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BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO AMEND 20.11.47 NMAC, *EMISSIONS INVENTORY REQUIREMENTS*, INCORPORATE SAID AMENDMENTS INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN FOR AIR QUALITY (SIP) AND REPEAL 20.11.48 NMAC, *GREENHOUSE GAS EMISSIONS REPORTING*

AQCB Petition No. 2012-5

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 NMAC, *Rulemaking Procedures – Air Quality Control Board*, the City of Albuquerque Environmental Health Department, Air Quality Division ("the 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>**

City of Albuquerque Environmental Health Department, Air Quality Division

2. **<u>The name and qualifications of each technical witness.</u>**

Neal T. Butt. Environmental Health Scientist, Control Strategies Section, Air Quality Division. M.S. Biology (Wildlife Biology), University of North Dakota; B.S. Biology (Zoology), University of New Mexico; B.A. Environmental Planning & Design, UNM; A.A.S. Criminal Justice, Central New Mexico Community College; A.A.S. Environmental Protection Technology, CNM; WERC Waste Management Certificate, UNM Chemical & Nuclear Engineering Department. Employed by the City of Albuquerque's Environmental Health Department for 15 + years; the last 11 of which have been in the Air Quality Division. Chief

responsibility is the promulgation of air quality regulations for implementation within the County of Bernalillo.

Isreal Tavarez. Environmental Health Manager, Permitting Section, Air Quality Division. 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 16 + years. Previously employed by the State of New Mexico, Air Quality Bureau (1994-1996).

Dario Rocha. Supervisor, Permitting and Technical Analysis Section, Air Quality Division. B.S. Mechanical Engineering, New Mexico State University. Employed by the City of Albuquerque's Environmental Health Department, Air Quality Division for 11 + years. Previously employed by the State of New Mexico, Air Quality Bureau (1997-2000). Chief responsibility is to supervise Permitting and Technical Analysis Section.

3. <u>Summary and Estimated Duration of Testimony</u>

Mr. Butt's written testimony is attached as AQD Exhibit # 3. Mr. Butt will testify that this revision to the SIP should be approved. As grounds, Petitioner states the following:

1. The Air Board adopted 20.11.47 NMAC, *Emissions Inventory Requirements*, on March 12, 2008, which became effective on May 1, 2008. This new rule was adopted to facilitate the efficient collection and reporting of emissions inventory (EI) data from sources within Bernalillo County. These inventories are required by 40 CFR 51 Subpart A, entitled *Emissions Inventory Reporting Requirements*, as well as the consolidated emissions rule (CER). Before this rule the Division collected this data under the aegis of the individual source's permit

or through data requests. This rule standardized the methodology and format for EI reporting. This rule also provided baseline data for specific air pollutants for specific area and source categories in order to analyze the conditions in our air shed. This information provides a basis for planning of future regulations and policies. This rule also provided consistency in EI reporting for sources in Bernalillo County and the rest of the state by mirroring provisions found in the State's rule 20.2.87 NMAC, *GHG Emissions Reporting*.

2. The Air Board adopted 20.11.48 NMAC, *Greenhouse Gas Emissions Reporting*, on November 29, 2007, which became effective on January 1, 2008. The purpose of 20.11.48 NMAC was to provide a mechanism for measuring and reporting emissions of GHGs, thereby facilitating the collection of information that could provide a basis for policy decisions; enhance the County-wide GHG EI first compiled in 2005; and prepare GHG-emitting facilities for participating in a market-based emissions reduction program. 20.11.48 NMAC currently requires owners and operators of three categories of stationary facilities within Bernalillo County to submit annual GHG emissions reports to the Division. These categories are:

(a) electrical generating facilities with nameplate capacity to generate equal to or greater than 25 megawatts of electricity (presently only two facilities in Bernalillo County are in this category: the Public Service Company of New Mexico and Delta Power);

(b) petroleum refining facilities with the industry classification code specified in 20.11.48 NMAC (however no such oil and gas production facility operates in Bernalillo County, and no such petroleum refining facility is expected to ever operate within Bernalillo County); and

(c) cement manufacturing facilities that meet the requirements of 20.11.48 NMAC (which applies only to one facility in Bernalillo County: the GCC Rio Grande Portland cement facility located in Tijeras Canyon). [20.11.48.200.A NMAC].

3. In the interim since these two rules were adopted, there have been two dramatic changes in the area of GHG EI reporting. First on October 30, 2009, the EPA promulgated their 'Mandatory Reporting of GHG Final Rule' [Federal Register Vol. 74, NO. 209, 56260-56519], effective December 29, 2009, codified at 40 CFR 98, entitled *Mandatory GHG Reporting*. This rule encompasses all of the GHG EI reporting requirements of 20.11.48 NMAC, as well as the reporting requirements for GHGs in 20.11.47 NMAC; thereby causing sources to report to both the Division and EPA, with two different reports resulting in duplicative efforts and places an unnecessary burden on the sources. Secondly, the New Mexico Environmental Improvement Board (EIB) has repealed their rules addressing GHGs, specifically 20.2.300 NMAC, *Reporting of Greenhouse Gas Emissions* (a/k/a 20.2.87 NMAC, *GHG Emissions Reporting*), upon which 20.11.48 NMAC was modeled. The Air Act requires the City of Albuquerque and the County of Bernalillo to enact enabling ordinances that provide for local Air Board regulations that are as "stringent as" the regulations adopted by the EIB [NMSA 74-2-4.C]. Since the EIB has repealed its' GHG program, there are no longer any EIB rules addressing GHG EI reporting that the Air Board must be as 'stringent as'. Therefore, the Divisions is proposing to remove all provisions requiring local GHG emissions reporting [i.e. 20.11.47.15 NMAC] including concomitant definitions regarding GHGs from 20.11.47.7 NMAC, as well as repealing 20.11.48 NMAC in its entirety.

4. The use of the terms: "air contaminants" and "regulated air contaminant", are internally inconsistent within 20.11.47 NMAC, and so are proposed to be superseded by the term "regulated air pollutant" for clarity.

4. Text of Recommended Revisions to the New Mexico State Implementation Plan

The Division recommends adoption of the proposed amendments to 20.11.47 NMAC, *Emissions Inventory Requirements* as proposed in the Public Review Draft, shown as AQD Exhibit # 1a, which is attached to the Petition to Amend, filed July 19, 2012; the incorporation of Said Amendments into the New Mexico State Implementation Plan For Air Quality (SIP) and the Repeal of 20.11.48 NMAC, *Greenhouse Gas Emissions Reporting,* shown as AQD Exhibit # 1b. Mr. Butt's testimony is anticipated to take approximately 30 minutes.

5. List and Description of Exhibits

The Division has attached the following exhibits to this Notice of Intent:

Exhibit Number	Title of Exhibit
AQD Exhibit 1	Petition to Amend 20.11.47 NMAC, *Emissions Inventory Requirements*, Incorporate Said Amendments into the New Mexico State Implementation Plan For Air Quality (SIP) and Repeal 20.11.48 NMAC, *Greenhouse Gas Emissions Reporting*
AQD Exhibit 1a	Public Review Draft 20.11.47 NMAC, *Emissions Inventory Requirements* {attached to AQD Exhibit 1}
AQD Exhibit 1b	Public Review Draft 20.11.48 NMAC, *Greenhouse Gas Emissions Reporting* {attached to AQD Exhibit 1}

AQD Exhibits 2a/b/c	Notice of Proposed Rulemaking: Albuquerque Journal, 8/12/12 {2a}; NM Register, 8/30/12 {2b}; and Air Quality Announce List Serve, 8/14/12 {2c}
AQD Exhibits 3	Direct Testimony
AQD Exhibit 4	Comments Received: EPA

6. **Reservation of Rights**

This Notice of Intent to Present Technical Testimony is based on the Division's Petition. The Division reserves the right to call any person to testify and to present any exhibit in response to another notice of intent or public comment filed in this matter or to any testimony or exhibit offered at the public hearing. The Division also reserves the right to call any person as a rebuttal witness and to present any exhibit in support thereof.

Respectfully submitted,

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department
One Civic Plaza, NW, Suite 3023
Albuquerque, New Mexico 87103
(505) 768-2660

CERTIFICATION

I hereby certify that on September 25, 2012, an original and nine copies of this Notice of Intent to present technical testimony (NOI), with attached exhibits were delivered to the following person for filing.

Elizabeth Jones
Air Quality Control Board Liaison
Air Quality Division
Environmental Health Department
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103

And that on September 25, 2012, a copy of this NOI with attached exhibits was sent to the Attorney for the Board, Bill Grantham, at the following e-mail address:

Bill.grantham@state.nm.us

Neal Butt
Environmental Health Scientist
Air Quality Division
Environmental Health Department