BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO INCORPORATE AN AMENDED INFRASTRUCTURE STATE IMPLEMENTATION PLAN (SIP) FOR $PM_{2.5}$ AND OZONE; AND TO AMEND 20.11.60 NMAC, *PERMITTING IN NONATTAINMENT AREAS*, AND *20.11.61 NMAC, PREVENTION OF SIGNIFICANT DETERIORATION*, AND SUBMIT SAID AMENDMENTS TO EPA AS REVISIONS TO THE SIP

AQCB Petition No. 2010-_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 (NOI) 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 13 + years; the last nine of which

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

Damon R. Reyes. Supervisor, Enforcement Section, Air Quality Division. B.S. Environmental Science, College of Santa Fe. Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for 4+ years. Previously employed by the State of New Mexico, Air Quality Bureau (2001 - 2005). Chief responsibility is to supervise the Enforcement Section, which includes regulating both Fugitive Dust and Stationary Sources

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.

Matt Stebleton. Compliance Supervisor, Compliance Section, Air Quality Division. M.S. Biology, University of New Mexico. Employed by the City of Albuquerque's Air Quality Division for 15+ years. Previously employed by the State of New Mexico Air Quality Bureau for 8 years. Chief responsibilities are reviewing Notices of Violation and settling them by participating in informal and formal settlement conferences which lead to Compliance Agreements and penalties following EPA guidance and regulations.

Isreal Tavarez. Environmental Engineering 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 13 + years. Previously employed by the State of New Mexico, Air Quality Bureau (1994-1996).

Fabian Macias. Air Quality Assurance Manager, Air Quality Division. B.S. Chemistry, New Mexico Highlands University. Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for 8 + years. Previously employed by the State of New Mexico's, Air Quality Bureau (1995-2001), as Ambient Air Monitoring Network Manager. Chief responsibility is to manage the resources of the Air Quality Assurance Program within the Air Quality Division, including both the Ambient Air Monitoring and Quality Assurance Sections. Air Quality Assurance Program operations include data acquisition and validation of ambient air pollution measurements within Bernalillo County.

3. Summary and Estimated Duration of Testimony

Mr. Butt's written testimony is attached as AQD Exhibit # 4. Mr. Butt will testify that 20.11.60 NMAC, *Permitting in Nonattainment Areas*; 20.11.61 NMAC, *Prevention of Significant Deterioration*; and the *Infrastructure SIP for PM $_{2.5}$ and Ozone*, should be amended, and the aforementioned rules and SIP should be submitted to EPA, as revisions to the SIP.

The Division is petitioning the Board to amend 20.11.60 NMAC, *Permitting in Nonattainment Areas*; 20.11.61 NMAC, *Prevention of Significant Deterioration*; and the *Infrastructure SIP for PM $_{2.5}$ and Ozone*, for the following reasons:

1. The New Mexico Air Quality Control Act (Air Act), NMSA 1978, Sections 74-2-4 and 74-2-5.B(1) [1967 as amended through 2007] authorizes and requires the Air Board to adopt, amend, or replace air quality regulations and to adopt air quality plans ("SIP"s) under NMSA 1978, Section 74-2-5.B(2).

2. Sections 110(a)(1) and (2) of the federal Clean Air Act (CAA), 42 U.S.C. § 7410(a)(1) and (2) hereafter referred to as the "Infrastructure SIP" requirements, requires that states submit an implementation plan to the United States Environmental Protection Agency (EPA) Administrator that demonstrates their ability and authority to implement, maintain, and enforce each National Ambient Air Quality Standard (NAAQS). Section 110(a)(1) of the CAA addresses the timing requirement for the submissions of any Infrastructure SIP revisions while Section 110(a)(2) of the CAA lists the required elements that comprise the Infrastructure SIP.

These elements include: enforceable emission limitations and other control measures; air quality monitoring, compilation, data analysis, and reporting; enforcement and stationary source permitting; interstate transport; resources, conflict of interest, and emergency backstop; stationary source emissions monitoring and reporting; emergency powers and contingency plans; SIP revision for revised air quality standards or new attainment methods; SIP revisions for new nonattainment areas; consultation and public notification; air quality modeling and reporting; major stationary source permitting fees; and consultation with local entities.

On August 15, 2006, the EPA issued guidance on what states should submit in order to comply with Section 110(a)(2)(D)(i) of the CAA. Subsequently, on October 2, 2007, the EPA issued guidance on what states should submit in order to comply with the remaining non-transport-

related requirements of Section 110(a)(2) for both the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

The Air Quality Division, acting as agent for the Air Board utilized both of these guidance documents to comply with the Infrastructure SIP requirements for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in the following three ways:

(1) On September 12, 2007, the Air Board adopted an Interstate Transport SIP to comply with the requirements of §110(a)(2)(D)(i). The Air Quality Division submitted this SIP to EPA on October 24, 2007.

(2) On December 11, 2007, the Director of the Environmental Health Department submitted a "Certification Letter" to the Regional Administrator for EPA Region VI, certifying that Bernalillo County's infrastructure is adequate to enforce the "new" 1997 8-hour ozone NAAQS. However, on March 27, 2008, EPA published the "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS" [FR Vol. 73, No. 60, 16205-16211]. Their finding for New Mexico, including Bernalillo County, was that:

> "New Mexico: As required by Section 110(a)(2)(C) and (J), the State of New Mexico has failed to submit a SIP addressing changes to the Part C PSD permit program required by the November 29, 2005 [70 FR 71612, page 71699] final rule that made NO_X a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21."

Therefore, the Air Board's *Prevention of Significant Deterioration* rule, 20.11.61 NMAC must be amended to correct this deficiency.

(3) As of 2004, states (including New Mexico and Bernalillo County) still had not submitted complete SIPs to satisfy all of the Section 110(a)(2) requirements for the 1997 $PM_{2.5}$ NAAQS (as well as for the aforementioned 8-hour ozone NAAQS). On March 4, 2004, Earth Justice submitted a notice of intent to sue, related to EPA's failure to issue 'findings of failure to submit' related to these requirements. Consequently, EPA entered into a Consent Decree with Earth Justice which required EPA, among other things, to sign a notice for publication in the Federal Register no later than October 5, 2008, announcing EPA's determinations pursuant to Section 110(k)(1)(B) as to whether each state has made complete submissions to meet the requirements of Section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS.

On April 7, 2008, the Governor of New Mexico, on behalf of the Air Board, submitted an Infrastructure SIP to EPA, which addressed all the non-transport-related elements of Section 110(a)(2) with respect to the $PM_{2.5}$ NAAQS.

Through these efforts, the Air Quality Division determined that it had the authority to implement the Infrastructure SIP requirements outlined in the EPA's guidance documents with respect to both the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. Furthermore, these actions by the Air Quality Division, acting as agent for the Air

Board, satisfied the timing requirement under the Consent Decree for the Section 110(a)(2) elements for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

Then on October 22, 2008, the EPA published its "Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS", [Vol. 73, No. 205, 62902-62906]. Their finding was as follows:

> "The following states have been determined by EPA to have made complete SIP submissions that address all of the Section 110(a)(2) requirements as of the signature date of this notice: Region VI: Arkansas, Louisiana, New Mexico, Texas."

Thus, EPA is satisfied with Air Quality Division's basic infrastructure for enforcement of the $PM_{2.5}$ NAAQS. However, in reviewing the Code of Federal Regulations, the Air Quality Division discovered that there were updates to the federal rule language that had not yet been incorporated into the Air Board rules entitled *Permitting in Nonattainment Areas*, 20.11.60 NMAC, and *Prevention of Significant Deterioration, 20.11.61 NMAC.* The amendments that are proposed to bring these rules into alignment with the CFR, are shown in the attached Public Review Drafts of these rules.

4. <u>Text of Recommended Revisions to the New Mexico State Implementation Plan</u>

The Division recommends the proposed to amendments to the *Infrastructure SIP for PM $_{2.5}$ and Ozone*; 20.11.60 NMAC, *Permitting in Nonattainment Areas*; and 20.11.61 NMAC,

Prevention of Significant Deterioration; as proposed in the Public Review Drafts shown as AQD Exhibits 1a, 1b and 1c respectively; as amended by Staff Proposed Floor Amendments shown as AQD Exhibit #5.

5. <u>List and Description of Exhibits</u>

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

Exhibit Number	**Title of Exhibit**
AQD Exhibit 1	'Petition to Amend' filed on April 27, 2010
AQD Exhibit 1a	Public Review Draft {attached to AQD Exhibit 1} showing proposed amended *Infrastructure SIP for PM $_{2.5}$ and Ozone*;
AQD Exhibit 1b	Public Review Draft {attached to AQD Exhibit 1} showing proposed amendments to 20.11.60 NMAC, *Permitting in Nonattainment Areas*
AQD Exhibit 1c	Public Review Draft {attached to AQD Exhibit 1} showing proposed amendments to 20.11.61 NMAC, *Prevention of Significant Deterioration*
AQD Exhibits 2 a/b/c	Notice of Proposed Rulemaking: Including the legal advertisement of this hearing in the Albuquerque Journal {2a}; the New Mexico Register {2b}; and the Air Quality Announce List Serve {2c}

AQD Exhibit 3a	Preliminary Comments, received from EPA, April 19, 2010
AQD Exhibit 3b	AQD's Response to EPA's Preliminary Comments, sent May 4, 2010
AQD Exhibit 4	Direct Testimony by AQD
AQD Exhibit 5	Air Quality Division staff proposed floor amendments
AQD Exhibit 6	Draft Agenda, Air Quality Control Board, for July 14, 2010

6. **Reservation of Rights**

This Notice of Intent to Present Technical Testimony is based on the Division's Petition to Amend. 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 June 29, 2010, 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.

Janice Wright
Air Quality Control Board Liaison / Hearing Clerk
Environmental Health Department
One Civic Plaza, NW, Suite 3023
Albuquerque, New Mexico 87103

And that on June 29, 2010, 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