

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-23-88 ENACTMENT NO. _____

SPONSORED BY: Dan Lewis

1 **ORDINANCE**

2

3 **REPEALING CHAPTER 9, ARTICLE 5, PART 1 ROA 1994, THE JOINT AIR**
4 **QUALITY CONTROL BOARD ORDINANCE; ABOLISHING THE CURRENT**
5 **ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD;**
6 **ADOPTING CHAPTER 9, ARTICLE 5, PART 1 ROA 1994, THE JOINT AIR**
7 **QUALITY CONTROL ORDINANCE; CREATING THE ALBUQUERQUE-**
8 **BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

9

10 WHEREAS, it has been asserted by legal counsel representing the
11 Albuquerque-Bernalillo County Air Quality Control Board (Air Board) that said
12 Board is an autonomous entity established by state statute, and not subject to
13 control by Environmental Health, the City Council, or the County Commission;
14 and

15 WHEREAS, it has been further affirmed by legal counsel representing the
16 Air Board that the Air Board maintains collaborative relations with
17 Environmental Health, the New Mexico Environmental Department, and the
18 Environmental Protection Agency, without being governed by them; and

19 WHEREAS, these statements suggest that the Air Board may not be
20 answerable to elected officials and, consequently, the electorate; and

21 WHEREAS, the absence of adherence to state law by the Air Board could
22 result in a lack of accountability; and

23 WHEREAS, not all meetings sanctioned by the body regarding policy
24 changes are accessible to the general public; and

25 WHEREAS, the Air Board conducts sub-committee meetings and engages
26 select members of the public in those meetings; and

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1 WHEREAS, the Open Meetings Act was established with the intent of
2 ensuring that policy decisions affecting the public are made in a transparent
3 and open manner, to serve the best interests of all residents of New Mexico;

4 WHEREAS, adherence to the Open Meetings Act is essential to the
5 preservation of a free society and the democratic process, as it is crucial for a
6 policymaking body to maintain the trust of the public; and

7 WHEREAS, a significant portion of the Air Board comprises individuals
8 advocating for specific interests rather than a diverse representation of experts
9 in the relevant subject matter; and

10 WHEREAS, historically, the Air Board has strived to include members with
11 backgrounds in the fields of medicine, science, industry, advocacy, law, and
12 technical academia; and

13 WHEREAS, it is imperative to maintain a composition that reflects the
14 diverse expertise required for the comprehensive consideration of pertinent
15 matters.

16 BE IT ORDAINED BY THE COUNCIL, GOVERNING BODY OF THE CITY OF
17 ALBUQUERQUE:

18 SECTION 1. REPEALER. Chapter 9, Article 5, Part 1 is hereby repealed.

19 SECTION 2. NEW MATERIAL. Chapter 9, Article 5, Part 1 is hereby added to read
20 as follows:

21 "PART 1: AIR QUALITY CONTROL BOARD

22 § 9-5-1-1 SHORT TITLE.

23 Sections 9-5-1-1 et seq. may be cited as the "Joint Air Quality Control Board
24 Ordinance."

25 § 9-5-1-2 DEFINITIONS.

26 As provided in the New Mexico Air Quality Control Act, Sections 74-2-1 through
27 74-2-17 NMSA 1978 (hereinafter referred to as the "Air Quality Control Act"), the
28 following definitions shall apply to terms used in §§ 9-5-1-1 et seq.

29 AIR CONTAMINANT. Any substance, including but not limited to any
30 particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor,
31 microorganisms, radioactive material, any combination thereof or any decay or
32 reaction product thereof.

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1 AIR POLLUTION. The emission, except emission that occurs in nature, into
2 the outdoor atmosphere of one or more air contaminants in quantities and of a
3 duration that may with reasonable probability injure human health or animal or
4 plant life or as may unreasonably interfere with the public welfare, visibility or
5 the reasonable use of property.

6 BOARD. The Albuquerque-Bernalillo County Air Quality Control Board
7 created by §§ 9-5-1-1 et seq.

8 DEPARTMENT. The administrative agency that is the local agency under the
9 Air Quality Control Act of the Albuquerque-Bernalillo County Air Quality Control
10 Board.

11 DIRECTOR. The administrative head of the Department or his or her
12 authorized representative.

13 EMISSION LIMITATION and EMISSION STANDARD. A requirement
14 established by the Board, the Department, or pursuant to the federal Act that
15 limits the quantity, rate or concentration, or combination thereof, of emissions
16 of air contaminants on a continuous basis, including any requirements relating
17 to the operation or maintenance of a source to assure continuous reduction.

18 ENVIRONMENT DEPARTMENT. The Environment Department of the state.

19 EX PARTE COMMUNICATION. An oral or other communication with a board
20 member, a board hearing officer, or board attorney regarding the merits of an
21 expected or pending petition or related proceeding if:

22 (1) the communication is made by a person, including a board member,
23 hearing clerk, hearing officer, or board attorney;

24 (2) the person communicating knows or has reason to know a petition
25 will be or has been filed for a hearing before the Board;

26 (3) the communication is made without all other parties to the proceeding
27 being present or receiving the same communication received by the board
28 member, board hearing officer, or board attorney, except where authorized by
29 the closed meeting provisions of the Open Meetings Act; and

30 (4) the communication is intended to affect, or reasonably may be
31 expected to affect the board member's, board hearing officer's, or board
32 attorney's opinion regarding the merits of the expected or pending petition or
33 related proceeding.

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1 FEDERAL ACT. The Federal Clean Air Act, 42 U.S.C. 7401 through 7642, its
2 subsequent amendments and successor provisions.

3 FEDERAL STANDARD OF PERFORMANCE. Any standard of performance,
4 emission limitation or emission standard adopted pursuant to 42 U.S.C. Section
5 7411 or 7412.

6 HAZARDOUS AIR POLLUTANT. An air contaminant that has been classified
7 as a hazardous air pollutant pursuant to the Federal Act.

8 MANDATORY CLASS I AREA. Any of the following areas in the state of New
9 Mexico that were in existence on August 7, 1977:

- 10 (1) National wilderness areas that exceed 5,000 acres in size; and
- 11 (2) National parks that exceed 6,000 acres in size.

12 MAYOR. The Mayor or his or her authorized representative.

13 MODIFICATION. Any physical change in, or change in the method of
14 operation of a source that results in an increase in the Potential Emission Rate
15 of any Regulated Air Contaminant emitted by the source or that results in the
16 emission of any Regulated Air Contaminant not previously emitted, but does
17 not include:

- 18 (1) A change in ownership of the source;
- 19 (2) Routine maintenance, repair or replacement;
- 20 (3) Installation of air pollution control equipment and all related process
21 equipment and materials necessary for its operation, undertaken for the
22 purpose of complying with regulations adopted by the board or pursuant to the
23 Federal Act; or
- 24 (4) Unless previously limited by enforceable permit conditions:
 - 25 (a) An increase in the production rate, if such increase does not exceed
26 the operating design capacity of the source;
 - 27 (b) An increase in the hours of operation; or
 - 28 (c) Use of an alternative fuel or raw material if, prior to January 6, 1975,
29 the source was capable of accommodating such fuel or raw material, or if use
30 of an alternate fuel or raw material is caused by any natural gas curtailment or
31 emergency allocation or any other lack of supply of natural gas.

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1 **NONATTAINMENT AREA.** For any air contaminant, an area that is designated
2 “nonattainment” with respect to that contaminant within the meaning of Section
3 107(d) of the Federal Act.

4 **PERSON.** An individual, partnership, corporation, association, the state or
5 political subdivision of the state or any agency, department, or instrumentality
6 of the United States and any of their officers, agents or employees.

7 **PLAN.** Any and all parts of the state implementation plan~~t~~ that pertain to the
8 county that are adopted by the Board for submittal by the Governor of the state
9 to the federal Environmental Protection Agency pursuant to 42 U.S.C. Section
10 7410.

11 **POTENTIAL EMISSION RATE.** The emission rate of a source at its maximum
12 capacity in the absence of air pollution control equipment that is not vital to
13 production of the normal product of the source or to its normal operation; also
14 defined by Board regulations as “pre-controlled” emissions.

15 **REGULATED AIR CONTAMINANT.** Any air contaminant, the emission or
16 ambient concentration of which is regulated pursuant to the Air Quality Control
17 Act or the Federal Act.

18 **SIGNIFICANT DETERIORATION.** Any increase in the ambient concentrations
19 of any air contaminant above the levels allowed by the Federal Act or Federal
20 regulations for that air contaminant in the area within which the increase
21 occurs.

22 **SOURCE.** Any structure, building, equipment, facility, installation or
23 operation that emits or may emit any air contaminant.

24 **STANDARD OF PERFORMANCE.** A requirement of continuous emission
25 reduction, including any requirement relating to operation or maintenance of a
26 source to assure continuous emission reduction.

27 **STATE IMPLEMENTATION PLAN.** Any plan submitted by the Governor of the
28 state of New Mexico to the federal Environmental Protection Agency pursuant
29 to 42 U.S.C. Section 7410.

30 **§ 9-5-1-3 JOINT AIR QUALITY CONTROL BOARD.**

31 **(A)** In accordance with the New Mexico Air Quality Control Act, a joint air
32 quality control board known as the Albuquerque-Bernalillo County Air Quality
33 Control Board is created. The Board shall serve as a joint local authority acting

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1 on behalf of both the city and the county. Within the exterior boundaries of the
2 county, the Board shall have authority and jurisdiction to exercise the same
3 functions pertaining to air quality as the functions that have been delegated by
4 the Air Quality Control Act to the New Mexico Environmental Improvement
5 Board except any functions reserved exclusively for the Environmental
6 Improvement Board.

7 (B) The membership and organization of the Board shall be as described
8 in this section.

9 ~~(1) — Members of the Board previously appointed and serving at the time~~
10 ~~§§9-5-1-1 et seq. are enacted shall continue serving their terms on the Board.~~
11 ~~The length and termination date of their terms of office shall not be affected by~~
12 ~~the passage of §§ 9-5-1-1 et seq.~~

13 ~~(2)~~(1) The Board shall consist of seven members, four of whom shall be
14 appointed by the Mayor with the advice and consent of the City Council and
15 three of whom shall be appointed by the County Commission. The Mayor shall
16 submit qualified appointments to City Council within 30 days of the effective
17 date. If the Mayor does not timely submit qualified persons for appointment,
18 City Council may appoint the initial members of the Board.

19 ~~(3)~~(2) Members shall be appointed for three-year terms. No member shall
20 serve more than two consecutive terms at a time. If a person is appointed to fill
21 an unexpired term of another member, that term shall be considered a term for
22 the purpose of this limitation. The positions on the Board shall be staggered
23 appointments so no more than two city appointee’s terms expire in any single
24 year. Vacant positions shall be filled by individuals appointed by the same
25 authority that appointed the outgoing member.

26 ~~(4)~~(3) Nominations and appointments to the Board shall be made as follows:

27 (a) At least a majority of the membership of the Board shall be individuals
28 who represent the public interest and meet the requirements of the state and
29 federal guidelines set forth in the New Mexico Air Quality Control Act, as
30 amended, and the federal Clean Air Act, 42 U.S.C.A. Section 7401, et seq., as
31 amended. Further, to the extent that the requirement does not conflict with this
32 division (a), Board members will be selected as follows: one Board member
33 shall be a registered professional licensed engineer who shall have at least five

1 (5) years' experience in the field of air pollution control; one Board member
2 shall be a physician licensed in New Mexico who shall be experienced in the
3 health effects of air contaminants; one Board member shall be a person
4 involved in the program of an institute of higher learning in the state involved
5 in the conducting of training in air pollution evaluation and control; and one
6 Board member shall be a person from City industry with current full-time
7 employment in a private manufacturing concern and have a college degree and
8 8 years of combined technical training and experience in permit compliance or
9 air pollution abatement for Title 5 or non-Title 5 sources for a source permitted
10 in the city or county. ~~for their concerns about, and commitment to, the local~~
11 ambient air quality. ~~Therefore, selections may be made from a broad range of~~
12 persons representing the public interest and who are experienced or trained in
13 disciplines including natural sciences, humanities, social studies, finance,
14 medicine and health, engineering or physics, law, law enforcement, education,
15 business and industry.As used in this section: REPRESENT THE PUBLIC
16 means does not have a controlling interest in, have 5 percent or more of his or
17 her capital invested in, serve as attorney for, act as consultant for, serve as
18 officer or director of, or hold any other official or contractual relationship with
19 any person subject to permits or enforcement orders or any trade or business
20 association of which such a person is a member; SIGNIFICANT PORTION OF
21 INCOME means 10 percent or more of gross personal income for a calendar
22 year, including retirement benefits, consultant fees, and stock dividends,
23 except that it shall mean 50 percent or more of gross personal income for a
24 calendar year if the recipient is over 60 years of age and is receiving such
25 portion pursuant, to retirement, pension, or singular arrangement. Income
26 derived from mutual-fund payments, or from other diversified investments as
27 to which the recipient does not know the identity of the primary sources of
28 income, shall be considered part of the recipient's gross personal income but
29 shall not be treated as income derived from persons subject to permits or
30 enforcement orders; and PERSONS SUBJECT TO PERMITS OR
31 ENFORCEMENT ORDERS includes any individual, corporation, partnership, or
32 association who holds, is an applicant for, or is subject to any permit, or who is
33 or may become subject to any enforcement order under the Federal Clean Air

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1 Act, Air Quality Control Act, any regulation of the Board or any permit condition
2 issued thereto, except that it does not include (1) an individual who is or may
3 become subject to an enforcement order solely by reason of his or her
4 ownership or operation of a motor vehicle or (2) any department or agency of,
5 a state, local or regional government.

6 (b) No person employed on a full time basis by either the city or the
7 county shall be a member of the Board. No elected city or county official, and
8 no member of the immediate family of any elected city or county official shall
9 be appointed to the Board.

10 (c) Members shall submit to the Department a signed written statement
11 to assure compliance with the applicable law on Board composition, upon
12 appointment and renewed annually or with any change in employment, and
13 such statement shall be available for public inspection. -In the event either the
14 Department cannot make a finding that at least a majority of the Board as
15 constituted by appointment of its members meets the requirements of
16 applicable law, the Department shall notify the City Council and the County
17 Commission of the determination that at least a majority of its membership does
18 not meet the requirements. The Department shall advise and make
19 recommendations regarding corrective action necessary to allow the Board to
20 be qualified under applicable law, including substitutionary appointments of a
21 member or members. The Board shall not act to hear petitions of permit
22 appeals, variances, or regulatory changes until the City Council and County
23 Commission have both determined that it can do so consistent with applicable
24 law.

25 (e)(d) City-appointed members shall be residents of the city and
26 county-appointed members shall be residents of the county.

27 (d)(e) A Board member may be removed from office by the appointing
28 authority if:

29 (i) The appointing authority determines the member has violated any law,
30 regulation, or ordinance, or for other good cause such as malfeasance or the
31 intentional failure to carry out the duties of the Board, or is otherwise incapable
32 or unfit to discharge the duties of the office;

33 (ii) the member has missed three consecutive meetings or has been

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1 absent from more than 50% of the meetings during any 12 consecutive
2 meetings; or

3 (iii) to comply with the requirements of division (B)(3)(a) for member
4 composition of the Board.

5 (f) At least two months before a Board member's term expires, the
6 Department shall solicit a recommended list of qualified members for the city
7 vacancy as suggested by the City Council and the Department for consideration
8 by the Mayor. The County Commission will appoint its representatives to the
9 Board. The list shall include a brief biography describing the qualifications of
10 each candidate. From the list, as modified or enlarged by the appointing
11 authority, appointments to the Board will be made.

12 (g) Candidates appointed shall be notified in writing, and the candidate
13 must accept or reject the appointment in writing.

14 (e)(h) Unless a member retires or is removed, each member shall
15 serve until a successor has been appointed.

16 (i) If a vacancy occurs for reasons other than expiration of a term, the
17 Department shall promptly utilize the procedure described in division (e) above.
18 Each vacancy shall be filled by the authority that appointed the departing
19 member. The replacement member shall serve for the remainder of the
20 unexpired term.

21 (5)(4) Four members present shall constitute a quorum. A quorum shall be
22 present for all matters decided by a vote of the Board.

23 (6)(5) Any action, order or decision of the Board requires a simple majority
24 vote of the members present, except for adoption, amendment or repeal of a
25 Board regulation, in which case the concurrence of four members shall be
26 required.

27 (7)(6) All officers of the Board shall be elected annually by the Board for
28 one-year terms. No officer shall serve in the same position for more than two
29 consecutive years at a time.

30 (8)(7) The Board may adopt rules to govern its proceedings. Such rules shall
31 not take effect until reviewed and approved by the City Attorney and County
32 Attorney.

33 (C) The Board shall meet in public facilities with public seating available.

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1 (D) The Board shall meet monthly if a quorum is available unless a
2 meeting is unnecessary or delayed for good reason. The Board shall hold a
3 minimum of six monthly meetings a year. Special additional meetings may be
4 held as needed.

5 (E) Notice of time, place and agenda of meetings, work sessions,
6 committee meetings, hearings, any other gathering of a quorum of the Board,
7 and subcommittee meetings shall be published according to the requirements
8 of law, including the Open Meetings Act. Meetings, work sessions, committee
9 meetings, and hearings and any other gathering of a quorum of the Board, and
10 subcommittee meetings shall be open to the public and shall follow the
11 procedures described in the Open Meetings Act.

12 ~~(C)~~(F) In addition to any requirements applicable to each member based on
13 the member's appointing authority as set forth in the City and County codes of
14 conduct, any member of the Board who has a conflict of interest regarding a
15 matter before the Board shall disqualify himself or herself from the discussion
16 and shall abstain from the vote on such matter. If a potential conflict of interest
17 is raised during a meeting a member of the board shall submit the question to
18 the entire Board for a determination of whether disqualification is necessary.
19 The member with the potential conflict being voted on shall not vote in this
20 determination. The Board's determination of whether disqualification is
21 necessary shall be final. In the event a member is made aware of a conflict of
22 interest requiring disqualification or abstention outside of a meeting, the
23 member shall disclose the potential conflict of interest to the board and may
24 seek guidance concerning disqualification from the board attorney or seek an
25 advisory opinion from the County or City, as applicable to each member based
26 on the member's appointing authority. A conflict of interest means any interest
27 which may yield, directly or indirectly any monetary or other material benefit to
28 the Board member or the member's spouse or minor child.

29 (G) The City Environmental Planning Commission (EPC) and the County
30 Planning Commission (CPC) may appoint a member of the EPC and of the CPC,
31 respectively, to be liaisons to the Air Quality Control Board. The EPC and CPC
32 liaisons may attend Board meetings and may participate in Board discussions,
33 but will not be members of the Board and will not vote. The respective liaisons

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1 may communicate with the Board and their respective planning commissions
2 regarding air quality issues.

3 (H) The eCity shall provide the staffadministrative support it deems
4 necessary to the Board to assist the Board with carrying out the administrative
5 functions of its powers and duties under the Air Quality Control Act. Nothing
6 herein shall limit the city’s authority and ability to maintain full oversight and
7 control over such staffCity resources.

8 (1) The Director of the Department The Department shall attend all
9 meetings of the Board, but not be entitled to a vote. The Department shall record
10 all transactions and proceedings of the Board and shall perform the duties
11 required by the Air Quality Control Act. The Department shall handle
12 correspondence, keep records, prepare reports, and perform such other duties
13 as the city may direct or authorize to carry out the administrative functions of
14 the city and Board’s powers and duties under the Air Quality Control Act.

15 (2) The Director is the custodian of all files and records of the Board and
16 the Board shall provide such files and records to the Director upon request.

17 (1)(3) The Director, and shall be an ex officio member of the Board and may
18 meet with the Board, but does not have a vote. Nothing herein limits or waives
19 ex parte communication prohibitions which shall apply to the Director.

20 (4) Staff may be an employee of the city but shall not include such
21 employee’s supervisory staff.

22 (5) In the exercise of any of its powers or duties, the Board may act with
23 legal advice received in accordance with the Open Meetings Act, Chapter 10,
24 Article 15, NMSA 1978. Such legal advice shall be provided by the city. Such
25 legal research shall be distributed to all Board members. Legal advice and legal
26 research shall only be requested with the concurrence of four Board members.
27 An attorney to the Board shall not be a member of the Board or serve as an ex-
28 officio member, and shall act only in an advisory capacity. The Board shall not
29 delegate its authority to the Board’s attorney.

30 § 9-5-1-4 DUTIES AND POWERS OF BOARD.

31 (A) The Board, in accordance with the Air Quality Control Act, shall
32 prevent or abate Air Pollution within the city and county.

33 (B) The Board shall:

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1 (1) Adopt, promulgate, publish, amend and repeal regulations consistent
2 with the Air Quality Control Act and §§9-5-1-1 et seq. to attain and maintain
3 national ambient air quality standards and prevent or abate air pollution,
4 including regulations prescribing air standards, within the geographic area of
5 the Board’s jurisdiction, or any part thereof; and

6 (2) Adopt a plan for the regulation, control, prevention or abatement of
7 Air Pollution, recognizing the differences, needs, requirements and conditions
8 within the county or any part thereof.

9 (C) Regulations adopted by the Board may:

10 (1) Include regulations to protect visibility in Mandatory Class I Areas, to
11 prevent significant deterioration of air quality and to achieve national ambient
12 air quality standards in nonattainment areas, provided that such regulations:

13 (a) shall be no more stringent than but at least as stringent as required
14 by the Federal Act and federal regulations pertaining to visibility protection in
15 Mandatory Class I Areas, pertaining to prevention of significant deterioration
16 and pertaining to nonattainment areas; and

17 (b) Shall be applicable only to sources subject to such regulation
18 pursuant to the Federal Act;

19 (2) Prescribe standards of performance for Sources and Emission
20 Standards for Hazardous Air Pollutants that, except as provided in division (3)
21 below:

22 (a) Shall be no more stringent than but at least as stringent as required
23 by federal standards of performance; and

24 (b) Shall be applicable only to sources subject to such federal standards
25 of performance;

26 (3) Include regulations governing emissions from solid waste
27 incinerators that shall be as least as stringent as, and may be more stringent
28 than, any applicable federal emission limitations;

29 (4) Require notice to the Department of the intent to introduce or allow
30 the introduction of an air contaminant into the air within the geographical area
31 of the Board’s jurisdiction; and

32 (5) Require any person emitting any air contaminant to:

33 (a) Install, use and maintain emission monitoring devices;

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1 (b) Sample emissions in accordance with methods and at locations and
2 intervals as may be prescribed by the Board;

3 (c) Establish and maintain records of the nature and amount of
4 emissions;

5 (d) Submit reports regarding the nature and amounts of emissions and
6 the performance of emission control devices; and

7 (e) Provide any other reasonable information relating to the emission of
8 air contaminants.

9 (D) Any regulation adopted under this section shall be consistent with
10 federal law, if any, relating to control of motor vehicle emission.

11 (E) In making its regulations, the Board shall give weight it deems
12 appropriate to all facts and circumstances, including but not limited to:

13 (1) Character and degree of injury to or interference with health, welfare,
14 visibility and property;

15 (2) The public interest, including the social and economic value of the
16 Sources and subjects of air contaminants; and

17 (3) Technical practicability and economic reasonableness of reducing or
18 eliminating air contaminants from the Sources involved and previous
19 experience with equipment and methods available to control the air
20 contaminants involved.

21 **§ 9-5-1-5 DUTIES AND POWERS OF THE DEPARTMENT.**

22 The Department shall:

23 (A) Administer and enforce the provisions of the Air Quality Control Act,
24 §§9-5-1-1 et seq. and any regulations adopted pursuant thereto and any other
25 laws relating to Air Pollution applicable within the city and the county. ~~The staff~~
26 ~~for the Board shall be provided by the city.~~ The Department shall perform, within
27 the boundaries of the county, all functions delegated to the New Mexico
28 Environment Department under the Act, except for the duties and powers
29 reserved exclusively for the Environment Department.

30 (B) Develop facts and make investigations and studies consistent with
31 the Air Quality Control Act and §§9-5-1-1 et seq., and in connection therewith,
32 enter at all reasonable times in or upon any private or public property, except
33 private residences, that the Department has reasonable cause to believe is or

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1 will become a source of air contaminants contributing to air pollution and
2 require the production of information relating to emissions that cause or
3 contribute to air pollution. The results of any such investigations shall be
4 reduced to writing if any enforcement action is contemplated, and a copy
5 thereof shall be furnished to the owner or occupant of the premises before the
6 action is filed.

7 (C) Institute legal proceedings to compel compliance with the Air Quality
8 Control Act, §§9-5-1-1 et seq., or any regulation of the Board.

9 (D) Encourage and make every reasonable effort to obtain voluntary
10 cooperation by the owner or occupants to preserve, restore or improve air
11 purity.

12 (E) Consult with any person proposing to construct, install or otherwise
13 acquire an air contaminant source, device, system or control mechanism
14 concerning the efficiency of the device, system, or mechanism or the air
15 pollution problem that may be related to the source, device, system or
16 mechanism, provided that consultation shall not relieve any Person from
17 compliance with the Air Quality Control Act, §§ 9-5-1-1 et seq., regulations in
18 force, pursuant thereto, or any other provision of law.

19 (F) Establish a small business stationary source technical and
20 environmental compliance assistance program, consistent with the provisions
21 of Section 507 of the Federal Act.

22 (G) Accept, receive and administer grants or other funds or gifts from
23 public and private agencies, including the federal government or from any
24 person.

25 (H) Classify and record air contaminant sources that in its judgment, may
26 cause or contribute to air pollution, according to levels and types of emissions
27 and other characteristics that relate to air pollution, provided that
28 classifications may be for application to the county as a whole or to any
29 designated area of the city or county, and shall be made with special reference
30 to the effects on health, economic and social factors and physical effects on
31 property.

32 (I) Develop and present to the Board a Plan for the regulation, control,
33 prevention or abatement of air pollution, recognizing the differences, needs,

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1 requirements and conditions in the different portions of the geographical area
2 of the Department’s responsibility as established by §§ 9-5-1-1 et seq.

3 § 9-5-1-6 ADOPTION OF REGULATIONS; NOTICE AND HEARING.

4 (A) Any person may recommend or propose regulations to the Board for
5 adoption. ~~The Board shall determine whether to hold a hearing within 60 days~~
6 ~~of submission of a proposed regulation.~~

7 (B) Persons interested in recommending or proposing regulations shall
8 engage other interested persons, the Department, and any other relevant
9 regulatory entities in the regulation development process. The petition shall
10 identify the activities undertaken for development of the proposed regulation
11 text and how the petitioner engaged other interested persons, the Department,
12 and any other relevant regulatory entities. Failure to solicit and consider the
13 positions of others may result in the denial of a hearing.

14 (C) The Board shall determine whether to hold a hearing within 60 days of
15 the submission of a proposed regulation. In addition to other applicable notice
16 requirements, notice of the Board’s intention to consider whether to hold a
17 hearing shall be given at least 15 days prior to the meeting at which the matter
18 will be considered. At a minimum, notice shall be posted in the lobby of City
19 Hall and County offices; electronically on the Board’s web site; and in writing
20 to the Director. The notice shall state the subject, the time and the place of the
21 meeting and the manner in which interested persons may obtain relevant
22 information and present their views.

23 ~~(B)(D)~~ No regulation or emission control requirement shall be adopted until
24 after a public hearing by the Board. As used in this section, REGULATION
25 includes any amendment or repeal thereof.

26 (E) Notice of hearing shall be given at least 30 days prior to the hearing
27 date and shall state the subject, the time and the place of the hearing and the
28 manner in which interested persons may present their views. The subject shall
29 include a summary of the full text of the proposed rule and a short explanation
30 of the purpose of the proposed rule with reasonable specificity. The notice shall
31 also state where interested persons may secure copies of any proposed
32 regulation or air quality standard. The notice shall be published in a newspaper
33 of general circulation in the city and county. Reasonable effort shall be made to

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1 give notice to all persons who have made a written request to the Board for
2 advance notice of its hearings.

3 ~~(C)(F)~~ The Board shall not consider alternate proposals at the hearing,
4 though it can consider modifications to a proposal which simply deletes,
5 clarifies or elaborates on elements of the already-submitted proposal without
6 adding or changing substantive new obligations or requirements.

7 ~~(D)(G)~~ At the hearing, the Board shall allow all interested persons reasonable
8 opportunity to submit data, views or arguments orally or in writing and to
9 examine witnesses testifying at the hearing. Any person heard or represented
10 at the hearing shall be given written notice of the action of the Board.

11 ~~(H)~~ The Board ~~may~~shall designate a hearing officer to take evidence in the
12 hearing.

13 ~~(I)~~ All hearings shall be recorded verbatim and any transcription costs
14 shall be borne by the petitioner.

15 ~~(J)~~ At no time before a petition is expected to be filed and at no time
16 between the filing of a petition and the final decision of the Board or withdrawal
17 of the petition or related regulatory action shall any person have ex parte
18 communication.

19 ~~(K)~~ The Department shall present to City Council any regulatory change
20 promulgated by the Board.

21 ~~(1)~~ City Council may grant a stay of any regulatory change or emission
22 control requirement promulgated by the Board after a hearing and upon a
23 determination of good cause, including whether harm to the public interest will
24 result. City Council shall state the length of time the stay is in effect. If City
25 Council fails to approve a stay of any regulatory change within 60 days after
26 presentation, the regulatory change or emission control requirement shall be in
27 full force and effect.

28 ~~(2)~~ City Council may disapprove any regulatory change or emission
29 control requirement promulgated by the Board by two-thirds of the entire
30 membership of City Council disapproving the regulatory change or emission
31 control requirement. If City Council fails to disapprove any regulatory change
32 or emission control requirement within 60 days after presentation, the
33 regulatory change or emission control requirements shall be in full force and

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1 effect.
2 (3) Any person adversely affected by a City Council decision in divisions
3 (1) and (2) may appeal to the court of appeals.
4 (E)(L) No regulation or emission control requirement shall be filed under the
5 State Rules Act, Sections 14-3-24, 14-3-25, 14-4-1 through 14-4-9 NMSA 1978,
6 until at least 60 days after it is presented by the Department to City Council. No
7 regulation or emission control requirement adopted by the Board shall become
8 effective until 30 days after its filing under the State Rules Act, Sections 14-3-
9 24, 14-3-25, 14-4-1 through 14-4-9 NMSA 1978.
10 (F)(M) A copy of adopted air quality control regulations shall be on file in the
11 office of the City Clerk and shall be available for inspection by the public during
12 regular business hours. Copies of the regulations shall be available to any
13 person upon request and payment of a reasonable charge set by the Mayor.
14 § 9-5-1-7 PERMITS; APPEALS; FEES.
15 (A) By regulation, the Board shall require:
16 (1) Any person intending to construct or modify any source, except as
17 otherwise specifically provided by regulation, to obtain a construction permit
18 from the Department prior to such construction or modification; and
19 (2) Any person intending to operate any source for which an operating
20 permit is required pursuant to the 1990 amendments to the Federal Act, except
21 as otherwise specifically provided by regulation, to obtain an operating permit
22 from the Department.
23 (B) Regulations adopted by the Board shall include at least the following
24 provisions:
25 (1) Requirements for the submission of relevant information, including
26 but not limited to information the Department deems necessary to ensure that
27 regulations and standards under §§ 9-5-1-1 et seq., the Air Quality Control Act
28 or the Federal Act will not be violated.
29 (2) Specification of the deadlines for processing permit applications;
30 provided, the deadline for a final decision by the Department on a construction
31 permit application may not exceed:
32 (a) One hundred and eighty days after the application is determined to be
33 complete, if the application is not affected by requirements for prevention of

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- 1 significant deterioration; or
- 2 (b) Two hundred and forty days after the application is determined to be
- 3 complete, if the application is affected by requirements for prevention of
- 4 significant deterioration;
- 5 (3) Specification of the public notice, comment period and public hearing,
- 6 if any, required prior to the issuance of a permit, provided the permit regulations
- 7 adopted include provisions requiring that notice be given to the New Mexico
- 8 Environment Department of all applications by any source that emits, or has a
- 9 Potential Emission Rate of 100 tons per year or more of any Regulated Air
- 10 Contaminant, including any source of fugitive emissions of any Regulated Air
- 11 Contaminant, at least 60 days prior to the date on which construction or major
- 12 modification is to commence;
- 13 (4) A schedule of construction permit fees sufficient to cover:
- 14 (a) The reasonable costs of reviewing and acting upon any application
- 15 for such permit; and
- 16 (b) The reasonable costs of implementing and enforcing the terms and
- 17 conditions of the permit, excluding any court or other costs associated with an
- 18 enforcement action.
- 19 (5) A schedule of emission fees consistent with the provisions of Section
- 20 502(b)(3) of the 1990 amendments to the Federal Act;
- 21 (6) Specification of the maximum length of time for which a permit shall
- 22 be valid, provided that for an operating permit, such period may not exceed five
- 23 years; and
- 24 (7) For an operating permit only:
- 25 (a) Provisions, consistent with Sections 502(b) and 505(b) of the Federal
- 26 Act, that require:
 - 27 1. Notice to and review and comment by the United States
 - 28 Environmental Protection Agency (EPA); and
 - 29 2. If the Department receives notice of objection from the United States
 - 30 Environmental Protection Agency before the operating permit is issued, the
 - 31 Department shall not issue the permit unless the permit is revised and issued
 - 32 pursuant to Section 505(c) of the Federal Act;
- 33 (b) Provisions governing renewal of the operating permit; and

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1 (c) Specification of the conditions under which the operating permit may
2 be terminated, modified or revoked and reissued prior to the expiration of the
3 term of the operating permit.

4 (C) The Department may deny any application for:

5 (1) A construction permit if it appears that the construction or
6 modification: will not meet applicable requirements of §§ 9- 5-1-1 et seq., the Air
7 Quality Control Act, the federal Act or any regulation adopted pursuant thereto
8 or

9 (2) An operating permit if:

10 (a) The source for which the permit is sought will emit a hazardous air
11 pollutant or any air contaminant in excess of a federal standard of performance
12 or a regulation of the Board;

13 (b) It appears that the source for which the permit is sought will cause or
14 contribute to air contaminant levels in excess of any national, state or
15 applicable local ambient air quality standard; or

16 (c) Any other provision of §§ 9-5-1-1 et seq. and the Air Quality Control
17 Act or the Federal Act will be violated.

18 (D) The Department may specify conditions to any permit granted under
19 this section, including:

20 (1) For a construction permit, a requirement that such source install and
21 operate control technology, determined on a case-by-case basis, sufficient to
22 meet the requirements of §§ 9-5-1-1 et seq., the Air Quality Control Act, the
23 Federal Act or any regulations promulgated pursuant thereto; and

24 (2) For an operating permit:

25 (a) Imposition of, individual emission limits, determined on a case-by-
26 case basis, but only as restrictive as necessary to meet the requirements of the
27 Air Quality Control Act and the Federal Act or the emission rate specified in the
28 operating permit application, whichever is most stringent;

29 (b) Compliance with applicable federal standards of performance;

30 (c) Imposition of reasonable restrictions and limitations not relating to
31 emission limits or emission rates; or

32 (d) Any combination of the conditions listed above.

33 (E) This section does not authorize the Department to require the use of

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1 machinery, devices or equipment from a particular manufacturer if the federal
2 standards of performance, regulations of the Board and permit conditions may
3 be met by machinery, devices or equipment otherwise available.

4 (F) The issuance of a construction or operating permit does not relieve
5 any person from the responsibility of complying with the provisions of the Air
6 Quality Control Act, §§ 9-5-1-1 et seq. or any applicable regulations of the Board.
7 Any conditions placed upon a permit by the Department shall be enforceable to
8 the same extent as a regulation of the Board.

9 (G) Any person who participated in a permitting action before the
10 Department shall be notified by the Department of the action taken by the
11 Department and the reasons for the action. Notification of the applicant shall be
12 by certified mail.

13 (H) Any person who participated in a permitting action before the
14 Department and who is adversely affected by such permitting action may file a
15 petition for hearing before the Board. The petition shall be made in writing to
16 the Board within 30 days from the date notice is given of the Department's
17 action. Unless a timely request for hearing is made, the decision of the
18 Department shall be final.

19 (I) If a timely petition for hearing is made, the Board shall hold a hearing
20 within 90 days after receipt of the petition. The Board shall notify the petitioner
21 and the applicant or permittee, if other than the petitioner, by certified mail of
22 the date, time and place of the hearing. If the subject of the petition is a
23 permitting action deemed by the Board to substantially affect the public
24 interest, the Board shall ensure that the, public receives notice of the date, time
25 and place of the hearing. The public in such circumstances shall also be given
26 a reasonable opportunity to submit data, views or arguments orally or, in writing
27 and to examine witnesses testifying at the hearing. Any person submitting data,
28 views or arguments orally or in writing shall be subject to examination at the
29 hearing.

30 (J) The Board ~~shall~~may designate a hearing officer to take evidence in the
31 hearing. All hearings shall be recorded verbatim and any transcription and
32 administrative costs shall be borne by the petitioner.

33 (F) The burden of proof shall be upon the petitioner. Based upon the

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1 evidence presented at the hearing, the Board shall sustain, modify or reverse
2 the action of the Department.

3 ~~(F)~~(G) At no time before a petition is expected to be filed and at no time
4 between the filing of a petition and the final decision of the Board or withdrawal
5 of the petition or related permit action shall any person have ex parte
6 communication.

7 (K) Notwithstanding any other provision of law, and subject to the
8 provisions of Section 74-2-4 NMSA 1978, a final decision on a permit by the
9 Department, the Board or the court of appeals that a new source will or will not
10 meet applicable local, state and federal air pollution standards and regulations
11 shall be conclusive and is binding on every city, county and state agency, and
12 as an issue before any such agency shall be deemed resolved in accordance
13 with that final decision.

14 (L) Fees collected pursuant to this section shall be deposited in a fund
15 created pursuant, to Section 74-2-16 NMSA 1978 if collected pursuant to a
16 permit regulation adopted by the Board pursuant to this section.

17 § 9-5-1-8 VARIANCES.

18 (A) The Board may grant an individual variance from the limitations
19 prescribed under the Air Quality Control Act, §§9-5-1- 1 et seq., any regulation
20 of the Board, or any permit condition imposed by the Department whenever it
21 is found, upon presentation of adequate proof:

22 (1) That compliance with any part of the Air Quality Control Act, §§9-5-1-
23 1 et seq., any regulation of the Board, or any permit condition will:

- 24 (a) Result in an arbitrary and unreasonable taking of property; or
- 25 (b) Impose an undue economic burden upon any lawful business,
26 occupation or activity; and

27 (2) That the granting of the variance will not:

- 28 (a) Result in a condition injurious to health or safety; or
- 29 (b) Cause or contribute to an air contaminant level in excess of any
30 primary national ambient air quality standard.

31 (B) No variance shall be granted pursuant to this section until the Board
32 has considered the relative interests of the applicant, other owners of property
33 likely to be affected by the discharges and the general public.

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1 (C) Any variance or renewal thereof shall be granted within the
2 requirements of Subsection A of this section and for time periods and under
3 conditions consistent with the reasons therefor, and within the following
4 limitations:

5 (1) If the variance is granted on the ground that there are no practicable
6 means known or available for the adequate prevention, abatement or control of
7 the air pollution involved, it shall be only until the necessary means for
8 prevention, abatement or control become known and available; If the variance
9 is granted on the ground that compliance with the particular requirement or
10 requirements from which variance is sought will necessitate the taking of
11 measures that, because of their extent or cost, must be spread over a
12 considerable period of time, it shall be for a period not to exceed such
13 reasonable time as, in the view of the Board, is requisite for the taking of the
14 necessary measures. A variance granted on the ground specified in this
15 division (2) shall contain a timetable for the taking of action in an expeditious
16 manner and shall be conditioned on adherence to the timetable; or

17 (2) If the variance is granted on the ground that it is justified to relieve or
18 prevent hardship of a kind other than that provided for in divisions (1) and (2)
19 of this division (C), it shall be for not more than one year.

20 (D) Any person seeking a variance shall do so by filing a petition for
21 variance with the Director. The Director shall promptly investigate the petition
22 and make a recommendation to the Board as to the disposition of the petition.

23 (E) Upon receiving the recommendation of the Director on the variance,
24 the Board shall:

25 (1) If the recommendation of the Director favors a variance, hold a public
26 hearing prior to the granting of any variance; and

27 (2) If the Director is opposed to the granting of the variance, hold a
28 hearing only upon the request of the petitioner.

29 ~~(F)~~ In the hearing, the burden of ~~o~~ⁿ proof shall be upon the petitioner.

30 ~~(F)(G)~~ At no time before a petition is expected to be filed and at no time
31 between the filing of a petition and the final decision of the Board or withdrawal
32 of the petition or related variance action shall any person have ex parte
33 communication.

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1 § 9-5-1-9 JUDICIAL REVIEW; ADMINISTRATIVE ACTIONS.

2 (A) Any person adversely affected by an administrative action taken by
3 the Board or the Director may appeal to the Court of Appeals. All appeals shall
4 be upon the record made at the hearing and shall be taken to the Court of
5 Appeals within 30 days following the date of the action being appealed.

6 (B) For appeals of regulations, the date of the action shall be the date of
7 the filing of the regulation by the Board pursuant to the State Rules Act,
8 Sections 14-3-24, 14-3-25, and 14-4-1 through 14-4-9 NMSA 1978.

9 (C) Upon appeal, the Court of Appeals shall set aside the action only if
10 found to be:

11 (1) Arbitrary, capricious or an abuse of discretion;

12 (2) Not supported by substantial evidence in the record; or

13 (3) Otherwise not in accordance with law.

14 (D) After a hearing and a showing of good cause by the appellant, a stay
15 of the action being appealed may be granted:

16 (1) By the Board or the Director, whichever took the action being
17 appealed; or

18 (2) By the Court of Appeals if the Board or the Director denies a stay or
19 fails to act upon an application for a stay within 60 days after receipt of the
20 application.

21 § 9-5-1-10 EMERGENCY POWERS OF THE DIRECTOR.

22 (A) Notwithstanding any other provision of the Air Quality Control Act,
23 §§9-5-1-1 et seq., or any regulation of the Board, if the Director of the
24 Department determines that a source or combination of sources presents an
25 imminent and substantial endangerment to the public health or welfare or to the
26 environment, the Director may bring suit in the District Court for the county to
27 restrain immediately any person causing or contributing to the alleged air
28 pollution to stop the emission of air contaminants causing or contributing to
29 such air pollution or to take such other action as may be necessary.

30 (B) If it is not practicable to assure prompt protection of the public health
31 or welfare or the environment by commencement of a civil action, the Director
32 may issue orders necessary to protect the public health or welfare or the
33 environment. An order shall be effective for a period of not more than 24 hours,

1 unless the Director brings a civil action before the expiration of the 24 hours. If
2 the Director brings an action within that time, the order shall be effective
3 thereafter for 48 hours or for such longer period as may be authorized by the
4 court pending litigation.

5 **§ 9-5-1-11 CONFIDENTIAL INFORMATION.**

6 (A) Any records, reports or information obtained under the Air Quality
7 Control Act or §§ 9-5-1-1 et seq. by the Board or the Department shall be
8 available to the public, except that upon a satisfactory showing by any person
9 to the Director or the Board that records, reports or information, except
10 emission data, or particular parts thereof, to which the Director or the Board
11 has access under the Air Quality Control Act, if made public would divulge
12 confidential business records or methods or processes entitled to protection
13 as trade secrets of that person, the Director or the Board, as applicable, shall
14 consider such record, report or information, or particular portion thereof,
15 confidential in accordance with the provisions of Section 14-2-1 NMSA 1978
16 and 18 U.S.C. Section 1905, except that such record, report or other information
17 may be disclosed:

18 (1) To other officers, employees or authorized representatives of the
19 Department or the Board concerned with carrying out the Air Quality Control
20 Act;

21 (2) To officers, employees or authorized representatives of the United
22 States Environmental Protection Agency concerned with carrying out the
23 Federal Act; or

24 (3) When relevant, in any proceeding under the Air Quality Control Act or
25 the Federal Act.

26 (B) The Board shall adopt regulations to implement this section, including
27 regulations specifying those business records entitled to treatment as
28 confidential records.

29 **§ 9-5-1-12 LIMITATIONS ON AUTHORITY AND REGULATIONS.**

30 (A) Sections 9-5-1-1 et seq. do not:

31 (1) Authorize the Board to make any regulation with respect to any condition
32 or quality of the outdoor atmosphere if the condition or air quality level and its
33 effect are confined entirely within the boundaries of the industrial or

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1 manufacturing property within which the air contaminants are or may be
2 emitted and public access is restricted within such boundaries;

3 (2) Grant to the Board any jurisdiction or authority affecting the relation
4 between employers and employees with respect to or arising out of any
5 condition of air quality; or

6 (3) Supersede or limit the applicability of any law relating to industrial
7 health, safety or sanitation.

8 (B) The Board shall have no authority to:

9 (1) Make any regulation to address quality of life impacts absent scientific
10 evidence that there is a nexus to air pollution by identifying the quantities and
11 durations of air contaminants that may, with reasonable probability, cause
12 injury;

13 (2) Adopt or amend a standard or regulation whereby the impact on
14 industrial development is by design and not a consequence of preventing or
15 abating air pollution;

16 (3) Expand the definition of air pollution;

17 (4) Serve as a forum for public discussion for matters not on the agenda;

18 (5) Draft and present to itself regulations, except it may adopt bylaws to
19 govern its non-hearing proceedings in accordance with § 9-5-1-3(B)(7);

20 (6) Direct the work of the Director or Department, including no authority,
21 express or implied, to advise, recommend or determine costs associated with
22 Board activities and the City's ability to pay such costs;

23 (7) Recommend to the Mayor, Director, Department, County Manager,
24 City Council, or County Commission policies for air quality matters, needs,
25 improvements, and programs;

26 (8) Advise the Mayor, Director, Department, County Manager, City
27 Council, or County Commission regarding air quality matters, needs and
28 programs; and

29 (9) Advise the Environmental Planning Commission or County Planning
30 Commission regarding air quality matters.

31 § 9-5-1-13 LOCAL AIR QUALITY PERMIT FUND ESTABLISHED.

32 (A) Pursuant to Section 74-2-16 NMSA 1978 and §§ 9-5-1-1 et seq., an
33 Environmental Health Department air quality permit fund is established.

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1 (B) All fees collected by the Department pursuant to §§ 9-5-1-1 et seq.
2 shall be deposited in the fund created in division (A) above, and shall be used
3 by the city only for the purpose of paying the reasonable costs of funding the
4 department's performance of the following permitting functions required by the
5 Federal Clean Air Act Amendments of 1990 as follows:

- 6 (1) Reviewing and acting upon any application for a permit;
- 7 (2) If the owner or operator receives a permit, implementing and
8 enforcing the terms and conditions of such permit, not including any court
9 costs or other costs associated with any enforcement action;
- 10 (3) Emissions and ambient monitoring;
- 11 (4) Preparing generally applicable regulations or guidance;
- 12 (5) Modeling, analysis and demonstration; and
- 13 (6) Preparing inventories and tracking emissions.

14 § 9-5-1-14 INSPECTION.

15 The Director or an authorized representative, upon presentation of
16 Departmental credentials:

17 (A) Shall have a right of entry to, upon or through any premises on which
18 an emission source is located or on which any records required to be
19 maintained by regulations of the Board or by any permit condition are located;
20 and

21 (B) May at reasonable times:

- 22 (1) Have access to and copy any records required to be established and
23 maintained by regulations of the Board or any permit condition; and
- 24 (2) Inspect any monitoring equipment and method required by
25 regulations of the Board or by any permit condition; and
- 26 (3) Sample any emissions that are required to be sampled pursuant to
27 regulation of the Board or any permit condition.

28 (C) If premises described in divisions (A) or (B) above are unoccupied, a
29 Department employee shall first make a reasonable effort to locate the owner
30 or other person having charge or control of the premises and demand entry.

31 (D) If entry is refused, the ~~Mayor~~Department shall proceed to obtain a
32 search warrant by filing the documents and following the procedures required
33 by the Metropolitan Court or District Court. The sworn statement filed in

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- 1 conjunction with the application for the search warrant or order shall:
- 2 (1) Set forth the particular premises, or portion thereof, sought to be
- 3 inspected;
- 4 (2) State that the owner or occupant of the premises or portion thereof,
- 5 has refused entry;
- 6 (3) State that inspection of the premises or portion thereof is necessary
- 7 to determine whether it complies with the requirements of §§ 9-5-1-1 et seq.;
- 8 (4) Set forth the particular provisions of §§ 9-5-1-1 et seq. sought to be
- 9 enforced;
- 10 (5) Set forth any other reason necessitating the inspection, including
- 11 knowledge or belief that a particular condition exists in the premises, or portion
- 12 thereof, which constitutes a violation of §§ 9-5-1-1 et seq.; and
- 13 (6) State that the Department Mayor—or the Department’s Mayor’s
- 14 designated representative is authorized by the city Mayor to make the
- 15 inspection.

16 § 9-5-1-15 REPRESENTATION OF THE DEPARTMENT, THE CITY AND THE

17 COUNTY.

18 In any court action to enforce the provisions of the Air Quality Control Act, §§

19 9-5-1-1 et seq. or any regulation, permit condition or emergency order adopted,

20 imposed or issued pursuant thereto:

- 21 (A) The city and the Department shall be represented by the City Attorney;
- 22 and
- 23 (B) The County or City Attorney shall be represented by the District
- 24 Attorney.

25 § 9-5-1-98 VIOLATIONS; COMPLIANCE ORDERS; FIELD CITATIONS.

26 (A) Whenever, on the basis of any information, the Mayor Director

27 determines that any person has violated or is violating any requirement, or

28 prohibition of the Air Quality Control Act, §§ 9-5-1-1 et seq., any regulation

29 promulgated pursuant to §§ 9-5- 1-1 et seq., or any condition of a permit issued

30 pursuant thereto, the Director Mayor may:

- 31 (1) Issue a compliance order stating with reasonable specificity the
- 32 nature of the violation and requiring compliance immediately or within a
- 33 specified time period or assessing a civil penalty for any past or current

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1 violation, or both; or

2 (2) Commence a civil action in district court for appropriate relief,
3 including a temporary or permanent injunction.

4 (B) Any order issued pursuant to division (A) above may include a
5 suspension or revocation of any permit, or portion thereof, issued by the
6 DirectorMayer. Any penalty assessed in the order shall not exceed \$15,000 per
7 day of noncompliance for each violation.

8 (C) Any order issued pursuant to division (A) above shall become final
9 unless, no later than 30 days after the order is served, the person named therein
10 submits a written request to the Director for a public hearing. Upon such
11 request, the Director shall promptly conduct a public hearing. The Director shall
12 appoint an independent hearing officer to preside over the public hearing. The
13 hearing officer shall make and preserve a complete record of the proceedings
14 and forward the hearing officer's recommendation based thereon to the
15 Director, who shall make the final decision.

16 (D) The Board may adopt a field citation program through regulations
17 establishing appropriate minor violations for which field citations assessing
18 civil penalties not to exceed \$1,000 per day of violation may be issued by
19 officers or employees of the Department as designated by the DirectorMayer.
20 The program will be implemented by the Department.

21 (E) Any person to whom a field citation is issued pursuant to division (D)
22 above may, within a reasonable time as prescribed by regulation by the Board,
23 elect to pay the penalty assessment or to request a hearing by the issuing
24 agency on the field citation. If a request for hearing is not made within the time
25 specified in the regulation, the penalty assessment in the field citation shall be
26 final.

27 (F) Payment of a civil penalty required by a field citation issued pursuant
28 to division (D) above shall not be a defense to further enforcement by the
29 Department to correct a violation or to assess the maximum statutory penalty
30 pursuant to other authorities in the Air Quality Control Act or §§ 9-5-1-1 et seq.
31 if the violation continues.

32 (G) In determining the amount of any penalty to be assessed pursuant to
33 this section, the Director or the individual issuing a field citation shall take into

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1 account the seriousness of the violation, any good-faith efforts to comply with
2 the applicable requirements and other relevant factors.

3 (H) In connection with any proceeding under this section, the Director
4 may issue subpoenas for the attendance and testimony of witnesses and the
5 production of relevant papers, books and documents and may adopt rules for
6 discovery procedures.

7 (I) Penalties collected pursuant to an administrative order or a field
8 citation shall be deposited in the city or the county general fund, as applicable.
9 § 9-5-1-99 PENALTY.

10 (A) Civil Penalty. Any person who violates any provision of the Air Quality
11 Control Act, §§9-5-1-1 et seq., any regulation of the Board or any permit
12 condition or emergency order adopted or issued pursuant to the Air Quality
13 Control Act or §§ 9-5-1-1 et seq. may be assessed a civil penalty not to exceed
14 \$15,000 for each day during any portion of which a violation occurs.

15 (B) Criminal Penalties.

16 (1) Any person who knowingly commits any violation of §§9-5-1-1 et seq.
17 or a regulation of the Board which is not described as a felony in Section 74-2-
18 14.C or 74-2-14.D NMSA 1978 is guilty of a misdemeanor and shall be sentenced
19 in accordance with the provisions of Section 31-19-1 NMSA 1978.

20 (2) Any person who knowingly makes any false statement, representation
21 or certification in any application, record, report, plan or other document filed
22 or required to be maintained under the Air Quality Control Act or who falsifies,
23 tampers with or knowingly renders inaccurate any monitoring device or method
24 to be maintained under the Air Quality Control Act or §§ 9-5-1-1 et seq. or
25 regulation adopted pursuant thereto is guilty of a petty misdemeanor and shall,
26 upon conviction, be punished by a fine of not more than \$10,000, per day for
27 each violation, or by imprisonment for not more than six months, or by both.”

28 Section 3. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
29 clause, word, or phrase of this ordinance is for any reason held to be invalid or
30 unenforceable by any court of competent jurisdiction, such decision shall not
31 affect the validity of the remaining provisions of this ordinance. The Council
32 hereby declares that it would have passed this ordinance and each section,
33 paragraph, sentence, clause, word, or phrase thereof irrespective of any

1 provision being declared unconstitutional or otherwise invalid.

2 Section 4. COMPILATION. This ordinance shall be incorporated in and made
3 part of the Revised Ordinances of Albuquerque, New Mexico 1994.

4 Section 5. EFFECTIVE DATE. This ordinance shall take effect December 3,
5 2023.

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