

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

RECEIVED
ENVIRONMENTAL HEALTH
17 AUG 29 PM 2: 51

**IN THE MATTER OF PETITION TO:
AMEND 20.11.41 NMAC, *CONSTRUCTION
PERMITS*, TO ADDRESS CONDITIONAL
APPROVAL BY THE U.S. ENVIRONMENTAL
PROTECTION AGENCY**

AQCB PETITION NO. 2017-2

**ENVIRONMENTAL HEALTH
DEPARTMENT, PETITIONER**

**ENVIRONMENTAL HEALTH DEPARTMENT'S
PETITION TO:
AMEND 20.11.41 NMAC, *CONSTRUCTION PERMITS*,
TO ADDRESS CONDITIONAL APPROVAL
BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

The City of Albuquerque's Environmental Health Department ("EHD") petitions the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board") to authorize a hearing on EHD's petition to amend 20.11.41 NMAC, *Construction Permits*. This action is necessary in order to address a recent conditional approval by the U.S. Environmental Protection Agency ("EPA") of a proposed revision to the New Mexico State Implementation Plan ("SIP") for Albuquerque and Bernalillo County.

As required by 20.11.82.18(B) NMAC, *Rulemaking Procedures – Air Quality Control Board*, a draft of EHD's proposed amendments to 20.11.41 NMAC is attached to this petition, with individual line numbers included. The amendments are marked in red, in legislative edit format (i.e. strikethroughs and underlines to indicate altered language). As EHD explains below, these amendments are necessary in order to fulfill Albuquerque – Bernalillo County's obligations under EPA regulations.

In preparing the draft regulations attached to this petition, EHD sought comment from interested stakeholders. On May 30, 2017, EHD sent copies of proposed draft regulations to Albuquerque and Bernalillo County neighborhood associations; persons holding air quality permits for gas stations or emergency generators; and members of the community on the email list-serve of the Air Board. EHD's cover letter invited these stakeholders to two public comment meetings held on June 28, 2017, one held in the afternoon and one in the evening. Four people attended the afternoon meeting. No one attended the evening meeting. EHD received four written comments on its draft regulations. EHD also consulted with the US Environmental Protection Agency, Region 6. EHD considered all comments received and will discuss these in its hearing testimony.

As reasons for its petition, EHD states as follows.

1. On July 10, 2013, the Air Board adopted amendments to 20.11.41 NMAC. These amendments were submitted to EPA on July 26, 2013 as a proposed revision to the New Mexico SIP.

2. On June 29, 2017, EPA approved all but two of the amendments to 20.11.41 as SIP revisions.¹ In those two instances, EPA noted amended provisions of 20.11.41 NMAC that failed to satisfy federal regulatory requirements. In both instances, EPA approved the provisions on the condition that Albuquerque – Bernalillo County submit further amendments to remedy the deficiencies no later than one year after EPA's conditional approval on June 29, 2017. The amendments that EHD proposes in this petition will address these two issues and meet the EPA deadline.

¹ 82 Fed. Reg. 29,421 (June 29, 2017).

3. Because these regulations are required to comply with federal law, these changes are in the public interest. Because these regulations do not change substantive air quality requirements, EHD does not anticipate any impacts on health, welfare, visibility or property or impacts on technical practicability and economic reasonableness.²

I. CHANGES TO TECHNICAL PERMIT REVISIONS, SECTION 28 AND RELATED CHANGE TO SECTION 13

4. In its first conditional approval, EPA noted a deficiency in 20.11.41.28(B) NMAC. These provisions specify public notice for technical permit revisions. In some cases, technical permit revisions allowed a one pound per hour increase in emissions of pollutants. The public notice procedures required an applicant for a technical permit revision to provide notice of the application to nearby neighborhood associations. EPA found that the one pound per hour emissions increase was significant enough to require notice by "prominent advertisement in the area affected" as required by federal regulations, at 40 CFR § 51.161(b)(3). Notice to neighborhood associations, without more, was not sufficient this requirement. EPA stated that truly insignificant increases, or no emission increase, would allow reduced or eliminated public notice requirements.

5. The purpose of technical permit revisions is to provide a streamlined process to allow truly insignificant changes to permits to be processed quickly so that more staff time could be devoted to more significant changes. In order to meet EPA's conditional approval, EHD proposes to eliminate the one pound per hour increase in emissions and to further narrow technical permit revisions to those actions which do not require air quality dispersion modeling.³

² NMSA 1978, § 74-2-5(E); Revised Ordinances of Albuquerque ("ROA") § 9-5-1-4(E); Bernalillo Code of Ordinances ("Bern. Code") § 30-33(e).

³ 20.11.41.28(B)(1)(b) NMAC, p. 19, lines 40-43; 20.11.41.28(B)(1)(e)(vii), (viii), and (ix) NMAC, p. 20, lines 11-13; 20.11.41.28(B)(1)(g) NMAC, p. 20, lines 19-22.

6. Because no increase in the potential emission rate and no changes that necessitate dispersion modeling will be allowed in a technical permit revision, EHD has also removed the provision for public notice and public information hearings for technical permit revisions.⁴ EHD also proposes minor clarifications and format changes to the requirements for technical permit revisions,⁵ consistent with federal, state, and local law on requirements for permitting.⁶

7. The above changes will allow technical permit revisions to be processed promptly and to serve the purpose originally envisioned—a streamlined process for truly insignificant changes.

II. CHANGES TO ACCELERATED PERMIT REVIEW, SECTION 32

8. In its second conditional approval, EPA noted a typographical error in 20.11.41.32(B) NMAC that resulted in violation of a federal requirement. Section 32(B) of 20.11.41 NMAC requires that, in an accelerated permit review, EHD must "provide the public notice as required by Paragraphs (2) through (9) of Subsection B of 20.11.41.14 NMAC." This language inadvertently left out Paragraph (1) of the cited Subsection, which requires EHD to make a permit application available for public inspection at its offices. EPA pointed out that federal regulations, at 40 CFR § 51.161, require posting of a permit application and the agency's analysis of it in a public place. EHD has explained to EPA that this omission was an inadvertent oversight which occurred during the 2013 adoption of the amended 20.11.41 NMAC.

9. EHD proposes to amend Section 32 by changing "Paragraphs (2) through (9) of Subsection B of 20.11.41.14 NMAC" to "Paragraphs (1) through (9) of Subsection B of

⁴ 20.11.41.13(B) NMAC, p. 8, lines 1-4; 20.11.41.28(B)(2)(a) NMAC, p. 20, line 24; former 20.11.41.28(B)(4) deleted, p. 20, lines 34-36.

⁵ 20.11.41.28(B) NMAC, p. 20, lines 37, 39, 46.

⁶ 40 CFR §§ 51.160 to 51.164; NMSA 1978 § 74-2-7; ROA § 9-5-1-7; Bern. Code § 30-36.

20.11.41.14 NMAC.” The corrected language will require public availability of a permit application and EHD's analysis of it, as provided in 20.11.41.14(B) NMAC.⁷

10. EHD's draft of a proposed 20.11.41 NMAC will address both of EPA's conditional approvals of Part 41.

III. ADDITIONAL PROPOSED CHANGES TO PART 41

11. EHD's draft proposes certain other minor changes, apart from the correction of deficiencies noted by EPA.

12. EHD's draft would amend 20.11.41.14(B)(2) NMAC to allow EHD to provide notice of permit applications on its web page rather than by newspaper publication.⁸ State and local law authorizes this change by authorizing the Air Board to specify public notice requirements for permits.⁹ Federal law authorizes this change because EPA regulations requiring "notice by prominent advertisement" of permit applications include notice by electronic publication as well as print newspaper publication.¹⁰

13. EHD's draft would change the required public notice period for departmental public information hearings from 10 days to 30 days.¹¹ EPA did not require these changes in its conditional approval of June 29, 2017 but recommends them in order to improve public notice provisions. These changes meet applicable federal, state, and local requirements regarding public hearings for permits.¹²

⁷ 20.11.41.32(B) NMAC, p. 24, line 10.

⁸ 20.11.41.14(B)(2) NMAC, p. 10, lines 34-35.

⁹ NMSA 1978 § 74-2-7(B)(5); ROA § 9-5-1-7(B)(3); Bern. Code § 30-36(b)(3).

¹⁰ 40 CFR § 51.161(b)(3) (requiring "notice by prominent advertisement" for minor source permit applications); 81 Fed. Reg. 71,613, 71,617 (Oct. 18, 2016) ("notice by prominent advertisement" means electronic publication as well as newspaper publication).

¹¹ 20.11.41.15(B)(5) NMAC, p. 11, line 53; 20.11.41.15(B)(6) NMAC, p. 12, line 10.

¹² 40 CFR §§ 51.160 to 51.164; NMSA 1978 § 74-2-7(B)(5); ROA § 9-5-1-7(B)(3); Bern. Code § 30-36(b)(3).

14. If the Air Board adopts the above described regulatory changes, EHD also petitions the Air Board to authorize EHD to submit the changes to EPA for approval as proposed revisions to the New Mexico State Implementation Plan under Section 110(a) of the Clean Air Act.

15. The Air Board is authorized to adopt this proposed regulatory change under NMSA 1978 § 74-2-5(B)(1), Revised Ordinances of the City of Albuquerque § 9-5-1-4, and Bernalillo County Ordinances § 30-33.

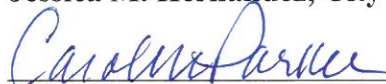
16. EHD estimates that the hearing for this proposed regulatory change will take approximately 30 minutes.

WHEREFORE, EHD requests that the Air Board,

- a. Schedule a hearing to consider the merits of EHD's petition;
- b. Authorize EHD to provide a court reporter for the hearing;
- c. Designate a hearing officer for the hearing.

Respectfully submitted,

CITY OF ALBUQUERQUE
Jessica M. Hernandez, City Attorney

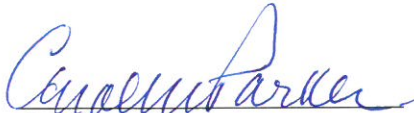


Carol M. Parker
Assistant City Attorney
PO Box 2248
Albuquerque NM 87103
Telephone (505) 768-4500
Facsimile (505) 768-4525
cparker@cabq.gov

CERTIFICATE OF SERVICE

I certify that an original and fifteen copies of this Petition were hand-delivered on August 29, 2017, to:

Andrew Daffern, Hearing Clerk
Albuquerque-Bernalillo County Air Quality Control Board
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103



Carol M. Parker
Assistant City Attorney

348328