ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

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IN THE MATTER OF THE SECOND AMENDED PETITION TO REPEAL CURRENTLY EFFECTIVE 20.11.41 NMAC, *AUTHORITY TO CONSTRUCT*; ADOPT A PROPOSED REPLACEMENT 20.11.41, *CONSTRUCTION PERMITS*; AND INCORPORATE THE REPLACEMENT 20.11.41 NMAC INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN FOR AIR QUALITY

AQCB Petition No. 2013-5

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

Second Amended Petition to Repeal Currently Effective 20.11.41, *Authority to Construct*; Adopt A Proposed Replacement 20.11.41 NMAC, *Construction Permits*; and Incorporate The Replacement 20.11.41 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) to repeal currently effective 20.11.41 NMAC, *Authority to Construct*; attached as AQD Exhibit #2a; adopt a proposed replacement 20.11.41 NMAC, *Construction Permits*, attached as AQD Exhibit #2b; and incorporate the replacement 20.11.41 NMAC, *Construction Permits*, 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 New Mexico Air Quality Control Act (Air Act), NMSA 1978, §§74-2-4 and 74-2-5.B(1) [1967 as amended through 2008] authorizes and requires the Air Board to adopt, amend and replace air quality regulations; and to adopt air quality plans (i.e. SIPs) under NMSA 1978, §74-2-5.B(2). The Air Act at NMSA §74-2-7, authorizes and requires the Air Board to adopt regulations regarding issuance of minor stationary source air quality permits.

As grounds, Petitioner states the following:

1. The currently effective 20.11.41 NMAC is an outdated regulation. Significant changes have been made to the Air Act since 1994 when 20.11.41 NMAC was last substantively amended. For example, the Air Act generally requires AQD to make a final decision regarding a construction permit application within 90 days of the application being deemed complete. Although AQD follows the 90-day timeline, the present wording of 20.11.41 NMAC provides 120 days, which is inconsistent with the Air Act. Therefore, 20.11.41 NMAC should be changed to be consistent with applicable requirements of the Air Act.

The Air Act and the currently effective 20.11.41 NMAC include minimal wording regarding hearings or meetings that may be held before the AQD makes a decision about a pending permit

application. Although public information hearings (PIHs) are not required by the Air Act, the AQD has adopted increasing outreach, notice and other activities regarding PIHs on a policy level. The expanded processes are not included in the currently effective 20.11.41 NMAC.

The Air Act at NMSA 1978, §74-2-4.C, requires air quality standards and regulations within Bernalillo County to be "not lower than those required by regulations adopted by" the state Environmental Improvement Board (EIB). Therefore, AQD compared the currently effective 20.11.41 NMAC to the EIB regulation 20.2.72 NMAC, *Construction Permits*, and is proposing amendments to bring the two rules into alignment.

As part of their review of 20.11.41 NMAC, AQD surveyed other jurisdictions to see how their permitting programs operated, which has led to proposed changes to many aspects of AQD's permitting process.

AQD has also reached out to stakeholders. For the 2008 effort, AQD hosted two stakeholder review meetings (one for the public and one for the regulated community), followed by five stakeholder work group meetings. This outreach resulted in many constructive changes being made to AQD's proposed draft before its release as the "20.11.41 NMAC Public Review Draft 9/23/08" (PRD). This PRD was attached to 'AQCB Petition No. 2008-2' and labeled "Petition Exhibit #2 - Proposed Replacement Part 41". Both documents were filed on September 23, 2008.

2. Chronology of Development of Current PRD. The AQD received extensive input from the Environmental Protection Agency's Region 6 Office in 2008. However, their lead reviewer subsequently retired, and due to a combination of other circumstances, the Department's priorities shifted, thereby postponing this rulemaking effort until now.

During the interim the AQD continued to evaluate the permitting program, and in 2012 made further improvements to the 9/23/08 Draft, resulting in a new draft entitled "20.11.41 NMAC 1st Amended Public Review Draft *For Stakeholder Review* 7/18/12". To solicit Stakeholder review and comment, the AQD mailed a notice of availability of the "20.11.41 NMAC 1st Amended Public Review Draft *For Stakeholder Review* 7/18/12" to each 2008 permit holder and each 2012 permit holder; e-mailed individuals who participated in the 2008 stakeholder/workgroup meetings; and all individuals subscribed to the "Air Quality Announce" listserve. In addition, a "Comparison Summary of Current and Proposed Albuquerque-Bernalillo County Air Quality Control Board Regulation for Minor Air Quality Permitting Actions, July 17, 2012" was provided to stakeholders, which outlined the proposed changes to be made to the currently effective 20.11.41 NMAC. Stakeholder comments were accepted from July 19th to August 17th, 2012. AQD received many comments and has responded to them in writing, making more changes to the draft as a result.

Proposed changes to address these stakeholder comments are documented in the AQD's written responses to individual stakeholders, which will be included in the City of Albuquerque's Notice of Intent to present technical testimony, and are incorporated into the "1st Amended Public Review Draft, 10/30/12". This 10/30/12 PRD is attached to 'AQCB Petition No. 2012-6'as AQD Exhibit 1b. which was filed on October 30, 2012.

This draft, shows changes made by AQD from the 2008 PRD to the 10/30/12 PRD and are indicated by single underline and single strikeout (i.e. 'redline strikeout'). Changes made to address stakeholder comments, as well as further refinements made by the AQD, are indicated by double underline and double strikeout. AQD Exhibit 1c is a "Comparison Summary of Current and Proposed Albuquerque-Bernalillo County Air Quality Control Board Regulations for Minor Stationary Source

Air Quality Permitting Actions, October 30, 2012". This table summarizes the changes from the currently effective rule, the 7/18/12 stakeholder review draft and the "1st Amended Public Review Draft, 10/30/12".

After the "1st Amended Public Review Draft, 10/30/12" was filed, AQD received additional substantive comments from Kirtland Air Force Base (12/28/12) and from EPA. To address these comments, AQD has amended the PRD and comparison summary, which are attached to this petition and labeled as AQD Exhibits 2b and 2c respectively, with AQD Exhibit 2a being the currently effective 20.11.41 NMAC. Changes made to the 10/30/12 PRD are indicated by grey highlight in the attached 4/23/13 PRD, shown as AQD Exhibit 2b. AQD Exhibit 2c also incorporates changes from the previous summary, which are shown in a new column.

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

4. The proposed "20.11.41 NMAC, 2nd Amended Public Review Draft, 4/23/13", is attached as AQD Exhibit #2b, and is intended to replace the currently effective 20.11.41 NMAC, *Authority to Construct*, attached as AQD Exhibit #2a.

Respectfully submitted,

for

Mary Lou Leonard, Director
Environmental Health Department
City of Albuquerque

CERTIFICATION

I hereby certify that the original and 15 copies of this **2nd Amended Petition to Repeal Currently Effective 20.11.41, *Authority to Construct*; Adopt A Proposed Replacement 20.11.41 NMAC, *Construction Permits*; and Incorporate the Replacement 20.11.41 NMAC into the New Mexico State Implementation Plan (SIP) for Air Quality,** were delivered to the following person on April 23, 2013.

Elizabeth Jones
Air Quality Control Board Liaison
Environmental Health Department
One Civic Plaza, NW, Suite 3023
Albuquerque, New Mexico 87102

and that a copy was provided to:

Bill Grantham, Attorney to the Air Quality Control Board
at wggrantham@gmail.com

for

Mary Lou Leonard, Director,
Environmental Health Department
City of Albuquerque