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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

Mx. XXXXX XXXXX, AQCB Chair

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 Air Board composition and conflict of interest was submitted in response to an EPA SIP call on July 19, 1989. This was done in order to demonstrate that appointment of members to the Air Board satisfied the requirements of Section 7428(a)(2), U.S.C.A.

The EPA approved the SIP revision for 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.

Introduction

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. 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, the State of New Mexico adopted the Air Quality Control Act (Act) to control air pollution statewide.

In deference to the local program 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, the local governments established additional ordinances creating the Air Board to carry out this mission.

For membership of the Air Board, the 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)

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.

EPA-Approved City of Albuquerque and Bernalillo County Ordinances for State Board Composition and Conflict of Interest Provisions					Revised Ordinances To Be Incororated Into SIP	
State citation	**Title/subject**	**State Approval / effective date**	**EPA approval date**	**EPA Comments**	**Revised Ordinance Citation**	**Revised Ordinance Date(s)**
City of Albuquerque, Chapter 6, Article XVII Sections 6–17–1 to 6–17–3 {Ex. No. 2a}	Metropolitan Environmental Health Advisory Board	November 16, 1990	June 1, 1999		§ 9-5-6-1 to 9-5-6-3 {Ex. No. 2b}	Ord. 12-1975; Am. Ord. 72-1976; Am. Ord. 32-1990
Bernalillo County Commission Ordinance 302 {Ex. No. 3a}	Metropolitan Environmental Health Advisory Board	August 5, 1974	June 1, 1999		Chapter 42, *Health & Sanitation*; Article II, *MEHAB;* Sec. 42-36 to 42-39 {Ex. No. 3b}	
Bernalillo County Commission Ordinance 90–19 {Ex. No. 4a}	Metropolitan Environmental Health Advisory Board	August 21, 1990	June 1, 1999	Amended Ordinance 302.	Sec. 42-37 & 42-38 {Ex. No. 4b}	8/21/1990
City of Albuquerque, Chapter 6, Article XVI Sections 6–16–1 to 6–16–15 {Ex. No. 5a}	Joint Air Quality Control Board Ordinance	August 1, 1989	June 1, 1999		§ 9-5-1-1 to 9-5-1-99 {Ex. No. 5b}	Am. Ord 65-1993 & 23-1996

State citation	Title/subject	State Approval / effective date	EPA approval date	EPA Comments	Revised Ordinance Citation	Revised Ordinance Date(s)
Bernalillo County Commission Ordinance 88–45 {Ex. No. 6a}	Joint Air Quality Control Board Ordinance	December 27, 1988	June 1, 1999	Amended Ordinance 84–44.	Chapter 30, *Environment;* Article II, *Air Pollution;* Sec. 30-31 to 30-47 (Ex. No 6b}	Ord. No. 94-5, 2-2-94
City of Albuquerque Chapter 1, Article XII Sections 1–12–1 to 1–12–3 {Ex. No. 7a}	Public Boards, Commissions and Committees	July 1, 1987	June 1, 1999		§ 2-6-1-1 to 2-6-1-5 {Ex. No. 7b}	Ord. 54-1975; Am. Ord. 60-1975; Am. Ord. 55-1992; Am. Ord. 35-2003; Am. Ord. 57-2003; Am. Ord. 43-2007; Am. Ord. 1-2008; Am. Ord. 2-2008; Am. Ord. 8-2009
City of Albuquerque Chapter 2, Article III Sections 2–3–1 to 2–3–13 {Ex. No. 8a}	Conflict of Interest	July 1, 1985	June 1, 1999		§ 3-3-1 to 3-3-13 {Ex. No. 8b}	
City of Albuquerque Charter, Article XII {Ex. No. 9a}	Code of Ethics	April 1, 1990	June 1, 1999		Section 4 - Conflict of Interest {Ex. No. 9b}	Am. Ord. 34-2006
Bernalillo County Commission Ordinance 85–3 {Ex. No. 10a}	Code of Ethics	February 5, 1985	June 1, 1999		Chapter 2, *Administration;* Article III, *Officers & Employees;* Division 4, *Code of Conduct;* Sec. 2-126 to 2-136 {Ex. No. 10b}	Ord. No. 2012-13, 8-14-12

State citation	Title/subject	State Approval / effective date	EPA approval date	EPA Comments	Revised Ordinance Citation	Revised Ordinance Date(s)
City of Albuquerque Code of Conduct {Ex. No. 11a}	City Code of Conduct	February 9, 1990	June 1, 1999		Personnel Rules & Regs: 300 *Conditions of Employment*: 301 *Code of Conduct* {Ex. No. 11b}	2-1-2001 / 3-5-2005