [1]	32	0.1
Native Hawaiian and Other Pacific Islander	29	0.1
Native Hawaiian	16	0.1
Guamanian or Chamorro	3	0.0
Samoan	3	0.0
Other Pacific Islander [2]	7	0.0
Some Other Race	5,970	19.1

Subject	Number	Percent
Two or More Races	1,353	4.3
White; American Indian and Alaska Native [3]	237	0.8
White; Asian [3]	126	0.4
White; Black or African American [3]	106	0.3
White; Some Other Race [3]	614	2.0
Race alone or in combination with one or more other races: [4]		
White	23,160	74.3
Black or African American	644	2.1
American Indian and Alaska Native	1,577	5.1
Asian	427	1.4
Native Hawaiian and Other Pacific Islander	76	0.2
Some Other Race	6,752	21.7
HISPANIC OR LATINO		
Total population	31,183	100.0
Hispanic or Latino (of any race)	17,650	56.6
Mexican	9,911	31.8
Puerto Rican	102	0.3
Cuban	49	0.2
Other Hispanic or Latino [5]	7,588	24.3
Not Hispanic or Latino	13,533	43.4
HISPANIC OR LATINO AND RACE		
Total population	31,183	100.0
Hispanic or Latino	17,650	56.6
White alone	10,319	33.1
Black or African American alone	104	0.3
American Indian and Alaska Native alone	290	0.9
Asian alone	39	0.1
Native Hawaiian and Other Pacific Islander alone	9	0.0
Some Other Race alone	5,911	19.0
Two or More Races	978	3.1
Not Hispanic or Latino	13,533	43.4
White alone	11,661	37.4
Black or African American alone	314	1.0
American Indian and Alaska Native alone	918	2.9
Asian alone	186	0.6
Native Hawaiian and Other Pacific Islander alone	20	0.1
Some Other Race alone	59	0.2
Two or More Races	375	1.2
RELATIONSHIP		
Total population	31,183	100.0
In households	30,736	98.6
Householder	13,093	42.0
Spouse [6]	5,024	16.1
Child	8,126	26.1
Own child under 18 years	5,644	18.1
Other relatives	2,249	7.2
Under 18 years	894	2.9
65 years and over	312	1.0
Nonrelatives	2,244	7.2
Under 18 years	145	0.5
65 years and over	107	0.3
Unmarried partner	1,267	4.1
In group quarters	447	1.4
Institutionalized population	354	1.1
Male	296	0.9

Subject	Number	Percent
Female	58	0.2
Noninstitutionalized population	93	0.3
Male	77	0.2
Female	16	0.1
HOUSEHOLDS BY TYPE		
Total households	13,093	100.0
Family households (families) [7]	7,822	59.7
With own children under 18 years	3,149	24.1
Husband-wife family	5,024	38.4
With own children under 18 years	1,735	13.3
Male householder, no wife present	883	6.7
With own children under 18 years	456	3.5
Female householder, no husband present	1,915	14.6
With own children under 18 years	958	7.3
Nonfamily households [7]	5,271	40.3
Householder living alone	4,187	32.0
Male	1,905	14.5
65 years and over	407	3.1
Female	2,282	17.4
65 years and over	900	6.9
Households with individuals under 18 years	3,703	28.3
Households with individuals 65 years and over	3,528	26.9
Average household size	2.35	(X)
Average family size [7]	2.97	(X)
HOUSING OCCUPANCY		
Total housing units	14,074	100.0
Occupied housing units	13,093	93.0
Vacant housing units	981	7.0
For rent	372	2.6
Rented, not occupied	18	0.1
For sale only	132	0.9
Sold, not occupied	37	0.3
For seasonal, recreational, or occasional use	98	0.7
All other vacants	324	2.3
Homeowner vacancy rate (percent) [8]	1.5	(X)
Rental vacancy rate (percent) [9]	7.4	(X)
HOUSING TENURE		
Occupied housing units	13,093	100.0
Owner-occupied housing units	8,463	64.6
Population in owner-occupied housing units	20,085	(X)
Average household size of owner-occupied units	2.37	(X)
Renter-occupied housing units	4,630	35.4
Population in renter-occupied housing units	10,651	(X)
Average household size of renter-occupied units	2.30	(X)

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000.

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South

American countries. It also includes general origin responses such as "Latino" or "Hispanic."

[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.





DP-1

Profile of General Population and Housing Characteristics: 2010

2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>

Geography: ZCTA5 87106

Subject	Number	Percent
SEX AND AGE		
Total population	27,013	100.0
Under 5 years	1,414	5.2
5 to 9 years	1,178	4.4
10 to 14 years	1,052	3.9
15 to 19 years	2,915	10.8
20 to 24 years	4,620	17.1
25 to 29 years	3,101	11.5
30 to 34 years	2,065	7.6
35 to 39 years	1,526	5.6
40 to 44 years	1,309	4.8
45 to 49 years	1,381	5.1
50 to 54 years	1,466	5.4
55 to 59 years	1,517	5.6
60 to 64 years	1,161	4.3
65 to 69 years	747	2.8
70 to 74 years	487	1.8
75 to 79 years	399	1.5
80 to 84 years	315	1.2
85 years and over	360	1.3
Median age (years)	28.6	(X)
16 years and over	23,175	85.8
18 years and over	22,765	84.3
21 years and over	19,264	71.3
62 years and over	2,957	10.9
65 years and over	2,308	8.5
Male population	13,561	50.2
Under 5 years	710	2.6
5 to 9 years	627	2.3
10 to 14 years	529	2.0
15 to 19 years	1,349	5.0
20 to 24 years	2,378	8.8
25 to 29 years	1,649	6.1
30 to 34 years	1,103	4.1
35 to 39 years	800	3.0
40 to 44 years	696	2.6
45 to 49 years	701	2.6
50 to 54 years	744	2.8
55 to 59 years	724	2.7
60 to 64 years	566	2.1
65 to 69 years	353	1.3
70 to 74 years	213	0.8

Exhibit E

Subject	Number	Percent
75 to 79 years	170	0.6
80 to 84 years	131	0.5
85 years and over	118	0.4
Median age (years)	28.4	(X)
16 years and over	11,603	43.0
18 years and over	11,383	42.1
21 years and over	9,744	36.1
62 years and over	1,304	4.8
65 years and over	985	3.6
Female population	13,452	49.8
Under 5 years	704	2.6
5 to 9 years	551	2.0
10 to 14 years	523	1.9
15 to 19 years	1,566	5.8
20 to 24 years	2,242	8.3
25 to 29 years	1,452	5.4
30 to 34 years	962	3.6
35 to 39 years	726	2.7
40 to 44 years	613	2.3
45 to 49 years	680	2.5
50 to 54 years	722	2.7
55 to 59 years	793	2.9
60 to 64 years	595	2.2
65 to 69 years	394	1.5
70 to 74 years	274	1.0
75 to 79 years	229	0.8
80 to 84 years	184	0.7
85 years and over	242	0.9
Median age (years)	28.8	(X)
16 years and over	11,572	42.8
18 years and over	11,382	42.1
21 years and over	9,520	35.2
62 years and over	1,653	6.1
65 years and over	1,323	4.9
RACE		
Total population	27,013	100.0
One Race	25,691	95.1
White	18,826	69.7
Black or African American	1,112	4.1
American Indian and Alaska Native	1,423	5.3
Asian	1,082	4.0
Asian Indian	222	0.8
Chinese	354	1.3
Filipino	53	0.2
Japanese	83	0.3
Korean	91	0.3
Vietnamese	119	0.4
Other Asian [1]	160	0.6
Native Hawaiian and Other Pacific Islander	22	0.1
Native Hawaiian	7	0.0
Guamanian or Chamorro	3	0.0
Samoan	3	0.0
Other Pacific Islander [2]	9	0.0
Some Other Race	3,226	11.9

Subject	Number	Percent
Two or More Races	1,322	4.9
White; American Indian and Alaska Native [3]	248	0.9
White; Asian [3]	219	0.8
White; Black or African American [3]	153	0.6
White; Some Other Race [3]	410	1.5
Race alone or in combination with one or more other races: [4]		
White	19,952	73.9
Black or African American	1,431	5.3
American Indian and Alaska Native	1,806	6.7
Asian	1,390	5.1
Native Hawaiian and Other Pacific Islander	77	0.3
Some Other Race	3,780	14.0
HISPANIC OR LATINO		
Total population	27,013	100.0
Hispanic or Latino (of any race)	9,387	34.7
Mexican	5,852	21.7
Puerto Rican	133	0.5
Cuban	165	0.6
Other Hispanic or Latino [5]	3,237	12.0
Not Hispanic or Latino	17,626	65.3
HISPANIC OR LATINO AND RACE		
Total population	27,013	100.0
Hispanic or Latino	9,387	34.7
White alone	5,131	19.0
Black or African American alone	156	0.6
American Indian and Alaska Native alone	206	0.8
Asian alone	38	0.1
Native Hawaiian and Other Pacific Islander alone	9	0.0
Some Other Race alone	3,150	11.7
Two or More Races	697	2.6
Not Hispanic or Latino	17,626	65.3
White alone	13,695	50.7
Black or African American alone	956	3.5
American Indian and Alaska Native alone	1,217	4.5
Asian alone	1,044	3.9
Native Hawaiian and Other Pacific Islander alone	13	0.0
Some Other Race alone	76	0.3
Two or More Races	625	2.3
RELATIONSHIP		
Total population	27,013	100.0
In households	24,356	90.2
Householder	12,022	44.5
Spouse [6]	2,897	10.7
Child	4,795	17.8
Own child under 18 years	3,706	13.7
Other relatives	1,261	4.7
Under 18 years	408	1.5
65 years and over	105	0.4
Nonrelatives	3,381	12.5
Under 18 years	73	0.3
65 years and over	54	0.2
Unmarried partner	1,237	4.6
In group quarters	2,657	9.8
Institutionalized population	41	0.2
Male	16	0.1

Subject	Number	Percent
Female	25	0.1
Noninstitutionalized population	2,616	9.7
Male	1,238	4.6
Female	1,378	5.1
HOUSEHOLDS BY TYPE		
Total households	12,022	100.0
Family households (families) [7]	4,851	40.4
With own children under 18 years	2,176	18.1
Husband-wife family	2,897	24.1
With own children under 18 years	1,140	9.5
Male householder, no wife present	604	5.0
With own children under 18 years	275	2.3
Female householder, no husband present	1,350	11.2
With own children under 18 years	761	6.3
Nonfamily households [7]	7,171	59.6
Householder living alone	5,056	42.1
Male	2,694	22.4
65 years and over	292	2.4
Female	2,362	19.6
65 years and over	579	4.8
Households with individuals under 18 years	2,421	20.1
Households with individuals 65 years and over	1,831	15.2
Average household size	2.03	(X)
Average family size [7]	2.85	(X)
HOUSING OCCUPANCY		
Total housing units	13,078	100.0
Occupied housing units	12,022	91.9
Vacant housing units	1,056	8.1
For rent	558	4.3
Rented, not occupied	27	0.2
For sale only	93	0.7
Sold, not occupied	30	0.2
For seasonal, recreational, or occasional use	107	0.8
All other vacants	241	1.8
Homeowner vacancy rate (percent) [8]	2.1	(X)
Rental vacancy rate (percent) [9]	6.8	(X)
HOUSING TENURE		
Occupied housing units	12,022	100.0
Owner-occupied housing units	4,408	36.7
Population in owner-occupied housing units	9,655	(X)
Average household size of owner-occupied units	2.19	(X)
Renter-occupied housing units	7,614	63.3
Population in renter-occupied housing units	14,701	(X)
Average household size of renter-occupied units	1.93	(X)

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000.

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South

American countries. It also includes general origin responses such as "Latino" or "Hispanic."

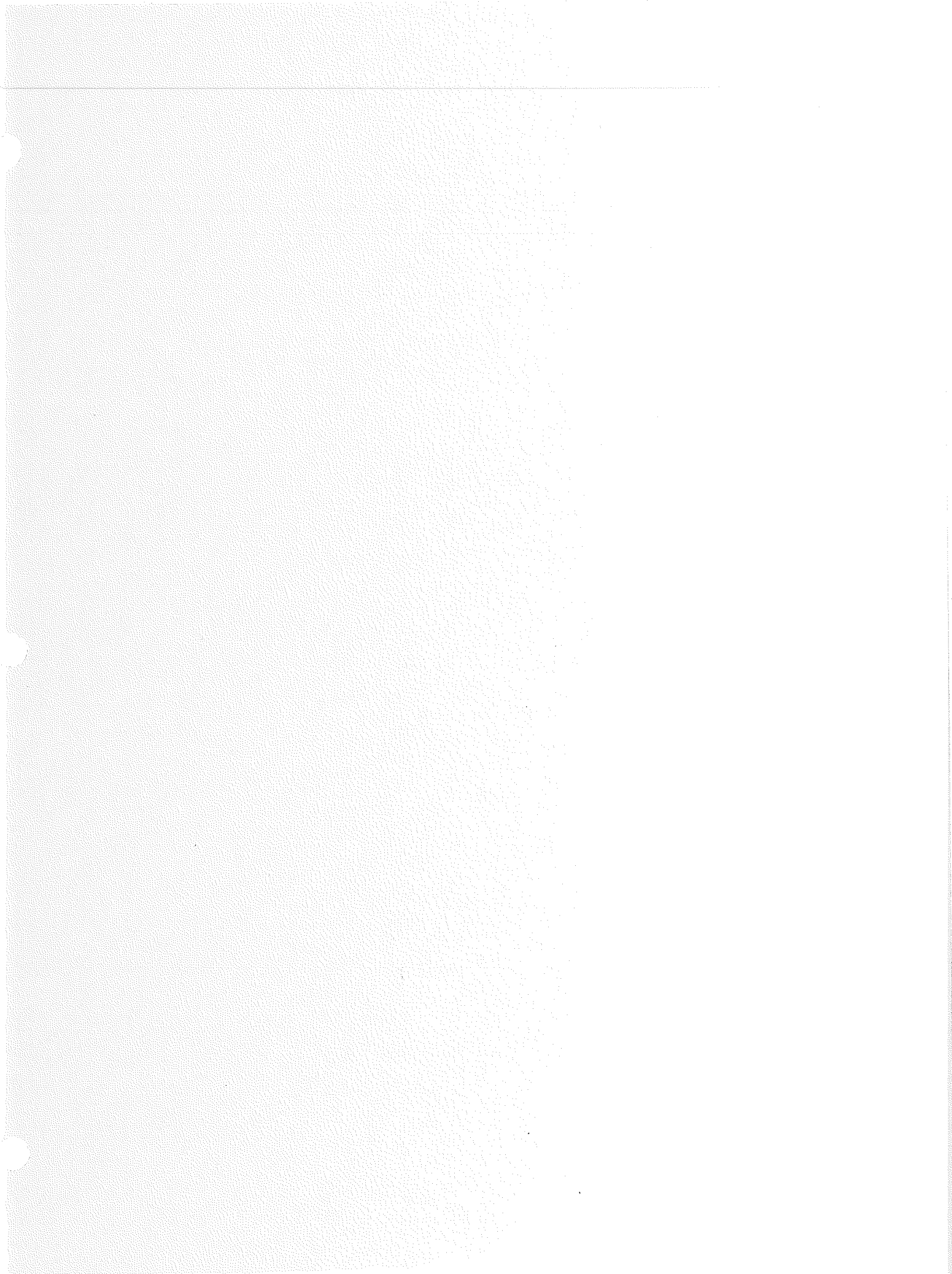
[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.



STATE OF NEW MEXICO ALBUQUERQUE/BERNALILLO COUNTY AIR
QUALITY CONTROL BOARD

IN THE MATTER OF THE TWO PETITIONS FOR A
HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 2037-M1 ISSUED TO
SMITH'S FOOD & DRUG CENTERS, INC.

Georgianna E. Peña-Kues, Petitioner,

No. AQCB 2012-1 and

Andy Carrasco, James A. Nelson and
Summit Park Neighborhood Association,
Petitioners.

No. AQCB 2012-2

13 FEB 14 10:00 AM

FINAL ORDER AND STATEMENT OF REASONS

Pursuant to 20.11.81.18.D (2) NMAC, the Albuquerque/Bernalillo County Air Quality Control Board issues this Final Order in this matter, setting aside the Hearing Officer's recommended decision and reversing the action of the Air Quality Division of the City of Albuquerque Environmental Health Department. As reasons for doing so the Board States the following:

1. The hearing on the merits regarding Petition AQCB 2012-1 and Petition AQCB 2012-2 was held On August 21, 22, and 23, 2012 by the Air Board's Hearing Officer, with members of the Board in attendance.
2. Subsequent to post-hearing procedures conducted in accordance with 20.11.81 NMAC, the Hearing Officer on December 7, 2012 filed with the Board her Hearing Officer's Report, Recommended Findings of Fact and Conclusions of Law, and a proposed Final Order.
3. At the regularly scheduled monthly meeting of the Board held on January 9, 2013, the Board deliberated on the merits of this appeal, in accordance with 20.11.81.18 NMAC. Each Board member verified that he or she had either attended the entire three day hearing or had read

the transcript for any portion of the hearing which he or she did not attend. Deliberation, including a possible decision on the merits, was listed as an item on the meeting agenda, which was publicly available more than 24 hours before the meeting. The deliberation and decision were conducted in a meeting open to the public, and were transcribed by a court reporter.

4. At the January 9, 2013 meeting, by a majority vote the Board adopted a resolution reversing the Division's April 17th, 2012 issuance of minor source air quality Authority-to-Construct Permit Modification No. 2037-M1 (Resolution 2013-01). In support of the reversal, the resolution stated that "The Air Quality Control Board is required to protect public health and welfare. Increases in throughput increase risks to public health. The quality-of-life concerns raised by the community could be indirectly related to air quality."

5. The resolution reversing the decision indicated that the Board rejected the Hearing Officer's proposed Findings of Fact, Conclusions of Law, and Recommended Decision. After adopting the resolution, the Board indicated that it did not dispute any of the proposed Findings of Fact. The Hearing Officer's proposed Findings of Fact are hereby adopted in their entirety and incorporated herein by reference, notwithstanding anything in Resolution 2013-01.

6. In further support of the reversal of the permit modification, the Board took exception to the following proposed Conclusions of Law submitted by the Hearing Officer, and directed counsel to amend them as indicated in the Board's deliberations:

a. Conclusion 7 is amended as follows: "The scope of the Board's review is to determine whether the Station "will or will not meet applicable local, state and federal air pollution standards and regulations[.]" Section 74-2-7(L)-and to ensure that air pollution is prevented or abated. NMSA, §§ 74-2-5.A"

b. Conclusion 23 is amended as follows: "The Department and the Air Board have no authority over traffic patterns, construction of streets and highways, traffic violations or fire violations within the City municipal boundaries. See NMSA, §§ 74-2-5.1, 74-2-5, & 74-2-7. The Board has an interest in minimizing air pollution caused by vehicles, to the extent allowed by the Air Act and the federal Clean Air Act. See NMSA, § 74-2-5.D."

c. Conclusion 27 is amended as follows: "20.11.41.18(B)(4) NMAC, which allows air quality permit conditions to impose "reasonable restrictions and limitations other than those relating specifically to emission limits or emission rates[.]" ~~does not broaden the scope of the Board's authority to include traffic planning, zoning, or any other matter beyond that which has been delegated to the Board by the NM Act.~~ authorizes permit conditions designed to effectuate the general purpose of the Board's regulations – to prevent or abate air pollution. See NMSA, § 74-2-5.A."

e. Conclusion 28 is amended as follows: "AQD gave ~~proper and~~ legally sufficient public notice regarding the proposed issuance of the original Permit No. 2037. NMSA 1978, § 74-2-7(B)(5); 20.11.41.14 NMAC."

f. Conclusion 31 is amended as follows: "AQD gave ~~proper and~~ legally sufficient public notice regarding the proposed issuance of Permit No. 2037-M1. NMSA 1978, § 74-2-7(B)(5); 20.11.41.14 NMAC."

g. Conclusion 37 is amended as follows: "Any person seeking to construct a new stationary source or modify an existing stationary source must obtain ~~an valid~~ authority-to-construct permit pursuant to 20.11.41NMAC."

h. Conclusion 48 is amended as follows: "Notwithstanding a written statement by Division staff apparently to the contrary, Smith's did not commence a "modification" to the

Station prior to AQD's issuance of Permit No. 2037-M1 as that term is used in the NM Act and in 20.11.41 NMAC. NMSA 1978, § 74-2-2(M); 20.11.41.2(B)(3)(c) and .7(H) NMAC.

i. Conclusion 52 is amended as follows: "~~Petitioners failed to carry~~ carried their burden of proving that the modification sought by Smith's ~~will~~ would violate any other provision of the NM Act or the Federal Act. NMSA 1978, § 74-2-7(C)(1)(c). Specifically, petitioners demonstrated by a preponderance of the evidence that the increase in throughput allowed by the modification would contribute indirectly to increased air pollution, in violation of the Air Act's mandate to the Board to prevent or abate air pollution. See NMSA 1978, § 74-2-5.A

j. Conclusion 56 is amended as follows: "The operation of the Smith's GDF facility in accordance with Permit #2037 M1 ~~will~~ would not violate ~~any provision of the Air Act, the City Joint Ordinance,~~ 20.11.41 NMAC, Authority to Construct, 20.11.42 NMAC, Operating Permits, 20.11.65 NMAC, Volatile Organic Compounds, 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, or 40 CFR 63, Subpart CCCCCC, but would increase air pollution and increase risks to public health, in violation of the Air Act's mandate to the Board to prevent or abate air pollution. See NMSA 1978, § 74-2-5.A,

k. Conclusion 57 is deleted.

l. Conclusion 58 is renumbered as 57 and amended as follows: "The Division's decision to issue Permit #2037 M1 was not arbitrary or capricious, ~~was supported by substantial evidence in the record, and was in accordance with the law. Accordingly, Petitioners' requested relief must be denied."~~

m. A new Conclusion 58 is inserted to read: "The Board's authorization to prevent or abate air pollution permits the Board to consider quality of life concerns that are directly or indirectly related to air quality. See NMSA 1978, § 74-2-2.B (defining air pollution in terms of

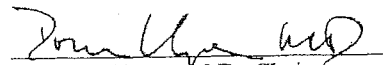
injury to human health or animal and plant life or interference with public welfare or reasonable use of property), See also NMSA 1978, § 74-2-5.E (requiring consideration of injury to health, welfare, visibility and property, and the public interest, including the social and economic value of the sources and subjects of air contaminants, when making regulations)."

n. A new Conclusion 59 is inserted to read: "Even if the Division's actions in considering and approving the requested permit modification complied with all regulatory provisions applicable at the time, including but not limited to Part 41 of 20.11 NMAC, the isolation of this decision process from that of other governmental entities resulted in a failure to consider all related factors, and thereby failed to achieve the purposes of the Air Act of protecting public health and welfare."

7. The Hearing Officer's proposed Conclusions of Law are incorporated herein by reference, with the modifications noted in paragraph 6 above.

IT IS THEREFORE ORDERED:

The Hearing Officer's recommended decision is set aside. The City's April 17, 2012 issuance of minor stationary source air quality Authority-to-Construct Permit Modification #2037-M1 to Smith's Food & Drug Center, Inc., is REVERSED.



Dr. Dona Upson, M.D., Chair
Albuquerque-Bernalillo County
Air Quality Control Board

NOTICE OF RIGHT TO REVIEW

Pursuant to Section 74-2-9, NMSA 1978, any person adversely affected by an administrative action of the Board may appeal to the court of appeals. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days following the date notice is given of this action.



Exhibit G

FINAL REPORT

Submitted to:
Albuquerque-Bernalillo County
Air Quality Control Board

By:
Environmental Justice Task Force

March 12, 2008



Executive Summary

Why the Environmental Justice (EJ) Task Force was formed: The purpose of EJ Task Force is to provide recommendations to the Air Quality Control Board (AQCB) to address environmental justice concerns in Albuquerque and Bernalillo County. The EJ Task Force recommendations relate primarily to *air quality*.

Scope of the EJ Task Force:

- Develop recommendations to implement the EJ objectives of the Task Force (i.e., immediate, short-term, and long-term recommendations)
- Identify barriers to implementing recommendations (e.g., data access and availability, training needs)
- Identify/develop a check list or other qualitative analysis for EJ regarding air quality
- Identify existing models (quantitative and qualitative analyses) for analyzing cumulative effects

Challenges of the EJ Task Force:

- Timeframe
- Varying stages of knowledge by different Task Force members on the various issues
- Diversity of Task Force members created a heightened potential for conflict
- Directives from the AQCB were broad in scope
- The Task Force was unable to set time frames for the recommendations

Key Task Force Recommendations - By Priority:

1. Support the adoption of environmental assessment provisions in regulations, statutes and ordinances at the state and local level.
2. Monitor sources to ensure that modeled emissions are reflective of actual emissions.
3. Explicitly consider EJ and cumulative impact in the permitting process and regulation.
4. Strengthen enforcement of regulations and permits.
5. Collaborate with the AQCB and the Environmental Improvement Board (EIB) to create new regulations or modify existing regulations.
6. Improve the monitoring network so that air quality at the neighborhood level can be assessed more effectively.
7. Ensure that human health and environmental monitoring data are collected, available, and analyzed appropriately through a collaborative center.
8. Create an EJ ombudsman position.
9. Ensure that membership on appointed boards and commissions accurately reflect composition of the community.

EJ Task Force Members

Jens Deichmann, AQCB

Maria Dominguez, AQCB Attorney

John Dufay, Albuquerque Public Schools

Doug Heatherly, Industry Representative

Lora Lucero, Land Use Planner and Attorney

Margaret Ménache, UNM, Family and Community Medicine Program

Amy Miller, Public Service Company of New Mexico

Felicia Orth, State Hearing Officer

Marla Painter, Affected Community Member

Debby Potter, AQCB

Kitty Richards, Bernalillo County, Office of Environmental Health

Tom Scharmen, New Mexico Department of Health, Public Health Division

Isreal Tavaréz, City of Albuquerque, Air Quality Division

Joe Valles, West Side Coalition of Neighborhood Associations

Richard Moore, Affected Community Member, could not attend due to other obligations

Rosemary Romero, Facilitator

Recommendations

Environmental Justice (EJ) Objectives of the EJ Task Force

The purpose of these objectives is to provide recommendations to the Air Quality Control Board (AQCB) to address EJ concerns in Albuquerque and Bernalillo County. The following objectives relate to *guidelines for air quality*.

Information included in this document was partially adapted from the following documents:

California EPA Policies: <http://www.arb.ca.gov/ch/programs/programs.htm>
EPA Region 6: <http://www.epa.gov/earth1r6/6dra/oejta/ej/index.html>

The EJ Task Force was provided with a list of seven objectives that were adopted by the AQCB at their Board meeting on 11 July 2007. After some discussion on the most effective way to develop and summarize its recommendations, the EJ Task Force decided to use the objectives, as adopted by the AQCB. To capture an alternative way of grouping the issues or problems and their recommended solutions, the tables of this report include a column labeled 'key concepts'. The key concepts represent the general overlying themes for specific problems, issues, and solutions. Key concepts include recommendations such as revising the permitting process, creating new policies, conducting assessments, and developing partnerships, to name a few.

The report is structured as a series of seven tables corresponding to each of the seven objectives. The objective is briefly stated and is followed by a vision statement of how things would look in an ideal world. The table itself has four columns corresponding to: key concepts, the statement of the issues/problems, strategies for recommended actions, and a suggested recommendation for a likely responsible party to implement the recommended action.

The report is the result of a collaborative process and presents a variety of stakeholder concerns and recommendations. Overall, members of the EJ Taskforce support the recommendations as presented with some concerns about the future implementation of the recommendations which will require policies that may be developed without the opportunity for review or comment.

Objective 1: To identify opportunities for *integrating EJ* in air quality programs, policies, and regulations of the City and County.

Vision: Albuquerque and Bernalillo County will consider EJ issues as they set priorities, identify program gaps, and assess the benefits and adverse impacts of their programs, policies, and regulations. Every person will be equally protected from environmental hazards. The programs will be comprehensive and include:

- adopting regulations
- identifying disproportionately affected communities
- funding clean air projects through incentive programs
- assessing current processes for air monitoring and emissions assessments
- improving enforcement
- facilitating employee training
- collaborating on research
- conducting public outreach and education

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Policies	1. The AQCB policies, procedures and bylaws do not fully address EJ issues.	1. Incorporate EJ principles in AQCB policies and procedures.	1. AQCB
Policies	2. The current regulations have limited mechanisms to address EJ and cumulative impacts.	2.A. Adopt AQCB Title 20 Environmental Protection, Chapter 11, Part 72, Cumulative Impacts and EJ (Attachment 1). 2.B. Finalize the public involvement plan (PIP) required under the EPA implementation regulations of Title VI. 2.C. Adopt environmental assessment provisions at the local government level. 2.D. Advocate for environmental assessment provisions at the state level.	2.A. AQCB 2.B. AQD 2.C. AQCB 2.D. NM State Legislature
Permitting process, Policies, Community involvement	3. Communities do not feel that their input is considered in decisions that directly affect them.	3.A. Require participation of all stakeholders, including industry, agencies, and community members, <u>early</u> in the permitting process. The public should know about a potential interest in a permit application as soon as the agency does. 3.B. Develop regulatory language that explicitly states how public comment will be considered in permitting decisions. 3.C. Create an ombuds position to act on behalf of the	3.A. AQD 3.B. AQD and AQCB 3.C. City Council and

Objective 1: To identify opportunities for *integrating EJ* in air quality programs, policies, and regulations of the City and County.

		community and as a liaison between County and City staff.	County Commission
Legal authority and responsibility	4. Differing interpretations exist on the AQCB's authority to consider EJ, cumulative impacts, public health, and public comment as part of their decision making process.	4.A. Review the Attorney General's (AG) Opinion on the AQCB's authority to consider EJ, cumulative impacts and public comment when it becomes available. 4.B. After the Vulcan decision by the Court of Appeals, the AQCB is urged to have a public workshop with counsel to review the ruling and the AG's opinion to hear different perspectives on their discretion.	4.A. AQCB 4.B. AQCB
Assessment	5. Disproportionately burdened, minority and low-income communities have not been systematically identified and mapped.	5. Use a variety of tools, including GIS, to identify overburdened communities, based on minority and low-income status, and provide equal protection for these communities (Appendix A).	5. NMDOH, BCEH, AQD

Objective 2: To identify opportunities to strengthen outreach and education efforts in all communities, especially disproportionately affected communities, so that all residents can fully participate in public processes and share in the air quality benefits of Albuquerque and Bernalillo County programs.

Vision: Albuquerque and Bernalillo County will enhance public participation in local decision-making processes. They will:

- solicit input from communities
- develop additional information on air quality in communities
- make this information more accessible early in the decision making process
- educate communities and industries on the public process used to make local decisions

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Permitting process, Community involvement, Assessment, Training	1. Education and outreach are needed to familiarize: a) communities with decision making processes; b) staff with community concerns; and c) staff and communities with environmental health and health data for specific locations.	1.A. Provide outreach and education via neighborhood associations. 1.B. Create a resource center at community centers for community access to health, environmental health and permitting information. 1.C. Require EJ training programs for all agency staff and Board members to learn about the effect of environmental injustice on various cultures and communities. References are found at: http://www.ejhu.org/justice_training.html http://www.fedcenter.gov/training/	1.A. Offices of Neighborhood Coordination (ONC) from city and county (Attachment 2) 1.B. City Council and County Commission, AQD 1.C. AQD and AQCB
Community involvement, Assessment	2. Boards and Commissions may not reflect the diversity of communities they are representing.	2.A. Recruit members who are representative of the community. 2.B. Routinely assess, by survey or other tools, the composition of Boards. 2.C. Assess whether there are barriers to representative Board membership, such as non-paid board position, that can be mitigated.	2.A. City Council and County Commission 2.B. City Council and County Commission 2.C. City Council and County Commission

Objective 3: To identify opportunities to work with the City of Albuquerque and the County of Bernalillo to reduce health risks from toxic air pollutants in all communities, especially disproportionately affected communities, through the adoption of control measures and the promotion of pollution prevention programs.

Vision: Albuquerque and Bernalillo County will reduce health risks from toxic air pollutants at neighborhood levels by:

- identifying sources of pollution at neighborhood and regional (air shed) levels
- implementing pollution prevention measures
- implementing pollution control measures

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Policies	1. Industries have no incentive to reduce pollution below Federal or State standards in disproportionately affected communities.	1. Provide incentives to industries for pollution prevention activities.	1. NMED at State level; AQD at local level; City Council and County Commission.
Assessment	2. Air toxics are difficult to identify, measure, and mitigate.	2A. Improve monitoring capabilities. 2B. Provide community residents with equipment and training.	2.A. AQD 2.B. AQD and BCEH

Objective 4: To identify opportunities to work with the City of Albuquerque and the County of Bernalillo to strengthen enforcement activities at the community level.

Vision: Albuquerque and Bernalillo County will:

- improve compliance with air quality regulations
- assure that all complaints are promptly investigated and that feedback is provided to the public
- improve enforcement response

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Enforcement, Policies, Training	1. There is inadequate enforcement of industrial emissions.	1.A. Increase inspection staff. 1.B. Explore the possibility of training residents in assessing stack emissions. 1.C. Increase penalties and enhance supplemental environmental projects (SEP). 1.D. Strengthen the regulations on excess emissions.	1.A. AQD 1.B. AQD 1.C. AQD 1.D. AQCB
Enforcement, Training	2. Assure that all complaints are properly addressed and responded to in a timely manner.	2. Train 311 staff on appropriate response to public complaints on air quality.	2. AQD

Objective 5: To identify opportunities to assess, consider, and reduce cumulative emissions, exposures, interactive effects and health risks when developing and implementing air quality programs.

Vision: Albuquerque and Bernalillo County will:

- consider both cumulative emissions and cumulative burdens of disease and death when developing and implementing air quality programs
- ensure compliance with permits conditions.

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Permitting process, Enforcement, Policies, Assessment	1. Currently, there are limited mechanisms within the planning, permitting, and enforcement process that address the potential cumulative impact of air emissions. This is especially true of hazardous air pollutants, particulate matter and other fugitive emissions, and mobile sources.	1.A. Routinely monitor industries' emissions. 1.B. Increase the number of monitoring stations and assure that both point and mobile sources are included. 1.C. Adopt regulations to reduce idling of diesel vehicles. 1.D. Adopt local regulations that require environmental assessment provisions as part of the permit process. 1.E. Advocate for state-wide environmental assessment provision.. 1.F. Work with NMED on rule making to prevent excess emissions. 1.G. Require adoption and implementation of the Consistency Doctrine.	1.A. AQD 1.B. AQD and AQCB 1.C. AQCB 1.D. AQCB 1.E. NM State Legislature 1.F. AQCB 1.G. City Council, County Commission, NM State Legislature, AQCB
Permitting process, Policies	2. The permitting process does not address cumulative emissions at a neighborhood level.	2. Adopt regulations and implement procedures to consider cumulative emissions at a neighborhood level in the air quality permitting process, such procedures can follow those listed below: - EJ checklist - Environmental assessment policy (Attachment 3) - Albuquerque model (Appendix A)	2. AQCB and AQD, with assistance from BCEH
Assessment, Permitting process	3. Data from the air quality monitoring network is averaged and may not be reflective of actual air quality in the affected community at a given time.	3.A. In the permitting process, use actual and recent monitoring data from stations in close proximity to the applicant's proposed location, if available. Data from mobile monitoring units should be considered if there are no suitable or representative stationary monitoring units. 3.B. Purchase mobile monitoring equipment to obtain air quality data for the affected communities. 3.C. Increase the number of monitoring stations to assure that	3.A. AQD 3.B. AQD, BCEH 3.C. AQD

Objective 5: To identify opportunities to assess, consider, and reduce cumulative emissions, exposures, interactive effects and health risks when developing and implementing air quality programs.

		off-site and on-site emissions within the affected community are considered in the permitting process.	
Assessment	4. The AQCB is unsure of the impact of prior permitting decisions on the affected communities and should validate applicants' model predictions.	4. Perform a statistical analysis of existing information to determine whether prior air quality permits: 1) were protective of disproportionately impacted communities, and 2) were accurate in their assessment of modeled emissions. It is recommended that this study use a random sample of permits issued in the past 10 years.	4. AQCB requests study; AQD provides data for study
Policies, Permitting process, Assessment	5. Communities that are disproportionately burdened by air pollutant emissions are not identified in such a way that they can be protected from future and current emissions.	5.A. Use GIS to map reported emissions and community demographics. 5.B. Develop and adopt statutory and regulatory language for environmental assessment provisions such as the 2007 amendments to 20.9.1 NMAC, the Solid Waste Management Regulations at: (http://www.nmcpr.state.nm.us/nmac/ title20/T20C009.htm).	5.A. AQD, BCEH, NMDOH 5.B. AQCB, NM State Legislature, NMED
Health assessment, Permitting process	1. Data on the health status of communities, including the cumulative burdens of disease and death, are not included in planning, permitting and enforcement processes. Communities that are disproportionately burdened by disease are not identified.	1.A. Access existing health data (including information on morbidity and mortality) to identify burdened communities and consider this data as part of the planning and permitting processes. 1.B. Change the permit process to include available health and welfare considerations from cumulative exposures. 1.C. Identify data gaps and implement data collection to improve the health data used in the permit process.	1.A. NMDOH 1.B. NM State Legislature, AQCB 1.C. NMDOH, BCEH, AQD
Assessment	2. Existing health burdens may create populations that are more vulnerable to risk from air pollution.	2. Collect community specific health data that will be accessible to communities and to staff.	2. NMDOH, BCEH

Objective 6: To identify opportunities to work with local land use agencies, transportation agencies, the City of Albuquerque and the County of Bernalillo to develop ways to assess, consider, and reduce cumulative emissions, exposures, interactive effects, and health risks from air pollution through general plans, permitting, and other local actions in the City and County.

Vision: Albuquerque and Bernalillo County will:

- Promote partnerships and work as partners with other state, regional, and local agencies and stakeholders to ensure that we are all equally committed to eradicating environmental injustices in our communities.

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Policies, Assessment	1. The AQCB addresses air quality and doesn't have the authority to address land-use issues.	1.A. Formalize collaboration with land-use agencies and assure that relevant agency input on potential negative or positive community impacts has occurred prior to issuing land-use or air quality permits. 1.B. Propose and implement local EJ Executive Order, modeled after state EJ Order. 1.C. Develop an Air Shed Plan that addresses cumulative impacts. 1.D. Develop collaborative grants and planning.	1.A. BCEH, AQD, AQCB and City and County Planning Commissions 1.B. City Council, County Commission 1.C. City Council, County Commission, including Sandoval, Torrance, Cibola, Santa Fe, Valencia, and Bernalillo. 1.D. UNM, NMDOH, BCEH, AQD
Policies	2. Single media and land-use zoning regulations result in the inability to address EJ issues in a holistic way.	2.A. In collaboration with the Planning Commission, review land use plans and regulations to incorporate air quality concerns to address EJ and cumulative impact issues explicitly. 2.B. Revive EPC liaison on the AQCB.	2.A. County/City Planning Commission, County/City Commission, County/City Planning Departments 2.B. AQCB, City Council
Policies	3. Comprehensive plans are not implemented and enforced.	3. Require implementation of Consistency Doctrine in order to address cumulative impacts and ensure that regulations and rules are implemented in accordance with long term land-use plans.	3. NM State Legislature, City Council, County Commission, County/City Planning Commission
Permitting process	4. Consideration of cumulative impacts adds complexity to the permitting process.	4. Criteria for permit approval or denial must be explicitly stated in the permit application guidelines.	4. AQD
Partnership	5. There is a lack of	5. Create incentives for collaborative planning, joint grant	5. UNM, City Council,

Objective 6: To identify opportunities to work with local land use agencies, transportation agencies, the City of Albuquerque and the County of Bernalillo to develop ways to assess, consider, and reduce cumulative emissions, exposures, interactive effects, and health risks from air pollution through general plans, permitting, and other local actions in the City and County.

	incentives for potential partners to work together.	writing, and centers.	County Commission
Partnership	6. Partnerships often have less influence than a single agency.	6. Revise regulations to require collaboration as part of the planning and permitting processes.	6. AQCB

Objective 7: To identify opportunities to support research and data collection needed to reduce cumulative emissions, exposure, interactive effects and health risks, as appropriate, in all communities, especially disproportionately affected communities.

Vision: Albuquerque and Bernalillo County will:

- Cooperatively fund and spearhead implementation of a model program for research and data collection which will be followed by other communities in the country in the future.
- Contribute to a collaborative data clearinghouse that will acquire, develop and analyze databases to provide cumulative impact and health status information.

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Assessment	1. The AQCB doesn't have the necessary resources to conduct research and data collection.	1.A. Assess existing data sets used by the City and County to develop cumulative emissions models. 1.B. Identify data needed to establish a community-specific baseline of emissions and health burdens. 1.C. Compile an expert resources list and invite these people to become part of the on-going work.	1.A. AQD, BCEH 1.B. NMDOH, AQD, BCEH 1C. UNM, NMDOH, AQD, community, BCEH
Assessment, Partnership	2. Assessments of cumulative emissions and cumulative health burdens are not conducted.	2.A. Develop and use methodology to conduct qualitative and quantitative assessments of cumulative emissions as part of permitting process. 2.B. Support the creation of a permanent, locally-based joint center for comprehensive health and environmental assessment that commits key partners and resources to the assessment process.	2.A. BCEH, AQCB, AQD 2.B. City Council, County Commission
Assessment	3. The assessment process is more time consuming than the current permitting process.	3. Support assessment processes that create multipurpose comprehensive data tools that can rapidly respond to data needs.	3. AQCB
Partnership	4. Access to multiple datasets to build comprehensive assessment tools that will be located in one place is obstructed by factors such as issues of confidentiality.	4. Use strength of partnerships to establish community rights to data and write cooperative agreements with data collectors and keepers to facilitate data consolidation in one local center.	4. UNM, NMDOH, AQD, BCEH
Assessment	5. The assessment process must include an objective	5. Support assessment processes that include community-based participatory elements and that openly involve all	5. AQCB

Objective 7: To identify opportunities to support *research and data collection* needed to reduce cumulative emissions, exposure, interactive effects and health risks, as appropriate, in all communities, especially disproportionately affected communities.

	and interactive facilitation component to assist partners in asking and answering the pertinent questions about cumulative impacts and health burdens.	partners in exploring data on cumulative impacts and health burdens.	
Assessment	6. Literature is just beginning to address the synergy between chemicals and their effects on health and welfare.	6. Review existing literature on chemical synergy, as well as the precautionary principle and provide recommendations on possible planning and permitting methodologies that incorporate this knowledge and provide this information to community residents through a resource library at community centers.	6. AQD, BCEH, DOH, UNM, community

Glossary

AQCB. Air Quality Control Board: The New Mexico State Legislature granted this Board the authority and responsibility to prevent or abate air pollution in Bernalillo County. The Board consists of seven voting members who volunteer to serve. Four members are appointed by the Albuquerque City Council and three members are appointed by the Bernalillo County Commission. On March 17, 1994, the County Commission adopted Bernalillo County Code, Section 30-32, creating the joint city-county board, establishing board membership, procedural requirements and responsibilities. See <http://www.cabq.gov/airquality/aboutaqcb.html>

Air shed: A geographic area that, because of topography, meteorology or climate, is frequently affected by the same air mass. See <http://199.128.173.141/Flag2000.pdf>

Air toxic (also known as hazardous air pollutants): Any air pollutant (for which a national ambient air quality standard does not exist) that may reasonably be anticipated to cause cancer; respiratory, cardiovascular or developmental effects, reproductive dysfunctions, neurological disorders, heritable gene mutations, or other serious or irreversible chronic or acute health effects in humans. See <http://www.epa.gov/glossary/aterms.html>. EPA is working with to reduce 188 toxic air pollutants. See <http://www.epa.gov/ttn/atw/allabout.html>

Consistency doctrine: Definitions are given from three sources.

Rhode Island Statutes: All regulations that are used to implement the local comprehensive plans must be consistent with the recommendations and policies of the plan, and state and local funding decisions must be consistent with the local plan.

California Planning Roundtable: Consistency means free from variation or contradiction. Programs in the comprehensive plan are to be consistent, not contradictory or preferential. State law requires consistency between the plan and implementation measures such as zoning ordinance.

Moorpark California: Consistency means compatibility and agreement with the comprehensive plan of the municipality and/or county. Consistency exists when the standards and criteria of the comprehensive plan are met or exceeded.

Cumulative emissions: The public health and environmental effects in a geographic area or population group from all hazardous air pollutants, particulate matter, other fugitive dusts, and mobile sources from existing facilities, known planned facilities, and the proposed facility's emissions.

Cumulative exposures: The public health and environmental effects in a geographic area or population group from all exposures, including pollution from all emissions and discharges, whether single or multi-media, routinely, accidentally from existing facilities, known planned facilities and the proposed facility.

Cumulative impacts: The public health and environmental effects in a geographic area or population group from all pollution sources and from social determinants, such as income and ethnicity status.

EJ. Environmental justice: The fair treatment of all residents (in the City of Albuquerque and Bernalillo County), including communities of color and low income communities, and their meaningful involvement in the development, implementation and enforcement of environmental laws, regulations and policies regardless of race, color, ethnicity, religion, income or education level. (Adapted from NM Executive Order 2005-056).

Morally unacceptable harm: This definition is taken from COMEST 2005: 14. Harm to humans or the environment that is:

- Threatening to human life or health, or
- Serious and effectively irreversible, or
- Inequitable to present or future generations, or
- Imposed without adequate consideration of the human rights of those affected.

Precautionary principle: When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. The precautionary principle calls for a shifting of the burden of proof.

Where the precautionary principle has not been adopted:

- people exposed to risky actions must bear the risks of such actions until it can be demonstrated that they cause harm to health or the environment.
- the people exposed to risk bear the responsibility for demonstrating that actions caused harm.

Where the precautionary principle is applied:

- people exposed to risk can ask for precautionary actions to be taken before risky actions can be proven to cause harm.
- once some preliminary basis for taking precautionary action exists, risk creators bear the responsibility of showing that actions are safe, or at least acceptably risky.

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<http://albuquerquegree.com/pdfs/bestgreenpractices.doc>

Hospitalization and Mortality in Albuquerque Zip Codes; A Preliminary Descriptive Analysis of Hospitalization and Deaths at the Sub-County Level. Scharmen, T.N.
<http://www.health.state.nm.us/pdf/ABQ-Health-and-Social-Indicator-Map-Book-v6a-e.pdf>.

Website for new EJ organization: www.simplechange.org/pages.about

Local website/blog about land use issues: <http://cocoposts.typepad.com/>

Website for City of Albuquerque Goal 5: Environmental Protection and Enhancement:
<http://www.cabq.gov/progress/goal5.html>

California policies: <http://www.arb.ca.gov/ch/programs/programs.htm>

EPA Region 6: <http://www.epa.gov/earth1r6/6dra/oejta/ej/index.html>

E-news letter: Petitions Urge EPA to Regulate Aircraft Emissions
environmental@1105newsletters.com

Asthma study information from Tom Scharmen presentation:
<http://www.personal.psu.edu/users/a/u/aup162/geog586/SemesterProject/SemesterProject.htm>
1.

Other materials reviewed by EJ Task Force members

City of Albuquerque air quality ordinance

Environmental Health Report Card for the City of Albuquerque and Bernalillo County

“Rhino Case” information

Albuquerque Journal – Westside edition, Thursday, October 25, 2007. *Mountain View Battles Another Cement Permit*, Juan-Carlos Rodriguez

Article – Clovis Plant Poses Health Risks, by Wayne Roth-Nelson, Ph.D.

Margaret Menache presentation to EJ Task Force, November 20, 2007. Cumulative Risk Assessment

Kitty Richards presentation to EJ Task Force, November 20, 2000. Other State Models for Considering EJ and Cumulative Impacts.

Color-blind, Color-mute and Color-deaf: Race and Expertise in Environmental Justice Rule Making, Sofia Martínez. Submitted to the Task Force via e-mail 12/10/07.

Cumulative Impacts – State of California information. Submitted to the Task Force via e-mail 12/10/07.

Article – Environmental Justice: Healthy Children, Healthy Communities, and a Healthy Mother Earth. Submitted to the Task Force via e-mail 12/10/07

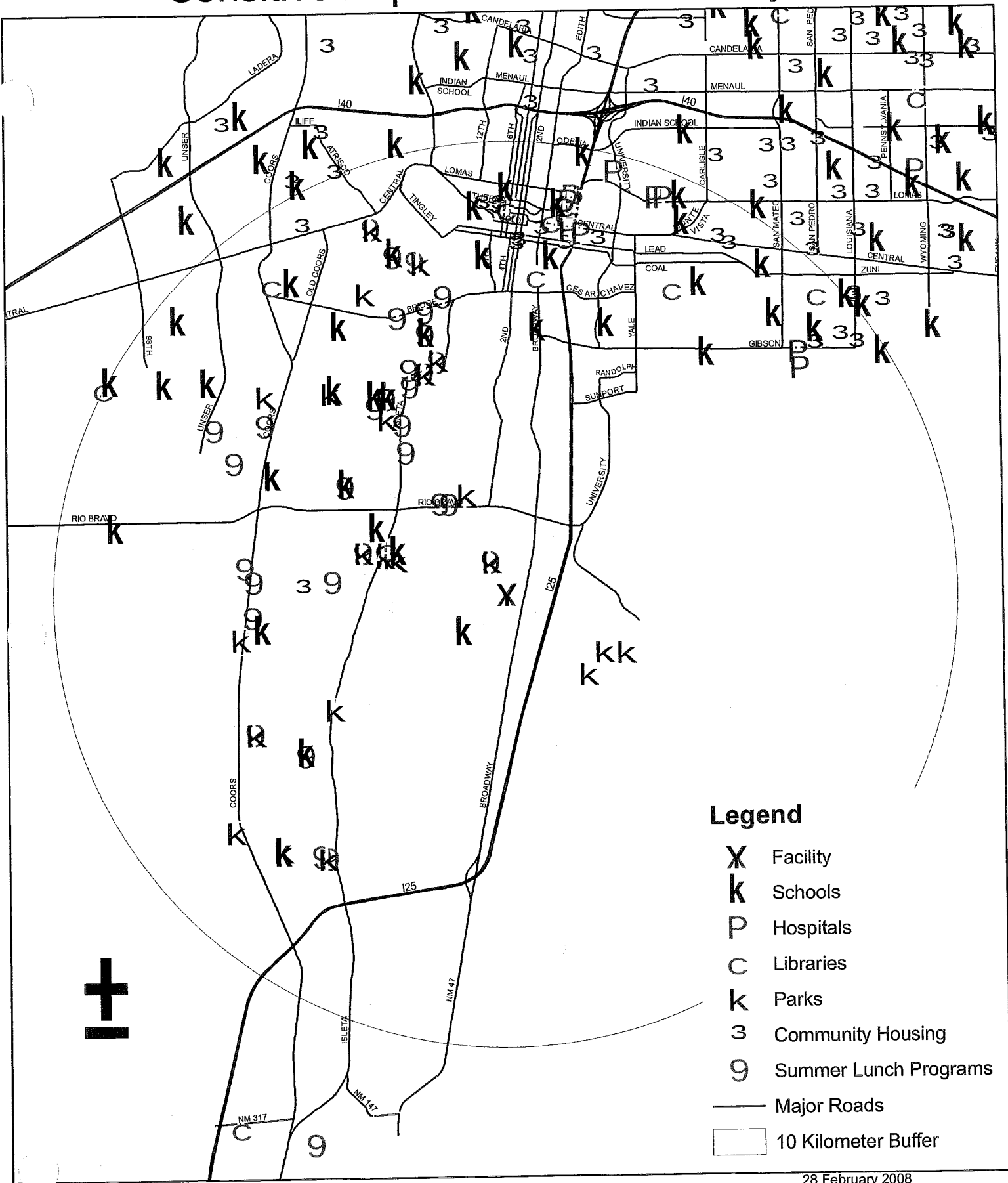
Article – Sector Plan Delayed for Businesses’ Input. Submitted to the Task Force via e-mail 1/10/08.

Appendix A: Implementing Air Emissions Risk Analysis Using Qualitative Information – A Local Example: South Valley, Bernalillo County

This Appendix provides a pictorial representation of quantitative information through the use of maps. Each map depicts a hypothetical permit applicant's facility, here located in the South Valley and a 10 kilometer buffer zone (this zone can increase or decrease based on an agency's need). Overlain on this base map are: 1) locations of other permitted air emissions, 2) zoning classes, 3) land-uses, 4) sensitive populations, and 5) population density by land parcel.

These maps enable agency personnel and the Board to visually assess whether a proposed facility's emissions will adversely impact sites housing sensitive populations (shown on this map are school lunch programs, hospitals and clinics, parks, etc.), and communities having a high population density, and whether the impacted community bears a great environmental burden due to the proposed facility's emissions and other nearby existing facilities' permitted emissions. Information was easily obtained through the Bernalillo County, Public Works Division.

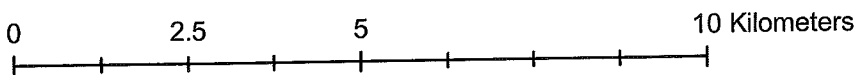
Sensitive Population - South Valley



Legend

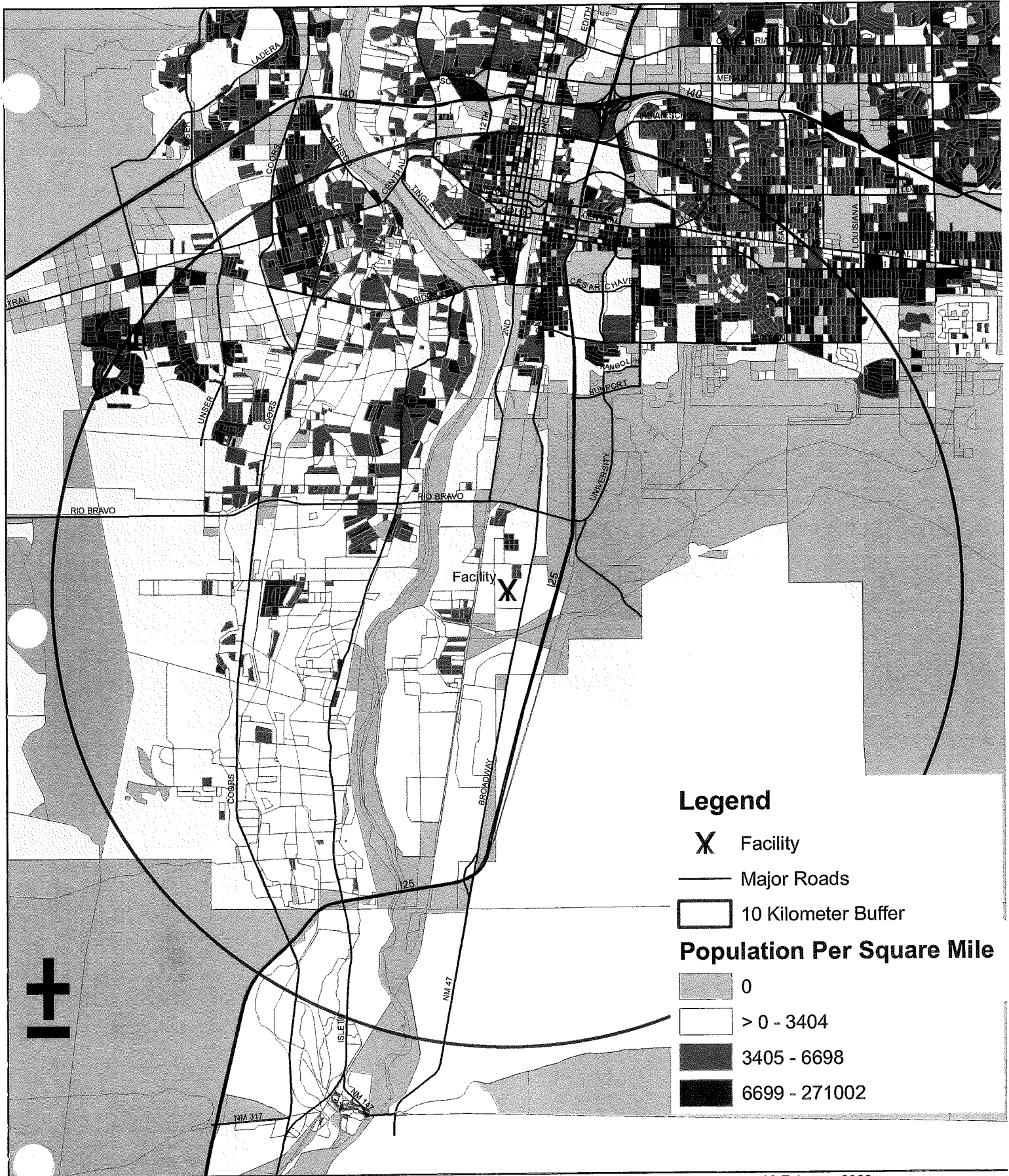
- X Facility
- k Schools
- P Hospitals
- C Libraries
- k Parks
- 3 Community Housing
- 9 Summer Lunch Programs
- Major Roads
- 10 Kilometer Buffer

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GIS Program



This information is for reference only.
Bernalillo County assumes no liability for errors
associated with the use of these data.

Population Density - South Valley



Legend

X Facility

— Major Roads

□ 10 Kilometer Buffer

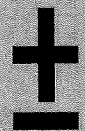
Population Per Square Mile

□ 0

□ > 0 - 3404

■ 3405 - 6698

■ 6699 - 271002

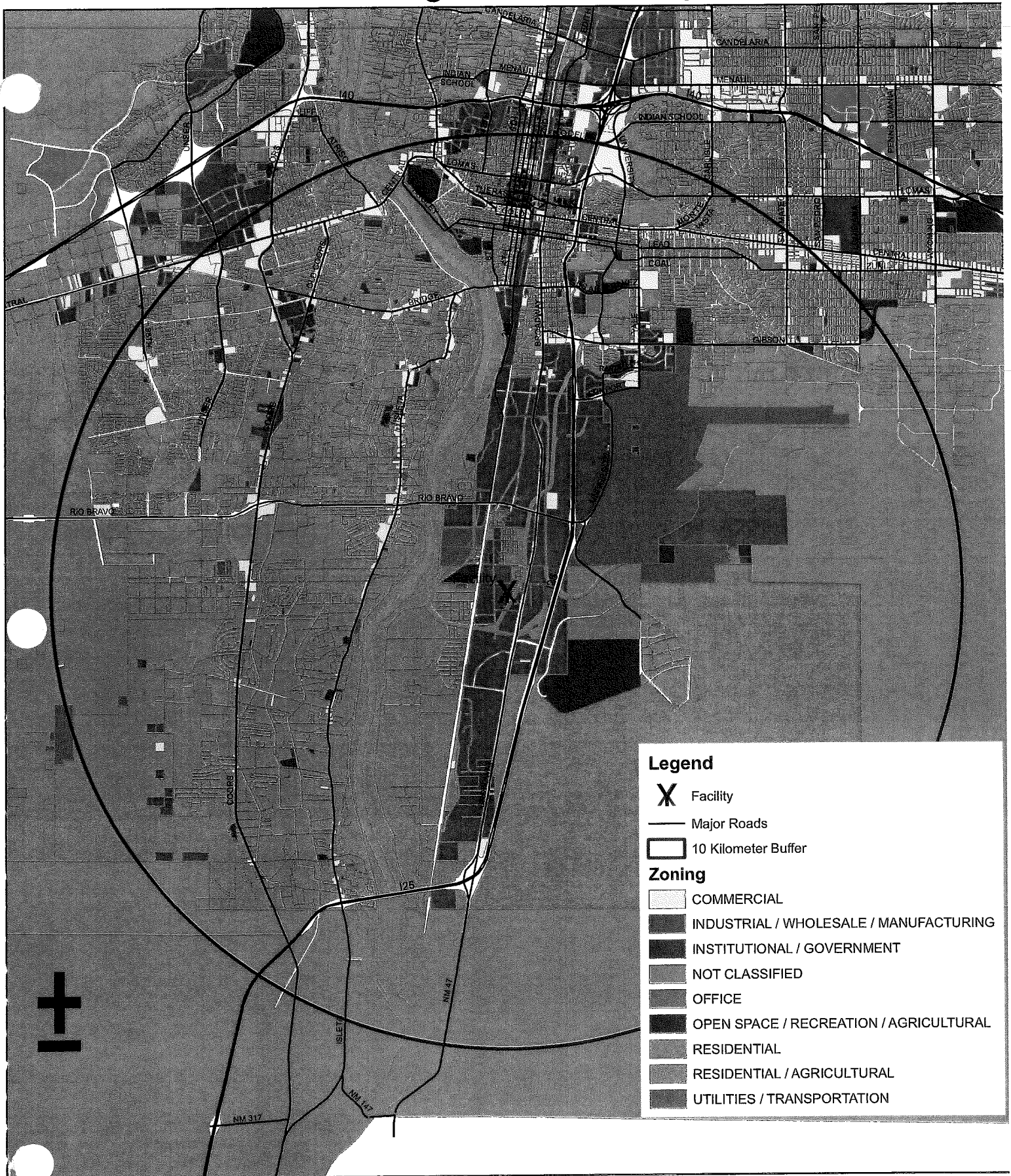


0 2.5 5 10 Kilometers

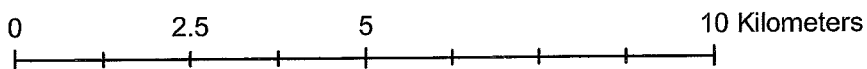
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Zoning - South Valley

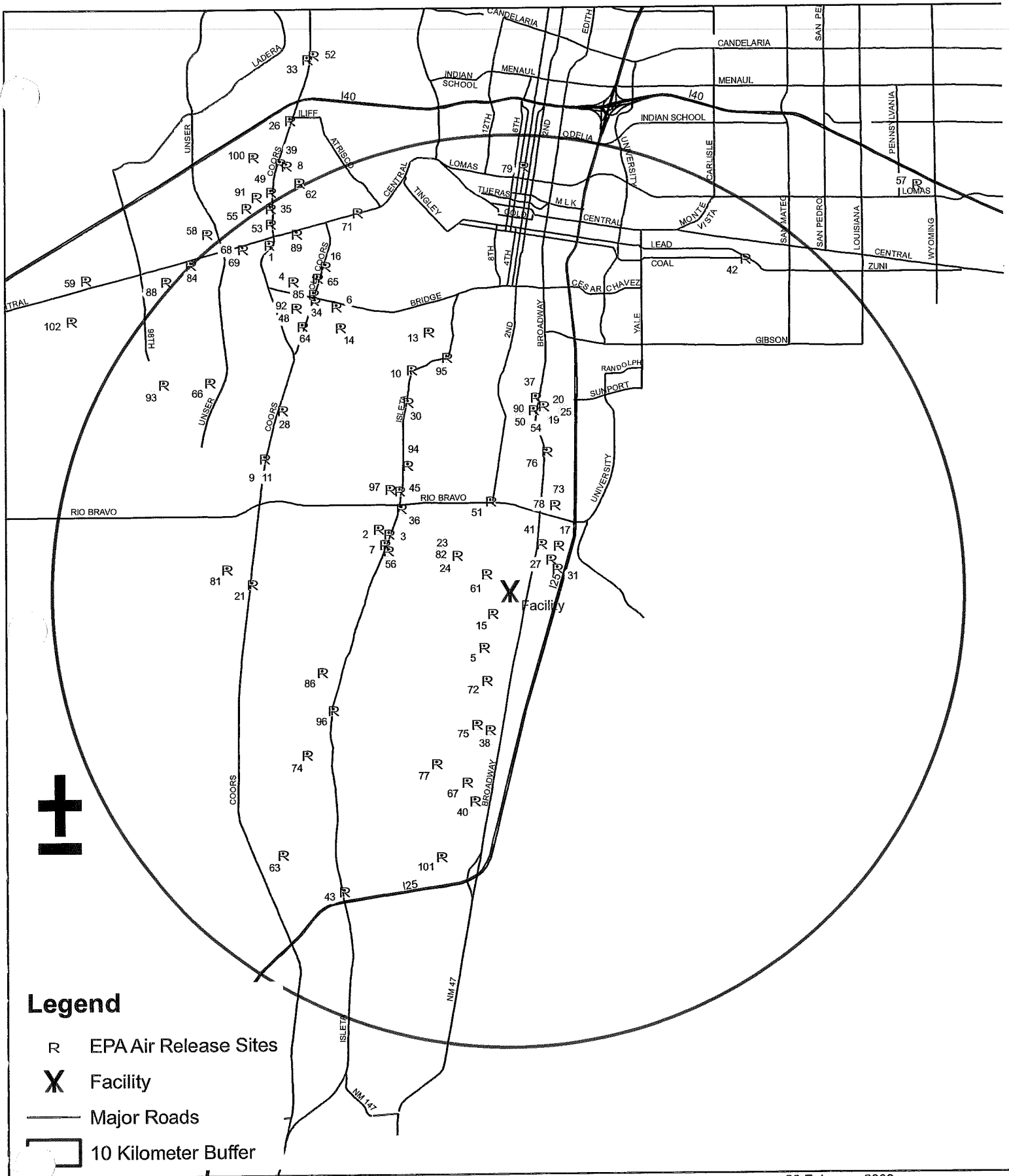


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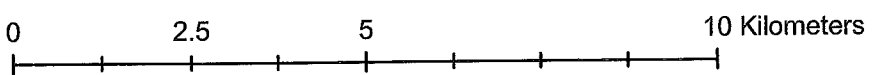


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Location of Air Emissions - South Valley



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Appendix B: Environmental Justice Scorecard Bernalillo County

This Appendix provides rankings of potential exposure to toxic chemicals by ethnicity, income, education, job classification and home ownership for Bernalillo County.

DISTRIBUTION OF BURDENS BY RACE/ETHNICITY

<u>Releases of Toxic Chemicals</u>	(indicator of chemical releases)	Ratio
People of Color	3800	1.81
Whites	2100	
<u>Cancer Risks from Hazardous Air Pollutants</u>	(added risk per 1,000,000)	Ratio
People of Color	220	0.96
Whites	230	
<u>Superfund Sites</u>	(sites per square mile)	Ratio
People of Color	.3	2.31
Whites	.13	
<u>Facilities Emitting Criteria Air Pollutants</u>	(facilities per square mile)	Ratio
People of Color	.19	2.64
Whites	.072	

DISTRIBUTION OF BURDENS BY INCOME

<u>Releases of Toxic Chemicals</u>	(indicator of chemical releases)	Ratio
Low Income Families	3500	1.30
High Income Families	2700	
<u>Cancer Risks from Hazardous Air Pollutants</u>	(added risk per 1,000,000)	Ratio
Low Income Families	220	1.00
High Income Families	220	
<u>Superfund Sites</u>	(sites per square mile)	Ratio
Low Income Families	.34	2.62
High Income Families	.13	
<u>Facilities Emitting Criteria Air Pollutants</u>	(facilities per square mile)	Ratio
Low Income Families	.21	2.88
High Income Families	.073	

DISTRIBUTION OF BURDENS BY POVERTY

<u>Releases of Toxic Chemicals</u>	(indicator of chemical releases)	Ratio
Families Below Poverty	3600	1.29
Families Above Poverty	2800	
<u>Cancer Risks from Hazardous Air Pollutants</u>	(added risk per 1,000,000)	Ratio
Families Below Poverty	220	1.00
Families Above Poverty	220	
<u>Superfund Sites</u>	(sites per square mile)	Ratio
Families Below Poverty	.39	2.79
Families Above Poverty	.14	
<u>Facilities Emitting Criteria Air Pollutants</u>	(facilities per square mile)	Ratio
Families Below Poverty	.24	2.96
Families Above Poverty	.081	

DISTRIBUTION OF BURDENS BY CHILDHOOD POVERTY

<u>Releases of Toxic Chemicals</u>	(indicator of chemical releases)	Ratio
Kids Below Poverty	3700	1.32
Kids Above Poverty	2800	
<u>Cancer Risks from Hazardous Air Pollutants</u>	(added risk per 1,000,000)	Ratio
Kids Below Poverty	220	1.00
Kids Above Poverty	220	
<u>Superfund Sites</u>	(sites per square mile)	Ratio
Kids Below Poverty	.38	2.71
Kids Above Poverty	.14	
<u>Facilities Emitting Criteria Air Pollutants</u>	(facilities per square mile)	Ratio
Kids Below Poverty	.23	3.03
Kids Above Poverty	.076	









DISTRIBUTION OF BURDENS BY EDUCATION

<u>Releases of Toxic Chemicals</u>	(indicator of chemical releases)	Ratio
Non-Highschool Graduates	3900	1.56
Highschool Graduates	2500	
<u>Cancer Risks from Hazardous Air Pollutants</u>	(added risk per 1,000,000)	Ratio
Non-Highschool Graduates	220	0.96
Highschool Graduates	230	
<u>Superfund Sites</u>	(sites per square mile)	Ratio
Non-Highschool Graduates	.38	2.38
Highschool Graduates	.16	
<u>Facilities Emitting Criteria Air Pollutants</u>	(facilities per square mile)	Ratio
Non-Highschool Graduates	.25	2.72
Highschool Graduates	.092	

DISTRIBUTION OF BURDENS BY JOB CLASSIFICATION

<u>Releases of Toxic Chemicals</u>	(indicator of chemical releases)	Ratio
Working Class People	3100	1.41
Non-Working Class People	2200	
<u>Cancer Risks from Hazardous Air Pollutants</u>	(added risk per 1,000,000)	Ratio
Working Class People	230	1.00
Non-Working Class People	230	
<u>Superfund Sites</u>	(sites per square mile)	Ratio
Working Class People	.19	1.12
Non-Working Class People	.17	
<u>Facilities Emitting Criteria Air Pollutants</u>	(facilities per square mile)	Ratio
Working Class People	.12	1.33
Non-Working Class People	.09	

DISTRIBUTION OF BURDENS BY HOME OWNERSHIP

<u>Releases of Toxic Chemicals</u>	(indicator of chemical releases)	Ratio
Renters	 2400	1.20
Homeowners	 2000	
<u>Cancer Risks from Hazardous Air Pollutants</u>	(added risk per 1,000,000)	Ratio
Renters	 220	0.92
Homeowners	 240	
<u>Superfund Sites</u>	(sites per square mile)	Ratio
Renters	 .16	0.53
Homeowners	 .3	
<u>Facilities Emitting Criteria Air Pollutants</u>	(facilities per square mile)	Ratio
Renters	 .087	0.46
Homeowners	 .19	

Downloaded from:

http://www.scorecard.org/community/ejssummary.tcl?fips_county_code=35001&lang=eng#map
on 27 February 2008.

Scorecard's environmental justice reports integrate information about different kinds of pollution problems with census data to identify geographic areas or demographic groups that may be disparately affected by pollution. Summary environmental justice report examine the distribution of four environmental burdens: releases of toxic chemicals, cancer risks from hazardous air pollutants, Superfund sites, and facilities emitting criteria air pollutants. Detail pages illustrate the distribution of cancer risks by race and income, and provide geographic comparisons of environmental hazards and demographic characteristics.

See limits of the data and how to interpret the data.

ENVIRONMENTAL JUSTICE LOCATOR

Scorecard provides maps at the national, state, county, and census tract levels that illustrate estimated cancer risks from outdoor hazardous air pollution and the location of three types of pollution-generating facilities: manufacturing firms reporting to the Toxics Release Inventory, facilities emitting Criteria Air Pollutant and Superfund sites. You can see whether your home, workplace, or school is located in an area where estimated cancer risks are higher, comparable, or lower than in other communities. You can also see how many polluting facilities are located in your area of interest. Charts associated with the maps provide demographic information about an area, including the percent people of color, percent families living in poverty, and percent homeownership. You can also use Scorecard's mapper to access environmental data at the most local level (i.e., for each individual census tract in the U.S.).

DISTRIBUTION OF ENVIRONMENTAL BURDENS

Scorecard uses easy-to-understand bar charts to illustrate which demographic group bears the burden of different pollution problems. Four problems are evaluated: releases of toxic chemicals, cancer risks from hazardous air pollutants, Superfund sites, and facilities emitting criteria air pollutants. Scorecard analyses the distribution of these problems using seven demographic categories: Race/Ethnicity, Income, Poverty, Childhood Poverty, Education, Home Ownership, and Job Classification. For example, Scorecard calculates whether whites or people of color live in areas with greater toxic chemical releases, and then graphically portrays the extent of the disparity, indicating which group is worse off. Further information about any environmental problems in an area can be found in Scorecard reports listed in the Links section.

LOCATOR FOR UNEQUAL IMPACTS

For any burden or combination of burdens that you select, or any group you select, this Locator will show you every county where that group of people experiences a higher impact than the rest of the population in the same county.

COMPARATIVE ANALYSES OF ENVIRONMENTAL JUSTICE

Links are provided to several more detailed analyses of environmental justice issues in an area.

DISTRIBUTION OF RISKS BY RACE, ETHNICITY AND INCOME

Is race or income the driving factor accounting for disparate environmental burdens in your state? Scorecard examines the distribution of estimated cancer risks

associated with outdoor hazardous air pollution to illustrate patterns of inequity by race/ethnicity and income. Scorecard calculates a population-weighted estimate of the average lifetime cancer risks imposed on each racial/income group by hazardous air pollutants. The Y-axis shows the estimated cancer risk per million persons, and the X-axis displays nine annual household income categories ranging from less than \$5000 to over \$100,000. Each line in the graph represents one of five racial/ethnic groups: Whites, African Americans, Native Americans, Asian/Pacific Islanders and Latinos. Gaps between the lines indicate potential racial/ethnic disparities in cancer risk burdens. Slopes in the lines indicate potential differences in cancer risk across income categories. NOTE: Due to data limitations, these distribution calculations are only available at the state level.

ENVIRONMENTAL HAZARDS

Scorecard provides several measures of environmental hazards which can be used to compare counties within a state, including average cancer risks from hazardous air pollutants, the number of Criteria Air Pollutant facilities per square mile, the number of Superfund sites per square mile, and the number of Toxic Release Inventory facilities per square mile. State comparisons can be made on the basis of estimated cancer risks from outdoor hazardous air pollutants, and the percentage of total Toxic Release Inventory facilities, Criteria Air Pollutant facilities and Superfund sites hosted by a particular state. Environmental hazard indicators for counties and states can be compared to demographic profiles in order to assess which communities bear the largest burden of pollution sources.

DEMOGRAPHIC PROFILES

Scorecard uses bar charts to illustrate the racial make-up of counties and states, and provide information about income, wealth, class, educational attainment, and citizenship. The demographic and socioeconomic information used for Scorecard's environmental justice analyses are all derived from the 1990 Census. The demographic profile of a county is compared to its state average, and states are compared to the US as a whole.

Downloaded from:

http://www.scorecard.org/env-releases/def/ej_report_descriptions.html#dist
on 27 February 2008.

Attachments

Attachment 1. AQCB Title 20 Environmental Protection, Chapter 11, Part 72, Cumulative Impacts and EJ - Draft Regulation

Attachment 2. Neighborhood association recognition ordinance.

Attachment 3. Environmental Assessment Policy

Attachment 1

CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

PART 72 CUMULATIVE EFFECTS AND ENVIRONMENTAL JUSTICE

20.11.72.1 **ISSUING AGENCY:** Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2600.

20.11.72.2 **SCOPE:** This Part applies to all evaluations of the effects or potential effects of Air Pollution on human health and/or the environment performed in connection with any and all actions the Board or the Department consider, propose or take under New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances.

20.11.72.3 **STATUTORY AUTHORITY:** 20.11.72 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

20.11.72.4 **DURATION:** Permanent.

20.11.72.5 **EFFECTIVE DATE:** The effective date of 20.11.72 NMAC shall be [].

20.11.72.6 **OBJECTIVE:** This regulation ensures that the Board and the Department take into account the cumulative effects of air pollution and ensure environmental justice, when they consider, propose or take any action pursuant to the New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances.

20.11.72.7 **DEFINITIONS:** In addition to the definitions in this section, 20.11.72.7 NMAC, the definitions in 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the definition in 20.11.72 NMAC shall govern.

A. **“Cumulative Effects”** means the public health and environmental effects in a geographic area or population group from all pollution sources, including pollution from all emissions and discharges, whether single or multi-media, routinely, accidentally or otherwise released.

B. **“Environmental Justice”** means the fair treatment of the people of New Mexico of all races, cultures, and incomes with respect to all actions considered, proposed or taken pursuant to the New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances, including the development, adoption, implementation, and enforcement of all laws, regulations, standards, and policies.

20.11.72.8 VARIANCES: In accordance with the Joint Air Quality Control Board Ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-8 NMSA 1978, any person may seek a variance from the non-federally enforceable provisions of this Part.

20.11.72.9 SAVINGS CLAUSE: Any amendment to 20.11.72 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, or Board Regulation 41, or 20.11.72 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part or regulation section in effect at the time the violation was committed.

20.11.72.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of this Part is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

20.11.72.11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

20.11.72.12 CUMULATIVE EFFECTS: Evaluation of the cumulative effects of air pollution is intended to enable the Board and the Department to do the following: 1) develop a full understanding of the current and future effects of their actions on the ecosystems and human communities in Bernalillo County and the City of Albuquerque, 2) evaluate and recognize the differences, needs, requirements and conditions within the county and parts thereof, and 3) implement the principles and goals outlined in Governor Bill Richardson's Executive Order No. 2005-056, entitled "Environmental Justice Executive Order" and President Bill Clinton's Executive Order No. 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

A. Whenever the Board and/or the Department evaluates the effects of air pollution on human health and the environment, the Board and Department must take into account the cumulative effects of air pollution in connection with any action the Board or the Department considers, proposes or takes under New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances.

B. Evaluation of the cumulative effects of a particular source of air pollution, along with other existing sources of air pollution, on the public's health and environment shall comprise evaluation, quantitatively to the extent possible and also qualitatively, by incorporating the following principles:

(1) Cumulative effects are caused by the aggregate of past, present, and reasonably foreseeable future actions; therefore the effects of the proposed action on a given ecosystem and human community must include its present and future effects added to the effects (past, present and future) of all other actions that affect the same ecosystem and human community;

(2) Cumulative effects are the total effect, including both direct and indirect, on a given ecosystem and human community of all actions taken, no matter who (federal, nonfederal, or

private) took them; therefore the additional effects contributed by actions unrelated to the proposed action must be included in the analysis;

(3) Cumulative effects may result from the accumulation of similar effects and from the synergistic interaction of different effects; therefore both additive and synergistic effects must be considered;

(4) Cumulative effects must be analyzed in terms of the specific relevant ecosystem and human community, and by developing an understanding of how they are susceptible to effects;

(5) Cumulative effects analysis on natural systems must to the extent possible use natural ecological boundaries and analysis of human communities must use actual socio-cultural boundaries to ensure proper scoping of the full extent of all effects;

(6) Since many actions can have adverse effects for many years, cumulative effects analysis must apply the best science and forecasting techniques to assess potential catastrophic consequences in the future;

(7) Each affected ecosystem and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters. Cumulative effects analysis must focus on what is needed to ensure long-term productivity or sustainability of the affected ecosystem or human community;

(8) In an area affected by pollution or environmental degradation, there are often certain subpopulations or environmental areas that are highly sensitive or highly exposed (such as children or workers); therefore cumulative effects on such populations or environmental areas must be evaluated;

(9) Cumulative effects analysis may encounter significant data gaps and uncertainties; therefore a cumulative effects analysis must identify and evaluate, quantitatively to the extent possible but also qualitatively, of any and all significant data gaps that may prevent complete evaluation of cumulative effects of the air pollution; and

(10) The Board and Department shall consider alternative courses of action to those considered or proposed whenever possible, and evaluate the cumulative effects of each such alternative.

C. All public participation provisions pursuant to the New Mexico Air Quality Control Act, the Joint Air Quality Control Board Ordinances and the regulations of the Board shall include providing for public participation as a critical input into all evaluations of cumulative effects of air pollution. This participation shall extend to the opportunity to provide information and raise issues of concern as an input into such evaluations as well as the opportunity to comment on draft evaluations and to seek review of final evaluations in the context of appropriate proceedings. The Board and Department will respond in writing to the information, issues raised and comments made by the public.

D. In order to continually improve its evaluation of cumulative effects, the Department shall, with public participation, prepare guidance for the evaluation of the cumulative effects of air pollution within one year and update such guidance every three years thereafter. The Department shall examine methodologies for evaluation of cumulative effects being developed by other governmental entities, including the U.S. Environmental Protection Agency, the New Mexico Environmental Justice Task Force, and the California Environmental Protection Agency.

20.11.72.13 ENVIRONMENTAL JUSTICE: Evaluation of environmental justice is intended to enable the Board and the Department to do the following: 1) develop a full understanding of the current and future effects of their actions on the ecosystems and human communities in Bernalillo County and the City of Albuquerque, 2) evaluate and recognize the differences, needs, requirements and conditions within the county and parts thereof, and 3) implement the principles and goals outlined in Governor Bill Richardson's Executive Order No. 2005-056, entitled "Environmental Justice Executive Order" and President Bill Clinton's Executive Order No. 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

A. Whenever the Board and/or the Department evaluates the effects or potential effects of air pollution on human health and/or the environment, the Board and Department must ensure the fair treatment of the people of New Mexico of all races, cultures, and incomes in connection with any action the Board or the Department considers, proposes or takes under New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances.

B. In connection with evaluating the effects on the environment or public health of any action the Board or Department considers, proposes or takes, the Board and the Department shall evaluate, quantitatively to the extent possible and also qualitatively, whether the cumulative effects of air pollution is consistent with the fair treatment of the people of New Mexico of all races, cultures and incomes. This Environmental Justice evaluation shall:

(1) Identify populations and communities suffering from disproportionate exposure to the cumulative effects of environmental threats that may be affected by the action being considered, proposed or taken;

(2) Identify populations and communities that may suffer disproportionate impacts from the cumulative effects of the action being considered, proposed or taken;

(3) Evaluate the environmental justice impact of the cumulative effects of alternatives to the action being considered, proposed or taken; and

(4) Give high priority to actions that will address environmental justice problems, including adequate deployment of enforcement resources.

C. All public participation provisions pursuant to the New Mexico Air Quality Control Act, the Joint Air Quality Control Board Ordinances and the regulations of the Board shall include providing for public participation as a critical input into all evaluations of

environmental justice. This participation shall extend to the opportunity to provide information and raise issues of concern as an input into such evaluations as well as the opportunity to comment on draft evaluations and to seek review of final evaluations in the context of appropriate proceedings. The Board and Department shall respond in writing to the information, issues raised and comments made by the public.

D. In order to continually improve its evaluation of environmental justice, the Department shall, with public participation, prepare guidance for the evaluation of environmental justice within one year and update such guidance every three years thereafter. The Department shall examine methodologies for evaluation of environmental justice being developed by other governmental entities, including the U.S. Environmental Protection Agency, the New Mexico Environmental Justice Task Force, and the California Environmental Protection Agency.

HISTORY OF 20.11.72 NMAC:

Attachment 2

NEIGHBORHOOD ASSOCIATION RECOGNITION

§ 14-8-2-1 SHORT TITLE.

Sections 14-8-2-1 et seq. may be cited as the "Neighborhood Association Recognition Ordinance."
(74 Code, § 7-11-1) (Ord. 14-1987)

§ 14-8-2-2 LEGISLATIVE FINDINGS AND PURPOSE.

(A) Early identification and resolution of potential conflicts involving neighborhoods and the private sector can be of utmost value to all concerned.

(B) A standardized recognition policy for Albuquerque neighborhood associations would promote improved communications between neighborhood associations and city government.

(C) Due to the potential impact of new development and redevelopment upon neighborhoods, it can be useful if developers coordinate major proposals and plans with neighborhood associations.

(D) The purpose of §§ 14-8-2-1 et seq. is to meet the needs specified by the above legislative findings, while not limiting the rights of any other person, including nonrecognized neighborhood groups, to input directly into the city's decision-making processes.

(74 Code, § 7-11-2) (Ord. 14-1987)

§ 14-8-2-3 DEFINITIONS.

(A) For the purpose of §§ 14-8-2-1 et seq., the following definition shall apply unless the context clearly indicates or requires a different meaning.

NEIGHBORHOOD ASSOCIATION. An organized group of people or other legal entities who own or occupy real property within a specified subarea of the city.

(B) Words not defined herein, but defined in the Zoning Code, are to be construed as defined therein.
(74 Code, § 7-11-3) (Ord. 14-1987)

§ 14-8-2-4 CRITERIA FOR RECOGNITION OF NEIGHBORHOOD ASSOCIATIONS.

A neighborhood association shall be designated a recognized neighborhood association by the Mayor when and so long as all the following criteria are found to be met:

(A) The association shall file with the City Office of Neighborhood Coordination a current copy of their bylaws. The bylaws shall include the following provisions:

(1) The geographic boundaries of the neighborhood association shall be reasonable; boundaries are recommended to include an area of the city not more than one square mile and not less than 15 acres or 4 blocks. The boundaries of any neighborhood association in existence on the effective date of §§ 14-8-2-1 et seq. shall be deemed reasonable.

(2) The association shall make full membership open to all persons residing within its boundaries and to all persons and legal entities owning property or having a place of business within its boundaries.

(3) The association shall hold at least one meeting per year for which it makes a reasonable attempt to give written notice to every household and place of business within the association's boundaries; mail, delivered handbills, or a number of prominent signs are examples of adequate notice. No election shall be held at a meeting of an association unless the meeting is so advertised.

(B) Officers of recognized associations shall annually submit a letter to the Office of Neighborhood Coordination attesting to the number of dues-paying members their records indicate for the previous year. If an association has no dues-paying members, or if dues-paying membership does not adequately reflect an association's size, its officers shall annually submit other evidence of the size of its active membership.

(C) No new neighborhood association shall be recognized which has within its boundaries a geographic area already defined within the boundaries of an existing, previously recognized neighborhood association unless the new association demonstrates to the satisfaction of the Mayor that it has more membership in the overlapping area than the first association.

(D) The appropriate district City Councillor and the City Office of Neighborhood Coordination shall be furnished with names, addresses and available phone numbers of current neighborhood association officers and/or board members.

(E) Evidence of an annual general membership meeting advertised as specified in division (A)(3) above shall be sent to the City Office of Neighborhood Coordination within 60 days of the meeting.

(F) Failure to comply with any of the preceding criteria shall result in notification of noncompliance being sent to the recognized neighborhood association officers and/or board members from the City Office of Neighborhood Coordination. Upon receipt of this notice, a recognized neighborhood association must offer evidence of compliance within 60 days; if it does not comply, the association shall be removed from the list of recognized neighborhood associations.

('74 Code, § 7-11-4) (Ord. 14-1987)

§ 14-8-2-5 RESPONSIBILITIES OF RECOGNIZED NEIGHBORHOOD ASSOCIATIONS.

Recognized neighborhood associations shall:

(A) By interaction with their members, residents, and the city, strive to uphold good planning, protect the environment, and promote the community welfare. Communication should be fostered between the recognized neighborhood association and city government on plans, proposals, and activities affecting their area.

(B) Attempt to inform members and other eligible participants in their neighborhood of issues for discussion.

(C) Establish an orderly and democratic means for making representative decisions.

(D) Establish and follow a clear method for reporting to the city actions which accurately reflect the neighborhood's position. When a neighborhood association presents its official position on an issue to the city, it shall be prepared to identify whether the decision was reached by the board, a poll of the general membership, or by a vote at a general membership meeting, and the vote for and against the position.

(E) Comply with its bylaw provisions as specified in § 14-8-2-4 above.

(F) Notify the City Office of Neighborhood Coordination and the district City Councillor(s) of general membership meetings at least two weeks in advance, when possible.

(G) Notify the City Office of Neighborhood Coordination of two persons' addresses where it wishes notice to be sent pursuant to §§ 14-8-2-1 et seq.; such designation shall be changed by the neighborhood association when appropriate.

('74 Code, § 7-11-5) (Ord. 14-1987)

§ 14-8-2-6 RESPONSIBILITIES OF THE CITY.

(A) The Mayor shall make reasonable attempts to give mailed notice to recognized neighborhood associations of rank one, two, and three plan applications, which plans would cover areas within or contiguous to the recognized neighborhood association's boundaries; notification shall be when the application is filed. Recognized neighborhood associations shall be notified of new plans and plan amendments upon initiation of such a project by city departments and within five days of application filing by others. The Mayor shall make reasonable attempts to mail such associations notice concerning all subsequent public hearings of city boards, commissions, and task forces concerning such plan proposals, except hearings which have been deferred to a specific time announced at the prior hearing.

(B) The Mayor shall give directly affected recognized neighborhood associations prior mailed notification of pending major city development and redevelopment projects and changes in services by the city which will have a direct, significant impact on that neighborhood; permanent and temporary street construction and major repair, total closing of streets, changes in size or type of city parks, building of new city facilities, relocation or reconstruction of privately owned utilities which require a permit, or rerouting of bus service are examples. With regard to permanent and temporary street construction and major repair, the Mayor shall give mailed prior notification to the recognized neighborhood associations within one mile of the street construction and/or major repair. When new traffic calming devices are being planned or scheduled for installation, the Mayor shall by mail notify the affected residents directly. Only those persons residing on the street where the devices are to be placed shall be included in any survey or petition process. Affected residents are defined as those who meet either or both of the following criteria:

(1) Residents who cannot avoid traffic calming devices while traveling to or from their homes within the boundaries of the recognized neighborhood association where the devices will be installed.

(2) Residents whose homes are located within 500 feet of the proposed traffic calming devices.

(C) The Mayor shall require written affirmation of prior notice to recognized neighborhood associations at the time of filing applications, as specified in § 14-8-2-7. Not less than 15 days prior to the first public hearing on applications specified in § 14-8-2-7, the Mayor shall mail notices of the hearing to such recognized neighborhood

associations.

(D) For the purpose of divisions (A), (B), and (C) of this section, first class letters mailed to two contact addresses submitted by a neighborhood association shall constitute reasonable attempt to notify.

(E) The city shall mail initial response within seven days of receipt of any correspondence received from any recognized neighborhood association that requests an answer, definition, or status of any city project within their boundaries.

(F) The City Office of Neighborhood Coordination shall:

(1) Notify all known neighborhood associations and prospective associations of the requirements for recognition, and advise such groups on how to meet the requirements;

(2) Review its files on neighborhood associations to verify if each association has met the requirements for recognition with current information;

(3) At least annually notify each known neighborhood association of its current recognition status; city agencies shall also be advised of associations' status;

(4) Encourage individuals to cooperate with their existing neighborhood association;

(5) Work with City officials and recognized neighborhood associations to develop appropriate processes for neighborhood review and comment on city plans and policies;

(6) Supply to all recognized neighborhood associations a current list of all city government agencies, their department heads, and corresponding phone numbers;

(7) Advise recognized neighborhood associations of self-help projects which could enhance the quality of life within their neighborhoods;

(8) Along with the district Councillor, serve when appropriate as a liaison between a recognized neighborhood association and city agencies;

(9) Provide for the sharing of information with recognized neighborhood associations by furnishing, upon request, available pertinent information;

(10) Provide to recognized neighborhood associations a city newsletter to inform them about happenings in city government and to increase communications between such neighborhood associations;

(11) Provide to neighborhood associations workshops on appropriate topics concerning city procedures and actions as well as the effective operation of neighborhood associations; such workshops shall be free for two representatives of each recognized neighborhood association, while a fee may be charged to others; fees may be charged for materials;

(12) Upon request, assist the district Councillor and/or neighborhood associations in the formation of alliances of neighborhood associations; and

(13) Supply to the public and to city officials the names and addresses of the two designated recipients of notices, as most recently specified by each recognized neighborhood association.

(G) Neighborhood groups which are not recognized neighborhood associations will upon request be placed on the mailing list of the City Office of Neighborhood Coordination to receive its newsletter and notices of neighborhood association workshops.

(H) With the advice and consent of the Council, the Mayor may promulgate rules and guidelines necessary to implement §§ 14-8-2-1 et seq.

(I) The Mayor shall make reasonable attempts to give directly affected recognized neighborhood associations prior mailed notification of pending major city development and redevelopment projects and changes in services by the city which will have a direct, significant impact on neighborhoods within one mile of, for example, the permanent and temporary street construction and major repair, total closing of streets, changes in size or type in city parks, building of new city facilities, relocation or reconstruction of privately owned utilities which require a permit, or rerouting of bus service.

(74 Code, § 7-11-6) (Ord. 14-1987; Am. Ord. 23-2003; Am. Ord. 28-2005)

§ 14-8-2-7 RESPONSIBILITIES OF APPLICANTS AND DEVELOPERS.

Applicants for approval of amendments of the zone map, zoning site development plans (except houses and

accessory buildings), major subdivisions, vacations of public right-of-way, mapping historic districts, landmarking sites, and issuance or transfer of liquor licenses shall, prior to filing the application, make a reasonable attempt to give written notification of their proposal to any recognized neighborhood association which covers, abuts, or is across public right of way from the site of their plans. Certified letters, return receipt requested, mailed to the two designated neighborhood association representatives on file at the City Office of Neighborhood Coordination constitutes a reasonable attempt to notify an association. Failure by an applicant to show proof of either notification in person or a reasonable attempt to give written notification of its proposal to such designated association representatives shall be grounds for a neighborhood association to request deferral of a hearing. The application for such hearing shall include a signed statement that such notification has been sent.

('74 Code, § 7-11-7) (Ord. 14-1987)

Attachment 3

New Mexico Environmental Quality Act

Chapter 1: Statement of Policy and Intent.

The Legislature finds and declares that it is the policy of the State of New Mexico to do the following:

- (A) Develop and maintain a high quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State;
- (B) Take all action necessary to provide the people of this State with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise, light pollution, and threats to human health;
- (C) Prevent the elimination of fish or wildlife species due to human activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities of this state;
- (D) Ensure that the long-term protection of the environment, consistent with the provision of a suitable living environment for every State citizen, shall be the guiding criterion in public decisions;
- (E) Create and maintain conditions under which humans and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations;
- (F) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality;
- (G) Require governmental agencies at all levels to consider qualitative and technical factors, as well as economic factors; to consider long-term as well as short-term benefits and costs; and to consider alternatives to proposed actions affecting the environment;
- (H) Regulate activities of public agencies which are found to affect the quality of the environment, so that major consideration is given to preventing environmental damage in this State; and
- (I) Deny projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. The procedures required by this Act are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social or other conditions make infeasible such

project alternatives or such mitigation measures, individual projects may be improved in spite of one or more significant effects thereof.

Chapter 2: Definitions.

- (A) "Environment" means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.
- (B) "Environment Assessment" or "EA" means an informational document which every public agency shall prepare for its proposed projects. The purpose of an Environmental Assessment is to either issue a "Finding of No Significant Impact" or to determine that further assessment of the project is necessary through preparation of an Environmental Impact Statement.
- (C) "Environmental Impact Statement" or "EIS" means an informational, detailed document setting forth the matters specified in this Act, which, when its preparation is required by this Act, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an Environmental Impact Statement is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.
- (D) "Finding of No Significant Impact" means a written statement, which may be included in an Environmental Assessment, briefly describing the reasons that a proposed project will not have a significant effect on the environment and therefore does not require the preparation of an Environmental Impact Statement.
- (E) "Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project.
- (F) "Person" means any human, organization, agency, corporation, or other entity.
- (G) "Project" means any activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:
 - a. An activity directly undertaken by any public agency;
 - b. An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or
 - c. An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.
- (H) "Public agency" means any state or local agency, board, or commission; any county, city, city and county, or regional agency; or an agency of any other political subdivision.

- (I) "Significant effect on the environment" means a substantial, or potentially substantial, change in the environment.
- (J) "Substantial evidence" means evidence including facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. Argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly inaccurate or erroneous is not substantial evidence.

Chapter 3: Assessment of Environmental Impacts.

Section 3.1: Environmental Assessments on proposed projects; significant effects; Findings of No Significant Impact.

- (A) All lead agencies shall require the applicant to prepare, or cause to be prepared by contract, and certify the completion of, an Environmental Assessment on any proposed project. On the basis of substantial evidence in light of the whole record, the Environmental Assessment either shall conclude that the project may have significant effect on the environment or shall enter a finding of No Significant Impact.
- (B) If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, an Environmental Impact Statement shall be prepared by the applicant.

Section 3.2: Environmental Impact Statements on proposed projects.

- (A) All lead agencies shall require the applicant to prepare, or cause to be prepared by contract, and certify the completion of, an Environmental Impact Statement on any project which they propose to carry out or approve that may have a significant effect on the environment.
- (B) The Environmental Impact Statement shall include a detailed statement setting forth all of the following:
 - a. All significant effects on the environment of the proposed project;
 - b. In a separate section:
 - i. Any significant effect on the environment that cannot be avoided if the project is implemented.
 - ii. Any significant effect on the environment that would be irreversible if the project is implemented.
 - iii. The cumulative environmental impact of this project when connected with the environmental impacts of past, current and proposed projects.
 - c. Mitigation measures proposed to minimize significant effects on the environment, and a description of how those measures would be implemented;
 - d. Alternatives to the proposed project, including a no-action alternative;

- i. The discussion of each alternative to the proposed project shall include a description of the significant effects to the environment that would result from each alternative.
 - ii. The agency's preferred alternative and proposed course of action shall be identified.
- e. The impacts on cultural and historic resources of the State.

(C) The Environmental Impact Statement shall also contain a brief statement indicating the reasons for determining which, if any, various effects on the environment of a project are not significant and consequently have not been discussed in detail in the Statement.

Section 3.3: Best available alternative; mitigation.

(A) Each lead agency shall choose the best available alternative to action which, to the maximum extent practicable, minimizes or avoids adverse environmental effects.

Section 3.4: New Mexico Environment Department; preparation and development of guidelines.

The New Mexico Environment Department shall prepare and develop proposed guidelines for the implementation of this Act by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of documents in a manner consistent with this Act.

- (A) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a significant effect on the environment. The criteria shall require a finding that a project may have a significant effect on the environment if any of the following conditions exist:
- a. A proposed project has the potential to degrade the quality of the environment, to curtail the range of the environment, or to interfere with proper ecosystem functioning in the environment;
 - b. The possible effects of a project are individually limited but cumulatively considerable. As used in this subsection, "cumulatively considerable" means that the incremental environmental impacts of an individual project are considerable when viewed in connection with the environmental impacts caused by past projects, the environmental impacts caused by other current projects, and the environmental impacts caused by probable future projects;
 - c. The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.
- (B) The guidelines shall also include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or area-wide environmental significance that it should be submitted to appropriate state agencies for review and comment prior to completion of an Environmental Assessment of Environmental Impact Statement.

- (C) The New Mexico Environment Department shall develop and prepare the proposed guidelines as soon as practicable.

Section 3.5: Establishment of time limits for Environmental Assessments and Environmental Impact Statements.

- (A) For its projects, each public agency shall establish, by resolution or order, time limits that do not exceed the following:
- a. Six months for completing Environmental Assessments and, where appropriate, adopting Findings of No Significant Impact.
 - b. One year for completing and certifying Environmental Impact Statements.
 - i. The time limits specified in this section shall apply only to those circumstances in which the public agency is the lead agency for a project. The resolutions or orders may establish different time limits for different types or classes of projects, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the public agency.
 - ii. The resolutions or orders required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.
- (B) If an Environmental Assessment or Environmental Impact Statement is prepared under a contract to a public agency, the contract shall be executed within 45 days from the date on which the public agency sends a notice of preparation. The public agency may take longer to execute the contract if the project applicant and the public agency mutually agree to an extension of the time limit provided by this subsection.

Section 3.6: Notice; opportunity to comment; availability to legislature and general public.

- (A) Whenever a public agency, board, or commission approves or determines to carry out a project, it shall file notice of that approval or that determination with the New Mexico **(insert State's Office of Planning and Research)**.
- a. The notice shall indicate the determination of the agency, board, or commission on whether the project will, or will not, have a significant effect on the environment and shall indicate whether an Environmental Impact Statement has been prepared pursuant to this Act.
 - b. All notices filed pursuant to this section shall be available for public inspection.
- (B) Lead agencies shall solicit and consider comments from the public and public agencies on environmental documents, including, but not limited to, Environmental Assessments and draft Environmental Impact Statements, in order to help the lead agencies identify

potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects.

- (C) The lead agency shall make available each Environmental Assessment and Environmental Impact Statement to the following:
- a. The State Legislature. It shall include the Environmental Assessment and Environmental Impact Statement as a part of the regular project statement used in the existing review and budgetary process.
 - b. The general public. Any member of the general public may secure a copy thereof by requesting a copy from the lead agency.
 - c. The appropriate local planning agency or agencies of any city, county, or city and county which will be affected by the project.

Chapter 4: Proceedings.

Section 4.1: Enforcement; commencement of actions or proceedings.

- (A) Any person may enforce the provisions of this Act.
- (B) Any action or proceeding to challenge, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this Act shall be commenced as follows:
- a. An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.
 - b. Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 60 days from the date of the filing of the notice required by this Act.
 - c. Any action or proceeding alleging that an Environmental Impact Statement does not comply with this Act shall be commenced within 60 days from the date of the filing of the notice required by this Act.

Section 4.2: Settlement meetings; settlement conference.

- (A) Not later than 20 days from the date of service upon a public agency of a petition or complaint, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity

of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

- (B) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.
- (C) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.
- (D) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

Section 4.3: Noncompliance with Act; court orders.

If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this Act, the court shall enter an order that includes one or more of the following:

- (A) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.
- (B) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision, into compliance with this Act.
- (C) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this Act.
- (D) A mandate that the public agency pay attorneys' fees to plaintiff.

Chapter 5: Effective Date.

Unless otherwise specified, this Act shall become effective six months from enactment.

Chapter 6: Funding.

All expenses born from implementing this Act shall be that undertaken by each agency.

Chapter 7: Severability.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provision of this Act are severable.



ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION
TO AMEND AIR QUALITY REGULATION
20.11 NMAC TO REQUIRE REVIEW
AND CONSIDERATION OF
CUMULATIVE IMPACTS

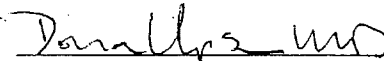
AQCB Petition No. 2014-1

ORDER DENYING HEARING

This matter comes before the Board on a petition filed January 27, 2014 by the Southwest Organizing Project to amend 20.11 NMAC by adopting a proposed Part 72, "Cumulative Effects." Under 20.11.82.18.C NMAC, the Board is required to determine at a public hearing occurring no later than 60 days after receipt of the petition whether or not to hold a public hearing on the proposed regulatory change.

Accordingly, the Board considered the petition at its regular meeting of March 12, 2014. The Board considered written and oral arguments in support of the petition from counsel for Southwest Organizing Project, written and oral arguments in opposition to the petition from counsel from the City of Albuquerque Environmental Health Department and the Association of Commerce and Industry, and written and oral comments in support and opposition from members of the public. After deliberation, the Board decided by a vote of 6-1 to not hold a public hearing on the proposed regulatory changes.

The request for a public hearing in this matter is therefore DENIED.



Dr. Dona Upson
Chair

3/21/14

Exhibit H



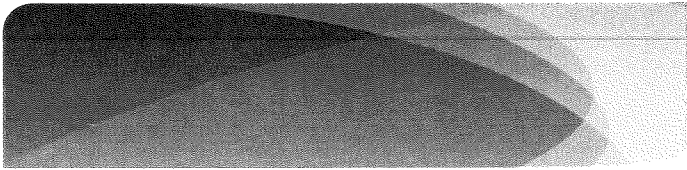
Legend

Stationary Source Density



This map was produced by the City of Albuquerque Environmental Health Department Air Quality Division using data from the City of Albuquerque and Bernalillo County. The AQID takes no responsibility for the accuracy of these data.

Exhibit I



SouthWest Organizing Project

211 10th St SW

Albuquerque, NM 87102

Phone: (505) 247-8832 Fax: (505) 247-9972

E-Mail: juan@swop.net Web: breatheinm.org

San Jose Air Quality Report [DRAFT]

A product of Breathe In New Mexico

March 12, 2014



Albuquerque's San Jose Community

The San Jose neighborhood of southeast Albuquerque is one of the oldest neighborhoods in our city, with a rich history at the center of a growing metropolis. Unfortunately, it's also a community with a toxic legacy- a fate they have fought to change for years. For no less than half a century, residents of this mostly Latino community have fought against the impacts of the large and diverse industry that resides right near their homes, community centers, and schools. As a result of the rail line running alongside their community, as well as zoning laws that cater to heavy industry, residents here have to deal with an industry presence that includes refineries, asphalt companies, an intermodal facility, cement plants, metal recycling plants, and chemical and gasoline storage facilities.

San Jose is also the location of two federally designated Superfund sites, one of which was the first in New Mexico. These Superfund sites resulted in groundwater contamination in the community of San Jose throughout the 1980s and 90s. Community members organized themselves in response to the groundwater contamination, and it is a battle that they are still fighting to this day. These are just some of the elements that have brought San Jose a designation as an environmental justice community.

More recently, San Jose residents have been working to address the toxic smelling odors and air pollution produced by not only the surrounding industry, but also the large amount of diesel trains that sit on the tracks and idle for hours on end. Many community members even complain about smelling these odors inside of their homes, while they lie in bed, or sit down to eat dinner. The health impacts from this pollution are of great concern to community members, and that is where the Breathe In New Mexico campaign has been able to participate- by collecting and analyzing air quality data, and creating a plan to enact stronger regulations.

Community members have had a hard time convincing elected officials and regulatory bodies to enact tougher regulations. Many San Jose community members have worked hard to educate elected officials and policy makers of the realities of industry pollution in their community. They've fought against air permits for new polluting facilities and have questioned why some current facilities don't have air permits.

The issue we are focused on now is cumulative pollution impacts, in which communities are exposed to multiple sources of pollution in a concentrated area. While community members have no choice but to deal with the aggregate impacts of pollution, regulatory bodies look at each site on a case-by-case basis when reviewing air quality permits. While one site may pass an air permit review for their output of VOCs, we argue that regulators should look at the total emissions of VOCs in an area with multiple sites during an air permit review for new and existing facilities.

We are confident that the data, the stories, and the solutions outlined in this report will set us on a path to improve air quality in New Mexico's environmental justice communities, and ultimately improve the quality of life in our state.



Discussing Health Impacts

Residents in the San Jose and Mountain View neighborhoods have worried about the health impacts of industry on their community for decades, but only recently has hard data for the areas been collected and become available. In 2011, Bernalillo County Place Matters conducted a health impact assessment on the communities of San Jose and Mountain View in order to respond to a request for a special use air permit from NMRT, LLC. The health figures reflected in the Place Matters report helped community residents fight back against the plans of NMRT plans to build a dirty materials recovery facility in the area alongside the expansive existing industry. Significant findings in this report, including data on causes of death and frequency of serious illnesses, clearly showed the health disparities that exist between communities like San Jose and Mountain View and other communities in the city of Albuquerque that are less burdened by industry.

“Research has found that the clustering of social, economic and environmental health risks in low-income and minority neighborhoods contributes to sickness and death (Joint Center for Political and Economic Studies, 2011).”

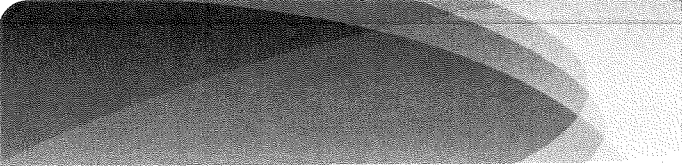
These sobering statistics show us that residents San Jose and Mountain View have a much lower life expectancy than most other areas in Albuquerque, while also having a higher density of environmental hazards than these other areas. Quoting the report, “The predominantly Hispanic communities of Mountain View and San Jose not only suffer from higher death rates and shorter life spans, but from higher poverty, a greater number of heavy industries (Bernalillo County, Office of Environmental Health, 2006), and more severe contamination when compared to other areas in the County.”

Over the course of SWOP’s air quality campaign in this area, community members have told us that seeing the findings of health impact assessment was a critical moment that made them aware of their community’s situation and galvanized them to action. After achieving victory by keeping NMRT from locating in their backyard, community members have been inspired to continue the fight for environmental justice in San Jose and Mountain View.

Organizing a Bucket Brigade

Community bucket brigades have been the cornerstone of our air quality work, as they combine reliable scientific data with direct community involvement and cooperation. In 2012, San Jose residents realized that they needed to take matters into their own hands by providing more context to their air quality issues. A partnership was formed with SWOP to conduct air monitoring (*see Air Bucket Methodology*) through the Breathe In New Mexico bucket brigade. SWOP helped organize a cadre of community members and, with the help of Global Community Monitor, trained these residents on the proper collection and handling of air quality data, and how to proceed with analysis, interpretation and a plan for action.

The first step, as always, was to meet with affected community members to talk about their experiences and get their perspective on environmental justice issues where they live. These conversations led to a common understanding of the issues in the area, as well as potential sources of



air pollution. This preliminary information outlined a roadmap of how and where to begin air sampling.

The next step was partnering with Global Community Monitor to do a series of technical trainings for community members. The first step in community-based air monitoring is the collection of air quality logs, which help provide a narrative of the community member's day-to-day experience. From there, residents were trained on how to correctly use the data collection equipment (VOC bucket and/or particulate monitor), log the sample, and fill out the chain of custody forms to send to the assigned lab. We established a calendar with community members that included benchmarks to help them schedule their sample set that would be collected over the course of a year. San Jose started their sampling in September of 2012.

The focus of the air monitoring in San Jose was to identify Volatile Organic Compounds (VOCs) coming from locations like refineries, refueling stations, and chemical storage facilities by collecting bucket air samples. Particulate matter tests were also performed on diesel emissions coming from trains and 18-wheelers, as well as on dust originating from cement plants.

San Jose residents collected a total of 12 VOC samples and 6 particulate samples over a year's timeframe. Over the course of data collection, community members also documented acute health effects like headache, nausea and respiratory problems that coincided with a prevalence of heavy chemical odors such as diesel fuel, gear oil and spray paint.





San Jose Air Quality Data

Results of Data Collection

San Jose residents used two different methods of air quality data collection to study the air in their community. Residents took data on both Volatile Organic Compounds and Particulates. Field data included start and end time of sampling, temperature, meteorological conditions and notable circumstances, which was recorded contemporaneously by trained community volunteers.

To get a clear, scientific understanding of the sample results, SWOP and Global Community Monitor worked with Dr. Mark Chernaik of Science for Citizens for help in analyzing the results of the collection of samples. What follows is a summary of Dr. Chernaik's full analysis of the sample results for the San Jose community.

RESULTS - VOC LEVELS

Seven (7) grab samples of air were collected by trained community volunteers over a period of approximately one year. The first air sample was collected on September 13th, 2012, and the last air sample was collected on September 18th, 2013.

Chlorobenzene

Air samples collected from southwest Albuquerque were remarkable in that each sample contained detectable and significantly elevated levels of chlorobenzene. The average concentration found in all seven samples is 23.6 $\mu\text{g}/\text{m}^3$, ranging from a low of 8.5 $\mu\text{g}/\text{m}^3$ to a high of 50 $\mu\text{g}/\text{m}^3$.

These levels are roughly 10 time higher than concentrations of chlorobenzene commonly found in urban ambient air. According to the U.S. Agency for Toxic Substances and Disease Registry:

"Air samples at 56 localities in the United States in 1982 had mean chlorobenzene concentrations of about [3.0 $\mu\text{g}/\text{m}^3$] the highest concentrations in urban and suburban areas, at much lower levels at the sites of production, but was not detectable in rural and remote areas (Brodzinsky and Singh 1983). This suggests a substantial contribution to urban air levels by small industry and consumer products but also a short residence time in the air. A study of New Jersey waste sites found similar air levels of chlorobenzene [2.5 $\mu\text{g}/\text{m}^3$] (Harkov et al. 1985)."¹

¹ <http://www.atsdr.cdc.gov/toxprofiles/tp131-c5.pdf>

² <http://www.epa.gov/ttnatw01/hlthef/chlorobe.html>

³ See, for example: GE Railcar (Elkton, Maryland). <http://www.epa.gov/reg3wcmd/ca/md/webpages/mdd078288354.html>

⁴ U.S. EPA (1993) "Locating And Estimating Air Emissions From Sources Of Chlorobenzenes."

⁵ http://www.epa.gov/ttn/naaqs/pm/pm25_index.html

⁶ Even in urban areas, levels of EC in air samples almost never exceed 1 $\mu\text{g}/\text{m}^3$ unless the sample is within a few hundred feet of road traffic. See: <http://www.mnp.nl/bibliotheek/rapporten/500099011.pdf>

⁷ Ostro, et al. (2008) "The impact of components of fine particulate matter on cardiovascular mortality in susceptible subpopulations," *Occup. Environ. Med.*, 65:750-756.

These consistently elevated levels of chlorobenzene in southwest Albuquerque may also be of significance to public health in that levels are averaging higher than the U.S. Environmental Protection Agency's (U.S. EPA) provisional Reference Concentration (RfC) for chlorobenzene. According to the U.S. EPA:

"EPA has calculated a provisional Reference Concentration (RfC) of 0.02 milligrams per cubic meter (mg/m³) [equivalent to 20 µg/m³] for chlorobenzene based on kidney and liver effects in rats. The RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups), that is likely to be without appreciable risk of deleterious noncancer effects during a lifetime. It is not a direct estimator of risk but rather a reference point to gauge the potential effects. At exposures increasingly greater than the RfC, the potential for adverse health effects increases. Lifetime exposure above the RfC does not imply that an adverse health effect would necessarily occur. The provisional RfC is a value that has had some form of Agency review, but it does not appear on IRIS. (6)"²

What is the source of chlorobenzene in southwest Albuquerque is, therefore, an important question, but for which there is not yet a clear answer, only reasonable possibilities. All of the samples were collected near a railway corridor, and several of the samples were collected in close proximity to an asphalt storage terminal operated by Western Refining facility on 2040 2nd Street. Rail car service facilities commonly use chlorobenzene as degreasing solvent.³ Chlorobenzene is used as a solvent in the production of bitumen and asphalt coatings and, according the U.S. EPA, asphalt paving mixtures and blocks are potential sources of chlorobenzene.⁴

Toluene

Air samples collected from in southwest Albuquerque were also remarkable in that each sample contained detectable levels of toluene. The average concentration of toluene found in all seven samples is 10.9 µg/m³, ranging from a low of 8.9 µg/m³ to a high of 15 µg/m³. However, these levels of toluene are not higher than concentrations of toluene commonly found in urban ambient air.

RESULTS - PARTICULATE MATTER AND ELEMENTAL CARBON LEVELS

Particulate Matter levels

There is a robust association between health effects and ambient levels of particulate matter. Very small (fine) particles exert disproportionately more health effects than do larger particles. According to the U.S. EPA:

"Particles less than 10 micrometers in diameter (PM₁₀) pose a health concern because they can be inhaled into and accumulate in the respiratory system. Particles less than 2.5 micrometers in

² <http://www.epa.gov/ttnatw01/hlthef/chlorobe.html>

³ See, for example: GE Railcar (Elkton, Maryland). <http://www.epa.gov/reg3wcmd/ca/md/webpages/mdd078288354.html>

⁴ U.S. EPA (1993) "Locating And Estimating Air Emissions From Sources Of Chlorobenzenes."

diameter (PM_{2.5}) are referred to as "fine" particles and are believed to pose the largest health risks. Because of their small size (less than one-seventh the average width of a human hair), fine particles can lodge deeply into the lungs.

"Health studies have shown a significant association between exposure to fine particles and premature mortality. Other important effects include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia. Individuals particularly sensitive to fine particle exposure include older adults, people with heart and lung disease, and children."⁵

Seven filtered air samples from southwest Albuquerque were analyzed for PM_{2.5} levels. Most of the PM_{2.5} levels in filtered air samples collected in southwest Albuquerque were relatively low. However, a PM_{2.5} level of 75.7 µg/m³ was measured at Williams & Broadway on 13 August 2013, more than twice the U.S. EPA 24-hour standard for PM_{2.5} of 35 µg/m³. Primarily because of this sample, the long-term average PM_{2.5} level (six samples over a period of six months) now stands at 18.9 µg/m³, above the U.S. EPA annual standard for PM_{2.5} of 12 µg/m³.

Elemental Carbon levels

Vehicle exhaust, primarily diesel exhaust, is the predominant source of EC in ambient air.

- When EC levels are above 1 microgram per cubic meter (µg/m³), then one can conclude that this location is an area impacted by diesel engine emissions.⁶
- When 24-hour EC levels at a location are above 1.36 µg/m³, then they are high enough to be associated with an excess risk of cardiovascular mortality two and three-days post exposure.⁷
- When 24-hour EC levels at a location are above 0.838 µg/m³, then they are high enough to be associated with an excess risk of cardiovascular and respiratory hospitalizations on the day of exposure.⁸

Nine filtered air samples from southwest Albuquerque were analyzed for EC levels. EC levels in samples collected at the 2500-2600 block of Williams Street were consistently high, indicating impacts from heavy vehicle (diesel engine) emissions. EC levels exceeded 0.838 µg/m³ in three of four samples from this location, high enough to be associated with an excess risk of cardiovascular and respiratory hospitalizations on the day of exposure. A EC level of 1.76 µg/m³ was measured at Williams & Broadway on 23 August 2013, substantially higher than levels associated with an excess risk of cardiovascular mortality two and three-days post exposure

⁵ http://www.epa.gov/ttn/naaqs/pm/pm25_index.html

⁶ Even in urban areas, levels of EC in air samples almost never exceed 1 µg/m³ unless the sample is within a few hundred feet of road traffic. See: <http://www.mnp.nl/bibliotheek/rapporten/500099011.pdf>

⁷ Ostro, et al. (2008) "The impact of components of fine particulate matter on cardiovascular mortality in susceptible subpopulations," *Occup. Environ. Med.*, 65:750-756.

⁸ Bell, et al. (2009) "Hospital Admissions and Chemical Composition of Fine Particle Air Pollution," *Am J Respir Crit Care Med*, 179:1115-1120.

For several samples with low EC levels were low (April 22-23 and May 5-6) windy conditions prevailed.⁹ On April 22nd, wind speeds averaged 12 mph with gusts of up to 37 mph, with winds out of the SW; on April 23rd, wind speeds averaged 13 mph with gusts of up to 44 mph, with winds out of the N. On May 5th, wind speeds averaged 19 mph with gusts of up to 47 mph, with winds out of the ESE; On May 6th, wind speeds averaged 12 mph with gusts of up to 31 mph, with winds out of the SSW. On the one day when EC levels were quite high (Jan 26-27th), winds were quite lower, averaging only 7-8 mph. On windy days, ambient air levels of pollutants from a point source are lower simply because there is more total air passing over a location for pollutants to disperse into.

I would conclude, therefore, that the sampling location – a mixed residential-industrial area along a railway corridor in southwest Albuquerque – is adversely impacted by diesel emissions, impacts which are mitigated some by occasional days with high winds.



⁹ http://www.wunderground.com/history/airport/KABQ/2013/4/22/DailyHistory.html?req_city=NA&req_state=NA&req_statename=NA
http://www.wunderground.com/history/airport/KABQ/2013/4/23/DailyHistory.html?req_city=NA&req_state=NA&req_statename=NA
http://www.wunderground.com/history/airport/KABQ/2013/5/5/DailyHistory.html?req_city=NA&req_state=NA&req_statename=NA
http://www.wunderground.com/history/airport/KABQ/2013/5/6/DailyHistory.html?req_city=NA&req_state=NA&req_statename=NA
http://www.wunderground.com/history/airport/KABQ/2013/1/26/DailyHistory.html?req_city=NA&req_state=NA&req_statename=NA
http://www.wunderground.com/history/airport/KABQ/2013/1/27/DailyHistory.html?req_city=NA&req_state=NA&req_statename=NA

Community Improvements

Where Are We Now?

San Jose has a rich history of activism and fighting for a better quality of life in their community, and as you've seen throughout this report, that fight is very much alive today. San Jose is dealing with a host of problems originating from a heavy industry presence that literally represents a life or death situation- and this is a story we've heard before. Black and Brown Berets organized in the 1960s to relocate a sewage waste treatment plant, community awareness councils have been formed in the community and done great work, and churches and schools have been involved in advocating on behalf of the community. Despite all this incredible community action, and all the progress they've made along the way, the San Jose neighborhood still exhibits a lower quality of life than the rest of the city of Albuquerque. We cannot leave a legacy for San Jose that the people cared deeply, fought hard, and died early. We need policy makers to fully support the efforts of the people of San Jose.

SWOP has worked directly with San Jose residents to learn about their community and to develop solutions and recommendations for the health problems where they live. SWOP has canvassed the San Jose area, engaged in direct conversations, and held community meetings to provide a space where community members can share their experiences with environmental justice issues and share their thoughts on remedying the situation. These conversations have yielded a range of recommendations that extend past air quality regulations, including:

- Place an air monitor in the community in order to collect baseline air quality data at the point of impact; increase monitoring around sensitive areas like schools and community centers.
- Increase communication and outreach to community members when air permit requests for a facility in the community are introduced.
- Prioritize community participation and engagement during environmental assessment processes and community meetings.
- Enact ordinances that prohibit heavy trucks from using residential streets in San Jose where children play.
- Improve infrastructure in the neighborhood: sidewalks, street lights, streets, bus stops, bike lanes, etc.
- Fund the creation and development of more community centers, parks, and health centers.
- Work with business that locate in the area to prioritize hiring people from the community, to have job training and GED programs, and to not discriminate against those who have been previously incarcerated.



Policy Improvements

The Breathe in New Mexico campaign aimed to engage community members, strengthen the good community work they were already doing by providing more data to their argument, and come out with some positive community and policy gains. By working with elected officials and regulatory bodies, there is an opportunity to strengthen air quality regulations, as well as the air permit review process.

During the 2013 Legislative Session, SWOP helped continue the work that community members from Mountain View and other advocates started in the 2009 session by re-introducing the Consolidated Environmental Review Act (CERA). CERA aimed to provide the same protection on the state level that the National Environmental Protection Act (NEPA) does on the federal level.

If passed, the bill would have set up a review process for proposed projects affecting the environment that are funded by the State or for which a State permit, license or other such permission is needed. The bill also ordered a look at cumulative impacts during the review and would give special consideration to environmental justice communities who are already exposed to a large industry presence.

During the 2013 session, SWOP worked with past advocates of the bill and mobilized community members from San Jose to speak about their experience as an environmental justice community and the need for stronger air quality regulations. It was a tough fight, but eventually CERA was voted down in committee.

While we won't stop pursuing this fight at the state level, the next step for us is addressing the problem at the city level. SWOP is now working with community members to introduce a regulation at the Albuquerque Air Quality Control Board that seeks to add a cumulative impacts analysis during an air permitting process. This policy will help provide more information to community members about how a new polluting entity in their community would add to existing industrial conditions.

Cumulative impacts are not considered by regulatory bodies, which is how a neighborhood like San Jose can become infested with overbearing industry presence. Neighborhoods like this would greatly benefit from policies that promote studies of cumulative impacts. This policy would empower regulators with another tool to improve our communities' air quality and quality of life. Regulations and policies that look at cumulative impacts are not at all common, and this policy is an opportunity for Albuquerque to lead the charge.



Moving Forward

Through the community-based bucket brigades we now have a strong set of data that reveals the presence of volatile organic compounds in San Jose, and we can trace a direct link to documented health disparities in the area. We now have an opportunity to bring all of this community participation, along with the data, and create policy changes that will establish a better quality of life for San Jose. We are very close to making changes in the process by which air permits are reviewed and issued, and ultimately, improving the air that we breathe.

San Jose residents are motivated to move this process with elected officials because, as we try to reach a resolution on this issue, more problems keep cropping up. Community members are already challenging a proposal to build a highway extension that would run right into the San Jose neighborhood. They project has been an opponent of the people from the beginning as it has elicited very little public participation while representing, if built, a significant increase in the amount of industry and associated pollution in San Jose.

SWOP has had a great opportunity to work with the incredibly strong San Jose community and the amazing people who live there. The people have driven this work and will continue to help shape where the environmental justice work heads in the future. Policy and regulation campaigns will continue alongside direct work to help improve the quality of life of the community as a whole. The Breathe in New Mexico campaign aims to have many more victories working with communities as we move into organizing on environmental issues in 2014 and beyond.



Who are the South Valley Partners for Environmental Justice?

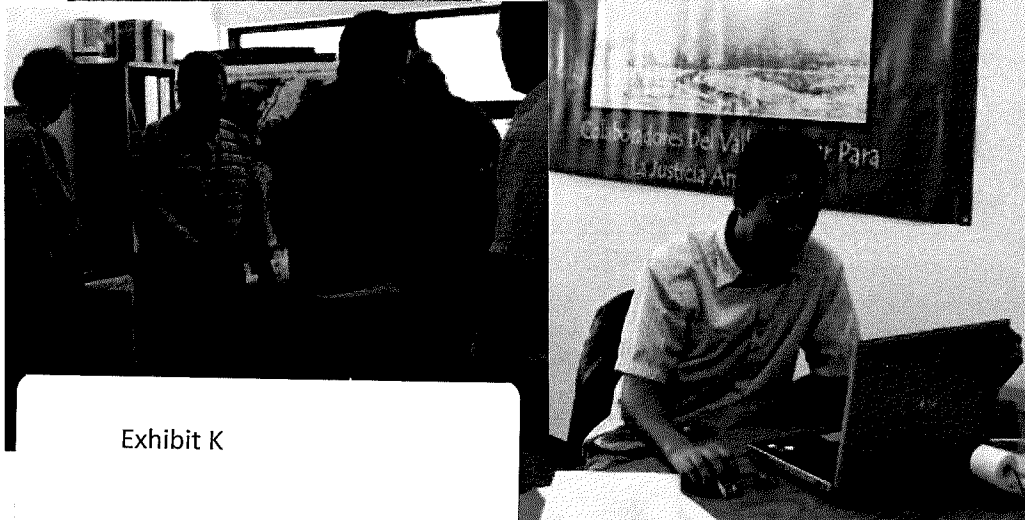


Exhibit K

- A partnership of:
 - Community members
 - Rio Grande Community Development Corporation
 - Bernalillo County, Office of Environmental Health
 - UNM, Community Environmental Health Program
- The mission of the SVPEJ is:
 - to promote healthy, sustainable communities through participatory land-use decision making

Why are we here today?

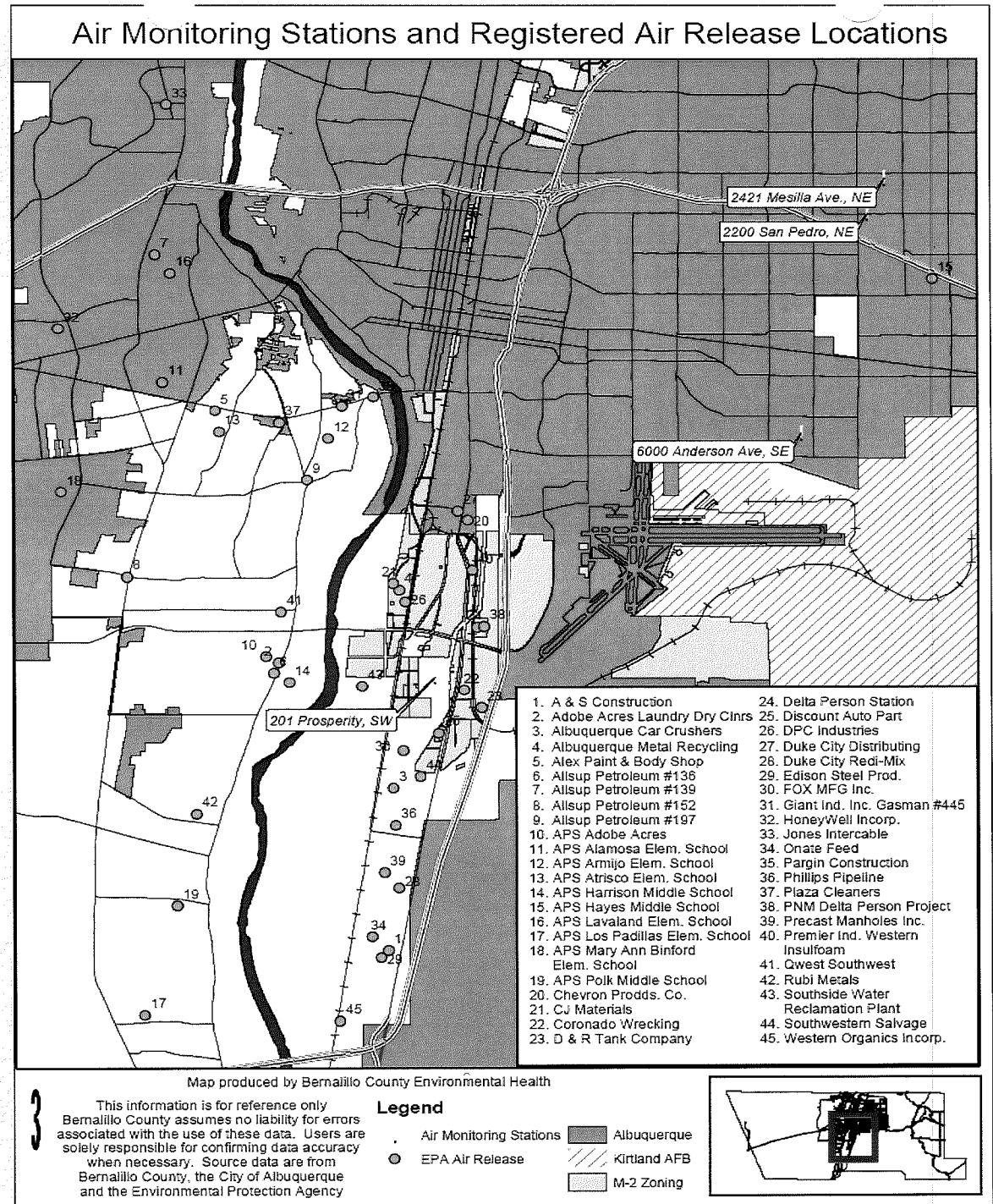
To provide the community with

- results from our air quality monitoring study
- possible sources of air pollutants
- potential health effects from exposure to these air pollutants
- information on how to reduce exposures to these air pollutants

Why was the study done?

To answer residents' concerns about

- potential air pollutants (VOCs) coming from industry
- the potential for these VOCs to impact health
- whether VOC levels differed among Mountain View, Los Padillas, & Pajarito Mesa



What are volatile organic compounds (VOCs)?

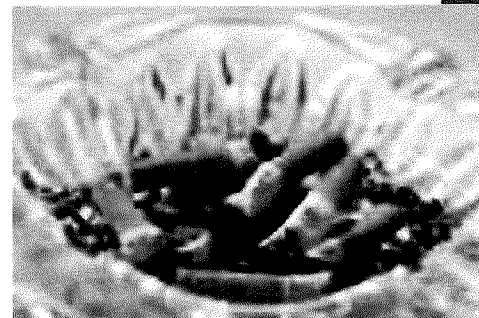
Compounds that

- evaporate easily and may be explosive
- have noticeable odors
 - gasoline
 - nail polish
- can easily enter the bloodstream when inhaled
- react with the body and are often toxic
- react with other air pollutants to form ozone

VOCs can cause cancer and other illnesses

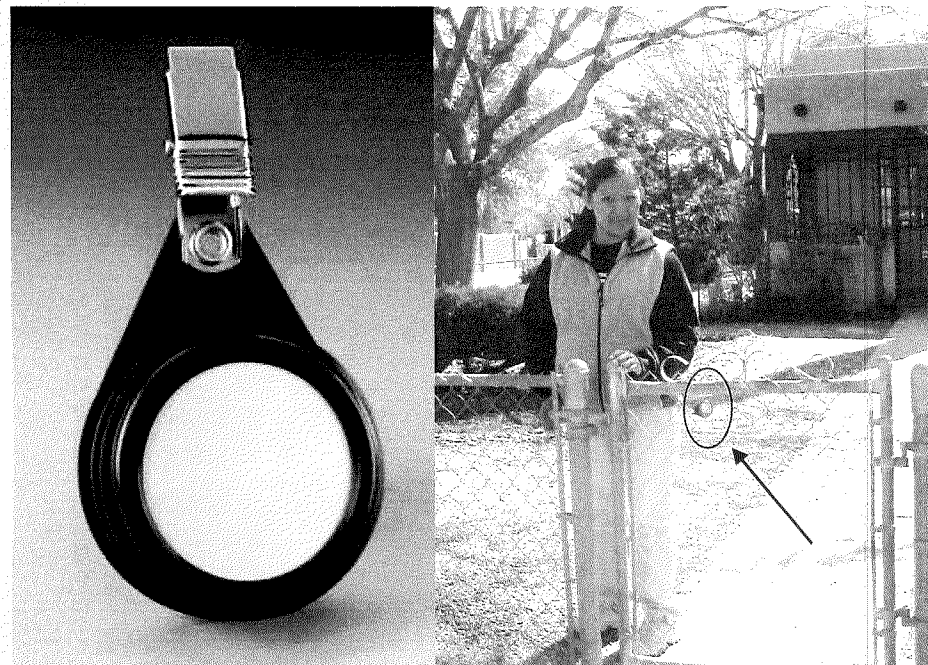
Where do VOCs come from?

- Burning fuels like gasoline, heating oil & painted lumber
- Industrial processes
- Preserved woods
 - Landscaping timbers
 - Laminated flooring and paneling
- Chemicals in furniture and carpeting
- Paint
- Cleaning products
- Dry cleaning
- Smoking



How did we conduct the study?

- 29 study participants
 - 14 Mountain View residents
 - 8 Pajarito Mesa residents
 - 7 Los Padillas residents
- 3 badges
 - Indoor, outdoor, and on person
- 11 different volatile organic compounds
 - benzene, carbon tetrachloride, chloroform, ethyl benzene, methylene chloride, xylenes, MTBE, styrene, tetrachloroethylene, toluene, and trichloroethylene
- 3 continuous days
- Activity logs



How did we communicate results?

- All participants received their results by letter (in Spanish or English)
- Participants with high pollutant amounts, received personal consultation
 - Pollutants were generally associated with house cleaning, dry-cleaning, gasoline pumping, and painting activities

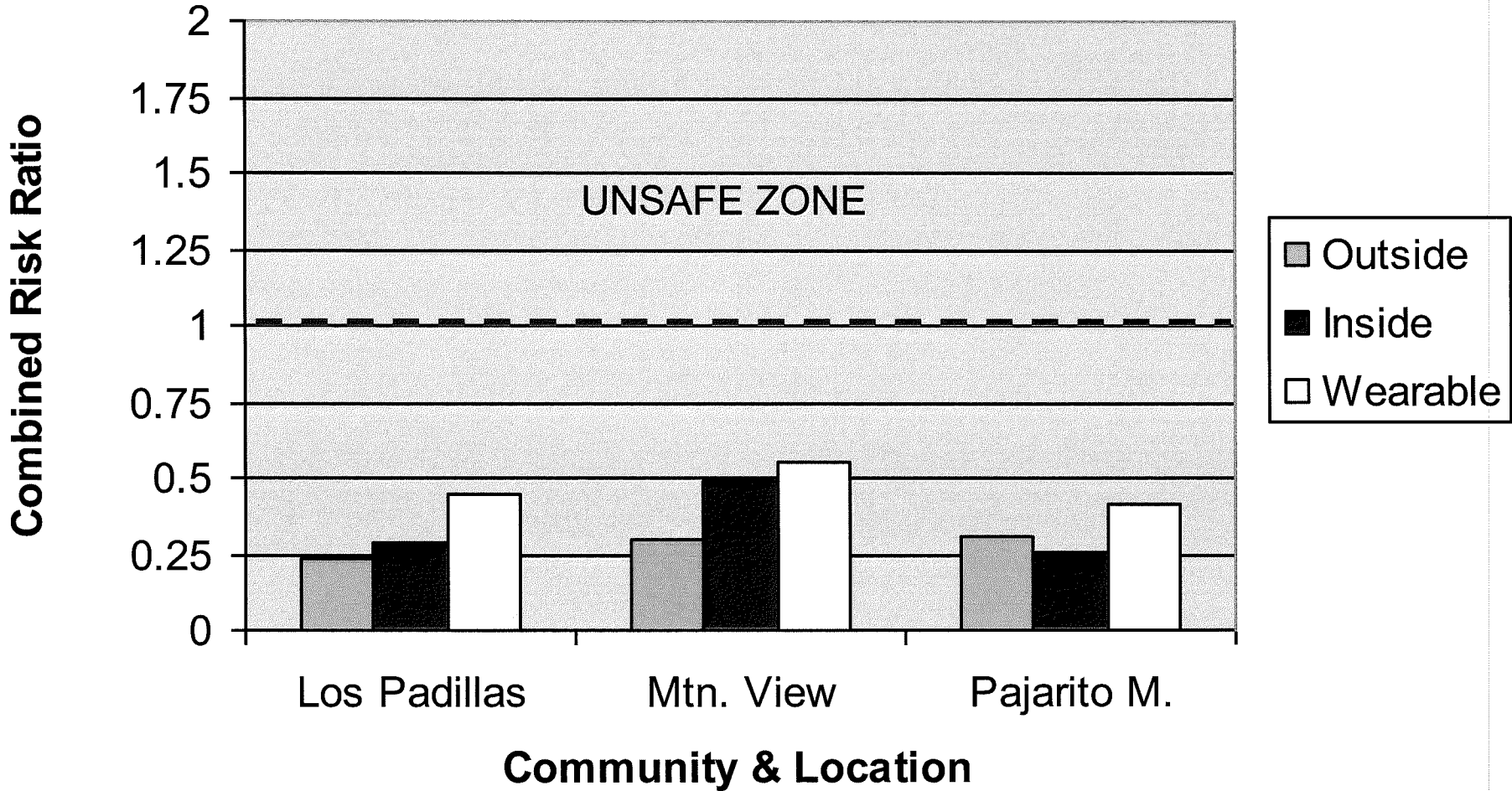
How did we determine whether pollutant amounts caused harm?

- Each pollutant amount from each of the monitoring badges was compared with Environmental Protection Agency (EPA) values
- When dividing the observed pollutant amount by the EPA value, if the result was
 - Greater than 1, the pollutant amount was considered unsafe
 - Less than 1, the pollutant amount was considered “safer”
- EPA values are used for SCREENING ONLY -- identify POTENTIAL for concern, not actual likelihood of illness
- *First step* in evaluation

Were the pollutant amounts of the monitoring badges considered safe based on EPA's non-cancer values?

- Yes
- When all of the pollutant amounts were added together, they were less than 1
- In general,
 - personal exposures were greater than indoor exposures and indoor exposures were greater than outdoor exposures

Non-cancer Risk Ratios

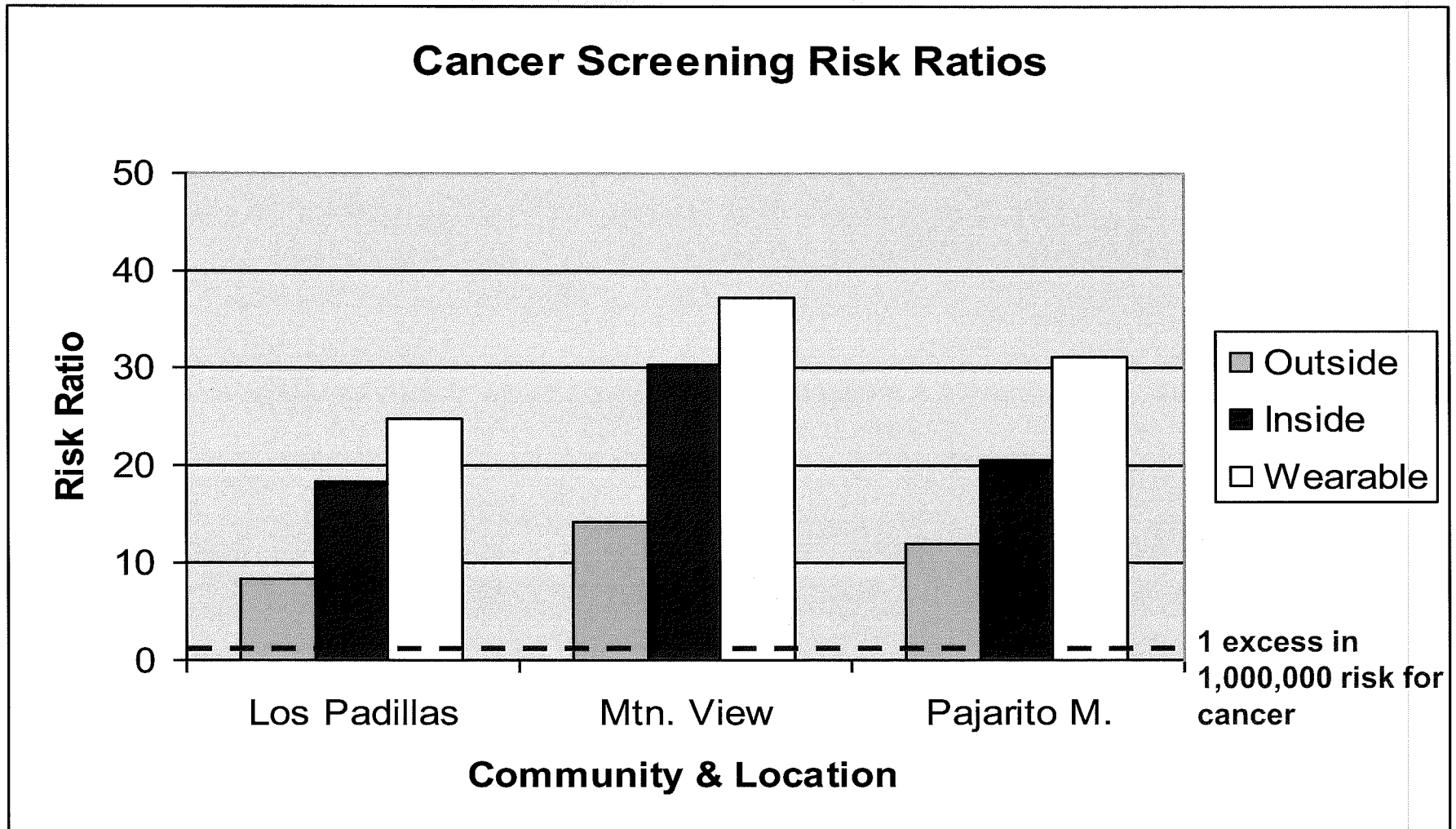


Were the pollutant amounts of the monitoring badges considered safe based on EPA's cancer values?

➤ No

- When all of the pollutant amounts were added together, they were greater than 1
 - all three communities
 - outdoors, indoors and personal exposures

Cumulative excess cancer risks

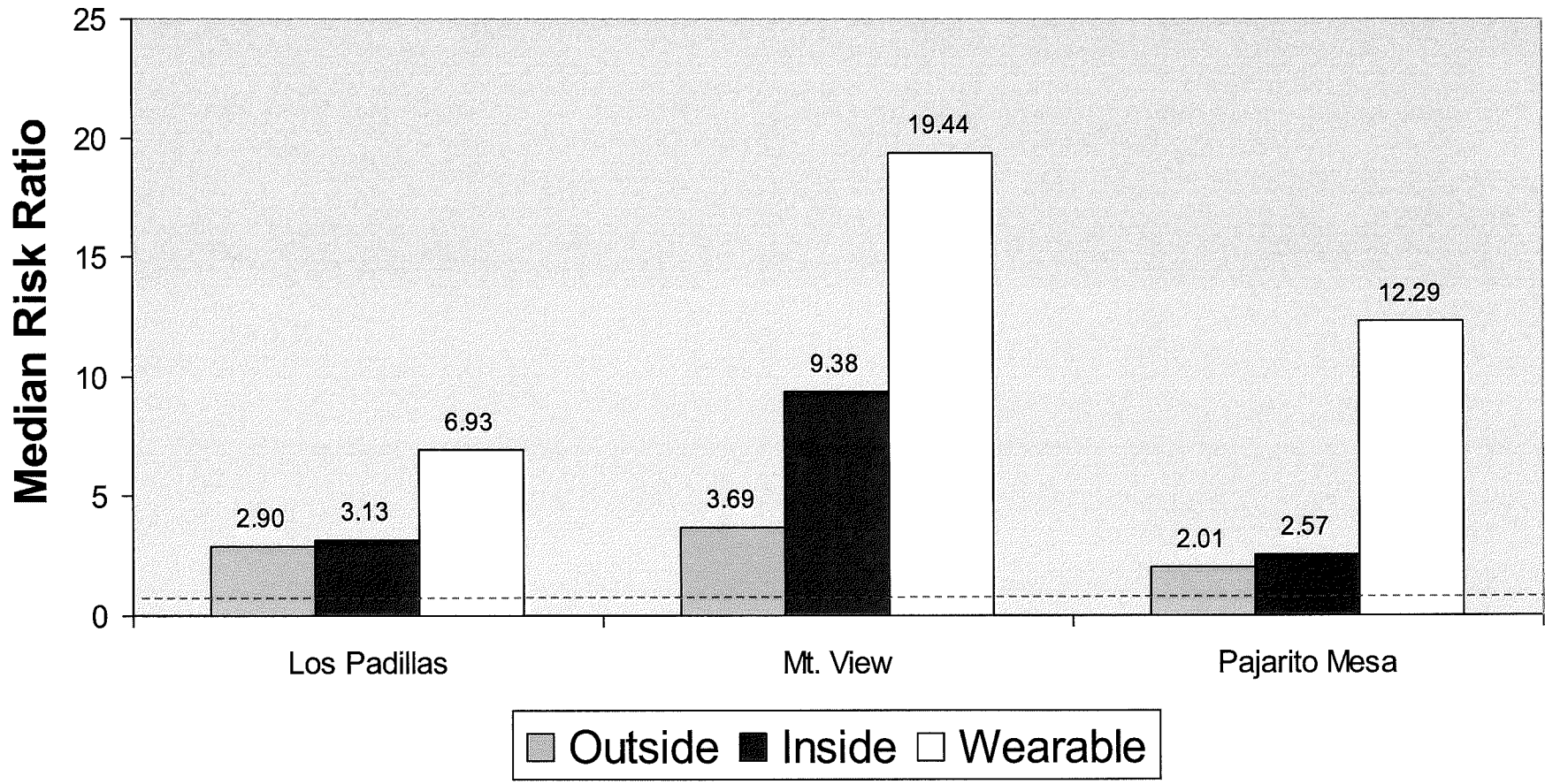


- Because the ratios are greater than 1, further investigation is needed.

Which pollutants had amounts that were considered unsafe?

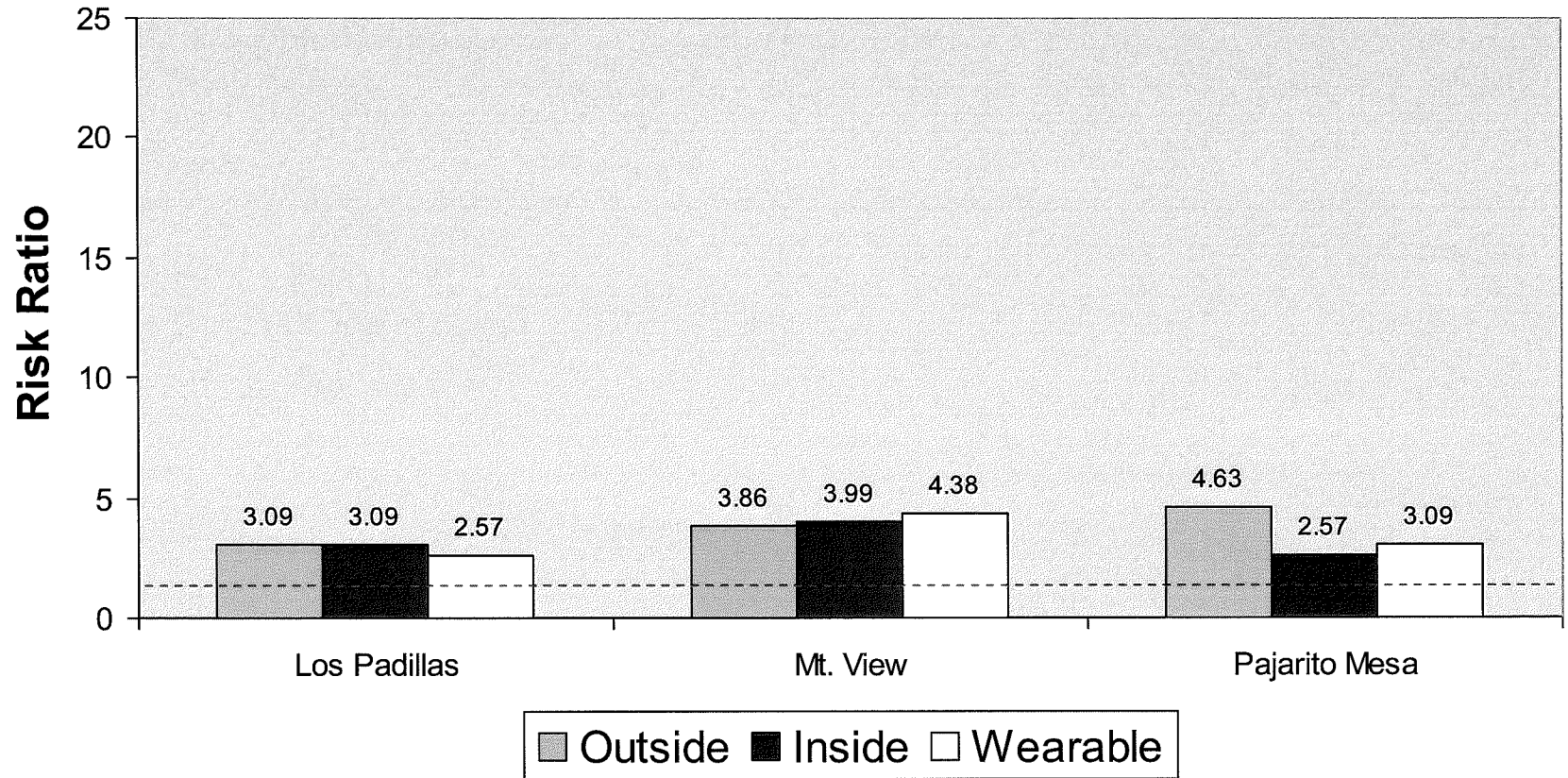
- Benzene
 - WD-40, gasoline, cigarettes having processed tobacco, motor oil, paint thinner, lacquer, paint stripper, furniture polish and spray, engine degreaser, spray paint
- Carbon tetrachloride
 - Household usage was banned in the U.S. in the 1970's. World-wide there are high amounts of carbon tetrachloride in the air
- Chloroform
 - Waste water from sewage plants, chlorinated drinking water, and anti-bacterial soaps with triclosan
- Tetrachloroethylene
 - Metal degreasers and dry cleaned clothing

Benzene



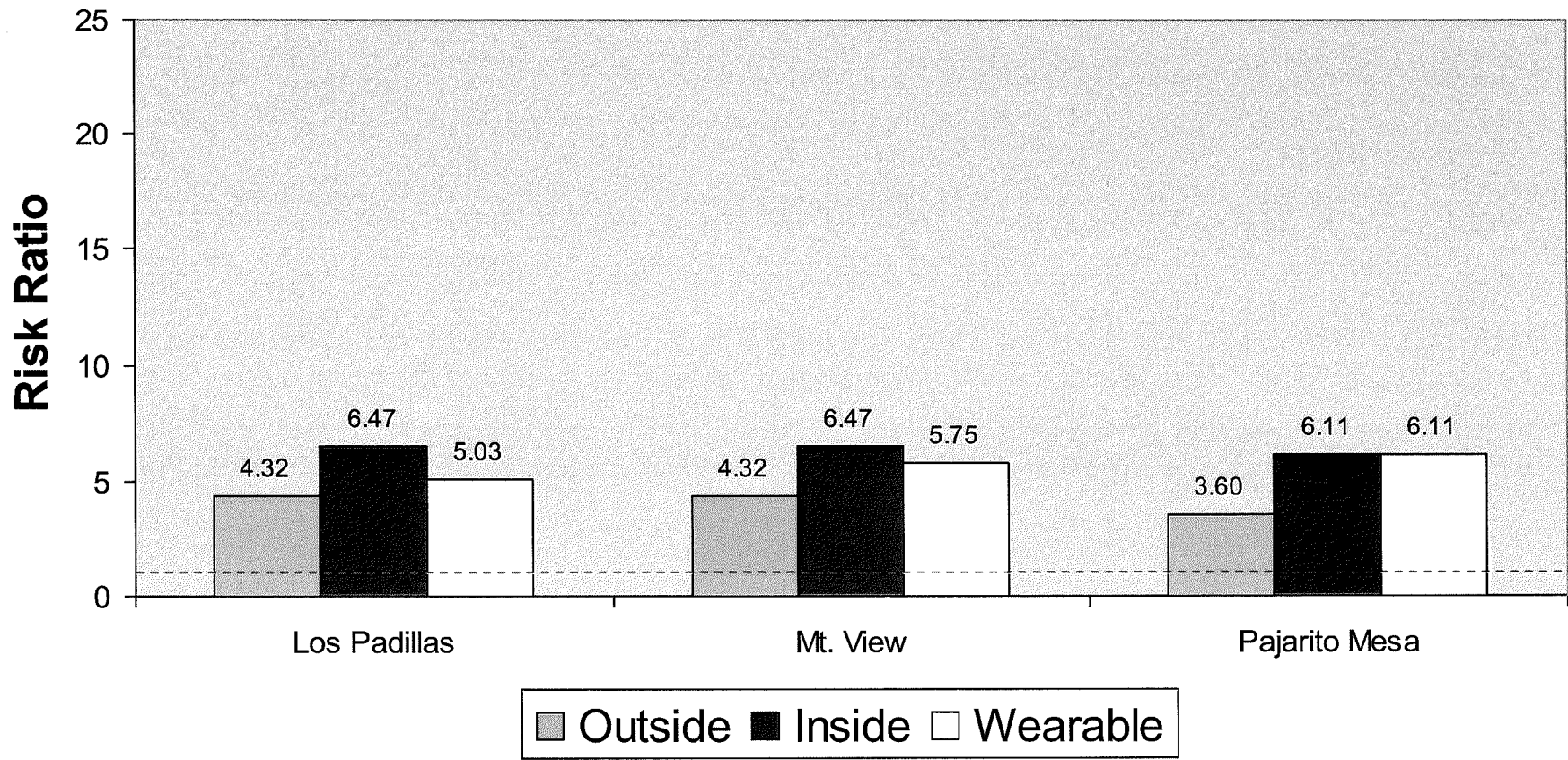
----- Indicates 1 excess in
1,000,000 risk for cancer

Carbon Tetrachloride



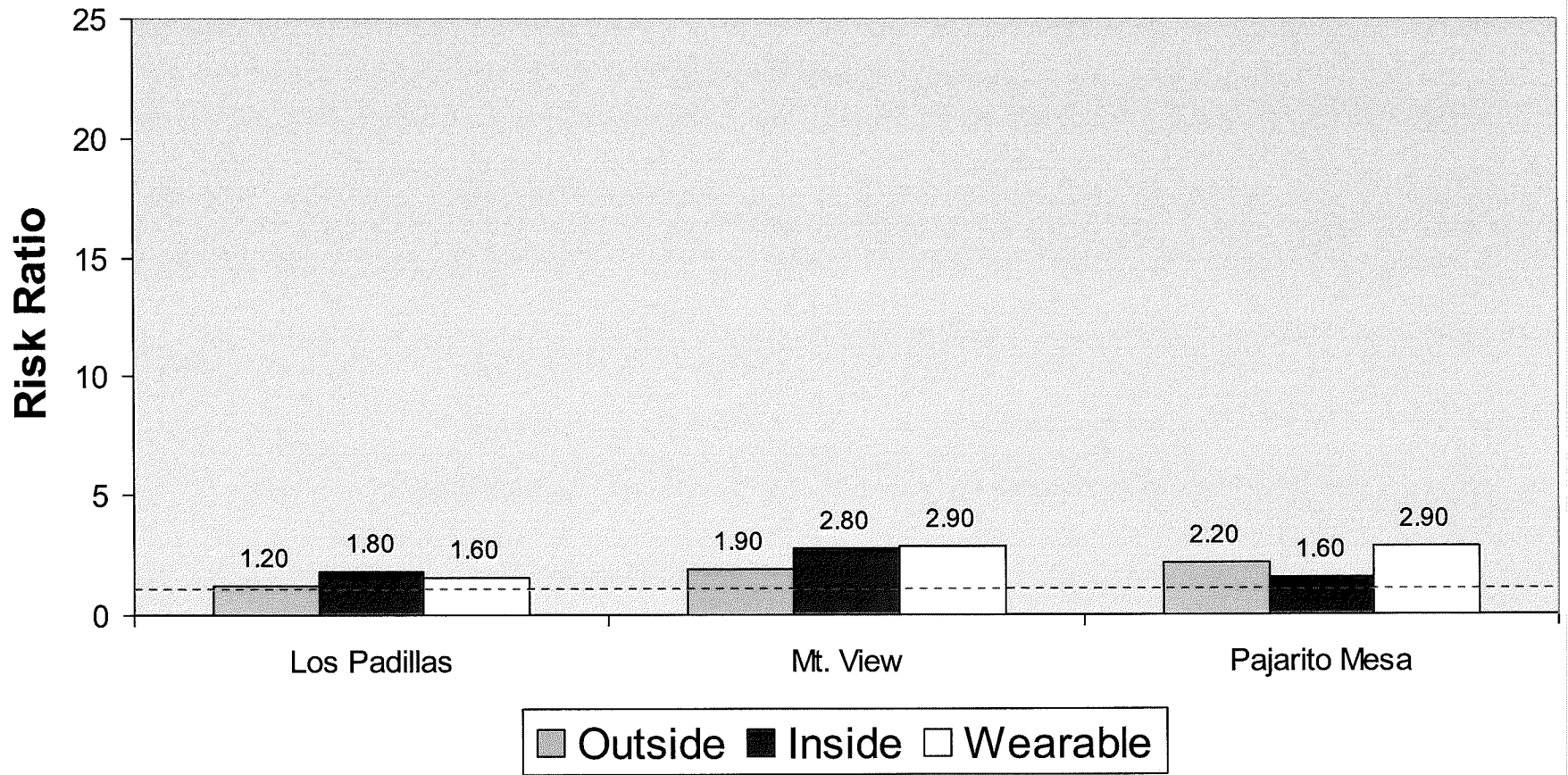
----- Indicates 1 excess in
1,000,000 risk for cancer

Chloroform



----- Indicates 1 excess in
1,000,000 risk for cancer

Tetrachloroethylene

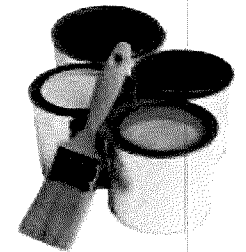


----- Indicates 1 excess in
1,000,000 risk for cancer

How can I reduce my exposures?

- **benzene**

- When fueling your car stand up-wind
- Don't smoke or allow others to smoke in your home
- Ventilate your home when painting and wear a mask

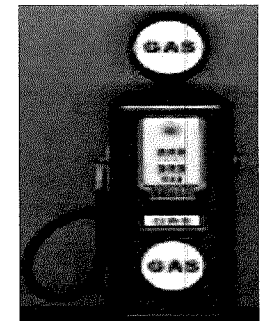


- **chloroform**

- Do not use products that contain triclosan

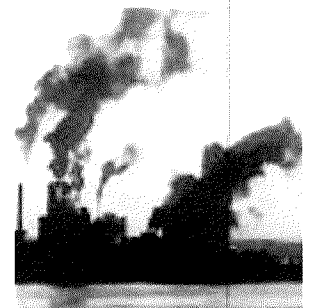
- **tetrachloroethylene**

- Air out clothes outside that have been dry cleaned
- Do not use metal degreasing products



- **carbon tetrachloride**

- Do not purchase pesticides from other countries



What does it mean?

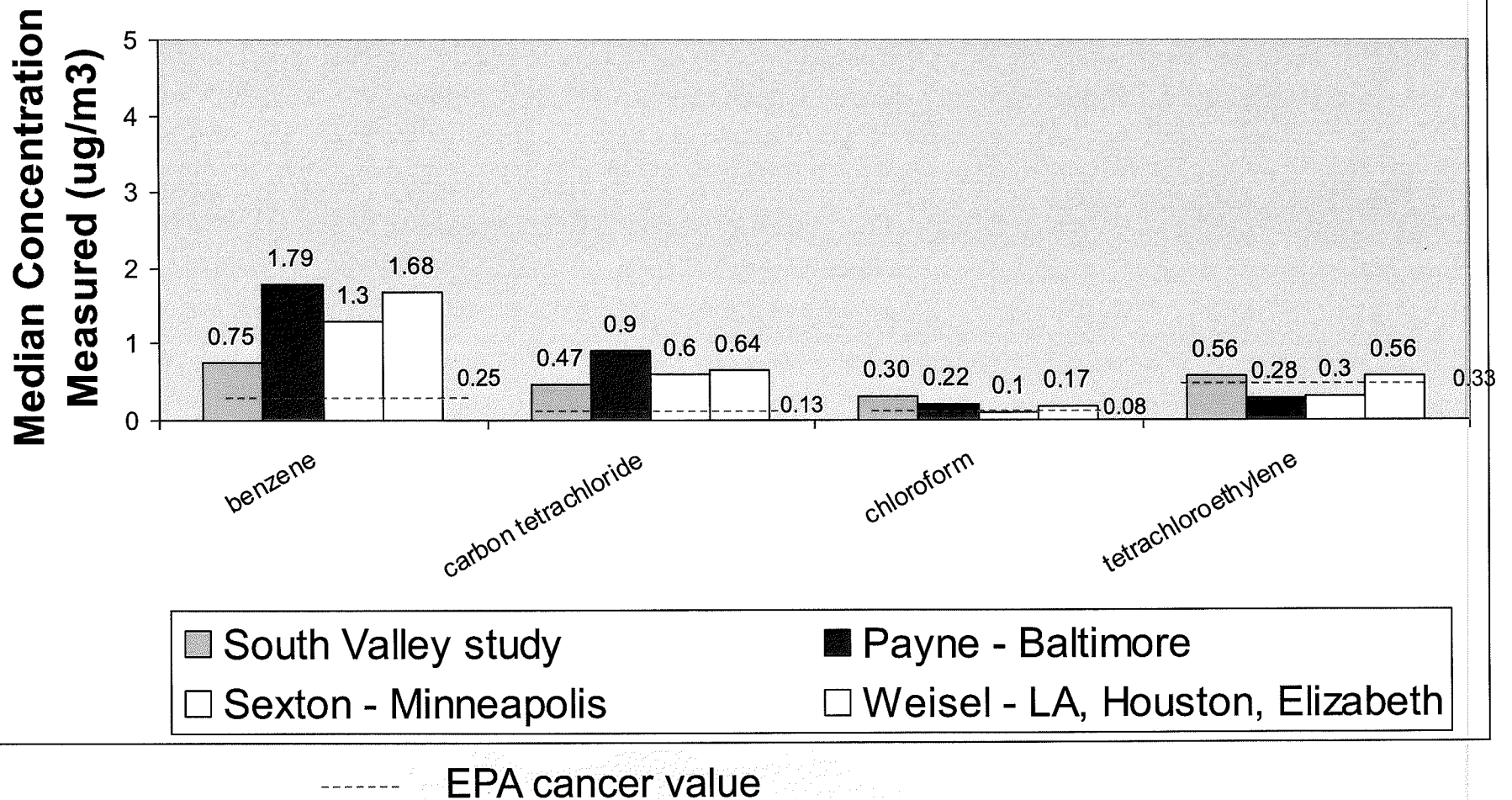
- Based on our study results, we are concerned about amounts of:
 - Benzene
 - Carbon tetrachloride
 - Chloroform
 - Tetrachloroethylene
- These chemicals were problems in all three communities, although amounts differed
- In general
 - personal exposures were greater than indoor exposures and indoor exposures were greater than outdoor exposures

How do VOC concentrations in the SV compare to other US communities?

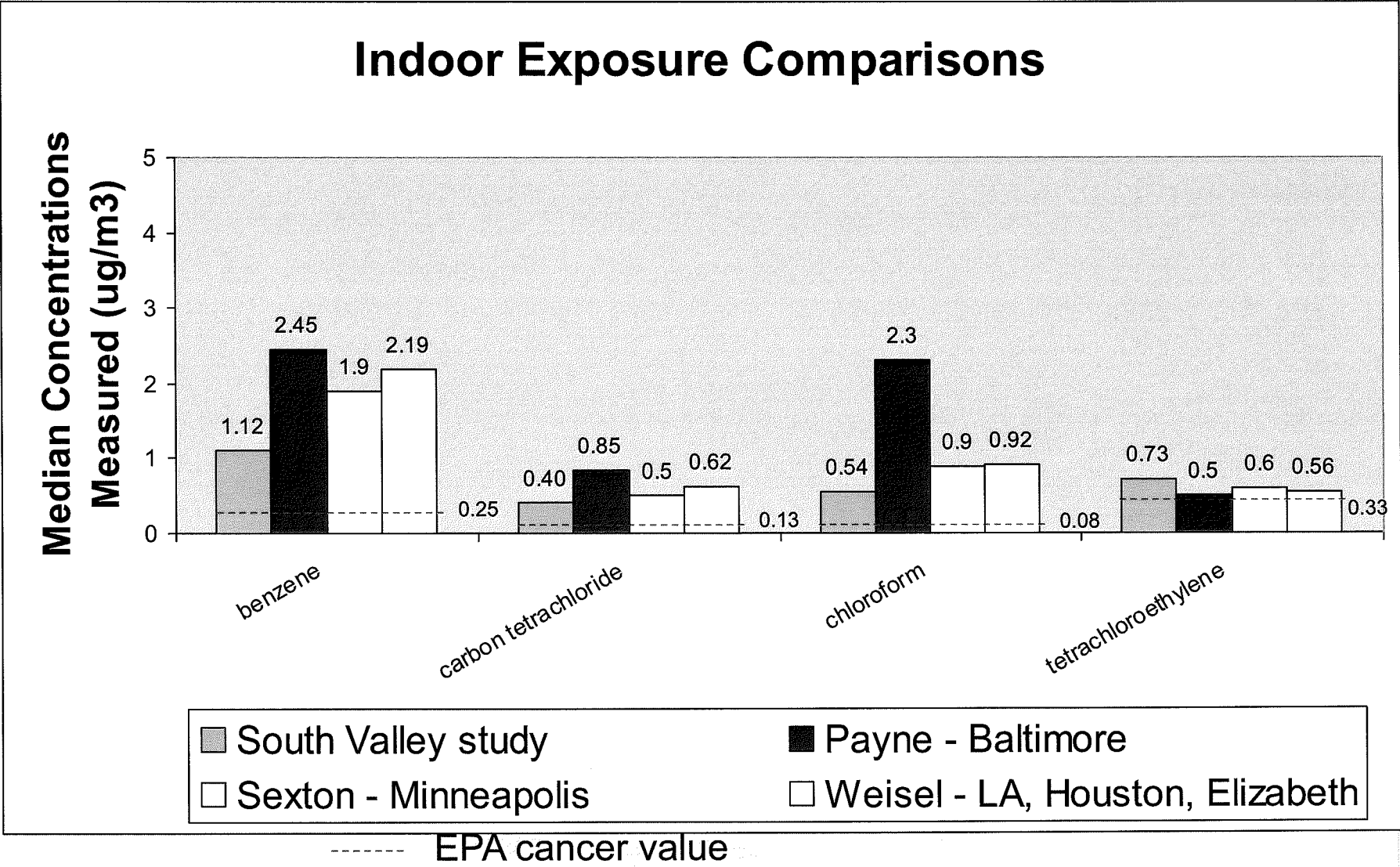
- Comparison studies in
 - Minneapolis
 - Baltimore
 - LA, Houston, Elizabeth (NJ)
- Studies used similar methods
- SV had lower amounts than other communities
 - Tetrachloroethylene - higher for personal, outdoor, indoor exposures
 - Chloroform – higher for outdoor exposures only
 - Benzene – higher for personal exposures only
 - Carbon tetrachloride – lower for personal, outdoor, indoor exposures

Other communities – outdoor amounts

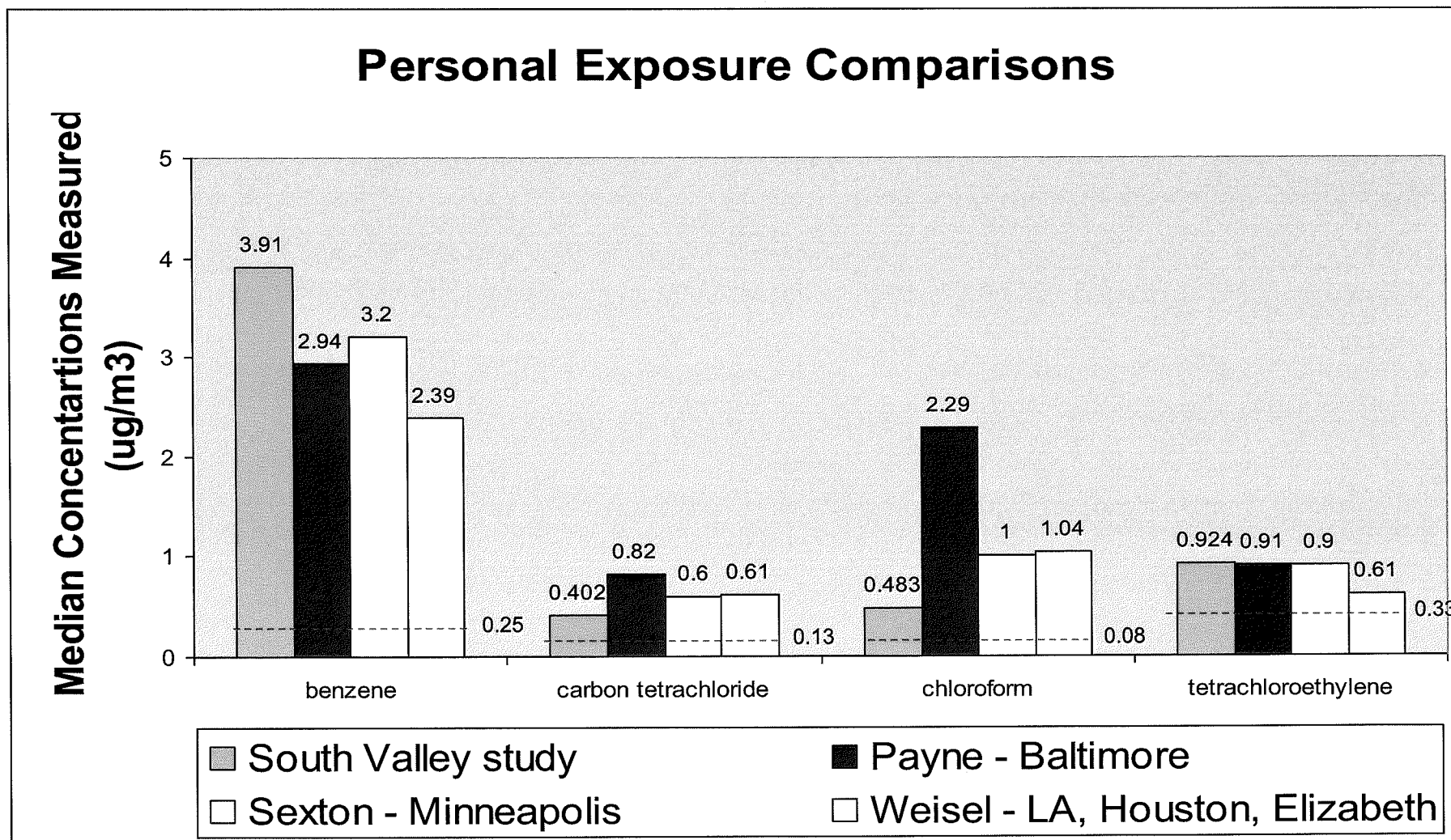
Outdoor Exposure Comparisons



Other communities – indoor amounts



Other communities – personal amounts



----- EPA cancer value

Cancer in the Mountain View

- Based on a previous study comparing observed cancers in Mountain View with Bernalillo County:
 - Mountain View had a greater than expected number of lung cancer, bladder cancer, brain cancer, thyroid cancer, and leukemia cases
 - VOCs may contribute to lung cancer, bladder cancer and leukemia; however factors other than exposure to VOCs could also cause these types of cancers.
 - For example, cigarette smoking is known to cause lung cancer and bladder cancer.

Other considerations

- Short sampling period – 3 days
- Small sample size – 29 participants
- How does EPA calculate their “safe” values
- Did not consider place (e.g., industry) specific air pollutants, but rather community air pollutants
- Patterns of personal exposure may vary based on length of stay in community, length of duration at work, wind patterns, etc.
- Illness may be based on an individual’s susceptibility
- VOCs can come from industrial emissions and from chemical use in the home
- You can reduce your VOC exposure by using products that are environmentally safe

Potential Follow-up

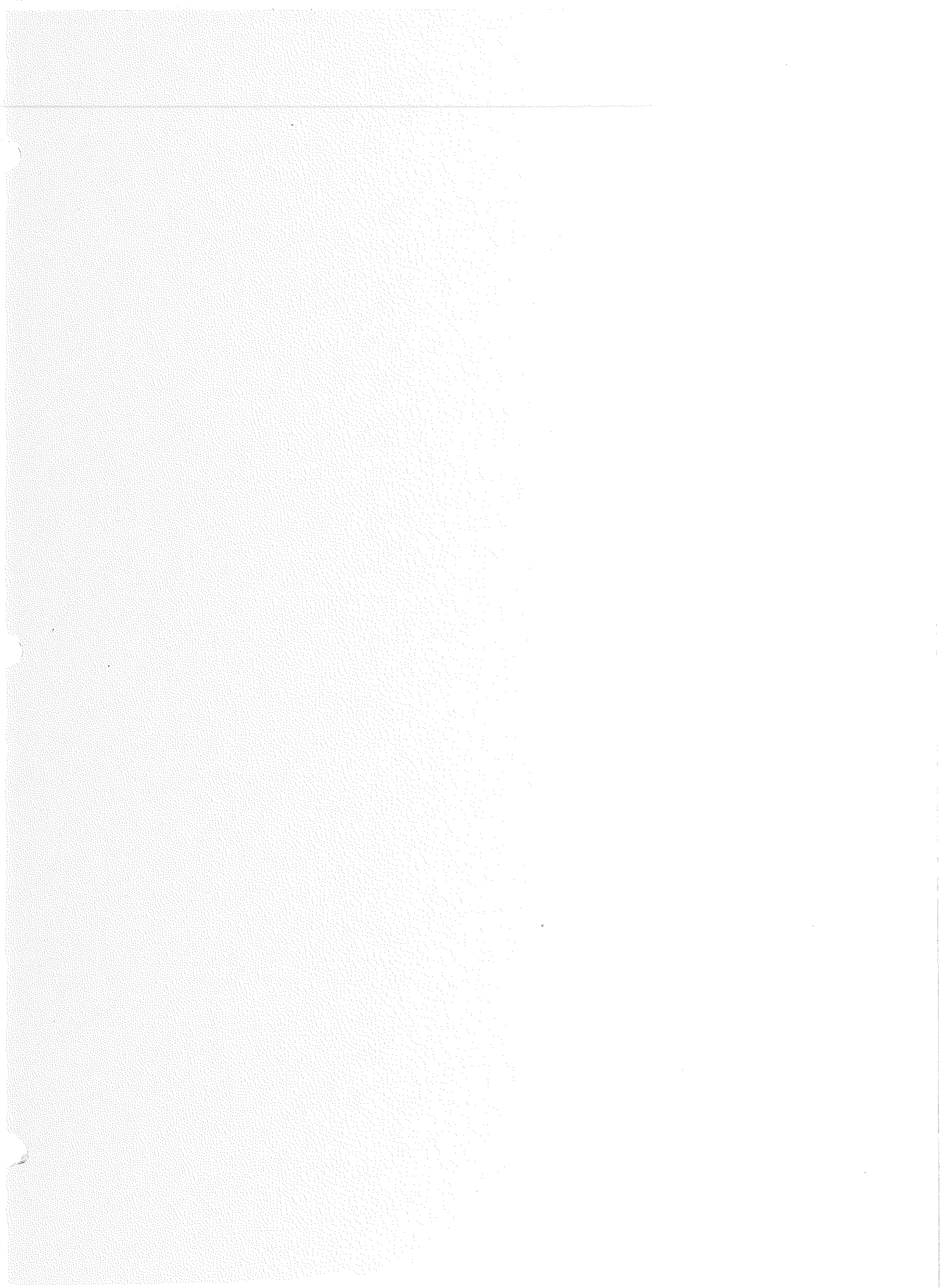
- Identify funding for a more in-depth study
- Identify the types and quantities of pollutants that industries are emitting
- Strengthen the air monitoring network and sample for more types of pollutants
- Provide residents with access to health care providers that understand the links between environmental quality and health
- Educate residents on ways to reduce their pollutant exposures
- Inform health care providers and policy makers of study results and pollutants of concern

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Contact Information

- South Valley Partners for Environmental Justice – (505) 452-8525
- Bernalillo County, Office of Environmental Health – (505) 314-0310
- UNM, Community Environmental Health Program – (505) (fill in)



PERMITTED STATIONARY SOURCES OF POLLUTION

ALBUQUERQUE, NEW MEXICO

Exhibit L

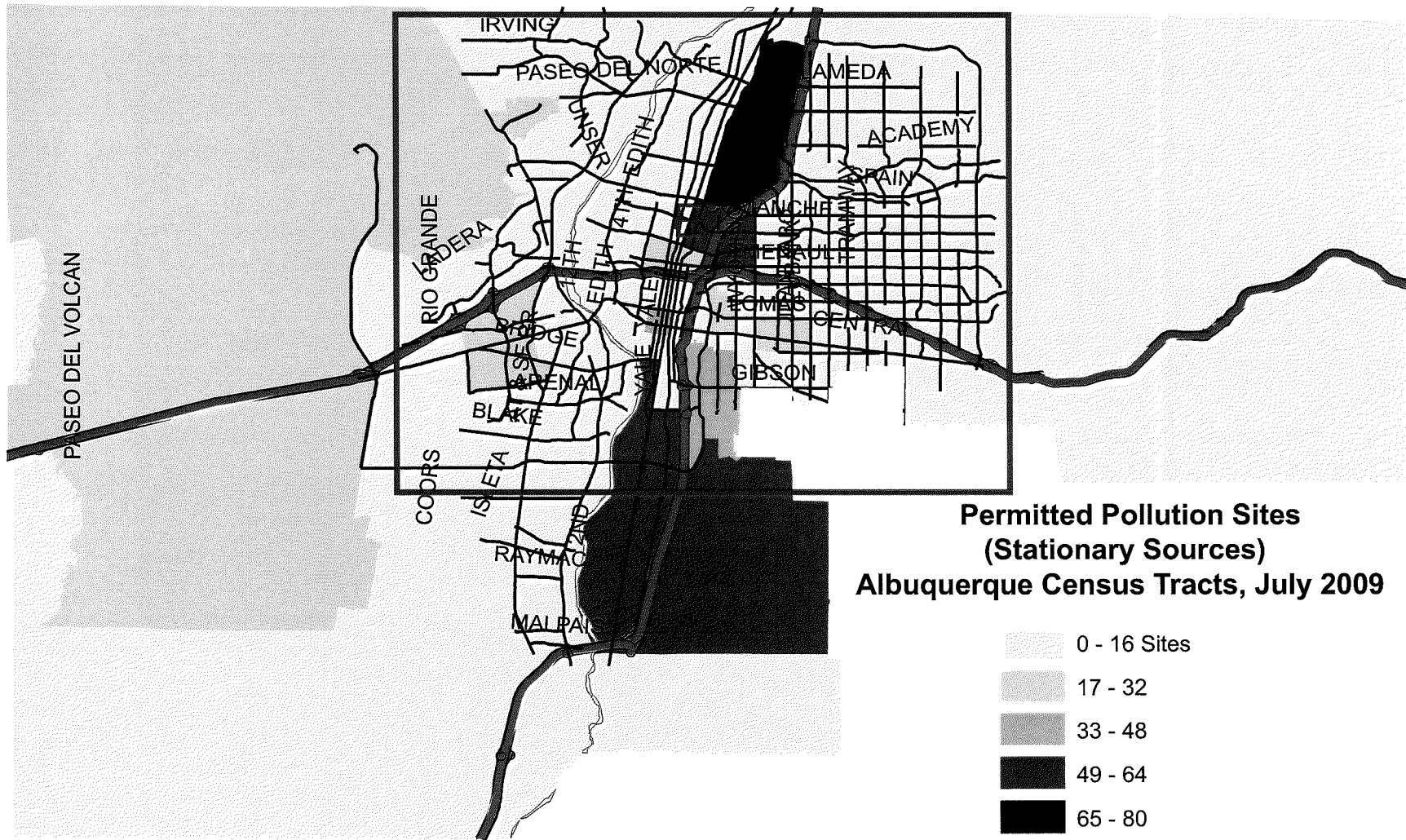
NEW MEXICO
DEPARTMENT OF
HEALTH

The data in this report was compiled and analyzed at the request of the North Valley Coalition of Neighborhood Associations and the Greater Gardner Neighborhood Association to aid in their response to the petition of the American Cement Corporation to expand the hours of operation of its cement transfer plant located at 4702 Carlton NW.

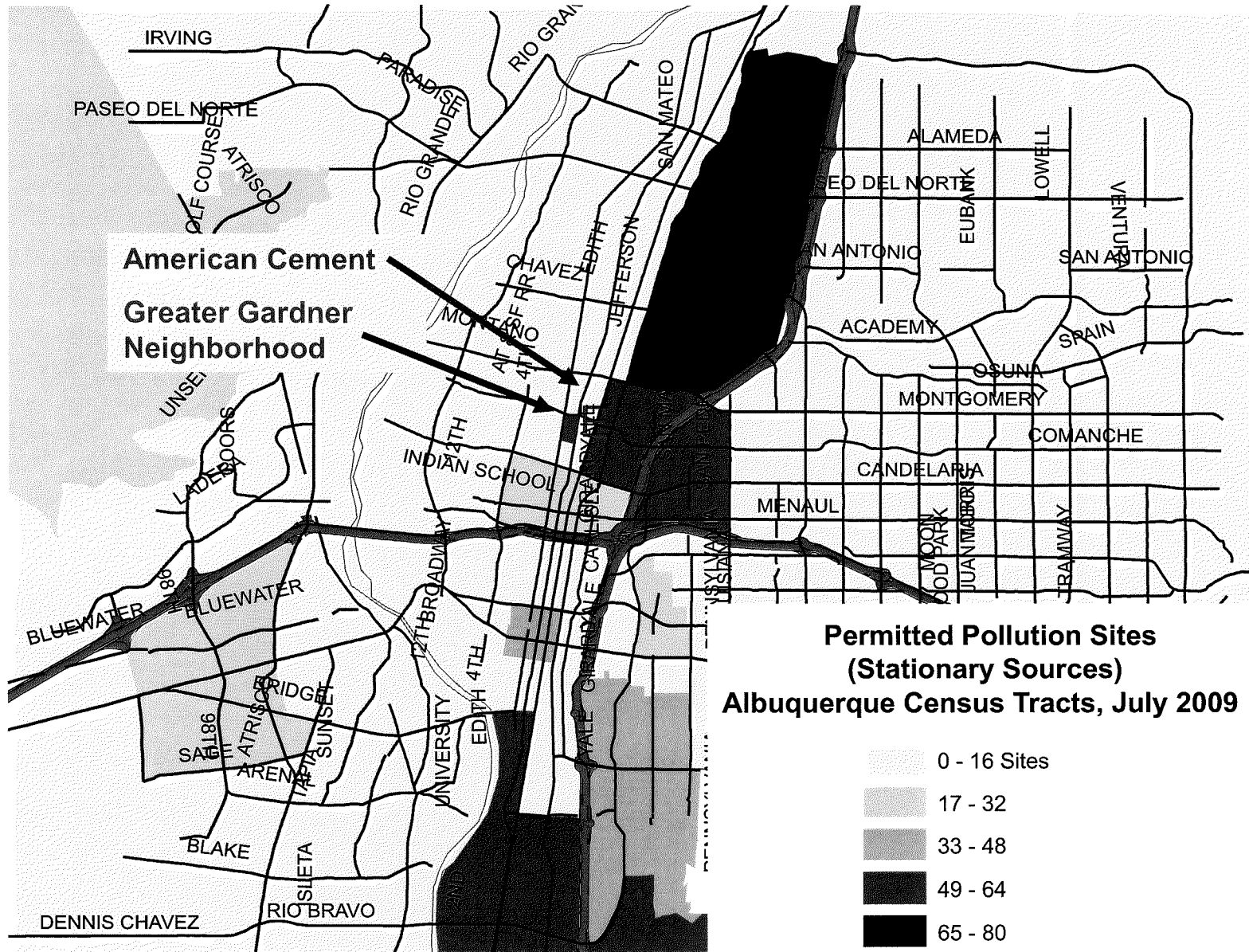
An earlier version of this report was presented at the public hearing on the petition held on August 5, 2009. This updated version is intended to augment that testimony.

Thomas N. Scharmen, M.A., M.P.H., Epidemiologist
Regions 1 & 3, Office of Community Assessment, Planning and Evaluation
Public Health Division, New Mexico Department of Health
North Valley Public Health Office
7704-A 2nd St, NW Albuquerque, NM 87107
Telephone: 897-5700 ext 126; Fax: 897-1010
E-mail: thomas.scharmen@state.nm.us

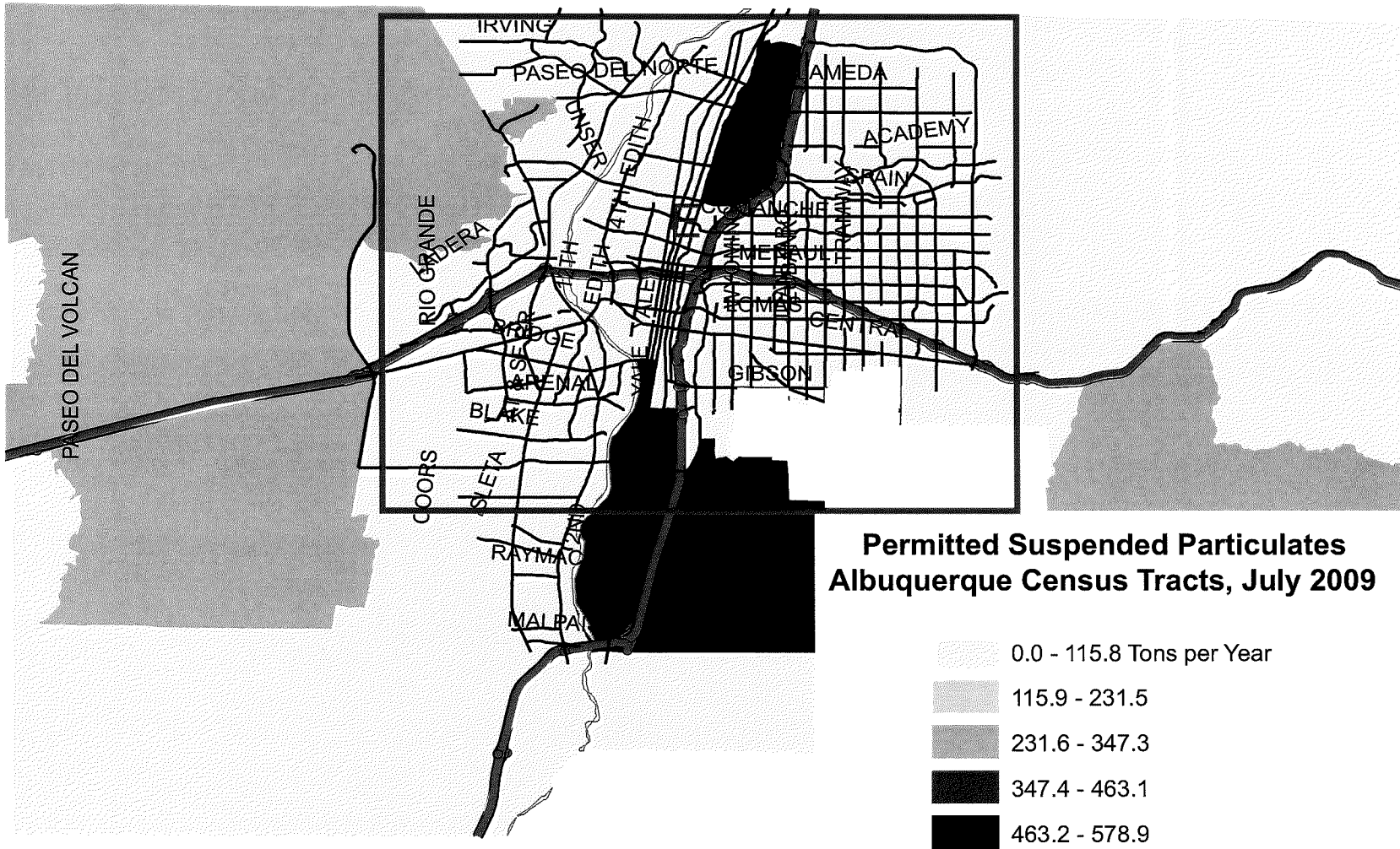
WHERE ARE POLLUTING SITES LOCATED?



WHERE ARE POLLUTING SITES LOCATED?

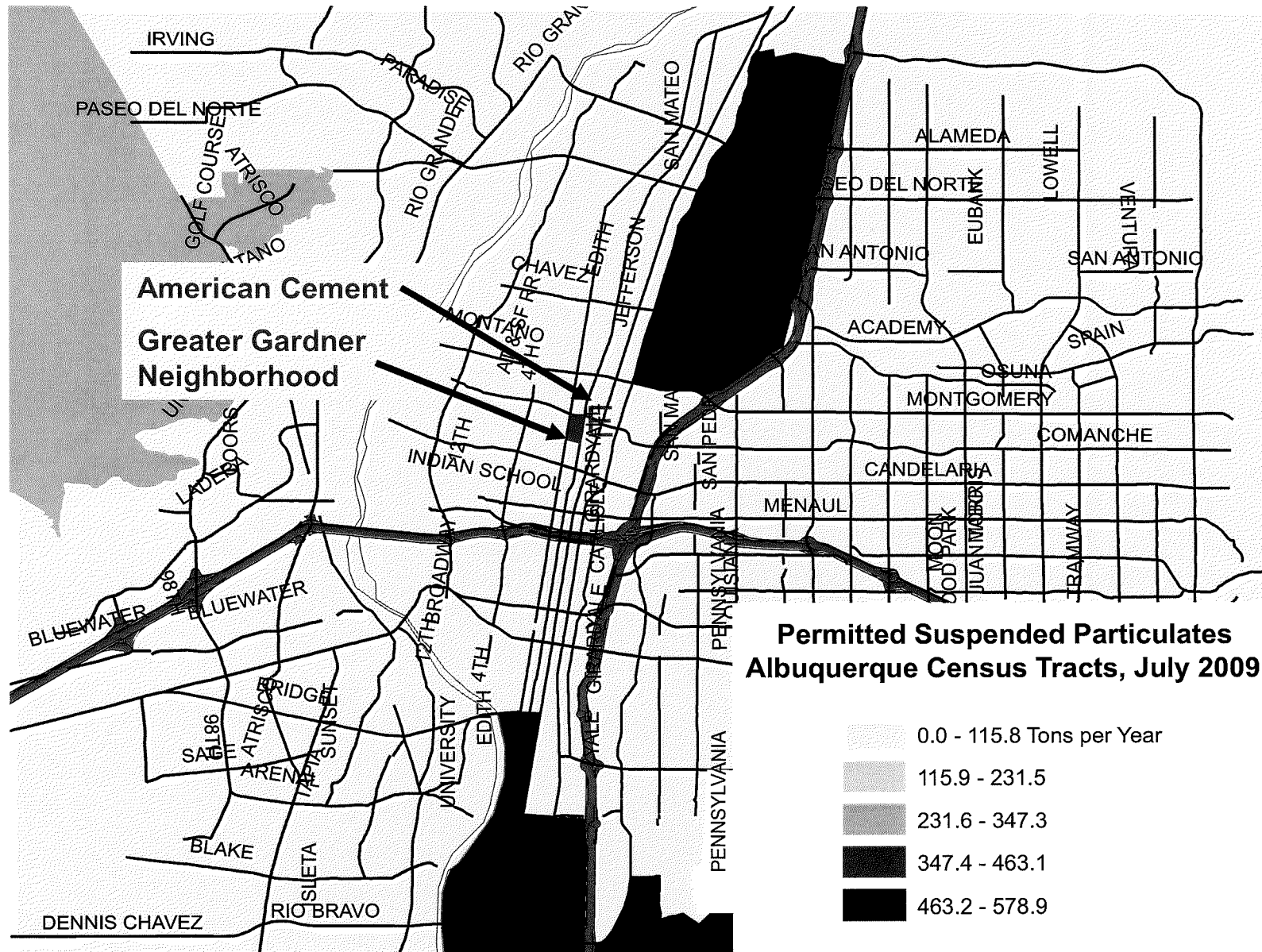


HOW MUCH POLLUTION IS PERMITTED?

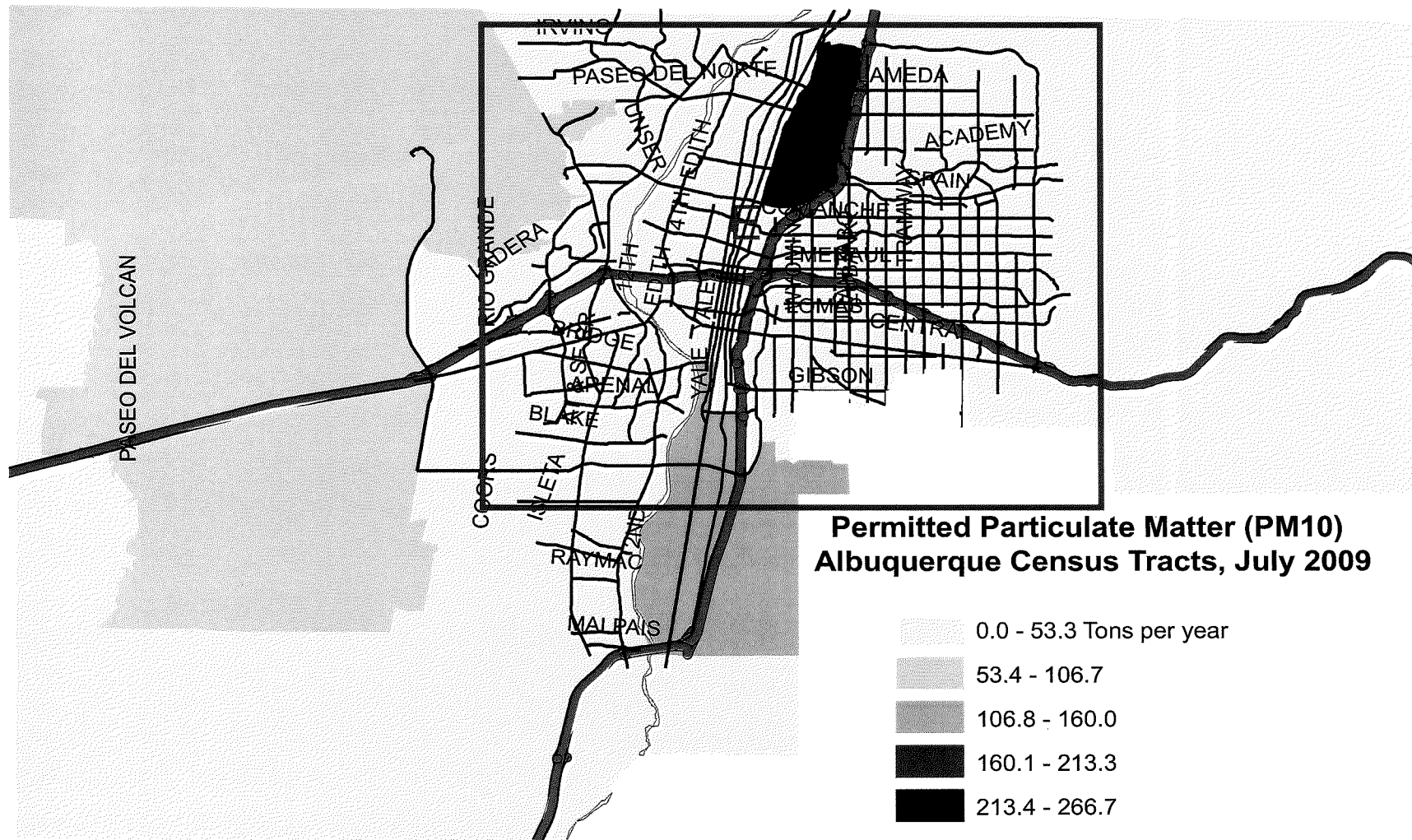


Of the 44 sites in the local area of ACC, ACC has the 4th highest level of total permitted suspended particulates, the 3rd highest level of permitted PM 10 and the 2nd highest level of permitted PM 2.5.

HOW MUCH POLLUTION IS PERMITTED?

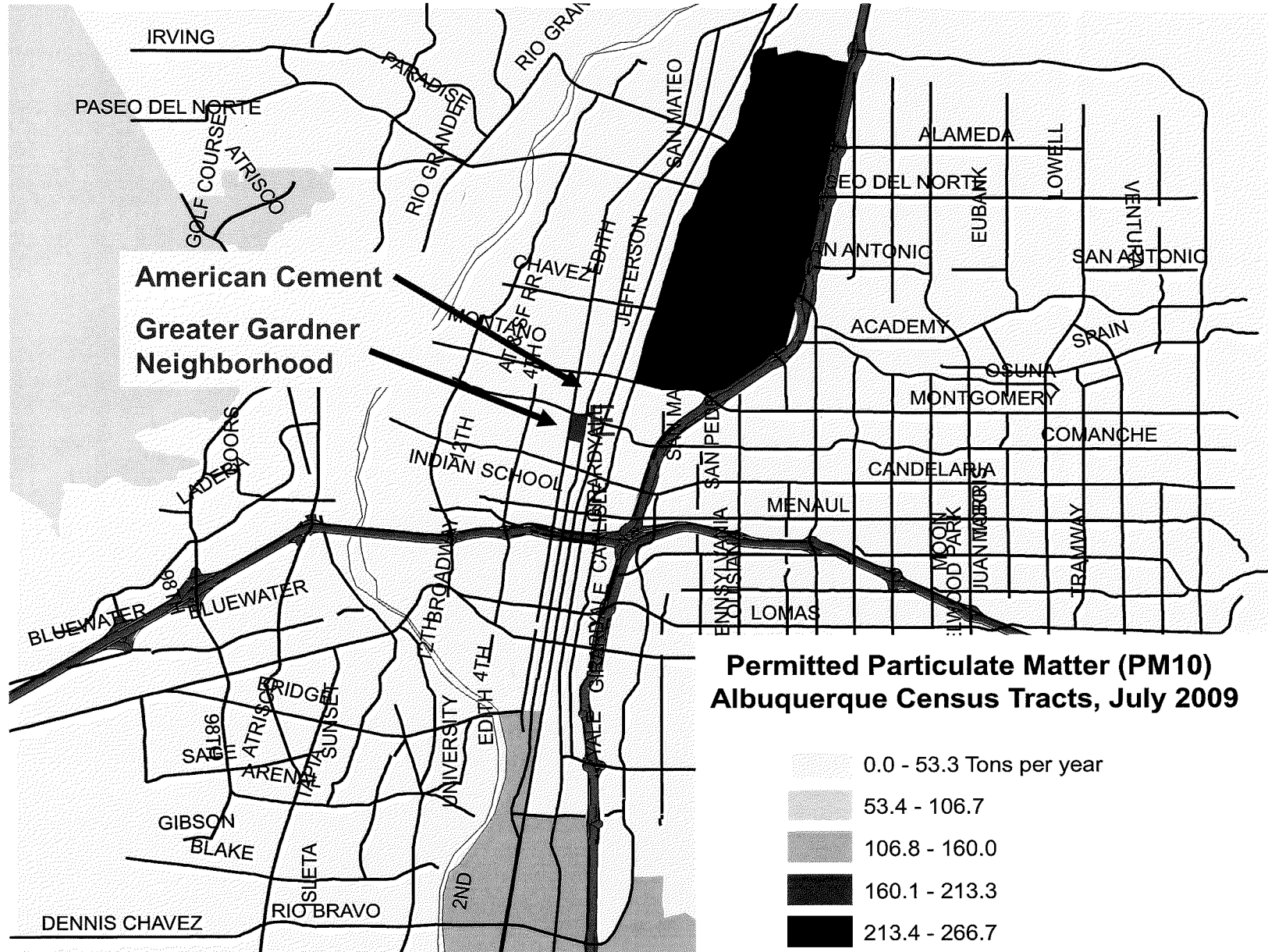


HOW MUCH POLLUTION IS PERMITTED?

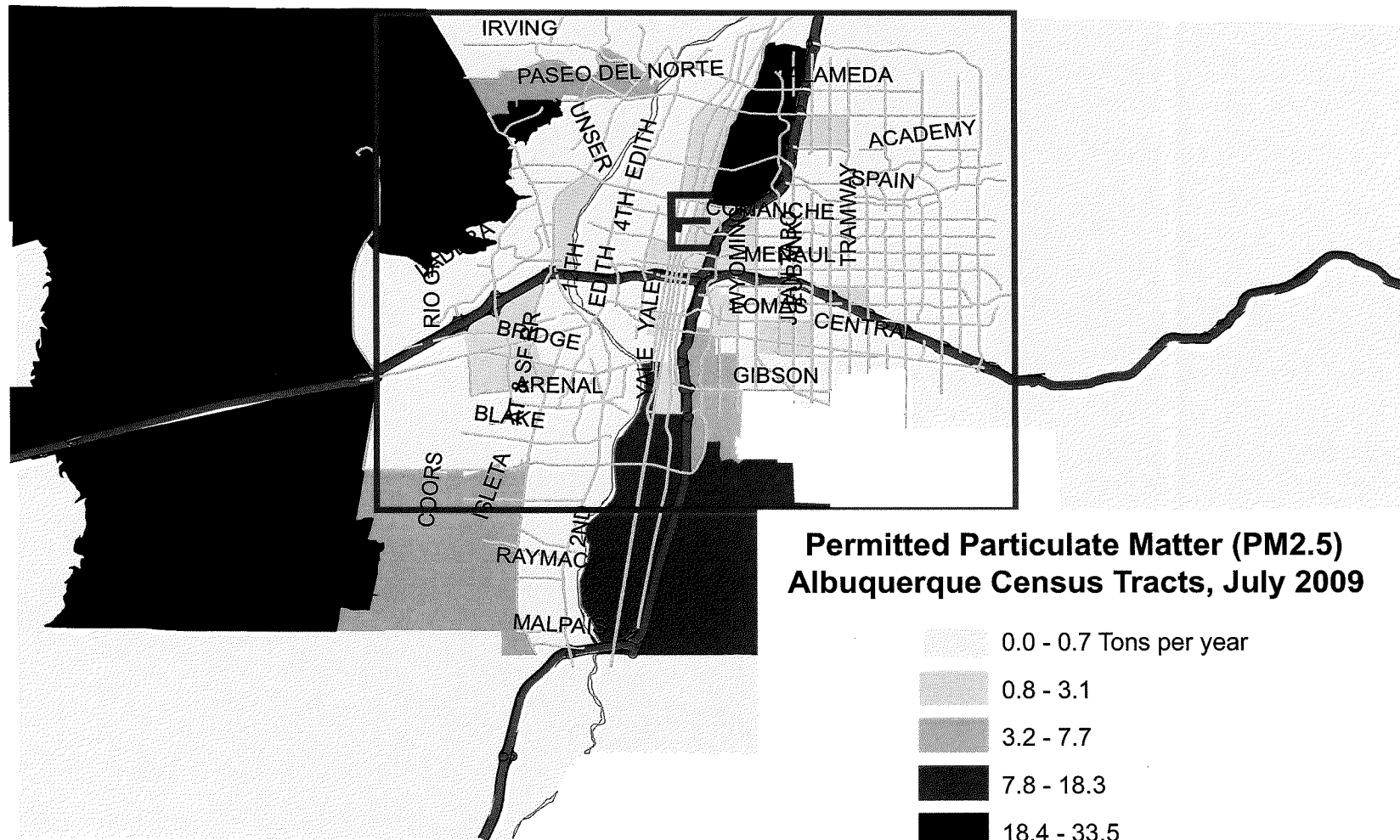


Of the 44 sites in the local area of ACC, ACC has the 3rd highest level of permitted PM 10.

HOW MUCH POLLUTION IS PERMITTED?

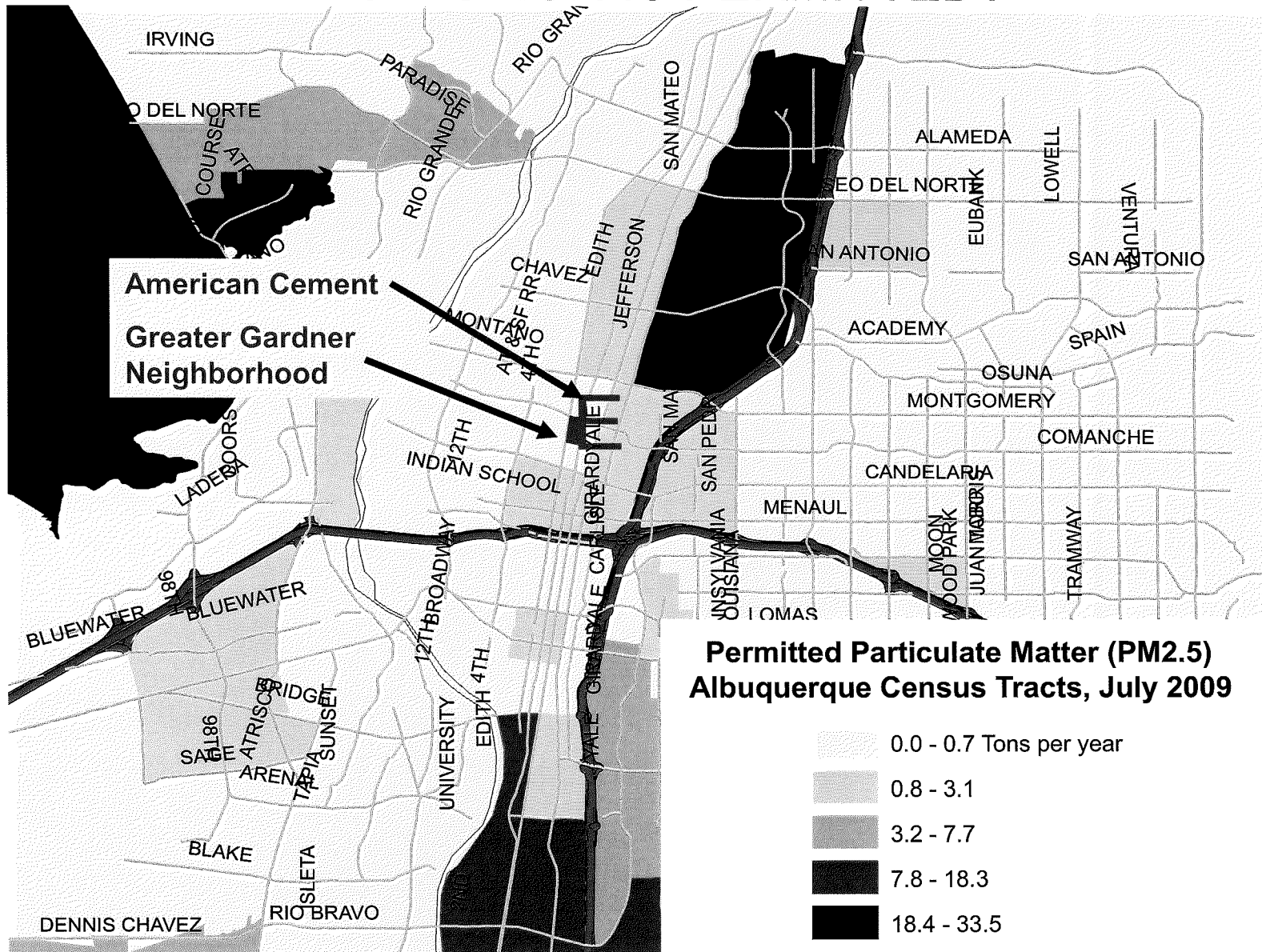


HOW MUCH POLLUTION IS PERMITTED?

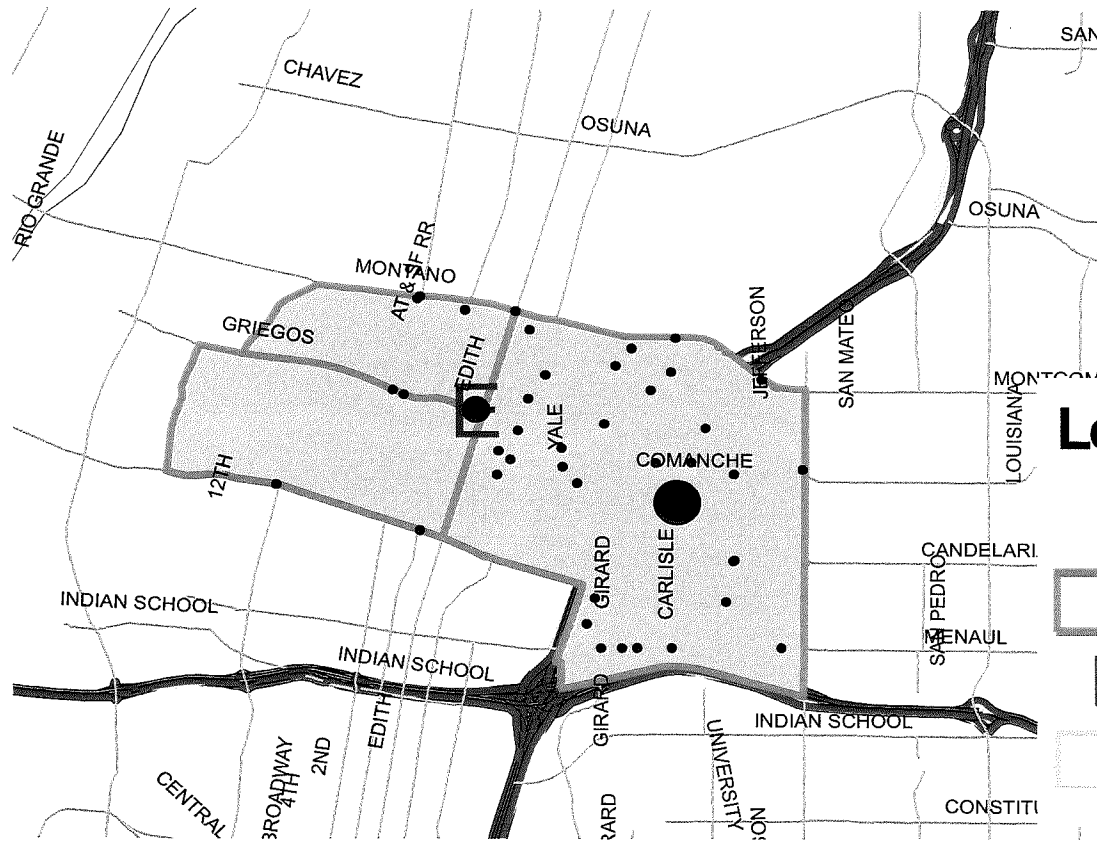


Of the 44 sites in the local area of ACC, ACC has the 2nd highest level of permitted PM 2.5.

HOW MUCH POLLUTION IS PERMITTED?



HOW MUCH MORE POLLUTION WILL BE PERMITTED?



Of these 44 sites, ACC currently has the 2nd highest level of permitted PM 2.5, and emits more than the next 6 permitted sites combined.

Legend

- 44 Permitted Sites
- ▭ 3 Local Census Tracts
- E American Cement Facility
- ▨ Neighborhoods

The total amount of fine particulate matter permitted in this area will increase by 59.1%.

American Cement is currently allowed to contribute 30% of all fine particulate matter permitted in this area (0.6 out of 2.03 tons). If the plant goes to 24 hours, their share will rise to 47%. (1.8 out of 3.83 tons).

HOW MUCH MORE POLLUTION WILL BE PERMITTED?

POLLUTANTS - Tons Per Year Permitted

	Particulate Matter (2.5µm)	Particulate Matter (10µm)	Total Suspended Particulates
Total Pollutants from 44 Current Permits in 3 Census Tracts*	2.03	11.3	35.32
Pollutants Currently Permitted to American Cement Corporation	0.6	1.19	3.9
% of all Currently Permitted Pollution coming from American Cement Corporation	29.56%	10.53%	11.04%
American Cement Corporation Requested Additional Permit	1.2	2.38	7.8
Total Future Pollution in the 3 Census Tracts**	3.83	14.87	47.02
% Increase in Area Permitted Pollution if American Cement Corporation Request Granted	59.11%	21.06%	22.08%
American Cement Corporation % of all Future Permitted Pollution	47.00%	24.01%	24.88%

*Census Tracts 003201, 003400, 003202

**It is assumed that ACC's extended hours will increase its levels of permitted pollutants by a factor of 3.

Particulate matter, or PM, is the term for particles found in the air, including dust, dirt, soot, smoke, and liquid droplets. Particles can be suspended in the air for long periods of time. Some particles are large or dark enough to be seen as soot or smoke. Others are so small that individually they can only be detected with an electron microscope. Many manmade and natural sources emit PM directly or emit other pollutants that react in the atmosphere to form PM. These solid and liquid particles come in a wide range of sizes. Particles less than 10 micrometers in diameter (PM10) pose a health concern because they can be inhaled into and accumulate in the respiratory system. Particles less than 2.5 micrometers in diameter (PM2.5) are referred to as "fine" particles and are believed to pose the greatest health risks. Because of their small size (approximately 1/30th the average width of a human hair), fine particles can lodge deeply into the lungs. <http://www.epa.gov/pmdesignations/faq.htm>

HISTORICAL BURDEN OF ILLNESS & DEATH IN LOCAL AREA

COMPARISON OF MORTALITY RATES
Selected Age-Adjusted Death Rates per 100,000 Residents, 1990-2005

CAUSE OF DEATH	RATES PER 100,000		# OF DEATHS IN LOCAL CENSUS TRACTS	% DIFFERENCE
	ALL BERNALILLO COUNTY CENSUS TRACTS	LOCAL CENSUS TRACTS*		
All Causes of Death Combined	809.6	894.7	1,584	10.51%
6 Major Causes Combined (Cancer of the Lung or Larynx, Diseases of Heart, Hypertension without Heart Disease, Pneumonia and Influenza, Chronic Obstructive Pulmonary Disease and Allied Cond)	316.7	345.7	594	9.16%
Cancers:				
Oral Cavity and Pharynx	2.4	4.5	8	87.50%
Digestive System	45.2	55.7	97	23.23%
Respiratory System	41.3	44.6	78	7.99%
Larynx	1.1	1.7	3	54.55%
Lung and Bronchus	39.7	42.9	75	8.06%
Urinary System	7.6	9.8	17	28.95%
Tuberculosis	0.3	0.7	1	133.33%
Other Infectious and Parasitic Diseases	4	6.7	12	67.50%
Diabetes Mellitus	24.4	33.1	57	35.66%
Diseases of Heart	197.1	206.7	355	4.87%
Hypertension without Heart Disease	6.2	9	15	45.16%
Pneumonia and Influenza	25.3	30.8	52	21.74%
Chronic Obstructive Pulmonary Disease	47.3	54.7	94	15.64%
Stomach and Duodenal Ulcers	1.8	2.9	5	61.11%
Chronic Liver Disease and Cirrhosis	14.6	29	52	98.63%
Nephritis, Nephrotic Syndrome and Nephrosis	9.7	12.3	21	26.80%
Accidents and Adverse Effects	50.2	72.5	143	44.42%
Suicide and Self-Inflicted Injury	18.5	23.3	46	25.95%
Homicide and Legal Intervention	10.1	11.8	27	16.83%

*Census Tracts 003201, 003400, 003202 border the American Cement Corp plant.

Source: NMDOH BVRHS

During the period 1990 through 2005, a total of 1,584 deaths for all causes combined were registered in the 3 census tracts. This is an excess of 97 deaths more than the number expected if deaths in the neighborhood were proportional to those in the county.

For the 6 major causes combined there was an excess of 23 deaths, and for the selected causes on the remainder of the table there was an excess of 146 deaths during the time period.

The rates and numbers cited in the table are historical record.

HISTORICAL BURDEN OF ILLNESS & DEATH IN LOCAL AREA

- The neighborhoods east of the American Cement Corp plant registered the 4th highest asthma death rate in the county for the period 1990-2005.

That rate (3.8 per 100,000) is 1.8 times the county rate (2.1 per 100,000), and more than 4 times higher than the Healthy People 2010 goals (1) for all age groups except the elderly. - *NM Vital Records*

- From 1998 to 2002, 163 children under age 5 living in zip code 87107 were hospitalized for acute asthma.

The average annual hospitalization rate of 38.3 per 10,000 in zip code 87107 is 1.4 times the rate for the County (27.2 per 10,000) and 1.5 times the Healthy People 2010 Target (25 per 10,000). -*NM Health Policy Commission (2)*

- During those 5 years, 87107 ranked 5th highest in the county for environmentally related hospitalizations of children under age 5.

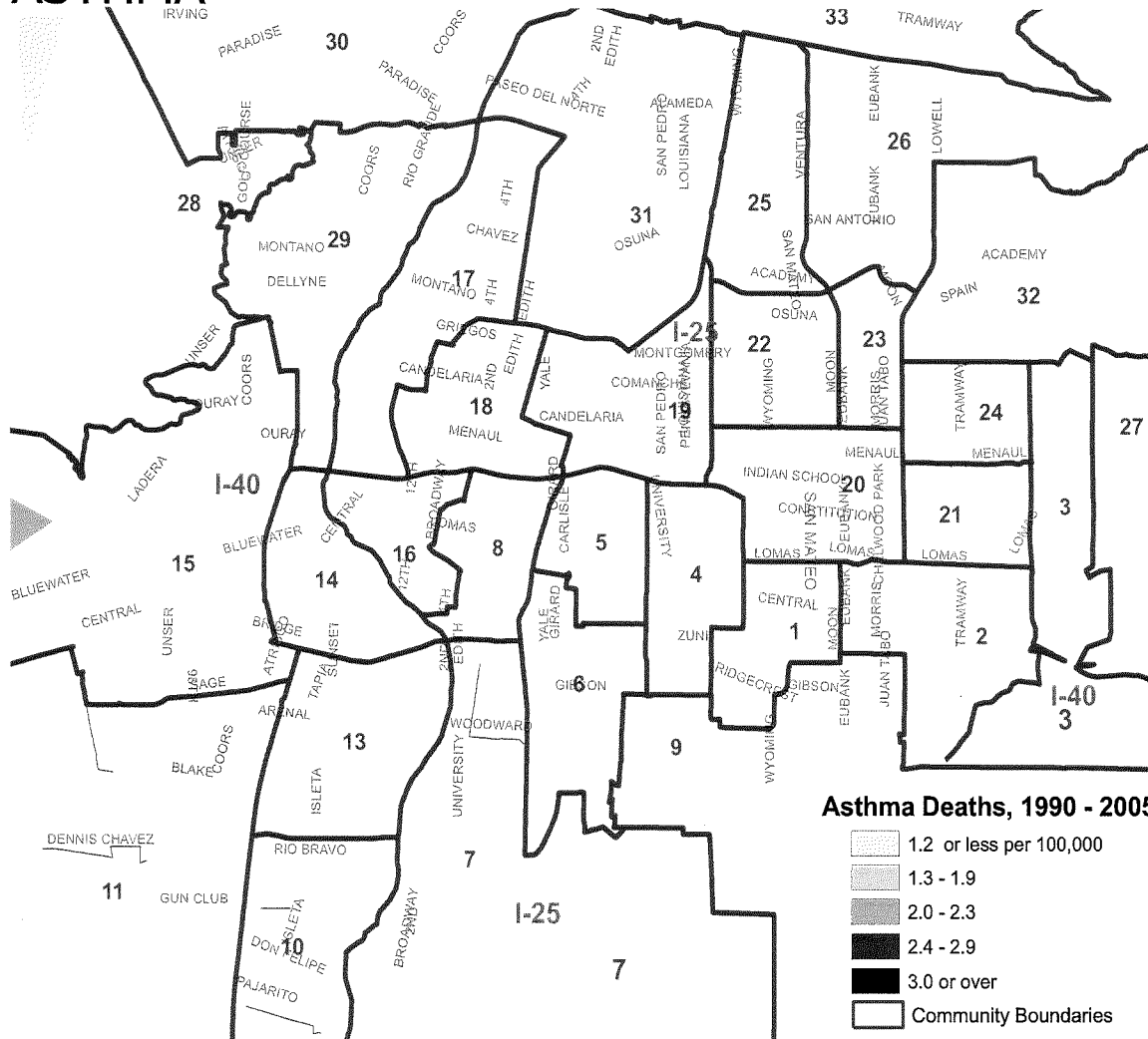
The rate for the zip code was 11% higher than the average county rate. -*NM Health Policy Commission (2)*

1- <http://www.healthypeople.gov/Document/HTML/Volume2/24Respiratory.htm>

2- <http://www.nmpha.org/documents/social%20determinants/Hospitalization%20and%20Mortality%20in%20ABQ%20MSA%20T%20Scharmen.pdf>

HISTORICAL BURDEN OF ILLNESS IN THE LOCAL AREA

ASTHMA



The 4 neighborhoods east and south of the American Cement plant registered the 1st, 4th, 5th and 6th highest asthma death rates in the county for the period 1990-2005.

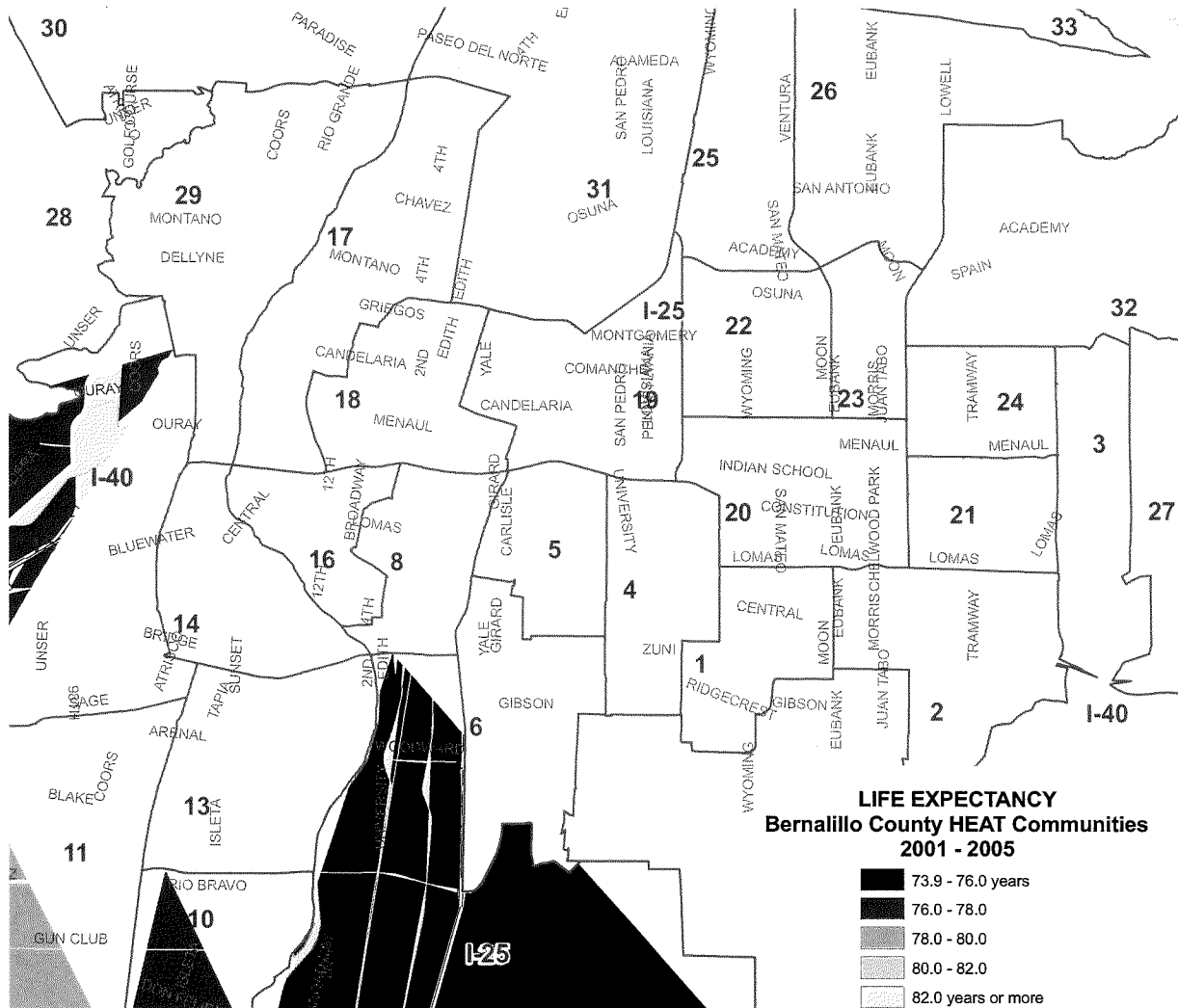
All 4 of these communities have asthma death rates higher than the county rate.

A total of 27 deaths from asthma occurred in map communities #5, #8, #16, & #19. Five more deaths occurred in community #18, west of the plant. Together, these 32 deaths represent 20% of all deaths from asthma in Bernalillo County over 16 years.

PLACE MATTERS – ABC HEAT
Age-Adjusted Death Rates, All ages, Years 1990 through 2005, N = 166

Source: NMDOH, BVRHS

HISTORICAL BURDEN OF DEATH IN THE LOCAL AREA



LIFE EXPECTANCY AT BIRTH

Bernalillo County HEAT Communities

Both Sexes, 2001-2005

Life Expectancy Comparisons

USA (2003)*	77.4 years
NM (2001-03)*	77.3 years
<u>Bernalillo County (2001-05)</u>	<u>80.3 years</u>

**Source: NCHS*

Life expectancy is a key measure of the health status of a population. It is defined as the average number of years a baby born in a particular area or population can be expected to live if it experiences the current age-specific mortality rates of that particular area or population throughout its life.

These estimates use the methods described by Chiang, 1968 (see references).

PLACE MATTERS – ABC HEAT

Source: Deaths - NMDOH-BVRHS; Population - Geolytics, Inc.

LIFE EXPECTANCY IN THE LOCAL AREA

Life Expectancy	Years
Bernalillo County	80.3
Census Tract 35001003201	78.1
Census Tract 35001003202	75.3
Census Tract 35001003400	79.1

The Greater Gardner Neighborhood Association lies within census tract 3202, which has a life expectancy of 75.3 years, ranked 116th lowest out of 135 Bernalillo census tracts.

Peer reviewed articles regarding particulate matter and morbidity/mortality:

Pope, et al., JAMA 2002: 287: 1132-1141

Samet, et al., NEJM 2000: 343/24: 1742-1749

Schwartz, Env Health Persp 2000: 108/5: 563-568

Eftim, et al., Epidemiology 2008: 19/2: 209-216

Arden Pope, Inh Tox 2007: 19(suppl. 1): 33-38



SEPTEMBER 2012



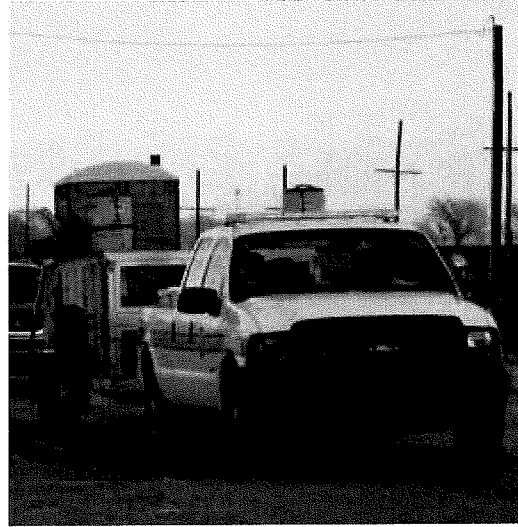
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PLACE MATTERS FOR HEALTH IN BERNALILLO COUNTY:

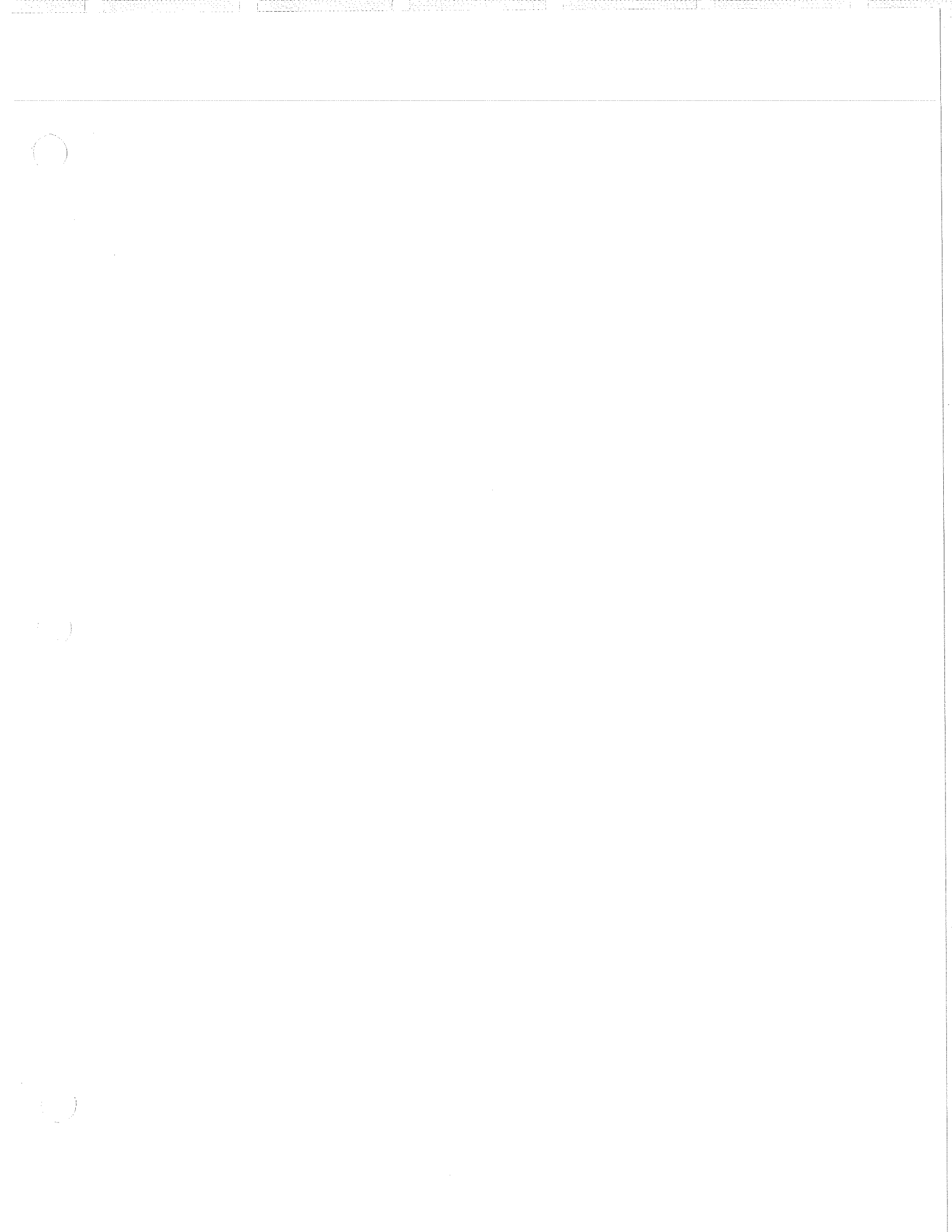
Ensuring Opportunities for Good Health for All

A Report on Health Inequities in Bernalillo County, New Mexico



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Exhibit M



PLACE MATTERS FOR HEALTH IN BERNALILLO COUNTY:

Ensuring Opportunities for Good Health for All

A Report on Health Inequities in Bernalillo County, New Mexico

**Prepared by the
Joint Center for Political and Economic Studies**

**In Conjunction With
the Center on Human Needs, Virginia Commonwealth University
and The Virginia Network for Geospatial Health Research**

**JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES
SEPTEMBER 2012**

The contents of this report reflect the views of the authors and do not necessarily reflect the views of the Joint Center for Political and Economic Studies or its Board of Governors, the Center on Human Needs at the Virginia Commonwealth University, and the Virginia Network for Geospatial Health Research.

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FOREWORD

Place matters for health in important ways, according to a growing body of research. Differences in neighborhood conditions powerfully predict who is healthy, who is sick, and who lives longer. And because of patterns of residential segregation, these differences are the fundamental causes of health inequities among different racial, ethnic, and socioeconomic groups.

The Joint Center for Political and Economic Studies is pleased to add to the existing knowledge base with this report, *“Place Matters for Health in Bernalillo County: Ensuring Opportunities for Good Health for All, A Report on Health Inequities in Bernalillo County, New Mexico.”* The report, supported by a grant from the National Institute on Minority Health and Health Disparities (NIMHD) of the National Institutes of Health, provides a comprehensive analysis of the range of social, economic, and environmental conditions in Bernalillo County and documents their relationship to the health status of the county’s residents.

The study finds that social, economic, and environmental conditions in low-income and non-white neighborhoods make it more difficult for people in these neighborhoods to live healthy lives.

The overall pattern in this report – and those of others that the Joint Center has conducted with other PLACE MATTERS communities – suggests that we need to tackle the structures and systems that create and perpetuate inequality to fully close racial and ethnic health gaps. Accordingly, because the Joint Center seeks not only to document these inequities, we are committed to helping remedy them.

Through our PLACE MATTERS initiative, which is generously supported by the W.K. Kellogg Foundation, we are working with leaders in 24 communities around the country to identify and address social, economic, and environmental conditions that shape health. We look forward to continuing to work with leaders in Bernalillo County and other communities to ensure that every child, regardless of their race, ethnicity, or place of residence, can enjoy the opportunity to live a healthy, safe, and productive life.

Alph B. Everett
President and CEO
Joint Center for Political and Economic Studies



EXECUTIVE SUMMARY

Place matters for health in important ways. Differences in neighborhood conditions powerfully predict who is healthy, who is sick, and who lives longer. And because of patterns of residential segregation, these differences in neighborhood conditions are the fundamental causes of health inequities found among different racial, ethnic, and socioeconomic groups.

This study examined the relationships between place, ethnicity, and health in Bernalillo County, N.M., and found that:

- Life expectancy in the county varies by more than 22 years across census tracts.
- The percentage of low-birth-weight infants varies by a factor of 12 across census tracts.
- Community-level health risks, which are measured by factors such as educational attainment, violent crime rates, foreclosure rates, unemployment rates, and the percentage of overcrowded households, vary widely across census tracts.
- A clear relationship exists between community risk index scores and health outcomes; when a neighborhood's community risk index is low, life expectancy is high.
- Nonwhite and low-income census tracts, such as those in the downtown area, face a higher concentration of environmental health hazards such as air pollution and toxic industrial wastes than do whiter and higher-income census tracts;
- Life expectancy is an average of 5.2 years shorter in census tracts with the greatest concentration of environmental hazards.

Although researchers cannot say with certainty that these neighborhood conditions *cause* poor health, the overall pattern suggests that the clustering of social, economic, and environmental health risks in low-income and nonwhite neighborhoods makes it more difficult for people in these communities to live healthy lives.

These patterns need not and should not continue as they are. Policy makers should consider steps to reduce the concentration of health risks in vulnerable communities and support health-enhancing resources. For example, the use of Health Impact Assessments as well as the environmental assessments required under the Consolidated Environmental Review Act can help ensure that low-income and Hispanic communities are not disproportionately hurt by environmental degradation and policies or practices that cluster health risks.

There is a strong moral imperative to enact policies designed to improve health for all. But there is also a powerful economic incentive. A study released by the Joint Center for Political and Economic Studies in 2009 found that the direct medical costs associated with health inequities among African Americans, Hispanics, and Asian Americans approached \$230 billion between 2003 and 2006. When the indirect costs of health inequities, such as lowered productivity and lost tax revenue resulting from illness and premature death, are added to the equation, the total cost of health inequities between 2003 and 2006 exceeded \$1.24 trillion.¹ For both moral and economic reasons, now is the time for action to address neighborhood conditions that shape health outcomes.

INTRODUCTION

Place matters for health, and it may be even more important than access to health care or health-related behaviors. This is the startling conclusion of a large and growing body of public health research, including this report. This research demonstrates that neighborhood conditions have powerful direct and indirect influences on health, often operating in ways over which individuals have little control. The research further indicates that unhealthy neighborhood conditions tend to cluster adjacent to one another, and most often in minority and low-income neighborhoods. According to many leading scholars, place is a root cause of health inequities between racial, ethnic, and socioeconomic groups.

In Bernalillo County, N.M., people living in neighborhoods characterized by poor housing, inadequate schools, polluted environments, insufficient transportation, and lack of safety typically have significantly poorer health than people living in neighborhoods that don't suffer from these conditions. They also have higher rates of poverty and lower life expectancy.

Data on a national scale indicate that neighborhoods shape the health of individuals in many ways;

- Neighborhood conditions such as the level of crime and violence not only increase the risk of injury and death, but they also increase the stress levels of those who are not directly victimized, which in turn can lead to premature aging and other stress-related illnesses.
- Neighborhoods can also directly influence health through environmental degradation and exposure to air, water, and soil hazards—hazards such as lead paint in homes, which can lead to permanent cognitive and behavioral impairment in young children, or molds, rodents, and insects, which are associated with asthma and other health problems. Children are also at greater risk for asthma if they live in communities with high levels of air pollution.
- Neighborhood characteristics shape health indirectly. For example, research has shown that when fresh produce and healthy foods are readily available, people are more likely to report eating a healthy diet. On the other hand, when low-cost but nutritionally poor fast food is one of the few options close at hand, neighborhoods experience higher rates of obesity and related illnesses.
- The likelihood that neighborhood residents will be able to exercise or enjoy an active lifestyle is powerfully shaped by community characteristics. In neighborhoods that aren't safe or where residents are fearful and distrustful, people find it harder to bike, jog, or play outdoor sports.

Other factors that we don't typically think of as affecting people's health, such as the quality of schools, also play a role. The best predictor of a person's health is his or her educational level. In other words, the better educated people are, the more likely they are to be healthy. But too many children in the United States live in poor neighborhoods and are stuck in schools that have high dropout rates, outdated textbooks, crumbling facilities, inadequately trained teachers, and a woeful lack of resources. As a result, these children are more likely to receive an inadequate education, are less prepared for many of life's challenges, and are at greater risk of poor health.

The quality of transportation also affects a community's health. Good public transportation can minimize environmental health threats while at the same time encouraging economic growth by linking people with jobs, goods, and services.

Taken together, these neighborhood factors—housing, schools, transportation, environmental quality, public safety—often are referred to as social determinants of health.

Despite these problems, the communities most disadvantaged from a health standpoint are also the same communities where the greatest gains can be made to improve the community's health. In doing so, we can also improve the health of surrounding communities. This report finds that by working together to reduce the concentration of health risks and increasing health-enhancing resources, we can give all residents of Bernalillo County a better chance to live healthy lives.

Part I of this report provides background information about Bernalillo County, including population data, health outcomes, socioeconomic conditions, community characteristics, and a community risk index. Part II examines the geographic relationship between the community risk index and life expectancy. Part III examines the environmental hazards in the county and the geographic relationship between environmental hazards, health outcomes, and life expectancy. Part IV presents conclusions about the role of community risk factors and environmental hazards in understanding disparities in health outcomes in Bernalillo County. For a full explanation of data sources and analytic methods, please access the Virginia Commonwealth University Center on Human Needs website, at <http://www.humannneeds.vcu.edu/>.

Table 1. Demographic Characteristics of Bernalillo County, State of New Mexico, and United States

	Bernalillo	New Mexico	United States
Population (2009)_(a)	642, 527	2,009,671	307,006,556
Population Density (2000)_(b)	477.4	15.0	79.6
Race/Ethnicity (2009)_(a)			
Hispanic	46.7%	45.6%	15.8%
White	42.0%	41.0%	64.9%
Black	2.7%	1.9%	12.1%
Other	4.3%	2.9%	6.6%
American Indian and Alaska Native Alone	4.2%	8.6%	0.6%
Foreign Born	10.4%	9.8%	12.5%

(a) Source: U.S. Census Bureau, 2009 American Community Survey

(b) Source: 2009 Geolytics Projection

I. Bernalillo County: Where People Live

Bernalillo County Population

Bernalillo County, located in central New Mexico, had a population of 642,527 in 2009,² almost one third of the state's population. It is the most densely populated county in New Mexico, with 477 people per square mile. The city of Albuquerque, with a population of 529,219, accounts for more than 80% of the county's population. The city has an average density of 1,237 people per square mile, with a high of over 12,000.

As detailed in Table 1, Hispanics are the largest ethnic group in the county and make up a significantly larger percentage of the population than the national average (46.7% compared to 15.8% nationally). The majority of the Hispanic population in Bernalillo County is U.S.-born. According to the U.S. Census Bureau, the foreign-born population in the county is similar to that of the nation (10.4% compared to 12.5% nationally).

As in many areas of the United States, where residential patterns reflect historical racial and ethnic segregation and restrictions in the housing market,^{3,4,5} there are notable differences in the ethnic and racial composition of neighborhoods across Bernalillo County. Map 1 shows the racial and ethnic composition of the census tracts in central Bernalillo County. Census tracts with the highest concentrations of Hispanic residents are in South Valley and Southwest Mesa; there, a majority of census tracts are 75% to over 90% Hispanic. Downtown also has a high percentage of Hispanic residents. A number of census tracts in the Far Northeast Heights/Foothills

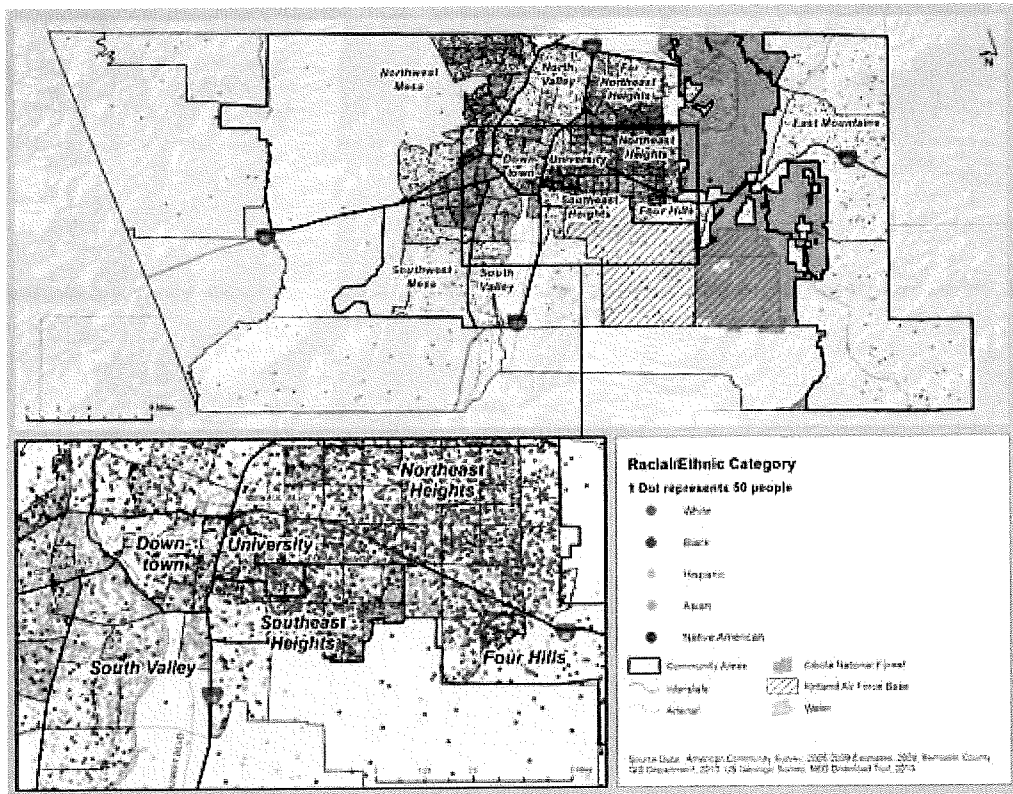
areas are over 75% white. One way to assess the racial/ethnic mix of an area is to use the Diversity Index, a measure of the likelihood that two people randomly chosen from an area will be of a different race or ethnicity. The higher the value, the less segregated the area. While the index for Bernalillo as a whole is 61.7%, the value ranges from 13.7% (low diversity) to 80.6% (high diversity). Based on the Diversity Index, the Northwest Mesa, North Valley, Southeast Heights, Northeast Heights, and University are the most diverse areas.

Map 2 highlights census tracts within Bernalillo County in which the percentage of foreign-born residents has been higher than the county average over several decades. As indicated by dark brown shading on Map 2, foreign-born residents have been more concentrated in Southeast Heights and Downtown since the 1970s.

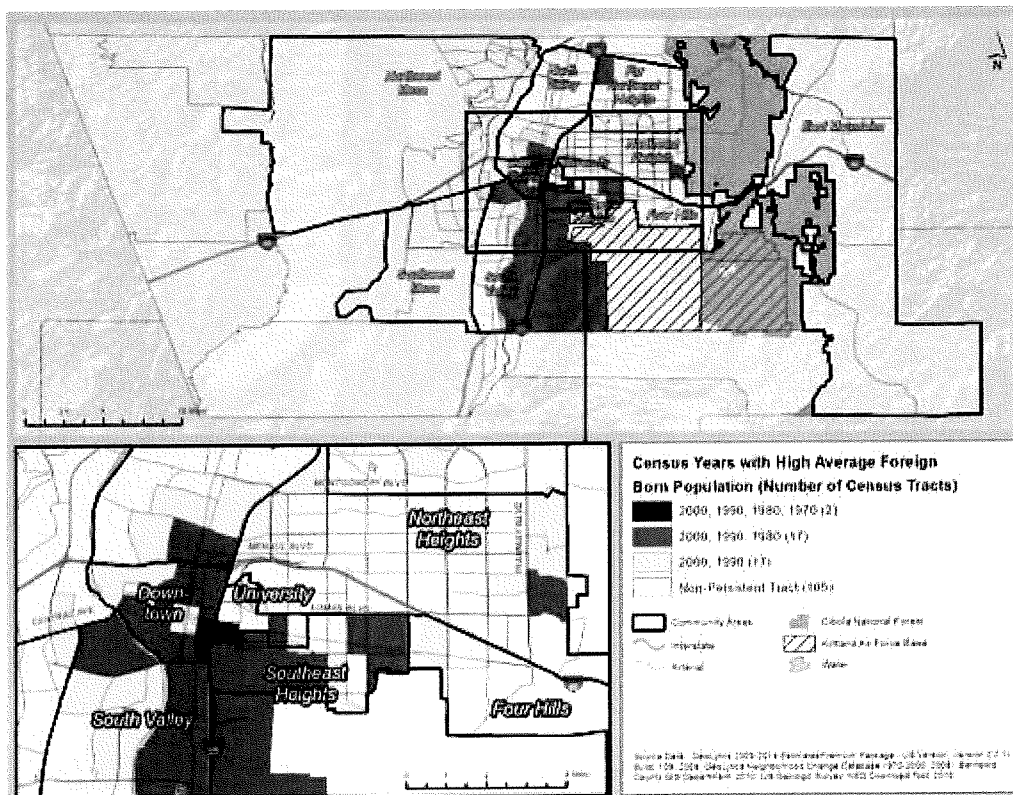
Socioeconomic Conditions

Like other communities, socioeconomic conditions in Bernalillo County have an important and often unrecognized influence on health status. Education, for example, is a pathway to higher income and net worth, which in turn have strong influences on health status and access to health care. National statistics indicate that adults (age 25 and older) who lack a high school education or equivalent are three times more likely to die before age 65 than those with a college education.⁶ They are also more likely to engage in unhealthy behaviors such as cigarette smoking.⁷

Map 1: Racial/Ethnic Distribution by Census Tract, Bernalillo County, N.M. (2005-2009)



Map 2: Persistent Foreign Born by Census Tract, Bernalillo County, N.M. (1970-2009)



Note: The category of "persistent foreign born" includes census tracts that, for two or more decennial census periods, had a percentage of foreign-born population equal to or greater than the overall Bernalillo County average (5%) for the time period from 1970 to 2000.

Table 2. Socioeconomic Characteristics of Bernalillo County, State of New Mexico and United States

	Bernalillo	New Mexico	United States
Educational Attainment			
Less than High School (K-12)	13.5%	17.2%	14.7%
High School Only	24.3%	26.4%	28.5%
Some College	30.7%	31.1%	28.9%
Bachelor's Degree or Higher	31.5%	25.3%	27.9%
Poverty Rate			
Below 0.50 of Poverty Rate	7.3%	7.5%	6.3%
.50-.99 of Poverty Rate	8.6%	10.5%	8.1%
1.00-1.99 of Poverty Rate	19.5%	22.3%	18.4%
2.00 and Above of Poverty Rate	64.6%	59.7%	67.3%

Source: U.S. Census Bureau, 2009 American Community Survey

Educational attainment in Bernalillo County, where 86.5% of adults age 25 and over have completed high school, compares favorably with that of New Mexico (82.8%) and the U.S.

5.3%) (Table 2). However, educational attainment varies greatly by race and ethnicity (Figure 1). According to 2009 data from the American Community Survey, over 25% of the county's Hispanic adults have not completed high school, and almost 60% have no education beyond high school. Of the foreign-born residents, 32.3% do not have a high school degree and 54.5% do not have an education beyond high school. While educational outcomes are slightly better for Native American residents, nearly 40% have no education past high school.

The percentage of adults in Bernalillo County who have graduated from high school varies even more by neighborhood. Census tracts in which 40% or more of the adult population have not completed high school are in Downtown, South Valley, Southeast Heights, North Valley, and Native American lands in the northwest and south (Map 3).

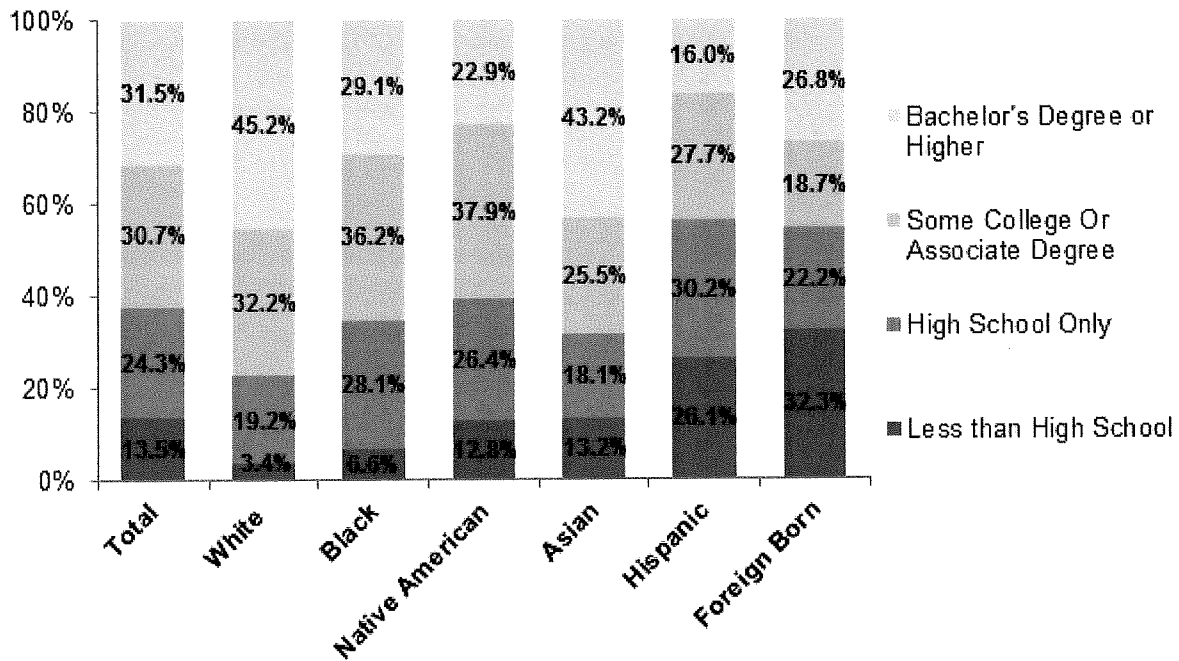
Poverty also has a strong influence on health: nationally, families living below the federal poverty level are 3.6 times more likely to report fair or poor health than those with incomes at least twice the poverty level.⁸ Experiencing poverty during childhood influences a child's cognitive, emotional, behavioral, and physical development. For example, poor children have a higher rate of lead poisoning than non-poor children, have a higher prevalence of developmental delay, and are more likely to be reported as having long-term emotional or behavioral problems. Childhood poverty also decreases a child's likelihood of high school graduation.^{9,10} Poverty rates are highest in Native American lands bordering the western and southern portions of

Bernalillo County (Map 4). In 2009 in these areas, as well as in a few census tracts in the Southeast Heights and South Valley, over 55% of the population had incomes below 150% of the poverty level.

Persistent poverty, defined as having at least 20% of the population with incomes under 100% of the federal poverty level for at least two consecutive census periods, is shown in Map 5. Areas of persistent poverty since the 1970s are shown in dark brown. These include six census tracts in South Valley, Southeast Heights, Downtown, and North Valley. Areas of persistent poverty since the 1980s are shown in lighter brown. These include eight census tracts in Downtown, North Valley, South Valley, and Southeast Heights.

Poverty rates in Bernalillo County are somewhat higher than national rates. In 2009, about 16% of households in Bernalillo County had incomes below 100% of the federal poverty level (\$22,000 or less for a family of four), compared to 14% nationwide. Like educational attainment, poverty rates vary with race and ethnicity. According to American Community Survey data for 2009, white residents are least likely to live in poverty (10.1%) compared to black, Native American, Hispanic, and foreign-born residents (23.3%, 20.3%, 21.2%, and 20.2% respectively; see Figure 2).

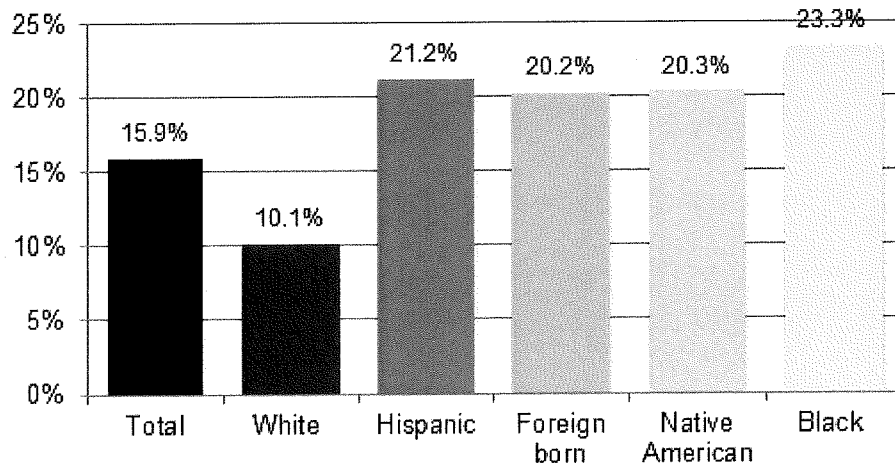
Figure 1: Educational Attainment in Bernalillo County, N.M.



Source: U.S. Census Bureau 2009 American Community Survey

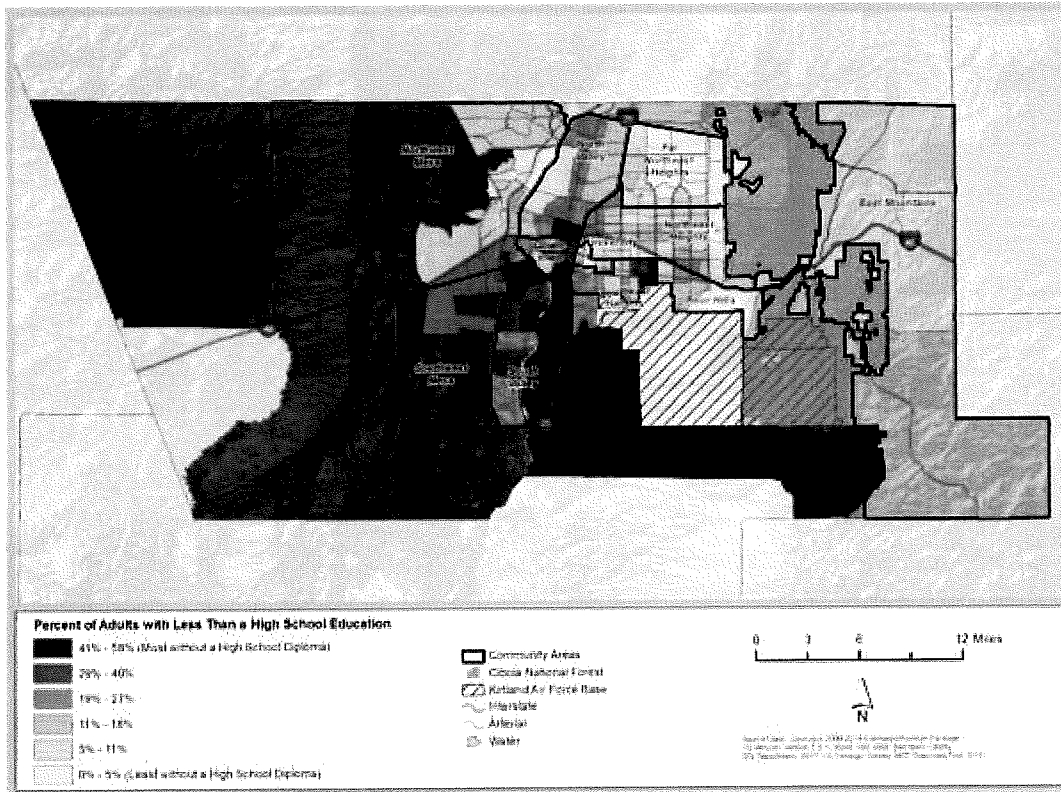
Notes: : White includes Non-Hispanic population only; all other racial categories include Hispanic and Non-Hispanic population.

Figure 2: Individuals in Poverty in Bernalillo County, N.M., by Race, Ethnicity, and Nativity



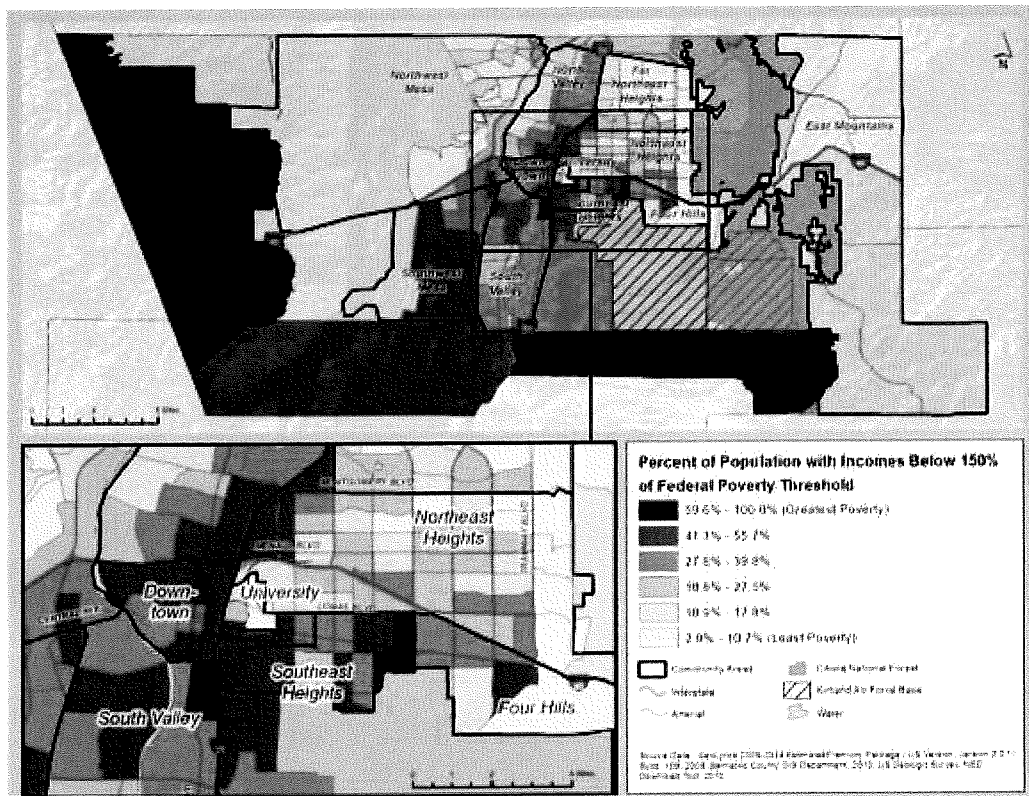
Source: U.S. Census Bureau, 2009 American Community Survey

Map 3: Adults With Less Than High School Education by Census Tract, Bernalillo County, N.M. (2009)

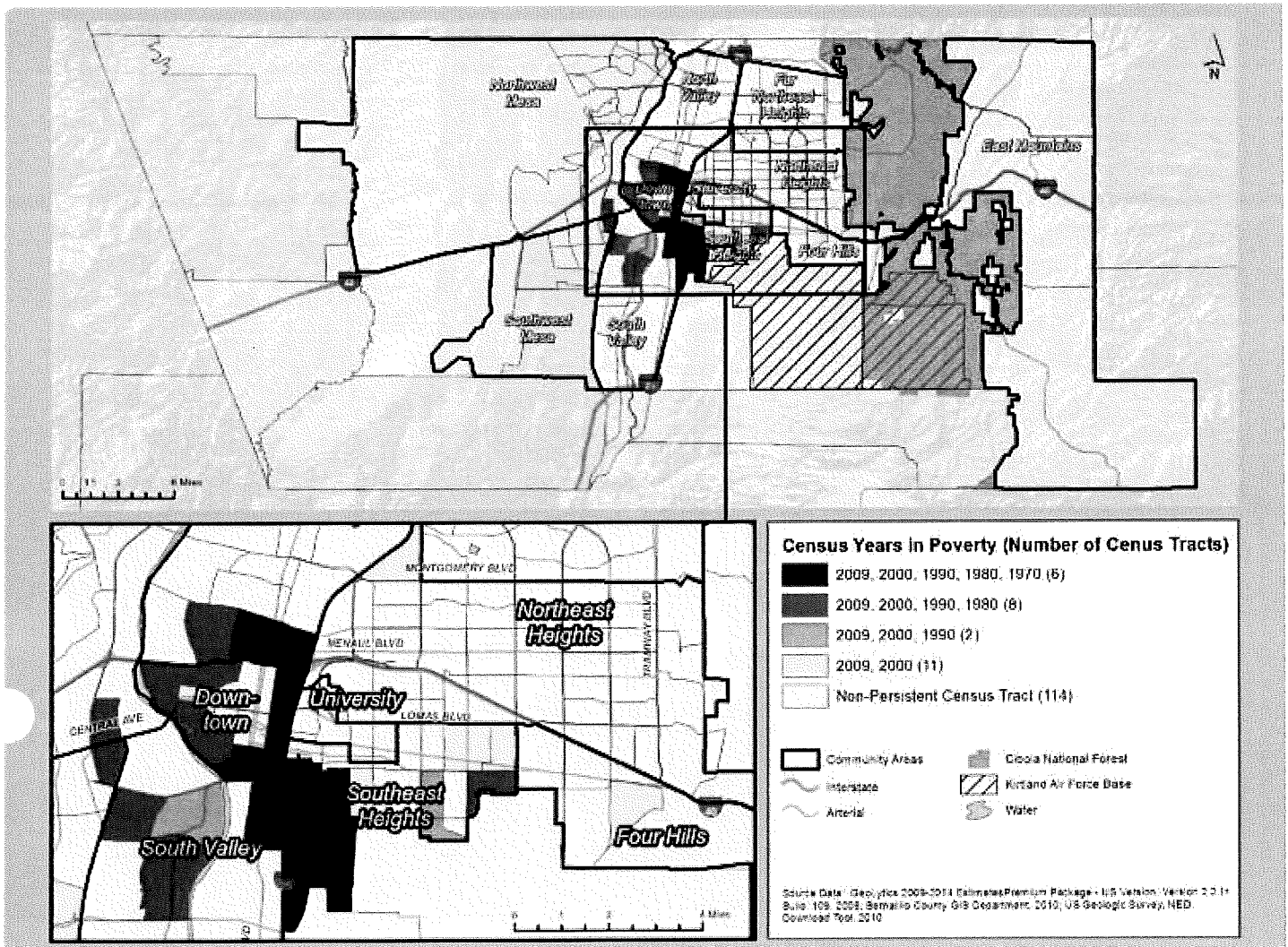


Note: Adults age 25 or older without a high school diploma or equivalent.

Map 4: Poverty by Census Tract, Bernalillo County, N.M. (2009)



Map 5: Persistent Poverty by Census Tract, Bernalillo County, N.M. (1970-2009)



Note: The category of “persistent poverty” includes census tracts with a poverty rate of at least 20% for at least two consecutive census periods, looking retrospectively from 2009. This concept is based on the U.S. Department of Agriculture’s research on persistent poverty counties.

II. The Health and Life Expectancy of the People of Bernalillo County

Housing Conditions

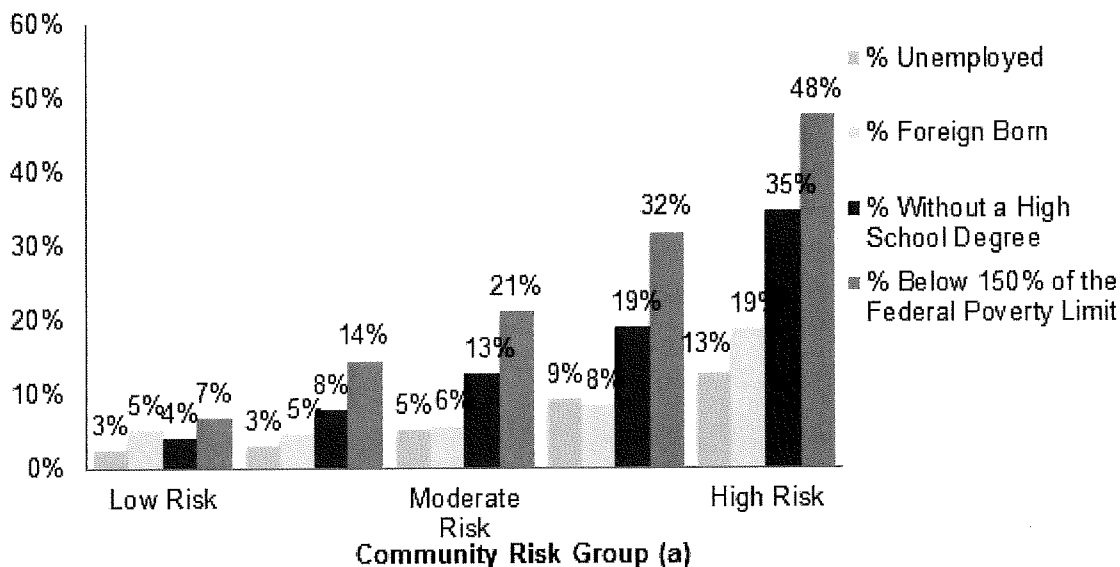
Neighborhood housing conditions have a significant impact on the community environment. Foreclosure rates in 2010 were lower in Albuquerque (one in 475 housing units) than in the nation (one in 381 units), but higher than the New Mexico rates (one in 753 units). Foreclosure rates during 2006-2008 were highest in the Downtown area, Northeast Heights, and Southwest Mesa.

percent of vacant housing units for Bernalillo County is lower than both the state and national average, but varies greatly

within the county. Census tracts with the highest rates of vacant housing, above 15%, include the Southeast Heights and the Downtown and University areas.

According to American Community Survey data for 2009, overcrowding in Albuquerque, generally defined by the survey as more than one person per room, is lower than the rate in New Mexico (2.4% and 3.6% respectively), and lower than the national rate (3.0%). Overcrowding varies by neighborhood in Bernalillo County, from census tracts with no significant overcrowding to census tracts with a rate of over 15%. Census tracts that have higher-than-average overcrowding rates include Northeast Heights, South Valley, and the Downtown and University areas.

Figure 3: Community Risk Index Groups, Bernalillo County, N.M.



(a) Community Risk Index quintiles; Source: Geolytic 2009 Projections, Albuquerque Public Schools; Research, Development and Accountability Department 2004-2006, RealtyTrac via the Federal Reserve, U.S. Census Bureau, Census 2000, Institute for Social Research 2004-2006

Community Risk Index

To sum up socioeconomic and neighborhood risks, we developed an index for comparing Bernalillo County neighborhoods. We statistically combined a set of measures into a single “community risk” index (CRI) for each census tract (see the Center on Human Needs website at <http://www.humannneeds.vcu.edu/> for details). The CRI was calculated based on variables of interest to the Bernalillo County Place Matters Team and has a basis in social determinants of health literature. These variables include: average educational attainment, average standardized test scores, the violent crime rate, the foreclosure rate, the unemployment rate, vacant houses, households with no automobile, and overcrowded households. The higher the CRI score, the higher the risk associated with socioeconomic and community conditions. Use of this index enables us to examine the relationship between multiple community socioeconomic risks and health outcomes simultaneously.

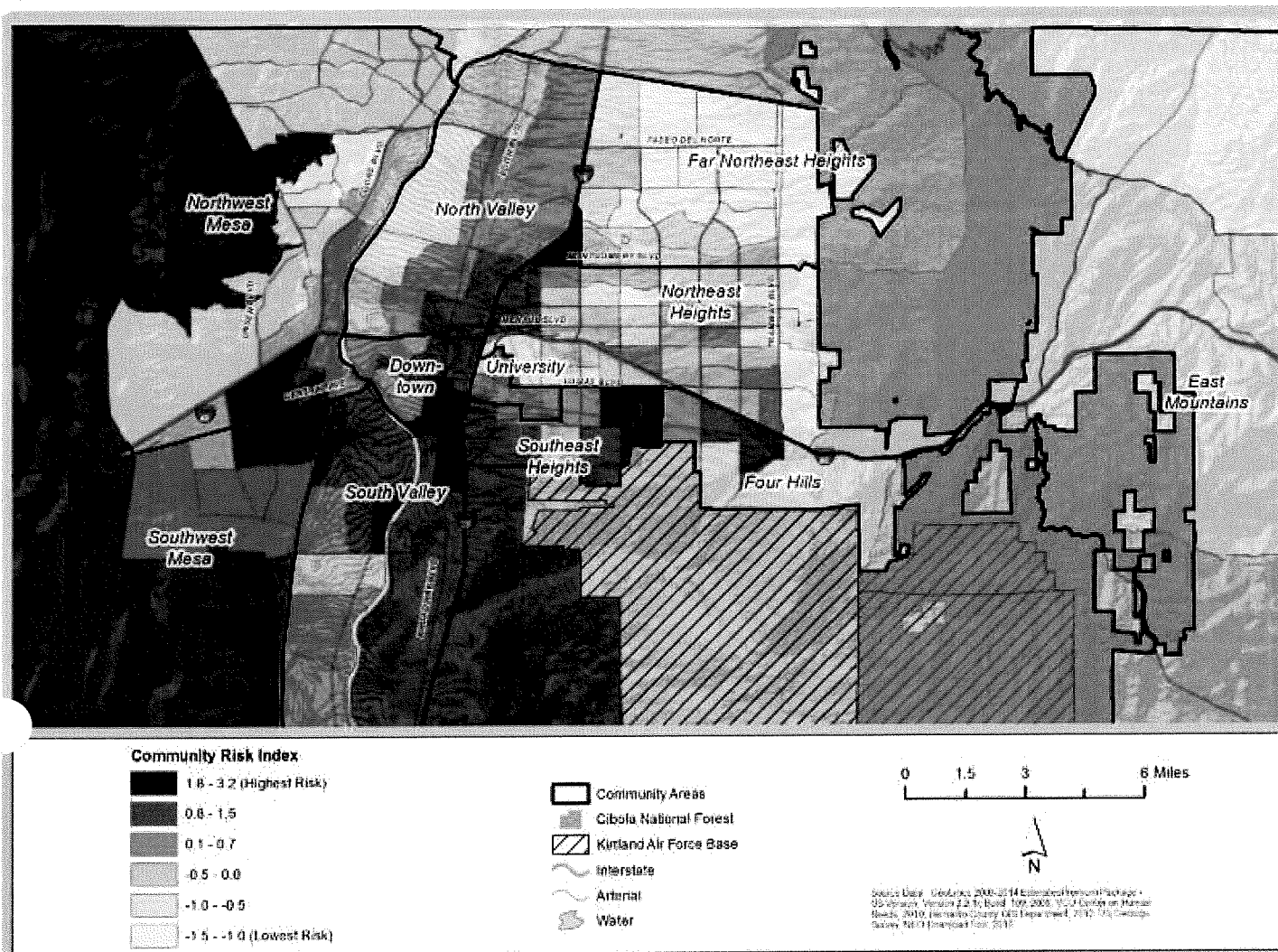
Figure 3 illustrates the relationship between the CRI and selected socioeconomic conditions. Census-tract-level scores on the CRI were divided into quintiles (five equal-size groups), which are displayed from lowest to highest. In the quintile with the lowest CRI values (lowest risk), the unemployment rate is 3%, 7% have an income below 150% of the federal poverty level, and 4% of adults lack a high school diploma. In the quintile with the highest CRI values (highest risk) 13% are unemployed, 19% have an income below 150% of the federal poverty level, and 35% of adults lack a high school diploma.

Map 6 examines geographic variation in the CRI, with high-risk areas shaded in dark brown, including Southeast Heights, Downtown, South Valley, and Northeast Heights. These are neighborhoods in which residents may be most vulnerable to poor health outcomes that are influenced by unfavorable socioeconomic conditions and community characteristics, such as high rates of poverty, crime, unemployment, low educational attainment, and poor housing conditions.

Health Status of Community Residents

Overall indicators of the health status of Bernalillo County are mixed. According to the County Health Rankings released in 2010 by the Robert Wood Johnson Foundation, Bernalillo County ranked the seventh highest in health status among the 33 counties in New Mexico; however, it should be noted that New Mexico ranked very low in morbidity, 10th lowest in the U.S.¹¹ Based on health outcome data from the New Mexico Department of Health for years 2001–2005, the average life expectancy in Bernalillo County (80.3 years) is slightly higher than for the state of New Mexico (77.3) or the United States (77.9). Similarly, the death rate in Bernalillo (783.6/100,000 population) is somewhat higher than the rate in the state of New Mexico (761.2) and lower than in the United States (803.6). On the other hand, rates of infant mortality and low birth weight in Bernalillo County are similar to those for New Mexico and the United States (Table 3).

Map 6: Community Risk Index by Census Tract, Bernalillo County, N.M. (2004-2009)



Note: The CRI is a composite index that is based on the following indicators: percentage of population with less than a high school education, average standardized test scores, the violent crime rate, the foreclosure rate, the unemployment rate, percentage of houses that were vacant, and percentage of households with no automobile or with overcrowding. Higher scores represent the highest levels of risk.

Given the significant differences by neighborhood in community risk factors that may affect health in Bernalillo County, it follows that health outcomes, including life expectancy, mortality, and rate of low-birth-weight births, vary sharply by neighborhood as well.

Life expectancy—how long a person born today can expect to live—varies by several decades across Bernalillo County neighborhoods. Based on vital statistics data from the New Mexico Department of Health for years 2001 to 2005, the average life expectancy for the county as a whole is 80.3 years. However, in some census tracts in the Downtown area and the Southeast Heights, a person born today can expect to live to only about 70 years or less. In other places in Bernalillo County, a person born today might expect to live into his/her nineties.

Map 7 illustrates this variation, with census tracts with the lowest life expectancies denoted in dark brown and census tracts with the highest life expectancies denoted by light yellow.

Low birth weight (defined as a weight of less than 5.5 pounds at birth) also varies sharply by neighborhood. Based on data from the New Mexico Department of Health for years 2001 to 2005, the average percent of low-birth-weight births for Bernalillo County is 8.5%. Geographic patterns for low birth weight are shown in Map 8. Darker brown areas on the map represent areas of high rates of low birth weight. Census tracts with the highest low-birth-weight rates are located in the Northeast Heights and University areas.

Map 7: Life Expectancy by Census Tract, Bernalillo County, N.M. (2001-2005)

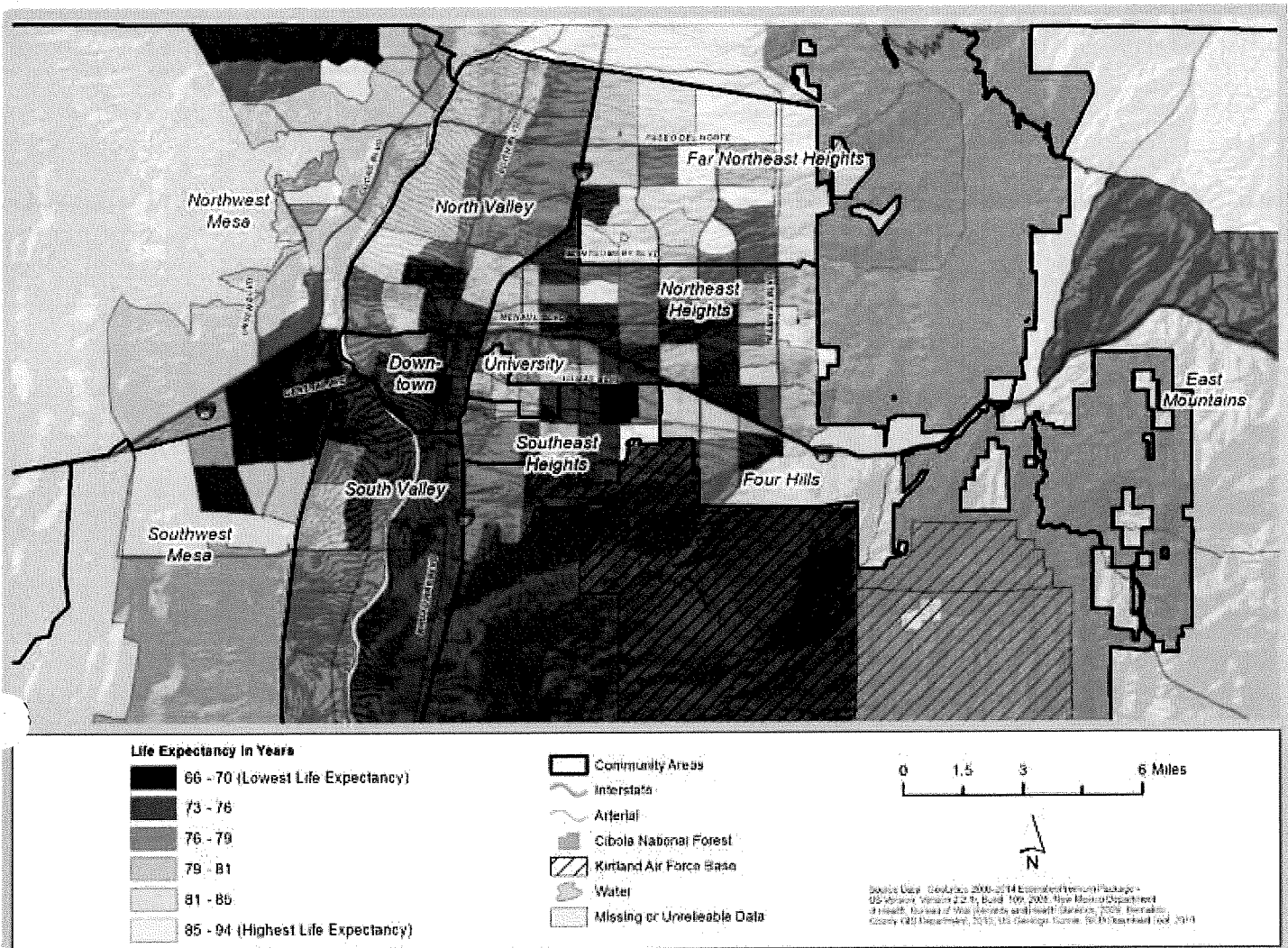


Table 3. Health Outcomes in Bernalillo County, State of New Mexico, and United States

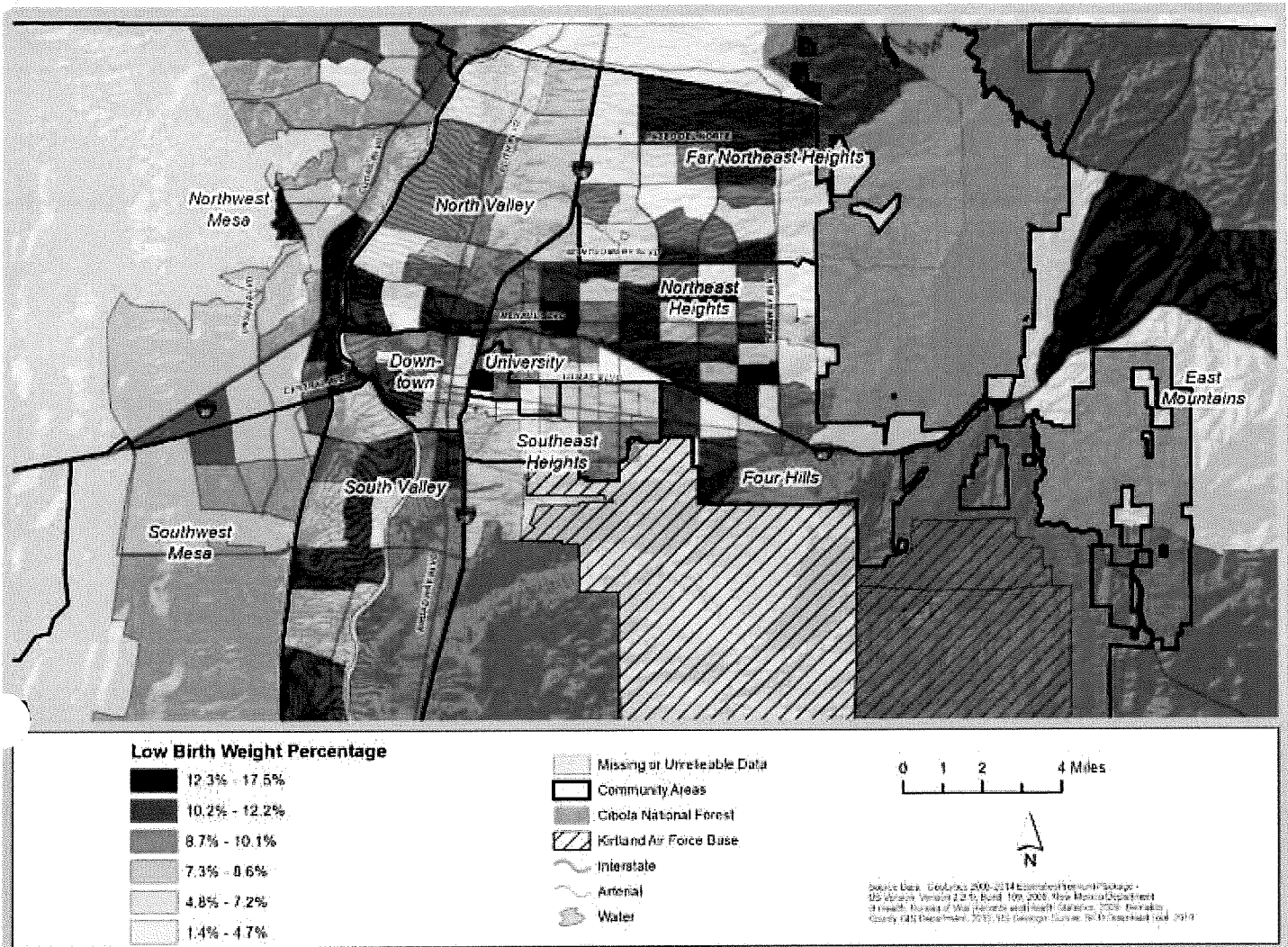
	Bernalillo	New Mexico	United States
Deaths			
Life Expectancy in Years	80.3 ^(a)	77.3 ^(b)	77.9 ^(b)
Death Rate/100,000 Population	783.6 ^(a)	761.2 ^(b)	803.6 ^(b)
Births			
Low Birth Weight	8.4% ^(a)	8.5% ^(b)	8.2% ^(b)
Infant Mortality/1,000 Births	6.3 ^(a)	6.1 ^(c)	6.8 ^(c)

^(a) New Mexico Department of Health, Bureau of Vital Records and Health Statistics, 2001-2005.

^(b) Centers for Disease Control and Prevention, National Center for Health Statistics, 2005.

^(c) National Vital Statistics Report, Vol 58, No. 17, April 30, 2010.
Available at http://www.cdc.gov/nchs/data/nvsr58/nvsr58_17.pdf.

Map 8: Low Birth Weight by Census Tract, Bernalillo County, N.M. (2001-2005)



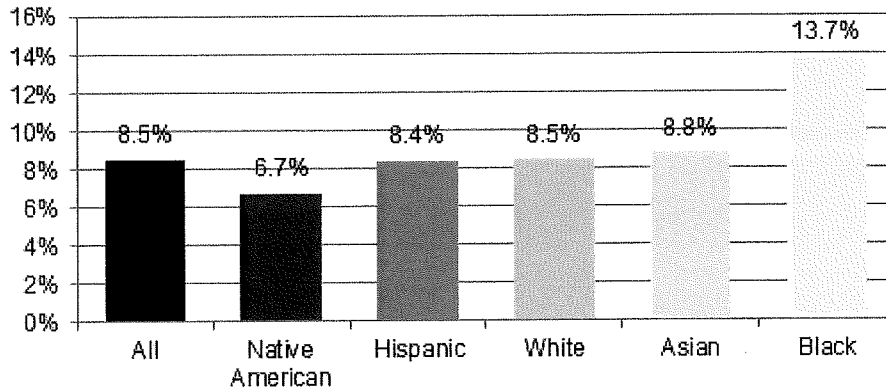
Note: Low birth weight is defined as a weight of less than 2500 grams, or about 5.5 pounds at birth. Rates in the Cibola National Forest may be unreliable due to small population size.

Figure 4 shows that the average low-birth-weight rate is nearly identical for Hispanics and whites, the two largest racial/ethnic groups in Bernalillo County. Thus, variability in low-birth-weight rates in Bernalillo County is likely to have less to do with racial/ethnic composition of neighborhoods and more to do with other community and individual risks. However, it should be noted that the percentage of low-birth-weight African American babies in the county is significantly higher than that for other population groups. This may be due to the relatively small African American population in the county, or it may be related to the stress of racism, an outcome that has been suggested by other research in other locations.

Community Risk and Health Outcomes

Although low-birth-weight rates often vary with socioeconomic characteristics, in Bernalillo County there does not appear to be any significant relationship between low-birth-weight rates and community or household-level characteristics measured at the census tract level. We may have insufficient data to uncover this relationship in Bernalillo County. However, census tracts in Bernalillo County with the highest level of community risk have lower average life expectancy (Figure 5). A variety of factors may affect life expectancy, including social, environmental and behavioral factors—some of which are themselves associated with the indicators measured by the community risk index. To some degree, the observed association between our index and life expectancy may represent the

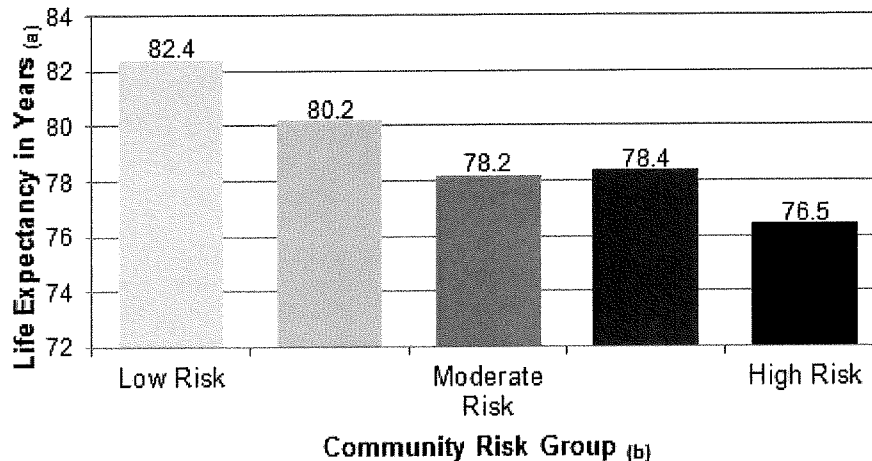
Figure 4: Percent Low-Birth-Weight Births by Race/Ethnicity in Bernalillo County, N.M.



Source: Bernalillo County Department of Health, Seer Stat 2001-2005.

Note: Racial groups include Non-Hispanic population only. Hispanic can include any racial group.

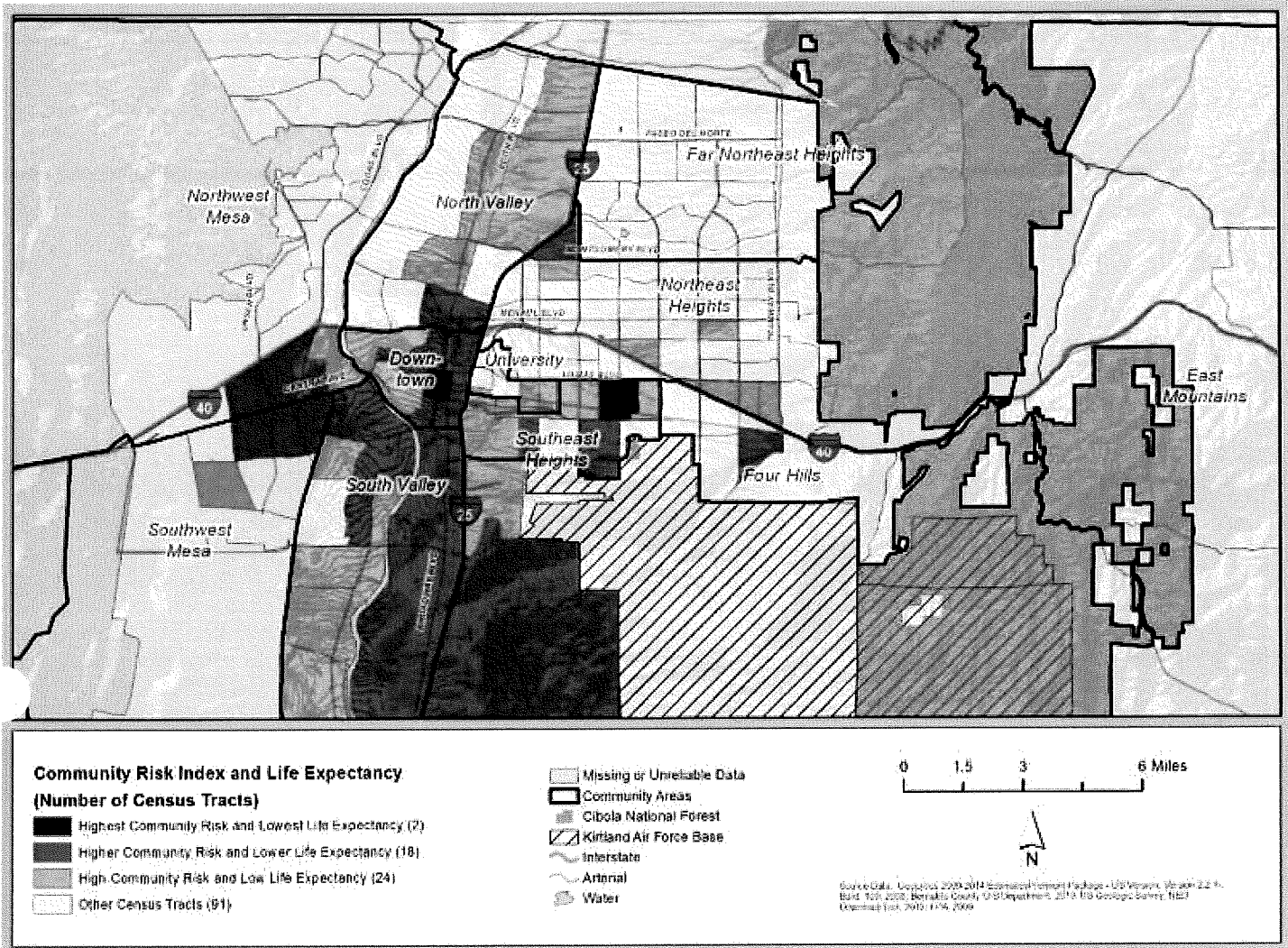
Figure 5: Life Expectancy in Bernalillo County, N.M., by Community Risk Groups



(a) Life expectancy quintiles; Source: Department of Health, Seer Stat, 2001-2005

(b) Community Risk Index quintiles; Source: Geolytic 2009 Projections, Albuquerque Public Schools; Research, Development and Accountability Department 2004-2006, RealtyTrac via the Federal Reserve, U.S. Census Bureau, Census 2000, Institute for Social Research 2004-2006

Map 9: Regions of Elevated Community Risk Index and Low Life Expectancy by Census Tract, Bernalillo County, N.M. (1970-2009)



Note: Values for CRI: highest = 1.79 - 3.21; higher = 0.71 - 1.47; high = 0.01 - 0.61. Values for life expectancy (LE): lowest = 66 - 70; lower = 71 - 76; low = 77 - 79.

influence of these confounding variables and not a causal role of the measured indicators themselves.

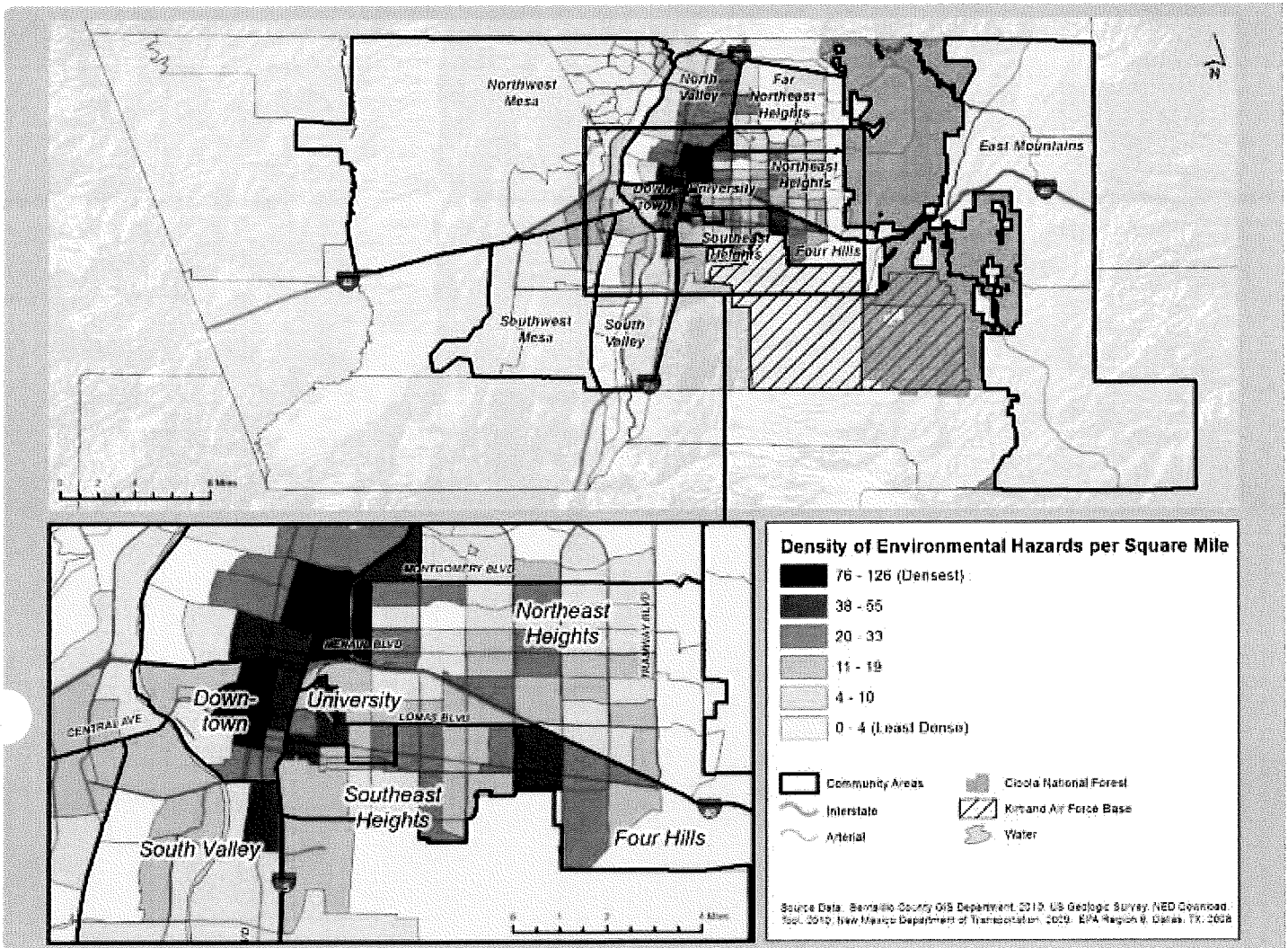
Map 9 shows the geographic relationship between socioeconomic and community risk factors (as measured by the CRI) and life expectancy in Bernalillo. Neighborhoods where the CRI is high and there are poor health outcomes are shown in darker colors. The map, which focuses on the urban areas of Bernalillo County, illustrates that census tracts in Southeast Heights, Downtown, Four Hills, South Valley, and portions of Northwest Mesa, Southwest Mesa, and Northeast Heights have a co-occurrence of high community risk index and low life expectancy.

III. Environmental Hazards and Life Expectancy in Bernalillo County

Environmental Hazards

As noted above, factors that determine one's health are not restricted to the characteristics of individuals and families. Other factors, often referred to as social determinants of health, such as communities where people are exposed to environmental hazards, contribute to greater health risks. Environmental hazards may induce disease and injuries by exposing the population to contaminated air, water, and food or to hazards associated with workplace conditions, transportation, pests, noise, toxic spills, and climate change.

Map 10: Environmental Risk by Census Tract, Bernalillo County, N.M. (2002)



Note: The density of environmental hazards was generated from an aggregation of the following types of hazards per square mile:

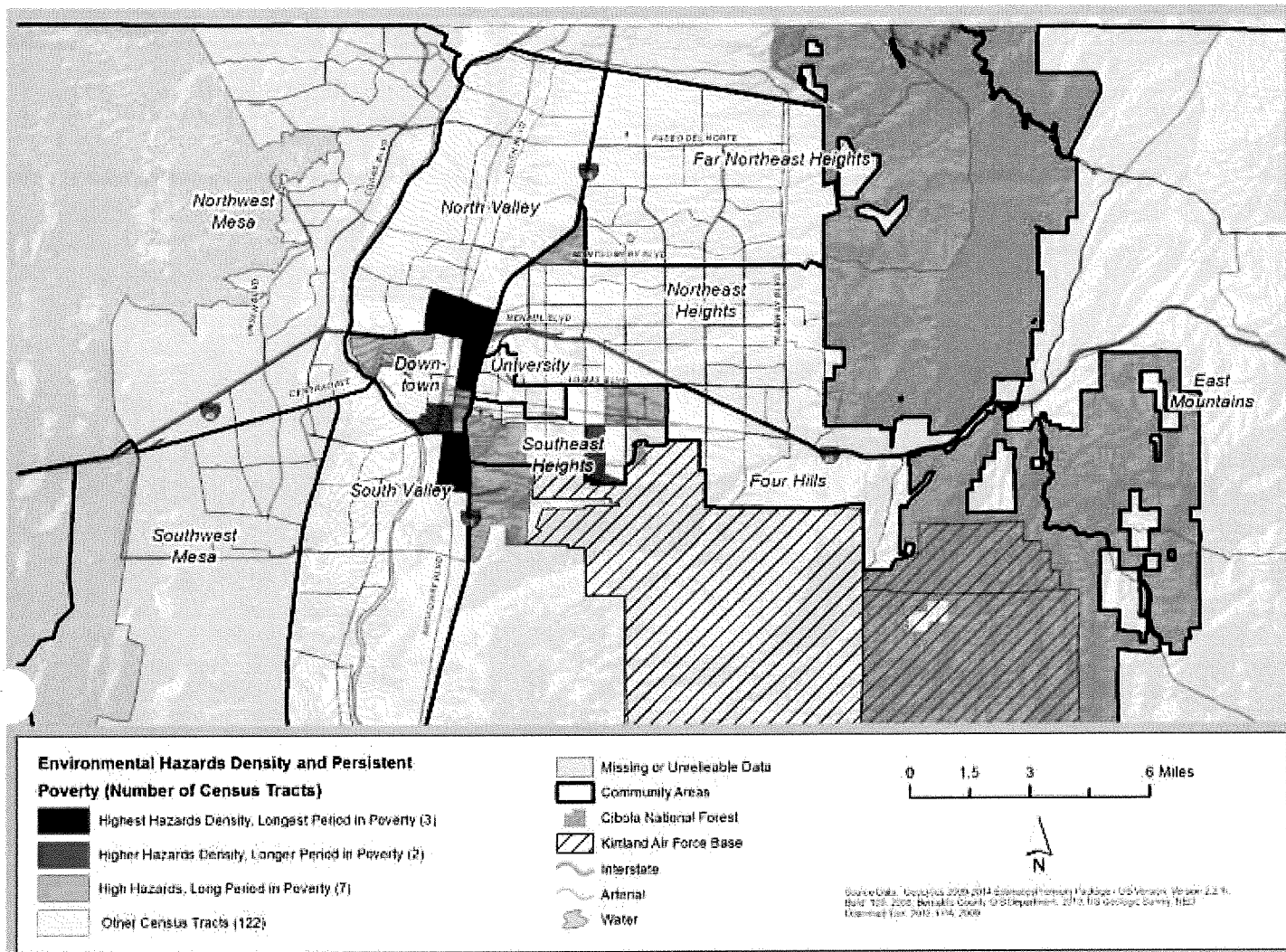
- Tier II reporting facilities
- Discharge permit points
- Dumping locations
- Hazmat locations
- Hospitals
- Railroad depots
- NMED discharge permit locations
- NPDES permit locations
- NMED petroleum storage tank bureau leak sites
- Stationary air [pollution] sources
- Superfund sites
- Industrial/manufacturing land use

While a broad array of environmental risks are considered to have health effects, the 2003 Albuquerque/Bernalillo County Comprehensive Plan identified primary sources of air pollutants as vehicular emissions, residential wood burning, dust from unpaved roads and construction sites, and, to a lesser degree, industrial operations. Primary sources of water pollutants include septic tanks, agricultural activities, gas stations, landfills, illegal dumping, and hazardous materials. In addition, there are three Superfund sites in Bernalillo County.¹² (According to the Environmental Protection Agency, “a Superfund site is an uncontrolled or abandoned place where hazardous waste is located, possibly affecting local ecosystems or people.”^{13,12})

Environmental Hazards in Bernalillo County

- Traffic corridors
- Railroads
- Industrial zones
- Brownfield sites
- Superfund sites
- Resource Conservation and Recovery Act (RCRA) sites
- Hazardous air pollutants

Map 11: Regions of Elevated Environmental Risk and Persistent Poverty by Census Tract, Bernalillo County, N.M. (1970-2009)



Note: Values for hazards density: highest = 38.95 - 54.65; higher = 26.00 - 33.01; high = 13.89 - 20.17. Values for period in poverty: longest = 5 decades; longer = 3 - 4 decades; long = 2 decades.

Exposure to environmental hazards is rarely uniform across geographic areas. Studies document proximity to hazardous sites and heightened exposure to pollution in neighborhoods with larger populations of people of color and the poor.^{14,15,16,17} Studies in various locations also document that more environmental hazards occur in communities with large minority populations.¹⁸ Some longitudinal studies suggest that toxic facilities are deliberately sited in minority communities,¹⁹ possibly because such neighborhoods are socially isolated and hold limited political power to resist undesirable land use decisions by governments and corporations.²⁰

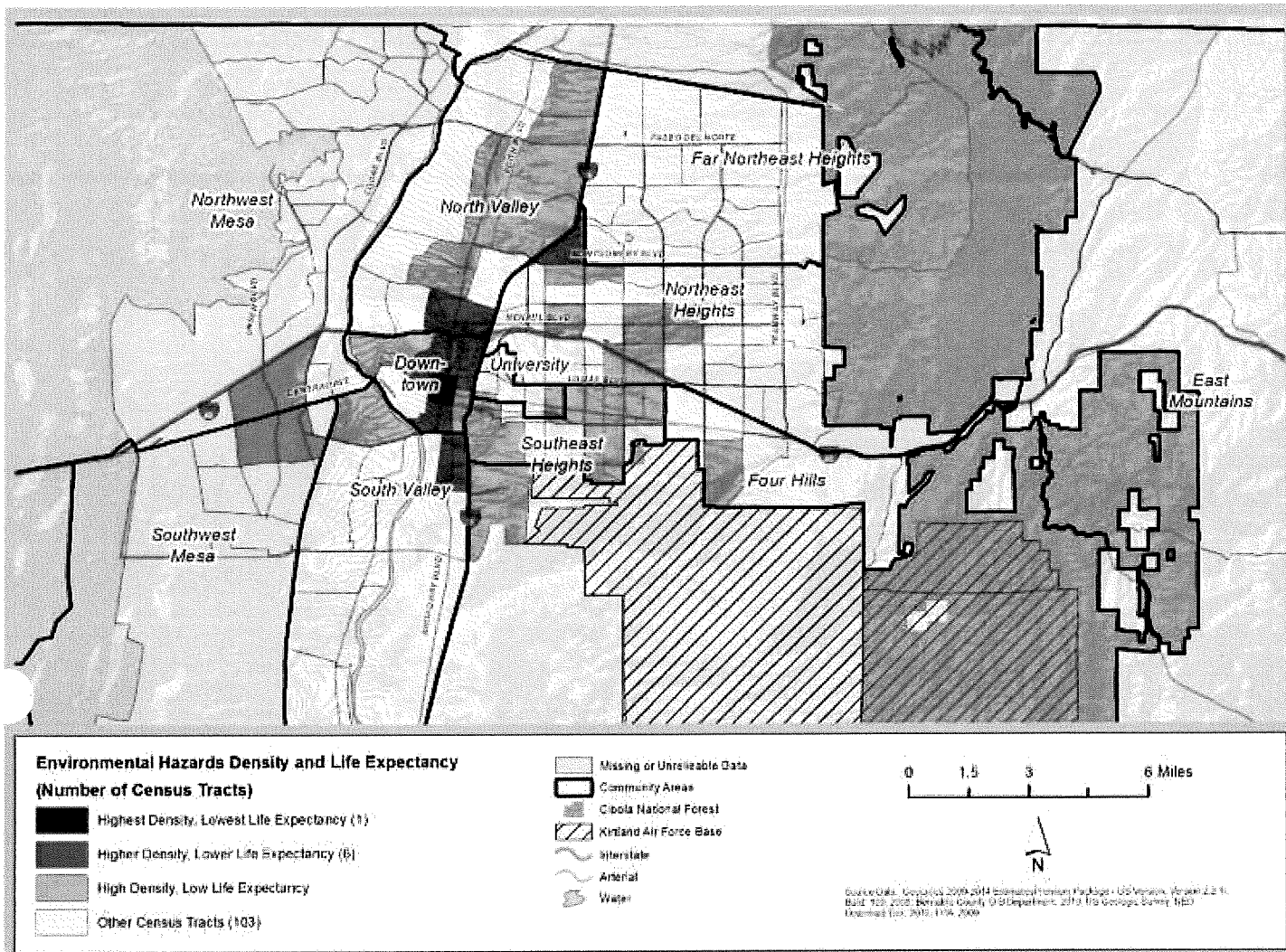
Map 10 shows, environmental hazards are most prevalent in downtown Albuquerque, near North Valley, and Northeast Heights close to Interstate 25. This measure does not reflect the

number of pollutant sources but rather the number of pollutant sources divided by the square miles. While one census tract in Four Hills has elevated risk as measured by this index, the high risk score is primarily a result of land that is zoned for industrial or commercial use. Land use in this zoning classification does not necessarily result in exposure to environmental hazards.

Community Characteristics and Environmental Exposure

In Bernalillo County, particular community characteristics are common in areas having a greater number of toxic facilities. Areas with high levels of potential pollution are significantly more likely to contain low-income, Hispanic, and recent immigrant populations (Figure 6). In the quintile with the highest levels of environmental risk, 32% of households have

Map 12: Regions of Elevated Environmental Risk and Low Life Expectancy by Census Tract, Bernalillo County, N.M. (1970-2009)



Note: Values for hazards density: highest = 54.65 - 126.15; higher = 27.43 - 54.64; high = 13.52 - 27.42. Values for life expectancy: lowest = 66 - 70; lower = 71 - 76; low = 77 - 79.

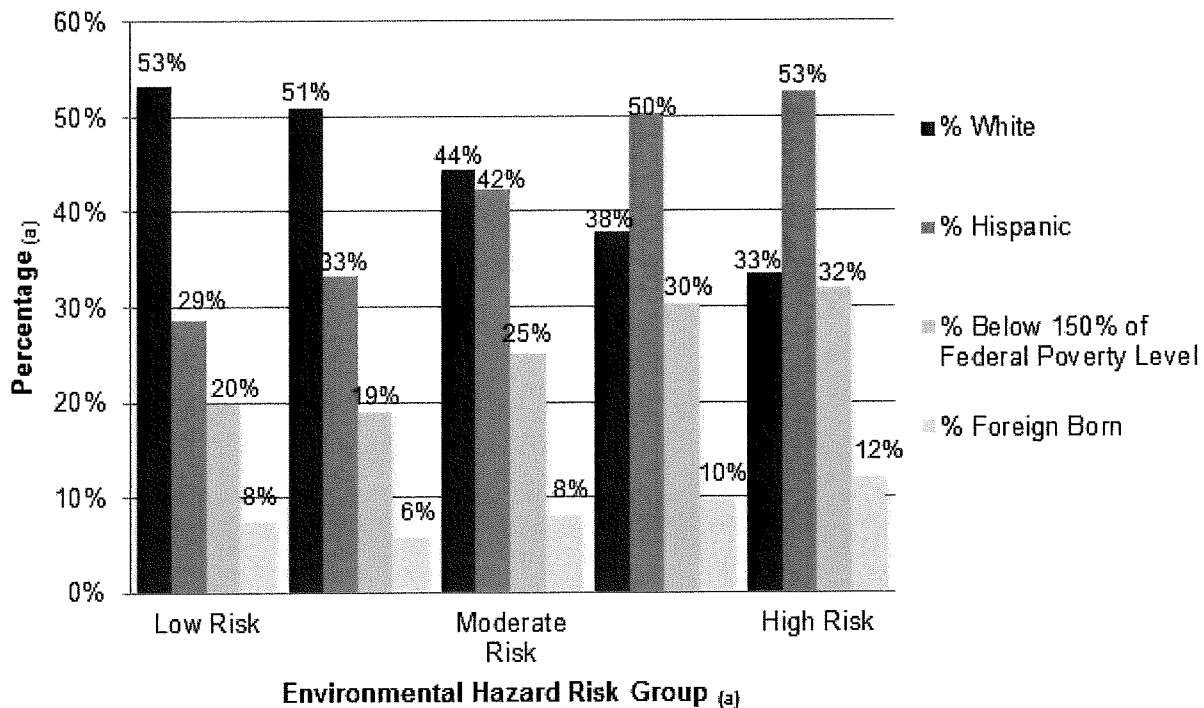
incomes below 150% of the federal poverty level—or \$33,525 for a family of four as of 2011—and 53% of these households are Hispanic. In addition, areas with the highest exposure to environmental hazards like landfills have on average 50% more foreign-born residents than the areas with the lowest exposure. Communities with the lowest levels of exposure to potentially toxic facilities tend to report higher incomes (20% below 150% of the federal poverty level) and to have a majority white population (53%).

Map 11 illustrates census tracts with a co-occurrence of persistent poverty and exposure to environmental hazards. Census tracts in the Downtown, South Valley, Southeast Heights, and North Valley have experienced high rates of poverty over several decades and have a high density of

environmental hazards. There are, however, census tracts in the South Valley that have experienced persistent poverty but relatively few environmental hazards. The environmental hazards density (hazards per square mile) is meant to represent a general measure of pollution and hazards to the environment. The measure is based on the available hazardous and pollutant data from Bernalillo County at point level. Because the data set includes several types of hazards and pollutants, and excludes others, over differing time periods, the ground perception of hazard density may differ from the measure derived here.

In sum, our findings indicate that exposure to environmental hazards—traffic corridors, railroads, industrial zones, brownfield sites, Superfund sites, Resource Conservation and Recovery Act sites, and hazardous air

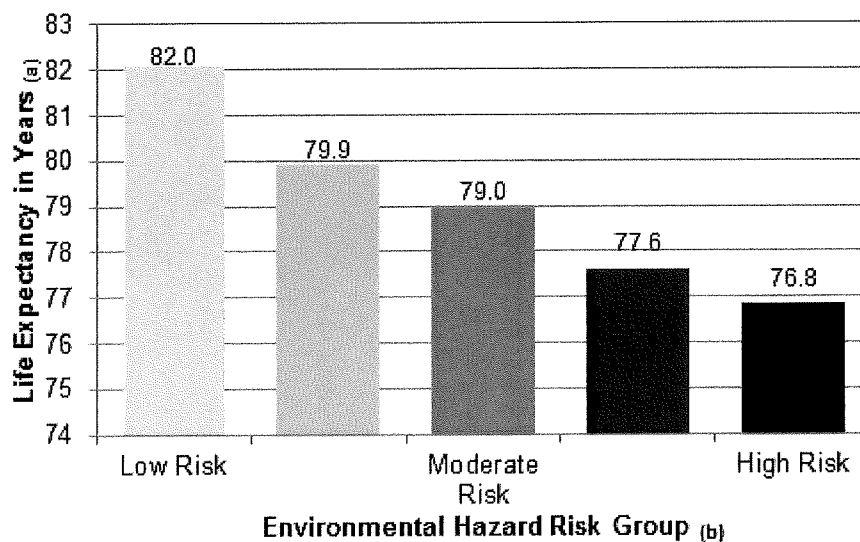
Figure 6: Environmental Exposure by Race/Ethnicity and Poverty in Bernalillo County, N.M.



(a) Geolytic 2009 Projections

(b) Environmental hazard risk quintiles; Calculated by Virginia Network for Geospatial Health Research.

Figure 7: Life Expectancy in Bernalillo County, N.M., by Environmental Risk Groups



(a) Life expectancy quintiles. Source: Department of Health, Seer Stat, 2001-2005

(b) Environmental hazard risk quintiles; Source: Bernalillo GIS Department

pollutants—is more likely to occur in communities where a higher percentage of the population is poor and/or Hispanic, and less likely in communities that have lower concentrations of poverty and a larger white population. Furthermore, in the Downtown area, South Valley, North Valley, and Northeast Heights, which had high environmental hazard exposure, life expectancy was low (see Map 12).

Figure 7 illustrates the relationship between the density of environmental hazards and life expectancy for census tracts in Bernalillo County. Census tracts were divided into quintiles according to the number of environmental hazards they contain. Life expectancy in the tracts in the highest quintile (with the most environmental hazards) was an average of 5.2 years shorter than for census tracts with the fewest environmental hazards (lowest quintile).

IV. Conclusion and Recommendations

Where people live within Bernalillo County powerfully predicts whether they are healthy, whether they are sick, and how long they live. Communities facing the greatest array of health risks have a larger percentage of low-income, immigrant, and Hispanic families than communities facing the least health risks. Specifically, the data show:

- Life expectancy in the county varies by more than 22 years across census tracts.
- The percentage of low-birth-weight infants varies by a factor of 12 across census tracts.
- Community-level health risks, which are measured by factors such as educational attainment, violent crime rates, foreclosure rates, unemployment rates, and the percentage of overcrowded households, vary widely across census tracts.
- A clear relationship exists between community risk index scores and health outcomes; when a neighborhood's community risk index is low, life expectancy is high.
- Nonwhite and low-income census tracts, such as those in the downtown area, face a higher concentration of environmental health hazards such as air pollution and toxic industrial wastes than do whiter and higher-income census tracts;
- Life expectancy is an average of 5.2 years shorter in census tracts with the greatest concentration of environmental hazards.

Although researchers cannot say with certainty that these neighborhood conditions *cause* poor health, the overall pattern suggests that the clustering of social, economic, and

environmental health risks in low-income and nonwhite neighborhoods makes it more difficult for people in these communities to live healthy lives.

These patterns need not—and should not—continue as they are. Policy makers should consider steps to reduce the concentration of health risks in vulnerable communities and support health-enhancing resources. For example, the use of Health Impact Assessments as well as the environmental assessments required under the Consolidated Environmental Review Act can help to ensure that low-income and Hispanic communities are not disproportionately hurt by environmental degradation and policies or practices that cluster health risks.

Consolidated Environmental Review Act (CERA) Assessments

Currently, New Mexico regulations set limits for individual pollutants in air, water, and soil. However, regulations do not account for exposure to multiple pollutants from a single facility or multiple facilities and do not require an assessment of a project's overall impact on the environment or the public's health. This approach therefore underestimates a project's total impact on the community's health and the environment. To address this, CERA requires a 1-2 page environmental assessment for all projects that require permits under the federal Clean Air Act, Clean Water Act, or Hazardous Waste Act in order to identify, early on, impacts to the environment or the community's health. Environmental assessments include descriptions of: (1) the affected environment, (2) possible alternatives to the proposed actions, and (3) mitigating measures to reduce the project's impact to the environment and the community's health.

CERA requires the use of evidence-based science for the permit decision-making process that considers pollution sources, population exposures, environmental effects, and public health effects. It is expected to result in a consistent and predictable permitting process because projects will be vetted by the lead agency during the early project planning stages, potentially saving resources that would otherwise be needed later for environmental cleanup and health care costs.

Health Impact Assessments (HIAs)

HIAs allow researchers and policy makers to systematically judge the potential, sometimes unintended, effects of a proposed policy, plan, program, or project on the health of a population and the distribution of those effects within the population.

HIAs attempt to ensure that all government programs and initiatives in and outside of the health care delivery sector—such as transportation, housing, land use policies, and environmental protection—are assessed to determine their potential impact on the health status of affected communities.²¹ HIAs are used extensively as a policy and planning tool in

Europe and other countries, and they are used increasingly in the United States. Bernalillo County is currently conducting HIAs for proposed land use changes in the Mountain View, San Jose, and Southeast Heights neighborhoods. King County in Washington State is developing a process to utilize an impact assessment tool that focuses on health equity and social justice in the adoption and implementation of county policies and decisions.

Other policies can also be effective in helping to reduce the concentration of health risks in vulnerable communities; CERA and HIAs are but two examples. The point is that community-based health promotion and disease prevention strategies are the most cost-effective ways to improve health, because they address the underlying causes of illness.

There is a strong moral imperative to enact policies designed to improve health for all. But there is a powerful economic reason as well. A study released by the Joint Center for Political and Economic Studies in 2009 found that the direct medical costs associated with health inequities among African Americans, Hispanics, and Asian Americans approached \$230 billion between 2003 and 2006. When the indirect costs of health inequities—such as lowered productivity and lost tax revenue resulting from illness and premature death—are added to the equation, the total cost of health inequities between 2003 and 2006 exceeded \$1.24 trillion. For both moral and economic reasons, now is the time for action to address neighborhood conditions that shape health outcomes.

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ABOUT THE JOINT CENTER, ITS HEALTH POLICY INSTITUTE AND THE *PLACE MATTERS* PROJECT

The Joint Center for Political and Economic Studies is a national, nonprofit research and public policy institution that is sometimes referred to as “America’s black think tank.” Founded in 1970 by black intellectuals and professionals to provide training and technical assistance to newly elected black public officials, it has evolved into an invaluable source of information and policy analysis for policy makers and policy influentials on issues of particular concern to African Americans and other communities of color. It currently focuses its work on critical public policy issues such as political participation, economic advancement, health policy, and climate change.

The Joint Center’s Health Policy Institute (HPI) is a pioneering program of the Joint Center that seeks to ignite a health equity movement that gives people of color the right to equal opportunity for healthy lives. Its research, publications, activities, and projects are designed to accelerate progress through collective strategies that will produce real and lasting change in health outcomes. *PLACE MATTERS* is a major HPI initiative that is designed to build the capacity of community leaders to address the social, economic, and environmental conditions in their communities that shape health and health outcomes. The program assists participating local *PLACE MATTERS* teams in developing and implementing community-based strategies to address social factors that determine health.





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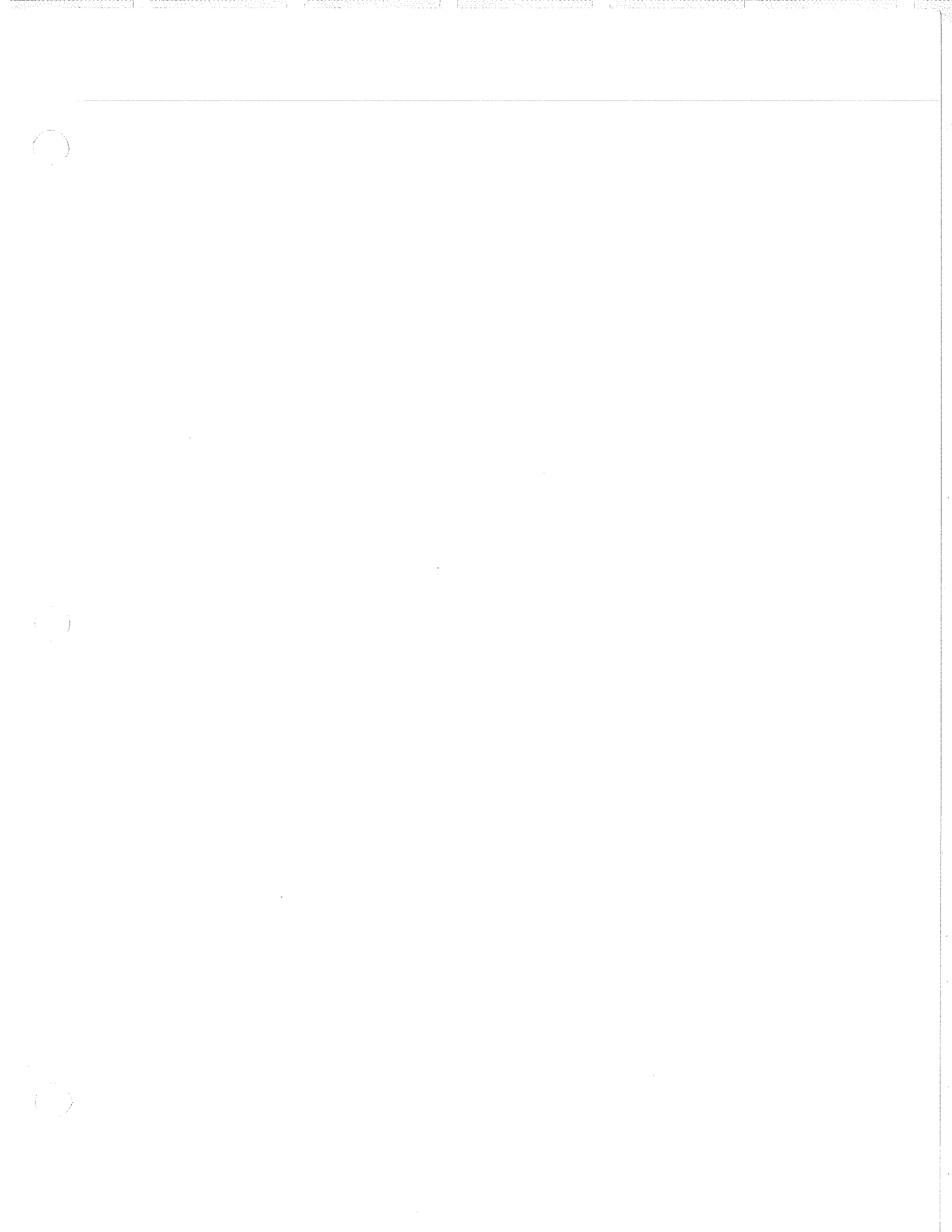
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