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ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO AMEND 20.11.46 NMAC, SULFUR DIOXIDE EMISSIONS INVENTORY REQUIREMENTS; WESTERN BACKSTOP SULFUR DIOXIDE TRADING PROGRAM, AND INCORPORATE SAID AMENDMENTS INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN (SIP) FOR AIR QUALITY

AQCB Petition No. 2011-1

Air Quality Division,
Environmental Health Department,
City of Albuquerque, Petitioner

Petition to Amend 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*, and Incorporate an Amended 20.11.46 NMAC into the New Mexico State Implementation Plan for Air Quality (SIP)

The Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division (AQD), asks the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) for a hearing at which the Air Board will hear the AQD's request to adopt amendments to 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program,* and submit said amendments to U.S. Environmental Protection Agency (EPA) as a revision to the SIP. This Petition includes a request for a hearing on these matters and permission to provide a court reporter and hearing officer for the hearing. As grounds, Petitioner states the following:

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 (SIPs) under NMSA 1978, Section 74-2-5.B(2).

2. On November 12, 2003, the Air Board adopted 20.11.46 NMAC, which implements the Western Backstop (WEB) Sulfur Dioxide (SO_2) Trading Program provisions as required by the federal Clean Air Act, the federal Regional Haze Rule, 40 CFR § 51.309 (Section 309), and the concomitant Albuquerque-Bernalillo County element of the State of New Mexico's regional haze implementation plan. Section 309 of the federal Regional Haze Rule establishes mandatory requirements that must be incorporated into the SIP, including regional SO_2 milestones, SO_2 emissions tracking requirements and a backstop regional cap-and-trade program for SO_2. 20.11.46 NMAC includes emissions inventory requirements for tracking compliance with the SO_2 milestones. The emissions inventory and tracking requirements for SO_2 were included as enforceable provisions in 20.11.46 NMAC. 20.11.46 NMAC contains the requirements that would apply to major industrial sources (i.e. 100 tons or more per year) of SO_2 emissions as a "backstop" regulatory program if specified SO_2 milestones were exceeded. If the milestones are exceeded, numerous mandatory requirements of 20.11.46 NMAC will be triggered, including the procedures and compliance requirements for sources in the trading program. However, the mandatory provisions that will be triggered by exceeding the milestones may never be implemented if the goal of meeting the regional SO_2 milestones through voluntary means is achieved.

Continued compliance with 40 CFR § 51.309 and associated legal challenges has necessitated revisions to the Regional Haze SIP and 20.11.46 NMAC. After first being

adopted by the Air Board in 2003, 20.11.46 NMAC was subsequently amended on August 13, 2008, after a public review period and corresponding public hearings held on November 14, 2007 and August 13, 2008. These amendments became effective locally on September 15, 2008, but have not been approved by EPA. In order for the backstop trading rules to be approved by EPA, they must be consistent across all "309 states" (i.e. New Mexico, Utah, and Wyoming). Therefore, EPA is requiring that 20.11.46 NMAC be amended again, in order to bring it into alignment with the model rule language utilized by the other "309 states".

Therefore, the following amendments to 20.11.46 NMAC are being proposed:

A. Removing definitions for: "Allowance Tracking System"; "Allowance Tracking System Account"; and" Emissions Tracking Database";

B. Adding definitions for: "WEB Emissions and Allowance Tracking System" / "WEB EATS"; and "WEB EATS Account";

C. Clarifying that "retirement" of a source must be "permanent";

D. Modifying language at 20.11.46.14 NMAC, *Allowance Allocations*; 20.11.46.15 NMAC, *Establishment of Accounts*; 20.11.46.16 NMAC, *Monitoring, Record Keeping and Reporting*; 20.11.46.18 NMAC, *Use Of Allowances From A Previous Year;* and 20.11.46.20 NMAC, *Special Penalty*

Provisions For Year 2018 Milestone; to align with Utah's trading rule (*Western Backstop Sulfur Dioxide Trading Program*, R307-250-6);

E. Modifying language at 20.11.46.21 NMAC, *SO_2 Monitoring of Fuel Gas Combustion Devices* and 20.11.46.22 NMAC, *Predictive Flow Monitoring Systems For Kilns With Positive Pressure Fabric Filter*, to align with Wyoming's trading rule (Appendix A: WEB Chapter 14, Section 2, Monitoring Protocols); and

F. Correcting cross-references, improving style, and increasing readability.

3. It is anticipated that the hearing will take approximately 1 hour or less.

4. The proposed Public Review Draft of 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program* is attached as Exhibit #1a.

Respectfully submitted,

Mary Lou Leonard
Director, Environmental Health Department
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CERTIFICATION

I hereby certify that a copy of this Petition to Amend 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*, and Incorporate said amendments into the SIP, was delivered to the following person on January 25, 2011.

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

Mary Lou Leonard
Director, Environmental Health Department