Testimony Regarding Proposed Changes To 20.11.2 NMAC, Permit Fees
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I. Introduction

A. In this day of extensive regulation, air quality permits can be vital to the success of a facility. The right permit can make the difference in a company's ability to react to market demands, and an adequately financed and efficient program can make the difference in promoting public health while sustaining economic development.

The decisions of this Board can play a huge role in the local economy. This is especially true in light of the present trend towards regionalism. Likewise, the day-to-day activities of the City's air program has an ongoing impact on our businesses. Therefore, we believe it is essential that the City's program has the appropriate resources to do its job. Because we all stand to benefit from an adequately financed program, we support the City's staffs' efforts to obtain the resources they need to provide service.

Despite our support for the staff's efforts, the request for a fee increase raises some fundamental questions, some of which we believe cannot be adequately answered in the short time we have tonight. Our concerns, which I will elaborate on more fully, are based on three fundamental concepts: equity (or fairness), accountability, and level of service. These issues also go to more "real-world" matters associated with the air quality program, such as day-to-day management of the Title V permit fund and Title V program staffing, and also programmatic matters like regionalism, market-based emissions trading, and air quality attainment.

Please make no mistake, we support the local operating permit quality program, and as the numbers clearly show, we have been its biggest financial contributor over the years. But tonight we have some serious questions about this regulation.

First, I'd like to take a few moments to describe a few basics of how facilities are regulated under the air program and the regulatory mechanisms for assessing fees.

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II. Air Quality Permitting - General

A. Air quality permitting requirements for a given source will vary depending on the process type and the type and magnitude of regulated emissions that will result from operating the process. The law and regulations require that each facility over a specified threshold apply for and obtain a permit. Here in Bernalillo County, we have quite an impressive assortment of such sources.

B. Various levels of air quality permitting include Source Registration, Authority-to-Construct, NSPS, NESHAP, Major NSR/PSD, and Title V Operating Permits.

C. Of the various levels of permitting that may be required of a source, the Source Registration and Authority-to-Construct programs are truly local in nature, and have the weakest link to the federal Clean Air Act. At the state level, these permits are more commonly know as "construction permits." In federal Clean Air terms, the local authority-to-construct program falls into the category of "minor new source review."

D. At the other end of the permitting spectrum, the Title V operating permit program is closely prescribed by federal requirements. These requirements are found in Title V of the Clean Air Act and in Part 70 of Title 40 to the Code of Federal Regulations. Title V sources are called 'major sources" because of their status under the regulations.

E. The NM Air Quality Control Act allows the collection of reasonable permit fees to cover the costs of the construction permit program including the costs of reviewing and acting on permits, and enforcing their terms, excluding legal costs of an enforcement action.

F. Significantly, the NM Air Quality Control Act has a different section that specifically allows for collection of annual emissions fees consistent with Title V of the Clean Air Act and its regulations.

G. The two types of fees have a different basis in state and federal law and each has a different purpose. One is a permitting fee dedicated towards funding the construction permit program, and the other is an emissions fee dedicated toward funding the state and local Title V program.

The difference is highlighted in the federal requirements for the Title V program and emissions fees. Under the federal law, local programs must guarantee that Title V emissions fees will be used exclusively for the costs of the Title V permit program.

The idea behind this requirement is fairly straightforward. It is inequitable, or unfair, to require major sources subject to Title V to shoulder the expense of regulating all other industry.

H. In order to provide uniform accountability, and a level of transparency in the management of these fees, the state law requires that the local authority establish a designated air quality permit fund, to be used exclusively for meeting the costs of the permit program. In addition, the federal Part 70 regulation requires an initial accounting and periodic accountings of how the fee revenues are used soley to cover the costs of the permitting program.

III. Considerations In The Air Permit Application Process

A. Despite the level of permitting, all air quality permits will contain federally enforceable limitations, either process or emissions, that restrict the amount of pollutants that can be emitted on an hourly and annual basis. These emissions are termed to be emissions allowed by permit or "allowable emissions".

B. These limitations are imposed to ensure compliance with federal, state, and local air quality standards that are designed to protect the publics' health and the environment.

C. These federally enforceable limitations are based at least partially on information contained in the permit application.

D. By regulation, a source must base their emission estimates on a facilities "potential-to-emit" or PTE. Emissions based on PTE are theoretical emissions that have been derived assuming that the process is running at 100% capacity. A definition of PTE can be found in Section 20.11.2.7.E on page 3 of the proposed regulation.

E. As a strategy to ensure both compliance with the hourly and annual emissions limitations contained in an air quality permit and to have a certain degree of operational flexibility in an unpredictable market, a source will often slightly over-state emissions beyond what is indicated by PTE.

IV. Title V Emissions Fees

A. Current Fees are based on Actual Emissions
1. Actual Emissions are derived through an annual emissions inventory submitted by Title V sources.
2. Inventory is reviewed by EHD staff.
3. Fees are based upon the inventory after staff review and approval.
4. Current system allows sources to pay fees based on actual emissions not theoretical maximums.
5. Allows for fluctating economic conditions.
6. Promotes pollution prevention – A source has an economic incentive to reduce emissions.

B. Proposed changes to NMAC 20.11.2 will allow fees to be based upon permitted allowable emissions.

1. Emissions fees will be based on theoretical maximum emissions.
2. No provisions for fluctuating economic conditions.
3. Removes economic based pollution prevention incentives.

V. Title V Program Budget

A. EHD Title V Fee Projections from January, 2001 indicate that amending NMAC 20.11.2 as proposed would increase collection of Title V fees from $224,176 to $462,937 per year. This is over a 100% increase of $238,761.

B. The EHD Analysis Of Air Quality Division Fund 242 (January, 2001) indicated that the change in collections for Title V sources is $0 even though the comments section of this document indicates that Title V sources would pay fees based on allowables.

C. Assuming that an error was made and factoring increased Title V collections into the analysis of the fund indicates that the total Air Quality Division Fund would be $858,825 of which Title V fees constituted a 54% share.

D. The Divisions January, 2001 Line Item Budget for FY 99, 00, and 01 was not sufficiently detailed to determine the number of staff positions and resources that the Title V fees are supporting.

VI. RGPC Concerns

We have a number of questions that we believe merit careful consideration. The fee regulation presented tonight really goes to the fiscal direction of the program, and therefore, it fundamentally forms the basis for the program. As fee payers, permittees, and citizens with a stake in the community, we have a vital interest in this regulation.

I'd like to run through some of our questions, and then invite the Board to revisit them invidually after I am done.

A. First, on the face of the state and the federal law, this Board appears to be the entity that may be ultimately liable for the fee system, the management of the fund, and the program priorities that are supported by the fund. As the entity that may be ultimately responsible, how does this Board interact with the City program?

B. We're all aware of the City/County merger and the trend towards regionalism. How will the Board and the City manage these funds and the program in light of the consolidation of governments?

C. What is relation of Title V budget to general city budget? Or the city enterprise funds?

D. We're all aware of the City's well-publicized fiscal woes. In times of revenue shortfalls, the Title V program cannot be caught up local budgetary politics. How can the Board and the City ensure that the Title V program is managed "off-budget" from other budgetary considerations so as to be protected from other unrelated fiscal concerns.

E. Is there a separate Title V budget? Or is it intermingled with the general permit program budget? If they are intermingled, how can we account for Title V revenues and expenditures?

F. Has there been an accounting as described in the Part 70 rule? When will there be? How can stakeholders gain access to the information? Is there a formal mechanism for stakeholders to request an accounting?

G. It's without question that this Board and the City need resources to provide an adequate level of service. How are the Title V budgetary requirements derived? Number of employees, hours, other resources. If half the budget is derived from Title V fees? Is half of the staff time dedicated to administrating the Title V program? How are these details tracked? What can we do as stakeholders do to ensure that the Title V Program is adequately staffed?

H. Because our concerns will require some research and consultations with the City's program staff, we believe it is prudent for the Board to hear our concerns tonight, and to defer action on this regulation until after we've had a chance to consult more fully with the City staff.

TITLE V FEES BILLED FOR 2000 - 2001 WITH CURRENT FEE ADJUSTMENT PROVISIONS AND ESTIMATE OF POTENTIAL CONDITIONS WITHOUT FEE ADJUSTMENT PROVISIONS

Facility	Current Condition with Fee Adjustments	Potential Condition without Fee Adjustments
Albuquerque Publishing Co.	$ 1,271	$ 1,271
Chevron Bulk Terminal	12,431	12,431
COA/Cerro Colorado	6,510	6,510
Delta Power (Cobisa)	42,563	42,563
Cresent (Albuq. Plaza)	899	899
DOE	3,232	78,461 ✓
Earth Grains	4,836	4,836
Elastimold	9,500	9,500
General Electric	2,635	2,635
KAFB (DOD)	18,631	18,631
LaFarge (W. Mobile)	4,836	4,836
PNM Reeves	11,292	152,923 ✓
Rio Grande Portland Cement	83,026	84,506 ✓
UNM	8,905	29,326 ✓
VA Hospital	1,333	1,333
Vulcan	12,276	12,276
TOTAL	$224,176	$462,937

DIFFERENCE = $238,761

Does not include COA/Southside Water Reclamation Plant and Centex American Gypsum

RG Grande Portland Corp
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ANALYSIS OF AIR QUALITY DIVISION FUND 242
January 10, 2001

ESTIMATED COLLECTIONS UNDER CURRENT VERSUS PROPOSED AIR QUALITY PERMIT FEE REGULATION, 20 NMAC 11.02

DESCRIPTION OF BILLING	ESTIMATED COLLECTIONS UNDER CURRENT FEE REGULATION	ESTIMATED COLLECTIONS UNDER PROPOSED FEE REGULATION	ESTIMATED CHANGE IN COLLECTIONS	COMMENTS
Title V Sources Annual Billing	$224,176.00	$224,176.00	$0.00	Removal of provision to pay on actuals
Minor Sources Annual Billing	$118,854.00	$118,854.00	$0.00	No change in fees
Gasoline Service Station Annual Billing	$39,750.00	$48,174.00	$8,424.00	Flat fee changed to fee based on emissions
Registration Annual Billing	$16,800.00	$25,200.00	$8,400.00	Increase to $150 from $100 per registration
Surface Disturbance Permit Fee	$0.00	$89,000.00	$89,000.00	$100 per acre disturbed
MACT Sources Annual Billing	$5,400.00	$5,400.00	$0.00	No change in fees
Permit Application Review Fees	$50,250.00	$69,000.00	$18,750.00	Review fees are being increased
Asbestos Application Fees	$39,210.00	$39,210.00	$0.00	No change in fees
Registrations/MACT Sources Application Fees	$1,050.00	$1,050.00	$0.00	No change in fees
TOTAL	$495,490.00	$620,064.00	$124,574.00	

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OPERATING PERMITS PROGRAM - FISCAL YEARS 1999, 2000, 2001
LINE ITEM DISTRIBUTION OF BUDGETS AND EXPENDITURES

	FY 99 Budget	FY 99 Expenditures	FY 00 Budget	FY 00 Expenditures	FY 01 Budget
Regular Wages	$372,015	$332,291	$372,015	$360,013	$411,916
Part Time		240		-240	
Over Time		117		-1,254	
PERA	70,122	62,995	70,122	88,394	78,400
FICA	28,220	24,607	28,220	27,022	31,539
Other Employee Benefits	29,068	26,068	29,068	28,323	32,373
Retiree Health	3,688	3,311	3,688	3,598	4,238
Clothing Allowance					
Subtotal	**$503,113**	**$449,589**	**$503,113**	**$485,856**	**$558,466**
Professional Services				4,151	
Printing & Duplicating	2,500	78	2,500	356	2,500
Electricity					
Gas					
Refuse					
Telephone	1,953		1,953		
Water					
Supplies	13,242	5,266	13,242	10,770	10,242
Travel	3,850		3,850		3,850
Training	2,600	400	2,600	4,418	2,600
Dues & Memberships	1,300	220	1,300		1,300
Repairs/Maintenance	4,000	1,668	4,000	1,108	4,000
Contractual Services	8,000	4,067	8,000	35,603	7,000
Reserve Appropriation					125
Subtotal	**$37,445**	**$11,718**	**$37,445**	**$56,404**	**$31,617**
Automobiles				2,559	
Office Furniture					
Subtotal				**$2,559**	
Worker's Comp	2,990	2,990	2,990	4,265	3,214
Tort & Other	685	685	685	689	1,603
Vehicle Maintenance	2,100		2,100		2,100
Vehicle Fuels	667		667		
Radio Maintenance					
Indirect Overhead	39,333		39,333	39,333	23,000
Subtotal	**$45,775**	**$3,675**	**$45,775**	**$44,287**	**$29,917**
Total	**$586,333**	**$464,982**	**$586,333**	**$589,106**	**$620,000**