

**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/Ins15-23). 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,

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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
2 AIR QUALITY CONTROL BOARD

3 AQCB Petition No. 2022-3

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

9 Mountain View Neighborhood Association,
10 Mountain View Community Action,
11 Friends of Valle de Oro,

12 Petitioners.

13 TRANSCRIPT OF PROCEEDINGS

14 BE IT REMEMBERED that on the 11th day of December,
15 2023, this matter came on for hearing and decision
16 before the Albuquerque-Bernalillo County Air Quality
17 Control Board, taken at the Albuquerque Convention
18 Center, 401 Second Street, Northwest, and virtually
19 through Zoom video conferencing, commencing at the hour
20 of 9:10 a.m.

21 Volume 6

22
23 REPORTED BY: CHERYL ARREGUIN, RPR, New Mexico CCR 21
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<p>1 case-by-case basis or even if the source or modification 2 is not a major stationary source or a major 3 modification. 4 D, development -- the department shall in 5 consultation with the public, using the latest and best 6 available science and data on public health and the 7 environment, update its overburdened area maps within 8 two years after every decennial US census and provide 9 notice of potentially regulated entities at least six 10 months before an updated map goes into effect. 11 That's the end. 12 CHAIR PAUL: Okay. 13 Member Lewis, can you be very brief? 14 MEMBER LEWIS: You said that this applied to 15 permits that were within the overburdened communities, 16 and I thought the purpose was that had emissions that 17 would affect the overburdened communities. So I think, 18 you know, this changes the whole concept pretty 19 significantly. 20 CHAIR PAUL: We've -- okay. I think the 21 modeling part was removed earlier on. So I'm not sure 22 how you would go from the map -- 23 MEMBER LEWIS: I'm going -- 24 CHAIR PAUL: -- where the permits are to 25 what's affected without the modeling, and I think we -- ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>	<p>1 an overburdened area or within one mile from an 2 overburdened area. 3 MEMBER EBERLEIN: Yeah. That will work fine. 4 MEMBER GALEWSKY: Can you summarize -- can you 5 read that relevant section, just so I know what the 6 wording is? 7 CHAIR PAUL: Can you say that again? 8 MEMBER EBERLEIN: So -- so I shall read 9 section C again. The department shall require every new 10 or modified stationary source subject to the permitting 11 under 20.11.41 NMAC or located within an overburdened 12 area or within one mile as indicated by the overburdened 13 area map in effect as of the permit application date to 14 apply best available control technology as determined by 15 the department on a case-by-case basis even if the 16 source or modification is not a major stationary source 17 or major modification. 18 CHAIR PAUL: Okay. 19 Is there a second for that one item of 20 discussion? 21 Vice Chair Richards. 22 VICE CHAIR RICHARDS: Yeah. I feel like we 23 need some discussion on that. So -- 24 CHAIR PAUL: Well, we can do it after the 25 second, too. ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>
<p>Page 427</p> <p>1 there was discussion that the modeling -- 2 MEMBER LEWIS: Then maybe you -- 3 CHAIR PAUL: -- (unintelligible and/or 4 inaudible). 5 MEMBER LEWIS: Then maybe you have to change 6 it to one mile at least from an overburdened community. 7 I mean, I think saying it has to be in the overburdened 8 community doesn't -- I mean -- 9 CHAIR PAUL: Okay. 10 MEMBER LEWIS: -- these are residential 11 communities. That doesn't make any sense. 12 CHAIR PAUL: Member Lewis, can you speak like 13 with a friendly amendment, saying I make a motion to 14 make a friendly amendment to your motion? So that 15 actions are clear? 16 MEMBER LEWIS: Okay. I make a friendly 17 amendment that that language on where the permit is 18 being requested be changed to within one mile of an 19 overburdened community. 20 CHAIR PAUL: Is that something that you would 21 accept, Member Eberlein? 22 MEMBER EBERLEIN: Let's see. That should be 23 in section C. 24 CHAIR PAUL: Um-hum. 25 I think in your language that's located within ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>	<p>Page 429</p> <p>1 VICE CHAIR RICHARDS: Oh, I'm sorry. That -- 2 CHAIR PAUL: That's why I was looking for a 3 second. I was moving things along. 4 Is there a second to Member Eberlein's 5 proposal? 6 MEMBER GALEWSKY: I second it. 7 CHAIR PAUL: Seconded by Member Galewsky. 8 Now, Vice Chair Richards, discussion? 9 MS. SEDILLO LOPEZ: With the friendly 10 amendment? 11 CHAIR PAUL: With the friendly amendment? 12 MEMBER GALEWSKY: Yes. 13 CHAIR PAUL: Yes, with the friendly amendment 14 of or within one mile from an overburdened area. 15 VICE CHAIR RICHARDS: I just feel like -- so 16 you're requiring BACT technology, but it's at the 17 discretion. It sounds like it's case dependent at the 18 discretion of EHD. 19 And I wonder if we can just require -- again 20 this goes back to what we had discussed earlier about 21 these chemicals. If we can -- instead of saying at the 22 discretion of EHD on a case-by-case basis, which I think 23 can be somewhat difficult to follow, I would recommend 24 amending that to include the specific chemicals that 25 were discussed in the UNM proposal. There are 27 of ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>

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<p style="text-align: right;">Page 430</p> <p>1 them.</p> <p>2 CHAIR PAUL: Is that a friendly amendment to</p> <p>3 your proposal? Is that something you would consider?</p> <p>4 Member Eberlein?</p> <p>5 MEMBER EBERLEIN: So that's the list that</p> <p>6 was -- oh, yeah. That's the 20-something chemicals,</p> <p>7 right? Yeah.</p> <p>8 Should we just -- should we put that as a list</p> <p>9 at the end of this -- let's see here, how would that fit</p> <p>10 in this.</p> <p>11 VICE CHAIR RICHARDS: So that would be</p> <p>12 requiring -- rather than leaving it open, requiring BACT</p> <p>13 for facilities that emit those -- one of -- one of</p> <p>14 those -- one or more of those contaminants.</p> <p>15 CHAIR PAUL: That's the list from 181.1?</p> <p>16 Is that a friendly amendment --</p> <p>17 VICE CHAIR RICHARDS: Yeah. You can see the</p> <p>18 list. It's on page 2 of the UNM proposal.</p> <p>19 MEMBER CALMAN: Can I ask a quick</p> <p>20 clarification -- I really need go to bed --</p> <p>21 clarification question --</p> <p>22 CHAIR PAUL: Yes.</p> <p>23 MEMBER CALMAN: -- from Member Richards?</p> <p>24 Are you saying then BACT would only be</p> <p>25 required for sources that emit those listed chemicals?</p> <p style="text-align: center;">ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>	<p style="text-align: right;">Page 432</p> <p>1 MEMBER EBERLEIN: Yeah. I'm still figuring</p> <p>2 out -- okay. So --</p> <p>3 CHAIR PAUL: Is there a level of emission for</p> <p>4 any of those that you -- from the docket?</p> <p>5 MEMBER EBERLEIN: I don't think so.</p> <p>6 CHAIR PAUL: Because it just says emit, so --</p> <p>7 MEMBER EBERLEIN: Because -- I mean, the best</p> <p>8 available control technology will be -- okay. So the</p> <p>9 department has to make an evaluation of that basically.</p> <p>10 CHAIR PAUL: Right.</p> <p>11 So provided -- all right. What about -- okay.</p> <p>12 I'm not sure that it's a friendly amendment then.</p> <p>13 Is that what you're saying?</p> <p>14 MEMBER EBERLEIN: What?</p> <p>15 CHAIR PAUL: Are you saying that you would</p> <p>16 accept that amendment or not?</p> <p>17 MEMBER EBERLEIN: Yeah. I will accept it.</p> <p>18 I --</p> <p>19 CHAIR PAUL: Okay.</p> <p>20 MEMBER EBERLEIN: -- just can't come up with a</p> <p>21 way to write it right now, but --</p> <p>22 CHAIR PAUL: Okay.</p> <p>23 MS. SEDILLO LOPEZ: Leave it to me.</p> <p>24 MEMBER CALMAN: I'm -- you could --</p> <p>25 CHAIR PAUL: Yeah. One more from Member</p> <p style="text-align: center;">ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>
<p style="text-align: right;">Page 431</p> <p>1 Can you just explain --</p> <p>2 VICE CHAIR RICHARDS: Sure.</p> <p>3 No. I'm saying that requiring BACT be used</p> <p>4 for those chemicals, but also if the department has</p> <p>5 discretion to also include that for other types of --</p> <p>6 MEMBER CALMAN: So it's a minimum.</p> <p>7 VICE CHAIR RICHARDS: Yes.</p> <p>8 MEMBER CALMAN: Okay.</p> <p>9 MEMBER EBERLEIN: I'm just thinking how to</p> <p>10 write this.</p> <p>11 CHAIR PAUL: I was -- I typed it as provided</p> <p>12 that BACT is always required for facilities that emit</p> <p>13 one or more of the list from 181.1.</p> <p>14 MS. SEDILLO LOPEZ: I'll try to clean up the</p> <p>15 grammar.</p> <p>16 MEMBER EBERLEIN: Yeah. Because we have -- we</p> <p>17 have to include an actual list here. Right? Because</p> <p>18 otherwise we can't reference the docket. So we have to</p> <p>19 actually --</p> <p>20 CHAIR PAUL: No.</p> <p>21 MEMBER EBERLEIN: -- include a list. Yeah.</p> <p>22 CHAIR PAUL: Yes. But I'm just saying that in</p> <p>23 the interest of time.</p> <p>24 MEMBER EBERLEIN: Um-hum. Right.</p> <p>25 CHAIR PAUL: Is that a friendly amendment?</p> <p style="text-align: center;">ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>	<p style="text-align: right;">Page 433</p> <p>1 Calman.</p> <p>2 MEMBER CALMAN: You could leave it up to some</p> <p>3 discretion with EHD and say significant levels of those</p> <p>4 emit -- you could say -- if the -- if EHD determines</p> <p>5 there are significant levels of those things, then back</p> <p>6 to -- like as a minimum. I don't know. I'm just</p> <p>7 trying --</p> <p>8 CHAIR PAUL: Significance has another meaning</p> <p>9 to it.</p> <p>10 MEMBER CALMAN: I know it does. I'm just --</p> <p>11 CHAIR PAUL: So, Counsel --</p> <p>12 MEMBER CALMAN: Okay.</p> <p>13 CHAIR PAUL: -- can you address provided that</p> <p>14 BACT is always required for facilities that emit one or</p> <p>15 more of 181?</p> <p>16 Because remember BACT means they do a BACT</p> <p>17 analysis. They still don't -- it's still -- there's</p> <p>18 still some --</p> <p>19 MS. SEDILLO LOPEZ: Discretion.</p> <p>20 CHAIR PAUL: -- leeway. Yeah.</p> <p>21 MS. SEDILLO LOPEZ: I -- I think I can do it,</p> <p>22 and I'll run the language by you to see if I</p> <p>23 accomplished it.</p> <p>24 CHAIR PAUL: Okay.</p> <p>25 MEMBER ARMIJO: We still need a second.</p> <p style="text-align: center;">ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>

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<p>1 MS. SEDILLO LOPEZ: Oh, that's right. 2 CHAIR PAUL: Yeah. 3 MEMBER CALMAN: I'll second. 4 CHAIR PAUL: Okay. So I'm lost as to where we 5 are. We've got -- 6 VICE CHAIR RICHARDS: We just -- oh, I'll 7 let -- 8 MEMBER CALMAN: Member Richards made a motion 9 to include that list as a minimum for (unintelligible 10 and/or inaudible) -- 11 CHAIR PAUL: Okay. And you seconded that, but 12 it has to be accepted by the movant. 13 MEMBER EBERLEIN: Yeah. I accepted it. 14 CHAIR PAUL: Okay. You've accepted it. 15 MEMBER EBERLEIN: Yeah. 16 CHAIR PAUL: So that was -- okay. 17 So do we have to go back to the beginning, or 18 can we vote now? 19 MEMBER GALEWSKY: (Unintelligible and/or 20 inaudible) -- 21 CHAIR PAUL: Are there any other comments on 22 this -- on this proposed regulation? 23 MEMBER GALEWSKY: I'm just asking -- 24 CHAIR PAUL: Member Galewsky and Member Lewis. 25 Sorry. Hold on. One -- one second. ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>	<p>1 MEMBER LEWIS: Can you clarify whether there 2 are any options -- or any language in your amendment 3 that would deal with denial, or is that a separate part? 4 CHAIR PAUL: I can't -- 5 MEMBER LEWIS: I'm a little -- little lost 6 here. 7 CHAIR PAUL: I can't really hear what you 8 said. 9 MEMBER LEWIS: You can't hear? 10 CHAIR PAUL: Did anyone get -- catch that? 11 MEMBER CALMAN: Yes. Member Lewis was asking 12 if any part of Member Eberlein's proposal would allow 13 for permit denial or require permit denial. 14 CHAIR PAUL: Member Eberlein. 15 MEMBER EBERLEIN: I don't see that in this 16 language. 17 CHAIR PAUL: Member Lewis. 18 MEMBER LEWIS: So is that something that we 19 would have to -- I mean, every -- every petition that 20 we've seen has had some criteria on denial. 21 Are we talking about this being the entire 22 rule that we're going to pass, or are we still thinking 23 we would come back -- 24 CHAIR PAUL: That is what's on the table. 25 You could add more to it. That's what's on ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>
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<p>1 MEMBER CALMAN: We're just talking about the 2 amendments. 3 CHAIR PAUL: Okay. Yeah. Sorry. You're 4 right. We're voting on just that amendment. 5 MS. SEDILLO LOPEZ: I thought he accepted it. 6 MEMBER CALMAN: So we don't have a -- 7 MS. SEDILLO LOPEZ: No. He -- yeah. He 8 accepted it. So that's -- 9 CHAIR PAUL: Okay. 10 MS. SEDILLO LOPEZ: It becomes part of what 11 you end up voting on in the end. 12 CHAIR PAUL: Yes. So it's just -- we're 13 hoping to just do one vote here. 14 Member Galewsky, Member Lewis. 15 MEMBER GALEWSKY: I'm still trying to clarify 16 what the inclusion of this list refers to. 17 Does that mean that a facility that emits any 18 of those substances even if it's not in an overburdened 19 community has to apply the best available -- 20 CHAIR PAUL: No. 21 MEMBER GALEWSKY: -- control technology? 22 CHAIR PAUL: Only within or within one mile 23 from. 24 MEMBER GALEWSKY: Okay. 25 CHAIR PAUL: Member Lewis. ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>	<p>1 the table right now. 2 MEMBER LEWIS: And that -- I'm trying to 3 clarify, though, if this is the entire rule -- 4 CHAIR PAUL: Um-hum. 5 MEMBER LEWIS: -- as proposed. 6 CHAIR PAUL: No? 7 MS. SEDILLO LOPEZ: No. I think -- 8 CHAIR PAUL: I'm hearing no. 9 MS. SEDILLO LOPEZ: I think it's the -- the 10 amendment that -- that Member Eberlein is trying to -- 11 you know how you voted down the first one, then you now 12 have another one? So then this is -- God, I'm sorry. 13 I'm tired. 14 You can vote on this and see if there's any 15 other changes to what the petitioners proposed. 16 MEMBER ARMIJO: And the other thing -- 17 CHAIR PAUL: Yeah. We're not -- we're on the 18 whole thing, I think, because a friendly amendment was 19 accepted. 20 So what Member Lewis I believe is asking is if 21 you vote yes on this is this over. 22 MS. SEDILLO LOPEZ: And the answer is no. 23 CHAIR PAUL: The answer is no. 24 MEMBER LEWIS: Thank you. 25 CHAIR PAUL: Okay. ALBUQUERQUE COURT REPORTING SERVICE, LLC</p>