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Constructors of Excellence

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January 23, 2008

Mr. Neal Butt
Albuquerque Environmental Health Department
PO Box 1293
Albuquerque, NM 87103

RE: Notice Of Intent to present technical testimony at Air Quality Control Board on February 13, 2008.

Dear Mr. Butt:

Please accept this correspondence as the required Notice Of Intent to present technical testimony at the above referenced meeting. My comments are directed to proposed amendments to 20.11.20 NMAC and are as follows:

20.11.20.12 E. requires that stockpiles shall not be higher than 15 feet above the existing natural or manmade grade that abuts the stockpile without prior written approval by the department. As a practical matter, there are going to be many instances on smaller, tighter sites, where excavation or over excavation could exceed this limitation with little or no notice. Also, very large sites requiring massive earth moving activities may be difficult to track for compliance without shutting down these activities while awaiting for department approval.

It is our suggestion this item be deleted as the responsibilities to control fugitive dust are sufficiently addressed throughout the code.

20.11.20.15 proposed amendments clarify what information is required on all permit applications. With the exception of high wind contingency measures and mitigation of damages, this information would, for the most part, be contained in the operators SWPPP (Storm Water Pollution Prevention Plan) which would be required for a majority of these sites. It would seem more efficient to note most of this information by reference. Perhaps it would be wise at some point to simply require all projects requiring a SWPPP to also include a more comprehensive dust control plan?

20.11.20.16 C deals with mandatory control measures that shall be used on an ongoing basis in order to assert a high wind affirmative defense. The testing requirements under subparagraph (1) are cost prohibitive. First, the samples must be taken three times per day (at equally spaced intervals), in three separate locations for a total of nine tests per day. These samples must then be tested by a certified laboratory and the results analyzed and retained for the duration of the project.

As an example of the costs to comply with this section, the standard schedule of services provided by AMEC (attached hereto) show the required test (ASTM D 1557 or ASTM D-698) will cost \$120.00 per sample. The cost for testing alone would amount to \$1,080.00 per day for the nine samples. Because of the sequencing of the tests, a technician would have to make three trips to a given site

per day. With allowable travel time of up to two hours per trip the sampling costs could exceed \$285.00 per day. Thus the total for testing under these standards could feasibly cost an additional **\$27,300 per month for every project!** (\$1080.00 + \$285.00 x 20 days/month). This does not account for the cost of extended General Conditions that the General Contractor would incur for monitoring compliance and test results. This could easily add an additional \$1-2,000.00 per month onto the compliance tab. Another twist to this is that a contract could, and often does, state that the owner will be responsible for all testing, thus this becomes a scope of contract issue.

Subparagraph (2) allows for the installation of a perimeter silt fence, however, the proposed amendment to 20.11.20.23 would now make perimeter silt fence mandatory. At a cost of \$2.40 per lin. ft., meeting this requirement on a project that is only one square acre (approximately 209' x 209') could cost an additional \$2,000.00 per site plus maintenance costs.

Subparagraph (3) allows for the application of dust suppressants, however, these are not yet readily available nor tested for reliability or contamination. On one of our sites measuring 50 acres, we received an estimate of \$400.00 per acre for the application of a soil stabilizer which would have added an additional \$20,000.00 to the project.

Subparagraph (4) option requires department approved alternative measures, but this seems to make the department an evaluator or tester of means and methods to control dust. The final option under Subparagraph (5) is to stop operations that are capable of producing fugitive dust. This seems to be the only viable and practical option, thus all others should be eliminated.

20.11.20.24 is a section that contains specifications for native grass seeding and mulch that is about three pages in length. Unless the department is prepared to make this a construction permit condition, it seems impossible to evaluate or to enforce.

For instance, the construction specifications that a General Contractor bids for a project does not often allow a redesign to meet other standards as this is typically a design issue, not a construction issue. In other words, Contractors build from plans and specifications given to them by the owner or design professional for the project and they cannot deviate from these requirements. Seeding and mulching may not even be in the scope of work that was bid by the Contractor, thus this becomes a contractual issue. This section should be deleted unless the department wants to take responsibility for design and contract requirements.

Please reconsider these amendments and do not hesitate to contact me should you have any questions concerning this matter.

Sincerely,



R. Lar Thomas
General Counsel

RLT/tbm
Enclosures as stated



AMEC Proposal #PG08-0110
January 16, 2008

8519 Jefferson NE
Albuquerque, NM 87113
P: (505)821-1801
F: (505)821-7371

QUALITY CONTROL TESTING SERVICES – 2008

PERSONNEL

Field or Laboratory Technician	\$ 47.50/hr.
Lead Technician or NMDOT Certified Technician	\$ 55.00/hr.
Senior Supervising Technician	\$ 65.00/hr.
Inspector; CWI Welding or ICC (Special Inspection)	\$ 75.00/hr.
QA/ Safety Administrator.....	\$ 50.00/hr.
Staff Engineer or Project Manager Professional.....	\$ 95.00/hr.
Professional Engineer (Materials/ Geotechnical).....	\$165.00/hr.
Principal Engineer - Dave Kondziolka	\$180.00/hr.

Personnel rates are portal to portal with a 2 hour minimum.

SELECTED LABORATORY TESTS (Additional tests, services or analysis will be quoted upon request)

Soil (On site nuclear densities included with technician hourly rate)

Sieve Analysis ASTM C136 (Code P284).....	\$ 60.00/ea.
Plasticity Index ASTM D4318 (Code P130)	\$ 60.00/ea.
Moisture/Density Relationship (Proctor) ASTM D1557 or ASTM D698 (Code P154 or P155).....	\$120.00/ea.
R-Value ASTM D2844 (Code P210)	\$260.00/ea.

Aggregate

Gradation	\$ 60.00/ea.
L.A. Abrasion ASTM C131 (Code K147)	\$ 180.00/ea.
Soundness: Magnesium or Sodium (Code K261).....	\$ 200.00/ea.
Fractured Face (Code K013)	\$ 70.00/ea.
Sand Equivalent ASTM D2419 (Code K230).....	\$ 65.00/ea.
Specific Gravity – Coarse ASTM C127 (Code K270), Fine ASTM C128 (Code K271).....	\$ 65.00/ea.

Concrete

Compressive Strength (including mold) (Code M020)	\$ 16.50/ea.
- Slump, Air, Temperature and Unit Weight included with technician hourly rate	
Flexural Strength ASTM C78 (Code M140)	\$ 50.00/ea.
Concrete Cores (includes trimming and capping)(Code M011)	\$ 45.00/ea.

Asphalt

Extraction & Gradation AASHTO T308 (Code L039).....	\$160.00/ea.
Marshall Density, Stability & Flow (Code L071).....	\$160.00/ea.
Density of Cores- Set of 3 (Code L030)(Includes Trimming)	\$ 50.00/ea.
Rice Maximum Theoretical Density (Code L103)	\$ 65.00/ea.
Gyratory Properties (Super Pave Mixes)	\$170.00/ea.
NMDOT Superpave Mix Series of Test.....	\$370.00/ea.
COA Superpave Mix Series of Test.....	\$510.00/ea.

Masonry

Compressive Strength of Mortar or Grout (Code M070)	\$ 16.50/ea.
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MISCELLANEOUS

Sample Prep (Code K220).....	\$ 70.00/hr.
Vehicle - Outside 15 Mile Radius of	
Albuquerque, Santa Rosa, Gallup or Santa Fe (Code AM14)	\$ 0.70/mi.
In-town	\$ 5.00/hr.
Per Diem (out-of-town requiring overnight stay)	\$ 70.00/day
UT Equipment.....	\$ 75.00/day
Report Preparation & Office Administration Fees.....	6% of labor and units

02/05/2008

Albuquerque Environmental Health Department
Air Quality Division (AQD)

Re: Regulatory and Policy Advisory Committee (RPAC) written responses to Stakeholders, concerning proposed amendments to the Albuquerque-Bernalillo County Air Quality Control Board (Board) Regulation 20.11.20 NMAC – Fugitive Dust Control (Part 20).

The current version of Part 20, implemented in March 2004, required that the Board hold a public hearing regarding a decision on continuation or expiration of eight sources that had been given a three-year exemption to Part 20. The status of the sources exempt for three years was to be considered after review of an emission inventory of the eight source types. The AQD requested additional time to complete an extensive review and submit amendments for the entire Part 20 regulation. The Board approved this request for additional time and the AQD provided a draft to stakeholders in June 2007, an amended draft to stakeholders in December 2007, and a public review draft on December 29, 2007 for review and comment. The following are the responses to stakeholder comments received by the Part 20 subcommittee during public comment period.

The responses were sent by electronic mailing (email) to the stakeholder.

GERALD
MARTIN
General Contractor

Constructors of Excellence

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505.828 .949 1 Main Fax
lthomas@gerald martin.com

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20.11.20.12 E. requires that stockpiles shall not be higher than 15 feet above the existing natural or manmade grade that abuts the stockpile without prior written approval by the department. As a practical matter, there are going to be many instances on smaller, tighter sites, where excavation or over excavation could exceed this limitation with little or no notice. Also, very large sites requiring massive earth moving activities may be difficult to track for compliance without shutting down these activities while awaiting for department approval.

It is our suggestion this item be deleted as the responsibilities to control fugitive dust are sufficiently addressed throughout the code.

RPAC Response: The AQD staff has experienced incidents in the field where stockpiles have been constructed adjacent to existing, occupied residences and the profile of the stockpiles were at elevations exceeding the height of property walls and in one case, the roof height of residences. Such scenarios created difficulty for the permittee to maintain adequate control of fugitive dust and generated complaints from the public.

The AQD would suggest that an applicant “front load” the fugitive dust control permit application, if there is potential for stockpile formation in exceedance of 15 feet, to allow for Department approval at issuance of permit. Therefore, there would not be a need for shutting down activities should the need arise for constructing an oversize stockpile.

20.11.20.15 proposed amendments clarify what information is required on all permit applications. With the exception of high wind contingency measures and mitigation of damages, this information would, for the most part, be contained in the operators SWPPP (Storm Water Pollution Prevention Plan) which would be required for a majority of these sites. It would seem more efficient to note most of this information by reference. Perhaps it would be wise at some point to simply require all projects requiring a SWPPP to also include a more comprehensive dust control plan?

RPAC Response: The current version of Part 20 allows for use of alternative fugitive dust control measures, including measures taken to comply with any other statute or regulation. The fugitive dust control construction permit application form uses the SWPPP as an example of an alternative plan that may be submitted by the applicant for control of fugitive dust during active operations or construction activity, as long as there is sufficient detail of information that addresses the ongoing measures to be used for control of fugitive dust. If so, the applicant would only have to provide two additional items along with the alternative plan: 1) Contingency measures (secondary control measures) that would be utilized in addition to the alternative plan control measures if the Department determines that those measures alone do not provide sufficient control on their own, and 2) a statement concerning action to be taken to mitigate claims of property damage. The proposed version of Part 20 maintains these same available conditions.

20.11.20.16 C deals with mandatory control measures that shall be used on an ongoing basis in order to assert a high wind affirmative defense. The testing requirements under subparagraph (1) are cost prohibitive. First, the samples must be taken three times per day (at equally spaced intervals), in three separate locations for a total of nine tests per day. These samples must then be tested by a certified laboratory and the results analyzed and retained for the duration of the project.

As an example of the costs to comply with this section, the standard schedule of services provided by AMEC (attached hereto) show the required test (ASTM 01557 or ASTM 0-698) will cost \$120.00 per sample. The cost for testing alone would amount to \$1,080.00 per day for the nine samples. Because of the sequencing of the tests, a technician would have to make three trips to a given site per day. With allowable travel time of up to two hours per trip the sampling costs could exceed \$285.00 per day. Thus the total for testing under these standards could feasibly cost an additional \$27,300 per month *for every project!* (\$1080.00 + \$285.00 x 20 days/month). This does not account for the cost of extended General Conditions that the General Contractor would incur for monitoring compliance and test results. This could easily add an additional \$1-2,000.00 per month onto the compliance tab. Another twist to this is that a contract could, and often does, state that the owner will be responsible for all testing, thus this becomes a scope of contract issue.

RPAC Response: The Part 20 section that deals with the high wind affirmative defense was placed in the regulation to provide an applicant with an optional, aggressive control plan, that if proven to have been utilized at all times would allow for a defense against an enforcement action. The high wind affirmative defense is not a mandatory condition in order to receive a fugitive dust control construction permit. The option to use this type of control plan has always been voluntary.

The RPAC determined that the current condition of maintaining a constant 12 percent soil moisture content is not feasible for most soil types in Bernalillo County and therefore decided to propose the alternate method of soil moisture testing throughout the day to ensure that a certain percentage of each soil's optimal moisture content is maintained.

Most projects may require up-front costs for soil proctor samples that are used to determine parameters for testing for appropriate compaction and moisture content of soils, and a specific or random testing requirement for compaction and soil moisture content throughout the course of a project. However, the RPAC would agree that it appears from the comments received along with the attached schedule of services costs, that it would not be cost effective to utilize the proposed scenario of nine tests per day, unless the project required a full time technician at a daily rate, regardless of the amount of tests taken.

Subparagraph (2) allows for the installation of a perimeter silt fence, however, the proposed amendment to 20.11.20.23 would now make perimeter silt fence mandatory. At a cost of \$2.40 per lin. ft., meeting this requirement on a project that is only one square acre (approximately 209' x 209') could cost an additional \$2,000.00 per site plus maintenance costs.

RPAC Response: The second condition, to be used in conjunction with the soil moisture content requirement, requires a perimeter fence or wall be installed. These two control measures are considered sufficient, if maintained, to assert a high wind affirmative defense as a voluntary plan.

The RPAC is proposing that perimeter silt fencing be mandatory for all projects, however, the fence height requirement is lower for the high wind affirmative defense.

Subparagraph (3) allows for the application of dust suppressants, however, these are not yet readily available nor tested for reliability or contamination. On one of our sites measuring 50 acres, we received an estimate of \$400.00 per acre for the application of a soil stabilizer which would have added an additional \$20,000.00 to the project.

RPAC Response: The use of chemical dust suppressants, in lieu of testing for moisture content, along with a perimeter fence or walls is also considered sufficient, if maintained, to assert a high wind affirmative defense. Although there are many products apparently available that can be used to attempt to stabilize soil surfaces, the Department has seen limited success with chemical dust suppressants as an ongoing control measure or long term control measure. Failure seems to occur when the application of certain suppressants does not provide sufficient binding/sealing of the surface crust for certain soils, or the area of application is not protected from further surface disturbances. Again, this is a voluntary plan.

Subparagraph (4) option requires department approved alternative measures, but this seems to make the department an evaluator or tester of means and methods to control dust. The final option under Subparagraph (5) is to stop operations that are capable of producing fugitive dust. This seems to be the only viable and practical option, thus all others should be eliminated.

RPAC Response: The alternative control measure to use the high wind affirmative defense would involve up-front discussion and negotiation between the applicant and the Department for the purpose of designing other types of alternative plans that may satisfy the high wind affirmative defense condition of maintaining a specific level of control for the duration of a project, whether or not a high wind event exists.

Finally, all sources must comply with the requirement to stop active operations and continue control measures during a high wind event, this is not an option.

In summary, the RPAC suggests that a high wind affirmative defense should be available to any applicant as an optional plan. The department is willing to discuss alternative dust control scenarios that may be approved for the high wind affirmative defense.

20.11.20.24 is a section that contains specifications for native grass seeding and mulch that is about three pages in length. Unless the department is prepared to make this a construction permit condition, it seems impossible to evaluate or to enforce.

For instance, the construction specifications that a General Contractor bids for a project does not often allow a redesign to meet other standards as this is typically a design issue, not a construction issue. In other words, Contractors build from plans and specifications given to them by the owner or design professional for the project and they cannot deviate from these requirements. Seeding and mulching may not even be in the scope of work that was bid by the Contractor, thus this becomes a contractual issue. This section should be deleted unless the department wants to take responsibility for design and contract requirements.

Please reconsider these amendments and do not hesitate to contact me should you have any questions concerning this matter.

Sincerely,

R. Lar Thomas
General Counsel

RPAC response: Native grass seeding is not a required control measure. It is a reasonably available control measure that may be used for fugitive dust control. This method of control is not often utilized on projects in Bernalillo County. However, since it is not widely used, and there may be companies that offer this type of service that are not local and may not be familiar with local requirements, the RPAC regards inclusion of the information in the regulation as appropriate and helpful. Also, its inclusion provides a guideline for certain reporting requirements to the department when this method of control is used and also allows for referencing citations within this section to be included in a permit application. When applied, this control measure is usually for long term control of property that may not be immediately developed, so it is an attempt to not have to provide ongoing active control measure for the inactive disturbed surface area.

The permittee and responsible person(s), and ultimately the property owner, are responsible for dust control. The Department's responsibility is to determine if sufficient control measures are being used until the source of fugitive dust no longer is present.