

ALBUQUERQUE-BERNALILLO COUNTY  
AIR QUALITY CONTROL BOARD

RE: AIR QUALITY CONTROL BOARD HEARING REGARDING  
20.11.60 NMAC, PERMITTING IN NONATTAINMENT AREAS;  
20.11.61 NMAC, PREVENTION OF SIGNIFICANT  
DETERIORATION; AND 20.11.42 NMAC, OPERATING PERMITS

PROCEEDINGS

APRIL 10, 2013

5:40 p.m.

Vincent E. Griego Chambers  
One Civic Plaza, Northwest  
Albuquerque, New Mexico

REPORTED BY: Peggy Jo Gonzales, RMR, CCR #145

Bean & Associates, Inc.  
Professional Court Reporting Service  
201 Third Street, Northwest, Suite  
Albuquerque, New Mexico 87102

(6917K-PJ)



<p style="text-align: right;">Page 6</p> <p>1 NEAL BUTT, 2 after having been first duly sworn under oath, 3 testified as follows: 4 MR. BUTT: I'm an environmental health 5 scientist with the Air Quality Division Control 6 Strategy Section, and I'm here in the matter of the 7 petition to amend 20.11.60 NMAC entitled Permitting 8 in Nonattainment Areas, 20.11.61 NMAC entitled 9 Prevention of Significant Deterioration, and 20.11.42 10 NMAC entitled Operating Permits. 11 The amendments to 20.11.42 NMAC are 12 proposed as a revision to the Title V Operating 13 Permit Program, and the amendments to 20.11.60 NMAC 14 and 20.11.61 NMAC are proposed as a revision to the 15 New Mexico State Implementation Plan for Air Quality 16 or SIP. This is Air Quality Control Board position 17 number 2013-1. 18 The provisions governing state 19 implementation of the Nonattainment New Source Review 20 Permit Program are contained in the CFR or Code of 21 Federal Regs, Title 40 entitled Protection of the 22 Environment, Part 51 entitled Requirements for 23 Submittal of Implementation Plans, Subpart I entitled 24 Review of New Sources and Modifications, Section 165 25 entitled Permit Requirements.</p>	<p style="text-align: right;">Page 8</p> <p>1 Air Act are contained in 40 CFR Part 70 entitled 2 State Operating Permit Programs, and in Albuquerque/ 3 Bernalillo County 20.11.42 NMAC entitled Operating 4 Permits. 5 On May 16th of 2008, the United States 6 Environmental Protection Agency, or EPA, promulgated 7 "Implementation of the New Source Review Program" for 8 particulate matter less than 2.5 micrometers, or PM 9 2.5, effective July 15, 2008. These amendments 10 affect 40 CFR 51.165 and have already been 11 incorporated into the currently effective version of 12 20.11.60 NMAC. These amendments also affect 40 CFR, 13 51.166 and 52.21, and all but one amendment has been 14 incorporated into the currently effective version of 15 20.11.61 NMAC. This remaining amendment adds an 16 additional stationary source exemption and is cited 17 as 20.11.61.18.D.(3) NMAC in the proposed draft 18 before you. 19 On October 20, 2010, the EPA promulgated 20 "PSD for particular matter less than 2.5 micrometers 21 - increments, significant impact levels, or SILs, and 22 significant monitoring concentration, or SMC". This 23 became effective on December 20, 2010. These 24 amendments affect 40 CFR 51.165, and have been 25 incorporated into the proposed draft of 20.11.60</p>
<p style="text-align: right;">Page 7</p> <p>1 Albuquerque - Bernalillo County's 2 implementation of this program is governed by 3 20.11.60 NMAC entitled Permitting in Nonattainment 4 Areas. 5 The provisions governing state 6 implementation of the Prevention of Significant 7 Deterioration, or PSD, Permit Program are contained 8 in the CFR Title 40 entitled Protection of the 9 Environment, Part 51, Requirements for Submittal of 10 Implementation Plans, Subpart I, Review of New 11 Sources and Modifications, Section 166 entitled 12 Prevention of Significant Deterioration of Air 13 Quality. 14 The provisions governing direct federal 15 implementation of PSD are found at Title 40, 16 Protection of the Environment, Part 52, Approval and 17 Promulgation of Implementation Plans, Subpart A, 18 General Provisions, Section 21, Prevention of 19 Significant Deterioration of Air Quality. 20 Albuquerque - Bernalillo County's 21 implementation of the PSD program is governed locally 22 by 20.11.61 NMAC entitled Prevention of Significant 23 Deterioration. 24 The provisions governing major source 25 operating permits pursuant to Title V of the Clean</p>	<p style="text-align: right;">Page 9</p> <p>1 NMAC. These amendments also affect 40 CFR 51.166 and 2 52.21, and have been incorporated into the proposed 3 draft of 20.11.61 NMAC. 4 One exception is an amendment that would 5 have been inserted at 20.11.61.15.B.(2) NMAC 6 regarding SILs, but which EPA has conceded to be 7 vacated and remanded to EPA, in response to the 8 Sierra Club versus EPA court case. Another exemption 9 is proposed -- is the proposed SMC for PM fine at 10 20.11.61.28 NMAC, which was also vacated by the U.S. 11 Court of Appeals. 12 Incorporation of changes to the federal PSD 13 rule into the local PSD rule are required not only to 14 keep the local PSD program up-to-date, but is also 15 required for the infrastructure SIP, or i-SIP, for 16 the 2010 nitrogen dioxide NAAQS, because EPA requires 17 that any i-SIP submittal should address any new or 18 revised PSD program requirements. The NO2 i-SIP is 19 anticipated to be submitted to EPA sometime in June 20 of this year. 21 On March 30th of 2011, the EPA promulgated 22 "PSD and nonattainment new source review: 23 Reconsideration of inclusion of fugitive emissions; 24 interim rule; stay and revisions." This became 25 effective on March 30th of 2011. These amendments</p>

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<p>1 affect 40 CFR 51.165, 51.166, and 52.21, and have 2 been incorporated into the proposed drafts of 3 20.11.60 NMAC and 20.11.61 NMAC.</p> <p>4 On July 20th of 2011, EPA promulgated 5 "Deferral for carbon dioxide emissions from 6 bio-energy and other biogenic sources under the PSD 7 and Title V programs." This became effective 8 July 20th of 2011. In this rule, state, local and 9 tribal permitting authorities may adopt the deferral 10 at their option, but the deferral is effective upon 11 publication for the PSD and Title V permit programs 12 that are implemented by EPA. These amendments affect 13 40 CFR 51.166 and 52.21, and have been incorporated 14 into the proposed draft of 20.11.61 NMAC. They also 15 affect 40 CFR Part 70, state operating permits at 16 70.2 entitled Definitions, and have been incorporated 17 into the proposed draft of 20.11.42 NMAC, operating 18 permits, at the citation 20.11.42.7.II.(2) NMAC.</p> <p>19 Adoption of biomass deferral provisions 20 will allow the division to avoid the need to 21 determine net carbon cycle impacts for bio-energy 22 projects until EPA has adopted a consistent and 23 practical framework for such calculations, and 24 prevent the division from spending valuable time and 25 resources evaluating sources that may have de</p>	<p>1 proposed draft of 20.11.61 NMAC.</p> <p>2 This hearing has been legally noticed as 3 shown on AQD Exhibits 2A, 2B, and 2C. There have not 4 been any negative comments received regarding this 5 proposal, only a verbal no comment received by EPA. 6 Therefore, the Environmental Health Department of the 7 City of Albuquerque, by and through the Air Quality 8 Division, respectfully asks the Albuquerque/ 9 Bernalillo County Air Quality Control Board to adopt 10 amendments to 20.11.60 NMAC, Permitting in 11 Nonattainment Areas, shown as AQD Exhibit 1a, 12 20.11.61 NMAC, Prevention of Significant 13 Deterioration, shown as AQD Exhibit 1b, and 20.11.42 14 NMAC, Operating Permits, shown as AQD Exhibit 1c as 15 amended by staff proposed floor amendments shown as 16 AQD Exhibits 4 and 4a, and submit the amended 17 20.11.42 NMAC to EPA as a proposed revision to the 18 Title V Operating Permit Program, and the amended 19 20.11.60 NMAC and 20.11.61 NMAC as proposed revisions 20 to the New Mexico State Implementation Plan for Air 21 Quality.</p> <p>22 This concludes my testimony. I request 23 that the Exhibits 1, 1a, 1b, 1c, 2a, 2b, 2c, 3, 4, 24 and 4a be moved into the record, and I stand for 25 questions.</p>
<p>Page 11</p> <p>1 minimus, neutral or positive impact on net CO2 levels 2 in the atmosphere.</p> <p>3 On July 20, 2012, EPA promulgated 4 "Prevention of significant deterioration and Title V 5 greenhouse gas tailoring rule step 3, and greenhouse 6 gas plantwide applicability limits." This became 7 effective on August 13th of 2012. These amendments 8 affect 40 CFR 52.21, and have been incorporated into 9 the proposed draft of 20.11.61 NMAC.</p> <p>10 Adoption of the PAL amendments for 11 greenhouse gases would allow the division to provide 12 greater operational flexibility to permitted sources 13 by issuing greenhouse gas PALs to greenhouse gas only 14 sources without requiring the sources to become a 15 major source. Greenhouse gas-only sources could 16 obtain a greenhouse gas PAL and remain a minor source 17 as long as our greenhouse gas emissions remain below 18 the PAL.</p> <p>19 On October 25, 2012, EPA promulgated 20 "Implementation of the NSR program for particulate 21 matter less than 2.5 micrometers: Amendment to the 22 definition of regulated NSR pollutant concerning 23 condensable particulate matter." This became 24 effective December 24, 2012. These amendments affect 25 51.166 and 52.21, and have been incorporated into the</p>	<p>Page 13</p> <p>1 MR. GRANTHAM: Thank you, Mr. Butt. The 2 exhibits you listed are admitted into the record. 3 Are there questions from the board for 4 Mr. Butt? Seeing none, I had a couple of questions. 5 On page 8 of the proposed regulations, this is 6 subsection PP -- 7 MR. BUTT: Which rule? 8 MR. GRANTHAM: Sorry, 20.11.61, Section 7, 9 subsection PP. 10 MR. BUTT: Okay. 11 MR. GRANTHAM: Net emissions increase. 12 Subparagraph 3(c) reads, "The increase or decrease in 13 emissions did not occur at a clean unit," and that 14 term is italicized. Is that defined anywhere, clean 15 unit? I didn't see that in the definitions. 16 MR. BUTT: No, I don't believe so. That 17 came out of one of the Federal Registers. It came 18 out of -- well, it's from 40 -- like you see in 19 those -- all the braces behind the amendments, 20 anywhere you see braces, and then for -- for 21 instance, in this case, it says {40 CFR 51.166 22 (b)(3)(iii)(c) and Federal Register Volume 76, 23 Number 61, published March 30, 2011, page 17554}, 24 anywhere we see braces like that, those won't be in 25 your final rule. Those should help people know where</p>

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<p>1 the -- the additional language came from; so that 2 should be near every proposed amendment by the 3 division. And so in answer to your question, I don't 4 know that it's defined in the rule, but it came out 5 of both the Federal Register, and it's in the -- the 6 CFR, and I bolded it and italicized it so you could 7 tell what that term was. I don't know that it -- 8 there's a definition in the -- where I got that 9 citation or in the Federal Register necessarily. 10 EPA is -- I think they're still mulling it 11 over, and they haven't decided whether they want to 12 keep it or what they're going to do with it, so right 13 now it's still in the -- in the CFR, but I know 14 they're -- they are having talks. I don't know the 15 specifics, but I know there's discussion at EPA about 16 it. 17 MR. GRANTHAM: But it's -- it's currently 18 at -- within that CFR section, that's -- that's cited 19 there within the braces? 20 MR. BUTT: Yes. 21 MR. GRANTHAM: Would the division object to 22 having that citation be made part of the rule, "did 23 not occur at a clean unit," as defined in 40 CFR 24 51.166? 25 MR. BUTT: I don't object. Let me see what</p>	<p>1 NMAC apply." I just wonder if that should be an 2 "or." Do all those sections need to apply in order 3 for this provision to apply? 4 (A discussion was held off the record.) 5 MR. ROCHA: My name is Dario Rocha, 6 supervisor for permitting in the Air Quality 7 Division. 8 Mr. Grantham, your question regarding 9 20.11.61.11 (b), each one of those -- it's my opinion 10 that each one of those provisions that are cited 11 apply -- are applicable to any -- any one that's 12 going to construct a new major stationary source or 13 modify an existing major stationary source. 14 MR. GRANTHAM: My question was for 15 subsection C. 16 MR. ROCHA: Oh, okay. All right, I see. 17 Let me review that. Stand by. 18 MR. SULLIVAN: Mr. Grantham, while we're 19 going over that, I'm having trouble reading that 20 where it says, "Subsections B and C of 20.11.61.21 21 NMAC," and I'm with you on the "and." Does that mean 22 subsections B and C of both 20.11.21 and 20.11.61.24 23 or should there be a comma after that, and all of 24 that, or are they referring to subsections B and C of 25 .21 and .24? Or should there be a comma there, what</p>
<p>1 the experts say. 2 (A discussion was held off the record.) 3 MR. BUTT: Mr. Hearing Officer, that would 4 be fine. I guess you guys could propose it as a 5 floor amendment when you get to that part of the 6 game. 7 MR. GRANTHAM: Thank you. Mr. Sullivan? 8 MR. SULLIVAN: Can we verify that it is 9 defined in 40 CFR 51.166? I mean, if you're going to 10 say it's defined, I'd like to know if it is defined. 11 12 MR. BUTT: Madame Chair, Member Sullivan, 13 let me -- let me see if Dario can find it. 14 (A discussion was held off the record.) 15 MR. BUTT: I believe it's just a general 16 discussion of what a clean unit is about. I don't 17 know if it has a cut and dry definition at the CFR. 18 MR. GRANTHAM: Just one other question. On 19 20.11.61.11.(C) on page 12. 20 MR. BUTT: Okay. 21 MR. GRANTHAM: It says, "No new major 22 stationary source or major modification to which the 23 requirements of subsections...", and then there's a 24 whole list of various subsections, and before the 25 last subsection, there's an "and," "and 20.11.61.24</p>	<p>1 you brought up, meaning all of 20.11.61.24 NMAC? 2 MR. GRANTHAM: Do you understand 3 Mr. Sullivan's question? 4 MR. BUTT: Yes, Mr. Hearing Officer. And 5 Mr. Sullivan, the -- those are two separate 6 applicabilities. The -- subsections B and C of 7 20.11.61.21 NMAC is one applicable requirement, and 8 then 20.11.61.24 is another applicable requirement, 9 and generally when I have a string of items like 10 this, I put commas behind all of -- each item except 11 for the one that comes before the "and," and I leave 12 the comma off if there's an "and" there. 13 MR. ROCHA: Mr. Grantham, I believe on C, I 14 believe the way I interpret that is that if any of 15 those provisions apply to a source, then they cannot 16 commence construction of that source until -- unless 17 they meet each one of those requirements. 18 MR. GRANTHAM: Right. 19 MR. ROCHA: That's the way I interpret it. 20 MR. GRANTHAM: That's the way I thought it 21 should read, that's the intent that I thought, but I 22 think to reflect that, it should -- that last "and" 23 should be an "or," so that if any of those provisions 24 apply, they shall not commence construction without a 25 permit, et cetera.</p>

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<p>1 (A discussion was held off the record.)  2 MR. BUTT: While he's looking up that  3 citation, are there other questions?  4 MR. GRANTHAM: I did not have any other  5 questions. Are there questions from the board?  6 MR. BUTT: Mr. Hearing Officer, the experts  7 said you can make it an "or" in your floor amendment,  8 and if he comes across the citation and finds out the  9 Fed says "and," just decide which is better at the  10 time. I have no objection to making it an "or."  11 MR. GRANTHAM: Okay, thank you for your  12 assistance with that. It's something that just  13 caught my eye, and I thought it might have practical  14 implications for enforcement.  15 MR. BUTT: Okay, thank you.  16 MR. GRANTHAM: If there are no questions  17 from the board, I'll ask if there's any members of  18 the public who have signed up for questions?  19 Seeing none, is there any reason from the  20 board that the hearing should not be closed at this  21 time? And seeing none, the hearing is closed at  22 6:10 p.m. Thank you, Mr. Butt.  23 MR. BUTT: Thank you.  24 (A brief recess was taken.)  25 MS. UPSON: So moving on to the decision on</p>	<p>1 Act (Air Act) NMSA 74-2-5, requires the Albuquerque -  2 Bernalillo County Air Quality Control Board (Air  3 Board) to adopt, promulgate, publish, amend and  4 repeal regulations consistent with the Air Quality  5 Control Act to attain and maintain national air --  6 ambient air quality standards and prevent or abate  7 air pollution, including regulations prescribing air  8 standards within Bernalillo County, and to meet  9 requirements of the United States Clean Air Act, the  10 City of Albuquerque and Bernalillo County Joint Air  11 Quality Control Board ordinances and the Albuquerque  12 - Bernalillo County Air Quality Control Board (Air  13 Board) regulations; and  14 Whereas, on April 10,2013, the Air Board  15 held a public hearing in the Vincent E. Griego  16 Chambers, on the basement level of the Albuquerque/  17 Bernalillo County Government Center, One Civic Plaza,  18 Northwest, in Albuquerque, New Mexico, and the  19 hearing was held consistent with the notice  20 requirements of the New Mexico Air Quality Control  21 Act, and 20.11.82 NMAC, Rulemaking Procedures --  22 AQCB; and  23 Whereas, on April 10, 2013, the Air Board  24 met and determined that 20.11.60 NMAC, Permitting in  25 Nonattainment Areas, 20.11.61 NMAC, Prevention of</p>
<p>Page 19</p> <p>1 proposal to amend 20.11.60 NMAC, Permitting in  2 Nonattainment Areas, 20.11.61 NMAC, Prevention of  3 Significant Deterioration, and 20.11.42 NMAC,  4 Operating Permits.  5 The amendments to 20.11.42 NMAC are  6 proposed as revisions to the Title V Operating Permit  7 Program. The amendments to 20.11.60 NMAC and  8 20.11.61 NMAC are proposed as revision to the New  9 Mexico State Implementation Plan for Air Quality.  10 It's AQCB petition number 2013-1, resolution  11 number 2013-2. And we'll read those resolutions into  12 the record.  13 MS. CURRAN: I vote that Albuquerque/  14 Bernalillo County Air Quality Control Board  15 resolution 2013-2 adopt an amended 20.11.60 NMAC,  16 Permitting in Nonattainment Areas, 20.11.61 NMAC,  17 Prevention of Significant Deterioration, and 20.11.42  18 NMAC, Operating Permits.  19 The amendments to 20.11.42 NMAC are  20 proposed as a revision to the Title V Operating  21 Permit Program, and the amendments to 20.11.60 NMAC  22 and 20.11.61 NMAC are proposed as a revision to the  23 New Mexico State Implementation Plan for Air Quality,  24 SIP.  25 Whereas, the New Mexico Air Quality Control</p>	<p>Page 21</p> <p>1 Significant Deterioration, and 20.11.42 NMAC,  2 Operating Permits, should be amended, and that the  3 amended 20.11.42 NMAC should be submitted to the EPA  4 as a revision to the Title V Operating Permit  5 Program; and that the amended 20.11.60 NMAC and  6 20.11.61 NMAC should be submitted to the EPA as a  7 proposed revision to the New Mexico State  8 Implementation Plan (SIP) for air quality; and  9 Whereas, at the April 10, 2013 public  10 hearing, testimony was presented to establish a  11 present need or a reasonably anticipated future need,  12 which exists to warrant taking the following actions  13 to help prevent or abate air pollution by maintaining  14 the required consistency of local regulations with  15 federal rules.  16 Now, therefore, be it resolved by the board  17 that 1) The board hereby adopts the amendments to  18 20.11.60 NMAC, Permitting in Nonattainment Areas,  19 20.11.61 NMAC, Prevention of Significant  20 Deterioration, and 20.11.42 NMAC, Operating Permits,  21 as proposed in AQD Exhibits 1a, 1b and 1c, as amended  22 by the staff proposed floor amendments, shown as AQD  23 Exhibit 4, which were admitted at the April 10, 2013,  24 hearing;  25 2) The Air Board hereby directs staff to</p>

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<p>1 take all actions necessary to submit the amendment  2 20.11.60 NMAC, Permitting in Nonattainment Areas, and  3 20.11.61 NMAC, Prevention of Significant  4 Deterioration to EPA as a proposed revision to the  5 SIP, and 20.11.42 NMAC, Operating Permits, as a  6 revision to the Title V Operating Permit Program;  7 3) The effective date of the amended  8 20.11.60 NMAC, Permitting in Nonattainment Areas,  9 20.11.61 NMAC, Prevention of Significant  10 Deterioration, and 20.11.42 NMAC, Operating Permits,  11 shall be May 13, 2013; and  12 4) Staff is hereby directed to submit the  13 amended 20.11.60 NMAC, Permitting in Nonattainment  14 Areas, 20.11.61 NMAC, Prevention of Significant  15 Deterioration, and 20.11.42 NMAC, Operating Permits,  16 to the State Records Center in the format currently  17 required by the State Records Center without  18 charging -- without changing the substance of the  19 amendments as adopted by the Air Board on  20 April 10, 2013.  21 With the following changes: In 20.11.61  22 NMAC, page 8, line 23, insert the following after  23 clean air -- or excuse me, clean unit. Delete the  24 bracket and add, as defined in 40 CFR 51.166 (b)(3),  25 that's in parentheses, as well, and then (iii)(c),</p>	<p>1 change it from "and" to "or," if that would be all  2 right. We can bring it to you if you want.  3 MS. KEARNY: Mr. Hearing Officer, Madam  4 Chair, Adelia Kearny, K-E-A-R-N-Y. The problem --  5 the problem I have is that I can't advise them  6 because I don't know the scheme well enough, and the  7 issue is -- the question is when -- there are two  8 things, is the trigger any one of those individual  9 things, and if the trigger applies and then you have  10 to issue a permit, it appears that the permit has to  11 say that it -- that the source complies with all of  12 those things, and that's what they're wrestling with.  13 Does that make sense? Rocky?  14 MR. GRANTHAM: Sorry, I'm not seeing the  15 relevance.  16 MR. ROCHA: That's -- what you're looking  17 at is the equivalent federal language under -- under  18 40 CFR 52.21 A23. That's -- that's the equivalent  19 federal language. And, basically, it's -- it's  20 saying that if any of those requirements are  21 applicable to the source, then you cannot -- you  22 cannot begin construction of that source without a  23 permit that shows that you can meet those  24 requirements. So, in other words, it has to list the  25 requirements in the permit, itself, that obligates</p>
<p>Page 23</p> <p>1 and FR Volume 76, Number 61, 3/30/11 page -- p.  2 17554. And on page 12, line 26, after 20.11.61 NMAC,  3 delete the "and" and insert "or" in its place.  4 MR. BUTT: Madame Chair, I have two issues,  5 and I don't know where you want to insert them. One  6 is Exhibit 4a is a late addition, I found a mistake  7 an hour before we started tonight, so if you want to  8 add that to part of -- with the following changes to  9 make those rules as amended by the staff proposed  10 floor amendments in Exhibit 4, which you already have  11 the language of the resolution, but add on top of  12 that, also, additional staff proposed floor  13 amendments shown as AQD Exhibit 4a.  14 MS. UPSON: So if you add on line 11, "as  15 amended by staff proposed floor amendments, shown as  16 AQD Exhibit 4 and 4a, which were admitted the  17 April 10, 2013, hearing."  18 MR. BUTT: That solved that problem.  19 MS. UPSON: Okay.  20 MR. BUTT: And then the next issue is we  21 have the CFR citation that Hearing Officer Grantham  22 was interested in to decide whether "and" or "or" is  23 more helpful in this case, and we would like to have  24 him look at it and make a -- interpret it himself  25 before he -- before we move a floor amendment to</p>	<p>Page 25</p> <p>1 the applicant to meet those requirements.  2 MR. GRANTHAM: Doesn't -- doesn't your  3 proposed language do the same thing, putting aside  4 the "and" or "or" issue? Because 20.11.61.11 (c)  5 reads, no major stationary source or major  6 modifications, to which the requirements of all those  7 subsections applies, shall begin actual construction  8 without a permit, that states that the major  9 stationary source or major modification will meet  10 those requirements. I read those requirements to  11 mean whatever -- whichever ones of those are  12 applicable.  13 MR. ROCHA: The way -- I guess the way I  14 interpret it in the federal language is the applicant  15 must meet all of those requirements that are listed  16 in that range of citations. I believe that was  17 stating R5 through -- or J through R5.  18 MR. GRANTHAM: I would defer to the  19 division's interpretation and their preference for  20 "and" or "or," due to their greater familiarity with  21 the regulations. It struck me that it should be an  22 "or," but if you feel it's more consistent with the  23 federal regulations to be "and," then, you know, I  24 wouldn't argue with that.  25 MR. ROCHA: Okay.</p>

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1 MR. BUTT: I'm not sure if this sheds any  
 2 light or not, but if you look at -- as an example, if  
 3 you look at the portion that mentions subsections A  
 4 and B of 20.11.61.16, if you go to -- if you go to  
 5 Section 16, the applicant will have to meet the  
 6 requirements under Subsection A and B, but C is  
 7 optional because it says that the department may  
 8 require monitoring of visibility and any class one --  
 9 in any federal class one area. So that's not --  
 10 that's not a mandatory requirement, it's just an  
 11 option, but the source does have to meet Subsections  
 12 A and B.  
 13 MR. GRANTHAM: Okay.  
 14 MS. UPSON: So scratch that change.  
 15 MS. CURRAN: So scratch change number 2  
 16 that was read into the record.  
 17 MS. UPSON: Is there a motion to approve  
 18 the regulation -- to adopt the resolution with the  
 19 changes made?  
 20 MR. SULLIVAN: I so move to adopt the  
 21 regulation --  
 22 MS. UPSON: With the changes made?  
 23 MR. SULLIVAN: -- with the changes made.  
 24 MS. UPSON: Thank you, Member Sullivan. Is  
 25 there a second?

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1 MS. CURRAN: Second.  
 2 MS. UPSON: Seconded by member Curran. All  
 3 in favor say aye.  
 4 (Aye by all the board members.)  
 5 MS. UPSON: Passes unanimously.  
 6 (The hearing concluded at 6:45 p.m.)  
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1  
 2 STATE OF NEW MEXICO  
 3 COUNTY OF BERNALILLO  
 4 REPORTER'S CERTIFICATE  
 5 I, Peggy Jo Gonzales, New Mexico CCR #145, DO  
 6 HEREBY CERTIFY that the hearing in the above-entitled  
 7 cause was reported by me stenographically on April  
 8 10, 2013, and that the foregoing is a true and  
 9 accurate transcription of my shorthand notes.  
 10 I FURTHER CERTIFY that I am neither employed by  
 11 nor related to any of the parties or attorneys in  
 12 this case, and that I have no interest in the final  
 13 disposition of this case in any court.  
 14  
 15  
 16  
 17 \_\_\_\_\_  
 18 Peggy Jo Gonzales  
 19 Certified Court Reporter #145  
 20 License Expires: 12/31/2013  
 21  
 22  
 23  
 24 (6917k) PJ  
 25 Date Taken: April 10, 2013  
 Proofread by: PJ/CB

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1 RECEIPT  
 2 JOB NUMBER: (6917k) PJ  
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 5 ATTORNEY:  
 6 DOCUMENT: Transcript / Exhibits / Disks / Other \_\_\_\_\_  
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## A

**a23** 24:18  
**abate** 20:6 21:13  
**aboveentitled** 28:6  
**accurate** 28:9  
**act** 5:10 8:1 20:1,1,5,9,21  
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**actual** 25:7  
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**addition** 23:6  
**additional** 8:16 14:1 23:12  
**address** 9:17  
**adds** 8:15  
**adelia** 2:8 24:4  
**admitted** 4:9 13:2 21:23 23:16  
**adopt** 5:6 10:9 12:9 19:15 20:3  
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**adopted** 10:22 22:19  
**adoption** 10:19 11:10  
**adopts** 21:17  
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**affect** 8:10,12,24 9:1 10:1,12,15  
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