

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

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STATE OF NEW MEXICO, ex rel.,
GEORGE J. HANOSH, JOHN ARTHUR SMITH, TIMOTHY Z. JENNINGS, JIM R. TRUJILLO,
BENDER DEALER GROUP, INC., a New Mexico corporation,
BORMAN MOTOR COMPANY LAS CRUCES, LLC, a
New Mexico limited liability company; DESERT SUN MOTORS, INC.,
a Delaware corporation; JACK KEY MOTOR COMPANY, INC., a
New Mexico corporation; JACK KEY MOTOR COMPANY OF
ALAMOGORDO, LLC, a New Mexico limited liability company;
and SCOTT PIPKIN,

COURT
COUNTY, NM
SANCHEZ

THIS CASE HAS BEEN ASSIGNED TO
JUDGE ROBERT E. ROBLES.

Plaintiffs,

v.

No.

CV-2007-2708

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

For their complaint against defendants, the plaintiffs allege and state:

PARTIES

1. George J. Hanosh is a resident of Cibola County. He is the duly elected State Representative for House District 6.
2. John Arthur Smith is a resident of Luna County. He is the duly elected State Senator for Senate District 35.
3. Timothy Z. Jennings is a resident of Chavez County. He is the duly elected State Senator for Senate District 32.
4. Jim R. Trujillo is a resident of Santa Fe County. He is the duly elected State Representative for House District 45.

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5. As members of the New Mexico Legislature, the legislator plaintiffs have standing to bring this action, in order to preserve the constitutional separation of powers between the legislative and executive branches of the State, and to protect the citizens' constitutional right to representative self-government. They seek to protect the right of the Legislature and all of its members to make and modify the laws of the State. This action seeks to protect their legislative authority and prerogatives, which they exercise in common with other members of the Legislature, from being usurped or infringed by the defendant.

6. Bender Dealer Group, Inc. is a New Mexico corporation with its principal place of business in Clovis, New Mexico. Borman Motor Company Las Cruces, LLC is a New Mexico limited liability company with its principal place of business in Las Cruces, New Mexico. Desert Sun Motors, Inc. is a Delaware corporation with its principal place of business in Alamogordo, New Mexico. Jack Key Motor Company, Inc. is a New Mexico corporation with its principal place of business in Las Cruces, New Mexico. Jack Key Motor Company of Alamogordo, LLC is a New Mexico limited liability company with its principal place of business in Alamogordo, New Mexico. These auto dealers sell new vehicles. They will be directly and adversely affected by the uncertainty, costs, and confusion that will result if the Environmental Improvement Board ("EIB") adopts the proposed regulations.

7. Plaintiff Scott Pipkin is a resident of Curry County. He owns and operates a farm. As a farmer, and as a purchaser of trucks and automobiles, he will be directly and adversely affected by the increased cost, decreased choice, and unsuitability of the vehicles that will be required by the proposed regulations.

8. Plaintiffs Hanosh, Smith, Jennings, Trujillo and Pipkin are registered voters in New Mexico, so they also seek to protect the constitutional rights guaranteed to them and all other citizens by the Constitution of New Mexico, as set forth below.

9. The plaintiffs are proper parties to bring this action, which involves a matter of "general public interest." *See, e.g., State ex rel. Clark v. Johnson*, 120 N.M. 562, 904 P.2d 11 (1995); *State ex rel. Gomez v. Campbell*, 75 N.M. 86, 400 P.2d 956 (1965); *Hutcheson v. Gonzales*, 41 N.M. 474, 71 P.2d 140 (1937). The plaintiffs are acting as private attorneys general in protecting the rights of citizens generally, including the citizens' rights under the New Mexico Constitution to participate in the elective and legislative process by which the law is made.

10. The defendant EIB is an agency of the State of New Mexico, within the executive branch. The EIB is created, controlled, and limited by statute. In some areas, although not those at issue here, the EIB has authority from the Legislature to make regulations. EIB regulations are enforced by the Environmental Improvement Department ("EID," sometimes also known as the "Environment Department"). In this instance the EIB has disregarded the limitations, controls, and prohibitions placed upon it by the Legislature. It is attempting to act beyond its statutory authority.

11. Although this complaint refers to federal law as necessary, it asserts claims based only on the laws and Constitution of New Mexico.

12. This Court has jurisdiction pursuant to NMSA 1978, § 38-3-2. Venue is proper under NMSA 1978, § 38-3-1.

13. **To protect New Mexico's air quality, the New Mexico Legislature has opted to follow the national standards for vehicle emissions set by the federal Environmental Protection Agency, rather than the stricter standards set by California.**

14. The federal Clean Air Act was first enacted in 1967. It has been amended many times since then, most notably in 1977 and 1990. The Clean Air Act gives the United States Environmental Protection Agency ("EPA") the authority to promulgate maximum levels for airborne pollutants, known as National Ambient Air Quality Standards ("NAAQS"). Once the EPA establishes the national standards for a particular pollutant, each state is responsible for developing plans to implement and enforce the EPA's standards. Each state must adopt a State Implementation Plan ("SIP") detailing the particular measures the state will take to ensure that the air within its borders does not contain more than federally determined acceptable levels of designated pollutants. If a geographic area exceeds the national standard for one or more of the pollutants specified by the EPA, it is designated a "nonattainment area," and a State or local agency must take steps to obtain compliance.

15. The Clean Air Act draws a distinction between stationary pollution sources, like factories and power plants, and movable sources, primarily motor vehicles. For stationary sources, states have considerable freedom to choose the methods to obtain compliance with national standards. For example, one coal-fired power plant might be allowed a higher level of emissions than another.

16. As regards motor vehicles, Congress recognized that the consequences would be chaotic if every state were allowed to promulgate its own regulations, since motor

vehicles are manufactured as standardized models which are sold across the country, by the millions. Moreover, motor vehicles move from state to state, unlike stationary sources. Therefore, Congress expressly preempted the states from adopting or enforcing admissions requirements for new motor vehicles. Every state must enforce the national standards set by the EPA, which identify each regulated pollutant and the acceptable parameters the vehicle can emit. In recognition of California's massive problems with auto pollution, the EPA granted California a preemption waiver allowing California, and only California, to devise standards that meet or exceed the national standards, if the EPA approves those more stringent standards.

17. In 1977 Congress amended the Clean Air Act to allow other states to adopt California's more stringent standards, if the EPA has granted California a waiver for those regulations. But other states must adopt regulations that are identical to California's. Another state cannot tinker with California's regulations, because Congress expressly prohibited any state from requiring "a third vehicle." 42 U.S.C. § 7507. Another state has only two choices: allow vehicles that meet the national standards, or allow only vehicles that comply with the national standards and also the stricter regulations promulgated by the California Air Resources Board ("CARB"), pursuant to California statute.

18. In 2002, the California Legislature enacted legislation expressly authorizing and directing the California Air Resources Board (CARB) to develop and adopt a regulation for the control of greenhouse gases (primarily carbon dioxide) by light-duty motor vehicles. Cal. Health & Safety Code § 43018.5, attached and incorporated as Exhibit 1 hereto. The California statute was a significant departure from the federal Clean Air Act, because

carbon dioxide is not a designated and regulated pollutant under the Clean Air Act. In accordance with the 2002 mandate from the California Legislature, CARB approved detailed regulations in 2004 and submitted them in 2005 for approval by the EPA. The EPA has not acted on California's request for a waiver, so on November 8, 2007 California filed a lawsuit in federal court to compel the EPA to either grant or deny California's request for a waiver. *State of California, et al. v. United States Environmental Protection Agency, et al.*, No. 1:07-CV-02024-RCL (D.D.C. filed Nov. 8, 2007). Meanwhile, several other states are considering adoption of the CARB standards and initiatives, which are sometimes called the "Clean Car Program" by its supporters.

19. The California regulations have three interrelated components: LEV II, ZEV, and greenhouse gas. The LEV II (Low Emissions Vehicle) regulations require lower emissions than the national standards set by the EPA. ZEV (zero emissions vehicle) is California's attempt to force new technology like battery electric vehicles or hydrogen fuel cell vehicles. The greenhouse gas regulation (GHG) sets standards for the emission of greenhouse gases (primarily carbon dioxide) which are currently not subject to EPA standards. One effect of the GHG regulation is to require a fuel economy standard that is more stringent than the federal mileage requirements. The National Highway Traffic Safety Administration ("NHTSA") sets "CAFE," or Corporate Average Fleet Economy standards, which are measured by the EPA. Congress and the federal agencies are also considering new initiatives in these areas, but they have not yet been enacted or promulgated.

20. The New Mexico Legislature originally enacted the Air Quality Control Act in 1967. Since then, the Legislature has enacted numerous changes to the statute, primarily

but not exclusively to comply with the national standards set by the EPA. Unlike California, New Mexico has not enacted a statute that authorizes and directs a state agency to promulgate emission standards that are stricter than the EPA's. On the contrary, the Legislature has explicitly incorporated the federal standards by reference, and limited the authority of the Environmental Improvement Board and the Environmental Improvement Division to attaining those standards. The Air Quality Control Act specifically requires that motor vehicles standards must be consistent with the federal standards, and that regulations shall be no more stringent than required by federal law and EPA regulations. *See* NMSA 1978, § 74-2-5, discussed below. The Air Quality Control Act also contains a preemption provision confining the authority of the EIB to matters not delegated to the federal government. *See* NMSA 1978, § 74-1-6, discussed below.

21. The executive branch in New Mexico cannot follow California, because the California Legislature has enacted statutes that explicitly authorize and direct the executive branch to promulgate vehicle standards that are more stringent than federal law requires, whereas the New Mexico Legislature has enacted statutes that explicitly prohibit the executive branch from promulgating standards that are more stringent than federal law requires. Although the adoption of CARB's regulations may be an option under federal law, it is not an option under New Mexico law as currently enacted. To adopt CARB's regulations, the New Mexico Legislature would have to pass a specific authorizing statute, as California did in 2002.

22. **In violation of the New Mexico Air Quality Control Act, the EIB is proposing to adopt California's vehicle emission regulations, which are more stringent than required by federal regulations.**

23. The proposed EIB regulations violate NMSA 1978, § 74-2-5 of the New Mexico Air Quality Control Act, which provides in pertinent part that “[r]egulations adopted by the environmental improvement board . . . may . . . include regulations . . . to achieve national ambient air quality standards in nonattainment areas; provided that such regulations . . . shall be no more stringent than but at least as stringent as required by the federal act and federal regulations . . . pertaining to prevention of significant deterioration and pertaining to nonattainment areas.” NMSA 1978, § 74-2-5(C) (emphasis added). The proposed EIB regulations violate this section of the Air Quality Control Act in several ways.

A. First, the proposed EIB regulations are more stringent than required by the federal act and regulations.

B. Second, the Legislature has limited EIB’s authority to achieving national ambient air quality standards. The California standards are not national standards, because they do not apply nationwide. All states (including California) must meet the national standards, which are set by the EPA.

C. Third, the proposed EIB regulations will do nothing to achieve the national standard in New Mexico’s only nonattainment area – less than 2 square miles in Anthony, New Mexico on the Texas border. *See* Anthony PM-10 Nonattainment Area Map, Exhibit 2 attached. The problem in Anthony is blowing dust from the desert, not auto pollution. Blowing dust sometimes surpasses the EPA PM-10 standard (particulate matter bigger than 10 microns). However, “the EPA concluded that emissions from the desert and managed rangelands are the overwhelming source of PM-10 in Anthony and that anthropogenic sources are insignificant emissions sources and do not require control measures.” *See* EPA

Air Regulations: State Implementation Plans, New Mexico Dona Ana County Anthony PM-10 Plan Summary, Exhibit 3 attached.

24. The proposed EIB regulations also violate NMSA 1978, § 74-2-5(D). That subsection provides: "Any regulation adopted pursuant to this section shall be consistent with federal law, if any, relating to control of motor vehicle emissions." The EIB regulations would violate this provision of the statute, because the EIB regulations would prohibit the sale and use of vehicles that comply with federal law.

25. Adoption of the EIB's proposed California regulations also violates NMSA 19778, § 74-1-6(E) of the Environmental Improvement Act. The EIB is attempting to give powers to the Environmental Improvement Department which exceed the powers granted by the Legislature. Section 74-1-6(E) provides that "The department shall have power to . . . serve as agent of the state in matters of environmental management and consumer protection not expressly delegated by law to another department, commission or political subdivision in which the United States is a party." (Emphasis added.) The setting of pollution standards for vehicle emissions has been delegated by federal and by state law to the United States Environmental Protection Agency. Section 74-1-6 expressly preempts and excludes the EID from defining auto emission standards. In the area of auto emissions, the Legislature has restricted the power of the EID and the EIB to the implementation and enforcement of national standards set by the EPA.

26. The New Mexico EIB is obligated by the federal and state clean air statutes to follow the rulings and interpretation of the federal EPA, not the California Air Resources

Board. The proposed regulations are therefore illegal, because they commit the state to the exercise of judgment and discretion by CARB, rather than the EPA.

27. If the EIB enacted the California regulations and the EID attempted to enforce them, these executive agencies would be acting beyond the statutory authority granted in NMSA 1978, § 74-2-5.2, and beyond the constitutional authority of the executive branch. Subsection C authorizes the agency to "enter into agreements and compacts with adjoining states and Indian tribes, where appropriate." However, California is not an adjoining state. Further, the adoption of California air quality law and regulations would require the adoption of an interstate compact, which requires passage of enabling legislation by the New Mexico Legislature and Congress. The executive branch has no authority to enter into compacts without legislative approval. *State ex rel. Clark v. Johnson.*

28. In some areas of environmental protection, the Legislature has given the EID broad discretion to consider all circumstances, such as injury to health, animal and plant life and the environment: the social, economic, and cultural effects of environmental degradation, along with technical practicability. *See* NMSA 1978, § 74-1-9(B). However, the Legislature has specified that these broad mandates and standards "do not apply to the promulgation of regulations under the Air Quality Control Act; or any other act in which specific standards are set forth for the board's consideration." NMSA 1978, § 74-1-9(C). The EPA sets the specific standards for auto emissions and for air pollution, and it is the task of the EIB and the EID to take the steps necessary to comply with those standards, not to devise its own motor vehicle standards.

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29. Under New Mexico law as currently enacted by the Legislature, the EIB and the EID do not have the legal authority to enact, implement and enforce the California regulations, because the New Mexico statutes would have to be extensively revised to duplicate California's scheme, and to make it enforceable. For example, the Legislature would have to amend the statute on motor vehicle registration to prevent residents from buying cars in other states. California cars generally cost more and do not perform as well in some respects. This creates a strong incentive for California residents to buy national standard cars in another state and import them into California. Therefore, California law prohibits the importation and registration of a federal standard car unless it has already been driven at least 7,500 miles. Cal. Health & Safety Code §§ 43156 and 39042. By contrast, New Mexico law has no such provision, and the Department of Motor Vehicles is required to register new vehicles that are purchased in other states, so long as they meet the current national emissions standard. *See* NMSA 1978, § 66-3-7. Therefore, if the EIB imposes the more stringent California standards on New Mexico, many New Mexicans would buy their new vehicles in adjoining states like Texas. This problem would be particularly acute for car dealers in border areas, where it is easy to drive a few miles to buy a car in another state, but it would affect dealers throughout the state. The EIB has no authority to change the car registration statute; only the Legislature can do that.

30. Because the federal Clean Air Act imposes national standards on vehicles sold in every state, New Mexico auto dealers are able trade vehicles with dealers in other states to meet a customer's demand for a particular vehicle. Approximately 10% of the new vehicles sold in New Mexico have been obtained from dealers in other states. Likewise,

New Mexico dealers trade their inventory with dealers in other states. If the EIB imposed the California standard, this swapping would be impossible, and the auto dealers and their customers would be damaged.

31. The EIB cannot adopt the California regulations, because the California regulations do not yet exist. California has merely proposed regulations which, due to federal preemption, have no legal force and effect unless and until a waiver is granted by the EPA. The EPA has not granted such a waiver, and it is doubtful that it will. On November 8, 2007, California filed suit to force the EPA to consider and act upon California's waiver request, *State of California, et al. v. United States Environmental Protection Agency, et al.*, No. 1:07-CV-02024-RCL (D.D.C. filed Nov. 8, 2007). The outcome of that lawsuit is speculative. Even if the federal court were to direct the EPA to consider and decide on the waiver request, the EPA might reject the request *in toto*, if the EPA believes that the California regulations are ill-advised.

32. Additionally, the EIB regulation commits the State of New Mexico to follow a regulation whose content is unknown. CARB has modified its regulations approximately 50 times in the past, and it will modify its proposed regulations in the future. And it is likely that the EPA, even if it does grant a waiver, will condition its waiver on significant changes in CARB's regulations. Therefore the EIB's proposed regulations are unlawful, because they commit the state to regulations whose requirements are unknown and unknowable. The proposed regulations are a "blank check" and completely delegate the EIB's authority, judgment and discretion to CARB, contrary to the New Mexico Clean Air Act, which requires the EIB to exercise its own judgment, and to deal with air quality problems as they

actually exist in New Mexico, not California. The proposed regulations are an unlawful abdication of EIB's statutory duties to formulate regulations that address the problems of air quality as they exist in New Mexico, not California or some other state.

33. **The EIB's proposed regulations are arbitrary, capricious, and contrary to reality.**

34. The proposed EIB regulations state "that 'California' shall mean 'New Mexico'" See NMAC 20.2.88.6 and 20.2.88.102(A). This is arbitrary, capricious, and contrary to reality. New Mexico is not California. As regards air quality, the problems in California are quite different than the problems in New Mexico, and so are the solutions to those problems.

35. For example, California has 15 nonattainment areas for the national standard for ozone. These nonattainment areas cover most of Southern California, the Central Valley, and the San Francisco Bay Area. The inhabitants in these areas total in the tens of millions. California has 2 nonattainment areas for the national PM2.5 standard – the Los Angeles/Orange County/Riverside area, and the San Joaquin Valley. The population in these areas exceeds 10 million people. At present, New Mexico has no persons living in nonattainment areas for ozone or PM2.5.

36. **The California regulations would cause other pollution problems in New Mexico.**

37. The California regulations might or might not improve air quality in California, but they will create new problems for New Mexico's environment. California exports much of its pollution downwind to New Mexico. So do the states of Arizona, Nevada, and to a lesser extent, Utah. Air pollution from California is exported to New

Mexico in at least two ways: physical transport and demand for electric generation. The California ZEV regulations will increase the demand for electrical generation in the Southwest, and that will increase the demand for coal-fired plants in the Southwest, *e.g.* the proposed Desert Rock power plant, near Farmington, just south of the Four Corners Plant operated by Arizona Public Service Company ("APS"). Although New Mexico is presently in compliance with EPA regulations (except for Anthony), New Mexico does have serious pollution problems caused by power plants: nitrogen oxides, mercury, and coal combustion wastes. The APS Four Corners Plant is the largest single emitter of NOx in the United States, and the 38th largest source of mercury emissions. *See* Environmental Integrity Project, *Dirty Kilowatts*, Tables 6 and 8 (July 2007), Exhibit 5 attached. The nearby San Juan Plant, operated by Public Service Company of New Mexico ("PNM"), is the 18th largest emitter of NOx, and the 29th largest source of mercury emissions. *Id.* In addition to air pollution, coal-fired power plants produce huge amounts of solid wastes: fly ash, bottom ash, boiler slag, and scrubber sludge. *See* "Coal's Other Mess," High Country News, November 26, 2007.

38. **The EIB regulations violate the provisions of the New Mexico Constitution concerning self-government, sovereignty, voting, separation of powers, and federal supremacy.**

39. The EIB regulations vest New Mexico's legislative and regulatory authority in California officials, who are not answerable to the people of New Mexico, either directly or indirectly. Public officials in California are not elected or appointed pursuant to New Mexico law, and they cannot be removed by the voters or the officials of New Mexico. California officials have the primary duty to act in the best interests of the State of California

and its people, not the State of New Mexico and its citizens. For these reasons, the proposed EIB regulations are an unconstitutional abrogation of the rights of self-government, sovereignty, and voting that are guaranteed by the New Mexico Constitution.

40. *Inter alia*, the proposed regulation violates the popular sovereignty provision in New Mexico's Bill of Rights, which states: "All political power is vested in and derived from the people: all government of right originates with the people, is founded upon their will and is instituted solely for their good." N. M. Const., art. II, § 2. The EIB's proposed regulations would allow air quality to be founded upon the will of the people of California, not the people of New Mexico.

41. The EIB regulations also violate the constitutional rights of self-government and autonomy guaranteed by New Mexico's Bill of Rights, N.M. Const. art. II, § 3: "The people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state." The EIB's proposed regulations deprive the people of their right to govern themselves as a free, sovereign and independent state since the people of New Mexico have no ability to elect, appoint, or control the California Legislature, or the California Governor, or the California Air Resources Board. The EIB's proposed regulations destroy the citizens' right of self-government as regards air-quality.

42. As regards the right of self-government, another state like California occupies a position that is quite different than the federal government. Pursuant to the supremacy clause in the federal Constitution, and the supremacy clause in New Mexico's Bill of Rights, N.M. Const. art. II, § 1, federal law is the supreme law of the land. As citizens of the United States, the citizens of New Mexico have delegated some of their rights of self-

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government to the federal government. Thus, New Mexico is obligated to follow federal law, including the federal vehicle emissions standards set by the EPA. But New Mexico's citizens did not, and could not, delegate any of their rights of self-government to another state.

43. The EIB regulations also violate Article III, § 1 of the New Mexico Constitution: "The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted." The EIB is invading and usurping the power to make the law that is vested in the Legislature and its members, including the legislator plaintiffs named herein.

44. The proposed EIB regulations also disenfranchise the voters of New Mexico, in violation of the elective franchise guaranteed by Article VII of the New Mexico Constitution. The CARB regulations would have the force of law in New Mexico, but the California officials who promulgate them are not answerable, either directly or indirectly, to the voters of New Mexico.

45. Under certain circumstances, the EIB regulations and 42 U.S.C. § 7507 could interact in a manner that would override the judicial power that is vested in the courts of New Mexico by Article VI of the New Mexico Constitution. If the EIB adopts the California regulations, then New Mexico courts might lose the ability to interpret the EIB's regulations in a way that differs from CARB and the California courts. If the EIB adopts

CARB's regulations, then the EIB, and the courts would be obligated to follow CARB's interpretation of its own regulations, or the interpretations of the California courts. The New Mexico courts would be required to follow the interpretations of CARB, because § 7507 requires identicalness and prohibits any "third vehicle." If the New Mexico courts interpreted the CARB regulations to reach a different result than California, then New Mexico would be in violation of § 7507. The California interpretation would prevail, even if contrary to the interpretation of the New Mexico courts.

46. The EIB regulations violate the constitutional prohibition against amendment or extension of statutes by incorporation. *See* N.M. Const. art. IV, §18. These constitutional policies also apply to regulations. In this instance, the problem of incorporation by reference are compounded, because the ultimate content of the CARB regulations is unknown.

47. Upon information and belief, the EIB has prejudged this matter. It is a foregone conclusion that the EIB will adopt the proposed regulations. Upon information and belief, there have been improper *ex-parte* communications with the EIB. Upon information and belief, instead of acting autonomously, the members of the EIB are following directives from others. Therefore, exhaustion of administrative remedies would be futile. No matter what law or evidence is presented, the EIB will adopt the proposed regulations, unless enjoined by the Court.

48. Upon information and belief, the EIB has not sought and obtained meaningful independent legal advice on the proposed regulations, in violation of NMSA 1978, § 74-1-8.1(A). Upon information and belief, the EIB has failed to obtain and consider

disinterested, independent, impartial legal advice on key aspects of the proposed California regulations, including the questions of law raised by this complaint.

PRAAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court issue such judgments and orders as are necessary and appropriate, including:

A. A temporary restraining order, directing defendant not to promulgate any proposed regulations until the Court can hear this matter;

B. A preliminary injunction;

C. A permanent injunction directing the Environmental Improvement Board not to adopt the California regulations, unless and until the Legislature explicitly authorizes it by statute;

D. A declaratory judgment declaring that, under existing law, the EIB lacks the authority to adopt the proposed California regulations; that the EIB's authority in the area of pollution from motor vehicles is limited to carrying out the national standards and regulations set by the EPA; and that the EIB's regulations on motor vehicle pollution may not be more stringent than those of the EPA, unless the Legislature explicitly enacts or authorizes more stringent regulations.

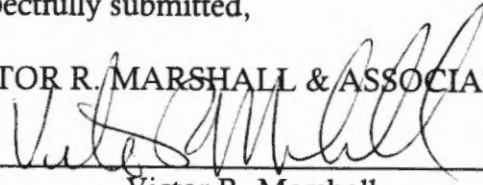
E. Such other and further relief as may be appropriate; and

F. An award of costs and expenses, including reasonable attorneys' fees.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By



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Deering's California Codes Annotated
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*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED ***
*** THROUGH 2007 CH. 750, APPROVED 10/14/07 ***

HEALTH AND SAFETY CODE
Division 26. Air Resources
Part 5. Vehicular Air Pollution Control
Chapter 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Health & Saf Code § 43018.5 (2007)

§ 43018.5. Maximum reduction of greenhouse gas emissions from motor vehicles; Adoption of standards and regulations

(a) No later than January 1, 2005, the state board shall develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles.

(b)

(1) The regulations adopted pursuant to subdivision (a) may not take effect prior to January 1, 2006, in order to give the Legislature time to review the regulations and determine whether further legislation should be enacted prior to the effective date of the regulations, and shall apply only to a motor vehicle manufactured in the 2009 model year, or any model year thereafter.

(2)

(A) Within 10 days of adopting the regulations pursuant to subdivision (a), the state board shall transmit the regulations to the appropriate policy and fiscal committees of the Legislature for review.

(B) The Legislature shall hold at least one public hearing to review the regulations. If the Legislature determines that the regulations should be modified, it may adopt legislation to modify the regulations.

(c) In developing the regulations described in subdivision (a), the state board shall do all of the following:

(1) Consider the technological feasibility of the regulations.

(2) Consider the impact the regulations may have on the economy of the state, including, but not limited to, all of the following areas:

(A) The creation of jobs within the state.

(B) The creation of new businesses or the elimination of existing businesses within the state.

(C) The expansion of businesses currently doing business within the state.

(D) The ability of businesses in the state to compete with businesses in other states.

(E) The ability of the state to maintain and attract businesses in communities with the most significant exposure to air contaminants, localized air contaminants, or both, including, but not limited to, communities with minority populations or low-income populations, or both.

(F) The automobile workers and affiliated businesses in the state.



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(3) Provide flexibility, to the maximum extent feasible consistent with this section, in the means by which a person subject to the regulations adopted pursuant to subdivision (a) may comply with the regulations. That flexibility shall include, but is not limited to, authorization for a person to use alternative methods of compliance with the regulations. In complying with this paragraph, the state board shall ensure that any alternative methods for compliance achieve the equivalent, or greater, reduction in emissions of greenhouse gases as the emission standards contained in the regulations. In providing compliance flexibility pursuant to this paragraph, the state board may not impose any mandatory trip reduction measure or land use restriction.

(4) Conduct public workshops in the state, including, but not limited to, public workshops in three of the communities in the state with the most significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities with minority populations or low-income populations, or both.

(5)

(A) Grant emissions reductions credits for any reductions in greenhouse gas emissions from motor vehicles that were achieved prior to the operative date of the regulations adopted pursuant to subdivision (a), to the extent permitted by state and federal law governing emissions reductions credits, by utilizing the procedures and protocols adopted by the California Climate Action Registry pursuant to subdivision (j) of Section 42823.

(B) For the purposes of this section, the state board shall utilize the 2000 model year as the baseline for calculating emission reduction credits.

(6) Coordinate with the State Energy Resources Conservation and Development Commission, the California Climate Action Registry, and the interagency task force, convened pursuant to subdivision (e) of *Section 25730 of the Public Resources Code*, in implementing this section.

(d) The regulations adopted by the state board pursuant to subdivision (a) shall not require any of the following:

(1) The imposition of additional fees and taxes on any motor vehicle, fuel, or vehicle miles traveled, pursuant to this section or any other provision of law.

(2) A ban on the sale of any vehicle category in the state, specifically including, but not limited to, sport utility vehicles and light-duty trucks.

(3) A reduction in vehicle weight.

(4) A limitation on, or reduction of, the speed limit on any street or highway in the state.

(5) A limitation on, or reduction of, vehicle miles traveled.

(e) The regulations adopted by the state board pursuant to subdivision (a) shall provide an exemption for those vehicles subject to the optional low-emission vehicle standard for oxides of nitrogen (NO [X]) for exhaust emission standards described in paragraph (9) of subdivision (a) of *Section 1961 of Title 13 of the California Code of Regulations*.

(f) Not later than July 1, 2003, the California Climate Action Registry, in consultation with the state board, shall adopt procedures for the reporting of reductions in greenhouse gas emissions from mobile sources to the registry.

(g) By January 1, 2005, the state board shall report to the Legislature and the Governor on the content of the regulations developed and adopted pursuant to this section, including, but not limited to, the specific actions taken by the state board to comply with paragraphs (1) to (6), inclusive, of subdivision (c), and with subdivision (f). The report shall include, but shall not be limited to, an analysis of both of the following:

(1) The impact of the regulations on communities in the state with the most significant exposure to air contaminants or toxic air contaminants, or both, including, but not limited to, communities with minority populations or low-income populations, or both.

(2) The economic and public health impacts of those actions on the state.

(h) If the federal government adopts a standard regulating a greenhouse gas from new motor vehicles that the state board determines is in a substantially similar timeframe, and of equivalent or greater effectiveness as the regulations that would be adopted pursuant to this section, the state board may elect not to adopt a standard on any greenhouse gas included in the federal standard.

(i) For the purposes of this section, the following terms have the following meanings:

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(1) "Greenhouse gases" means those gases listed in subdivision (g) of Section 42801.1.

(2) "Maximum feasible and cost-effective reduction of greenhouse gas emissions" means the greenhouse gas emission reductions that the state board determines meet both of the following criteria:

(A) Capable of being successfully accomplished within the time provided by this section, taking into account environmental, economic, social, and technological factors.

(B) Economical to an owner or operator of a vehicle, taking into account the full life-cycle costs of a vehicle.

(3) "Motor vehicle" means a passenger vehicle, light-duty truck, or any other vehicle determined by the state board to be a vehicle whose primary use is noncommercial personal transportation.

HISTORY:

Added Stats 2002 ch 200 § 3 (AB 1493).

NOTES:

Note

SEC. 4. Paragraphs (3) and (4) of subdivision (d) of *Section 43018.5 of the Health and Safety Code*, as added by this act, do not constitute a change in, but are declaratory of, the existing law.

Collateral References:

12 Witkin Summary (10th ed) Real Property § 901.

Law Review Articles:

California's Global Warming Bill: Will Fuel Economy Preemption Curb California's Air Pollution Leadership? 30 *Ecology LQ* 893.

Review of Selected 2002 California Legislation: Environmental Protection: California's Attempt to Remain the Leader in Environmental Policy: Regulating Carbon Dioxide Emissions from Vehicles Sold in the Golden State. 33 *McGeorge LR* 465.

Hierarchy Notes:

Div. 26 Note

Div. 26, Pt. 5 Note

Div. 26, Pt. 5, Ch. 1 Note

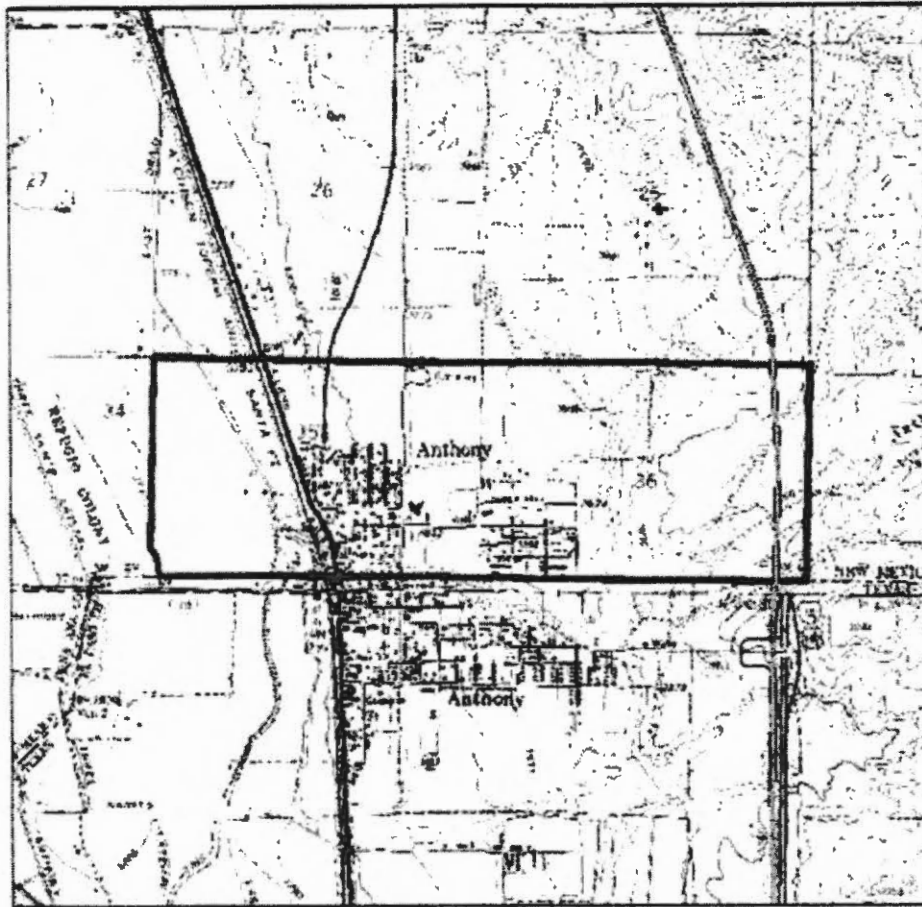
NOTES OF DECISIONS

In automobile dealerships' suit against the Executive Officer of the California Air Resources Board (CARB) challenging an environmental statute, six environmental organizations could intervene as of right pursuant to *Fed. R. Civ. P. 24(a)* because they intended to raise arguments that would not be raised by CARB; they were also entitled to permissive intervention. *Cent. Valley Chrysler-Jeep Inc. v Witherspoon (2005, ED Cal) 2005 US Dist LEXIS 26536*.

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Anthony PM-10 Nonattainment Area Map

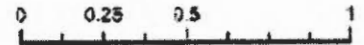


Legend

- Interstate 10
- Nonattainment Area



Air Quality Bureau
New Mexico Environment Department
January 28, 2003



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New Mexico

Main Heading: New Mexico SIP Plan Summaries

Subheading: New Mexico, Dona Ana County, Anthony, Particulate Matter (PM-10): Attainment Plan Summary

Item Subpart: New Mexico, Dona Ana County, Anthony, Particulate Matter (PM-10): Attainment Plan Summary

▼ Citations & Dates

State SIP Citation#:

State Effective Date:

Federal SIP Citation#:

Federal Effective Date:

Federal Register Citation#:

Federal Register Publication Date:

Codification #:

CFR Citation#:

Regulatory Text:

New Mexico Dona Ana County Anthony PM-10 Plan Summary

Purpose of Plan: To address particulate matter pollution in Anthony, New Mexico.

Area Covered: Anthony, New Mexico.

Type of Pollutant: Particulate matter with diameter 10 micrometers or less (PM-10)

Background:

Under the 1990 Clean Air Act Amendments, the town of Anthony in Doña Ana County, New Mexico (Anthony) was designated nonattainment for not meeting the PM-10 National Ambient Air Quality Standards (NAAQS) and classified as "moderate". As required, New Mexico submitted revisions to its State Implementation Plan (SIP) on November 8, 1991. These revisions included a PM-10 emissions inventory and modeling analyses for the area, an enforceable commitment, and emission control



measures. New Mexico also submitted a request for a waiver of the PM-10 moderate area attainment date because most of its PM-10 is from nonanthropogenic sources.

The EPA approved these revisions, including the attainment date waiver, on September 9, 1993.

Pollution Data:

New Mexico calculated that the Anthony nonattainment area generated 0 tons per year of PM-10 emissions from point sources, and 37.4 tons per year from area sources (paved and unpaved roads). In Doña Ana County, including the town of Anthony, the state calculated 72.1 tons per year of emissions from point sources. With EPA corrections to the state's calculations, there were between 628,032 tons per year and 3.2 million tons per year PM-10 emissions from the neighboring desert and managed rangelands. The desert portion of the area affecting Anthony is in an undisturbed state, and PM-10 emissions from the desert are considered to be of nonanthropogenic origin. The surrounding rangelands are managed for livestock grazing as required by Federal regulation, a method which decreases soil erosion and PM-10 production. However, the soil compositions in Doña Ana County are inherently and naturally susceptible to wind erosion and PM-10 emissions from the rangelands can not be fully controlled. The EPA considers PM-10 emissions from the managed rangelands to also be of nonanthropogenic origin.

The EPA concluded that emissions from the desert and managed rangelands are the overwhelming source of PM-10 in Anthony and that anthropogenic sources are insignificant emission sources and do not require control measures.

Pollution Control Measures:

Anthony is not required to control most of its PM-10 sources because they are either insignificant or nonanthropogenic and not feasibly controllable. However, the state and county have adopted regulations and ordinances to decrease PM-10 emissions from the area sources in the county, listed in the table below. These control measures meet the Act's "moderate" area requirements for area sources of PM10 emissions. Further, the State submitted an enforceable commitment that it remains committed to the dust control measures implemented by the County, the moderate area control strategies as agreed to in the SIP, and to the established monitoring schedule.

In this table, the "Regulation" column displays the number of the New Mexico state regulation. New Mexico's Air Quality Control Regulations were reformatted and renumbered into the New Mexico Administrative Code in 1995. The tables below refer to the current numbering system. "FR citation" is the reference number for the Federal Register Notice announcing the EPA's approval of those SIP revisions. The Federal Register is an official government publication for rules and proposed rules of federal agencies. It gives more detailed descriptions and explanations of the SIP than are found here. The first number represents the volume number - 59 represents the 1994 volume, 60 1995, and so on. "FR" stands for federal register.

The number after "FR" is the page number. Federal Register notices from 1994 and later can be searched and read at <http://www.gpoaccess.gov/fr/index.html>

. Earlier Federal Registers can be found at Federal Depository libraries.

Regulation	Description	State Adoption	EPA Approval into SIP	FR citation
20 NMAC 79	Permits - Nonattainment Areas	6/25/1992	5/12/1993	58 FR 27937
20 NMAC 60	Open Burning: Prohibits trash burning	2/7/1983	9/9/1993	58 FR 47385
County commitment to state	Unpaved Roads: Implements control measures, such as oil spraying, on unpaved roads in the county. Developers are also required to pave newly	10/29/1991	9/9/1993	58 FR 47385

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established private roads in the county.

County	Haul Trucks: Haul trucks	10/21/1991	9/9/1993	58 FR 47385
commitment to state	operating in Doña Ana County must be covered			

Attainment Date Waiver:

New Mexico has demonstrated that attainment of the PM-10 NAAQS by the December 31, 1994 deadline is not practicable, as the dominant sources of PM-10 impacting the area (the surrounding desert and managed rangelands) are nonanthropogenic and not feasibly controllable. The Clean Air Act, section 188(f), states that the EPA may waive a deadline for attainment of the NAAQS where "nonanthropogenic sources of PM-10 contribute significantly to the violation of the PM-10 standard in the area". The section also states that the Administrator may waive the attainment date for areas classified as serious where "anthropogenic sources of PM-10 do not contribute significantly to the violation of the PM-10 standard in the area." The EPA interprets section 188(f) to mean that a moderate area can only qualify for a waiver if it meets the waiver requirements for serious PM-10 nonattainment areas. In other words, the EPA must determine both that nonanthropogenic sources contribute significantly to PM-10 NAAQS violations, and that anthropogenic sources do not contribute significantly to violation of the PM-10 NAAQS.

New Mexico submitted emissions inventories, dispersion modeling, and particulate analysis to support its request for an attainment date waiver. The EPA concluded that the data supported the waiver request and granted a PM-10 attainment date waiver for the Anthony nonattainment area.

Subsequent Action and Events:

Because the EPA has waived the deadline for Anthony to attain the PM-10 NAAQS, the nonattainment area is not required to submit rate of progress plans or identify contingency measures to be triggered if the area does not meet its rate of progress goals.

Federal Register Actions:

EPA Action	Federal Register Date	Federal Register Page Number
Proposed approval of PM-10 SIP, including emissions inventory, modeling analyses, PM-10 control measures, enforceable commitment, and attainment date waiver	4/8/1993	58 FR 18190
Final approval of PM-10 SIP, including emissions inventory, modeling analyses, PM-10 control measures, enforceable commitment, and attainment date waiver	9/9/1993	58 FR 47383
Direct final approval of nonattainment area permit program	5/12/1993	58 FR 27937

EPA Region 6 Contacts:

Bill Deese or Joanne Sum-Ping at ☎ - 214-665-7253 or deese.william@epa.gov

*****end*****d8f**

This SIP Citation Was Last Modified on: 08/15/2003

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1 TITLE 20 ENVIRONMENTAL PROTECTION
2 CHAPTER 2 AIR QUALITY (STATEWIDE)
3 PART 88 EMISSIONS STANDARDS FOR NEW MOTOR VEHICLES
4
5

6 20.2.88.1 ISSUING AGENCY. Environmental Improvement Board.
7 [20.2.88.1 NMAC - N, xx/xx/07]
8

9 20.2.88.2 SCOPE. All persons who deliver for sale, offer for sale, sell, import, deliver, purchase, rent,
10 lease, or register new passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty motor
11 vehicles within the jurisdiction of the Environmental Improvement Board.
12 [20.2.88.2 NMAC - N, xx/xx/07]
13

14 20.2.88.3 STATUTORY AUTHORITY. Environmental Improvement Act, NMSA 1978, Section 74-1-
15 8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-5
16 (C)(2).
17 [20.2.88.3 NMAC - N, xx/xx/07]
18

19 20.2.88.4 DURATION. Permanent.
20 [20.2.88.4 NMAC - N, xx/xx/07]
21

22 20.2.88.5 EFFECTIVE DATE. xx/xx/07 except where a later date is cited at the end of a section.
23 [20.2.88.5 NMAC - N, xx/xx/07]
24

25 20.2.88.6 OBJECTIVE. The objective of this part is to establish emission standards for new motor
26 vehicles subject to this part.
27 [20.2.88.6 NMAC - N, xx/xx/07]
28

29 20.2.88.7 DEFINITIONS. In addition to the terms defined in 20.2.88.7 NMAC (Definitions), and the
30 definitions in California Code of Regulations ("CCR"), Title 13, sections incorporated by reference, the following
31 definitions apply to this part, except that "California" shall mean "New Mexico" unless otherwise specified or
32 clearly inappropriate. If a term is defined in this subsection and CCR, Title 13, section 1900, the definition in this
33 subsection shall apply.

34 A. "Air contaminant emission control system" means the equipment designed for installation on a
35 motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor
36 vehicle or motor vehicle engine or a system or engine modification on a motor vehicle which causes a reduction of
37 air contaminants emitted from the motor vehicle engine, including but not limited to exhaust control systems, fuel
38 evaporative control systems and crankcase ventilating systems.

39 B. "Business" means an occupation, profession or trade; a person or partnership or corporation
40 engaged in commerce, manufacturing, or a service; or a profit-seeking enterprise or concern.

41 C. "CARB" means California Air Resources Board.

42 D. "CCR" means California Code of Regulations, Title 13.

43 E. "California-certified" means a vehicle having a valid Executive Order stating that the vehicle
44 meets all applicable requirements under the applicable sections of CCR and approved for sale in California by
45 CARB.

46 F. "California standards" means those emission standards for motor vehicles and new motor vehicle
47 engines that the State of California has adopted and for which it has received a waiver from the United States
48 Environmental Protection Agency pursuant to the authority of 42 U.S.C. §7543 and which other states are permitted
49 to adopt pursuant to 42 U.S.C. §7507.

50 G. "Certification" means a finding by CARB that a motor vehicle, motor vehicle engine, or air
51 contaminant emission control system satisfies the criteria adopted by CARB for the control of specified air
52 contaminants from motor vehicles.

53 H. "Clean Air Act" or "CAA" means the Federal Clean Air Act, 42 U.S.C. §§7401 et seq..

54 I. "Dealer" means any person actively engaged in the business of offering to sell, solicit or advertise
55 the sale, purchase, transfer, lease, sale or exchange of a new motor vehicle and who has an established place of
56 business.



57 J. "Department" means the New Mexico Environment Department.

58 K. "Emergency vehicle" means any publicly owned vehicle operated by a peace officer in the
59 performance of his duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire
60 calls, any publicly owned authorized emergency vehicle used by an emergency medical technician or paramedic, or
61 any ambulance used by a private entity under contract with a public agency.

62 L. "Emission standards" means specified limitations on the discharge of air contaminants into the
63 atmosphere.

64 M. "Executive order" means a document issued by CARB certifying that a specified test group or
65 model year vehicle has met all applicable requirements adopted by CARB pursuant to the applicable sections of
66 CCR for the control of specified air contaminants from motor vehicles.

67 N. "Fleet average greenhouse gas emission requirement" means the limitations on greenhouse gas
68 exhaust mass emission values from passenger cars, light-duty trucks and medium-duty passenger vehicles as set
69 forth in CCR, section 1961.1.

70 O. "Fleet-wide average non-methane organic gas exhaust emission requirement" means a motor
71 vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this
72 regulation sold in New Mexico in any model year based on the calculation in CCR, section 1960.1(g)(2).

73 P. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum
74 loaded weight of a single vehicle.

75 Q. "Light-duty truck" means any model year 2000 and subsequent motor vehicle certified to the
76 standards in CCR, section 1961(a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle
77 rated at 6,000 pounds or less, which is designed primarily for the purposes of transportation of property, is a
78 derivative of such vehicles, or is available with special features enabling off-street or off-highway operation and use.

79 R. "Low-emission vehicle" or "LEV" means a motor vehicle which has been certified by CARB.

80 S. "Medium duty passenger vehicle or "MDPV" means any medium-duty vehicle with a gross
81 vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The
82 medium-duty passenger vehicle definition does not include any vehicle which:

83 (1) is an "incomplete truck" i.e., is a truck that does not have primary load carrying device or
84 container attached; or

85 (2) has a seating capacity of more than 12 persons; or

86 (3) is designed for more than 9 persons in seating rearward of the drivers seat; or

87 (4) is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not
88 readily accessible from the passenger compartment shall be considered an open cargo area for the purpose of this
89 definition.

90 T. "Medium-duty vehicle" means any pre-1995 model year heavy-duty vehicle having a
91 manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 through 2006 model year heavy-duty
92 low-emission, ultra-low emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in
93 CCR, section 1960.1(h)(2) having a manufacturer's gross vehicle weight rating of 14,000 pounds or less; and any
94 2000 and subsequent model heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-
95 emission vehicle certified to the standards in CCR, section 1961(a)(1) or 1962 having a manufacturer's gross weight
96 rating between 8,501 and 14,000 pounds.

97 U. "Model year" means the manufacturer's annual production period which includes January 1, or if
98 the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two
99 or more stages, the time of manufacture shall be the date of completion of the chassis.

100 V. "Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or
101 may be transported otherwise than by muscular power, except motorized bicycles and devices that run only on rails
102 or tracks.

103 W. "Motor vehicle engine" means an engine that is used to propel a motor vehicle.

104 X. "New vehicle" means any vehicle with 7,500 miles or fewer on its odometer.

105 Y. "Non-methane organic gas" or "NMOG" means the sum of non-oxygenated and oxygenated
106 hydrocarbons contained in a gas sample as measured in accordance with the "California Non-Methane Organic Gas
107 Test Procedures", which is incorporated herein by reference.

108 Z. "Passenger car" means any motor vehicle designed primarily for transportation of persons and
109 having a design capacity equal to or less than 12 individuals.

110 AA. "Person" means an individual, public or private corporation, company, partnership, firm,
111 association, society or joint stock company, municipality, state, interstate body, the United States, or any Board,
112 commission, employee, agent, officer or political subdivision, or a state, an interstate body or the United States.

113 **BB.** "Placed in service" means having been sold to an ultimate purchaser and not to a dealer or other
114 entity in the distribution chain, and having been individually registered for on-road use by the New Mexico Motor
115 Vehicle Division.
116 **CC.** "Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle
117 engine to the ultimate purchaser.
118 **DD.** "State" means:
119 (1) for purposes of referring to a governing entity, the state of New Mexico; or
120 (2) for purposes of referring to a geographic area, all geographic areas within the jurisdiction of the
121 Environmental Improvement Board.
122 **EE.** "Test group" means a grouping of vehicles as defined by 40 CFR 86.1827-01.
123 **FF.** "Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine,
124 the first person whom in good faith purchases a new motor vehicle or new motor vehicle engine for a purpose other
125 than resale.
126 **GG.** "Vehicle identification number" or "VIN" means a unique, 17 digit, alphanumeric code that the
127 vehicle manufacturer assigns to a vehicle.
128 **HH.** "ZEV Credit Bank" means a system designated by the Department that records and tracks the
129 generation, verification, transfer, voluntary retirement, use, and invalidation of vehicle credits.
130 [20.2.88.7 NMAC - N, xx/xx/07]
131
132 **20.2.88.8** **DOCUMENTS.** Documents incorporated and cited in this part may be viewed at the New
133 Mexico Environment Department, Air Quality Bureau, in Santa Fe. [2048 Galisteo Street, Santa Fe, NM 87505]
134 [20.2.88.8 NMAC - N, xx/xx/07]
135
136 **20.2.88.9** **SEVERABILITY.** If any provision of this part, or the application of such provision to any
137 person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or
138 circumstances other than those as to which it is held invalid, shall not be affected thereby.
139 [20.2.88.9 NMAC - N, xx/xx/07]
140
141 **20.2.88.10** **CONSTRUCTION.** This part shall be liberally construed to carry out its purpose.
142 [20.2.88.10 NMAC - N, xx/xx/07]
143
144 **20.2.88.11** **SAVINGS CLAUSE.** Repeal or supersession of prior versions of this part shall not affect any
145 administrative or judicial action initiated under those prior versions.
146 [20.2.88.11 NMAC - N, xx/xx/07]
147
148 **20.2.88.12** **COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve
149 a person from the responsibility to comply with any other applicable federal, state, or local regulations.
150 [20.2.88.12 NMAC - N, xx/xx/07]
151
152 **20.2.88.13** **LIMITATION OF DEFENSE.** The existence of a valid permit under this part shall not constitute
153 a defense to a violation of any section of this part, except the requirement for obtaining a permit.
154 [20.2.88.13 NMAC - N, xx/xx/07]
155
156 **20.2.88.14 to 20.2.88.99** [RESERVED]
157
158 **20.2.88.100** **APPLICABILITY.** Except as provided in 20.2.88.103 NMAC (Exemptions), no motor vehicle
159 manufacturer, dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease,
160 acquire, receive, or register a new model year 2011 or subsequent model year passenger car, light-duty truck,
161 medium-duty passenger vehicle, or medium-duty vehicle unless the vehicle has been certified by CARB and
162 received a CARB Executive Order.
163 [20.2.88.100 NMAC - N, xx/xx/07]
164
165 **20.2.88.101** **REQUIREMENTS TO MEET CALIFORNIA STANDARDS.**
166 **A.** Starting with model year 2011 and each model year thereafter, no motor vehicle manufacturer,
167 dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire,

168 receive or register a new passenger car, light-duty truck, or medium-duty passenger vehicle, or medium-duty vehicle
169 unless such vehicle is certified to the California standards.

170 **B.** Each motor vehicle manufacturer shall comply with the fleet average emission requirements and
171 the warranty, recall, reporting, and other applicable requirements contained in this part.

172 **C.** Each motor vehicle dealer and rental car agency shall comply with the Department's inspection
173 and information requests issued pursuant to 20.2.88.112 (Inspections and Information Requests).

174

175 **20.2.88.102 INCORPORATION BY REFERENCE.**

176 **A.** For the purpose of applying the incorporated sections of CCR "California" means "New Mexico"
177 and "CARB" means New Mexico Environment Department, unless otherwise specified or clearly inappropriate.

178 **B.** Each manufacturer of a new model year 2011 and subsequent model year passenger car, light-duty
179 truck, medium-duty passenger vehicle, or medium-duty vehicle must comply with each applicable standard in the
180 CCR as incorporated by reference herein. The Department shall maintain copies of these sections for public
181 inspection.

182 (1) Section 1900: Definitions. California effective date 1/1/2006.

183 (2) Section 1956.8(g) and (h): Exhaust Emission Standards and Test Procedures – 1985 and
184 Subsequent Model Heavy Duty Engines and Vehicles. California effective date 11/15/06.

185 (3) Section 1960.1: Exhaust Emission Standards and Test Procedures – 1981 and through 2006
186 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles. California effective date 3/26/04.

187 (4) Section 1961: Exhaust Emission Standards and Test Procedures – 2004 and Subsequent Model
188 Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 2/17/2007.

189 (5) Section 1961.1: Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 and
190 Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective
191 date 01/01/06.

192 (6) Section 1962: Zero-Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars,
193 Light-Duty Trucks and Medium-Duty Vehicles. California effective date 3/26/04.

194 (7) Section 1962.1: Electric Vehicle Charging Requirements. California effective date 7/24/02.

195 (8) Section 1965: Emission Control and Smog Index Labels – 1979 and Subsequent Model Year
196 Vehicles. California effective date 12/04/03.

197 (9) Section 1968.2: Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model
198 Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 04/21/03.

199 (10) Section 1968.5: Enforcement of Malfunction and Diagnostic System Requirements for 2004 and
200 Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines.
201 California effective date 04/21/03.

202 (11) Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.
203 California effective date 2/17/07.

204 (12) Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. California
205 effective date 2/17/07.

206 (13) Section 2035: Purpose, Applicability and Definitions. California effective date 12/26/90.

207 (14) Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger
208 Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles. California
209 effective date 11/27/99.

210 (15) Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Year
211 Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such.
212 California effective date 11/27/99.

213 (16) Section 2039: Emission Control System Warranty Statement. California effective date 12/26/90.

214 (17) Section 2040: Vehicle Owner Obligations. California effective date 12/26/90.

215 (18) Section 2041: Mediation; Finding of Warrantable Condition. California effective date 12/26/90.

216 (19) Section 2046: Defective Catalyst. California effective date 2/15/79.

217 (20) Section 2109: New Vehicle Recall Provisions. California effective date 12/30/83.

218 (21) Section 2111: Applicability. California effective date 12/13/06.

219 (22) Section 2112: Definitions. California effective date 11/15/03.

220 (23) Section 2113: Initiation and Approval of Voluntary and Influenced Recalls. California effective
221 date 1/26/95.

222 (24) Section 2114: Voluntary and Influenced Recall Plans. California effective date 11/27/99.

223 (25) Section 2115: Eligibility for Repair. California effective date 1/26/95.

- 224 (26) Section 2116: Repair Label. California effective date 1/26/95.
 225 (27) Section 2117: Proof of Correction Certificate. California effective date 1/26/95.
 226 (28) Section 2118: Notification. California effective date 1/26/95.
 227 (29) Section 2119: Record keeping and Reporting Requirements. California effective date 11/27/99.
 228 (30) Section 2120: Other Requirements Not Waived. California effective date 1/26/95.
 229 (31) Section 2121: Penalties
 230 (32) Section 2122: General Provisions. California effective date 1/26/95.
 231 (33) Section 2123: Initiation and Notification of Ordered Emission-Related Recalls. California
 232 effective date 1/26/95.
 233 (34) Section 2124: Availability of Public Hearing. California effective date 1/26/95.
 234 (35) Section 2125: Ordered Recall Plan. California effective date 1/26/95.
 235 (36) Section 2126: Approval and Implementation of Recall Plan. California effective date 1/26/95.
 236 (37) Section 2127: Notification of Owners. California effective date 1/26/95.
 237 (38) Section 2128: Repair Label. California effective date 1/26/95.
 238 (39) Section 2129: Proof of Correction Certificate. California effective date 1/26/95.
 239 (40) Section 2130: Capture Rates and Alternative Measures. California effective date 11/27/99.
 240 (41) Section 2131: Preliminary Tests. California effective date 1/26/95.
 241 (42) Section 2132: Communication with Repair Personnel. California effective date 1/26/95.
 242 (43) Section 2133: Record keeping and Reporting Requirements. California effective date 1/26/95.
 243 (44) Section 2135: Extension of Time. California effective date 1/26/95.
 244 (45) Section 2137: Vehicle and Engine Selection. California effective date 12/28/2000.
 245 (46) Section 2138: Restorative Maintenance. California effective date 11/27/99.
 246 (47) Section 2139: Testing. California effective date 8/21/2002.
 247 (48) Section 2140: Notification and Use of Test Results. California effective date 8/21/2002.
 248 (49) Section 2151: New Motor Vehicle Dealer Surveillance. California effective date 12/13/83.
 249 (50) Section 2141: General Provisions. California effective date 12/28/00.
 250 (51) Section 2142: Alternative Procedures. California effective date 2/23/90.
 251 (52) Section 2143: Failure Levels Triggering Recall. California effective date 11/27/99.
 252 (53) Section 2144: Emission Warranty Information Report. California effective date 11/27/99.
 253 (54) Section 2145: Field Information Report. California effective date 11/27/99.
 254 (55) Section 2146: Emissions Information Report. California effective date 11/27/99.
 255 (56) Section 2147: Demonstration of Compliance with Emission Standards. California effective date
 256 8/21/02.
 257 (57) Section 2148: Evaluation of Need for Recall. California effective date 11/27/99.
 258 (58) Section 2149: Notification of Subsequent Action. California effective date 2/23/90.
 259 (59) Section 2235: Requirements. California effective date 9/17/91.

261 **20.2.88.103 EXEMPTIONS.**

262 The following vehicles are not subject to this part:

- 263 A. Military tactical vehicles;
 264 B. Vehicles sold for registration and use in a state that is not subject to the California vehicle
 265 emission standards;
 266 C. Previously registered vehicles with more than 7,500 miles, provided that for vehicle dealers, the
 267 mileage at the time of sale is determined by the odometer statement when the dealer acquired the vehicle;
 268 D. Vehicles available only for rent to a final destination in a state that is not subject to the California
 269 vehicle emission standards;
 270 E. Vehicles transferred by inheritance or as a result of divorce, dissolution, or legal separation;
 271 F. Emergency vehicles when a public safety agency has demonstrated to the Department's
 272 satisfaction that a vehicle that shall meet the agency's needs is not otherwise reasonably available;
 273 G. A vehicle acquired by a New Mexico resident to replace a vehicle registered to such resident that
 274 was stolen, damaged or failed beyond reasonable repair while out of state, provided that such replacement vehicle is
 275 acquired out of state when the previously-owned vehicle was either stolen, damaged, or failed beyond reasonable
 276 repair; and,
 277 H. A vehicle with a right-hand drive configuration that is not available in a California-certified
 278 model, purchased by a rural route postal carrier and used primarily for work.

279 I. Vehicles purchased by a nonresident before establishing residency in New Mexico, regardless of
280 the mileage on the vehicle.
281

282 **20.2.88.104 FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION**
283 **REQUIREMENTS AND REPORTING.**

284 A. Fleet average requirement. Effective model year 2011 and each model year thereafter, each motor
285 vehicle manufacturer's NMOG fleet average emissions from passenger cars, light-duty trucks and medium-duty
286 vehicles delivered for sale in New Mexico shall not exceed the Fleet Average NMOG Exhaust Emission
287 Requirement set forth in CCR, section 1961. Compliance shall be based on the number of vehicles, subject to this
288 part, delivered for sale in New Mexico.

289 B. Fleet average NMOG exhaust emission credits and debits. Effective model year 2011 and each
290 model year thereafter, each motor vehicle manufacturer may accrue NMOG emission credits and debits and use
291 credits in accordance with the procedures in CCR, section 1961. Debits and credits accrued and used shall be based
292 on the number of vehicles subject to this part that are produced and delivered for sale in New Mexico.

293 C. Reporting. Effective model year 2011 and for each model year thereafter, each motor vehicle
294 manufacturer shall submit a report to the Department no later than March 1, that follows the procedures in CCR,
295 section 1961 and in the same format used to report such information to CARB.
296

297 **20.2.88.105 ZEV SALES.**

298 A. Effective model year 2011 and each model year thereafter, manufacturers subject to this part shall
299 produce and deliver for sale in New Mexico vehicles that comply with the ZEV sales requirement set forth in CCR,
300 section 1962.

301 B. An intermediate volume or large volume manufacturer of ZEVs, ATPZEVs or PZEVs may use
302 previously earned credits in accordance with CCR, section 1962 to offset the ZEV sales requirement in subsection
303 A.
304

305 **20.2.88.106 ZEV CREDIT BANK AND REPORTING.**

306 A. Manufacturers shall establish a ZEV Credit Bank with New Mexico on or before January 1, 2011,
307 and establish reporting procedures to report additions and deletions to that Bank in accordance with CARB
308 Manufacturers Advisory Correspondence (MAC) #06-03 Zero Emission Vehicle (ZEV) Credit Reporting and
309 Tracking System and subsections B, C, D, and E below.

310 B. In order to generate and deposit credits for vehicles delivered for sale in New Mexico during the
311 2009 through 2010 model years, a manufacturer shall open an account with the ZEV Credit Bank and submit an
312 appropriate Notice of Credit Generation to the Department by the time such vehicles are delivered.

313 C. A manufacturer shall be entitled to full credit for each Type III ZEV placed in service prior to
314 model year 2012 in any state that has adopted the California ZEV regulations contained in CCR, Section 1962.

315 D. A manufacturer with an account in the ZEV Credit Bank may acquire credits from another
316 manufacturer with an account in the ZEV Credit Bank, provided that if the credits are to be used for future
317 compliance with the ZEV sales requirement in 20.2.88.105 NMAC (ZEV Sales), the transaction shall be recorded in
318 the ZEV Credit Bank and certified by both parties to the transaction.

319 E. A vehicle equivalent credit shall not constitute or convey a property right.
320

321 **20.2.88.107 FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSIONS AND REPORTING.**

322 A. Effective model year 2011 and each model year thereafter, each manufacturer subject to this part
323 shall comply with emissions standards, fleet average greenhouse gas exhaust mass emission requirements for
324 passenger car, light-duty truck, medium-duty passenger vehicle weight classes, and other requirements of CCR,
325 section 1961.1, for vehicles produced and delivered for sale in New Mexico.

326 B. Requirements for Large Volume Manufacturers. The fleet average greenhouse gas exhaust
327 emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles produced and
328 delivered for sale in New Mexico by a large volume manufacturer for model year 2011 and each model year
329 thereafter are set forth in CCR, section 1961.1.

330 C. Requirements for Small, Intermediate, and Independent Manufacturers. The fleet average
331 greenhouse gas exhaust emission requirements for passenger cars, light-duty trucks, and medium-duty passenger
332 vehicles delivered for sale in New Mexico by small volume, intermediate volume and independent low volume
333 manufacturers for model year 2016 and each model year thereafter are set forth in CCR, section 1961.1.

334 D. Greenhouse gas emission credits and debits. Greenhouse gas credits and debits may be accrued
335 and used based on each manufacturer's sale of vehicles in New Mexico as set forth in CCR, section
336 1961.1.

337 E. Optional alternative compliance with greenhouse gas emission standards. Greenhouse gas vehicle
338 test groups that are certified pursuant to CCR, section 1961.1(a)(1)(B)2.a in the State of California may obtain
339 equivalent credit if delivered for sale and use in New Mexico.

340 F. Alternative compliance credit. To receive the credit authorized by subsection E, a manufacturer
341 shall submit to the Department the data set forth in CCR, section 1961.1(a)(1)(B)2.a.i for New Mexico-specific sale
342 and use.

343 G. Reporting on greenhouse gas requirements. Effective model year 2011 and for each model year
344 thereafter, each manufacturer shall submit by March 31 a report to the Department that includes end-of-model year
345 data that calculates the fleet average greenhouse gas emissions for the model year just ended. The report shall
346 include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to CCR,
347 section 1961.1. The report shall follow the procedures in CCR, section 1961.1 and be in the same format used to
348 report such information to CARB.

349
350 **20.2.88.108 ADDITIONAL REPORTING.**

351 A. To determine compliance with this part, the Department may require a motor vehicle manufacturer
352 to submit any documentation that the Department deems necessary to the effective administration and enforcement
353 of this part, including all certification materials submitted to CARB.

354 B. In addition to the reporting requirements in 20.2.88.106 NMAC (ZEV Credit Bank and Reporting)
355 and NMAC 20.2.88.111 (Registration and Fees), beginning with the 2011 model year and each model year
356 thereafter, each manufacturer of a vehicle subject to 20.2.88.100 NMAC (Applicability) shall submit annually to the
357 Department, no later than March 31 following the close of the model year, a report documenting the total deliveries
358 for sale in New Mexico of vehicles in each test group during that model year.

359
360 **20.2.88.109 WARRANTIES.**

361 A. For model year 2011 and each model year thereafter, each manufacturer of a vehicle subject to
362 20.2.88.100 NMAC (Applicability) shall warrant to the ultimate purchaser and each subsequent purchaser that the
363 vehicle shall comply over its period of warranty coverage with all requirements of CCR, sections 2035 through
364 2038, 2040, and 2041.

365 B. For model year 2011 and each model year thereafter, a manufacturer of a vehicle subject to this
366 part shall include an emission control system warranty statement that complies with the requirements in CCR,
367 section 2039, except that a manufacturer may modify the statement for the sole purposes of informing the owner of
368 the warranty's applicability and including a telephone number for owners to obtain answers to questions regarding
369 the warranty.

370 C. Upon the Department's request, a manufacturer of a vehicle subject to this part shall submit a
371 Failure of Emission-Related Component report, or copy of the report submitted to CARB, to the Department as
372 defined in CCR, section 2144.

373
374 **20.2.88.110 RECALLS.**

375 A. Any order issued or enforcement action taken by CARB to correct noncompliance with any
376 section of CCR, Title 13, that results in the recall of a vehicle pursuant to CCR, sections 2109 through 2135, shall be
377 *prima facie* evidence concerning noncompliance for a vehicle registered in New Mexico. If the manufacturer
378 demonstrates to the Department's satisfaction that the order or action is not applicable to a vehicle registered in New
379 Mexico, the Department shall not pursue a recall of that vehicle.

380 B. A voluntary or influenced emission-related recall campaign initiated by a manufacturer pursuant to
381 CCR, sections 2113 through 2121 shall include all affected vehicles registered in New Mexico.

382 C. For any vehicle subject to an order or action under subsection A, each manufacturer shall send to
383 each owner of a vehicle registered in New Mexico a notice that complies with the requirements in CCR, sections
384 2118 or 2127, including a telephone number for owners to obtain answers to questions regarding the recall.

385
386 **20.2.88.111 REGISTRATION AND FEES.**

387 A. After January 1, 2010, no large-volume or intermediate-volume vehicle manufacturer shall deliver
388 for sale, offer for sale, sell, import, deliver, rent, or lease a motor vehicle subject or potentially subject to this part
389 without first obtaining a registration from the Department.

- 390 B. The registration shall have a term no more than 10 years and shall be subject to an annual fee.
391 C. The Department shall assess an annual registration fee of \$10,000 to each large and intermediate-
392 volume manufacturer for the period beginning July 1 and ending June 30 of the subsequent year.
393 D. Each large and intermediate-volume manufacturer shall remit the specified amount payable to the
394 New Mexico Environment Department April 1.

395
396 **20.2.88.112 INSPECTIONS AND INFORMATION REQUESTS.**

- 397 A. For the purpose of determining compliance with this part, the Department may inspect any new
398 and used motor vehicle, and may inspect and copy relevant, non-financial records, including records documenting
399 vehicle origin, certification, delivery, or sales, and any record of emission-related part repairs performed under
400 warranty.
401 B. For the purpose of determining compliance with this part, the Department may require a vehicle
402 dealer or rental car agency to submit relevant, non-financial documentation related to a motor vehicle subject or
403 potentially subject to this part, except that this subsection shall not be construed to require the creation of a new
404 record.
405 C. A vehicle dealer or rental car agency may assert a claim for a record or documentation requested
406 pursuant to this section in accordance with 20.2.1.115 NMAC – *Confidential Information Protection*.

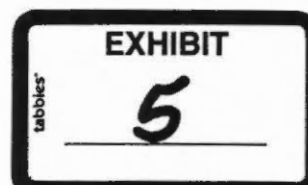
407
408 **HISTORY OF 20.2.88 NMAC: [RESERVED]**



**Table 6. Top 50 Polluting Power Plants for NOx
By Tons NOx (2006)**

Rank (Tons)	Facility Name	Facility Owner	State	NOx Tons	Rank (lbs/MWh)
1	Four Corners	Arizona Public Service	NM	44,648.57	22
2	Paradise	Tennessee Valley	KY	43,022.35	17
3	Crystal River	Progress Energy Florida Inc.	FL	35,411.89	130
4	Navajo	Salt River Proj Ag I & P Dist	AZ	34,743.80	67
5	Cumberland	Tennessee Valley Authority	TN	34,359.77	95
6	Gen J M Gavin	Ohio Power	OH	33,960.37	62
7	John E Amos	Appalachian Power Co	WV	33,946.88	118
8	La Cygne	Kansas City Power & Light	KS	33,511.51	6
9	Colstrip	PP&L Montana	MT	32,868.55	41
10	Monroe	Detroit Edison	MI	31,808.64	106
11	Big Bend	Tampa Electric Company	FL	30,713.94	10
12	Intermountain	Los Angeles (City of)	UT	28,911.01	65
13	New Madrid	Associated Electric Coop Inc	MO	28,757.11	5
14	Bowen	Georgia Power Co	GA	28,636.08	184
15	Gibson	PSI Energy, Inc	IN	28,532.85	183
16	Rockport	Indiana Michigan Power	IN	28,124.04	165
17	Jim Bridger	Pacificorp	WY	28,053.82	90
18	San Juan	Public Service Co of NM	NM	27,503.07	44
19	Bruce Mansfield	Pennsylvania Power	PA	25,724.63	166
20	Powerton	Midwest Generations	IL	25,539.79	9
21	J M Stuart	Dayton Power & Light	OH	25,518.95	113
22	Sherburne County	Northern States Power	MN	25,459.35	68
23	Conemaugh	Reliant Engy NE	PA	23,369.36	127
24	Seminole (136)	Seminole Electric Coop Inc	FL	22,719.01	33
25	Jeffrey Energy	Westar Energy	KS	22,647.96	132
26	Mount Storm Power	Virginia Electric & Power	WV	22,463.70	84
27	Milton R Young	Minnkota Power Coop Inc	ND	21,923.53	3
28	St. Johns River	JEA	FL	21,698.01	38
29	Clifty Creek	Indiana-Kentucky Electric	IN	21,661.70	36
30	James H Miller Jr	Southern/ Alabama Power	AL	21,237.10	224
31	Belews Creek	Duke Energy Group	NC	21,179.50	170
32	Harrison	Allegheny Energy Supply	WV	21,154.23	138
33	Harlee Branch	Georgia Power Co	GA	20,960.64	61
34	Roxboro	Progress Energy Carolinas	NC	20,940.61	164
35	W H Sammis	FirstEnergy Generation	OH	20,591.84	176
36	Hatfields Ferry	Allegheny Energy Supply	PA	20,055.61	51
37	E C Gaston	Southern/AL Power Company	AL	19,838.52	111
38	Laramie River	Basin Electric Power	WY	19,781.16	137
39	Hunter	PacifiCorp	UT	18,828.93	83
40	Northeastern	Public Service Co of Oklahoma	OK	18,353.16	91
41	Shawnee	Tennessee Valley	KY	18,216.35	81
42	Johnsonville	Tennessee Valley	TN	18,201.57	35
43	Muskingum River	AEP- Ohio Power Co	OH	17,950.82	34
44	Kyger Creek	Ohio Valley Electric Corp	OH	17,862.62	28
45	Conesville	Columbus Southern Power	OH	17,860.71	69
46	Gerald Gentleman	Nebraska Public Power	NE	17,646.52	89
47	Scherer	Southern/Georgia Power	GA	17,364.70	249
48	Widows Creek	Tennessee Valley Authority	AL	17,183.64	103
49	Cardinal	Cardinal Operating Co.	OH	17,159.86	145
50	Craig	Tri-State G & T Assn Inc	CO	17,081.03	108
Total				1,245,689.36 tons	

000046¹⁷



**Table 8. Top 50 Polluting Power Plants for Mercury (Hg)
By Pounds Hg (2005)**

Rank (lbs)	Facility	Owner	State	Hg(lbs)	Rank (lbs/MMwh)
1	Martin Lake	TXU Generation Co LP	TX	1705.00	25
2	Scherer Steam	Georgia Power	GA	1662.20	42
3	Miller Steam Plant	Alabama Power Co.	AL	1595.30	35
4	Monticello	TXU	TX	1595.00	15
5	Keystone Power Plant	Reliant Energy	PA	1370.00	16
6	Big Brown	TXU Generation Co LP	TX	1196.00	6
7	Rockport Plant	American Electric Power	IN	1179.00	46
8	H.W. Pirkey	American Electric Power	TX	1142.00	1
9	Amerenue Labadie	Ameren-UE	MO	1129.90	61
10	Limestone	Texas Genco II, LP	TX	1089.20	28
11	Gaston Steam Plant	Alabama Power Co.	AL	1077.40	23
12	Gorgas Steam Plant	Alabama Power Co.	AL	1004.10	9
13	Conesville Plant	American Electric Power	OH	984.00	17
14	Bowen Steam	Georgia Power Co	GA	966.90	120
15	Northern States Power Co.	Northern States Power Co	MN	958.40	41
16	W.A. Parish	Texas Genco II, LP	TX	957.00	98
17	Colstrip Steam Electric Station	PP&L Montana LLC	MT	920.00	69
18	Big Cajun 2	Louisiana Generating Plant	LA	891.00	33
19	Barry Steam Plant	Alabama Power Co.	AL	880.60	62
20	Coal Creek Station	Great River Energy	ND	858.50	19
21	Amos Plant	American Electric Power	WV	837.00	116
22	Pleasant Prairie Power Plant	Wisconsin Electric Power Co	WI	834.60	18
23	Lacygne Generating Station	Great Plains Energy	KS	826.10	26
24	Cardinal Plant	American Electric Power	OH	826.00	39
25	J.M. Stuart Station	Dayton Power & Light Co	OH	790.00	73
26	Monroe Power Plant	Detroit Edison Co.	MI	780.00	128
27	Jeffrey Energy Center	Westar Energy Inc.	KS	757.40	87
28	Shawville Station	Reliant Energy	PA	691.00	2
29	San Juan Generating Station	Public Service Co. of NM	NM	683.00	72
30	Roxboro Steam Electric Plant	Carolina Power and Light Co.	NC	670.00	111
31	Laramie River Station	Basin Electric Power Cooperative	WY	650.00	88
32	Brandon Shores & Wagner Complex	Constellation Power Source	MD	640.00	32
33	EME Homer City G	EME Homer City	PA	633.87	104
34	Greene County Steam Plant	Alabama Power Co.	AL	606.60	5
35	Coronado Generating Station	Salt River Project	AZ	582.00	22
36	White Bluff Generating Plant	Arkansaw Power	AR	581.40	56
37	Gibson Generating Station	Duke Energy Corp	IN	577.00	211
38	Four Corners	Public Service Co of NM	NM	562.70	162
39	Crystal River Energy Complex	Progress Energy	FL	550.00	213
40	Amerenue Rush Island Power Plant	Ameren-UE	MO	535.10	63
41	Sandow Steam Electric Station	TXU Generation Co LP	TX	524.00	13
42	Kammer/Mitchell Plants	American Electric Power	WV	511.30	8
43	OW Sommers/JT Deely/JK Spruce	San Antonio (City of)	TX	509.30	14
44	Gavin Plant	American Electric Power	OH	507.00	206
45	R.M. Schafer Generating Station	N. Indiana Public Service Co.	IN	505.00	102
46	Milton R. Young Station	Minnkota Power Coop Inc	ND	502.00	21
47	Edison International Powerton	Midwest Generations EME LLC	IL	501.78	76
48	IPL Petersburg	Indianapolis Power and Light Co.	IN	500.30	119
49	Conemaugh Power Plant	Reliant Energy	PA	500.00	145
50	Paradise Fossil Plant	U.S. TVA	KY	490.00	169
Total				41,826 lbs	