AQD Ex. #1r

Jones, Elizabeth A.

From: Butt, Neal T.
Sent: Thursday, December 20, 2012 10:46 AM
To: Jones, Elizabeth A.
Subject: FW: Comments on proposed changes to 20.11.41 NMAC, Construction Permits
Attachments: Letter to Air Board (W1744184).docx

From: Blair, David [mailto:David.Blair@hollyfrontier.com]
Sent: Tuesday, August 14, 2012 7:32 AM
To: Butt, Neal T.
Cc: Carpenter, Donna; Blair, David
Subject: Comments on proposed changes to 20.11.41 NMAC, Construction Permits

Mr. Butt , Please see NK Asphalt Partners which formerly operated as Holly Asphalt Company comments to the proposed changes to the permit process.

I will send you the signed original in the mail.

Thanks for allowing us a chance to comment.

David G. Blair
Vice President
Asphalt and Heavy Fuels
The HollyFrontier Companies
20860 N Tatum Blvd
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Phoenix, AZ 85050
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HOLLYFRONTIER

RECEIVED
ENVIRONMENTAL HEALTH
12 AUG 17 AM 10: 07

August 14, 2012

Via E-mail (nbutt@cabq.gov) and regular mail

Mr. Neal Butt
City of Albuquerque, Environmental Health Department
P.O. Box 1293
Albuquerque, NM 87103

Re: Comments on proposed changes to 20.11.41 NMAC, *Construction Permits*

Dear Mr. Butt:

NK Asphalt Partners ("NK") appreciates this opportunity to comment on the proposed revisions to Title 20, Chapter 11, Part 41 of the New Mexico Administrative Code. NK's comments below address the "1st Amended Public Review Draft" of the proposed revisions which was made available on July 18, 2012.

Summary of Comments

NK commends the Environmental Health Department for reviewing and proposing to update its regulations. However, there are two primary areas of concern with the proposed changes to the regulation. First, as presently drafted, the proposed public notice requirements in subsection (B) of 20.11.41.13 may create uncertainty and unnecessary administrative delay, and may foster unnecessary administrative appeals concerning adequacy of notice. We recommend revising the draft to provide objective standards for determining which neighborhood groups an applicant must notify. Specifically, we recommend designated representative(s) of the recognized neighborhood associations and recognized neighborhood coalitions, as shown in the records of the city of Albuquerque office of neighborhood coordination and the Bernalillo County zoning, building and planning department, within one-half (1/2) mile of the property on which the source is or is proposed to be located. Second, the proposed 10 year limit on the term of a construction permit set forth in proposed subsection (E) of 20.11.41.18 is unnecessary, would increase the workload and administrative burden on the department, and may be a deterrent to economic development in Bernalillo County. We would encourage the department to delete this proposed provision. More detailed discussion of these points is provided below.

Public notice requirement

Proposed subsection (B) of 20.11.41.13 would impose new public notice requirements on applicants for a permit or permit modification. As drafted, those public notice requirements may create uncertainty and unnecessary administrative delay, and may foster unnecessary administrative appeals concerning adequacy of notice.

The proposed regulations state that applicants "shall" provide notice "to the two representatives of the recognized neighborhood association that is closest to the proposed source and the two representatives of the neighborhood coalition that is closest to the proposed source." Proposed 20.11.41.13(B)(1). This provision creates a number of potential problems. First, the proposed regulation does not provide any objective standard by which to make the determination which neighborhood association and/or neighborhood coalition is "closest" to the proposed source. The regulation does not refer to any objective, publically available source for determining the location and boundaries of each "recognized" neighborhood association and each neighborhood coalition. While the draft regulation states that "required contact information" is maintained by the city of Albuquerque office of neighborhood coordination and the Bernalillo County zoning, building and planning department, the regulation does not specify that the information concerning the boundaries for each neighborhood association and neighborhood coalition would be maintained and available from such sources.

Second, the draft regulation draws a distinction between a "recognized neighborhood association" and a "neighborhood coalition." The regulation does not define or explain what a "recognized neighborhood association" is or by whom that association must be "recognized." Also, it is not clear why the neighborhood association must be "recognized" but the neighborhood coalition need not be "recognized."

Third, use of the subjective term "closest" creates uncertainty. For example, if a proposed source is to be located within one neighborhood, but is bordered on two sides by two other neighborhoods (each of which has its own "recognized" neighborhood association), would the applicant need only give notice to the neighborhood association for the neighborhood in which the source is to be located, but not to the two adjoining neighborhood associations? Also, is the "closest" neighborhood association or neighborhood coalition determined by measuring from the emission point of the source (e.g. the stack) or from the fence line of the property on which the source is to be located?

To address these issues, we would urge that the proposed regulation be revised as follows:

B. Applicants public notice requirements: Before the applicant submits the application required by Subsection D of 20.11.41.13 NMAC, the applicant shall comply with the public notice requirements of Paragraphs (1) through (3) of Subsection B of 20.11.41.13 NMAC if the applicant is applying for a permit or permit modification. If required by the department, the applicant shall comply with the same notice requirements if the applicant is applying for a portable stationary source relocation. The applicant shall:

(1) Provide ~~public~~ notice by certified mail or electronic mail to the ~~two~~ designated representative(s) of the recognized neighborhood associations ~~that is closest to the proposed source and the two representatives of the~~and recognized neighborhood coalitions, as shown in the records of the city of Albuquerque office of neighborhood coordination and the Bernalillo county zoning, building and planning department, within one-half (1/2) mile of the property on which the source is or is proposed to be located~~that is closest to the proposed source; for areas within the Albuquerque city limits, the required contact information is maintained by the city of Albuquerque office of neighborhood coordination; for unincorporated areas of Bernalillo county, the required contact information is maintained by the Bernalillo county zoning, building and planning department~~;
(2) Include in the public notice all information required by Subsection E of 20.11.41.13 NMAC; and
(3) Until the department makes a final decision regarding the application, post and maintain a weather-proof sign provided by the department, posted at the more visible of either the proposed or existing facility entrance or another location on the property boundary. The applicant shall list on the sign all information required by Subsection E of 20.11.41.13 NMAC.

If the foregoing changes are made to the proposed regulation, then corresponding change would also need to be made to 20.11.41.14.B(6) NMAC and to 20.11.41.15.B(5).

Ten year permit term and requirement of permit renewal

Proposed subsection (E) of 20.11.41.18 would impose on all permits issued after an as-yet undefined date a ten-year limit, with applications for renewal due one year prior to the expiration of the permit. This proposal is unnecessary, would increase the workload and administrative burden on the department, and may be a deterrent to economic development in Bernalillo County. We would recommend that this provision of the proposed regulation be deleted.

First, this proposed term limit is unnecessary. There is adequate, existing authority to reopen, revise, or reissue a permit based on changes in applicable law, or for other reasons as set forth in 20.11.41.30 NMAC. Moreover, major sources are already subject to requirements to obtain an operating permit which must be renewed every five years. Thus, as to such sources, the department already has an opportunity every five years to determine whether any new air quality requirements may be applicable and to reopen, revise or reissue the underlying construction permit based on a change in law or for other reasons under 20.11.41.30 NMAC.

Second, requiring all sources to incur the time and expense associated with the preparation and processing of a permit application every ten years is not only burdensome to them, but likely will significantly increase the workload and administrative burden on the department, without producing a significant improvement to overall air quality. Many minor sources will not change the nature of scope of their operations once their air permit has been issued. Requiring such sources to incur the time, expense and risk of renewal every 10 years is burdensome and unnecessary. If such sources do intend to change their operation in a manner that would result in an increase in the potential emission rate of a regulated air contaminant, then they would need to apply for and obtain a permit modification. At that time, the department can review the existing permit conditions and determine whether any new conditions should be added or any outdated requirements should be removed.

Third, the proposed term limit may be a deterrent to economic development in Bernalillo County. For new sources and for some existing sources, the potential time and expense associated with renewal of a construction permit every ten years may tip the balance against locating (or continuing to operate) in Bernalillo County in favor of another location, in state or out of state, that does not have such a requirement. For all of those reasons, we would urge the department to delete the proposed ten year term limitation.

If the department believes that some provision is needed to provide for periodic review of permit terms, then the department could provide that a permittee must, every ten years, submit some sort of abbreviated form explaining whether there have been any changes in operations or any changes

in applicable laws or regulations that would necessitate a change in any permit term or condition. If there have been no changes, then the permit would remain in force as is. If there have been changes, then the permittee and the department could evaluate whether any changes in or additions to the permit are necessary and, if so, whether the changes could be accomplished through an administrative revision, a technical revision or a modification of the permit. This approach to periodic review would provide the department a regular opportunity to review permits without subjecting many sources who would not require a permit revision to the time, and expense of a full blown permit application and hearing process.

If the ten year term limit is not removed, then the proposed regulation should be revised to make clear how renewal applications would be processed. We would encourage the department to revise the proposed regulation to provide that renewal applications presumptively be processed as an administrative or technical permit revision, under the procedures set forth in proposed subsection (B) of 20.11.41.28.

In addition, if the ten year term limit is retained, we would urge that the proposed regulation be revised to make clear that a relocation, administrative revision, or technical revision to an existing permit will not subject that permit to the new ten year term limitation. As currently drafted, the regulation provides that "all permits issued pursuant to 20.11.41 NMAC" after an as yet unspecified date "shall be valid for no longer than 10 years." The proposed regulation defines the term "permit" to mean "a construction permit for a source or a construction permit modification, relocation, or administrative or technical permit revision." Under that definition, even an administrative revision to an existing permit will then make the permit subject to the ten year term limit.

Conclusion

Once again, we appreciate the opportunity to provide these comments on the proposed revisions to the regulation. Should you require further information or explanation of our comments, please do not hesitate to ask.

Sincerely,

David G. Blair
Vice President

HollyFrontier Refining & Marketing LLC
NK Asphalt Partners
20860 N. Tatum Boulevard, Suite 150 • Phoenix, AZ 85050
(480) 256-1900 • Fax (480) 247-9685
http://www.hollyfrontier.com

Tavarez, Isreal L.

From: Tavarez, Isreal L.
Sent: Thursday, September 20, 2012 3:10 PM
To: 'David.Blair@hollyfrontier.com'
Subject: Albuquerque EHD Response to HollyFrontier's Comments Regarding Proposed 20.11.41 NMAC, Construction Permits

Attachments: EHD Response 9-20-12 to HollyFrontier Comments 8-17-12.pdf

Dear Mr. Blair:

Thank you for submitting your comments regarding the proposed repeal and replacement of 20.11.41 NMAC which is the minor stationary source air quality regulation. Please find attached a response to the comments you submitted in your letter dated August 14, 2012, sent to Neal Butt of the Air Quality Division.

Respectfully,

Isreal L. Tavarez, P.E.
Environmental Health Manager
Permitting Division
Air Quality Programs
City of Albuquerque Environmental Health Department

EHD Response 9-20-12 to HollyF...

CITY OF ALBUQUERQUE

Environmental Health Department
Mary Lou Leonard, Director

September 20, 2012

David G. Blair
Vice President
HollyFrontier Refining & Marketing LLC
NK Asphalt Partners
20860 N. Tatum Boulevard, Suite 150
Phoenix, AZ 85050

Sent via e-mail to David.Blair@hollyfrontier.com

RE: **Albuquerque Environmental Health Department Response to HollyFrontier's Comments Regarding Repeal of 20.11.41 NMAC Authority to Construct and Replacement with 20.11.41 NMAC, Construction Permits**

Environmental Health Dept.

Air Quality Division

PO Box 1293

Albuquerque, NM 87103

www.cabq.gov

Dear Mr. Blair:

Thank you for submitting your comments regarding the proposed repeal and replacement of 20.11.41 NMAC which is the minor stationary source air quality regulation. Please find below a response to the comments you submitted in your letter dated August 14, 2012, sent to Neal Butt of the Air Quality Division. The City of Albuquerque Environmental Health Department (Department) has provided a response to your letter and has numbered your comments in order to better identify each comment and response.

<u>Public notice requirement</u>

1. *First, as presently drafted, the proposed public notice requirements in subsection (B) of 20.1.41.13 may create uncertainty and unnecessary administrative delay, and may foster unnecessary administrative appeals concerning adequacy of notice. We recommend revising the draft to provide objective standards for determining which neighborhood groups an applicant must notify. Specifically, we recommend designated representative(s) of the recognized neighborhood associations and recognized neighborhood coalitions, as shown in the records of the city of Albuquerque office of neighborhood coordination and the Bernalillo County zoning, building and planning department, within one-half (1/2) mile of the property on which the source is or is proposed to be located.*

   The Department has incorporated the suggested changes in paragraph (1) of subsection B of 20.11.41.13 NMAC:

~~provide public notice by certified mail or electronic mail to the two representatives of the recognized neighborhood association that is closest to the proposed source and the two representatives of the neighborhood coalition that is closest to the proposed source; for areas within the Albuquerque city limits, the required contact information is maintained by the city of Albuquerque office of neighborhood coordination; for unincorporated areas of Bernalillo county, the required contact information is maintained by the Bernalillo county zoning, building and planning department;~~ provide public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, as shown in the most current records of the city of Albuquerque office of neighborhood coordination and the Bernalillo County zoning, building and planning department, within one-half (1/2) mile of the exterior boundaries of the property on which the source is or is proposed to be located. The applicant may submit a written request to the department proposing an alternative approach to providing public notice if the proposed source or modification is located at a site with large property boundaries or campus-like facilities. The applicant shall obtain prior written approval from the department for any alternative approach to provide public notice.

Ten year permit term and requirement of permit renewal

2. *Second, the proposed 10 year limit on the term of a construction permit set forth in proposed subsection E of 20.11.41.18* [19] *is unnecessary, would increase the workload and administrative burden on the department, and may be a deterrent to economic development in Bernalillo County. We would encourage the department to delete this proposed provision.*

   The Department has removed the proposed requirement in Subsection E of 20.11.41.19 NMAC for a 10 year limit on the term of a construction permit.

Thank you again for providing your comments. If you would like to discuss the information in this response please contact me at 768-1965 or at itavarez@cabq.gov.

Respectfully,

Isreal L. Tavarez

Isreal L. Tavarez, P.E.
Environmental Health Manager
Permitting Division
Air Quality Programs
City of Albuquerque Environmental Health Department

cc: File