

July 23, 2024

**By email**

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Re: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act and the terms incorporated into New Mexico's state implementation plan and Title V permitting program for the Albuquerque-Bernalillo County Air Quality Control Board

Dear Administrator Regan, Assistant Administrator Goffman, and Director Garcia:

Los Jardines Institute ("Los Jardines") and the Natural Resources Defense Council (NRDC) submit this petition for action to urge EPA to (1) review a local ordinance enacted by the Albuquerque City Council ("City Council") that attempts to strip the region's rulemaking body, the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board"), of regulatory authority and (2) find that the ordinance's implementation would violate the requirements for local control under the Clean Air

Act (CAA or “the Act”) and the terms upon which EPA approved New Mexico’s state implementation plan (SIP) and Title V permitting program.

The City Council enacted Albuquerque Ordinance O-2023-29 (“the Ordinance”) because the Air Board deigned to consider a regulation, brought via petition by a community coalition, that would require the region’s permitting authority, the Albuquerque Environmental Health Department (EHD), to consider cumulative impacts in its air pollution permitting decisions. The cumulative impacts rule’s opponents on the City Council retaliated by attempting to render the Air Board wholly dependent on the petition process for regulation while also erecting barriers to the general public’s ability to petition. Although the Air Board promulgated a cumulative impacts rule, the rule’s opponents—including EHD—have challenged the rule in state court and that litigation is still pending.

Congress did not intend for state and local air pollution control programs to be on paper only. If granted control over air quality, states and local governments must still assure EPA that they “have adequate personnel, funding, and authority under State (and, as appropriate, local) law” to implement their plans to meet air quality standards and have mechanisms for updating their plans based on changing national standards and technology. 42 U.S.C. § 7410(a)(2)(E), (H)(i), (I), (J); *see also id.* § 7661a(b)(5)(A) (state and local permitting authorities must “have adequate authority to . . . assure compliance by all sources required to have a permit under [Title V of the Act] with each applicable standard, regulation or requirement under this chapter”). If implemented, the City Council’s changes to the Air Board would ossify air pollution control in a county with an “F” grade in all air quality metrics evaluated by the American Lung Association,<sup>1</sup> and where a cumulative impacts rule is needed to ensure compliance with federal civil rights law.<sup>2</sup>

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<sup>1</sup> Am. Lung Ass’n, *New Mexico: Bernalillo* (last visited July 23, 2024), <https://www.lung.org/research/sota/city-rankings/states/new-mexico/bernalillo>.

<sup>2</sup> On May 30, 2024, Los Jardines and NRDC filed a Title VI civil rights complaint with EPA’s Office of External Civil Rights Compliance against EHD and the City of Albuquerque based on the continuing concentration of air pollution in communities of color and evidence of intentional discrimination during the Air Board hearing on the cumulative impacts rule. Part of the relief Los Jardines and NRDC seek is a finding by EPA that EHD must implement a cumulative impacts rule to meet its Title VI obligations. A copy of that complaint is attached as Exhibit A.

Los Jardines and NRDC therefore urge EPA to assert its oversight authority to review Ordinance O-2023-29 now. Although the Air Board is currently able to operate pursuant to a preliminary injunction while a state trial court reviews the Ordinance's consistency with state law, any period under which the Air Board is unable to regulate maintains a status quo that is unacceptable for Albuquerque's communities of color. EPA can opine (and communicate to Albuquerque) now that the Ordinance would violate the Act's requirements were it to take effect – thus ensuring it does not. And if Albuquerque does not course-correct and implements the Ordinance, making such a finding now allows EPA to swiftly begin the process to impose sanctions and/or revoke local control so that Albuquerque and Bernalillo County have CAA-complaint air pollution regulatory programs with all necessary authorities. Albuquerque's overburdened communities cannot continue to wait.

## **I. Petitioners**

The petitioners are Los Jardines and NRDC.

Los Jardines is a multicultural, multigenerational grassroots organization that focuses on environmental, economic, and food justice. Los Jardines is based in Albuquerque's South Valley and promotes multi-generational learning through projects, organizing, policy work, and partnering with other local, state, and national organizations. Among other affiliations, Los Jardines is a member of the Environmental Justice Health Alliance for Chemical Policy Reform, a national network of grassroots environmental and economic justice organizations that works to eliminate the disproportionate impacts of toxic chemical exposure in communities of color and low-income communities. Since its founding in 2008, Los Jardines has worked to strengthen other community organizations and leaders in Albuquerque, including through collaborations with the Santa Barbara Martineztown Neighborhood Association, the Greater Gardner Neighborhood Association, the Health Equity Council in the International District, the San Jose Community, the Mountain View Neighborhood Association, and the Friends of Valle de Oro National Wildlife National Refuge (also located in Mountain View). Los Jardines has also been working with YES Housing Inc. on constructing affordable housing in the Mountain View community.

NRDC is an environmental and public health nonprofit advocacy organization. It is committed to protecting communities from health threats and works to reduce the disproportionate burdens borne by communities of color and low-income communities from environmental contamination, including air pollution. One of NRDC's priorities is to ensure that regulatory authorities consider cumulative impacts when making decisions that affect communities already overburdened with pollution.

## II. Legal Framework

### A. The Clean Air Act

#### 1. State Implementation Plans

Under the Act, states can formulate their own plans (called State Implementation Plans or SIPs) to meet national ambient air quality standards. *See* 42 U.S.C. § 7410(a)(1). Although states have broad latitude to formulate their SIPs, the Act requires that all SIPs meet certain substantive and structural requirements. *See id.* § 7410(a)(2). To ensure compliance, states submit their air quality laws and regulations to EPA for review. If EPA approves the submission, the laws and regulations become part of the state’s SIP. *See id.* § 7410(k).

Most SIP laws and regulations that EPA reviews relate to requirements for air pollutants and sources. *See* 42 U.S.C. § 7410(a)(2)(A)-(D). But the Act also requires states to have “basic air quality management program components in place.”<sup>3</sup> States must provide EPA with “necessary assurances” that they “have adequate personnel, funding, and authority under State . . . law” to carry out their implementation plans. *Id.* § 7410(a)(2)(E)(i). These structural components are important because air quality and its control are not stagnant: federal regulations, pollution control technology, and on-the-ground conditions can change. Thus, the Act requires that SIPs have mechanisms for amendment to account for changes including EPA’s revisions “to national primary or secondary ambient air quality standard[s],” “improved or more expeditious methods of attaining such standard[s],” EPA designating an area as in non-attainment, or EPA requiring a visibility protection plan. *Id.* § 7410(a)(2)(H)-(J).

A state may rely on a local or regional government to implement its SIP in a particular geographic area. *See id.* § 7410(a)(2)(E). When a state delegates part of its air pollution control to a locality, EPA will undertake the same review and approval process of local laws to ensure compliance with the Act. *See id.* Like a state, a local agency must assure EPA that it has adequate authority to implement its plan and account for changing conditions. *See id.* § 7410(a)(2)(E)(i) (including local governments and local laws as part of adequate authorities requirement).

If a state (and any local government to which the state delegates authorities) submits a SIP to EPA that fails to meet the Act’s requirements, EPA must disapprove it and promulgate a federal implementation plan. *See id.* § 7410(c)(1)(B), (k)(1)(C), (k)(3).

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<sup>3</sup> EPA, Process of Working with Areas to Attain and Maintain NAAQs (last updated Nov. 30, 2023), <https://www.epa.gov/criteria-air-pollutants/process-working-areas-attain-and-maintain-naaqs-implementation-process>.

To prevent states from submitting compliant programs but not implementing them, the Act prohibits unilateral changes to any terms incorporated into a SIP (and thus formed the basis of EPA's approval). Amendments that a state makes to laws incorporated into a SIP must also be submitted to EPA for approval. *See id.* § 7410(l); 40 C.F.R. § 51.104(b) (requiring states submit any SIP revisions within 60 days of adoption). Unless and until a state submits state law amendments to EPA *and* EPA approves those amendments through a federal rulemaking subject to public notice and comment, the prior federally approved SIP continues to operate and remain enforceable as a matter of federal law. *See* 42 U.S.C. § 7410(l); 40 C.F.R. § 51.105.<sup>4</sup> EPA may withdraw its approval of a SIP if it determines the approval was an error. *See* 42 U.S.C. § 7410 (k)(6). EPA may also impose sanctions if it finds any part of an approved SIP is not being implemented. *See id.* §§ 7410(m), 7509(a)(4).<sup>5</sup>

## 2. Title V Permitting

To help achieve national air quality standards and assure compliance with all applicable requirements embedded in the Act, the Act requires air pollution sources to obtain permits. One such permit is an "operating permit" required by Title V of the Act, which applies to all "major" sources of air pollution and certain types of smaller sources. *See* 42 U.S.C. § 7661a(a).

Title V places structural requirements on states if they seek to administer an operating permitting program in lieu of EPA. *See* 42 U.S.C. § 7661a(b) (directing EPA to promulgate regulations "establishing the minimum elements of a permit program"). To have Title V permitting authority, states must assure EPA that they have "adequate personnel and funding" to "develop, administer, and enforce" the program. 40 C.F.R. § 70.4(b)(8). Such submissions must include descriptions of the "scope, structure, coverage, and processes of the State program" and descriptions of the "organization and structure of the agency or agencies that will be responsible for administering the program" with delineations of each agency's responsibilities. 40 C.F.R. § 70.4(b)(8)(i)-(ii). Local agencies may implement Title V permitting if they meet the same requirements. *See* 40 C.F.R. § 70.4(c)(1)-(2).

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<sup>4</sup> *See also Safe Air for Everyone v. U.S. EPA*, 488 F.3d 1088, 1097 (9th Cir. 2007) ("[T]he SIP became *federal law*, not *state law*, once EPA approved it, and could not be changed unless and until EPA approved any change.").

<sup>5</sup> *See also* Marcia Spink, EPA Region Three, *Sanctions, Federal Implementation Plans (FIPs), and SIP Calls Under the Clean Air Act* 3, 15 (2009), <https://perma.cc/E7PF-GSE7> (explaining that the CAA mandates sanctions for failure to implement SIPs in nonattainment areas, and allows sanctions for violations of "any 'plan or plan item required under this chapter,' i.e., the CAA").

Changes to the permitting program that affect a state’s ability to comply with Title V must be submitted and approved by EPA before they may be recognized and effective as a matter of federal law. *See id.* §§ 70.4(i)(2) (procedures for amendment), 70.10(b) (A permitting program “shall at all times be conducted in accordance with” the terms submitted to EPA.). EPA may issue deficiency notices to states whose Title V programs do not comply with the Act and ultimately withdraw approval if the deficiency is not corrected. *See* 40 C.F.R. § 70.10(b)(2)(i), (iii) (authorizing EPA to withdraw approval and promulgate a federal program 90 days after Title V deficiency notice).

## **B. Air pollution regulation in Bernalillo County & Albuquerque**

New Mexico’s Air Quality Control Act divides air pollution authority between a “department” that makes initial permitting decisions, N.M. Stat. Ann. §§ 74-2-2(C), -5.1, -7(B), and an oversight “board” that hears permitting appeals and promulgates “rules and standards” to “attain and maintain national ambient air quality standards and prevent or abate air pollution,” *id.* §§ 74-2-3, -5(B), -7(H). At the state level, these agencies are the New Mexico Environment Department and Environmental Improvement Board, respectively. *See id.* §§ 74-2-2(C), -2-5.

A New Mexico county or a municipality may set its own air pollution standards if it enacts an ordinance that creates a local board that can perform “those functions delegated to the [state] environmental improvement board.” *Id.* § 74-2-4(A)(1). New Mexico’s SIP includes the statute authorizing local boards. *See* 40 C.F.R. § 52.1620(e); 83 Fed. Reg. 12,493 (Mar. 22, 2018). This means that for New Mexico to comply with the CAA, both the state’s board *and* any local board it authorizes must meet CAA requirements. *See* 80 Fed. Reg. 63,431, 63,432 (Oct. 20, 2015). Similarly, New Mexico law authorizes local agencies to enforce air pollution regulations and administer permitting in lieu of the state Environment Department. *See* N.M. Stat. Ann. § 74-2-4(A)(2). Currently, the state government administers New Mexico’s air program except for the area within the boundaries of the City of Albuquerque and Bernalillo County. *See* 40 C.F.R. pt. 52, subpt. GG (New Mexico’s plan showing New Mexico laws and City and County ordinances).

The governments of Albuquerque and Bernalillo County share authority over a joint air pollution program that covers the entire county, including Albuquerque. Albuquerque and Bernalillo County each have ordinances delegating authority to the Air Board and EHD to control air pollution, which – until the City Council’s unilateral action in December 2023, *see infra* pp. 11-13 – substantially paralleled each other.

Compare Albuquerque, N.M. Ord. (“City Ord.”) ch. 9, art. 5, pt. 1,<sup>6</sup> with Bernalillo County, N.M. Ord. (“Cnty. Ord.”) ch. 30, art. II.

Under the joint air pollution program, EHD is the local permitting authority. See City Ord. § 9-5-1-5, -7; Cnty. Ord. § 30-34, -36; see also N.M. Admin. Code § 20.11.1.7 (defining EHD as the agency “responsible for the administration and enforcement” of the area’s air regulations). Although run by the City of Albuquerque, EHD’s permitting and enforcement authority covers both the City and the County – i.e., any entity that needs a CAA permit in Bernalillo County must submit an application to EHD even if it is not within Albuquerque’s city boundaries. See City Ord. § 9-5-1-5(A); Cnty. Ord. § 30-34(a).

The Air Board is the local regulatory and appellate authority. It promulgates regulations that cover air quality standards that EHD must incorporate into its permitting decisions. See City Ord. §§ 9-5-1-3(A); -5-1-4(B); Cnty. Ord. § 30-33(b), (c). Any member of the public may file a petition with the Air Board to promulgate a rule. See City Ord. § 9-5-1-6(A); Cnty. Ord. § 30-35(a). EHD also routinely files rulemaking petitions with the Air Board.<sup>7</sup> The Air Board cannot promulgate a regulation without a public hearing. See City Ord. § 9-5-1-6(B); Cnty. Ord. § 30-35(b). Additionally, any person who wishes to challenge EHD’s permitting decisions may file an appeal with the Air Board. See City Ord. § 9-5-1-7(H); Cnty. Ord. § 30-36(h).

Like EHD, the Air Board’s authority applies to both the City and County. See City Ord. § 9-5-1-3(A); Cnty. Ord. § 30-32(a). Unlike EHD, however, the Air Board has specific structural requirements to ensure diversity in viewpoints and limit industry capture as required by federal law. See City Ord. § 9-5-1-3(B)(4)(a), (E); Cnty. Ord. § 30-32(b)(4)(A), (e); see also 42 U.S.C. § 7428 (income and conflicts of interest requirements for boards). The City appoints four members to the Air Board while the County appoints three. See City Ord. § 9-5-1-3(B)(2); Cnty. Ord. § 30-32(b)(2). Each board

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<sup>6</sup> Unless otherwise noted, citations to the Albuquerque Code of Ordinances refers to the version linked on the City’s website as of July 23, 2024 – which does *not* reflect the City Council’s December 2023 changes to the Air Board. This complaint cites to the Ordinance O-2023-29 when referring to City Council’s changes. Copies of the Code of Ordinances for the City of Albuquerque and Bernalillo County are included as Exhibits B and C.

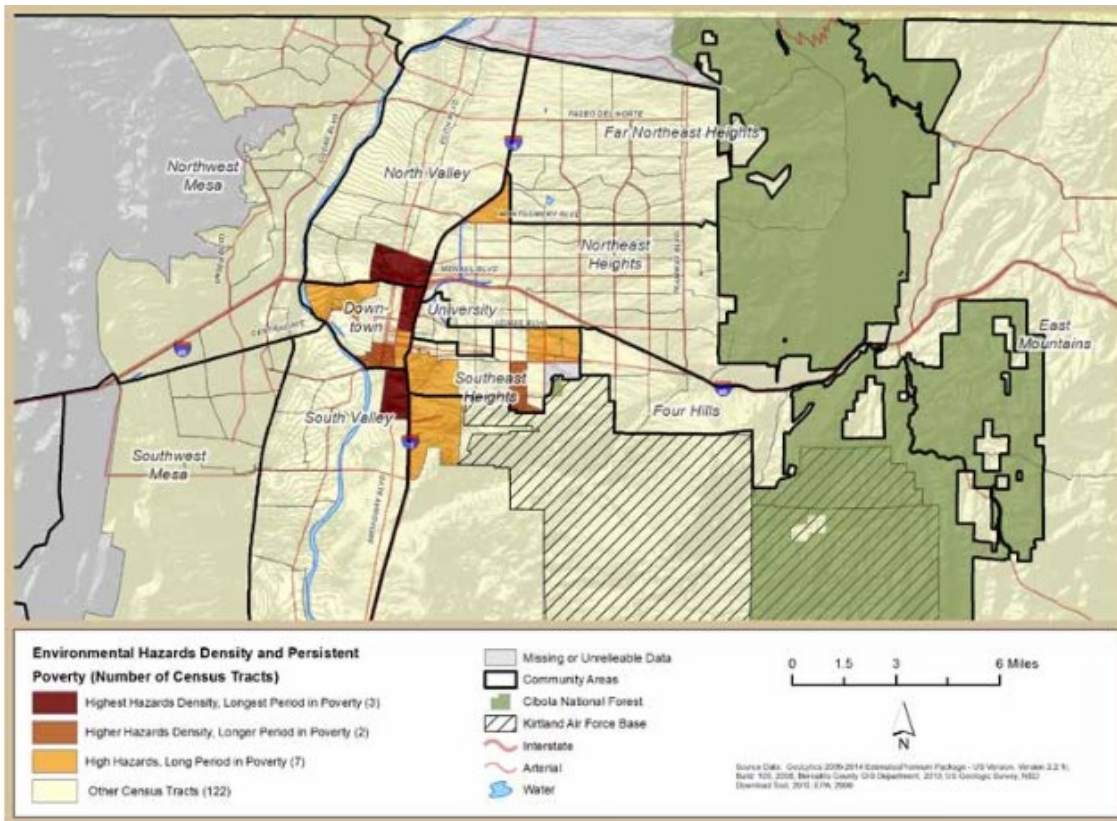
<sup>7</sup> See Air Board, *Rulemaking Process Guidebook 5* (2023), [https://www.cabq.gov/airquality/air-quality-control-board/documents/2023-05-01\\_approved-aqcb-rulemaking-guidebook.pdf](https://www.cabq.gov/airquality/air-quality-control-board/documents/2023-05-01_approved-aqcb-rulemaking-guidebook.pdf) (stating EHD typically proposes new and amended rules).

member has a three-year term and appointments are staggered such that in a single year, no more than two City appointees' terms expire and no more than one County appointee's term expires. *See* City Ord. § 9-5-1-3(B)(3); Cnty. Ord. § 30-32(b)(3). As a structural matter, the Air Board oversees the smaller, City-controlled EHD through its regulatory and appellate powers.

### III. Factual Background

#### A. A community coalition invokes the Air Board's petition procedures to propose a rule that would redress the concentration of air pollution in communities of color

As explained in more detail in the Title VI complaint filed with U.S. EPA by Los Jardines and NRDC on May 30, 2024, Bernalillo County and Albuquerque have a long history of concentrating air pollution in low-income, predominantly Latino communities and communities of color.<sup>8</sup>



**Note:** Values for hazards density: highest = 38.95 - 54.65; higher = 26.00 - 33.01; high = 13.89 - 20.17. Values for period in poverty: longest = 5 decades; longer = 3 - 4 decades; long = 2 decades.

<sup>8</sup> See Ex. A at 7-10.



*Map 1: Regions of elevated environmental risk & persistent poverty by census tract, Bernalillo County (1970-2009)*<sup>9</sup>

Map 1 shows these neighborhoods are concentrated near downtown and Albuquerque's southwest, such as Martineztown, San Jose, and Mountainview, but also include Greater Gardner in the northwest and the International District in the southeast. These neighborhoods suffer worse health outcomes on a myriad of metrics including being in the 79th percentile or higher for the state in asthma incidence.<sup>10</sup>

For over a decade, community members and organizations have called on the Air Board to use its rulemaking authority to promulgate a cumulative impacts regulation that would require EHD to account for existing pollution and health vulnerabilities in its permitting decisions. When community members and organizations first filed a petition with the Air Board, the Board summarily denied the petition without a hearing in 2014.<sup>11</sup> This led the Southwest Organizing Project, a nonprofit community organization based in Albuquerque, to file in the same year a Title VI complaint against the Air Board and EHD.<sup>12</sup> EPA ultimately accepted the complaint for investigation.<sup>13</sup>

EHD never petitioned the Air Board to promulgate a cumulative impacts regulation that would bring it into compliance with Title VI of the Civil Rights Act.

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<sup>9</sup> Joint Ctr. For Pol. & Econ. Studies, *Place Matters for Health in Bernalillo County: Ensuring Opportunities for Good Health for All* 16 map 11 (2012), <https://www.nationalcollaborative.org/wp-content/uploads/2016/02/PLACE-MATTERS-for-Health-in-Bernalillo-County.pdf>. As explained later in the study, the map reflects hazards per square mile based on hazardous and pollutant data from Bernalillo County at point level. *Id.* at 17.

<sup>10</sup> See Ex. A at 25 tbl.2.

<sup>11</sup> See Compl. 7, *Sw. Org. Project v. Albuquerque Air Quality Division*, EPA File No. 13R-14-R6 (Sep. 16, 2014). Documents relating to the 2014 Complaint are available on EPA's External Civil Rights docket tracker. See EPA, External Civil Rights Docket, 2014-Present, <https://www.epa.gov/external-civil-rights/external-civil-rights-docket-2014-present> (last updated July 19, 2024).

<sup>12</sup> See Compl., *supra* note 11.

<sup>13</sup> Letter from Lilian S. Dorka, Acting Dir., EPA Off. of Civ. Rts., to Kelsey Curran, Chairperson, Albuquerque-Bernalillo Cnty. Air Quality Control Bd., and Mary Lou Leonard, Env't. Health Dir., Albuquerque Air Quality Div. (July 19, 2016) ("2016 Acceptance Letter").

After eight years of inaction, a community coalition<sup>14</sup> took matters into its own hands, and in March 2022, petitioned the Air Board to promulgate a rule requiring EHD to account for cumulative impacts on overburdened communities in its permitting decisions.<sup>15</sup> EPA itself acknowledged such a mechanism was necessary: an undated informal resolution agreement (“Draft Agreement”) between EPA, the Air Board, and EHD contemplated that the Air Board and EHD would agree that as part of EHD’s permitting process, EHD would (1) adopt a routine method for screening environmental justice and civil rights concerns, and (2) engage in a multi-factor analysis of environmental justice issues raised in the initial screening.<sup>16</sup>

**B. To prevent a hearing on the cumulative impacts rule, the Albuquerque City Council attempts to strip the Air Board of most of its regulatory authority**

The Air Board did not summarily dismiss the March 2022 cumulative impacts rule petition – much to the chagrin of EHD, industry, and ultimately the Albuquerque City Council. EHD objected to the petition from the start. Its initial response criticized the proposed rule for not going through the same consultation procedures EHD used

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<sup>14</sup> The initial petitioners included the Mountain View Neighborhood Association, Mountain View Community Action, and Friends of Valle de Oro. Pro se parties Sofia Martinez (Co-coordinator for Los Jardines), Manuel Criollo, and Elaine Cimino, representing other political districts in Bernalillo County, later joined them.

<sup>15</sup> Pet. to Amend Title 20, Chapter 11 of the N.M. Admin. Code to Require Review and Consideration of Health, Environment, and Equity Impacts (Nov. 21, 2022), Doc. 1. The cumulative impacts rulemaking docket is available on the Air Board’s Dropbox website. See Dropbox, *AQCB Docket No. 2022-3 (20.11.72 NMAC)*, <https://www.dropbox.com/scl/fo/ftzpfvuwonpmwu7vg492o/AJVv1VSwOybEfxPMg5duhgY?rlkey=mk8ox5s9vihwhzt668d7s8xy0&e=1&dl=0> (last visited July 23, 2024).

Unless otherwise noted, any other citations to a docket going forward are to the Air Board’s rulemaking docket in the form [Document Name] [page number] ([date filed]), Doc [#].

<sup>16</sup> Although discussions between EPA, the Air Board, and EHD were not public, other groups served EHD with public records requests that revealed a copy of the Draft Agreement. See Draft Informal Resolution Agreement 8-9 (“Draft Agreement”), EPA Compl. No. 13R-14-R6 (undated), *attached to* Notice of Filing Air Board/USEPA Negotiations Which Invalidate the Rulemaking Process and Suppl. Mot. to Disqualify (“Suppl. Mot. to Disqualify”) (Mar. 29, 2023), Doc. 23.

for drafting rules and for not including feedback from EPA Region 6.<sup>17</sup> Industry groups entered appearances in the rulemaking to attack the proposed rule for reasons other than its merits.<sup>18</sup>

Despite the urgent need for a cumulative impacts regulation, the community coalition meaningfully engaged in the Air Board’s prehearing procedures that involved both EHD and industry members.<sup>19</sup> Community members moved to extend the rulemaking schedule to “give the [Air] Board the best, most informed blueprint” and to “allow the Board to adopt the most legally and scientifically sound” rule.<sup>20</sup> In September 2023, the Air Board rescheduled the hearing from October 23 to December 4 to give the public time to consider the changes before preparing their testimony.<sup>21</sup> Unsatisfied with simply letting the Air Board consider the merits of their arguments, however, opponents of the cumulative impacts rule in the City Council sought to stop the rule – and the Air Board – outright.

On October 16, 2024, the City Council introduced a two-pronged attack on the cumulative impacts rule and Air Board.<sup>22</sup> One prong, a resolution, placed a

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<sup>17</sup> EHD’s Response to the Petition ¶¶ 3, 12 (Dec. 13, 2022), Doc. 3.

<sup>18</sup> For example, one industry group argued that the entire Air Board should recuse itself from hearing the rule simply because the Air Board was engaging in good faith discussions with EPA to resolve the Title VI complaint. *See, e.g.*, Suppl. Mot. to Disqualify, *supra* note 16, at 5.

<sup>19</sup> *See* Pets.’ Memo. in Support of Joint Mot. to Extend Hearing Date 2, 5-6 (Sept. 7, 2023), Doc. 126. (requesting extension of hearing date because there were “fruitful discussions” about amendments during “required” prehearing meetings); Notice of Filing Am. Ex. A, Version 4 to Pet. (Oct. 6, 2023), Doc. 140. The Air Board’s procedures build prehearing meetings into the normal petition process. *See Rulemaking Process Guidebook, supra* note 7, at 8. EHD admits it did not meaningfully engage with the community until these meetings. *See* Vol. 5 Transcript of Proceedings 1876:16-24, 1877:5-11, No. 2022-3, (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Dec. 11, 2023) (attached as Exhibit G).

<sup>20</sup> Pets.’ Memo. in Support of Joint Mot. to Extend Hearing Date 6 (Sept. 7, 2023), Doc. 126.

<sup>21</sup> *See* Order Appointing Replacement Hearing Officer 2 (Sept. 15, 2023), Doc. 134.

<sup>22</sup> City of Albuquerque, *Legislation Details O-23-88* (last visited July 23, 2024), <https://cabq.legistar.com/LegislationDetail.aspx?ID=6383471&GUID=A3C990D7-9746-40CA-B316-BA589E05C921&Options=ID%7CText%7C&Search=O-23-88>; City of Albuquerque, *Legislation Details R-23-176* (last visited July 23, 2024),

moratorium on the Air Board from considering any “quality of life” regulations, and prejudged the community petition’s cumulative impacts rule as one such regulation. Albuquerque, N.M. Resolution R-2023-097 1:9-19, § 1.<sup>23</sup> The other prong was a larger assault on the Air Board to change its composition and strip it of power so it could never consider – let alone promulgate – anything like a cumulative impacts rule again. Ordinance O-2023-29<sup>24</sup> proposed making several structural changes to restrict the Air Board’s authority, including:

- **Forbidding the Air Board from taking any actions besides approving or disapproving regulations presented to it by outside parties while also increasing the barriers for public proposals.** The Ordinance specified that the Air Board had no authority to “[d]raft and present to itself regulations” and could not “consider alternative proposals” at a hearing on a regulation. Ordinance O-2023-29 15:27-30, 24:28-29. The Air Board could consider only modifications that “simply delete[ed], clarif[ied] or elaborate[d] on elements of [an] already-submitted proposal without adding or changing substantive new obligations or requirements.” *Id.* at 15:27-30. Further, the ordinance limited the public’s ability to propose regulations by requiring petitioners to bear the transcript costs for hearings, with no mentions of hardship exceptions or alternative arrangements, and stating that soliciting insufficient feedback from other “interested persons” could be a basis for denying a hearing. *Id.* at 15:3-4, 16:5-6.<sup>25</sup> In addition to limiting public participation, the ordinance cut off the Air Board’s ability to raise any regulatory issues with EHD by forbidding it from “[r]ecommend[ing]” any “policies for air quality matters, needs, improvements and programs” or “[a]dvis[ing]” on any “air quality matters, needs and programs” to EHD, the City government, or the County government. *See id.* at 24:33-25:7.
- **Rendering the current Air Board’s composition invalid by creating new criteria for four of the seven seats.** *See id.* at 6:21-7:7. The new criteria required one member

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<https://cabq.legistar.com/LegislationDetail.aspx?ID=6383569&GUID=BBA92D00-9CF5-47E5-9E94-0A159A9BDF3B&Options=ID%7cText%7c&Search=R-23-176>.

<sup>23</sup> A copy of Resolution R-2023-097 as enacted is attached as Exhibit D.

<sup>24</sup> A copy of the Ordinance as enacted is attached as Exhibit E.

<sup>25</sup> The Air Board’s rulemaking guidebook previously stated that petitioners typically bore the costs of transcripts for themselves and the Board, which could cost “several hundred to thousands of dollars,” but that petitioners could contact the hearing officer if they were “unable to pay” to discuss “potential alternative arrangements.” *Rulemaking Process Guidebook, supra* note 7, at 6-7.

to be a licensed engineer, one a physician, one a person involved at an institute of higher learning, and one from a “City industry” in a “private manufacturing concern.” *Id.* If EHD unilaterally determined that the Air Board did not meet these composition requirements, the Air Board could not hear any petitions or permit appeals or make regulatory changes until both the City Council and County Commission agreed that the Board could act “consistent with applicable law.” *Id.* at 8:2-16.

- **Forbidding the Air Board from promulgating any “quality of life” regulations similar to those described in Resolution R-2023-097.** *See id.* at 24:18-21.

The drastic nature of the City Council’s actions drew an official response. After the City Council passed the resolution and ordinance on November 8, 2023,<sup>26</sup> Albuquerque Mayor Timothy Keller vetoed both, stating the ordinance “disregard[ed] our obligations under state and federal law” and that the City Council’s hasty action could “ultimately lead to the City and County losing control of [their] air quality.”<sup>27</sup>

Instead of heeding the Mayor’s cautionary message, the City Council accused him of siding with “environmental extremists” and overrode his veto on the day the Air Board began the cumulative impacts rule hearing – December 4, 2023.<sup>28</sup> The City Council thus enacted legislation changing the City’s ordinances but did not – and could not – change the County’s parallel code that reflected the two governments’ previously agreed-to Air Board terms. Nonetheless, based on its resolution, the City Council sent the Air Board a cease-and-desist letter the next day, threatening to withhold resources the Air Board would need to continue the hearing.<sup>29</sup>

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<sup>26</sup> Legislation Details O-23-88 & R-23-176, *supra* note 22.

<sup>27</sup> Memorandum from Timothy M. Keller, Mayor of Albuquerque, to City Council re: Veto of R-23-176 (Nov. 22, 2023) (filed in rulemaking docket as Doc. 229.1) (“Mayor Veto Statement”).

<sup>28</sup> *See* City of Albuquerque, Off. of City Councilor Dan Lewis, Dist. 5, *City Council Overrides Mayor’s Vetoes* (Dec. 4, 2023), <https://www.cabq.gov/council/find-your-councilor/district-5/news/city-council-overrides-mayor2019s-vetoes>.

<sup>29</sup> Letter from Louie Sanchez et al., Albuquerque City Council, to Air Quality Control Board Members (Dec. 5, 2023), Doc. 222; *see also* City Ord. § 9-5-1-5(A) (stating the City would provide the Air Board with staff).

### C. The Albuquerque City Council's actions have sown chaos

After the Air Board filed a request for a temporary restraining order in state court, it received resources for space, security,<sup>30</sup> technology, and services for the hearing through December 11, 2023.<sup>31</sup> The Air Board was ultimately able to issue a final cumulative impacts rule, titled the Health, Environment, and Equity Impacts Rule (“HEEI Rule”), on December 19, 2023.<sup>32</sup>

Using its rulemaking authority, the Air Board tried to balance the different concerns raised during the hearing. As promulgated, the HEEI Rule requires EHD to create a map of “overburdened areas” to determine the degree of harm a new or modified air permit would have on the surrounding community based on a dozen different health, environmental, and socioeconomic factors listed in the rule. N.M. Admin. Code § 20.11.72.7, .8(A).<sup>33</sup> To reduce the harms of additional pollution, the HEEI Rule mandates that any new or modified permit for a stationary source apply best available control technology if it is located or proposed to be located in or within a one-mile radius of an overburdened area. *See id.* § 20.11.72.8(C). The HEEI Rule also requires any new or modified stationary source emitting hazardous air pollutants (as defined by the regulation) to apply best available control technology regardless of its location. *Id.* § 20.11.72.8(D).

Notwithstanding the HEEI Rule’s salutary and essential requirements, the Air Board gave EHD and industry significant concessions. It opted to require best available

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<sup>30</sup> The Air Board hearing required security in part due to threats of violence to individual Air Board members and their families. *See, e.g.*, Vol. 2 Transcript of Proceedings 718:10-14, No. 2022-3 (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Dec. 5, 2023) (attached as Exhibit F) (testimony of Vice Chair Richards) (“I am very, very deeply disturbed by how [one of the City Council members] divided our community. . . . I fear for my family. I fear for my own life, and it was absolutely unnecessary.”).

<sup>31</sup> *See* Final Order & Statement of Reasons for Adopting Reg. Concerning Health Env’t. & Equity Impacts 3-4 (“Final Rule Order”) (Dec. 19, 2023), Doc. 241. The Air Board withdrew its temporary restraining order application after the hearing’s completion. *See id.* at 4.

<sup>32</sup> N.M. Admin. Code Transmittal Form for N.M. Admin. Code § 20.11.72: Health Environment Equity Impacts (Dec. 28, 2023), Doc. 242.

<sup>33</sup> The text of the new rule is taken from the rule as transmitted to the New Mexico State Records Center and Archives found in note 32 at 22-23.

control technology in overburdened communities (as defined by the rule) rather than requiring EHD to deny permits as community members had requested in their revised petition.<sup>34</sup> The HEEI Rule also does not require EHD to determine whether there is a substantial justification for additional pollution in an overburdened community or consider a less discriminatory alternative as described in the Draft Agreement.<sup>35</sup>

Although the Air Board was able to promulgate the HEEI Rule, its ability to operate—let alone promulgate any new regulations—remains in a state of flux. The Air Board is pursuing its lawsuit against the City of Albuquerque challenging the legality of the Ordinance under state law, supported by the Bernalillo County Commission which joined the lawsuit as a co-plaintiff.<sup>36</sup> The Air Board is currently operating, but only pursuant to a preliminary injunction granted by a New Mexico trial court that is valid through a merits ruling.<sup>37</sup> To date, the SIP for New Mexico and Bernalillo County continue to reflect the Air Board’s old structure and authorities. *See* 40 C.F.R. pt. 52, subpt. GG.

On May 30, 2024, Los Jardines and NRDC filed a Title VI civil rights complaint with U.S. EPA against EHD and the City based on concerns that EHD would not implement the HEEI Rule given the agency’s consistent opposition to the rule and the challenges to the rule in court by EHD and industry groups.<sup>38</sup> One of the remedies

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<sup>34</sup> Compare *id.* N.M. Admin Code § 20.11.72.8(C) (requiring best available control technology), with Notice of Filing Am. Ex. A, Version 4, *supra* note 19, at 17-19 (version community members submitted for hearing setting forth criteria for permit denials or requiring specific mitigation measures).

<sup>35</sup> Compare N.M. Admin. Code § 20.11.72.8, *supra* note 32, with Draft Agreement, *supra* note 16, at 9-10

<sup>36</sup> See Docket Sheet, *Albuquerque-Bernalillo Cnty. Air Quality Control Bd. v. City of Albuquerque*, No. D-202-CV-202309295 (N.M. Distr. Ct. filed Dec. 5, 2023). Information on all state court cases mentioned was found by searching by case number on New Mexico Case Lookup, <https://caselookup.nmcourts.gov/caselookup/app>, and is current through July 23, 2024.

<sup>37</sup> See Order Granting Preliminary Injunctive Relief, *Albuquerque Bernalillo County Air Quality Control Board v. City of Albuquerque*, No. D-202-CV-2023-09295 (N.M. Distr. Ct. Feb. 1, 2024). A copy of the order is attached as Exhibit H.

<sup>38</sup> See Ex. A. Three petitions for review of the rule are in the state court of appeals. See Docket Sheet, *ABQ Asphalt, Inc. v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. A-1-CA-41673 (N.M. Ct. App. filed Jan. 26, 2024); Docket Sheet, *Nat’l Tech. & Eng’r Solutions Sandia, LLC v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. A-

requested by the complaint is that EPA find that to comply with Title VI, EHD must implement a cumulative impacts rule and apply it in air permitting decisions.<sup>39</sup> Absent federal pressure, EHD can otherwise thwart the HEEI Rule – or any other rule it dislikes for that matter – through inaction, due to the chilling of community petitions, and the questions surrounding the Air Board’s authority to promulgate any new regulations.

**IV. If implemented, the City Council’s changes to the Air Board would deprive the Board of authority previously approved by EPA as necessary to meet Clean Air Act requirements**

Congress viewed public-minded, uncaptured boards as so critical to effective air pollution control that it required them for every state. *See* 42 U.S.C. § 7428. This structure worked as intended when the Air Board agreed to hear community members’ petition and consider limiting air pollution despite strong industry opposition. The Air Board’s opponents, however, responded by pushing through the Albuquerque City Council changes that would strip from the Air Board much of the rulemaking authority it had when EPA approved New Mexico’s SIP and Title V permitting program. The Ordinance would impede the Air Board’s regulatory authority to such a degree that it would lack “adequate . . . authority” under local law to carry out plan implementation or “adequately administer[]” the Title V operating permit program. 42 U.S.C. §§ 7410(a)(2)(E)(i), 7661a(i)(1).

Regulatory delay maintains a status quo that harms already overburdened communities. Thus, EPA should review Ordinance O-2023-29 now and alert Albuquerque to the Ordinance’s incompatibility with the Clean Air Act to ensure it is not implemented. Review now would also ensure that if the Ordinance took effect, EPA would be ready to initiate the process for deficiency findings and corrective action. Delay would only further the anti-regulatory goals of the Air Board’s opponents.

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1-CA-41666 (N.M. Ct. App. filed Jan. 25, 2024); Docket Sheet, *Albuquerque Env’t. Health Dep’t v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. A-1-CA-41669 (N.M. Ct. App. filed Jan. 26, 2024). There is also a pending trial court case against the Air Board. *See* Docket Sheet, *GCC Rio Grande, Inc. v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. D-202-CV-202309435 (N.M. Dist. Ct. filed Dec. 11, 2023).

<sup>39</sup> Ex. A at 35.



**A. The Ordinance would deprive the Air Board of adequate authority to meet air quality standards or administer Title V permitting**

The Ordinance’s hamstringing of the Air Board would violate the Act’s substantive requirements for SIPs and Title V programs because both require a functional rulemaking authority. Most relevant here, the Act requires a SIP to:

1. Contain necessary assurances that a state or local agency will have “adequate personnel, funding, and authority” under the applicable law to carry out the SIP’s substantive requirements, 42 U.S.C. § 7410(a)(2)(E)(i); and
2. Provide methods of amending the SIP to “take account of revisions” to national primary or secondary ambient air quality standards or improved methods to attain a standard. *Id.* § 7410(a)(2)(H)(i). Additionally, a SIP would need to be revised if an area fell into nonattainment or if the federal government required a new visibility plan for an area. *See id.* § 7410(a)(2)(I), (J).

Similarly, an entity administering a Title V program must have “adequate personnel and funding” to “develop, administer, and enforce” the permitting program. 40 C.F.R. § 70.4(b)(8). Those authorities must include the ability to incorporate federal and state regulatory changes. *See id.* § 70.4(i); *see also id.* § 70.10(c)(1)(i)(A) (listing the failure of a permitting authority to “promulgate or enact new authorities when necessary” as a basis for EPA withdrawing approval of a Title V program).

If the Ordinance takes effect, the Air Board would lack adequate authority to revise regulations as needed to reflect changes in national standards, technology, or attainment status. The Ordinance makes the Air Board entirely dependent on petitioners for regulations – the Air Board can neither draft its own regulations, nor amend the regulations presented to it, nor even recommend to EHD that EHD propose regulations that it views as legally mandated. *See* Ordinance O-2023-29 at 15:27-30, 24:28-25:5.

Regulation via petition is insufficient if the Air Board cannot bring its knowledge and judgment to promote the public interest, including when it is required to comply with changes in federal standards, technology, or air quality levels. The Ordinance forbids the Air Board from “consider[ing] alternative proposals” at a hearing on a regulation and allows it to make modifications that only “delete[,], clarif[y] or elaborate[] on elements of the already-submitted proposal without adding or changing substantive new obligations or requirements.” *Id.* at 15:27-30. As demonstrated by the

cumulative impacts rulemaking, the Air Board hears from a myriad of viewpoints both before and during a hearing. So long as parties have fair notice of the options available, it is part of the normal, functioning governmental process for an agency to synthesize the views it hears and reach compromise.<sup>40</sup>

The City Council's legislation creates the perverse incentive for a rule's opponents to withhold moderating amendments during the petition process. Opponents could simply state their strenuous opposition to a petition to try to force the Air Board to deny it and challenge any regulation as *ultra vires* if the Air Board made any change to account for the opponents' concerns. The CAA does not countenance this heckler's veto to thwart the attainment and maintenance of national ambient air quality standards. By hamstringing the Air Board, the Ordinance all but ensures that effective air pollution regulation will not occur. That is the City Council's intent.

Having restricted the Air Board's authority to marginally edit petitions submitted by the public or EHD, the City Council then significantly diminished the likelihood of the Air Board receiving the petitions it needs to ensure compliance with federal law. Making petitioners bear all transcription costs without any hardship exceptions chills public participation. Ordinance O-2023-29 at 16:5-6. As the Air Board acknowledges, transcripts can cost several hundred to thousands of dollars per proceeding and petitioners will also need legal counsel.<sup>41</sup> Low-income communities, where air pollution is most concentrated and regulation is most needed, will be least able to seek regulatory changes under this regime. This is both unfair and unjust, and will diminish the prospect for adoption of improved air quality standards or improved technology as the Act and EPA envision. *See* 42 U.S.C. § 7410(a)(2)(H)(i); 40 C.F.R. § 70.10(c)(1)(i)(A). The Clean Air Act guarantees all Americans the right to safe, healthy air, requiring national ambient air quality standards to be attained and maintained everywhere, 42 U.S.C. § 7409, yet the City Council actions single out for further discrimination low-income communities and communities of color already experiencing unhealthy air quality.

Simply put, the Ordinance keeps communities seeking protective regulation from petitioning the Air Board while prohibiting the Air Board from playing the

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<sup>40</sup> *Cf. Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007) (cleaned up) (explaining that federal rules promulgated under the Administrative Procedure Act need only be a "logical outgrowth" of a proposed rule to comply notice and comment requirements).

<sup>41</sup> *See Rulemaking Process Guidebook, supra* note 7, at 6-7, 14.

customary, flexible role of a regulator to consider disparate points of view and formulate workable rules. Stripped of meaningful regulatory power, the Air Board does not have adequate authority to implement its SIP commitments or administer the Title V permitting program.

**B. The Ordinance contravenes federally-approved SIP and Title V Program terms**

The reality that the Air Board has more than cursory levels of rulemaking authority was part of EPA's approval of local control for Bernalillo County under New Mexico's SIP. EPA incorporated into New Mexico's SIP the state's statutes delineating agency responsibilities and authorizing local control as well as City and County ordinances governing the Air Board. *See* 40 C.F.R. pt. 52, subpt. GG.; *see also* 82 Fed. Reg. 60,933, 60,936-37 (Dec. 26, 2017) (acknowledging that the Air Board has authority to "adopt regulations to abate, control, and prohibit air pollution" throughout Bernalillo County as part of EPA's finding that New Mexico had entities with adequate authority to implement and revise SIP for fine particulate matter); 84 Fed. Reg. 42,819, 42,820 (Aug. 19, 2019) (stating local control statute is part of SIP); 80 Fed. Reg. 63,431, 63,433 (Oct. 20, 2015) (incorporating City Ordinance 9-5-1-3 as part of SIP). EPA has approved numerous regulations promulgated by the Air Board as part of New Mexico's SIP, showing that the SIP is premised on the region having a robust regulator. *See* 40 C.F.R. pt. 52, subpt. GG.

A functional Air Board with rulemaking authority was also part of EPA's approval for local control over Title V permitting. EPA has approved the Air Board and EHD as the administrators of Title V permitting for Albuquerque and Bernalillo County. *See* 61 Fed. Reg. 60,032, 60,033 (Nov. 26, 1996); *see also* 60 Fed. Reg. 2527, 2528 (Jan. 10, 1995) (describing Air Board's role in promulgating regulations as part of interim approval).

If the Ordinance took effect, it would contravene the terms under which EPA approved New Mexico's SIP and Title V program, both of which include Albuquerque having a local rulemaking agency with adequate authority for implementation and administration. Unless and until EPA approves amendments to the SIP through federal notice and comment rulemaking, the prior federally approved SIP remains operational and enforceable as a matter of federal law.<sup>42</sup> For the Title V permitting program, even

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<sup>42</sup> *See Safe Air*, 488 F.3d at 1097 (9th Cir. 2007) ("[T]he SIP became *federal law*, not *state law*, once EPA approved it, and could not be changed unless and until EPA approved any change.").

“proposed modifications . . . to basic statutory or regulatory authorities” must be shared with EPA. *See* 40 C.F.R. § 70.4(i). Only after submittal, notice and comment rulemaking, and approval by EPA can changes become effective. *See id.* § 70.4(i)(2)(i)-(iv); *see also id.* § 70.10(b) (states must operate their Title V programs “at all times . . . in accordance with” the terms they submitted).

As explained above, *see supra* pp. 17-18, Albuquerque could not have received approval from EPA as having adequate authority to meet air quality standards and implement Title V permitting had its initial submissions contained such limited regulatory authority. It would thwart the Act’s detailed requirements and EPA’s close initial review if state and local governments unilaterally stopped implementing terms previously approved in a SIP or Title V submission. If the reduction in the Air Board’s regulatory authority takes effect, EPA has the authority (and responsibility) to issue deficiency notices for both the SIP and Title V operating permit programs. *See* 42 U.S.C. § 7410(k)(6) (allowing EPA, if it finds its approval of a SIP was in error, to make corrections following the same procedures as the original approval); 40 C.F.R. § 70.10(b)(1) (deficiency notices for Title V permitting). Indeed, EPA (including Region 6) has issued proposed findings and notices of deficiencies against states when subsequent legal actions overrode the structural assurances provided in their SIPs and Title V submissions.<sup>43</sup>

If the deficiency we are highlighting is left uncorrected, Albuquerque cannot maintain local control. *See* 42 U.S.C. § 7410(c)(1) (mandating federal implementation within two years after state fails to make required submissions or EPA disapproves a submission); 40 C.F.R. § 70.10(b)(2)(i), (iii) (authorizing EPA to withdraw approval and promulgate a federal program 90 days after Title V deficiency notice). Given that the City Council’s action goes to dismantling the linchpin agency for setting air quality standards, discretionary sanctions are appropriate. *See* 42 U.S.C. § 7410(m) (authorizing sanctions if EPA makes one of the findings described in § 7509(a)(1)-(4) “in relation to any plan . . . required under this chapter”); *id.* § 7509(a)(4) (sanctions triggered by

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<sup>43</sup> *See, e.g.*, 67 Fed. Reg. 49,895, 49,895 (Aug. 1, 2002) (Region 6 proposing to make a SIP non-implementation finding that Texas did not have “adequate funding” as required by CAA Section 110(a)(2)(E) after a court struck down the funding law incorporated into the SIP); 63 Fed. Reg. 65,783, 65,783-84 (Nov. 30, 1998) (issuing deficiency finding for Oregon’s Title V program after court restricted judicial review for permits to less than what EPA required); 46 Fed. Reg. 58,593, 58,593-94 (Dec. 2, 1981) (issuing deficiency finding after Pennsylvania legislature overrode funding source incorporated into SIP).

finding that “any requirement of an approved plan (or approved part of a plan) is not being implemented”).<sup>44</sup>

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The City Council’s actions would put Albuquerque and Bernalillo County in violation of the Act if allowed to take effect. Both the Mayor of Albuquerque and the Bernalillo County Commission have expressed alarm that the City Council’s action would take their local program out of compliance. Mayor Keller characterized the ordinance as “disregard[ing] our obligations under state and federal law” and expressed concern about losing local control.<sup>45</sup> The Bernalillo County Commission joined the Air Board’s lawsuit against the City as a co-plaintiff because it believed the absence of a functioning Air Board could “jeopardize air quality and [the County’s] relationship with state and federal agencies, including [EPA].”<sup>46</sup>

Although Ordinance O-2023-29 is not currently being implemented, it is not premature for EPA to determine now that the Ordinance violates the Act and governing federal regulations. Changes to provisions incorporated into prior SIPs and Title V program approvals cannot take effect without EPA approval: EPA should say as much to ensure it never happens. Moreover, the corrective actions available to EPA take time. Reviewing the Ordinance now would allow EPA to make the requisite finding as soon the Ordinance takes effect. Delay has real-life consequences for communities in Albuquerque that have suffered disproportionate air pollution burdens for too long.

## V. Conclusion

Pursuant to the Clean Air Act, Congress requires states to provide assurances that their air pollution programs will not only comply with the law on paper but also be adequately staffed, funded, and authorized so that they can incorporate improving standards and technology and address deteriorating air quality. By reviewing and responding to changes to state and local air pollution programs, EPA performs a federal

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<sup>44</sup> See generally Jessica Ranucci, *Reviving the Clean Air Act’s Requirement that States Adequately Fund and Staff Clean Air Programs*, 40 Harv. Envtl. L. Rev. 351, 356, 371-72, 380 (2016) (describing enforcement actions EPA could take if states violate structural requirements post-SIP approval).

<sup>45</sup> Mayor Veto Statement, *supra* note 27, at 2.

<sup>46</sup> Bernalillo County, *Bernalillo County Joins as Necessary Party to Case Filed by Joint Quality Air Board* (Dec. 19, 2023), <https://www.bernco.gov/blog/2023/12/19/bernalillo-county-joins-as-a-necessary-party-to-case-filed-by-joint-air-quality-control-board/>.

oversight function and serves as a backstop against state and local governments reneging on commitments previously made to EPA and the public. If implemented, Albuquerque Ordinance O-2023-29 would render the Air Board at odds with EPA's prior approvals and strip the local Air Board of authority to carry out necessary Clean Air Act functions and requirements. For the foregoing reasons, Los Jardines and NRDC request that EPA:

1. Find and notify Albuquerque that Ordinance O-2023-29 would deprive the Air Board of authority required under the Act and contradict the federally-approved terms of New Mexico's SIP and Title V permitting program;
2. If Albuquerque Ordinance O-2023-29 takes effect:
  - a. Issue SIP and Title V program deficiency notices;
  - b. Put in place a federal implementation plan and federal Title V program if Albuquerque fails to take corrective action; and
  - c. Impose sanctions.

Sincerely,

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