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

**IN THE MATTER OF THE FIRST AMENDED PETITION TO
AMEND 20.11.3 NMAC, *TRANSPORTATION
CONFORMITY*, AND INCORPORATE AN AMENDED
20.11.3 NMAC INTO THE NEW MEXICO STATE
IMPLEMENTATION PLAN (SIP)
FOR AIR QUALITY.**

AQCB Petition No. 2008-1-A

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

**First Amended Petition to Amend 20.11.3 NMAC, *Transportation Conformity*, and
Incorporate an Amended 20.11.3 NMAC into the New Mexico State Implementation
Plan (SIP) for Air Quality and Request for Hearing**

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 (Board) to amend 20.11.3 NMAC, *Transportation Conformity*, and incorporate an amended 20.11.3 NMAC into the New Mexico State Implementation Plan (SIP) for Air Quality. This Petition includes a request for a hearing on these matters and permission to provide a court reporter and hearing officer for the hearing. The Board has the authority to adopt, amend, or replace air quality Regulations under NMSA 1978, Sections 74-2-5.B(1) and to adopt air quality plans under NMSA 1978, Section 74-2-5.B(2).

Amendments to 20.11.3 NMAC, *Transportation Conformity* are proposed in part because on January 24, 2008 the U.S. Environmental Protection Agency (EPA) finalized changes to the transportation conformity rule to make the rule consistent with the Clean

Air Act as amended by the most recent transportation funding legislation known as the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* or "SAFETEA-LU". In response, and as required by U.S. EPA, the City of Albuquerque Environmental Health Department is proposing amendments to update the conformity regulation as follows:

- Changes the required frequency of conformity determinations for transportation plans and transportation improvement programs from at least every three years to at least every four years.
- Gives areas two years (increased from 18 months) to make a conformity determination in response to a new "motor vehicle emissions budget" in a State Implementation Plan.
- Provides a one-year grace period before the consequences of a conformity lapse apply when an area misses certain conformity deadlines. During the lapse grace period, an area can make conformity determinations for certain projects.
- Gives areas the flexibility to shorten the timeframe covered by a conformity determination, if the local transportation planning agency elects to do so.
- Streamlines the requirements for state conformity procedures (conformity SIPs).
- Addresses the statute's provision that allows areas to substitute or add transportation control measures without a SIP revision.

In addition, this proposed rule includes other changes not related to SAFETEA-LU, but for practical reasons, are included as follows:

- Allows the U.S. Department of Transportation, in consultation with EPA, to make categorical hot-spot findings for projects in areas that are in non-attainment or maintenance for carbon monoxide. Such findings could streamline hot-spot analyses for certain projects.

- Removes the provision that allowed 8-hour ozone non-attainment areas to use other tests for conformity instead of their 1-hour ozone SIP budgets where the other tests were more appropriate. This provision no longer applies because it was vacated by the U.S. Court of Appeals for the District of Columbia Circuit on Oct. 20, 2006.
- Updates terms and makes other minor changes for clarification or to ensure the rule is consistent with other EPA and DOT regulations.

Background

Transportation conformity is a Clean Air Act requirement that ensures that federally supported highway and transit projects are consistent with (conform to) the purpose of a State Implementation Plan. Conformity ensures that public health is protected by early consideration of the air-quality impacts of transportation decisions in places where air quality does not currently meet national standards or has not met them in the past.

Enacted in August 2005, SAFETEA-LU primarily authorized funding of the nation's transportation infrastructure. This legislation also made several changes to the conformity portion of the Clean Air Act, which are addressed by the final rule.

Health and Environmental Benefits

Though the proposed final rule makes the conformity program more flexible, health and air quality continue to be protected. As always, transportation activities -- transportation plans, transportation improvement programs, and individual transportation projects -- must be found to conform before they may be adopted. In addition, conformity must still be determined on a regular basis.

20.11.3 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air

Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

The proposed Public Review Draft of 20.11.3 NMAC, *Transportation Conformity* is attached as Exhibit #1.

It is anticipated that the hearing will take approximately 2 hours or less.

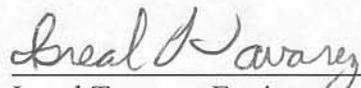
This First Amended Petition is submitted as a result of comments from the U. S. Environmental Protection Agency (EPA) that were submitted to the Division subsequent to the filing of the first petition. These comments necessitated the following additional changes to the Public Review Draft:

- EPA Region VI requested that the language that addresses substitution of Transportation Control Measures in the currently effective rule [20.11.3.202.C.(5)(b) NMAC], mirror the language in the Clean Air Act that was amended by SAFETEA-LU. The current language in 20.11.3 NMAC, only mentions substitutions. In addition to TCM substitution procedures, Clean Air Act Section 176 (c)(8) also includes adding TCMs, which is available to Bernalillo County. That language has been added to the Public Review Draft as reflected in the First Amended Public Review Draft.
- EPA's Office of Transportation and Air Quality (OTAQ), has requested that the language in the currently effective rule that refers to Land Use Measures be removed. This includes the definition of LUMs [20.11.3.7.CC NMAC] as well as the definition for Air Quality Credit [20.11.3.7.D NMAC] which is only used in reference to LUMS. The language in the currently effective rule that addresses adoption of LUMS into the applicable implementation plan [20.11.3.202.C.(6)] and general requirements for LUMS

and TCMs [20.11.3.202.C.(7)] was removed from the Public Review Draft as reflected in the First Amended Public Review Draft.

The proposed First Amended Public Review Draft of 20.11.3 NMAC, *Transportation Conformity* is attached as Exhibit #2, and includes the changes requested by EPA.

Respectfully submitted,

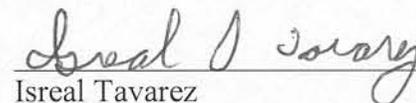


Isreal Tavarez, Environmental Health
Engineering Manager, Air Quality Division
City of Albuquerque
Environmental Health Department
11850 Sunset Gardens
Albuquerque, New Mexico 87121
(505) 768-1965

CERTIFICATION

I hereby certify that a copy of this First Amended Petition to Amend 20.11.3 NMAC, *Transportation Conformity*, and Incorporate an Amended 20.11.3 NMAC into the New Mexico State Implementation Plan (SIP) for Air Quality was delivered to the following person on September 4, 2008.

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



Isreal Tavarez