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AQD EXHIBIT
36

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
NOTICE OF HEARING

On September 9, 2009, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

Proposal to repeal the current excess emissions rule, *Breakdown, Abnormal Operating Conditions, Or Scheduled Maintenance*, at Section 20.11.90.12 NMAC, and replace it with a new rule, 20.11.49 NMAC, *Excess Emissions*. There are also cross-references to the current rule found within the *Volatile Organic Compounds* rule at 20.11.65.7.A NMAC and within the *Pathological Waste Destructors* rule at 20.11.69.25.A NMAC which are proposed to be changed to reference the new proposed rule.
The AQD is proposing to repeal the current excess emissions rule, *Breakdown, Abnormal Operating Conditions, Or Scheduled Maintenance*, at Section 20.11.90.12 NMAC, and replace it with a new rule, 20.11.49 NMAC, *Excess Emissions*, for the following reasons:

On September 28, 1982, September 20, 1999, and again on December 5, 2001, the U.S. Environmental Protection Agency (EPA) issued guidance on how states should address excess emissions during malfunction, startup and shutdown in their State Implementation Plan (SIP). The current version of the excess emissions rule for Bernalillo County, entitled *Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance*, at Section 20.11.90.12 NMAC [AKA Regulation No. 19" or "Section 19 of Regulation # 1"] was adopted by the Air Board and filed on 6/6/1973. This rule was subsequently submitted to EPA for inclusion into the SIP and was approved by EPA on 4/10/1980, effective the same day. Except for phraseology and formatting differences, this rule has not changed substantively since then. Therefore to comply with EPA guidance, and to comport with New Mexico's new rule, 20.2.7 NMAC, *Excess Emissions*, [effective 8/1/08], the Air Board's excess emissions rule needs to be replaced.

Therefore, the Air Quality Division (Division) proposes that Section 20.11.90.12 NMAC, be repealed (while leaving the rest of 20.11.90 NMAC intact), and be replaced by a new rule, 20.11.49 NMAC, *Excess Emissions*. The proposed replacement rule is patterned after New Mexico's rule with some modifications made in response to comments received from EPA. These modifications include the deletion of Sections 14 and 15 of 20.2.7 NMAC, and the incorporation of additional language from the Oklahoma Department of Environmental Quality's *Excess Emission Reporting Requirements*, at 252.100.9 OAC.

The Division's proposal tightens notification requirements and establishes criteria recommended by EPA for affirmative defenses. The proposed rule prohibits excess emissions for startup or shutdown unless they are the result of unavoidable and unforeseeable malfunctions. In addition, as part of the required analysis for excess emissions events, the Division is proposing a requirement for a "root cause analysis". This would be a detailed technical analysis of excess emission events that determines the underlying reason(s) that the event occurred and all contributing factors to the malfunction, to the extent possible. The analysis would also require an evaluation of alternative measures (if any) that can be implemented to reduce the likelihood of a recurrence of an incident. Minimizing the likelihood of excess emissions from malfunctions will reduce the reporting burden for both facilities and the Division.

Finally, the cross-references made to 20.11.90.12 NMAC, found at 20.11.65.7.A NMAC and 20.11.69.25.A NMAC, are proposed to be changed to reference 20.11.49 NMAC.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the proposal to repeal the current excess emissions rule, *Breakdown, Abnormal Operating Conditions, Or Scheduled Maintenance*, 20.11.90.12 NMAC, and replace it with a new rule, 20.11.49 NMAC, *Excess Emissions*.

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

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, Rulemaking Procedures -- Air Quality Control Board.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on August 25, 2009, to: Attn: Hearing Clerk, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Suite 3023, 400 Marquette Avenue NW. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record for this hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on September 2, 2009. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to jamend@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department office, or by contacting Ms. Janice Amend electronically at jamend@cabq.gov or by phone (505) 768-2601, or by downloading a copy from the City of Albuquerque Air Quality Division website http://www.cabq.gov/airquality/aqcb/public-review-drafts .

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