ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

13 JUN 25

IN THE MATTER OF THE SECOND AMENDED PETITION TO REPEAL CURRENTLY EFFECTIVE 20.11.41 NMAC, *AUTHORITY TO CONSTRUCT*; ADOPT A PROPOSED REPLACEMENT 20.11.41 NMAC, *CONSTRUCTION PERMITS*; AND INCORPORATE THE REPLACEMENT 20.11.41 NMAC INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN FOR AIR QUALITY

AQCB Petition No. 2013-5

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

CITY OF ALBUQUERQUE'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

Pursuant to 20.11.82.20 NMAC, *Rulemaking Procedures – Air Quality Control Board*, the City of Albuquerque Environmental Health Department, Air Quality Division hereby submits its Notice of Intent to Present Technical Testimony (NOI) in this proceeding.

1. <u>The person for whom the witness will testify.</u>

The City of Albuquerque, through the Environmental Health Department (Department), Air Quality Division.

2. <u>The name and qualifications of each technical witness the City intends to present.</u>

Isreal Tavarez, P.E. Environmental Health Manager, Permitting Section, Air Quality Division, Environmental Health Department. M.S. Chemical Engineering, New Mexico State University; B.S. Chemical Engineering, NMSU. Registered Professional Engineer (New

Mexico). Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for 17 + years. Previously employed by the State of New Mexico, Air Quality Bureau (1994-1996).

Mr. Tavarez' primary responsibility is to manage the air quality stationary source permitting program, which includes reviewing and approving all air quality stationary source permits to ensure the permits are issued in accordance with local, state and federal regulations. Mr. Tavarez' resume is attached as AQD Ex. #2k.

Dario Rocha. Supervisor, Permitting and Technical Analysis Section, Air Quality Division, Environmental Health Department. B.S. Mechanical Engineering, New Mexico State University. Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for 13 + years. Previously employed by the State of New Mexico, Air Quality Bureau (1997-2000).

Mr. Rocha's chief responsibility is to supervise and direct staff in the Permitting and Technical Analysis Section of the Air Quality Division. He assigns air quality permit applications for New Source Review a/k/a "NSR" and for Clean Air Act Title V air permitting programs. Mr. Rocha makes applicability determinations for air quality permitting and reviews and approves portable stationary source relocations within Bernalillo County. He also drafts and reviews air quality permits for minor and major stationary sources and is responsible for ensuring all air quality permits for minor and major stationary sources are issued or denied within their respective regulatory or statutory timeframes. In addition, he is responsible for ensuring that stationary source air quality emissions inventories are prepared in accordance with 40 CFR 51 Subpart A. Mr. Rocha's resume is attached as AQD Ex. #2 l.

Damon Reyes. Environmental Health Supervisor, Enforcement Section, Air Quality Division, Environmental Health Department. B.S in Environmental Science, College of Santa Fe. Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for eight years. Previously employed by the State of New Mexico, Air Quality Bureau (2002 – 2005), and before that, by the All Indian Pueblo Council, Pueblo Office of Environmental Protection (2000 to 2002).

Mr. Reyes' primary responsibility is to oversee enforcement staff's regulation of stationary sources, fugitive dust sources, asbestos, open burning and wood burning. Mr. Reyes also reviews enforcement staff's inspections reports and makes determinations regarding enforcement actions. He also is responsible for staying current with changes to local and federal air quality regulations. Mr. Reyes' resume is attached as AQD Ex. #2m.

Matt Stebleton. Compliance Supervisor, Compliance Section, Air Quality Division, Environmental Health Department. M.S. in Biology (concentration in environmental science, University of New Mexico. Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for 19 years. Previously employed by the State of New Mexico, Air Quality Bureau (1987 to 1994).

Mr. Stebleton's primary responsibility is to review and issue Notices of Violations (NOs) for non-compliance with federal Clean Air Act and local air quality regulations, participate in formal and informal settlement conferences to resolve NOVs and to stay current with changes to federal and local air quality regulations. Mr. Stebleton's resume is attached as AQD Ex. #2n.

3. **Direct Testimony and anticipated duration of testimony of each witness.**

Mr. Tavarez will provide direct testimony based on his PowerPoint presentation, which is attached as AQD Ex. #2o. Mr. Tavarez' direct testimony is anticipated to take approximately one and a half hours.

Mr. Tavarez, Mr. Rocha, Mr. Reyes and Mr. Stebleton constitute the Petitioner's direct testimony panel. The panel members are available to answer questions and testify regarding the proposed repeal and replacement of 20.11.41 NMAC based on their experience and areas of expertise. In addition to the time taken by Mr. Tavarez' direct testimony, the total time that will be taken by the direct testimony of the additional three panel members will depend on the number and type of questions that are asked to the panel members.

4. **Text of the Department's Recommended Modifications to Proposed Replacement 20.11.41 NMAC.**

In the Department's Second Amended Petition, the Department has asked the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) to repeal current 20.11.41 NMAC, which is attached to the NOI as AQD Ex. # 2a, and to adopt proposed replacement 20.11.41 NMAC, which is attached as AQD Ex. #2b. The Department also recommends and asks the Air Board to modify or amend AQD Ex. #2b by adopting the staff proposed floor amendments that are attached as AQD Ex. #2d. The proposed floor amendments are requested to add clarity, improve consistency, correct typographical errors and correct errors in internal citations that occurred when sections were rearranged.

5. List and Description of Anticipated Exhibits.

The Department anticipates offering the following exhibits, which are attached to this NOI. For the convenience of the Air Board Members, the Department also will include in each exhibit packet a copy of:

- Second Amended Petition to Repeal Currently Effective 20.11.41 NMAC, *Authority to Construct;* Adopt a Proposed Replacement 20.11.41 NMAC, *Construction Permits*; and Incorporate the Replacement 20.11.41 NMAC into the New Mexico State Implementation Plan (SIP) for Air Quality (*Second Amended Petition* filed 4/23/13)
- First Amended Petition to Repeal Currently Effective 20.11.41 NMAC, *Authority to Construct;* Adopt a Proposed Replacement 20.11.41 NMAC, *Construction Permits*; and Incorporate the Replacement 20.11.41 NMAC into the New Mexico State Implementation Plan (SIP) for Air Quality (*First Amended Petition* filed 10/30/12)
- New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-1 to -17 (1967, as amended through 2009)
- New Mexico Environmental Improvement Board regulation 20.2.72 NMAC, *Construction Permits*

Exhibit Number	Title of Exhibit
Regarding the 2013 *Second Amended Petition* to Repeal and Replace 20.11.41 NMAC, (AQCB Petition No. 2013-5, filed 4/23/13):	
AQD Ex. #2a	Currently-effective 20.11.41 NMAC, *Authority to Construct*
AQD Ex. #2b	*2d Amended Public Review Draft* (PRD)- 4/23/13. (The *2d Amended PRD* was attached to the *Second Amended Petition,* which presently is before the Air Board. The *Second Amended Petition* asks the Air Board to repeal current regulation 20.11.41 NMAC, *Authority to- Construct,* and replace it with the *2d Amended Public Review Draft,* 20.11.41 NMAC, *Construction Permits).*
AQD Ex. #2c	*Comparison Summary of Current and Proposed Albuquerque-Bernalillo County Air Quality Control Board Regulations for Minor Stationary Source Air Quality Permitting Actions – April 23, 2013* (comparing currently-effective 20.11.41 NMAC to the 7/8/12 *Amended PRD Draft for Stakeholder Review*, the10/30/12 *1st Amended PRD* [AQD Ex. #1b] and the 4/23/13 *2d Amended Public Review Draft* [AQD Ex. #2b])
AQD Ex. #2d	Staff Proposed Floor Amendments

AQD Ex. #2e	5/8/13 Air Board Agenda and Minutes approving Air Board hearing regarding the *Second Amended Petition*
AQD Ex. #2f	5/14/13 Air Quality Announce ListServe email to Stakeholders, EPA and others providing notice of 7/10/13 Air Board Hearing, AQD proposal to repeal and replace 20.11.41 NMAC, reasons, changes, info re how to provide testimony and comments
AQD Ex. #2g	5/19/13 *Albuquerque Journal* legal ad providing notice of 7/10/13 Air Board hearing, AQD proposal to repeal and replace 20.11.41 NMAC, reasons, changes, info re how to provide testimony and comments; Proof of Publication
AQD Ex. #2h	5/31/13 *New Mexico Register*, Notice of Proposed Rulemaking, providing notice of 7/10/13 Air Board hearing, AQD proposal to repeal and replace 20.11.41 NMAC, reasons, changes, info re how to provide testimony & comments
AQD Ex. #2i	5/23/13 letter to neighborhood associations and homeowners' associations in City of Albuquerque (City) and Bernalillo County with copy of legal ad (AQD Ex. #2g); ListServe address list (662 addresses) and mailing label list (27 addresses)
AQD Ex. #2j	5/23/13 letter to permit holders in City and Bernalillo County with copy of legal ad (AQD Ex. #2g); ListServe address list (60 addresses) and mailing label list (328 addresses)
AQD Ex. #2k	Resume of Isreal L. Tavarez, P.E., Environmental Health Manager, Permitting Section, Air Quality Division, Environmental Health Department
AQD Ex. #2 l	Resume of Dario W. Rocha, Environmental Health Supervisor, Permitting Section, Air Quality Division, Environmental Health Department
AQD Ex. #2m	Resume of Damon R. Reyes, Environmental Health Supervisor, Enforcement Section, Air Quality Division, Environmental Health Department
AQD Ex. #2n	Resume of Matthew B. Stebleton, Compliance Supervisor, Compliance Section, Air Quality Division, Environmental Health Department
AQD Ex. #2o	PowerPoint presentation by Isreal Tavarez, P.E., Environmental Health Manager, Permitting Section, Air Quality Division, Environmental Health Department
AQD Ex. #2p	6/18/13 Small Business Regulatory Advisory Committee (SBRAC) agenda and 6/18/13 handout to SBRAC members by Air Quality Division presenter Tavarez
AQD Ex. #2q	6/20/13 email re National Association of Industrial and Office Properties-New Mexico 6/27/13 agenda

Regarding the 2012 *First Amended Petition* to Repeal and Replace 20.11.41 NMAC, (AQCB Petition No. 2012-6, filed 10/30/12):

AQD Ex. #1a	Currently-effective 20.11.41 NMAC, *Authority to Construct*
AQD Ex. #1b	*First Amended Public Review Draft* - 10/30/12, which is the version of proposed replacement regulation 20.11.41, *Construction Permits,* that was proposed by the Air Quality Division in 2012
AQD Ex. #1c	*Comparison Summary of Current and Proposed Albuquerque-Bernalillo County Air Quality Control Board Regulations for Minor Stationary Source Air Quality Permitting Actions – 10/30/12* (comparing currently-effective 20.11.41 NMAC to the 7/18/12 *1st Amended PRD for Stakeholder Review* and the 10/30/12 *1st Amended PRD* [AQD Ex. #1b])
AQD Ex. #1d	7/18/12 Stakeholder letter to permit holders regarding proposed repeal of 20.11.41 NMAC, *Authority to Construct,* and replacement with enclosed *1st Amended Public Review Draft* and also enclosing *Comparison Summary* (AQD Ex. 1c), seeking comments; mailing label list
AQD Ex. #1e	7/19/12 Air Quality Announce ListServe email to Stakeholders, EPA and others regarding proposed repeal of 20.11.41, *Authority to Construct,* and replacement with *1st Amended Public Review Draft* and seeking comments
AQD Ex. #1f	10/31/12 letter to Stakeholders, EPA and others regarding proposed repeal of 20.11.41, *Authority to Construct,* and replacement with *1st Amended Public Review Draft* and seeking comments; with mailing label list
AQD Ex. #1g	10/31/12 Air Quality Announce ListServe email to Stakeholders, EPA and others with copy of First Amended Petition
AQD Ex. #1h	11/19/12 Air Quality Announce List email to Stakeholders, EPA and others with notice of 2/13/13 Air Board hearing
AQD Ex. #1i	11/18/12 *Albuquerque Journal* legal ad re notice of 2/13/13 Air Board hearing & mtg., info re proposed repeal and replacement of 20.11.41 NMAC, reasons, information on testifying & submitting comments; Proof of Publication
AQD Ex. #1j	11/30/12 *New Mexico Register* Notice of Proposed Rulemaking re notice of 2/13/13 Air Board hearing & mtg., info re proposed repeal and replacement of 20.11.41 NMAC, reasons, information on testifying and submitting comments
AQD Ex. #1k	*Albuquerque Journal* 1-16-12 legal ad re Notice of Postponement of 2/13/13 Air Board Hearing re Petition No. 2012-6
AQD Ex. #1 l	*New Mexico Register* 1/31/12 Notice of Postponement of 2/13/13 Air Board Hearing re Petition No. 2012-6
AQD Ex. #1m	1/17/13 Air Quality Announce ListServe email to Stakeholders, EPA and others providing Notice of Postponement of 2/13/13 Air Board Hearing
AQD Ex. #1n	7/11/12 Rule Name Change Request to New Mexico State Records Center

AQD Ex. #1o	7/24/12 TPL, Inc. email comments (re 7/18/12 stakeholder review draft); 9/20/12 Air Quality Division email and response letter
AQD Ex. #1p	8/16/12 NM Gas Company email and comment letter (re 7/18/12 stakeholder review draft); 9/20/12 Air Quality Division email and response letter
AQD Ex. #1q	8/16/12 FAA Albuquerque Terminal RADAR/Comm SCC email comments (re 7/18/12 stakeholder review draft); 9/20/12 Air Quality Division email and response letter
AQD Ex. #1r	8/14/12 NK Asphalt Partners (f/k/a Holly Asphalt Company) email and comment letter (re 7/18/12 stakeholder review draft); 9/20/12 Air Quality Division email and letter response
AQD Ex. #1s	8/16/12 Valero Retail Holdings, Inc. email and letter (re 7/18/12 stakeholder review draft); 9/20/12 Air Quality Division email and response letter
AQD Ex. #1t	8/17/12 PNM Resources email comments (re 7/18/12 stakeholder review draft); 9/20/12 Air Quality Division email and response letter
AQD Ex. #1u	8/17/12 UNM email with attached comments (re 7/18/12 stakeholder review draft); 9/20/12 Air Quality Division email and response letter
AQD Ex. #1v	8/17/12 Kirtland AFB email and attached comments (re 7/18/12 stakeholder review draft); 8/24/12 email confirmation no additional comments from Kirtland AFB headquarters; 9/20/12 Air Quality Division email and response letter
AQD Ex. #1w	8/23/12 LaFarge Aggregates & Concrete email and comment letter (re 7/18/12 stakeholder review draft); 9/20/12 Air Quality Division email and letter response
AQD Ex. #1x	12/28/12 Kirtland AFB email and attached comments (re 1st Amended Public Review Draft); 5/6/13 Air Quality Division email, letter and attached response

6. **Reservation of Rights**

This NOI is regarding the Department's *Second Amended Petition* and the related exhibits that are attached to this NOI. The Department reserves the right to call any person to testify and to present any exhibit in response to another NOI or public comment filed in this matter and to any testimony or exhibit offered at the Air Board's public hearing on the merits.

The Department also reserves the right to call any person as a rebuttal witness and to present any exhibit in support thereof.

Respectfully submitted,

Israel L. Tavarez, P.E.
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Permitting Section
Air Quality Division
Environmental Health Department
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Albuquerque, New Mexico 87102)
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CERTIFICATION

I hereby certify that on June 25, 2013:

1. an original of this Notice of Intent, with attached exhibits, was filed with the Hearing Clerk in the above-captioned matter and 15 copies of the NOI and exhibits were hand delivered to the Hearing Clerk;

2. one copy of the NOI with exhibits was sent by electronic mail to Hearing Officer Felicia Orth at orthf@yahoo.com and one copy was mailed to the Hearing Officer at 20 Barranca Road, Los Alamos, NM 87544;

3. one copy of the NOI with exhibits was sent by electronic mail to Albuquerque-Bernalillo County Air Quality Control Board attorney Bill Grantham at wggrantham@gmail.com, and one copy was hand delivered to Margaret Nieto, Environmental Health Supervisor, Control Strategies Division, Environmental Health Department for delivery to Bill Grantham; and

4. one copy of the NOI with exhibits was sent by electronic mail to Vernon Hershberger, Senior Consultant, Trinity Consultants (for client Cummins Rock Mountain, Inc.) at vhershberger@trinityconsultants.com, per Mr. Hershberger's June 25, 2013 request.

Isreal L. Tavarez, P.E.
Environmental Health Manager
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