AQD Exhibit # 15 Staff Proposed Floor Amendments (shown in red font)

PENGAD 800-631-6989
AQD EXHIBIT
15

STATE BOARDS STATE IMPLEMENTATION PLAN REVISION

TO SATISFY THE REQUIREMENTS OF THE CLEAN AIR ACT
Section 128(a) — State Boards [§7428, U.S.C.A.]

CITY OF ALBUQUERQUE-BERNALILLO COUNTY
NEW MEXICO

~~*Public Review Draft*~~

~~February 26, 2013~~

City of Albuquerque Environmental Health Department
Air Quality Division
Control Strategies Section

Reviewed and Approved after Public Hearing by:

Albuquerque-Bernalillo County
Air Quality Control Board (AQCB)

On

~~Month Day, Year~~ June 12, 2013

~~Mx. XXXXX XXXXX~~ Dona Upson, MD, AQCB Chair

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STATE IMPLEMENTATION PLAN (SIP) NARRATIVE STATEMENT REGARDING "STATE BOARDS" AS IT PERTAINS TO ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD (AIR BOARD)

Purpose

The most recent SIP revision to incorporate the City of Albuquerque and County of Bernalillo Ordinances ~~regarding~~ governing Air Board composition and conflict of interest was submitted in response to ~~an EPA SIP call on~~ a July 19, 1989 'SIP call' letter from EPA to the Governor of New Mexico, "requiring a cure to identified SIP deficiencies concerning State Boards". The EPA had found that the SIP was "substantially inadequate to meet the requirements of Section 128 of the Clean Air Act Amendments of 1977 (CAA), entitled 'State Boards'". EPA stated that: "neither the New Mexico Conflict of Interest Act nor the New Mexico Environmental Improvement Act appear to prohibit appointment of a majority of board members who already have a significant portion of income derived from persons subject to permits or enforcement orders prior to appointment (required in Paragraph (a)(l) of Section 128 of the CAA". ~~This was done in order~~ Therefore, SIP revisions were submitted to demonstrate that appointment of members to the Air Board satisfied the requirements of Section 7428(a)(2), U.S.C.A.

After a public hearing held on October 10, 1990, the Air Board adopted proposed revisions to its portion of the SIP regarding State Boards. "The revisions were submitted by the Governor to EPA on April 20 and July 16, 1990, for the State portion, and on November 16, 1990, for the Albuquerque/Bernalillo County portion. Supplemental information was submitted for Albuquerque/Bernalillo County on December 18, 1990, October 21, 1991, and November 22, 1991. These revisions corrected deficiencies for the New Mexico Environmental Improvement Board (NMEIB) and the Albuquerque/Bernalillo County Air Quality Board in order to comply with Section 128 of the Act. The EPA approval of these New Mexico SIP revisions make the revisions federally enforceable. Subsequent correspondence in February and March 1993 addressed eligibility for ''public interest'' Board member positions."

The EPA approved ~~the SIP revision for~~ these SIP revisions, including Board composition and conflict of interest disclosure requirements, on 6/1/1999, effective 8/2/1999 [FR Vol. 64, No. 104, pp. 29235-29240]. Since that time the supporting ordinances and policies have been revised. Therefore the Air Quality Division is proposing to update the SIP to incorporate the latest City of Albuquerque and Bernalillo County Ordinances and policies regarding board composition and conflict of interest as it applies to the Air Board. A matrix is attached which outlines these SIP-approved ordinances and policies and their corresponding ordinances and policies that are currently effective, and are proposed to be incorporated into the SIP.

Introduction

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The original SIP for New Mexico, dated January 1972, briefly alluded to a local program in Bernalillo County. However, the initial enabling ordinances were not included with the plan. With the authorization of the CAA of 1977, Section 128 contained specific requirements for all State Boards and applied also to the local Board. Specifically, the United States Code, Title 42, *The Public Health and Welfare*, Chapter 85, *Air Pollution Prevention and Control*, Section 7428, *State Boards*, states that:

(a) "Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that:

(1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter; and

(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of Paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan."

Necessary amendments were made to the ordinances pertaining to the local Board so that they would comply with the CAA. ~~These requirements may be summarized as follows: (1) The Board must have a majority of its members who represent the public interest, and (2) Conflicts of interest shall be adequately disclosed by any Board member or agency director.~~

Albuquerque - Bernalillo County Air Quality Control Board's Membership

Even before the advent of the federal mandates for clean air plans and controls, the City and County had already established by local ordinances a joint board known as the Metropolitan Environmental Health Advisory Board (MEHAB). Its members consisted of seven volunteers, with four appointed by the City and three appointed by the County. ~~With the enactment of the 1970 amendments to the CAA~~ In 1967, the State of New Mexico adopted the Air Quality Control Act (Act) to control air pollution statewide.

In deference to the local program already in operation under MEHAB, the Act permitted Albuquerque and Bernalillo County to "provide for the local administration and enforcement of the Air Quality Control Act". ~~And~~ As ~~such~~ a result, in 1967, the local governments ~~established~~ adopted additional ordinances, ~~creating~~ both of which were entitled "Joint Air Quality Control Board Ordinance" ("Joint Ordinances"). The Joint Ordinances accepted delegated authority from the state and created the "Albuquerque - Bernalillo County Joint Air Quality Control Board" ~~the Air Board~~ to carry out this mission.

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For membership of the Air Board, the ~~initial~~ Joint ordinances simply stated that the MEHAB board would constitute the Air Board. Thus, it was only necessary to amend the requirements governing the MEHAB members in order to have an Air Board that met the mandate of the CAA. Both City and County MEHAB Ordinances were modified to add the following language:

> "At least a majority of the membership of the Board shall be individuals who represent the public interest and meet the requirements of state and federal guidelines set forth in the New Mexico Air Quality Control Act, §74-2-1, et. seq.,~. as amended NMSA 1978, and the federal Clean Air Act, 42 U.S.C.A. §7401, et. seq., ~. as amended .... " With the inclusion of this in the ordinances, the "majority makeup" mandate of the federal Act was satisfied.

Conflict of Interest

The City and County addressed this issue at the inception of the MEHAB. In their respective ordinances, a section was included as follows:

"Conflict of Interest
Any Board member having a pecuniary interest in matters before the Board must disqualify himself from discussion and vote on such matters."

Along with this, both City and County have extensive Conflict of Interest prohibitions as described and compiled for this SIP submittal. (See ~~attachment A~~ attached matrix)

For the 1990 SIP, the City Attorney stated that the enclosures "[a]nd excerpt from the City Charter require the disclosure of all potential conflicts of interest by members of the Albuquerque - Bernalillo County Air Quality Control Board and meet the requirements of the Clean Air Act, Section 7428(a)(2), U.S.C.A."

Conclusion

The materials described and attached hereto demonstrate that the Albuquerque - Bernalillo County Air Quality Control Board and the agency director are governed in a manner that complies with the CAA, Section 7428(a)(2), U.S.C.A.