ADMINISTRATIVE RECORD DOCUMENT #1a

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

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IN THE MATTER OF THE PETITION TO ADOPT A NEW REGULATION, 20.11.80 NMAC, *ADJUDICATORY PROCEDURES – ENVIRONMENTAL HEALTH DEPARTMENT – ADMINISTRATIVE ENFORCEMENT – HEARINGS BY DIRECTOR.*

AQCB Petition No. 2011-4

City of Albuquerque,
Petitioner.

Petition to Adopt 20.11.80 NMAC, *Adjudicatory Procedures – Environmental Health Department – Administrative Enforcement – Hearings by Director*

The City of Albuquerque ("City"), by and through the Air Quality Division ("Division") of the City Environmental Health Department ("Department"), asks the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board") to adopt a new regulation, 20.11.80 NMAC, *Adjudicatory Procedures – Environmental Health Department – Administrative Enforcement – Hearings by Director*. This Petition includes a request for a hearing on these matters, and for permission to provide a court reporter and hearing officer for the hearing. The Air Board has the authority to adopt, amend or replace air quality regulations pursuant to NMSA 1978, Sections 74-2-5.B(1) and 74-2-12.

Adoption of proposed 20.11.80 NMAC is requested for the following reasons. When the Division has initiated an administrative enforcement action against a Respondent for an alleged violation of an air quality permit or air quality act, ordinance, regulation or standard, and the Division and Respondent have not been able to resolve the alleged violation, the Department Director may issue an administrative Compliance Order as authorized by the New Mexico Air Quality Control Act (Air Act), Chapter 74,

Article 2, at NMSA, Section 74-2-12(A)(1). The Compliance Order initiates an administrative enforcement action, as opposed to a civil or criminal action filed in court.

In the past, when a Respondent has received an administrative Compliance Order and requested an administrative enforcement hearing on the merits, the parties have referred to New Mexico Environmental Improvement Board (EIB) procedural regulation 20.1.5 NMAC, *Adjudicatory Procedures* - [NM] *Environment Department*. The EIB regulation was adopted to establish administrative adjudicatory procedures for at least six separate state acts, including the New Mexico Air Quality Control Act, the Hazardous Waste Act, the Solid Waste Act, the Groundwater Protection Act and the Tire Recycling Act. Because the EIB regulation addresses a wide range of subjects, laws and terminology, some confusion has arisen regarding the procedures and terminology that should be applied to administrative enforcement actions initiated by the City's Environmental Health Department Director.

Proposed 20.11.80 NMAC provides the procedures that will apply to adjudicatory enforcement proceedings that are conducted by or on behalf of the Environmental Health Department Director, as authorized and required by the NM Air Quality Control Act at NMSA 1978, Sections 74-2-4, 74-2-5 and 74-2-12; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections, 4, 5 and 13; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-4, 9-5-1-5 and 9-5-1-98.

The proposed Public Review Draft of 20.11.80 NMAC, *Adjudicatory Procedures – Environmental Health Department – Administrative Enforcement – Hearings by Director* is attached as AQD Exhibit #1a.

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

Respectfully submitted,

Mary Lou Leonard, Director
Environmental Health Department
City of Albuquerque

CERTIFICATION

I hereby certify that on April 26, 2011, an original and nine photocopies of this Petition to Adopt 20.11.80 NMAC, *Adjudicatory Procedures – Environmental Health Department – Administrative Enforcement – Hearings by Director,* were delivered to the following person:

Margaret Nieto
Secretary to the Air Quality Control Board
Environmental Health Department
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103

and that a copy was provided to

Bill Grantham, Attorney to the Air Quality Control Board
at bill.grantham@state.nm.us.

Mary Lou Leonard, Director,
Environmental Health Department
City of Albuquerque