



## OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

January 17, 2025

In Reply Refer to:

EPA Complaint No: 13R-14-R6

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**RE: Closure of Administrative Complaint (EPA Complaint No. 13R-14-R6)**

Dear Director Rogers, Ms. Sedillo Lopez, and Ms. Armijo:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Environmental Justice and External Civil Rights, Office of External Civil Rights Compliance (OECRC), is closing the administrative complaint (Complaint) involving the Albuquerque Environmental Health Department (EHD) and the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) which was accepted for investigation by EPA on July 19, 2016. EPA accepted the following issues for investigation:

Director Rogers  
Attorney Sedillo-Lopez  
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- 1) Whether the Albuquerque-Bernalillo County Air Quality Control Board's and/or the Albuquerque Air Quality Division's permitting process discriminates against minority residents on the basis of race and/or national origin, in violation of Title VI of the Civil Rights Act and EPA's implementing regulations; and
- 2) Whether the Albuquerque-Bernalillo County Air Quality Control Board and/or the Albuquerque Air Quality Division discriminated against minority residents on the basis of race and/or national origin in violation of Title VI of the Civil Rights Act and EPA's implementing regulations by refusing to conduct a hearing on an ordinance to consider cumulative impacts in the permitting process.

OECRC attempted to resolve the complaint informally soon after accepting it for investigation in July 2016. After participating in a mediated alternative dispute resolution process with complainants, beginning in April 2019 and ending unsuccessfully in October 2020, both EHD and the Air Board agreed to re-enter EPA's informal resolution agreement process on November 9 and December 10, 2020, respectively, where the complaint resolution process has remained to the date of this letter.

At this time, EPA is closing the complaint as to Issue #2 because it is moot. On November 21, 2022, the New Mexico Environmental Law Center, representing the Mountain View Neighborhood Association and others, filed a rulemaking petition and the proposed Health, Environment, and Equity Impacts (HEEI) Rule, pursuant to N.M. Admin. Code 20.11.82.18. The HEEI Rule sought to address the disproportionate and cumulative impacts of polluting sources in the City of Albuquerque and Bernalillo County's most overburdened communities. On December 14, 2022, the Air Board granted the petition and voted 5-0 to hold a rulemaking hearing on the petition and the proposed HEEI Rule. Following numerous pre-hearing meetings, motions, and arguments, the Air Board published notice in the New Mexico Register, setting the rulemaking proceeding to begin on December 4, 2023.<sup>1</sup> The Air Board held the hearing on December 4-8 and 11, 2023, for the purpose of considering input on the proposed HEEI Rule.<sup>2</sup>

The Air Board issued a final HEEI Rule on December 19, 2023. Among other things, the HEEI Rule requires EHD to create a map of "overburdened areas" by January 1, 2025, to determine the degree of harm a new air permit or modification would have on the surrounding community, and further mandates that any new or modified permit for a stationary source apply best available control technology.<sup>3</sup>

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<sup>1</sup> See Volume XXXIV, Issue 20, New Mexico Register (Oct. 24, 2023).

<sup>2</sup> See "Past Air Quality Control Board Meetings," available at <https://www.cabq.gov/airquality/air-quality-control-board/past-air-quality-control-board-meetings> (recordings available for "December 4-8, & December 11 HEEI Rulemaking Hearing").

<sup>3</sup> N.M. Admin. Code Transmittal Form for N.M. Admin. Code § 20.11.72: Health, Environment and Equity Impacts (Dec. 28, 2023).

Director Rogers  
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Liaison Armijo

By granting the petition for the HEEI rulemaking, conducting a hearing on the proposed HEEI Rule, and issuing a final HEEI Rule, the Air Board undertook a process that addressed Issue #2 accepted by EPA for investigation in July 2016. Accordingly, EPA has determined that Issue #2 is resolved.

As for Issue #1, which only implicates the authority of EHD, and not the Air Board,<sup>4</sup> EPA determined that closure is appropriate due to changed circumstances. With the adoption of the HEEI Rule, EHD is now required to increase protections for overburdened communities in Albuquerque. EHD has taken action to implement the HEEI Rule by publishing the Overburdened Areas Map (the “OBA Map”) of Bernalillo County.<sup>5</sup> To develop the OBA Map, EHD held a series of ten public consultation sessions between August 8, 2024, and November 14, 2024, to receive stakeholder input on methods for data gathering, map generation, and index calculations. EHD took community input into consideration to refine the OBA Map, which is subject to further adjustments based on public input through June 30, 2025.<sup>6</sup> On July 1, 2025, the OBA Map will go into effect. As of that date, EHD must establish additional permitting requirements and encourage meaningful public participation in the permitting process for new or modified stationary sources of air pollution located, or proposed to be located, in or within a one-mile radius of an overburdened area as identified by the OBA Map.<sup>7</sup>

In addition, the legality of the City of Albuquerque and the Air Board’s actions with respect to the hearing and adoption of the HEEI Rule is currently being challenged in three pending State court cases.<sup>8</sup> Because the outcome of these cases could impact EHD’s efforts to implement the HEEI Rule, OECRC determined that administrative closure is appropriate for this issue.<sup>9</sup>

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<sup>4</sup> The governments of Albuquerque and Bernalillo County share authority over an air pollution program that covers the entire county, including Albuquerque. 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. See City Ord. § 9-5-1-5(A); Cnty. Ord. § 30-34(a).

<sup>5</sup> The “Health Environment and Equity Impacts Rule Draft Map (January 1, 2025)” is available at:

[https://www.cabq.gov/environmentalhealth/documents/15\\_indicator\\_bg\\_1.pdf](https://www.cabq.gov/environmentalhealth/documents/15_indicator_bg_1.pdf).

<sup>6</sup> Information about the online and in-person sessions held by EHD on the OBA Map, including presentation slides and session recordings, are available at: [www.cabq.gov/environmentalhealth/public-health/overburdened-areas-map-version-0.1](https://www.cabq.gov/environmentalhealth/public-health/overburdened-areas-map-version-0.1).

<sup>7</sup> See NMAC 20.11.72, available at: <https://www.cabq.gov/environmentalhealth/documents/20-11-72-health-environment-and-equity-impacts-rulle-heei-english.pdf> (English version), and <https://www.cabq.gov/environmentalhealth/documents/final-20-11-72-health-environment-and-equity-impacts-rulle-heei-spanish.pdf> (Spanish version).

<sup>8</sup> See *Albuquerque-Bernalillo County Air Quality Control Board and the Board of County Commissioners of the County of Bernalillo v. City of Albuquerque*, New Mexico, No. D-202-CV-2023-09295 (filed Dec. 5, 2023); *GCC Rio Grande, Inc., et al. v. Albuquerque-Bernalillo County Air Quality Control Board, City of Albuquerque*, No. D-202-CV-2023-09435 (filed Dec. 11, 2023); *Mountain View Community Action et al. v. City of Albuquerque*, No. D-202-CV-2023-09449 (filed Dec. 11, 2023).

<sup>9</sup> See EPA’s *Case Resolution Manual* (2021), Section 2.5.

Director Rogers  
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Therefore, EPA Complaint No. 13R-14-R6, is closed as of the date of this letter and requires no further action. The resolution of the issues above does not foreclose EPA's ability to address other complaints or conduct compliance reviews related to EHD's implementation of the HEEI Rule or administration of the air permitting program going forward.

EPA's nondiscrimination regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either acted or participated in an action to secure rights protected by the civil rights requirements that we enforce. See 40 C.F.R. § 7.100. Any individual alleging such retaliation or intimidation may file a complaint with OECRC.

If you have any questions, please contact me by email at [hoang.anhthu@epa.gov](mailto:hoang.anhthu@epa.gov). You may also contact Kurt Temple, Case Manager, by email at [temple.kurt@epa.gov](mailto:temple.kurt@epa.gov).

Sincerely,



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Acting Director  
Office of External Civil Rights Compliance  
Office of Environmental Justice and  
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cc:

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Deputy Associate General Counsel  
Civil Rights & Finance Law Office  
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