

**BEFORE THE ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL
BOARD**

**Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals.,**

Appellants

Vs.

**Permit Modification
Permit No. #0902-M3**

City of Albuquerque Air Quality Division,

Appellee

**APPEAL
PETITION FOR HEARING**

PRELIMINARY STATEMENT

This is an appeal of the granting of Air Quality Authority-to-Construct Permit #0902-M3, Facility #35/001/00012 to American Cement Corporation by the City of Albuquerque Air Quality Division ("AQD"). This appeal is brought by community organizations Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, and individuals Kyle Silfer, David Wood, Marcia Finical.

This case involves the failure to protect the health, safety and welfare of the public without a proper review of all relevant evidence and the failure to incorporate principles of environmental justice in the permitting process which resulted in the Air Quality Permit Modification #0902-M3.

The Appellants respectfully request that the Albuquerque/Bernalillo County Air Quality Control Board ("AQCB") reverse the action granting Air Quality Permit Modification #0902-M3 under the New Mexico Air Quality Control Act, NMSA 74-2-7(K).

STATUTORY AND OTHER BASES FOR CLAIMS

Factual and evidentiary issues related to the issuance of a permit may be raised per NMSA 74-2-7(I)(K). Failure to ensure an environment that will confer optimum health, safety, comfort and economic and social well-being on its inhabitants and maximize their economic and

cultural benefits is a violation of NMSA 1978 § 74-1-2. Failure to consider public welfare, visibility and the reasonable use of property in granting an Air Quality Permit violates the definition of "air pollution" in NMSA 1978, § 74-2-2(B). Permits that disproportionately affect certain populations violate 42 U.S.C.A. § 2000d.

JURISDICTION

The Albuquerque/Bernalillo County Air Quality Control Board has jurisdiction to hear this appeal under NMSA 74-2-7(H). The Albuquerque/Bernalillo County Air Quality Control Board was created by Albuquerque Code of Ordinances §9-5-1-3 as a local board to perform, within the boundaries of the local authority, those functions delegated to the environmental improvement board under the Air Quality Control Act, except any functions reserved exclusively for the environmental improvement board under NMSA 74-2-4. Albuquerque Code of Ordinances §9-5-1-7(H) also provides for this petition for hearing before the Board.

TIMELINESS

As notice of this permit was granted on September 15, 2009, and notice was received by Appellants on October 2, 2009, this appeal is timely filed under NMSA 74-2-7(H).

PARTIES

Appellants are community organizations and individuals who participated in the permitting action before the Air Quality Division and who are adversely affected by the permitting action.

Appellant Greater Gardner Neighborhood Association is a neighborhood association of residents in Albuquerque's Near North Valley, an area that is, clockwise from the east, bounded by the Burlington North-Santa Fe Railroad tracks; bounded on the south by Mescalero Rd. NW, Fourth St. NW, the north border of the back lots of San Clemente Ave NW, Eleventh St. NW and La Luz Dr. NW, respectively; bounded on the west by Twelfth St. NW; bounded on the north by Griegos Rd. NW, bounded on the west (north of Griegos Rd. NW) by Fourth St. NW; and bounded on the north (east of Fourth St. NW) by Montano Rd. NW. The Greater Gardner area represents a portion of zip code 87107, which covers 14.5 square miles in the North Valley area of Albuquerque; it is bounded on the north by Los Ranchos Blvd, on the west by the Rio Grande, on the south by Menaul Blvd. and on the east by Carlisle Blvd. The population of zip code 87107 is 32,617, nearly 19,000 (58%) of whom are Hispanic. The median yearly household income of residents is \$33,788. The area has five aggregate processing plants, three asphalt production facilities, six concrete production operations, and two cement distribution terminals, among other pollution sources. In Bernalillo County there are 939 permitted stationary sources of pollution which are permitted a total of 2388.62 tons per year of all suspended particulates. Zip code 87107 (with 5% of the county population) contains 11% of the stationary sources of pollution and 17% of the permitted yearly tonnage of total suspended particulates. The American Cement transfer facility is located less than 2000 feet from from La

Luz Elementary School and less than 3000 feet from Mountain Mahogany Community School.

Appellant North Valley Coalition of Neighborhood Associations provides a forum for an exchange of ideas between residents, businesses, property owners, neighborhood associations, institutions, and government toward preserving, protecting, and enhancing the North Valley Area consistent with the adopted Goals and Policies of the North Valley Area Plan. The Plan's chief goal is to "recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the entire metropolitan community." A specific purpose of this plan is to "preserve air, water and soil quality in the North Valley area" and to "encourage quality commercial/industrial development and redevelopment." Members of the North Valley Coalition include Los Griegos Neighborhood Association, Stronghurst Neighborhood Association, Near North Valley Neighborhood Association, and Monkbridge Gardens Neighborhood Association.

Appellant Kyle Silfer is president of the Greater Gardner Neighborhood Association. Since moving into the neighborhood in 2003, he has suffered multiple cases of bronchial pneumonia. His residence is located less than 2000 feet from the facility. He has two small children.

Appellant David Wood is vice-president of the Greater Gardner Neighborhood Association and a long-time resident of the neighborhood directly abutting the American Cement facility. His residence is located little more than 1000 feet from the facility.

Appellant Marcia Finical is Secretary of the of the Greater Gardner Neighborhood Association and lives less than 1000 feet from the American Cement facility.

Appellee City of Albuquerque Air Quality Division is the local agency assigned to the role of the New Mexico Environment Department in enforcing the New Mexico Air Quality Control Act by the Joint Air Quality Control Board Ordinance, §9-5-1-1, et seq. The Joint Air Quality Control Board Ordinance also created the Albuquerque-Bernalillo County Air Quality Control Board to serve as a joint local authority acting on behalf of both the city and the county. This Board assumed jurisdiction under the New Mexico Air Quality Control Act NMSA §74-2-4.

ESSENTIAL FACTS

American Cement Corporation was granted an Authority-to-Construct Permit Modification on September 15, 2009 by the Air Quality Division of the City of Albuquerque's Environmental Health Department.

The original permit application from American Cement Corporation was received by the Air Quality Division on February 26, 2009. Additional information was received March 2, 2009, March 13, 2009, and March 19, 2009.

The application was deemed complete on March 19, 2009.

Public information hearings on the permit application were held on June 23, 2009 and August 5, 2009.

STATEMENT OF CLAIMS

FIRST CLAIM

The American Cement Authority-to-Construct permit was issued without adequate conditions to protect the health, safety and welfare of the public and without a proper review of all relevant evidence. Neighborhood residents provided substantial testimony regarding continued fugitive dust problems with the facility. Video footage date-stamped June 19, 2008 and documenting an obvious violation of the existing permit 0902-M1 while the facility was under the management of the new owners was not given proper weight. Officers of the Greater Gardner Neighborhood Association and North Valley Coalition of Neighborhood Associations made a clear request for the best available control technology, including more efficient pulse-jet fabric filters instead of cartridge-type collectors, completely enclosed transfer points for loading and unloading at all silos, and fence-line monitoring. None of these requests were included in the conditions of the permit as issued, despite the fact that the applicant proposed building a neighborhood PM monitor in a list of proposed capital improvements provided to the Air Quality Division on June 11, 2008.

SECOND CLAIM

The action of the Air Quality Division in granting the Authority-to-Construct permit failed to incorporate principles of environmental justice in its decision. Per Attorney General of New Mexico Opinion No. 08-03, "Environmental justice principles center on the concept that a government agency should notify the public, and factor in public testimony regarding a company's environmental impact on the community, particularly in a minority or impoverished community, prior to issuing a permit to that company." The New Mexico Department of Health provided data derived from the historical record and could not rule out causation with regard to exposure to cement dust and certain of the ailments listed in the table, nor the possibility that future risk and burden to the community will emulate past risk and burden. Additionally, the decision to grant the permit was made without asthma data from La Luz Elementary School that had been requested by Bernalillo County Environmental Health. Studies have linked increased exposure to particles of 10 micrometers or less with bronchitis and phlegm in children with asthma. Furthermore, studies indicate that hospital admissions for bronchitis and asthma increase as PM10 levels increase. Without incorporating principles of environmental justice into the decision-making process, a concentration of pollution in a single area can continue to grow without meaningful regulation or planning.

THIRD CLAIM

Air Quality Authority-to-Construct Permit #0902-M3 as written does not appear to be

"enforceable as a practical matter." It is unclear how control efficiency will be verified either initially or as the source continues to operate. The permit should be clear enough for the public, the source, and the enforcing agency to know exactly what is being emitted and how it is being emitted, how it is being controlled and at what levels. A review of the text of Air Quality Authority-to-Construct Permit #0902-M3 is currently in progress by Environmental Protection Agency Region 6 staff. Questions about the federal enforceability of the permit as issued have been raised. The deadline for appealing the permit decision is likely to pass before these questions are answered.

FOURTH CLAIM

Any other factual or legal issues identified by Petitioner prior to the hearing.

RELIEF REQUESTED

Appellants hereby request that the Board reverse the decision by the Air Quality Division to grant the American Cement Corporation's Authority-to-Construct permit.

DATED: November 1, 2009



Kyle Silber, Appellant

Greater Gardner Neighborhood Association, Appellant

North Valley Coalition of Neighborhood Associations, Appellant

David Wood, Appellant

Marcia Finical, Appellant

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3**

Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals, Petitioners/Appellants, v. City of Albuquerque Environmental Health Department, Air Quality Division, Respondent/Appellee	AQCB No. 2009-7 <div style="text-align: right;">RECEIVED ENVIRONMENTAL HEALTH 09 NOV 17 PM 4:28 Jew</div>
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ANSWER OF THE CITY OF ALBUQUERQUE

The City of Albuquerque (City) files this Answer in response to the *Appeal Petition for Hearing* that was filed on November 2, 2009 (hereafter, the "November 2 Petition" or "Petition"), by Kyle Silfer individually and as President of the Greater Gardner Neighborhood Association, on behalf of the North Valley Coalition of Neighborhood Associations, on behalf of David Wood individually, and on behalf of Marcia Finical individually. Mr. Silfer is not an attorney and no evidence was provided in the November 2 Petition that Mr. Silfer was authorized to represent the North Valley Coalition of Neighborhood Associations, David Wood (Mr. Wood) or Marcia Finical (Mr. Finical). Mr. Silfer also did not provide his mailing address or the mailing addresses of the other Petitioners.

Because Mr. Silfer filed the Answer *pro se*, the undersigned Deputy City Attorney Adelia Kearny, on the direction of her client, brought the following issues to the attention of Mr. Silfer by letter and e-mail dated November 5, 2009: the absence of an oath or affirmation attesting to the truth of the information in the Petition, which is required by 20.11.81.14.A(1) NMAC; the lack of an address at which Mr. Silfer is to be served, although required by 20.11.81.B(2)(b) NMAC; the absence of documentation establishing that Mr. Silfer is authorized to represent the North Valley Coalition of Neighborhood Associations, Mr. Wood individually or Ms. Finical individually; and non compliance with other requirements of

20.11.81 NMAC that are less critical to the City Environmental Health Department Air Quality Division permitting staff, including failure to file nine copies of the Petition with the Hearing Clerk as required by 20.11.81.14.A(2) NMAC, and a caption that does not conform to 20.11.81.12.G(1) NMAC.

As a result of communications between the undersigned and Mr. Silfer, Mr. Silfer delivered a signed and dated Waiver and Release, a copy of which is Attachment 1 to this Answer. As provided by 20.11.81.14.C NMAC, the Waiver and Release waives the Petitioners' right to begin a public hearing regarding the permit challenge within 30 days of receipt of the request for public hearing. By signing the Waiver and Release, Mr. Silfer warranted he is authorized to represent the two organizations and three individuals named as Appellants/petitioners in the Petition, and that Mr. Silfer has full legal authority to execute the Waiver and Release and bind all the Petitioners.

By November 9 and November 10, 2009 e-mails, Ms. Silfer committed to filing a first amended Answer. However, November 17 is the deadline for the City to file its answer to the November 2 Petition. The City Answers as follows.

Answer to Petitioners' Appeal Petition for Hearing

1. Petitioners' "Preliminary Statement": The City admits the allegations in the first sentence of the first paragraph of Petitioners' "Preliminary Statement".
2. Petitioners' "Preliminary Statement": The City admits the allegations contained in the second sentence of the first paragraph of Petitioners' "Preliminary Statement".
3. Petitioners' "Preliminary Statement": The City admits the allegations in the second paragraph of Petitioners' "Preliminary Statement" contain Petitioners' description of Petitioners' arguments on appeal, which consist of legal conclusions and legal arguments, and which the City denies. To the extent the remainder of the second paragraph contains factual allegations, the City denies all allegations.
4. Petitioners' "Preliminary Statement": The City respectfully requests that the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) deny the relief requested by the Petitioners in the third paragraph of Petitioners' "Preliminary Statement", and that the Air Board sustain the issuance of air quality Authority-to-Construct Permit 902-M3 by the City Environmental Health Department Air Quality Division.
5. Petitioners' "Statutory and Other Bases for Claims" section: The City admits a timely petition for hearing may be heard by the Air Board if the petitioners meet the requirements of the New Mexico Air Quality Control Act, NMSA Section 74-2-1 et seq. (1978) (Air Act), specifically NMSA §§ 74-2-7(H) and (I), and 20.11.81 NMAC and that facts and other

evidence regarding permitting may be raised if authorized by NMSA § 74-2-7 and 20.11.81 NMAC. The City denies that factual and evidentiary issues may be raised per NMSA § 74-2-7(K), and, to the extent the remainder of the first sentence of Petitioners' "Statutory and Other Bases for Claims" section contains additional factual allegations, the City denies all such allegations.

6. Petitioners' "Statutory and Other Bases for Claims": The wording in the second sentence of Petitioners' "Statutory and Other Bases for Claims" section is taken from the New Mexico Environmental Improvement Act (EIA), NMSA 74-1-1 et seq. (1978), specifically NMSA § 74-1-2, *Purpose of Environmental Improvement Act*. The EIA does not apply to the Air Board or political subdivisions. Therefore, City denies all allegations contained in the second sentence of Petitioners' "Statutory and Other Bases for Claims" section.

7. Petitioners' "Statutory and Other Bases for Claims": The City denies the allegations contained in the third sentence of Petitioners' "Statutory and Other Bases for Claims" section.

8. Petitioners' "Statutory and Other Bases for Claims": To the extent the allegations contained in the fourth sentence of Petitioners' "Statutory and Other Bases for Claims" section are intended to assert a claim under Title VI of the Civil Rights Act of 1964 (42 U.S.C § 2000d to 2000d-7) in this administrative appeal to the Air Board, the City denies 42 U.S.C § 2000d applies to AQCB No. 2009-7. The City further states that 42 U.S.C § 2000d speaks for itself, and Petitioners' statement in the fourth sentence is nothing more than a legal argument and legal conclusion. To the extent the fourth sentence of Petitioners' "Statutory and Other Bases for Claims" section contains legal or factual allegations, the City denies all allegations.

9. Petitioners' "Jurisdiction" section: The City admits the Air Board has jurisdiction to hear appeals pursuant to NMSA 74-2-7(H) and 20.11.81 NMAC. The City denies the Air Board has jurisdiction to hear all of the issues raised on appeal in AQCB No. 2009- 7. To the extent the remainder of the first sentence of Petitioners' "Jurisdiction" section contains additional factual allegations, the City denies.

10. Petitioners' "Jurisdiction" section: The City admits the allegations contained in the second sentence of Petitioners' "Jurisdiction" section and states the Air Board also was created by Bernalillo County Joint Air Quality Control Board Ordinance No. 94-5 (County Ordinance), Section 3.

11. Petitioners' "Jurisdiction" section: The City admits the City Joint Air Quality Control Board Ordinance, 9-5-1-1 et seq. ROA 1994 (City Ordinance) at 9-5-1-7(H) authorizes

appeals to the Air Board that comply with the requirements of the Air Act and the City Ordinance. The City denies the Air Board has jurisdiction to hear all of the issues raised on appeal in AQCB No. 2009-7. To the extent the remainder of the third sentence of Petitioners' "Jurisdiction" section contains additional factual allegations, the City denies.

12. Petitioners' "Timeliness" section: The City denies that notice of the permit was granted on September 15, 2009; the City affirms that the air quality Authority-to-Construct Permit # 902-M3 was signed on September 15, 2009. The City admits the Petitioners received the participant notification letter on or after October 2, 2009, and that the Petition was timely filed.

13. Petitioners' "Parties" section: The City admits Petitioners are community organizations and individuals who participated in the permitting action before the Air Quality Division of the City, but is without information sufficient to form a belief regarding the remaining allegations in the first paragraph of Petitioners' "Parties" section and therefore denies the remainder of the allegations.

14. Petitioners' "Parties" section: The City admits the allegations contained in the first sentence of the second paragraph of Petitioners' "Parties" section.

15. Petitioners' "Parties" section: The City admits Greater Gardner NA is a portion of zip code 87107; admits the area of zip code 87107 is approximately 14.5 square miles; that Greater Gardner NA comprises approximately 0.34 square miles, which is 2.3% of the area of zip code 87107; and admits the accuracy of the boundary description of zip code 87107 in the second sentence of the second paragraph of Petitioners' "Parties" section. The City denies all other allegations contained in the second sentence of the second paragraph of Petitioners' "Parties" section.

16. Petitioners' "Parties" section: The information asserted by Petitioners in third sentence of Petitioners' "Parties" section does not include a reference to a year. The City affirms that, as of November 126, 2009, the Year 2000 Census reports a population of 30,781 for zip code 87107, that the 2000 Census reports that 17,043 people within zip code 87107 (55.4%) are Hispanic, and denies all additional allegations contained in the third sentence of the second paragraph of Petitioners' "Parties" section.

17. Petitioners' "Parties" section: The information asserted by Petitioners in the fourth sentence of Petitioners' "Parties" section does not include a reference to a year. The City affirms that, as of November 16, 2009, the Year 2000 Census reports the median yearly household income for zip code 87107 is \$34,645, and denies all additional allegations contained in the fourth sentence of the second paragraph of Petitioners' "Parties" section.

18. Petitioners' "Parties" section: The Petitioners did not define the "area" when it provided information in the fifth sentence of Petitioners' "Parties" section. As a result, the City is without information sufficient to respond, and therefore denies the allegations contained in the fifth sentence of the second paragraph of Petitioners' "Parties" section.

19. Petitioners' "Parties" section: The information provided in the sixth sentence of the second paragraph of Petitioners' "Parties" section did not include a reference to a date. However, the City affirms that, as of the date the City filed this Answer, within Bernalillo County there are 993 stationary sources with both air quality permits and air quality registrations, and that the stationary sources are permitted to emit a total of 2,550 tons per year of total suspended particulates (TSP), which includes TSP PM10 and PM2.5 as subsets of TSP. The City denies all other allegations contained in the sixth sentence of the second paragraph of Petitioners' "Parties" section.

20. Petitioners' "Parties" section: The information provided in the seventh sentence of the second paragraph did not include a reference to a date. However, the City affirms that, as of November 16, 2009, according to 2000 Census data, zip code 87107 was 5.5% of the total population of Bernalillo County, and zip code 87107 contained 10.4% of the stationary sources of air pollution and 8.1% of the permitted annual tonnage of total suspended particulates. The City denies all other allegations contained in the seventh sentence of the second paragraph of Petitioners' "Parties" section.

21. Petitioners' "Parties" section: The City admits the allegations contained in the eighth sentence of the second paragraph of Petitioners' "Parties" section.

22. Petitioners' "Parties" section: The City states that the North Valley Coalition of Neighborhood Associations documents speak for themselves. To the extent the wording of the first sentence of the third paragraph of Petitioners' "Parties" sections does not accurately and completely quote from or summarize those documents, the City denies.

23. Petitioners' "Parties" section: The City states that the North Valley Area Plan speaks for itself. To the extent the wording of the second sentence of the third paragraph of Petitioners' "Parties" section does not accurately and completely quote from or summarize the Plan, the City denies.

24. Petitioners' "Parties" section: The City states that the North Valley Area Plan speaks for itself. To the extent the wording of the third sentence of the third paragraph of Petitioners' "Parties" section does not accurately and completely quote from or summarize the Plan, the City denies.

25. Petitioners' "Parties" section: The City admits the allegations contained in the fourth sentence of the third paragraph of Petitioners' "Parties" section.

26. Petitioners' "Parties" section: The City admits the allegations contained in the first sentence of the fourth paragraph of Petitioners' "Parties" section.

27. Petitioners' "Parties" section: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the second sentence of the fourth paragraph of Petitioners' "Parties" section and therefore denies.

28. Petitioners' "Parties" section: The City admits the allegations contained in the third sentence of the fourth paragraph of Petitioners' "Parties" section.

29. Petitioners' "Parties" section: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the fourth sentence of the fourth paragraph of Petitioners' "Parties" section and therefore denies.

30. Petitioners' "Parties" section: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the first sentence of the fifth paragraph of Petitioners' "Parties" section and therefore denies.

31. Petitioners' "Parties" section: The City admits Mr. Wood's residence is located approximately 1,000 feet from the American Cement facility, as alleged in the second sentence of the fifth paragraph of Petitioners' "Parties" section.

32. Petitioners' "Parties" section: The City is without information sufficient to form a belief regarding the accuracy of the statement regarding Ms. Finical's role in the Greater Gardner Neighborhood Association, and admits Ms. Finical lives approximately 1,000 feet from the American Cement facility as alleged in the sixth paragraph of Petitioners' "Parties" section.

33. Petitioners' "Parties" section: The City admits the Air Act and the City Ordinance authorize the City Environmental Health Department to be the local agency to administer and enforce air quality regulations and programs within Bernalillo County, just as the New Mexico Environment Department has authority to administer and enforce air quality regulations and programs within the state of New Mexico, outside Bernalillo County. The City denies all other allegations contained in the first sentence of the seventh paragraph of Petitioners' "Parties" section.

34. Petitioners' "Parties" section: The Air Act at NMSA §74-2-2(J) defines "local authority" as a qualifying political subdivision. Therefore, the City denies the allegations in the second sentence of the seventh paragraph of Petitioners' "Parties" section.

35. Petitioners' "Parties" section: The City admits the Air Board assumed authority over air quality within Bernalillo County pursuant to the Air Act at NMSA § 74-2-4, the City Ordinance at 9-5-1-3, and the Bernalillo County Ordinance at Section 3.

36. Petitioners' "Essential Facts" section: The City admits the allegations contained in the first paragraph of Petitioners' "Essential Facts" section.

37. Petitioners' "Essential Facts" section: The City admits the allegations contained in the first sentence of the second paragraph of Petitioners' "Essential Facts" section.

38. Petitioners' "Essential Facts" section: The City admits the allegations contained in the second sentence of the second paragraph of Petitioners' "Essential Facts" section.

39. Petitioners' "Essential Facts" section: The City admits the allegations contained in the third paragraph of Petitioners' "Essential Facts" section.

40. Petitioners' "Essential Facts" section: The City admits the allegations contained in the fourth paragraph of Petitioners' "Essential Facts" section.

41. Petitioners' "Statement of Claims – First Claim": The City denies the allegations contained in the first sentence of Petitioners' "First Claim".

42. Petitioners' "Statement of Claims – First Claim": The City admits the allegations contained in the second sentence of Petitioners' "First Claim".

43. Petitioners' "Statement of Claims – First Claim": The City admits video footage with a manually-affixed date stamp of June 19, 2008 was submitted at a summer of 2009 Public Information Hearing (PIH). The City denies all other allegations contained in the third sentence of Petitioners' "First Claim".

44. Petitioners' "Statement of Claims – First Claim": The City admits participants in the PIHs requested inclusion of best available control technology (BACT) in American Cement's proposed air quality Permit No. 902-M3. However, the City states affirmatively that federal, state, and Air Board regulations only require installation of BACT technology at major stationary sources that are subject to prevention of significant deterioration (PSD) requirements imposed by 20.11.61 NMAC, *Prevention of Significant Deterioration* (Part 61). The American Cement facility is a minor, not major, stationary source. American Cement is subject to the minor source permitting regulation 20.11.41 NMAC, *Authority-to-Construct*, not to Part 61 PSD BACT requirements. The City denies all other allegations contained in the fourth sentence of Petitioners' "First Claim".

45. Petitioners' "Statement of Claims – First Claim": The City admits BACT requirements were not included in Permit 902-M3 for the reasons stated in the Answer 44. The City also admits that during negotiations with the new owner regarding resolution of the

prior owner's violations, the Air Quality Division received a June 11, 2008 letter and attachment from the new owner of American Cement with a list of potential improvements at the facility. The City admits the new owner initially offered to install and operate a neighborhood PM monitor for one year and to turn the facility over to the Air Quality Division for operation. The City affirmatively states that in 2008 the new owner of the American Cement facility performed an air quality self-audit of the facility, self-reported existing violations to the Air Quality Division, and was issued a Notice of Violation by the Air Quality Division that ultimately was resolved pursuant to the EPA's *Interim Approach to Applying the Audit Policy to New Owners*. The City affirms that the new owner ultimately signed a Compliance Agreement that included significant changes and improvements at the facility that were not required by the air quality permit in effect at the time or by applicable laws, and that the new owner paid a \$61,525 penalty into the City general fund. In addition, the City affirms that the Air Quality Division operates more air quality monitoring stations within Bernalillo County than are required by the EPA, and that air quality within Bernalillo County is well within all federal, state of New Mexico, and local health-based air quality standards, which includes the standards for particulates. The City denies all other allegations contained in the fifth sentence of Petitioners' "First Claim".

46. Petitioners' "Statement of Claims – Second Claim": The City denies the allegations contained in the first sentence of Petitioners' "Second Claim".

47. Petitioners' "Statement of Claims – Second Claim": The City states the Attorney General of New Mexico Opinion No. 08-03 speaks for itself. To the extent the wording of the second sentence of Petitioners' "Second Claim" does not accurately and completely quote from the opinion, the City denies.

48. Petitioners' "Statement of Claims – Second Claim": The City admits the allegations contained in the third sentence of Petitioners' "Second Claim", and affirmatively states the data did not establish causation.

49. Petitioners' "Statement of Claims – Second Claim": The City admits the allegations contained in the fourth sentence of Petitioners' "Second Claim".

50. Petitioners' "Statement of Claims – Second Claim": The City admits the allegations contained in the fifth sentence of Petitioners' "Second Claim".

51. Petitioners' "Statement of Claims – Second Claim": The City admits the allegations contained in the sixth sentence of Petitioners' "Second Claim".

52. Petitioners' "Statement of Claims – Second Claim": The City denies the allegations contained in the seventh sentence of Petitioners' "Second Claim", and states

affirmatively that Permit 902-M3 was issued consistent with all requirements of the New Mexico Air Act, the City Ordinance, and the Air Board regulations.

53. Petitioners' "Statement of Claims – Third Claim": The City denies the allegations contained in the first sentence of Petitioners' "Third Claim".

54. Petitioners' "Statement of Claims – Third Claim": The City denies the allegations contained in the second sentence of Petitioners' "Third Claim".

55. Petitioners' "Statement of Claims – Third Claim": The City admits a minor source air quality permit should be clear enough for the public, the source, and the enforcing agency to know what is being emitted and how it is being emitted, how it is being controlled and at what levels. The City denies all other allegations contained in the third sentence of Petitioners' "Third Claim".

56. Petitioners' "Statement of Claims – Third Claim": The City admits the allegations contained in the fourth sentence of Petitioners' "Third Claim".

57. Petitioners' "Statement of Claims – Third Claim": The City admits the allegations contained in the fifth sentence of Petitioners' "Third Claim".

58. Petitioners' "Statement of Claims – Third Claim": The City admits the allegations contained in the sixth sentence of Petitioners' "Third Claim".

59. Petitioners' "Statement of Claims – Fourth Claim": The City is without information sufficient to form a belief regarding potential facts or legal issues that may be identified or raised by Petitioner prior to hearing. Therefore, the City denies all allegations contained in Petitioners' "Fourth Claim".

Affirmative Defenses

60. Regarding Petitioners' "Relief Requested" section, the Petitioners did not allege how the Petitioners are adversely affected by the permitting action. Therefore, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' *Appeal Petition for Hearing* with prejudice, and sustain the issuance of Permit No. 902-M3.

61. Regarding Petitioners' "Relief Requested" section, the Petitioners did not allege how the petitioner is adversely affected by the permitting action or cite to a board regulation other than 20.11.81 NMAC that authorizes the Petitioners to request a hearing on the merits as required by 20.11.81.14.B(2)(c) NMAC. Petitioners also failed to specify the portions of the permitting action to which the petitioner objects as required by 20.11.81.18.B(2)(d) NMAC. Therefore, the City respectfully asks the Air Board to deny the relief requested,

dismiss Petitioners' *Appeal Petition for Hearing* with prejudice, and sustain the issuance of Permit No. 902-M3.

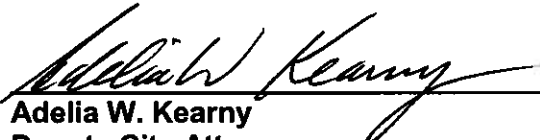
62. Regarding Petitioners' "Relief Requested" section, the City Petitioners failed to state a claim upon which relief may be granted. Therefore, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' *Appeal Petition for Hearing* with prejudice, and sustain the issuance of Permit No. 902-M3.

Response to Prayer for Relief

63. In response to Petitioners' "Relief Requested", and based on the foregoing Answer, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' *Appeal Petition for Hearing* with prejudice, sustain the issuance of Permit No. 902-M3, and grant the City any additional relief deemed appropriate by the Air Board.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney



Adelia W. Kearny
Deputy City Attorney
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(505) 768-4530
akearny@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2009, a copy of the foregoing *Answer of the City of Albuquerque*, with Attachment 1 (copy of Waiver and Release) attached, was mailed by regular mail, postage prepaid to Kyle Silfer, individually and as representative of Greater Gardner Neighborhood Association; North Valley Coalition of Neighborhood Associations; David Wood, individually; and Marcia Finical, individually, at follows:

Kyle Silfer, individually, and as
President of Greater Gardner NA
4465 Jupiter NW
Albuquerque, NM 87107

and that a copy was sent by electronic mail to Kyle Silfer at kyle@rtoads.com

by: 
Adelia W. Kearny, Deputy City Attorney

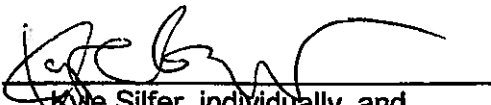
WAIVER AND RELEASE

Regarding Extension of Deadline for Holding Hearing

The Air Quality Division (AQD) of the City of Albuquerque (City) Environmental Health Department issued American Cement Authority-to-Construct Permit modification # 0902-M3, effective September 15, 2007. Kyle received the participant notification letter sent by AQD informing Mr. Silfer that the permit modification had been issued, the process followed by AQD during its review, the conditions incorporated in the permit modification, and the deadline for requesting a hearing before the Albuquerque-Bernalillo County Air Quality Control Board (Air Board). On November 2, 2009, Kyle Silfer filed an *Appeal Petition for Hearing* dated November 1, 2009 with the Air Board Hearing Clerk.

The Air Board is directed by subsection F of 20.11.41.14 NMAC and paragraph (1) of subsection F of 20.11.81.14 NMAC to hold a public hearing regarding an authority-to-construct permit challenge within 30 days of receipt of the request for public hearing unless the Petitioner waives the deadline pursuant to 20.11.81.14.C NMAC. By signing this Waiver and Release, Kyle Silfer, on behalf of the two organizations and three individuals named as Appellants (petitioners) in the Appeal Petition for Hearing filed November 2, 2009, hereby waives the 30-day deadline, and forever waives, releases and discharges any and all rights and claims for damages or other relief that the Appellants/petitioners may have against the Air Board, each individual member of the Board, the City, and all City officials, officers, employees, contractors and agents as a result of the Air Board not holding the public hearing within 30 days of receipt of the Appeal Petition for Hearing.

The individual signing this Waiver and Release warrants he is authorized to represent the two organizations and three individuals named as Appellants/petitioners in the Appeal Petition for Hearing and has full legal authority to execute this Waiver and Release on behalf of the Greater Gardner Neighborhood Association (GGNA), the North Valley Coalition of Neighborhood Associations (NVCNA), David Wood individually and Marcia Finical individually, and to bind GGNA, NVCNA, David Wood, Marcia Finical, and himself to its terms.

By: 

Kyle Silfer, individually, and
as authorized representative of
Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood Associations,
David Wood individually, and
Marcia Finical individually

Date: 11/10/09

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR
A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 0902-M3**

**Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia Finical, Petitioners**

**BEFORE THE ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL
BOARD**

**Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals.,**

Appellants

Vs.

**Permit Modification
Permit No. #0902-M3**

City of Albuquerque Air Quality Division,

Appellee

**APPEAL
PETITION FOR HEARING**

PRELIMINARY STATEMENT

This is an appeal of the granting of Air Quality Authority-to-Construct Permit #0902-M3, Facility #35/001/00012 to American Cement Corporation by the City of Albuquerque Air Quality Division ("AQD"). This appeal is brought by community organizations Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, and individuals Kyle Silfer, David Wood, Marcia Finical.

This case involves the failure to protect the health, safety and welfare of the public without a proper review of all relevant evidence and the failure to incorporate principles of environmental justice in the permitting process which resulted in the Air Quality Permit Modification #0902-M3.

The Appellants respectfully request that the Albuquerque/Bernalillo County Air Quality Control Board ("AQCB") reverse the action granting Air Quality Permit Modification #0902-M3 under the New Mexico Air Quality Control Act, NMSA 74-2-7(K).

STATUTORY AND OTHER BASES FOR CLAIMS

Factual and evidentiary issues related to the issuance of a permit may be raised per NMSA 74-2-7(I)(K). Failure to ensure an environment that will confer optimum health, safety, comfort and economic and social well-being on its inhabitants and maximize their economic and cultural benefits is a violation of NMSA 1978 § 74-1-2. Failure to consider public welfare, visibility and the reasonable use of property in granting an Air Quality Permit violates the definition of "air pollution" in NMSA 1978, § 74-2-2(B). Permits that disproportionately affect certain populations violate 42 U.S.C.A. § 2000d.

JURISDICTION

The Albuquerque/Bernalillo County Air Quality Control Board has jurisdiction to hear this appeal under NMSA 74-2-7(H). The Albuquerque/Bernalillo County Air Quality Control Board was created by Albuquerque Code of Ordinances §9-5-1-3 as a local board to perform, within the boundaries of the local authority, those functions delegated to the environmental improvement board under the Air Quality Control Act, except any functions reserved exclusively for the environmental improvement board under NMSA 74-2-4. Albuquerque Code of Ordinances §9-5-1-7(H) also provides for this petition for hearing before the Board.

TIMELINESS

As notice of this permit was granted on September 15, 2009, and notice was received by Appellants on October 2, 2009, this appeal is timely filed under NMSA 74-2-7(H).

PARTIES

Appellants are community organizations and individuals who participated in the permitting action before the Air Quality Division by providing testimony at one or both Public information hearings and who are adversely affected by the permitting action due to the deleterious effect on health, safety, comfort and economic and social well-being caused by the permitting action.

Appellant Greater Gardner Neighborhood Association is a neighborhood association of residents in Albuquerque's Near North Valley, an area that is, clockwise from the east, bounded by the Burlington North-Santa Fe Railroad tracks; bounded on the south by Mescalero Rd. NW, Fourth St. NW, the north border of the back lots of San Clemente Ave NW, Eleventh St. NW and La Luz Dr. NW, respectively; bounded on the west by Twelfth St. NW; bounded on the

north by Griegos Rd. NW, bounded on the west (north of Griegos Rd. NW) by Fourth St. NW; and bounded on the north (east of Fourth St. NW) by Montano Rd. NW. The Greater Gardner area represents a portion of zip code 87107, which covers 14.5 square miles in the North Valley area of Albuquerque; it is bounded on the north by Los Ranchos Blvd, on the west by the Rio Grande, on the south by Menaul Blvd. and on the east by Carlisle Blvd. The population of zip code 87107 is 32,617, nearly 19,000 (58%) of whom are Hispanic. The median yearly household income of residents is \$33,788. The area has five aggregate processing plants, three asphalt production facilities, six concrete production operations, and two cement distribution terminals, among other pollution sources. In Bernalillo County there are 939 permitted stationary sources of pollution which are permitted a total of 2388.62 tons per year of all suspended particulates. Zip code 87107 (with 5% of the county population) contains 11% of the stationary sources of pollution and 17% of the permitted yearly tonnage of total suspended particulates. The American Cement transfer facility is located less than 2000 feet from La Luz Elementary School and less than 3000 feet from Mountain Mahogany Community School. Contact information for appellant: c/o Kyle Silfer, President, 4465 Jupiter Street NW, Albuquerque, NM 87107; home (505) 265-5840; cell (505) 918-0978; email ggna@macmountain.org.

Appellant North Valley Coalition of Neighborhood Associations provides a forum for an exchange of ideas between residents, businesses, property owners, neighborhood associations, institutions, and government toward preserving, protecting, and enhancing the North Valley Area consistent with the adopted Goals and Policies of the North Valley Area Plan. The Plan's chief goal is to "recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the entire metropolitan community." A specific purpose of this plan is to "preserve air, water and soil quality in the North Valley area" and to "encourage quality commercial/industrial development and redevelopment." Members of the North Valley Coalition include Los Griegos Neighborhood Association, Stronghurst Neighborhood Association, Near North Valley Neighborhood Association, and Monkbridge Gardens Neighborhood Association. Contact information for appellant: c/o Chris Catechis, President, 5733 Guadalupe Trail NW, Albuquerque, NM 87107; home (505) 271-9876; cell (505) 363-2747; email catechis@msn.com.

Appellant Kyle Silfer is president of the Greater Gardner Neighborhood Association. Since moving into the neighborhood in 2003, he has suffered multiple cases of bronchial pneumonia. His residence is located less than 2000 feet from the facility. He has two small children. Contact information for appellant: 4465 Jupiter Street NW, Albuquerque, NM 87107; home (505) 265-5840; cell (505) 918-0978; email kyle@rtoads.com.

Appellant David Wood is vice-president of the Greater Gardner Neighborhood Association and a long-time resident of the neighborhood directly abutting the American Cement facility. His residence is located little more than 1000 feet from the facility. Contact information for appellant: 158 Pleasant Avenue NW, Albuquerque, NM 87107; home (505) 344-4674; cell (505) 250-0421; email wood_cpa@msn.com.

Appellant Marcia Finical is Secretary of the of the Greater Gardner Neighborhood Association and lives less than 1000 feet from the American Cement facility. Contact information for appellant: 141 Griegos Rd NW, Albuquerque, NM 87107; home (505) 341-3141; cell (505) 550-4560; email marcia_finical@yahoo.com.

Appellee City of Albuquerque Air Quality Division is the local agency assigned to the role of the New Mexico Environment Department in enforcing the New Mexico Air Quality Control Act by the Joint Air Quality Control Board Ordinance, §9-5-1-1, et seq. The Joint Air Quality Control Board Ordinance also created the Albuquerque-Bernalillo County Air Quality Control Board to serve as a joint local authority acting on behalf of both the city and the county. This Board assumed jurisdiction under the New Mexico Air Quality Control Act NMSA §74-2-4.

ESSENTIAL FACTS

American Cement Corporation was granted an Authority-to-Construct Permit Modification on September 15, 2009 by the Air Quality Division of the City of Albuquerque's Environmental Health Department.

The original permit application from American Cement Corporation was received by the Air Quality Division on February 26, 2009. Additional information was received March 2, 2009, March 13, 2009, and March 19, 2009.

The application was deemed complete on March 19, 2009. Public information hearings on the permit application were held on June 23, 2009 and August 5, 2009.

STATEMENT OF CLAIMS

FIRST CLAIM

The American Cement Authority-to-Construct permit was issued without adequate conditions to protect the health, safety and welfare of the public and without a proper review of all relevant evidence. Neighborhood residents provided substantial testimony regarding continued fugitive dust problems with the facility. Video footage date-stamped June 19, 2008 and documenting an obvious violation of the existing permit 0902-M1 while the facility was under the management of the new owners was not given proper weight. Officers of the Greater Gardner Neighborhood Association and North Valley Coalition of Neighborhood Associations made a clear request for the best available control technology, including more efficient pulse-jet fabric filters instead of cartridge-type collectors, completely enclosed transfer points for loading and unloading at all silos, and fence-line monitoring. None of these requests were included in the conditions of the permit as issued, despite the fact that the applicant proposed building a neighborhood PM monitor in a list of proposed capital improvements provided to the Air Quality Division on June 11, 2008.

SECOND CLAIM

The action of the Air Quality Division in granting the Authority-to-Construct permit failed to incorporate principles of environmental justice in its decision. Per Attorney General of New Mexico Opinion No. 08-03, "Environmental justice principles center on the concept that a government agency should notify the public, and factor in public testimony regarding a company's environmental impact on the community, particularly in a minority or impoverished community, prior to issuing a permit to that company." The New Mexico Department of Health provided data derived from the historical record and could not rule out causation with regard to exposure to cement dust and certain of the ailments listed in the table, nor the possibility that future risk and burden to the community will emulate past risk and burden. Additionally, the decision to grant the permit was made without asthma data from La Luz Elementary School that had been requested by Bernalillo County Environmental Health. Studies have linked increased exposure to particles of 10 micrometers or less with bronchitis and phlegm in children with asthma. Furthermore, studies indicate that hospital admissions for bronchitis and asthma increase as PM10 levels increase. Without incorporating principles of environmental justice into the decision-making process, a concentration of pollution in a single area can continue to grow without meaningful regulation or planning.

THIRD CLAIM

Air Quality Authority-to-Construct Permit #0902-M3 as written does not appear to be "enforceable as a practical matter." It is unclear how control efficiency will be verified either initially or as the source continues to operate. The permit should be clear enough for the public, the source, and the enforcing agency to know exactly what is being emitted and how it is being emitted, how it is being controlled and at what levels. A review of the text of Air Quality Authority-to-Construct Permit #0902-M3 is currently in progress by Environmental Protection Agency Region 6 staff. Questions about the federal enforceability of the permit as issued have been raised. The deadline for appealing the permit decision is likely to pass before these questions are answered.

FOURTH CLAIM

Any other factual or legal issues identified by Petitioner prior to the hearing.

RELIEF REQUESTED

Appellants hereby request that the Board reverse the decision by the Air Quality Division to grant the American Cement Corporation's Authority-to-Construct permit.

AFFIRMATION

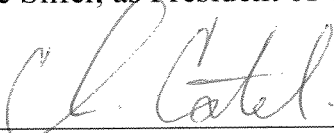
Appellants hereby swear and affirm that the contents of the petition are true and accurate to the best of their knowledge.

DATED: November 1, 2009

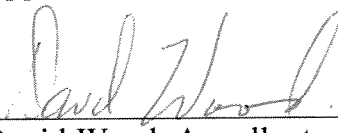
AMENDED: November 10, 2009

 11/16/09

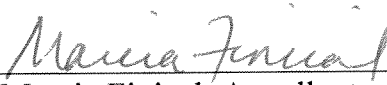
Kyle Silfer, as President of Greater Gardner Neighborhood Association, Appellant

 11/16/09

Chris Catechis, as President of North Valley Coalition of Neighborhood Associations, Appellant

 11/16/09

David Wood, Appellant

 11/16/09

Marcia Finical, Appellant

 11/16/09

Kyle Silfer, Appellant



Martin J. Chávez, Mayor

AIR QUALITY AUTHORITY-TO-CONSTRUCT PERMIT No. 0902-M3
FACILITY CDS No. 35/001/00012



John W. Soladay, Director

Issued to: American Cement Corporation
P.O. Box 2273
Española, New Mexico 87532

Certified Mail No. 7006 2760 0005 1562 4175
Return Receipt Requested

Responsible Official: Ron Hedrick, Vice President of Operations

Pursuant to the New Mexico Air Quality Control Act, Chapter 74, Article 2 New Mexico Statutes Annotated 1978 (as amended); the Joint Air Quality Control Board Ordinance, 9-5-1 to 9-5-99 ROA 1994; the Bernalillo County Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5; the Albuquerque/Bernalillo County Air Quality Control Board (A/BCAQCB) Regulation Title 20, New Mexico Administrative Code (20 NMAC), Chapter 11, Part 40 (20.11.40 NMAC), Air Contaminant Source Registration; and A/BCAQCB Regulation Title 20, Chapter 11, Part 41 NMAC (20.11.41 NMAC), Authority-To-Construct; American Cement Corporation (Company or Permittee) is hereby issued this **AUTHORITY-TO- CONSTRUCT PERMIT** and authorized to operate the following equipment at:

Facility/Location	Facility Process Description	SIC	NAICS
American Cement Facility	Cement and Cement Additive Transfer Station	3273	327320
4702 Carlton NW Albuquerque, NM UTMN: 3888364 UTME: 350955			

This **AUTHORITY-TO-CONSTRUCT Permit Number 0902-M3** has been issued based on the review of the application received by the Albuquerque Environmental Health Department (Department), Air Quality Division (Division) on February 26, 2009 and additional information received on March 2, 13 and 19, 2009, which was deemed complete on March 19, 2009 and on the National Ambient Air Quality Standards, New Mexico Ambient Air Quality Standards, Air Quality Control Regulations for Albuquerque/Bernalillo County, as amended, and consideration of relevant information provided at the June 23, 2009 and August 5, 2009 public information hearings held before issuance of this permit. As these standards and regulations are updated or amended, the applicable changes will be incorporated into Permit Number 0902-M3 and will apply to the facility. This permit supersedes all portions of Air Quality Permit Number 0902-M1, issued November 15, 2006.

Issued on the 15th day of September, 2009

Isreal J. Tavarez

Isreal Tavarez, Environmental Engineering Manager
Air Quality Programs
Air Quality Division
Environmental Health Department
City of Albuquerque

I. **CONDITIONS:** Conditions have been imposed in this permit to assure continued compliance. 20.11.41.18.C NMAC, states that any term or condition imposed by the Division on a permit or permit modification is enforceable to the same extent as a regulation of the Board. Pursuant to 20.11.41 NMAC, the facility is subject to the following conditions:

1. **Construction and Operation:** Compliance will be based on Division inspections of the facility, reviews of production records, submission of appropriate permit applications for modification, and timely notification to the Department regarding equipment substitutions and relocations.

a) This permit modification authorizes:

- i. The change in process equipment as listed under condition I.1.b) and I.1.c) of this permit;
- ii. The change in rated process rate for equipment listed under condition I.1.b) and I.1.c) of this permit;
- iii. The change in storage material for any of the five silos to either cement or cement additive;
- iv. The change in rated control efficiency for the dust collectors to 99.95% per manufacturer's guarantee statement; and,
- v. The change in hours of operation from 3,366 hrs/yr to continuous operation.

b) This permit authorizes the construction and operation of the following equipment:

Process Equipment

Process Equipment Unit No.	Unit Description	Manufacturer	Model Number	Serial Number	Date of Mfg.	Rated Process Rate (ton/hr)	Unit Subject to NSPS
1	Silo 1	Allstate	N/A	N/A	2005	200	No
2	Silo 2	Allstate	N/A	N/A	2005	200	No
3	Silo 3	Allstate	N/A	N/A	2005	200	No
4	Silo 4	Great West	N/A	N/A	Prior to 1990	60	No
5	Silo 5	Great West	N/A	N/A	Prior to 1990	60	No
6	Loadout (Silos 1-3)	DCL	UN800EV	Job 206039503	2005	150	No
7	Loadout (Silo 4)	DCL	CFM 330	Job 206039501	2006	150	No
8	Loadout (Silo 5)	DCL	CFM 330	Job 206039501	2006	150	No
9	Haul Road	N/A	N/A	N/A	N/A	N/A	No

c) This permit authorizes the construction and operation of the following air pollution control equipment:

Air Pollution Control Equipment

Type of Air Pollution Control Equipment	Manufacturer	Model Number	Serial Number	Rated Flow Rate (acfm)	Rated Control Efficiency
Silo 1 Dust Collector	DCL	CFM 330	Job 206039503	1400	99.95%
Silo 2 Dust Collector	DCL	CFM 330	Job 206039503	1400	99.95%
Silo 3 Dust Collector	DCL	CFM 330	Job 206039503	1400	99.95%
Silo 4 Dust Collector	Whirl Airflow Corp.	450-56/180	MC2695	1400	99.95%
Silo 5 Dust Collector 1	Whirl Airflow Corp.	450-56/180	MC2695	1400	99.95%
Silo 5 Dust Collector 2	Whirl Airflow Corp.	450-56/180	MC2695	1400	99.95%

Dust Collector Loadout (Silos 1-3)	DCL	UN800EV	Job 206039503	1400	99.95%
Dust Collector Loadout (Silo 4)	DCL	CFM 330	Job 206039501	1400	99.95%
Dust Collector Loadout (Silo 5)	DCL	CFM 330	Job 206039501	1400	99.95%

- d) All equipment shall be maintained as per manufacturer specifications to ensure the emissions remain at or below the permitted levels.
- e) This facility shall be constructed and operated in accordance with information provided on the permit application dated **February 23, 2009** and received **February 26, 2009** and additional information received **March 2, 13 and 19, 2009** and in accordance with the legal authority specified above and the conditions of this permit.
- f) This facility is not subject to Federal New Source Performance Standards (NSPS), Code of Federal Regulations (CFR), Title 40, Part 60.
- g) No National Emissions Standard for Hazardous Air Pollutants (NESHAP) apply to this facility. However, prior to any asbestos demolition or renovation work, the Division must be notified and proper permits shall be obtained and CFR Title 40, Part 61 Subpart M may apply.
- h) Substitution of equipment is authorized provided the equipment has the same or lower process capacity as the piece of equipment being substituted. Equipment that is substituted shall comply with the requirements in Condition 2.
- i) The equipment listed in Condition I.1.b) are limited to the following operational restrictions:
 - i. This facility is authorized to run continuously;
 - ii. The storage material in any of the five silos (Units 1 through 5) can be either cement or cement additive;
 - iii. Units 1 through 3 shall each be restricted to a maximum material throughput process rate of 200 tons per hour of cement or cement additive;
 - iv. Units 4 through 5 shall each be restricted to a maximum material throughput process rate of 60 tons per hour of cement or cement additive;
 - v. The silo unloading spouts (Units 6 through 8) shall each be restricted to a maximum material loadout rate of 150 tons per hour of cement or cement additive;
 - vi. The nine (9) dust collectors which serve Units 1 through 8 shall be operated and maintained in accordance with the manufacturer's specifications in order to ensure a control efficiency greater than or equal to 99.95% is achieved. The pressure drop across the dust collectors shall remain within the range required by the manufacturer to achieve this level of control efficiency. If any of the dust collectors are not operating in compliance with the respective conditions in this permit or the manufacturer's specifications, the effected silo shall be immediately shut down until the dust collection control equipment is repaired and functioning in accordance with the manufacturer's specifications. Compliance with this condition shall be shown through meeting the requirements of Permit Conditions {I.1.d)}, {I.1.i)ix}, {I.2.c)}, and {I.3.b),d),e),f)}. This condition has been placed in the permit based on air dispersion modeling of the facility at this location to demonstrate compliance with the National Ambient Air Quality Standards and New Mexico Ambient Air Quality Standards for PM_{2.5}, PM₁₀, and TSP);

- vii. During operation of Units 1 through 8, emissions shall be ducted to a dust collector, with a control efficiency as described above. Compliance with opacity of fugitive emissions, during connection and disconnection of equipment, shall be shown through Permit Condition I.2.c). This condition has been placed in the permit based on air dispersion modeling of the facility at this location to demonstrate compliance with the National Ambient Air Quality Standards and New Mexico Ambient Air Quality Standards for PM_{2.5}, PM₁₀, and TSP);
- viii. Units 1 through 5 shall be equipped with a functioning and well maintained overflow alarm. Alarm activation shall either be visual in the form of a lamp, or audible in the form of a buzzer. The Permittee shall stop filling the silo whenever the overflow alarm has been activated. This device shall be installed within fifteen (15) days of permit issuance; and,
- ix. Units 1 through 8 shall each be equipped with a functioning and well maintained device capable of reading the pressure drop across each dust collector. The pressure drop reading of each pressure drop monitoring device shall continually remain within the range required by the manufacture to achieve a \geq 99.95% control efficiency. This device shall be installed within sixty (60) days of permit issuance.
- j) Vehicle traffic areas, haul roads and all site operations shall be maintained and controlled pursuant to 20.11.20.12.A. NMAC, General Provisions, Fugitive Dust Control. That is, the owner/operator shall "...use reasonable available control measures or any other effective control measure to prevent a violation of the national ambient air quality standards and meet the objective established in 20.11.20.6 NMAC, whether or not the person has been issued a fugitive dust control permit. No person shall allow fugitive dust, track out, or transported material from any active operation, open storage pile, paved or unpaved roadway or disturbed surface area, or inactive disturbed surface area to be carried beyond the property line, right-of-way, easement or any other area under control of the person generating or allowing the fugitive dust if the fugitive dust will: 1) adversely affect the health, public welfare or safety of the residents of Bernalillo county; or 2) impair visibility or the reasonable use of property; or 3) be visible longer than a total of 15 minutes in any one hour observation period...To mitigate fugitive dust, all inactive disturbed surface areas must be stabilized and maintained in stable condition by the owner, operator, or person responsible for maintenance of the disturbed surface..."
- k) All haul roads shall be paved by the owner/operator. The permittee shall perform daily vacuum street cleaning or wet sweeping with a sweeper certified by the manufacturer to be efficient at removing particulate matter having an aerodynamic diameter of less than 10 microns (i.e. PM₁₀) to prevent visible emissions of fugitive dust from being generated as specified by 20.11.20.23.A and B NMAC. Vacuum street cleaning or wet sweeping shall be conducted more frequently than daily as necessary to prevent fugitive dust from being generated from all haul roads.
- l) Changes in plans, specifications, and other representations proposed in the application documents shall not be made if they will increase the potential to emit or cause a change in the method of control of emissions or in the character of emissions. Any such proposed changes shall be submitted as a modification to this permit. No modification shall begin prior to issuance of a permit.
- m) Compliance with ton per year (tpy) emissions shall be based on compliance with Conditions I.1.i)iii, iv, v, vi, vii, viii and ix.

2. **Unit Emission Limits:** Condition 2, Unit Emission Limits, has been placed in the permit in accordance with 20.11.41.18.B NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. These were the emission rates stated in the permit application and are the basis of the Division's review. Compliance will be based on Division inspections of the facility and upon compliance with the emission limits and opacity readings conducted in accordance with the test methods specified in Condition 6 - **Compliance Tests**.

- a) The cement and cement additive transfer station emissions units are described below and correspond to the process equipment units in Condition I.1.b).

Emission Unit Table

Emission Unit Number	Emission Unit Description
1	Silo 1 (Dust Collector)
2	Silo 2 (Dust Collector)
3	Silo 3 (Dust Collector)
4	Silo 4 (Dust Collector)
5, 6	Silo 5 (Dust Collector)
7	Loadout (Silos 1-3) (Dust Collector)
8	Loadout (Silo 4) (Dust Collector)
9	Loadout (Silo 5) (Dust Collector)
10	Haul Road

- b) The facility shall not exceed the emission limits stated in the table below. Tons per year emissions shall be based on a 12-month rolling total.

Criteria Pollutants

Emission Unit No.	TSP, lb/hr	TSP, tpy	PM10, lb/hr	PM10, tpy	PM2.5, lb/hr	PM2.5, tpy	Percent Opacity	Recordkeeping ¹	Monitoring ¹	Reporting ¹	Compliance Testing ²
1	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
2	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
3	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
4	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
5	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
6	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
7	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
8	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
9	0.12	0.51	0.09	0.41	0.04	0.16	10%	Yes	Yes	Yes	Yes
10	3.01	14.37	0.59	2.80	0.09	0.42	*	Yes	Yes	Yes	No
Total	4.03	18.82	1.42	6.46	0.42	1.84					

¹ Refer to Conditions 3, 4 and 5 for unit specific record keeping/monitoring, and reporting requirements.

² Refer to Condition 6 for unit specific compliance testing requirements.

*Please see Conditions I.1.i) and k) for compliance of Unit 10.

- c) Emission Units 1 through 9 shall not cause or allow visible emissions that exceed 10 percent opacity. Percent opacity shall be determined using a 15-minute Method 22 test - "Visual determination of fugitive emissions from material sources and smoke emissions from flares", pursuant to CFR Title 40 Part 60 Appendix A. If visible emissions are observed during any Method 22 test, the facility will perform on the Unit(s) in question a 30-minute Method 9 test - "Visual Determination of the opacity of emissions from stationary sources", pursuant to CFR Title 40 Part 60 Appendix A.
 - d) Total suspended particulate matter (TSP), particulate matter less than 10 microns (PM_{10}), particulate matter less than 2.5 microns ($PM_{2.5}$), (lb/hr) emission rates for Emission Units 1 through 10 are for informational purposes and shall be used to determine tpy emissions for each emission unit. Compliance with lb/hr emission rates, for Units 1 through 9, shall be based on compliance with the opacity standards in Condition I.2.c). Compliance with lb/hr emission rates, for Unit 10, shall be based on compliance with Conditions I.1.j) and k).
3. **Record keeping:** Condition 3 has been placed in the permit in accordance with 20.11.41.18.B(8) NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on Division inspection of records and logs. This information shall be retained at the facility for the most recent two-year period and shall be made available to Division personnel upon request.
- a) Maintain Bill of Lading records of the daily receipt of cement and cement additive (in tons) for the silos. Daily receipt records shall be totaled on a monthly basis.
 - b) Maintain records of all maintenance and repair performed on Emission Units 1 through 9.
 - c) Maintain records of biannual testing done on the overflow alarm for each silo. Include any repairs performed on the alarm system.
 - d) Maintain records showing the pressure drop range required across each dust collector.
 - e) Maintain records of each daily pressure drop reading for Emission Units 1 through 9. Include any repairs performed on the pressure drop device.
 - f) Maintain records of monthly opacity readings on Emission Units 1 through 9. These records shall include Method 9 Certifications for the person(s) performing the Method 9 tests as necessary.
 - g) Maintain manufacture records showing the control efficiency of the cartridges used in Emission Units 1 through 9.
 - h) Maintain records of the sweep of haul roads including daily vacuum sweeps.
 - i) Annual scale calibration certifications shall be kept on site.
 - j) Maintain records of the location, within the dust collector, of each cartridge replacement. This recordkeeping shall be performed so continuous cartridge failure at a certain location can be tracked, diagnosed, and resolved.
 - k) Maintain records of monthly purchases and installation of cartridges.
4. **Monitoring:** Condition 4 has been placed in the permit in accordance with 20.11.41.18(4), (6), and (7) NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on Division inspection of equipment and logs.

- a) Each cement and cement additive silo shall be equipped with a functioning and well maintained overflow alarm. Alarm activation shall either be visual in the form of a lamp, or audible in the form of a buzzer. The owner/operator shall monitor the overflow alarm during any silo filling.
 - b) Emission Units 1 through 9 shall each be equipped with a functioning and well maintained device capable of reading the pressure drop across each unit. The owner/operator shall monitor, daily, the pressure drop across Units 1 through 9 to verify it is within the range required by the manufacturer.
 - c) Opacity readings, on Emission Units 1 through 9, shall be performed on a monthly basis. Opacity readings for these units shall be done in accordance with Method 22 - "Visual determination of fugitive emissions from material sources and smoke emissions from flares" or Method 9 - "Visual Determination of the opacity of emissions from stationary sources", CFR Title 40 Part 60 Appendix A, in compliance with Condition I.2.c).
 - d) The owner/operator shall ensure that a 50% cartridge replacement stock is kept onsite for each dust collector.
5. **Reporting:** Condition 5 has been placed in the permit in accordance with 20.11.41.20 NMAC and 20.11.90 NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on timely submittal of the reports (initial and annual). Notifications shall contain the required information and shall be made in accordance with 20.11.41.20 NMAC.

The permittee shall notify the Division in writing of:

- a) Any change in control or ownership within fifteen (15) days of the change in control or ownership; the permit and conditions apply in the event of any change in control or ownership of the facility. No permit modification is required in such case; however, in the event of any such change in control or ownership, the permittee shall notify the succeeding owner of the permit and the conditions;
 - b) An updated emissions inventory for all pollutants contained in the Permit Condition I.2.b) table; to include annual throughput (in tons) for cement and cement additive; by March 15 every year. If no change has occurred, a letter indicating that no change has occurred shall be sufficient;
 - c) Any breakdown of equipment or air pollution control devices or apparatus so as to cause emissions of air contaminants in excess of limits set by permit conditions. Any breakdown or abnormal operating conditions shall be reported within two hours of occurrence to (505) 224-6977 and via facsimile to (505) 768-1977; and,
 - d) Any equipment substitution within 15 days of said substitution.
6. **Compliance Tests:** Condition 6 has been placed in the permit in accordance with 20.11.41.21 NMAC, and 20.11.90.13 F. NMAC. Compliance will be based on the satisfactory completion of the compliance tests, the timely submittal of the emission unit test results to the Division, and on meeting the emission limits specified in Condition 2.
- a) In accordance with 20.11.41.21 NMAC and 20.11.90.13 F. NMAC, Performance Testing Following Startup and Performance Tests respectively, an initial performance test shall be conducted on Emission Units 1 through 9 to demonstrate compliance with the opacity standards established in Condition I.2.c). The compliance tests shall be conducted in accordance with EPA Method 9 found in Appendix A of CFR Title 40 Part 60, and the procedures found in Subpart A of CFR Title 40 Part 60.11. These tests shall be conducted within 60 days after achieving the maximum production rate at which affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Division.

- b) Biannual compliance tests for the overflow alarms for each silo shall be conducted.
- c) Compliance tests for Units 1 through 9 shall be conducted once every quarter-year in order to demonstrate continual compliance of the opacity standards stated in Condition I.2.b). The compliance tests shall be conducted in accordance with EPA Method 9 found in Appendix A of CFR Title 40 Part 60, and the procedures found in Subpart A of CFR Title 40 Part 60.11. If any Method 9 reading shows non-compliance, EPA Methods 1 through 5 shall be conducted within 30 days of the non-compliant Method 9 testing. The permittee may submit to the Department for review a written request to waive any compliance test requirement. Compliance testing shall not be waived unless it is approved in writing by the Department.
- d) Compliance tests have not been imposed for Emission Unit 10.
- e) The permittee shall provide for the Division's approval a written test protocol at least fifteen (15) days prior to the anticipated test date. The protocol shall describe the test methods to be used (including sampling locations), and shall describe data reduction procedures. Any variation from the established sampling and analytical procedures or from facility operating conditions shall be presented for Division approval.
- f) The test protocol and compliance test report shall conform to the standard format specified by the Division.
- g) The tests shall be conducted at ninety (90%) percent or greater of the facilities permitted capacity to demonstrate compliance with the permitted emission limits. Compliance testing at other than 90% production levels shall be performed at the Division's request and/or approval.
- h) One copy of the compliance test results shall be submitted to the Division Enforcement Section within thirty (30) days after the completion of testing.

Unit Specific Compliance Testing

Emission Unit Number	Initial Compliance Test	Frequency of Compliance Test
1, 2, 3, 4, 5, 6, 7, 8, and 9	Yes (Opacity)	Quarter-annually for Opacity
10	Not Required*	Not Required*

*Compliance tests have not been imposed for this unit at this time, but may be imposed if inspections of the source indicate non-compliance with permit conditions.

- 7. **Modifications:** Condition 7 has been placed in the permit in accordance with 20.11.41.7.H NMAC, to enable the Division to review proposed changes to the facility which may constitute a permit modification prior to such changes. Compliance will be based on Division inspections and the submittal of a new permit application for any modification.
 - a) Any future physical changes or changes in the method of operation which results in an increase in the pre-controlled emission rate may constitute a modification as defined by 20.11.41.7.H NMAC. No modification shall begin prior to issuance of a permit. Modifications or revisions to this permit shall be processed in accordance with 20.11.41 NMAC.
- 8. **Compliance Assurance/Enforcement:** All air pollution emitting facilities within Bernalillo County are subject to all applicable Albuquerque/Bernalillo County Air Quality Control Regulations, whether listed in this registration/permit or not.
 - a) The issuance of a permit or registration does not relieve the facility from responsibility of complying with the provisions of the Air Quality Control Act, and the laws and regulations in force pursuant to the Act and 20.11.41.17 NMAC.

- b) Any conditions imposed upon the facility as the result of an Authority-To-Construct Permit or any other permit issued by the Division shall be enforceable to the same extent as a regulation of the Board and 20.11.41.18.C NMAC.
 - c) Whenever two or more parts of the Air Quality Control Act, or the laws and regulations in force pursuant to the Act, limit, control or regulate the emissions of a particular air contaminant, the more restrictive or stringent shall govern pursuant to 20.11.1.14 NMAC.
 - d) The Division is authorized to issue a compliance order requiring compliance and assessing a civil penalty not to exceed Fifteen Thousand and no/100 Dollars (\$15,000) per day of noncompliance for each violation, commence a civil action in district court for appropriate relief, including a temporary and permanent injunction. (74-2-12 NMSA).
 - e) Scheduled and Unscheduled Inspection (74-2-13 NMSA) -- The Division will conduct scheduled and unscheduled inspections to insure compliance with the Air Quality Control Act, and the laws and regulations in force pursuant to the Act, and this permit, and, upon presentation of credentials:
 - i. Shall have a right of entry to, upon, or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the Board or by any permit condition are located;
 - ii. May at any reasonable time have access to and copy any records required to be established and maintained by Regulations of the Board, or any permit condition;
 - iii. May inspect any monitoring equipment and method required by Regulations of the Board or by any permit condition; and,
 - iv. Sample any emissions that are required to be sampled pursuant to Regulation of the Board, or any permit condition.
 - f) Any credible evidence may be used to establish whether the facility has violated or is in violation of any regulation of the Board, or any other provision of law. Credible evidence and testing shall include, but is not limited to (20.11.41.26.A-B NMAC):
 - i. A monitoring method approved for the source pursuant to 20.11.42 NMAC "Operating Permits" and incorporated into an operating permit;
 - ii. Compliance methods specified in the Regulations, conditions in a permit issued to the facility, or other provision of law;
 - iii. Federally enforceable monitoring or testing methods, including methods in 40 CFR parts 51, 60, 61, and 75; and,
 - iv. Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the Division and EPA.
9. **Posting of the Permit:** Compliance will be based on Division inspections of the facility, which show that a copy of the permit has been posted in a visible location. A copy of this permit shall be posted in a visible location at the plant site at all times. The permit shall be made available to Division personnel for inspection upon request.

10. **Annual Fees:** Condition 10 has been placed in the permit in accordance with 20.11.2 NMAC to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on the receipt of the annual emissions fee due each year to the Division pursuant to 20.11.2 NMAC. Every owner or operator of a source that is required to obtain a source registration, an Authority-to-Construct, an operating permit, or a preconstruction permit shall pay an annual emissions fee pursuant to 20.11.2 NMAC, 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, or 20.11.62 NMAC.

**Facility Wide Fee Pollutants
(Tons Per Year)**

Fee Pollutant	Facility Wide Fee Pollutant Totals in Tons per Year (TPY)
Total Suspended Particulate Matter (TSP)	19
Facility Wide Fee Pollutants Totals (TPY)	19

II. ADDITIONAL REQUIREMENTS

1. **Permit Cancellation**-- The Division may cancel any permit if the construction or modification is not commenced within one (1) year from the date of issuance or if, during the construction or modification, work is suspended for a total of one (1) year pursuant to 20.11.41.19 NMAC.

Application for permit modifications, relocation notices and items listed under **ADDITIONAL REQUIREMENTS** shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Division
Permitting Section
P.O. Box 1293
Albuquerque, New Mexico 87103

Test protocols, compliance tests and all reports shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Division
Attention: Compliance Officer
P.O. Box 1293
Albuquerque, New Mexico 87103

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,

Petitioners/Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division,

Respondent/Appellee

AQCB No. 2009-7

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**ANSWER OF THE CITY OF ALBUQUERQUE
TO PETITION FILED NOVEMBER 17, 2009**

The City of Albuquerque (City) files this Answer in response to the *Appeal Petition for Hearing* that was filed on November 17, 2009 (hereafter the "November 17 Petition" or "Petition". The November 17 Petition was filed by the Petitioners/Appellants (hereafter "Petitioners") after Petitioners filed an identically-named *Appeal Petition for Hearing* on November 2 (hereafter "November 2 Petition"). The City Answers as follows.

Answer to Petitioners' November 17, 2009 Appeal Petition for Hearing

1. Petitioners' "Preliminary Statement", first paragraph, first sentence: The City admits the allegations in the first sentence of the first paragraph of Petitioners' "Preliminary Statement".

2. Petitioners' "Preliminary Statement", first para., second sentence: The City admits the allegations contained in the second sentence of the first paragraph of Petitioners' "Preliminary Statement".

3. Petitioners' "Preliminary Statement", second para.: The City admits that the second paragraph of Petitioners' "Preliminary Statement" contains Petitioners' description

of Petitioners' arguments on appeal, and that the statements consist of legal arguments and legal conclusions, each of which the City denies. To the extent the remainder of the second paragraph contains factual allegations, the City denies all allegations.

4. Petitioners' "Preliminary Statement", third para.: The City respectfully requests that the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) deny the relief requested by the Petitioners in the third paragraph of Petitioners' "Preliminary Statement", and that the Air Board sustain the issuance of air quality Authority-to-

5. Petitioners' "Statutory and Other Bases for Claims", first sentence: The City admits a timely petition for hearing may be heard by the Air Board if the petitioners meet the requirements of the New Mexico Air Quality Control Act (Air Act), NMSA 1978, §§ 74-2-1 to 17, specifically NMSA §§ 74-2-7(H) and (I), and 20.11.81 NMAC, and that facts and other evidence regarding permitting may be raised if authorized by NMSA § 74-2-7 and 20.11.81 NMAC. The City denies that factual and evidentiary issues may be raised per NMSA § 74-2-7(K), and, to the extent the remainder of the first sentence of Petitioners' "Statutory and Other Bases for Claims" section contains additional legal or factual allegations, the City denies all such allegations.

6. Petitioners' "Statutory and Other Bases for Claims", second sentence: The wording in the second sentence of Petitioners' "Statutory and Other Bases for Claims" section is taken from the New Mexico Environmental Improvement Act (EIA), NMSA 1978, §§ 74-1-1 to 74-1-16, specifically NMSA § 74-1-2, *Purpose of Environmental Improvement Act*. The EIA does not apply to the Air Board or political subdivisions of the State of New Mexico. Therefore, City denies all allegations contained in the second sentence of Petitioners' "Statutory and Other Bases for Claims" section.

7. Petitioners' "Statutory and Other Bases for Claims", third sentence: The City denies the allegations contained in the third sentence of Petitioners' "Statutory and Other Bases for Claims" section.

8. Petitioners' "Statutory and Other Bases for Claims", fourth sentence: To the extent the allegations contained in the fourth sentence of Petitioners' "Statutory and Other Bases for Claims" section are intended to assert a claim under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d to 2000d-7) in this administrative appeal to the Air Board, the City denies 42 U.S.C. § 2000d applies to AQCB No. 2009-7. The City further states that 42 U.S.C. § 2000d speaks for itself, and that Petitioners' statement in the fourth sentence is nothing more than a legal argument and legal conclusion. To the extent the fourth sentence of

Petitioners' "Statutory and Other Bases for Claims" section regarding unidentified "certain" populations, contains legal or factual allegations, the City denies all allegations.

9. Petitioners' "Jurisdiction" section, first sentence: The City admits the Air Board has jurisdiction to hear appeals pursuant to NMSA 74-2-7(H) and 20.11.81 NMAC. The City denies the Air Board has jurisdiction to hear all of the issues raised on appeal in AQCB No. 2009- 7. To the extent the remainder of the first sentence of Petitioners' "Jurisdiction" section contains additional legal or factual allegations, the City denies.

10. Petitioners' "Jurisdiction" section, second sentence: The City admits the allegations contained in the second sentence of Petitioners' "Jurisdiction" section and states the Air Board also was created by Bernalillo County Joint Air Quality Control Board Ordinance No. 94-5 (County Ordinance), Section 3.

11. Petitioners' "Jurisdiction" section, third sentence: The City admits the City Joint Air Quality Control Board Ordinance, 9-5-1-1 et seq. ROA 1994 (City Ordinance) at 9-5-1-7(H) authorizes appeals to the Air Board that comply with the requirements of the Air Act and the City Ordinance. The City denies the Air Board has jurisdiction to hear all of the issues raised on appeal in AQCB No. 2009-7. To the extent the remainder of the third sentence of Petitioners' "Jurisdiction" section contains additional legal or factual allegations, the City denies.

12. Petitioners' "Timeliness" section: The City denies that notice of the permit was granted on September 15, 2009. The City affirms that the air quality Authority-to-Construct Permit # 902-M3 was signed on September 15, 2009. The City admits the Petitioners received the participant notification letter on or after October 2, 2009, and that the Petition was timely filed.

13. Petitioners' "Parties" section, first para.: The City admits Petitioners are community organizations and individuals who participated in the permitting action before the Air Quality Division of the City, but is without information sufficient to form a belief regarding the remaining allegations in the first paragraph of Petitioners' "Parties" section and therefore denies the remainder of the allegations.

14. Petitioners' "Parties" section, second para., first sentence: The City admits the allegations contained in the first sentence of the second paragraph of Petitioners' "Parties" section.

15. Petitioners' "Parties" section, second para., second sentence: The City admits Greater Gardner NA is a portion of zip code 87107; admits the area of zip code 87107 is approximately 14.5 square miles; that Greater Gardner NA comprises approximately 0.34

square miles, which is 2.3% of the area of zip code 87107; and admits the accuracy of the boundary description of zip code 87107 in the second sentence of the second paragraph of Petitioners' "Parties" section. The City denies all other allegations contained in the second sentence of the second paragraph of Petitioners' "Parties" section.

16. Petitioners' "Parties" section, second para., third sentence: The information asserted by Petitioners in third sentence of the second paragraph of Petitioners' "Parties" section does not include a reference to a year. The City affirms that, as of November 16, 2009, the Year 2000 Census reports a population of 30,781 for zip code 87107, that the 2000 Census reports that 17,043 people within zip code 87107 (55.4%) are Hispanic, and denies all additional allegations contained in the third sentence of the second paragraph of Petitioners' "Parties" section.

17. Petitioners' "Parties" section, second para., fourth sentence: The information asserted by Petitioners in the fourth sentence of Petitioners' "Parties" section does not include a reference to a year. The City affirms that, as of November 16, 2009, the Year 2000 Census reports the median yearly household income for zip code 87107 is \$34,645, and denies all additional allegations contained in the fourth sentence of the second paragraph of Petitioners' "Parties" section.

18. Petitioners' "Parties" section, second para., fifth sentence: The Petitioners did not define the "area" referred to in the fifth sentence of the second paragraph of Petitioners' "Parties" section. As a result, the City is without information sufficient to respond, and therefore denies the allegations contained in the fifth sentence of the second paragraph of Petitioners' "Parties" section.

19. Petitioners' "Parties" section, second para., sixth sentence: The information provided in the sixth sentence of the second paragraph of Petitioners' "Parties" section does not include a reference to a date. However, the City affirms that, as of November 17, 2009, within Bernalillo County there were 993 stationary sources with air quality permits and air quality registrations, that the stationary sources are permitted to emit a total of 2,550 tons per year of total suspended particulates (TSP), and that TSP includes PM10 and PM2.5 as subsets of TSP. The City denies all other allegations contained in the sixth sentence of the second paragraph of Petitioners' "Parties" section.

20. Petitioners' "Parties" section, second para., seventh sentence: The information provided in the seventh sentence of the second paragraph does not include a reference to a date. However, the City affirms that, as of November 16, 2009, according to 2000 Census data, zip code 87107 was 5.5% of the total population of Bernalillo County, and zip code

87107 contained 10.4% of the stationary sources of air pollution and 8.1% of the permitted annual tonnage of total suspended particulates. The City denies all other allegations contained in the seventh sentence of the second paragraph of Petitioners' "Parties" section.

21. Petitioners' "Parties" section, second para., eighth sentence: The City admits the allegations contained in the eighth sentence of the second paragraph of Petitioners' "Parties" section.

22. Petitioners' "Parties" section, second para., ninth sentence: The information provided in the ninth sentence of the second paragraph appears to be nothing more than contact information for the President of the Greater Gardner Neighborhood Association. To the extent the ninth sentence of the second paragraph contains additional legal or factual allegations, the City denies all allegations.

23. Petitioners' "Parties" section, third para., first sentence: The City states that the North Valley Coalition of Neighborhood Associations documents and the North Valley Area Plan speak for themselves. To the extent the wording of the first sentence of the third paragraph of Petitioners' "Parties" sections does not accurately and completely quote from or summarize those documents, the City denies.

24. Petitioners' "Parties" section, third para., second sentence: The City states that the North Valley Area Plan speaks for itself. To the extent the wording of the second sentence of the third paragraph of Petitioners' "Parties" section does not accurately and completely quote from or summarize the Plan, the City denies.

25. Petitioners' "Parties" section, third para., third sentence: The City states that the North Valley Area Plan speaks for itself. To the extent the wording of the third sentence of the third paragraph of Petitioners' "Parties" section does not accurately and completely quote from or summarize the Plan, the City denies.

26. Petitioners' "Parties" section, third para., fourth sentence: The City admits the allegations contained in the fourth sentence of the third paragraph of Petitioners' "Parties" section.

27. Petitioners' "Parties" section, third para., fifth sentence: The information provided in the fifth sentence of the third paragraph appears to be nothing more than contact information for the President of the North Valley Coalition of Neighborhood Associations. To the extent the fifth sentence of the third paragraph contains additional legal or factual allegations, the City denies all allegations.

28. Petitioners' "Parties" section, fourth para., first sentence: The City admits the allegations contained in the first sentence of the fourth paragraph of Petitioners' "Parties" section.

29. Petitioners' "Parties" section, fourth para., second sentence: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the second sentence of the fourth paragraph of Petitioners' "Parties" section and therefore denies.

30. Petitioners' "Parties" section, fourth para., third sentence: The City admits the allegations contained in the third sentence of the fourth paragraph of Petitioners' "Parties" section.

31. Petitioners' "Parties" section, fourth para., fourth sentence: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the fourth sentence of the fourth paragraph of Petitioners' "Parties" section and therefore denies.

32. Petitioners' "Parties" section, fourth para., fifth sentence: The information provided in the fifth sentence of the fourth paragraph appears to be nothing more than contact information for Petitioner Kyle Silfer. To the extent the fifth sentence of the fourth paragraph contains additional legal or factual allegations, the City denies all allegations.

33. Petitioners' "Parties" section, fifth para., first sentence: The City is without information sufficient to form a belief regarding the accuracy of the statements contained in the first sentence of the fifth paragraph of Petitioners' "Parties" section and therefore denies.

34. Petitioners' "Parties" section, fifth para., second sentence: The City admits Mr. Wood's residence is located approximately 1,000 feet from the American Cement facility, as alleged in the second sentence of the fifth paragraph of Petitioners' "Parties" section.

35. Petitioners' "Parties" section, fifth para., third sentence: The information provided in the third sentence of the fifth paragraph appears to be nothing more than contact information for Petitioner David Wood. To the extent the third sentence of the fifth paragraph contains additional legal or factual allegations, the City denies all allegations.

36. Petitioners' "Parties" section, sixth para., first sentence: The City is without information sufficient to form a belief regarding the accuracy of the statement regarding Ms. Finical's role in the Greater Gardner Neighborhood Association, and admits Ms. Finical lives approximately 1,000 feet from the American Cement facility as alleged in the sixth paragraph of Petitioners' "Parties" section.

37. Petitioners' "Parties" section, sixth para., second sentence: The information provided in the second sentence of the sixth paragraph appears to be nothing more than contact information for Petitioner Marcia Finical. To the extent the second sentence of the sixth paragraph contains additional legal or factual allegations, the City denies all allegations.

38. Petitioners' "Parties" section, seventh para., first sentence: The City admits the Air Act and the City Ordinance authorize the City Environmental Health Department to be the local agency that administers and enforces air quality regulations and programs within Bernalillo County, just as the New Mexico Environment Department has authority to administer and enforce air quality regulations and programs within the state of New Mexico, outside Bernalillo County. The City denies all other allegations contained in the first sentence of the seventh paragraph of Petitioners' "Parties" section.

39. Petitioners' "Parties" section, seventh para., second sentence: The Air Act at NMSA §74-2-2(J) defines "local authority" as a qualifying political subdivision, not a board. Therefore, the City denies the allegations in the second sentence of the seventh paragraph of Petitioners' "Parties" section.

40. Petitioners' "Parties" section, seventh para., third sentence: The City admits the Air Board assumed jurisdiction over air quality within Bernalillo County pursuant to the Air Act at NMSA § 74-2-4, the City Ordinance at 9-5-1-3 ROA 1994, and the Bernalillo County Ordinance at Section 3.

41. Petitioners' "Essential Facts" section, first para.: The City admits on September 15, 2009 the Air Quality Division of the City Environmental Health Department issued air quality Authority-to-Construct Permit No. 0902-M3 to American Cement Corporation. The City denies all other allegations in the first paragraph of Petitioners' "Essential Facts" section.

42. Petitioners' "Essential Facts" section, second para., first sentence: The City admits the allegations contained in the first sentence of the second paragraph of Petitioners' "Essential Facts" section.

43. Petitioners' "Essential Facts" section, second para., second sentence: The City admits the allegations contained in the second sentence of the second paragraph of Petitioners' "Essential Facts" section.

44. Petitioners' "Essential Facts" section, third para., first sentence: The City admits the allegations contained in the first sentence of the third paragraph of Petitioners' "Essential Facts" section.

45. Petitioners' "Essential Facts" section, third para., second sentence: The City admits the allegations contained in the second sentence of the third paragraph of Petitioners' "Essential Facts" section.

46. Petitioners' "Statement of Claims – First Claim", first sentence: The City denies the allegations contained in the first sentence of Petitioners' "First Claim".

47. Petitioners' "Statement of Claims – First Claim", second sentence: The City admits neighborhood residents provided testimony as described in the second sentence of Petitioners' "First Claim".

48. Petitioners' "Statement of Claims – First Claim", third sentence: The City admits video footage with a manually-affixed date stamp of June 19, 2008 was submitted at a summer of 2009 Public Information Hearing (PIH). The City denies all other allegations contained in the third sentence of Petitioners' "First Claim".

49. Petitioners' "Statement of Claims – First Claim", fourth sentence: The City admits participants in the PIHs requested inclusion of best available control technology (BACT) in American Cement's proposed air quality Permit No. 902-M3. However, the City states affirmatively that federal, state, and Air Board regulations only require installation of BACT technology at major stationary sources that are subject to prevention of significant deterioration (PSD) requirements imposed by 20.11.61 NMAC, *Prevention of Significant Deterioration* (Part 61). The American Cement facility is a minor, not a major, stationary source. American Cement is subject to the minor source permitting regulation 20.11.41 NMAC, *Authority-to-Construct*, and is not subject to Part 61 PSD major source BACT requirements. The City denies all other allegations contained in the fourth sentence of Petitioners' "First Claim".

50. Petitioners' "Statement of Claims – First Claim", fifth sentence: The City admits BACT requirements were not included in Permit 902-M3 for the reasons stated in Answer 49 above. The City also admits that during negotiations with the new owner regarding resolution of the prior owner's violations, the Air Quality Division received a June 11, 2008 letter and attachment from the new owner of American Cement with a list of potential improvements at the facility. The City admits the new owner initially offered to install and operate a neighborhood PM monitor for one year and then to turn the facility over to the Air Quality Division for operation. The City affirmatively states that in 2008 the new owner of the American Cement facility performed an air quality self-audit of the recently-acquired facility, self-reported past and existing violations to the Air Quality Division, and was issued a Notice of Violation (NOV) by the Air Quality Division. The NOV ultimately was resolved consistent

with the EPA's *Interim Approach to Applying the Audit Policy to New Owners*. The City affirms that the new owner ultimately signed a Compliance Agreement that described significant changes and improvements at the facility that were made by the new owner and were not required either by the air quality permit that was in effect at that time or by applicable laws, and that the new owner paid a \$61,525 penalty into the City general fund. In addition, the City affirms that the Air Quality Division operates more air quality monitoring stations within Bernalillo County than are required by the EPA, and that air quality within Bernalillo County is well within all federal, state of New Mexico, and local health-based air quality standards, which includes the standards for particulates. The City denies all other allegations contained in the fifth sentence of Petitioners' "First Claim".

51. Petitioners' "Statement of Claims – Second Claim", first sentence: The City denies the allegations contained in the first sentence of Petitioners' "Second Claim".

52. Petitioners' "Statement of Claims – Second Claim", second sentence: The City states the Attorney General of New Mexico Opinion No. 08-03 speaks for itself. To the extent the wording of the second sentence of Petitioners' "Second Claim" does not accurately and completely quote from the opinion, the City denies.

53. Petitioners' "Statement of Claims – Second Claim", third sentence: The City admits the New Mexico Department of Health provided data derived from historical record, admits the Department of Health could not rule out causation, and affirmatively states the data did not establish causation. The City denies all other allegations contained in the third sentence of Petitioners' "Second Claim".

54. Petitioners' "Statement of Claims – Second Claim", fourth sentence: The City admits the allegations contained in the fourth sentence of Petitioners' "Second Claim".

55. Petitioners' "Statement of Claims – Second Claim", fifth sentence: The City admits the allegations contained in the fifth sentence of Petitioners' "Second Claim".

56. Petitioners' "Statement of Claims – Second Claim", sixth sentence: The City admits the allegations contained in the sixth sentence of Petitioners' "Second Claim".

57. Petitioners' "Statement of Claims – Second Claim", seventh sentence: The City denies the allegations contained in the seventh sentence of Petitioners' "Second Claim", and states affirmatively that Permit 902-M3 was issued consistent with all requirements of the New Mexico Air Act, the City Ordinance, and the Air Board regulations.

58. Petitioners' "Statement of Claims – Third Claim", first sentence: The City denies the allegations contained in the first sentence of Petitioners' "Third Claim".

59. Petitioners' "Statement of Claims – Third Claim", second sentence: The City denies the allegations contained in the second sentence of Petitioners' "Third Claim".

60. Petitioners' "Statement of Claims – Third Claim", third sentence: The City admits a minor source air quality permit should be clear enough for the public, the source, and the enforcing agency to know what is being emitted and how it is being emitted, how it is being controlled and at what levels. The City affirmatively states air quality Authority-to-Construct Permit 0902-M3 is clear enough for the public, the source, and the enforcing agency to know what is being emitted and how it is being emitted, how it is being controlled and at what levels. The City denies all other allegations contained in the third sentence of Petitioners' "Third Claim".

61. Petitioners' "Statement of Claims – Third Claim", fourth sentence: The City admits the allegations contained in the fourth sentence of Petitioners' "Third Claim".

62. Petitioners' "Statement of Claims – Third Claim", fifth sentence: The City admits the allegations contained in the fifth sentence of Petitioners' "Third Claim".

63. Petitioners' "Statement of Claims – Third Claim", sixth sentence: The City admits the allegations contained in the sixth sentence of Petitioners' "Third Claim".

64. Petitioners' "Statement of Claims – Fourth Claim": The City is without information sufficient to form a belief regarding potential facts or legal issues that may be identified or raised by Petitioner prior to hearing. Therefore, the City denies all allegations contained in Petitioners' "Fourth Claim".

Affirmative Defenses

65. Regarding Petitioners' "Relief Requested" section, the City Petitioners failed to state a claim upon which relief may be granted. Therefore, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' November 17, 2009 *Appeal Petition for Hearing* with prejudice, and sustain the issuance of air quality Authority-to-Construct Permit No. 902-M3.


Response to Request for Relief

66. In response to Petitioners' request for relief, and based on the foregoing Answer, the City respectfully asks the Air Board to deny the relief requested, dismiss Petitioners' November 17, 2009 *Appeal Petition for Hearing* with prejudice, sustain the issuance of air

quality Authority-to-Construct Permit No. 902-M3, and grant the City any additional relief deemed appropriate by the Air Board.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney


Adelia W. Kearny
Deputy City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4530
akearny@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2009: 1.) the original *Answer of the City of Albuquerque to Petition Filed November 17, 2009* was filed with the Hearing Clerk in the above-captioned matter, nine copies were hand delivered to the Hearing Clerk for delivery to the Air Board members as required by 20.11.81.12.G NMAC, and two copies were hand delivered to the Hearing Clerk forwarding to the current Hearing Officer, Jens Deichmann, Chair of the Air Board, and to Bill Granthan, Air Board counsel, as directed by the Hearing Clerk; and
2.) a copy was mailed and sent by electronic mail to:

Kyle Silfer, President
Greater Gardner NA
4465 Jupiter Street NW
Albuquerque, NM 87107
ggna@macmountain.org

Chris Catechis, President
North Valley Coalition of
Neighborhood Associations
5733 Guadalupe Trail NW
Albuquerque, NM 87107
catechis@msn.com

Kyle Silfer
4465 Jupiter Street NW
Albuquerque, NM 87107
kyle@rtoads.com

David Wood
158 Pleasant Ave., NW
Albuquerque, NM 87107
wood_cpa@msn.com

Marcia Finical
141 Griegos Rd., NW
Albuquerque, NM 87107
marcia_finical@yahoo.com

By: 
Adelia W. Kearny, Deputy City Attorney

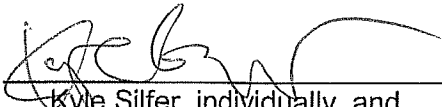
WAIVER AND RELEASE

Regarding Extension of Deadline for Holding Hearing

The Air Quality Division (AQD) of the City of Albuquerque (City) Environmental Health Department issued American Cement Authority-to-Construct Permit modification # 0902-M3, effective September 15, 200. Kyle received the participant notification letter sent by AQD informing Mr. Silfer that the permit modification had been issued, the process followed by AQD during its review, the conditions incorporated in the permit modification, and the deadline for requesting a hearing before the Albuquerque-Bernalillo County Air Quality Control Board (Air Board). On November 2, 2009, Kyle Silfer filed an *Appeal Petition for Hearing* dated November 1, 2009 with the Air Board Hearing Clerk.

The Air Board is directed by subsection F of 20.11.41.14 NMAC and paragraph (1) of subsection F of 20.11.81.14 NMAC to hold a public hearing regarding an authority-to-construct permit challenge within 30 days of receipt of the request for public hearing unless the Petitioner waives the deadline pursuant to 20.11.81.14.C NMAC. By signing this Waiver and Release, Kyle Silfer, on behalf of the two organizations and three individuals named as Appellants (petitioners) in the Appeal Petition for Hearing filed November 2, 2009, hereby waives the 30-day deadline, and forever waives, releases and discharges any and all rights and claims for damages or other relief that the Appellants/petitioners may have against the Air Board, each individual member of the Board, the City, and all City officials, officers, employees, contractors and agents as a result of the Air Board not holding the public hearing within 30 days of receipt of the Appeal Petition for Hearing.

The individual signing this Waiver and Release warrants he is authorized to represent the two organizations and three individuals named as Appellants/petitioners in the Appeal Petition for Hearing and has full legal authority to execute this Waiver and Release on behalf of the Greater Gardner Neighborhood Association (GGNA), the North Valley Coalition of Neighborhood Associations (NVCNA), David Wood individually and Marcia Finical individually, and to bind GGNA, NVCNA, David Wood, Marcia Finical, and himself to its terms.

By: 

Kyle Silfer, individually, and
as authorized representative of
Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood Associations,
David Wood individually, and
Marcia Finical individually

Date: 11/10/09

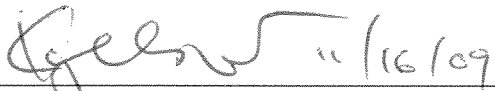
STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR
A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 0902-M3

Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, Petitioners

Statement of Authority to Represent

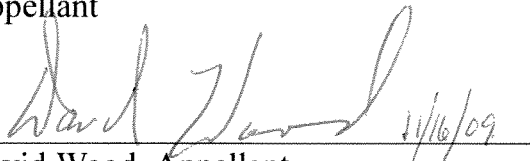
Until such time as the appellants can retain legal counsel, the appellants in the Appeal Petition for Hearing grant appellant Kyle Silfer full legal authority to represent the Greater Gardner Neighborhood Association, the North Valley Coalition of Neighborhood Associations, David Wood individually and Marcia Finical individually.

 11/16/09

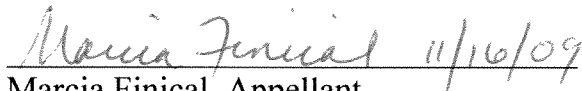
Kyle Silfer, as President of Greater Gardner Neighborhood Association, Appellant

 11/16/09

Chris Catechis, as President of North Valley Coalition of Neighborhood Associations, Appellant

 11/16/09

David Wood, Appellant

 11/16/09

Marcia Finical, Appellant

NOV 17 2009
JCU

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT
No. 0902-M3**

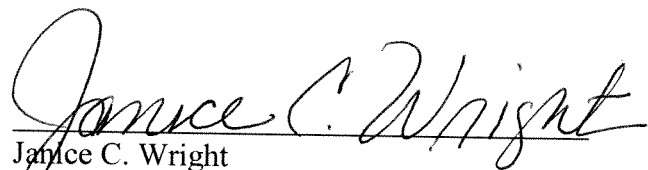
Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals, Petitioners/Appellants, v. City of Albuquerque Environmental Health Department, Air Quality Division, Respondent/Appellee.	AQCB No. 2009-7 <div style="text-align: right;">RECEIVED NOV 17 2009 JCU</div>
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NOTICE OF DOCKETING

Petition Received by Hearing Clerk: November 2, 2009

The procedural rules that will be followed for this hearing will be 20.1.81 NMAC,
Adjudicatory Procedures-Air Quality Control Board.

Respectively submitted,



Janice C. Wright
Hearing Clerk
Air Quality Division
Environmental Health Department
City of Albuquerque
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico, 87103

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, hand-delivered, and e-mailed a true and correct copy of the foregoing pleading on this 17th day of November, 2009, to the following:

Mailed and E-mailed

Kyle Silfer
Greater Gardner Neighborhood Association
4465 Jupiter NW
Albuquerque, NM 87107
kyle@rtoads.com

Hand-Delivered

John W. Soladay, Director
Environmental Health Department
City of Albuquerque
Room 3023, One Civic Plaza
Albuquerque, NM 87102

Hand-Delivered

Isreal L. Tavarez,
Environmental Engineering Manager
Air Quality Division
Environmental Health Department
City of Albuquerque
Room 3047, One Civic Plaza
Albuquerque, NM 87102

Hand-Delivered

Adelia Kearny
City Attorney's Office
City of Albuquerque
Room 4015, One Civic Plaza
Albuquerque, NM 87102

Mailed and E-mailed

Tim Van Valen
Brownstein, Hyatt, Farber, Schreck, LLP
201 Third Street NW, #1700
Albuquerque, NM 87102
tvanvalen@bhfs.com

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Janice Wright at least ten days prior to the hearing date at P.O. Box 1293 Albuquerque, New Mexico, 87103. Ms. Wright's telephone number is (505) 768-2601. TDY users please access Ms. Wright's number through the New Mexico Relay Network at 1-800-659-8331.

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**GREATER GARDNER NEIGHBORHOOD
ASSOCIATION, NORTH VALLEY COALITION
OF NEIGHBORHOOD ASSOCIATIONS, AND
KYLE SILFER, DAVID WOOD, AND MARCIA
FINICAL AS INDIVIDUALS,**

Appellants

vs.

**CITY OF ALBUQUERQUE AIR QUALITY
DIVISION**

Appellee.

**Authority to Construct
Permit Modification
Permit No. 0902-M3**

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CITY OF ALBUQUERQUE
AIR QUALITY CONTROL BOARD
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MOTION TO INTERVENE

Permittee American Cement Corporation, a New Mexico Corporation ("Permittee"), acting by and through its attorneys Brownstein Hyatt Farber Schreck, LLP, hereby moves the Albuquerque-Bernalillo County Air Quality Control Board (the "Board") for an order permitting the intervention of Permittee as Appellee in the above-captioned proceeding, and in support thereof states as follows:

1. On November 2, 2009, the Greater Gardner Neighborhood Association and the North Valley Coalition of Neighborhood Associations, and Kyle Silfer, David Wood and Marcia Finical as Individuals (collectively, the "Appellants"), filed an Appeal and Petition for Hearing concerning the City of Albuquerque Air Quality Division's issuance of Permittee's modified Authority-to-Construct Permit No. 0902-M3 on September 15, 2009.

2. Permittee is the holder of the permit challenged in this appeal, and is the owner and operator of the facility for which the permit was issued.

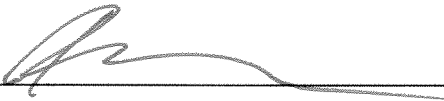
3. As holder of the permit and as owner and operator of the facility, Permittee has a significant interest in this appeal proceeding.

4. Pursuant to the New Mexico Air Quality Control Act, NMSA §§ 74-2-1 to 74-2-17, Permittee is properly a party to this proceeding and is entitled to notice and an opportunity to participate in all proceedings related to Appellants' request for a hearing before the Board.

WHEREFORE, Permittee respectfully requests the Board to order the intervention of Permittee as an Appellee in the above-captioned proceeding.

Respectfully submitted this 16th day of November, 2009.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: _____

Tim Van Valen
Brownstein Hyatt Farber Schreck, LLP
201 Third Street N.W., #1700
Albuquerque, NM 87102
(505) 244-0770
E-mail: tvanvalen@bhfs.com

ATTORNEY FOR AMERICAN CEMENT
CORPORATION

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD
IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 0902-M3

**GREATER GARDNER NEIGHBORHOOD ASSOCIATION, NORTH VALLEY
COALITION OF NEIGHBORHOOD ASSOCIATIONS, AND KYLE SILFER, DAVID
WOOD, AND MARCIA FINICAL AS INDIVIDUALS, PETITIONERS.**

Certificate of Service


I certify that one original and nine copies of the foregoing **Motion to Intervene** were filed with the hearing clerk on the 16th day of November, 2009, and by same date submitted by certified mail, return receipt requested, to the following:

Kyle Silfer, Petitioner
4465 Jupiter NW
Albuquerque, NM 87107

and by same date submitted by hand delivery to Janice Wright for the following:

Jens Deichman, Hearing Officer and Board Chair
Albuquerque-Bernalillo County Air Quality Control Board
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102

Bill Grantham, Esq., AQCB Legal Counsel
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102



Timothy R. Van Valen

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3**

**Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,**

Petitioners/Appellants,

v.

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

Respondent/Appellee

AQCB No. 2009-7

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**NOTICE OF FILING OF ADMINISTRATIVE RECORD
AND SERVICE OF INDEX OF ADMINISTRATIVE RECORD**

On November 17, 2009, the Administrative Record of the permitting action that is the subject of the above-captioned action and the related Index of the Administrative Record were filed with the Air Quality Control Board Hearing Clerk. On November 17, a copy of the Index also was mailed and electronically mailed to Petitioner Kyle Silfer.

Respectfully submitted,

**CITY OF ALBUQUERQUE
Robert M. White, City Attorney**



**Adelia W. Kearny
Deputy City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4530
akearny@cabq.gov**

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2009, a true and correct copy of the Administrative Record Index was mailed by regular mail, postage prepaid to:

Kyle Silfer, individually, and as
President of Greater Gardner NA
4465 Jupiter NW
Albuquerque, NM 87107

and a copy was sent by electronic mail to Kyle Silfer at kyle@rtoads.com.

by: 
Adelia W. Kearny, Deputy City Attorney

AMERICAN CEMENT ADMINISTRATIVE RECORD Re Application For third modification to Air Quality Permit #0902 (tracking #0902-M3) Facility CDS #35/001/00012, 4702 Carlton NW , ABQ, NM		
Includes all documents in AQD Permit file through letter to participants in permitting process		
This permitting action is subject to:		
New Mexico Air Quality Control Act, NMSA 74-2-1, <i>et seq.</i>		
City of Alb. Joint Air Quality Control Board Ordinance, 9-5-1-1 <i>et seq</i> ROA 1994		
Air Quality Regulations for Albuquerque and Bernalillo County, adopted by the Albuquerque-Bernalillo County Air Quality Control Board, including 20.11.41 NMAC, 20.11.1 NMAC and 20.11.2 NMAC		
Admin Record Doc #	Sequential (Bate stamp) page #	Document description
AR 001	0001	2/6/09 11:31 p.m. e-mail to Kearny/CoA Legal and Eyerman/AQD from Tavarez/AQD, Subj: RE: Need info re GCC/Am Cement permit mod tele conf Fri 2/13. 2/6/09 11:31 e-mail is attached to: 2/6/09 3:01 p.m. e-mail to Tavarez/AQD and Eyerman/AQD from Kearny/CoA Legal, Subj: Need info re GCC/Am Cement permit mod tel conf Fri 2/13
AR 002	0002	Photocopy 2/20/09 GCC Rio Grande, Inc. permit application fee check and City of ABQ receipt
AR 003	0003	2/25/09 Transmittal lt. to Tavarez/AQD from Choquette/Trinity Consultants
AR 004	0004	2/25/09 American Cement Corporation Application for Minor Source Air Quality Permit Modification #3 to Permit No. 0902-M1 – received 2/26/09. American Cement Consultant's modeling CD and AQD Modeling Review CD are at AR 028. (application by prior owner for modification M-2 had been withdrawn)
AR 005	0059	Sample draft Air Quality Authority-to-Construct Permit No. 0902-M2 submitted by American Cement with Application for M3. Was attached to 3/2/09 3:34 p.m. e-mail (see AR 7).
AR 006	0010	2/27/09 Permit Application Tracking Form for proposed Permit Number 0902-M3
AR 007	0071	3/2/09 3:34 p.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, Subj: Application Page and Draft Permit attaching replacement application page.
AR 008	0073	3/12/09 4:04 p.m. e-mail from Eyerman/AQD to

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NOV 17 1:27 PM '09

		Choquette/Trinity Consultants, Subj: Authority-to-Construction (<i>sic</i>) Permit Modification Review – American Cement. Request for additional info from Am Cement consultant.
AR 009	0074	3/13/09 9:56 a.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construct Permit Modification Review – American Cement. Responses. 3/13/09 9:56 a.m. e-mail is attached to: 3/12/09 5:03 pm e-mail to Choquette/Trinity Consultants from Eyerman/AQD, Subj: Authority-to-Construct Permit Modification Review- American Cement
AR 010	0077	3/13/09 12:24 p.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement. With Whirl Air Flow Statement.pdf attached. 3/13/09 12:24 p.m. e-mail is attached to: 3/12/09 5:03 p.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Roark/GCC, Subj: Authority-to-Construction Permit Modification – American Cement
AR 011	0079	3/16/09 9:52 a.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Roark/GCC, from Eyerman/AQD, Subj: RE: Authority-to-Construction Permit Modification Review – Am Cement. Question about origin of ratio data. Am Cement. 3/16/09 9:52 a.m. e-mail is attached to 3/13/09 9:56 am e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification Review- Am Cement GCC with Whirl Air Flow Statement.pdf attached. 3/13/09 9:56 am e-mail is attached to 3/12/09 5:03 p.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Roark/GCC, Subj: Authority-to-Construction Permit Modification – American Cement (at AR 10)
AR 012	0080	3/19/09 Phone Record to Permit File for American Cement #0902-M3 from Eyerman/AQD Subject: Phone message with Vern Choquette, Principal Consultant, Trinity Consultants re PM2.5 & TSP ratios. Tables 11.6.2 & 11.6-5 attached
AR 013	0083	3/19/09 9:24 a.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit

		Modification Review – American Cement, GCC with two-page AP-42 Background Document.pdf attached. 3/19/09 9:24 a.m. e-mail is attached to 3/16/09 10:50 a.m. e-mail to Choquette/Trinity Consultants from Eyerman, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement
AR 014	0066	3/19/09 1:20 p.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement, informing application is complete. 3/19/09 1:20 p.m. e-mail is attached to 3/19/09 9:24 a.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement, with AP-42 Background Document.pdf attached. 3/19 9:24 am e-mail is attached to 3/16/09 10:50 a.m. e-mail to Choquette/Trinity Consultants from Eyerman, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification – American Cement
AR 015	0087	Public Notice of proposed Modification to Air Quality Certificate of Registration and Authority-to-Construct Permit #0902-M1 for American Cement Corporation w/ description, proposed maximum air pollution emission date, procedure, timelines, contact info, etc.
AR 016	0088	3/23/09 Lt to Benavidez/Monkbridge Gardens NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines. Related return receipt info on second page
AR 017	0090	3/23/09 Lt to Warrick/North Edith Commercial Corridor Assoc. from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines. Related return receipt info on second page
AR 018	0092	3/23/09 Lt to Silfer/Greater Gardner NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines. Related return receipt info on second page
AR 019	0094	3/23/09 Lt to Cantrup/American Cement from Eyerman/AQD, Re App No. 00902-M3 Am Cement. App. deemed administratively complete. Info re public comment period. Enclosing public notice.

		Summarizing procedure. Related return receipt info on second page
AR 020	0096	3/23/09 Proof of March 23, 2009 Albuquerque Journal publication of public notice of proposed Mod of Am Cement Permit 0902-M1 with clipping attached
AR 021	0097	3/23/09 Memo to Stonesifer/AQD from Eyerman/AQD: Request for Air Quality Dispersion modeling summary
AR 022	0098	3/26/09 3:06 p.m. e-mail to Soladay/EHD from Tavarez/AQD, cc Liberatore/AQD, Rocha/AQD, Eyerman/AQD, Subj: FW: Media Clearance. 3/26/09 3:06 p.m. e-mail is attached to 3/26/09 10:05 a.m. e-mail to Tavarez/AQD from Gutierrez/AQD, Subj: Media Clearance
AR 023	0099	3/27/09 10:15 a.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Stonesifer/AQD, Subj: FW: Authority-to-Construction Permit Modification Review – American Cement. 3/27/09 10:15 a.m. e-mail is attached to 3/19/09 1:20 p.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement, and 3/19/09 9:24 a.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC with AP-42 Background Document.pdf attached, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement.
AR 024	0100	3/27/09 1:36 p.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Fw: Authority-to-Construction Permit Modification Review – American Cement, with Revised Controlled Tablev2.pdf attached (see second page). 3/27/09 1:36 p.m. e-mail is attached to: 3/27/09 11:14 a.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Stonesifer/AQD, Subj: Fw: Authority-to-Construction Permit Modification Review – American, re 0.6 Texas factor and app table
AR 025	0102	3/27/09 Lt Stonesifer/AQD from Choquette/Trinity Consultants Re Am Cement ...Mod-additional Dispersion Modeling Data, providing additional dispersion modeling data for American Cement Corp Air Permit No. 0902-M1 Modification
AR 026	0104	City of Albuquerque Env. Health Dept Air Quality

		Division Modeling Review Checklist
AR 027	0105	CoA EHD AQD Peer review checklist
AR 028	0106	3/30/09 Interoffice Memo to Eyerman/AQD from Stonesifer/AQD, Subj: Review of model for American Cement Corporation with Grupo Cementos American Cement Facility Modeling Files Trinity Consultants CD February 2009 and AQD Review of Model submitted for American Cement 0902-M3 CD (photocopy of 2 CDs and two original CDs)
AR 029	0119	3/31/09 form Request to Inspect Public Records from Silfer/Greater Gardner NA
AR 030	0120	4/2/09 11:37 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD informing records ready for review
AR 031	0121	4/7/09 Lt to Eyerman/AQD from Gatwood requesting Public Info Hearing (received 4/9/09). Envelope included at pg. 2.
AR 032	0123	4/8/09 Eyerman/AQD handwritten meeting notes from meeting with Roark/GCC regarding American Cement air quality permit modification
AR 033	0124	4/9/09 1:16 p.m. e-mail to Kearny/CoA Legal and Eyerman/AQD from Tavarez/AQD, Subj: Fw: American Cement permit questions. 4/9/09 1:16 p.m. e-mail is attached to 4/9/09 1:14 p.m. e-mail to McCormack/Weekly Alibi from Tavarez/AQD, Subj: Re: American Cement permit questions, attached to 4/8/09 2:54 p.m. e-mail to Tavarez/AQD from McCormack/Weekly Alibi, Subj: American Cement permit questions.
AR 034	0127	4/15/09 Lt to Eyerman/AQD from Kalwaic Requesting Public Info Hearing. Received 4/16/09. Envelope is attached as second pg.
AR 035	0129	4/20/09 4:24 p.m. e-mail to Kearny/CoA Legal and Eyerman/AQD from Tavarez/AQD, Subj: Fw: Couple of more follow up questions. 4/20/09 4:24 p.m. e-mail is attached to: 4/20/09 4:24 p.m. e-mail to McCormack/Weekly Alibi from Tavarez/AQD, Subj: Fw: Couple of more follow up questions; 4/20/09 4:07 p.m. e-mail to McCormack/Weekly Alibi, Subj: Re: Couple more follow up questions, and 4/20/09 2:56 p.m. e-mail to Tavarez/AQD from McCormack/Weekly Alibi, Subj: Re: Couple more follow up questions.
AR 036	0131	4/22/09 Lt to Soladay/AEHD from Senator Feldman requesting Public Info hearing

AR 037	0132	4/27/09 1:12 pm e-mail to Eyerman/AQD from Tavarez/AQD, Subj: Ltr fr Sen. Feldmen ar AQ A to C Permit 902-M3 for Am Cement, which is attached to 4/27/09 9:33 a.m. e-mail to Tavarez/AQD etc., fr. Munoz-Romero/AEHD
AR 038	0133	4/28/09 Lt to Eyerman/AQD from Catechis/North Valley Coalition requesting Public Info hearing. Received 5/1/09. Envelope is attached as second pg.
AR 039	0135	4/29/09 Postcard to AQD from Schrader Objecting to increased operation. Received 4/30/09
AR 040	0136	4/29/09 2:28pm 311 call from Schrader strongly opposing
AR 041	0137	Newscity Cement Déjà Vu - Neighbors face increased pollution from a cement transfer station—again by Simon McCormack, Weekly Alibi, V. 18 No. 18, April 30 – May 6, 2009
AR 042	0138	5/1/09 Lt to Soladay/AEHD from Mah opposing plant expansion Received 5/5/09. Envelope is attached as second pg.
AR 043	0140	5/2/09 Lt to Soladay/AEHD from Karpinski requesting Public Info hearing. Received 5/5/09. Envelope is attached as second pg.
AR 044	0143	5/3/09 Lt to Eyerman/AQD from Sandoval/Near North Valley NA requesting Public Info hearing. Received 5/5/09.
AR 045	0145	5/5/09 Lt to Soladay/AEHD from Suiter/Albuquerque Museum Foundation requesting Public Info hearing. Received 5/7/09
AR 046	0147	5/6/09 Lt to Soladay/AEHD from Blackwood/Los Griegos NA requesting Public Info hearing. Received 5/11/09
AR 047	0149	5/6/09 Lt to Soladay/AEHD from Bassinger objecting to requested expansion of hrs of operation. Received 5/11/09 Envelope is attached as second pg.
AR 048	0151	5/6/09 Lt to Soladay/AEHD from Silber/Greater Gardner NA, Request for public hearing. Received 5/11/09. Envelope is attached as 3d pg.
AR 049	0154	Postcard to Air Quality Board from Cross

		requesting denying of permit. Postmarked 5/7/09
AR 050	0155	5/6/09 Lt to Soladay/AEHD from Finical requesting Public Info hearing. Received 5/11/09. Envelope is attached as second pg.
AR 051	0157	5/7/09 Lt to Soladay/AEHD from Kellett/Greater Garnder NA requesting Public Info hearing. Received 5/11/09. Envelope is attached as 3d pg.
AR 052	0160	5/7/09 Lt to Soladay/AEHD from Benavidez/Monkbridge NA requesting Public Info hearing. Received 5/11/09. Envelope is attached as 3d pg.
AR 053	0165	5/7/09 Lt to Senator Feldman from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 054	0169	5/7/09 Lt to Gatwood from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached
AR 055	0170	5/7/09 Lt to Catechis/North Valley Coalition from Soladay/AEHD regarding granting of Public Info hearing
AR 056	0174	5/7/09 Lt to Kalwaic from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 057	0178	5/7/09 Lt to Karpinski from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 058	0182	5/7/09 Lt to Sandoval/Near North Valley NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 059	0186	5/7/09 Lt to Suiter/Albuquerque Museum Foundation from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 060	0187	5/7/09 Memo to Soladay/AEHD through Tavarez/AQD from Eyerman/AQD re request for and approval of request for 90-day extension for permit decision deadline (because of Public Info Hearing)
AR 061	0188	5/8/09 CoA 311 CRM report taken from Wrinkle by Duran/AQD requesting to be notified about when the hearing would be taking place. Two pages.

AR 062	0193	5/11/09 Lt to Finical from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 063	0197	5/11/09 Lt to Silfer/Greater Gardner NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 064	0201	5/11/09 Lt to Benavidez/Monkbridge NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 065	0205	5/11/09 Lt to Blackwood/Los Griegos NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 066	0209	5/11/09 Lt to Kellett/Greater Gardner NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached.
AR 067	0210	5/18/09 12:13 p.m. e-mail to Amend/AQD from Tavarez/AQD regarding adding Ms. Talia Sledge w/ Alvarado Gardens NA to list to be notified of American Cement Public Info Hearing
AR 068	0211	Map and List of residences receiving direct notification of American Cement Public Info Hearing. Three pages.
AR 069	0214	5/19/09 2:39 p.m. e-mail to Young from Eyerman/AQD, Subj: Application and info for American Cement permit modification 0902-M3 and separate page w/ 4/23/09 emails 12:21 p.m. and 8:19 a.m. to and from Tavarez/AQD and Young
AR 070	0218	5/20/09 4:01 p.m. e-mail to Amend/AQD from Eyerman/AQD, Subj: Contact Info
AR 071	0219	5/27/09 3:41 p.m. e-mail to Duran/AQD from Suiter/Albuquerque Museum Foundation, Subj: Re: Request To Inspect Public Records Form
AR 072	0220	5/27/09 Request #1 to inspect Public Records from Suiter/Albuquerque Museum Foundation
AR 073	0221	5/27/09 5:09 p.m. e-mail to Duran/AQD from Suiter/Albuquerque Museum Foundation, Subj: Re: Request To Inspect Public Records Form
AR 074	0222	6/27/09 Request #2 to inspect Public Records from Suiter/Albuquerque Museum Foundation

AR 075	0223	8/28/09 1:41 p.m. e-mail to Armijo/AQD from Rocha/AQD, cc Gutierrez/AQD, Candelaria/AEHD, Reyes/AQD, Eyerman/AQD, Subj: Re: Request to Inspect Public Records. 5/28/09 1:41 p.m. e-mail is attached to: 5/28/09 12:46 p.m. e-mail to zephyr e-mail address (Suiter/Albuquerque Museum Foundation) from Armijo/AQD, cc Rocha/AQD, Gutierrez/AQD, Candelaria/AEHD, Subj: Request to Inspect Public Records.
AR 076	0224	5/28/09 5:34 p.m. e-mail to Eyerman/AQD fr. Choquette/Trinity Consultants cc Roark/GCC, Subj: Re: Question on meaning of "cement additive" in permit. 5/28 5:34 e-mail is attached to 5/27 4:00 pm e-mail to Choquette from Eyerman re (same)
AR 077	0225	5/29/09 3:24 p.m. e-mail to Eyerman/AQD from Roark/GCC, Subj: American Cement, re new owner employees
AR 078	0226	6/1/09 Lt to Concerned Citizens from Tavarez/AQD re 6/23/09 Public Info hearing with Public Information Hearing flyer enclosed
AR 079	0228	Mailing list for 6/1/09 Lt to Concerned Citizens from Tavarez/AQD-6/23/09 Public Info hearing
AR 080	0234	Returned Lts for 6/1/09 Lt to Concerned Citizens from Tavarez/AQD-6/23/09 Public Info hearing
AR 081	0243	6/2/09 Request to inspect Public Records from Silfer/Greater Gardner NA
AR 082	0244	6/4/09 9:56 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD, Subj: Request to Inspect Public Records
AR 083	0245	6/4/09 Fax to Janice Amend/AQD from Gomez/Albuquerque Publishing-proof of publication, charges. Three pages.
AR 084	0246	6/7/09 Proof of June 7 publication in Alb. Journal of public notice of 6/23/09 Public Information hearing
AR 085	0250	8 1/2" x 11" English language 8 1/2" x 11" public notice of 6/23/09 Public Information hearing
AR 086	0252	Spanish language 8 1/2" x 11" public notice of 6/23/09 Public Information Hearing
AR 087	0254	6/10/09 11:24 a.m. e-mail to Catechis/North Valley Coalition from Eyerman/AQD, cc Amend/AQD, w/

		returned 5/7/09 Public Info Hr approval lt from Soladay/EHD attached.
AR 088	0258	6/12/09 12:30 p.m. e-mail to Silfer/Greater Gardner NA from Tavarez/AQD, Subj: Re: Questions re: 6/23 American Cement hearing. 6/12/09 12:30 p.m. e-mail is attached to: 6/11/09 9:31 a.m. e-mail to Amend/AQD and Tavarez/AQD from Silfer/Greater Gardner NA, Subj: Questions re: 6/23 American Cement hearing. "The Division will incorporate in permit app file #0902-M3 the entire record from the 3/18/08 Public Info Hr"...
AR 089	0260	(Re withdrawn M-2 application:) 3/18/08 Public Info hearing attendance registry
AR 090	0271	(Re withdrawn M-2 application:) 3/18/08 Public Info hearing audio tapes (photocopy of 5 cassette tapes and 5 original cassette tapes)
AR 091	0278	(Re withdrawn M-2 application:) First public notice re Modification to Air Quality Certificate of Registration and Authority-to-Construct Permit #0902-M2 for American Cement Corporation-Alb Journal-published 6/18/07
AR 092	0279	(Re withdrawn M-2 application:) Amended public notice for Authority-to-Construct Permit #0992-M2 for American Cement Corporation - Alb Journal
AR 093	0280	(Re withdrawn M-2 application:) 6/15/07 Proof of 6/15/07 publication of public notice Re: permit application with description
AR 094	0282	(Re withdrawn M-2 application:) 8/1/07 Lt to Stantistevan/AEHD and Troutman/AQD from Silfer/Greater Gardner NA -request for Public Info hearing on Permit No. 0902-M2 for American Cement
AR 095	0284	(Re withdrawn M-2 application:) 1/16/08 Lt to Silfer/Greater Gardner NA from Soladay/AEHD-informing requested Public Info Hearing approved
AR 096	0285	(Re withdrawn M-2 application:) Photocopies of 6/07 & 7/07 return receipts from public notice letters sent re Permit #0902-M2: ret. receipts from Silfer/Greater Gardner NA, Noyce/Monkbridge Gardens NA, Warrick/North Edith Commercial Corridor Assoc.

AR 097	0286	(Re withdrawn M-2 application:) 1/16/08 Memo from Troutman/AQD to Soladay/AEHD through Tavaréz/AQD, Albrecht/AQD, Rocha/AQD requesting 90-day extension for permit decision deadline for Permit #0902-M2 & documenting approval of Public Information Hearing.
AR 098	0287	(Re withdrawn M-2 application:) 2/15/08 Lt to Residents from Albrecht/AQD-notification of 3/18/08 public information hearing at Los Griegos Community Center for Authority-to-Construct Air Quality Permit Modification Application #0902-M2 for American Cement
AR 099	0288	(Re withdrawn M-2 application:) English language 8 ½" x 11" flyer/notice of 3/18/08 Public Info Hearing
AR 100	0290	(Re withdrawn M-2 application:) Spanish language 8 ½" x 11" flyer/notice of 3/18/08 Public Info Hearing
AR 101	0292	(Re withdrawn M-2 application:) 2/19/08 Clipped Legal Notice for 3/18/08 Public Info Hearing in English and Spanish
AR 102	0295	(Re withdrawn M-2 application:) 2/15/08 Lt to "Agency" from Albrecht/AQD-providing notification of community concerns and asking agency to attend 3/18/08 Public Info hearing.
AR 103	0296	(Re withdrawn M-2 application:) 10/11/2007 List of State/County Agencies
AR 104	0298	(Re withdrawn M-2 application:) Handwritten note from 3/18/2008 Public Info hearing requesting to call upon Jim Brinkman
AR 105	0300	(Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant - Lung Cancer, Cardiopulmonary Mortality and Long-term Exposure to Fine Particulate Air Pollution, March 6, 2002 Journal of American Medical Association, Vol. 287, No. 9.
AR 106	0310	(Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant -- Assessing Confounding, Effect Modification, and Thresholds in the Association between Ambient Particles and Daily Deaths, June 2000,

		Environmental Health Perspectives, Vol. 108, No. 6.
AR 107	0316	(Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant - Fine Particulate Air Pollution and Mortality in 20 U.S. Cities 1987 – 1994, December 14, 2000, The New England Journal Medicine, Vol. 343, No. 24.
AR 108	0324	(Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant - -Fine Particulates and Coarse Particles: Concentration Relationships Relevant to Epidemiologic Studies, Journal of the Air & Waste Management Association (1995) 47 1238-49 D '97
AR 109	0335	(Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant - PM Standards Revision – 2006 from the federal Environmental Protection Agency website: http://epa.gov/pm/naaqsrev2006.html .
AR 110	0343	(Re withdrawn M-2 application:) 3/18/08 Public Info hearing handwritten note that Debora Sponsel-Jolley wants to testify; and 3/18/08 Public Info hearing handwritten note from Sharon Gee that her concerns have been discussed and withdraws her request to speak
AR 111	0344	(Re withdrawn M-2 application:) 3/17/08 It to Madrid/GE Environmental from Harwick Transportation Group Re Am Cement Facility- Alb, NM. inquiry about truck traffic impacts, Griegos Rd minor urban arterial , new trips.
AR 112	0345	(Re withdrawn M-2 application:) 3/18/08 Public Info Hearing - hearing officer statement
AR 113	0354	(Re withdrawn M-2 application:) 3/18/08 Tavarez/AQD handwritten notes from 3/18/08 Public Info hearing, 9 pages
AR 114	0363	list of Bern Co and State of NM List of State/County Agencies available to Public Information Hearing Participants
AR 115	0364	(Re withdrawn M-2 application:) 3/15/08 fax confirmation providing notice to State/County agencies.
AR 116	0401	(Re withdrawn M-2 application:) 2/15/08 letter to

		"Resident" from Albrecht/AQD Re: Public Info Hr – Authority-to-Construct AQ Permit Mod App #0902-M2 for Am. Cement re 3/18/08 Public Info Hr at Los Griegos Center
AR 117	0402	(Re withdrawn M-2 application:) Memo to Albrecht/AQD from Sims/AQD – Re: 3/21/08 Assignment: American Cement, Neighborhood Environmental Assessment follow up to 3/18/08 Public Information Hearing with attached AQD Citizen Contact forms and map.
AR 118	0413	6/16/09 Public Information Request to inspect Public Records from Flamm
AR 119	0414	6/17/09 9:15 a.m. e-mail to Eyerman/AQD from Suiter/Albuquerque Museum Foundation, Subj: Re: #0902-M3 – request. 6/17/09 9:15 a.m. e-mail is attached to: 6/16/09 11:33 PM e-mail to Gutierrez/AQD from Suiter/Albuquerque Museum Foundation, Subj: #0902-M3 – request.
AR 120	0415	6/17/09 Public Information Request to Inspect Public Records from Silber/Greater Gardner NA
AR 121	0416	6/18/09 Lt to Eyerman/AQD from Sandoval/Near North Valley NA – Air Quality Authority-to-Construct Permit No. 0902-M3 for the American Cement facility at 4702 Carlton St NW
AR 122	0418	(re M-3 6/23/09 Public Info Hr.): 6/19/09 2:43 p.m. e-mail to Eyerman/AQD from Stebleton/AQD, Subj: Fw: Air Quality Hearing June 23. 6/19/09 2:43 p.m. e-mail is attached to 6/19/09 2:04 p.m. e-mail to EHD, AQD from O'Brien, Subj: Air Quality Hearing June 23.
AR 123	0419	(re M-3 6/23/09 Public Info Hr.): 6/20/09 Flamm Letter to the Editor – Westside Edition of Albuquerque Journal
AR 124	0420	(re M-3 6/23/09 Public Info Hr.): 6/22/09 4:52 p.m. e-mail to Tavarez/AQD, Kearny/CoA Legal, and Rocha/AQD from Eyerman/AQD, Subj: For what it's worth... reYoutube & 12' fence
AR 125	0421	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing attendance registry
AR 126	0430	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info Hr. Audio CD (photocopy of CD & one original CD)

AR 127	0440	(re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info Hr. AQD Exhibit – Draft Air Quality Authority-To-Construct Permit No. 0902-M3
AR 128	0450	(re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info Hr. AQD Exhibit – Draft 6/19/09 Memo to Permit File, Enforcement File from Eyerman/AQD, Subj Am Cement Permit app. No. 0902-M3; Air Quality Division review of Authority-To-Construct Permit M3 application
AR 129	0462	(re M-3 6/23/09 Public Info Hr.:) Spanish language notice re proposed Am Cement app for AQ modification #0902M3 & 6/23/09 Public Info Hr
AR 130	0464	(re M-3 6/23/09 Public Info Hr.:) English language notice re proposed Am Cement app for AQ modification #0902-M3 & 6/23/09 Public Info Hr
AR 131	0466	(re M-3 6/23/09 Public Info Hr.:) Public Notice of Am Cement proposed modification to AQ Authority to Construct Permit #0902-M1 w/ max air pollution emissions info, procedure, contact info, etc. (Albuquerque Journal)
AR 132	0467	(re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info Hr. AQD Exhibit: 6/1/09 Lt to Concern Citizen from Tavarez/AQD – Public Info Hearing – Authority-to-Construct Air Quality Permit Modification Application #0902-M3 for American Cement
AR 133	0468	(re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info Hr. AQD Exhibit: 5/27/09 Request to Inspect/Inspect Public Records from Suiter/Albuquerque Museum Foundation
AR 134	0469	(re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info hearing AQD Exhibit: 5/7/09 Memo to Soladay/AEHD from Eyerman/AQD through Tavarez/AQD approving request for 90-day extension for permit decision deadline (Public Info hearing)
AR 135	0470	(re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info hearing AQD Exhibit: 5/7/09 Lt to Senator Feldman from Soladay/AEHD regarding approval of request for Public Info Hearing
AR 136	0471	(re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info hearing AQD Exhibit: 4/22/09 Lt to Soladay/AEHD

		from Senator Feldman requesting Public Info hearing
AR 137	0472	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit: 3/23/09 Lt to Benavidez/Monkbridge Gardens NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines w/ return receipt
AR 138	0473	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit: 3/23/09 Lt to Warrick/North Edith Commercial Corridor Assoc. from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines w/ return receipt
AR 139	0474	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit: 3/23/09 Lt to Silfer/Greater Gardner NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines w/ return receipt
AR 140	0475	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit - 3/23/09 Lt to Cantrup/American Cement from Eyerman/AQD - App. Deemed administratively complete. Stating public comment. Enclosing public notice. Summarizing procedure.
AR 141	0476	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit - 8 1/2" x 11" flyer/notice of 6/23/09 Public Info Hearing
AR 142	0477	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Exhibit by participant - June 2009 GCC Rio Grande - "Cementing Albuquerque's future" submitted
AR 143	0478	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Exhibit submitted by Albuquerque Museum Foundation: 6/23/09 Lt to Tavarez/AQD from Kleinfeld/Albuquerque Museum Foundation, Subj: Proposed Air Quality Authority-to-Construct Permit #0902-M3, Batten estate, w/ attached two US Dept of Interior Natl Park Service Natl Register of Historic Places Inventory-Nomination forms
AR 144	0538	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Exhibit submitted by Senator Feldman:

		6/23/09 Lt to Air Quality Division from Senator Feldman Re: Authority to Construct Air Quality Permit Modification Application #0902-M3 for Grupo Cementos de Chihuahua w/ map: Hospitalizations for Asthma by zip code; map: Chronic Lower Respiratory Disease by Bern Co Census Tracts; map Asthma Mortality "Hea(l)t(h) Community Boundaries
AR 145	0544	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Exhibit submitted by Jill Gatwood: written statement read by Gatwood.
AR 146	0547	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Exhibit submitted by Perez/Rio Grande Boulevard NA: 6/22/09 Lt to Air Quality Division from Perez/Rio Grande Boulevard NA
AR 147	0549	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Schematic for room setup at Conv. Center
AR 148	0550	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Eyerman /AQD handwritten notes from 6/23/09 Public Info hearing
AR 149	0569	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Reyes /AQD handwritten notes from 6/23/09 Public Info hearing
AR 150	0578	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Rocha /AQD handwritten notes from 6/23/09 Public Info hearing
AR 151	0590	(re M-3 6/23/09 Public Info Hr.): 6/23/09 Tavarez /AQD handwritten notes from 6/23/09 Public Info hearing
AR 152	0602	(re M-3 6/23/09 Public Info Hr.): 6/24/09 New Mexico Independent article, "ABQ's American Cement air quality hearing – to be continued" by Gwyneth Doland
AR 153	0604	(re M-3 6/23/09 Public Info Hr.): 6/24/09 2:44 pm e-mail to Tavarez/AQD et al from Zeigler/AQD, Subject: Am Cement Audio File from 6/23/09 Am Cement hr.
AR 154	0605	(re M-3 6/23/09 Public Info Hr.): 6/25/09 Tavarez/AQD handwritten notes from Air Quality Division debriefing meeting on 6/23/09 Public Info hearing.

AR 155	0606	(re M-3 6/23/09 Public Info Hr.:) 6/25/09 12:51 p.m. e-mail to Suiter/Albuquerque Museum Foundation from Eyerman/AQD, cc Armijo/AQD and Gutierrez/AQD, Subj: Re: #0920-M3-request. Draft proposed M3 permit attached (AR 128)
AR 156	0607	(re M-3 6/23/09 Public Info Hr.:) Memo to Tavarez/AQD from Aragon/AQD – Re: 6/30/09 Assignment: American Cement, Neighborhood Environmental Assessment follow up to 6/23/09 Public Information Hearing with AQD Citizen Contact forms.
AR 157	0611	(re M-3 6/23/09 Public Info Hr.:) Memo to Tavarez/AQD from Sims/AQD – Re: 6/30/09 and 7/1/09 Assignment: American Cement, Neighborhood Environmental Assessment follow up to 6/23/09 Public Information Hearing with AQD Citizen Contact forms, map, photographs, and field notes
AR 158	0642	(re M-3 6/23/09 Public Info Hr.:) 6/25/09 Westside Albuquerque Journal article, "Neighbors Protest Cement Plant Request" by Elaine Briseño.
AR 159	0646	(re M-3 6/23/09 Public Info Hr.:) 6/27/09 Westside Albuquerque Journal article, "Cement Plant Request Needs Thorough Airing" in Opinion
AR 160	0648	(re M-3 6/23/09 Public Info Hr.:) Weekly Alibi, V. 18 No. 27 July 2 – 8, 2009 "Stone Cold Reception" by Simon McCormack
AR 161	0649	(re M-3 6/23/09 Public Info Hr.:) 7/11/09 Westside Albuquerque Journal article, "Expansion Could Take Our Clean Air" by Genny O'Herron
AR 162	0650	7/8/09 11:20 a.m. e-mail to Silfer/Greater Gardner NA, from Gutierrez/AQD, cc Eyerman/AQD and Armijo/AQD, Subj: Re: Request to Inspect Public Records. re setting up time to review documents. 7/8/09 11:20 a.m. e-mail is attached to: 7/1/09 9:29 a.m. e-mail to Silfer/Greater Gardner NA from Eyerman/AQD, Subj: Request to Inspect Public Records, and 7/1/09 8:22 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD, Subj: Request to Inspect Public Records.
AR 163	0652	7/8/09 12:28 a.m. e-mail to Gutierrez/AQD from Eyerman/AQD, cc Amend/AQD, Subj: Fw:

		American Cement Permit Modification Application 0902-M3. 7/8/09 12:28 a.m. e-mail is attached to: 7/8/09 11:32 a.m. e-mail to Eyerman/AQD fro64Amend/AQD, Subj: Fw: American Cement Permit Modification Application 0902-M3; and 7/3/09 11:23 a.m. e-mail to Mathews/Brownstein, Hyatt, Farber & Schreck from Young (Hr. Officer), cc Tavarez/AQD, Amend/AQD, and Kearny/CoA Legal, Subj: American Cement Permit Modification Application 0902-M3.
AR 164	0654	7/9/09 10:14 a.m. e-mail to Nieto/AQD and Eyerman/AQD from Amend/AQD, Subj: Fw: [Fwd: Continued American Cement Public Information Hearing Legal Ad]. 7/9/09 10:14 a.m. e-mail is attached to: 7/9/09 10:11 a.m. e-mail to Tavarez/AQD and Amend/AQD, from Silfer/Greater Gardner NA, cc Stebleton/AQD, Reyes/AQD, Rocha/AQD, Candelaria/AEHD, Kearny/CoA Legal, and Deichman, Subj: [Fwd: Continued American Cement Public Information Hearing Legal Ad] re Nat'l Night Out; and 7/9/09 9:06:41 e-mail to air-quality-announce@list.cabq.gov from Amend/AQD, Subj: Continued American Cement Public Information Hearing Legal Ad. on 8/4/09 at Indian Pueblo Cultural Center
AR 165	0658	7/9/09 10:50 a.m. e-mail to legals@abqpubco.com from Amend/AQD, cc Nieto/AQD and Eyerman/AQD, Subj: Continued American Cement Hearing Legal Ad (for 7/17/09 publication re continuation of Public Info Hr on 8/5/09 instead of 8/4/09) w/ text of Notice attached, including max air pollution emis info & contact info, etc.
AR 166	0662	7/9/09 3:20 p.m. e-mail to concerned citizens from Amend/AQD, cc Nieto/AQD, Eyerman/AQD, and Tavarez/AQD, Subj: Please Note Public Hearing Date Has Changed – attaching letter and flyer re continued American Cement Public Information Hearing
AR 167	0663	7/9/09 Lt to Concerned Citizen from Tavarez/AQD Re: Continued Public Information Hearing – Authority-to-Construct Air Quality Permit Modification Application #0902-M3 for American Cement – w/ info on 8/5/09 Public Info Hr at Indian Pueblo Cultural Center and returned letters

AR 168	0675	7/9/09 3:27 p.m. e-mail to air-quality-announce@lists.cabq.gov from Amend/AQD, Subj: "Please Note, Public Hearing Date Has Changed—Continued American Cement Public Information Hearing Legal Ad" providing e-notice of continued Public Info Hr 8/5/09 w/ max air pollution emis info, contact info, etc.
AR 169	0677	7/10/09 11:42 a.m. e-mail to El Hispano Newspaper from Amend/AQD, cc Eyerman/AQD, Subj: Legal Ad for Continued American Cement Hearing—Attn: Sara Garcia w/ Spanish language Notice of continued Public Info Hr 8/5/09 w/ max air pollution emis info, contact info, etc.
AR 170	0680	7/10/09 2:03 p.m. e-mail to Rubin/Mountain Mahogany Community School from Eyerman/AQD, cc Genny and Tavarez/AQD, Subj: Re: air filter analysis. 7/10/09 2:03 p.m. e-mail is attached to: 7/6/09 5:01 p.m. e-mail to Eyerman/AQD and Genny from Rubin/Mountain Mahogany Community School, cc Genny, Subj: air filter analysis.
AR 171	0681	7/12/09 Proof of July 12 publication of public notice Re: 8/5/09 Continuation of Public Info hearing.
AR 172	0682	7/14/09 11:28 a.m. e-mail to Rocha/AQD, Nieto/AQD, Eyerman/AQD, Amend/AQD, Kearny/CoA Legal from Tavarez/AQD, Subj: Fw: Second American Cement air quality hearing scheduled – and rescheduled. 7/14/09 11:28 a.m. e-mail attached to 7/10/09 10:20 a.m. e-mail to Soladay/AEHD from Kennedy/AEHD, cc Tavarez/AQD, w/ article by Doland "Second American Cement air quality hearing scheduled – and rescheduled".
AR 173	0684	7/14/09 12:59 p.m. e-mail to Young (Hr. Officer) from Tavarez/AQD, cc Kearny/CoA Legal, Rocha/AQD, Nieto/AQD, Eyerman/AQD, and Amend/AQD, Subj: Fw: continuation NOT duplication, at American Cement public hearing. 7/14/09 12:59 p.m. e-mail is attached to: 7/14/09 12:55 p.m. e-mail to Kalwaic from Tavarez/AQD, Subj: Re: (same); and 7/13/09 10:03 a.m. e-mail to Tavarez/AQD from Kalwaic, Subj: (same)
AR 174	0686	7/14/09 4:28 p.m. e-mail to Silfer/Greater Gardner NA from Eyerman/AQD, cc Armijo/AQD, Subj: Re:

		Request to Inspect Public Records. 7/14/09 4:28 p.m. e-mail is attached to: 7/14/09 4:07 p.m. e-mail to Gutierrez/AQD from Silfer/Greater Gardner NA, cc Eyerman/AQD and Armijo/AQD, Subj: Re: (same); 7/1/09 9:29 a.m. e-mail to Silfer/Greater Gardner NA from Eyerman/AQD, cc Gutierrez/AQD, Subj: (same); and 7/1/09 8:22 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD, cc Tavarez/AQD, Stebleton/AQD, Reyes/AQD, Rocha/AQD, Candelaria/AEHD, Subj: (same).
AR 175	0688	7/15/09 8:57 a.m. e-mail to Suiter/Albuquerque Museum Foundation from Eyerman/AQD, cc Tavarez/AQD and Rocha/AQD, Subj: Re: #0902-M3 – request. 7/15 8:57 am e-mail is attached to 7/14/09 5:22 e-mail to Eyerman/AQD fr Suiter re requested hrs. of operation
AR 176	0689	7/15/09 11:28 a.m. e-mail to Silfer/Greater Gardner NA from Stonesifer/AQD, cc Eyerman/AQD and Rocha/AQD, Subj: American Cement's modeling files, as submitted to AQD, are attached. 7/15/09 11:28 a.m. e-mail is attached to: 7/15/09 11:00 a.m. e-mail to Stonesifer/AQD from Eyerman/AQD, Subj: Fw: Request to Inspect Public Records; 7/15/09 10:49 am e-mail to to Eyerman/AQD, cc Gutierrez/AQD and Armijo/AQD fr. Silfer, Subj: Re: (same);
AR 177	0690	7/15/09 11:43 a.m. e-mail to Silfer/Greater Gardner NA from Stonesifer/AQD, cc Eyerman/AQD and Rocha/AQD, Subj: Request to Inspect Public Records. 7/15/09 11:43 a.m. e-mail is attached to 7/15/09 11:00 am to Stonesifer/AQD from Eyerman/AQD re (same); 7/15/09 10:49 a.m. to Eyerman/AQD from Silfer/Greater Gardner NA, cc Gutierrez/AQD and Armijo/AQD, Subj: (same); 7/14/09 4:07 p.m. e-mail to Gutierrez/AQD from Silfer/Greater Gardner NA, cc Eyerman/AQD and Armijo/AQD, Subj: Re: (same); 7/1/09 9:29 a.m. e-mail to Silfer/Greater Gardner NA from Eyerman/AQD, cc Gutierrez/AQD, Subj: Re: (same); 7/1/09 8:22 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD, cc Tavarez/AQD, Stebleton/AQD, Reyes/AQD, Rocha/AQD and Candelaria/AEHD, Subj: (same)

AR 178	0693	7/15/09 12:08 pm e-mail to Silfer/Greater Gardner NA fr Stonesifer/AQD, Subj: Am Cement modeling files sent to you re proposed Permit 02-M3
AR 179	0694	7/17/09 El Hispano News: Spanish language Public Notice of 8/5/09 Continuation of Public Info Hearing
AR 180	0695	7/27/2009 Westside Albuquerque Journal Article: "Cement-firm expansion hearing continues Aug. 5", by Elaine D. Briseno.
AR 181	0694	7/27/09 2:46 p.m. e-mail to Silfer/Greater Gardner NA from Tavarez/AQD, cc Amend/AQD, Kearny/CoA Legal, Nieto/AQD, Rocha/AQD, Eyerman/AQD, Subj: Re: 8/5 American Cement Hearing. 7/27/09 2:46 p.m. e-mail is attached to: 7/24/09 9:08 a.m. e-mail to Tavarez/AQD from Silfer/Greater Gardner NA, cc Amend/AQD, Kearny/CoA Legal, Nieto/AQD, Rocha/AQD, Eyerman/AQD, Subj: 8/5 American Cement hearing.
AR 182	0699	7/30/09 Lt to Soladay/AEHD from George and Katherine Pappas – regarding Authority-to-Construct Air Quality Permit Modification Application #0902-M3 for American Cement w/ 7/20/09 Alb journal article "Prenatal Pollution Harmful" and envelope to Tavarez attached
AR 183	0701	8/4/09 9:03 a.m. e-mail to Armijo/AQD from Kearny/CoA Legal, cc Rocha/AQD and Eyerman/AQD, Subj: Sen. Feldman request for draft American Cement permit. 8/4/09 9:03 a.m. e-mail is attached to: 8/4/09 7:30 a.m. e-mail to Kearny/CoA Legal from Armijo/AQD, Subj: Fw: Draft Permit for American Cement; and 8/3/09 2:03 p.m. e-mail to Senator Feldman from Armijo/AQD, cc Gutierrez/AQD, Candelaria/AEHD, Tavarez/AQD, Subj: Fw: (same)
AR 184	0702	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 11:43 a.m. e-mail to (Hr Officer) Young from Nieto/AQD, cc Amend/AQD, Tavarez/AQD, Eyerman/AQD, Subj: American Cement hearing—City Councilor testimony.
AR 185	0703	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 12:04 p.m. e-mail to Silfer/Greater Gardner NA and Eyerman/AQD from Tavarez/AQD, Subj: Re:

		American Cement Post-hearing public comments. 8/5/09 12:04 p.m. e-mail is attached to: 8/5/09 9:27 a.m. e-mail to Tavaréz/AQD and Eyerman/AQD from Silfer/Greater Gardner NA, Subj: American Cement Post-hearing public comments.
AR 186	0704	(re M3 8/5/09 continued Public Info. Hr.:) English language 8/5/09 Continued Public Info hearing flyer/notice
AR 187	0705	(re M3 8/5/09 continued Public Info. Hr.:) Spanish language 8/5/09 Continued Public Info hearing flyer/notice
AR188	0706	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info Hr attendance registry
AR 189	0720	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info Hr -Audio DVD of PIH (photocopy of DVD and one original DVD)
AR 190	0722	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Draft proposed Air Quality Authority-To-Construct Permit No. 0902-M3
AR 191	0732	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Draft 6/19/09 Memo to Permit File, Enforcement File from Eyerman/AQD re Air Quality Division's Review of Authority-To-Construct proposed Permit No. 0902-M3,
AR 192	0744	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Permitting Process Timeline: graphic
AR 193	0745	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Permitting Process Timeline: written description
AR 194	0746	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 6/24/09 10:40 a.m. e-mail to Eyerman/AQD from Suiter/Albuquerque Museum Foundation, Subj: #0902-M3 – request

AR 195	0747	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 7/9/09 10:11 a.m. e-mail to Tavarez/AQD and Amend/AQD from Silfer/Greater Gardner NA, cc Stebleton/AQD, Reyes/AQD, Rocha/AQD, Candelaria/AEHD, Kearny/CoA Legal, Deichman, Subj: [Fwd: Continued American Cement Public Information Hearing Legal Ad]
AR 196	0748	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 4/22/09 Lt to Soladay/AEHD from Senator Feldman requesting Public Info Hearing
AR 197	0749	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 3/23/09 Lt to Cantrup/American Cement from Eyerman/AQD – App. Deemed administratively complete. Stating public comment. Enclosing public notice. Summarizing procedure.
AR 198	0750	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit – 5/7/09 Lt to Senator Feldman from Soladay/AEHD regarding approval of request for Public Info hearing w/ return receipt
AR 199	0751	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 7/9/09 Lt to Concerned Citizen from Tavarez/AQD – Continued Public Information Hearing – Authority-to-Construct Air Quality Permit Modification Application #0902-M3 for American Cement
AR 200	0752	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 3/23/09 Lt to Warrick/North Edith Commercial Corridor Assoc. from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines
AR 201	0753	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 3/23/09 Lt to Benavidez/Monkbridge Gardens NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines
AR 202	0754	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit – 3/23/09 Lt to Silfer/Greater Gardner NA from Eyerman/AQD describing the permit application

		process, enclosing public notice, stating public comment period and deadlines
AR 203	0755	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 5/7/09 Memo to Soladay/AEHD from Eyerman/AQD through Tavarez/AQD: request for & approval of request for 90-day extension of permit decision deadline because of Public Info Hearing)
AR 204	0756	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: American Cement Permitting Process Timeline
AR 205	0757	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Public Notice of proposed Modification to Air Quality Certificate of Registration and Authority-to-Construct Permit #0902-M1 for American Cement Corporation-includes max air pollution emissions, timelines, permit application availability, contact info, etc.
AR 206	0758	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: English language Notice of Continued Public Information Hearing for Proposed Authority To Construct Air Quality Permit Modification Application #0902-M3 for American Cement –includes max air pollution emissions, info on 8/4/09 PIH, permit application file availability, contact info, etc.
AR 207	0760	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Spanish language Notice of Continued Public Information Hearing for Proposed Authority To Construct Air Quality Permit Modification Application #0902-M3 for American Cement – includes max air pollution emissions, info on 8/4/09 PIH, permit application file availability, contact info, etc.
AR 208	0762	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Information - English language flyer/notice
AR 209	0763	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Information - Spanish language flyer/notice
AR 210	0764	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Scharmen: "Permitted Stationary Sources of Pollution Albuquerque, New Mexico" by Schamen

		NM Dept of Health
AR 211	0771	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit submitted by C Sax-Romney: photos of dust on automobile "July 2008 4448 3 rd St NW 87107" (3 photos)
AR 212	0774	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Aug 4, 2009 Lt to Soladay/AEHD from Senator Feldman Re: Proposed Air Quality Authority to Construct Permit #0902-M3
AR 213	0776	(re M3 8/5/09 continued Public Info. Hr.:) Indian Pueblos Marketing -Facility Rentals/Banquet Division Contract dated 7/2/2009 (5 pages)
AR 214	0781	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Am Cement/GCC: Delta Toxicology Power Point Presentation slides: "Am Cement Hr 5 August 2009, Alb, NM" by Kelly/Delta Toxicology (13 two-sided pages)
AR 215	0806	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Benavidez/Monkbridge NA: Statement read by Benavidez/Monkbridge NA
AR 216	0809	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Alb. Museum Foundation: 7/29/09 Lt to Tavarez/AQD from Kleinfeld/Albuquerque Museum Fdj.- Subject: Proposed Air Quality Authority-to-Construct Permit #0902-M3; Comments in addition to those made in our letter dated June 22, 2009. Lt. rec'd 8/5/09. Envelope attached.
AR 217	0813	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – Questions submitted by Blackwood/asked by Blackwood
AR 218	0814	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – Handwritten notes submitted by an unidentified concerned citizen.
AR 219	0816	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit submitted by participant: GCC of American Material Safety Data Sheet for Portland Cement
AR 220	0826	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Karpinski: written statement "Air Quality Hearing---

		Grupo Chihuahua Cement Plant"
AR 221	0828	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Councilor O'Malley: August 5, 2009 It to Air Quality Division Director from Councilor O'Malley – Re: American Cement Company's application to the Air Quality Division for a modification to their existing Air Quality Permit #0902-M1 which would increase hours of operation
AR 222	0829	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Am Cement/GCC: August 7, 2009 It to Tavarez./AQD from Kelly/Delta Toxicology Re: American Cement Permit Application 0902-M1. (3 pgs - two-sided)
AR 223	0834	(re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 8/6/09 5:39 p.m. e-mail to Eyerman/AQD from Kelly/Delta Toxicology, Subj: MSDS data and silicosis. 8/7/09 5:39 p.m. e-mail is attached to 8/6/09 3:54 p.m. e-mail to Eyerman/AQD, Tavarez/AQD, Rocha/AQD from Kelly/Delta Toxicology, Subj: MSDS data and silicosis.
AR 224	0836	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – Irene Walkiw statement
AR 225	0837	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – Debora Sponsel-Jolley statement with page from Discover Magazine attached.
AR 226	0841	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – David Wood statement
AR 227	0843	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Eyerman/AQD handwritten notes from 8/5/09 Public Info hearing
AR 228	0855	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Reyes/AQD handwritten notes from 8/5/09 Public Info hearing
AR 229	0860	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Rocha/AQD handwritten notes from 8/5/09 Public Info hearing
AR 230	0813	(re 8/5/09 continued Public Info. Hr.:) 8/5/09 Tavarez/AQD handwritten notes from 8/5/09 Public Info hearing
AR 231	0865	8/5/09 5:56 p.m. The New Mexico Independent

		article, "Transcript: American Cement air quality hearing" by Gwyneth Doland.
AR 232	0681	8/6/09 7:09 a.m. The New Mexico Independent article, "Politicians feel the pain of ABQ cement plant neighbors" by Gwyneth Doland
AR 233	0686	8/6/09 8:07 a.m. The New Mexico Independent article, "American Cement permit appears for approval" by Gwyneth Doland
AR 234	0691	8/20-26/09 Weekly Alibi article, "Neverending Stories, Coddling Industry or Rewarding Good Behavior?" by Simon McCormack
AR 235	0692	8/6/09 10:57 a.m. e-mail to Silfer/Greater Gardner NA and Eyerman/AQD from Tavarez/AQD, Subj: Re: American Cement Post-hearing public comments. 8/6/09 10:57 a.m. e-mail is attached to: 8/5/09 9:27 a.m. e-mail to Tavarez/AQD and Eyerman/AQD from Silfer/Greater Gardner NA, Subj: American Cement Post-hearing public comments
AR 236	0693	8/6/09 4:39 p.m. e-mail to Suiter/Albuquerque Museum Foundation and Cogan/Albuquerque Museum Foundation from Tavarez/AQD, cc Eyerman/AQD and Armijo/AQD, Subj: American Cement Air Quality Permit Application Replacement Page Requesting 24 hours (AR 7)
AR 237	0694	Marked up copy of Draft Air Quality Authority-to-Construct Permit No. 0902-M3 with incorporation of comments from Albuquerque Museum Foundation, Senator Feldman, Chris Catechis/North Valley Coalition, and Eyerman/AQD
AR 238	0904	8/18/09 12:32 p.m. e-mail to Espinoza/AEHD from Tavarez/AQD, cc Eyerman/AQD, Subj: Re: Judy's Comments: American Cement Hearing Presentation. 8/18/09 12:32 p.m. e-mail attached to: 8/17/09 11:38 a.m. e-mail to Tavarez/AQD from Espinoza/AEHD, cc Amend/AQD, Subj: Judy's Comments: American Cement Hearing Presentation; 8/13/09 10:52 a.m. e-mail to Espinoza/AEHD from Tavarez/AQD, Subj: Fw: American Cement Hearing Presentation; 08/13/09 8:46 a.m. e-mail to Tavarez/AQD from Eyerman/AQD, Subj: Fw: American Cement Hearing Presentation; 8/12/09 4:29 p.m. e-mail to Eyerman/AQD from Scharmen/NMDOH, cc Amend/AQD, Subj: Re: American Cement Hearing Presentation; and 8/12/09 1:42 p.m. e-mail

		to Scharmen/NMDOH from Eyerman/AQD, cc Amend/AQD, Subj: American Cement Hearing Presentation
AR 239	0908	8/28/09 Lts to Riordan/CoA DMD and Dineen/CoA Planning Dept from Eyerman/AQD – Re: Concerns About Truck Traffic Issues Expressed at Public Hearings for Air Quality Permit No. 0902-M3, American Cement Corporation
AR 240	0910	9/2/09 1:30 p.m. e-mail to Tavarez/AQD from Scharmen/NMDOH, cc Eyerman/AQD and Kearny/AQD, Subj: Re: Follow Up Questions on "Permitted Stationary Sources of Pollution" Presentation. 9/2/09 1:30 p.m. e-mail is attached to: 8/20/09 1:09 p.m. e-mail to Scharmen/NMDOH from Tavarez/AQD, cc Eyerman/AQD and Kearny/CoA Legal, Subj: Follow Up Questions on "Permitted Stationary Sources of Pollution" Presentation.
AR 241	0933	9/4/09 9:31 a.m. e-mail to Kennedy/AEHD from Tavarez/AQD, Subj: Re: Ricahrd, Fw: [N Valley Coalition] NVC Meeting (Thursday, 3 September 2009) – our apologies to Israel Tavarez for misspelling his name. 9/4/09 9:31 a.m. e-mail is attached to: 9/2/09 12:30 p.m. e-mail to Tavarez/AQD from Kennedy/AEHD, cc Soladay/AEHD, Subj: Fw: Richard, Fw: [N Valley Coalition] NVC Meeting (Thursday, 3 September 2009) – our apologies to Israel Tavarez for misspelling his name; 9/2/09 12:28 p.m. e-mail to Kennedy/AEHD from Sandra P. Richardson, Subj: Richard, Fw: Fw: [N Valley Coalition] NVC Meeting (Thursday, 3 September 2009) – our apologies to Israel Tavarez for misspelling his name; 9/2/09 10:18 a.m. e-mail to <u>north-valley-coalition@googlegroups.com</u> from Morelli/North Valley Coalition, Subj: [N Valley Coalition] NVC Meeting (Thursday, 3 September 2009) – our apologies to Israel Tavarez for misspelling his name; and 9/2/09 6:31:47 a.m. e-mail to <u>north-valley-coalition@googlegroups.com</u> from Morelli/North Valley Coalition, Subj: NVC Meeting (Thursday, 3 September 2009) – Quarter Cent Tax & North Valley Air Quality.
AR 242	0935	9/8/09 10:07 a.m. e-mail to Scharmen/NMDOH from Tavarez/AQD, cc Eyerman/AQD and Kearny/CoA Legal, Subj: Re: Follow up Questions

		on "Permitted Stationary Sources of Pollution" Presentation. 9/8/09 10:07 a.m. e-mail is attached to: 9/2/09 1:30 p.m. e-mail to Tavarez/AQD, cc Eyerman/AQD and Kearny/CoA Legal, Subj: Re: Follow Up Questions on "Permitted Stationary Sources of Pollution" Presentation; and 8/20/09 1:09 p.m. to Scharmen/NMDOH from Tavarez/AQD Subj: (same). With attached hyperlinks: "Healthy People 2010" and July 6, 2004 "Hospitalization and Mortality in Albuquerque Zip Codes – A Preliminary Descriptive Analysis of Hospitalization and Deaths at the Sub-County Level" by Scharmen.
AR 243	0983	9/9/09 7:06 a.m. e-mail to Eyerman/AQD from Stebleton/AQD, Subj: Re: American Cement compliance question. 9/9/09 7:06 a.m. e-mail is attached to: 9/8/09 5:09 p.m. e-mail to Stebleton/AQD from Eyerman/AQD, Subj: American Cement compliance question.
AR 244	0984	9/9/09 11:32 a.m. e-mail to Richards/Bernalillo County from Tavarez/AQD, cc Scharmen/NMDOH, Schroeder/Bernalillo County, Cross-Guillen/Bernalillo County, Kearny/CoA Legal, Eyerman/AQD, Subj: Re: health outcomes from census tracts in North Valley. 9/9/09 11:32 a.m. e-mail is attached to: 9/8/09 1:56 p.m. e-mail to Tavarez/AQD from Richards/Bernalillo County, cc Scharmen/NMDOH, Schroeder/Bernalillo County, and Cross-Guillen/Bernalillo County, Subj: Re: health outcomes for census tracts in North Valley; 9/8/09 10:49 a.m. e-mail to Richards/Bernalillo County from Tavarez/AQD, cc Schroeder/Bernalillo County, Cross-Guillen/Bernalillo County, Scharmen/NMDOH, Kearny/CoA Legal, and Eyerman/AQD, Subj: Re: health outcomes for census tracts in North Valley; and 9/4/09 10:08 a.m. e-mail to Richards/Bernalillo County from Tavarez/AQD, cc Schroeder/Bernalillo County, Cross-Guillen/Bernalillo County, Scharmen/NMDOH, Subj: Fw: health outcomes for census tracts in North Valley.
AR 245	0987	9/10/09 Interoffice Memo to Eyerman/AQD from Riordan/CoA DMD Subj: Concerns about Truck Traffic Issues Expressed at Public Hearings...
AR 246	0989	9/11/09 2:11 p.m. e-mail to Eyerman/AQD from Reyes/AQD, cc Aragon/AQD and Keiser/AQD, Subj: Fw: American Cement Survey. 9/11/09 2:11

		p.m. e-mail is attached to: 9/11/09 1:30 p.m. e-mail to Reyes/AQD from Aragon/AQD, cc Aragon/AQD, Subj: American Cement Survey with attached CD Re: David Wood 9/3/09 158 Pleasant NW, AQD Citizen Contact Form – photocopy of David Wood CD, one original CD, and all three photos from CD; and Citizen Contact Form – Inez Gallegos 4613 Carlton NW.
AR 247	0997	9/15/09 Air Quality Authority-To-Construct Permit No. 0902-M3 issued on 15 th day of September, 2009.
AR 248	1007	9/15/08 4:57 e-mail to Eyerman/AQD from Nason/CoA Planning Dept, Subj: Re: Letter Regarding Truck Concerns in the North Valley. 9/15/08 4:57 e-mail is attached to: 9/15/09 4:48 p.m. to Nason/CoA Planning Dept from Eyerman/AQD, Subj: Letter Regarding Truck Traffic Concerns in the North Valley
AR 249	1008	9/17/09 9:45 a.m. e-mail to Roark/GCC from Eyerman/AQD, Subj: Re: Amended American Cement Permit. 9/17/09 9:45 a.m. e-mail is attached to: 9/11/09 4:13 p.m. e-mail to Eyerman/AQD from Roark/GCC, Subj: (same); and 9/11/09 3:41 pm e-mail to Roark/GCC from Eyerman/AQD, Subj: (same).
AR 250	1009	9/17/09 Lt to Roark/GCC from Eyerman/AQD – Air Quality Tracking #0902-M3 enclosing air quality Authority-To-Construct Permit #0902-M3 for American Cement Corp.
AR 251	1010	9/30/09 Lt to Residents (Participants) from Tavarez/AQD – Re: issuance of Air Quality Permit No. 0902-M3, applicable laws, review process, issues considered, administrative record review, concerns forwarded to appropriate agencies, permit conditions requested by American Cement and imposed by AQD, contact information, and information on appeal process
AR 252	1014	9/30/09 Lt Mailing List of Residents (Participants) sent 9/30/09 Lt
AR 253	1028	9/30/09 Lt to Residents (Participants) Returned Receipts
AR 254	1148	9/30/09 Lt to Residents (Participants) Undelivered Letters

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3**

**Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,**

Petitioners/Appellants,

v.

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

Respondent/Appellee

AQCB No. 2009-7


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NOTICE OF FILING OF LIST OF INTERESTED PERSONS

On November 12, 2009, as required by 20.11.81.14.D(2) NMAC, the Environmental Health Department delivered to the Hearing Clerk in the above-captioned matter a list of all persons who, within the preceding 12 months, have expressed in writing to the Department an interest in the facility or the permitting action that is the subject of the Petition that was filed in the above-captioned action, or who participated in a public information meeting or hearing on the permitting action and who have provided a legible written name and current mailing address at the public information meeting or hearing.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney


Adelia W. Kearny
Deputy City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4530
akearny@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2009, a true and correct copy of the above Notice was mailed by regular mail, postage prepaid to:

**Kyle Silfer, individually, and as
President of Greater Gardner NA
4465 Jupiter NW
Albuquerque, NM 87107**

and a copy was sent by electronic mail to Kyle Silfer at kyle@rtoads.com.

**by: 
Adelia W. Kearny, Deputy City Attorney**

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3**

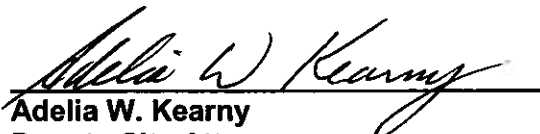
Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals, Petitioners/Appellants, v. City of Albuquerque Environmental Health Department, Air Quality Division, Respondent/Appellee	AQCB No. 2009-7 <div style="text-align: right;">RECEIVED ENVIRONMENTAL HEALTH 09 NOV 17 PM 4:27 JCU</div>
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NOTICE OF FILING OF PETITIONERS' WAIVER AND RELEASE

Attached to this Notice is the original Waiver and Release, signed and dated by Kyle Silfer on behalf of all of the Petitioners. The Waiver and Release waives the Petitioners' right to a public hearing that begins within 30 days of receipt of Petitioners' *Appeal Petition for Hearing*. And warrants that Kyle Silfer is authorized to represent the two organizations and three individuals named as appellants/petitioners in the *Appeal Petition for Hearing*.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney

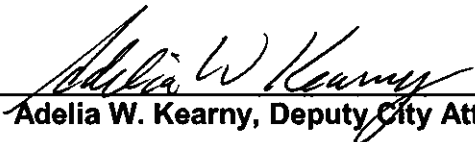

Adelia W. Kearny
Deputy City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4530
akearny@cabq.gov

CERTIFICATE OF SERVICE

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President of Greater Gardner NA
4465 Jupiter NW
Albuquerque, NM 87107**

and a copy was sent by electronic mail to Kyle Silfer at kyle@rtoads.com.

**by: 
Adelia W. Kearny, Deputy City Attorney**

WAIVER AND RELEASE

Regarding Extension of Deadline for Holding Hearing

The Air Quality Division (AQD) of the City of Albuquerque (City) Environmental Health Department issued American Cement Authority-to-Construct Permit modification # 0902-M3, effective September 15, 2009. Kyle received the participant notification letter sent by AQD informing Mr. Silfer that the permit modification had been issued, the process followed by AQD during its review, the conditions incorporated in the permit modification, and the deadline for requesting a hearing before the Albuquerque-Bernalillo County Air Quality Control Board (Air Board). On November 2, 2009, Kyle Silfer filed an *Appeal Petition for Hearing* dated November 1, 2009 with the Air Board Hearing Clerk.

The Air Board is directed by subsection F of 20.11.41.14 NMAC and paragraph (1) of subsection F of 20.11.81.14 NMAC to hold a public hearing regarding an authority-to-construct permit challenge within 30 days of receipt of the request for public hearing unless the Petitioner waives the deadline pursuant to 20.11.81.14.C NMAC. By signing this Waiver and Release, Kyle Silfer, on behalf of the two organizations and three individuals named as Appellants (petitioners) in the Appeal Petition for Hearing filed November 2, 2009, hereby waives the 30-day deadline, and forever waives, releases and discharges any and all rights and claims for damages or other relief that the Appellants/petitioners may have against the Air Board, each individual member of the Board, the City, and all City officials, officers, employees, contractors and agents as a result of the Air Board not holding the public hearing within 30 days of receipt of the Appeal Petition for Hearing.

The individual signing this Waiver and Release warrants he is authorized to represent the two organizations and three individuals named as Appellants/petitioners in the Appeal Petition for Hearing and has full legal authority to execute this Waiver and Release on behalf of the Greater Gardner Neighborhood Association (GGNA), the North Valley Coalition of Neighborhood Associations (NVCNA), David Wood individually and Marcia Finical individually, and to bind GGNA, NVCNA, David Wood, Marcia Finical, and himself to its terms.

By: 

Kyle Silfer, individually, and
as authorized representative of
Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood Associations,
David Wood individually, and
Marcia Finical individually

Date: 11/10/09

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3**

**Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,**

Petitioners/Appellants,

v.

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

Respondent/Appellee

AQCB Petition No. 2009-7

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AIR QUALITY CONTROL BOARD
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SCHEDULING ORDER

THIS MATTER having come before the Chairman of the Albuquerque-Bernalillo County Air Quality Control Board (Air Board), who is acting as interim hearing officer in the above-captioned matter pursuant to Paragraph (2) of Subsection (B) of 20.11.81.12 NMAC, upon Petitioners' *Appeal Petition for Hearing* filed November 2, 2009, and being apprised of the filing of Petitioners' *Waiver and Release* dated November 11, 2009, finds as follows:

1. The Petition was timely filed.
2. The 30-day deadline for beginning the hearing on the merits, which is established by Subsection F of 20.11.41.15 NMAC and Paragraph (1) of Subsection F of 20.11.81.14 NMAC, is stayed by the filing of the *Waiver and Release* pursuant to Subsection C of 20.11.81.14 NMAC.
3. The next regularly-scheduled Air Board meeting is December 9, 2009.
4. December 9, 2009 falls within the extended, additional 30-day period allowed by Subsection C of 20.11.81.14 NMAC, and provides an opportunity for the Air Board to: appoint a Hearing Officer or authorize the Hearing Clerk to obtain a Hearing Officer; establish the date, time and location of the hearing on the merits in the above-captioned matter, or authorize the

Hearing Officer to set the date, time and location of the hearing; direct the Hearing Clerk to secure a court reporter; and decide any other procedural decisions regarding the hearing on the merits that are necessary at this stage in the proceedings.

THEREFORE, IT IS ORDERED that:

1. At the December 9, 2009 Air Board meeting, the Board shall: appoint a Hearing Officer or authorize the Hearing Clerk to obtain a Hearing Officer; establish the date, time and location of the hearing on the merits in the above-captioned matter, or authorize the Hearing Officer to set the date, time and location of the hearing; direct the Hearing Clerk to secure a court reporter; and decide any other procedural decisions regarding the hearing on the merits that are necessary at this stage in the proceedings.

2. Pursuant to Subsection C of 20.11.81.14 NMAC and Paragraph (1) of Subsection F of 20.11.81.12 NMAC, the hearing on the merits will begin on Monday, January 4, 2010, unless the hearing officer or the Air Board, as appropriate for the stage of the proceeding, extends the deadline for an additional period for good reason and an amended Scheduling Order is issued.

3. All prehearing deadlines set forth in 20.11.81.14 NMAC related to the 30-day hearing procedure will remain in effect, based on the January 4, 2010 hearing date.



Jens Deichmann
Chairman/Interim Hearing Officer
Air Quality Division
Environmental Health Department
City of Albuquerque
Mailing Address:
P. O. Box 1293
Albuquerque, NM 87103
Physical Address:
1 Civic Plaza NW
City/County Building
3rd Floor, Room 3023
Albuquerque, NM 87102

If any person requires assistance, an interpreter, or auxiliary aid to participate in this process, please contact Hearing Clerk Janice Wright at least ten days before the hearing date at P.O. Box 1293, Albuquerque, New Mexico 87103. Ms. Wright's telephone number is (505) 768-2601. TDY users, please access Ms. Wright's number through the New Mexico Relay Network at 1-800-659-8331.

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, hand delivered, and e-mailed a true and correct copy of the foregoing pleading on this 30th day of November, 2009 to the following parties of record:

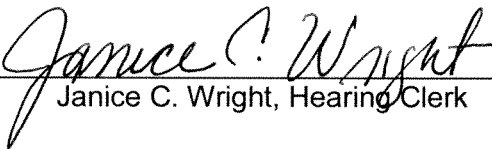
Mailed and e-mailed:

Kyle Silfer, Petitioner
4465 Jupiter NW
Albuquerque, NM 87107
kyle@rtoads.com

Tim Van Valen, Esq.
Brownstein Hyatt Farber Schreck, LLP
201 Third Street NW, Suite 1700
Albuquerque, NM 87102-4386
tvanvalen@bhfs.com

Hand delivered:

Adelia W. Kearny
Deputy City Attorney
Room 4015
One Civic Plaza NW
Albuquerque, NM 87102



Janice C. Wright, Hearing Clerk

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**GREATER GARDNER NEIGHBORHOOD
ASSOCIATION, NORTH VALLEY COALITION
OF NEIGHBORHOOD ASSOCIATIONS, AND
KYLE SILFER, DAVID WOOD, and MARCIA
FINICAL AS INDIVIDUALS,**

Appellants,

vs.

**CITY OF ALBUQUERQUE AIR QUALITY
DIVISION,**

Appellee.

Authority to Construct

Permit Modification

Permit No. 0902-M3

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MOTION FOR ADMISSION PRO HAC VICE

Pursuant to Rule 16-505(E) of the New Mexico Rules of Professional Conduct, the undersigned counsel ("Counsel") move for an order from the Board granting temporary admission to enable their participation in the above-entitled matter as co-counsel for Permittee American Cement Corporation. In support of this Motion, Counsel state the following:

1. The following Counsel are attorneys at law affiliated as shareholders and associate of the law firm of Brownstein Hyatt Farber Schreck, LLP, which maintains an office at 410 Seventeenth Street, Suite 2100, Denver, CO 80202, telephone 303.223.1100:

Mark J. Mathews, Colorado attorney registration no. 23749
Adam T. DeVoe, Colorado attorney registration no. 32059
Bret A. Fox, Colorado attorney registration no. 36723

2. Counsel are members in good standing with the Bar of the State of Colorado, and have not been disbarred or suspended from practice in any jurisdiction.

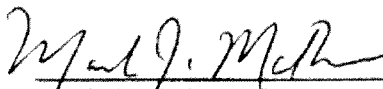
3. By this motion, Counsel seek admission to provide legal services and representation on a temporary basis before the Albuquerque-Bernalillo County Air Quality Control Board (the "Board"), which services and representation relate to and are limited to the above-entitled proceeding currently pending before the Board.

4. An administrative agency such as the Board is authorized to allow, by order adopted pursuant to the informal practice of the agency, a non-admitted lawyer to appear in a proceeding before the agency. See NMRA 16-505(E), cmt. 9. Upon the advice of Board


counsel, this Motion is submitted in accordance with such Board procedures as authorized by NMRA 16-505(E).

WHEREFORE, the undersigned Counsel respectfully request that the Board enter the attached order specially admitting and enabling each to participate in this matter as co-counsel for Permittee American Cement Corporation. A draft Order is submitted herewith for the Board's convenience.

Respectfully submitted this 2nd day of December, 2009.


Mark J. Mathews


Adam T. DeVoe



Bret A. Fox

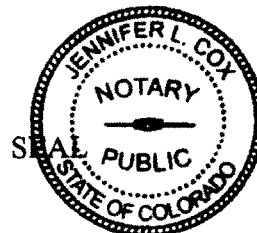
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Telephone: 303-223-1100
Fax: 303-223-1111
e-mail: bfox@bhfs.com
Attorneys for American Cement Corporation

STATE OF COLORADO)
) SS:
COUNTY OF DENVER)

Subscribed and sworn to before me this 2nd day of December, 2009, by Mark J. Mathews, Esq.

My commission expires: 6/6/2012


Notary Public

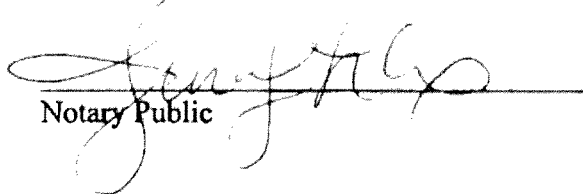


My Commission Expires June 6, 2012

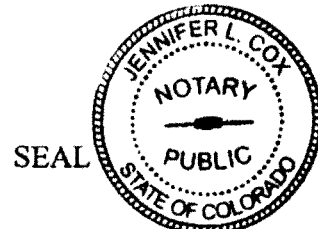
STATE OF COLORADO)
) SS:
COUNTY OF DENVER)

Subscribed and sworn to before me this 2nd day of December, 2009, by Adam T. DeVoe, Esq.

My commission expires: 6/6/2012



Notary Public

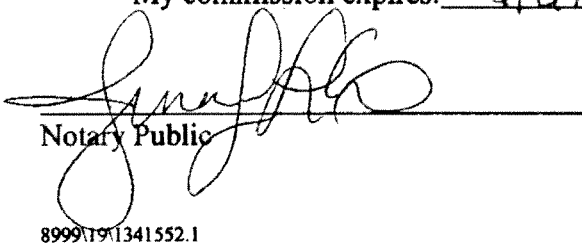


My Commission Expires June 6, 2012

STATE OF COLORADO)
) SS:
COUNTY OF DENVER)

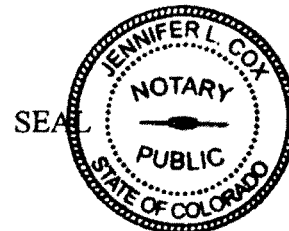
Subscribed and sworn to before me this 2nd day of December, 2009, by Bret A. Fox, Esq.

My commission expires: 6/6/2012



Notary Public

89991791341552.1



My Commission Expires June 6, 2012

Certificate of Service

I certify that one original and nine copies of the foregoing **Motion for Admission Pro Hac Vice** were filed with the hearing clerk on the 3rd day of December, 2009, and by same date submitted by email and certified mail, return receipt requested, to the following:

Kyle Silber, Petitioner
4465 Jupiter NW
Albuquerque, NM 87107

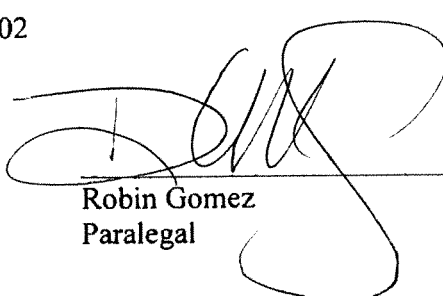
and by same date submitted by email to the following:

Adelia W. Kearny
Deputy City Attorney
Room 4015
One Civic Plaza NW
Albuquerque, NM 87102

and by same date submitted by hand delivery to Janice Wright for the following:

Jens Deichman, Hearing Officer and Board Chair
Albuquerque-Bernalillo County Air Quality Control Board
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102

Bill Grantham, Esq., AQCB Legal Counsel
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102



Robin Gomez
Paralegal

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3**

**Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as Individuals,**

Petitioners/Appellants

AQCB Petition No. 2009-07


v.

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

Respondent/Appellee

ORDER

This matter comes before the Chairman of the Air Quality Control Board, acting as Hearing Officer, upon American Cement Corporation's Motion to Intervene. Being fully advised of the premises, and noting that as the applicant American Cement Corporation is by definition a party to the proceeding pursuant to 20.11.81.7 (N) NMAC, the motion is granted. American Cement Corporation is hereby named an Appellee in the above captioned proceeding.



Jens Deichman, Chairman

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, hand delivered, and e-mailed a true and correct copy of the foregoing pleading on this 15th day of December, 2009 to the following parties of record:


Mailed and e-mailed:

Kyle Silfer, Petitioner
4465 Jupiter NW
Albuquerque, NM 87107
kyle@rtoads.com

Tim Van Valen, Esq.
Brownstein Hyatt Farber Schreck, LLP
201 Third Street NW, Suite 1700
Albuquerque, NM 87102-4386
tvanvalen@bhfs.com

Hand delivered:

Adelia W. Kearny
Deputy City Attorney
Room 4015
One Civic Plaza NW
Albuquerque, NM 87102



Janice C. Wright, Hearing Clerk

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.

33 32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1 Jan

Appellants,

Permit No. 0902-M3

CITY OF ALBUQUERQUE AIR QUALITY
DIVISION,

Appellee.

THIS MATTER CAME before the Board upon the Motion for Admission Pro Hac Vice filed pursuant to Rule 16-505(E) NMRA for temporary admission to enable participation of non-admitted counsel on behalf of the Permittee American Cement Corporation (the "Permittee") in the above-entitled proceeding before the Board. The Board, having reviewed the Motion and otherwise being fully advised on the premises, hereby FINDS that the Motion is well taken and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Mark J. Mathews, Adam T. DeVoe and Bret A. Fox are hereby granted admission pro hac vice for the purpose of temporarily appearing before the Board on behalf of Permittee, and may represent the interests of Permittee in all proceedings and in any such matters as are necessarily related to the above-entitled proceeding.


Jens Deichmann
Board Chairman and Interim Hearing Officer

Leaving officers

STATE OF NEW MEXICO
ABUQUERQUE BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION
AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Assoc.,
North Valley Coalition of Neighborhood
Assoc.s, Kyle Silfer, David Wood, Marcia
Finical, as individuals,

AQCB Petition No. 2009-7

Petitioner /Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division

Respondent/Appellee,

American Cement Corporation,

Intervener.

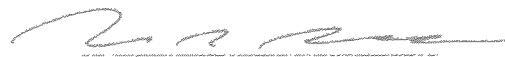
AMENDED SCHEDULING ORDER

Pursuant to the authority granted to me as Hearing Officer under Subsection B of 20.11.81.12 NMAC and the Scheduling Order issued November 30, 2009 by the Chairman of the Albuquerque-Bernalillo County Air Quality Control Board ("Board"), and after consultation with the parties, IT IS ORDERED:

1. The hearing on the merits in the above-captioned matter shall be held on February 22 and 23, 2010, beginning at 9:00 a.m on each day. Opportunities for public comment shall be provided from 12:00 noon to 1:00 p.m and from 5:00 - 6:00 p.m., as necessary, on each

day. Testimony of the parties may continue past 6:00 p.m. at the discretion of the Hearing Officer.

2. The hearing shall be held in the Vincent E. Griego Chambers in the Albuquerque-Bernalillo County Government Center, or at another suitable location secured by the clerk in the event such Chambers are not available.
3. Statements of Intent to present technical evidence shall be filed and served no later than February 5, 2010. Each party shall provide the information specified in Paragraph (2) of Subsection (II) of 20.11.81.14 NMAC for each witness the party intends to call, regardless of whether the witness's testimony is technical or non-technical.
4. Any pre-hearing motions shall be filed and served no later than January 22, 2010.
5. In computing any time period prescribed or allowed by 20.11.81 NMAC, where differing periods are provided for 30 day and 60 day hearing procedures, the period applicable to 60 day hearing procedure shall govern.



Bill Grantham
Hearing Officer

STATE OF NEW MEXICO
ALBUQUERQUE BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION
AIR QUALITY PERMIT No. 0902-M3

RECEIVED
ENVIRONMENTAL HEALTH

10 JAN -7 AM 8:33

JCO

Greater Gardner Neighborhood Assoc.,
North Valley Coalition of Neighborhood
Assoc.s, Kyle Silfer, David Wood, Marcia
Finical, as individuals,

AQCB Petition No. 2009-7

Petitioner /Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division

Respondent/Appellee,

American Cement Corporation,
Intervenor

SECOND AMENDED SCHEDULING ORDER

Pursuant to Subparagraph (b) of Paragraph (2) of Subsection B of 20.11.81.12 NMAC, in order to provide for an orderly and efficient hearing and an opportunity to comment for all interested members of the public, the daily schedule for hearing in this matter on February 22 and 23rd is amended as follows:

1. On each day an opportunity for public comment shall be provided from 1:00 p.m. to 2:00 p.m. (instead of 12:00 to 1:00) and from 6:00 p.m. onward as necessary to accommodate the interested persons present.
2. Technical testimony may resume during these times after all public members present have had an opportunity to comment.



Bill Grantham
Hearing Officer

STATE OF NEW MEXICO
Before the
ALBUQUERQUE BERNALILLO COUNTY AIR QUALITY CONTROL
BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING MAERICAN CEMENT CORPORATION
AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Association, North
Valley Coalition of Neighborhood Associations,
Kyle Silfer, David Wood and Marcia Finical, as
individuals,

Petitioners/Appellants

v.

City of Albuquerque Environmental Health
Department Air Quality Division,

Respondent/Appellee,

and

American Cement Corporation,

Intervener

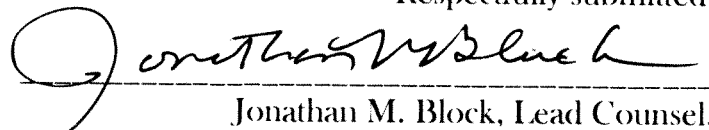
AQCB Petition No. 2009-7

January 8, 2010

NOTICE OF APPEARANCE

New Mexico Environmental Law Center, Jonathan M. Block, Staff Attorney, enters
an appearance in the above captioned matter on behalf of Petitioners/Appellants.

Respectfully submitted:



Jonathan M. Block, Lead Counsel,
Douglas Meiklejohn, Bruce Frederick, Eric Jantz
New Mexico Environmental Law Center
1405 Luisa Street, Ste. 5
Santa Fe, NM 87501
(505) 989-9022, Ext. 22
jblock@nmelc.org

cc: Attached Service List with Certification

CERTIFICATION OF SERVICE

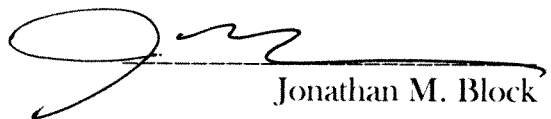
I, Jonathan M. Block, hereby certify that on this 8th day of January, 2010, I caused the foregoing Notice of Appearance to be served upon the below listed persons by mailing it to them U.S. First Class postage prepaid:

Janice C. Wright, Hearing Clerk
Air Quality Div., Env. Health Dept.
City of Albuquerque
One Civic Plaza, Rm. 3023
Albuquerque, NM 87103

Bill Grantham, Esq., Hearing Officer
N.M. Environmental Department
P.O. Box 5469
Santa Fe, NM 87502-5469

Adelia Kearny, Esq.
City Attorney's Office
City of Albuquerque
One Civic Plaza, Rm. 4015
Albuquerque, NM 87102

Tim Van Valen, Esq.
Brownstein, Hyatt, Farber, Schreck, LLP
201 Third Street NM, #1700
Albuquerque, NM 87102



Jonathan M. Block

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**GREATER GARDNER NEIGHBORHOOD
ASSOCIATION, NORTH VALLEY COALITION
OF NEIGHBORHOOD ASSOCIATIONS, AND
KYLE SILFER, DAVID WOOD, and MARCIA
FINICAL AS INDIVIDUALS,**

Petitioner/Appellants,

vs.

**CITY OF ALBUQUERQUE AIR QUALITY
DIVISION,**

Respondent/Appellee.

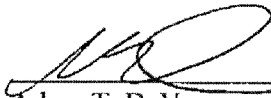
**AMERICAN CEMENT CORPORATION,
Intervenor**

AQCB Petition No. 2009-7

ENTRY OF APPEARANCE

Adam T. DeVoe and Mark M. Matthews, of the law firm of Brownstein Hyatt Farber Schreck, LLP, 410 Seventeenth Street, Suite 2200, Denver, Colorado 80202, (303) 223-1100, hereby enter their appearance on behalf of Intervenor American Cement Corporation, a New Mexico Corporation ("Intervenor"). Service and acceptance of all filings can be sent to lead counsel, Adam T. DeVoe via e-mail at adevoe@bhfs.com. All inquiries can be directed to Mr. DeVoe at 303-223-1180.

Respectfully submitted this 22nd day of January, 2010.



Adam T. DeVoe
Mark M. Matthews
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Telephone: 303-223-1100
Fax: 303-223-1111
e-mail: adevoe@bhfs.com
Attorneys for American Cement Corporation

CERTIFICATE OF SERVICE

I certify that one original and nine copies of the foregoing **ENTRY OF APPEARANCE** was filed with the hearing clerk on the 22nd day of January, 2010, and by same date submitted by email and certified mail, return receipt requested, to the following:

Kyle Silfer, Petitioner
4465 Jupiter NW
Albuquerque, NM 87107

and by same date submitted by email to the following:


Jonathan Block
New Mexico Environmental Law Center
1405 Luisa St., Ste. 5
Santa Fe, NM 87501

Adelia W. Kearny
Deputy City Attorney
Room 4015
One Civic Plaza NW
Albuquerque, NM 87102

and by same date submitted by hand delivery to Janice Wright for the following:

Jens Deichman, Hearing Officer and Board Chair
Albuquerque-Bernalillo County Air Quality Control Board
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102

Bill Grantham, Esq.
N.M. Environmental Department
P.O. Box 5469
Santa Fe., NM 87102



Mary A. Erculiani

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**GREATER GARDNER NEIGHBORHOOD
ASSOCIATION, NORTH VALLEY COALITION
OF NEIGHBORHOOD ASSOCIATIONS, AND
KYLE SILFER, DAVID WOOD, and MARCIA
FINICAL AS INDIVIDUALS,**

Petitioner/Appellants,

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**CITY OF ALBUQUERQUE AIR QUALITY
DIVISION,**

Respondent/Appellee.

**AMERICAN CEMENT CORPORATION,
Intervenor**

AQCB Petition No. 2009-7

MOTION TO DISQUALIFY MEMBER BRINKMAN

Pursuant to Paragraph 3 of Subsection B of 20.11.81.12 NMAC, by and through undersigned counsel, American Cement Corporation requests an order of the Board disqualifying Member James Brinkman from participating in the above captioned adjudicatory proceeding. In support of this Motion, Counsel states the following:

1. In summary, New Mexico law requires a trier of fact to recuse himself or herself where impartiality may be in question or there is any appearance of unfairness in the proceeding. In the early stages of the Albuquerque Environmental Health Department's ("Department") review of the American Cement Corporation permit modification, Mr. Brinkman personally provided testimony in opposition to the permit modification, and attempted to call into question the adequacy of the modeling conducted by American Cement and reviewed and approved by the Department.

2. The New Mexico Administrative Code provides:

(3) Board member and hearing officer disqualification-recusal-withdrawal:

(a) A board member or hearing officer **shall not perform** any function authorized by 20.11.81 NMAC [adjudicatory functions] regarding any matter in which a board member or a hearing officer:

- (i) has a personal bias or prejudice concerning a party or the outcome of a proceeding;
- (ii) has personal knowledge of disputed facts concerning the proceeding;
- [(iii) (v) excluded]; or
- (vi) has performed prosecutorial or investigative functions in connection with a permitting action at issue in the proceeding.

20.11.18.12(3) NMAC

3. The New Mexico Administrative Code also provides that the hearing officer and board may rely on applicable legal authority. "In making its decision regarding whether a board member or hearing officer should be disqualified or recuse himself or herself, the board and hearing officer may rely on applicable legal authority." 20.11.81.12.B(3)(b) NMAC.

4. In this adjudicatory proceeding, the Air Quality Control Board Members are essentially acting as judges. According to the New Mexico Code of Judicial Conduct, a judge must recuse himself "in a proceeding in which the judge's impartiality might reasonably be questioned." Rule 21-400(A) NMRA.

5. The principles behind disqualification requirements apply to adjudicatory procedures of an administrative tribunal as well as to a court. Wall v. American Optometric Association, Inc., 379 F.Supp. 175 (N.D.Ga.), *aff'd mem.*, 419 U.S. 888, 95 S.Ct. 166, 42 L.Ed.2d 134 (1974); 1 Am.Jur.2d Administrative Law § 63 (1962). New Mexico applies disqualification and recusal principles to administrative proceedings. Reid v. New Mexico Board of Examiners, 92 N.M. 414, 589 P.2d 198 (1979). The basis for the standard for disqualification of an administrative hearing officer which is set forth in Reid is that "our system of justice requires that the appearance of complete fairness be present." Reid, 92 N.M. at 416, 589 P.2d at 200.

6. A fair trial in a fair tribunal is an essential requirement of due process, and this concept applies to administrative agencies as well as to courts. Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975); Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927). Safeguarding this requirement is especially essential in administrative proceedings where certain basic rights are overlooked in the interest of administrative efficiency and expedition. National Labor Relations Board v. Phelps, 136 F.2d 562 (5th Cir.1943).

7. On March 18, 2008, Member Brinkman testified at a public hearing before the Department on a previous version of the permit modification (permit modification version M2). Though a transcript of Mr. Brinkman's testimony has not been produced, in a tape recording from that hearing Mr. Brinkman testified in opposition to the permit modification for the American Cement facility.

8. Specifically, Mr. Brinkman testified that modeling for trace metals should have been conducted at the American Cement facility. There is no federal, state or local requirement to conduct modeling for trace metals, and there is no National Ambient Air Quality Standard (NAAQS) for trace metals. As such, Mr. Brinkman's requested modeling would have exceeded the applicable federal, state and local requirements, and the Department could not have required

such modeling to be conducted in order to approve the requested permit modification. Mr. Brinkman also testified that American Cement should be required to conduct fence line monitoring, even though the American Cement facility falls far below federal, state and local thresholds to conduct fence line monitoring. Finally, Mr. Brinkman testified that some consideration should have been given, and the permit modification should address, acute exposure, despite the fact that there is no federal, state or local requirement for any such consideration in approving a permit modification.

9. Member Brinkman has apparently investigated the proposed permit modification and has personal knowledge of the facts of this matter outside the context of the facts and evidence to be presented to the board at the hearing set to commence February 22, 2010. Member Brinkman has already formed an opinion that the permit modification should have been denied prior to the commencement of this hearing. As such, Member Brinkman cannot act in a fair and impartial manner in the adjudicatory hearing of this matter.

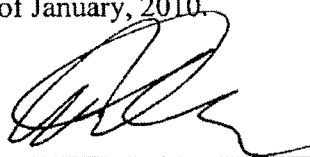
10. Where a board member has "personal bias" concerning a party and has personal knowledge through his or her own investigations of the permitting action, the New Mexico Administrative Code requires disqualification or voluntary recusal of that board member.

11. Judicial review is available for recusal issues and may result in remand for a new hearing of the matter. See *City of Albuquerque v. Chavez*, 941 P.2d 509 (N.M.App. 1997).

12. Counsel for American Cement has conferred with all parties in this matter prior to the filing of this motion. Counsel for Petitioners indicated that they oppose the filing of this motion. Counsel for the Department indicated that they take no position on the filing of this motion.

WHEREFORE, the undersigned Counsel respectfully request that the Board enter an order disqualifying member James Brinkman from the above captioned proceedings.

Respectfully submitted this 22nd day of January, 2010.



Adam T. DeVoe

Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Telephone: 303-223-1100
Fax: 303-223-1111
e-mail: adevoe@bhfs.com
Attorneys for American Cement Corporation

Certificate of Service

I certify that one original and nine copies of the foregoing **Motion to Disqualify Member Brinkman** were filed with the hearing clerk on the 22nd day of January, 2010, and by same date submitted by email and certified mail, return receipt requested, to the following:

Kyle Silfer, Petitioner
4465 Jupiter NW
Albuquerque, NM 87107

and by same date submitted by email to the following:

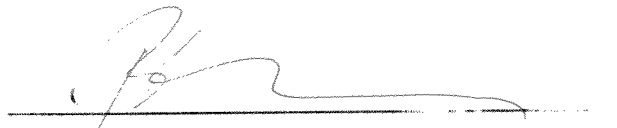
Adelia W. Kearny
Deputy City Attorney
Room 4015
One Civic Plaza NW
Albuquerque, NM 87102

Jonathan Block
New Mexico Environmental Law Center
1405 Luisa St., Ste. 5
Santa Fe, NM 87501

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Jens Deichman, Hearing Officer and Board Chair
Albuquerque-Bernalillo County Air Quality Control Board
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102

Bill Grantham, Esq.
N.M. Environmental Department
P.O. Box 5469
Santa Fe., NM 87102



**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**GREATER GARDNER NEIGHBORHOOD
ASSOCIATION, NORTH VALLEY COALITION
OF NEIGHBORHOOD ASSOCIATIONS, AND
KYLE SILFER, DAVID WOOD, and MARCIA
FINICAL AS INDIVIDUALS,**

Petitioner/Appellants,

vs.

**CITY OF ALBUQUERQUE AIR QUALITY
DIVISION,**

Respondent/Appellee.

**AMERICAN CEMENT CORPORATION,
Intervenor**

AQCB Petition No. 2009-7

MOTION IN LIMINE AND MOTION TO DISMISS

Permittee American Cement Corporation, a New Mexico Corporation ("Permittee"), acting by and through its attorneys Brownstein Hyatt Farber Schreck, LLP, hereby moves the Albuquerque-Bernalillo County Air Quality Control Board (the "Air Board") for an order limiting the admission of facts, evidence and testimony in this matter, and an order dismissing Petitioners' fourth claim for relief, and in support thereof states as follows:

ARGUMENT

- A. The Inclusion of Permit Conditions is a Decision Committed to the Discretion and Expertise of the Department, and Permit 0902-M3 Includes Conditions Necessary to Ensure Compliance with the Air Quality Control Act.**

The only issue at this hearing is whether the Petitioners can prove that the permit issued by the Department failed to comply with the Air Quality Control Act (the "Air Act") the Joint Air Quality Control Board Ordinance and the Albuquerque/Bernalillo County Air Quality Control Board Regulations ("Air Regulations"). In making this showing, the Petitioners must show by a preponderance of the evidence that the permit terms imposed by the Division were inadequate to protect air quality. Evidence which does not demonstrate that the permit modification violates the Air Act and Air Regulations should be excluded. In conducting this review, the Air Board should defer to the Department's technical expertise, particularly on

matters involving air dispersion modeling, compliance with National Ambient Air Quality Standards (NAAQS), adequacy of technology to control emissions, and the effect of permit terms and conditions in meeting air quality standards.

Petitioners urge in their first claim for relief that the Permit was issued "without adequate conditions to protect the health, safety and welfare of the public and without a proper review of all relevant evidence." In support, Petitioners recite evidence from the administrative record without identifying how or upon what basis such evidence should be incorporated into permit conditions that are permissible in accordance with NMAC § 20.11.41.18(B).

Under the Department's Authority to Construct regulations, the Department is afforded broad discretion in determining the appropriate combination of conditions necessary to ensure compliance with the Air Act. See NMAC 20.11.41.18(B) (the Department "may include any combination of the following conditions"). Permissible conditions include specification of emission limits necessary to comply with the state and federal acts; installation of control technologies; compliance with federal NSPS and NESHAP regulations; and emissions testing, monitoring, and measuring requirements. See *Id.* The permit modification for the American Cement facility included all of these various conditions and limitations.

The Petitioners in this matter have the burden of proof, which includes the burden of proving by a preponderance of the evidence the facts relied upon by the Petitioners to justify the relief sought in the petition. New Mexico Administrative Code provides:

C. Burden of Persuasion: In a hearing on the merits, the petitioner has the burden of proof, the burden of going forward with the evidence and the burden of proving by a preponderance of the evidence the facts relied upon by the petitioner to justify the relief sought in the petition.

NMAC 20.11.81.16(C.)

Part 81 provides that this matter is a hearing on the merits. 20.11.81 NMAC. Nevertheless, determinations made by an agency in the course of administrative hearings are extended "extreme deference" upon review, See *Archuleta v. Santa Fe Police Dept.*, 108 P.3d 1019 (N.M. 2005); *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n.*, 904 P.2d 28 (1995); *Stokes v. Morgan*, 680 P.2d 335, 342 (1984) (reviewing decision of the State Engineer following a hearing and noting that "[t]he special knowledge and experience of state agencies should be accorded deference"). Such deference is "especially" appropriate with respect to factual issues concerning matters in which the agency has specialized expertise. *Morningstar*, 904 P.2d at 32.

In conducting the review of technical testimony and determining whether the Department followed the statutory and regulatory standards for permit issuance, the Air Board should therefore defer to the Department's technical expertise, particularly on matters involving air dispersion modeling, compliance with National Ambient Air Quality Standards (NAAQS), adequacy of technology to control emissions, and the effect of permit terms and conditions in meeting air quality standards. The Petitioners will have an opportunity to demonstrate that the Department did not meet these standards, but the Air Board should not supplant the Department's

judgment on technical matters which are clearly within the specialized expertise of the Department. In that regard, the purpose of the hearing is not to provide conjectural, repetitive and cumulative evidence about what additional information beyond the statutory and regulatory standards the Petitioners may have liked the Department to consider, but to determine whether the Department did in fact meet its statutory and regulatory obligation in issuing the permit.

B. Petitioners' Environmental Justice Arguments

Any evidence, whether technical or public, that does not pertain to the Air Quality Act and Air Regulation should be excluded.

There is no legal authority for the Air Board to deny the permit or impose additional permit terms and conditions on the basis of environmental justice concerns. In order to impose environmental justice terms and conditions, there must be some regulatory standard for the Air Board and Department to reference, and for American Cement to address, when conducting a permit review. The New Mexico Supreme Court requires that the "authority to address such [environmental justice] concerns requires a nexus to a regulation." Colonias Development Council v. Rhino Env'tl Services, Inc., 117 P.3d 939, 947 (N.M. 2005).

In Rhino, the New Mexico Supreme Court directed the New Mexico Environment Department (NMED) to apply specific aspects of the implementing regulations in the Solid Waste Act when considering public testimony regarding environmental justice concerns over the proposed location of a landfill in Chapparral, New Mexico. Id. Directing NMED to modify its review process and remanding the case for consideration of the environmental justice testimony, the New Mexico Supreme Court specifically relied on the nexus between the public comments and specific regulatory language under the Solid Waste Act and its implementing regulations which required NMED to consider: (1) whether the solid waste facility would be located or operated in a manner that would cause a public nuisance; (2) whether the solid waste facility would be located or operated in a manner that would create a potential hazard to public health, welfare, or the environment; and (3) whether the solid waste facility application poses an undue risk to property. Id., at 947.

Unlike the Rhino case, the Air Quality Control Act and Air Regulations contain no similar broad based language which would require the Air Board or Department to deny the permit or impose additional terms and conditions to address environmental justice concerns. The Air Quality Control Act and the Air Regulations do not require the Department or the Air Board consider: (1) whether location of a facility would cause a public nuisance, (2) whether the American Cement facility would be operated in manner to create a potential hazard to public health, welfare or the environment, or (3) whether the American Cement facility poses a risk to property. Instead, the Air Act and regulations require the Air Board and Department to impose permit terms and conditions which ensure that facilities "will not emit air pollution, which will cause violations of air pollution control regulations upon operation following construction." 20.11.41.6. NMAC.

Petitioners have so far failed to advance or identify any legal or factual basis for an "environmental justice" claim in this air permitting context which would require denial of the permit or the imposition of additional terms and conditions. The Albuquerque/Bernalillo County

regulations allow the Department to include nine different types of permit conditions. 20.11.14.18.B NMAC. These conditions include: (1) emission limits in accordance with the Air Act or regulation, (2) emission control technology, (3) compliance with NSPS and NESHAP regulations, (4) reasonable restrictions and limitations on operations, (5) a schedule of construction, (6) performance testing and monitoring, (7) repetitive testing, (8) recordkeeping and reporting, and (9) other reasonable conditions. *Id.*

Even the most general of these conditions – Condition (9) "other reasonable conditions as the Department may deem necessary" (20.11.14.18.B) – does not make any reference to public nuisance, potential hazard, or risk to property, as relied upon by the New Mexico Supreme Court in the Solid Waste context addressed in *Rhino*. The permit conditions which may be imposed tie back to the essential Department and Air Board function - issuing permits to prevent the emission of air pollution that would violate the Air Act or Air Regulations. Accordingly, the hearing of this matter and any testimony or evidence presented to the Air Board should go to the Petitioners burden to prove that the permit was inadequate to prevent air emissions that would violate the Air Act or the Air Regulations. While public testimony may be relevant on the issue of air emissions and appropriate terms and conditions as permitted by the Albuquerque/Bernalillo County regulations, irrelevant, repetitive and cumulative testimony should be excluded.

This matter differs from *Rhino* in other critical ways. The *Rhino* decision was about the appropriate siting of landfills in a community the New Mexico Supreme Court agreed was "an unincorporated community that lacks infrastructure, political representation, and medical facilities . . . consisting primarily of low income, minority residents, Chapparal has been called New Mexico's largest *colonia*." *Id.*, at 941. In contrast, the American Cement facility is located in an incorporated area of Albuquerque, with infrastructure, active political representation and medical facilities. Moreover, American Cement is not seeking to locate a new facility in the neighborhood, but rather sought and obtained an amendment to a minor source permit for an existing facility. Accordingly, this case is not about the proliferation of cement transfer facilities or even industrial operations in the Greater Gardner neighborhood. It is also not about the siting of cement transfer facilities or industrial facilities in neighborhoods where environmental justice concerns dictate special protection from the Air Board. Instead, this is a simple permit modification action for a facility that is already located in the Greater Gardner neighborhood. Testimony, whether technical or public, which goes to the factors enumerated in *Rhino* but not embodied in the Air Quality Control Act or implementing regulations should be excluded. Even if the Air Board allows this testimony, it cannot result in denial of the American Cement permit modification or the imposition of additional permit terms and conditions if such terms and conditions do not tie directly to the terms and conditions which may be imposed under the air Regulations (20.11.41.18.B NMAC).

Petitioners also claim that the Department "failed to incorporate principles of environmental justice in its decision." Petition, at 5; *see also* Op. Att'y Gen. 08-03 (2008). Petitioners characterize these "principles" as consisting of notice and consideration of public testimony regarding impacts to minority or impoverished communities. Petition, at 5. Without consideration of these principles, Petitioners assert, "a concentration of pollution in a single area can continue to grow without meaningful regulation or planning." *Id.*

Petitioners have presented no evidence of deficiency in the form, substance, or timing of notice given in these proceedings. Furthermore, the administrative record is replete with testimony given by Petitioners in the course of public hearings, and evidence otherwise submitted for the record that relates to the specific impacts upon the local community. Presumably, Petitioners will be given adequate opportunity to present additional public testimony at the hearing before the Air Board starting February 22, 2010. Accordingly, the Air Board should dismiss the claim that Petitioners have not been given adequate notice and opportunity to comment.

C. Petitioners' Fourth Claim for Relief Should Be Dismissed.

Petitioners' Fourth Claim for Relief, which includes "[a]ny other factual or legal issues identified by Petitioner prior to the hearing," appears intended to enable Petitioners to add any additional claims that they may in the future deem appropriate. This claim finds no support in the Air Board's Adjudicatory Procedures regulations or in the New Mexico Rules of Civil Procedure, and must be summarily dismissed. The Department and American Cement are entitled to be put on notice of any factual and legal claims the Petitioners may make. The Petitioners cannot now, or at anytime before the hearing, add factual or legal claims.

Likewise, the Petitioners may not now amend the Petition to add factual or legal claims. The Air Board's regulations governing the petition and review of Department decisions makes no provision allowing for an amended petition. Even if the Air Board were to rely on the New Mexico Rules of Civil Procedure, as the Air Board may, pursuant to Rule 1-015 a party is entitled to one amended pleading prior to service of a responsive pleading. In this case, both the Amended Petition and the responsive Answer of the City of Albuquerque were filed on November 17, 2009. In accordance with the Rules of Civil Procedure, therefore, Petitioners have already exercised whatever right they may have had to amend the Petition, and may not seek leave to add additional claims in the future.

Duty to Confer. Counsel for American Cement has conferred with all parties in this matter prior to the filing of this motion. Counsel for Petitioners indicated that they oppose the filing of this motion. Counsel for the Department indicated that they do not oppose the filing of this motion.

WHEREFORE, Permittee American Cement Corporation respectfully requests: (1) that the Air Board enter an Order dismissing Petitioners' Fourth Claims for Relief as set forth in the Amended Petition filed on November 17, 2009, and (2) exclude testimony and evidence as necessary to expedite the hearing of this matter, prevent repetitive and cumulative testimony, and exclude irrelevant testimony and evidence.

Respectfully submitted this 22nd day of January, 2010.

A handwritten signature in black ink, appearing to read 'A. DeVoe', is written over a horizontal line.

Adam T. DeVoe

Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Telephone: 303-223-1100
Fax: 303-223-1111
e-mail: adevoe@bhfs.com
Attorneys for American Cement Corporation

Certificate of Service

I certify that one original and nine copies of the foregoing **Motion in Limine and Motion to Dismiss** were filed with the hearing clerk on the 22nd day of January, 2010, and by same date submitted by email and certified mail, return receipt requested, to the following:

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and by same date submitted by email to the following:

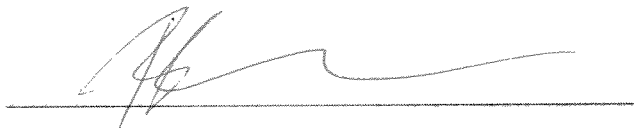
Jonathan Block
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Adelia W. Kearny
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Environmental Health Department
1 Civic Plaza NW
City & County Building
3rd Floor, Room 3023
Albuquerque, NM 87102

Bill Grantham, Esq.
N.M. Environmental Department
P.O. Box 5469
Santa Fe., NM 87102

A handwritten signature in black ink, appearing to be 'Bill Grantham', is written over a horizontal line.

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

GREATER GARDNER NEIGHBORHOOD)
ASSOCIATION, NORTH VALLEY COALITION)
OF NEIGHBORHOOD ASSOCIATIONS, AND)
KYLE SILFER, DAVID WOOD, AND)
MARCIA FINICAL AS INDIVIDUALS,)
)
Petitioners/Appellants,)
)
Versus)
)
CITY OF ALBUQUERQUE AIR QUALITY DIVISION,)
)
Respondent/Appellee,)
)
AMERICAN CEMENT CORPORATION,)
Intervenor.)

AQCB Petition No. 2009-7

RESPONSE TO MOTION TO DISQUALIFY MEMBER BRINKMAN

Chairperson man Deichmann, Vice Chairperson Menache and Members Grace, Sharpe, Sullivan, and Upson:

The testimony referenced in the motion is in the administrative record on the compact disk (CD) entitled, American Cement Public Hearing Audio, 3/18/2008, AR090. The testimony is from 2:20 to 2:30 on this audio MP3 file.

My participation in this hearing occurred before I was a member of Albuquerque-Bernalillo County Air Quality Control Board (Board). I received a telephone call from a friend at about 3:00 pm on 3/18/2008. He told me of the public information hearing that evening and asked if I would attend and potentially speak as a resident of the North Valley and an environmental professional. I told him that my knowledge of the facility was limited to driving past it. I had seen the silos on the property and had seen trucks entering and exiting the facility onto Griegos Road. After significant coaxing, I agreed to attend. My friend sent me the flier for the hearing. I searched the Web for information on the facility and found limited information that included a brief description of the facility, that it was transferring cement and fly ash. The time I spent on this search was between 15 and 30 minutes. The rest of information I have regarding this permit modification came from testimony provided at the March 2008 hearing and a partial review of the administrative record recently provided by the Air Quality Division (Division).

At the time of the March 2008 hearing, my exposure to and understanding of air permitting requirements was very limited and I had not read the American Cement permit modification application. Prior to the hearing, I had attended only one meeting of the Board. The agenda included an action item regarding a facility on North Second Street for which some neighbors and I had concerns. I had not read the Albuquerque-Bernalillo County Air Quality Regulations.

My testimony was primarily questions seeking information on the requirements of an air quality permit. I was and am concerned about the protection provided by modeling compared to sampling and analysis, protections from acute exposures, what a facility must know and report regarding the chemical constitution of handled materials, cumulative impacts from a facility and other nearby sources, and the nature and level of involvement of the public in the permitting and regulatory process. These are general concerns regarding prevention and abatement of air pollution. I have no personal bias for or against American Cement. I have not formed an opinion regarding the American Cement permit modification. I can and will act in a fair and impartial manner in the hearing.

I had considered recusing myself from this hearing based on the said testimony. I first sought counsel on this matter more than six months ago. Before a board meeting I spoke with Mr. Grantham about the testimony relative to the possible permit approval and petition. I explained to Mr. Grantham that my testimony was before I was a board member and mainly questions regarding what was required in a permit relative to concerns I have regarding air pollution and public exposure and health. Based on my description of the testimony, he did not think the regulations required that I recuse myself.

I again considered recusal earlier this year. I asked myself if I could be an impartial evaluator of the facts in these proceedings. I thought of the time that I have served as a trier of fact as a juror and foreperson in an armed bank robbery trial. In the prosecution's case, a few witnesses' statements did not make sense; in particular the FBI agent's reason for video observation of the defendant's storage shed. Before the jury started deliberations, as foreperson, I took a straw poll on the verdict. It was split evenly. The inconsistencies in the prosecution witnesses' testimony bothered me to the degree that I was one that thought that the defendant was guilty but not proven beyond a reasonable doubt. Through deliberation, piecing the events together, we reached a unanimous guilty verdict. I was able to put aside concerns regarding the prosecution's case because they did not affect the facts in this case. After the trial, the judge and lawyers debriefed the jury. They explained the inconsistencies that concerned me resulted from rulings by the judge limiting testimony regarding other ongoing bank robbery investigations and trials. Recalling this experience, I am confident that I can and will do the same in these proceedings, that is, evaluate and deliberate on the facts impartially.

Regarding No. 7 in the motion, I did not testify in opposition to the permit modifications. Framed by testimony provided by American Cement's consultant, Division staff, legislators and facility neighbors, I asked questions seeking information regarding my concerns. I hoped that the facility and the division would consider these concerns. However, given my lack of familiarity with the governing regulations, the permit application and other information about the facility and its neighbors, I was not sure of the applicability and appropriateness of my concerns to the specific permit application.

I did not advocate the positions as stated in No. 8. Rather, I questioned if the modeling, monitoring, and consideration of acute exposure could and should be in a permit. I asked questions because I did not know. The facility representative and Division staff responded with useful information.

Regarding No. 9, the first statement is false. I did not investigate the permit modification and I have no personal knowledge of additional facts of this matter. Although stated as fact, the second statement is a presumption apparently based on an interpretation of the 10-minute

question and answer exchange at the March 2008 hearing. This statement is false; I have formed no opinion as to the outcome of the upcoming hearing. The final sentence is based on two false statements and also is false. If qualified to serve, I can and will act in a fair and impartial manner in the hearing.

I do not have access to the judicial review cited in No. 11 of the motion. I presume that the point is that grounds for appeal by the intervenor may be if the board's ruling is to deny the permit modification with my participation in the process. I would then also presume that grounds for appeal by the petitioner may be if the board's ruling is to accept the permit modification without my participation in the process. In my opinion the question is: Will the fairness and impartiality of the proceeding be better served with my participation or without my participation?

In my earlier consultation with Mr. Grantham, he did not think that recusal was required. The Division staff knew of my testimony at the March 2008 because they answered most of my questions. Furthermore, in a lunch meeting early last year with Mr. Soladay, Mr. Tavaréz, and Ms. Nieto, I discussed some of these same concerns and referenced my testimony at the March 2008 hearing. The respondent in this case, the Division, knew of my testimony and had the opportunity to file a motion to disqualify. The Division did not file a motion and do not support the intervenor's motion; rather, the Division takes no position.

The statements in the motion regarding my thoughts and experiences are apparently based on presumptions and interpretation of a 10-minute question and answer session. My response is based on careful and thorough introspection concluding with a finding that I can and will act fairly and impartially in this hearing. It is my opinion that I should be included for the board to provide in actuality and appearance a fair and impartial hearing.

WHEREFORE the undersigned Board Member respectfully requests that the Board vote to qualify Member Brinkman for participation in the captioned proceedings.

Respectfully submitted on January 26, 2010,

A handwritten signature in black ink, reading "James Brinkman". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

James Brinkman
Board Member

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia Finical,
as individuals,

Petitioners/Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division,

Respondent/Appellee

AQCB No. 2009-7

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NOTICE OF FILING OF FIRST AMENDED ADMINISTRATIVE RECORD INDEX AND
RELATED ADDITIONAL DOCUMENTS AND
SERVICE OF FIRST AMENDED INDEX AND ADDITIONAL DOCUMENTS ON PARTIES

On January 29, 2010, the Environmental Health Department Air Quality Division filed with the Air Quality Control Board Hearing Clerk the Notice of Filing of First Amended Administrative Record and the following additional administrative records that inadvertently were omitted from the Administrative Record:

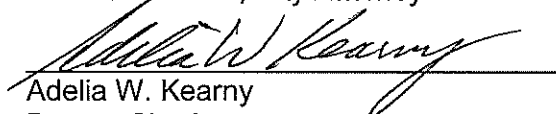
AR 025.1, p. 0103.1: Attachments to AR 025, including AP 42, Section 3.2.1, Paved Roads, which also is available at the Environmental Protection Agency web site

AR 237.1, p. 0903.1: same as AR 237, but color photocopy of all pages

AR 246.1, p. 0996.1: 9/15/09 final memo to permit file, enforcement file (6/19/09 draft of memo is at AR 128, p. 0450, and AR 191, p. 0732)

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney



Adelia W. Kearny
Deputy City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4530
akearny@cabq.gov

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2010, the original and nine copies of the Notice and the related additional administrative records were filed with the Hearing Clerk and an additional hard copy was delivered to the Hearing Clerk for forwarding to the Hearing Clerk as agreed:


Bill Grantham, Esq., AQCB Legal Counsel
and Hearing Officer
c/o Janice Wright, Hearing Clerk
Environmental Health Department
1 Civic Plaza NW
City-County Government Center
3rd Floor, Room 3023
Albuquerque, NM 87102

I also certify that on January 29, 2010, a copy of the Notice and the related additional administrative records were mailed and electronically mailed to:

Jonathan M. Block
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505-4074
Office: 1-(505) 989-9022 x 22
jblock@nmelc.org
Attorney for Petitioners

Adam T. DeVoe
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street
Suite 2200
Denver, CO 80202-4432
adevoe@bhfs.com
Attorney for American Cement Corporation

By:


Adelia W. Kearny, Deputy City Attorney

| AMERICAN CEMENT 1ST AMENDED ADMIN. RECORD INDEX
Re Applic. for 3d modification to Air Quality Permit #0902 (tracking #0902-M3)
Facility CDS #35/001/00012, 4702 Carlton NW , ABQ, NM
(adding AR 25.1, AR 237.1, AR 246.1) | | |
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| Includes all docs in AQD Permit file through the lt to participants in permitting process | | |
| This permitting action is subject to: | | |
| New Mexico Air Quality Control Act, NMSA 74-2-1, <i>et seq.</i> | | |
| City of Alb. Joint Air Quality Control Board Ordinance, 9-5-1-1 <i>et seq</i> ROA 1994 | | |
| Air Quality Regulations for Albuquerque and Bernalillo County, adopted by the Albuquerque-Bernalillo County Air Quality Control Board, including 20.11.41 NMAC, 20.11.1 NMAC and 20.11.2 NMAC | | |
| Admin Record Doc # | Sequential (Bate stamp) page # | Document description |
| AR 001 | 0001 | 2/6/09 11:31 p.m. e-mail to Kearny/CoA Legal and Eyerman/AQD from Tavarez/AQD, Subj: RE: Need info re GCC/Am Cement permit mod tele conf Fri 2/13. 2/6/09 11:31 e-mail is attached to: 2/6/09 3:01 p.m. e-mail to Tavarez/AQD and Eyerman/AQD from Kearny/CoA Legal, Subj: Need info re GCC/Am Cement permit mod tel conf Fri 2/13 |
| AR 002 | 0002 | Photocopy 2/20/09 GCC Rio Grande, Inc. permit application fee check and City of ABQ receipt |
| AR 003 | 0003 | 2/25/09 Transmittal lt. to Tavarez/AQD from Choquette/Trinity Consultants |
| AR 004 | 0004 | 2/25/09 American Cement Corporation Application for Minor Source Air Quality Permit Modification #3 to Permit No. 0902-M1 – received 2/26/09. American Cement Consultant's modeling CD and AQD Modeling Review CD are at AR 028. (application by prior owner for modification M-2 had been withdrawn) |
| AR 005 | 0059 | Sample draft Air Quality Authority-to-Construct Permit No. 0902-M2 submitted by American Cement with Application for M3. Was attached to 3/2/09 3:34 p.m. e-mail (see AR 7). |
| AR 006 | 0070 | 2/27/09 Permit Application Tracking Form for proposed Permit Number 0902-M3 |
| AR 007 | 0071 | 3/2/09 3:34 p.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, Subj: Application Page and Draft Permit attaching replacement application page. |
| AR 008 | 0073 | 3/12/09 4:04 p.m. e-mail from Eyerman/AQD to |

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| | | Choquette/Trinity Consultants, Subj: Authority-to-Construction (sic) Permit Modification Review – American Cement. Request for additional info from Am Cement consultant. |
| AR 009 | 0074 | 3/13/09 9:56 a.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construct Permit Modification Review – American Cement. Responses. 3/13/09 9:56 a.m. e-mail is attached to: 3/12/09 5:03 pm e-mail to Choquette/Trinity Consultants from Eyerman/AQD, Subj: Authority-to-Construct Permit Modification Review- American Cement |
| AR 010 | 0077 | 3/13/09 12:24 p.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement. With Whirl Air Flow Statement.pdf attached. 3/13/09 12:24 p.m. e-mail is attached to: 3/12/09 5:03 p.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Roark/GCC, Subj: Authority-to-Construction Permit Modification – American Cement |
| AR 011 | 0079 | 3/16/09 9:52 a.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Roark/GCC, from Eyerman/AQD, Subj: RE: Authority-to-Construction Permit Modification Review – Am Cement. Question about origin of ratio data. Am Cement. 3/16/09 9:52 a.m. e-mail is attached to 3/13/09 9:56 am e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification Review- Am Cement GCC with Whirl Air Flow Statement.pdf attached. 3/13/09 9:56 am e-mail is attached to 3/12/09 5:03 p.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Roark/GCC, Subj: Authority-to-Construction Permit Modification – American Cement (at AR 10) |
| AR 012 | 0080 | 3/19/09 Phone Record to Permit File for American Cement #0902-M3 from Eyerman/AQD Subject: Phone message with Vern Choquette, Principal Consultant, Trinity Consultants re PM2.5 & TSP ratios. Tables 11.6.2 & 11.6-5 attached |
| AR 013 | 0083 | 3/19/09 9:24 a.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit |

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| | | Modification Review – American Cement, GCC with two-page AP-42 Background Document.pdf attached. 3/19/09 9:24 a.m. e-mail is attached to 3/16/09 10:50 a.m. e-mail to Choquette/Trinity Consultants from Eyerman, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement |
| AR 014 | 0086 | 3/19/09 1:20 p.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement, informing application is complete. 3/19/09 1:20 p.m. e-mail is attached to 3/19/09 9:24 a.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement, with AP-42 Background Document.pdf attached. 3/19 9:24 am e-mail is attached to 3/16/09 10:50 a.m. e-mail to Choquette/Trinity Consultants from Eyerman, cc Roark/GCC, Subj: Re: Authority-to-Construction Permit Modification – American Cement |
| AR 015 | 0087 | Public Notice of proposed Modification to Air Quality Certificate of Registration and Authority-to-Construct Permit #0902-M1 for American Cement Corporation w/ description, proposed maximum air pollution emission date, procedure, timelines, contact info, etc. |
| AR 016 | 0088 | 3/23/09 Lt to Benavidez/Monkbridge Gardens NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines. Related return receipt info on second page |
| AR 017 | 0090 | 3/23/09 Lt to Warrick/North Edith Commercial Corridor Assoc. from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines. Related return receipt info on second page |
| AR 018 | 0092 | 3/23/09 Lt to Silfer/Greater Gardner NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines. Related return receipt info on second page |
| AR 019 | 0094 | 3/23/09 Lt to Cantrup/American Cement from Eyerman/AQD, Re App No. 00902-M3 AmCement. App. deemed administratively complete. Info re public comment period. Enclosing public notice. |

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| | | Summarizing procedure. Related return receipt info on second page |
| AR 020 | 0096 | 3/23/09 Proof of March 23, 2009 Albuquerque Journal publication of public notice of proposed Mod of Am Cement Permit 0902-M1 with clipping attached |
| AR 021 | 0097 | 3/23/09 Memo to Stonesifer/AQD from Eyerman/AQD: Request for Air Quality Dispersion modeling summary |
| AR 022 | 0098 | 3/26/09 3:06 p.m. e-mail to Soladay/EHD from Tavarez/AQD, cc Liberatore/AQD, Rocha/AQD, Eyerman/AQD, Subj: FW: Media Clearance. 3/26/09 3:06 p.m. e-mail is attached to 3/26/09 10:05 a.m. e-mail to Tavarez/AQD from Gutierrez/AQD, Subj: Media Clearance |
| AR 023 | 0099 | 3/27/09 10:15 a.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Stonesifer/AQD, Subj: FW: Authority-to-Construction Permit Modification Review – American Cement. 3/27/09 10:15 a.m. e-mail is attached to 3/19/09 1:20 p.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement, and 3/19/09 9:24 a.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC with AP-42 Background Document.pdf attached, Subj: Re: Authority-to-Construction Permit Modification Review – American Cement. |
| AR 024 | 0100 | 3/27/09 1:36 p.m. e-mail to Eyerman/AQD from Choquette/Trinity Consultants, cc Roark/GCC, Subj: Re: Fw: Authority-to-Construction Permit Modification Review – American Cement, with Revised Controlled Tablev2.pdf attached (see second page). 3/27/09 1:36 p.m. e-mail is attached to: 3/27/09 11:14 a.m. e-mail to Choquette/Trinity Consultants from Eyerman/AQD, cc Stonesifer/AQD, Subj: Fw: Authority-to-Construction Permit Modification Review – American, re 0.6 Texas factor and app table |
| AR 025 | 0102 | 3/27/09 Lt Stonesifer/AQD from Choquette/Trinity Consultants Re Am Cement ...Mod-additional Dispersion Modeling Data, providing additional dispersion modeling data for American Cement Corp Air Permit No. 0902-M1 Modification |
| AR 025.1 | 0103.1 | Attachments to AR 025: AP 42, Sec. 13.2.1, Paved Roads; Emission Calculations for Holly Asphalt haul rd; proposed permit modification M3 Pg 6-3 corrected |
| AR 026 | 0104 | City of Albuquerque Env. Health Dept Air Quality |

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| | | Division Modeling Review Checklist |
| AR 027 | 0105 | CoA EHD AQD Peer review checklist |
| AR 028 | 0106 | 3/30/09 Interoffice Memo to Eyerman/AQD from Stonesifer/AQD, Subj: Review of model for American Cement Corporation with Grupo Cementos American Cement Facility Modeling Files Trinity Consultants CD February 2009 and AQD Review of Model submitted for American Cement 0902-M3 CD (photocopy of 2 CDs and two original CDs) |
| AR 029 | 0119 | 3/31/09 form Request to Inspect Public Records from Silfer/Greater Gardner NA |
| AR 030 | 0120 | 4/2/09 11:37 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD informing records ready for review |
| AR 031 | 0121 | 4/7/09 Lt to Eyerman/AQD from Gatwood requesting Public Info Hearing (received 4/9/09). Envelope included at pg. 2. |
| AR 032 | 0123 | 4/8/09 Eyerman/AQD handwritten meeting notes from meeting with Roark/GCC regarding American Cement air quality permit modification |
| AR 033 | 0124 | 4/9/09 1:16 p.m. e-mail to Kearny/CoA Legal and Eyerman/AQD from Tavarez/AQD, Subj: Fw: American Cement permit questions. 4/9/09 1:16 p.m. e-mail is attached to 4/9/09 1:14 p.m. e-mail to McCormack/Weekly Alibi from Tavarez/AQD, Subj: Re: American Cement permit questions, attached to 4/8/09 2:54 p.m. e-mail to Tavarez/AQD from McCormack/Weekly Alibi, Subj: American Cement permit questions. |
| AR 034 | 0127 | 4/15/09 Lt to Eyerman/AQD from Kalwaic Requesting Public Info Hearing. Received 4/16/09. Envelope is attached as second pg. |
| AR 035 | 0129 | 4/20/09 4:24 p.m. e-mail to Kearny/CoA Legal and Eyerman/AQD from Tavarez/AQD, Subj: Fw: Couple of more follow up questions. 4/20/09 4:24 p.m. e-mail is attached to: 4/20/09 4:24 p.m. e-mail to McCormack/Weekly Alibi from Tavarez/AQD, Subj: Fw: Couple of more follow up questions; 4/20/09 4:07 p.m. e-mail to McCormack/Weekly Alibi, Subj: Re: Couple more follow up questions, and 4/20/09 2:56 p.m. e-mail to Tavarez/AQD from McCormack/Weekly Alibi, Subj: Re: Couple more follow up questions. |
| AR 036 | 0131 | 4/22/09 Lt to Soladay/AEHD from Senator Feldman requesting Public Info hearing |

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| AR 037 | 0132 | 4/27/09 1:12 pm e-mail to Eyerman/AQD from Tavarez/AQD, Subj: Ltr fr Sen. Feldman ar AQ A to C Permit 902-M3 for Am Cement, which is attached to 4/27/09 9:33 a.m. e-mail to Tavarez/AQD etc., fr. Munoz-Romero/AEHD |
| AR 038 | 0133 | 4/28/09 Lt to Eyerman/AQD from Catechis/North Valley Coalition requesting Public Info hearing. Received 5/1/09. Envelope is attached as second pg. |
| AR 039 | 0135 | 4/29/09 Postcard to AQD from Schrader Objecting to increased operation. Received 4/30/09 |
| AR 040 | 0136 | 4/29/09 2:28pm 311 call from Schrader strongly opposing |
| AR 041 | 0137 | Newscity Cement Déjà Vu - Neighbors face increased pollution from a cement transfer station—again by Simon McCormack, Weekly Alibi, V. 18 No. 18, April 30 – May 6, 2009 |
| AR 042 | 0138 | 5/1/09 Lt to Soladay/AEHD from Mah opposing plant expansion Received 5/5/09. Envelope is attached as second pg. |
| AR 043 | 0140 | 5/2/09 Lt to Soladay/AEHD from Karpinski requesting Public Info hearing. Received 5/5/09. Envelope is attached as second pg. |
| AR 044 | 0143 | 5/3/09 Lt to Eyerman/AQD from Sandoval/Near North Valley NA requesting Public Info hearing. Received 5/5/09. |
| AR 045 | 0145 | 5/5/09 Lt to Soladay/AEHD from Suiter/Albuquerque Museum Foundation requesting Public Info hearing. Received 5/7/09 |
| AR 046 | 0147 | 5/6/09 Lt to Soladay/AEHD from Blackwood/Los Griegos NA requesting Public Info hearing. Received 5/11/09 |
| AR 047 | 0149 | 5/6/09 Lt to Soladay/AEHD from Bassinger objecting to requested expansion of hrs of operation. Received 5/11/09 Envelope is attached as second pg. |
| AR 048 | 0151 | 5/6/09 Lt to Soladay/AEHD from Silfer/Greater Gardner NA, Request for public hearing. Received 5/11/09. Envelope is attached as 3d pg. |
| AR 049 | 0154 | Postcard to Air Quality Board from Cross |

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| | | requesting denying of permit. Postmarked 5/7/09 |
| AR 050 | 0155 | 5/6/09 Lt to Soladay/AEHD from Finical requesting Public Info hearing. Received 5/11/09. Envelope is attached as second pg. |
| AR 051 | 0157 | 5/7/09 Lt to Soladay/AEHD from Kellett/Greater Garnder NA requesting Public Info hearing. Received 5/11/09. Envelope is attached as 3d pg. |
| AR 052 | 0160 | 5/7/09 Lt to Soladay/AEHD from Benavidez/Monkbridge NA requesting Public Info hearing. Received 5/11/09. Envelope is attached as 3d pg. |
| AR 053 | 0165 | 5/7/09 Lt to Senator Feldman from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 054 | 0169 | 5/7/09 Lt to Gatwood from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached |
| AR 055 | 0170 | 5/7/09 Lt to Catechis/North Valley Coalition from Soladay/AEHD regarding granting of Public Info hearing |
| AR 056 | 0174 | 5/7/09 Lt to Kalwaic from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 057 | 0178 | 5/7/09 Lt to Karpinski from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 058 | 0182 | 5/7/09 Lt to Sandoval/Near North Valley NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 059 | 0184 | 5/7/09 Lt to Suiter/Albuquerque Museum Foundation from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 060 | 0187 | 5/7/09 Memo to Soladay/AEHD through Tavarez/AQD from Eyerman/AQD re request for and approval of request for 90-day extension for permit decision deadline (because of Public Info Hearing) |
| AR 061 | 0188 | 5/8/09 CoA 311 CRM report taken from Wrinkle by Duran/AQD requesting to be notified about when the hearing would be taking place. Two pages. |

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| AR 062 | 0193 | 5/11/09 Lt to Finical from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 063 | 0197 | 5/11/09 Lt to Silfer/Greater Gardner NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 064 | 0201 | 5/11/09 Lt to Benavidez/Monkbridge NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 065 | 0205 | 5/11/09 Lt to Blackwood/Los Griegos NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 066 | 0209 | 5/11/09 Lt to Kellett/Greater Gardner NA from Soladay/AEHD regarding granting of Public Info Hearing. Return receipt attached. |
| AR 067 | 0210 | 5/18/09 12:13 p.m. e-mail to Amend/AQD from Tavarez/AQD regarding adding Ms. Talia Sledge w/ Alvarado Gardens NA to list to be notified of American Cement Public Info Hearing |
| AR 068 | 0211 | Map and List of residences receiving direct notification of American Cement Public Info Hearing. Three pages. |
| AR 069 | 0216 | 5/19/09 2:39 p.m. e-mail to Young from Eyerman/AQD, Subj: Application and info for American Cement permit modification 0902-M3 and separate page w/ 4/23/09 emails 12:21 p.m. and 8:19 a.m. to and from Tavarez/AQD and Young |
| AR 070 | 0218 | 5/20/09 4:01 p.m. e-mail to Amend/AQD from Eyerman/AQD, Subj: Contact Info |
| AR 071 | 0219 | 5/27/09 3:41 p.m. e-mail to Duran/AQD from Suiter/Albuquerque Museum Foundation, Subj: Re: Request To Inspect Public Records Form |
| AR 072 | 0220 | 5/27/09 Request #1 to inspect Public Records from Suiter/Albuquerque Museum Foundation |
| AR 073 | 0221 | 5/27/09 5:09 p.m. e-mail to Duran/AQD from Suiter/Albuquerque Museum Foundation, Subj: Re: Request To Inspect Public Records Form |
| AR 074 | 0222 | 6/27/09 Request #2 to inspect Public Records from Suiter/Albuquerque Museum Foundation |

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| AR 075 | 0223 | 8/28/09 1:41 p.m. e-mail to Armijo/AQD from Rocha/AQD, cc Gutierrez/AQD, Candelaria/AEHD, Reyes/AQD, Eyerman/AQD, Subj: Re: Request to Inspect Public Records. 5/28/09 1:41 p.m. e-mail is attached to: 5/28/09 12:46 p.m. e-mail to zephyr e-mail address (Suiter/Albuquerque Museum Foundation) from Armijo/AQD, cc Rocha/AQD, Gutierrez/AQD, Candelaria/AEHD, Subj: Request to Inspect Public Records. |
| AR 076 | 0224 | 5/28/09 5:34 p.m. e-mail to Eyerman/AQD fr. Choquette/Trinity Consultants cc Roark/GCC, Subj: Re: Question on meaning of "cement additive" in permit. 5/28 5:34 e-mail is attached to 5/27 4:00 pm e-mail to Choquette from Eyerman re (same) |
| AR 077 | 0225 | 5/29/09 3:24 p.m. e-mail to Eyerman/AQD from Roark/GCC, Subj: American Cement, re new owner employees |
| AR 078 | 0226 | 6/1/09 Lt to Concerned Citizens from Tavarez/AQD re 6/23/09 Public Info hearing with Public Information Hearing flyer enclosed |
| AR 079 | 0226 | Mailing list for 6/1/09 Lt to Concerned Citizens from Tavarez/AQD-6/23/09 Public Info hearing |
| AR 080 | 0234 | Returned Lts for 6/1/09 Lt to Concerned Citizens from Tavarez/AQD-6/23/09 Public Info hearing |
| AR 081 | 0243 | 6/2/09 Request to inspect Public Records from Silfer/Greater Gardner NA |
| AR 082 | 0244 | 6/4/09 9:56 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD, Subj: Request to Inspect Public Records |
| AR 083 | 0245 | 6/4/09 Fax to Janice Amend/AQD from Gomez/Albuquerque Publishing-proof of publication, charges. Three pages. |
| AR 084 | 0248 | 6/7/09 Proof of June 7 publication in Alb. Journal of public notice of 6/23/09 Public Information hearing |
| AR 085 | 0250 | 8 1/2" x 11" English language 8 1/2" x 11" public notice of 6/23/09 Public Information hearing |
| AR 086 | 0252 | Spanish language 8 1/2" x 11" public notice of 6/23/09 Public Information Hearing |
| AR 087 | 0254 | 6/10/09 11:24 a.m. e-mail to Catechis/North Valley Coalition from Eyerman/AQD, cc Amend/AQD, w/ |

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| | | returned 5/7/09 Public Info Hr approval lt from Soladay/EHD attached. |
| AR 088 | 0258 | 6/12/09 12:30 p.m. e-mail to Silfer/Greater Gardner NA from Tavarez/AQD, Subj: Re: Questions re: 6/23 American Cement hearing. 6/12/09 12:30 p.m. e-mail is attached to: 6/11/09 9:31 a.m. e-mail to Amend/AQD and Tavarez/AQD from Silfer/Greater Gardner NA, Subj: Questions re: 6/23 American Cement hearing. "The Division will incorporate in permit app file #0902-M3 the entire record from the 3/18/08 Public Info Hr"... |
| AR 089 | 0260 | (Re withdrawn M-2 application:) 3/18/08 Public Info hearing attendance registry |
| AR 090 | 0271 | (Re withdrawn M-2 application:) 3/18/08 Public Info hearing audio tapes (photocopy of 5 cassette tapes and 5 original cassette tapes) |
| AR 091 | 0276 | (Re withdrawn M-2 application:) First public notice re Modification to Air Quality Certificate of Registration and Authority-to-Construct Permit #0902-M2 for American Cement Corporation-Alb Journal-published 6/18/07 |
| AR 092 | 0279 | (Re withdrawn M-2 application:) Amended public notice for Authority-to-Construct Permit #0992-M2 for American Cement Corporation - Alb Journal |
| AR 093 | 0280 | (Re withdrawn M-2 application:) 6/15/07 Proof of 6/15/07 publication of public notice Re: permit application with description |
| AR 094 | 0282 | (Re withdrawn M-2 application:) 8/1/07 Lt to Stantistevan/AEHD and Troutman/AQD from Silfer/Greater Gardner NA -request for Public Info hearing on Permit No. 0902-M2 for American Cement |
| AR 095 | 0284 | (Re withdrawn M-2 application:) 1/16/08 Lt to Silfer/Greater Gardner NA from Soladay/AEHD-informing requested Public Info Hearing approved |
| AR 096 | 0285 | (Re withdrawn M-2 application:) Photocopies of 6/07 & 7/07 return receipts from public notice letters sent re Permit #0902-M2: ret. receipts from Silfer/Greater Gardner NA, Noyce/Monkbridge Gardens NA, Warrick/North Edith Commercial Corridor Assoc. |

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| AR 097 | 0206 | (Re withdrawn M-2 application:) 1/16/08 Memo from Troutman/AQD to Soladay/AEHD through Tavaréz/AQD, Albrecht/AQD, Rocha/AQD requesting 90-day extension for permit decision deadline for Permit #0902-M2 & documenting approval of Public Information Hearing. |
| AR 098 | 0207 | (Re withdrawn M-2 application:) 2/15/08 Lt to Residents from Albrecht/AQD-notification of 3/18/08 public information hearing at Los Griegos Community Center for Authority-to-Construct Air Quality Permit Modification Application #0902-M2 for American Cement |
| AR 099 | 0208 | (Re withdrawn M-2 application:) English language 8 1/2" x 11" flyer/notice of 3/18/08 Public Info Hearing |
| AR 100 | 0210 | (Re withdrawn M-2 application:) Spanish language 8 1/2" x 11" flyer/notice of 3/18/08 Public Info Hearing |
| AR 101 | 0212 | (Re withdrawn M-2 application:) 2/19/08 Clipped Legal Notice for 3/18/08 Public Info Hearing in English and Spanish |
| AR 102 | 0215 | (Re withdrawn M-2 application:) 2/15/08 Lt to "Agency" from Albrecht/AQD-providing notification of community concerns and asking agency to attend 3/18/08 Public Info hearing. |
| AR 103 | 0216 | (Re withdrawn M-2 application:) 10/11/2007 List of State/County Agencies |
| AR 104 | 0218 | (Re withdrawn M-2 application:) Handwritten note from 3/18/2008 Public Info hearing requesting to call upon Jim Brinkman |
| AR 105 | 0300 | (Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant - Lung Cancer, Cardiopulmonary Mortality and Long-term Exposure to Fine Particulate Air Pollution, March 6, 2002 Journal of American Medical Association, Vol. 287, No. 9. |
| AR 106 | 0310 | (Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant -- Assessing Confounding, Effect Modification, and Thresholds in the Association between Ambient Particles and Daily Deaths, June 2000, |

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| | | Environmental Health Perspectives, Vol. 108, No. 6. |
| AR 107 | 0316 | (Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant - Fine Particulate Air Pollution and Mortality in 20 U.S. Cities 1987 – 1994, December 14, 2000, The New England Journal Medicine, Vol. 343, No. 24. |
| AR 108 | 0324 | (Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant - -Fine Particulates and Coarse Particles: Concentration Relationships Relevant to Epidemiologic Studies, Journal of the Air & Waste Management Association (1995) 47 1238-49 D '97 |
| AR 109 | 0335 | (Re withdrawn M-2 application:) 3/18/08 Public Info hearing exhibit submitted by participant - PM Standards Revision – 2006 from the federal Environmental Protection Agency website: http://epa.gov/pm/naaqsrev2006.html . |
| AR 110 | 0343 | (Re withdrawn M-2 application:) 3/18/08 Public Info hearing handwritten note that Debora Sponsel-Jolley wants to testify; and
3/18/08 Public Info hearing handwritten note from Sharon Gee that her concerns have been discussed and withdraws her request to speak |
| AR 111 | 0344 | (Re withdrawn M-2 application:) 3/17/08 It to Madrid/GE Environmental from Harwick Transportation Group Re Am Cement Facility- Alb, NM. inquiry about truck traffic impacts, Griegos Rd minor urban arterial , new trips. |
| AR 112 | 0345 | (Re withdrawn M-2 application:) 3/18/08 Public Info Hearing - hearing officer statement |
| AR 113 | 0354 | (Re withdrawn M-2 application:) 3/18/08 Tavaréz/AQD handwritten notes from 3/18/08 Public Info hearing, 9 pages |
| AR 114 | 0363 | list of Bern Co and State of NM List of State/County Agencies available to Public Information Hearing Participants |
| AR 115 | 0364 | (Re withdrawn M-2 application:) 3/15/08 fax confirmation providing notice to State/County agencies. |
| AR 116 | 0401 | (Re withdrawn M-2 application:) 2/15/08 letter to |

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| | | "Resident" from Albrecht/AQD Re: Public Info Hr – Authority-to-Construct AQ Permit Mod App #0902-M2 for Am. Cement re 3/18/08 Public Info Hr at Los Griegos Center |
| AR 117 | 0402 | (Re withdrawn M-2 application:) Memo to Albrecht/AQD from Sims/AQD – Re: 3/21/08 Assignment: American Cement, Neighborhood Environmental Assessment follow up to 3/18/08 Public Information Hearing with attached AQD Citizen Contact forms and map. |
| AR 118 | 0413 | 6/16/09 Public Information Request to inspect Public Records from Flamm |
| AR 119 | 0414 | 6/17/09 9:15 a.m. e-mail to Eyerman/AQD from Suiter/Albuquerque Museum Foundation, Subj: Re: #0902-M3 – request. 6/17/09 9:15 a.m. e-mail is attached to: 6/16/09 11:33 PM e-mail to Gutierrez/AQD from Suiter/Albuquerque Museum Foundation, Subj: #0902-M3 – request. |
| AR 120 | 0415 | 6/17/09 Public Information Request to Inspect Public Records from Silfer/Greater Gardner NA |
| AR 121 | 0416 | 6/18/09 Lt to Eyerman/AQD from Sandoval/Near North Valley NA – Air Quality Authority-to-Construct Permit No. 0902-M3 for the American Cement facility at 4702 Carlton St NW |
| AR 122 | 0418 | (re M-3 6/23/09 Public Info Hr.): 6/19/09 2:43 p.m. e-mail to Eyerman/AQD from Stebleton/AQD, Subj: Fw: Air Quality Hearing June 23. 6/19/09 2:43 p.m. e-mail is attached to 6/19/09 2:04 p.m. e-mail to EHD, AQD from O'Brien, Subj: Air Quality Hearing June 23. |
| AR 123 | 0419 | (re M-3 6/23/09 Public Info Hr.): 6/20/09 Flamm Letter to the Editor – Westside Edition of Albuquerque Journal |
| AR 124 | 0420 | (re M-3 6/23/09 Public Info Hr.): 6/22/09 4:52 p.m. e-mail to Tavarez/AQD, Kearny/CoA Legal, and Rocha/AQD from Eyerman/AQD, Subj: For what it's worth... reYoutube & 12' fence |
| AR 125 | 0421 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing attendance registry |
| AR 126 | 0438 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info Hr. Audio CD (photocopy of CD & one original CD) |

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| AR 127 | 0440 | (re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info Hr. AQD Exhibit – Draft Air Quality Authority-To-Construct Permit No. 0902-M3 |
| AR 128 | 0450 | (re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info Hr. AQD Exhibit – Draft 6/19/09 Memo to Permit File, Enforcement File from Eyerman/AQD, Subj Am Cement Permit app. No. 0902-M3; Air Quality Division review of Authority-To-Construct Permit M3 application |
| AR 129 | 0462 | (re M-3 6/23/09 Public Info Hr.:) Spanish language notice re proposed Am Cement app for AQ modification #0902M3 & 6/23/09 Public Info Hr |
| AR 130 | 0464 | (re M-3 6/23/09 Public Info Hr.:) English language notice re proposed Am Cement app for AQ modification #0902-M3 & 6/23/09 Public Info Hr |
| AR 131 | 0466 | (re M-3 6/23/09 Public Info Hr.:) Public Notice of Am Cement proposed modification to AQ Authority to Construct Permit #0902-M1 w/ max air pollution emissions info, procedure, contact info, etc. (Albuquerque Journal) |
| AR 132 | 0467 | (re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info Hr. AQD Exhibit: 6/1/09 Lt to Concern Citizen from Tavarez/AQD – Public Info Hearing – Authority-to-Construct Air Quality Permit Modification Application #0902-M3 for American Cement |
| AR 133 | 0468 | (re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info Hr. AQD Exhibit: 5/27/09 Request to Inspect/ Inspect Public Records from Suiter/Albuquerque Museum Foundation |
| AR 134 | 0469 | (re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info hearing AQD Exhibit: 5/7/09 Memo to Soladay/AEHD from Eyerman/AQD through Tavarez/AQD approving request for 90-day extension for permit decision deadline (Public Info hearing) |
| AR 135 | 0470 | (re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info hearing AQD Exhibit: 5/7/09 Lt to Senator Feldman from Soladay/AEHD regarding approval of request for Public Info Hearing |
| AR 136 | 0471 | (re M-3 6/23/09 Public Info Hr.:) 6/23/09 Public Info hearing AQD Exhibit: 4/22/09 Lt to Soladay/AEHD |

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| | | from Senator Feldman requesting Public Info hearing |
| AR 137 | 0472 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit: 3/23/09 Lt to Benavidez/Monkbridge Gardens NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines w/ return receipt |
| AR 138 | 0473 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit: 3/23/09 Lt to Warrick/North Edith Commercial Corridor Assoc. from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines w/ return receipt |
| AR 139 | 0474 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit: 3/23/09 Lt to Silfer/Greater Gardner NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines w/ return receipt |
| AR 140 | 0475 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit - 3/23/09 Lt to Cantrup/American Cement from Eyerman/AQD - App. Deemed administratively complete. Stating public comment. Enclosing public notice. Summarizing procedure. |
| AR 141 | 0476 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing AQD Exhibit - 8 1/2" x 11" flyer/notice of 6/23/09 Public Info Hearing |
| AR 142 | 0477 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Exhibit by participant - June 2009 GCC Rio Grande - "Cementing Albuquerque's future" submitted |
| AR 143 | 0478 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Exhibit submitted by Albuquerque Museum Foundation: 6/23/09 Lt to Tavarez/AQD from Kleinfeld/Albuquerque Museum Foundation, Subj: Proposed Air Quality Authority-to-Construct Permit #0902-M3, Batten estate, w/ attached two US Dept of Interior Natl Park Service Natl Register of Historic Places Inventory-Nomination forms |
| AR 144 | 0538 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Exhibit submitted by Senator Feldman: |

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| | | 6/23/09 Lt to Air Quality Division from Senator Feldman Re: Authority to Construct Air Quality Permit Modification Application #0902-M3 for Grupo Cementos de Chihuahua w/ map: Hospitalizations for Asthma by zip code; map: Chronic Lower Respiratory Disease by Bern Co Census Tracts; map Asthma Mortality "Hea(l)t(h) Community Boundaries |
| AR 145 | 0544 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Exhibit submitted by Jill Gatwood: written statement read by Gatwood. |
| AR 146 | 0547 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Exhibit submitted by Perez/Rio Grande Boulevard NA: 6/22/09 Lt to Air Quality Division from Perez/Rio Grande Boulevard NA |
| AR 147 | 0549 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Public Info hearing Schematic for room setup at Conv. Center |
| AR 148 | 0550 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Eyerman /AQD handwritten notes from 6/23/09 Public Info hearing |
| AR 149 | 0569 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Reyes /AQD handwritten notes from 6/23/09 Public Info hearing |
| AR 150 | 0578 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Rocha /AQD handwritten notes from 6/23/09 Public Info hearing |
| AR 151 | 0590 | (re M-3 6/23/09 Public Info Hr.): 6/23/09 Tavarez /AQD handwritten notes from 6/23/09 Public Info hearing |
| AR 152 | 0602 | (re M-3 6/23/09 Public Info Hr.): 6/24/09 New Mexico Independent article, "ABQ's American Cement air quality hearing – to be continued" by Gwyneth Doland |
| AR 153 | 0604 | (re M-3 6/23/09 Public Info Hr.): 6/24/09 2:44 pm e-mail to Tavarez/AQD et al from Zeigler/AQD, Subject: Am Cement Audio File from 6/23/09 Am Cement hr. |
| AR 154 | 0605 | (re M-3 6/23/09 Public Info Hr.): 6/25/09 Tavarez/AQD handwritten notes from Air Quality Division debriefing meeting on 6/23/09 Public Info hearing. |

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| AR 155 | 0606 | (re M-3 6/23/09 Public Info Hr.:) 6/25/09 12:51 p.m. e-mail to Suiter/Albuquerque Museum Foundation from Eyerman/AQD, cc Armijo/AQD and Gutierrez/AQD, Subj: Re: #0920-M3-request. Draft proposed M3 permit attached (AR 128) |
| AR 156 | 0607 | (re M-3 6/23/09 Public Info Hr.:) Memo to Tavaréz/AQD from Aragon/AQD – Re: 6/30/09 Assignment: American Cement, Neighborhood Environmental Assessment follow up to 6/23/09 Public Information Hearing with AQD Citizen Contact forms. |
| AR 157 | 0611 | (re M-3 6/23/09 Public Info Hr.:) Memo to Tavaréz/AQD from Sims/AQD – Re: 6/30/09 and 7/1/09 Assignment: American Cement, Neighborhood Environmental Assessment follow up to 6/23/09 Public Information Hearing with AQD Citizen Contact forms, map, photographs, and field notes |
| AR 158 | 0642 | (re M-3 6/23/09 Public Info Hr.:) 6/25/09 Westside Albuquerque Journal article, "Neighbors Protest Cement Plant Request" by Elaine Briseño. |
| AR 159 | 0646 | (re M-3 6/23/09 Public Info Hr.:) 6/27/09 Westside Albuquerque Journal article, "Cement Plant Request Needs Thorough Airing" in Opinion |
| AR 160 | 0648 | (re M-3 6/23/09 Public Info Hr.:) Weekly Alibi, V. 18 No. 27 July 2 – 8, 2009 "Stone Cold Reception" by Simon McCormack |
| AR 161 | 0649 | (re M-3 6/23/09 Public Info Hr.:) 7/11/09 Westside Albuquerque Journal article, "Expansion Could Take Our Clean Air" by Genny O'Herron |
| AR 162 | 0650 | 7/8/09 11:20 a.m. e-mail to Silfer/Greater Gardner NA, from Gutierrez/AQD, cc Eyerman/AQD and Armijo/AQD, Subj: Re: Request to Inspect Public Records. re setting up time to review documents. 7/8/09 11:20 a.m. e-mail is attached to: 7/1/09 9:29 a.m. e-mail to Silfer/Greater Gardner NA from Eyerman/AQD, Subj: Request to Inspect Public Records, and 7/1/09 8:22 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD, Subj: Request to Inspect Public Records. |
| AR 163 | 0652 | 7/8/09 12:28 a.m. e-mail to Gutierrez/AQD from Eyerman/AQD, cc Amend/AQD, Subj: Fw: |

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| | | American Cement Permit Modification Application 0902-M3. 7/8/09 12:28 a.m. e-mail is attached to: 7/8/09 11:32 a.m. e-mail to Eyerman/AQD fro64Amend/AQD, Subj: Fw: American Cement Permit Modification Application 0902-M3; and 7/3/09 11:23 a.m. e-mail to Mathews/Brownstein, Hyatt, Farber & Schreck from Young (Hr. Officer), cc Tavarez/AQD, Amend/AQD, and Kearny/CoA Legal, Subj: American Cement Permit Modification Application 0902-M3. |
| AR 164 | 0654 | 7/9/09 10:14 a.m. e-mail to Nieto/AQD and Eyerman/AQD from Amend/AQD, Subj: Fw: [Fwd: Continued American Cement Public Information Hearing Legal Ad]. 7/9/09 10:14 a.m. e-mail is attached to: 7/9/09 10:11 a.m. e-mail to Tavarez/AQD and Amend/AQD, from Silfer/Greater Gardner NA, cc Stebleton/AQD, Reyes/AQD, Rocha/AQD, Candelaria/AEHD, Kearny/CoA Legal, and Deichman, Subj: [Fwd: Continued American Cement Public Information Hearing Legal Ad] re Nat'l Night Out; and 7/9/09 9:06:41 e-mail to air-quality-announce@list.cabq.gov from Amend/AQD, Subj: Continued American Cement Public Information Hearing Legal Ad. on 8/4/09 at Indian Pueblo Cultural Center |
| AR 165 | 0656 | 7/9/09 10:50 a.m. e-mail to legals@abqpubco.com from Amend/AQD, cc Nieto/AQD and Eyerman/AQD, Subj: Continued American Cement Hearing Legal Ad (for 7/17/09 publication re continuation of Public Info Hr on 8/5/09 instead of 8/4/09) w/ text of Notice attached, including max air pollution emis info & contact info, etc. |
| AR 166 | 0662 | 7/9/09 3:20 p.m. e-mail to concerned citizens from Amend/AQD, cc Nieto/AQD, Eyerman/AQD, and Tavarez/AQD, Subj: Please Note Public Hearing Date Has Changed – attaching letter and flyer re continued American Cement Public Information Hearing |
| AR 167 | 0663 | 7/9/09 Lt to Concerned Citizen from Tavarez/AQD Re: Continued Public Information Hearing – Authority-to-Construct Air Quality Permit Modification Application #0902-M3 for American Cement – w/ info on 8/5/09 Public Info Hr at Indian Pueblo Cultural Center and returned letters |

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| AR 168 | 0675 | 7/9/09 3:27 p.m. e-mail to air-quality-announce@lists.cabq.gov from Amend/AQD, Subj: "Please Note, Public Hearing Date Has Changed—Continued American Cement Public Information Hearing Legal Ad" providing e-notice of continued Public Info Hr 8/5/09 w/ max air pollution emis info, contact info, etc. |
| AR 169 | 0677 | 7/10/09 11:42 a.m. e-mail to El Hispano Newspaper from Amend/AQD, cc Eyerman/AQD, Subj: Legal Ad for Continued American Cement Hearing—Attn: Sara Garcia w/ Spanish language Notice of continued Public Info Hr 8/5/09 w/ max air pollution emis info, contact info, etc. |
| AR 170 | 0680 | 7/10/09 2:03 p.m. e-mail to Rubin/Mountain Mahogany Community School from Eyerman/AQD, cc Genny and Tavarez/AQD, Subj: Re: air filter analysis. 7/10/09 2:03 p.m. e-mail is attached to: 7/6/09 5:01 p.m. e-mail to Eyerman/AQD and Genny from Rubin/Mountain Mahogany Community School, cc Genny, Subj: air filter analysis. |
| AR 171 | 0681 | 7/12/09 Proof of July 12 publication of public notice Re: 8/5/09 Continuation of Public Info hearing. |
| AR 172 | 0682 | 7/14/09 11:28 a.m. e-mail to Rocha/AQD, Nieto/AQD, Eyerman/AQD, Amend/AQD, Kearny/CoA Legal from Tavarez/AQD, Subj: Fw: Second American Cement air quality hearing scheduled – and rescheduled. 7/14/09 11:28 a.m. e-mail attached to 7/10/09 10:20 a.m. e-mail to Soladay/AEHD from Kennedy/AEHD, cc Tavarez/AQD, w/ article by Doland "Second American Cement air quality hearing scheduled – and rescheduled". |
| AR 173 | 0684 | 7/14/09 12:59 p.m. e-mail to Young (Hr. Officer) from Tavarez/AQD, cc Kearny/CoA Legal, Rocha/AQD, Nieto/AQD, Eyerman/AQD, and Amend/AQD, Subj: Fw: continuation NOT duplication, at American Cement public hearing. 7/14/09 12:59 p.m. e-mail is attached to: 7/14/09 12:55 p.m. e-mail to Kalwaic from Tavarez/AQD, Subj: Re: (same) ; and 7/13/09 10:03 a.m. e-mail to Tavarez/AQD from Kalwaic, Subj: (same) |
| AR 174 | 0686 | 7/14/09 4:28 p.m. e-mail to Silfer/Greater Gardner |

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| | | NA from Eyerman/AQD, cc Armijo/AQD, Subj: Re: Request to Inspect Public Records. 7/14/09 4:28 p.m. e-mail is attached to: 7/14/09 4:07 p.m. e-mail to Gutierrez/AQD from Silfer/Greater Gardner NA, cc Eyerman/AQD and Armijo/AQD, Subj: Re: (same); 7/1/09 9:29 a.m. e-mail to Silfer/Greater Gardner NA from Eyerman/AQD, cc Gutierrez/AQD, Subj: (same); and 7/1/09 8:22 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD, cc Tavarez/AQD, Stebleton/AQD, Reyes/AQD, Rocha/AQD, Candelaria/AEHD, Subj: (same). |
| AR 175 | 0468 | 7/15/09 8:57 a.m. e-mail to Suiter/Albuquerque Museum Foundation from Eyerman/AQD, cc Tavarez/AQD and Rocha/AQD, Subj: Re: #0902-M3 – request. 7/15 8:57 am e-mail is attached to 7/14/09 5:22 e-mail to Eyerman/AQD fr Suiter re requested hrs. of operation |
| AR 176 | 0689 | 7/15/09 11:28 a.m. e-mail to Silfer/Greater Gardner NA from Stonesifer/AQD, cc Eyerman/AQD and Rocha/AQD, Subj: American Cement's modeling files, as submitted to AQD, are attached. 7/15/09 11:28 a.m. e-mail is attached to: 7/15/09 11:00 a.m. e-mail to Stonesifer/AQD from Eyerman/AQD, Subj: Fw: Request to Inspect Public Records; 7/15/09 10:49 am e-mail to to Eyerman/AQD, cc Gutierrez/AQD and Armijo/AQD fr. Silfer, Subj: Re: (same); |
| AR 177 | 0690 | 7/15/09 11:43 a.m. e-mail to Silfer/Greater Gardner NA from Stonesifer/AQD, cc Eyerman/AQD and Rocha/AQD, Subj: Request to Inspect Public Records. 7/15/09 11:43 a.m. e-mail is attached to 7/15/09 11:00 am to Stonesifer/AQD from Eyerman/AQD re (same); 7/15/09 10:49 a.m. to Eyerman/AQD from Silfer/Greater Gardner NA, cc Gutierrez/AQD and Armijo/AQD, Subj: (same); 7/14/09 4:07 p.m. e-mail to Gutierrez/AQD from Silfer/Greater Gardner NA, cc Eyerman/AQD and Armijo/AQD, Subj: Re: (same); 7/1/09 9:29 a.m. e-mail to Silfer/Greater Gardner NA from Eyerman/AQD, cc Gutierrez/AQD, Subj: Re: (same); 7/1/09 8:22 a.m. e-mail to Silfer/Greater Gardner NA from Armijo/AQD, cc Tavarez/AQD, Stebleton/AQD, Reyes/AQD, Rocha/AQD and |

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| | | Candelaria/AEHD, Subj: (same) |
| AR 178 | 0693 | 7/15/09 12:08 pm e-mail to Silfer/Greater Gardner NA fr Stonesifer/AQD, Subj: Am Cement modeling files sent to you re proposed Permit 02-M3 |
| AR 179 | 0694 | 7/17/09 El Hispano News: Spanish language Public Notice of 8/5/09 Continuation of Public Info Hearing |
| AR 180 | 0695 | 7/27/2009 Westside Albuquerque Journal Article: "Cement-firm expansion hearing continues Aug. 5", by Elaine D. Briseno. |
| AR 181 | 0696 | 7/27/09 2:46 p.m. e-mail to Silfer/Greater Gardner NA from Tavarez/AQD, cc Amend/AQD, Kearny/CoA Legal, Nieto/AQD, Rocha/AQD, Eyerman/AQD, Subj: Re: 8/5 American Cement Hearing. 7/27/09 2:46 p.m. e-mail is attached to: 7/24/09 9:08 a.m. e-mail to Tavarez/AQD from Silfer/Greater Gardner NA, cc Amend/AQD, Kearny/CoA Legal, Nieto/AQD, Rocha/AQD, Eyerman/AQD, Subj: 8/5 American Cement hearing. |
| AR 182 | 0699 | 7/30/09 Lt to Soladay/AEHD from George and Katherine Pappas – regarding Authority-to-Construct Air Quality Permit Modification Application #0902-M3 for American Cement w/ 7/20/09 Alb journal article "Prenatal Pollution Harmful" and envelope to Tavarez attached |
| AR 183 | 0701 | 8/4/09 9:03 a.m. e-mail to Armijo/AQD from Kearny/CoA Legal, cc Rocha/AQD and Eyerman/AQD, Subj: Sen. Feldman request for draft American Cement permit. 8/4/09 9:03 a.m. e-mail is attached to: 8/4/09 7:30 a.m. e-mail to Kearny/CoA Legal from Armijo/AQD, Subj: Fw: Draft Permit for American Cement; and 8/3/09 2:03 p.m. e-mail to Senator Feldman from Armijo/AQD, cc Gutierrez/AQD, Candelaria/AEHD, Tavarez/AQD, Subj: Fw: (same) |
| AR 184 | 0702 | (re 8/5/09 continued Public Info. Hr.): 8/5/09 11:43 a.m. e-mail to (Hr Officer) Young from Nieto/AQD, cc Amend/AQD, Tavarez/AQD, Eyerman/AQD, Subj: American Cement hearing—City Councilor testimony. |
| AR 185 | 0703 | (re 8/5/09 continued Public Info. Hr.): 8/5/09 12:04 |

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| | | p.m. e-mail to Silfer/Greater Gardner NA and Eyerman/AQD from Tavaréz/AQD, Subj: Re: American Cement Post-hearing public comments. 8/5/09 12:04 p.m. e-mail is attached to: 8/5/09 9:27 a.m. e-mail to Tavaréz/AQD and Eyerman/AQD from Silfer/Greater Gardner NA, Subj: American Cement Post-hearing public comments. |
| AR 186 | 0704 | (re M3 8/5/09 continued Public Info. Hr.:) English language 8/5/09 Continued Public Info hearing flyer/notice |
| AR 187 | 0705 | (re M3 8/5/09 continued Public Info. Hr.:) Spanish language 8/5/09 Continued Public Info hearing flyer/notice |
| AR188 | 0706 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info Hr attendance registry |
| AR 189 | 0720 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info Hr -Audio DVD of PIH (photocopy of DVD and one original DVD) |
| AR 190 | 0722 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Draft proposed Air Quality Authority-To-Construct Permit No. 0902-M3 |
| AR 191 | 0732 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Draft 6/19/09 Memo to Permit File, Enforcement File from Eyerman/AQD re Air Quality Division's Review of Authority-To-Construct proposed Permit No. 0902-M3, |
| AR 192 | 0744 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Permitting Process Timeline: graphic |
| AR 193 | 0745 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Permitting Process Timeline: written description |
| AR 194 | 0746 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 6/24/09 10:40 a.m. e-mail to Eyerman/AQD from Suiter/Albuquerque Museum Foundation, Subj: #0902-M3 – request |

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| AR 195 | 0747 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 7/9/09 10:11 a.m. e-mail to Tavarez/AQD and Amend/AQD from Silfer/Greater Gardner NA, cc Stebleton/AQD, Reyes/AQD, Rocha/AQD, Candelaria/AEHD, Kearny/CoA Legal, Deichman, Subj: [Fwd: Continued American Cement Public Information Hearing Legal Ad] |
| AR 196 | 0748 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 4/22/09 Lt to Soladay/AEHD from Senator Feldman requesting Public Info Hearing |
| AR 197 | 0749 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 3/23/09 Lt to Cantrup/American Cement from Eyerman/AQD – App. Deemed administratively complete. Stating public comment. Enclosing public notice. Summarizing procedure. |
| AR 198 | 0750 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit – 5/7/09 Lt to Senator Feldman from Soladay/AEHD regarding approval of request for Public Info hearing w/ return receipt |
| AR 199 | 0751 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 7/9/09 Lt to Concerned Citizen from Tavarez/AQD – Continued Public Information Hearing – Authority-to-Construct Air Quality Permit Modification Application #0902-M3 for American Cement |
| AR 200 | 0752 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 3/23/09 Lt to Warrick/North Edith Commercial Corridor Assoc. from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines |
| AR 201 | 0753 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 3/23/09 Lt to Benavidez/Monkbridge Gardens NA from Eyerman/AQD describing the permit application process, enclosing public notice, stating public comment period and deadlines |
| AR 202 | 0754 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit – 3/23/09 Lt to Silfer/Greater Gardner NA from Eyerman/AQD describing the permit application |

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| | | process, enclosing public notice, stating public comment period and deadlines |
| AR 203 | 0755 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 5/7/09 Memo to Soladay/AEHD from Eyerman/AQD through Tavarez/AQD: request for & approval of request for 90-day extension of permit decision deadline because of Public Info Hearing) |
| AR 204 | 0756 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: American Cement Permitting Process Timeline |
| AR 205 | 0757 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Public Notice of proposed Modification to Air Quality Certificate of Registration and Authority-to-Construct Permit #0902-M1 for American Cement Corporation-includes max air pollution emissions, timelines, permit application availability, contact info, etc. |
| AR 206 | 0758 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: English language Notice of Continued Public Information Hearing for Proposed Authority To Construct Air Quality Permit Modification Application #0902-M3 for American Cement –includes max air pollution emissions, info on 8/4/09 PIH, permit application file availability, contact info, etc. |
| AR 207 | 0760 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Spanish language Notice of Continued Public Information Hearing for Proposed Authority To Construct Air Quality Permit Modification Application #0902-M3 for American Cement – includes max air pollution emissions, info on 8/4/09 PIH, permit application file availability, contact info, etc. |
| AR 208 | 0762 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Information - English language flyer/notice |
| AR 209 | 0763 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Information - Spanish language flyer/notice |
| AR 210 | 0764 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Scharmen: "Permitted Stationary Sources of Pollution Albuquerque, New Mexico" by Schamen |

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| | | NM Dept of Health |
| AR 211 | 0771 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit submitted by C Sax-Romney: photos of dust on automobile "July 2008 4448 3 rd St NW 87107" (3 photos) |
| AR 212 | 0774 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: Aug 4, 2009 Lt to Soladay/AEHD from Senator Feldman Re: Proposed Air Quality Authority to Construct Permit #0902-M3 |
| AR 213 | 0776 | (re M3 8/5/09 continued Public Info. Hr.:) Indian Pueblos Marketing -Facility Rentals/Banquet Division Contract dated 7/2/2009 (5 pages) |
| AR 214 | 0781 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Am Cement/GCC: Delta Toxicology Power Point Presentation slides: "Am Cement Hr 5 August 2009, Alb, NM" by Kelly/Delta Toxicology (13 two-sided pages) |
| AR 215 | 0806 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Benavidez/Monkbridge NA: Statement read by Benavidez/Monkbridge NA |
| AR 216 | 0809 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Alb. Museum Foundation: 7/29/09 Lt to Tavaréz/AQD from Kleinfeld/Albuquerque Museum Fdj.- Subject: Proposed Air Quality Authority-to-Construct Permit #0902-M3; Comments in addition to those made in our letter dated June 22, 2009. Lt. rec'd 8/5/09. Envelope attached. |
| AR 217 | 0813 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – Questions submitted by Blackwood/asked by Blackwood |
| AR 218 | 0814 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – Handwritten notes submitted by an unidentified concerned citizen. |
| AR 219 | 0816 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit submitted by participant: GCC of American Material Safety Data Sheet for Portland Cement |
| AR 220 | 0826 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Karpinski: written statement "Air Quality Hearing--- |

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| | | Grupo Chihuahua Cement Plant" |
| AR 221 | 0828 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Councilor O'Malley: August 5, 2009 It to Air Quality Division Director from Councilor O'Malley – Re: American Cement Company's application to the Air Quality Division for a modification to their existing Air Quality Permit #0902-M1 which would increase hours of operation |
| AR 222 | 0829 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit submitted by Am Cement/GCC: August 7, 2009 It to Tavarez./AQD from Kelly/Delta Toxicology Re: American Cement Permit Application 0902-M1. (3 pgs - two-sided) |
| AR 223 | 0834 | (re M3 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing AQD Exhibit: 8/6/09 5:39 p.m. e-mail to Eyerman/AQD from Kelly/Delta Toxicology, Subj: MSDS data and silicosis. 8/7/09 5:39 p.m. e-mail is attached to 8/6/09 3:54 p.m. e-mail to Eyerman/AQD, Tavarez/AQD, Rocha/AQD from Kelly/Delta Toxicology, Subj: MSDS data and silicosis. |
| AR 224 | 0836 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – Irene Walkiw statement |
| AR 225 | 0837 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – Debora Sponsel-Jolley statement with page from Discover Magazine attached. |
| AR 226 | 0841 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Continued Public Info hearing Exhibit – David Wood statement |
| AR 227 | 0843 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Eyerman/AQD handwritten notes from 8/5/09 Public Info hearing |
| AR 228 | 0855 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Reyes/AQD handwritten notes from 8/5/09 Public Info hearing |
| AR 229 | 0860 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Rocha/AQD handwritten notes from 8/5/09 Public Info hearing |
| AR 230 | 0873 | (re 8/5/09 continued Public Info. Hr.:) 8/5/09 Tavarez/AQD handwritten notes from 8/5/09 Public Info hearing |
| AR 231 | 0885 | 8/5/09 5:56 p.m. The New Mexico Independent |

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| | | article, "Transcript: American Cement air quality hearing" by Gwyneth Doland. |
| AR 232 | 0887 | 8/6/09 7:09 a.m. The New Mexico Independent article, "Politicians feel the pain of ABQ cement plant neighbors" by Gwyneth Doland |
| AR 233 | 0888 | 8/6/09 8:07 a.m. The New Mexico Independent article, "American Cement permit appears for approval" by Gwyneth Doland |
| AR 234 | 0891 | 8/20-26/09 Weekly Alibi article, "Neverending Stories, Coddling Industry or Rewarding Good Behavior?" by Simon McCormack |
| AR 235 | 0892 | 8/6/09 10:57 a.m. e-mail to Silfer/Greater Gardner NA and Eyerman/AQD from Tavarez/AQD, Subj: Re: American Cement Post-hearing public comments. 8/6/09 10:57 a.m. e-mail is attached to: 8/5/09 9:27 a.m. e-mail to Tavarez/AQD and Eyerman/AQD from Silfer/Greater Gardner NA, Subj: American Cement Post-hearing public comments |
| AR 236 | 0893 | 8/6/09 4:39 p.m. e-mail to Suiter/Albuquerque Museum Foundation and Cogan/Albuquerque Museum Foundation from Tavarez/AQD, cc Eyerman/AQD and Armijo/AQD, Subj: American Cement Air Quality Permit Application Replacement Page Requesting 24 hours (AR 7) |
| AR 237 | 0894 | Marked up copy of Draft Air Quality Authority-to-Construct Permit No. 0902-M3 with incorporation of comments from Albuquerque Museum Foundation, Senator Feldman, Chris Catechis/North Valley Coalition, and Eyerman/AQD |
| AR 237.1 | 0903.1 | AR 237: color photocopy of all pages |
| AR 238 | 0904 | 8/18/09 12:32 p.m. e-mail to Espinoza/AEHD from Tavarez/AQD, cc Eyerman/AQD, Subj: Re: Judy's Comments: American Cement Hearing Presentation. 8/18/09 12:32 p.m. e-mail attached to: 8/17/09 11:38 a.m. e-mail to Tavarez/AQD from Espinoza/AEHD, cc Amend/AQD, Subj: Judy's Comments: American Cement Hearing Presentation; 8/13/09 10:52 a.m. e-mail to Espinoza/AEHD from Tavarez/AQD, Subj: Fw: American Cement Hearing Presentation; 08/13/09 8:46 a.m. e-mail to Tavarez/AQD from Eyerman/AQD, Subj: Fw: American Cement Hearing Presentation; 8/12/09 4:29 p.m. e-mail to Eyerman/AQD from Scharmen/NMDOH, cc Amend/AQD, Subj: Re: American Cement Hearing Presentation; and 8/12/09 1:42 p.m. e-mail |

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| | | to Scharmen/NMDOH from Eyerman/AQD, cc Amend/AQD, Subj: American Cement Hearing Presentation |
| AR 239 | 0908 | 8/28/09 Lts to Riordan/CoA DMD and Dineen/CoA Planning Dept from Eyerman/AQD – Re: Concerns About Truck Traffic Issues Expressed at Public Hearings for Air Quality Permit No. 0902-M3, American Cement Corporation |
| AR 240 | 0910 | 9/2/09 1:30 p.m. e-mail to Tavarez/AQD from Scharmen/NMDOH, cc Eyerman/AQD and Kearny/AQD, Subj: Re: Follow Up Questions on "Permitted Stationary Sources of Pollution" Presentation. 9/2/09 1:30 p.m. e-mail is attached to: 8/20/09 1:09 p.m. e-mail to Scharmen/NMDOH from Tavarez/AQD, cc Eyerman/AQD and Kearny/CoA Legal, Subj: Follow Up Questions on "Permitted Stationary Sources of Pollution" Presentation. |
| AR 241 | 0933 | 9/4/09 9:31 a.m. e-mail to Kennedy/AEHD from Tavarez/AQD, Subj: Re: Ricahrd, Fw: [N Valley Coalition] NVC Meeting (Thursday, 3 September 2009) – our apologies to Israel Tavarez for misspelling his name. 9/4/09 9:31 a.m. e-mail is attached to: 9/2/09 12:30 p.m. e-mail to Tavarez/AQD from Kennedy/AEHD, cc Soladay/AEHD, Subj: Fw: Richard, Fw: [N Valley Coalition] NVC Meeting (Thursday, 3 September 2009) – our apologies to Israel Tavarez for misspelling his name; 9/2/09 12:28 p.m. e-mail to Kennedy/AEHD from Sandra P. Richardson, Subj: Richard, Fw: Fw: [N Valley Coalition] NVC Meeting (Thursday, 3 September 2009) – our apologies to Israel Tavarez for misspelling his name; 9/2/09 10:18 a.m. e-mail to <u>north-valley-coalition@googlegroups.com</u> from Morelli/North Valley Coalition, Subj: [N Valley Coalition] NVC Meeting (Thursday, 3 September 2009) – our apologies to Israel Tavarez for misspelling his name; and 9/2/09 6:31:47 a.m. e-mail to <u>north-valley-coalition@googlegroups.com</u> from Morelli/North Valley Coalition, Subj: NVC Meeting (Thursday, 3 September 2009) – Quarter Cent Tax & North Valley Air Quality. |
| AR 242 | 0935 | 9/8/09 10:07 a.m. e-mail to Scharmen/NMDOH from Tavarez/AQD, cc Eyerman/AQD and Kearny/CoA Legal, Subj: Re: Follow up Questions |

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| | | on "Permitted Stationary Sources of Pollution" Presentation. 9/8/09 10:07 a.m. e-mail is attached to: 9/2/09 1:30 p.m. e-mail to Tavarez/AQD, cc Eyerman/AQD and Kearny/CoA Legal, Subj: Re: Follow Up Questions on "Permitted Stationary Sources of Pollution" Presentation; and 8/20/09 1:09 p.m. to Scharmen/NMDOH from Tavarez/AQD Subj: (same). With attached hyperlinks: "Healthy People 2010" and July 6, 2004 "Hospitalization and Mortality in Albuquerque Zip Codes – A Preliminary Descriptive Analysis of Hospitalization and Deaths at the Sub-County Level" by Scharmen. |
| AR 243 | 0983. | 9/9/09 7:06 a.m. e-mail to Eyerman/AQD from Stebleton/AQD, Subj: Re: American Cement compliance question. 9/9/09 7:06 a.m. e-mail is attached to: 9/8/09 5:09 p.m. e-mail to Stebleton/AQD from Eyerman/AQD, Subj: American Cement compliance question. |
| AR 244 | 0984 | 9/9/09 11:32 a.m. e-mail to Richards/Bernalillo County from Tavarez/AQD, cc Scharmen/NMDOH, Schroeder/Bernalillo County, Cross-Guillen/Bernalillo County, Kearny/CoA Legal, Eyerman/AQD, Subj: Re: health outcomes from census tracts in North Valley. 9/9/09 11:32 a.m. e-mail is attached to: 9/8/09 1:56 p.m. e-mail to Tavarez/AQD from Richards/Bernalillo County, cc Scharmen/NMDOH, Schroeder/Bernalillo County, and Cross-Guillen/Bernalillo County, Subj: Re: health outcomes for census tracts in North Valley; 9/8/09 10:49 a.m. e-mail to Richards/Bernalillo County from Tavarez/AQD, cc Schroeder/Bernalillo County, Cross-Guillen/Bernalillo County, Scharmen/NMDOH, Kearny/CoA Legal, and Eyerman/AQD, Subj: Re: health outcomes for census tracts in North Valley; and 9/4/09 10:08 a.m. e-mail to Richards/Bernalillo County from Tavarez/AQD, cc Schroeder/Bernalillo County, Cross-Guillen/Bernalillo County, Scharmen/NMDOH, Subj: Fw: health outcomes for census tracts in North Valley. |
| AR 245 | 0987 | 9/10/09 Interoffice Memo to Eyerman/AQD from Riordan/CoA DMD Subj: Concerns about Truck Traffic Issues Expressed at Public Hearings... |
| AR 246 | 0989 | 9/11/09 2:11 p.m. e-mail to Eyerman/AQD from Reyes/AQD, cc Aragon/AQD and Keiser/AQD, |

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| | | Subj: Fw: American Cement Survey. 9/11/09 2:11 p.m. e-mail is attached to: 9/11/09 1:30 p.m. e-mail to Reyes/AQD from Aragon/AQD, cc Aragon/AQD, Subj: American Cement Survey with attached CD Re: David Wood 9/3/09 158 Pleasant NW, AQD Citizen Contact Form – photocopy of David Wood CD, one original CD, and all three photos from CD; and Citizen Contact Form – Inez Gallegos 4613 Carlton NW. |
| AR 246.1 | 0996.1 | 9/15/09 final Memo to Permit File, Enforcement File from Eyerman/AQD re AQD Review of application for permit modification No. 0902-M3. |
| AR 247 | 0997 | 9/15/09 Air Quality Authority-To-Construct Permit No. 0902-M3 issued on 15 th day of September, 2009. |
| AR 248 | 1007 | 9/15/08 4:57 e-mail to Eyerman/AQD from Nason/CoA Planning Dept, Subj: Re: Letter Regarding Truck Concerns in the North Valley. 9/15/08 4:57 e-mail is attached to: 9/15/09 4:48 p.m. to Nason/CoA Planning Dept from Eyerman/AQD, Subj: Letter Regarding Truck Traffic Concerns in the North Valley |
| AR 249 | 1008 | 9/17/09 9:45 a.m. e-mail to Roark/GCC from Eyerman/AQD, Subj: Re: Amended American Cement Permit. 9/17/09 9:45 a.m. e-mail is attached to: 9/11/09 4:13 p.m. e-mail to Eyerman/AQD from Roark/GCC, Subj: (same); and 9/11/09 3:41 pm e-mail to Roark/GCC from Eyerman/AQD, Subj: (same). |
| AR 250 | 1009 | 9/17/09 Lt to Roark/GCC from Eyerman/AQD – Air Quality Tracking #0902-M3 enclosing air quality Authority-To-Construct Permit #0902-M3 for American Cement Corp. |
| AR 251 | 1010 | 9/30/09 Lt to Residents (Participants) from Tavarez/AQD – Re: issuance of Air Quality Permit No. 0902-M3, applicable laws, review process, issues considered, administrative record review, concerns forwarded to appropriate agencies, permit conditions requested by American Cement and imposed by AQD, contact information, and information on appeal process |
| AR 252 | 1014 | 9/30/09 Lt Mailing List of Residents (Participants) sent 9/30/09 Lt |
| AR 253 | 1028 | 9/30/09 Lt to Residents (Participants) Returned Receipts |
| AR 254 | 1148 | 9/30/09 Lt to Residents (Participants) Undelivered Letters |

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

**IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION AIR QUALITY PERMIT
No. 0902-M3**

**Greater Gardner Neighborhood Association,
North Valley Coalition of Neighborhood
Associations, Kyle Silfer, David Wood, Marcia
Finical, as individuals,**

Petitioners/Appellants,

v.

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

Respondent/Appellee,

**American Cement Corporation,
Intervenor.**

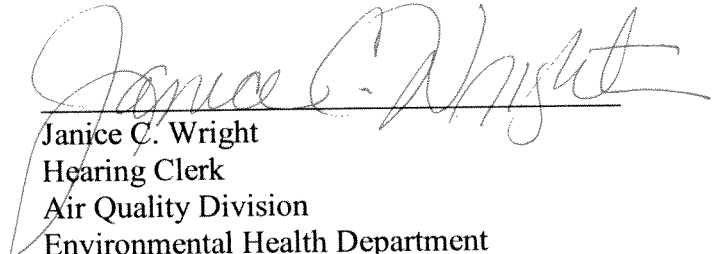
AQCB Petition No. 2009-7

JW

AFFIDAVIT

I, Janice Wright, Air Quality Control Board Hearing Clerk certify that on January 29, 2010 one hundred and twenty-four (124) *Notices of Hearing* were mailed, and thirty-three (33) were e-mailed to the parties and interested participants regarding the hearing in the above-captioned matter. The *Notice of Hearing* will be published in the *Albuquerque Journal* on Sunday, January 31, 2010.

Respectively submitted,



Janice C. Wright
Hearing Clerk
Air Quality Division
Environmental Health Department
City of Albuquerque
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico, 87103

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, hand-delivered, and e-mailed a true and correct copy of the foregoing pleading on this 29th day of January, 2010, to the following:

Mailed and E-mailed

Jonathan M. Block
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, NM 87501

Mailed and E-mailed

Adam T. DeVoe
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Adelia Kearny
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City of Albuquerque
Room 4015, One Civic Plaza
Albuquerque, NM 87102

STATE OF NEW MEXICO
ALBUQUERQUE BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

Greater Gardner Neighborhood Assoc.,
North Valley Coalition of Neighborhood
Assoc., Kyle Silfer, David Wood, Marcia
Finical, as individuals,

Petitioner /Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division

Respondent/Appellee,

American Cement Corporation,
Intervenor

AQCB Petition No. 2009-7

**HEARING OFFICER'S RECOMMENDATION ON THE
MOTION TO DISQUALIFY MEMBER BRINKMAN**

This matter comes before the Board on Intervenor American Cement Corporation's ("American Cement") Motion to Disqualify Member Brinkman, filed January 22, 2010, and the Response to Motion to Disqualify Member Brinkman, filed by Mr. Brinkman January 26, 2010. As required by 20.11.81.12.B (3) (c) (ii) NMAC, I hereby file my recommended decision on the motion. For the reasons discussed below, I recommend that the motion be sustained.

Applicable Law

Moving party American Cement correctly notes that under 20.11.12.B (3)(b) NMAC, "[i]n making its decision regarding whether a board member or hearing officer should be disqualified or recuse himself or herself, the board and hearing officer may rely on applicable legal authority."

The leading New Mexico case addressing recusal of board members sitting in an adjudicative function is Reid v. New Mexico Board of Examiners in Optometry, 92 N.M. 414, 589 P.2d 189 (1979). There the court held that the respondent's due process rights were violated by the board's failure to disqualify a board member who, prior to the hearing on the merits, had expressed an opinion on the ultimate question in the case (i.e., that the respondent would lose his optometry license). In so holding, in fairly sweeping language, the court stated:

At a minimum, a fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case. In addition, our system of justice requires that the appearance of complete fairness be present. The inquiry is not whether the Board members are actually biased or prejudiced, but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him.

Id. at 416, 589 P.2d at 200.

In Las Cruces Professional Fire Fighters v. City of Las Cruces, 123 N.M. 239, 938 P.2d 1384, (N.M. Ct. App. 1997), the New Mexico Court of Appeals noted that this language must be understood in the context the *Reid* court's conclusion that "because the board member had 'admitted making a statement indicating his bias and prejudgment of the issues ..., the Board's failure to disqualify [the board member] clearly violated Reid's constitutional right to procedural due process.'" 123 N.M. at 245, 938 P.2d at 1390, quoting *Reid*, 92 N.M. at 416, 589 P.2d at 200 (ellipses and brackets in original). Thus, the Court of Appeals warned, "[o]ne should not infer from *Reid* that a member of a tribunal is necessarily disqualified whenever prior conduct of the member indicates a view that would favor one party or the other." *Id.* Instead, the court noted, "[b]ias can take different forms", and [w]hether a bias is disqualifying depends on the nature of the bias." *Id.*

The *Las Cruces* court went on to discuss five types of bias as set forth in a secondary source (3 Kenneth Culp Davis, *Administrative Law Treatise*):

- (1) A prejudgment or point of view about a question of law or policy, even if so tenaciously held as to suggest a closed mind, is not, without more, a disqualification.
- (2) Similarly, a prejudgment about legislative facts that help answer a question of law or policy is not, without more, a disqualification.
- (3) Advance knowledge of adjudicative facts that are in issue is not alone a disqualification for finding those facts, but a prior commitment may be.
- (4) A personal bias or personal prejudice, that is, an attitude toward a person, as distinguished from an attitude about an issue, is a disqualification when it is strong enough; such partiality may be either animosity or favoritism.
- (5) One who stands to gain or lose by a decision either way has an interest that may disqualify; even a legislator may be disqualified on account of a conflict of interest.

Id. at 246, 938 P.2d at 1391.¹

Discussion

(1) Prejudgment of the issues. American Cement asserts that “Member Brinkman has already formed an opinion that the permit modification should have been denied prior to the commencement of this hearing. As such, Member Brinkman cannot act in a fair and impartial manner in the adjudicatory hearing of this matter.” Motion to Disqualify at ¶ 9.

This characterization overstates the facts. Unlike the Board member whose disqualification the Supreme Court found necessary in *Reid*, nowhere in his testimony did Mr. Brinkman express an opinion on the ultimate issue – in this case, whether the permit revision should be approved.

¹The court acknowledged that this summary of the law with respect to bias types 1, 2, and 3 “appears to contradict the broad language of *Reid*” and therefore provided an extensive discussion of the “strong precedential support for that summary.” See *Las Cruces*, 123 N.M. 246-247, 938 P.2d 1391-1392.

American Cement also asserts, however, that Mr. Brinkman testified that modeling for “trace metals should have been conducted,” that “American Cement should be required to conduct fence line monitoring,” and that the permit “should address . . . acute exposure,” despite the lack of federal, state, or local requirements for such conditions. Motion to Disqualify at ¶ 8.

While Mr. Brinkman did not explicitly state that he believed that the modeling and monitoring requirements should have been required, the tone and form of his questions do reasonably indicate such a belief. Mr. Brinkman repeatedly pressed the question of whether monitoring or modeling was conducted “for trace metal that is in the fly ash – arsenic, selenium, cadmium, chromium, uranium, thorium.” Being answered in the negative, Mr. Brinkman stated “So in other words there is no guarantee that people in the area . . . are not being exposed to trace metals . . . that [are] known to be in the fly ash . . . that’s coming off in that dust.” At another point, Mr. Brinkman stated “It’s a 12 ton source with neighbors adjacent to that source, with . . . fallout in their trees and obviously in their breathing zone as well.” Finally, Mr. Brinkman stated “when the wind comes up you know that those levels on the average are being broken considerably – people can get pretty sick from breathing that really thick air for a short amount of time.” (AR090, *American Cement Public Hearing 3/18/2008 Audio File*, hour 2:20 – 2:30).

To the extent that Mr. Brinkman’s statements reflect a bias in favor of a policy of requiring certain permit conditions (i.e., certain form of monitoring or modeling or addressing acute exposures) such a bias is not a grounds for disqualification, as set forth in the standard for the type (1) bias in *Las Cruces* “[a] prejudgment or point of view about a question of law or policy, even if so tenaciously held as to suggest a closed mind, is not, without more, a disqualification.” 123 N.M. 246, 938 P.2d at 1391 (quoting *Administrative Law Treatise*)

However, to the extent Mr. Brinkman's statements reflect potential bias with respect to the finding of facts in this proceeding, such "type 3" bias may be grounds for disqualification: "advance knowledge of adjudicative facts that are in issue is not alone a disqualification for finding those facts, *but a prior commitment may be.*" *Id.* (Emphasis added). Thus the test is whether Mr. Brinkman's testimony at the 2008 hearing indicate a prior commitment to a view of the facts.

In his response to the Motion to Disqualify, Mr. Brinkman states:

I did not testify in opposition to the permit modifications. . . . I asked questions seeking information regarding my concerns. I hoped that the facility and the division would consider these concerns. Given my lack of familiarity with governing regulations, the permit application and other information about the facility and its neighbors, I was not sure of the applicability and appropriateness of my concerns to the specific permit application." Response to Motion to Disqualify at 2.

He further attests that he "has formed no opinion as to the outcome of the upcoming hearing," and that "he can and will act in a fair and impartial manner at the hearing." *Id.* As a person serving as an adjudicator in an administrative function, Mr. Brinkman is entitled to a presumption of honesty and integrity. Jones v. New Mexico State Racing Commission, 100 N.M. 434, 437, 671 P.2d 1145, 1148 (citing Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)).

Notwithstanding Member Brinkman's undoubted commitment to impartiality and fairness going forward, however, his statements in the 2008 hearing clearly indicate not merely a passive advance knowledge of adjudicatory facts, but a prior commitment to a position based on his understanding of those facts. That is, his statements indicate that he believed it was a fact that dust emitted from the facility contained certain heavy metals, was deposited on neighbors, could result in sickness from short term exposure, and therefore necessitated certain permit

requirements. Moreover, any doubt as to whether such prior commitment has been demonstrated must be resolved in accordance with the dictate of *Reid* that “our system of justice requires that the appearance of complete justice be present.” 92 N.M at 416, 589 P.2d at 200. By indicating a commitment to a position on the existence and significance of certain facts, Mr. Brinkman’s questions and statements in the 2008 hearing present “an indication of a possible temptation . . . to try the case with bias for or against any issue presented to him. *Id.* For this reason, and this reason only, disqualification is called for.

(2) Personal Bias. American Cement cites 20.11.81.12.B (3)(a)(i) NMAC, which provides that a board member shall not perform any function under Part 81 if he “has a personal bias or prejudice concerning a party or the outcome of a proceeding.” According to the treatise cited favorably in *Las Cruces*, “a personal bias or personal prejudice, that is, an attitude toward a person, as distinguished from an attitude about an issue, is a disqualification when it is strong enough; such partiality may be either animosity or favoritism.” 123 N.M. at 246, 938 P.2d at 1391. American Cement has not presented any evidence of any personal bias, regardless of strength (as opposed to an attitude about an issue), and nothing in Mr. Brinkman’s comments indicate such a bias.

3). Investigative or Prosecutorial Function. Finally, American Cement cites 20.11.81.12.B (3)(a)(vi) NMAC, which provides that a board member shall not perform any function under Part 81 if he “has performed prosecutorial or investigative functions in connection with a permitting action at issue in the proceeding.” American Cement does not elaborate on the applicability of this provision, except to state that “Member Brinkman has apparently investigated the proposed permit modification and has personal knowledge of the

facts of this matter outside the context of the facts and evidence to be presented to the board at the hearing set to commence February 22, 2010.” Motion to Disqualify at ¶ 9.

Because 20.11.81.12.B (3)(a)(vi) NMAC refers to “prosecutorial or investigative *functions*” (emphasis added), the plain meaning of this provision appears to refer to actions taken in a formal role as a prosecutor or investigator on behalf of the Division or some other agency. See the definition of “function,” e.g. at <http://www.merriam-webster.com/dictionary/function>: 1) professional or official position; occupation, 2) the action for which a person or thing is specially fitted or used or for which a thing exists. 20.11.81.12.B (3)(a)(vi) NMAC appears to mirror the separation of functions embodied in the federal Administrative Procedures Act at 5 U.S.C. § 554(d): “[a]n employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision....” Because Mr. Brinkman clearly has not performed investigative or prosecutorial functions in this sense, invocation of 20.11.81.12.B (3)(a)(vi) NMAC does not add anything to the analysis of Mr. Brinkman’s personal knowledge of the facts, as discussed above.

Conclusion

Member Brinkman’s testimony at the 2008 hearing indicates a commitment to a position based on advance knowledge of adjudicative facts and forms an indication of a possible temptation to try the case with bias. Under New Mexico’s high standards for the appearance of complete fairness, whether or not actual bias or prejudice exists, this testimony should result in Member Brinkman’s disqualification from this proceeding. Therefore I respectfully recommend that the motion to disqualify be sustained.



Bill Grantham
Hearing Officer

STATE OF NEW MEXICO
Before the
ALBUQUERQUE BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION
AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Association, North
Valley Coalition of Neighborhood Associations, Kyle
Silfer, David Wood and Marcia Finical, as
individuals, *Petitioners/Appellants*

v.

City of Albuquerque Environmental Health
Department Air Quality Division,
Respondent/Appellee,

and

GCC, Inc. (Grupo Cementos de Chihuahua), d/b/a
American Cement Corporation, *Intervener*

AQCB Petition No. 2009-7

February 3, 2010

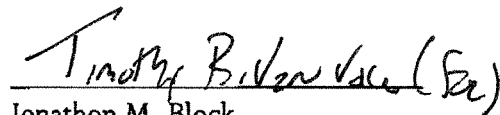
MOTION TO SUSPEND HEARING AND WAIVER OF DEADLINES DURING SETTLEMENT
NEGOTIATIONS

By this motion, Intervener GCC, d/b/a American Cement Corporation, and
Petitioners/Appellants, jointly and without opposition from City of Albuquerque, request the
Hearing Officer and the Albuquerque Bernalillo County Air Quality Control Board, pursuant to
NMAC § 20.11.81.14(C) and 20.11.81.20(C), to postpone the hearing scheduled for February 22
and 23, 2010, including the motion practice schedule, during the course of negotiations to settle
this matter. As a result of this requested postponement, Intervener and Petitioners request an
immediate telephone status conference. Further, the movants request that the hearing be
rescheduled for March 16th and 17th, 2010. The negotiating parties will report to the Hearing
Officer on the progress of their negotiations by February 25.

Respectfully submitted:



Adam T. DeVoe
Brownstein Hyatt Farber Schreck
Counsel for Intervener GCC



Jonathon M. Block
New Mexico Environmental Law Center
Counsel for Petitioners/Appellants

CERTIFICATION OF SERVICE

I, Timothy P. VanValen, hereby certify that on this 3rd day of February, 2010, I caused the foregoing Motion to Suspend Hearing Schedule During Settlement Negotiations to be served upon the below listed persons by mailing it to them U.S. First Class postage prepaid and email:

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jcwright@cabq.gov


Bill Grantham, Esq., Hearing Officer
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By service upon the Hearing Clerk

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STATE OF NEW MEXICO
Before the
ALBUQUERQUE BERNALILLO COUNTY AIR QUALITY
CONTROL BOARD

IN THE MATTER OF PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION
AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Association, North
Valley Coalition of Neighborhood Associations,
Kyle Silfer, David Wood and Marcia Finical, as
individuals, *Petitioners/Appellants*

v.

City of Albuquerque Environmental Health
Department Air Quality Division,
Respondent/Appellee,

and

GCC, Inc. (Grupo Cementos de Chihuahua), d/b/a
American Cement Corporation, *Intervener*

AQCB Petition 2009-7

February 3, 2010

APPEALLANT'S RESPONSE IN OPPOSITION TO INTERVENER'S
MOTION TO DISQUALITY, MEMBER BRINKMAN'S RESPONSE, AND
HEARING OFFICER'S RECOMMENDATION ON THE MOTION

Petitioners/Appellants, Greater Gardner Neighborhood Association, North
Valley Coalition of Neighborhood Associations, and Kyle Silfer, David Wood and
Marcia Finical as individuals ("Petitioners"), through counsel Jonathan M. Block,
New Mexico Environmental Law Center, hereby respond in opposition to the
Intervener CGG, Inc. (Gruppo Cementos de Chihuahua), d/b/a American

Cement Corporation, Motion to Disqualify Air Quality Board Member Brinkman and the Hearing Officer's Recommendation on the Motion to Disqualify, and Member Brinkman's Response. For the reasons of fact and law set forth below, Petitioners contend the Motion to Disqualify should be overruled.

BACKGROUND FACTS AND LEGAL ISSUES

To the extent they are not inconsistent with the facts set forth below, Petitioners incorporate the facts set forth in the Member Brinkman's response of January 26, 2010, and Hearing Officer Grantham's Recommendation on the Motion to Disqualify of February 1, 2010, and further set forth:

1. Mr. Brinkman was not a member of the Air Quality Board at the time he participated in the public information hearing at issue.
2. The permit at issue is not the same permit as in the instant proceeding, as a previous owner of the cement transfer station applied for the permit, and the new owners withdrew that permit.
3. The permit at issue is a new permit for a new company, Intervener in this case, and the issues involved in this permit cannot and should not be considered identical, given that it is a new permit and a new company.
5. In the *Las Cruces Professional Fire Fighters v. City of Las Cruces*, 123 N.M. 239 (1997), analyzing the recusal behavior of the United States Supreme Court, our New Mexico Supreme Court stated:

These actions by members of the [U.S.] Supreme Court reflect recognition that members of courts (and administrative agencies) are human beings. They cannot avoid having histories or opinions; indeed, they may well have been selected for their offices in part on that basis. Recognition of this reality counsels us against requiring that every decisionmaker start with a clean slate.

Id. at 246.

ARGUMENT

Petitioners agree with Hearing Officer Grantham's analysis of the applicable law and discussion of the issues except as to "point 1", "Prejudgment of the issues", on which the following is focused.

Although Hearing Officer Grantham states that the Intervener American Cement "overstated" the facts in alleging that Member Brinkman cannot act in a fair and impartial manner" in the proceeding, and, significantly, that "nowhere in his testimony did Mr. Brinkman express an opinion on the ultimate question" as to whether the permit should be approved, Hearing Officer Grantham concludes that Mr. Brinkman's statements and questions in the 2008 Public Information Hearing warrant disqualification. Hearing Officer's Recommendations on the Motion to Disqualify Member Brinkman at 5-6 (emphasis added).

Two important items are noticeably absent from absent in the Hearing Officer's analysis. First, there is no discussion of the significance of the fact that, unlike the *Reid* issue, this is not the same company (person), nor the same permit as when Mr. Brinkman participated in a "Public Information Hearing". Mr. Brinkman

was *neither* a Board member or adjudicator at the time, and only asked questions in the context of the answers to those questions and information he had heard at the hearing prior to his questions--none of which, under the Hearing Officer description, actually show *any* bias or prejudice in this case. Not only a different permit and a different company, but no actual bias or prejudice is shown--merely a subjective judgment by an individual (the Hearing Officer) as to the meaning of the "tone" and "form" of questions and a negative characterization of that based upon that subjective judgment.

Second, and significantly, in the Hearing Officer's reference to the *Las Cruces Fire Fighters* case he fails to discuss the significance of the distinctions the New Mexico Supreme Court made between the *Reid* case analysis and that deemed applicable following Kenneth Culp Davis's "five point" list of reasons to disqualify. It is significant that in *Las Cruces Fire Fighters*, a partisan union representative was on the Board at issue, conducted extensive cross-examination of witnesses based upon the union's interest in getting certain information on the record, and yet the Court of Appeals found that disqualification of the Board member was not required. See *Las Cruces Professional Fire Fighters v. City of Las Cruces*, 123 N.M. 239, 244-248 (1997) (Court analyzes a situation in which, unlike the instant case, the partisanship of a member already sitting on a Board in the same matter at issue, is blatant, yet finds disqualification not required).

Petitioners contend that requiring Brinkman disqualification imposes a higher standard as called for in *Reid*, the principal case upon which the Hearing Officer relies, which case is distinguishable on its facts from the instant matter. The Hearing Officer does not confront two very significant issues that distinguish this case from *Reid*: (1) this permit does not have the same property interest and privilege as a professional license, and, (2), unlike the adjudicator in *Reid*, Mr. Brinkman was just an ordinary citizen exercising his right of free speech and democratic participation in a public process when he raised the questions at issue--at the time he was not a Board member bound to act in a fair and impartial manner.¹

Hearing Officer Grantham's analysis turns entirely on an interpretation of the questions Mr. Brinkman raised at a public information hearing on a subsequently withdrawn permit application by a previous owner of the facility at issue here. Mr. Brinkman asked whether monitoring included certain trace materials known to be present in cement dust, was told that it did not, asked further whether that meant that there was no guarantee that people in the area were not being exposed to those trace materials known to be in cement dust, observed further that this is a facility that emits 12 tons of dust per year, has neighbors adjacent to the source, with "fallout in

¹ The Hearing Officer also fails to confront a side issue of disqualification--his own--in that Mr. Brinkman's Response states that the Hearing Officer counseled him on this very issue six months ago, and the Hearing Officer told him, "he did not think the regulations required that I recuse myself", yet the Hearing Officer provided the entire Board with legal advice on this matter by recommending that Member Brinkman disqualify himself. Compare Member Brinkman's Response at 2 and Hearing Officer's Recommendation at 6-7.

their trees" and "in their breathing zones as well." Hearing Officer's Recommendation at 4, quoting AR090, American Cement Public Hearing 3/18/2008 Audio file at hour 2:20-2:30).

What is significantly absent in the Hearing Officer's account of this brief period of questioning is how Mr. Brinkman acquired the information he used in his questions. Petitioners contend that if the information was presented during the public hearing prior to the time that Mr. Brinkman spoke, he was merely restating in his questions the information other citizens had provided during the course of the hearing. Is the mere fact that he raised additional questions based upon what he had heard during the proceeding evidence of anything more than a concerned citizen who was able to reason and question the information being presented to him and all attendees at the public hearing? Hearing Officer's Grantham's "Q.E.D." of alleged "prior commitment" to the fact at issue here is not only based upon a hearing for a withdrawn permit sought by a different company at a time Mr. Brinkman was merely an interested citizen attending and asking questions at a public hearing, it really rests solely upon the final question/statement Mr. Brinkman made: "when the wind comes up you know those levels on the average are being broken considerably -- people can get sick from breathing that really thick air for a short amount of time." Again--this is no more than a "Q.E.D." that Mr. Brinkman was exercising some intelligence and deductive reasoning and does not show any

prejudgment of the issues in the instant case, as the testimony in this case is not identical nor does it concern the identical permit or company.

Were the Hearing Officer correct that Mr. Brinkman's statements "reflect a bias in favor of a policy of requiring certain permit conditions" there might be a reasonable argument that there was a "prior commitment"--but there is none. Reading such a "prior commitment" into questions Mr. Brinkman says were raised not "in opposition to the permit modifications" but "seeking information regarding [his] concerns", Brinkman Response to Motion to Disqualify at 2. Hearing Officer Grantham goes too far when he opines that Mr. Brinkman's "statement indicate that he believed it was a fact that dust emitted from the facility contained certain heavy metals, was deposited on neighbors, and could result in sickness from short term exposure, and therefore necessitated certain permit requirements." Hearing Officer's Recommendation at 5-6 (emphasis added).

The Hearing Officer added the underlined portion--nowhere has he provided a quotation from Mr. Brinkman that any permit requirements was necessary. In fact, responding to Intervener American Cement's allegations of Mr. Brinkman's statements, Hearing Officer Grantham states that "Mr. Brinkman did not explicitly state that he believed that the modeling and monitoring requirements should have been required"--rather, Hearing Officer Grantham relies on divination

as support, stating that "the tone and form of his questions reasonably indicate such a belief." Hearing Officer's Recommendation at 4. P

Petitioners contend that in so serious a matter as a Motion to Disqualify, more than mere opinion concerning the import of "tone and form" should be necessary before the harsh remedy of disqualification is invoked on the basis of inferred "prior commitment" on an issue. This is doubly true when Mr. Brinkman denies having testified in opposition to the permit modification and states that he has not prejudged the issues, formed an opinion on this new permit for a different company, and that he can act fairly and impartially. Brinkman Response at 2. As the Hearing Officer rightly notes, New Mexico law provides that Mr. Brinkman is entitled to a "presumption of honest and integrity." Hearing Officer's Recommendation at 5 (citing *Jones v. New Mexico State Racing Commission*, 100 N.M. 434, 437 (1983) (citing *Withrow v. Larkin*, 421 U.S. 35 (1975))).

The bottom line is that despite Intervener American Cement's allegation of testimony showing prejudgment on the need for specific permit conditions, finding no such statements in the record, the Hearing Officer rests his entire recommendation on his personal interpretation of the "tone and form" of questions as indicating such a belief and predicated on irrelevant facts. If such a standard were adopted, not only would professional diviners be required to interpret each case of alleged bias, but many Boards and Commissions would fail of have a quorum--

unless they were composed of people who had never raised questions during previous permit hearings. In the *Las Cruces Professional Fire Fighters* the New Mexico Supreme Court stated, in pertinent part:

One should not infer from Reid that a member of a tribunal is necessarily disqualified whenever prior conduct of the member indicates a view that would favor one party or the other. If that were the law, no judge could sit on a case after rendering a decision in a similar case.

Id. at 245. Board member Brinkman, at the time of his raising questions at a public hearing, was a private citizen. The hearing where is raised questions was on a different permit application by a different company. Thus, his questions in that matter have nothing to do with the instant case and are not a proper basis for the Intervener's motion or the Hearing Officer's recommendation to the Board that the motion be sustained. The alleged evidence offered here of Mr. Brinkman's "prior commitment" type of bias is so attenuated, so entirely inappropriate and questionable as to fail to meet the stringent tests of *Reid* and *Las Cruces Fire Fighters* on which the Hearing Officer relies to support his recommendation. Hearing Officer's Recommendation at 4-5.

CONCLUSION

The reasons of fact and law stated above weigh heavily in favor of overruling the motion to disqualify.

WHEREFORE, the Board should overrule the Motion for Disqualification
and deny the motion.

Respectfully submitted:

 BY PERMISSION
JONATHAN BLOCK

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CERTIFICATION OF SERVICE

I, Jonathan M. Block, hereby certify that on this 3d day of February, 2010, I caused the foregoing Response to Motion to Disqualify to be served upon the below listed persons by hand or by email* where mail service has been waived:

Janice C. Wright, Hearing Clerk
Air Quality Div., Env. Health Dept.
City of Albuquerque
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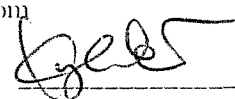
For City of Albuquerque
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 BY PERMISSION
JONATHAN BLOCK
Jonathan M. Block

STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR A HEARING ON THE MERITS
REGARDING AMERICAN CEMENT CORPORATION
AIR QUALITY PERMIT No. 0902-M3

Greater Gardner Neighborhood Assoc.,
North Valley Coalition of Neighborhood
Assoc., Kyle Silfer, David Wood, Marcia
Finical, as individuals,

AQCB Petition No. 2009-7

Petitioner /Appellants,

v.

City of Albuquerque Environmental Health
Department, Air Quality Division

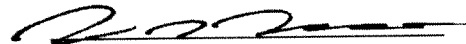
Respondent/Appellee,

American Cement Corporation,
Intervenor

ORDER SUSPENDING HEARING AND WAIVING DEADLINES

This matter comes before me by joint motion of Intervenor American Cement Corporation and Petitioner/Appellents, unopposed by Respondent City of Albuquerque, to suspend the hearing in this matter, waive applicable deadlines, and reschedule the hearing for March 16 and 17th, 2010 in order to allow for negotiation between the parties. Conference with parties has revealed irreconcilable scheduling conflicts among the parties and the Hearing Officer with respect to the schedule proposed by the moving parties. The Parties agree to an alternative hearing date of March 9 and 10, 2010, if another Hearing Officer is available. Therefore, being fully advised in the premises, the motion to suspend the hearing and waive the deadlines for motion practice is granted. Rescheduling the hearing and re-establishing the motion practice schedule is stayed

pending a decision by the Board on the appointment of an alternative Hearing Officer. Nothing in this Order shall preclude the Intervenor from filing on or before February 8, 2010 a reply to Petitioner's response to Intervenor's Motion to Disqualify Member Brinkman, or preclude the Board from deliberating and ruling on such motion at its February 10, 2010 meeting.


Bill Grantham
Hearing Officer

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**GREATER GARDNER NEIGHBORHOOD
ASSOCIATION, NORTH VALLEY COALITION
OF NEIGHBORHOOD ASSOCIATIONS, AND
KYLE SILFER, DAVID WOOD, and MARCIA
FINICAL AS INDIVIDUALS,**

Petitioner/Appellants,

vs.

**CITY OF ALBUQUERQUE AIR QUALITY
DIVISION,**

Respondent/Appellee.

**AMERICAN CEMENT CORPORATION,
Intervenor**

AQCB Petition No. 2009-7

**INTERVENOR'S REPLY IN SUPPORT OF
MOTION TO DISQUALIFY MEMBER BRINKMAN**

Intervenor GCC, d/b/a American Cement Corporation ("GCC") through undersigned counsel, hereby replies to the Petitioner's Response, the Hearing Officer's Recommendation, and Member Brinkman's Response. For the reasons set forth below, the Motion to Disqualify Member Brinkman should be granted.

Prejudgment of the Issues

The Appellants and Mr. Brinkman make too much of the fact that Mr. Brinkman's testimony to the Air Division was phrased in the form of questions. As noted by the Hearing Officer, the questions from Member Brinkman were repeated and pressed in a way to indicate an opinion, not merely to seek information. Moreover, in response to his questions about modeling, trace metals, and acute exposure, Mr. Brinkman did in fact get answers from the Division and

from the American Cement representative at the hearing. Nevertheless, he pressed the questions again, belying the fact that his questions were statements intended to influence the outcome of the proceeding. As indicated by the Hearing Officer, Mr. Brinkman must therefore be disqualified because he presented testimony that shows he has already formed an opinion on the issues in dispute.

Investigative or Prosecutorial Function

The Hearing Officer suggests that disqualification is only appropriate where a member has acted in an official capacity as a prosecutor or investigator in a case. While this more stringent standard may be appropriate in criminal proceedings, a lesser standard should inform a disqualification decision in administrative adjudicatory proceedings. Where, as here, a member took on investigation of the permit in order to provide testimony in opposition to the permit, that "investigative" function should be weighed in determining whether disqualification is appropriate.

At the time of filing the Motion to Disqualify Member Brinkman, GCC did not have any specific information regarding the investigation of the permitting action performed by Member Brinkman. Without any specific information, GCC therefore made a general allegation that Member Brinkman apparently investigated the facts of the matter.

Since filing the motion, GCC has obtained information that Member Brinkman did in fact request additional information from the Division prior to providing testimony. On March 18, 2008, Mr. Brinkman faxed an IPRA form to the City of Albuquerque Air Quality Division. Mr. Brinkman's information request sought the following information: (1) Permit Application #0902-M2 for the American Cement Facility at 4702 Carlton, NW; (2) Air Dispersion Model Summary and Report; (3) Original Permit Application and supporting documents; and (4) Other

pertinent information in the facility's file. Items 3 and 4 were deemed to be overboard by the Air Division, so Mr. Brinkman, in an e-mail dated March 20, 2008, replaced those items by requesting: (3) all previous permits applications; and (4) all city inspection reports.

Mr. Brinkman states that he did not read the permit application, but he must have reviewed the Air Dispersion Model Summary and Report in order to provide the specific and detailed testimony presented at the March 18, 2008 hearing. And whether he obtained and reviewed the information or not, he was specifically seeking information on city inspections. His request for and review of such information is perhaps not the equivalent of a prosecutorial investigation, but neither is it a completely unbiased quest for information. While this investigation alone does not provide grounds for disqualification, viewed as a whole with the testimony presented at the March 18, 2008 hearing, there is at least the clear appearance that Mr. Brinkman was not testifying at the hearing merely to seek additional information. Mr. Brinkman's independent review of materials and information, and the clear direction of his testimony at the March 18, 2008 hearing, gives the appearance that he was opposed to the permit modification and that he should therefore be disqualified.

Conference with the Hearing Officer

Mr. Brinkman states that approximately six months ago he sought the counsel of Mr. Grantham, in his capacity as counsel to the Air Board, as to whether Mr. Brinkman should recuse himself from this hearing. At that time, Mr. Grantham advised him that recusal was unnecessary.

Hearing Officer Grantham informed the parties at a status conference conducted Friday, February 5, 2010, that his initial discussion with Mr. Brinkman was brief and without the benefit of all the facts. Mr. Grantham has since been appointed the hearing officer in this matter,

reviewed the facts, arguments, and written statement of Mr. Brinkman, and recommended that the Board disqualify Member Brinkman. In short, it appears that Mr. Grantham's earlier advice to Mr. Brinkman was based on limited information under time constraints, while on further reflection and with the benefit of additional facts Mr. Grantham has concluded that disqualification is appropriate.

Same Company and Permit

Appellants make much of the allegation that this permit modification is not the same company or the same permit. On the contrary, GCC purchased the American Cement Corporation, and is doing business at this facility as American Cement. Though this appeal involves permit modification Number 0902-M3, as opposed to the hearing where Mr. Brinkman provided testimony on Number 0902-M2, the permits are fundamentally the same. The facility is the same, the modeling exercise is nearly identical, the permit terms and conditions (with the exception of operating hours) are nearly identical, and the parties on all sides are the same. Perhaps most importantly, the modeling that Mr. Brinkman objected to at the hearing has not fundamentally changed with the exception of updates to reflect the slightly different operating conditions in permit versions 2 and 3. Accordingly, the Board should draw no conclusions from Appellant's arguments that this proceeding does not involve the same permit or the same company.

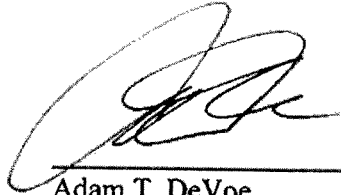
Conclusion

The applicable standard in New Mexico is that the appearance of complete fairness must be present at all times. *Reid v. New Mexico Board of Examiners*, 92 N.M. 414, 416, 589 P.2d 198, 200 (1979). The appearance of fairness cannot be maintained where a member of the air board sought information about a permit and testified at the hearing in a manner that displayed

clear opposition to the permit.

WHEREFORE, the undersigned Counsel respectfully request that the Board enter an order disqualifying member James Brinkman from the above captioned proceedings.

Respectfully submitted this 8th day of February, 2010.

A handwritten signature in black ink, appearing to read 'Adam T. DeVoe', is written over a horizontal line.

Adam T. DeVoe

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Certificate of Service

I certify that one original and nine copies of the foregoing **Intervenor's Reply in Support of Motion to Disqualify Member Brinkman** were filed with the hearing clerk on the 8th day of February, 2010, and by same date submitted by email and certified mail, return receipt requested, to the following:

Kyle Silfer, Petitioner
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and by same date submitted by email to the following:

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and by same date submitted by hand delivery to Janice Wright for the following:

Jens Deichman, Hearing Officer and Board Chair
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