ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO AMEND 20.11.2 NMAC, *FEES*, AND INCORPORATE AN AMENDED 20.11.2 NMAC INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN (SIP) FOR AIR QUALITY

AQCB Petition No. 2010-3

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

Petition to Amend 20.11.2 NMAC, *Fees*, and Incorporate an Amended 20.11.2 NMAC into the New Mexico State Implementation Plan (SIP) for Air Quality

The Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division (AQD), asks the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) for a hearing at which the Air Board will hear the Air Quality Divisions' request to adopt amendments to 20.11.2 NMAC, *Fees*, and submit said amendments to U.S. Environmental Protection Agency (EPA) as a revision to the SIP. This Petition includes a request for a hearing on these matters and permission to provide a court reporter and hearing officer for the hearing. As grounds, Petitioner states the following:

1. **Authorization:** The New Mexico Air Quality Control Act (Air Act), NMSA 1978, Sections 74-2-4 and 74-2-5.B(1) [1967 as amended through 2007] authorizes and requires the Air Board to adopt, amend, or replace air quality regulations and to adopt air quality plans (SIPs) under NMSA 1978, Section 74-2-5.B(2).

2. Statement of Reasons: Proposed amendments to 20.11.2 NMAC, *Fees* constitute increases to some fees, regular annual adjustments consistent with the Consumer Price Index, and some language changes for the following reasons:

- Federal and New Mexico laws require or authorize, depending on the type of permit, collection of fees to cover specific costs. Current fees are insufficient and resulted in a projected budget deficit in FY/10 and will result in yet another budget deficit in FY/11 if unchanged.
- Fee fund balance has covered program cost deficits in past years, but the fund balance is now depleted.
- The scope and objectives sections of the current fee regulation require updating and revision to be consistent with the New Mexico Air Quality Control Act.
- Some current fees are based on theoretical maximum emissions rather than the maximum requested by the applicant. The proposed fees will be charged only for what industry requests on a permit application, which could substantially reduce costs.
- Programs have increased in both volume and complexity.
- Personnel and operating costs have increased steadily since the current fee structures were put in place between 1997 and 2004.
- To date, fees have not been adjusted for CPI increases, although such adjustments are authorized. CPI adjustments will be applied going forward in the proposed regulation.
- Refund and appeal processes need clarification.

3. Estimated time to conduct the hearing: It is anticipated that the hearing will take approximately 1 hour or less.

4. The proposed Public Review Draft of 20.11.2 NMAC, *Fees* is attached as Exhibit #1a.

Respectfully submitted,

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Director, Environmental Health Department
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CERTIFICATION

I hereby certify that a copy of this Petition to Amend 20.11.2 NMAC, *Fees*, and Incorporate an Amended 20.11.2 NMAC into the New Mexico State Implementation Plan (SIP) for Air Quality was delivered to the following person on September 28, 2010.

Janice Wright
Air Quality Control Board Liaison
Environmental Health Department
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103

Mary Lou Leonard
Director, Environmental Health Department