

June 26, 2013

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Ms. Elizabeth Jones  
Albuquerque Bernalillo County Air Quality Control Board  
City of Albuquerque  
Environmental Health Department  
P.O. Box 1293  
Albuquerque, NM 87103

**RE: SUBMITTAL OF NON-TECHNICAL TESTIMONY – PETITION TO AMEND  
20.11.41 NMAC AUTHORITY TO CONSTRUCT**

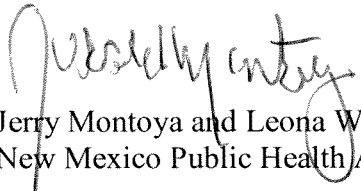

Dear Ms. Jones:

On behalf of the New Mexico Public Health Association, we respectfully submit the enclosed non-technical testimony for the July 10, 2013 AQCB hearing regarding amendments to 20.11.41 NMAC *Authority to Construct*.

Please see the attached non-technical testimony, along with 15 copies, that have been prepared in accordance with the provisions of 20.11.82.22 NMAC. Per the *Notice of Hearing and Meeting* published in the Albuquerque Journal on May 19, 2013, we understand that our written non-technical testimony will be placed into the public record if received prior to 5:00 p.m. on July 3, 2013.

If you have any questions regarding our written testimony, please do not hesitate to contact us at (505) 681-2727.

Sincerely,

   
Jerry Montoya and Leona Woelk, Co-Presidents  
New Mexico Public Health Association

Members of the Board  
New Mexico Public Health Association

Enclosures (1 original and 15 copies)



## Non-Technical Testimony on Behalf of the New Mexico Public Health Association

### Regarding Amendments to Current 20.11.41 NMAC *Authority to Construct* as Proposed in “20.11.41 NMAC 2<sup>nd</sup> Amended Public Review Draft 4/23/13”

The New Mexico Public Health Association is dedicated to improving the health and well-being of our residents and to ensuring our residents are well informed and can fully participate in environmental and health decisions that directly affect them and their neighborhoods.

On the face of the language contained in the *Notice of Hearing and Meeting* published in the Albuquerque Journal on May 19, 2013 it appears the City’s Environmental Health Department is attempting to strengthen the public notification and participation requirements; however, when comparing the 20.11.41 NMAC 2<sup>nd</sup> Amended Public Review Draft 4/23/13 (hereinafter referenced as “amended draft”) with the state’s Construction Permit Regulation (found at 20.2.72) it appears the proposed amendments favor applicants through language that provides for: 1) accelerated reviews, 2) shorter timelines for Department decisions on permit applications, 3) life-time permits, and 4) public notification alternatives for campus-like facilities and facilities having large boundaries, at the expense of public participation by decreasing rather than increasing public notification and public comment requirements.

We believe that economic development can be stimulated while providing for the public notification/participation rights of our residents and protecting the environment. In other words, responsible economic development and healthy neighborhoods do not present an “either or” scenario, but rather a “best of” scenario.

Although the City’s Environmental Health Department states in the *Notice of Hearing and Meeting* they are amending 20.11.41 NMAC *Authority to Construct* to achieve further alignment with the state’s Construction Permit Regulation, we feel the language provided in the amended draft is less stringent than the state’s Construction Permit Regulation and is in violation of the Air Act at NMSA 1798, 74-2-4.C (1967 as amended through 2009) which 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).”

Following is an example, pulled from a comparison of the state’s Construction Permit Regulation and the amended draft, demonstrating the concerns mentioned above:

#### Example:

As proposed in the amended draft, an **applicant** requesting a new or modified permit application, must follow these public notification requirements (found at 20.11.41.13.B NMAC):

- 1) copy of public notice to neighborhood associations and neighborhood coalitions within ½ mile of the exterior boundary of the property on which the source is or is proposed to be located, and
- 2) post and maintain a weather proof sign at a visible location at the site or the proposed site.

As proposed in the amended draft, the **City** must follow these public notification requirements (found at 20.11.41.14.B NMAC):

- 1) publish public notice in the newspaper of largest circulation with 30 days for public comments to be submitted,
- 2) send a copy of the public notice to neighborhood associations and neighborhood coalitions within ½ mile of the exterior boundary of the property on which the source is or is proposed to be located, and
- 3) provide notice to all individuals and organizations on the list maintained by the City's Environmental Health Department.

By contrast, the state's Construction Permit Regulation requires **applicants** for permits or significant permit revisions to perform the following public notification requirements:

- 1) notification by certified mail of property owners within 100 feet of the property on which the facility is located or proposed to be located, if the facility is in a Class A county (Bernalillo County is a Class A county) (20.2.72.203.B.1.a),
- 2) notification by certified mail to all municipalities and counties in which the facility is or will be located and to all municipalities, Indian tribes, and counties within a ten mile radius of the property on which the facility is or is proposed to be constructed or operated (20.2.72.203.B.2),
- 3) notification through publication once in a newspaper of general circulation in the county in which the property on which the facility is or is proposed to be constructed or operated. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice, and, when appropriate, shall be printed in both English and Spanish (20.2.72.203.B.3),
- 4) notification through signage at 4 publicly accessible and conspicuous places, including the proposed or existing facility entrance on the property on which the facility is, or is proposed to be, located, until the permit or significant permit revision is issued or denied, and 3 locations commonly frequented by the general public, such as nearby post office, public library, or city hall (20.2.72.203.B.4.a-b),
- 5) notification through public service announcement to at least one radio or television station serving the municipality or county in which the source is or is proposed to be located and containing information outlined in 20.2.72.203.D.1-5 (20.2.72.203.B.5).

Further, the state's Construction Permit Regulation requires the respective **agency** (e.g., City's Environmental Health Department) to perform the following notification requirements (20.2.72.206):

- 1) all individuals and organizations identified on a list maintained by the Department of those who have indicated in writing a desire to receive notices, and
- 2) mail a copy of the public notice at the time it is sent for publication to the appropriate county (e.g., Bernalillo County).

While we recognize the intent of the City is to save the applicant expense and the City money, public notification/public participation is not the appropriate area for these cost savings. The language in the state's Construction Permit Regulation is far more inclusive of adjacent property owners and the general public, many of whom may not belong to a neighborhood association

(many of which meet only annually to keep their status) or neighborhood coalition, do not read the paper on a daily basis, and are not on the City's Environmental Health Department list.

To ensure the fullest possible public participation, we request the public notification requirements in the amended draft be consistent with the state's Construction Permit Regulation, as stated in 20.2.72.203 and 20.2.72.206 NMAC. Additionally, we request these public notification requirements be applied for the following types of permit applications: technical permit revisions, permits, permit modifications, temporary permits, general permits, and permits for campus-like facilities and facilities having large boundaries.

The New Mexico Public Health Association encourages the City to retain the language of 20.11.41 NMAC *Authority to Construct* as it pertains to the time periods for public comment on permit applications, requests for public information hearings, accelerated application reviews, and general construction permits.

Specifically, we request the following:

- 1) Providing all interested persons with at least 45 days to submit written comments, evidence, or to request a public hearing on the permit application (20.11.41.14.A.4 of NMAC *Authority to Construct*), and, if a person expresses in writing an interest in the permit application, providing 45 days (rather than the 30 days as proposed in the amended draft at 20.11.41.14.C NMAC, 20.11.41.14.B.2.f NMAC) **after the Department's analysis is available** to submit written comments and to request a public information hearing. Recognizing the very technical nature of air quality permitting and regulatory processes, we believe the original 45 day period is more appropriate and will provide residents with the time necessary to learn more about the proposed operations and to garner technical and legal expertise, if necessary.
- 2) No provision for accelerated reviews of permit applications as occurs in 20.11.41 NMAC *Authority to Construct*. We feel that an accelerated review will further decrease opportunities for meaningful public participation and may introduce bias into the permit approval process due to possible conflicts of interest given the small universe of environmental consultants within New Mexico.
- 3) No provision for general construction permits as occurs in 20.11.41 NMAC *Authority to Construct*. The geographic characteristics of Bernalillo County and Albuquerque are quite different from the state, with a predominantly urban setting. While a single permit for facilities having similar operations, processes and emissions may make sense for a state that is largely open and rural, it can have a deleterious impact on residents living in more densely populated urban areas and within closer proximity to these facilities.
- 4) No provision for alternative public notification requirements for campus-like facilities and facilities having large boundaries (draft amendment – 20.11.41.13.B.1). As mentioned above, we believe that permits for these types of facilities should follow the public notification requirements outlined in the state's Construction Permit Regulation at 20.2.72.203, particularly since these types of facilities cover more acreage and are more likely to impact a greater number of people living in the surrounding communities.

In terms of Department permitting decision making processes, we also request that final action on an application be made by the Department within 120 days, or 180 days if a public hearing

has been called, from the date the application was ruled complete rather than the proposed 90 day time period stated in the amended draft (20.11.41.16.B NMAC).

Finally, and perhaps most importantly, although potential applicants would undoubtedly favor the proposed language provided in the amended draft to not have an expiration date or renewal date for authority to construct permits, we believe it is irresponsible to issue life-time permits and request the re-insertion of proposed language for a 10-year permit term as stated in 20.11.41 NMAC 1<sup>st</sup> Amended Public Review Draft for Stakeholder Review 7/18/12 at 11.41.19, subsection E of 20 NMAC, for the following reasons:

- 1) life-time permits provide residents with only one opportunity to participate in the permitting process,
- 2) life-time permits could contribute to an “out of sight out of mind” mentality on behalf of the City’s Air Quality Division in terms of enforcement and review,
- 3) life-time permits could decrease the accountability of the facility’s owner to the impacted community, and
- 4) life-time permits provide little protection for impacted residents should cumulative impacts increase and neighborhood conditions change.