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BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO AMEND 20.11.60 NMAC, *PERMITTING IN NONATTAINMENT AREAS*; 20.11.61 NMAC, *PREVENTION OF SIGNIFICANT DETERIORATION*; AND 20.11.42 NMAC, *OPERATING PERMITS*. THE AMENDMENTS TO 20.11.42 NMAC ARE PROPOSED AS A REVISION TO THE TITLE V OPERATING PERMIT PROGRAM, AND THE AMENDMENTS TO 20.11.60 NMAC AND 20.11.61 NMAC ARE PROPOSED AS A REVISION TO THE NEW MEXICO STATE IMPLEMENTATION PLAN FOR AIR QUALITY (SIP).

AQCB Petition No. 2013-1

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

CITY OF ALBUQUERQUE'S NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

Pursuant to 20.11.82.20 NMAC, *Rulemaking Procedures – Air Quality Control Board*, the City of Albuquerque Environmental Health Department, Air Quality Division ("the Division") hereby submits its Notice of Intent to present technical testimony (NOI) in this proceeding.

1. **<u>The person for whom the witness will testify.</u>**

City of Albuquerque Environmental Health Department, Air Quality Division

2. **<u>The name and qualifications of each technical witness.</u>**

Neal T. Butt. Environmental Health Scientist, Control Strategies Section, Air Quality Division. M.S. Biology (Wildlife Biology), University of North Dakota; B.S. Biology (Zoology), University of New Mexico; B.A. Environmental Planning & Design, UNM; A.A.S. Criminal Justice, Central New Mexico Community College; A.A.S. Environmental Protection

Technology, CNM; WERC Waste Management Certificate, UNM Chemical & Nuclear Engineering Department. Employed by the City of Albuquerque's Environmental Health Department for 15 + years; the last 12 of which have been in the Air Quality Division.

Chief responsibility is to promulgate air quality legislation through the Albuquerque – Bernalillo County Air Quality Control Board for implementation within the County of Bernalillo, including research, drafting and editing of technical documents, hearing preparation, testifying, and submittal to EPA for approval. Develop and implement long range plans, programs and special projects in the field of municipal environmental health. Research and refine strategies for achieving improved environmental health standards. Collaborate with other disciplines, follow schedules and budget commitments, work independently, and problem solve.

Isreal Tavarez. Environmental Health Manager, Permitting Section, Air Quality Division. M.S. Chemical Engineering, New Mexico State University; B.S. Chemical Engineering, NMSU. Registered Professional Engineer (New Mexico). Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for 17 + years. Previously employed by the State of New Mexico, Air Quality Bureau (1994-1996).

Main responsibility is to manage the air quality stationary source permitting program which includes reviewing and approving all air quality stationary source permits to ensure the permits are issued in accordance with local, state, and federal regulations.

Dario Rocha. Supervisor, Permitting and Technical Analysis Section, Air Quality Division. B.S. Mechanical Engineering, New Mexico State University. Employed by the City

of Albuquerque's Environmental Health Department, Air Quality Division for 13 + years. Previously employed by the State of New Mexico, Air Quality Bureau (1997-2000).

Chief responsibility is to supervise and direct staff in the Permitting & Technical Analysis Section for the Air Quality Division. Assign air quality permit applications for NSR and Title V air permitting programs. Make applicability determinations for air quality permitting. Review and approve portable stationary source relocations within Bernalillo County. Prepare air quality permits for minor and major stationary sources. Responsible for ensuring all air quality permits for minor and major stationary sources are issued or denied within their respective regulatory or statutory timeframes. Responsible for ensuring that stationary source air quality emissions inventories are prepared in accordance with 40 CFR 51 Subpart A.

3. <u>Summary and Estimated Duration of Testimony</u>

Mr. Butt's written testimony is attached as AQD Exhibit # 3. Mr. Butt will testify that this revision to the SIP should be approved. As grounds, Petitioner states the following:

1. The provisions governing state implementation of the Nonattainment New Source Review (NNSR) permit program are contained in the CFR, Title 40, *Protection of Environment*, Part 51, *Requirements for Submittal of Implementation Plans*, Subpart I, *Review of New Sources and Modifications*, Section 165, *Permit Requirements*. Albuquerque - Bernalillo County's implementation of this program is governed by 20.11.60 NMAC, *Permitting in Nonattainment Areas*.

2. The provisions governing state implementation of the Prevention of Signification Deterioration (PSD) permit program are contained in the CFR Title 40, *Protection of*

Environment, Part 51, *Requirements for Submittal of Implementation Plans*, Subpart I, *Review of New Sources and Modifications*, Section 166, *Prevention of Significant Deterioration of Air Quality*. The provisions governing direct federal implementation of PSD are found at Title 40, *Protection of Environment*, Part 52, *Approval and Promulgation of Implementation Plans*, Subpart A, *General Provisions*, Section 21, *Prevention of Significant Deterioration of Air Quality*. Albuquerque - Bernalillo County's implementation of the PSD program is governed by 20.11.61 NMAC, *Prevention of Significant Deterioration*.

3. The provisions governing major source operating permits pursuant to Title V of the Clean Air Act (CAA) are contained in 40 CFR Part 70, *State Operating Permit Programs*, and, within Albuquerque - Bernalillo County, at 20.11.42 NMAC, *Operating Permits*.

4. On **May 16, 2008**, the U.S. Environmental Protection Agency (EPA) promulgated "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)", effective 7/15/08 [Federal Register Vol. 73, No. 96, 28321-50]. These amendments affect 40 CFR 51.165, and have already been incorporated into the currently effective version of 20.11.60 NMAC. These amendments also affect 40 CFR 51.166 and 52.21, and all but one amendment has been incorporated into the currently effective version of 20.11.61 NMAC. This remaining amendment adds an additional exemption for stationary sources, and is cited at 20.11.61.18.D.(3) NMAC in the proposed draft. The department has the discretion to exempt a proposed major stationary source or major modification from *Air Quality Analysis And Monitoring Requirements*, with respect to monitoring for a particular pollutant if. . .the pollutant is ***not*** listed in Table 3 of 20.11.61.28 NMAC, *Significant Monitoring Concentrations:*

5. On **October 20, 2010**, the EPA promulgated "PSD for $PM_{2.5}$ - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)", effective 12/20/10 [Federal Register Vol. 75, No. 202, 64864-907]. These amendments affect 40 CFR 51.165, and have been incorporated into the proposed draft of 20.11.60 NMAC. These amendments also affect 40 CFR 51.166 and 52.21 and have been incorporated into the proposed draft of 20.11.61 NMAC. One exception is for an amendment that would have been inserted at 20.11.61.15.B.(2) NMAC, re: "SILs" [see 40 CFR 51.166.(k)(2) & 52.21(k)(2)], but which EPA has conceded to be vacated and remanded to EPA, in response to *Sierra Club v. EPA*. Another exception is the proposed SMC for $PM_{2.5}$ at 20.11.61.28 NMAC which was also vacated by the US Court of Appeals [Case No. 10-1413, decided January 22, 2013] (Document at http://www.cadc.uscourts.gov/internet/opinions.nsf/3964717CAD7BDA0085257AFB0055425F/$file/10-1413-1416378.pdf

Docket at

http://www.regulations.gov/#!searchResults;rpp=25;po=0;s=EPA%25E2%2580%2593HQ%25E2%2580%2593OAR%25E2%2580%25932006%25E2%2580%25930605). Incorporation of changes to the federal PSD rule into the local PSD rule are required not only to keep the local PSD program up to date, but is also required for the Infrastructure SIP for the 2010 Nitrogen Dioxide (NO_2) National Ambient Air Quality Standards (NAAQS) because EPA requires that any i-SIP submittal should address any new or revised PSD program requirements. The NO_2 i-SIP is anticipated to be submitted to EPA in June, 2013.

"When a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause "significant" deterioration in air quality.

This final rule establishes several components for making PSD permitting determinations for fine particle pollution. These components address air quality modeling and monitoring provisions for fine particle pollution in areas protected by the PSD program and include: increments, SILs, and a SMC.

PSD Increments (Increments)

A system of "increments" is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. An increment is the maximum allowable increase in ambient concentrations of a pollutant in an area. Increases above that level will be considered to significantly deteriorate air quality and cannot be allowed.

EPA set the PSD increments for $PM_{2.5}$ using the "percent of NAAQS" approach that Congress used to establish the original increments for particulate matter (PM) and sulfur dioxide (SO_2) in 1977. EPA also used this approach to establish NO_2 increment regulations on October 12, 2005. This approach treats $PM_{2.5}$ as a new pollutant, and does not impact the existing annual and 24-hour increments for PM, measured as "PM_{10}."

Significant Impact Levels (SILs)

SILs are a screening tool used to determine whether a proposed source's emissions will have a "significant" impact on air quality in the area. If an individual facility projects an increase in air quality impacts less than the corresponding SIL, its impact is said to be *de minimis* and the permit applicant would not be required to perform a more comprehensive, cumulative modeling analysis. A cumulative analysis involves measuring the impact of the new facility in addition to impacts from other existing sources in the area. If a cumulative modeling analysis indicates a violation of the NAAQS, the SILs may also be used to determine whether the proposed source's impact on a modeled violation is significant enough that it is considered to "cause or contribute to" the modeled violation of the NAAQS or increment.

EPA proposed SILs for $PM_{2.5}$ by scaling the existing SILs for PM_{10} by the ratio of the $PM_{2.5}$ NAAQS to the PM_{10} NAAQS for each applicable averaging period (annual and 24-hour)", but the U.S. Court of Appeals vacated and remanded to the EPA for further consideration the portions of EPA's rule addressing 'SILs', except for the parts of EPA's rule codifying $PM_{2.5}$ SILs in 40 CFR § 56.165(b)(2).

Significant Monitoring Concentration (SMC)

The SMC, is a screening tool that may be used to determine if a source must submit to the permitting authority one year of pre-construction air quality monitoring data prior to constructing or modifying a facility.

If a proposed source's predicted impact is less than the SMC, the source's impact may be considered *de minimis* for monitoring purposes, and the reviewing authority (i.e. Department)

could exempt the applicant from the preconstruction monitoring requirement. The reviewing authority also may exempt the applicant from the monitoring requirement if the existing air quality in the area is shown to be less than the SMC.

EPA based its final SMC for $PM_{2.5}$ on the "Lowest Detection Concentration" for ambient $PM_{2.5}$ concentrations - 2 μg/m3 (24-hour average). To account for uncertainty with precision, sample handling, and monitor variability, etc. to establish an SMC of 4 μg/m3 (24-hour average) for $PM_{2.5}$." (EPA Fact Sheet, http://www.epa.gov/nsr/documents/20100929factsheet.pdf)
The U.S. Court of Appeals has granted the Sierra Club's petition as to the parts of EPA' rule establishing a $PM_{2.5}$ SMC and vacated them because these parts of the rule exceed EPA's statutory authority [See 42 U.S.C. § 7607(d)(9)(c).

6. On **March 30, 2011**, the EPA promulgated "PSD and NNSR: Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions", effective 3/30/11 [Federal Register Vol. 76, No. 61, 17548-56]. These amendments affect 40 CFR 51.165, 51.166 and 52.21, and have been incorporated into the proposed drafts of 20.11.60 NMAC, and 20.11.61 NMAC.

This "interim rule to stays a December 2008 rule known as "the Fugitive Emissions Rule", which established new provisions for how fugitive emissions, those that do not pass through a stack, chimney, vent, or other similar opening, should be treated for NSR permitting. This stay replaces the stay EPA issued on March 31, 2010, that was to be effective through October 3, 2011.

The March 2010 stay of the Fugitive Emissions Rule inadvertently covered portions of the NSR permitting requirements in the CFR that should not have been stayed." This March 30, 2011 action stays the 2008 Fugitive Emissions Rule as originally intended and reverts the regulatory text back to the language that existed prior to the Fugitive Emissions Rule amendments that EPA is currently reconsidering.

The final rule will remain in effect until EPA completes its reconsideration of how fugitive emissions should be treated in the NSR permitting program." (EPA Fact Sheet, http://www.epa.gov/nsr/documents/20110308fefactsheet.pdf)

7. On **July 20, 2011**, EPA promulgated "Deferral for CO_2 Emissions From Bioenergy and Other Biogenic Sources Under the PSD and Title V Programs", effective 7/20/11. "State, local, and tribal permitting authorities may adopt the deferral at their option but the deferral is effective upon publication for the PSD and Title V permit programs that are implemented by EPA." [Federal Register Vol. 76, No. 139, 43490-43508]. These amendments affect 40 CFR 51.166 and 52.21, and have been incorporated into the proposed draft of 20.11.61 NMAC. They also affect 40 CFR 70, *State Operating Permit Programs*, at 70.2, *Definitions*, and have been incorporated into the proposed draft of 20.11.42 NMAC, *Operating Permits*, at 20.11.42.7.II.(2) NMAC.

"This final action defers, for a period of three years, the application of the PSD and Title V permitting requirements to CO_2 emissions from bioenergy and other biogenic stationary sources (biogenic CO_2).

During this three year deferral period, EPA will conduct a detailed examination of the science associated with biogenic CO_2 emissions from stationary sources.

Biogenic CO_2 emissions

Biogenic CO_2 emissions are emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples include, CO_2 generated from:

- the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- the combustion of biogas;
- fermentation during ethanol production;
- combustion of the biological fraction of municipal solid waste or biosolids; or tire-derived fuel; and
- combustion of biological material,." (EPA Fact Sheet, http://www.epa.gov/nsr/documents/Biogenic_Fact_Sheet_June_2011.pdf)

Adoption of the biomass deferral provisions will allow the Division to avoid the need to determine net carbon cycle impacts for bio-energy projects until EPA has adopted a consistent

and practical framework for such calculations, and avoid spending valuable time and resources evaluating sources that may have *de minimis*, neutral or positive impact on net CO_2 levels in the atmosphere.

8. On **July 12, 2012**, EPA promulgated "PSD and Title V Greenhouse Gas (GHG) Tailoring Rule Step 3 and GHG Plantwide Applicability Limits", effective 8/13/12 [Federal Register Vol. 77, No. 134, 41051-75]. These amendments affect 40 CFR 52.21, and have been incorporated into the proposed draft of 20.11.61 NMAC.

This "final rule that does not revise the GHG permitting thresholds that were established in Step 1 and Step 2 of the GHG Tailoring Rule. These emissions thresholds determine when CAA permits under the NSR PSD and Title V Operating Permit programs are required for new and existing industrial facilities.

After evaluating comments on the proposed rule, and assessing the progress of GHG permitting to date, EPA has determined that state permitting authorities have not had sufficient time to develop necessary permitting infrastructure and to increase their GHG permitting expertise and capacity. By the same token, EPA and the state permitting authorities have not had the opportunity to develop and implement streamlining approaches. Therefore, at this time, it is not appropriate to apply PSD and Title V permitting requirements to additional, smaller sources of GHG emissions.

EPA is also finalizing an approach to assist state and local permitting authorities in streamlining the administration of PSD permits for GHGs. This action will improve the usefulness of PALs for GHG emissions by allowing GHG PALs to be established on a CO_2e basis in addition to the already available mass-basis.

Plantwide Applicability Limit (PAL)

A PAL is an emissions limit applied source-wide rather than to specific emissions points. With a PAL, a source can make changes to the facility without triggering PSD permitting requirements as long as emissions do not increase above the limit established by the PAL. This would allow companies to respond rapidly to changing market conditions while protecting the environment. EPA is also revising its regulations to allow a source that emits or has the potential to emit GHGs at levels above 100,000 tpy CO_2e but that have emissions of other regulated pollutants at minor source levels to apply for a GHG PAL while still maintaining its minor source status." (EPA Fact Sheet, http://www.epa.gov/nsr/documents/20120702fs.pdf)

Adoption of the PAL amendments for GHGs would allow the Division to provide greater operational flexibility to permitted sources by issuing GHG PALs to GHG-only sources without requiring the sources to become a major source. GHG-only sources could obtain a GHG PAL and remain a minor source as long as their GHG emissions remain below the PAL.

9. On **October 25, 2012**, EPA promulgated "Implementation of the NSR Program for $PM_{2.5}$: Amendment to the Definition of "Regulated NSR Pollutant" Concerning Condensable Particulate Matter", **effective 12/24/12** [Federal Register Vol. 77, No. 207, 65107-19]. These

amendments affect 51.166 and 52.21, and have been incorporated into the proposed draft of 20.11.61 NMAC

These amendments to EPA's rules for the CAA NSR permitting program regard the definition of "regulated NSR pollutant," clarifying when "condensable particulate matter" should be measured.

"Condensable particulate matter is not directly emitted as a solid or liquid at the stack. Instead gaseous emissions such as sulfuric acid mist, ammonium sulfate, and certain metal vapors condense upon cooling and dilution, in the ambient air, to form solid or liquid particles following discharge from the stack.

When an industrial facility applies for a NSR permit to construct or modify an emissions source, it must show that it does not interfere with an area's ability to meet or maintain the NAAQS. Since EPA has established NAAQS for $PM_{2.5}$ and PM_{10}, and *condensable particulate matter* emissions contribute to monitored levels of $PM_{2.5}$ and PM_{10}, then the impact of those emissions on monitored air quality levels of $PM_{2.5}$ and PM_{10} must be considered as part of a source's permit.

This final rule continues to require that *condensable particulate matter* be included as part of the emissions measurements for regulation of $PM_{2.5}PM_{10}$.

This final rule removes the inadvertent requirement in the 2008 $PM_{2.5}$ NSR Implementation Rule, that measurements of *condensable particulate matter* emissions be included as part of the measurement and regulation of '*particulate matter emissions*.'"

The terminology "'*particulate matter emissions*' includes particles that are significantly larger than either $PM_{2.5}$ or PM_{10}, and is used primarily to measure compliance with the EPA's existing New Source Performance Standards for particulate matter. The amount of '*particulate matter emissions*' that a source has the potential to emit is not intended to be used for determining whether an area can attain or maintain either of the existing sets of standards for particle pollution." (EPA Fact Sheet, http://www.epa.gov/nsr/documents/20121012fs.pdf)

4. Text of Recommended Revisions to the New Mexico State Implementation Plan

The Division recommends adoption of the proposed amendments to 20.11.60 NMAC, *Permitting In Nonattainment Areas*; 20.11.61 NMAC, *Prevention Of Significant Deterioration*; and 20.11.42 NMAC, *Operating Permits* as proposed in the Public Review Drafts, shown as AQD Exhibits # 1a, #1b and #1c respectively, which are attached to the Petition to Amend, shown as AQD Exhibit #1, filed January 29, 2013. The Amendments to 20.11.42 NMAC will be submitted to EPA as a revision to the Title V Operating Permit Program, and the Amendments to 20.11.60 NMAC and 20.11.61 NMAC will be submitted to EPA as a revision to the SIP. Mr. Butt's testimony is anticipated to take approximately 30 minutes.

5. List and Description of Exhibits

The Division has attached the following exhibits to this NOI:

Exhibit Number	Title of Exhibit
AQD Exhibit 1	Petition to Amend 20.11.60 NMAC, *Permitting In Nonattainment Areas*; 20.11.61 NMAC, *Prevention Of Significant Deterioration*; and 20.11.42 NMAC, *Operating Permits*. The Amendments to 20.11.42 NMAC Are Proposed As a Revision to the Title V Operating Permit Program, and the Amendments to 20.11.60 NMAC and 20.11.61 NMAC Are Proposed As a Revision to the New Mexico State Implementation Plan for Air Quality (SIP)
AQD Exhibit 1a	Public Review Draft 20.11.60 NMAC, *Permitting In Nonattainment Areas* {attached to AQD Exhibit 1}
AQD Exhibit 1b	Public Review Draft 20.11.61 NMAC, *Prevention Of Significant Deterioration* {attached to AQD Exhibit 1}
AQD Exhibit 1c	Public Review Draft 20.11.42 NMAC, *Operating Permits* {attached to AQD Exhibit 1}
AQD Exhibits 2a/b/c	Notice of Proposed Rulemaking: Albuquerque Journal, 2/17/13 {2a}; NM Register, 2/28/13 {2b}; and Air Quality Announce List Serve, 2/15/13 {2c}
AQD Exhibits 3	Direct Testimony
AQD Exhibit 4	Staff Proposed Floor Amendments

6. **Reservation of Rights**

This NOI is based on the Division's Petition. The Division reserves the right to call any person to testify and to present any exhibit in response to another NOI or public comment filed in this matter or to any testimony or exhibit offered at the public hearing. The Division also

reserves the right to call any person as a rebuttal witness and to present any exhibit in support thereof.

Respectfully submitted,

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department
One Civic Plaza, NW, Suite 3023
Albuquerque, New Mexico 87102
(505) 768-2660

CERTIFICATION

I hereby certify that on March 20 2013, an original and 15 copies of this NOI, with attached exhibits were delivered to the following person for filing.

Elizabeth Jones
Air Quality Control Board Liaison
Air Quality Division
Environmental Health Department
One Civic Plaza, NW, Suite 3023
Albuquerque, New Mexico 87103

And that on March 20 2013, a copy of this NOI with attached exhibits was sent to the Attorney for the Board, Bill Grantham, at the following e-mail address:

wggrantham@gmail.com

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department