

June 25, 2013

Ms. Elizabeth Jones  
Albuquerque/Bernalillo County Air Quality Control Board  
Environmental Health Dept.  
City of Albuquerque  
One Civic Plaza, 3rd Floor  
Albuquerque, NM 87102

Re: Submittal of NOI Petition to Amend 20.11.41 NMAC, Construction Permits

Dear Ms. Jones:

Please accept the attached Notice of Intent (NOI) to present technical testimony at the July 10 Board hearing regarding amendments to 20.11.41 NMAC, Construction Permits.

I am filing this NOI electronically as well as through a member of the Greater Gardner Neighborhood Association, who will deliver it by hand with 15 copies.

If you have any questions, please do not hesitate to contact me at 505.918.0978.

Respectfully,



Kyle Silfer  
President  
Greater Gardner NA

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**Notice of Intent (NOI) to Provide Technical Testimony on behalf of  
the Greater Gardner Neighborhood Association  
Regarding proposed amendments to 20.11.41 NMAC**

In accordance with the requirements of 20.11.82.20 NMAC, the following NOTICE OF INTENT (NOI) to submit TECHNICAL TESTIMONY is provided herein.

- (1) Identity of the witness: Kyle Silfer, on behalf of the Greater Gardner Neighborhood Association.
- (2) Address of the witness: 4465 Jupiter St NW, Albuquerque, NM 87107
- (3) Qualifications of Kyle Silfer, including a description of educational and work background:

Work background:

Self-employed Information Technology consultant in networking and related technologies, from 1991 to present.

Systems Manager at NuCity Publications d/b/a Weekly Alibi, from 1994 to present.

Officer and board member of Greater Gardner Neighborhood Association (GGNA), from 2004 to present. As GGNA President, participated in extensive interactions with the Air Quality Division of the Albuquerque Environmental Health Department regarding Air Quality Permit Modification 0902-M2 and 0902-M3, both on behalf of the Greater Gardner Neighborhood Association and as an individual. Petitioned to appeal Permit 0902-M3 before the Air Quality Control Board (AQCB Petition No. 2009-7) and negotiated a settlement with permit applicant Grupo Cementos de Chihuahua (GCC) that was used as the basis for permit modification 0902-M3-RV1 which included the installation of an advanced Bag Leak Detection system to prevent neighborhood emissions. Continues to serve as a member of the GCC Community Advisory Panel.

Educational background:

Bachelor of Arts, Humanities, State University of Stony Brook, 1989

- (3) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

1. Citation: 20.11.41.13.B NMAC

Comment: GGNA supports the 10/30/12 revisions that increase public notice requirements for both the applicant and the agency, but does not consider them to be sufficiently comprehensive. Since emissions can affect the quality of life of residents well beyond a 1/2-mile radius of the source, it seems reasonable to propose that a 1-mile radius be considered for notification. Additionally, since affordable services like the U.S. Postal Service's Every Door Direct Mail (EDDM) exist to facilitate sending mailpieces to every household in a targeted neighborhood, there is no reason to restrict notification requirements to areas where there is a recognized neighborhood association (NA) or coalition. Many areas without a recognized NA or coalition exist and are therefore the most at risk of being uninformed about new pollution sources. Notifying the recognized NA or coalition, if any, should be performed in addition to notifying the residents directly. Otherwise, the burden of notification unfairly falls on the NA or coalition for actions initiated by the applicant.

2. Citation: 20.11.41.13.B NMAC

Comment: Any alternative notification proposal for sites with large property or campus-like boundaries should be demonstrably as effective or more effective than direct notification. If the intent is to encourage the introduction of creative notification methods, the reach of the notification should not be diminished.

3. Citation: 20.11.41.13.B NMAC

Comment: GGNA applauds the revisions that go above and beyond the antiquated method of solely placing ads in a print newspaper to notify residents of permit applications. In this rapidly changing age of increasing electronic communication and declining newspaper readership, it is important to embrace new methods of reaching stakeholders. The not-so-new method of direct mail, however, should not be omitted, since it can reach residents who lack access to computers and smart phones. Local grocery stores have seen the value of this method and continue to use it every single week. If the transparency of the permitting process is improved by reaching more people and more Public Information Hearings result, the public stewardship of the Air Quality Division becomes that much more successful.

4. Citation: 20.11.41.13.B NMAC

The federal Clean Air Act, which is the basis for New Mexico's Clean Air Act, was intended, according to the EPA, to allow extensive public participation. To have an informed and participating public, notice provisions must be written broadly so that the entire spectrum of potentially affected persons—including non-polluting businesses and entities such as restaurants with outdoor cafés, grocery stores and schools—know about air permit applications which will change the quality of the air. Expecting that persons who do not engage in permitted pollution activities know about these regulations or regularly monitor notices in the newspaper is not reasonable, as this type of permitting is not a part of their routine practices, as it is with commercial and industrial concerns that have air pollution permits. Therefore, it is not only rational, but necessary, that extensive forms of notice be used to inform the public regarding air pollution permitting.

4. Citation: 20.11.41.14.B(6) NMAC

Comment: The concerns regarding the 1/2-mile boundary and notification of residents raised in 1. and 3., above, also apply to this portion of the proposed regulations.

5. Citation: 20.11.41.15.B NMAC

Comment: The concerns regarding the 1/2-mile boundary and notification of residents raised in 1. and 3., above, also apply to this portion of the proposed regulations.

ANTICIPATED DURATION of the above discussion: approximately 10 minutes.

(4) include the text of any recommended modifications to the proposed (AQD Exhibit 1b) regulatory change;

1. 20.11.41.13.B(1) NMAC *recommended text*:

B. (1) provide public notice by certified mail or electronic mail to the designated

representative(s) of the recognized neighborhood associations and recognized coalitions and by direct mail or electronic mail to residents, that are within one mile of the exterior boundaries of the property on which the source is or is proposed to be located. Contact information for neighborhood associations and coalitions shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department. The public notice shall include all information required by Subsection C of 20.11.41.13 NMAC. The applicant may submit a written request to the department proposing an alternative approach to providing public notice if the proposed source or modification is located at a site with large property boundaries or campus-like facilities. Such alternative approaches may not diminish the reach that would be provided by the direct mail and electronic mail method of public notice. The applicant shall obtain prior written approval from the department before using an alternative approach to providing public notice.

2. 20.11.41.14.C(6) NMAC *recommended text:*

C. (6) The department shall provide a copy of the public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions and by direct mail or electronic mail to residents, that are within one mile of the exterior boundaries of the property on which the source is or is proposed to be located. Contact information for neighborhood associations and coalitions should be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department.

3. 20.11.41.15.B(5) NMAC *recommended text:*

B. (5) No fewer than 10 days before the PIH, providing a copy of the public notice by certified mail or electronic mail to the applicant, the designated representative(s) of the recognized neighborhood associations and recognized neighborhood coalitions and by direct mail or electronic mail to residents that are within one mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information for neighborhood associations and coalitions shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department; the notice shall contain the information required by Paragraphs (1) and (3)-(5) of Subsection C of 20.11.41.13 NMAC, and the name of the contact person, the department and the address to which comments and inquiries may be directed; the notice of the PIH shall be in English and Spanish if the department determines that notice in Spanish is necessary; if a PIH notice is returned to the department undelivered, the department shall promptly confirm the address through the appropriate local government entity, and, if an address is available, shall provide a second copy of applicant's PIH notice to the president or vice president of the neighborhood association or neighborhood coalition;