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From: City of Albuquerque-Air Quality Division [nbutt@cabq.gov]
Sent: Thursday, June 02, 2011 10:03 AM
To: Butt, Neal T.
Subject: 20.11.80 NMAC, Adjudicatory Procedures - Environmental Health Department - Administrative Enforcement - Hearings by Director-Legal Notice for Hearing
Follow Up Flag: Follow up
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20.11.80 NMAC, *Adjudicatory Procedures - Environmental Health Department - Administrative Enforcement - Hearings by Director* Legal Notice of Hearing

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
NOTICE OF HEARING AND REGULAR MEETING

On July 13, 2011, at 5:30 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM.

The hearing will address: **Petition to Adopt 20.11.80 NMAC, *Adjudicatory Procedures - Environmental Health Department - Administrative Enforcement - Hearings by Director***

Adoption of proposed 20.11.80 NMAC is requested for the following reasons. When the Air Quality Division (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, Chapter 74, Article 2, at NMSA 1978, 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.

Historically, 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* for guidance. The EIB regulation was adopted to establish administrative adjudicatory procedures

for many and varied 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 would 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.**

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the new 20.11.80 NMAC, *Adjudicatory Procedures - Environmental Health Department - Administrative Enforcement - Hearings by Director.*

The Air Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is required by 20.11.82 NMAC, *Rulemaking Procedures - AQCB*, to submit a written Notice Of Intent (NOI) before 5:00 pm on June 28, 2011 to: Attn: 20.11.80 NMAC, *Adjudicatory Procedures - Environmental Health Department - Administrative Enforcement - Hearings by Director* Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The NOI shall identify the person's name, address and affiliation.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on July 6, 2011. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, **or by phone 768-2660,** or by e-mail at nbutt@cabq.gov , or by downloading a copy from the City of Albuquerque Air Quality Division website.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes.

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