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July 1, 2013

Ms. Elizabeth Jones
Air Quality Control Board Liaison
Environmental Health Department
P.O. Box 1293
Albuquerque, NM 87103

RE: Proposed 20.11.41 NMAC, *Construction Permits*

Dear Ms. Jones:

On behalf of W. G. Roberts Oil Company ("Roberts Oil"), 408 Arizona St. SE, Albuquerque, NM 87108, this firm submits the following non-technical comments on the proposed replacement regulation 20.11.41 NMAC, *Construction Permits*.

Section 20.11.41.16.C of the proposed regulation (2nd amended public review draft 4/23/13) states in part:

The department shall issue the permit, issue the permit subject to conditions or deny the requested permit or permit modification based on information contained in the department's administrative record of the permit application. The administrative record shall consist of the application, all other evidence submitted by the applicant, all evidence or written comments submitted by interested persons, all other evidence considered by the department, a statement of matters officially noticed and, if a PIH has been held, the PIH hearing record.

Because of the increased public notice in the proposed regulation and the potential for information not relevant to the applicable standards for evaluating applications to be included in the administrative record, Roberts Oil requests that the first sentence in proposed 20.11.41.16.C NMAC be changed to:

The department shall issue the permit, issue the permit subject to conditions or deny the requested permit or permit modification based on information contained

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in the department's administrative record of the permit application, but only to the extent the information relates to the bases for evaluating the application in 20.11.41.17 NMAC.

In addition, Roberts Oil requests that language in proposed 20.11.41.16.A NMAC, which pertains to denial of a permit application upon ruling an application administratively incomplete three times, be modified to reflect the discretionary nature of such a denial and be consistent with proposed 20.11.41.17 NMAC. In proposed 20.11.41.17 NMAC, "the department *may* deny the application if . . . the department has delivered three written notices requiring the applicant to provide specified information . . . and the applicant either has not provided the information by the deadline stated in the related notification or the applicant has submitted information that the department has determined to be technically unacceptable . . ." (Emphasis added).

To make it consistent with proposed 20.11.41.17, Roberts Oil suggests that the seventh sentence in proposed 20.11.41.16.A.2,

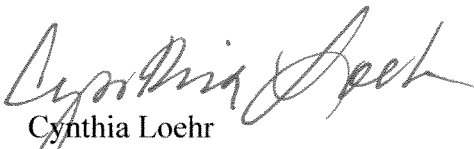
"If the department has ruled an application administratively incomplete three times, the department shall deny the permit application and send a letter . . .",

be changed to:

"If the department has ruled an application administratively incomplete three times, the department may deny the permit application and send a letter . . ."

Thank you for your consideration of the above comments in finalizing the regulation.

Sincerely,



Cynthia Loehr

cc: M.J. Wheeler