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 No. 2009-7**

CITY OF ALBUQUERQUE RESPONSE TO INTERVENOR'S MOTION TO DISMISS PETITIONERS' FOURTH CLAIM

COMES NOW, the City of Albuquerque (City), by and through the City Legal Department, Deputy Assistant City Attorney Adelia Kearny appearing, and hereby moves the Court to grant Intervenor's Motion to Dismiss relating to the Petitioners' Fourth Claim, which was included in Petitioners' Appeal Petition for Hearing that was filed November 17, 2009 (Petition). As grounds, the City states the following:

1. Although the City desires all issues that are relevant to the permit modification to be heard by and argued before the Hearing Officer, the language of the Fourth Claim in the Petition may be interpreted to improperly broaden the scope of both argument and discovery.

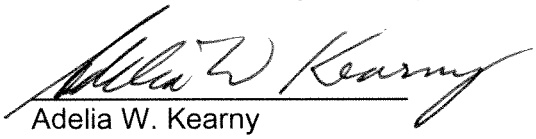
2. If the Fourth Claim is allowed to stand, it may be argued that it broadens the scope of relevancy and thus create unnecessary argument, which in turn will unnecessarily lengthen the hearing and negatively affect judicial efficiency.
3. The Fourth Claim is frivolous because if the Petitioners decide to assert new legal or factual claims that the Petitioners have not previously asserted, the Petitioners may argue they are entitled to additional discovery, which could unnecessarily delay the hearing. If the fourth claim were not dismissed, the Petitioners also may attempt to assert new claims during hearing, without the City having an opportunity to adequately review and prepare its case as provided by law, to the City's prejudice.

WHEREFORE,

The Hearing Officer should dismiss the Fourth Claim of the Petitioners' Appeal Petition for Hearing.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White, City Attorney



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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2010, one original and nine copies of the forgoing Response were hand delivered and a copy was electronically mailed to the Hearing Clerk for filing, and that on the same date, as previously agreed and directed, a copy was electronically mailed to:

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By: _____
Adelia W. Kearny, Deputy City Attorney