AQD EXHIBIT 2c

Wright, Janice C.

From: City of Albuquerque-Air Quality Division [jcwright@cabq.gov]
Sent: Thursday, May 13, 2010 1:32 PM
To: Wright, Janice C.
Subject: Legal Ad for Hearing Regarding 20.11.60 NMAC, Permitting in Nonattainment Areas, 20.11.61 NMAC, Prevention of Significant Deterioration and the Infrastructure State Implementation Plan

Legal Ad For A Hearing Regarding 20.11.60 NMAC, *Permitting in Nonattainment Areas*, 20.11.61 NMAC, *Prevention of Significant Deterioration*, and the Infrastructure State Implementation Plan

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ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD-NOTICE OF HEARING
On July 14, 2010, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

Proposal to adopt amendments to 20.11.60 NMAC, *Permitting in Nonattainment Areas*; 20.11.61 NMAC, *Prevention of Significant Deterioration;* and the *State Implementation Plan for Air Quality, to Address Infrastructure Requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) to Implement the 1997 and 2006 $PM_{2.5}$ NAAQS and the 1997 and 2008 Ozone NAAQS* (otherwise known as the "Infrastructure SIP"); and to submit said amendments to EPA as revisions to the SIP, for the following reasons:

Sections 110(a)(1) and (2) of the CAA, 42 U.S.C. § 7410(a)(1) and (2) hereafter referred to as the "Infrastructure SIP" requirements, obligates states to 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 ability 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 Public Review Drafts of these rules.

The proposed Public Review Drafts for the "*Albuquerque-*

Bernalillo County Air Quality Control Board, State Implementation Plan for Air Quality (SIP), to Address Infrastructure Requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act to Implement the 1997 and 2006 $PM_{2.5}$ NAAQS and the 1997 and 2008 Ozone NAAQS";Permitting in Nonattainment Areas, 20.11.60 NMAC;and *Prevention of Significant Deterioration, 20.11.61 NMAC* are posted at http://www.cabq.gov/airquality/aqcb/public-review-drafts

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the aforementioned proposals. Meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, Rulemaking Procedures -- Air Quality Control Board.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on June 29, 2010, to: Attn: Hearing Clerk, Ms. Janice Wright, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Suite 3023, 3rd Floor, 400 Marquette Avenue NW. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record for this hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on July 7, 2010. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to jcwright@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department office, or by contacting Ms. Janice Wright electronically at jcwright@cabq.gov or by phone (505) 768-2601, or by downloading a copy from the City of Albuquerque Air Quality Division website http://www.cabq.gov/airquality/aqcb/public-review-drafts .

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