

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NEW ENERGY ECONOMY, INC.

Petitioner,

vs.

No.: _____

THE HONORABLE SUSANA MARTINEZ,
Governor of the State of New Mexico,
F. DAVID MARTIN, Secretary of
the New Mexico Environment Department, and
SANDRA JARAMILLO, New Mexico State Records
Administrator,

Respondents.

ORIGINAL PROCEEDING IN MANDAMUS

VERIFIED PETITION FOR WRIT OF MANDAMUS

NEW MEXICO ENVIRONMENTAL LAW
CENTER

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SUPREME COURT OF NEW MEXICO
FILED

JAN 11 2011

Kathleen Jo Keenan

Attorneys for Petitioner

Introduction and Basis for Jurisdiction

1. This original mandamus action, filed in accordance with Rule of Appellate Procedure 12-504 NMRA, presents substantial questions of law regarding the constitutional limits of executive power and the Separation of Powers Doctrine. Petitioner seeks to prevent Respondents from circumventing the lawful process by which final administrative rules, duly filed with the State Records Center, become codified and published as enforceable law. Petitioner also seeks to prevent Respondents from encroaching on the powers of the Legislature and the appellate jurisdiction of the Court of Appeals. This Court has jurisdiction to hear this case pursuant to the New Mexico Constitution, which grants the “supreme court ... original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions.” N.M. Const. Art. VI, § 3.

2. On December 6, 2010, after presiding over an arduous two-year administrative hearing process, the New Mexico Environmental Improvement Board (“Board”) duly adopted a final rule pursuant to the Environmental Improvement Act (“EIA”) and the Air Quality Control Act (“AQCA”), to be codified as “Rule 20.2.100 NMAC.” On December 27, 2010, having taken every preliminary step required by statute to adopt a new rule, the Board duly filed Rule 20.2.100 NMAC with the State Records Center pursuant to NMSA 1978, § 14-4-3(1995) of the State Rules Act. Pursuant to this Act, “no rule [is] valid or enforceable until it is filed with the records center and published in the New

Mexico register as provided by the State Rules Act.” NMSA 1978, § 14-4-5(1995). Pursuant to the State Rules Act, the Records Center scheduled Rule 20.2.100 NMAC for publication in the State Register on January 14th.

3. However, on January 4, 2011, after Susana Martinez became Governor of New Mexico, the acting Secretary of the New Mexico Environment Department (“NMED”), Raj Solomon,¹ purportedly “canceled” the Board’s rule filing. He took this unilateral action, not pursuant to any direction from the Board, but in direct response to an urgent email demand made by the Governor’s general counsel, Jessica Hernandez. The Director of the Administrative Law Division at the State Records Center, John Martinez, had earlier the same day warned Ms. Hernandez that Rule 20.2.100 NMAC, along with several other filed rules, would be published in the State Register unless Ms. Hernandez required the “issuing agencies” to cancel their rule filings before close-of-business on January 4th. After Mr. Solomon carried out Ms. Hernandez’ cancellation order, the State Records Administrator (Sandra Jaramillo) disregarded the Board’s rule filing, failed to officially codify Rule 20.2.100 in NMAC, and failed to publish the Rule in the New Mexico State Register, as required by law.

4. Respondents did not only prevent the codification and publication of a single final rule, however. They prevented *thirty-two final and filed rules* from

¹ Mr. Solomon has since been replaced by Respondent Martin.

being codified and published, rules that various boards and commissions throughout state government had adopted during the last Administration.

[Exhibits 10.] Respondents are thus engaged in a concerted and comprehensive effort to circumvent the lawful process by which administrative rules become enforceable law.²

5. In their concerted efforts to “cancel” the Board’s filing of Rule 20.2.100 NMAC with the State Records Center, Mr. Martinez (acting on behalf of Ms. Jaramillo), Ms. Hernandez, and Mr. Solomon all invoked Governor Martinez’ January 1st Executive Order No. 2011-001. [Exhibit 1.] Among other things, this Executive Order suspends all “proposed and pending” rules for a period of ninety days so that a task force created by the Order can review the rules “to identify red-tape regulations that are harmful to business growth and job creation in New Mexico” [Exhibit 1.] Thus, Respondents sought to justify their cancellation of the Board’s rule filing by characterizing Rule 20.2.100 NMAC as merely a “proposed or pending” rule which the Governor or NMED could modify or wholly eliminate at will. Respondents’ characterization is mistaken and their resulting unlawful actions can and should be corrected by this Court through mandamus.

² This Petition, however, directly concerns only Rule 20.2.100 NMAC.

Petition Grounds

I. The Board Duly Adopted Rule 20.2.100 NMAC as a Final Rule and Filed it with the Records Center:

6. Rule 20.2.100 NMAC is not a “proposed or pending” rule which the Governor or NMED has discretion to change or revoke. It is a *final rule* that the Board, an independent state agency, adopted in accordance with law and duly *filed* with the Records Center.

7. The Board has exclusive statutory authority to adopt rules under the AQCA, such as Rule 20.2.100 NMAC. NMSA 1978, § 74-1-8 (2000); NMSA 1978, § 74-1-5 (2007); cf. NMSA 1978, § 74-1-5 (1997) (giving the Board authority to “promulgate all regulations applying to persons and entities outside of the department”). Neither the Governor nor NMED has any authority to adopt, repeal, or amend rules under the AQCA.

8. Both the EIA and the AQCA provide:

No regulation shall be adopted until after a public hearing by the board. As used in this section, “regulation” includes any amendment or repeal thereof.

NMSA 1978, §§ 74-1-9(B) & 74-2-6(B). The Board initiated a public hearing and ultimately adopted Rule 20.2.100 NMAC in direct response to the regulatory proposal that the Petitioner submitted to the Board over two years ago. See generally New Energy Econ. v. Shoobridge, 2010 NMSC 49; see also NMSA 1978, §§ 74-1-9 (A)(1985) & 72-2-6(A)(1992) (allowing “any person” to

recommend regulations to the Board). The lengthy procedural history of Rule 20.2.100 NMAC is described in Shoobridge and in the Board's *Order and Statement of Reasons for Adoption of Regulation*. [Exhibit 2]

9. The Board convened the public hearing in Santa Fe, New Mexico, on March 1, 2010, August 16 through 20, 2010, and on October 5 through 6, 2010. "The Board heard technical testimony from Petitioner and other interested parties and admitted exhibits into the record." [Exhibit 2 at 1.] On December 6, 2010, "the Board having familiarized itself with the record and the transcript of the proceedings, deliberated and adopted the proposed new regulations with several amendments by an affirmative vote of 4 to 1 and 1 recusal [.]" Id.

10. After the Board adopted Rule 20.2.100 NMAC on December 6, 2010, the Chair of the Board, Gay Dillingham, signed the completed "NMAC Transmittal Form," as the "issuing authority," and filed the rule with the State Records Center pursuant to NMSA 1978, § 14-4-3 and §1.24.10.15 NMAC. Exhibit 3 ("NMAC Transmittal Form" identifying Ms. Dillingham, Chair of the Board, as the "issuing authority"); see also § 1.24.1.7 (R) NMAC (defining "issuing authority" as the "public official or employee of the issuing agency who is specifically authorized to approve the issuance of rules for that agency").

11. Pursuant to Section 14-4-3 of the State Records Act, the Records Center "note[d]" on both the NMAC Transmittal Form and on Rule 20.2.100 NMAC the "date and hour of filing." Exhibit 3; Exhibit 4 (Rule 20.2.100

NMAC). The “date and hour of filing” noted on both is “*2010 Dec 27 AM 10:40.*”

Id.

12. The regulations of the State Records Administrator define “filing” as:

[The] process by which one paper copy of a part or amendment, the corresponding electronic copy and the NMAC transmittal form are delivered to the records center and, if accepted by the records center, are date stamped and accessioned.

§ 1.24.1.7 (J) NMAC (defining “filing”). Thus, there is no question that the Records Center “accepted” Rule 20.2.100 NMAC for “filing.”

II. Respondents Improperly Attempted to “Cancel” the Board’s Filing of Rule 20.2.100 NMAC with the State Records Center:

13. Just five days after the Board filed Rule 20.2.100 NMAC with the Records Center, on January 1, 2011, Susana Martinez became Governor of the State of New Mexico. On that same day, Governor Martinez issued Executive Order No. 2011-001, which provided in pertinent part:

All proposed and pending rules and regulations, excluding those not under the authority of the Governor, are suspended for a period of review of 90 days unless excepted as set forth below.

[**Exhibit 1.**] The Governor’s Executive Order “suspended” all “proposed and pending rules” in order to subject them to a ninety-day “common sense” review by the task force established in the Order. Id.

14. Three days later, *at 9:24 A.M.* on January 4, 2011, the “Director of the Administrative Law Division (ALD) at the State Records Center and Archives,” John Martinez, sent an email to the Governor’s general counsel, Jessica

Hernandez. [Exhibit 5.] In this email, Mr. Martinez stated the following to Ms.

Hernandez:

I have read Executive Order 2011-001 which establishes a 90-day freeze on rulemaking. I am writing you because there are 34 rules that were filed during the last administration but will not be published in the New Mexico Register until January 14, 2011. We plan on publishing these rules unless we receive written notification from the issuing authorities in the respective agencies that these rule filings should be pulled back. The major issue for the ALD is that today is the rule filing deadline meaning that we will have to know by the end of today if any of these rule filings will not be published. Beginning tomorrow, the text will be type set and cannot be changed after that point.

I have attached a report of the 34 filings that are slated to be published on January 14, 2011. Please note that the State Records Center and Archives (noted in the report as the Commission of Public Records) is an independent agency not under the authority of the Governor.

[Exhibit 5—email and attached table entitled “*Rules to Be Published in Volume XXII Issue 1 of the New Mexico Register – January 14, 2011.*”]

15. At 10:52 A.M. on the same day, Ms. Hernandez emailed her response to Mr. Martinez:

Thank you for your e-mail. Executive Order 2011-001 applies to these regulations. They are suspended unless they go through the exemption process set out in the executive order. They should not be published today. If you want written notification from the issuing authorities, please send me the list of your point people for these agencies on these issues. I will communicate with them and get that notification. Thank you.

[Exhibit 6.] Mr. Martinez never questioned, and Ms. Hernandez never explained, why Rule 20.2.100 NMAC (or any of the other filed rules) should be regarded as “proposed or pending” given the fact that the Board had *adopted* the Rule 20.2.100

as a final rule on December 6, 2010 and *filed* it with the State Records Center on December 27, 2010. [Exhibits 2-4.]

16. *At 12:09 P.M.* on the same day, Mr. Martinez responded back to Ms. Hernandez, by email, explaining to her:

We will need written notification from the respective *Issuing Agencies* stating the desire to cancel the rule filing that occurred last month. The *Issuing Authority* is the person in the position who is authorized by statute to issue the rules for the agency. Usually this is the secretary of a department, director of an agency, or chairperson of a board. I have attached the list of Issuing Authorities for those rules that filed last month in accordance with the State Rules Act but not yet published in the New Mexico Register. I have excluded the rules for the Commission of Public Records – State Records and Archives since those are exempt from the Executive Order.

[Exhibit 7 (emphasis added).] The list attached to Mr. Martinez' email clearly identified the Board as the "issuing agency" and its Chair, Gay Dillingham, as the "issuing authority" for Rule 20.2.100 NMAC. *Id.*; see also § 1.24.1.7 (Q) NMAC (defining "issuing agency" as "the agency that originally promulgated the rule, or its successor agency"); § 1.24.1.7 (R) NMAC (defining "issuing authority").

17. *At 2:48 P.M.* on the same day, Ms. Hernandez sent an email to the employees of several executive agencies, including the NMED. [Exhibit 8.] Ms. Hernandez informed these employees of the following:

John H. Martinez, the Director of the Administrative Law Division, has brought to my attention that your respective agencies and divisions have pending rules that are scheduled to be finalized today for publication in the New Mexico register. The list of such rules for your agencies is attached. As you may have seen, Governor Martinez issued an executive order suspending all pending rules and regulations for a

period of 90 days. Because these rules are not yet finalized, they are subject to the executive order and therefore suspended. Mr. Martinez has told me that he will refrain from printing the rules in the New Mexico register if he receives written notification from each of you today. *This notification to suspend publication is necessary to comply with the executive order. Accordingly, the Governor's Office requests that you sent [sic] that written notification to John Martinez immediately.*

[Exhibit 8 (emphasis added.)]

18. *At 4:49 P.M.* on the same day, the “Acting Cabinet Secretary of the [NMED],” Raj Solomon, sent an email to John Martinez. [Exhibit 9.] In accordance with Ms. Hernandez’ demand, Mr. Solomon wrote:

... I request that you suspend publication of the following environmental rules to comply with Governor Martinez’ Executive order 2011-001:

- 1) Rule No. 20.6.6 NMAC, Filed 12/13/2010; and
- 2) Rule No. 20.2.100 NMAC, Filed 12/27/2010.

19. Id. Mr. Solomon’s email clearly shows that he was acting solely in his capacity as acting Secretary of NMED and not as the Board’s or Ms. Dillingham’s agent. Neither this nor any email described herein listed the Environmental Improvement Board (*i.e.* the “issuing agency” of Rule 20.2.100 NMAC) and Chairperson Dillingham (*i.e.*, the “issuing authority”) as addressees.³ [Exhibits 5-10.] Neither Mr. Solomon nor any other employee of NMED is a member of the Environmental Improvement Board. Thus, nothing in the record

³ The Governor dismissed all members of the Board immediately upon taking office and has not announced the appointment of their replacements.

before this Court indicates that the Board knew of, much less lawfully authorized, Mr. Solomon's cancellation of the Board's rule filing.

20. At 12:06 P.M. the next day, Mr. Martinez emailed Ms. Hernandez:

Thank you for your assistance in notifying the issuing authorities of the rules that were filed but not yet published. *We have received notifications to cancel rule filings from all of the issuing authorities that were contacted.* I have attached a list of the cancelled rule filings.

[**Exhibit 10**—email with attachment entitled “Cancelled Rule Filings” showing “cancellation” of thirty-two rule filings, including Rule 20.2.100 NMAC (emphasis added).]

III. Respondents Unlawful “Cancellation” of the Board’s Filing of Rule 20.2.100 NMAC with the State Records Center can and should be Corrected by Mandamus:

21. Respondents’ treatment of Rule 20.2.100 NMAC as merely “proposed or pending” led directly to several unconstitutional and otherwise unlawful actions on their part that this Court can and should correct through a writ of mandamus.

a. First, the Records Center is “under the supervision and control” of the State Records Administrator, Sandra Jaramillo. NMSA 1978, § 41-3-8 (1959). Once the Board filed Rule 20.2.100 NMAC with the Records Center, Ms. Jaramillo had a non-discretionary ministerial duty to “have the rule published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code.” NMSA 1978, § 14-4-3(1995). Petitioner, therefore, seeks a writ of mandamus compelling her to perform these duties. See, e.g., Adjustments

v. Pub. Reg. Comm'n, 2000 NMSC 35, 129 N.M. 787, 14 P.3d 525 (“Mandamus is appropriate to compel the performance of an affirmative act”). As the Missouri Supreme Court explained in a very similar case:

Here, the individual relators seek enforcement of the secretary of state's duty to publish a final order of rulemaking. The secretary of state has no discretion in publishing such rules. Once the rule has been properly submitted, the secretary must publish it. Section 536.021.7, RSMo Supp. 1992 (providing that "all rules shall be published in full" (emphasis added)). This is a definite ministerial duty imposed by law. ... Because the secretary declined to perform the duty imposed upon him by law, a member of the general public can bring an action to enforce his duty to publish the final order of rulemaking.

Missouri Coalition for the Env't. v. Joint Comm. on Admin. Rules, 948 S.W.2d 125, 131-132 (Mo. S.Ct 1997).

b. Second, neither Governor nor NMED had authority to “cancel” the Board’s filing of Rule 20.2.100 NMAC with the State Records Center. Although the members of the Board are appointed by the Governor (NMSA 1978, § 74-1-4(2001)), the Board is *not* under the Governor’s direct control. The Board is independent of the Governor and NMED, and accordingly, they have no authority to set aside the Board’s administrative actions. Petitioner, therefore, seeks a writ of mandamus to compel Secretary Martin to withdraw acting Secretary Solomon’s unlawful cancellation of the Board’s rule filing. See 2000 NMSC 35, ¶ 129. Petitioner also requests this Court to prohibit the Governor and Secretary Martin from further interfering with the normal processes of law applicable to rule filings, publication and codification. State ex rel. Clark v. Johnson, 120 N.M. 562,

570, 904 P.2d 11, 19 (N.M. 1995) (“This Court on several occasions has recognized that mandamus is an appropriate means to prohibit unlawful or unconstitutional official action”); see also N.M. Const. Art. V, § 4 (requiring the Governor to “take care that the laws be faithfully executed”).

c. Third, by purportedly “cancelling” the Board’s rule filing and subjecting Rule 20.2.100 NMAC to “review” by a task force under Executive Order No. 2011-001, the Governor and NMED have unconstitutionally usurped legislative power and interfered with the appellate jurisdiction of the Court of Appeals. N.M. Const. Art. III, § 1 (requiring Separation of Powers). As explained above, Rule 20.2.100 NMAC is a final rule. The Legislature has provided for review of the Board’s final rules by the Court of Appeals:

Any “person who is or may be affected by [the] regulation ... may appeal to the court of appeals for further relief. All such appeals shall be upon the transcript made at the hearing [before the Board] and ***shall be taken to the court of appeals within thirty days after filing of the regulation under the State Rules Act.***

NMSA 1978, § 74-1-9(H)(1985)(emphasis added). Respondents’ attempt to “cancel” the Board’s rule filing should have no legal effect. Nevertheless it encroaches on the Legislature’s power to create statutory rights of appeal and on the appellate jurisdiction of the Court of Appeals. Petitioner, therefore, seeks a writ of mandamus to compel the Governor and Secretary Martin to comply with law and to prohibit them from attempting to encroach upon the Legislature and the Judiciary. See State ex rel. Taylor v. Johnson, 1998 NMSC 15, 3, 125 N.M. 343,

961 P.2d 768 (“This Court ... held that Respondents violated the separation of powers provision in Article III, Section 1 of the New Mexico Constitution.

Pursuant to this holding, we issued a Writ of Mandamus ... [to order] full compliance with existing law until it is constitutionally altered or amended by legislation signed into law by the Governor”); cf. Fullilove v. Carey, 91 Misc. 2d 531, 533, 398 N.Y.S.2d 226, 227-228 (Sup. Ct. 1977) (“Where an executive order extends and expands requirements of statutes, it does not serve the enforcement function and therefore constitutes an unwarranted exercise of legislative power); Application of Bowers, 203 Misc. 653, 655, 121 N.Y.S.2d 629, 631 (Sup. Ct. 1952) (holding that “the Governor cannot, by executive order or otherwise, enlarge” the “jurisdiction” of an executive agency).

22. It is both necessary and proper for Petitioner to seek a writ of mandamus in the Supreme Court. As held by this Court:

[When] issues of sufficient public importance are presented which involve a legal and not a factual determination, we will not hesitate to accept the responsibility of rendering a just and speedy disposition.

State ex rel. Bird v. Apodaca, 91 N.M. 279, 282, 573 P.2d 213, 216 (1977). This

Petition presents the Court with purely legal issues of great public importance.

First, as mentioned above, Respondents are not just preventing the codification and publication of a single final rule; they are arbitrarily preventing *thirty-two final and filed rules* from being codified and published. [Exhibit 10.] This systematic effort to circumvent the lawful process by which administrative rules become

public laws can only be addressed by this Court, and this Court's decision in this case will constitute binding precedent as to all of the improperly "cancelled" rule filings. Second, as set out above, this case is of great public interest because Petitioner seeks to enforce the Separation of Powers Doctrine.

23. Petitioner has standing to bring this action because of its unique stake in timely resolving the issues at hand. As explained above, the Board adopted Rule 20.2.100 in direct response to Petitioner's regulatory proposal to limit greenhouse gas emissions from certain stationary sources. In Shoobridge, this Court upheld the Board's statutory rulemaking authority to consider Petitioner's regulatory proposal free from improper judicial interference. Petitioner now requests the Court to again uphold the rule of law and the Separation of Powers Doctrine of the New Mexico Constitution, this time by enjoining improper interference by the Executive. Adjustments v. Pub. Reg. Comm'n, 2000 NMSC 35, 129 N.M. 787, 14 P.3d 525; State ex rel. Taylor v. Johnson, 1998 NMSC 15, 2-4, 125 N.M. 343, 961 P.2d 768 (holding that mandamus was proper to uphold Separation of Power and to address "an even more fundamental concept: respect for the rule of law").

Relief Sought

WHEREFORE, Petitioner respectfully requests the following relief:

- (1) An order compelling Ms. Jaramillo (a) to fully reinstate the filing of Rule 20.2.100 NMAC with the State Records Center, as of the date and time that it


was originally filed by the Board, (b) to codify Rule 20.2.100 in NMAC and (c) to publish the Rule in the New Mexico State Register as soon as possible;

(2) An order compelling Secretary Martin immediately to rescind Mr. Solomon's purported cancellation of the Board's filing of Rule 20.2.100 NMAC with the State Records Center; and

(3) An order compelling the Governor and the Secretary Martin to refrain from further interfering with the lawful process by which final administrative rules are filed with the State Records Center, codified in NMAC, and published in the New Mexico Register.

Respectfully submitted:

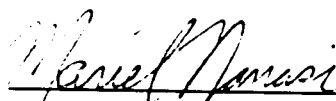
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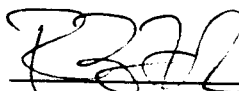
VERIFICATION

I, Mariel Nanasi, director of New Energy Economy, Inc., have read the forgoing Petition and state, under oath, that the statements contained in the Petition are true and correct to the best of my knowledge, information and belief.



Mariel Nanasi, Senior Policy Advisor
Director, New Energy Economy, Inc.

CERTIFICATE OF SERVICE: I certify that I caused a copy of the foregoing paper to be hand-delivered and emailed to the following persons pursuant to NMRA 12-307 on the 11th day of January, 2011:



R. Bruce Frederick

Honorable Susana Martinez Governor of the State of New Mexico Jessica Hernandez, General Counsel Office of the Governor 490 Old Santa Fe Trail Room 400 Santa Fe, NM 87501 jessica.hernandez@state.nm.us <i>Respondent</i>	F. David Martin Secretary, NMED Tannis Fox, General Counsel 1190 St. Francis Drive Santa Fe, NM 87502-5469 tannis.fox@state.nm.us <i>Respondent</i>
Honorable Gary King New Mexico Attorney General Stephen Vigil, Assistant AG Toney Anaya Building 2550 Cerrillos Road Santa Fe, New Mexico 87505 svigil@nmag.gov <i>Attorney General</i>	Sandra Jaramillo State Records Administrator John Martinez, Director, ALD State Records and Archives Center 1205 Camino Carlos Rey Santa Fe, NM 87507 sandra.jaramillo@state.nm.us john.martinez4@state.nm.us <i>Respondent</i>

State of New Mexico
Office of the Governor

Susana Martinez
Governor

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For Immediate Release
January 1, 2011

**GOVERNOR SUSANA MARTINEZ SIGNS FIRST EXECUTIVE ORDER,
CREATES SMALL BUSINESS TASK FORCE TO RECOMMEND RED-
TAPE CUTS**

*Executive Order Would Also Freeze Pending And Proposed Regulations For 90
Days*

SANTA FE – Today, Governor Susana Martinez signed her first executive order, which establishes a small business task force to identify red-tape regulations that are harmful to business growth and job creation in New Mexico and report its findings to the Governor. The task force, chaired by Secretary-designate of Economic Development, Jon Barela, will conduct its review over a 90-day period, during which all proposed and pending regulations will be frozen.

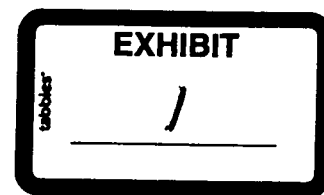
The full text of the executive order is below:

EXECUTIVE ORDER 2011-001

**FORMATION OF A SMALL BUSINESS-FRIENDLY TASK FORCE;
ESTABLISHING A 90-DAY REVIEW PERIOD FOR ALL PROPOSED AND PENDING RULES
AND REGULATIONS**

WHEREAS, New Mexico's citizens, their government, and all persons doing business in this State have a mutual interest in the proper administration of government and business, requiring common sense administrative rules and regulations that are comprehensible, reasonable, consistent, predictable, responsive, and without undue redundancy;

WHEREAS, one of the priorities of the Governor of New Mexico is establishing a common sense approach to executive rules and regulations, in accordance with the constitutional authority to direct the departments and agencies of the State of New Mexico, by establishing a "Small Business-Friendly Task Force" chaired by the Secretary of Economic Development;



WHEREAS, most proposed and pending rules and regulations can be temporarily suspended without detriment to the health or welfare of the citizens of New Mexico;

WHEREAS, ninety days is a reasonable time to review such proposed and pending rules and regulations, to examine them from various perspectives as to their workability, reasonableness, and determine whether they are proper and necessary;

WHEREAS, such an effort is timely given current unemployment levels and state budget difficulties, in order to create economic opportunity for each and every New Mexican, while protecting and preserving the health, safety and welfare of our community.

THEREFORE, I, Susana Martinez, Governor of the State of New Mexico, by the authority vested in me by the Constitution of the State of New Mexico and by its statutes, do hereby **ORDER** and **DIRECT**:

1. All proposed and pending rules and regulations, excluding those not under the authority of the Governor, are suspended for a period of review of 90 days unless excepted as set forth below.
2. Proposed and pending regulations shall not be suspended if doing so would:
 - a. Adversely impact public health;
 - b. Adversely impact public safety or security;
 - c. Fail to comply with a judicial order or deadline;
 - d. Prevent the respective department or agency from carrying out its essential functions and duties; or
 - e. Prevent qualification for any federal funds or certifications.
3. Each department or agency shall submit to the Office of the Governor a comprehensive listing of proposed and pending rules and regulations, for review not later than January 14, 2011.
4. Any proposed or pending rules and regulations to which this Order applies and the department or agency believes should be treated as an exception pursuant to paragraph 2, shall be separately identified as such, with a statement as to the basis for the exception and how it applies.
5. The Office of the Governor may, with the advice of the head of the department or agency affected, determine whether any rule or regulation initially excepted under paragraph 2 shall remain excepted. The Office of the Governor may, with the advice of the head of the department or agency affected, determine whether any rule or regulation not initially excepted under paragraph 2 shall also be excepted.
6. Each department and agency shall also review all of its existing rules and regulations with a view to enhancing the purpose of this Task Force, and no later than January 31, 2011, identify to the Secretary of Economic Development each rule or regulation, the rescinding or revision of which could significantly enhance the business environment in New Mexico through economic development and employment growth.
7. The Task Force shall, at a minimum, consist of the Secretaries of Taxation and Revenue, Workforce Solutions, General Services, and others whom the Governor may designate.

8. The Task Force shall make a report to the Governor no later than 90 days from the effective date of this order, and shall continue, as needed, to make specific legislative and regulatory recommendations to achieve economic growth and stability in New Mexico.
9. This Order does not create any legal rights on the part of any person or entity and shall not be a basis for a challenge to rules or regulations or any other action or inaction by any New Mexico governmental department or agency.

THIS ORDER supersedes any other previous orders, proclamations, or directives to the extent they are in conflict. This Executive Order shall take effect immediately.

ATTEST:

DONE AT THE EXECUTIVE OFFICE THIS
_____ day of _____, 2011.

DIANNA DURAN
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

SUSANA MARTINEZ
GOVERNOR OF NEW MEXICO

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STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD



IN THE MATTER OF THE PETITION TO ADOPT NEW)
REGULATIONS WITHIN 20.2 NMAC, STATEWIDE AIR)
QUALITY REGULATIONS, TO REQUIRE GREENHOUSE)
GAS EMISSIONS REDUCTIONS)
)
)
NEW ENERGY ECONOMY, INC. PETITIONER)
_____)

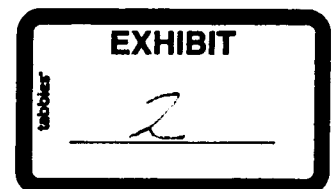
EIB No. 8-19 (R)

ORDER AND STATEMENT OF REASONS FOR ADOPTION OF REGULATION

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by New Energy Economy (“NEE” or “Petitioner”), proposing new regulations within 20.2 NMAC. A public hearing was convened in Santa Fe, New Mexico on August 16 through 20, 2010 and October 5 through 6, 2010. The Board heard technical testimony from Petitioner and other interested parties and admitted exhibits into the record. On December 6, 2010, the Board having familiarized itself with the record and the transcript of the proceedings, deliberated and adopted the proposed new regulations with several amendments by an affirmative vote of 4 to 1 and 1 recusal for the reasons that follow:

PROCEDURAL HISTORY

1. December 19, 2008 and February 2, 2009, respectively, Petitioner filed an original and a corrected regulatory proposal to the Board.
2. On January 5, 2009, pursuant to Section 74-1-9(A) of the EIA and Section 74-2-6(A) AQCA, the Board held a public meeting to “determine whether or not to hold a hearing” on the Petitioner’s “proposed regulation.” Several opponents urged the Board to deny the Petition



for Hearing, alleging that the Board lacked the authority to consider Petitioner's regulatory proposal. In response to opponents' arguments, the Board instructed the parties to brief the issue of the Board's jurisdiction and authority, appointed a hearing officer, and informed the parties that it would take up the matter again at its April 6, 2009 meeting.

3. On April 6, 2009, after hearing extensive public comment, briefing and oral argument, the Board decided that it "had the authority to hear this case" and scheduled a hearing.

4. On October 14, 2009, the Hearing Officer (Gay Dillingham) issued her First Order for Hearing Procedures.

5. On December 31, 2009, public notice was published on the Petitioner's regulatory proposal.

6. On January 13, 2010, a group state legislators, corporations and industry associations filed a lawsuit against the Board in the Fifth Judicial District in Lea County.

7. On January 14, 2010, the Hearing Officer (Gay Dillingham) issued her Second Order for Hearing Procedures.

8. On February 17, 2010, the Hearing Officer (Gay Dillingham) issued a Third Order for Hearing Procedures and an Order on March 1, 2010 hearing procedures.

9. On March 1, 2010, the Board held a public hearing for the sole purpose of taking public comment on NEE's Petition.

10. On March 2, 2010, the Petitioner submitted its Notice of Intent to Present Technical Testimony ("NOI"), which included pre-filed technical testimony and, pursuant to 20.1.1.302 NMAC, recommended changes.

11. On March 12, 2010, several opponents filed a Motion to Strike Petitioner's Technical Testimony.

12. On April 1, 2010, the Hearing Officer (Felicia Orth) denied the Motion and ordered additional notice on Petitioner's recommended changes to be published. This additional notice was published On April 15, 2010.

13. On April 29, 2010, the District Court issued a temporary injunction effectively halting the Board's proceedings in this matter.

14. On May 4, the Hearing Officer issued an Order staying prehearing deadlines and hearing dates.

15. Petitioner and the Attorney General sought review of the injunction in the New Mexico Supreme Court.

16. The Supreme Court ordered the Lea County court to dismiss opponents' case and dissolve the injunction issued against the Board. *See New Energy Economy v. Shoobridge*, 2010-NMSC-049.

17. On June 16, 2010, the District Court dissolved the temporary injunction and dismissed the case.

18. On June 18, 2010, Petitioner filed an Emergency Motion to Lift Stay and Resume Hearing Pursuant to Modified Schedule. The Hearing Officer then issued an Order lifting the stay.

19. On July 16, 2010, all other interested parties filed their NOIs.

20. On August 6, 2010, all parties filed their NOIs to present rebuttal testimony.

21. On August 12, 2010, NMOGA, et al. filed a Motion for Summary Disposition.

The Board refused to consider the motion as it was filed late according to the Board's rules.

22. On November 22, 2010, all parties filed closing arguments.

23. On November 22, 2010, NMOGA filed a Motion to Disqualify Board Member John Horning.

24. At the December 6, 2010 meeting, Board Member Horning announced on the record that he would recuse himself from voting and any further participation in the matter.

LEGAL AUTHORITY

1. The Board is authorized by the Air Quality Control Act ("AQCA") to adopt regulations "to prevent or abate air pollution...within the geographic area of [its] jurisdiction." NMSA 1978, § 74-2-5(B).

2. "In making its regulations, the environmental improvement board or the local board shall give weight it deems appropriate to all facts and circumstances, including but not limited to: (1) character and degree of injury to or interference with health, welfare, visibility and property; (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and (3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved." NMSA 1978, § 74-2-5(E).

3. A court will not reverse the Board's decision to adopt Part 100 unless the Board's decision is "(1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with law." NMSA 1978, § 74-2-9(C).

STATEMENT OF REASONS

I. Character and Degree of Injury & Public Interest.

1. Public interest in and support of the proposed regulation was demonstrated throughout the hearing. Tr. 1 at 276-292; Tr. 2 at 370-378, 381-391; Tr.4 at 52-71, 73-105; Tr. 6 at 18-21, 24-33; Tr. 7 at 297-300, 351-368; Tr. 8 at 344-41.

2. The United States Environmental Protection Agency (“EPA”) described the relationship between GHG emissions, climate change and injury to public health and welfare in its recent “Endangerment Finding”:

The specific issue here is whether an effect on human health that results from a change in climate should be considered when EPA determines whether the air pollution of well-mixed greenhouse gases is reasonably anticipated to endanger public health. In this case, the air pollution has an effect on climate. For example the air pollution raises surface, air, and water temperatures. Among the many effects that flow from this is the expectation that there will be an increase in the risk of mortality and morbidity associated with increased intensity of heat waves. In addition, there is an expectation that there will be an increase in levels of ambient ozone, leading to increased risk of morbidity and mortality from exposure to ozone. All of these are effects on human health, and all of them are associated with the effect on climate from elevated atmospheric concentrations of greenhouse gases. None of these human health effects are associated with direct exposure to greenhouse gases.

Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 FR 66496, 66527 (December 15, 2009). (Petitioner’s NOI, Exhibit P.10).

3. Dr. Gutzler, a well respected climate scientist, testified in support of proposed Part 100 all day on August 18. Tr. 3. Dr. Gutzler is a climate scientist and professor at the University of New Mexico. He has a PhD in Meteorology and has authored or co-authored numerous published reports and studies on the topic of climate variability and change. Since joining the faculty of UNM, much of his research has focused specifically on the climate of southwestern North America. (See Petitioner’s NOI, Exhibit P.13 (Gutzler CV)).

4. Dr. Gutzler's testimony, confirmed by his own research, presented the overwhelming scientific consensus that manmade greenhouse gas emissions are causing climate change, and that increasing emissions will increase the severity of climate change. (Tr. 3 at 27-30, 34-39, 57-58, 62-63, 167, 221-22, 225-226, 273-275).

5. Although past GHG emissions make it impossible to avoid climate change altogether, we can likely mitigate the most adverse effects of climate change by significantly reducing future GHG emissions. (Tr. 3 at 35). If not mitigated, the adverse effects of climate change could be catastrophic, particularly in New Mexico and the Southwest. (Tr. 3 at 14, 20-27, 29-33, 53, 84, 97, 255). Adverse effects include increased frequency and severity of drought, less snowpack and stream flow, more heat waves, and a substantial decrease in Gila Trout habitat. (Tr. 3 at 20-25, 29, 31-32, 49-50, 58, 220-21, 224, 275-277). Changes in climate induced by manmade greenhouse gas emissions could be abrupt and non-linear. (Tr. 3 at 49). The effects of climate change have already been observed. (Tr. 3 at 54-56).

6. Dr. Gutzler thoroughly explained why so-called "climategate" is merely a distraction without substance. Nothing in the stolen emails undermines the overwhelming evidence and body of scientific knowledge regarding climate change. (Tr. 3 at 43-46, 68-71). Dr. Gutzler discussed and debunked several popular myths regarding climate change. (Tr. 3 at 72-82).

7. Although he acknowledged that uncertainties exist, as they do in virtually all scientific endeavors, Dr. Gutzler believes that the evidence of human-caused climate change is compelling. (Tr. 3 at 63-64, 268, 272).

8. No climate scientist testified on behalf of opponents. Mr. Kappelman included a draft paper by a climate change skeptic, an economist, which Mr. Kappelman characterized as merely listing contrarian theories without judgment. Tr. 7 (Kappelman) at 336-338.

9. Compliance with Part 100 will reduce New Mexico's contribution to global warming at a rate consistent with the scientific consensus; and it will serve as an impetus for the United States Congress and other states to act. Pet. NOI, Tab C at 25; Pet. R-NOI, Tab B at 3, 30-31; Tr. 1 (Michel) at 109-110; Tr. 3 (Dr. Gutzler) at 265 (supporting the proposed rule); Tr. 5 (Michel) at 299; Tr. 6 (Michel) at 182-83, 210; Tr. 7 (Sprott) at 215-218, 268-69; Tr. 9 (Michel) at 324-25.

10. States acting together can have a substantial impact on climate change (Tr. 7 (Sprott) at 237).

II. Economic Reasonableness

11. The regulation is market-based and does not dictate how sources reduce CO2 emissions, but allows them to achieve compliance at the lowest cost possible. Tr. 1 (Michel) at 38-39, 65, 102-103; Tr. 5 (Michel) at 249-251, 260-67; Tr. 6 (Michel) at 164-165; Tr. 7 (Sprott) at 266; Tr. 7 (Michel) at 41. The regulation will have a negligible impact on utility costs and will not cause gasoline prices to increase. Tr. 6 (Michel) at 172-176; Tr. 7 (Michel) at 84; Tr. 9 (Michel) at 324, 343-44.

12. The regulation includes a cost cap, such that once a source's expenditures on compliance reach the cap in a given year its reduction obligation is satisfied. § 20.2.100.12; Tr. 7 (Michel) at 91-92. Application of this cost cap to the regulated sources represents a scenario in which sources cannot reduce emissions through efficiency or technology measures or through credits, but are forced to comply solely through the purchase of offsets at a price greater or equal to \$50.00 per mton each and every year.¹ Tr. 5 (Michel) at 198-199, 222-224, 227-228; Tr. 7 (Michel) at 18-22. Under this scenario, the cost of the regulation will be minimal, representing in terms of revenues less than 1% per year for utilities, 0.08% for oil refining, and 0.25% for gas

¹ \$50.00 is the "carbon price," which increases by \$1.0 each year. Substantial evidence supports using \$50.0, as adjusted over time, as the carbon price. Pet. NOI, Tab C at 24-25; Tr. 1 (Michel) at 231-34; Tr. 7 (Michel) at 79-80.

processing. Pet. NOI, Tab C at 10 (Table 1), 11; Pet. R-NOI, Tab B at 42-43 (“Based upon Tri-State’s own numbers, the impact will be about a 0.33 percent increase to Tri-State’s member consumer electric bills in the first year, growing by that same fraction of a percent in each subsequent year”), 54; Tr. 1 (Michel) at 35-36, 100; Tr. 5 (Michel) at 225-226, 242; Tr. 6 (Michel) at 166-169, 172-176; Tr. 7 (Michel) at 84-86; Tr. 9 (Michel) at 243-44 (maximum cost of regulation would be 0.8% of Tri-State’s approximately \$1.3 billion in revenues, noting mathematical error of Tri-State witness Spiers); Tr. 9 (Michel) at 269; cf. City of Farmington NOI Tab B (Kappelman) at 12 (noting rule’s structure would result in “modest initial cost impacts”).

13. As a practical matter, the costs and revenues of regulated sources will not be affected by Part 100, but will continue to be dominated by the vagaries of global market forces and commodity prices. Pet. R-NOI, Tab B at 37; Tr. 1 (Michel) at 46, 101; Tr. 7 (Michel) at 85.

14. By placing a price on carbon and creating a market for offsets and businesses that specialize in reduction technologies and renewable resources, the regulation will likely induce economic activity in New Mexico and may have a net positive effect on the state’s economy. Pet. R-NOI, Tab B at 10-11, 38 (“greenhouse gas regulation will likely be a boom for the natural gas industry”); 41 (“rule more likely to drive development into New Mexico than out”); Tr. 1 (Michel) at 46, 172, 261; Tr. 2 (Collins) at 59-60 (regulations will provide extra “push” to incentivize methane reductions at upstream oil and gas sites); Tr. 7 (Michel) at 88, 93-96, 105-07, 113-14, ; Tr. 9 (Michel) at 256. Moreover, the emission baseline for new sources set by the regulation would create an incentive to locate sources here, because they can emit less than the baseline and thus establish valuable credits. Pet. R-NOI, Tab B at 5-6, 8-9, 25, 40; Tr. 1 (Michel) at 119, 223; Tr. 5 (Michel) at 300-302; Tr. 9 (Michel) at 245, 263-66, 294-295 (listing

energy sources that can “beat” the baseline), 342.

15. Wind and solar energy generate 40% more jobs per dollar invested than coal mining. The solar and wind industries create about 5.7 jobs per million dollars invested over a ten-year period, compared to the coal industry, which creates only 3.96 jobs per million dollars. Pet. R-NOI, Tab C (LaDuke) at 15.

16. As a general rule, the combustion of coal emits twice as much CO₂ as natural gas per MWh. Pet. R-NOI, Tab B at 15; Tr. 1 (Michel) at 212; Tr. 8 (Simms) at 95; Tr. 7 (Michel) at 40; Tr. 9 (Michel) at 345. The demand for natural gas, viewed as the transition fuel, will likely increase if the Board adopts the rule. Pet. R-NOI, Tab B at 38; Tr. 1 (Michel) at 224-225; cf. Tr. 8 (Richards) at 132 (increased natural gas demand would avoid perceived “death spiral”). The rule should not adversely affect investment in new coal-fired coal plants. The rule does not mandate the use of any particular resource or technology (Tr. 9 (Michel) at 345), and even without the rule, utilities are far more likely to invest in new gas-fired power plants than coal-fired plants. Tr. 9 (Michel) at 342, 357.

17. Because of the availability of offsets and cost-effective means of reducing CO₂ emissions through efficiency and other measures, it is highly unlikely that a source’s actual compliance costs will ever come close to the cost cap provided in the regulation. Pet. R-NOI, Tab B at 49; Tr. 1 (Michel) at 43, 45, 65, 95, 102-03, 201, 212, 214, 216-17, 243; Tr. 1 (Hausman, VP, Synapse Economics) at 259-261; Tr. 5 (Michel) at 241-244, 228, 252-55; Tr. 9 (Michel) at 267. In the unlikely event a source reaches the cost cap in a given year, it is excused from further compliance for that year. Tr. 5 (Michel) at 199, 241-242.

18. Although opponents speculated about the possibility of “leakage” under the regulation, none provided evidence that it would occur. No evidence in the record shows that any regulation

has ever induced leakage from New Mexico or any other jurisdiction, much less a regulation similar to the one under consideration. Utilities hoping to sell power to New Mexicans from out-of-state sources, moreover, would not have a “free ride” but would have to obtain approval from the New Mexico Public Regulation Commission. Tr. 5 (Michel) at 307.

19. No evidence shows that any covered source could operate more profitably in another state; nor did any party provide any economic or regulatory comparison of New Mexico to other states. In reality, covered sources are linked to New Mexico by the location of the resource (oil and gas) or the location of customers (utilities). Pet. R-NOI, Tab B at 32. Moreover, other states also impose various greenhouse gas reduction requirements and renewable portfolio standards and may impose additional requirements in the future. Tr. 9 (Michel) at 297. Finally, the modest costs imposed by this regulation are unlikely to justify moving facilities or purchasing power out-of-state. Pet. R-NOI, Tab B at 32-33.

20. There are multiple cost-effective opportunities and means by which CO₂ and other greenhouse gas emissions can be reduced in New Mexico, including improved efficiency, fuel-switching, employment of solar, wind and other renewable resources (either alone or in combination with fast-starting combustion and combined-cycle turbines), carbon capture and sequestration (or use in tertiary oil recovery), leak detection and cessation, de-pressuring gas pipelines, dairy biogas combustion, switching from combustion to electricity; vapor recovery units, vacuum release valves, use of co-generation (electricity and heat), methane recovery at landfills, rangeland management, refrigerator recycling, methane recover from underground coal mines, green completions of oil and gas wells, etc. Pet. NOI, Tab C at 18; Pet. R-NOI, Tab B at 5, 11, 13, 20-21, 23-25, 27, 34-35, 47; Tr. 1 (Michel) at 80-81, 95-96, 103, 212-215, 221; Tr. 2 (Peridas) at 30-43; (Randolph) at 43-53; (Collins) at 57-68; Tr. 5 (Michel) at 187-191, 257, 279;

Tr. 6 (Michel) at 152-158; Tr. 7 (Michel) at 44-47, 85-86; Tr. 8 (Simms) at 97.

21. There are 89 discrete practices or technologies for methane reduction in the oil and gas sector. These include reduction options for oil and gas production (e.g., at well sites, gathering lines), processing (e.g., natural gas plants) and transmission (e.g., larger pipelines). Pet. R-NOI, Tab G; Tr. 2 (Collins) at 58-63.

22. Eliminating methane from the rule alone creates millions of metric tons of potential offsets. Tr. 5 (Michel) at 43, 190, 214, 216-17; Tr. 7 (Sprott) at 233-34; cf. Tr. 8 (Simms) at 96; Tr. 9 (Michel) at 260-65, 319, 332-333 (BHP mine provides opportunities to reduce methane emissions on the order of hundreds of thousands of metric tons), 357-358.

23. Renewable energy sources, such as wind and solar, can be added to existing power generation without adversely affecting system reliability or fast-start capability. Tr. 5 (Michel) at 208; Tr. 9 (Michel) at 292-293. Indeed, as demonstrated by a PNM exhibit, this is key to California's strategy for reducing greenhouse gas emissions. PNM Surrebuttal (Bothwell), PNM Exhibit CDB-6S at 2-3 (December 24, 2009, letter from the California Energy Commission to EPA).

24. Even opponents admitted that an offset market will be stimulated by adoption of Part 100. Tr. 9 (Bothwell) at 82. And that Devon Energy Corporation has implemented profitable carbon reduction techniques and is banking credits from the anticipated price on carbon. Tr. 8(Smith) at 303.

25. The actions that are taken by specific companies, such as Devon and PNM, to reduce GHG emissions may qualify for early action credits under Part 100, and reductions required under Part 100 will also likely qualify for early action credits under a future federal GHG program. Pet. NOI, Tab B at 11-13, 15, 20, 31, 39, 55.

26. The incredible range of impacts estimated by one economist, who assumed no positive benefits from the rule, was an unbelievable \$0.0 to \$1.7 billion. Tr. 8 (Lillywhite) at 46-48, 56, 58 (“the net effect is going to be close to zero when you have -- you are exchanging money”), 60. Mr. Lillywhite provided no documentation of the output or assumptions of his simple Excel model. Tr. 8 (Lillywhite) at 42-44, 47.

III. Technical Practicability

27. NMED has sufficient staffing, funding and skill to implement Part 100. Tr. 6 (Michel) at 163; Tr. 7 (Spratt) at 165-174, 195-96, 201, 249-50 (one FTE required); Tr. 9 (Michel) at 374-75. The rule is appropriately flexible and provides appropriate discretion to NMED, enabling it to apply the rule to diverse sources and situations. Tr. 7 (Spratt) at 168-174, 186, 194. The flexibility provided in Part 100, as well as the many “off ramps,” will obviate the need for formal variances. Tr. 7 (Spratt) at 186, 194.

28. The definition of “source” in Part 100 is clear and workable and provides sufficient certainty to regulated sources. *Id.* at 196-99, 224; Tr. 6 (Michel) at 78. Reporting under Part 100 will track reporting to EPA and will not impose an undue burden on industry. *Id.* At 229-30.

AMENDMENTS

29. The Board amended Section 20.2.100.5 - EFFECTIVE DATE to read: "January 1, 2013, or six months after 20.2.350 NMAC is no longer in force, whichever date is later."

30. The Board amended Section 20.2.100.15 - SUNSET to read: "This part shall sunset if a regional or federal greenhouse gas reduction program is in place or ten years after the effective date."

31. Other sections of the proposed rule were amended to comport with these changes. These amendments are detailed in the deliberation transcript.

ORDER

By an affirmative vote of 4 to 1, the proposed new regulation was approved by the Board on December 6, 2010 with the amendments as detailed in this Order and the hearing transcript. The regulations described in this Order are hereby adopted, to be effective 30 days after filing with the State Records Center.


Gay Dillingham, Chair
On Behalf of the Board

Dated: 12-29-10

2010 DEC 27 AM 10:40

NMAC TRANSMITTAL FORM

1.24.10 NMAC

[Sequence # _____]

1. Agency Name Environmental Improvement Board	2. Agency Code (NMAC) 66700
--	---------------------------------------

3. Agency Address
P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico 87502

4. Contact Person			
Name	Brad Musick	Phone #	(505) 476-4321
		FAX	(505) 476-4375
E-mail brad.musick@state.nm.us			

5. Type of Rule/Action

New Amendment Renumber Repeal Emergency

6. Order Number of Process	4	7. Issue Date	12/6/2010	8. Effective Date	01/01/13
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9. Code Numbers		
Title	Chapter	Part
20	2	100

10. NMAC Name		
Title	Chapter	Part
Environmental Protection	Air Quality (Statewide)	Greenhouse Gas Reduction Program

11. Amendment Description	12. Amendment's NMAC Citation

13. Most recent filing date (if applicable)
/ /

14. Are there any materials incorporated by reference?

No Yes

Please list attachments and Internet site(s) if applicable

Reference / Internet site
1.
2.
3.

15. If materials are attached, has copyright permission been received?

No Yes Public domain

16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all citations)

Environmental Improvement Act, NMSA 1978, §§ 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, §§74-2-1 et seq., including 74-2-5(A) and (B).

17. Signature & Title of Issuing Authority (Delegated authority must be on file)

Name: Gay Dillingham Check if delegated authority

Title: Chair

Gay Dillingham
Signature

12-13-10
Date Signed



2010 DEC 27 AM 10:40

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 100 GREENHOUSE GAS REDUCTION PROGRAM

20.2.100.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.100.1 NMAC - N, 01/01/13]

20.2.100.2 SCOPE: All persons who own, operate or control a source, as defined in this part.
[20.2.100.2 NMAC - N, 01/01/13]

20.2.100.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Sections 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including Sections 74-2-5(A) and (B).
[20.2.100.3 NMAC - N, 01/01/13]

20.2.100.4 DURATION: Permanent.
[20.2.100.4 NMAC - N, 01/01/13]
[Sunsetting of this rule is provided in Section 20.2.100.15 NMAC, and mandatory board consideration of revisions and reauthorization is provided in Section 20.2.100.16 NMAC.]

20.2.100.5 EFFECTIVE DATE: January 1, 2013, or six months after 20.2.350 NMAC is no longer in force, whichever date is later.
[20.2.100.5 NMAC - N, 01/01/13]

20.2.100.6 OBJECTIVE: The objective of this part is to establish greenhouse gas emission reduction requirements for sources, as defined herein.
[20.2.100.6 NMAC - N, 01/01/13]

20.2.100.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part the following definitions shall apply; provided, however, that in the event of a conflict, the definition provided in this part shall prevail for purposes of this part.

A. **"Baseline emissions"** means the actual or estimated carbon dioxide emissions from a source in 2010, as approved by the department. For new sources, it is the emissions set forth in 20.2.100.10 NMAC during the first year of regulation of the new source, as approved by the department. The department shall allow the use of a different time period or output level upon a determination that it is more representative of normal source operations.

B. **"Board"** means the environmental improvement board.

C. **"CO₂e"** means carbon-dioxide equivalent, which is the global warming potential of a gas calculated in terms of metric tons of carbon dioxide, as provided in 40 CFR 98.6.

D. **"Carbon dioxide maximum expenditure price"** shall be fifty dollars (\$50.00) per metric ton carbon dioxide, which dollar amount shall increase by one dollar (\$1.00) every year thereafter.

E. **"Credit"** means the amount of a reduction of carbon dioxide emissions from a source beginning in 2012 in excess of that required by these regulations that has been reviewed and approved by the department.

F. **"Department"** means the New Mexico environment department.

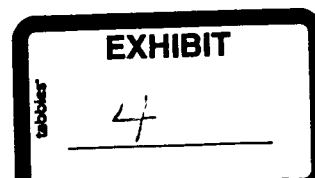
G. **"Early action"** means specific, measured, enforceable, permanent and verifiable steps voluntarily taken at a source at any time in 2005 through 2011 that reduced the source's carbon dioxide emissions below that which it would have emitted had such steps not been taken.

H. **"Early action credit"** means the amount of a reduction in carbon dioxide emissions from early action.

I. **"Existing source"** means a source whose carbon dioxide emissions in 2010 equaled or exceeded the threshold amount.

J. **"Greenhouse gas"** means a gas, except water vapor, with a global warming potential.

K. **"New source"** means a source whose carbon dioxide emissions equal or exceed the threshold amount after 2010, but not during 2010. A new source includes output capacity added to a source after 2010.



L. "Offset" means a CO₂e reduction in greenhouse gas emissions in New Mexico not at a source, or a non-carbon dioxide reduction in greenhouse gas emissions at a source. An offset must be approved and determined by the department to be accurately measured, verifiable, enforceable, voluntary, additional and permanent. The department shall approve New Mexico offsets certified by the climate action reserve, or certified by any other protocol authorized by the department.

M. "Source" means a petroleum refining facility (SIC code 2911), gas processing or treatment facility (SIC codes 1321 or 1389), gas compression facility (SIC codes 4922, 1389 or 1311) or electric generating facility (SIC code 4911) located in New Mexico whose carbon dioxide emissions equal or exceed the threshold amount. Emissions from oil and gas well sites and associated gathering and transportation systems shall not be aggregated or otherwise considered in determining whether a facility is a source. A source that has been retired or is no longer being operated shall continue to be a source for three years from the date of retirement or ceased operation.

N. "Threshold amount" means carbon dioxide emissions of 25,000 metric tons per year or such lesser amount as the facility owner selects.
[20.2.100.7 NMAC - N, 01/01/13]

20.2.100.8 PREAMBLE: Human activity has increased the global concentration of greenhouse gases in the atmosphere. Science informs us that these increased concentrations have and will warm the climate globally and that, unless abated, will have significant, adverse impacts to the health and welfare of New Mexicans. Currently, scientists believe that greenhouse gas emission reductions to 25 percent below 1990 levels by 2020, and 80 percent below 1990 levels by 2050, or more, are needed to avoid the most severe of these adverse impacts. These regulations are intended to reduce greenhouse gas emissions in New Mexico in a manner consistent with this scientific view, and in proportion to New Mexico's contribution to global warming. Although the science underlying the connection between anthropogenic greenhouse gas emissions and climate change is well-established, the global climate system is complex, and science's ability to predict future impacts and recommend avoidance strategies has and will evolve and improve over time. Accordingly, these regulations should be reviewed in 2014, and thereafter as necessary, to assure they remain consistent with the most current scientific knowledge and understanding.

[20.2.100.8 NMAC - N, 01/01/13]

20.2.100.9 EXISTING SOURCES:

A. Within thirty days of the effective date, existing sources shall accurately report their baseline emissions to the department. The report shall include a detailed description of the source, quantities of all carbon dioxide emissions from the source, and a description of how the 2010 emissions were measured or estimated for the source. Emission monitoring and calculation methods provided in 40 CFR Part 98 may be used to meet this requirement. The department shall approve or disapprove the source's baseline emissions. In the event of disapproval, the source may correct the report or appeal the department's decision to the board.

B. Unless otherwise provided in this part, an existing source shall emit no more than its approved baseline emissions one year after the effective date, and thereafter it shall reduce those emissions by at least three percent each year. For example, two years after the effective date an existing source shall emit no more than 97 percent of its approved baseline emissions, and three years after the effective date no more than 94 percent of its approved baseline emissions.

C. Beginning two years from the effective date, existing sources shall accurately report their annual carbon dioxide emissions for the prior year to the department, on or before March 1. The report shall include a detailed description of the source, quantities of all carbon dioxide emissions from the source, and a description of how the annual emissions were measured or estimated for the source. The department shall approve or disapprove the source's annual carbon dioxide emissions report. In the event of disapproval, the source may appeal the department's decision to the board.

[20.2.100.9 NMAC - N, 01/01/13]

20.2.100.10 NEW SOURCES:

A. The baseline emissions for new sources that generate electricity shall equal 0.5 metric tons of carbon dioxide per megawatt-hour times the expected output per year of that facility during normal operating conditions. The 0.5 metric tons shall be reduced by 0.015 metric tons each year after the effective date.

B. The baseline emissions for new sources that refine oil, process or treat natural gas, or compress natural gas shall equal the metric tons of carbon dioxide that would be emitted annually during normal operating

conditions using best available control technology. The baseline shall assume natural gas is the fuel source for all combustion at the facility.

C. Unless otherwise provided in this part, a new source shall emit no more than its approved baseline emissions during its first full calendar year of operation, and thereafter it shall reduce those emissions by at least three percent each year. For example, in the second year a new source shall emit no more than 97 percent of its approved baseline emissions, and in the third year no more than 94 percent of its approved baseline emissions.
[20.2.100.10 NMAC - N, 01/01/13]

20.2.100.11 CREDITS, OFFSETS, BANKING AND BORROWING:

A. Credits. Any person may apply to the department for approval of a credit. A person with an approved credit may use it to comply with any emission requirement of this part as to any source that is owned, operated or controlled by the same person.

B. Early action credits. Any person may apply to the department for an early action credit. A person with an approved early action credit may use it to comply with any emission requirement of this part as to any source that is owned, operated or controlled by the same person. The amount of an approved early action credit at a source during the first twelve months after the early action was completed shall be added to that source's baseline carbon dioxide emissions.

C. Offsets. Any person may apply to the department for an offset. As applicable, the department may require execution of an enforceable contract between the person, the department and the owner of the offsetting source. A person with an approved offset may use it to comply with any emission requirement of this part as to any source that is owned, operated or controlled by the same person, or may transfer the offset to a third party.

D. Banking. Approved credits, early action credits and offsets may be held indefinitely until they are submitted to the department for the purpose of lowering a source's carbon dioxide reduction requirement for a given year on a one-to-one basis.

E. Borrowing. A source that for any reason cannot meet its carbon dioxide reduction requirement in a given year may defer meeting all or part of such requirement for one additional year; provided, however, that the source shall meet the next year's carbon dioxide reduction requirement plus one hundred and ten percent of the quantity of emissions deferred from the previous year. If a source defers compliance in a year, the unused portion of any 20.2.100.12 NMAC expenditure limit for that year shall carry forward with any deferred reductions.
[20.2.100.11 NMAC - N, 01/01/13]

20.2.100.12 COMPLIANCE LIMIT: Notwithstanding any other provision of this part, a source shall have no further obligation to meet its carbon dioxide reduction requirement in a given year if it has demonstrated to the department that: (1) a good faith effort was made to reasonably and effectively either reduce carbon dioxide emissions at the source or obtain offsets; and (2) the amount of direct expenditures on such good faith effort equals or exceeds the carbon dioxide price times the metric tons of carbon dioxide reduction required in that year. A source shall also be excused from compliance in a given year to the extent that the source demonstrates to the department that sufficient offset and reduction opportunities do not exist, or that compliance would threaten the financial integrity and continued operation of the source.
[20.2.100.12 NMAC - N, 01/01/13]

20.2.100.13 NON-COMPLIANCE: Failure to comply with the carbon dioxide emission limitations established by this part shall be subject to a penalty or other enforcement action as determined by the secretary.
[20.2.100.13 NMAC - N, 01/01/13]

20.2.100.14 VARIANCES: Any person may seek a variance from this part pursuant to 20.2.1.114 NMAC.
[20.2.100.14 NMAC - N, 01/01/13]

20.2.100.15 SUNSET: This part shall sunset if a regional or federal greenhouse gas reduction program is in place or ten years after the effective date.
[20.2.100.15 NMAC - N, 01/01/13]

20.2.100.16 REVISIONS: Three years after the effective date, the department shall petition the board to amend these regulations to modify the definitions of source and threshold, change the covered emissions, adjust the reduction requirements to compensate for emissions from new sources, or make other changes as necessary to assure that New Mexico is reducing its greenhouse gas emissions in a manner that is consistent with the best available

information and advice from climate change scientists. Within nine years of the effective date, the board shall conduct a reauthorization hearing of this rule.
[20.2.100.16 NMAC - N, 01/01/13]

HISTORY OF 20.2.100 NMAC: [RESERVED]

Martinez, John, SRCA

From: Martinez, John, SRCA
Sent: Tuesday, January 04, 2011 9:24 AM
To: Hernandez, Jessica, GOV
Cc: Gutierrez, Bianca, GOV; Jaramillo, Sandra, SRCA
Subject: Executive Order 2011-001
Attachments: xxii01.pdf

Dear Jessica Hernandez,

My name is John Martinez and I am the Director of the Administrative Law Division (ALD) at the State Records Center and Archives. The ALD is the central filing point for all rules promulgated by Executive Branch agencies and is also the publisher of the New Mexico Register and the compiler of the New Mexico Administrative Code (NMAC). The New Mexico Register is the official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico, which is available online at <http://www.nmcpr.state.nm.us/nmregister/>. The State Rules Act mandates that "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register" (Section 14-4-5 NMSA 1978). The New Mexico Register is published twice each month, usually around the 15th and the last day. The last issue was published on December 30, 2010 and the next issue is scheduled for January 14, 2011.

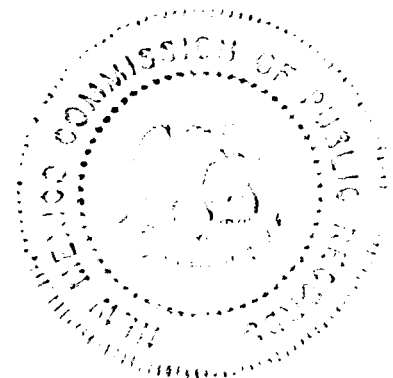
I have read Executive Order 2011-001 which establishes a 90-day freeze on rulemaking. I am writing you because there are 34 rules that were filed during the last administration but will not be published in the New Mexico Register until January 14, 2011. We plan on publishing these rules unless we receive written notification from the issuing authorities in the respective agencies that these rule filings should be pulled back. The major issue for the ALD is that today is the rule filing deadline meaning that we will have to know by the end of today if any of these rule filings will not be published. Beginning tomorrow, the text will be type set and cannot be changed after that point.

I have attached a report of the 34 rule filings that are slated to be published on January 14, 2011. Please note that the State Records Center and Archives (noted in the report as the Commission of Public Records) is an independent agency not under the authority of the Governor.

Please contact me if you have any questions.

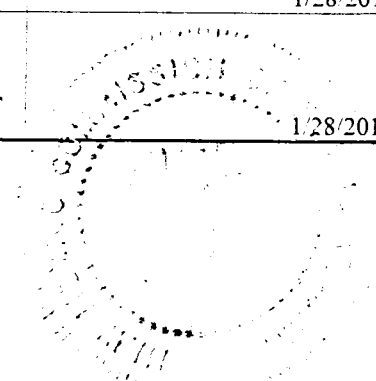
Sincerely,
John H. Martinez
Director, Administrative Law Division

New Mexico Commission of Public Records – State Records Center and Archives
1205 Camino Carlos Rey
Santa Fe, NM 87507
505-476-7941



Rules to Be Published in Volume XXII Issue 1 of the New Mexico Register - January 14, 2011

Agency	Filed	Type	Rule Number	Description	Comments	Effective Date
Environmental Improvement Board - Air Quality Control	12/27/2010	New Rule	20.2.100 NMAC	Air Quality - Greenhouse Gas Reduction Program.		1/1/2013
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.1 NMAC	Amendment to 16.62.1 NMAC [14], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.7 NMAC	Amendment to 16.62.7 NMAC [10, 12 & 13], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.8 NMAC	Amendment to 16.62.8 NMAC [12, 14 & 15], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.12 NMAC	Amendment to 16.62.12 NMAC [8], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.13 NMAC	Amendment to 16.62.13 NMAC [15], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.65.2 NMAC	Amendment to 16.65.2 NMAC [8, 11, 12, 13 & 14], filed 9-15-2009.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.65.3 NMAC	Amendment to 16.65.3 NMAC [8 & 9], filed 9-15-2009.		1/16/2011
Records, Commission of Public	12/29/2010	Amendment	1.13.10 NMAC	Amendment to 1.13.10 NMAC [11], filed 6-15-2005.		1/14/2011
Records, Commission of Public	12/29/2010	Amendment	1.13.11 NMAC	Amendment to 1.13.11 NMAC [8], filed 7-1-2003.		1/14/2011
Regulation and Licensing Department - Administrative Services Division	12/23/2010	Repeal	16 NMAC 1.1	Repealer; repeals 16 NMAC 1.1, filed 11-3-1995.		1/23/2011
Regulation and Licensing Department - Administrative Services Division	12/23/2010	New Rule	16.1.1 NMAC*	Parental Responsibility Act Compliance.	*Replaces 16 NMAC 1.1, effective 1-23-2011.	1/23/2011
Regulation and Licensing Department - Administrative Services Division	12/23/2010	New Rule	12.2.15 NMAC	Sale of Recycled Metals.		1/23/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.5.1 NMAC	Amendment to 14.5.1 NMAC [2, 7 & 9], filed 5-27-2004.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.5.2 NMAC	Amendment to 14.5.2 NMAC [2, 8, 10 & 11], filed 5-27-2004.		1/28/2011

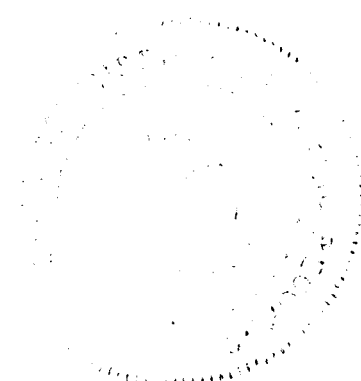


Rules to Be Published in Volume XXII Issue 1 of the New Mexico Register - January 14, 2011

Agency	Filed	Type	Rule Number	Description	Comments	Effective Date
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.5.3 NMAC	Amendment to 14.5.3 NMAC [2 & 9], filed 5-27-2004.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.7.2 NMAC	Repealer; repeals 14.7.2 NMAC, filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.7.2 NMAC*	Building Codes General - 2009 New Mexico Commercial Building Code.	*Replaces 14.7.2 NMAC, effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.7.3 NMAC	Repealer; repeals 14.7.3 NMAC, filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.7.3 NMAC*	Building Codes General - 2009 New Mexico Residential Building Code.	*Replaces 14.7.3 NMAC, effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.7.4 NMAC	Repealer; repeals 14.7.4 NMAC, filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.7.4 NMAC*	Building Codes General - 2009 New Mexico Earthen Building Materials Code.	*Replaces 14.7.4 NMAC, effective 1-18-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.7.5 NMAC*	2009 New Mexico Non-Load Bearing Baled Straw Construction Building Standards. Amendment to 14.7.5 NMAC [2 & 8], filed 8-16-2007.	*Part name amended.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.7.6 NMAC	Repealer; repeals 14.7.6 NMAC, filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.7.6 NMAC*	Building Codes General - 2009 New Mexico Energy Conservation Code.	*Replaces 14.7.6 NMAC, effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.7.7 NMAC*	2009 New Mexico Existing Building Code. Amendment to 14.7.7 NMAC [2, 8, 9 & 11], filed 8-16-2007.	*Part name amended.	1/28/2011

Rules to Be Published in Volume XXII Issue 1 of the New Mexico Register - January 14, 2011

Agency	Filed	Type	Rule Number	Description	Comments	Effective Date
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.7.8 NMAC*	2009 New Mexico Historic Earthen Buildings. Amendment to 14.7.8 NMAC [2]. filed 8-16-2007.	*Part name amended.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.8.2 NMAC	Repealer; repeals 14.8.2 NMAC. filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.8.2 NMAC*	Plumbing Codes - 2009 New Mexico Plumbing Code.	*Replaces 14.8.2 NMAC, effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.9.2 NMAC	Repealer; repeals 14.9.2 NMAC. filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.9.2 NMAC*	Mechanical Codes - 2009 New Mexico Mechanical Code.	*Replaces 14.9.2 NMAC, effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.10.4 NMAC	Amendment to 14.10.4 NMAC [11, 14 & 15]. filed 1-24-2008.		1/28/2011
Water Quality Control Commission	12/23/2010	New Rule	20.6.6 NMAC	Water Quality - Ground Water Protection - Supplemental Permitting Requirements For Dairy Facilities.		1/31/2011
Council for Purchasing from Persons with Disabilities	12/30/2010	Amendment	2.40.5 NMAC	Amendment to 2.40.5 NMAC [7 thru 11, 14 & 15]. filed 3-15-2007.		1/15/2011



Martinez, John, SRCA

From: Hernandez, Jessica, GOV
Sent: Tuesday, January 04, 2011 10:52 AM
To: Martinez, John, SRCA
Cc: Gutierrez, Bianca, GOV; Jaramillo, Sandra, SRCA; Stackpole, Matthew, GOV
Subject: RE: Executive Order 2011-001

John,

Thank you for your e-mail. Executive Order 2011-001 applies to these regulations. They are suspended unless they go through the exemption process set out in the executive order. They should not be published today. If you want written notification from the issuing agencies, please send me the list of your point people for these agencies on these issues. I will communicate with them to get that notification. Thank you.

Jessica Hernandez
General Counsel to Governor Martinez

From: Martinez, John, SRCA
Sent: Tuesday, January 04, 2011 9:24 AM
To: Hernandez, Jessica, GOV
Cc: Gutierrez, Bianca, GOV; Jaramillo, Sandra, SRCA
Subject: Executive Order 2011-001

Dear Jessica Hernandez,

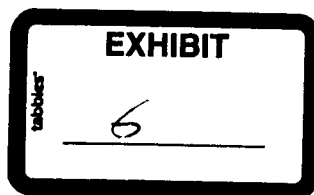
My name is John Martinez and I am the Director of the Administrative Law Division (ALD) at the State Records Center and Archives. The ALD is the central filing point for all rules promulgated by Executive Branch agencies and is also the publisher of the New Mexico Register and the compiler of the New Mexico Administrative Code (NMAC). The New Mexico Register is the official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico, which is available online at <http://www.nmcpr.state.nm.us/nmregister/>. The State Rules Act mandates that "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register" (Section 14-4-5 NMSA 1978). The New Mexico Register is published twice each month, usually around the 15th and the last day. The last issue was published on December 30, 2010 and the next issue is scheduled for January 14, 2011.

I have read Executive Order 2011-001 which establishes a 90-day freeze on rulemaking. I am writing you because there are 34 rules that were filed during the last administration but will not be published in the New Mexico Register until January 14, 2011. We plan on publishing these rules unless we receive written notification from the issuing authorities in the respective agencies that these rule filings should be pulled back. The major issue for the ALD is that today is the rule filing deadline meaning that we will have to know by the end of today if any of these rule filings will not be published. Beginning tomorrow, the text will be type set and cannot be changed after that point.

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Please contact me if you have any questions.

Sincerely,
John H. Martinez
Director, Administrative Law Division



Martinez, John, SRCA

From: Martinez, John, SRCA
Sent: Tuesday, January 04, 2011 12:09 PM
To: Hernandez, Jessica, GOV
Cc: Gutierrez, Bianca, GOV; Stackpole, Matthew, GOV; Jaramillo, Sandra, SRCA; 'tmaestas@nmag.gov'
Subject: RE: Executive Order 2011-001
Attachments: RuleAuthorities.pdf

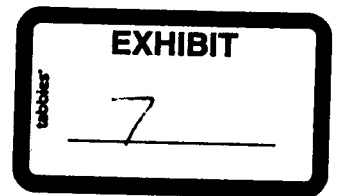
Jessica,

Thank you for your response. We will need written notification from the respective Issuing Authorities stating the desire to cancel the rule filings that occurred last month. The Issuing Authority is the person in the position who is authorized by statute to issue rules for an agency. Usually this is the secretary of a department, director of an agency, or chairperson of a board. I have attached the list of Issuing Authorities for those rules filed last month in accordance with the State Rules Act but not yet published in the New Mexico Register. I have excluded the rules for the Commission of Public Records – State Records Center and Archives since those are exempt from the Executive Order.

Please contact me if you have questions.

John H. Martinez
Director, Administrative Law Division

From: Hernandez, Jessica, GOV
Sent: Tuesday, January 04, 2011 10:52 AM
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Cc: Gutierrez, Bianca, GOV; Jaramillo, Sandra, SRCA; Stackpole, Matthew, GOV
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General Counsel to Governor Martinez

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To: Hernandez, Jessica, GOV
Cc: Gutierrez, Bianca, GOV; Jaramillo, Sandra, SRCA
Subject: Executive Order 2011-001

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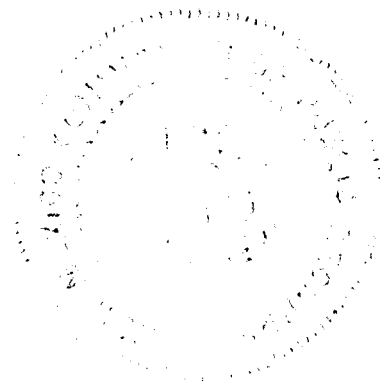
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Please contact me if you have any questions.

Sincerely,
John H. Martinez
Director, Administrative Law Division

New Mexico Commission of Public Records – State Records Center and Archives
1205 Camino Carlos Rey
Santa Fe, NM 87507
505-476-7941



Environmental Improvement Board - Air Quality Control

Issuing Authority: Gay Dillingham – Chair

Contact: Brad Musick
 505-476-4321
brad.musick@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/27/2010	New Rule	20.2.100 NMAC	Air Quality - Greenhouse Gas Reduction Program.	1/1/2013

Real Estate Appraisers Board

Issuing Authority: Wayne Ciddio, Executive Secretary – Real Estate Commission

505-222-9829

wayne.ciddio@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/17/2010	Amendment	16.62.1 NMAC	Amendment to 16.62.1 NMAC [14], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.62.7 NMAC	Amendment to 16.62.7 NMAC [10, 12 & 13], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.62.8 NMAC	Amendment to 16.62.8 NMAC [12, 14 & 15], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.62.12 NMAC	Amendment to 16.62.12 NMAC [8], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.62.13 NMAC	Amendment to 16.62.13 NMAC [15], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.65.2 NMAC	Amendment to 16.65.2 NMAC [8, 11, 12, 13 & 14], filed 9-15-2009.	1/16/2011
12/17/2010	Amendment	16.65.3 NMAC	Amendment to 16.65.3 NMAC [8 & 9], filed 9-15-2009.	1/16/2011

Regulation and Licensing Department - Administrative Services Division

Issuing Authority: Kelly O'Donnell, Superintendent

505-476-4508

kelly.odonnell@state.nm.us

Contact - Vadra Baca, Acting Deputy Director

505-476-4642

vadra.baca@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/23/2010	Repeal	16 NMAC 1.1	Repealer; repeals 16 NMAC 1.1, filed 11-3-1995.	1/23/2011
12/23/2010	New Rule	16.1.1 NMAC*	Parental Responsibility Act Compliance.	1/23/2011
12/23/2010	New Rule	12.2.15 NMAC	Sale of Recycled Metals.	1/23/2011

Regulation and Licensing Department - Construction Industries Division

Issuing Authority: Lisa D. Martinez, Construction Industries Division Director

Contact: Jose Rudy Romero

505-476-4598

joser.romero@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/28/2010	Amendment	14.5.1 NMAC	Amendment to 14.5.1 NMAC [2, 7 & 9], filed 5-27-2004.	1/28/2011
12/28/2010	Amendment	14.5.2 NMAC	Amendment to 14.5.2 NMAC [2, 8, 10 & 11], filed 5-27-2004.	1/28/2011
12/28/2010	Amendment	14.5.3 NMAC	Amendment to 14.5.3 NMAC [2 & 9], filed 5-27-2004.	1/28/2011

12/28/2010	Repeal	14.7.2 NMAC	Repealer; repeals 14.7.2 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.7.2 NMAC*	Building Codes General - 2009 New Mexico Commercial Building Code.	1/28/2011
12/28/2010	Repeal	14.7.3 NMAC	Repealer; repeals 14.7.3 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.7.3 NMAC*	Building Codes General - 2009 New Mexico Residential Building Code.	1/28/2011
12/28/2010	Repeal	14.7.4 NMAC	Repealer; repeals 14.7.4 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.7.4 NMAC*	Building Codes General - 2009 New Mexico Earthen Building Materials Code.	1/28/2011
12/28/2010	Amendment	14.7.5 NMAC*	2009 New Mexico Non-Load Bearing Baled Straw Construction Building Standards. Amendment to 14.7.5 NMAC [2 & 8], filed 8-16-2007.	1/28/2011
12/28/2010	Repeal	14.7.6 NMAC	Repealer; repeals 14.7.6 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.7.6 NMAC*	Building Codes General - 2009 New Mexico Energy Conservation Code.	1/28/2011
12/28/2010	Amendment	14.7.7 NMAC*	2009 New Mexico Existing Building Code. Amendment to 14.7.7 NMAC [2, 8, 9 & 11], filed 8-16-2007.	1/28/2011
12/28/2010	Amendment	14.7.8 NMAC*	2009 New Mexico Historic Earthen Buildings. Amendment to 14.7.8 NMAC [2], filed 8-16-2007.	1/28/2011
12/28/2010	Repeal	14.8.2 NMAC	Repealer; repeals 14.8.2 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.8.2 NMAC*	Plumbing Codes - 2009 New Mexico Plumbing Code.	1/28/2011
12/28/2010	Repeal	14.9.2 NMAC	Repealer; repeals 14.9.2 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.9.2 NMAC*	Mechanical Codes - 2009 New Mexico Mechanical Code.	1/28/2011
12/28/2010	Amendment	14.10.4 NMAC	Amendment to 14.10.4 NMAC [11, 14 & 15], filed 1-24-2008.	1/28/2011

Water Quality Control Commission

Issuing Authority: Sarah Cottrell, Chair – Water Quality Control Commission

Contact: Chuck Noble
505-827-0127
chuck.noble@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/23/2010	New Rule	20.6.6 NMAC	Water Quality - Ground Water Protection - Supplemental Permitting Requirements For Dairy Facilities.	1/31/2011

Council for Purchasing from Persons with Disabilities

Issuing Authority: Andrew Winnegar, State Purchasing Council from Persons with Disabilities

505-466-6563
ajwinnegar@comcast.net

Filed	Type	Rule Number	Description	Effective Date
12/30/2010	Amendment	2.40.5 NMAC	Amendment to 2.40.5 NMAC [7 thru 11, 14 & 15], filed 3-15-2007.	1/15/2011

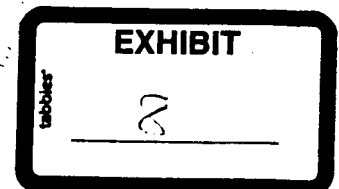
Martinez, John, SRCA

From: Hernandez, Jessica, GOV
Sent: Tuesday, January 04, 2011 2:48 PM
To: Musick, Brad, NMENV; Ciddio, Wayne, RLD; kelly.odonnell@state.nm.us; Baca, Vadra, RLD; Romero, Jose R., RLD; Noble, Chuck, NMENV; ajwinnegar@comcast.net
Cc: Martinez, John, SRCA; Gardner, Keith, GOV
Subject: Necessary Written Notification to Suspend Publication of Rules
Attachments: RuleAuthorities.pdf

Importance: High

John H. Martinez, the Director of the Administrative Law Division, has brought to my attention that your respective agencies and divisions have pending rules that are scheduled to be finalized today for publication in the New Mexico register. The list of such rules for your agencies is attached. As you may have seen, Governor Martinez issued an executive order suspending all pending rules and regulations for a period of 90 days. Because these rules are not yet finalized, they are subject to the executive order and therefore suspended. Mr. Martinez has told me that he will refrain from printing the rules in the New Mexico register if he receives written notification from each of you today. This notification to suspend publication is necessary to comply with the executive order. Accordingly, the Governor's Office requests that you sent that written notification to John Martinez immediately. He needs it today. I have copied him on this e-mail for your convenience. Thank you for your cooperation.

Jessica Hernandez
General Counsel to Governor Martinez



Martinez, John. SRCA

2011 JAN 4 PM 4:57

From: Solomon, Raj, NMENV
Sent: Tuesday, January 04, 2011 4:49 PM
To: Martinez, John. SRCA
Cc: Gardner, Keith. GOV; Hernandez, Jessica. GOV
Subject: Written Notification to Suspend Publication of Environmental Rules

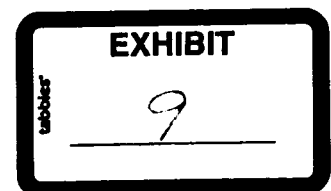
Dear Mr. Martinez:

As Acting Cabinet Secretary of the New Mexico Environment Department, I request that you suspend publication of the following environmental rules to comply with Governor Martinez's Executive order 2011-001:

- 1) Rule No. 20.6.6 NMAC, Filed 12/23/2010; and
- 2) Rule No. 20.2.100 NMAC, Filed 12/27/2010.

Sincerely,

Raj Solomon, P.E.
Acting Cabinet Secretary
New Mexico Environment Department



Martinez, John, SRCA

From: Martinez, John, SRCA
Sent: Wednesday, January 05, 2011 12:06 PM
To: Hernandez, Jessica, GOV
Cc: Gutierrez, Bianca, GOV; Gardner, Keith, GOV; 'tmaestas@nmag.gov'; Jaramillo, Sandra, SRCA; Stackpole, Matthew, GOV
Subject: Canceled Rule Filings
Attachments: CanceledRules.pdf

Dear Jessica,

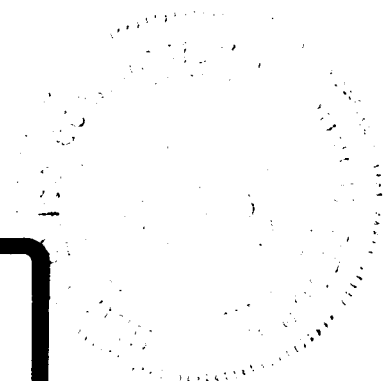
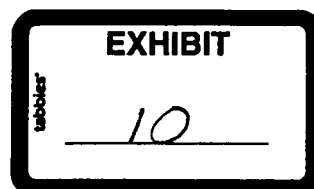
Thank you for your assistance in notifying the issuing authorities of the rules that were filed but not yet published. We have received notifications to cancel rule filings from all of the issuing authorities that were contacted. I have attached a list of the canceled rule filings.

Please contact me if there are questions about rules or the rulemaking process. We have developed an online course that covers the basics of rulemaking in New Mexico. The course is available 24 hours a day and is open to anyone. A person simply needs to send an email to staterules@state.nm.us requesting registration for the course and I will register them.

Sincerely,
John H. Martinez
Director, Administrative Law Division

New Mexico Commission of Public Records – State Records Center and Archives
1205 Camino Carlos Rey
Santa Fe, NM 87507

505-476-7941



Canceled Rule Filings

Environmental Improvement Board - Air Quality Control				
Filed	Type	Rule Number	Description	Canceled
12/27/2010	New Rule	20.2.100 NMAC	Air Quality - Greenhouse Gas Reduction Program.	1/4/2011
Real Estate Appraisers Board				
Filed	Type	Rule Number	Description	Canceled
12/17/2010	Amendment	16.62.1 NMAC	Amendment to 16.62.1 NMAC [14], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.62.7 NMAC	Amendment to 16.62.7 NMAC [10, 12 & 13], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.62.8 NMAC	Amendment to 16.62.8 NMAC [12, 14 & 15], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.62.12 NMAC	Amendment to 16.62.12 NMAC [8], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.62.13 NMAC	Amendment to 16.62.13 NMAC [15], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.65.2 NMAC	Amendment to 16.65.2 NMAC [8, 11, 12, 13 & 14], filed 9-15-2009.	1/4/2011
12/17/2010	Amendment	16.65.3 NMAC	Amendment to 16.65.3 NMAC [8 & 9], filed 9-15-2009.	1/4/2011
Regulation and Licensing Department - Administrative Services Division				
Filed	Type	Rule Number	Description	Canceled
12/23/2010	Repeal	16 NMAC 1.1	Repealer: repeals 16 NMAC 1.1, filed 11-3-1995.	1/4/2011
12/23/2010	New Rule	16.1.1 NMAC*	Parental Responsibility Act Compliance.	1/4/2011
12/23/2010	New Rule	12.2.15 NMAC	Sale of Recycled Metals.	1/4/2011
Regulation and Licensing Department - Construction Industries Division				
Filed	Type	Rule Number	Description	Canceled
12/28/2010	Amendment	14.5.1 NMAC	Amendment to 14.5.1 NMAC [2, 7 & 9], filed 5-27-2004.	1/5/2011
12/28/2010	Amendment	14.5.2 NMAC	Amendment to 14.5.2 NMAC [2, 8, 10 & 11], filed 5-27-2004.	1/5/2011
12/28/2010	Amendment	14.5.3 NMAC	Amendment to 14.5.3 NMAC [2 & 9], filed 5-27-2004.	1/5/2011
12/28/2010	Repeal	14.7.2 NMAC	Repealer: repeals 14.7.2 NMAC, filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.7.2 NMAC*	Building Codes General - 2009 New Mexico Commercial Building Code.	1/5/2011
12/28/2010	Repeal	14.7.3 NMAC	Repealer: repeals 14.7.3 NMAC, filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.7.3 NMAC*	Building Codes General - 2009 New Mexico Residential Building Code.	1/5/2011
12/28/2010	Repeal	14.7.4 NMAC	Repealer: repeals 14.7.4 NMAC, filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.7.4 NMAC*	Building Codes General - 2009 New Mexico Earthen Building Materials Code.	1/5/2011
12/28/2010	Amendment	14.7.5 NMAC*	2009 New Mexico Non-Load Bearing Baled Straw Construction Building Standards. Amendment to 14.7.5 NMAC [2 & 8], filed 8-16-2007.	1/5/2011

12/28/2010	Repeal	14.7.6 NMAC	Repealer; repeals 14.7.6 NMAC. filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.7.6 NMAC*	Building Codes General - 2009 New Mexico Energy Conservation Code.	1/5/2011
12/28/2010	Amendment	14.7.7 NMAC*	2009 New Mexico Existing Building Code. Amendment to 14.7.7 NMAC [2, 8, 9 & 11], filed 8-16-2007.	1/5/2011
12/28/2010	Amendment	14.7.8 NMAC*	2009 New Mexico Historic Earthen Buildings. Amendment to 14.7.8 NMAC [2], filed 8-16-2007.	1/5/2011
12/28/2010	Repeal	14.8.2 NMAC	Repealer; repeals 14.8.2 NMAC. filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.8.2 NMAC*	Plumbing Codes - 2009 New Mexico Plumbing Code.	1/5/2011
12/28/2010	Repeal	14.9.2 NMAC	Repealer; repeals 14.9.2 NMAC, filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.9.2 NMAC*	Mechanical Codes - 2009 New Mexico Mechanical Code.	1/5/2011
12/28/2010	Amendment	14.10.4 NMAC	Amendment to 14.10.4 NMAC [11, 14 & 15], filed 1-24-2008.	1/5/2011
Water Quality Control Commission				
Filed	Type	Rule Number	Description	Canceled
12/23/2010	New Rule	20.6.6 NMAC	Water Quality - Ground Water Protection - Supplemental Permitting Requirements For Dairy Facilities.	1/4/2011
Council for Purchasing from Persons with Disabilities				
Filed	Type	Rule Number	Description	Canceled
12/30/2010	Amendment	2.40.5 NMAC	Amendment to 2.40.5 NMAC [7 thru 11, 14 & 15], filed 3-15-2007.	1/4/2011

