Jones, Elizabeth

AQD Ex. #2f

From: City of Albuquerque-Air Quality Division [nbutt@cabq.gov]
Sent: Tuesday, May 14, 2013 3:20 PM
To: Jones, Elizabeth
Subject: Notice of Hearing and Meeting - Proposal to Repeal and Replace 20.11.41 NMAC

City of Albuquerque

Notice of Hearing and Meeting - Proposal to repeal the currently effective rule 20.11.41 NMAC, *Authority to Construct*; adopt a proposed replacement 20.11.41 NMAC, *Construction Permits*; and incorporate it into the New Mexico State Implementation Plan (SIP) for Air Quality

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
NOTICE OF HEARING AND MEETING

On **July 10, 2013 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 (City Council/County Commission Chambers) at the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102.

The hearing will address a proposal by the Air Quality Division (AQD) of the City of Albuquerque's Environmental Health Department (EHD) to repeal the currently effective rule 20.11.41 NMAC, *Authority to Construct*; adopt a proposed replacement 20.11.41 NMAC, *Construction Permits*; and incorporate it into the New Mexico State Implementation Plan (SIP) for Air Quality. As grounds, the Petitioner (City of Albuquerque) states the following:

The existing regulation, 20.11.41 NMAC is outdated. There have been significant changes made to the New Mexico Air Quality Control Act (Air Act) since 1994 when 20.11.41 NMAC was last substantively amended. For example, the Air Act generally requires AQD to make a final decision regarding a

construction permit application within 90 days of the application being determined to be complete. Although AQD follows the 90-day timeline, the present wording of 20.11.41 NMAC provides 120 days, which is inconsistent with and not authorized by the Air Act.

The Air Act and the currently effective 20.11.41 NMAC include minimal wording regarding information hearings or meetings that may be held before the AQD makes a decision about a pending permit application. Although public information hearings (PIHs) are not required by the Air Act, the AQD has adopted increasing outreach, notice and other activities regarding PIHs consistent with EHD's policy decisions. The expanded processes are included in the proposed 20.11.41 NMAC.

The Air Act at NMSA 1978, §74-2-4.C (1967 as amended through 2009), requires air quality standards and regulations within Bernalillo County to be "not lower than those required by regulations adopted by" the state Environmental Improvement Board (EIB). Therefore, AQD compared the currently effective 20.11.41 NMAC to the comparable EIB regulation 20.2.72 NMAC, *Construction Permits*, and is proposing amendments to bring the two rules into alignment.

Specific changes and additions reflected in the proposed replacement 20.11.41 NMAC include: (1) requiring a new owner or operator who operates a source that requires an air quality permit, but does not have a permit, to obtain an air quality permit; (2) requiring a person to apply for and obtain a new or modified air quality permit when the source becomes subject to a new federal standard (New Source Performance or National Emission Standards for Hazardous Air Pollutants); (3) providing exemptions from air quality permitting for specified activities including: maintenance of grounds, maintenance of equipment, use of firefighting equipment and training, etc.; (4) changing the basis used to determine whether a permit is required from "pre-controlled emission rate" to "potential emission rate", which is consistent with both the federal regulation definition and the State of New Mexico Air Quality Control Act definition; (5) requiring an applicant to participate in a pre-application meeting unless EHD waives the requirement; (6) before an application is submitted, requiring the applicant to conduct public outreach by sending a copy of the public notice to the representatives of the neighborhood associations and coalitions within ½ mile of the exterior boundary of the property and posting and maintaining a weather-proof sign at a visible location at the site until EHD makes a final decision regarding the application; (7) changing EHD's public notice requirements, including publishing public

notice that provides 30 days for public comments to be submitted, sending a copy of the public notice to the representatives of the neighborhood associations and coalitions within ½ mile of the exterior boundary of the property, and providing a notice to all individuals and organizations on the list maintained by EHD; (8) providing the public with 30 days to submit written comments and evidence and to request a public information hearing (PIH) regarding the application; (9) if a person expresses in writing to EHD an interest in the permit application, and if an analysis of the application is not available, requiring EHD to provide an analysis and an additional 30 days after the analysis is available for the public to submit written comments and request a public information hearing; (10) requiring EHD to deny an air quality permit application if the applicant does not submit the required information after three attempts; (11) requiring EHD to take final action on an application within 90 days after EHD has determined the application is administratively complete unless EHD Director grants an extension for not more than 90 days for good cause, including conducting a PIH; (12) establishing the criteria that authorizes EHD to cancel a permit, providing the process for initiating cancellation of a permit, and establishing the criteria to suspend or revoke a permit; (13) establishing a time limit of 365 consecutive days for temporary relocation of a portable stationary source; (14) requiring a permittee that requests a relocation of a portable stationary source to post and maintain a weather-proof sign at a visible location at the proposed site prior to submitting the application for temporary relocation of a portable stationary source and to keep the sign posted until EHD makes a final decision regarding the relocation request; (15) authorizing EHD to require an applicant that requests relocation of a portable stationary source to provide notice of the proposed location to nearby neighbors; (16) establishing public notice requirements that apply to EHD when EHD issues an emergency permit: public notice in the form of a newspaper legal ad, notice to the neighborhood associations and coalitions within ½ mile of the exterior boundary of the property on which the source is or is proposed to be located, and notice to individuals and organizations on the list maintained by the EHD; (17) establishing provisions for an applicant to request technical revisions to the air quality permit; (18) authorizing development, approval and revision of general construction permit forms to be used for similar operations, processes and emissions; and (19) as required by the New Mexico Air Quality Control Act, establishing requirements for accelerated review of applications.

Following the hearing, the Air Board is expected to convene its regular monthly meeting during which the Board will consider repealing the currently effective rule 20.11.41

NMAC, *Authority to Construct*; adopting proposed replacement 20.11.41 NMAC, *Construction Permits*; and incorporating the replacement rule into the SIP.

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, the New Mexico Air Quality Control Act, local air quality regulations, 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 provide non-technical testimony regarding the proposal to repeal and replace 20.11.41 NMAC 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 Ordinance, Section 9-5-1-6, *Adoption of Regulations, Notice and Hearing* [ROA 1994]; Bernalillo County Ordinance, Section 30-35, *Adoption of Regulations, Notice and Hearings* [Ord. No. 94-5, Section 6, 2-2-94]; 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 and 20.11.82.16.B. (1) NMAC to file, by 5:00 pm on June 25, 2013, a written Notice Of Intent (NOI) to testify and 15 copies, with Elizabeth Jones, Air Quality Control Board Liaison, Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, New Mexico 87102, or email to ejones@cabq.gov or deliver the NOI to the Environmental Health Department, Suite 3023, 400 Marquette Avenue NW. The NOI shall identify the name, address, and affiliation of the person testifying.

In addition, written non-technical comments to be incorporated into the public record for the July 10, 2013 hearing should be received by 5:00 pm on July 3, 2013 at P.O. Box 1293, Albuquerque, NM 87103 or the Environmental Health Department office. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to ejones@cabq.gov and shall include the required name and address information.

A copy of the proposed replacement regulation entitled "2nd Amended Public Review Draft, 4/23/13" and the April 23

Comparison Summary of Current and Proposed Albuquerque-Bernalillo County Air Quality Control Board Regulations for Minor Stationary Source Air Quality Permitting Actions may be obtained at the Environmental Health Department Office, or by contacting Ms. Elizabeth Jones electronically at ejones@cabq.gov by phone (505) 768-2601 or by downloading the documents at http://www.cabq.gov/airquality/air-quality-control-board/documents/AQCBPetition_20135.pdf

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2601 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

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