

AQCB PETITION NO. 2023-1 TO AMEND 20.11.104 NMAC

KELSEA E. SONA, ASSISTANT CITY ATTORNEY

**ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD MEETING
AUGUST 9, 2023**

**ONE
ALBUQUE
RQUE**

Overview

- Federal Requirements
- California's Motor Vehicle Emission Standard Regulations Updates
- Petition Overview
- Stakeholder Engagement
- Timeline
- Other Procedural Considerations (*Proposed Order*)



Federal Requirements

- The Clean Air Act allows states to adopt California’s motor vehicle emission standards.
 - For New Mexico to adopt California’s standards, both the Air Board and the Environmental Improvement Board must adopt them.
- To be legally effective, New Mexico must have identical regulations imposing clean vehicle standards throughout the state:

$$\begin{array}{r}
 20.2.91 \text{ NMAC (NMED/EIB Regulation)} \\
 + \quad \underline{20.11.104 \text{ NMAC (EHD/AQCB Regulation)}} \\
 = \text{ New Mexico State-Wide Clean Vehicles Program}
 \end{array}$$

- California has updated new motor vehicle emission standard regulations necessitating updates to New Mexico’s regulations.

California's Advanced Clean Vehicle Regulations

**Advanced Clean
Cars II (ACC II)**

**Advanced Clean
Trucks (ACT)**

**Low Oxides of
Nitrogen Rule
(Low NOx)**



Term Refresh



Oxides of Nitrogen (NO_x) –
A precursor to ozone that is one of the National Ambient Air Quality Standards regulated by EPA

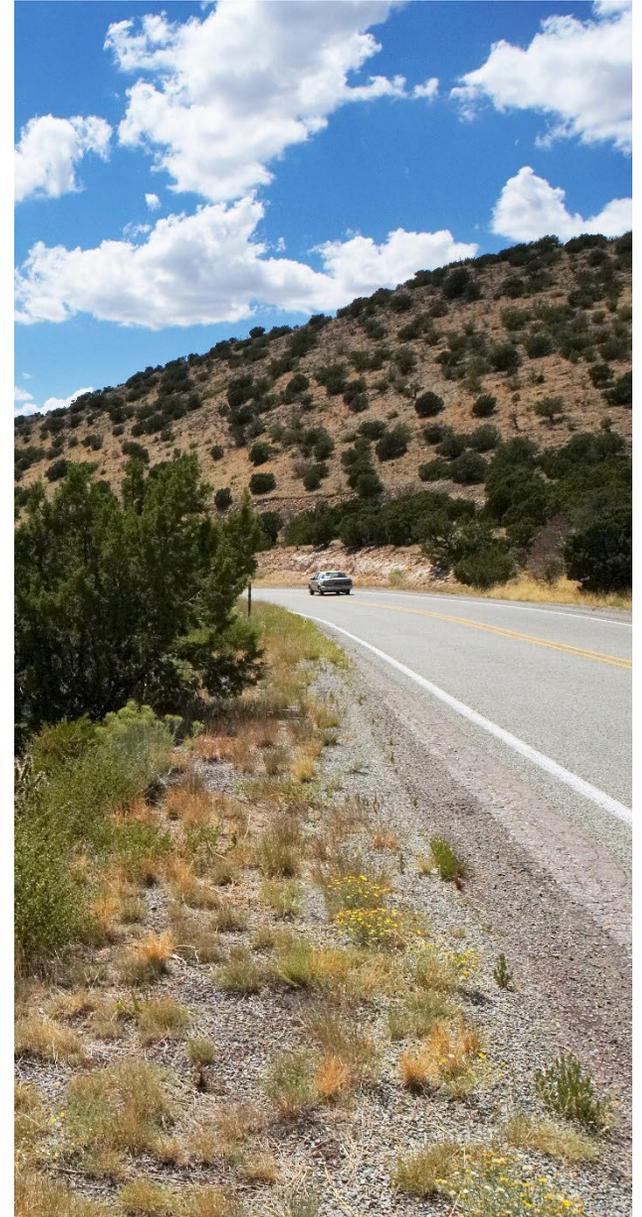
Zero-Emission Vehicles (ZEV) –
Vehicle without tailpipe emissions, such as battery-electric or fuel-cell-electric vehicles

Low-Emission Vehicles (LEV) –
Vehicle with tailpipe emission standards that are more stringent

Near-Zero-Emissions Vehicles (NZEV) –
Vehicle with an internal combustion engine and an electric energy storage system, such as plug-in electric hybrids

Advanced Clean Cars II Regulation

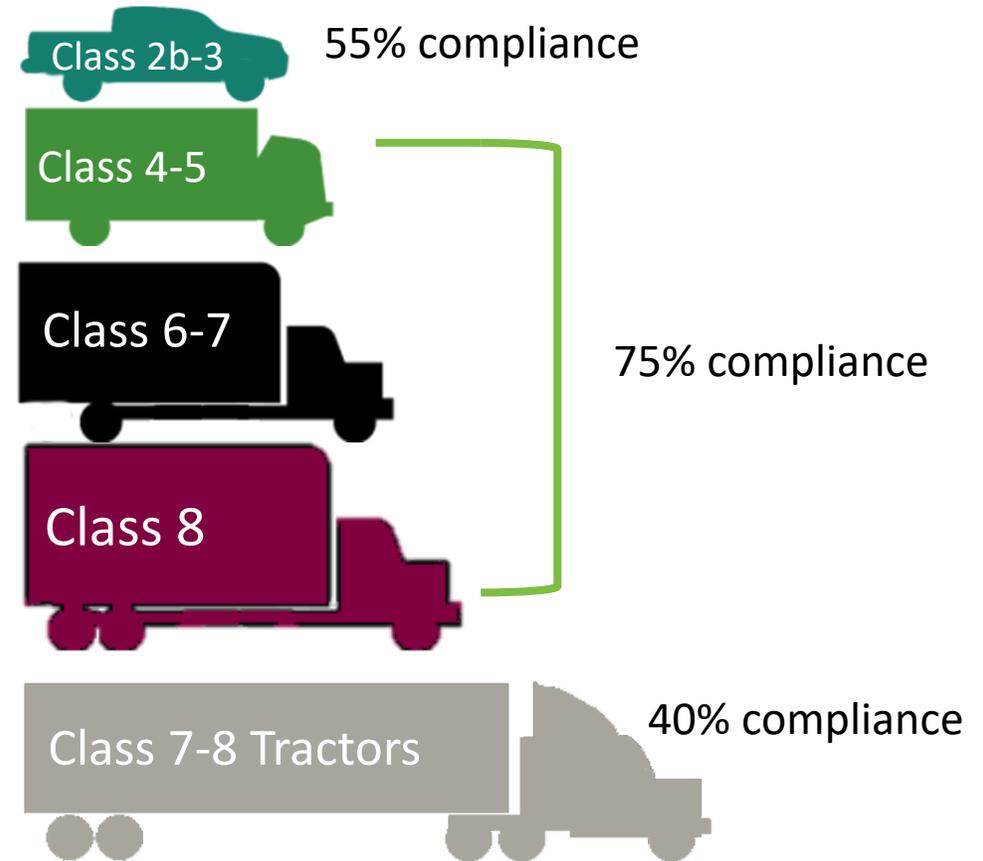
- Vehicle manufacturers must deliver for sale vehicles that comply with:
 - fleet average exhaust emission standards;
 - fleet average greenhouse gas standards; and
 - per-vehicle particulate matter standards.
- Compliance is measured with credits – now called values. Manufacturer sales generate values to reach targets. Values earned will generally correlate with the actual number of vehicles sold. Values can be banked, purchased, traded and rolled over.
- Applies to Model Year 2027-2035
- New Mexico is proposing only adopting through Model Year 2032 (82% compliance with ZEV instead of 100%)



Advanced Clean Trucks Regulation

Applies to medium- and heavy-duty motor vehicles and engines (e.g., delivery trucks, busses, trucks with four or more axles, tractor trailers)

- Manufacturers must sell and deliver ZEVs or NZEVs that comply with ACT sale percentage targets.
- Compliance is based on a credit and deficit system. Credits can be traded and sold.
- Applies to Model Year 2027-2035



Low Oxides of Nitrogen Regulation

- Applies to heavy-duty motor vehicles and engines
- Manufacturers must deliver for sale vehicles and engines that comply with NOx emission standards
- Achieves reduced emissions when trucks are idling or driving slowly, with frequent stops.



Petition Overview – [Link to Docket](#)

- Adopt Proposed Amended Rule 20.11.104 NMAC, *New Motor Vehicle Emission Standards*
 - Contains Current California Motor Vehicle Emission Standards for ACC II, ACT and Low NOx.
 - Standards Apply Starting in Model Year 2027 to 2032 (or 2035)
 - Still Applies to *New* Passenger Cars, Light-Duty Trucks, Medium-Duty Passenger Vehicles, Medium-Duty Vehicles, and Motor Vehicle Engines
 - New Standards Apply to *New* Heavy-Duty Trucks and Heavy-Duty Motor Vehicle Engines
 - New More Stringent NOx Emission Standards for *New* Heavy-Duty Vehicles and Engines

Stakeholder Engagement

- Several stakeholder meetings are being planned for September 2023 with the dates and specific locations TBD
 - In-Person Meeting in Santa Fe
 - In-Person Meeting in Albuquerque
 - Virtual Meeting
- Submit Public Comment
 - EHD – Morgan Allen Smith, Email at morgansmith@cabq.gov
 - NMED – Online at <https://nmed.commentinput.com/?id=TuMmsArBj>
- Websites for More Information
 - EHD – <https://www.cabq.gov/airquality/regulation-development/clean-vehicles-regulation-documents>
 - NMED - <https://www.env.nm.gov/transportation/>

IMPORTANT DATES

July

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

August

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

December

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Petition Summary

- EHD is asking the Air Board to amend 20.11.104 NMAC following a public hearing.
- The proposed amended rule adopts California's current motor vehicle emission standards, which further limit air contaminant emissions and require manufacturers to sell more zero-emission vehicles. The new standards would apply starting in model year 2027.
- NMED has proposed a parallel rule and will ask the EIB at its August 18th meeting to hold a joint hearing with the Air Board.
- EHD requests the Air Board to authorize a joint hearing with the EIB to consider the merits of EHD's petition.
- EHD also asks the Air Board to issue a hearing determination and pre-hearing order concerning conducting the public hearing.

Petition Summary cont.

By adopting the Proposed Order,* the Air Board would:

**With the New Paragraph 11*

1. Schedule the hearing to begin on November 13, 2023, at 9 a.m. and continue through November 16, 2023 (or until concluded);
2. Decide certain processes for the hearing, including the public hearing location, certain filing requirements, public comment submission details, etc.;
3. Appoint the hearing officer, Felicia Orth (New in Paragraph 11);
4. Authorize the hearing officer to exercise all powers and duties set forth in 20.11.82 NMAC (New in Paragraph 11); and
5. Authorize the Air Board Chair to coordinate with the EIB Chair to manage and resolve logistics until a hearing officer is appointed with concurrence by the EIB.

Specific Requests: Hearing Format and Date/Time

1. The public hearing in this matter shall be conducted jointly with the New Mexico Environmental Improvement Board (“EIB”).
2. The public hearing in this matter shall commence at 9 a.m. on November 13, 2023, and continue through ~~November 15, 2023~~, or as long as required to hear all testimony, evidence, **November 16, 2023** and public comment.

Specific Requests: Location

3. The Hearing Clerk is hereby requested to coordinate with EIB, NMED and EHD to secure a suitable location for the public hearing, which the Air Board Chair is delegated the authority to approve and shall do so, in consultation with the EIB Chair, prior to August 31, 2023. *See* 20.11.82.19(C)(1) NMAC (required public notice information); NMSA 1978, § 74-2-6 (“Hearings on regulations of statewide application may be held in Santa Fe or within any area of the state substantially affected by the regulation.”); 20.11.82.23 NMAC (“Unless otherwise provided by governing law, the board shall hold rulemaking hearings and meetings in public facilities within Bernalillo county with public seating available.”).

Specific Requests: Technical Testimony

4. In accordance with 20.11.82.20 NMAC, EHD and any person intending to present direct technical testimony shall file their notices of intent to present direct technical testimony no later than 20 days before the public hearing. *See* 20.11.82.20(A) NMAC; *compare* 20.1.1.303 (EIB deadline); *see also* 20.11.82.19(C)(3) NMAC (required public notice information). Additionally, any person intending to become a party without filing direct technical testimony shall file an entry of appearance no later than 20 days before the public hearing. *See* 20.11.82.21 NMAC; *compare* 20.1.1.303 (EIB deadline); *see also* 20.11.82.19(C)(3) NMAC (required public notice information).

Specific Requests: Non-Technical Testimony

5. In accordance with 20.11.82.22(B) NMAC and for purposes of 20.11.82.19(C)(3) NMAC (required public notice information), prior to the public hearing, the Air Board will accept non-technical written statements for the record (*i.e.*, written comments) from the general public. The Air Board will accept a written statement as an electronic or single original physical filing with the Hearing Clerk via e-mail at airboard@cabq.gov or as follows:

Mailing Address:

Environmental Health Department
Attn: Air Board Hearing Clerk
P.O. Box 1293
Albuquerque, NM 87103

Physical Address:

Environmental Health Department
Attn: Air Board Hearing Clerk
1 Civic Plaza NW - 3rd Floor, Room 3023
Albuquerque, NM 87102

Also, the Air Board hereby waives the requirement in 20.11.82.22(B)(2) NMAC to provide the Hearing Clerk with the original and 15 paper copies of the non-technical testimony exhibits.

Specific Requests: Electronic Filing

6. Any person filing a document, except non-technical written statements for the record, shall submit the document as an electronic filing with the Hearing Clerk via email at airboard@cabq.gov, as the Air Board hereby waives the requirement in 20.11.82.16(B)(1) NMAC to provide the Hearing Clerk with the original and 15 paper copies of the document. *See* 20.11.82.19(C)(3) NMAC (required public notice information). Documents filed with the Hearing Clerk shall be considered filed at the time the Hearing Clerk receives the email. *See id.*

Specific Requests: Decision Post-Hearing

7. The Air Board may decide on the proposed regulatory change at the conclusion of the public hearing, as determined in coordination with the EIB. *See* 20.11.82.19(C)(5) NMAC (required public notice information).

Specific Requests: Public Notice

8. Pursuant to and in accordance with City Ordinance, § 9-5-1-6(C); County Code, § 30-35(c); and 20.11.82.19 NMAC, and consistent with this Order, the Hearing Clerk shall give public notice of the hearing at least thirty (30) days before the public hearing. The Hearing Clerk is hereby requested to work with EHD and, as appropriate, NMED and the EIB, to prepare and give such notice.

Specific Requests: Public Notice

9. The hearing officer, once appointed, may issue additional orders not contrary to issued public notices for the maintenance of order, the efficient, fair and impartial consideration of issues, and to address the public hearing process given the joint nature of the public hearing.

See 20.11.82.11(B)(3) NMAC.

Specific Requests: Public Notice

10. Until such time as a hearing officer is appointed, the Air Board Chair, or her designee, may coordinate with the EIB Chair, or her designee, for purposes of resolving logistical matters pertaining to the public hearing in this matter.

Specific Requests: Hearing Officer *New*

11. Pursuant to City Ordinance, Section 9-5-1-6(E), Bernalillo County Code, Article II, Section 30-35(e), and 20.11.82.11(A) NMAC, the Air Board appoints Felicia Orth to serve as the hearing officer in this matter, and, upon the concurrence of the EIB, the Air Board Chair shall issue a notice of hearing officer assignment pursuant to 20.11.82.11(C) NMAC. The Air Board authorizes Ms. Orth, as hearing officer, to exercise all powers and duties set forth in 20.11.82 NMAC, including to manage the pre-hearing process, adopt procedural orders governing the proceedings, prepare any post-hearing recommendations for the Air Board at the Air Board's request, and take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in this matter.