RECEIVED
ENVIRONMENTAL HEALTH
13 MAY 28 PM 12: 44

BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO AMEND THE STATE BOARDS STATE IMPLEMENTATION PLAN (SIP) TO SATISFY THE REQUIREMENTS OF THE CLEAN AIR ACT Section 128(a) — State Boards [§7428, U.S.C.A.]; HEREAFTER REFERRED TO AS THE "STATE BOARDS SIP REVISION"

AQCB Petition No. 2013-4

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

CITY OF ALBUQUERQUE'S NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

Pursuant to 20.11.82 NMAC, *Rulemaking Procedures – Air Quality Control Board*, the Air Quality Division ("the Division") of the City of Albuquerque's Environmental Health Department, hereby submits its Notice of Intent (NOI) to present technical testimony in this proceeding.

1. <u>The person for whom the witness will testify.</u>

City of Albuquerque Environmental Health Department, Air Quality Division

2. <u>The name and qualifications of each technical witness.</u>

Neal T. Butt. Environmental Health Scientist, Control Strategies Section, Air Quality Division. M.S. Biology (Wildlife Biology), University of North Dakota; B.S. Biology (Zoology), University of New Mexico; B.A. Environmental Planning & Design, UNM; A.A.S. Criminal Justice, Central New Mexico Community College; A.A.S. Environmental Protection Technology, CNM; WERC Waste Management Certificate, UNM Chemical & Nuclear

Engineering Department. Employed by the City of Albuquerque's Environmental Health Department for 15 + years; the last 12 of which have been in the Air Quality Division.

Chief responsibility is to promulgate air quality regulations and plans through the Albuquerque – Bernalillo County Air Quality Control Board (Air Board) for implementation within the County of Bernalillo, including research, drafting and editing of technical documents, hearing preparation, testifying, and submittal to EPA for approval.

3. Summary and Estimated Duration of Testimony

Mr. Butt's written testimony is attached as AQD Exhibit # 14. Mr. Butt will testify that the State Boards SIP should be adopted and be submitted to EPA, as revision to the SIP. The Division is petitioning the Air Board to adopt the State Boards SIP, for the following reasons:

A. 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).

B. The Clean Air Act (Act), Section 128(a) titled—State Boards [§7428, U.S.C.A.], requires each SIP to contain provisions which ensure that: (1) any board or body which approves permits or enforcement orders under the Act 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 the Act, 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. The Air Act [Section 74–2–4] authorizes Albuquerque - Bernalillo County to locally administer and enforce the State Air Quality Control Act by

providing for a local air quality control program. Thus, State law views Albuquerque - Bernalillo County and the remainder of the State of New Mexico as distinct air quality control entities. Therefore, each entity is required to submit its own SIP revision in order to completely satisfy the requirements of Section 128(a) of the Act for the entire State of New Mexico.

The EPA published its approval of the SIP revision for Board composition and conflict of interest disclosure requirements in the Federal Register [FR Vol. 64, No. 104, pp. 29235-29240] on 6/1/1999, which became effective on 8/2/1999, as shown in AQD Exhibit # 16. Since that time the supporting ordinances and policies have been revised. Therefore the Division is proposing to update the SIP to incorporate the latest City of Albuquerque and County of Bernalillo County Ordinances regarding board composition and conflict of interest as it applies to the Air Board.

C. It is anticipated that the hearing will take approximately 1 hour or less.

4. Text of Recommended Revisions to the New Mexico State Implementation Plan

The Division recommends adoption of the proposed State Boards SIP; as proposed in the Public Review Draft shown as AQD Exhibit 1a; as amended by Staff Proposed Floor Amendments shown as AQD Exhibit #15.

5. List and Description of Exhibits

The Division has attached the following exhibits to this NOI:

Exhibit Number	Title of Exhibit
AQD Exhibit 1	Petition to Amend The State Boards State Implementation Plan (SIP) To Satisfy The Requirements Of The Clean Air Act Section 128(a) — State Boards [§7428, U.S.C.A.]; Hereafter Referred To As The "State Boards Sip Revision".

AQD Exhibit 1a Public Review Draft {attached to AQD Exhibit 1} showing proposed "State Boards SIP"

AQD Exhibits 2 a/b/c *Metropolitan Environmental Health Advisory Board*, City of Albuquerque, Chapter 6, Article XVII Sections 6–17–1 to 6–17–3 {Ex. No. 2a} / § 9-5-6-1 to 9-5-6-3 {Ex. No. 2b} /Redline strikeout showing changes between 2a and 2b{Ex. No. 2c}

AQD Exhibits 3 a/b/c *Metropolitan Environmental Health Advisory Board*, Bernalillo County Commission Ordinance 302 {Ex. No. 3a} / Chapter 42, Health & Sanitation; Article II, MEHAB; Sec. 42-36 to 42-39 {Ex. No. 3b} / Redline strikeout showing changes between 3a and 3b {Ex. No. 3cb}

AQD Exhibits 4 a/b/c *Metropolitan Environmental Health Advisory Board*, Bernalillo County Commission Ordinance 90–19 {Ex. No. 4a} / Sec. 42-37 & 42-38 {Ex. No. 4b} / Redline strikeout showing changes between 4a and 4b {Ex. No. 4c}

AQD Exhibits 5 a/b/c *Joint Air Quality Control Board Ordinance*, City of Albuquerque, Chapter 6, Article XVI Sections 6–16–1 to 6–16–15 {Ex. No. 5a} / § 9-5-1-1 to 9-5-1-99 {Ex. No. 5b} / Redline strikeout showing changes between 5a and 5b{Ex. No. 5c}

AQD Exhibits 6 a/b/c *Joint Air Quality Control Board Ordinance*, Bernalillo County Commission Ordinance 88–45 {Ex. No. 6a} / Chapter 30, Environment; Article II, Air Pollution; Sec. 30-31 to 30-47 (Ex. No 6b} / Redline strikeout showing changes between 6a and 6b {Ex. No. 6c}

AQD Exhibits 7 a/b/c *Public Boards, Commissions and Committees*, City of Albuquerque Chapter 1, Article XII Sections 1–12–1 to 1–12–3 {Ex. No. 7a} / § 2-6-1-1 to 2-6-1-5 {Ex. No. 7b} / Redline strikeout showing changes between 7a and 7b {Ex. No. 7c}

AQD Exhibits 8 a/b/c *Conflict of Interest*, City of Albuquerque Chapter 2, Article III Sections 2–3–1 to 2–3–13 {Ex. No. 8a} / § 3-3-1 to 3-3-13 {Ex. No. 8b} / Redline strikeout showing changes between 8a and 8b {Ex. No. 8c}

AQD Exhibits 9 a/b/c *Code of Ethics*, City of Albuquerque Charter, Article XII {Ex. No. 9a} / Section 4 - Conflict of Interest {Ex. No. 9b} / Redline strikeout showing changes between 9a and 9b {Ex. No. 9c}

AQD Exhibits 10 a/b/c *Code of Ethics*, Bernalillo County Commission Ordinance 85–3 {Ex. No. 10a} / Chapter 2, Administration; Article III, Officers & Employees; Division 4, Code of Conduct; Sec. 2-126 to 2-136 {Ex. No. 10b} / Redline strikeout showing changes between 10a and 10b {Ex. No. 10c}

AQD Exhibits 11 a/b/c	*City Code of Conduct*, City of Albuquerque Code of Conduct {Ex. No. 11a} / Personnel Rules & Regs: 300 Conditions of Employment: 301 Code of Conduct {Ex. No. 11b} / Redline strikeout showing changes between 11a and 11b {Ex. No. 11c}
AQD Exhibit 12 a/b/c	Notice of Proposed Rulemaking: Including the legal advertisement of this hearing in the Albuquerque Journal {12a}; the New Mexico Register {12b}; and the Air Quality Announce List Serve {12c}
AQD Exhibit 13	Comments: Received from EPA, February 20, 2013 and AQD's response, February 28, 2013
AQD Exhibit 14	Direct Testimony by Neal Butt, Air Quality Division
AQD Exhibit 15	Staff proposed floor amendments
AQD Exhibit 16	Federal Register Volume 64, Number 104, pages 29235-29240, published 6/1/1999

6. Reservation of Rights

This NOI is based on the Division's Petition to Amend. The Division reserves the right to call any person to testify and to present any exhibit in response to another NOI or public comment filed in this matter or to any testimony or exhibit offered at the public hearing. The Division also reserves the right to call any person as a rebuttal witness and to present any exhibit in support thereof.

Respectfully submitted,

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department
One Civic Plaza, NW, Suite 3023
Albuquerque, New Mexico 87102
(505) 768-2660

CERTIFICATION

I hereby certify that on May 28, 2013, an original and 15 copies of this NOI, with attached exhibits were delivered to the following person for filing.

Elizabeth Jones
Air Quality Control Board Liaison
Air Quality Division
Environmental Health Department
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103

And that on May 28, 2013, a copy of this NOI with attached exhibits was sent to the Attorney for the Air Board, Bill Grantham, at the following e-mail address:

wggrantham@gmail.com

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department