CITY OF ALBUQUERQUE

April 1, 2011

Honorable Susana Martinez
Governor, State of New Mexico
Office of the Governor
Room 400
490 Old Santa Fe Trail
Santa Fe, NM 87501

SUBJECT: Endorsement of request for the Environmental Protection Agency to consider a revision to the State Implementation Plan for Air Quality by amending 20.11.2 NMAC, *Permit Fees* (AKA Fees)

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NM 87103

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Dear Governor Martinez,

I am writing to request your endorsement of the attached submittal to the EPA which serves as the basis for a revision to the New Mexico State Implementation Plan (SIP) for Air Quality. The attached documentation supports the proposed SIP revision which incorporates a repeal of 20 NMAC 11.02 and replacement by 20.11.2 NMAC, *Permit Fees*, (AKA *Fees*), adopted pursuant to Title I of the Clean Air Act Amendments of 1990, into the SIP. If you agree to the submission of the proposed SIP revision, a letter of endorsement should be sent to the EPA with a request for their approval by way of publication in the *Federal Register*. A draft formal letter to EPA is attached for your convenience. I will provide EPA with the necessary review copies of the submittal, so you do not need to send any accompanying documentation. Please provide me with a copy of your letter of endorsement, or if you prefer to provide me with the original, I will take care of all the details.

The Albuquerque - Bernalillo County Air Quality Control Board (Air Board) repealed 20 NMAC 11.02 *Permit Fees* and replaced it with 20.11.2 NMAC, *Permit Fees*, on April 18, 2001, after a public comment period and corresponding public hearing held on February 14, 2001. The regulation was filed with the New Mexico State Records Center (NMSRC) on May 16, 2001 and became effective on July 1, 2001. We believe that the submitted materials provide adequate documentation to support the requested SIP revision.

The reasons for submitting an historical rule amendment as a revision to the SIP are as follows. Subsequent to adoption of the SIP revision before you, the Air Board adopted amendments to 20.11.2 NMAC on 1/14/04 regarding fees necessary in order to operate the fugitive dust program [20.11.20 NMAC] as well as other changes; these amendments were filed on 1/28/04, and became locally effective on 3/1/04. On 9/7/04 a request for a SIP revision was submitted to EPA under the Governor's signature. But before EPA finalized their approval for this revision, the Albuquerque Air Quality Division (AQD) had already begun work on the next revision. So EPA's review was postponed until the next SIP revision request was sent to them. The Air Board adopted this second set of amendments on 11/8/06, which reduced the hearing appeal fee from $1000.00 to $125.00. These amendments were filed on 11/15/06, and became effective locally on 12/16/06. A request for a SIP revision was submitted to EPA under the Governor's signature on 2/5/07.

20.11.2 NMAC has been amended numerous times since it was first adopted in 1977, with the penultimate hearing before the aforementioned 2004 and 2006 hearings, being held on 2/14/01. The Air Board adopted this repeal and replacement on 4/18/01. This replacement rule was filed on 5/16/01, and became effective locally on 7/1/01. The new rule addressed permit fees, potential to emit, State air toxics, and Title V. EPA reviewed these changes but there is no record of the 2001 amendment ever being submitted to EPA for inclusion into the SIP. Thus, EPA has not approved a SIP revision to include any of the amendments made to 20.11.2 NMAC in the intervening period since their initial approval in the Federal Register on April 10, 1980 [Vol. 45 No. 71, 24460-69].

Since the 20.11.2 NMAC SIP has not been revised at EPA since 1980, the locally effective version is completely different from that approved in the SIP. This raises two issues. First, the 2004 & 2006 (2007) SIP revisions will need to be compared to a "baseline" rule such as the 5/16/2001 replacement rule, since the 1980 rule is not comparable. Secondly, since the 2004, and 2006 (2007) amendments did not amend/update the language currently found in 20.11.2 NMAC, at Sections: 1, *Issuing Agency*; 4, *Duration*; 5, *Effective Date*, and 8, *Savings Clause*, these sections will need to be updated in the SIP as well. This will be done when the 2004 & 2006 (2007) SIP revisions are approved; or if the most recent amendments that were adopted on 12/8/2010, filed 12/10/2010, effective 1/10/2011, and submitted to EPA on 12/27/2010, are approved in the same federal register notice as the 2004 & 2006 (2007) revisions, the update will take place at that time.

To facilitate your review and processing, the following materials are enclosed:

1) SIP Completeness Checklist pursuant to 40 CFR 51, Appendix V

2) Hearing record, including transcripts and exhibits

3) Public comments and responses

4) The proposed SIP revision for 20.11.2 NMAC, *Permit Fees* adopted by the Air Board.

5) A draft formal submittal letter from the Governor to EPA

Thank you for your assistance in this matter. If you have questions or need clarification, please contact me or Margaret Nieto of my staff at (505) 768-2637.

Sincerely,

Mary Lou Leonard
Director
Albuquerque Environmental Health Department

cc: Chair, Albuquerque - Bernalillo County Air Quality Control Board
Margaret Nieto, Control Strategies Supervisor, AQD
Neal Butt, Environmental Health Scientist, AQD
Mary Uhl, Chief, Air Quality Bureau, NM Environment Department

Enclosures