



Legislation Details (With Text)

File #: O-23-96
Type: Ordinance **Status:** Died on Expiration
File created: 12/4/2023 **In control:** City Council
Final action: 12/16/2024
Enactment date: **Enactment #:**
Effective date:
Title: C/S Adopting A New Part In Chapter 9, Article 5 Of The Revised Ordinances Of Albuquerque 1994 To Create An Environmental Justice Air Quality Permit (Peña)
Sponsors: Klarissa J. Peña
Indexes:
Code sections:
Attachments: 1. O-96, 2. O-96 Approved CS Peña

Date	Ver.	Action By	Action	Result
12/16/2024	2	City Council	Died on Expiration	Pass
9/9/2024	2	Finance & Government Operations Committee	Postponed	Pass
8/12/2024	2	Finance & Government Operations Committee	Postponed	Pass
5/13/2024	2	Finance & Government Operations Committee	Postponed	Pass
2/12/2024	1	Finance & Government Operations Committee	Substituted	Pass
2/12/2024	1	Finance & Government Operations Committee	Postponed as Substituted	Pass
1/29/2024	1	Finance & Government Operations Committee	Postponed	Pass
12/11/2023	1	Finance & Government Operations Committee	Postponed	Pass
12/4/2023	1	President	Referred	
12/4/2023	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. C/S O-23-96

ENACTMENT NO. _____

SPONSORED BY: Klarissa Peña

ORDINANCE

C/S Adopting A New Part In Chapter 9, Article 5 Of The Revised Ordinances Of Albuquerque 1994
To Create An Environmental Justice Air Quality Permit (Peña)

WHEREAS, it is the role of the City of Albuquerque to achieve an appropriate balance between environmental protection and economic development, and the risk levels established by this ordinance are selected to strike that balance; and

WHEREAS, a strong economy is fostered by protection of human health and the environment, and the basic right of equal protection; and

WHEREAS, to protect human health and the environment for the benefit of all populations, municipal decision-makers need accurate information about the impacts of proposed action, including those on the determinants of health and the environment, and how these will be impacted by air quality permit decision making; and

WHEREAS, the City Council desires to establish additional permitting requirements for certain new and modified stationary sources of air pollution that are located or proposed to be located, in whole or in part, in a vulnerable or overburdened community; and

WHEREAS, these additional requirements are intended to minimize and mitigate any disproportionately high and adverse public health impacts or air pollution on the community, and ensure meaningful public engagement and participation in the permitting process.

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

SECTION 1. A new Part 7 in Chapter 9, Article 5 of the Revised Ordinances of Albuquerque 1994 is hereby adopted as follows:

“[§ 9-5-7-1 SHORT TITLE.

This Ordinance shall be known and cited as the “Environmental Justice Air Quality Permit Ordinance.”

§ 9-5-7-2. SCOPE.

- A. Applicability: A person who intends to construct a new stationary source or modify an existing stationary source that is subject to permitting under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC must obtain a permit pursuant to this Ordinance.
- B. Exemptions: The requirements of this Ordinance do not apply to:
- (1) technical permit revisions under 20.11.41.28(B) NMAC;
 - (2) administrative permit revisions under 20.11.41.28(A) NMAC;

- (3) administrative permit revisions under 20.11.41.28(A) NMAC;
- (4) relocations for portable sources under 20.11.41(F)(2)(G) NMAC;
- (5) any source exempt from 20.11.41 NMAC, 20.11.60 NMAC, 20.11.61 NMAC; and
- (6) sources within Bernalillo County that are located on Indian lands over which the Albuquerque - Bernalillo County air quality control board lacks jurisdiction.

§ 9-5-7-3. DEFINITIONS.

In addition to the definitions contained in this Ordinance, the definitions in 20.11.1 NMAC, 20.11.41 NMAC, 20.11.60 NMAC and 20.11.61 NMAC apply, unless there is a conflict between definitions, in which case the definition in this Ordinance shall govern.

- A. ADVERSE ENVIRONMENTAL AND PUBLIC HEALTH INDICATOR. An indicator related to the environment or public health that has been identified in a census tract or block on the map referenced in Section 9-5-7-4. Adverse Environmental and Public Health Indicators include geographic, socioeconomic, demographic, environmental, and public health indicators. An Adverse Environmental and Public Health Indicator must have a demonstrable nexus with air pollution but shall not be considered a standard required to identify quantities and duration of specified air contaminants that constitute air pollution.
- B. APPLICANT. A person who intends to construct a new stationary source or modify an existing stationary source that is subject to permitting under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC that is located or proposed to be located, in whole or in part, in a Vulnerable or Overburdened Community.
- C. DEPARTMENT. The City of Albuquerque Environmental Health Department.
- D. EJSCREEN. The United States Environmental Protection Agency's web-based Environmental Justice Screening and Mapping Tool, as updated.
- E. ENVIRONMENTAL JUSTICE. The fair treatment and meaningful involvement of all people regardless of race, color, or national origin, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. In this context, fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies.
- F. ENVIRONMENTAL JUSTICE ASSESSMENT REPORT. A report prepared by the Applicant for the purpose of documenting the results of an environmental justice assessment and providing the core information necessary to assess the existing Adverse Environmental and Public

Health Indicators in a Vulnerable or Overburdened Community.

- G. OPTIMUM CONTROL STRATEGY. The maximum degree of emissions reduction which can include best management practices, technological advancements, and other innovative emission reduction strategies based on the maximum degree of reduction achievable.
- H. OVERBURDENED COMMUNITY. A census tract or block in the City of Albuquerque or Bernalillo County where the public experiences maximum exposures likely to cause a higher risk for poor public health outcomes at a higher rate than in a Vulnerable Community, identified on the map referenced in Section 9-5-7-4.
- I. PUBLIC INFORMATION MEETING. A meeting held by the Applicant during which the Applicant describes the source the Applicant proposes to construct or modify, provides a detailed presentation on the Applicant's Environmental Justice Assessment Report, and takes into consideration public comments.
- J. TRIBE. A state or federally recognized Indian tribe or pueblo located wholly in, partially in, or adjacent to the City of Albuquerque or Bernalillo County.
- K. VULNERABLE COMMUNITY. A census tract or block in the City of Albuquerque or Bernalillo County where the public experiences heightened exposures likely to cause a higher risk for poor public health outcomes, identified on the map referenced in Section 9-5-7-4.

§ 9-5-7-4. MAPPING OF VULNERABLE AND OVERBURDENED COMMUNITIES BY THE

DEPARTMENT.

- A. Within 180 calendar days of the enactment of this Ordinance, the Department shall publish on its website a map of Vulnerable Communities and Overburdened Communities. The requirements for Applicants contained in this Ordinance shall go into effect 180 calendar days after the map is published.
 - 1. The map shall also include Adverse Environmental and Public Health Indicators for geographic, socioeconomic, demographic, environmental and public health impacts. The Department shall attribute a value to each Adverse Environmental and Public Health Indicator and may attribute a weight to each Adverse Environmental and Public Health Indicator.
 - 2. For each Adverse Environmental and Public Health Indicator, the Department shall publish online the justification, literature, data source(s), methodology, and additional resources supporting inclusion of the Adverse Environmental and Public Health Indicator on the map.

3. Information regarding the Adverse Environmental and Public Health Indicators used by the Department shall be based on the latest scientific data. Localized data may be used when it is peer reviewed, and consistent with accepted scientific practices.
- B. Recognized Neighborhood Associations and Recognized Neighborhood Coalitions who are established pursuant to the Neighborhood Association Recognition Ordinance, ROA 1994, Sections 14-8-2-1 et seq., and who represent an area in a Vulnerable Community or Overburdened Community, may submit to the Department a description of the community, including demographics, history, background, public notice avenues.
- C. Within two years after the U.S. Census Bureau releases the results of each decennial census, the Department shall publish on its website an updated map of Vulnerable Communities and Overburdened Communities, to go into effect 90 calendar days after it is published. The updated map shall include updated census tracts or blocks reflecting the most recent decennial census.
- D. Within 30 calendar days of publishing on its website a map or updated map of Vulnerable Communities and Overburdened Communities pursuant to Section 9-5-7-4(A) or (D) above, the Department shall publish a notice of availability in the newspaper with the largest general circulation in Bernalillo County and provide a copy of the notice by U.S. Certified Mail to all existing sources with a permit under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC.

§ 9-5-7-5. INITIAL SCREENING INFORMATION AND PRE-APPLICATION ENVIRONMENTAL JUSTICE CONSULTATION.

- A. An Applicant shall contact the Department in writing to request an Environmental Justice Consultation to discuss whether the Applicant may locate the proposed source, in whole or in part, in a Vulnerable Community or Overburdened Community and what, if any, additional permitting requirements apply pursuant to this Ordinance. Upon receipt of a request for an Environmental Justice Consultation, the Department shall schedule the Consultation to occur within thirty (30) calendar days after the request is received.
- B. Within fifteen (15) calendar days following receipt of a request for an Environmental Justice Consultation, the Department shall provide the Applicant with the following initial screening information:
 1. a list of all Adverse Environmental and Public Health Indicators used in developing the latest map of Vulnerable Communities and Overburdened Communities published by the Department pursuant to Section 9-5-7-4; and

2. all Adverse Environmental and Public Health Indicators that are present in the Vulnerable Community or Overburdened Community in which the source is located or proposed to be located and any contiguous Vulnerable Community or Overburdened Community located, in whole or in part, within a one-half mile radius around the source location .

B. The Applicant is required to review the initial screening information provided by the Department and to attend the Environmental Justice Consultation prior to completing the Enhanced Public Engagement procedures outlined in Sections 9-5-7-7 through -9, and submitting a final application to construct a new stationary source or modify an existing stationary source that is subject to permitting pursuant to 20.11.41 NMAC, 20.11.60 NMAC, or 20.11.61 NMAC. The Department shall not waive the pre-application Environmental Justice Consultation requirement.

§ 9-5-7-6. ENVIRONMENTAL JUSTICE ASSESSMENT REPORT BY THE APPLICANT.

A. An Applicant shall conduct an environmental justice assessment and document the findings in an Environmental Justice Assessment Report. The purpose of the Environmental Justice Assessment Report is for the Applicant to:

1. provide the core information necessary to assess the existing Adverse Environmental and Public Health Indicators in a Vulnerable or Overburdened Community;
2. document how the construction of a new stationary source or modification or relocation of an existing stationary source will impact those Adverse Environmental and Public Health Indicators;
3. document mitigation measures to address those impacts;
4. assess the source's impact on the community;
5. and provide the community with information about the source to facilitate meaningful public outreach.

B. The Applicant shall not be required to disclose information protected from disclosure pursuant to the Air Quality Control Act, NMSA 1978, Section 74-2-11.

C. The Environmental Justice Assessment Report shall reflect the purposes described above in Section 9-5-7-6(A) and include:

1. An executive summary of the information contained in the Environmental Justice Assessment Report;
2. The initial screening information obtained from the Department pursuant to Section 9-5-

7-5:

3. Copies of all available EJScreen reports for a one-half mile radius around the source location;
4. A description of the source and related facility, if any; the nature of the business; the process or the change for which the permit is being requested, including a preliminary estimate of the maximum quantities of each regulated air contaminant the source will emit if the permit is issued and the proposed construction or modification is completed; and, if the source is being modified, the net change in emissions.;
5. A detailed description of the source's purpose and current and proposed operations, including all equipment and processes to be used;
6. A completed compliance history form;
7. An assessment of the source's impact on all Adverse Environmental and Public Health Indicators;
8. All actions and controls the Applicant proposes to implement in order to minimize or mitigate the source's impact on Adverse Environmental and Public Health Indicators in the Vulnerable or Overburdened Community;
9. A description of the Applicant's approach to providing Inclusive Community Resources and to promote Enhanced Public Engagement;
10. A description of the Vulnerable Community or Overburdened Community in which the source is located or proposed to be located, including demographics, history, and background, as provided by an applicable neighborhood association,
11. The Applicant's name and address, and the names and addresses of the owner or operator of the source or proposed source;
12. The anticipated date the final application will be submitted to the Department;
13. The exact location of the source or proposed source;
14. The anticipated maximum and normal operating schedules proposed for the source or facility;
15. The current contact information of the Applicant to which comments and inquiries may be directed, including the name of a responsible official, phone number, email address, and mailing address;
16. The Applicant's website, if available;

17. A zoning certification for the proposed location including any special use permits or other authorizations; and
 18. The site plan, if applicable; and
 19. Proof of financial responsibility and pollution liability insurance.
- D. The Environmental Justice Assessment Report may include an Optimum Control Strategy analysis demonstrating the emission reduction strategy is based on the maximum degree of reduction achievable, and any quality-of-life factors agreed upon with the applicable community.
- E. The Department may provide resources, data and information to Applicants to assist with preparation of the Environmental Justice Assessment Report.
- F. The Applicant may submit the Environmental Justice Assessment Report to the Department for review and recommendations before proceeding with the Enhanced Public Engagement process required by Sections 9-5-7-7 through -9. The Department's review shall be limited to determining whether the Environmental Justice Assessment Report contains all the information required by Section 9-5-7-6. The Department may identify where information in the Environmental Justice Assessment Report appears lacking in sufficient detail. Nothing identified by the Department in this optional review of the Environmental Justice Assessment Report shall be deemed mandatory nor binding and shall not be used as a basis for appeal of a permit application decision.

§ 9-5-7-7. ENHANCED PUBLIC ENGAGEMENT AND INCLUSIVE COMMUNITY RESOURCE REQUIREMENTS.

- A. Before submitting a final application to the Department, an Applicant shall comply with the Enhanced Public Engagement requirements of Sections 9-5-7-8 (Public Notice) and 9-5-7-9 (Public Information Meeting) and shall be subject to the Inclusive Community Resource requirements below, if imposed by the Department.
- B. The purpose of these Inclusive Community Resource requirements is to make it possible for people with different abilities to fully participate, assuring that information is accessible and reaches populations in Vulnerable or Overburdened Communities.
- C. Where Inclusive Community Resource requirements are imposed on the Applicant, the following shall apply:
1. Send via regular mail or e-mail an invitation to all Tribes for formal tribal consultation. A Tribe may request an extension of any deadline herein if it needs additional time to be

able to sufficiently participate in the process. The Department, upon a determination of good cause, may extend any deadline herein for purposes of allowing a Tribe additional time to participate; provided however, any extension of a deadline shall not be for more than thirty (30) calendar days.

2. Information shall be made available in Spanish and Vietnamese, and any other language upon request or as determined by the Department.
3. Information shall be made accessible to those with disabilities.
4. Information shall be made accessible to any other persons upon request or as determined by the Department.
5. All persons shall have the opportunity to engage with meaningful involvement, which means:
 - i. People have an opportunity to participate in decisions about activities that may affect their environment and/or health;
 - ii. The public's contribution can influence the regulatory agency's decision;
 - iii. Community concerns will be considered in the decision-making process;
and
 - iv. Decision makers will seek out and facilitate the involvement of those potentially affected.

D. A member of the public participating in the Enhanced Public Engagement activities under this Ordinance may request from the Department reasonable assistance to access the process due to a limited ability to speak, write, or understand English, or a disability.

1. Assistance is not reasonable if it fundamentally alters the nature of the program, service, or activity; requires waiver of essential program or licensure requirements; violates accreditation requirements; or poses an undue fiscal or administrative burden on the Department.
2. The Department will take reasonable measures to provide such individuals with access to Inclusive Community Resources at no cost to a requesting individual when the request is made to the Department at least seventy-two (72) hours in advance of the Public Information Meeting.
3. The Department will consider requests made within seventy-two (72) hours on a case-by case basis.
4. Applicants shall fully cooperate to assist and allow the Department to provide

reasonable assistance for access to Inclusive Community Resources.

5. The Department encourages Applicants to anticipate requests for reasonable assistance for access to Inclusive Community Resources and for Applicants to make proper arrangements in advance of the Public Information Meeting.

E. Nothing herein shall prohibit or limit the Department or Applicant from providing additional Inclusive Community Resources.

§ 9-5-7-8. ENHANCED PUBLIC ENGAGEMENT - PUBLIC NOTICE.

A. The Applicant shall provide notice to the public that includes the following information regarding the stationary source that the Applicant proposes to construct or modify:

1. a brief summary of the Environmental Justice Assessment Report prepared in accordance with Section 9-5-7-6 and instructions for how interested persons may obtain a copy of the full Environmental Justice Assessment Report;
2. a statement that a Public Information Meeting will be held if there is significant public interest and inviting submission of public interest for a period of 30 days, and identifying the deadline to do so.
3. a statement inviting public comment for a period of 30 calendar days, identifying the end date, establishing the end of the comment period as the deadline for requesting a Public Information Meeting, and providing instructions for requesting a meeting or submitting comments to the Applicant; and
4. contact information of the Applicant for where to submit public interest and/or public comment.

B. The Applicant shall provide public notice:

1. to the Department, which will distribute it to the Department's listserv for persons interested in receiving information about permits and the Department will publish it on the Department's website until the Applicant notifies the Department that the Enhanced Public Engagement process is complete;
2. by regular mail to all owners, as listed in the records of the Bernalillo County Assessor, of property located in whole or in part, within a one-half mile radius around the boundaries of the property on which the source is located or proposed to be located;
3. by regular mail or email to all Recognized Neighborhood Associations and Recognized Neighborhood Coalitions that represent an area in the Vulnerable Community or the Overburdened Community where the source is located or proposed to be located; and

4. by regular mail or e-mail to the manager of any federal lands managed by the National Park Service, U.S. Fish and Wildlife Service, or Bureau of Land Management, state parks managed by the New Mexico Environment, Minerals and Natural Resources Department, or city or county parks or open space areas managed by the Bernalillo County Parks and Recreation Department or the City of Albuquerque Parks and Recreation Department located within a one-half mile radius around the boundaries of the property the source is located or proposed to be located on.

§ 9-5-7-9. ENHANCED PUBLIC ENGAGEMENT - PUBLIC INFORMATION MEETING.

- A. After giving notice, the Applicant shall hold a Public Information Meeting if there is significant public interest. Public interest is considered significant if:
 1. five or more individuals, each of whom are residents of the Vulnerable Community or Overburdened Community where the source is located or proposed to be located, request a meeting;
 2. a request for a meeting includes a petition signed by five or more individuals, each of whom are residents of the Vulnerable Community or Overburdened Community where the source is located or proposed to be located;
 3. a meeting is requested by an elected official, or an elected representative of a Recognized Neighborhood Association or Recognized Neighborhood Coalition, pursuant to the Neighborhood Association Recognition Ordinance, ROA 1994, Sections 14-8-2-1 et seq., who represents an area in the Vulnerable Community or the Overburdened Community where the source is located or proposed to be located;
 4. the Applicant determines public interest is significant; or
 5. the Department Director determines public interest is significant.
- B. The Public Information Meeting shall be held in the Vulnerable Community or Overburdened Community in which the source is located or proposed to be located unless there is no suitable meeting space in the Vulnerable Community or Overburdened Community, in which circumstance the Applicant may, subject to the Department's approval, hold the meeting in an alternate location within as close proximity as possible to the Vulnerable Community or Overburdened Community, which may include a City-owned property.
- C. The meeting shall be made available in both in-person and virtual formats, and in accordance with any Inclusive Community Resource requirements imposed pursuant to Section 9-5-7-7.
- D. The meeting shall be held prior to the end of the public comment period on a day and time that

is mutually agreeable to those expressing significant public interest and the Applicant.

- E. The Applicant shall create an audio recording or verbatim transcript of the Public Information Meeting.
 - F. The Applicant shall schedule the meeting for at least one hour.
 - G. At the Public Information Meeting the Applicant shall:
 - 1. describe the source the Applicant proposes to construct or modify;
 - 2. provide a detailed presentation on the Applicant's Environmental Justice Assessment Report;
 - 3. accept written and oral public comments, information, and questions; and
 - 4. respond to comments and questions.
 - H. The Applicant shall make all arrangements and pay all expenses associated with the meeting.
 - I. If a Public Information Meeting is to be held, the Applicant shall provide public notice of the meeting at least fifteen (15) calendar days before the meeting. The notice shall be provided in accordance with Section 9-5-7-7 and Section 9-5-7-8 and shall include:
 - 1. the date, start time, end time, and location of the Public Information Meeting;
 - 2. the information required by Section 9-5-7-7 and Section 9-5-7-8; and
 - 3. a statement extending the public comment period at least 15 calendar days beyond the date of the Public Information Meeting.
 - J. If the Applicant holds a Public Information Meeting, the Applicant shall provide written responses to all persons who submitted written comments, information, or questions during the public comment period or provided written comments, information or questions for the Public Information Meeting, before submitting a final application to the Department.
- § 9-5-7-10. ENVIRONMENTAL JUSTICE ASSESSMENT REPORT UPDATE AND

ADDENDUM.

- A. After the close of the public comment period, the Applicant shall update its Environmental Justice Assessment Report to reflect responses and changes based on the Enhanced Public Engagement process, including :
 - (1) the audio recording or verbatim transcript of the Public Information Meeting, if held;
 - (2) the written comments, information, and/or questions received during the public comment period, or provided for or during the Public Information Meeting;
 - (3) the Applicant's responses to comments, information, and questions received as public comments or as part of the Public Information Meeting;

- (4) identify any changes the Applicant made to the Environmental Justice Assessment Report, including the Optimal Control Strategy, if applicable, following the Enhanced Public Engagement process to address concerns;
- (5) identify points of agreement with the public;
- (6) identify points of disagreement with the public and state why a resolution between the public and Applicant was not reached, if applicable; and
- (7) proposed permit terms and conditions to minimize or mitigate identified air quality impacts.

B. After the close of the public comment period, the Applicant shall update its Environmental Justice Assessment Report to include documentary proof the Applicant complied with all public notice requirements if a Public Information Meeting was held. Such proof shall include:

- (1) for public notice published on the Department's website, a screenshot of the notice on the Department's website or a printout of the web page the notice is displayed on; and
- (2) for public notice mailed or emailed to nearby property owners as listed in the records of the Bernalillo County Assessor, Recognized Neighborhood Associations or Recognized Neighborhood Coalitions, or federal, state or local public land managers; the date(s) on which notice was mailed or emailed; a copy of the notice provided; and a list of those addresses and email addresses to which the notice was mailed or emailed.

§ 9-5-7-11. APPLICATION FOR PERMIT.

A. In addition to all information required pursuant to 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC, as applicable, the Applicant shall include the following information in the permit application:

- (1) the final Environmental Justice Assessment Report ; and
- (2) if an Optimum Control Strategy is included in the Environmental Justice Assessment Report, the Applicant shall include the Optimum Control Strategy in the permit application.

B. The application must meet the requirements of this Ordinance in addition to all requirements of 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC, as applicable, for the Department to deem it administratively complete.

§ 9-5-7-12. DEPARTMENT REVIEW AND DECISION.

A. The Department shall consider the Environmental Justice Assessment Report submitted with the application when making a final decision regarding the permit application.

B. If the Department issues a permit or permit modification, pursuant to all requirements under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC, the Department shall issue the permit or permit modification with the permit terms and conditions in the application based on the Environmental Justice Assessment Report, and, if applicable, the Optimum Control Strategy.

§ 9-5-7-13. APPEAL.

Appeals of permitting actions pursuant to this Ordinance shall be made under 20.11.81 NMAC and shall be based on the permitting action and the administrative record for the same, which may include information as identified herein.

§ 9-5-7-14. NONDISCRIMINATION.

The City Environmental Health Department Air Quality Program shall not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration its programs and activities, pursuant to federal civil rights laws including Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000d to 2000d-7, and the United States Environmental Protection Agency's implementing regulations at 40 C.F.R. Parts 5 and Part 7. A person alleging a permitting action under this Ordinance is either intentional discrimination or has discriminatory effects under federal civil rights laws may file a grievance with the City Nondiscrimination Coordinator. The City Nondiscrimination Coordinator shall promptly investigate the grievance using an established grievance procedure. The City Nondiscrimination Coordinator shall be appointed and the grievance procedure shall be established and carried out in accordance with 40 C.F.R. Part 7. Alternatively, a person that believes they have been discriminated against by a permitting action of the Program under this Ordinance may file a complaint directly with the United States Environmental Protection Agency. Grievances alleging a permitting action of the Program under this Ordinance is either intentional discrimination or has discriminatory effects under federal civil rights laws shall not be actionable claims under 20.11.81 NMAC and the Albuquerque-Bernalillo County Air Quality Control Board shall have no authority to hear, review or decide whether a permitting action is discriminatory, either intentionally or in effect.]”

SECTION 2. SEVERABILITY CLAUSE.

If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 3. COMPILATION.

Section 1 of this Ordinance shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994 as a new Part 7 in Chapter 9, Article 5, entitled the “Environmental Justice Air Quality Permit Ordinance.”

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect five days after publication by title and general summary.