PENGAD 800-631-6989 AQD EXHIBIT 4

[Testimony for Hearing regarding 20.1.60 & 61 NMAC; and Infrastructure SIP]

Slide 1 (Caption)

Thank you, Mr. Hearing Officer, Chairman Deichman, and members of the Board. My name is Neal Butt. I am an Environmental Health Scientist with the Air Quality Division, Control Strategies Section. I am here:

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

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Reasons for Proposed Amendments to 20.11.60 & 61 NMAC and Infrastructure SIP

I. 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 SIP 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.

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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.

II. 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.

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(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.

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(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.

Hence, 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.

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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 proposed amendments bring these rules into better alignment with the CFR.

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On April 19, 2010, the Air Quality Division received comments regarding the proposed drafts, from EPA, shown as AQD Exhibit 3a. The Air Quality Division responded to EPA's concerns in a letter dated May 4, 2010, shown as AQD Exhibit 3b; as well as by incorporating changes into the Public Review Drafts. We feel that we have satisfactorily addressed all substantive issues raised by EPA.

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Therefore, the Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division (AQD), respectfully requests that the Albuquerque-Bernalillo County Air Quality Control Board adopt amendments to 20.11.60 NMAC, *Permitting in Nonattainment Areas*, 20.11.61 NMAC, *Prevention Of Significant Deterioration*, along with an amended *Infrastructure SIP for PM $_{2.5}$ and Ozone*, as amended by Proposed Staff Floor Amendments shown as AQD Exhibit 5, and submit these amendments to EPA as revisions to the SIP.

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QUESTIONS

That concludes my presentation, I would like to have exhibits 1 through 6 moved into the record, and I stand for questions