

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

JAN 25 PM 4:34

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

AQCB PETITION NO. 2022-1

CITY OF ALBUQUERQUE
ENVIRONMENTAL HEALTH
DEPARTMENT,

PETITIONER.

[PROPOSED] PRE-HEARING ORDER

On February 9, 2022, the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) decided to take up the City of Albuquerque Environmental Health Department’s (“Department”) Petition to Repeal Existing Rule 20.11.104 NMAC, *Emission Standards For New Motor Vehicles*, and Adopt Proposed Replacement Rule 20.11.104 NMAC, *New Motor Vehicle Emission Standards* (“Petition”). It also scheduled the hearing in the above-captioned matter for 9 a.m. on May 4, 2022, and continuing through May 6, 2022. Pursuant to 20.11.82.18 NMAC and supported by Air Quality Control Act, NMSA 1978, Section 72-2-6, the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 (“City Ordinance”), Section 9-5-1-6, Bernalillo County Code, Article II, Section 30-35, and 20.11.82.19 NMAC, to facilitate preparation for and conduct of the joint hearing with the New Mexico Environmental Improvement Board and to provide details for public notices, the Air Board hereby ORDERS as follows:

1. The public hearing shall be held virtually and possibly in person, in accordance

with applicable law and public health orders, as determined in coordination with the Environmental Improvement Board. *See* 20.11.82.23 NMAC (“Unless otherwise provided by governing law, the board shall hold rulemaking hearings and meetings in public facilities within Bernalillo county with public seating available.”); NMSA 1978, § 74-2-6 (“Hearings on regulations of statewide application may be held in Santa Fe or within any area of the state substantially affected by the regulation.”); *see also* 20.11.82.24 NMAC (Participation at a Board Meeting By Conference Telephone or Other Similar Device).

2. The Air Board may decide on the proposed regulatory change at the conclusion of the hearing, as determined in coordination with the Environmental Improvement Board. *See* 20.11.82.19(C)(5) NMAC (required public notice information).

3. Hearing Officer Selection: [*select one*]

The hearing officer in this matter shall be assigned by the Air Board at a later date to allow the Air Board Chair to coordinate with the Environmental Improvement Board Chair to select a hearing officer in this matter, and upon agreement of the Boards, the Air Board shall issue a notice of hearing officer assignment pursuant to 20.11.82.11(C) NMAC. *See* Joint Air Quality Control Board Ordinance, § 9-5-1-6(E); Bernalillo County Code, Art. II, § 30-35(e); 20.11.82.11(A) NMAC.

Pursuant to City Ordinance, Section 9-5-1-6(E), Bernalillo County Code, Article II, Section 30-35(e), and 20.11.82.11(A) NMAC, the Air Board desires _____ to serve as hearing officer in this matter and, upon the consent of the Environmental Improvement Board, the Air Board shall issue a notice of hearing officer assignment pursuant to 20.11.82.11(C) NMAC.

4. In accordance with 20.11.82.20 NMAC, the Department and any person intending

to present direct technical testimony shall file their notices of intent to present direct technical testimony no later than 15 days before the hearing, unless otherwise ordered by the Hearing Officer to protect the orderly hearing process given the joint nature of the hearing. *See* 20.11.82.11(B)(3) NMAC.

5. In accordance with 20.11.82.22(B) NMAC, the Air Board will accept non-technical written statements for the record (*i.e.*, written comments) from the general public before the hearing. The Air Board will accept a written statement as an electronic filing with the Hearing Clerk via e-mail at seapodaca@cabq.gov.

[*Optional*] The Air Board requests that an original and 15 paper copies of a non-technical written statement be filed with the Hearing Clerk, in accordance with 20.11.82.22(B) NMAC. Written statements filed with the Hearing Clerk shall be considered filed at the time the Hearing Clerk receives them, whether by electronic or paper filing, whichever is earliest.

6. Any person filing a document, except non-technical written statements for the record, shall: [*select one*]

Pursuant to 20.11.82.16(B)(1) NMAC, provide the Hearing Clerk with the original and 15 paper copies of the document; provided, however, parties may submit the *original* as an electronic filing with the Hearing Clerk via e-mail at seapodaca@cabq.gov. Documents filed with the Hearing Clerk shall be considered filed at the time the Hearing Clerk receives them, whether by electronic or paper filing, whichever is earliest.

Submit the document as an electronic filing with the Hearing Clerk via email at seapodaca@cabq.gov, as the requirement in 20.11.82.16(B)(1) to provide the Hearing Clerk with the original and 15 paper copies of the document is hereby waived. Documents filed with the Hearing Clerk shall be considered filed at the time the Hearing Clerk receives them.

7. Service of documents shall be in accordance with 20.11.82.16(C) NMAC, which allows for service by electronic transmission when a person has agreed in writing, as may be evidenced by that person including their email address on a document filed in this matter.

8. Pursuant to City Ordinance, § 9-5-1-6(C), Bernalillo County Code, Article II, Section 30-35(c), and 20.11.82.19 NMAC, the Hearing Clerk shall give public notice of the hearing at least 30 days before the hearing. The Petitioner is hereby directed to work with the Hearing Clerk on such notice.

Date: _____

Kitty Richards, Chair
Albuquerque-Bernalillo County Air Quality
Control Board

CERTIFICATION

I hereby certify that on January 25, 2022, which is at least 15 days before any hearing or meeting at which the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) will consider the document, an original and 15 copies of this *Proposed* Pre-Hearing Order was filed with the Air Board Hearing Clerk via hand delivery at:

Albuquerque-Bernalillo County Air Quality Control Board
Attn: Stephanie Apodaca, Air Board Hearing Clerk
Environmental Health Department
One Civic Plaza
Room 3023
Albuquerque, New Mexico 87102

Digital copies were sent as a courtesy to Stephanie Apodaca at seapodaca@cabq.gov.

As of January 25, 2022, the Air Board does not have legal counsel; thus, a copy was not delivered in accordance with 20.11.82.16(B)(2) NMAC.

The City of Albuquerque Environmental Health Department is the only party in this matter; thus, no other copies were served in accordance with 20.11.82.16(B)(3) NMAC.

By: /s/ Kelsea E. Sona

Kelsea E. Sona, Assistant City Attorney

