

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

ENDORSED COPY
ORG. FILED DIST COURT
JAN 13 2010
NELDA CUELLAR, CLERK

SENATOR CARROLL H. LEAVELL,
SENATOR GAY G. KERNAN,
REPRESENTATIVE DONALD E. BRATTON,
NEW MEXICO OIL AND GAS ASSOCIATION,
DAIRY PRODUCERS OF NEW MEXICO,
NEW MEXICO RURAL ELECTIC COOPERATIVE ASSOCIATION,
EL PASO ELECTRIC COMPANY,
PUBLIC SERVICE COMPANY OF NEW MEXICO,
TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,
NEW MEXICO FARM & LIVESTOCK BUREAU, and
NEW MEXICO PETROLEUM MARKETERS ASSOCIATION

Plaintiffs,

v.

No.

CV-2010-50^S
William G. W. Shoobridge

NEW MEXICO ENVIRONMENTAL IMPROVEMENT
BOARD,

Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

For their cause of action, Plaintiffs Senator Carroll H. Leavell, Senator Gay G. Kernan, Representative Donald D. Bratton, New Mexico Oil and Gas Association ("NMOGA"), Dairy Producers of New Mexico ("DPNM"), El Paso Electric Company ("El Paso Electric"), New Mexico Rural Electric Cooperative Association ("NMRECA"), Public Service Company of New Mexico ("PNM"), Tri-State Generation and Transmission Association, Inc. ("Tri-State"), New Mexico Farm & Livestock Bureau ("NMFLB"), and New Mexico Petroleum Marketers Association ("NMPMA") (collectively "Plaintiffs"), state as follows:

NATURE OF THE CASE

1. This is a civil action in which Plaintiffs seek a declaratory judgment establishing that the New Mexico Environmental Improvement Board (“EIB”) lacks statutory authority to consider or adopt the rulemaking petition filed by New Energy Economy Inc. (“NEE”) on December 19, 2008, as amended on February 2, 2009 (“Rulemaking Petition” or “Petition”), seeking promulgation of a statewide cap on greenhouse gas (“GHG”) emissions, along with changes to existing construction and operating permitting regulations to implement the cap. EIB is prohibited from considering or adopting the Rulemaking Petition because EIB lacks authority under either the Environmental Improvement Act (“EIA”), NMSA 1978, §§ 74-1-1 to -16 (1971, as amended through 2009) or the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, §§ 74-2-1 to -17 (1967, as amended through 2009), to adopt regulations limiting emissions of GHG without first establishing an ambient air quality standard for GHG.

2. Plaintiffs also seek to enjoin EIB from conducting further administrative proceedings on the Rulemaking Petition, or other appropriate equitable relief.

PARTIES

3. Plaintiff Senator Carroll H. Leavell is a resident of Jal, in Lea County, New Mexico and is the duly elected State Senator for Senate District 41. Senator Leavell represents approximately 42,000 residents of Lea and Eddy Counties.

4. Plaintiff Senator Gay G. Kernan is a resident of Hobbs, in Lea County, New Mexico and is the duly elected State Senator for Senate District 42. Senator Kernan represents approximately 42,000 residents of Chaves, Curry, Eddy, Lea, and Roosevelt Counties.

5. Plaintiff Representative Donald E. Bratton is a resident of Hobbs, in Lea County, New Mexico and is the duly elected State Representative for House District 62. Representative Bratton represents approximately 28,000 residents of Lea County.

6. Plaintiff NMOGA is a New Mexico non-profit corporation. NMOGA represents over 300 member companies, ranging from independent to major oil and gas producers, pipeline companies, well servicing and field services companies, refineries and processing plants, all doing business in the state of New Mexico. NMOGA represents its member companies before state and federal regulatory agencies, including EIB, as well as before state and federal courts, the New Mexico Legislature and Congress, on matters related to environmental protection, including air quality. NMOGA members own and operate facilities in New Mexico, including facilities in Lea, Eddy and Chaves Counties, that emit GHG and are subject to air quality construction and operating permits.

7. Plaintiff DPNM is a non-profit corporation, organized under the laws of New Mexico. DPNM represents over 370 members, including approximately 118 dairy producers who own and operate dairies throughout New Mexico, before local, state and federal regulatory agencies, including EIB, state and federal courts, and federal and state legislative bodies.

8. Plaintiff El Paso Electric is an electric power generation, transmission and distribution company serving 80,000 customers in south-central New Mexico. El Paso Electric generates power at its Rio Grande Generating Station in Sunland Park, Dona Ana County. The Rio Grande Generating Station emits GHG and is subject to construction and operating permits issued under the AQCA.

9. Plaintiff NMRECA is a New Mexico non-profit corporation. NMRECA is comprised of 19 rural electric cooperatives with operations throughout New Mexico. The rural

electric cooperatives purchase and distribute power to approximately 166,000 residential customers, 32,000 commercial customers, 7,600 irrigation customers and 100 industrial customers. NMRECA represents its members before local, state and federal regulatory agencies, including EIB, state and federal courts, and federal and state legislative bodies.

10. Plaintiff PNM is a New Mexico corporation which operates as a public utility in New Mexico. PNM provides electric service to approximately 500,000 residential and commercial retail utility customers in New Mexico. PNM has an ownership interest in, and operates, five fossil-fueled electric generating stations in New Mexico that have air quality construction and operating permits. These generating stations are: the San Juan Generating Station, a coal-fired, 1,800 megawatt electric generating station in San Juan County, New Mexico, of which PNM owns approximately 48%; the Luna Energy Facility, a natural gas-fired, 570 megawatt electric generation station, of which PNM owns 33%; the Afton Generating Station, a natural gas-fired, 243 megawatt electric generating station in Dona Ana County, New Mexico; the Lordsburg Generating Station, a natural gas-fired, 80 megawatt electric generation station in Hidalgo County, New Mexico; and the Las Vegas Turbine, a fuel oil-fired, 21 megawatt generating station in San Miguel County, New Mexico.

11. Plaintiff Tri-State is a not-for-profit wholesale electric power supply cooperative providing power to forty-four (44) member distribution systems that serve customers in a 250,000 square-mile territory including New Mexico, Colorado, Nebraska, and Wyoming. Tri-State provides electricity to members based on a diverse mix of generation sources including coal, natural gas, hydroelectric, and wind power. Tri-State's twelve (12) member-systems' service territories in New Mexico include approximately 159,000 meters, many of which are located in some of the most economically disadvantaged areas of the country. Tri-State operates

two (2) electrical generating facilities in New Mexico. Those facilities emit GHG and are subject to construction permits and operating permits issued pursuant to the AQCA.

12. Plaintiff NMFLB is a New Mexico non-profit corporation. NMFLB is a voluntary membership organization of farmers, ranchers and people interested in agriculture and rural life. NMFLB was organized to promote agriculture and enhance the lives of farmers, rural people and everyone interested in protecting their fundamental constitutional rights, including private property rights. NMFLB has approximately 14,500 members throughout the state, including county organizations, such as the Curry County Farm & Livestock Bureau, the Santa Fe County Farm & Livestock Bureau, the Taos County Farm & Livestock Bureau, the Mora/San Miguel County Farm & Livestock Bureau, the San Juan County Farm & Livestock Bureau, the Bernalillo County Farm & Livestock Bureau, and the Rio Arriba County Farm & Livestock Bureau. Some NMFLB members have construction permits issued pursuant to the AQCA; most of the members use fuels and electricity produced by facilities subject to air quality construction and operating permits.

13. Plaintiff NMPMA is a New Mexico non-profit corporation. NMPMA is a voluntary membership organization comprised of companies involved in marketing petroleum products in New Mexico. NMPMA represents its members before local, state and federal regulatory agencies, including EIB, state and federal courts, and federal and state legislative bodies. Some NMPMA members, including members in Lea and Eddy Counties, own and operate facilities that emit GHG and are subject to construction and operating permits issued pursuant to the AQCA. NMPMA members market fuels and use electricity produced by facilities subject to air quality construction and operating permits.

14. Defendant EIB is an agency of the State of New Mexico, created in 1971 by the EIA, with authority to adopt standards and regulations for various environmental programs, including air quality. NMSA 1978, § 74-1-4 & 8.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this case pursuant to Article IV, Section 13 of the New Mexico Constitution, and the Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 *et seq.* (1975).

16. Venue is properly located in this judicial district pursuant to NMSA 1978, § 38-3-1(G) (1988).

GENERAL ALLEGATIONS

I. Background

A. Environmental Improvement Board

17. EIB is an administrative body created by the New Mexico Legislature with the passage of the EIA.

18. As an administrative body created by statute, EIB's powers are limited to the authority expressly granted by the New Mexico Legislature or necessarily implied by the operative statutes.

19. The EIA delegates authority to EIB to adopt regulations and standards in a number of environmental management and consumer protection programs. NMSA 1978, § 74-1-8 (2000).

20. With regard to air quality, the EIA delegates authority to EIB to promulgate rules and standards for "air quality management as provided in the Air Quality Control Act." Section 74-1-8(A)(4).

21. With regard to air quality, EIB's authority is limited to the authority expressly granted by the New Mexico Legislature in the AQCA, or necessarily implied from the AQCA.

B. The Air Quality Control Act

22. The AQCA was enacted in 1967, consistent with federal air quality legislation in effect at the time.

23. The AQCA has been amended on several occasions to conform to changes in federal air quality legislation and address air quality concerns identified by the Legislature.

24. The AQCA requires EIB to adopt regulations "to attain and maintain national ambient air quality standards," and "to prevent or abate air pollution," including regulations prescribing ambient air quality standards. NMSA 1978, § 74-2-5(A) & (B) (2007).

25. The AQCA defines "air pollution" as "the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property." NMSA 1978, § 74-2-2(B) (2001).

26. Pursuant to the federal Clean Air Act, 42 U.S.C. § 7409, the Environmental Protection Agency ("EPA") has adopted national ambient air quality standards for particulate matter, carbon monoxide, sulfur dioxide, nitrogen dioxide, ozone and lead. 40 C.F.R. Part 50.

27. The AQCA authorizes EIB to adopt state ambient air quality standards and regulations to implement those state standards.

28. EIB has adopted ambient air quality standards for the following air contaminants: total suspended particulates, sulfur compounds (including sulfur dioxide and hydrogen sulfide), carbon monoxide and nitrogen dioxide. 20.2.3 NMAC.

29. The AQCA requires EIB to adopt regulations for the issuance of permits to construct, including modification, and to operate sources of air contaminant emissions. NMSA 1978, § 74-2-7(A) (2003).

30. Pursuant to Section 74-2-7(A) of the AQCA, EIB has adopted regulations requiring permits for the construction and modification of sources, 20.2.72 NMAC, and the operation of sources, 20.2.70 NMAC.

31. Construction and operating permits issued pursuant to the AQCA and implementing regulations contain provisions to ensure that each permitted facility meets ambient air quality standards adopted by the EIB.

II. The NEE Rulemaking Petition

32. On December 19, 2008, NEE filed its Rulemaking Petition requesting EIB to promulgate regulations under the AQCA setting a statewide cap on GHG emissions.

33. On February 2, 2009, NEE filed its corrected Rulemaking Petition. A true and correct copy of the corrected Rulemaking Petition is attached hereto as Exhibit A.

34. In its Rulemaking Petition, NEE cites generally to the entire EIA and the entire AQCA as the source of EIB's statutory authority to grant the Rulemaking Petition.

35. The Rulemaking Petition calls for a cap on GHG emissions that would require each regulated entity to reduce GHG emissions to 25% below its 1990 emission level by the year 2020.

36. The proposed regulations in the Rulemaking Petition would therefore regulate GHG solely on the basis of emissions, without any relationship to levels of GHG in the ambient air in New Mexico that may cause adverse effects on human health or the environment.

37. The proposed GHG emissions cap would be implemented through construction permits issued under 20.2.72 NMAC and operating permits issued under 20.2.70 NMAC. All facilities that have air permits issued by NMED and that emit the equivalent of 10,000 metric tons or more of carbon dioxide per year, including facilities represented by Plaintiffs, would be required to comply with the emissions cap.

II. Controversy Regarding EIB's Authority to Consider the Rulemaking Petition

38. EIB addressed the Rulemaking Petition during its meeting on January 5, 2009. At that meeting, a number of interested parties, including Plaintiffs NMOGA, PNM and Tri-State, objected to the Rulemaking Petition on several grounds, including EIB's lack of authority under existing law to promulgate the proposed regulations.

39. On January 20, 2009, EIB issued an Order for Pre-Hearing Briefing Schedule, allowing interested parties to file briefs addressing EIB's statutory or regulatory authority to consider the Rulemaking Petition.

40. A number of interested parties, including Plaintiffs NMOGA, PNM and Tri-State, submitted briefs asserting that EIB lacks statutory authority to grant the Rulemaking Petition. More specifically, Plaintiffs NMOGA, PNM and Tri-State asserted that EIB does not have the authority to adopt a statewide cap on GHG emissions as sought by NEE because no air quality standard for GHG has been established.

41. At its meeting on April 6, 2009, EIB held a hearing on the question of its authority to adopt a statewide cap on GHG emissions as sought in the Rulemaking Petition. At the conclusion of the hearing, EIB made an oral ruling that it has authority to address the Rulemaking Petition. EIB did not issue a written order or findings on this matter.

42. EIB determined that it has the authority to adopt a statewide cap on GHG emissions along with changes to existing construction and operating permitting regulations to implement the cap.

43. An actual controversy exists regarding EIB's authority to promulgate the proposed regulations capping GHG emissions, and the ability and propriety of EIB holding rulemaking proceedings on such regulations.

44. On January 11, 2010, EIB conducted a pre-hearing conference to consider pre-hearing deadlines and procedure for the hearing in this matter. EIB announced that it will consider non-technical testimony on the Petition on March 1, 2010. NEE is scheduled to file its written direct testimony on or before March 2, 2010. Other parties are required to file their written direct testimony on or before May 3, 2010. Rebuttal Testimony is to be filed June 4, 2010. EIB has scheduled the hearing on the merits to begin June 21, 2010.

45. The issues involved in the hearing on the Rulemaking Petition will be far-reaching and complex, and the parties, including some Plaintiffs, will incur substantial expenses if the proceedings are allowed to go forward. Plaintiffs will not be able to recover the substantial expenses incurred by participating in the Rulemaking Petition proceeding before EIB. The Plaintiffs will not incur the substantial expenses associated with the hearing on the Rulemaking Petition if this Court grants the relief sought in this Complaint.

46. Plaintiffs will be adversely affected if the Rulemaking Petition is adopted. More specifically, Plaintiffs, and entities or individuals represented by Plaintiffs, will be required to implement significant changes to their facilities at significant cost, or will be adversely affected by the increased costs if the Rulemaking Petition is adopted.

CLAIM FOR RELIEF

47. Plaintiffs reallege Paragraphs 1 through 46 as though fully set forth herein.

48. NEE's Rulemaking Petition requests EIB to adopt regulations related to air quality. EIB's authority to adopt the regulations proposed by the Rulemaking Petition must be derived from the AQCA.

49. In the AQCA, the Legislature delegated authority to EIB "to attain and maintain national ambient air quality standards" and "to prevent or abate air pollution . . . within the geographic area of the . . . [EIB's] jurisdiction." NMSA 1978, § 74-2-5(A) & (B).

50. EPA has not adopted a national ambient air quality standard for GHG. Thus, the Petition is not necessary to "attain and maintain national ambient air quality standards." *Id.*

51. Because there is no national ambient air quality standard for GHG, EIB's authority under the AQCA to promulgate GHG regulations, as sought in the Rulemaking Petition, must arise from its authority "to prevent or abate air pollution . . . within the geographic area" of its jurisdiction. *Id.*

52. Before EIB can regulate emissions of a particular air contaminant, it must first determine the quantity and a duration at which that air contaminant becomes "air pollution" within the meaning of the AQCA. *See* NMSA 1978, § 74-2-2(B). Under the AQCA, the EIB makes that determination by adopting an ambient air quality standard for that contaminant.

53. Adoption of an ambient air quality standard setting the level at which GHG is considered "air pollution" is therefore a necessary prerequisite to the exercise of EIB's authority to promulgate regulations limiting GHG.

54. EIB has not determined the quantity and duration at which GHG becomes "air pollution" under the AQCA. Nor has EIB established an air quality standard for GHG.

55. The Rulemaking Petition does not seek to have EIB determine the quantity and duration at which GHG becomes “air pollution” under the AQCA. Nor does the Rulemaking Petition request that EIB establish an air quality standard for GHG.

56. The Rulemaking Petition seeks to establish a statewide GHG emissions cap and implement that cap through emission limits in construction and operating permits.

57. The AQCA requires the EIB to adopt an ambient air quality standard for GHG before it can adopt or consider the Rulemaking Petition.

58. Because EIB has not established an ambient air quality standard for GHG, EIB has no authority to adopt the regulations proposed in the Rulemaking Petition.

59. EIB is prohibited from considering a petition which requests EIB to take actions that are beyond its authority.

60. EIB has no authority to consider the Rulemaking Petition because EIB has no authority to grant the relief requested in that Petition.

61. Plaintiffs are entitled to the judgment of this Court declaring that EIB lacks statutory authority to promulgate a statewide cap on GHG emissions and the proposed changes to existing construction and operating permitting regulations as proposed in the Rulemaking Petition.

62. Plaintiffs will suffer irreparable harm, and otherwise have no adequate remedy at law, if EIB continues to pursue the adoption of regulations which are beyond its statutory authority.

63. Plaintiffs are entitled to preliminary and permanent injunctive relief prohibiting EIB from conducting further proceedings on the Rulemaking Petition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter its order:

1. Declaring that EIB lacks authority under existing law to adopt the regulations proposed in the Rulemaking Petition setting a statewide cap on GHG emissions in the absence of an ambient air quality standard for GHG;
2. Granting preliminary and permanent injunctions enjoining the EIB from conducting further proceedings on the Rulemaking Petition;
3. Awarding Plaintiffs their costs.
4. Granting such additional relief as the Court deems just and proper.

Respectfully Submitted,

MONTGOMERY & ANDREWS, P.A.

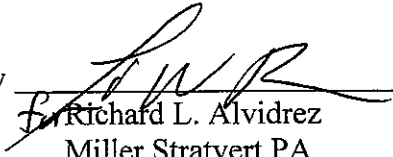
By: 

Louis W. Rose
Jeffrey J. Wechsler
Lara Katz
Montgomery & Andrews, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873

*Attorneys for Plaintiffs Senator Carroll H. Leavell,
Senator Gay G. Kernan, Representative Donald E.
Bratton, New Mexico Oil and Gas Association,
Dairy Producers of New Mexico, New Mexico Rural
Electric Cooperative Association, Tri-State
Generation and Transmission Association, Inc.,
New Mexico Farm & Livestock Bureau, and New
Mexico Petroleum Marketers Association*

and

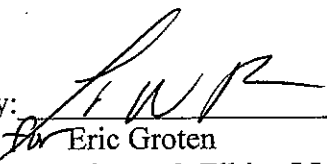
MILLER STRATVERT P.A.

By 
Richard L. Alvidrez
Miller Stratvert PA
P.O. Box 25687
Albuquerque, NM 87125-0687
(505) 842-4737

Attorneys for Public Service Company of New Mexico

and

VINSON & ELKINS LLP

By: 
Eric Groten
Vinson & Elkins LLP
2801 Via Fortuna, Suite 100
Austin, TX 78746
(512) 542-8709

Attorneys for El Paso Electric Company

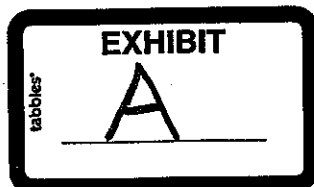
**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

CORRECTED PETITION TO ADOPT NEW)
REGULATIONS AND TO AMEND VARIOUS)
SECTIONS OF TITLE 20, CHAPTER 2, PARTS)
1, 2, 70, AND 72 OF THE NEW MEXICO)
ADMINISTRATIVE CODE FOR THE PURPOSE)
OF CREATING A STATEWIDE CAP ON)
GREENHOUSE GAS EMISSIONS AND)
PROMULGATING OTHER REQUIREMENTS)
RELATED THERETO)
and)
REQUEST FOR PUBLIC HEARING)

Pursuant to 20.1.1.300 NMAC, New Energy Economy, Inc. ("Petitioner") petitions the Environmental Improvement Board ("EIB") to adopt new regulations and to amend existing regulations, as set out in detail below, for the purpose of promulgating a statewide cap on greenhouse gas emissions. The Petitioner requests that EIB set a public hearing to consider evidence in support of this Petition and, at the conclusion of such hearing, that it adopt new regulations and amend its existing regulations as requested herein.

I. STATEMENT OF REASONS: The Board should grant this Petition and adopt the proposed regulatory changes for the following reasons:

A. The world scientific community has long acknowledged the substantial evidence of unabated global warming caused by anthropogenic emissions of Green House Gases (GHGs). It is well-documented that Global warming is already causing adverse impacts on the human and natural environment, including New Mexico. These impacts will, unless abated, increase in severity over time. *See, e.g., United Nations, Intergovernmental Panel on Climate Change (IPCC), Reports, and U.S. Global Change*



Research Program, *Report of the Southwest Regional Assessment Group: Preparing for a Climate Change* (2000).

B. The IPCC has concluded that developed countries must reduce emissions 25-40% below 1990 levels by 2020 in order to stabilize CO₂ levels at 450ppm, which is still substantially above pre-industrial levels. IPCC, *FOURTH ASSESSMENT: WORKING GROUP III REPORT, Mitigation of Climate Change*, Ch.13.3.3.3, Box 13.7 at 776. (2007). James Hanson of NASA's Goddard Institute for Space Studies and other notable climate scientists argue that atmospheric levels of CO₂ must be reduced even further—to 350 ppm—in order to avoid the most catastrophic consequences of global warming. Hansen, J., et al., *Target atmospheric CO₂: Where Should Humanity Aim?*, 2 *Open Atmos. Sci. J.* 217 (2008).

C. If New Mexico and other jurisdictions fail to substantially and timely reduce their emissions of GHGs, New Mexico and the world will suffer substantial and potentially irreversible catastrophic economic, health and environmental consequences. These consequences for New Mexico and the Southwest Region include, but are not limited to:

1. Increased variability in the amount of precipitation;
2. Increasing summer temperatures;
3. Increased flooding and floods of greater intensity and resulting threats to public health, the environment and property;
4. Increased drought and water scarcity;

5. Changes to ecosystems affecting:

- a) production of additional vectors for transmission of dengue fever, encephalitis, and forms of Hantavirus;
- b) Increased production of flammable vegetation and greater likelihood of forest fires;
- c) Increased prevalence of certain species at the expense of predator species, e.g., rodents and insects that damage crops and provide vectors for the spread of infectious diseases;
- d) Extinction of plant and animal species that are unique to New Mexico and upon which humans and animals depend for food and other resources; and
- e) Degradation and depletion of water supplies.

II. **Statutory Authority:** EIB is authorized to grant this Petition pursuant to the Environmental Improvement Act, NMSA 1978, sections 74-1-1 et seq., and the Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq.

III. **Estimated Time of Hearing:** Three to five days.

IV. **Proposed Regulatory Changes (New Material is Underlined):**

- 1 1. **NEW REGULATION:**
- 2 **20.2.1.116 STATEWIDE GREENHOUSE GAS EMISSIONS LEVEL.**
- 3 **By January 1, 2010, the Department shall, after one or more public workshops,**
- 4 **with public notice, and an opportunity for all interested parties to comment,**
- 5 **determine what the statewide greenhouse gas emissions level was in 1990.**
- 6 **Unless preempted by federal law or expressly superseded by state law, the**

1 statewide greenhouse gas emissions limit shall be twenty-five percent (25%)
2 below 1990 emission levels, to be achieved by 2020. In order to ensure the
3 most accurate determination feasible, the Department shall evaluate the best
4 available scientific, technological, and economic information on greenhouse
5 gas emissions to determine the 1990 level of greenhouse gas emissions.

6 2. **PROPOSED AMENDMENTS (UNDERLINED) TO REGULATION**

7 **20.2.2.7.**

8 § 20.2.70.7. DEFINITIONS

9 In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part
10 the following definitions shall apply.

11 A. "*Administrator*" means the administrator of the United States environmental
12 protection agency (US EPA) or his or her designee.

13 B. "*Aerodynamic diameter*" means the diameter of a sphere of unit density which
14 behaves aerodynamically the same as the particle of the test substance. It is used to
15 predict where particles of different size and density may be deposited in the respiratory
16 tract.

17 C. "*Air contaminant*" means any airborne substance, including but not limited to, any
18 particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms,
19 radioactive material, any combination thereof or any decay or reaction product thereof.

20 D. "*Air pollution*" means the emission, except as such emission occurs in nature, into
21 the outdoor atmosphere of one or more air contaminants in such quantities and duration
22 as may with reasonable probability injure human health, animal or plant life, or as may
23 unreasonable interfere with the public welfare, visibility or the reasonable use of

1 property.

2 E. "Asbestos" includes chrysolite, crocidolite, amosite, anthophyllite, tremolite, and
3 actinolite.

4 F. "Board" means the New Mexico environmental improvement board or its successor
5 agency or authority.

6 G. "Carbon dioxide" means the chemical compound containing one atom of carbon
7 and two atoms of oxygen.

8 H. "Carbon dioxide equivalent," "CO2 equivalent" or "CO2e" means a measure for
9 comparing carbon dioxide with other GHGs, based on the quantity of those gases
10 multiplied by the appropriate global warming potential (GWP) factor and commonly
11 expressed as metric tons of carbon dioxide equivalent. GWP factors shall be provided by
12 department guidelines based on the recommendations of the Intergovernmental Panel on
13 Climate Change ("IPCC") or other credible scientific bodies.

14 HI. "Carbon monoxide" means the chemical compound containing one atom of carbon
15 and one atom of oxygen.

16 J. "Climate nuisance" means (1) causing or substantially contributing to an
17 exceedance of any applicable allowance, cap, or other limitation on greenhouse gas
18 emissions imposed under state or federal law; or (2) failing to implement cost-effective
19 means that could substantially reduce the annual emission of greenhouse gases from a
20 source, thereby preventing the source from unreasonably contributing to the
21 accumulation of greenhouse gases in the atmosphere.

22 KI. "Department" means the New Mexico environment department or its successor
23 agency or authority, as represented by the department secretary or his or her designee.

1 KL. "Direct emissions of greenhouse gases" means emissions from sources at the
2 source.

3 JM. "Federal act" means the Federal Clean Air Act, as amended, 42 U.S.C. sections
4 7401 et seq.

5 NK. "Flue" means, any duct for air, gases, or the like, such as a stack or chimney.

6 OL. "Fugitive dust" or "fugitive particulate matter" means particulate emissions which
7 escape to the atmosphere due to leakage; materials handling, transfer or storage; travel
8 over unpaved roads or parking areas; or other industrial activities, and which are not
9 ducted through exhaust systems.

10 PM. "Greenhouse gas" means any of the following: carbon dioxide, methane, nitrous
11 oxide, hydrofluorocarbons, perfluorocarbons or sulfur hexafluoride.

12 QN. "Heavy metal" means any metal having an atomic number greater than 21.

13 RQ. "Hydrofluorocarbons" means gaseous chemical compounds containing only
14 hydrogen, carbon, and fluorine atoms.

15 SP. "Hydrogen sulfide" means the chemical compound containing two atoms of
16 hydrogen and one atom of sulfur.

17 TQ. "Indirect emissions of greenhouse gases" means emissions that are a consequence
18 of the operation of the source, but which occur at a source owned or controlled by
19 another entity.

20 UQ. "Kraft pulp" means the fibrous cellulose material produced in a kraft mill.

21 VR. "Lead" means elemental lead; alloys in which one of the elements is lead; or
22 compounds containing lead, which are measured as elemental lead.

23 WS. "Methane" means the chemical compound containing one atom of carbon and

1 four atoms of hydrogen.

2 XƦ. "*mg/m³*" means milligrams per cubic meter.

3 YŦ. "*Nitrogen dioxide*" means the chemical compound containing one atom of
4 nitrogen and two atoms of oxygen, for the purposes of ambient determinations. The term
5 "nitrogen dioxide," for the purposes of stack emissions monitoring, shall include nitrogen
6 dioxide (the chemical compound containing one atom of nitrogen and two atoms of
7 oxygen), nitric oxide (the chemical compound containing one atom of nitrogen and one
8 atom of oxygen), and other oxides of nitrogen which may test as nitrogen dioxide.

9 ZV. "*Nitrous oxide*" means the chemical compound containing two atoms of nitrogen
10 and one atom of oxygen.

11 AAW. "*Non-methane hydrocarbons*" means any combination of hydrocarbons
12 (chemical compounds consisting of hydrogen and carbon) excluding only the molecule
13 methane.

14 ABX. "*Ozone*" means the chemical compound having the molecular composition of
15 three oxygen atoms.

16 ACY. "*Particulate matter*" means any airborne, finely divided solid or liquid material
17 with an aerodynamic diameter smaller than 100 micrometers.

18 ADZ. "*Particulate matter emissions*" means all finely divided solid or liquid material,
19 other than uncombined water, emitted to the ambient air as measured by: applicable
20 reference methods; an equivalent or alternative method specified by the administrator; or
21 a test method specified in the New Mexico state implementation plan.

22 AEA. "*Perfluorocarbons*" means gaseous chemical compounds containing only carbon
23 and fluorine atoms.

1 AFB. "*Person*" means any individual; partnership; corporation; association;
2 municipality; the state or political subdivision of the state; and any agency, department,
3 or instrumentality of the United States and any of their officers, agents, or employees.

4 AGE. "*Photochemical oxidants*" means those oxidizing chemical compounds which
5 are the products of photo initiated reactions involving organic compounds and nitrogen
6 oxides, consisting primarily of ozone and peroxyacetyl nitrate (PAN).

7 AHD. "*PM10*" means particulate matter with an aerodynamic diameter less than or
8 equal to a nominal 10 micrometers.

9 AIE. "*PM10 emissions*" means finely divided solid or liquid material with an
10 aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the
11 ambient air, as measured by: an applicable reference method; an equivalent or alternative
12 method specified by the EPA administrator; or a test method specified in the New
13 Mexico state implementation plan.

14 AIF. "*ppm*" means parts per million by volume.

15 AKG. "*Ringelmann scale*" means the grading of opacity, appearance, density or shade
16 of a smoke emission, in determining the light-obscuring power of smoke.

17 ALH. "*Schedule of compliance*" means a schedule or timetable, acceptable to the
18 board, which clearly sets out in detail, the steps to be taken in achieving the objectives of
19 a regulation or standard.

20 AMI. "*Secretary*" means the secretary of the New Mexico environment department or
21 his or her designee.

22 ANJ. "*Smoke*" means small gas-borne particles resulting from incomplete combustion,
23 consisting predominantly, by not exclusively, of carbon, soot and combustible material.

1 AOK. "Sulfur dioxide" means the chemical compound containing one atom of sulfur
2 and two atoms of oxygen, for the purposes of ambient determinations. The term sulfur
3 dioxide, for the purposes of stack emissions monitoring, shall include sulfur dioxide
4 (chemical compound containing one atom of sulfur and two atoms of oxygen), and other
5 oxides of sulfur which may test as sulfur dioxide.

6 APL. "Sulfur hexafluoride" means the chemical compound containing one atom of
7 sulfur and six atoms of fluorine.

8 AQM. "Total reduced sulfur" means any combination of sulfur compounds, except
9 sulfur dioxide and free sulfur, which test as total reduced sulfur, including, but not
10 limited to, hydrogen sulfide, methyl mercaptan, and ethyl mercaptan.

11 ARN. "Total suspended particulates (TSP)" means particulate matter as measured by
12 the method described in 40 CFR Part 50, Appendix B.

13 ASQ. "ug/m3" means micrograms per cubic meter.

14 ATP. "US EPA" means the United States environmental protection agency.

15 AUQ. "Volatile organic compound (VOC)" means any organic compound which
16 participates in atmospheric photochemical reactions; that is, any organic compound other
17 than those which the administrator designates as having negligible photochemical
18 reactivity.

19 3. **PROPOSED AMENDMENTS (UNDERLINED) TO REGULATION**

20 **20.2.70.300 (D).**

21 § 20.2.70.300. PERMIT APPLICATIONS

22 ...

23 D. Content of application. Any person seeking a permit under this part shall do so by

1 filing a written application with the department. The applicant shall submit three (3)
2 copies of the permit application, or more, as requested by the department. An applicant
3 may not omit information needed to determine the applicability of, or to impose, any
4 applicable requirement, or to evaluate the fee amount required under 20.2.71 NMAC
5 (operating permit emission fees). Fugitive emissions shall be included in the permit
6 application in the same manner as stack emissions, regardless of whether the source
7 category in question is included in the list of sources contained in the definition of major
8 source. All applications shall meet the following requirements.

9 (1) Be made on forms furnished by the department, which for the acid rain portions of
10 permit applications and compliance plans shall be on nationally-standardized forms to the
11 extent required by regulations promulgated under Title IV of the federal act.

12 (2) State the company's name and address (and, if different, plant name and address),
13 together with the names and addresses of the owner(s), responsible official and the
14 operator of the source, any subsidiaries or parent companies, the company's state of
15 incorporation or principal registration to do business and corporate or partnership
16 relationship to other permittees subject to this part, and the telephone numbers and names
17 of the owners' agent(s) and the site contact(s) familiar with plant operations.

18 (3) State the date of the application.

19 (4) Include a description of the source's processes and products (by standard industrial
20 classification code) including any associated with alternative scenarios identified by the
21 applicant, and a map, such as the 7.5 minute topographic quadrangle map published by
22 the United States geological survey or the most detailed map available showing the exact
23 location of the source. The location shall be identified by latitude and longitude or by

1 UTM coordinates.

2 (5) For all emissions of all air pollutants for which the source is major and all emissions
3 of regulated air pollutants, provide all emissions information, calculations and
4 computations for the source and for each emissions unit, except for insignificant activities
5 (as defined in 20.2.70.7 NMAC). This shall include:

6 (a) a process flow sheet of all components of the facility which would be involved in
7 routine operations and emissions;

8 (b) identification and description of all emissions points in sufficient detail to
9 establish the basis for fees and applicability of requirements of the state and federal acts;

10 (c) emissions rates in tons per year, pounds per hour and in such terms as are
11 necessary to establish compliance consistent with the applicable standard reference test
12 method;

13 (d) specific information such as that regarding fuels, fuel use, raw materials, or
14 production rates, to the extent it is needed to determine or regulate emissions;

15 (e) identification and full description, including all calculations and the basis for all
16 control efficiencies presented, of air pollution control equipment and compliance
17 monitoring devices or activities;

18 (f) the maximum and standard operating schedules of the source, as well as any work
19 practice standards or limitations on source operation which affect emissions of regulated
20 pollutants;

21 (g) if requested by the department, an operational plan defining the measures to be
22 taken to mitigate source emissions during startups, shutdowns and emergencies;

23 (h) other relevant information as the department may reasonably require or which are

1 required by any applicable requirements (including information related to stack height
2 limitations developed pursuant to Section 123 of the federal act); and

3 (i) for each alternative operating scenario identified by the applicant, all of the
4 information required in Subparagraphs (a) through (h) above, as well as additional
5 information determined to be necessary by the department to define such alternative
6 operating scenarios.

7 (6) Disclose the sources, types, locations, quantities, and rates of all direct emissions of
8 greenhouse gases, including a detailed description of the quantification and estimation
9 methodologies. If available, direct emissions data shall be provided. Applicable
10 emissions quantification procedures and methods of estimation provided by the
11 department shall be used if available. If requested by the department, the applicant shall
12 provide the same information relating to indirect emissions of greenhouse gases.
13 Reporting of greenhouse gases emissions pursuant to Part 20.2.73 or Part 20.2.87 shall
14 satisfy this requirement.

15 (7) Provide a detailed description of all measures, equipment, plans, etc. that will be
16 installed, used or implemented to minimize or reduce direct and indirect emissions of
17 greenhouse gases.

18 (68) Provide a list of insignificant activities (as defined in 20.2.70.7 NMAC) at the
19 source, their emissions, to the extent required by the department, and any information
20 necessary to determine applicable requirements.

21 ~~(7)9~~ Provide a citation and description of all applicable air pollution control
22 requirements, including:

23 (a) sufficient information related to the emissions of regulated air pollutants to verify

1 the requirements that are applicable to the source; and

2 (b) a description of or reference to any applicable test method for determining
3 compliance with each applicable requirement.

4 (810) Provide an explanation of any proposed exemptions from otherwise applicable
5 requirements.

6 (911) Provide other specific information that may be necessary to implement and
7 enforce other requirements of the state or federal acts or to determine the applicability of
8 such requirements, including any requirements relating to greenhouse gas emissions and
9 any information necessary to collect any permit fees owed under 20.2.71 NMAC
10 (operating permit emission fees).

11 (4012) Provide certification of compliance, including all of the following.

12 (a) A certification, by a responsible official consistent with Subsection E of
13 20.2.70.300 NMAC, of the source's compliance status for each applicable requirement.

14 For national ambient air quality standards, certifications shall be based on the following.

15 (i) For first time applications, this certification shall be based on modeling
16 submitted with the application for a permit under 20.2.72 NMAC.

17 (ii) For permit renewal applications, this certification shall be based on compliance
18 with the relevant terms and conditions of the current operating permit.

19 (b) A statement of methods used for determining compliance, including a description
20 of monitoring, recordkeeping, and reporting requirements and test methods.

21 (c) A statement that the source will continue to be in compliance with applicable
22 requirements for which it is in compliance, and will, in a timely manner or at such
23 schedule expressly required by the applicable requirement, meet additional applicable

1 requirements that become effective during the permit term, including requirements
2 relating to greenhouse gas emissions.

3 (d) A schedule for submission of compliance certifications during the permit term, to
4 be submitted no less frequently than annually, or more frequently if specified by the
5 underlying applicable requirement or by the department.

6 (e) A statement indicating the source's compliance status with any enhanced
7 monitoring and compliance certification requirements of the federal act.

8 (H13) For sources that are not in compliance with all applicable requirements at the
9 time of permit application, provide a compliance plan that contains all of the following.

10 (a) A description of the compliance status of the source with respect to all applicable
11 requirements.

12 (b) A narrative description of how the source will achieve compliance with such
13 requirements for which it is not in compliance.

14 (c) A schedule of remedial measures, including an enforceable sequence of actions
15 with milestones, leading to compliance with such applicable requirements. The schedule
16 of compliance shall be at least as stringent as that contained in any consent decree or
17 administrative order to which the source is subject, and the obligations of any consent
18 decree or administrative order shall not be in any way diminished by the schedule of
19 compliance. Any such schedule of compliance shall be supplemental to, and shall not
20 prohibit the department from taking any enforcement action for noncompliance with, the
21 applicable requirements on which it is based.

22 (d) A schedule for submission of certified progress reports no less frequently than
23 every six (6) months.

1 (e) For the portion of each acid rain source subject to the acid rain provisions of Title
2 IV of the federal act, the compliance plan content requirements specified in this
3 paragraph, except as specifically superseded by regulations promulgated under Title IV
4 of the federal act with regard to the schedule and method(s) the source will use to achieve
5 compliance with the acid rain emissions limitations.

6 4. **PROPOSED AMENDMENTS (UNDERLINED) TO REGULATION**
7 **20.2.70.302(A)(1).**

8 § 20.2.70.302. PERMIT CONTENT

9 A. Permit conditions.

10 (1) The department shall specify conditions upon a permit, including emission
11 limitations and sufficient operational requirements and limitations, to assure compliance
12 with all applicable requirements at the time of permit issuance or as specified in the
13 approved schedule of compliance. The permit shall:

14 (a) for major sources, include all applicable requirements for all relevant emissions
15 units in the major source;

16 (b) for any non-major source subject to 20.2.70.200 NMAC -- 20.2.70.299 NMAC,
17 include all applicable requirements which apply to emissions units that cause the source
18 to be subject to this part;

19 (c) specify and reference the origin of and authority for each term or condition, and
20 identify any difference in form as compared to the applicable requirement upon which the
21 term or condition is based;

22 (d) include a severability clause to ensure the continued validity of the various permit
23 requirements in the event of a challenge to any portions of the permit;

1 (e) include a provision to ensure that the permittee pays fees to the department
2 consistent with the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees);
3 and

4 (f) for purposes of the permit shield, identify any requirement specifically identified
5 in the permit application or significant permit modification that the department has
6 determined is not applicable to the source, and state the basis for any such determination.

7 (g) require that the emission of greenhouse gases be strictly limited to the sources,
8 types, locations, quantities and rates specified in the approved permit application, subject
9 to further reductions, limitations or requirements as may be imposed pursuant to the
10 regulations of the board or other state and/or federal law;

11 (h) require that any alleged voluntary reduction of greenhouse gas emissions to be
12 claimed as a credit or offset be described, quantified and reported to the department
13 within three (3) months of such reduction, or as may be required by the law under which
14 the credit or offset will be claimed;

15 (i) require that the permittee comply with all applicable regulations of the board and
16 other state and/or federal law relating to greenhouse gases, whether enacted and
17 promulgated before or after the issuance of the permit, including but not limited to such
18 regulations and laws relating to greenhouse gas emissions reporting, quantification,
19 measurement, monitoring, verification, recordkeeping, and caps;

20 (j) contain an acknowledgment that the permittee's emissions of greenhouse gases
21 may be subject to further regulation, which may include substantial reduction, offset,
22 quantification, reporting and other requirements imposed by regulation of the board or
23 other state and/or federal law, consistent with state, federal and international efforts to

1 mitigate and minimize the effects of global warming and climate change. In the event of
2 a conflict between a permit condition and a requirement imposed by other law, the more
3 stringent requirement shall apply; and

4 (k) impose conditions regarding the emission of greenhouse gases, including
5 initial emission limits and/or systematic reductions in emissions, that the Department
6 deems necessary to prevent the source, either alone or in combination with other sources,
7 from becoming a climate nuisance. The Department shall impose such additional permit
8 conditions as it deems necessary to prevent the emission of greenhouse gases at nuisance
9 levels. Entities and facilities whose annual emissions are less than 10,000 metric tons of
10 CO₂e shall not be subject to this provision.

11 **5. PROPOSED AMENDMENTS (UNDERLINED) TO REGULATION**

12 **20.2.70.405(A)(1).**

13 **§ 20.2.70.405. PERMIT REOPENING, REVOCATION OR TERMINATION**

14 **A. Action by the Department:**

15 (1) Each permit shall include provisions specifying the conditions under which the
16 permit will be reopened prior to the expiration of the permit. A permit shall be reopened
17 and revised for any of the following, and may be revoked and reissued for subparagraphs
18 (c) or (d) of the following:

19 (a) Additional applicable requirements under the Federal Act become applicable to a
20 major source with a remaining permit term of three (3) or more years. Such a reopening
21 shall be completed not later than eighteen (18) months after promulgation of the
22 applicable requirement. No such reopening is required if the effective date of the
23 requirement is later than the date on which the permit is due to expire, unless the original

1 permit or any of its terms or conditions have been extended past the expiration date of the
2 permit pursuant to subsection D of 20.2.70.400 NMAC;

3 (b) Additional requirements (including excess emissions requirements) become
4 applicable to a source under the acid rain program promulgated under title IV of the
5 Federal Act. Upon approval by the Administrator, excess emissions offset plans shall be
6 deemed to be incorporated into the permit;

7 (c) The Department or the Administrator determines that the permit contains a
8 material mistake or that inaccurate statements were made in establishing the terms or
9 conditions of the permit; ~~or~~

10 (d) The Department or the Administrator determines that the permit must be revised
11 or revoked and reissued to assure compliance with the applicable requirements; or

12 (e). The Department determines that the permittee's direct or indirect emissions of
13 greenhouse gases, either alone or in combination with other sources, has or will constitute
14 or contribute to a climate nuisance. The Department shall reopen the permit to impose
15 such additional permit conditions as it deems necessary to systematically reduce the
16 annual emission of greenhouse gases to below nuisance levels in the shortest time
17 practicable. Entities and facilities whose annual emissions are less than 10,000 metric
18 tons of CO₂e shall not be subject to this provision.

19 5. **PROPOSED AMENDMENTS (UNDERLINED) TO REGULATION**

20 **20.2.72.203.**

21 § 20.2.72.203. CONTENTS OF APPLICATIONS

22 A. Any person seeking a permit under Subsection A of 20.2.72.200 NMAC shall do so
23 by filing a written application with the Department. ... All applications shall, as required

1 by the Department:

2 (1) Be filled out on the form(s) furnished by the Department;

3 (2) State the applicant's name and address, together with the names and addresses of all
4 owners or operators of the source, and the applicant's state of incorporation or principal
5 registration to do business;

6 (3) Provide all information, including:

7 (a) All calculations and computations, to describe the specific chemical and physical
8 nature and to estimate the maximum quantities of any regulated air contaminants the
9 source will emit through routine operations after construction, modification or installation
10 is completed, and estimate maximum potential emissions during malfunction, startup,
11 shutdown. With respect to a toxic air pollutant as defined by Subsection H of 20.2.72.401
12 NMAC this requirement only applies when the toxic air pollutant is emitted in such a
13 manner that a permit is required under the provisions of 20.2.72.400 NMAC --
14 20.2.72.499 NMAC;

15 (b) Disclose the sources, types, locations, quantities, and rates of all direct emissions
16 of greenhouse gases, including a detailed description of the quantification and estimation
17 methodologies. If available, direct emissions data shall be provided. Applicable
18 emissions quantification procedures and methods of estimation provided by the
19 department shall be used if available. If requested by the department, the applicant shall
20 provide the same information relating to indirect emissions of greenhouse gases; and

21 (c) Provide a detailed description of all measures, equipment, plans, etc. that will be
22 installed, used or implemented to minimize or reduce direct and indirect emissions of
23 greenhouse gases.

1 6. PROPOSED AMENDMENTS (UNDERLINED) TO REGULATION

2 20.2.72.210(B).

3 § 20.2.72.210. PERMIT CONDITIONS

4 ...

5 B. The Department shall, as appropriate, specify conditions upon a permit, including:

6 (1) Placement of individual emission limits determined on a case-by-case basis on the
7 source for which the permit is issued, but such individual emission limits shall be only as
8 restrictive as the more stringent of the following:

9 (a) The extent necessary to meet the requirements of the Air Quality Control Act and
10 the Federal Act; or

11 (b) The emission rate specified in the permit application;

12 (2) A requirement that such source install and operate control technology, determined
13 on a case-by-case basis, sufficient to meet the requirements of the Air Quality Control
14 Act and the Federal Act and regulations promulgated under either;

15 (3) Compliance with applicable NSPS and NESHAP;

16 (4) Imposition of reasonable restrictions and limitations other than restrictions and
17 limitations relating to emission limits or emission rates; or

18 (5) Any combination of the above;

19 (6) In the case of a modification, the requirements of Subsection B of 20.2.72.210
20 NMAC apply only to the facility or facilities involved in such modification.

21 (7) require that the direct and indirect emission of greenhouse gases be strictly limited
22 to the sources, types, locations, quantities and rates specified in the approved permit

1 application, subject to further reductions, limitations or requirements as may be imposed
2 by the regulations of the board or other state and/or federal law;

3 (8) require that any alleged voluntary reduction of greenhouse gas emissions to be
4 claimed as a credit or offset be described, quantified and reported to the department
5 within three (3) months of such reduction, or as may be required by the law under which
6 such credit or offset will be claimed;

7 (9) require that the permittee comply with all applicable regulations of the board and
8 other state and/or federal law relating to greenhouse gases, whether enacted and
9 promulgated before or after the issuance of the permit, including but not limited to such
10 regulations and laws relating to greenhouse gas emissions reporting, quantification,
11 measurement, monitoring, verification, recordkeeping, and caps;

12 (10) contain an acknowledgment that the permittee's emissions of greenhouse gases
13 may be subject to further regulation, which may include substantial reduction, offset,
14 quantification, reporting and other requirements imposed by regulation of the board or
15 other state and/or federal law, consistent with state, federal and international efforts to
16 mitigate and minimize the effects of global warming and climate change. In the event of
17 a conflict between a permit condition and a requirement imposed under other law, the
18 more stringent requirement shall apply; and

19 (11) impose conditions regarding the emission of greenhouse gases, including initial
20 emission limits and/or systematic reductions in emissions, that the Department deems
21 necessary to prevent the source, either alone or in combination with other sources, from
22 becoming a climate nuisance. The Department shall impose such additional permit
23 conditions as it deems necessary to prevent the emission of greenhouse gases at nuisance

1 levels. Entities and facilities whose annual emissions are less than 10,000 metric tons of
2 CO2e shall not be subject to this provision.

3 **7. NEW REGULATION (UNDERLINED)**

4 § 20.2.72.219. PERMIT REVISIONS AND REOPENING

5 ...

6 D. A permit shall be reopened if the Department determines that the permittee's
7 direct or indirect emissions of greenhouse gases, either alone or in combination with
8 other sources, has or will constitute or contribute to a climate nuisance. The Department
9 shall reopen the permit to impose such additional permit conditions as it deems necessary
10 to systematically reduce the annual emission of greenhouse gases to below nuisance
11 levels in the shortest time practicable. Entities and facilities whose annual emissions are
12 less than 10,000 metric tons of CO2e shall not be subject to this provision.

13 **6. PROPOSED AMENDMENTS (UNDERLINED) TO REGULATION**

14 20.2.72.301(C).

15 § 20.2.72.301. APPLICABILITY

16 ...

17 C. The following sections and subsections of 20.2.72.200 NMAC -- 20.2.72.299 NMAC
18 apply to permit applications submitted pursuant to 20.2.72.300 NMAC -- 20.2.72.399
19 NMAC: Subsections A, B and E through H of 20.2.72.200 NMAC, 20.2.72.202 NMAC,
20 Subsections A (3) (b) and (c) of 20.2.72.203, 20.2.72.204 NMAC, 20.2.72.205 NMAC,
21 Subsection C of 20.2.72.206 NMAC, Subsections D through G of 20.2.72.207 NMAC,
22 20.2.72.208 NMAC, 20.2.72.209 NMAC, 20.2.72.210 NMAC, 20.2.72.211 NMAC,
23 20.2.72.212 NMAC, 20.2.72.214 NMAC and 20.2.72.215 NMAC. The remainder of

- 1 20.2.72.200 NMAC -- 20.2.72.299 NMAC does not apply to applications submitted
- 2 pursuant to 20.2.72.300 NMAC -- 20.2.72.399 NMAC.

V. CONCLUSION

Supporting evidence for the above requested changes to EIB regulations will be provided at a public hearing. Petitioners contend, as stated above, that the requested changes are consistent with the Board's statutory authority and responsibility and that the requested changes are essential to safeguard the human and natural environment of New Mexico.

WHEREFORE, Petitioner respectfully requests EIB to set a public hearing to hear evidence in support of this Petition and, at the conclusion of this hearing, to adopt new regulations and amend existing regulations as requested herein.

Respectfully submitted:

NEW MEXICO ENVIRONMENTAL LAW
CENTER

BY: 

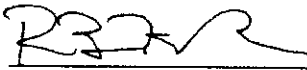
Bruce Frederick
Douglas Meiklejohn
Eric Jantz
1405 Luisa Street, Ste. 5
Santa Fe, NM 87505
(909) 989-9022
bfredericks@nmelc.org

Of Counsel:
Jonathan M. Block

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on the ^{2/2/2009}~~December 19, 2008~~, a true and correct copy of the foregoing paper was hand-delivered to the Environmental Improvement Board (10 copies) and mailed to Zachary A. Shandler, NM Attorney General, P.O. Box 1508, Santa Fe, New Mexico 87504-1508.


Bruce Frederick