BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

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IN THE MATTER OF THE PETITION TO AMEND 20.11.46 NMAC, SULFUR DIOXIDE EMISSIONS INVENTORY REQUIREMENTS; WESTERN BACKSTOP SULFUR DIOXIDE TRADING PROGRAM, AND INCORPORATE SAID AMENDMENTS INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN (SIP) FOR AIR QUALITY

AQCB Petition No. 2011-1

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 City of Albuquerque Environmental Health Department, Air Quality Division ("the Division") hereby submits its Notice of Intent to present technical testimony in this proceeding.

1. **The person for whom the witness will testify.**

City of Albuquerque Environmental Health Department, Air Quality Division.

2. **The name and qualifications of each technical witness.**

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; 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 14 + years; the last 10 of which

have been in the Air Quality Division. Chief responsibility is the promulgation of air quality regulations for implementation within the County of Bernalillo.

Isreal Tavarez. Environmental Health Manager, Air Quality Division. M.S. Chemical Engineering, New Mexico State University; B.S. Chemical Engineering, NMSU. Registered Professional Engineer (New Mexico). Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for 14 + years. Previously employed by the State of New Mexico, Air Quality Bureau (1994-1996).

Dario Rocha. Supervisor, Permitting and Technical Analysis Section, Air Quality Division. B.S. Mechanical Engineering, New Mexico State University. Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for 9 + years. Previously employed by the State of New Mexico, Air Quality Bureau (1997-2000). Chief responsibility is to supervise Permitting and Technical Analysis Section.

3. Summary and Estimated Duration of Testimony

Mr. Butt's written testimony is attached as AQD Exhibit # 4. Mr. Butt will testify that this revision to the SIP should be approved in part because, on November 12, 2003, the Air Board adopted 20.11.46 NMAC, which implements the Western Backstop (WEB) Sulfur Dioxide (SO_2) Trading Program provisions as required by the federal Clean Air Act, the federal Regional Haze Rule, 40 CFR § 51.309 (Section 309), and the concomitant Albuquerque-Bernalillo County element of the State of New Mexico's regional haze implementation plan. Section 309 of the federal Regional Haze Rule establishes mandatory requirements that must be incorporated into the SIP, including regional SO_2 milestones, SO_2 emissions tracking requirements and a backstop regional cap-and-trade program for SO_2. 20.11.46 NMAC includes emissions inventory requirements for tracking compliance with the SO_2 milestones. The

emissions inventory and tracking requirements for SO_2 were included as enforceable provisions in 20.11.46 NMAC. 20.11.46 NMAC contains the requirements that would apply to major industrial sources (i.e. 100 tons or more per year) of SO_2 emissions as a "backstop" regulatory program if specified SO_2 milestones were exceeded. If the milestones are exceeded, numerous mandatory requirements of 20.11.46 NMAC will be triggered, including the procedures and compliance requirements for sources in the trading program. However, the mandatory provisions that will be triggered by exceeding the milestones may never be implemented if the goal of meeting the regional SO_2 milestones through voluntary means is achieved.

Continued compliance with 40 CFR § 51.309 and associated legal challenges has necessitated revisions to the Regional Haze SIP and 20.11.46 NMAC. After first being adopted by the Air Board in 2003, 20.11.46 NMAC was subsequently amended on August 13, 2008, after a public review period and corresponding public hearings held on November 14, 2007 and August 13, 2008. These amendments became effective locally on September 15, 2008, but have not been approved by EPA. In order for the backstop trading rules to be approved by EPA, they must be consistent across all "309 states" (i.e. New Mexico, Utah, and Wyoming). Therefore, EPA is requiring that 20.11.46 NMAC be amended again, in order to bring it into alignment with the model rule language utilized by the other "309 states". Therefore, amendments to 20.11.46 NMAC are being proposed:

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

The Division recommends adoption of the proposed amendments to 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program* as proposed in the Public Review Draft, shown as AQD Exhibit #1a, which is

attached to the Petition to Amend, filed January 25, 2011, shown as AQD Exhibit # 1. Mr. Butt's testimony is anticipated to take approximately 30 minutes. Proposed revisions to the SIP include:

A. Removing definitions for: "Allowance Tracking System"; "Allowance Tracking System Account"; and" Emissions Tracking Database";

B. Adding definitions for: "WEB Emissions and Allowance Tracking System" / "WEB EATS"; and "WEB EATS Account";

C. Clarifying that "retirement" of a source must be "permanent";

D. Modifying language at 20.11.46.14 NMAC, *Allowance Allocations*; 20.11.46.15 NMAC, *Establishment of Accounts*; 20.11.46.16 NMAC, *Monitoring, Record Keeping and Reporting*; 20.11.46.18 NMAC, *Use Of Allowances From A Previous Year;* and 20.11.46.20 NMAC, *Special Penalty Provisions For Year 2018 Milestone*; to align with Utah's trading rule (*Western Backstop Sulfur Dioxide Trading Program*, R307-250-6);

E. Modifying language at 20.11.46.21 NMAC, *SO_2 Monitoring of Fuel Gas Combustion Devices* and 20.11.46.22 NMAC, *Predictive Flow Monitoring Systems For Kilns With Positive Pressure Fabric Filter*, to align with Wyoming's trading rule (Appendix A: WEB Chapter 14, Section 2, Monitoring Protocols); and

F. Correcting cross-references, improving style, and increasing readability.

5. List and Description of Exhibits

The Division has attached the following exhibits to this Notice of Intent:

Exhibit Number	Title of Exhibit
AQD Exhibit # 1	Petition to Amend 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*
AQD Exhibit # 1a	Public Review Draft 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program* {attached to AQD Exhibit 1}
AQD Exhibits # 2a/b/c	Notice of Proposed Rulemaking: Albuquerque Journal, 2/13/11 {2a}; NM Register 2/28/11 {2b}; and the Air Quality Announce List Serve 12/10/11 {2c}
AQD Exhibit # 3	Public Comment
AQD Exhibit # 4	Direct Testimony
AQD Exhibit # 5	Staff Proposed Floor Amendments
AQD Exhibit # 6	Draft Agenda

6. Reservation of Rights

This Notice of Intent to Present Technical Testimony is based on the Division's Petition. The Division reserves the right to call any person to testify and to present any exhibit in response to another notice of intent 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 87103
(505) 768-2660

CERTIFICATION

I hereby certify that on March 29, 2011, an original and nine copies of this Notice of Intent to present technical testimony (NOI), with attached exhibits were delivered to the following person for filing.

Margaret Nieto
Secretary to the Air Quality Control Board / Environmental Health Supervisor, AQD
Environmental Health Department
One Civic Plaza, NW, Suite 3023
Albuquerque, New Mexico 87103

And that on March 29, 2011, a copy of this NOI with attached exhibits was sent to the Attorney for the Board, Bill Grantham, at the following e-mail address: Bill.grantham@state.nm.us

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department