

BEFORE THE ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals.,

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Appellants

Vs.

**Permit Modification
Permit No. #0902-M3**

City of Albuquerque Air Quality Division,

Appellee

**APPEAL
PETITION FOR HEARING**

PRELIMINARY STATEMENT

This is an appeal of the granting of Air Quality Authority-to-Construct Permit #0902-M3, Facility #35/001/00012 to American Cement Corporation by the City of Albuquerque Air Quality Division (“AQD”). This appeal is brought by community organizations Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, and individuals Kyle Silfer, David Wood, Marcia Finical.

This case involves the failure to protect the health, safety and welfare of the public without a proper review of all relevant evidence and the failure to incorporate principles of environmental justice in the permitting process which resulted in the Air Quality Permit Modification #0902-M3.

The Appellants respectfully request that the Albuquerque/Bernalillo County Air Quality Control Board (“AQCB”) reverse the action granting Air Quality Permit Modification #0902-M3 under the New Mexico Air Quality Control Act, NMSA 74-2-7(K).

STATUTORY AND OTHER BASES FOR CLAIMS

Factual and evidentiary issues related to the issuance of a permit may be raised per NMSA 74-2-7(I)(K). Failure to ensure an environment that will confer optimum health, safety, comfort and economic and social well-being on its inhabitants and maximize their economic and

cultural benefits is a violation of NMSA 1978 § 74-1-2. Failure to consider public welfare, visibility and the reasonable use of property in granting an Air Quality Permit violates the definition of "air pollution" in NMSA 1978, § 74-2-2(B). Permits that disproportionately affect certain populations violate 42 U.S.C.A. § 2000d.

JURISDICTION

The Albuquerque/Bernalillo County Air Quality Control Board has jurisdiction to hear this appeal under NMSA 74-2-7(H). The Albuquerque/Bernalillo County Air Quality Control Board was created by Albuquerque Code of Ordinances §9-5-1-3 as a local board to perform, within the boundaries of the local authority, those functions delegated to the environmental improvement board under the Air Quality Control Act, except any functions reserved exclusively for the environmental improvement board under NMSA 74-2-4. Albuquerque Code of Ordinances §9-5-1-7(H) also provides for this petition for hearing before the Board.

TIMELINESS

As notice of this permit was granted on September 15, 2009, and notice was received by Appellants on October 2, 2009, this appeal is timely filed under NMSA 74-2-7(H).

PARTIES

Appellants are community organizations and individuals who participated in the permitting action before the Air Quality Division and who are adversely affected by the permitting action.

Appellant Greater Gardner Neighborhood Association is a neighborhood association of residents in Albuquerque's Near North Valley, an area that is, clockwise from the east, bounded by the Burlington North-Santa Fe Railroad tracks; bounded on the south by Mescalero Rd. NW, Fourth St. NW, the north border of the back lots of San Clemente Ave NW, Eleventh St. NW and La Luz Dr. NW, respectively; bounded on the west by Twelfth St. NW; bounded on the north by Griegos Rd. NW, bounded on the west (north of Griegos Rd. NW) by Fourth St. NW; and bounded on the north (east of Fourth St. NW) by Montano Rd. NW. The Greater Gardner area represents a portion of zip code 87107, which covers 14.5 square miles in the North Valley area of Albuquerque; it is bounded on the north by Los Ranchos Blvd, on the west by the Rio Grande, on the south by Menaul Blvd. and on the east by Carlisle Blvd. The population of zip code 87107 is 32,617, nearly 19,000 (58%) of whom are Hispanic. The median yearly household income of residents is \$33,788. The area has five aggregate processing plants, three asphalt production facilities, six concrete production operations, and two cement distribution terminals, among other pollution sources. In Bernalillo County there are 939 permitted stationary sources of pollution which are permitted a total of 2388.62 tons per year of all suspended particulates. Zip code 87107 (with 5% of the county population) contains 11% of the stationary sources of pollution and 17% of the permitted yearly tonnage of total suspended particulates. The American Cement transfer facility is located less than 2000 feet from from La

Luz Elementary School and less than 3000 feet from Mountain Mahogany Community School.

Appellant North Valley Coalition of Neighborhood Associations provides a forum for an exchange of ideas between residents, businesses, property owners, neighborhood associations, institutions, and government toward preserving, protecting, and enhancing the North Valley Area consistent with the adopted Goals and Policies of the North Valley Area Plan. The Plan's chief goal is to "recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the entire metropolitan community." A specific purpose of this plan is to "preserve air, water and soil quality in the North Valley area" and to "encourage quality commercial/industrial development and redevelopment." Members of the North Valley Coalition include Los Griegos Neighborhood Association, Stronghurst Neighborhood Association, Near North Valley Neighborhood Association, and Monkbridge Gardens Neighborhood Association.

Appellant Kyle Silfer is president of the Greater Gardner Neighborhood Association. Since moving into the neighborhood in 2003, he has suffered multiple cases of bronchial pneumonia. His residence is located less than 2000 feet from the facility. He has two small children.

Appellant David Wood is vice-president of the Greater Gardner Neighborhood Association and a long-time resident of the neighborhood directly abutting the American Cement facility. His residence is located little more than 1000 feet from the facility.

Appellant Marcia Finical is Secretary of the of the Greater Gardner Neighborhood Association and lives less than 1000 feet from the American Cement facility.

Appellee City of Albuquerque Air Quality Division is the local agency assigned to the role of the New Mexico Environment Department in enforcing the New Mexico Air Quality Control Act by the Joint Air Quality Control Board Ordinance, §9-5-1-1, et seq. The Joint Air Quality Control Board Ordinance also created the Albuquerque-Bernalillo County Air Quality Control Board to serve as a joint local authority acting on behalf of both the city and the county. This Board assumed jurisdiction under the New Mexico Air Quality Control Act NMSA §74-2-4.

ESSENTIAL FACTS

American Cement Corporation was granted an Authority-to-Construct Permit Modification on September 15, 2009 by the Air Quality Division of the City of Albuquerque's Environmental Health Department.

The original permit application from American Cement Corporation was received by the Air Quality Division on February 26, 2009. Additional information was received March 2, 2009, March 13, 2009, and March 19, 2009.

The application was deemed complete on March 19, 2009.

Public information hearings on the permit application were held on June 23, 2009 and August 5, 2009.

STATEMENT OF CLAIMS

FIRST CLAIM

The American Cement Authority-to-Construct permit was issued without adequate conditions to protect the health, safety and welfare of the public and without a proper review of all relevant evidence. Neighborhood residents provided substantial testimony regarding continued fugitive dust problems with the facility. Video footage date-stamped June 19, 2008 and documenting an obvious violation of the existing permit 0902-M1 while the facility was under the management of the new owners was not given proper weight. Officers of the Greater Gardner Neighborhood Association and North Valley Coalition of Neighborhood Associations made a clear request for the best available control technology, including more efficient pulse-jet fabric filters instead of cartridge-type collectors, completely enclosed transfer points for loading and unloading at all silos, and fence-line monitoring. None of these requests were included in the conditions of the permit as issued, despite the fact that the applicant proposed building a neighborhood PM monitor in a list of proposed capital improvements provided to the Air Quality Division on June 11, 2008.

SECOND CLAIM

The action of the Air Quality Division in granting the Authority-to-Construct permit failed to incorporate principles of environmental justice in its decision. Per Attorney General of New Mexico Opinion No. 08-03, "Environmental justice principles center on the concept that a government agency should notify the public, and factor in public testimony regarding a company's environmental impact on the community, particularly in a minority or impoverished community, prior to issuing a permit to that company." The New Mexico Department of Health provided data derived from the historical record and could not rule out causation with regard to exposure to cement dust and certain of the ailments listed in the table, nor the possibility that future risk and burden to the community will emulate past risk and burden. Additionally, the decision to grant the permit was made without asthma data from La Luz Elementary School that had been requested by Bernalillo County Environmental Health. Studies have linked increased exposure to particles of 10 micrometers or less with bronchitis and phlegm in children with asthma. Furthermore, studies indicate that hospital admissions for bronchitis and asthma increase as PM10 levels increase. Without incorporating principles of environmental justice into the decision-making process, a concentration of pollution in a single area can continue to grow without meaningful regulation or planning.

THIRD CLAIM

Air Quality Authority-to-Construct Permit #0902-M3 as written does not appear to be

"enforceable as a practical matter." It is unclear how control efficiency will be verified either initially or as the source continues to operate. The permit should be clear enough for the public, the source, and the enforcing agency to know exactly what is being emitted and how it is being emitted, how it is being controlled and at what levels. A review of the text of Air Quality Authority-to-Construct Permit #0902-M3 is currently in progress by Environmental Protection Agency Region 6 staff. Questions about the federal enforceability of the permit as issued have been raised. The deadline for appealing the permit decision is likely to pass before these questions are answered.

FOURTH CLAIM

Any other factual or legal issues identified by Petitioner prior to the hearing.

RELIEF REQUESTED

Appellants hereby request that the Board reverse the decision by the Air Quality Division to grant the American Cement Corporation's Authority-to-Construct permit.

DATED: November 1, 2009



Kyle Silber, Appellant

Greater Gardner Neighborhood Association, Appellant

North Valley Coalition of Neighborhood Associations, Appellant

David Wood, Appellant

Marcia Finical, Appellant

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3

<p>Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals,</p> <p>Petitioners/Appellants,</p> <p>v.</p> <p>City of Albuquerque Environmental Health Department, Air Quality Division,</p> <p>Respondent/Appellee</p>	<p>AQCB No. 2009-7</p> <p>RECEIVED ENVIRONMENTAL HEALTH 09 NOV 17 PM 4:28 Jew</p>
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ANSWER OF THE CITY OF ALBUQUERQUE

The City of Albuquerque (City) files this Answer in response to the *Appeal Petition for Hearing* that was filed on November 2, 2009 (hereafter, the “November 2 Petition” or “Petition”), by Kyle Silfer individually and as President of the Greater Gardner Neighborhood Association, on behalf of the North Valley Coalition of Neighborhood Associations, on behalf of David Wood individually, and on behalf of Marcia Finical individually. Mr. Silfer is not an attorney and no evidence was provided in the November 2 Petition that Mr. Silfer was authorized to represent the North Valley Coalition of Neighborhood Associations, David Wood (Mr. Wood) or Marcia Finical (Mr. Finical). Mr. Silfer also did not provide his mailing address or the mailing addresses of the other Petitioners.

Because Mr. Silfer filed the Answer *pro se*, the undersigned Deputy City Attorney Adelia Kearny, on the direction of her client, brought the following issues to the attention of Mr. Silfer by letter and e-mail dated November 5, 2009: the absence of an oath or affirmation attesting to the truth of the information in the Petition, which is required by 20.11.81.14.A(1) NMAC; the lack of an address at which Mr. Silfer is to be served, although required by 20.11.81.B(2)(b) NMAC; the absence of documentation establishing that Mr. Silfer is authorized to represent the North Valley Coalition of Neighborhood Associations, Mr. Wood individually or Ms. Finical individually; and non compliance with other requirements of

20.11.81 NMAC that are less critical to the City Environmental Health Department Air Quality Division permitting staff, including failure to file nine copies of the Petition with the Hearing Clerk as required by 20.11.81.14.A(2) NMAC, and a caption that does not conform to 20.11.81.12.G(1) NMAC.

As a result of communications between the undersigned and Mr. Silfer, Mr. Silfer delivered a signed and dated Waiver and Release, a copy of which is Attachment 1 to this Answer. As provided by 20.11.81.14.C NMAC, the Waiver and Release waives the Petitioners' right to begin a public hearing regarding the permit challenge within 30 days of receipt of the request for public hearing. By signing the Waiver and Release, Mr. Silfer warranted he is authorized to represent the two organizations and three individuals named as Appellants/petitioners in the Petition, and that Mr. Silfer has full legal authority to execute the Waiver and Release and bind all the Petitioners.

By November 9 and November 10, 2009 e-mails, Ms. Silfer committed to filing a first amended Answer. However, November 17 is the deadline for the City to file its answer to the November 2 Petition. The City Answers as follows.

Answer to Petitioners' Appeal Petition for Hearing

- 1. Petitioners' "Preliminary Statement": The City admits the allegations in the first sentence of the first paragraph of Petitioners' "Preliminary Statement".**
- 2. Petitioners' "Preliminary Statement": The City admits the allegations contained in the second sentence of the first paragraph of Petitioners' "Preliminary Statement".**
- 3. Petitioners' "Preliminary Statement": The City admits the allegations in the second paragraph of Petitioners' "Preliminary Statement" contain Petitioners' description of Petitioners' arguments on appeal, which consist of legal conclusions and legal arguments, and which the City denies. To the extent the remainder of the second paragraph contains factual allegations, the City denies all allegations.**
- 4. Petitioners' "Preliminary Statement": The City respectfully requests that the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) deny the relief requested by the Petitioners in the third paragraph of Petitioners' "Preliminary Statement", and that the Air Board sustain the issuance of air quality Authority-to-Construct Permit 902-M3 by the City Environmental Health Department Air Quality Division.**
- 5. Petitioners' "Statutory and Other Bases for Claims" section: The City admits a timely petition for hearing may be heard by the Air Board if the petitioners meet the requirements of the New Mexico Air Quality Control Act, NMSA Section 74-2-1 et seq. (1978) (Air Act), specifically NMSA §§ 74-2-7(H) and (I), and 20.11.81 NMAC and that facts and other**

evidence regarding permitting may be raised if authorized by NMSA § 74-2-7 and 20.11.81 NMAC. The City denies that factual and evidentiary issues may be raised per NMSA § 74-2-7(K), and, to the extent the remainder of the first sentence of Petitioners' "Statutory and Other Bases for Claims" section contains additional factual allegations, the City denies all such allegations.

6. Petitioners' "Statutory and Other Bases for Claims": The wording in the second sentence of Petitioners' "Statutory and Other Bases for Claims" section is taken from the New Mexico Environmental Improvement Act (EIA), NMSA 74-1-1 et seq. (1978), specifically NMSA § 74-1-2, *Purpose of Environmental Improvement Act*. The EIA does not apply to the Air Board or political subdivisions. Therefore, City denies all allegations contained in the second sentence of Petitioners' "Statutory and Other Bases for Claims" section.

7. Petitioners' "Statutory and Other Bases for Claims": The City denies the allegations contained in the third sentence of Petitioners' "Statutory and Other Bases for Claims" section.

8. Petitioners' "Statutory and Other Bases for Claims": To the extent the allegations contained in the fourth sentence of Petitioners' "Statutory and Other Bases for Claims" section are intended to assert a claim under Title VI of the Civil Rights Act of 1964 (42 U.S.C § 2000d to 2000d-7) in this administrative appeal to the Air Board, the City denies 42 U.S.C § 2000d applies to AQCB No. 2009-7. The City further states that 42 U.S.C § 2000d speaks for itself, and Petitioners' statement in the fourth sentence is nothing more than a legal argument and legal conclusion. To the extent the fourth sentence of Petitioners' "Statutory and Other Bases for Claims" section contains legal or factual allegations, the City denies all allegations.

9. Petitioners' "Jurisdiction" section: The City admits the Air Board has jurisdiction to hear appeals pursuant to NMSA 74-2-7(H) and 20.11.81 NMAC. The City denies the Air Board has jurisdiction to hear all of the issues raised on appeal in AQCB No. 2009- 7. To the extent the remainder of the first sentence of Petitioners' "Jurisdiction" section contains additional factual allegations, the City denies.

10. Petitioners' "Jurisdiction" section: The City admits the allegations contained in the second sentence of Petitioners' "Jurisdiction" section and states the Air Board also was created by Bernalillo County Joint Air Quality Control Board Ordinance No. 94-5 (County Ordinance), Section 3.

11. Petitioners' "Jurisdiction" section: The City admits the City Joint Air Quality Control Board Ordinance, 9-5-1-1 et seq. ROA 1994 (City Ordinance) at 9-5-1-7(H) authorizes

appeals to the Air Board that comply with the requirements of the Air Act and the City Ordinance. The City denies the Air Board has jurisdiction to hear all of the issues raised on appeal in AQCB No. 2009-7. To the extent the remainder of the third sentence of Petitioners' "Jurisdiction" section contains additional factual allegations, the City denies.

12. Petitioners' "Timeliness" section: The City denies that notice of the permit was granted on September 15, 2009; the City affirms that the air quality Authority-to-Construct Permit # 902-M3 was signed on September 15, 2009. The City admits the Petitioners received the participant notification letter on or after October 2, 2009, and that the Petition was timely filed.

13. Petitioners' "Parties" section: The City admits Petitioners are community organizations and individuals who participated in the permitting action before the Air Quality Division of the City, but is without information sufficient to form a belief regarding the remaining allegations in the first paragraph of Petitioners' "Parties" section and therefore denies the remainder of the allegations.

14. Petitioners' "Parties" section: The City admits the allegations contained in the first sentence of the second paragraph of Petitioners' "Parties" section.

15. Petitioners' "Parties" section: The City admits Greater Gardner NA is a portion of zip code 87107; admits the area of zip code 87107 is approximately 14.5 square miles; that Greater Gardner NA comprises approximately 0.34 square miles, which is 2.3% of the area of zip code 87107; and admits the accuracy of the boundary description of zip code 87107 in the second sentence of the second paragraph of Petitioners' "Parties" section. The City denies all other allegations contained in the second sentence of the second paragraph of Petitioners' "Parties" section.

16. Petitioners' "Parties" section: The information asserted by Petitioners in third sentence of Petitioners' "Parties" section does not include a reference to a year. The City affirms that, as of November 126, 2009, the Year 2000 Census reports a population of 30,781 for zip code 87107, that the 2000 Census reports that 17,043 people within zip code 87107 (55.4%) are Hispanic, and denies all additional allegations contained in the third sentence of the second paragraph of Petitioners' "Parties" section.

17. Petitioners' "Parties" section: The information asserted by Petitioners in the fourth sentence of Petitioners' "Parties" section does not include a reference to a year. The City affirms that, as of November 16, 2009, the Year 2000 Census reports the median yearly household income for zip code 87107 is \$34,645, and denies all additional allegations contained in the fourth sentence of the second paragraph of Petitioners' "Parties" section.

18. Petitioners' "Parties" section: The Petitioners did not define the "area" when it provided information in the fifth sentence of Petitioners' "Parties" section. As a result, the City is without information sufficient to respond, and therefore denies the allegations contained in the fifth sentence of the second paragraph of Petitioners' "Parties" section.

19. Petitioners' "Parties" section: The information provided in the sixth sentence of the second paragraph of Petitioners' "Parties" section did not include a reference to a date. However, the City affirms that, as of the date the City filed this Answer, within Bernalillo County there are 993 stationary sources with both air quality permits and air quality registrations, and that the stationary sources are permitted to emit a total of 2,550 tons per year of total suspended particulates (TSP), which includes TSP PM10 and PM2.5 as subsets of TSP. The City denies all other allegations contained in the sixth sentence of the second paragraph of Petitioners' "Parties" section.

20. Petitioners' "Parties" section: The information provided in the seventh sentence of the second paragraph did not include a reference to a date. However, the City affirms that, as of November 16, 2009, according to 2000 Census data, zip code 87107 was 5.5% of the total population of Bernalillo County, and zip code 87107 contained 10.4% of the stationary sources of air pollution and 8.1% of the permitted annual tonnage of total suspended particulates. The City denies all other allegations contained in the seventh sentence of the second paragraph of Petitioners' "Parties" section.

21. Petitioners' "Parties" section: The City admits the allegations contained in the eighth sentence of the second paragraph of Petitioners' "Parties" section.

22. Petitioners' "Parties" section: The City states that the North Valley Coalition of Neighborhood Associations documents speak for themselves. To the extent the wording of the first sentence of the third paragraph of Petitioners' "Parties" sections does not accurately and completely quote from or summarize those documents, the City denies.

23. Petitioners' "Parties" section: The City states that the North Valley Area Plan speaks for itself. To the extent the wording of the second sentence of the third paragraph of Petitioners' "Parties" section does not accurately and completely quote from or summarize the Plan, the City denies.

24. Petitioners' "Parties" section: The City states that the North Valley Area Plan speaks for itself. To the extent the wording of the third sentence of the third paragraph of Petitioners' "Parties" section does not accurately and completely quote from or summarize the Plan, the City denies.

25. Petitioners' "Parties" section: The City admits the allegations contained in the fourth sentence of the third paragraph of Petitioners' "Parties" section.

26. Petitioners' "Parties" section: The City admits the allegations contained in the first sentence of the fourth paragraph of Petitioners' "Parties" section.

27. Petitioners' "Parties" section: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the second sentence of the fourth paragraph of Petitioners' "Parties" section and therefore denies.

28. Petitioners' "Parties" section: The City admits the allegations contained in the third sentence of the fourth paragraph of Petitioners' "Parties" section.

29. Petitioners' "Parties" section: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the fourth sentence of the fourth paragraph of Petitioners' "Parties" section and therefore denies.

30. Petitioners' "Parties" section: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the first sentence of the fifth paragraph of Petitioners' "Parties" section and therefore denies.

31. Petitioners' "Parties" section: The City admits Mr. Wood's residence is located approximately 1,000 feet from the American Cement facility, as alleged in the second sentence of the fifth paragraph of Petitioners' "Parties" section.

32. Petitioners' "Parties" section: The City is without information sufficient to form a belief regarding the accuracy of the statement regarding Ms. Finical's role in the Greater Gardner Neighborhood Association, and admits Ms. Finical lives approximately 1,000 feet from the American Cement facility as alleged in the sixth paragraph of Petitioners' "Parties" section.

33. Petitioners' "Parties" section: The City admits the Air Act and the City Ordinance authorize the City Environmental Health Department to be the local agency to administer and enforce air quality regulations and programs within Bernalillo County, just as the New Mexico Environment Department has authority to administer and enforce air quality regulations and programs within the state of New Mexico, outside Bernalillo County. The City denies all other allegations contained in the first sentence of the seventh paragraph of Petitioners' "Parties" section.

34. Petitioners' "Parties" section: The Air Act at NMSA §74-2-2(J) defines "local authority" as a qualifying political subdivision. Therefore, the City denies the allegations in the second sentence of the seventh paragraph of Petitioners' "Parties" section.

35. Petitioners' "Parties" section: The City admits the Air Board assumed authority over air quality within Bernalillo County pursuant to the Air Act at NMSA § 74-2-4, the City Ordinance at 9-5-1-3, and the Bernalillo County Ordinance at Section 3.

36. Petitioners' "Essential Facts" section: The City admits the allegations contained in the first paragraph of Petitioners' "Essential Facts" section.

37. Petitioners' "Essential Facts" section: The City admits the allegations contained in the first sentence of the second paragraph of Petitioners' "Essential Facts" section.

38. Petitioners' "Essential Facts" section: The City admits the allegations contained in the second sentence of the second paragraph of Petitioners' "Essential Facts" section.

39. Petitioners' "Essential Facts" section: The City admits the allegations contained in the third paragraph of Petitioners' "Essential Facts" section.

40. Petitioners' "Essential Facts" section: The City admits the allegations contained in the fourth paragraph of Petitioners' "Essential Facts" section.

41. Petitioners' "Statement of Claims – First Claim": The City denies the allegations contained in the first sentence of Petitioners' "First Claim".

42. Petitioners' "Statement of Claims – First Claim": The City admits the allegations contained in the second sentence of Petitioners' "First Claim".

43. Petitioners' "Statement of Claims – First Claim": The City admits video footage with a manually-affixed date stamp of June 19, 2008 was submitted at a summer of 2009 Public Information Hearing (PIH). The City denies all other allegations contained in the third sentence of Petitioners' "First Claim".

44. Petitioners' "Statement of Claims – First Claim": The City admits participants in the PIHs requested inclusion of best available control technology (BACT) in American Cement's proposed air quality Permit No. 902-M3. However, the City states affirmatively that federal, state, and Air Board regulations only require installation of BACT technology at major stationary sources that are subject to prevention of significant deterioration (PSD) requirements imposed by 20.11.61 NMAC, *Prevention of Significant Deterioration* (Part 61). The American Cement facility is a minor, not major, stationary source. American Cement is subject to the minor source permitting regulation 20.11.41 NMAC, *Authority-to-Construct*, not to Part 61 PSD BACT requirements. The City denies all other allegations contained in the fourth sentence of Petitioners' "First Claim".

45. Petitioners' "Statement of Claims – First Claim": The City admits BACT requirements were not included in Permit 902-M3 for the reasons stated in the Answer 44. The City also admits that during negotiations with the new owner regarding resolution of the

prior owner's violations, the Air Quality Division received a June 11, 2008 letter and attachment from the new owner of American Cement with a list of potential improvements at the facility. The City admits the new owner initially offered to install and operate a neighborhood PM monitor for one year and to turn the facility over to the Air Quality Division for operation. The City affirmatively states that in 2008 the new owner of the American Cement facility performed an air quality self-audit of the facility, self-reported existing violations to the Air Quality Division, and was issued a Notice of Violation by the Air Quality Division that ultimately was resolved pursuant to the EPA's *Interim Approach to Applying the Audit Policy to New Owners*. The City affirms that the new owner ultimately signed a Compliance Agreement that included significant changes and improvements at the facility that were not required by the air quality permit in effect at the time or by applicable laws, and that the new owner paid a \$61,525 penalty into the City general fund. In addition, the City affirms that the Air Quality Division operates more air quality monitoring stations within Bernalillo County than are required by the EPA, and that air quality within Bernalillo County is well within all federal, state of New Mexico, and local health-based air quality standards, which includes the standards for particulates. The City denies all other allegations contained in the fifth sentence of Petitioners' "First Claim".

46. Petitioners' "Statement of Claims – Second Claim": The City denies the allegations contained in the first sentence of Petitioners' "Second Claim".

47. Petitioners' "Statement of Claims – Second Claim": The City states the Attorney General of New Mexico Opinion No. 08-03 speaks for itself. To the extent the wording of the second sentence of Petitioners' "Second Claim" does not accurately and completely quote from the opinion, the City denies.

48. Petitioners' "Statement of Claims – Second Claim": The City admits the allegations contained in the third sentence of Petitioners' "Second Claim", and affirmatively states the data did not establish causation.

49. Petitioners' "Statement of Claims – Second Claim": The City admits the allegations contained in the fourth sentence of Petitioners' "Second Claim".

50. Petitioners' "Statement of Claims – Second Claim": The City admits the allegations contained in the fifth sentence of Petitioners' "Second Claim".

51. Petitioners' "Statement of Claims – Second Claim": The City admits the allegations contained in the sixth sentence of Petitioners' "Second Claim".

52. Petitioners' "Statement of Claims – Second Claim": The City denies the allegations contained in the seventh sentence of Petitioners' "Second Claim", and states

affirmatively that Permit 902-M3 was issued consistent with all requirements of the New Mexico Air Act, the City Ordinance, and the Air Board regulations.

53. Petitioners' "Statement of Claims – Third Claim": The City denies the allegations contained in the first sentence of Petitioners' "Third Claim".

54. Petitioners' "Statement of Claims – Third Claim": The City denies the allegations contained in the second sentence of Petitioners' "Third Claim".

55. Petitioners' "Statement of Claims – Third Claim": The City admits a minor source air quality permit should be clear enough for the public, the source, and the enforcing agency to know what is being emitted and how it is being emitted, how it is being controlled and at what levels. The City denies all other allegations contained in the third sentence of Petitioners' "Third Claim".

56. Petitioners' "Statement of Claims – Third Claim": The City admits the allegations contained in the fourth sentence of Petitioners' "Third Claim".

57. Petitioners' "Statement of Claims – Third Claim": The City admits the allegations contained in the fifth sentence of Petitioners' "Third Claim".

58. Petitioners' "Statement of Claims – Third Claim": The City admits the allegations contained in the sixth sentence of Petitioners' "Third Claim".

59. Petitioners' "Statement of Claims – Fourth Claim": The City is without information sufficient to form a belief regarding potential facts or legal issues that may be identified or raised by Petitioner prior to hearing. Therefore, the City denies all allegations contained in Petitioners' "Fourth Claim".

Affirmative Defenses

60. Regarding Petitioners' "Relief Requested" section, the Petitioners did not allege how the Petitioners are adversely affected by the permitting action. Therefore, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' *Appeal Petition for Hearing* with prejudice, and sustain the issuance of Permit No. 902-M3.

61. Regarding Petitioners' "Relief Requested" section, the Petitioners did not allege how the petitioner is adversely affected by the permitting action or cite to a board regulation other than 20.11.81 NMAC that authorizes the Petitioners to request a hearing on the merits as required by 20.11.81.14.B(2)(c) NMAC. Petitioners also failed to specify the portions of the permitting action to which the petitioner objects as required by 20.11.81.18.B(2)(d) NMAC. Therefore, the City respectfully asks the Air Board to deny the relief requested,

dismiss Petitioners' *Appeal Petition for Hearing* with prejudice, and sustain the issuance of Permit No. 902-M3.

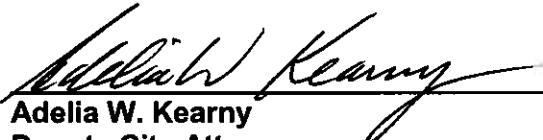
62. Regarding Petitioners' "Relief Requested" section, the City Petitioners failed to state a claim upon which relief may be granted. Therefore, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' *Appeal Petition for Hearing* with prejudice, and sustain the issuance of Permit No. 902-M3.

Response to Prayer for Relief

63. In response to Petitioners' "Relief Requested", and based on the foregoing Answer, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' *Appeal Petition for Hearing* with prejudice, sustain the issuance of Permit No. 902-M3, and grant the City any additional relief deemed appropriate by the Air Board.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney



Adelia W. Kearny
Deputy City Attorney
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akearny@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2009, a copy of the foregoing *Answer of the City of Albuquerque*, with Attachment 1 (copy of Waiver and Release) attached, was mailed by regular mail, postage prepaid to Kyle Silfer, individually and as representative of Greater Gardner Neighborhood Association; North Valley Coalition of Neighborhood Associations; David Wood, individually; and Marcia Finical, individually, at follows:

Kyle Silfer, individually, and as
President of Greater Gardner NA
4465 Jupiter NW
Albuquerque, NM 87107

and that a copy was sent by electronic mail to Kyle Silfer at kyle@rtoads.com

by: 
Adelia W. Kearny, Deputy City Attorney

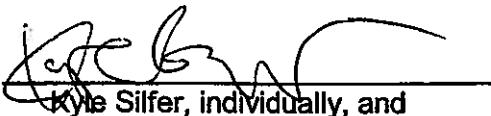
WAIVER AND RELEASE

Regarding Extension of Deadline for Holding Hearing

The Air Quality Division (AQD) of the City of Albuquerque (City) Environmental Health Department issued American Cement Authority-to-Construct Permit modification # 0902-M3, effective September 15, 2007. Kyle received the participant notification letter sent by AQD informing Mr. Silfer that the permit modification had been issued, the process followed by AQD during its review, the conditions incorporated in the permit modification, and the deadline for requesting a hearing before the Albuquerque-Bernalillo County Air Quality Control Board (Air Board). On November 2, 2009, Kyle Silfer filed an *Appeal Petition for Hearing* dated November 1, 2009 with the Air Board Hearing Clerk.

The Air Board is directed by subsection F of 20.11.41.14 NMAC and paragraph (1) of subsection F of 20.11.81.14 NMAC to hold a public hearing regarding an authority-to-construct permit challenge within 30 days of receipt of the request for public hearing unless the Petitioner waives the deadline pursuant to 20.11.81.14.C NMAC. By signing this Waiver and Release, Kyle Silfer, on behalf of the two organizations and three individuals named as Appellants (petitioners) in the Appeal Petition for Hearing filed November 2, 2009, hereby waives the 30-day deadline, and forever waives, releases and discharges any and all rights and claims for damages or other relief that the Appellants/petitioners may have against the Air Board, each individual member of the Board, the City, and all City officials, officers, employees, contractors and agents as a result of the Air Board not holding the public hearing within 30 days of receipt of the Appeal Petition for Hearing.

The individual signing this Waiver and Release warrants he is authorized to represent the two organizations and three individuals named as Appellants/petitioners in the Appeal Petition for Hearing and has full legal authority to execute this Waiver and Release on behalf of the Greater Gardner Neighborhood Association (GGNA), the North Valley Coalition of Neighborhood Associations (NVCNA), David Wood individually and Marcia Finical individually, and to bind GGNA, NVCNA, David Wood, Marcia Finical, and himself to its terms.

By: 

Kyle Silfer, individually, and
as authorized representative of
Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood Associations,
David Wood individually, and
Marcia Finical individually

Date: 11/10/09

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR
A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 0902-M3

Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia Finical, Petitioners

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BEFORE THE ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL
BOARD

Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals.,

Appellants

Vs.

Permit Modification
Permit No. #0902-M3

City of Albuquerque Air Quality Division,

Appellee

APPEAL
PETITION FOR HEARING

PRELIMINARY STATEMENT

This is an appeal of the granting of Air Quality Authority-to-Construct Permit #0902-M3, Facility #35/001/00012 to American Cement Corporation by the City of Albuquerque Air Quality Division ("AQD"). This appeal is brought by community organizations Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, and individuals Kyle Silfer, David Wood, Marcia Finical.

This case involves the failure to protect the health, safety and welfare of the public without a proper review of all relevant evidence and the failure to incorporate principles of environmental justice in the permitting process which resulted in the Air Quality Permit Modification #0902-M3.

The Appellants respectfully request that the Albuquerque/Bernalillo County Air Quality Control Board ("AQCB") reverse the action granting Air Quality Permit Modification #0902-M3 under the New Mexico Air Quality Control Act, NMSA 74-2-7(K).

STATUTORY AND OTHER BASES FOR CLAIMS

Factual and evidentiary issues related to the issuance of a permit may be raised per NMSA 74-2-7(I)(K). Failure to ensure an environment that will confer optimum health, safety, comfort and economic and social well-being on its inhabitants and maximize their economic and cultural benefits is a violation of NMSA 1978 § 74-1-2. Failure to consider public welfare, visibility and the reasonable use of property in granting an Air Quality Permit violates the definition of "air pollution" in NMSA 1978, § 74-2-2(B). Permits that disproportionately affect certain populations violate 42 U.S.C.A. § 2000d.

JURISDICTION

The Albuquerque/Bernalillo County Air Quality Control Board has jurisdiction to hear this appeal under NMSA 74-2-7(H). The Albuquerque/Bernalillo County Air Quality Control Board was created by Albuquerque Code of Ordinances §9-5-1-3 as a local board to perform, within the boundaries of the local authority, those functions delegated to the environmental improvement board under the Air Quality Control Act, except any functions reserved exclusively for the environmental improvement board under NMSA 74-2-4. Albuquerque Code of Ordinances §9-5-1-7(H) also provides for this petition for hearing before the Board.

TIMELINESS

As notice of this permit was granted on September 15, 2009, and notice was received by Appellants on October 2, 2009, this appeal is timely filed under NMSA 74-2-7(H).

PARTIES

Appellants are community organizations and individuals who participated in the permitting action before the Air Quality Division by providing testimony at one or both Public information hearings and who are adversely affected by the permitting action due to the deleterious effect on health, safety, comfort and economic and social well-being caused by the permitting action.

Appellant Greater Gardner Neighborhood Association is a neighborhood association of residents in Albuquerque's Near North Valley, an area that is, clockwise from the east, bounded by the Burlington North-Santa Fe Railroad tracks; bounded on the south by Mescalero Rd. NW, Fourth St. NW, the north border of the back lots of San Clemente Ave NW, Eleventh St. NW and La Luz Dr. NW, respectively; bounded on the west by Twelfth St. NW; bounded on the

north by Griegos Rd. NW, bounded on the west (north of Griegos Rd. NW) by Fourth St. NW; and bounded on the north (east of Fourth St. NW) by Montano Rd. NW. The Greater Gardner area represents a portion of zip code 87107, which covers 14.5 square miles in the North Valley area of Albuquerque; it is bounded on the north by Los Ranchos Blvd, on the west by the Rio Grande, on the south by Menaul Blvd. and on the east by Carlisle Blvd. The population of zip code 87107 is 32,617, nearly 19,000 (58%) of whom are Hispanic. The median yearly household income of residents is \$33,788. The area has five aggregate processing plants, three asphalt production facilities, six concrete production operations, and two cement distribution terminals, among other pollution sources. In Bernalillo County there are 939 permitted stationary sources of pollution which are permitted a total of 2388.62 tons per year of all suspended particulates. Zip code 87107 (with 5% of the county population) contains 11% of the stationary sources of pollution and 17% of the permitted yearly tonnage of total suspended particulates. The American Cement transfer facility is located less than 2000 feet from from La Luz Elementary School and less than 3000 feet from Mountain Mahogany Community School. Contact information for appellant: c/o Kyle Silfer, President, 4465 Jupiter Street NW, Albuquerque, NM 87107; home (505) 265-5840; cell (505) 918-0978; email ggna@macmountain.org.

Appellant North Valley Coalition of Neighborhood Associations provides a forum for an exchange of ideas between residents, businesses, property owners, neighborhood associations, institutions, and government toward preserving, protecting, and enhancing the North Valley Area consistent with the adopted Goals and Policies of the North Valley Area Plan. The Plan's chief goal is to "recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the entire metropolitan community." A specific purpose of this plan is to "preserve air, water and soil quality in the North Valley area" and to "encourage quality commercial/industrial development and redevelopment." Members of the North Valley Coalition include Los Griegos Neighborhood Association, Stronghurst Neighborhood Association, Near North Valley Neighborhood Association, and Monkbridge Gardens Neighborhood Association. Contact information for appellant: c/o Chris Catechis, President, 5733 Guadalupe Trail NW, Albuquerque, NM 87107; home (505) 271-9876; cell (505) 363-2747; email catechis@msn.com.

Appellant Kyle Silfer is president of the Greater Gardner Neighborhood Association. Since moving into the neighborhood in 2003, he has suffered multiple cases of bronchial pneumonia. His residence is located less than 2000 feet from the facility. He has two small children. Contact information for appellant: 4465 Jupiter Street NW, Albuquerque, NM 87107; home (505) 265-5840; cell (505) 918-0978; email kyle@rtoads.com.

Appellant David Wood is vice-president of the Greater Gardner Neighborhood Association and a long-time resident of the neighborhood directly abutting the American Cement facility. His residence is located little more than 1000 feet from the facility. Contact information for appellant: 158 Pleasant Avenue NW, Albuquerque, NM 87107; home (505) 344-4674; cell (505) 250-0421; email wood_cpa@msn.com.

Appellant Marcia Finical is Secretary of the of the Greater Gardner Neighborhood Association and lives less than 1000 feet from the American Cement facility. Contact information for appellant: 141 Griegos Rd NW, Albuquerque, NM 87107; home (505) 341-3141; cell (505) 550-4560; email marcia_finical@yahoo.com.

Appellee City of Albuquerque Air Quality Division is the local agency assigned to the role of the New Mexico Environment Department in enforcing the New Mexico Air Quality Control Act by the Joint Air Quality Control Board Ordinance, §9-5-1-1, et seq. The Joint Air Quality Control Board Ordinance also created the Albuquerque-Bernalillo County Air Quality Control Board to serve as a joint local authority acting on behalf of both the city and the county. This Board assumed jurisdiction under the New Mexico Air Quality Control Act NMSA §74-2-4.

ESSENTIAL FACTS

American Cement Corporation was granted an Authority-to-Construct Permit Modification on September 15, 2009 by the Air Quality Division of the City of Albuquerque's Environmental Health Department.

The original permit application from American Cement Corporation was received by the Air Quality Division on February 26, 2009. Additional information was received March 2, 2009, March 13, 2009, and March 19, 2009.

The application was deemed complete on March 19, 2009. Public information hearings on the permit application were held on June 23, 2009 and August 5, 2009.

STATEMENT OF CLAIMS

FIRST CLAIM

The American Cement Authority-to-Construct permit was issued without adequate conditions to protect the health, safety and welfare of the public and without a proper review of all relevant evidence. Neighborhood residents provided substantial testimony regarding continued fugitive dust problems with the facility. Video footage date-stamped June 19, 2008 and documenting an obvious violation of the existing permit 0902-M1 while the facility was under the management of the new owners was not given proper weight. Officers of the Greater Gardner Neighborhood Association and North Valley Coalition of Neighborhood Associations made a clear request for the best available control technology, including more efficient pulse-jet fabric filters instead of cartridge-type collectors, completely enclosed transfer points for loading and unloading at all silos, and fence-line monitoring. None of these requests were included in the conditions of the permit as issued, despite the fact that the applicant proposed building a neighborhood PM monitor in a list of proposed capital improvements provided to the Air Quality Division on June 11, 2008.

SECOND CLAIM

The action of the Air Quality Division in granting the Authority-to-Construct permit failed to incorporate principles of environmental justice in its decision. Per Attorney General of New Mexico Opinion No. 08-03, "Environmental justice principles center on the concept that a government agency should notify the public, and factor in public testimony regarding a company's environmental impact on the community, particularly in a minority or impoverished community, prior to issuing a permit to that company." The New Mexico Department of Health provided data derived from the historical record and could not rule out causation with regard to exposure to cement dust and certain of the ailments listed in the table, nor the possibility that future risk and burden to the community will emulate past risk and burden. Additionally, the decision to grant the permit was made without asthma data from La Luz Elementary School that had been requested by Bernalillo County Environmental Health. Studies have linked increased exposure to particles of 10 micrometers or less with bronchitis and phlegm in children with asthma. Furthermore, studies indicate that hospital admissions for bronchitis and asthma increase as PM10 levels increase. Without incorporating principles of environmental justice into the decision-making process, a concentration of pollution in a single area can continue to grow without meaningful regulation or planning.

THIRD CLAIM

Air Quality Authority-to-Construct Permit #0902-M3 as written does not appear to be "enforceable as a practical matter." It is unclear how control efficiency will be verified either initially or as the source continues to operate. The permit should be clear enough for the public, the source, and the enforcing agency to know exactly what is being emitted and how it is being emitted, how it is being controlled and at what levels. A review of the text of Air Quality Authority-to-Construct Permit #0902-M3 is currently in progress by Environmental Protection Agency Region 6 staff. Questions about the federal enforceability of the permit as issued have been raised. The deadline for appealing the permit decision is likely to pass before these questions are answered.

FOURTH CLAIM

Any other factual or legal issues identified by Petitioner prior to the hearing.

RELIEF REQUESTED

Appellants hereby request that the Board reverse the decision by the Air Quality Division to grant the American Cement Corporation's Authority-to-Construct permit.

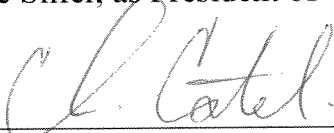
AFFIRMATION

Appellants hereby swear and affirm that the contents of the petition are true and accurate to the best of their knowledge.

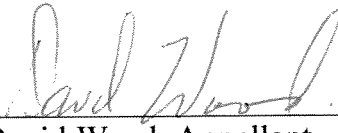
DATED: November 1, 2009
AMENDED: November 10, 2009

 11/16/09


Kyle Silfer, as President of Greater Gardner Neighborhood Association, Appellant

 11/16/09

Chris Catechis, as President of North Valley Coalition of Neighborhood Associations, Appellant

 11/16/09

David Wood, Appellant

 11/16/09

Marcia Finical, Appellant

 11/16/09

Kyle Silfer, Appellant



Martin J. Chávez, Mayor

**AIR QUALITY AUTHORITY-TO-CONSTRUCT PERMIT No. 0902-M3
FACILITY CDS No. 35/001/00012**



John W. Soladay, Director

Issued to: American Cement Corporation
P.O. Box 2273
Española, New Mexico 87532

Certified Mail No. 7006 2760 0005 1562 4175
Return Receipt Requested

Responsible Official: Ron Hedrick, Vice President of Operations

Pursuant to the New Mexico Air Quality Control Act, Chapter 74, Article 2 New Mexico Statutes Annotated 1978 (as amended); the Joint Air Quality Control Board Ordinance, 9-5-1 to 9-5-99 ROA 1994; the Bernalillo County Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5; the Albuquerque/Bernalillo County Air Quality Control Board (A/BCAQCB) Regulation Title 20, New Mexico Administrative Code (20 NMAC), Chapter 11, Part 40 (20.11.40 NMAC), Air Contaminant Source Registration; and A/BCAQCB Regulation Title 20, Chapter 11, Part 41 NMAC (20.11.41 NMAC), Authority-To-Construct; American Cement Corporation (Company or Permittee) is hereby issued this **AUTHORITY-TO- CONSTRUCT PERMIT** and authorized to operate the following equipment at:

Facility/Location	Facility Process Description	SIC	NAICS
American Cement Facility	Cement and Cement Additive Transfer Station	3273	327320
4702 Carlton NW Albuquerque, NM UTMN: 3888364 UTME: 350955			

This **AUTHORITY-TO-CONSTRUCT Permit Number 0902-M3** has been issued based on the review of the application received by the Albuquerque Environmental Health Department (Department), Air Quality Division (Division) on February 26, 2009 and additional information received on March 2, 13 and 19, 2009, which was deemed complete on March 19, 2009 and on the National Ambient Air Quality Standards, New Mexico Ambient Air Quality Standards, Air Quality Control Regulations for Albuquerque/Bernalillo County, as amended, and consideration of relevant information provided at the June 23, 2009 and August 5, 2009 public information hearings held before issuance of this permit. As these standards and regulations are updated or amended, the applicable changes will be incorporated into Permit Number 0902-M3 and will apply to the facility. This permit supersedes all portions of Air Quality Permit Number 0902-M1, issued November 15, 2006.

Issued on the 15th day of September, 2009

Isreal Tavarez, Environmental Engineering Manager
Air Quality Programs
Air Quality Division
Environmental Health Department
City of Albuquerque

I. **CONDITIONS:** Conditions have been imposed in this permit to assure continued compliance. 20.11.41.18.C NMAC, states that any term or condition imposed by the Division on a permit or permit modification is enforceable to the same extent as a regulation of the Board. Pursuant to 20.11.41 NMAC, the facility is subject to the following conditions:

1. **Construction and Operation:** Compliance will be based on Division inspections of the facility, reviews of production records, submission of appropriate permit applications for modification, and timely notification to the Department regarding equipment substitutions and relocations.

a) This permit modification authorizes:

- i. The change in process equipment as listed under condition I.1.b) and I.1.c) of this permit;
- ii. The change in rated process rate for equipment listed under condition I.1.b) and I.1.c) of this permit;
- iii. The change in storage material for any of the five silos to either cement or cement additive;
- iv. The change in rated control efficiency for the dust collectors to 99.95% per manufacturer's guarantee statement; and,
- v. The change in hours of operation from 3,366 hrs/yr to continuous operation.

b) This permit authorizes the construction and operation of the following equipment:

Process Equipment

Process Equipment Unit No.	Unit Description	Manufacturer	Model Number	Serial Number	Date of Mfg.	Rated Process Rate (ton/hr)	Unit Subject to NSPS
1	Silo 1	Allstate	N/A	N/A	2005	200	No
2	Silo 2	Allstate	N/A	N/A	2005	200	No
3	Silo 3	Allstate	N/A	N/A	2005	200	No
4	Silo 4	Great West	N/A	N/A	Prior to 1990	60	No
5	Silo 5	Great West	N/A	N/A	Prior to 1990	60	No
6	Loadout (Silos 1-3)	DCL	UN800EV	Job 206039503	2005	150	No
7	Loadout (Silo 4)	DCL	CFM 330	Job 206039501	2006	150	No
8	Loadout (Silo 5)	DCL	CFM 330	Job 206039501	2006	150	No
9	Haul Road	N/A	N/A	N/A	N/A	N/A	No

c) This permit authorizes the construction and operation of the following air pollution control equipment:

Air Pollution Control Equipment

Type of Air Pollution Control Equipment	Manufacturer	Model Number	Serial Number	Rated Flow Rate (acfm)	Rated Control Efficiency
Silo 1 Dust Collector	DCL	CFM 330	Job 206039503	1400	99.95%
Silo 2 Dust Collector	DCL	CFM 330	Job 206039503	1400	99.95%
Silo 3 Dust Collector	DCL	CFM 330	Job 206039503	1400	99.95%
Silo 4 Dust Collector	Whirl Airflow Corp.	450-56/180	MC2695	1400	99.95%
Silo 5 Dust Collector 1	Whirl Airflow Corp.	450-56/180	MC2695	1400	99.95%
Silo 5 Dust Collector 2	Whirl Airflow Corp.	450-56/180	MC2695	1400	99.95%

Dust Collector Loadout (Silos 1-3)	DCL	UN800EV	Job 206039503	1400	99.95%
Dust Collector Loadout (Silo 4)	DCL	CFM 330	Job 206039501	1400	99.95%
Dust Collector Loadout (Silo 5)	DCL	CFM 330	Job 206039501	1400	99.95%

- d) All equipment shall be maintained as per manufacturer specifications to ensure the emissions remain at or below the permitted levels.
- e) This facility shall be constructed and operated in accordance with information provided on the permit application dated **February 23, 2009** and received **February 26, 2009** and additional information received **March 2, 13 and 19, 2009** and in accordance with the legal authority specified above and the conditions of this permit.
- f) This facility is not subject to Federal New Source Performance Standards (NSPS), Code of Federal Regulations (CFR), Title 40, Part 60.
- g) No National Emissions Standard for Hazardous Air Pollutants (NESHAP) apply to this facility. However, prior to any asbestos demolition or renovation work, the Division must be notified and proper permits shall be obtained and CFR Title 40, Part 61 Subpart M may apply.
- h) Substitution of equipment is authorized provided the equipment has the same or lower process capacity as the piece of equipment being substituted. Equipment that is substituted shall comply with the requirements in Condition 2.
- i) The equipment listed in Condition I.1.b) are limited to the following operational restrictions:
- i. This facility is authorized to run continuously;
 - ii. The storage material in any of the five silos (Units 1 through 5) can be either cement or cement additive;
 - iii. Units 1 through 3 shall each be restricted to a maximum material throughput process rate of 200 tons per hour of cement or cement additive;
 - iv. Units 4 through 5 shall each be restricted to a maximum material throughput process rate of 60 tons per hour of cement or cement additive;
 - v. The silo unloading spouts (Units 6 through 8) shall each be restricted to a maximum material loadout rate of 150 tons per hour of cement or cement additive;
 - vi. The nine (9) dust collectors which serve Units 1 through 8 shall be operated and maintained in accordance with the manufacturer's specifications in order to ensure a control efficiency greater than or equal to 99.95% is achieved. The pressure drop across the dust collectors shall remain within the range required by the manufacturer to achieve this level of control efficiency. If any of the dust collectors are not operating in compliance with the respective conditions in this permit or the manufacturer's specifications, the effected silo shall be immediately shut down until the dust collection control equipment is repaired and functioning in accordance with the manufacturer's specifications. Compliance with this condition shall be shown through meeting the requirements of Permit Conditions {I.1.d)}, {I.1.i)ix}, {I.2.c)}, and {I.3.b),d),e),f)}. This condition has been placed in the permit based on air dispersion modeling of the facility at this location to demonstrate compliance with the National Ambient Air Quality Standards and New Mexico Ambient Air Quality Standards for PM_{2.5}, PM₁₀, and TSP);

- vii. During operation of Units 1 through 8, emissions shall be ducted to a dust collector, with a control efficiency as described above. Compliance with opacity of fugitive emissions, during connection and disconnection of equipment, shall be shown through Permit Condition I.2.c). This condition has been placed in the permit based on air dispersion modeling of the facility at this location to demonstrate compliance with the National Ambient Air Quality Standards and New Mexico Ambient Air Quality Standards for PM_{2.5}, PM₁₀, and TSP);
- viii. Units 1 through 5 shall be equipped with a functioning and well maintained overflow alarm. Alarm activation shall either be visual in the form of a lamp, or audible in the form of a buzzer. The Permittee shall stop filling the silo whenever the overflow alarm has been activated. This device shall be installed within fifteen (15) days of permit issuance; and,
- ix. Units 1 through 8 shall each be equipped with a functioning and well maintained device capable of reading the pressure drop across each dust collector. The pressure drop reading of each pressure drop monitoring device shall continually remain within the range required by the manufacture to achieve a \geq 99.95% control efficiency. This device shall be installed within sixty (60) days of permit issuance.
- j) Vehicle traffic areas, haul roads and all site operations shall be maintained and controlled pursuant to 20.11.20.12.A. NMAC, General Provisions, Fugitive Dust Control. That is, the owner/operator shall "...use reasonable available control measures or any other effective control measure to prevent a violation of the national ambient air quality standards and meet the objective established in 20.11.20.6 NMAC, whether or not the person has been issued a fugitive dust control permit. No person shall allow fugitive dust, track out, or transported material from any active operation, open storage pile, paved or unpaved roadway or disturbed surface area, or inactive disturbed surface area to be carried beyond the property line, right-of-way, easement or any other area under control of the person generating or allowing the fugitive dust if the fugitive dust will: 1) adversely affect the health, public welfare or safety of the residents of Bernalillo county; or 2) impair visibility or the reasonable use of property; or 3) be visible longer than a total of 15 minutes in any one hour observation period...To mitigate fugitive dust, all inactive disturbed surface areas must be stabilized and maintained in stable condition by the owner, operator, or person responsible for maintenance of the disturbed surface..."
- k) All haul roads shall be paved by the owner/operator. The permittee shall perform daily vacuum street cleaning or wet sweeping with a sweeper certified by the manufacturer to be efficient at removing particulate matter having an aerodynamic diameter of less than 10 microns (i.e. PM10) to prevent visible emissions of fugitive dust from being generated as specified by 20.11.20.23.A and B NMAC. Vacuum street cleaning or wet sweeping shall be conducted more frequently than daily as necessary to prevent fugitive dust from being generated from all haul roads.
- l) Changes in plans, specifications, and other representations proposed in the application documents shall not be made if they will increase the potential to emit or cause a change in the method of control of emissions or in the character of emissions. Any such proposed changes shall be submitted as a modification to this permit. No modification shall begin prior to issuance of a permit.
- m) Compliance with ton per year (tpy) emissions shall be based on compliance with Conditions I.1.i)iii, iv, v, vi, vii, viii and ix.

2. **Unit Emission Limits:** Condition 2, Unit Emission Limits, has been placed in the permit in accordance with 20.11.41.18.B NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. These were the emission rates stated in the permit application and are the basis of the Division's review. Compliance will be based on Division inspections of the facility and upon compliance with the emission limits and opacity readings conducted in accordance with the test methods specified in Condition 6 - **Compliance Tests**.

- a) The cement and cement additive transfer station emissions units are described below and correspond to the process equipment units in Condition I.1.b).

Emission Unit Table

Emission Unit Number	Emission Unit Description
1	Silo 1 (Dust Collector)
2	Silo 2 (Dust Collector)
3	Silo 3 (Dust Collector)
4	Silo 4 (Dust Collector)
5, 6	Silo 5 (Dust Collector)
7	Loadout (Silos 1-3) (Dust Collector)
8	Loadout (Silo 4) (Dust Collector)
9	Loadout (Silo 5) (Dust Collector)
10	Haul Road

- b) The facility shall not exceed the emission limits stated in the table below. Tons per year emissions shall be based on a 12-month rolling total.

Criteria Pollutants

Emission Unit No.	TSP, lb/hr	TSP, tpy	PM10, lb/hr	PM10, tpy	PM2.5, lb/hr	PM2.5, tpy	Percent Opacity	Recordkeeping ¹	Monitoring ¹	Reporting ¹	Compliance Testing ²
1	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
2	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
3	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
4	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
5	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
6	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
7	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
8	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
9	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
10	3.01	14.37	0.59	2.80	0.09	0.42	*	Yes	Yes	Yes	No
Total	4.03	18.82	1.42	6.46	0.42	1.84					

¹ Refer to Conditions 3, 4 and 5 for unit specific record keeping/monitoring, and reporting requirements.

² Refer to Condition 6 for unit specific compliance testing requirements.

*Please see Conditions I.1.i) and k) for compliance of Unit 10.

- c) Emission Units 1 through 9 shall not cause or allow visible emissions that exceed 10 percent opacity. Percent opacity shall be determined using a 15-minute Method 22 test - "Visual determination of fugitive emissions from material sources and smoke emissions from flares", pursuant to CFR Title 40 Part 60 Appendix A. If visible emissions are observed during any Method 22 test, the facility will perform on the Unit(s) in question a 30-minute Method 9 test - "Visual Determination of the opacity of emissions from stationary sources", pursuant to CFR Title 40 Part 60 Appendix A.
 - d) Total suspended particulate matter (TSP), particulate matter less than 10 microns (PM_{10}), particulate matter less than 2.5 microns ($PM_{2.5}$), (lb/hr) emission rates for Emission Units 1 through 10 are for informational purposes and shall be used to determine tpy emissions for each emission unit. Compliance with lb/hr emission rates, for Units 1 through 9, shall be based on compliance with the opacity standards in Condition I.2.c). Compliance with lb/hr emission rates, for Unit 10, shall be based on compliance with Conditions I.1.j) and k).
3. **Record keeping:** Condition 3 has been placed in the permit in accordance with 20.11.41.18.B(8) NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on Division inspection of records and logs. This information shall be retained at the facility for the most recent two-year period and shall be made available to Division personnel upon request.
- a) Maintain Bill of Lading records of the daily receipt of cement and cement additive (in tons) for the silos. Daily receipt records shall be totaled on a monthly basis.
 - b) Maintain records of all maintenance and repair performed on Emission Units 1 through 9.
 - c) Maintain records of biannual testing done on the overflow alarm for each silo. Include any repairs performed on the alarm system.
 - d) Maintain records showing the pressure drop range required across each dust collector.
 - e) Maintain records of each daily pressure drop reading for Emission Units 1 through 9. Include any repairs performed on the pressure drop device.
 - f) Maintain records of monthly opacity readings on Emission Units 1 through 9. These records shall include Method 9 Certifications for the person(s) performing the Method 9 tests as necessary.
 - g) Maintain manufacture records showing the control efficiency of the cartridges used in Emission Units 1 through 9.
 - h) Maintain records of the sweep of haul roads including daily vacuum sweeps.
 - i) Annual scale calibration certifications shall be kept on site.
 - j) Maintain records of the location, within the dust collector, of each cartridge replacement. This recordkeeping shall be performed so continuous cartridge failure at a certain location can be tracked, diagnosed, and resolved.
 - k) Maintain records of monthly purchases and installation of cartridges.
4. **Monitoring:** Condition 4 has been placed in the permit in accordance with 20.11.41.18(4), (6), and (7) NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on Division inspection of equipment and logs.

- a) Each cement and cement additive silo shall be equipped with a functioning and well maintained overflow alarm. Alarm activation shall either be visual in the form of a lamp, or audible in the form of a buzzer. The owner/operator shall monitor the overflow alarm during any silo filling.
 - b) Emission Units 1 through 9 shall each be equipped with a functioning and well maintained device capable of reading the pressure drop across each unit. The owner/operator shall monitor, daily, the pressure drop across Units 1 through 9 to verify it is within the range required by the manufacturer.
 - c) Opacity readings, on Emission Units 1 through 9, shall be performed on a monthly basis. Opacity readings for these units shall be done in accordance with Method 22 - "Visual determination of fugitive emissions from material sources and smoke emissions from flares" or Method 9 - "Visual Determination of the opacity of emissions from stationary sources", CFR Title 40 Part 60 Appendix A, in compliance with Condition I.2.c).
 - d) The owner/operator shall ensure that a 50% cartridge replacement stock is kept onsite for each dust collector.
5. **Reporting:** Condition 5 has been placed in the permit in accordance with 20.11.41.20 NMAC and 20.11.90 NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on timely submittal of the reports (initial and annual). Notifications shall contain the required information and shall be made in accordance with 20.11.41.20 NMAC.

The permittee shall notify the Division in writing of:

- a) Any change in control or ownership within fifteen (15) days of the change in control or ownership; the permit and conditions apply in the event of any change in control or ownership of the facility. No permit modification is required in such case; however, in the event of any such change in control or ownership, the permittee shall notify the succeeding owner of the permit and the conditions;
 - b) An updated emissions inventory for all pollutants contained in the Permit Condition I.2.b) table; to include annual throughput (in tons) for cement and cement additive; by March 15 every year. If no change has occurred, a letter indicating that no change has occurred shall be sufficient;
 - c) Any breakdown of equipment or air pollution control devices or apparatus so as to cause emissions of air contaminants in excess of limits set by permit conditions. Any breakdown or abnormal operating conditions shall be reported within two hours of occurrence to (505) 224-6977 and via facsimile to (505) 768-1977; and,
 - d) Any equipment substitution within 15 days of said substitution.
6. **Compliance Tests:** Condition 6 has been placed in the permit in accordance with 20.11.41.21 NMAC, and 20.11.90.13 F. NMAC. Compliance will be based on the satisfactory completion of the compliance tests, the timely submittal of the emission unit test results to the Division, and on meeting the emission limits specified in Condition 2.
- a) In accordance with 20.11.41.21 NMAC and 20.11.90.13 F. NMAC, Performance Testing Following Startup and Performance Tests respectively, an initial performance test shall be conducted on Emission Units 1 through 9 to demonstrate compliance with the opacity standards established in Condition I.2.c). The compliance tests shall be conducted in accordance with EPA Method 9 found in Appendix A of CFR Title 40 Part 60, and the procedures found in Subpart A of CFR Title 40 Part 60.11. These tests shall be conducted within 60 days after achieving the maximum production rate at which affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Division.

- b) Biannual compliance tests for the overflow alarms for each silo shall be conducted.
- c) Compliance tests for Units 1 through 9 shall be conducted once every quarter-year in order to demonstrate continual compliance of the opacity standards stated in Condition I.2.b). The compliance tests shall be conducted in accordance with EPA Method 9 found in Appendix A of CFR Title 40 Part 60, and the procedures found in Subpart A of CFR Title 40 Part 60.11. If any Method 9 reading shows non-compliance, EPA Methods 1 through 5 shall be conducted within 30 days of the non-compliant Method 9 testing. The permittee may submit to the Department for review a written request to waive any compliance test requirement. Compliance testing shall not be waived unless it is approved in writing by the Department.
- d) Compliance tests have not been imposed for Emission Unit 10.
- e) The permittee shall provide for the Division's approval a written test protocol at least fifteen (15) days prior to the anticipated test date. The protocol shall describe the test methods to be used (including sampling locations), and shall describe data reduction procedures. Any variation from the established sampling and analytical procedures or from facility operating conditions shall be presented for Division approval.
- f) The test protocol and compliance test report shall conform to the standard format specified by the Division.
- g) The tests shall be conducted at ninety (90%) percent or greater of the facilities permitted capacity to demonstrate compliance with the permitted emission limits. Compliance testing at other than 90% production levels shall be performed at the Division's request and/or approval.
- h) One copy of the compliance test results shall be submitted to the Division Enforcement Section within thirty (30) days after the completion of testing.

Unit Specific Compliance Testing

Emission Unit Number	Initial Compliance Test	Frequency of Compliance Test
1, 2, 3, 4, 5, 6, 7, 8, and 9	Yes (Opacity)	Quarter-annually for Opacity
10	Not Required*	Not Required*

*Compliance tests have not been imposed for this unit at this time, but may be imposed if inspections of the source indicate non-compliance with permit conditions.

- 7. **Modifications:** Condition 7 has been placed in the permit in accordance with 20.11.41.7.H NMAC, to enable the Division to review proposed changes to the facility which may constitute a permit modification prior to such changes. Compliance will be based on Division inspections and the submittal of a new permit application for any modification.
 - a) Any future physical changes or changes in the method of operation which results in an increase in the pre-controlled emission rate may constitute a modification as defined by 20.11.41.7.H NMAC. No modification shall begin prior to issuance of a permit. Modifications or revisions to this permit shall be processed in accordance with 20.11.41 NMAC.
- 8. **Compliance Assurance/Enforcement:** All air pollution emitting facilities within Bernalillo County are subject to all applicable Albuquerque/Bernalillo County Air Quality Control Regulations, whether listed in this registration/permit or not.
 - a) The issuance of a permit or registration does not relieve the facility from responsibility of complying with the provisions of the Air Quality Control Act, and the laws and regulations in force pursuant to the Act and 20.11.41.17 NMAC.

- b) Any conditions imposed upon the facility as the result of an Authority-To-Construct Permit or any other permit issued by the Division shall be enforceable to the same extent as a regulation of the Board and 20.11.41.18.C NMAC.
 - c) Whenever two or more parts of the Air Quality Control Act, or the laws and regulations in force pursuant to the Act, limit, control or regulate the emissions of a particular air contaminant, the more restrictive or stringent shall govern pursuant to 20.11.1.14 NMAC.
 - d) The Division is authorized to issue a compliance order requiring compliance and assessing a civil penalty not to exceed Fifteen Thousand and no/100 Dollars (\$15,000) per day of noncompliance for each violation, commence a civil action in district court for appropriate relief, including a temporary and permanent injunction. (74-2-12 NMSA).
 - e) Scheduled and Unscheduled Inspection (74-2-13 NMSA) -- The Division will conduct scheduled and unscheduled inspections to insure compliance with the Air Quality Control Act, and the laws and regulations in force pursuant to the Act, and this permit, and, upon presentation of credentials:
 - i. Shall have a right of entry to, upon, or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the Board or by any permit condition are located;
 - ii. May at any reasonable time have access to and copy any records required to be established and maintained by Regulations of the Board, or any permit condition;
 - iii. May inspect any monitoring equipment and method required by Regulations of the Board or by any permit condition; and,
 - iv. Sample any emissions that are required to be sampled pursuant to Regulation of the Board, or any permit condition.
 - f) Any credible evidence may be used to establish whether the facility has violated or is in violation of any regulation of the Board, or any other provision of law. Credible evidence and testing shall include, but is not limited to (20.11.41.26.A-B NMAC):
 - i. A monitoring method approved for the source pursuant to 20.11.42 NMAC "Operating Permits" and incorporated into an operating permit;
 - ii. Compliance methods specified in the Regulations, conditions in a permit issued to the facility, or other provision of law;
 - iii. Federally enforceable monitoring or testing methods, including methods in 40 CFR parts 51, 60, 61, and 75; and,
 - iv. Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the Division and EPA.
9. **Posting of the Permit:** Compliance will be based on Division inspections of the facility, which show that a copy of the permit has been posted in a visible location. A copy of this permit shall be posted in a visible location at the plant site at all times. The permit shall be made available to Division personnel for inspection upon request.

10. **Annual Fees:** Condition 10 has been placed in the permit in accordance with 20.11.2 NMAC to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on the receipt of the annual emissions fee due each year to the Division pursuant to 20.11.2 NMAC. Every owner or operator of a source that is required to obtain a source registration, an Authority-to-Construct, an operating permit, or a preconstruction permit shall pay an annual emissions fee pursuant to 20.11.2 NMAC, 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, or 20.11.62 NMAC.

**Facility Wide Fee Pollutants
(Tons Per Year)**

Fee Pollutant	Facility Wide Fee Pollutant Totals in Tons per Year (TPY)
Total Suspended Particulate Matter (TSP)	19
Facility Wide Fee Pollutants Totals (TPY)	19

II. ADDITIONAL REQUIREMENTS

1. **Permit Cancellation**-- The Division may cancel any permit if the construction or modification is not commenced within one (1) year from the date of issuance or if, during the construction or modification, work is suspended for a total of one (1) year pursuant to 20.11.41.19 NMAC.

Application for permit modifications, relocation notices and items listed under **ADDITIONAL REQUIREMENTS** shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Division
Permitting Section
P.O. Box 1293
Albuquerque, New Mexico 87103

Test protocols, compliance tests and all reports shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Division
Attention: Compliance Officer
P.O. Box 1293
Albuquerque, New Mexico 87103

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3

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Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,

Petitioners/Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division,

Respondent/Appellee

AQCB No. 2009-7

**ANSWER OF THE CITY OF ALBUQUERQUE
TO PETITION FILED NOVEMBER 17, 2009**

The City of Albuquerque (City) files this Answer in response to the *Appeal Petition for Hearing* that was filed on November 17, 2009 (hereafter the "November 17 Petition" or "Petition". The November 17 Petition was filed by the Petitioners/Appellants (hereafter "Petitioners") after Petitioners filed an identically-named *Appeal Petition for Hearing* on November 2 (hereafter "November 2 Petition"). The City Answers as follows.

Answer to Petitioners' November 17, 2009 Appeal Petition for Hearing

1. Petitioners' "Preliminary Statement", first paragraph, first sentence: The City admits the allegations in the first sentence of the first paragraph of Petitioners' "Preliminary Statement".

2. Petitioners' "Preliminary Statement", first para., second sentence: The City admits the allegations contained in the second sentence of the first paragraph of Petitioners' "Preliminary Statement".

3. Petitioners' "Preliminary Statement", second para.: The City admits that the second paragraph of Petitioners' "Preliminary Statement" contains Petitioners' description

of Petitioners' arguments on appeal, and that the statements consist of legal arguments and legal conclusions, each of which the City denies. To the extent the remainder of the second paragraph contains factual allegations, the City denies all allegations.

4. Petitioners' "Preliminary Statement", third para.: The City respectfully requests that the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) deny the relief requested by the Petitioners in the third paragraph of Petitioners' "Preliminary Statement", and that the Air Board sustain the issuance of air quality Authority-to-

5. Petitioners' "Statutory and Other Bases for Claims", first sentence: The City admits a timely petition for hearing may be heard by the Air Board if the petitioners meet the requirements of the New Mexico Air Quality Control Act (Air Act), NMSA 1978, §§ 74-2-1 to 17, specifically NMSA §§ 74-2-7(H) and (I), and 20.11.81 NMAC, and that facts and other evidence regarding permitting may be raised if authorized by NMSA § 74-2-7 and 20.11.81 NMAC. The City denies that factual and evidentiary issues may be raised per NMSA § 74-2-7(K), and, to the extent the remainder of the first sentence of Petitioners' "Statutory and Other Bases for Claims" section contains additional legal or factual allegations, the City denies all such allegations.

6. Petitioners' "Statutory and Other Bases for Claims", second sentence: The wording in the second sentence of Petitioners' "Statutory and Other Bases for Claims" section is taken from the New Mexico Environmental Improvement Act (EIA), NMSA 1978, §§ 74-1-1 to 74-1-16, specifically NMSA § 74-1-2, *Purpose of Environmental Improvement Act*. The EIA does not apply to the Air Board or political subdivisions of the State of New Mexico. Therefore, City denies all allegations contained in the second sentence of Petitioners' "Statutory and Other Bases for Claims" section.

7. Petitioners' "Statutory and Other Bases for Claims", third sentence: The City denies the allegations contained in the third sentence of Petitioners' "Statutory and Other Bases for Claims" section.

8. Petitioners' "Statutory and Other Bases for Claims", fourth sentence: To the extent the allegations contained in the fourth sentence of Petitioners' "Statutory and Other Bases for Claims" section are intended to assert a claim under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d to 2000d-7) in this administrative appeal to the Air Board, the City denies 42 U.S.C. § 2000d applies to AQCB No. 2009-7. The City further states that 42 U.S.C. § 2000d speaks for itself, and that Petitioners' statement in the fourth sentence is nothing more than a legal argument and legal conclusion. To the extent the fourth sentence of

Petitioners' "Statutory and Other Bases for Claims" section regarding unidentified "certain" populations, contains legal or factual allegations, the City denies all allegations.

9. Petitioners' "Jurisdiction" section, first sentence: The City admits the Air Board has jurisdiction to hear appeals pursuant to NMSA 74-2-7(H) and 20.11.81 NMAC. The City denies the Air Board has jurisdiction to hear all of the issues raised on appeal in AQCB No. 2009- 7. To the extent the remainder of the first sentence of Petitioners' "Jurisdiction" section contains additional legal or factual allegations, the City denies.

10. Petitioners' "Jurisdiction" section, second sentence: The City admits the allegations contained in the second sentence of Petitioners' "Jurisdiction" section and states the Air Board also was created by Bernalillo County Joint Air Quality Control Board Ordinance No. 94-5 (County Ordinance), Section 3.

11. Petitioners' "Jurisdiction" section, third sentence: The City admits the City Joint Air Quality Control Board Ordinance, 9-5-1-1 et seq. ROA 1994 (City Ordinance) at 9-5-1-7(H) authorizes appeals to the Air Board that comply with the requirements of the Air Act and the City Ordinance. The City denies the Air Board has jurisdiction to hear all of the issues raised on appeal in AQCB No. 2009-7. To the extent the remainder of the third sentence of Petitioners' "Jurisdiction" section contains additional legal or factual allegations, the City denies.

12. Petitioners' "Timeliness" section: The City denies that notice of the permit was granted on September 15, 2009. The City affirms that the air quality Authority-to-Construct Permit # 902-M3 was signed on September 15, 2009. The City admits the Petitioners received the participant notification letter on or after October 2, 2009, and that the Petition was timely filed.

13. Petitioners' "Parties" section, first para.: The City admits Petitioners are community organizations and individuals who participated in the permitting action before the Air Quality Division of the City, but is without information sufficient to form a belief regarding the remaining allegations in the first paragraph of Petitioners' "Parties" section and therefore denies the remainder of the allegations.

14. Petitioners' "Parties" section, second para., first sentence: The City admits the allegations contained in the first sentence of the second paragraph of Petitioners' "Parties" section.

15. Petitioners' "Parties" section, second para., second sentence: The City admits Greater Gardner NA is a portion of zip code 87107; admits the area of zip code 87107 is approximately 14.5 square miles; that Greater Gardner NA comprises approximately 0.34

square miles, which is 2.3% of the area of zip code 87107; and admits the accuracy of the boundary description of zip code 87107 in the second sentence of the second paragraph of Petitioners' "Parties" section. The City denies all other allegations contained in the second sentence of the second paragraph of Petitioners' "Parties" section.

16. Petitioners' "Parties" section, second para., third sentence: The information asserted by Petitioners in third sentence of the second paragraph of Petitioners' "Parties" section does not include a reference to a year. The City affirms that, as of November 16, 2009, the Year 2000 Census reports a population of 30,781 for zip code 87107, that the 2000 Census reports that 17,043 people within zip code 87107 (55.4%) are Hispanic, and denies all additional allegations contained in the third sentence of the second paragraph of Petitioners' "Parties" section.

17. Petitioners' "Parties" section, second para., fourth sentence: The information asserted by Petitioners in the fourth sentence of Petitioners' "Parties" section does not include a reference to a year. The City affirms that, as of November 16, 2009, the Year 2000 Census reports the median yearly household income for zip code 87107 is \$34,645, and denies all additional allegations contained in the fourth sentence of the second paragraph of Petitioners' "Parties" section.

18. Petitioners' "Parties" section, second para., fifth sentence: The Petitioners did not define the "area" referred to in the fifth sentence of the second paragraph of Petitioners' "Parties" section. As a result, the City is without information sufficient to respond, and therefore denies the allegations contained in the fifth sentence of the second paragraph of Petitioners' "Parties" section.

19. Petitioners' "Parties" section, second para., sixth sentence: The information provided in the sixth sentence of the second paragraph of Petitioners' "Parties" section does not include a reference to a date. However, the City affirms that, as of November 17, 2009, within Bernalillo County there were 993 stationary sources with air quality permits and air quality registrations, that the stationary sources are permitted to emit a total of 2,550 tons per year of total suspended particulates (TSP), and that TSP includes PM10 and PM2.5 as subsets of TSP. The City denies all other allegations contained in the sixth sentence of the second paragraph of Petitioners' "Parties" section.

20. Petitioners' "Parties" section, second para., seventh sentence: The information provided in the seventh sentence of the second paragraph does not include a reference to a date. However, the City affirms that, as of November 16, 2009, according to 2000 Census data, zip code 87107 was 5.5% of the total population of Bernalillo County, and zip code

87107 contained 10.4% of the stationary sources of air pollution and 8.1% of the permitted annual tonnage of total suspended particulates. The City denies all other allegations contained in the seventh sentence of the second paragraph of Petitioners' "Parties" section.

21. Petitioners' "Parties" section, second para., eighth sentence: The City admits the allegations contained in the eighth sentence of the second paragraph of Petitioners' "Parties" section.

22. Petitioners' "Parties" section, second para., ninth sentence: The information provided in the ninth sentence of the second paragraph appears to be nothing more than contact information for the President of the Greater Gardner Neighborhood Association. To the extent the ninth sentence of the second paragraph contains additional legal or factual allegations, the City denies all allegations.

23. Petitioners' "Parties" section, third para., first sentence: The City states that the North Valley Coalition of Neighborhood Associations documents and the North Valley Area Plan speak for themselves. To the extent the wording of the first sentence of the third paragraph of Petitioners' "Parties" sections does not accurately and completely quote from or summarize those documents, the City denies.

24. Petitioners' "Parties" section, third para., second sentence: The City states that the North Valley Area Plan speaks for itself. To the extent the wording of the second sentence of the third paragraph of Petitioners' "Parties" section does not accurately and completely quote from or summarize the Plan, the City denies.

25. Petitioners' "Parties" section, third para., third sentence: The City states that the North Valley Area Plan speaks for itself. To the extent the wording of the third sentence of the third paragraph of Petitioners' "Parties" section does not accurately and completely quote from or summarize the Plan, the City denies.

26. Petitioners' "Parties" section, third para., fourth sentence: The City admits the allegations contained in the fourth sentence of the third paragraph of Petitioners' "Parties" section.

27. Petitioners' "Parties" section, third para., fifth sentence: The information provided in the fifth sentence of the third paragraph appears to be nothing more than contact information for the President of the North Valley Coalition of Neighborhood Associations. To the extent the fifth sentence of the third paragraph contains additional legal or factual allegations, the City denies all allegations.

28. Petitioners' "Parties" section, fourth para., first sentence: The City admits the allegations contained in the first sentence of the fourth paragraph of Petitioners' "Parties" section.

29. Petitioners' "Parties" section, fourth para., second sentence: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the second sentence of the fourth paragraph of Petitioners' "Parties" section and therefore denies.

30. Petitioners' "Parties" section, fourth para., third sentence: The City admits the allegations contained in the third sentence of the fourth paragraph of Petitioners' "Parties" section.

31. Petitioners' "Parties" section, fourth para., fourth sentence: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the fourth sentence of the fourth paragraph of Petitioners' "Parties" section and therefore denies.

32. Petitioners' "Parties" section, fourth para., fifth sentence: The information provided in the fifth sentence of the fourth paragraph appears to be nothing more than contact information for Petitioner Kyle Silfer. To the extent the fifth sentence of the fourth paragraph contains additional legal or factual allegations, the City denies all allegations.

33. Petitioners' "Parties" section, fifth para., first sentence: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the first sentence of the fifth paragraph of Petitioners' "Parties" section and therefore denies.

34. Petitioners' "Parties" section, fifth para., second sentence: The City admits Mr. Wood's residence is located approximately 1,000 feet from the American Cement facility, as alleged in the second sentence of the fifth paragraph of Petitioners' "Parties" section.

35. Petitioners' "Parties" section, fifth para., third sentence: The information provided in the third sentence of the fifth paragraph appears to be nothing more than contact information for Petitioner David Wood. To the extent the third sentence of the fifth paragraph contains additional legal or factual allegations, the City denies all allegations.

36. Petitioners' "Parties" section, sixth para., first sentence: The City is without information sufficient to form a belief regarding the accuracy of the statement regarding Ms. Finical's role in the Greater Gardner Neighborhood Association, and admits Ms. Finical lives approximately 1,000 feet from the American Cement facility as alleged in the sixth paragraph of Petitioners' "Parties" section.

37. Petitioners' "Parties" section, sixth para., second sentence: The information provided in the second sentence of the sixth paragraph appears to be nothing more than contact information for Petitioner Marcia Finical. To the extent the second sentence of the sixth paragraph contains additional legal or factual allegations, the City denies all allegations.

38. Petitioners' "Parties" section, seventh para., first sentence: The City admits the Air Act and the City Ordinance authorize the City Environmental Health Department to be the local agency that administers and enforces air quality regulations and programs within Bernalillo County, just as the New Mexico Environment Department has authority to administer and enforce air quality regulations and programs within the state of New Mexico, outside Bernalillo County. The City denies all other allegations contained in the first sentence of the seventh paragraph of Petitioners' "Parties" section.

39. Petitioners' "Parties" section, seventh para., second sentence: The Air Act at NMSA §74-2-2(J) defines "local authority" as a qualifying political subdivision, not a board. Therefore, the City denies the allegations in the second sentence of the seventh paragraph of Petitioners' "Parties" section.

40. Petitioners' "Parties" section, seventh para., third sentence: The City admits the Air Board assumed jurisdiction over air quality within Bernalillo County pursuant to the Air Act at NMSA § 74-2-4, the City Ordinance at 9-5-1-3 ROA 1994, and the Bernalillo County Ordinance at Section 3.

41. Petitioners' "Essential Facts" section, first para.: The City admits on September 15, 2009 the Air Quality Division of the City Environmental Health Department issued air quality Authority-to-Construct Permit No. 0902-M3 to American Cement Corporation. The City denies all other allegations in the first paragraph of Petitioners' "Essential Facts" section.

42. Petitioners' "Essential Facts" section, second para., first sentence: The City admits the allegations contained in the first sentence of the second paragraph of Petitioners' "Essential Facts" section.

43. Petitioners' "Essential Facts" section, second para., second sentence: The City admits the allegations contained in the second sentence of the second paragraph of Petitioners' "Essential Facts" section.

44. Petitioners' "Essential Facts" section, third para., first sentence: The City admits the allegations contained in the first sentence of the third paragraph of Petitioners' "Essential Facts" section.

45. Petitioners' "Essential Facts" section, third para., second sentence: The City admits the allegations contained in the second sentence of the third paragraph of Petitioners' "Essential Facts" section.

46. Petitioners' "Statement of Claims – First Claim", first sentence: The City denies the allegations contained in the first sentence of Petitioners' "First Claim".

47. Petitioners' "Statement of Claims – First Claim", second sentence: The City admits neighborhood residents provided testimony as described in the second sentence of Petitioners' "First Claim".

48. Petitioners' "Statement of Claims – First Claim", third sentence: The City admits video footage with a manually-affixed date stamp of June 19, 2008 was submitted at a summer of 2009 Public Information Hearing (PIH). The City denies all other allegations contained in the third sentence of Petitioners' "First Claim".

49. Petitioners' "Statement of Claims – First Claim", fourth sentence: The City admits participants in the PIHs requested inclusion of best available control technology (BACT) in American Cement's proposed air quality Permit No. 902-M3. However, the City states affirmatively that federal, state, and Air Board regulations only require installation of BACT technology at major stationary sources that are subject to prevention of significant deterioration (PSD) requirements imposed by 20.11.61 NMAC, *Prevention of Significant Deterioration (Part 61)*. The American Cement facility is a minor, not a major, stationary source. American Cement is subject to the minor source permitting regulation 20.11.41 NMAC, *Authority-to-Construct*, and is not subject to Part 61 PSD major source BACT requirements. The City denies all other allegations contained in the fourth sentence of Petitioners' "First Claim".

50. Petitioners' "Statement of Claims – First Claim", fifth sentence: The City admits BACT requirements were not included in Permit 902-M3 for the reasons stated in Answer 49 above. The City also admits that during negotiations with the new owner regarding resolution of the prior owner's violations, the Air Quality Division received a June 11, 2008 letter and attachment from the new owner of American Cement with a list of potential improvements at the facility. The City admits the new owner initially offered to install and operate a neighborhood PM monitor for one year and then to turn the facility over to the Air Quality Division for operation. The City affirmatively states that in 2008 the new owner of the American Cement facility performed an air quality self-audit of the recently-acquired facility, self-reported past and existing violations to the Air Quality Division, and was issued a Notice of Violation (NOV) by the Air Quality Division. The NOV ultimately was resolved consistent

with the EPA's *Interim Approach to Applying the Audit Policy to New Owners*. The City affirms that the new owner ultimately signed a Compliance Agreement that described significant changes and improvements at the facility that were made by the new owner and were not required either by the air quality permit that was in effect at that time or by applicable laws, and that the new owner paid a \$61,525 penalty into the City general fund. In addition, the City affirms that the Air Quality Division operates more air quality monitoring stations within Bernalillo County than are required by the EPA, and that air quality within Bernalillo County is well within all federal, state of New Mexico, and local health-based air quality standards, which includes the standards for particulates. The City denies all other allegations contained in the fifth sentence of Petitioners' "First Claim".

51. Petitioners' "Statement of Claims – Second Claim", first sentence: The City denies the allegations contained in the first sentence of Petitioners' "Second Claim".

52. Petitioners' "Statement of Claims – Second Claim", second sentence: The City states the Attorney General of New Mexico Opinion No. 08-03 speaks for itself. To the extent the wording of the second sentence of Petitioners' "Second Claim" does not accurately and completely quote from the opinion, the City denies.

53. Petitioners' "Statement of Claims – Second Claim", third sentence: The City admits the New Mexico Department of Health provided data derived from historical record, admits the Department of Health could not rule out causation, and affirmatively states the data did not establish causation. The City denies all other allegations contained in the third sentence of Petitioners' "Second Claim".

54. Petitioners' "Statement of Claims – Second Claim", fourth sentence: The City admits the allegations contained in the fourth sentence of Petitioners' "Second Claim".

55. Petitioners' "Statement of Claims – Second Claim", fifth sentence: The City admits the allegations contained in the fifth sentence of Petitioners' "Second Claim".

56. Petitioners' "Statement of Claims – Second Claim", sixth sentence: The City admits the allegations contained in the sixth sentence of Petitioners' "Second Claim".

57. Petitioners' "Statement of Claims – Second Claim", seventh sentence: The City denies the allegations contained in the seventh sentence of Petitioners' "Second Claim", and states affirmatively that Permit 902-M3 was issued consistent with all requirements of the New Mexico Air Act, the City Ordinance, and the Air Board regulations.

58. Petitioners' "Statement of Claims – Third Claim", first sentence: The City denies the allegations contained in the first sentence of Petitioners' "Third Claim".

59. Petitioners' "Statement of Claims – Third Claim", second sentence: The City denies the allegations contained in the second sentence of Petitioners' "Third Claim".

60. Petitioners' "Statement of Claims – Third Claim", third sentence: The City admits a minor source air quality permit should be clear enough for the public, the source, and the enforcing agency to know what is being emitted and how it is being emitted, how it is being controlled and at what levels. The City affirmatively states air quality Authority-to-Construct Permit 0902-M3 is clear enough for the public, the source, and the enforcing agency to know what is being emitted and how it is being emitted, how it is being controlled and at what levels. The City denies all other allegations contained in the third sentence of Petitioners' "Third Claim".

61. Petitioners' "Statement of Claims – Third Claim", fourth sentence: The City admits the allegations contained in the fourth sentence of Petitioners' "Third Claim".

62. Petitioners' "Statement of Claims – Third Claim", fifth sentence: The City admits the allegations contained in the fifth sentence of Petitioners' "Third Claim".

63. Petitioners' "Statement of Claims – Third Claim", sixth sentence: The City admits the allegations contained in the sixth sentence of Petitioners' "Third Claim".

64. Petitioners' "Statement of Claims – Fourth Claim": The City is without information sufficient to form a belief regarding potential facts or legal issues that may be identified or raised by Petitioner prior to hearing. Therefore, the City denies all allegations contained in Petitioners' "Fourth Claim".

Affirmative Defenses

65. Regarding Petitioners' "Relief Requested" section, the City Petitioners failed to state a claim upon which relief may be granted. Therefore, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' November 17, 2009 *Appeal Petition for Hearing* with prejudice, and sustain the issuance of air quality Authority-to-Construct Permit No. 902-M3.

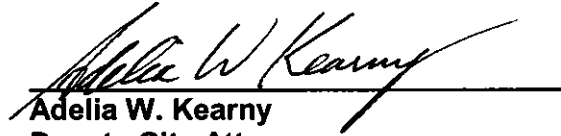
Response to Request for Relief

66. In response to Petitioners' request for relief, and based on the foregoing Answer, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' November 17, 2009 *Appeal Petition for Hearing* with prejudice, sustain the issuance of air

quality Authority-to-Construct Permit No. 902-M3, and grant the City any additional relief deemed appropriate by the Air Board.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney



Adelia W. Kearny
Deputy City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4530
akearny@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2009: 1.) the original *Answer of the City of Albuquerque to Petition Filed November 17, 2009* was filed with the Hearing Clerk in the above-captioned matter, nine copies were hand delivered to the Hearing Clerk for delivery to the Air Board members as required by 20.11.81.12.G NMAC, and two copies were hand delivered to the Hearing Clerk forwarding to the current Hearing Officer, Jens Deichmann, Chair of the Air Board, and to Bill Granthan, Air Board counsel, as directed by the Hearing Clerk; and
2.) a copy was mailed and sent by electronic mail to:

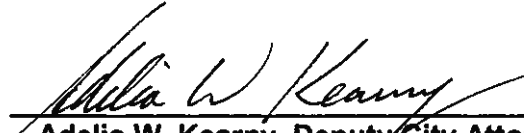
Kyle Silfer, President
Greater Gardner NA
4465 Jupiter Street NW
Albuquerque, NM 87107
ggna@macmountain.org

Chris Catechis, President
North Valley Coalition of
Neighborhood Associations
5733 Guadalupe Trail NW
Albuquerque, NM 87107
catechis@msn.com

Kyle Silfer
4465 Jupiter Street NW
Albuquerque, NM 87107
kyle@rtoads.com

David Wood
158 Pleasant Ave., NW
Albuquerque, NM 87107
wood_cpa@msn.com

Marcia Finical
141 Griegos Rd., NW
Albuquerque, NM 87107
marcia_finical @ yahoo.com

By: 
Adelia W. Kearny, Deputy City Attorney

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT
No. 0902-M3

Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals,	AQCB No. 2009-7
Petitioners/Appellants,	
v.	
City of Albuquerque Environmental Health Department, Air Quality Division,	
Respondent/Appellee.	

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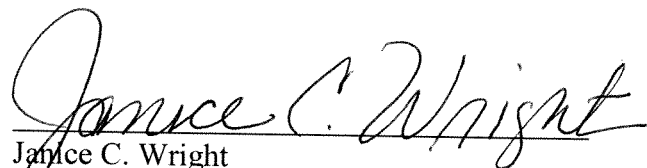
JCW

NOTICE OF DOCKETING

Petition Received by Hearing Clerk: November 2, 2009

The procedural rules that will be followed for this hearing will be 20.1.81 NMAC,
Adjudicatory Procedures-Air Quality Control Board.

Respectively submitted,



Jayce C. Wright
Hearing Clerk
Air Quality Division
Environmental Health Department
City of Albuquerque
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico, 87103

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, hand-delivered, and e-mailed a true and correct copy of the foregoing pleading on this 17th day of November, 2009, to the following:

Mailed and E-mailed

Kyle Silfer
Greater Gardner Neighborhood Association
4465 Jupiter NW
Albuquerque, NM 87107
kyle@rtoads.com

Hand-Delivered

John W. Soladay, Director
Environmental Health Department
City of Albuquerque
Room 3023, One Civic Plaza
Albuquerque, NM 87102

Hand-Delivered

Isreal L. Tavarez,
Environmental Engineering Manager
Air Quality Division
Environmental Health Department
City of Albuquerque
Room 3047, One Civic Plaza
Albuquerque, NM 87102

Hand-Delivered

Adelia Kearny
City Attorney's Office
City of Albuquerque
Room 4015, One Civic Plaza
Albuquerque, NM 87102

Mailed and E-mailed

Tim Van Valen
Brownstein, Hyatt, Farber, Schreck, LLP
201 Third Street NW, #1700
Albuquerque, NM 87102
tvanvalen@bhfs.com

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Janice Wright at least ten days prior to the hearing date at P.O. Box 1293 Albuquerque, New Mexico, 87103. Ms. Wright's telephone number is (505) 768-2601. TDY users please access Ms. Wright's number through the New Mexico Relay Network at 1-800-659-8331.

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR
A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 0902-M3

Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, Petitioners

Statement of Authority to Represent

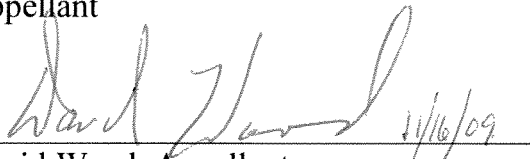
Until such time as the appellants can retain legal counsel, the appellants in the Appeal Petition for Hearing grant appellant Kyle Silfer full legal authority to represent the Greater Gardner Neighborhood Association, the North Valley Coalition of Neighborhood Associations, David Wood individually and Marcia Finical individually.

 11/16/09

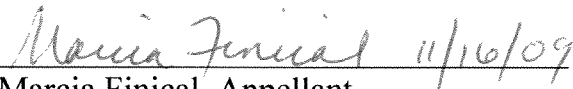
Kyle Silfer, as President of Greater Gardner Neighborhood Association, Appellant

 11/16/09

Chris Catechis, as President of North Valley Coalition of Neighborhood Associations, Appellant

 11/16/09

David Wood, Appellant

 11/16/09

Marcia Finical, Appellant

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**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**GREATER GARDNER NEIGHBORHOOD)
ASSOCIATION, NORTH VALLEY COALITION)
OF NEIGHBORHOOD ASSOCIATIONS, AND)
KYLE SILFER, DAVID WOOD, AND MARCIA)
FINICAL AS INDIVIDUALS,)

Appellants)

vs.)

CITY OF ALBUQUERQUE AIR QUALITY)
DIVISION)

Appellee.)**

**Authority to Construct
Permit Modification
Permit No. 0902-M3**

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DEPARTMENT
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MOTION TO INTERVENE

Permittee American Cement Corporation, a New Mexico Corporation ("Permittee"), acting by and through its attorneys Brownstein Hyatt Farber Schreck, LLP, hereby moves the Albuquerque-Bernalillo County Air Quality Control Board (the "Board") for an order permitting the intervention of Permittee as Appellee in the above-captioned proceeding, and in support thereof states as follows:

1. On November 2, 2009, the Greater Gardner Neighborhood Association and the North Valley Coalition of Neighborhood Associations, and Kyle Silfer, David Wood and Marcia Finical as Individuals (collectively, the "Appellants"), filed an Appeal and Petition for Hearing concerning the City of Albuquerque Air Quality Division's issuance of Permittee's modified Authority-to-Construct Permit No. 0902-M3 on September 15, 2009.
2. Permittee is the holder of the permit challenged in this appeal, and is the owner and operator of the facility for which the permit was issued.

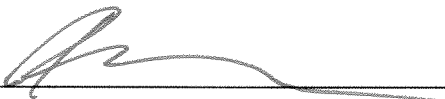
3. As holder of the permit and as owner and operator of the facility, Permittee has a significant interest in this appeal proceeding.

4. Pursuant to the New Mexico Air Quality Control Act, NMSA §§ 74-2-1 to 74-2-17, Permittee is properly a party to this proceeding and is entitled to notice and an opportunity to participate in all proceedings related to Appellants' request for a hearing before the Board.

WHEREFORE, Permittee respectfully requests the Board to order the intervention of Permittee as an Appellee in the above-captioned proceeding.

Respectfully submitted this 16th day of November, 2009.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By:  _____

Tim Van Valen
Brownstein Hyatt Farber Schreck, LLP
201 Third Street N.W., #1700
Albuquerque, NM 87102
(505) 244-0770
E-mail: tvanvalen@bhfs.com

ATTORNEY FOR AMERICAN CEMENT
CORPORATION

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD
IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 0902-M3

**GREATER GARDNER NEIGHBORHOOD ASSOCIATION, NORTH VALLEY
COALITION OF NEIGHBORHOOD ASSOCIATIONS, AND KYLE SILFER, DAVID
WOOD, AND MARCIA FINICAL AS INDIVIDUALS, PETITIONERS.**

Certificate of Service

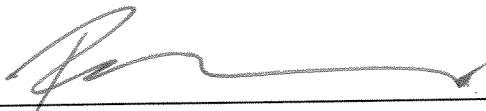
I certify that one original and nine copies of the foregoing **Motion to Intervene** were filed with the hearing clerk on the 16th day of November, 2009, and by same date submitted by certified mail, return receipt requested, to the following:

Kyle Silfer, Petitioner
4465 Jupiter NW
Albuquerque, NM 87107

and by same date submitted by hand delivery to Janice Wright for the following:

Jens Deichman, Hearing Officer and Board Chair
Albuquerque-Bernalillo County Air Quality Control Board
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102

Bill Grantham, Esq., AQCB Legal Counsel
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102



Timothy R. Van Valen

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,

Petitioners/Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division,

Respondent/Appellee

AQCB No. 2009-7


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NOTICE OF FILING OF ADMINISTRATIVE RECORD
AND SERVICE OF INDEX OF ADMINISTRATIVE RECORD

On November 17, 2009, the Administrative Record of the permitting action that is the subject of the above-captioned action and the related Index of the Administrative Record were filed with the Air Quality Control Board Hearing Clerk. On November 17, a copy of the Index also was mailed and electronically mailed to Petitioner Kyle Silfer.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney



Adelia W. Kearny
Deputy City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4530
akearny@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2009, a true and correct copy of the Administrative Record Index was mailed by regular mail, postage prepaid to:

**Kyle Silfer, individually, and as
President of Greater Gardner NA
4465 Jupiter NW
Albuquerque, NM 87107**

and a copy was sent by electronic mail to Kyle Silfer at kyle@rroads.com.

by: 

Adelia W. Kearny, Deputy City Attorney

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,

Petitioners/Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division,

Respondent/Appellee

AQCB No. 2009-7

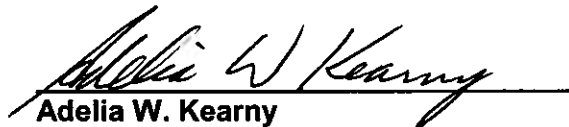
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NOTICE OF FILING OF LIST OF INTERESTED PERSONS

On November 12, 2009, as required by 20.11.81.14.D(2) NMAC, the Environmental Health Department delivered to the Hearing Clerk in the above-captioned matter a list of all persons who, within the preceding 12 months, have expressed in writing to the Department an interest in the facility or the permitting action that is the subject of the Petition that was filed in the above-captioned action, or who participated in a public information meeting or hearing on the permitting action and who have provided a legible written name and current mailing address at the public information meeting or hearing.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney



Adelia W. Kearny
Deputy City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4530
akearny@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2009, a true and correct copy of the above Notice was mailed by regular mail, postage prepaid to:

**Kyle Silfer, individually, and as
President of Greater Gardner NA
4465 Jupiter NW
Albuquerque, NM 87107**

and a copy was sent by electronic mail to Kyle Silfer at kyle@rtoads.com.

by: 

Adelia W. Kearny, Deputy City Attorney

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,

Petitioners/Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division,

Respondent/Appellee

AQCB No. 2009-7

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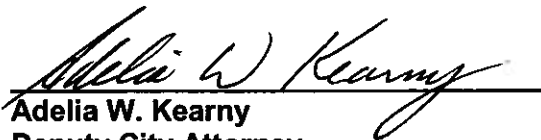
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NOTICE OF FILING OF PETITIONERS' WAIVER AND RELEASE

Attached to this Notice is the original Waiver and Release, signed and dated by Kyle Silfer on behalf of all of the Petitioners. The Waiver and Release waives the Petitioners' right to a public hearing that begins within 30 days of receipt of Petitioners' *Appeal Petition for Hearing*. And warrants that Kyle Silfer is authorized to represent the two organizations and three individuals named as appellants/petitioners in the *Appeal Petition for Hearing*.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney



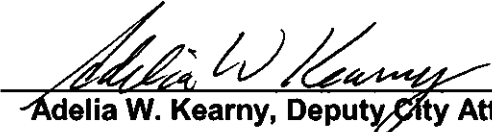
Adelia W. Kearny
Deputy City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4530
akearny@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2009, a true and correct copy of the above Notice was mailed by regular mail, postage prepaid to:

**Kyle Silfer, individually, and as
President of Greater Gardner NA
4465 Jupiter NW
Albuquerque, NM 87107**

and a copy was sent by electronic mail to Kyle Silfer at kyle@rtoads.com.

by: 
Adelia W. Kearny, Deputy City Attorney

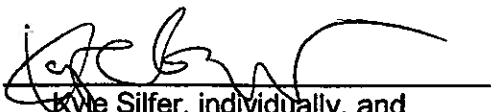
WAIVER AND RELEASE

Regarding Extension of Deadline for Holding Hearing

The Air Quality Division (AQD) of the City of Albuquerque (City) Environmental Health Department issued American Cement Authority-to-Construct Permit modification # 0902-M3, effective September 15, 2009. Kyle received the participant notification letter sent by AQD informing Mr. Silfer that the permit modification had been issued, the process followed by AQD during its review, the conditions incorporated in the permit modification, and the deadline for requesting a hearing before the Albuquerque-Bernalillo County Air Quality Control Board (Air Board). On November 2, 2009, Kyle Silfer filed an *Appeal Petition for Hearing* dated November 1, 2009 with the Air Board Hearing Clerk.

The Air Board is directed by subsection F of 20.11.41.14 NMAC and paragraph (1) of subsection F of 20.11.81.14 NMAC to hold a public hearing regarding an authority-to-construct permit challenge within 30 days of receipt of the request for public hearing unless the Petitioner waives the deadline pursuant to 20.11.81.14.C NMAC. By signing this Waiver and Release, Kyle Silfer, on behalf of the two organizations and three individuals named as Appellants (petitioners) in the Appeal Petition for Hearing filed November 2, 2009, hereby waives the 30-day deadline, and forever waives, releases and discharges any and all rights and claims for damages or other relief that the Appellants/petitioners may have against the Air Board, each individual member of the Board, the City, and all City officials, officers, employees, contractors and agents as a result of the Air Board not holding the public hearing within 30 days of receipt of the Appeal Petition for Hearing.

The individual signing this Waiver and Release warrants he is authorized to represent the two organizations and three individuals named as Appellants/petitioners in the Appeal Petition for Hearing and has full legal authority to execute this Waiver and Release on behalf of the Greater Gardner Neighborhood Association (GGNA), the North Valley Coalition of Neighborhood Associations (NVCNA), David Wood individually and Marcia Finical individually, and to bind GGNA, NVCNA, David Wood, Marcia Finical, and himself to its terms.

By: 

Kyle Silfer, individually, and
as authorized representative of
Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood Associations,
David Wood individually, and
Marcia Finical individually

Date: 11/10/09

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3**

**Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,**

Petitioners/Appellants,

v.

**City of Albuquerque Environmental Health
Department, Air Quality Division,**

Respondent/Appellee

AQCB Petition No. 2009-7

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Jcw

SCHEDULING ORDER

THIS MATTER having come before the Chairman of the Albuquerque-Bernalillo County Air Quality Control Board (Air Board), who is acting as interim hearing officer in the above-captioned matter pursuant to Paragraph (2) of Subsection (B) of 20.11.81.12 NMAC, upon Petitioners' *Appeal Petition for Hearing* filed November 2, 2009, and being apprised of the filing of Petitioners' *Waiver and Release* dated November 11, 2009, finds as follows:

1. The Petition was timely filed.
2. The 30-day deadline for beginning the hearing on the merits, which is established by Subsection F of 20.11.41.15 NMAC and Paragraph (1) of Subsection F of 20.11.81.14 NMAC, is stayed by the filing of the *Waiver and Release* pursuant to Subsection C of 20.11.81.14 NMAC.
3. The next regularly-scheduled Air Board meeting is December 9, 2009.
4. December 9, 2009 falls within the extended, additional 30-day period allowed by Subsection C of 20.11.81.14 NMAC, and provides an opportunity for the Air Board to: appoint a Hearing Officer or authorize the Hearing Clerk to obtain a Hearing Officer; establish the date, time and location of the hearing on the merits in the above-captioned matter, or authorize the

Hearing Officer to set the date, time and location of the hearing; direct the Hearing Clerk to secure a court reporter; and decide any other procedural decisions regarding the hearing on the merits that are necessary at this stage in the proceedings.

THEREFORE, IT IS ORDERED that:

1. At the December 9, 2009 Air Board meeting, the Board shall: appoint a Hearing Officer or authorize the Hearing Clerk to obtain a Hearing Officer; establish the date, time and location of the hearing on the merits in the above-captioned matter, or authorize the Hearing Officer to set the date, time and location of the hearing; direct the Hearing Clerk to secure a court reporter; and decide any other procedural decisions regarding the hearing on the merits that are necessary at this stage in the proceedings.

2. Pursuant to Subsection C of 20.11.81.14 NMAC and Paragraph (1) of Subsection F of 20.11.81.12 NMAC, the hearing on the merits will begin on Monday, January 4, 2010, unless the hearing officer or the Air Board, as appropriate for the stage of the proceeding, extends the deadline for an additional period for good reason and an amended Scheduling Order is issued.

3. All prehearing deadlines set forth in 20.11.81.14 NMAC related to the 30-day hearing procedure will remain in effect, based on the January 4, 2010 hearing date.



Jens Deichmann
Chairman/Interim Hearing Officer
Air Quality Division
Environmental Health Department
City of Albuquerque
Mailing Address:
P. O. Box 1293
Albuquerque, NM 87103
Physical Address:
1 Civic Plaza NW
City/County Building
3rd Floor, Room 3023
Albuquerque, NM 87102

If any person requires assistance, an interpreter, or auxiliary aid to participate in this process, please contact Hearing Clerk Janice Wright at least ten days before the hearing date at P.O. Box 1293, Albuquerque, New Mexico 87103. Ms. Wright's telephone number is (505) 768-2601. TDY users, please access Ms. Wright's number through the New Mexico Relay Network at 1-800-659-8331.

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, hand delivered, and e-mailed a true and correct copy of the foregoing pleading on this 30th day of November, 2009 to the following parties of record:

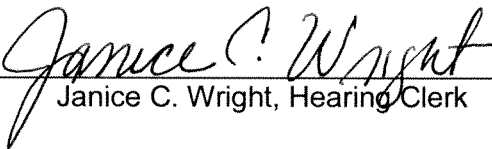
Mailed and e-mailed:

Kyle Silfer, Petitioner
4465 Jupiter NW
Albuquerque, NM 87107
kyle@rtoads.com

Tim Van Valen, Esq.
Brownstein Hyatt Farber Schreck, LLP
201 Third Street NW, Suite 1700
Albuquerque, NM 87102-4386
tvanvalen@bhfs.com

Hand delivered:

Adelia W. Kearny
Deputy City Attorney
Room 4015
One Civic Plaza NW
Albuquerque, NM 87102



Janice C. Wright, Hearing Clerk

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**GREATER GARDNER NEIGHBORHOOD
ASSOCIATION, NORTH VALLEY COALITION
OF NEIGHBORHOOD ASSOCIATIONS, AND
KYLE SILFER, DAVID WOOD, and MARCIA
FINICAL AS INDIVIDUALS,**

Appellants,

vs.

**CITY OF ALBUQUERQUE AIR QUALITY
DIVISION,**

Appellee.

Authority to Construct

Permit Modification

Permit No. 0902-M3

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MOTION FOR ADMISSION PRO HAC VICE

Pursuant to Rule 16-505(E) of the New Mexico Rules of Professional Conduct, the undersigned counsel ("Counsel") move for an order from the Board granting temporary admission to enable their participation in the above-entitled matter as co-counsel for Permittee American Cement Corporation. In support of this Motion, Counsel state the following:

1. The following Counsel are attorneys at law affiliated as shareholders and associate of the law firm of Brownstein Hyatt Farber Schreck, LLP, which maintains an office at 410 Seventeenth Street, Suite 2100, Denver, CO 80202, telephone 303.223.1100:

Mark J. Mathews, Colorado attorney registration no. 23749
 Adam T. DeVoe, Colorado attorney registration no. 32059
 Bret A. Fox, Colorado attorney registration no. 36723

2. Counsel are members in good standing with the Bar of the State of Colorado, and have not been disbarred or suspended from practice in any jurisdiction.

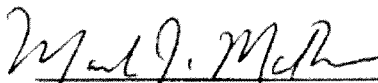
3. By this motion, Counsel seek admission to provide legal services and representation on a temporary basis before the Albuquerque-Bernalillo County Air Quality Control Board (the "Board"), which services and representation relate to and are limited to the above-entitled proceeding currently pending before the Board.

4. An administrative agency such as the Board is authorized to allow, by order adopted pursuant to the informal practice of the agency, a non-admitted lawyer to appear in a proceeding before the agency. See NMRA 16-505(E), cmt. 9. Upon the advice of Board

counsel, this Motion is submitted in accordance with such Board procedures as authorized by NMRA 16-505(E).

WHEREFORE, the undersigned Counsel respectfully request that the Board enter the attached order specially admitting and enabling each to participate in this matter as co-counsel for Permittee American Cement Corporation. A draft Order is submitted herewith for the Board's convenience.

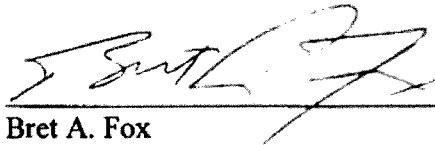
Respectfully submitted this 2nd day of December, 2009.



Mark J. Mathews



Adam T. DeVoe



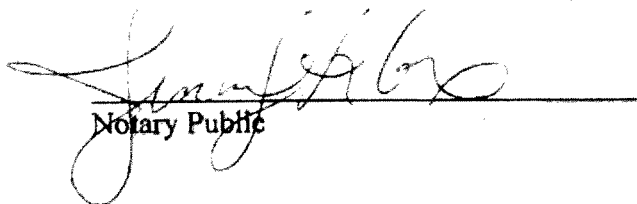
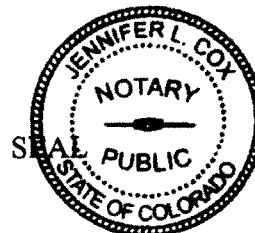
Bret A. Fox

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Denver, CO 80202
Telephone: 303-223-1100
Fax: 303-223-1111
e-mail: bfox@bhfs.com
Attorneys for American Cement Corporation

STATE OF COLORADO)
) SS:
COUNTY OF DENVER)

Subscribed and sworn to before me this 2nd day of December, 2009, by Mark J. Mathews, Esq.

My commission expires: 6/6/2012

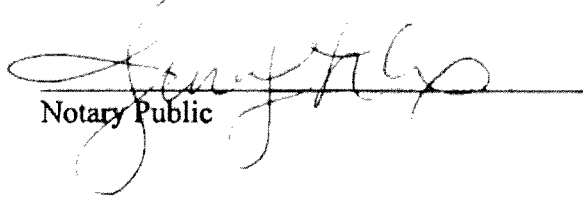

Notary Public

My Commission Expires June 6, 2012

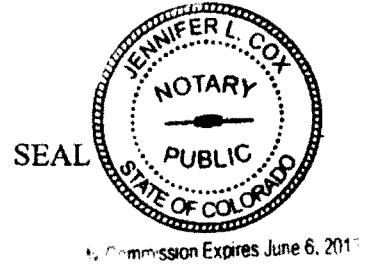
STATE OF COLORADO)
) SS:
COUNTY OF DENVER)

Subscribed and sworn to before me this 2nd day of December, 2009, by Adam T. DeVoe, Esq.

My commission expires: 6/6/2012



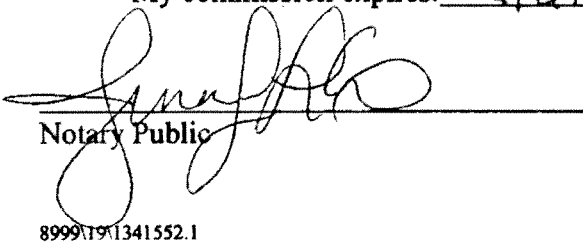
Notary Public



STATE OF COLORADO)
) SS:
COUNTY OF DENVER)

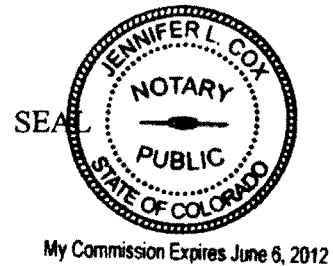
Subscribed and sworn to before me this 2nd day of December, 2009, by Bret A. Fox, Esq.

My commission expires: 6/6/2012



Notary Public

89991791341552.1



Certificate of Service

I certify that one original and nine copies of the foregoing **Motion for Admission Pro Hac Vice** were filed with the hearing clerk on the 3rd day of December, 2009, and by same date submitted by email and certified mail, return receipt requested, to the following:

Kyle Silber, Petitioner
4465 Jupiter NW
Albuquerque, NM 87107

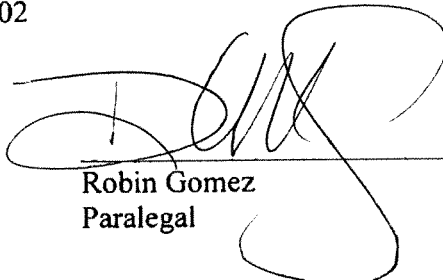
and by same date submitted by email to the following:

Adelia W. Kearny
Deputy City Attorney
Room 4015
One Civic Plaza NW
Albuquerque, NM 87102

and by same date submitted by hand delivery to Janice Wright for the following:

Jens Deichman, Hearing Officer and Board Chair
Albuquerque-Bernalillo County Air Quality Control Board
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102

Bill Grantham, Esq., AQCB Legal Counsel
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102



Robin Gomez
Paralegal

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

GREATER GARDNER NEIGHBORHOOD ASSOCIATION, NORTH VALLEY COALITION OF NEIGHBORHOOD ASSOCIATIONS, AND KYLE SILFER, DAVID WOOD, and MARCIA FINICAL AS INDIVIDUALS,)	
)	
Appellants,)	Authority to Construct
)	
vs.)	Permit Modification
)	Permit No. 0902-M3
)	
CITY OF ALBUQUERQUE AIR QUALITY DIVISION,)	
)	
Appellee.)	

ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE

THIS MATTER CAME before the Board upon the Motion for Admission Pro Hac Vice, filed pursuant to Rule 16-505(E) NMRA for temporary admission to enable participation of non-admitted counsel on behalf of the Permittee American Cement Corporation (the "Permittee") in the above-entitled proceeding before the Board. The Board, having reviewed the Motion and otherwise being fully advised on the premises, hereby FINDS that the Motion is well taken and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Mark J. Mathews, Adam T. DeVoe and Bret A. Fox are hereby granted admission pro hac vice for the purpose of temporarily appearing before the Board on behalf of Permittee, and may represent the interests of Permittee in all proceedings and in any such matters as are necessarily related to the above-entitled proceeding.

Date

Jens Deichmann
Board Chairman and Interim Hearing Officer