



13 JUN 21

June 21, 2013

Ms. Liz Jones
Albuquerque/Bernalillo County Air Quality Control (ABCAQC) Board
Environmental Health Dept.
City of Albuquerque
One Civic Plaza NW, 3rd Floor
Albuquerque, NM 87102

RE: SUBMITTAL OF NOI - PETITION TO AMEND 20.11.41 NMAC, CONSTRUCTION PERMITS

Dear Ms. Jones:

On behalf of the local Cummins Rocky Mountain, Inc. dealership in Albuquerque, we respectfully submit the enclosed Notice of Intent (NOI) to present technical testimony at the upcoming local ABCAQC Board hearing regarding amendments to 20.11.41 NMAC, *Construction Permits*. We understand that this hearing is tentatively scheduled for July 10, 2013.

Please see the attached NOI document and 15 copies that have been prepared in accordance with the provisions of 20.11.82.20 NMAC. Per your email, we understand that you will provide a copy of the NOI to the Board's attorney, Mr. Bill Grantham and all others who need them.

If you have any questions or comments about the information presented in this letter, please do not hesitate to call me at (505) 266-6611.

Sincerely,

TRINITY CONSULTANTS

Vernon Hershberger, CHMM, LEED AP
Senior Consultant

Enclosures (1 original & 15 NOI copies)

cc: Mr. Chris Tornillo, Sales Manager, East Region

Notice of Intent (NOI) to Provide Technical Testimony on Behalf of Cummins Rocky Mountain Regarding proposed amendments to 20.11.41 NMAC Construction Permits Regulation

In accordance with the requirements of 20.11.82.20 NMAC, the following NOTICE OF INTENT (NOI) to submit TECHNICAL TESTIMONY is provided herein.

- (1) Identity of the witness – Vernon Hershberger, CHMM, LEED AP – on behalf of Cummins Rocky Mountain.
- (2) Qualifications of the Vernon Hershberger, including a description of their educational and work background.

Work Background:

Senior Consultant at Trinity Consultants, Inc., Albuquerque office, from Nov. 2012 to present
Focus – air quality permitting in Bernalillo County and NM

Environmental Health Manager at University of NM, from October 1996 to November 2012 (16 years)
Focus – air quality on the ABQ campus and all other AQD, NMED and EPA environmental compliance requirements as well as various industrial hygiene issues.

Staff Engineer at Groundwater Technology/Fluor Daniel in ABQ , from October 1994 to September 1996
Focus – designing groundwater cleanup systems in NM and TX, including air permitting for soil vapor extraction and air sparging in Bernalillo County.

Staff Engineer at Earth Technology Corp. in Tempe, AZ from ~Mar. 1992 to Mar. 1994
Focus – real estate due diligence environmental investigations in AZ and NV

Educational Background:

Bachelors of Science – Construction Engineering/Management, Arizona State University, 1992
Masters of Technology – Hazardous Materials/Environmental Mgmt., Arizona State University, 1994

- (3) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

1. Citation: 20.11.41.2.D NMAC

Comment: It is less common for a New Source Performance Standard (NSPS) to be issued after equipment already is manufactured, purchased or installed. In such instances innocent equipment owners might not have any reason to know of such an ex post facto NSPS becoming applicable to their existing equipment. Therefore, as a member of the regulated community, we'd hope that enforcement of new NSPS or NESHAP permitting requirements would only occur after extensive public outreach efforts informing the regulated community.

2. Citation: 20.11.41.2.F(2)(g) NMAC

Comment: Cummins supports AQD's 10/30/12 revision to clarify the intended broader definition of portable support equipment. We appreciate the exemption of a long list of non-stationary sources in specific applications including portable support equipment such as power generators.

Question: Will the platform configuration of exempted portable equipment effect its

qualification as portable? For instance will skid-mounted generators be considered just as portable as trailer-mounted?

3. Citation: 20.11.41.7.HH NMAC

Question: Will the new "potential emission rate" allow the reduction of emissions from manufacturer required/attached control equipment (e.g., a catalyst to meet NSPS) to be considered similarly to inherently built-in controls (e.g., ACERT-type engine technology) in calculating whether equipment emits at the regulatory thresholds for NSR permitting (10lb/hr or 25 tpy) or not?

4. Citation: 20.11.41.13.A NMAC

Comment: We agree with need for pre-application meetings with novice air permit applicants who haven't employed the help of experienced air quality professionals. The more complicated permitting situations could also be helped by pre-application meetings too, and such already often occurs with the AQD, applicants and their consultants. However, to require pre-application meetings for simple routine permitting situations (e.g., emergency generators) may not a good use of anyone's time and may unnecessarily increase the cost of doing business for all involved. Perhaps this could be avoided by either specifically exempting such simple/routine emissions units from the pre-application meeting or by including a general permit program in the currently pending revised edition of 20.11.41 NMAC.

5. Citation 20.11.41.13.B NMAC

Comment: Cummins opposes the 10/30/12 revisions that increase the public notice requirements for both the applicant and the agency. These recent proposed revisions would require redundant notifications of all neighborhood associations & coalitions within ½-mile of the facility boundary. Requiring potential applicants to post signs and send pre-application notices to neighborhood groups regarding intent to apply for an air quality permit or to modify an existing permit is unfriendly to business. Such a new requirement may be viewed as counter-productive to job creation in Bernalillo County and may motivate job creators to instead prefer other locations. Having to conduct such public notice prior to applying for an air permit serves to prolong the time required to obtain an air permit which is also increases the cost & difficulty of doing business in Albuquerque and Bernalillo County.

6. Citation: 20.11.41.14.B NMAC

Comment: Posting an add and legal notice in the local newspapers is sufficient notice for most regulatory purposes in New Mexico and should be sufficient for air quality permitting as well. The proposed new pre-application notice requirement for the applicant above in conjunction with this redundant requirement that AQD also send its own post-application notices to all neighborhood groups within a ½-mile regarding a pending application is a business-unfriendly double whammy. Implementation of such proposed new requirements would likely increase the number of public hearings which may tax AQD's and the business community's limited resources. The redundant pair of new public notice requirements may be viewed as new job-killing regulations in Albuquerque and Bernalillo County.

7. Citation: 20.11.41.14.B. (2) (g) NMAC
Comment: Cummins supports the reduction of the existing long 45-day public comment period. Reducing it to 30 days as proposed is a business-friendly improvement, but we contend that even less delay such as 15 to 21 days instead would be better for business and local jobs.
8. Citation: 20.11.41.16.B NMAC
Comment: Cummins applauds reducing the current 120 days to 90 days for AQD to issue or deny a permit after the application has been ruled complete. It also makes ABCAQCB regulation consistent with the NM state regulations. This reduction of 30 days in permit issuance time may be viewed as a business-friendly improvement.
9. Citation: 20.11.41.21.B NMAC
Comment: The department has recently come to the conclusion that the 20 NMAC regulations do not allow them the authority to set and extend submittal deadlines for annual emissions inventories (AEI) as the department had previously done for many years. Since the proposed new subsection B is being added here to address AEIs, this a good opportunity to specifically allow such authority again.
10. Citation: 20.11.41.24.C NMAC.
Comment: For stationary or portable emission units needed to respond to true emergencies, e.g., earthquakes, floods, fires, severe cold, etc., creating new air quality posting, paperwork or other new regulatory requirements may detract from the Environmental Health Department's more critical multi-faceted duties of helping to save lives and protecting property.
11. Citation: 20.11.41.28.B (1) (d) (ii) NMAC
Comment: Allowing technical revisions to permit without involving the more onerous formal processes for full permit modifications would be viewed as helpful and business-friendly by the regulated community. To do this we need some minor text changes to these subsections to encourage more technical revisions that result in net emissions reductions. Such net emission reductions are sometimes possible even while increasing production, throughput, fuel efficiency and/or operational flexibility which may be tied to enforceable permit conditions. We need to untie this red-tape to encourage more technical revisions that result in net air emissions reductions.
12. Citation: 20.11.41.31 NMAC
Comment: General permits may be viewed as helpful to both AQD and the regulated community. General permits are consistent with NMED practice as well. The proposed 15-day public comment period is business-friendly. Likely stationary emission source categories for general permits would hopefully include the more numerous and simple process equipment, e.g., emergency generators, HVAC heating equipment, etc. Cummins supports inclusion of simplified general permits for emergency generators in the pending revisions to 20.11.41 NMAC.
13. Citation: 20.11.41.32 NMAC
Comment: Having a viable option of accelerated review via qualified outside contractors to bid on the accelerated permit review work or otherwise by the department may be a helpful and business-friendly new option for the regulated community. We can see how pre-application meetings may generally be warranted under such accelerated circumstances, even if

experienced applicants and environmental consultants are involved. Given the small world of qualified outside contractors, environmental consultants and applicants in Bernalillo County, a precise definition of conflict of interest may be needed to make this option more viable than it has been in other jurisdictions.

Question: There are no accelerated review fees currently listed in the 20.11.2 NMAC Fee regulation. 20.11.41.32.C (7) NMAC proposes that the department shall impose the accelerated review filing fee in the absence of bids from qualified outside contractors. What is the department's anticipated cost or cost structure of the department's accelerated review fees?

14. Citation: 20.11.41.33 MMAC

Comment: It appears that the proposed Table 1. may need some edits, e.g., for PM 2.5, SO₂ and NO₂. Why is there a 5.0 ug/m³ 3-hr significant ambient concentration for NMHC? The NMED has nothing similar for NMHCs or VOCs. Please see 14. in section (4) below for recommended edits.

ANTICIPATED DURATION of the above discussion – approximately 20 minutes depending on board member questions.

- (4) include the text of any recommended modifications to the proposed (AQD Exhibit 1b) regulatory change;
1. 20.11.41.2.D NMAC recommended text:
D. Sources that become subject to new NSPS or NESHAP. If a person is operating a source that becomes subject to a new NSPS or NESHAP, the persons shall apply for and obtain a construction permit as required by 20.11.41 NMAC. The department shall, at a minimum, post such new requirements visibly on their website as part of a public outreach effort. Department public outreach efforts will sufficiently precede department enforcement efforts to allow time for compliance actions by the regulated community.
 2. 20.11.41.2.F(2)(g) NMAC - no changes proposed.
 3. 20.11.41.7.HH NMAC - no changes proposed.
 4. 20.11.41.13.A NMAC - recommended text:
A. Pre-application requirements: A person who is seeking a permit pursuant to 20.11.41 NMAC shall contact the department in writing and request a pre-application meeting ~~of~~ for information regarding the contents of the application and the application process. The meeting shall include discussion of approved mission factors and control efficiencies, air dispersion modeling guidelines, department policies, air quality permit fees, public notice requirements and regulatory timelines. The department shall waive the pre-application meeting requirement

for persons that have prior successful experience with the department in permitting simple/routine emissions units, e.g., emergency generators, or other sources with general permit coverage. The department may also waive the pre-application meeting requirement in other instances.

5. 20.11.41.13.B NMAC - recommended text:

If the applicant is applying for a permit or permit modification, then before the applicant submits the application required by Subsection D E of 20.11.41.13 NMAC, the applicant shall publish a notice in a newspaper of largest circulation in Bernalillo County. This notice must appear in two (2) sections of the newspaper:

(1) as an advertisement in the classified or legal section of the newspaper; and

(2) as a display advertisement, calculated to give the general public the most effective notice.

Both of these ads shall be printed in both English and Spanish.

6. 20.11.41.14.B. (6) NMAC – recommended text:

(6) The department shall provide notice to nearby property owners on record with the Bernalillo County assessor's office. The two scenarios for this requirement are as follows:

(a) If the facility is or will be located within an incorporated municipality with a population of more than 2500 people, public notice must be sent to the property owners that are within 100 feet from the property boundary on which the facility is or will be located.

or

(b) If the facility is or will be otherwise located outside of such an incorporated municipality, public notice must be sent to the property owners that are within one-half (1/2) mile from the property boundary on which the facility is or will be located.

7. 20.11.41.14. B. (2) (g) NMAC – recommended text:

(g) that the public has ~~30~~ 15 days to submit written comments and evidence to the department regarding the proposed permit ~~and the deadline for submitting written comments, and evidence~~ or to request a public information hearing regarding the application; the notice should specify the date by which all comments and evidence or a request for a PIH shall be submitted;

8. 20.11.41.16.B NMAC - no changes proposed.

9. 20.11.41.21.B NMAC – recommended text:

B. The permittee shall submit an annual emissions inventory to the department as required by

20.11.47 NMAC, Emissions Inventory Requirements. The department shall have the authority to set and extend deadlines for permittee submittal of annual emissions inventories.

10. 20.11.41.24.C NMAC – recommended text:

C. If the department makes an affirmative administrative completeness determination regarding a request for and emergency permit and the department decides to issue the permit, then the department, if not also incapacitated by the emergency, shall attempt to:

[delete subsection (4)]

11. 20.11.41.28.B (1) (d) & (ii) NMAC - recommended text:

(d) to incorporate a change at a facility by replacing or modifying an emissions unit for which an allowable emissions limit has been established in the permit, but only if the replacement or modified emissions unit as determined by the department:

(ii) has the same or lower net emissions capacity and potential emission rates, regardless of other current enforceable permit conditions (e.g., horsepower) that do not necessarily directly effect emissions.

12. 20.11.41.31 NMAC - recommended text:

A. General permits are issued to groups of sources, such as emergency generators, that have similar operations, processes and emissions, are subject to the same or substantially similar requirements and have general construction permit forms that were approved by the department following the process described in Subsection B or C of 20.11.41.31 NMAC.

[delete subsection B.(c)(i)]

13. 20.11.41.32.E(1) NMAC – recommended text:

(1) The applicant and the qualified outside contractor have a continuing obligation to investigate potential conflicts of interest and to immediately disclose any conflict of interest to the department in writing. Unless the qualified outside contractor had or has involvement with the preparation of the subject application for accelerated review or some direct financial interest in the subject emissions source, no other associations would be considered conflicts of interest. If such a conflict of interest is not disclosed as required by Subparagraph (d) of Paragraph (5) of Subsection [B] D of 20.11.41.32 NMAC and is later disclosed or discovered , the department may:

14. 20.11.41.33 NMAC – recommended additions to Table 1:

PM2.5 Annual= 0.3 ug/m3, 24-hr = 1.2 ug/m3

SO2

1-hr = 7.8 ug/m3

NO2

1-hr = 7.54 ug/m3

5) Attached to each of the 15 NOI copies is a copy of AQD's 10/30/12 version of *AQD EXHIBIT 1b* regarding the 20.11.41 NMAC proposed amendments.