

STATE OF NEW MEXICO
Before the
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

**IN THE MATTER OF THE PETITION
FOR A HEARING ON THE MERITS
REGARDING PERMIT NO. 3340,
[NEW MEXICO TERMINAL SERVICES, LLC]**

**MOUNTAIN VIEW NEIGHBORHOOD ASSOCIATION,
As an organization, and
NORA GARCIA, as an individual,
Petitioners,**

v.

AQCB Docket No. 2018-1

**City of Albuquerque, Environmental
Health Department, Air Quality Program,
Respondent.**

**ENVIRONMENTAL HEALTH DEPARTMENT
AIR QUALITY PROGRAM'S
UNOPPOSED MOTION TO REVERSE AND REMAND THE PERMIT**

COMES NOW, the City of Albuquerque Environmental Health Department Air Quality Program ("EHD") and moves the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board") to reverse and remand Permit No. 3340 ("Permit") to EHD because the Permit was issued without compliance with notice requirements in 20.11.41 NMAC. As reasons, EHD states as follows:

- 1) On September 19, 2018, EHD issued the Permit to New Mexico Terminal Services, LLC ("NM Terminal Services"). Affidavit of Isreal Tavarez, EHD Ex. 1, ¶ 3.
- 2) The Permit authorized the construction and operation of a 400 ton/hr Hot Mix Asphalt Plant. Tavarez Aff. EHD Ex. 1, ¶ 4.

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3) During the permit application process before EHD, Nora Garcia, President of Mountain View Neighborhood Association requested a Public Information Hearing on April 10, 2018. EHD Ex. 1, ¶ 5.

4) On August 1, 2018, Acting Director of the Environmental Health Department Danny Nevarez determined that there was significant public interest and a significant air quality issue was involved for the application and approved holding a Public Information Hearing. EHD Ex. 1, ¶ 6.

5) The applicable regulations promulgated by the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) required EHD to provide notice of the Public Information Hearing by publishing notice in a newspaper of general circulation. 20.11.41.15(B)(6) NMAC.

6) EHD did not publish notice of the Public Information Hearing in a newspaper— EHD provided notice by placing the notice on its website, sending notice to nearby neighborhood coalitions and associations, to any member of the public who had, at that point, indicated an interest in the matter, to the applicant and his consultant, and to other persons. EHD Ex. 1, ¶ 7.

7) EHD’s notice for the Public Information Hearing did not comply with the Air Board’s regulations because the notice was not published in a newspaper. 20.11.41.15(B)(6) NMAC.

8) In preparing the administrative record in response to the Petition, EHD realized that EHD had not followed the Air Board’s required notice provisions for the Permit. EHD Ex. 1, ¶ 8.

9) The failure to substantially comply with notice requirements for a permit renders the issuance of a permit invalid. *See, e.g., Martinez v. Maggiore*, 2003-NMCA-043, ¶ 13, 133 N.M. 472.

10) To allow EHD to publish notice in compliance with the Air Board's regulations, EHD requests that the Air Board reverse EHD's issuance of the Permit and remand the matter to EHD for further proceedings.

11) EHD sought NM Terminal Services's and the Petitioners' positions on this Motion and this Motion is unopposed.

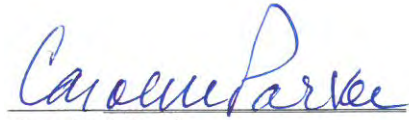
12) A Motion is required to be served on the Air Board's legal counsel. 20.11.81.12(G)(1) NMAC. However, this Motion is not being served on the Air Board's legal counsel because, as of the date of filing of this Motion, the Air Board does not have legal counsel.

13) A proposed form of order reversing and remanding the Permit to EHD is attached to this Motion for the Air Board's consideration as required. 20.11.81.12(H)(2) NMAC; EHD Ex. 2.

WHEREFORE, EHD respectfully requests that the Air Board reverse and remand the Permit to EHD so that EHD can (1) re-notice the Public Information Hearing in compliance with all notice requirements and (2) decide whether to issue the Permit after it has received and considered any relevant evidence or public comment.

Respectfully submitted,

CITY OF ALBUQUERQUE
Esteban A. Aguilar, Jr.
City Attorney



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Assistant City Attorney
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CERTIFICATE OF SERVICE

I hereby certify that I have delivered a true and correct copy of the foregoing pleading on this 9th day of November, 2018, by the method indicated to the following:

Hand-delivered

EHD's original pleading and nine copies were filed with the Hearing Clerk in the above-captioned matter.

E-mailed

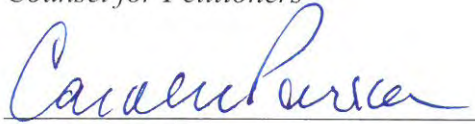
Ms. Michelle T. Miano, Chair
Albuquerque-Bernalillo County Air Quality Control Board
mtmiano@gmail.com
Hearing Officer pursuant to 20.11.81.12(B)(2) NMAC

Emailed

Randall L. Thompson, Registered Agent and Legal Counsel
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rlt@rltlawpc.com
Registered Agent and Counsel for NM Terminal Services, LLC, Permittee

E-mailed

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Counsel for Petitioners



Carol M. Parker

STATE OF NEW MEXICO
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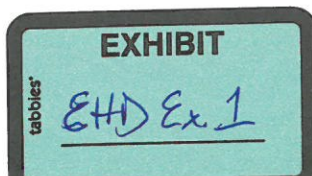
AQCB Docket No. 2018-1

**City of Albuquerque, Environmental
Health Department, Air Quality Program,
Respondent.**

AFFIDAVIT OF ISREAL TAVAREZ

I, Isreal Tavarez, Permitting Division Manager of the Environmental Health Department, Air Quality Program being duly sworn upon oath, state as follows:

- 1) I am the Permitting Division Manager of the Environmental Health Department (“EHD”) Air Quality Program (“AQP”) of the City of Albuquerque.
- 2) I oversee EHD’s Air Quality Permitting Program for stationary sources.
- 3) On September 19, 2018, EHD issued a stationary source Construction Permit, No. 3340 (“Permit”) to New Mexico Terminal Services, LLC (“NM Terminal Services”) which is the subject of a petition (“Petition”) docketed before the Albuquerque-Bernalillo Air Quality Control Board (“Air Board”) as AQCB No. 2018-1.
- 4) The Permit authorized the construction and operation of a 400 ton/hr Hot Mix Asphalt Plant.
- 5) During the permit application process before EHD, Nora Garcia, President of Mountain View Neighborhood Association requested a Public Information Hearing on April 10, 2018.
- 6) On August 1, 2018, Acting Director of the Environmental Health Department Danny Nevarez determined that there was significant public interest and a significant air



quality issue was involved for the application and approved holding a Public Information Hearing.

- 7) EHD did not publish notice of the Public Information Hearing in a newspaper—EHD provided notice by placing the notice on its website, sending notice to nearby neighborhood coalitions and associations, to any member of the public who had, at that point, indicated an interest in the matter, to the applicant and his consultant, and to other persons.
- 8) In preparing the administrative record in response to the Petition, EHD realized that EHD had not followed the Air Board's required notice provisions for the Permit.

AFFIANT FURTHER SAYETH NAUGHT.

DATED: November 8, 2018.

Isreal Tavaréz

Isreal Tavaréz, Affiant
Permitting Division Manager
Environmental Health Department
City of Albuquerque

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

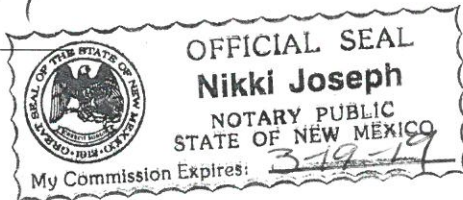
SUBSCRIBED AND SWORN TO before me this 8th day of November, 2018 by
Isreal Tavaréz.

Nikki Joseph
Notary Public

My commission expires:

3-19-19

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STATE OF NEW MEXICO
Before the
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

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**ORDER ON EHD'S UNOPPOSED MOTION
TO REVERSE AND REMAND THE PERMIT**

This matter comes before the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) upon a November 9, 2018 Unopposed Motion to Reverse and Remand the Permit (“Motion”) filed by the Environmental Health Department (“EHD”) Air Quality Program, Respondent, in the above matter. EHD requested that the Air Board reverse and remand Permit No. 3340 (the “Permit”) so that EHD could (1) re-notice the Public Information Hearing conducted for the New Mexico Terminal Services, LLC application in compliance with all Air Board requirements and (2) decide whether to issue the Permit after it has received and considered any relevant evidence or public comment.

The Motion was placed on the Air Board’s agenda for its _____ regularly scheduled meeting and a quorum of the Air Board was present. Neither the Petitioner nor the Permittee opposed the Motion.

The Motion, if granted, would effectively dispose of the currently pending matter and it was decided by the Air Board, rather than the Hearing Officer. 20.11.81.12(H)(6) NMAC.

Having considered the Motion, the Air Board granted the Motion to Reverse and Remand the Permit by a vote of _____.

The Permit is hereby reversed and remanded to EHD to provide notice for the Public Information Hearing in compliance with applicable Air Board regulations as required by 20.11.41 NMAC. EHD's issuance of the Permit is hereby invalidated.

For the Air Board

Approved:



*Legal Counsel for Petitioners,
Mountain View Neighborhood Association and Nora Garcia*

Legal Counsel for NM Terminal Services, LLC

The Motion, if granted, would effectively dispose of the currently pending matter, and it was decided by the Air Board, rather than the hearing officer. 20.11.81.12(H)(6) NMAC.

Having considered the Motion, the Air Board granted the Motion to Reverse and Remand the Permit by a vote of _____.

The Permit is hereby reversed and remanded to EHD to provide notice for the Public Information Hearing in compliance with applicable Air Board regulations as required by 20.11.41 NMAC. EHD's issuance of the Permit is hereby invalidated.

For the Air Board

Approved:

*Legal Counsel for Petitioners,
Mountain View Neighborhood Association and Nora Garcia*

/s/ Randall L. Thompson
Legal Counsel for NM Terminal Services, LLC