ADMINISTRATIVE RECORD DOCUMENT #2a

Butt, Neal T.

From: City of Albuquerque-Air Quality Division [jcwright@cabq.gov]
Sent: Tuesday, December 21, 2010 10:20 AM
To: Butt, Neal T.
Subject: 20.11.80 NMAC, Adjudicatory Procedures-Environmental Health Department--Administrative Enforcement and Hearings By Director-Stakeholder Review Draft
Follow Up Flag: Follow up
Flag Status: Green

20.11.80 NMAC, *Adjudicatory Procedures-Environmental Health Department--Administrative Enforcement and Hearings By Director* Stakeholder Review Draft

Dear Stakeholders:

20.11.80 NMAC is entitled Adjudicatory Procedures - Environmental *Health Department - Administrative Enforcement and Hearings by Director*, and also is referred to as "Part 80". Part 80 is a proposed new Albuquerque-Bernalillo County Air Quality Control Board (Air Board) regulation that establishes the procedures that must be followed when an administrative (non-court) enforcement action is initiated by the Environmental Health Department (EHD) and the person or entity that is responding to the enforcement action (who is referred to as the "respondent") asks for a hearing on the merits regarding the pending enforcement action. In the past, when a respondent has requested an administrative enforcement hearing, the parties have referred to New Mexico Environmental Improvement Board (EIB) procedural regulation 20.1.5 NMAC, *Adjudicatory Procedures - [NM] Environment Department* (EIB Part 5). EIB Part 5 was adopted by the EIB to establish procedures for at least six separate state acts, including the New Mexico Air Quality Control Act (NM Air Act), the Hazardous Waste Act, the Solid Waste Act, the Groundwater Protection Act (now under the authority of the Water Quality Control Commission) and the Tire Recycling Act (which was repealed in 2005). Because EIB Part 5 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 that allege violations of local Air Board regulations and permits.

Proposed Part 80 provides the procedures that, if adopted, will apply to adjudicatory enforcement proceedings that are conducted by or on behalf of the EHD Director, as authorized and required by the NM Air

Act at NMSA 74-2-12. Proposed Part 80 includes the requirements for filing a request for hearing; the powers and duties of the EHD Director and hearing officer; motions and discovery; hearing and post-hearing procedures; alternate means of resolving an administrative enforcement action; review of the EHD Director's final order by the New Mexico Court of Appeals (as provided by the NM Air Act at NMSA 74-2-9(A)); and other procedures that apply to administrative enforcement actions. Proposed Part 80 does not govern procedures of the Air Board regarding petitions for variance and related stays (see 20.11.7 NMAC); petitions for hearings on the merits before the Air Board that are made by a permit applicant, permittee or person who participated in a permitting action, as provided by 20.11.81 NMAC; *Adjudicatory Procedures - Air Quality Control Board;* and adoption, amendment and repeal of Air Board regulations, which are governed by 20.11.82 NMAC, *Rulemaking Procedures - Air Quality Control Board*.

A stakeholder review draft is available for your review and comments. Please provide your comments by February 13, 2011 to Janice Wright at jcwright@cabq.gov.

Please contact Janice Wright at jcwright@cabq.gov or 768-2601 regarding any questions.

Thank you,

Janice C. Wright
Air Quality Control Board Liaison and Hearing Clerk
Air Quality Division

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