AQD EXHIBIT 5a

PENGAD 800-631-6989

Butt, Neal T.

From: Butt, Neal T.
Sent: Thursday, January 27, 2011 10:13 AM
To: 'David.Kelly@pnm.com'
Cc: Nieto, Margaret ; 'jhgarcia@bernco.gov'; 'cgober@bernco.gov'; 'dherrera@bernco.gov'; Stonesifer, Jeff W.; Tavarez, Isreal L.; Stebleton, Matt B.; Rocha, Dario W.; Wright, Janice C.; Leonard, Mary Lou
Subject: RE: Revisions to Open Burn Regulation - Agricultural Lands
Follow Up Flag: Follow up
Flag Status: Purple
Attachments: AQD response to Kelly comments on 20_11_21 NMAC.pdf

Tracking:

Recipient	Read
'David.Kelly@pnm.com'	
Nieto, Margaret	Read: 1/27/2011 10:15 AM
'jhgarcia@bernco.gov'	
'cgober@bernco.gov'	
'dherrera@bernco.gov'	
Stonesifer, Jeff W.	Read: 1/27/2011 10:19 AM
Tavarez, Isreal L.	Read: 1/27/2011 2:07 PM
Stebleton, Matt B.	Read: 1/27/2011 10:22 AM
Rocha, Dario W.	Read: 1/31/2011 9:02 AM
Wright, Janice C.	Read: 1/27/2011 10:14 AM
Leonard, Mary Lou	Read: 1/27/2011 1:21 PM

Mr.. Kelly,

Thank you for your comments. Attached you will find the Air Quality Division's response. If you will provide a mailing address, I will send you the original.

Regards,

Neal Butt

Environmental Health Scientist

Air Quality Division

(505) 768-2660

"Every man, wherever he goes, is encompassed by a cloud of comforting convictions, which move with him like flies on a summer day."

—Bertrand Russell

From: Nieto, Margaret
Sent: Tuesday, January 25, 2011 10:02 AM
To: Butt, Neal T.; Tavarez, Isreal L.
Subject: FW: Revisions to Open Burn Regulation - Agricultural Lands

Neal, Isreal,
FYI. Response?
Margaret

From: Kelly, David [mailto:David.Kelly@pnm.com]
Sent: Tuesday, January 25, 2011 9:24 AM
To: Nieto, Margaret
Cc: v kelly; dherrera@bernco.gov; cgober@bernco.gov; jhgarcia@bernco.gov
Subject: Revisions to Open Burn Regulation - Agricultural Lands

Margaret,

It is my understanding from Dolores Herrera. Assistant to Commissioner Art DeLaCruz (District 2), that the Air Quality Division, Environmental Health Department (Department) is in the process of revising the Open Burn Regulation for Bernalillo County. As your Department reviews and revises the Open Burn Regulation I would request that your Department consider a little more flexibility for operating and maintaining the remaining agricultural land for the South Valley.

If I may, I'd like to provide you an overview of how our agricultural acreage is managed & a proposed recommendation to slightly modify the current Winter Burn Restrictions in place in the Unincorporated Areas of Bernalillo County that could help foster support for keeping what is left of the agricultural land in the South Valley.

OVERVIEW

We (my wife & I) own and operate a small farm (about 28 acres) in the south valley most of which is located across the street from Rio Grande High School and located within the unincorporated Area of Bernalillo County. The land has been actively farmed since the turn of the last century. My wife's family has actively farmed the property since the early 30s.

One part of keeping the farm up and running are keeping the perimeters (probably the length of four football fields) and irrigation ditches (probably the length of three football fields) clear of encroaching grasses, elm seedlings, and tumbleweeds after and during the growing season. For years we have maintained the perimeter & the irrigation ditches by first establishing fire breaks at reasonable intervals and when the air quality standards allow for burning in Bernalillo County and wind speeds are nominal we will systematically set fire to areas of the perimeter or irrigation ditches between the fire breaks. For many years we were requested to phone the fire department to request permission before burning.

However, within the last decade we were informed not to bother informing the fire department before burning but instead to check and ensure that Bernalillo County allowed burning for that day and to ensure that we burn between the hours of 11:00 & 3:00 pm.

Since November 2010 we established several fire breaks along the perimeter & irrigation ditches and started the normal winter process of burning the irrigation ditches and perimeter of the property. In December 2010 while burning the West perimeter fence line of the property, the Bernalillo County Fire Department informed my wife that burning was no longer allowed in Bernalillo County with the exception of *tumble weeds* that had been piled in a *three foot high by three foot wide by three foot depth*. And that Bernalillo County Fire Department *no longer issued agricultural permits for burning* and directed my wife to the Bernalillo County Fire Department web page for the specifics. The current listing on the web page is as follows:

> **Winter Burning Restrictions in place in the Unincorporated Areas of Bernalillo County**
> Restricted open burning is allowed in the unincorporated areas of Bernalillo County, weather permitting, from 11:00am to 3pm every day. The Bernalillo County Fire Prevention Bureau offers these rules for burning:
>
> - Residents are allowed to burn **dry tumbleweeds only**.
> - The fire needs to be at least 50 feet from any structure or combustible materials and piles must be no larger than 3 ft by 3 ft.
> - Residents need to be able to readily extinguish the fire.
> - The fire must not be left unattended.

While these Winter Fire Restrictions may be applicable to fair majority of residents who live in the unincorporated areas of Bernalillo County on small residential lots for weed control these rules are to restrictive for those residents who live on & attempt to maintain larger agricultural parcels.

PROPOSED SOLUTION

I would recommend that the Bernalillo County Fire Department change their current Winter Burning Restrictions in place in the Unincorporated Areas of Bernalillo County and provide agricultural property owners the same flexibility it has had for years to maintain their property.

That is, I would recommend *that all parcels greater than one acre that are irrigated* within the Unincorporated Areas of Bernalillo County be given the opportunity to maintain *their property perimeters and irrigation ditches by first establishing fire breaks at reasonable intervals with the flexibility to burn the grasses, elm seedlings as well as tumbleweeds*. The property owners would be required to notify the closest Bernalillo County Fire Department of the property owner intent to burn and provide the geographic location of the burn. In addition, the property owners would be required to follow air restriction guidelines of Bernalillo County and employ the prescribed time periods for the burn (11:00am – 3:00pm). Additionally the property owners would need to be prepared to readily extinguish the fire & would be required to ensure that the fire not be left unattended.

Such flexibility has worked well for decades in the Unincorporated Areas of Bernalillo County and should help foster the support for keeping what little is left of the agricultural farm land. We would be happy to offer a tour of our farm so that you could get a geographic sense for the size of the ditches & perimeters that must be maintained annually. I can be reached at 877-5680 or my wife (Velma) can be reached at 259-8884.

Thanks for your consideration and I look forward with working you and your Department.

Dave Kelly

CITY OF ALBUQUERQUE

January 27, 2011

David Kelly
David.Kelly@pnm.com
(505) 877-5680

Re: Revisions to 20.11.21 NMAC, *Open Burning* regulation and its impact on agricultural lands

Dear Mr. Kelly,

Thank you for your comments in regards to the Air Quality Division's proposed amendments to the Albuquerque-Bernalillo County Air Quality Control Board *Open Burning* regulation, 20.11.21 NMAC. The AQD as agent to the Air Board has no authority over the Bernalillo County Fire Department. However, in developing the proposed amendments to 20.11.21 NMAC, the AQD did meet with both the BCFD and the Albuquerque Fire Department to better understand their concerns. The BCFD rules incorporate by reference the 2006 International Fire Code, which states that: open burning requires a permit from both the "fire code official" and the local air quality management authority; burning must be conducted at least 50 feet from any structure, unless pile size is less than 3 feet in diameter and 2 feet high, in which case the distance to structures is reduced to 25 feet. The AQD understands the air quality benefits to be reaped by preserving open space through agriculture, and is supportive of this endeavor as long as you comply with the permitting requirements of 20.11.21 NMAC, and the local fire authority. We are not aware of any reason for the BCFD to restrict your ability to judiciously use open burning to manage your agricultural land.

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

You mention that you have historically used open burning on irrigated parcels of land greater than 1 acre, including grass, elm seedlings, and tumbleweeds, between 11:00am and 3:00pm, weather permitting. In both the current rule, and in the proposed draft rule, AQD allows agricultural burning with a permit. "Agricultural Burning" is defined as "the burning of crop residues for field preparation or that is otherwise used for the production of a crop". A permit is required for "broadcast burns 1/4 acre through 10 acres in size or up to 1,000 cubic feet of pile volume per day." The proposed rule adds a definition for "Broadcast Burn" as "the controlled application of fire to wildland fuels in their natural or modified state over a predetermined area. Broadcast Burns do not include the burning of wildland fuels that have been concentrated in piles by manual or mechanical methods." The proposed rule would require potential burners who would burn large volumes (e.g. 10 acres per day or 1,000 cubic feet per day), of "dead and dry weeds" to obtain a permit from AQD.

Furthermore, the proposed amendments would prohibit the burning of "vegetative material" without a "Level I Prescribed Burn" permit. "Vegetative Material" is defined as: "untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, shavings, grass, grass clippings, weeds, leaves, conifer needles, bushes, shrubs, clippings from bushes and shrubs, and agricultural plant residue." Therefore, it appears that your proposed use of open burning would be permissible from an air quality perspective, as long as you have secured an air quality permit. You are also subject to rules of the Bernalillo County Fire Department, which is not within the authority of AQD or the Air Board's regulations.

It is our understanding that a meeting is being planned to discuss this matter. In addition, your comments will be included in the hearing record. The hearing on proposed amendments to 20.11.21 NMAC is scheduled for March 9, 2011. Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony (e.g. scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.) is required by 20.11.82 NMAC, *Rulemaking Procedures - AQCB*, to submit a written Notice Of Intent (NOI) before 5:00 pm on February 22, 2011 to: Attn: Open Burning Hearing Record, Ms. Janice Wright, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The NOI shall identify the person's name, address and affiliation.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on February 2, 2011. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to jcwright@cabq.gov and shall include the required name and address information. Thank you for your interest,

Sincerely,

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department

cc: Mary Lou Leonard, Director, Environmental Health Department
Margaret Nieto, Control Strategies Supervisor, Air Quality Division
Isreal Tavarez, Environmental Health Manager, Permitting Programs AQD
Jeff Stonesifer, Meteorologist, AQD
Chris D. Gober BCFD cgober@bernco.gov
BCFD jhgarcia@bernco.gov