

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO AMEND TITLE 20, CHAPTER 11 OF THE NEW MEXICO ADMINISTRATIVE CODE TO REQUIRE REVIEW AND CONSIDERATION OF HEALTH, ENVIRONMENT, AND EQUITY IMPACTS.

AQCB PETITION NO. 2022-03

MOUNTAIN VIEW NEIGHBORHOOD ASSOCIATION, MOUNTAIN VIEW COMMUNITY ACTION, AND FRIENDS OF VALLE DE ORO.

PETITIONERS

MOTION FOR CORRECTION OF ADOPTED RULES TO ACCURATELY REFLECT RECORD

COME NOW Albuquerque Asphalt, Inc., Black Rock Services, LLC, Vital Consulting Group, LLC, and Mountain States Constructors, Inc. (Companies), by and through undersigned counsel of record, and hereby request that the Albuquerque/Bernalillo County Air Quality Control Board (the Board) correct the provisions in the adopted regulations that require the use of Best Available Control Technology (BACT) in any area in Bernalillo County where listed Hazardous Air Pollutants (HAPs) are emitted in order to accurately comply with the decision of the Board. (*See* Final Order and Statement of Reasons at ¶11).

Newly adopted 20.11.41.35. D states:

BACT is also required for permit applicants that emit emissions of common hazardous air pollutants (HAPS) listed in Table 2 in quantities described in 20.11.41.2.B.3 NMAC whether or not the source is within an Overburdened Area.

(Emphasis added).

Newly adopted 20.11.61.32.C states:

BACT is also required for permit applicants that emit emissions of common hazardous air pollutants (HAPS) listed in Table XX in quantities described in 20.11.41.2.B.3 NMAC whether or not the source is within an Overburdened Area.

(Emphasis added).

Newly adopted 20.11.72.8.D states:

D. The department shall require BACT for new or modified stationary sources **throughout Bernalillo County** that emit any one, or combination of, the following fifteen hazardous air pollutants (HAPs): acetaldehyde, acrolein, benzene, 1,3-butadiene, carbon tetrachloride, ethyl benzene, ethylene oxide, formaldehyde, hydrochloric acid, methyl bromide, methylene chloride, naphthalene, toluene, vinyl chloride, and xylenes.

(Emphasis added). For each of the quoted provisions, the Companies request that the underlined portions be deleted.

The Board deliberated on the BACT provisions (Exhibit 1, Dec. 11. 2023 Hearing Transcript (TR) at 429-436) and the following discussion took place:

MEMBER GALEWSKY: I'm still trying to clarify what the inclusion of this list refers to. Does that mean that a facility that emits any of those substances even if it's not in an overburdened community has to apply the best available –

CHAIR PAUL: No.

MEMBER GALEWSKY: -- control technology?

CHAIR PAUL: Only within or within one mile from.

MEMBER GALEWSKY: Okay.

(TR 435/lns15-23). Now that the transcript is available, it is clear that the Board intended that the BACT requirements would only apply to the areas identified as overburdened and to within one mile from such areas.

Requiring BACT throughout the County, rather than limiting it to an overburdened area or within 1 mile from an overburdened area, is not consistent with the deliberations by the Board, nor was it included in the proposed rule for which notice was provided and there is no evidence in the record supporting the use of BACT throughout the County.

The Companies request that the provisions found in 20.11.61.32.C, 20.11.41.35.D and 20.11.72.D be corrected to delete the portions highlighted above in order to accurately reflect the decision of the Board.

Respectfully submitted,

DOMENICI LAW FIRM, P.C.

/s/ Pete Domenici
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Attorneys for Albuquerque Asphalt, Inc., Black Rock Services, LLC, Vital Consulting Group, LLC, and Mountain States Constructors, Inc.,

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January, 2024, a copy of the foregoing was served via electronic mail on all counsel of record.

/s/ Lorraine Hollingsworth
Lorraine Hollingsworth

1	BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
2	THE CONTROL BOILE
3	AQCB Petition No. 2022-3
4	IN THE MATTER OF THE PETITION TO AMEND TITLE 20, CHAPTER 11 OF THE NEW MEXICO
5	ADMINISTRATIVE CODE TO REQUIRE REVIEW AND CONSIDERATION OF HEALTH, ENVIRONMENT AND EQUITY IMPACTS,
7	Mountain View Neighborhood Association,
8	Mountain View Community Action, Friends of Valle de Oro,
9	Petitioners.
10	TRANSCRIPT OF PROCEEDINGS
11	TIGHTSCRIFT OF TROCHEDINGS
12	BE IT REMEMBERED that on the 11th day of December,
13	2023, this matter came on for hearing and decision
14	before the Albuquerque-Bernalillo County Air Quality
15	Control Board, taken at the Albuquerque Convention
16	Center, 401 Second Street, Northwest, and virtually
17	through Zoom video conferencing, commencing at the hour
18	of 9:10 a.m.
19	
20	Volume 6
21	
22	
23	REPORTED BY: CHERYL ARREGUIN, RPR, New Mexico CCR 21 Albuquerque Court Reporting Service, LLC
24	Albuquerque Court Reporting Service, LLC 3150 Carlisle Boulevard, Northeast, Suite 104 Albuquerque, New Mexico 87110
25	(505) 806-1202 abqcrs@gmail.com

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1	case-by-case basis or even if the source or modification	1	an overburdened area or within one mile from an
2	is not a major stationary source or a major	2	overburdened area.
3	modification.	3	MEMBER EBERLEIN: Yeah. That will work fine.
4	D, development the department shall in	4	MEMBER GALEWSKY: Can you summarize can you
5	consultation with the public, using the latest and best	5	read that relevant section, just so I know what the
6	•	6	wording is?
7	environment, update its overburdened area maps within	7	CHAIR PAUL: Can you say that again?
8		8	MEMBER EBERLEIN: So so I shall read
9	notice of potentially regulated entities at least six	9	section C again. The department shall require every new
10	• •		or modified stationary source subject to the permitting
11	That's the end.	11	
12	CHAIR PAUL: Okay.		area or within one mile as indicated by the overburdened
13	Member Lewis, can you be very brief?		area map in effect as of the permit application date to
14	MEMBER LEWIS: You said that this applied to	14	
15	•	15	•
16		16	
17 18		17 18	or major modification. CHAIR PAUL: Okay.
19		19	Is there a second for that one item of
20	CHAIR PAUL: We've okay. I think the	20	
21		21	Vice Chair Richards.
22		22	VICE CHAIR RICHARDS: Yeah. I feel like we
23	MEMBER LEWIS: I'm going		need some discussion on that. So
24	CHAIR PAUL: where the permits are to	24	CHAIR PAUL: Well, we can do it after the
25			second, too.
	ALBUQUERQUE COURT REPORTING SERVICE, LLC		ALBUQUERQUE COURT REPORTING SERVICE, LLC
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	there was discussion that the modeling	1	VICE CHAIR RICHARDS: Oh, I'm sorry. That
2	MEMBER LEWIS: Then maybe you	2	CHAIR PAUL: That's why I was looking for a
3	CHAIR PAUL: (unintelligible and/or		
4		4	Is there a second to Member Eberlein's
5	MEMBER LEWIS: Then maybe you have to change		proposal?
6	•	6	MEMBER GALEWSKY: I second it.
	I mean, I think saying it has to be in the overburdened	7	CHAIR PAUL: Seconded by Member Galewsky.
8	·	8	Now, Vice Chair Richards, discussion?
9	CHAIR PAUL: Okay. MEMBER LEWIS: these are residential	9	MS. SEDILLO LOPEZ: With the friendly amendment?
10		10 11	
11 12	CHAIR PAUL: Member Lewis, can you speak like	12	CHAIR PAUL: With the friendly amendment? MEMBER GALEWSKY: Yes.
13		13	CHAIR PAUL: Yes, with the friendly amendment
1.5		14	· · · · · · · · · · · · · · · · · · ·
14		1	
14 15	actions are clear?	15	VICE CHAIR RICHARDS: I mist feel like so
15		15 16	VICE CHAIR RICHARDS: I just feel like so you're requiring BACT technology, but it's at the
	MEMBER LEWIS: Okay. I make a friendly	15 16 17	you're requiring BACT technology, but it's at the
15 16		16	you're requiring BACT technology, but it's at the discretion. It sounds like it's case dependent at the
15 16 17	MEMBER LEWIS: Okay. I make a friendly amendment that that language on where the permit is	16 17	you're requiring BACT technology, but it's at the discretion. It sounds like it's case dependent at the
15 16 17 18	MEMBER LEWIS: Okay. I make a friendly amendment that that language on where the permit is being requested be changed to within one mile of an	16 17 18	you're requiring BACT technology, but it's at the discretion. It sounds like it's case dependent at the discretion of EHD.
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1 them.	1 MEMBER EBERLEIN: Yeah. I'm still figuring
2 CHAIR PAUL: Is that a friendly amendment to	2 out okay. So
3 your proposal? Is that something you would consider?	3 CHAIR PAUL: Is there a level of emission for
4 Member Eberlein?	4 any of those that you from the docket?
5 MEMBER EBERLEIN: So that's the list that	5 MEMBER EBERLEIN: I don't think so.
6 was oh, yeah. That's the 20-something chemicals,	6 CHAIR PAUL: Because it just says emit, so
7 right? Yeah.	7 MEMBER EBERLEIN: Because I mean, the best
8 Should we just should we put that as a list	8 available control technology will be okay. So the
9 at the end of this let's see here, how would that fit	9 department has to make an evaluation of that basically.
10 in this.	10 CHAIR PAUL: Right.
11 VICE CHAIR RICHARDS: So that would be	11 So provided all right. What about okay.
12 requiring rather than leaving it open, requiring BACT	12 I'm not sure that it's a friendly amendment then.
13 for facilities that emit those one of one of	13 Is that what you're saying?
14 those one or more of those contaminants.	14 MEMBER EBERLEIN: What?
15 CHAIR PAUL: That's the list from 181.1?	15 CHAIR PAUL: Are you saying that you would
16 Is that a friendly amendment	16 accept that amendment or not?
17 VICE CHAIR RICHARDS: Yeah. You can see the	17 MEMBER EBERLEIN: Yeah. I will accept it.
18 list. It's on page 2 of the UNM proposal.	18 I
19 MEMBER CALMAN: Can I ask a quick	19 CHAIR PAUL: Okay.
20 clarification I really need go to bed	20 MEMBER EBERLEIN: just can't come up with a
21 clarification question	21 way to write it right now, but
22 CHAIR PAUL: Yes.	22 CHAIR PAUL: Okay.
23 MEMBER CALMAN: from Member Richards?	23 MS. SEDILLO LOPEZ: Leave it to me.
24 Are you saying then BACT would only be	24 MEMBER CALMAN: I'm you could
25 required for sources that emit those listed chemicals?	25 CHAIR PAUL: Yeah. One more from Member
ALBUQUERQUE COURT REPORTING SERVICE, LLC	ALBUQUERQUE COURT REPORTING SERVICE, LLC
D 421	D 42
Page 431	Page 433
1 Can you just explain	
2 VICE CHAID DICHADDS, C	1 Calman.
2 VICE CHAIR RICHARDS: Sure.	2 MEMBER CALMAN: You could leave it up to some
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16 CHAIR PAUL: So that was okay. 17 So do we have to go back to the beginning, or 21 can we vote now? 18 MEMBER GALEWSKY: (Unintelligible and/or 22 inaudible) 12 CHAIR PAUL: Are there any other comments on 23 MEMBER GALEWSKY: I'm just asking 24 CHAIR PAUL: Are there any other comments on 24 CHAIR PAUL: Are there any other comments on 25 Sorry. Hold on. One one second. ALBUQUERQUE COURT REPORTING SERVICE, LLC Page 435 MEMBER CALMAN: We're just talking about the amendments. CHAIR PAUL: Okay. Yeah. Sorry. You're 4 right. We're voting on just that amendment. MEMBER CALMAN: So we don't have a 4 MEMBER CALMAN: So we don't have a 4 CHAIR PAUL: I'm hum. MEMBER CALMAN: So we don't have a 4 CHAIR PAUL: No? MS. SEDILLO LOPEZ: It becomes part of what you don you for on in the end. CHAIR PAUL: Yes. So it's just we're 10 MS. SEDILLO LOPEZ: It becomes part of what you don you for on in the end. CHAIR PAUL: Yes. So it's just we're 11 Member Galewsky, Member Lewis. MEMBER GALEWSKY: I'm still trying to clarify 16 What the inclusion of this list refers to. MEMBER LEWIS: -as proposed. CHAIR PAUL: No? MEMBER LEWIS: -as proposed. CHAIR PAUL: No. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEMBER LEWIS: -as proposed. 1 the table right now. MEM	14 CHAIR PAUL: Okay. You've accepted it.	14 CHAIR PAUL: Member Eberlein.
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