Revised 2/10/10

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

RESOLUTION 2010-3

DECISION ON THE *MOTION TO DISQUALIFY MEMBER BRINKMAN* REGARDING AQCB PETITION NO. 2009-7

Whereas, AQCB Petition No. 2009-7, Petition for a Hearing Regarding American Cement Corporation Air Quality Permit #0902-M3 was timely filed on Nov. 2, 2009 with the Air Quality Control Board ("Air Board") Hearing Clerk; and

Whereas, on January 22, 2010, a *Motion to Disqualify Member Brinkman* was filed with the Air Quality Control Board Hearing Clerk by Brownstein, Hyatt, Farber, Schreck, LLP, Adam DeVoe representing American Cement Corporation; and

Whereas, on January 26, 2010, Air Board Member Jim Brinkman timely filed his *Response to Motion to Disqualify Member Brinkman*; and

Whereas, on February 1, 2010, Hearing Officer, Mr. Bill Grantham filed the *Hearing Officer's Recommendation on the Motion to Disqualify Member Brinkman,* wherein he recommended that the *Motion to Disqualify Member Brinkman* be sustained by the Air Board; and

Whereas, on February 3, 2010, *Appellant's Response in Opposition to Intervener's Motion to Disqualify, Member Brinkman's Response, and Hearing Officer's Recommendations on the Motion* was filed by the New Mexico Environmental Law Center, Jonathon Block of behalf of the Petitioners/Appellants, Greater Gardner Neighborhood Association, North Valley Coalition of Neighborhood Associations, Kyle Silfer, David Wood, Marcia Finical, as individuals; and

Whereas, on Feb. 8, 2010, *Intervenor's Reply in Support of Motion to Disqualify Member Brinkman* was filed by Brownstein, Hyatt, Farber, Schreck, LLP, Adam DeVoe representing American Cement Corporation; and

Whereas, 20.11.81.12B(3)(c)(ii) NMAC, *Adjudicatory Procedures—Air Quality Control Board* requires the Air Board to vote on a motion to disqualify a Member of the Board when certain criteria listed in 20.11.81.12B(3)(a) NMAC are established; and

Whereas, on February 10, 2010 the Air Board considered the Motion, Mr. Brinkman's Response, the Hearing Officer's Recommendation, the Appellant's Response, and the Intervenor's Reply ;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD THAT:

The *Motion to Disqualify Member Brinkman* is SUSTAINED / NOT SUSTAINED.

[WITH THE FOLLOWING CHANGES:]

PASSED AND ADOPTED THIS 10th DAY OF FEBRUARY, 2010
BY A VOTE OF 5 FOR AND ___ AGAINST.
Absent: 1

Jens Deichmann Chair
Albuquerque-Bernalillo County
Air Quality Control Board

Attest:
Margaret Nieto
Margaret Nieto, Board Secretary