

ORDINANCE NO. 94-5

1 RELATING TO AIR POLLUTION, AMENDING THE PROVISIONS OF ORDINANCE NO. 88-45
2 TO ESTABLISH OPERATING PERMITS FOR MAJOR STATIONARY SOURCES OF AIR
3 POLLUTION IN BERNALILLO COUNTY, REPEALING ORDINANCE NO. 88-45 AFTER
4 COMBINING THE PROVISIONS THEREOF WHICH ENABLE THE JOINT AIR QUALITY
5 CONTROL BOARD HEREIN. THIS ORDINANCE ESTABLISHES POWERS AND DUTIES OF
6 THE BOARD PROVIDING FOR THE ADOPTION, ADMINISTRATION AND ENFORCEMENT
7 OF THE REGULATIONS; PROVIDING FOR VARIANCES; PROVIDING FOR PERMITS;
8 PROVIDING FOR SPECIAL REGULATIONS CONSISTENT WITH FEDERAL AND STATE
9 REQUIREMENTS FOR PREVENTION OF SIGNIFICANT DETERIORATION, NEW SOURCE
10 PERFORMANCE STANDARDS, NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR
11 POLLUTANTS AND PROVIDING FOR OPERATING PERMITS AND FEES AS REQUIRED BY
12 THE 1990 AMENDMENTS TO THE FEDERAL CLEAN AIR ACT.

13 BE IT ORDAINED BY THE COUNTY COMMISSION, THE GOVERNING BODY OF THE
14 COUNTY OF BERNALILLO, NEW MEXICO:

15 **SECTION 1. Short Title.**

16 This Ordinance may be cited as the "Joint Air Quality Control Board Ordinance."

17 **SECTION 2. Definitions.**

18 As provided in the Air Quality Control Act, Chapter 74, Article 2, (hereinafter referred to as the "Air
19 Quality Control Act"), the following definitions shall apply to terms used in this Ordinance:

20 A. "air contaminant" means any substance, including but not limited to any particulate
21 matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any
22 combination thereof or any decay or reaction product thereof;

23 B. "air pollution" means the emission, except emission that occurs in nature, into the outdoor
24 atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable
25 probability injure human health, or animal or plant life or as may unreasonably interfere with the public

1 welfare, visibility or the reasonable use of property;

2 C. "Board" means the Albuquerque - Bernalillo County Air Quality Control Board created
3 by this Ordinance;

4 D. "department" means the administrative agency of the Albuquerque - Bernalillo County
5 Air Quality Control Board;

6 E. "director" means the administrative head of the department or his or her authorized
7 representative;

8 F. "emission limitation" and "emission standard" mean a requirement established by the
9 Board, the department, or pursuant to the federal act that limits the quantity, rate or concentration, or
10 combination thereof, of emissions of air contaminants on a continuous basis, including any requirements
11 relating to the operation or maintenance of a source to assure continuous reduction;

12 G. "environmental department" means the environment department of the State of New
13 Mexico;

14 H. "federal act" means the federal Clean Air Act, its subsequent amendments and successor
15 provisions;

16 I. "federal standard of performance" means any standard of performance, emission
17 limitation or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

18 J. "hazardous air pollutant" means an air contaminant that has been classified as a hazardous
19 air pollutant pursuant to the federal act;

20 K. "mandatory class I area" means any of the following areas in the State of New Mexico
21 that were in existence on August 7, 1977;

22 (1) national wilderness areas that exceed five thousand (5,000) acres in size, and

23 (2) national parks that exceed six thousand (6,000) acres in size;

24 L. "modification" means any physical change in, or change in the method of operation of,
25 a source that results in an increase in the potential emission rate of any regulated air contaminant

1 emitted by the source or that results in the emission of any regulated air contaminant not previously
2 emitted, but does not include:

3 (1) a change in ownership of the source;

4 (2) routine maintenance, repair or replacement;

5 (3) installation of air pollution control equipment and all related process equipment
6 and materials necessary for its operation, undertaken for the purpose of complying with regulations
7 adopted by the Board or pursuant to the federal act; or

8 (4) unless previously limited by enforceable permit conditions:

9 (a) an increase in the production rate, if such increase does not exceed the
10 operating design capacity of the source;

11 (b) an increase in the hours of operation; or

12 (c) use of an alternative fuel or raw material if, prior to January 6, 1975, the
13 source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw
14 material is caused by any natural gas curtailment or emergency allocation or any other lack of supply
15 of natural gas;

16 M. "nonattainment area" means, for any air contaminant, an area that is designated
17 "nonattainment" with respect to that contaminant within the meaning of Section 107(d) of the federal
18 act;

19 N. "person" includes an individual, partnership, corporation, association, the state or political
20 subdivision of the state and any agency, department or instrumentality of the United States and any of
21 their officers, agents or employees;

22 O. "plan" means any and all parts of the State Implementation Plan that pertain to Bernalillo
23 County that are adopted by the Board for submittal by the Governor of the State of New Mexico to the
24 federal environmental protection agency pursuant to 42 U.S.C. Section 7410.

25 P. "potential emission rate" means the emission rate of a source at its maximum capacity

1 in the absence of air pollution control equipment that is not vital to production of the normal product
2 of the source or to its normal operation, also defined by Board regulations as "pre-controlled"
3 emissions;

4 Q. "regulated air contaminant" means any air contaminant, the emission or ambient
5 concentration of which is regulated pursuant to the Air Quality Control Act or the federal act;

6 R. "significant deterioration" means any increase in the ambient concentrations of any air
7 contaminant above the levels allowed by the federal act or federal regulations for that air contaminant
8 in the area within which the increase occurs;

9 S. "source" means any structure, building, equipment, facility, installation or operation that
10 emits or may emit any air contaminant;

11 T. "standard of performance" means a requirement of continuous emission reduction,
12 including any requirement relating to operation or maintenance of a source to assure continuous
13 emission reduction; and

14 U. "State Implementation Plan" means any plan submitted by the Governor of the State of
15 New Mexico to the federal environmental protection agency pursuant to 42 U.S.C. Section 7410.

16 **SECTION 3. Joint Air Quality Control Board.**

17 A. In accordance with the New Mexico Air Quality Control Act, a joint air quality control
18 Board known as the Albuquerque - Bernalillo County Air Quality Control Board is hereby created. The
19 Board shall serve as a joint local authority acting on behalf of both the County of Bernalillo and the City
20 of Albuquerque. Within the exterior boundaries of Bernalillo County, the Board shall have authority
21 and jurisdiction to exercise the same functions pertaining to air quality as the functions that have been
22 delegated by the Air Quality Control Act to the New Mexico Environmental Improvement Board except
23 any functions reserved exclusively for the Environmental Improvement Board.

24 B. The membership and organization of the Board shall be as described in this section:

25 (1) Members of the Board previously appointed and serving at the time this Ordinance is enacted

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1 shall continue serving their terms on the Board. The length and termination date of their terms of office
2 shall not be affected by the passage of this Ordinance.

3 (2) The Board shall consist of seven members, three of whom shall be appointed by
4 the Bernalillo County Commission and four of whom shall be appointed by the City.

5 (3) Members shall be appointed for three-year terms. No member shall serve more
6 than two consecutive terms at a time. The positions on the Board shall be staggered appointments so
7 that no more than two City-appointee's terms expire in any single year, and no more than one County-
8 appointee's term expires in any single year. Vacant positions shall be filled by individuals appointed
9 by the same authority that appointed the outgoing member.

10 (4) Nominations and appointments to the Board shall be made as follows:

11 (a) At least a majority of the membership of the Board shall be individuals
12 who represent the public interest and meet the requirements of the state and federal guidelines set forth
13 in the New Mexico Air Quality Control Act, as amended, and the federal Clean Air Act, 42 U.S.C.A.
14 Section 7401, et. seq., as amended. Further, to the extent that the requirement does not conflict with
15 this paragraph, Board members will be selected for their concerns about, and commitment to, the local
16 ambient air quality. Therefore, selections may be made from a broad range of persons representing the
17 public interest and who are experienced or trained in disciplines including natural sciences, humanities,
18 social studies, finance, medicine and health, engineering or physics, law, law enforcement, education,
19 business and industry.

20 (b) No person employed by either the County of Bernalillo or the City of
21 Albuquerque shall be a member of the Board. No elected County or City official, and no member of
22 the immediate family of any elected County or City official shall be appointed to the Board. ~~(c) County-~~
23 appointed members shall be residents of Bernalillo County.

24 (d) A Board member may be removed from office by the appointing authority
25 if the member has missed three consecutive meetings or has been absent from more than 50 per cent

1 of the meetings during any 12 consecutive meetings.

2 (e) If a vacancy occurs for reasons other than expiration of a term, the
3 department shall promptly utilize the procedure described in paragraph 3.B(4)(e) of this Ordinance.
4 Each vacancy shall be filled by the authority that appointed the departing member. The replacement
5 member shall serve for the remainder of the unexpired term.

6 (5) Four members present shall constitute a quorum. A quorum shall be present for
7 all matters decided by a vote of the Board.

8 (6) Any action, order or decision of the Board requires a simple majority vote of the
9 members present, except for adoption, amendment or repeal of a Board regulation, in which case the
10 concurrence of four members shall be required.

11 (7) All officers of the Board shall be elected annually by the Board for one (1) year
12 terms. No officer shall serve in the same position for more than two (2) consecutive years.

13 (8) The Board may adopt rules to govern its proceedings.

14 C. The Board shall meet in public facilities with public seating available. The Board shall
15 meet monthly if a quorum is available, unless a meeting is unnecessary or delayed for good reason. The
16 Board shall hold a minimum of six monthly meetings a year. Special additional meetings may be held
17 as needed. Notice of time, place and agenda of meetings shall be published according to the
18 requirements of law. Meetings, work sessions and hearings of the Board shall be open to the public.

19 D. The director of the department shall record all transactions and proceedings of the Board
20 and shall perform the duties required by the Air Quality Control Act. The director is the custodian of
21 all files and records of the Board, and shall meet with the Board but does not have a vote.

22 E. Any member of the Board who has a conflict of interest regarding a matter before the
23 Board shall disqualify himself or herself from the discussion and shall abstain from the vote on such
24 matter. A conflict of interest means any interest which may yield, directly or indirectly, any monetary

1 or other material benefit to the Board member or the member's spouse or minor child.

2 F. The Bernalillo County Planning Commission (CPC) and the City Environmental Planning
3 Commission (EPC) may appoint a member of the CPC and of the EPC, respectively, to be liaisons to
4 the Air Quality Control Board. The CPC and EPC liaisons may attend Board meetings and may
5 participate in Board discussions, but will not be members of the Board and will not have a vote. The
6 respective liaisons may communicate with the Board and their respective planning commissions
7 regarding air quality issues.

8 **SECTION 4. Duties and powers of the Board.**

9 A. The Board, in accordance with the Air Quality Control Act, shall prevent or abate air
10 pollution within the County of Bernalillo and the City of Albuquerque.

11 B. The Board shall:

12 (1) adopt, promulgate, publish, amend and repeal regulations consistent with the Air
13 Quality Control Act and this Ordinance to attain and maintain national ambient air quality standards,
14 and prevent or abate air pollution, including regulations prescribing air standards within the geographic
15 area of the Board's jurisdiction, or any part thereof; and

16 (2) adopt a plan for the regulation, control, prevention or abatement of air pollution,
17 recognizing the differences, needs, requirements and conditions within Bernalillo County or any part
18 thereof.

19 C. Regulations adopted by the Board may:

20 (1) include regulations to protect visibility in mandatory class I areas, to prevent
21 significant deterioration of air quality and to achieve national ambient air quality standards in
22 nonattainment areas; provided that such regulations:

23 (a) shall be no more stringent than but at least as stringent as required by the
24 federal act and federal regulations pertaining to visibility protection in mandatory class I areas,
25 pertaining to prevention of significant deterioration and pertaining to nonattainment areas; and

1 (b) shall be applicable only to sources subject to such regulation pursuant to
2 the federal act;

3 (2) prescribe standards of performance for sources and emission standards for
4 hazardous air pollutants that, except as provided in Paragraph (3) of this subsection:

5 (a) shall be no more stringent than but at least as stringent as required by
6 federal standards of performance; and

7 (b) shall be applicable only to sources subject to such federal standards of
8 performance;

9 (3) include regulations governing emissions from solid waste incinerators that shall
10 be as least as stringent as, and may be more stringent than, any applicable federal emissions limitations;

11 (4) require notice to the department of the intent to introduce or allow the introduction
12 of an air contaminant into the air within the geographical area of the Board's jurisdiction; and

13 (5) require any person emitting any air contaminant to:

14 (a) install, use and maintain emission monitoring devices;

15 (b) sample emissions in accordance with methods and at locations and intervals
16 as may be prescribed by the Board;

17 (c) establish and maintain records of the nature and amount of emissions;

18 (d) submit reports regarding the nature and amounts of emissions and the
19 performance of emission control devices; and

20 (e) provide any other reasonable information relating to the emission of air
21 contaminants.

22 D. Any regulation adopted under this section shall be consistent with federal law, if any,
23 relating to control of Motor Vehicle Emission.

24 E. In making its regulations, the Board shall give the weight it deems appropriate to all facts
25 and circumstances, including but not limited to:

1 (1) character and degree of injury to or interference with health, welfare, visibility
2 and property;

3 (2) the public interest, including the social and economic value of the sources and
4 subjects of air contaminants; and

5 (3) technical practicability and economic reasonableness of reducing or eliminating
6 air contaminants from the sources involved and previous experience with equipment and methods
7 available to control the air contaminants involved.

8 **SECTION 5. Duties and powers of the department.**

9 A. The department shall administer and enforce the provisions of the Air Quality Control
10 Act, this Ordinance and any regulations adopted pursuant thereto and any other laws relating to air
11 pollution applicable within the County of Bernalillo and the City of Albuquerque. The staff for the
12 Board shall be provided by the City of Albuquerque. The department shall perform, within the
13 boundaries of Bernalillo County, all functions delegated to the New Mexico Environment Department
14 under the Air Quality Control Act, except for the duties and powers reserved exclusively for the New
15 Mexico Environment Department;

16 B. The department shall develop facts and make investigations and studies consistent with
17 the Air Quality Control Act and this Ordinance, and in connection therewith, enter at all reasonable
18 times in or upon any private or public property, except private residences, that the department has
19 reasonable cause to believe is or will become a source of air contaminants contributing to air pollution,
20 and require the production of information relating to emissions that cause or contribute to air pollution.
21 The results of any such investigations shall be reduced to writing if any enforcement action is
22 contemplated, and a copy thereof shall be furnished to the owner or occupants of the premises
23 investigated before the action is filed; and

24 C. institute legal proceedings to compel compliance with the Air Quality Control Act, this
25 Ordinance or any regulation of the Board; and

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1 D. encourage and make every reasonable effort to obtain voluntary cooperation by the owner
2 or occupants to preserve, restore or improve air purity; and

3 E. consult with any person proposing to construct, install or otherwise acquire an air
4 contaminant source, device, system or control mechanism concerning the efficiency of the device,
5 system or mechanism or the air pollution problem that may be related to the source, device, system or
6 mechanism, provided that consultation shall not relieve any person from compliance with the Air
7 Quality Control Act, this Ordinance, regulations in force pursuant thereto, and any other provision of
8 law; and

9 F. establish a small business stationary source technical and environmental compliance
10 assistance program, consistent with the provisions of Section 507 and of the federal act; and

11 G. accept, receive and administer grants or other funds or gifts from public and private
12 agencies, including the federal government or from any person; and

13 H. classify and record air contaminant sources that, in its judgement, may cause or contribute
14 to air pollution according to levels and types of emissions and other characteristics that relate to air
15 pollution, provided that classifications may be for application to Bernalillo County as a whole or to any
16 designated area of the County and City, and shall be made with special reference to effects on health,
17 economic and social factors and physical effects on property; and

18 I. develop and present to the Board a plan for the regulation, control, prevention or
19 abatement of air pollution, recognizing the differences, needs, requirements and conditions in the
20 different portions of the geographical area of the department's responsibility as established by this
21 Ordinance.

22 **SECTION 6. Adoption of regulations, notice and hearings.**

23 A. Any person may recommend or propose regulations to the Board for adoption. The
24 Board shall determine whether to hold a hearing within sixty (60) days of submission of a proposed
25 regulation.

1 B. No regulation or emission control requirement shall be adopted until after a public hearing
2 by the Board. As used in this section, "regulation" includes any amendment or repeal thereof.

3 C. Notice of the hearing shall be given at least thirty (30) days prior to the hearing date and
4 shall state the subject, the time and the place of the hearing and the manner in which interested persons
5 may present their views. The notice shall also state where interested persons may secure copies of any
6 proposed regulation or air quality standard. The notice shall be published in a newspaper of general
7 circulation in the County and City. Reasonable effort shall be made to give notice to all persons who
8 have made a written request to the Board for advance notice of its hearings.

9 D. At the hearing, the Board shall allow all interested persons reasonable opportunity to
10 submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.
11 Any person heard or represented at the hearing shall be given written notice of the action of the Board.

12 E. The Board may designate a hearing officer to take evidence, and the hearing officer may
13 make recommendations to the Board.

14 F. No regulation or emission control requirement adopted by the Board shall become
15 effective until thirty (30) days after its filing under the State Rules Act, 14-3-24, 14-3-25, 14-4-1 to 14-
16 4-9 NMSA 1978.

17 G. A copy of adopted air quality control regulations shall be on file in the office of the
18 County Clerk and shall be available for inspection by the public during regular business hours. Copies
19 of said regulations shall be available to any person upon request and payment of a reasonable charge
20 set by the County Clerk.

21 **SECTION 7. Permits, permit appeals to the Board and permit fees.**

22 A. By regulation, the Board shall require:

23 (1) any person intending to construct or modify any source, except as otherwise
24 specifically provided by regulation, to obtain a construction permit from the department prior to such
25 construction or modification; and

1 (2) any person intending to operate any source for which an operating permit is
2 required pursuant to the 1990 amendments to the federal act, except as otherwise specifically provided
3 by regulation, to obtain an operating permit from the department.

4 B. Regulations adopted by the Board shall include at least the following provisions:

5 (1) requirements for the submission of relevant information, including but not limited
6 to information the department deems necessary to ensure that regulations and standards under this
7 Ordinance, the Air Quality Control Act or the federal act will not be violated;

8 (2) specification of the deadlines for processing permit applications provided the
9 deadline for a final decision by the department on a construction permit application may not exceed:

10 (a) one hundred eighty (180) days after the application is determined to be complete, if the
11 application is not affected by requirements for prevention of significant deterioration; or

12 (b) two hundred forty (240) days after the application is determined to be
13 complete, if the application is affected by requirements for prevention of significant deterioration;

14 (3) specification of the public notice, comment period and public hearing, if any,
15 required prior to the issuance of a permit, provided the permit regulations adopted include provisions
16 requiring that notice be given to the New Mexico environment department of all applications by any
17 source that emits, or has a potential emission rate of, one hundred (100) tons per year or more of any
18 regulated air contaminant, including any source of fugitive emissions of any regulated air contaminant,
19 at least sixty (60) days prior to the date on which construction or major modification is to commence;

20 (4) a schedule of construction permit fees sufficient to cover:

21 (a) the reasonable costs of reviewing and acting upon any application for such
22 permit; and

23 (b) the reasonable costs of implementing and enforcing the terms and
24 conditions of the permit, excluding any court or other costs associated with an enforcement action;

1 (5) a schedule of emission fees consistent with the provisions of Section 502(b)(3) of
2 the 1990 amendments to the federal act;

3 (6) specification of the maximum length of time for which a permit shall be valid,
4 provided that for an operating permit, such period may not exceed five (5) years; and

5 (7) for an operating permit only:

6 (a) provisions consistent with Sections 502(b) and 505(b) of the federal act that
7 require: 1) notice to, and review and comment by, the United States Environmental Protection Agency;
8 and 2) if the department receives notice of objection from the United States Environmental Protection
9 Agency before the operating permit is issued, the department shall not issue the permit unless the permit
10 is revised and issued pursuant to Section 505(c) of the federal act;

11 (b) provisions governing renewal of the operating permit; and

12 (c) specification of the conditions under which the operating permit may be
13 terminated, modified or revoked and reissued prior to the expiration of the term of the operating permit.

14 C. The department may deny any application for:

15 (1) a construction permit if it appears that the construction or modification will not
16 meet applicable requirements of this Ordinance, the Air Quality Control Act, the federal act or any
17 regulation adopted pursuant thereto; or

18 (2) an operating permit if:

19 (a) the source for which the permit is sought will emit a hazardous air
20 pollutant or any air contaminant in excess of a federal standard of performance or a regulation of the
21 Board; or

22 (b) it appears that the source for which the permit is sought will cause or
23 contribute to air contaminant levels in excess of any national, state, or applicable local ambient air
24 quality standard; or

1 (c) any other provision of this Ordinance, the Air Quality Control Act or the
2 federal act will be violated.

3 D. The department may specify conditions to any permit granted under this section,
4 including:

5 (1) for a construction permit, a requirement that such source install and operate
6 control technology, determined on a case-by-case basis, sufficient to meet the requirements of this
7 Ordinance, the Air Quality Control Act, the federal act or any regulations promulgated pursuant thereto;
8 and

9 (2) for an operating permit:

10 (a) imposition of individual emission limits, determined on a case-by-case
11 basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act and
12 the federal act or the emission rate specified in the operating permit application, whichever is most
13 stringent;

14 (b) compliance with applicable federal standards of performance;

15 (c) imposition of reasonable restrictions and limitations not relating to emission
16 limits or emission rates; or

17 (d) any combination of the conditions listed above.

18 E. This section does not authorize the department to require the use of machinery, devices
19 or equipment from a particular manufacturer if the federal standards of performance, regulations of the
20 Board and permit conditions may be met by machinery, devices or equipment otherwise available.

21 F. The issuance of a construction or operating permit does not relieve any person from the
22 responsibility of complying with the provisions of the Air Quality Control Act, this Ordinance or any
23 applicable regulations of the Board. Any conditions placed upon a permit by the department shall be
24 enforceable to the same extent as a regulation of the Board.

1 G. Any person who participated in a permitting action before the department shall be notified
2 by the department of the action taken by the department and the reasons for the action. Notification
3 of the applicant shall be by certified mail.

4 H. Any person who participated in a permitting action before the department and who is
5 adversely affected by such permitting action may file a petition for hearing before the Board. The
6 petition shall be made in writing to the Board within thirty (30) days from the date notice is given of
7 the department's action. Unless a timely request for hearing is made, the decision of the department
8 shall be final.

9 I. If a timely petition for hearing is made, the Board shall hold a hearing within ninety (90)
10 days after receipt of the petition. The Board shall notify the petitioner and the applicant or permittee,
11 if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject
12 of the petition is a permitting action deemed by the Board to substantially affect the public interest, the
13 Board shall ensure that the public receives notice of the date, time and place of the hearing. The public
14 in such circumstances shall also be given a reasonable opportunity to submit data, views or arguments
15 orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data,
16 views or arguments orally or in writing shall be subject to examination at the hearing.

17 J. The Board may designate a hearing officer to take evidence in the hearing. All hearings
18 shall be recorded.

19 K. The burden of proof shall be upon the petitioner. Based upon the evidence presented at
20 the hearing, the Board shall sustain, modify or reverse the action of the department.

21 L. Notwithstanding any other provision of law and subject to the provisions of Section 74-2-
22 4 NMSA 1978, a final decision on a permit by the department, the Board or the court of appeals that
23 a new source will or will not meet applicable local, state, and federal air pollution standards and
24 regulations shall be conclusive and is binding on every County of Bernalillo, City of Albuquerque or

1 State of New Mexico agency and, as an issue before any such local or state agency, shall be deemed
2 resolved in accordance with that final decision.

3 M. Fees collected pursuant to this section shall be deposited in a fund created pursuant to
4 Section 74-2-16 NMSA 1978 if collected pursuant to a permit regulation adopted by the Board pursuant
5 to this section.

6 **SECTION 8. Variances.**

7 A. The Board may grant an individual variance from the limitations prescribed under the Air
8 Quality Control Act, this Ordinance, any regulation of the Board, or any permit condition imposed by
9 the department whenever it is found, upon presentation of adequate proof:

10 (1) that compliance with any part of the Air Quality Control Act, this Ordinance, any
11 regulation of the Board, or any permit condition will:

12 (a) result in an arbitrary and unreasonable taking of property; or

13 (b) impose an undue economic burden upon any lawful business, occupation
14 or activity; and

15 (2) that the granting of the variance will not:

16 (a) result in a condition injurious to health or safety; or

17 (b) cause or contribute to an air contaminant level in excess of any primary
18 national ambient air standard.

19 B. No variance shall be granted pursuant to this section until the Board has considered the
20 relative interests of the applicant, the other owners of property likely to be affected by the discharges
21 and the general public.

22 C. Any variance or renewal thereof shall be granted within the requirements of Subsection
23 A of this section and for time periods and under conditions consistent with the reasons therefor, and
24 within the following limitations:

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1 (1) if the variance is granted on the ground that there are no practicable means known
2 or available for the adequate prevention, abatement or control of the air pollution involved, it
3 shall be only until the necessary means for prevention, abatement or control become known and
4 available;

5 (2) if the variance is granted on the ground that compliance with the particular
6 requirement or requirements from which variance is sought will necessitate the taking of measures that,
7 because of their extent or cost, must be spread over a considerable period of time, it shall be for a
8 period not to exceed such reasonable time as, in the view of the Board, is requisite for the taking of the
9 necessary measures. A variance granted on the ground specified in this paragraph shall contain a
10 timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the
11 timetable; or

12 (3) if the variance is granted on the grounds that it is justified to relieve or prevent
13 hardship of a kind other than that provided for in Paragraphs (1) and (2) of this subsection, it shall be
14 for not more than one year.

15 D. Any person seeking a variance shall do so by filing a petition for variance with the
16 director. The director shall promptly investigate the petition and make a recommendation to the Board
17 as to the disposition of the petition.

18 E. Upon receiving the recommendation of the director on the variance, the Board shall:

19 (1) if the recommendation of the director favors a variance, hold a public hearing
20 prior to the granting of any variance; and

21 (2) if the director is opposed to the granting of the variance, hold a hearing only upon
22 the request of the petitioner.

23 F. In the hearing, the burden of proof shall be upon the petitioner.

1 **SECTION 9. Judicial review; administrative actions.**

2 A. Any person adversely affected by an administrative action taken by the Board or the
3 director may appeal to the court of appeals. All appeals shall be upon the record made at the hearing
4 and shall be taken to the court of appeals within thirty (30) days following the date of the action being
5 appealed.

6 B. For appeals of regulations, that date of the action shall be the date of the filing of the
7 regulation by the Board pursuant to the State Rules Act, 14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA
8 1978.

9 C. Upon appeal, the court of appeals shall set aside the action only if found to be:

- 10 (1) arbitrary, capricious or an abuse of discretion;
11 (2) not supported by substantial evidence in the record; or
12 (3) otherwise not in accordance with law.

13 D. After a hearing and a showing of good cause by the appellant, a stay of action being
14 appealed may be granted:

- 15 (1) by the Board or the director, whichever took the action being appealed; or
16 (2) by the court of appeals if the Board or the director denies a stay or fails to act
17 upon an application for a stay within sixty (60) days after receipt of the application.

18 **SECTION 10. Emergency powers of the director.**

19 A. Notwithstanding any other provision of the Air Quality Control Act, this Ordinance or
20 any regulation of the Board, if the director of the department determines that a source or combination
21 of sources present an imminent and substantial endangerment to the public health or welfare or to the
22 environment, the director may bring suit in the district court for Bernalillo County to restrain
23 immediately any person causing or contributing to the alleged air pollution to stop the emission of air
24 contaminants causing or contributing to such air pollution or to take such other action as may be
25 necessary.

1 B. If it is not practicable to assure prompt protection of the public health or welfare or the
2 environment by commencement of a civil action, the director may issue orders necessary to protect the
3 public health or welfare or the environment. An order shall be effective for a period of not more than
4 twenty-four (24) hours, unless the director brings a civil action before the expiration of the twenty-four
5 hours. If the director brings an action within that time, the order shall be effective thereafter for forty-
6 eight (48) hours or for such longer period as may be authorized by the court pending litigation.

7 **SECTION 11. Confidential information.**

8 A. Any records, reports or information obtained under the Air Quality Control Act or this
9 Ordinance by the Board or the department shall be available to the public, except that upon a
10 satisfactory showing to the director or the Board, as applicable, by any person that records, reports or
11 information, or particular parts thereof, except emission data, to which the director or the Board has
12 access under the Air Quality Control Act, if made public would divulge confidential business records
13 or methods or processes entitled to protection as trade secrets of that person, the director or the Board,
14 as applicable, shall consider such record, report or information, or particular portion thereof,
15 confidential in accordance with the provisions of Section 14-2-1 NMSA 1978 and 18 U.S.C. Section
16 1905, except that such record, report or other information may be disclosed:

17 (1) to other officers, employees or authorized representatives of the department or the
18 Board concerned with carrying out the Air Quality Control Act;

19 (2) to officers, employees or authorized representatives of the United States
20 environmental protection agency concerned with carrying out the federal act; or

21 (3) when relevant, in any proceeding under the Air Quality Control Act or the federal
22 act.

23 B. The Board shall adopt regulations to implement this section, including regulations
24 specifying those business records entitled to treatment as confidential records.

1 **SECTION 12. Limitations on regulations.**

2 This Ordinance does not:

3 A. authorize the Board to make any regulation with respect to any condition or quality of
4 the outdoor atmosphere if the condition or air quality level and its effect are confined entirely within
5 the boundaries of the industrial or manufacturing property within which the air contaminants are or may
6 be emitted and public access is restricted within such boundaries;

7 B. grant to the Board any jurisdiction or authority affecting the relation between employees
8 and employers with respect to or arising out of any condition of air quality; or

9 C. supersede or limit the applicability of any law relating to industrial health, safety or
10 sanitation.

11 **SECTION 13. Enforcement; compliance orders; field citations.**

12 A. Whenever, on the basis of any information, the director determines that any person has
13 violated or is violating any requirement or prohibition of the Air Quality Control Act, this Ordinance,
14 any regulation promulgated pursuant to this Ordinance, or any condition of a permit issued pursuant
15 thereto, the director may:

16 (1) issue a compliance order stating with reasonable specificity the nature of the
17 violation and requiring compliance immediately or within a specified time period or assessing a civil
18 penalty for any past or current violation, or both; or

19 (2) commence a civil action in district court for appropriate relief, including a
20 temporary or permanent injunction.

21 B. Any order issued pursuant to Subsection A of this section may include a suspension or
22 revocation of any permit, or portion thereof, issued by the director. Any penalty assessed in the order
23 shall not exceed fifteen thousand dollars (\$15,000) per day of noncompliance for each violation.

24 C. Any order issued pursuant to Subsection A of this section shall become final unless, no
25 later than thirty (30) days after the order is served, the person named herein submits a written request

Joint Air Quality Control Board Ordinance
Ordinance No. 94-5

1 to the director for a public hearing. Upon such request, the director shall promptly conduct a public
2 hearing. The director shall appoint an independent hearing officer to preside over the public hearing.
3 The hearing officer shall make and preserve a complete record of the proceedings and forward the
4 hearing officer's recommendation based thereon to the director, who shall make the final decision.

5 D. The Board may adopt a field citation program through regulations establishing appropriate
6 minor violations for which field citations assessing civil penalties not to exceed one thousand dollars
7 (\$1,000) per day of violation may be issued by officers or employees of the department as designated
8 by the director. The program will be implemented by the department.

9 E. Any person to whom a field citation is issued pursuant to Subsection D of this section
10 may, within a reasonable time as prescribed by regulation by the Board, elect to pay the penalty
11 assessment or to request a hearing by the issuing agency on the field citation. If a request for hearing
12 is not made within the time specified in the regulation, the penalty assessment in the field citation shall
13 be final.

14 F. Payment of a civil penalty required by a field citation issued pursuant to Subsection D
15 of this section shall not be a defense to further enforcement by the department to correct a violation or
16 to assess the maximum statutory penalty pursuant to other authorities in the Air Quality Control Act or
17 this Ordinance if the violation continues.

18 G. In determining the amount of any penalty to be assessed pursuant to this section, the
19 director or the individual issuing a field citation shall take into account the seriousness of the violation,
20 any good-faith efforts to comply with the applicable requirements and other relevant factors.

21 H. In connection with any proceeding under this section, the director may issue subpoenas
22 for the attendance and testimony of witnesses and the production of relevant papers, books and
23 documents and may adopt rules for discovery procedures.

24 I. Penalties collected pursuant to an administrative order or a field citation shall be deposited
25 in the Bernalillo County or City of Albuquerque general fund, as applicable.

1 **SECTION 14. Civil penalty; representation of the County and the City.**

2 A. Any person who violates any provision of the Air Quality Control Act, this Ordinance,
3 any regulation of the Board or any permit condition or emergency order adopted or issued pursuant to
4 that Act or Ordinance may be assessed a civil penalty not to exceed fifteen thousand dollars (\$15,000)
5 for each day during any portion of which a violation occurs.

6 B. In any court action to enforce the provisions of the Air Quality Control Act or this
7 Ordinance or regulation, permit condition or emergency order, adopted, imposed or issued pursuant
8 thereto:

9 (1) Bernalillo County shall be represented by the District Attorney; and

10 (2) the City of Albuquerque shall be represented by the City Attorney.

11 **SECTION 15. Inspection.**

12 The director or an authorized representative, upon presentation of departmental credentials:

13 A. shall have a right of entry to, upon or through any premises on which an emission source
14 is located or on which any records required to be maintained by regulations of the Board or any permit
15 condition are located; and

16 B. may at reasonable times:

17 (1) have access to and copy any records required to be established and maintained by
18 regulations of the Board or any permit condition; and

19 (2) inspect any monitoring equipment and method required by regulation of the Board
20 or by any permit condition; and

21 (3) sample any emissions that are required to be sampled pursuant to regulation of
22 the Board or any permit condition.

23 C. If premises described in subsection A or B of the section are unoccupied, a department
24 employee shall first make a reasonable effort to locate the owner or other person having charge or
25 control of the premises and demand entry.

1 D. If entry is refused, the department shall proceed to obtain a search warrant by filing the
2 documents and following the procedures required by the District Court or Metropolitan Court. The
3 sworn statement filed in conjunction with the application for the search warrant or order shall:

4 (1) set forth the particular premises, or portion thereof, sought to be inspected;

5 (2) state that the owner or occupant of the premises, or portion thereof, has refused
6 entry;

7 (3) state that inspection of the premises or portion thereof is necessary to determine
8 whether it complies with the requirements of this Ordinance;

9 (4) set forth the particular provisions of the Ordinance sought to be enforced;

10 (5) set forth any other reason necessitating the inspection, including knowledge or
11 belief that a particular condition exists in the premises, or portion thereof, which constitutes a violation
12 of this Ordinance; and

13 (6) state that the department or the department's designated representative is
14 authorized by the County Manager to make the inspection.

15 **SECTION 16. Enforcement summaries.**

16 The department shall deliver to the County Manager and the County Commissioners , and to the Mayor
17 and City Councilors or the designated representatives of any of them, a copy of the monthly
18 enforcement summary which the department submits to the Board.

19 **SECTION 17. Criminal penalties.**

20 A. Any person who knowingly commits any violation of this Ordinance or a regulation of
21 the Board which is not described in 74-2-14C NMSA 1978 is guilty of a misdemeanor and shall be
22 sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

23 B. Any person who knowingly makes any false statement, representation or certification in
24 any application, record, report, plan or other document filed or required to be maintained under the Air
25 Quality Control Act or a Board regulation or who falsifies, tampers with or knowingly renders

1 inaccurate any monitoring device or method to be maintained under the Air Quality Control Act or this
2 Ordinance or regulation adopted pursuant thereto is guilty of a petty misdemeanor and shall, upon
3 conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment
4 for not more than six (6) months, or by both.

5 **SECTION 18. Local air quality permit fund.**

6 A. Pursuant to Section 74-2-16 NMSA 1978 and this Ordinance, the City will establish an
7 environmental health department air quality permit fund.

8 B. All fees collected by the department shall be deposited in the fund created in Subsection
9 A above, and shall be used by the City only for the purpose of paying the reasonable costs of funding
10 the department's performance for the County and the City of the following permitting functions required
11 by the federal Clean Air Act Amendments of 1990 as follows:

12 (1) reviewing and acting upon any application for a permit;

13 (2) if the owner or operator receives a permit, implementing and enforcing the terms
14 and conditions of such permit, not including any court costs or other costs associated with any
15 enforcement action;

16 (3) emissions and ambient monitoring;

17 (4) preparing generally applicable regulations or guidance;

18 (5) modeling, analysis and demonstration; and

19 (6) preparing inventories and tracking emissions.

20 **SECTION 19. Severability.**

21 If any part or application of this Ordinance is held invalid, the remainder or its application to other
22 situations or persons shall not be affected.

23 **SECTION 20. Repeal of previous Ordinance.**

24 Ordinance Number 88-45 is hereby repealed and replaced by this Ordinance.

BERNALILLO COUNTY ORDINANCE NO. 94-5

AN ORDINANCE AMENDING THE PORTIONS OF THE
JOINT AIR QUALITY CONTROL BOARD ORDINANCE
NO. 94-5 PERTAINING TO PENALTIES

1 AMENDING THE PORTIONS OF THE JOINT AIR QUALITY CONTROL BOARD
2 ORDINANCE PERTAINING TO PENALTIES, BERNALILLO COUNTY ORDINANCE
3 NO. 94-5, TO REFLECT CHANGES IN THE NEW MEXICO AIR QUALITY ACT AND
4 FEDERAL REQUIREMENTS.

5 BE IT ORDAINED BY THE COMMISSION, THE GOVERNING BODY OF THE
6 COUNTY OF BERNALILLO:

7 *Sections 14 and 17 of Bernalillo County Ordinance No. 94-5*
8 *are amended to read as follows:*

9 "SECTION 14: CIVIL PENALTY; REPRESENTATION AT THE COUNTY AND
10 THE CITY.

11 (A) Civil Penalty. Any person who violates any provision of
12 the Air Quality Control Act, this Ordinance, any regulation of the
13 Board or any permit condition or emergency order adopted or issued
14 pursuant to [that] the Air Quality Control Act or Ordinance, may be
15 assessed a civil penalty not to exceed (\$15,000) for each day
16 during any portion of which a violation occurs."

17 "SECTION 17: CRIMINAL PENALTIES.



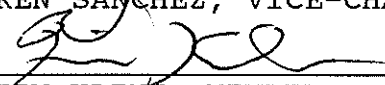

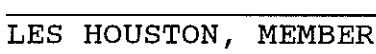
18 (A) Any person who knowingly commits any violation of this
19 Ordinance or a regulation of the Board which is not described as a
20 felony in Section 74-2-14.C NMSA 1978 is guilty of a misdemeanor
21 and shall be sentenced in accordance with the provisions of
22 Section 31-19-1 NMSA 1978.


23 (B) Any person who knowingly makes any false statement,
24 representation or certification in any application, record, report,

CONTINUATION PAGE 2, BERNALILLO COUNTY ORDINANCE NO. 94-5
AN ORDINANCE AMENDING THE PORTIONS OF THE JOINT AIR QUALITY
CONTROL BOARD ORDINANCE NO. 94-5 PERTAINING TO PENALTIES

1 plan or other document filed or required to be maintained under the
2 Air Quality Control Act or Board regulation who falsifies, tampers
3 with or knowingly renders inaccurate any monitoring device or
4 method to be maintained under the Air Quality Control Act or this
5 Ordinance or regulation adopted pursuant thereto is guilty of a
6 petty misdemeanor and shall, upon conviction, be punished by a fine
7 of not more than (\$10,000) per day for each violation, or by
8 imprisonment for not more than six (6) months, or both."

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BOARD OF COUNTY COMMISSIONERS

ALBERT "AL" VALDEZ, CHAIRMAN

KEN SANCHEZ, VICE-CHAIR

TIM KLINE, MEMBER

BARBARA J. SEWARD, MEMBER
VOTED 'NO'

LES HOUSTON, MEMBER

APPROVED AS TO FORM:

COUNTY LEGAL DEPARTMENT

DATE: 11/12/96

ATTEST:

COUNTY CLERK

DATE: _____