ALBUQUERQUE/BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

TRANSCRIPT OF PROCEEDINGS
February 14, 2001
5:15 p.m.
COUNCIL CHAMBERS
One Civic Plaza, NW
Albuquerque, NM 87102

REPORTED BY: DENISE KOPAN, NM CCR #124
Paul Baca Professional Court Reporters
500 Fourth Street, NW, Suite 105
Albuquerque, New Mexico 87102

APPEARANCES

THE HEARING OFFICER: MR. ARTHUR G. OLONA
MR. PAUL SILVERMAN, COUNTY
MS. KAREN WENTWORTH, CITY
DR. STEPHEN PILON, CITY
MS. JEANNE BASSETT, CITY
DR. KAREN MULLOY, CITY

For the City of Albuquerque Environmental Health Department:

MR. MICHAEL D. SMITH
MR. ANGEL MARTINEZ, JR.
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TRANSCRIPT OF PROCEEDINGS

THE HEARING OFFICER: If everybody can take a seat, we'll go ahead and begin.

Okay. We are going to begin. For the record, this public hearing is being held on Wednesday, February 14th, 2001 in the council commission chambers at One Civic Plaza, the City/County Building in Albuquerque, New Mexico. The time is 5:15 p.m.

This is a hearing of the Albuquerque/Bernalillo County Air Quality Control Board, also known as the Air Board or Board, to consider the proposed VPO and replacement of Section 20.11.2 NMAC, New Mexico Administrative Code, permit fees, also known as part 2 or regulation 2.

My name is Arthur Olona. I am a former member of the Albuquerque/Bernalillo County Air Quality Control Board and I will be the hearing officer for this hearing.

I am also an attorney licensed to practice in the state of New Mexico. And I note for the record that there are three members of the Air Board present at the public hearing this evening, Mr. Paul Silverman, Ms. Karen Wentworth and Dr. Karen Mulloy.

The court reporter tonight is Denise Kopan

representing the firm of Paul Baca Professional Court Reporters. Anyone who wishes to obtain a transcript of this hearing may order a transcript from that firm.

The Air Board hearings do not follow the rules of evidence as used in the courts; however, I will limit testimony which is irrelevant or repeats testimony already given.

The decision regarding whether testimony is irrelevant or repetitious will be made by me as the hearing officer. I will also rule on whether evidence or exhibits may be admitted into the record and on any motions or objections made.

We will begin the hearing with the testimony of the proponent, the Albuquerque Environmental Health Department Air Quality Division, who will testify about the proposed VPO and replacement of part 2.

Next, additional proponents, people who are in favor of the proposed VPO and replacement, will have an opportunity to testify. After that, the opponents will have an opportunity to testify. Finally, any interested parties will have an opportunity to testify.

Each category will be heard in the same order as people signed up to testify. Based on the number

1 of people who wish to testify tonight, I may limit the
2 amount of time each person may testify. If you want
3 to testify and have not signed up, please do so
4 immediately. The sign-up sheet is located in the back
5 of the room.
6 Everyone who testifies will be sworn in by
7 the court reporter before giving testimony. The
8 witnesses must identify themselves for the record.
9 Each witness must state his or her name, address, if
10 they represent someone or an organization, and who
11 that person or organization is.
12 After each witness has testified, the Air
13 Board members may question the witness. After the Air
14 Board has had an opportunity to ask the witness
15 questions, I will allow any interested person or party
16 to ask the witness questions.
17 The questions may be related to the testimony
18 just given by the witness. A person who is asking a
19 question does not have to be sworn in, but the person
20 who is asking a question cannot turn the question into
21 testimony of his or her own. You have an opportunity
22 to testify later.
23 Please beware, each statement you make may be
24 subject to examination by myself or an Air Board
25 member. Immediately after this hearing is closed

1 tonight, if there is a quorum, the Air Board will hold
2 its regular monthly meeting.
3 Before we proceed with the hearing, would all
4 people present please sign the separate attendance
5 sheet, sign-in sheet, whether or not they wish to
6 testify, and, again, the way this hearing is going to
7 operate, I will first allow the proponents, the City
8 of Albuquerque, to proceed and any other individual
9 who may wish to testify on behalf of the proposed
10 regulation.
11 After that, any person or party who opposes
12 the regulation may then testify, and after that, any
13 person interested or otherwise may testify.
14 I am the hearing officer in this case, I do
15 not vote or make any decision on this matter. My role
16 is strictly to conduct this hearing. The other thing
17 I want to mention before we begin is that I have been
18 informed by the city that after the conclusion of this
19 hearing, the record will remain open for two weeks,
20 until February 26th, 2001, 5:00 p.m., so any
21 individual or organization or otherwise who wishes to
22 submit additional evidence and/or testimony has an
23 additional two weeks and must submit it to Mr. Smith
24 at the City of Albuquerque.
25 Okay. The staff of the City of Albuquerque

1 Environmental Health Department may begin.
2 I have been requested, Mr. Smith, by Mr.
3 Silverman, because he has a commitment in about less
4 than an hour, if you could do your presentation in 15
5 minutes or so so we can get to the rest of the
6 testimony, is that possible?
7 MR. SMITH: I timed it at about 45
8 minutes.
9 THE HEARING OFFICER: Your entire
10 presentation?
11 MR. SMITH: Yes.
12 MR. SILVERMAN: At 45 minutes?
13 THE HEARING OFFICER: Well, let's do the
14 best we can. This is a public hearing.
15 All right. You may begin. One second.
16 Ms. Kearny?
17 MS. KEARNY: Adelia Kearny with the city
18 attorney's office. I did want to make it clear that
19 because I have been associated with the drafting of
20 this regulation that I'll not be advising the Air
21 Board, but as you know, Mr. Olona, from the ordinances
22 when you were a Board member, we cannot have the
23 hearing without a quorum, but everyone who is a member
24 who chooses to consider and vote on that at a later
25 time will have to read the transcript and the

1 exhibits, so Mr. Silverman has to leave, if he wants
2 to vote on this, will have to review the remainder of
3 the record.
4 MR. SILVERMAN: I understand that, Ms.
5 Kearny, but I can read the proposal for myself, what I
6 cannot do is hear the testimony of the general public,
7 and I'd rather spend my time here listening to what
8 the public has to say rather than somebody read me a
9 45-page document that I can read on my own, so maybe
10 what I might do is make a proposal that we take
11 testimony from the public first and let staff make
12 their presentation last.
13 MS. KEARNY: I understand that.
14 MR. SMITH: For the purpose of the
15 hearing, I do feel it's important to read it into the
16 record, and taking testimony prior to my testimony
17 simply does not make any sense.
18 MR. SILVERMAN: Then I would make the
19 request that staff make the presentation in 20
20 minutes.
21 THE HEARING OFFICER: I really can't
22 limit any relevant testimony. The problem I have with
23 that, Mr. Silverman, in fairness, is that at a public
24 hearing, there are people from the public who may want
25 to address specific concerns that the city is

1 presenting, and I think there could be a problem down
2 the line if Mr. Smith and the City of Albuquerque's
3 testimony --
4 MR. SILVERMAN: That's fine. Let's move
5 forward.
6 THE HEARING OFFICER: Okay. Mr. Smith,
7 you may proceed. Please raise your right hand and be
8 worn.
9 MICHAEL D. SMITH
10 after having been first duly sworn under oath,
11 testified as follows:
12 THE HEARING OFFICER: Would you please
13 state your name.
14 MR. SMITH: My name is Michael D. Smith,
15 I am with the City of Albuquerque Air Quality
16 Division.
17 THE HEARING OFFICER: Please proceed.
18 MR. SMITH: Good evening, Mr. Olona,
19 members of the board. My name, again, is Mike Smith
20 with the Environmental Health Department. I am an
21 environmental health scientist responsible for
22 researching and revising air quality rules and
23 regulations.
24 I have been with the department for more than
25 10 years and worked as an air quality inspector,

1 permit writer and supervisor.
2 I have a bachelor of geological science
3 degree from New Mexico State University and have
4 worked in resource law enforcement for 20 years at the
5 federal, state and local levels.
6 Before I start my testimony, I would like to
7 explain, for the benefit of the newer board members,
8 some of the requirements of the New Mexico Air Quality
9 Control Act important to tonight's hearing.
10 The basic duty of the local Air Quality Board
11 is to "prevent and abate air pollution." To that end,
12 the board is required to adopt, promulgate, publish
13 and repeal regulations consistent with the Air Quality
14 Control Act.
15 When considering new regulations or
16 amendments, the board must take into account the
17 "character and degree of injury to or interference
18 with health, welfare, visibility and property;" take
19 in account "the public interest, including social and
20 economic value of the sources and subjects of air
21 contaminant;" and, finally, take in account the
22 "technical practicability and economic reasonableness
23 of reducing or eliminating air contaminants from the
24 sources involved and previous experience with
25 equipment and methods available to control the air

1 contaminants involved."
2 Also, when considering a new regulation as
3 staff, we must provide you with substantial evidence
4 to support a new regulation or amendment to satisfy
5 that requirement, and to meet the requirement of the
6 New Mexico Air Quality Control Act, we are having this
7 hearing tonight to hear testimony from the staff and
8 public concerning this regulation to provide you with
9 the information you need to make an informed decision.
10 In tonight's hearing, I will make every
11 effort to avoid using acronyms without first defining
12 the term. If I should use a term or phrase that you
13 do not understand, please interrupt me and I will
14 explain the word or phrase.
15 As required by the New Mexico Air Quality
16 Control Act, the division must provide public notice
17 of hearing at least 30 days prior to hearing. To meet
18 this requirement, the division published notice of
19 tonight's hearing in New Mexico State Register on
20 December 29th, 2000, Staff Exhibit Number 1, and in
21 the Albuquerque Journal on January 7th, 2001, Staff
22 Exhibit Number 2.
23 In addition, the notice of hearing was posted
24 in city hall as required by City of Albuquerque
25 ordinance Section 2-6-1-4(C)(2)(a). Also, as required

1 by the New Mexico Air Quality Control Act, the
2 division mailed the notice of hearing to all persons
3 who have made written request to receive advance
4 notice of hearings and to every company with a permit
5 and registration issued by the department and to
6 contractors' issued surface disturbance permits
7 pursuant to 20.11.20, NMAC airborne particulate
8 matter. This mailing list is Staff Exhibit Number 3.
9 All letters sent were postdated January 10th
10 or 11th, 2001. Staff believes we have met and
11 exceeded the public notice requirements for this
12 hearing. As a result of this notice, the department
13 has received seven written comments or requests to
14 testify. These are marked as Staff Exhibits Numbers 4
15 through 9.
16 Staff Exhibit Number 10 is a copy of our
17 current regulation. Staff Exhibit Number 11 is a copy
18 of the proposed regulation with minor editorial
19 changes made on January 18th, 2001, with the proposed
20 floor amendments we wish to introduce tonight. I will
21 be referring to this exhibit during my testimony.
22 Staff Exhibit Number 12 is a copy of my
23 testimony for the record. Finally, Staff Exhibit
24 Numbers 14 and 15 are fee comparison tables I will
25 refer to later in my testimony.

1 Mr. Hearing Officer, at this time I would
2 like to introduce these exhibits into the record.
3 THE HEARING OFFICER: Staff Exhibits 1
4 through 14 are hereby admitted into the record.
5 MR. SMITH: My testimony tonight is to
6 explain the changes we propose to 20.1.2 NMAC permit
7 fees, the purpose of the fee regulation, how the
8 permit fee regulation will be implemented and explain
9 the rationale for the proposed fee scheduling.
10 Following my testimony, Mr. Angel Martinez,
11 division manager, will discuss issues specific to the
12 division's budget. Why do we have fee regulation in
13 the first place?
14 As required by New Mexico Air Quality Control
15 Act, 74-2-7 NMSA, and the Joint Air Quality Control
16 Board ordinances, the board is required to establish a
17 schedule of construction fees sufficient to cover the
18 reasonable cost of reviewing and acting upon any
19 application for a permit, including the costs of
20 implementing and enforcing the terms of any permit,
21 excluding the cost of any court costs or other cost
22 associated with an enforcement action.
23 In addition, the board is required to
24 establish a schedule of emission fees consistent with
25 the provisions of Section 50(B)(3) of the federal

1 Clean Air Act that requires any air contaminants
2 source that emits 100 tons or more per year of any
3 regulated air pollutant or 10 tons per year of any
4 single hazardous air pollutant or 25 tons per year of
5 combined hazardous air pollutants, to pay annual
6 emission fees sufficient to cover the direct and
7 indirect costs of a federally approved major source
8 permitting program.
9 With their regulation, the division is
10 establishing new elements for a minor source operating
11 permit program requiring all sources with a permit or
12 registration with the division to pay annual emission
13 fees sufficient to cover the direct and indirect costs
14 of ongoing inspection and compliance activities.
15 This regulation also establishes fees to
16 cover the direct and indirect costs of administering
17 and enforcing the asbestos and dust control programs
18 required by board regulation.
19 At this time, please refer to Staff Exhibit
20 Number 11, the proposed fee regulation with floor
21 amendments.
22 Since this is a new regulation and staff is
23 proposing to repeal the current regulation, I'm going
24 to discuss the major elements of the proposed
25 regulation and proposed four amendments.

1 First, page 1, line 8, Section 20.11.2.2
2 outlines the sources that will be affected by this
3 regulation. The only major change to this section
4 from the current regulation is the requirement that
5 persons requesting a surface disturbance permit
6 pursuant to 20.11.20 NMAC, airborne particulate
7 matter, shall be required to pay a filing and
8 inspection fee to cover the direct and indirect costs
9 of administering and enforcing the dust control
10 program, which will be discussed later in my
11 testimony.
12 Page 2, line 11, Section 20.11.2.6,
13 objectives, outlines the objective of the regulation
14 and states a statutory requirement for establishing
15 permit fees.
16 Starting on page 3, line 1, Section
17 20.11.2.7, definitions, list the definitions that will
18 be used in this part. The division is adding several
19 new definitions that will be used to implement the fee
20 program.
21 The first new definition is found on page 3,
22 line 21, "potential to emit," which defines the method
23 the division uses to determine the source's potential
24 emissions. This definition has been crafted to be
25 similar to the federal definition for regulatory

1 consistency. This definition will benefit sources
2 since it takes in account controls that are integral
3 to the production process.
4 At this time, staff would like to present the
5 following floor amendments to add several new
6 definitions to this section.
7 The first new definition is on page 4, line
8 3, "qualified small business," which shall mean a
9 business that has 100 or fewer employees; is a small
10 business concern as defined by the federal Small
11 Business Act; does not emit more than 50 tons per year
12 of any regulated pollutant or 75 tons per year of all
13 regulated air pollutants; and is not a major source of
14 hazardous air pollutants.
15 This definition is consistent with the small
16 business stationary source technical and environmental
17 compliance assistance program approved by the board on
18 October 7, 1992. The staff is proposing that
19 qualified small businesses may be eligible for reduced
20 permit and emission fees required by this part.
21 The second new definition we wish to propose
22 is on page 4, line 22, "state air toxic review," which
23 shall mean a case-by-case permit application review of
24 the potential emissions of air toxins listed in state
25 regulation 20.2.72 NMAC, Subsection IV. This

1 definition has been added so the division can
2 establish an appropriate review fee for toxic air
3 pollutants.
4 Depending on the source's potential to emit a
5 toxic air pollutant, a permit review becomes more
6 complicated and may require additional research and
7 air dispersion modeling; increasing staff time and
8 effort, justifying the additional fee.
9 The last definition the division wishes to
10 add is "stationary source with de minimus emissions,"
11 which means a source with a potential to emit less
12 than five tons per year of any regulated air
13 pollutant, excluding hazardous air pollutants; less
14 than two tons per year of any hazardous air pollutant;
15 five tons or less of any combination of hazardous air
16 pollutants; or 20 percent of any lesser threshold per
17 year for a single hazardous air pollutant established
18 by the Environmental Protection Agency by rule.
19 This definition establishes the emission
20 limit the division will use to determine the
21 applicability of a source in paying permit or emission
22 fees. This definition is not intended to exempt
23 sources from this regulation or any other board
24 regulation. Current and future regulations may
25 require sources that meet minimum limits established

1 by this definition to obtain permits and payee
2 emission fees, such as dry cleaners and other
3 hazardous pollutant sources that are specifically
4 regulated.
5 Starting on page 5, line 21, Section
6 20.11.2.1 are the general provisions for this
7 regulation. A major change from the current
8 regulation is the requirement to pay all fees at the
9 time of application.
10 Currently, staff invoices the applicants for
11 any fees due after the application is processed. By
12 collecting fees at the time of application, not only
13 is the division reducing the administrative burden on
14 the staff, but streamlines the review process by
15 having the complete application package submitted to
16 the division for review.
17 All permit fees will be required to be sent
18 or delivered directly to the Environmental Health
19 Department's finance section prior to the application
20 being submitted to the division.
21 This process will ensure all fees are
22 deposited into the correct air quality accounts.
23 Subsection B requires all sources to pay an annual
24 emission fee based on the source's potential to emit.
25 Sources wishing to reduce their potential to

1 emit may do so through the provisions of NMAC,
2 authority to construct. Annual permit fees will also
3 be sent directly to the department's finance section.
4 This section also requires that any person
5 submitting an application for a surface disturbance
6 permit or notifying the department of the removal of
7 asbestos-containing material, pursuant to 20.11.64
8 NMAC, emission standards for hazardous air pollutants,
9 for stationary sources shall also be required to pay
10 all fees due at the time of application.
11 To ensure compliance with this part,
12 Subsection G, page 6, line 22, states that no source
13 will be in compliance with its permit unless all
14 applicable fees are paid as required by this part.
15 As part of an inspection or annual compliance
16 statement, sources must demonstrate that all
17 applicable permit fees have been paid.
18 Starting on page 7, line 5, Section
19 20.11.2.12 authority to construct permit fees; fee
20 calculations and procedures describes the methods and
21 procedures used to determine the permit fee required
22 to process an authority-to-construct permit
23 application.
24 The division intends to stay with an
25 emission-based fee schedule in determining permit

1 fees, that is, the more you potentially pollute, the
2 higher the fee.
3 When determining the application fee, the
4 applicant must determine the potential to emit of all
5 regulated fee pollutants and emissions. This
6 procedure, along with the increased application fees,
7 generally will mean higher application fees to the
8 applicant.
9 The division believes these increased fees
10 are justified since the fee not only pays for the
11 permit review process, but includes initial baseline
12 inspections, performance testing review, EPA reporting
13 and the source's annual emission fee until the next
14 invoice cycle.
15 In addition to the emission-based fees,
16 sources that must comply with federal performance
17 standards or major source review programs shall be
18 required to pay an additional fee, depending on the
19 federal program being reviewed.
20 Federal programs include new source
21 performance standards, hazardous air pollutants
22 standards and federal major source review programs
23 such as prevention of significant deterioration,
24 nonattainment area permitting and acid rain.
25 Fees to modify an existing permit will also

be emission based in determining if the modification is major or minor modifications that trigger a federal review program or require an air toxic review will pay the additional federal program and air toxic review fees, but only for the emission unit subject to the requirement.

Page 8, line 3, paragraph 7, outlines an example of an emission-based fee with an additional federal program review fee added.

MR. SILVERMAN: Excuse me, Mr. Smith, my package doesn't have page 8.

MS. BASSETT: I don't think any of the packets do.

MR. SILVERMAN: It was included in what you made out, though.

MR. SMITH: I'm sorry, I did have problems with the copier today, and I can make copies if you would like to have that. Mr. Olona has the official record and if you would make sure it's in that.

THE HEARING OFFICER: That's correct. I just want to make sure you are referring to your floor exhibit now.

MR. SMITH: Right.

THE HEARING OFFICER: Okay. Which is

your --

MR. SMITH: Well, I just referenced page 8, line 3, paragraph 7 of the regulation.

THE HEARING OFFICER: Right. I'm trying to look at it. Are you talking about Exhibit 10 or Exhibit 11, then?

MR. SMITH: I am talking about Exhibit 11.

THE HEARING OFFICER: Okay. I'm sorry, Mike, what page number are you on again?

MR. SILVERMAN: Eight.

MR. SMITH: Page 8, line 3, paragraph 7.

THE HEARING OFFICER: Page 8 is not in the exhibit.

MR. SMITH: That's probably why no one has it.

THE HEARING OFFICER: If you can have one of your staff members make a copy prior to the conclusion of your testimony, so we need to put it into the record, and, also, make sure the Air Board has a copy.

MR. SMITH: I will.

THE HEARING OFFICER: Okay.

DR. MULLOY: I have a copy of page 8 from what you had sent us out prior to this meeting.

MR. SMITH: That particular page 8 or 9 may be paged a little bit different, but the same material is there.

MR. SILVERMAN: It would be page 7 in what was sent out, as best as I can tell.

THE HEARING OFFICER: Before you proceed, Mr. Smith, I just want to state in the record that since the beginning of your testimony, two additional air quality members, Dr. Steve Pilon and Ms. Jeanne Bassett, arrived and are attending.

Please proceed.

MR. SMITH: Thank you. At this time, staff would like to offer the following floor amendments, and it's not on page 8.

Backing up to page 7, line 6, Section 20.11.12, Sub A, delete the word "reserved" and add "sources applying for a general permit pursuant to 20.11.41 NMAC, authority to construct, shall pay the applicable fee found in Subsection 18 of this part."

THE HEARING OFFICER: Excuse me. Is that in Exhibit 11?

MR. SMITH: That's in Exhibit 11.

THE HEARING OFFICER: Okay.

MR. SMITH: And you are on page 7, aren't you?

THE HEARING OFFICER: Yes, sir.

MR. SILVERMAN: Repeat that one more time, please.

MR. SMITH: "Sources applying for a general permit pursuant to 20.11.41 NMAC, authority to construct, shall pay the applicable fee in Section 18 of this part.

"The division intends to amend 20.11.41 NMAC, authority to construct, to allow general permits to be established for specific source categories, eliminating the need for case-by-case air quality review, expediting the permit-issuing process."

Now I am going to be referring to page 8 again. If I can go ahead and review, read that, and, then, we can refer later back to the correct page.

At the end of Section 20.11.2.12, page 8, line 19, we wish to add Subsection D as follows: "Qualified small businesses shall pay one-half of the calculated case-by-case air quality review fees prior to adding any federal review fees or state toxic review fees."

Qualified small businesses working through the division's small business assistance program will only pay half of the case-by-case air quality review calculated prior to adding additional fees.

1 The small business would still be responsible
2 for paying for any federal program and air toxic
3 review fees. This provision is not applicable to
4 sources applying for general permit since the cost of
5 the permit has already been reduced.
6 The division estimate under the proposed
7 regulation, based on the average number of permit
8 applications received, to collect about $111,000 per
9 year in application fees.
10 Under the current regulation, we have
11 invoiced 87,500 for the past year. The division
12 estimates it costs approximately $252,000 per year to
13 minimally fund a new source review program, the
14 remainder of the funding comes from annual emission
15 fees, federal grant money and city general funds.
16 Starting on page 8, line 22, Section
17 20.11.2.13, annual emission fees, fee calculations and
18 procedures describes the methods and procedures for
19 invoicing and calculating annual emission fees. All
20 invoicing will be done by the City of Albuquerque with
21 annual fees sent to the department's finance section
22 for deposit.
23 As required by law, all fees will be
24 deposited into the City of Albuquerque permits program
25 fund. All annual emission fees will be determined

1 based on the source's potential to emit, taking into
2 account any permits and SIP-approved regulatory
3 limits.
4 Sources with registrations issued pursuant to
5 20.11.40 NMAC, source registration, will be reviewed
6 on a case-by-case basis, and if permitting is
7 required, the division will permit these sources at no
8 charge.
9 The division will be proposing to repeal
10 20.11.40 NMAC, source registration, and establish a
11 federally enforceable operating permit program for all
12 applicable sources.
13 Staff will also be proposing several floor
14 amendments in Section 18, creating annual emission
15 fees for specific source categories that currently
16 have registrations in lieu of authority-to-construct
17 permits.
18 Annual emission fees will be used primarily
19 to fund compliance and inspection activities required
20 by the state Air Quality Control Act, the joint Air
21 Quality Control Board ordinances and board
22 regulations.
23 In addition, the annual emission fees will
24 also fund the small business assistance program.
25 Under the proposed regulation, the division estimates

1 it will collect about $756,850 per year in annual
2 emission fees.
3 The division estimates it takes approximately
4 $819,000 to minimally fund the inspection and
5 compliance in small business assistance activities
6 within the division. Funds from annual emission fees
7 will also be used for staff training regulatory
8 development and federal emission inventory reporting
9 and other activities required by Section 502 of the
10 federal Clean Air Act. Remainder of the funding comes
11 from federal grant money and city general funds.
12 One major change staff is proposing is to
13 remove the provision in the current regulation to
14 allow sources to pay annual emission fees based on
15 actual emissions.
16 This provision is found in Section II.2.4.F,
17 that reads "An annual emission inventory may be
18 submitted for reviews by the department for the
19 purpose of annual fee adjustment. This shall be
20 restricted to sources with established permit
21 allowable emission rates or sources which have
22 submitted a timely permit application pursuant to part
23 42, Section I.2.2.A.2.
24 "The emissions inventories shall be
25 submitted to the department by no later than January

1 1, 1997 and by April 1 each year thereafter for review
2 consideration for every year an adjustment is sought.
3 Within 30 days of receipt, the department will bill
4 the source for the review pursuant to Table 1 of this
5 part.
6 "Any adjustments to the sources permitted or
7 otherwise established emission fees shall be
8 incorporated and adjusted and billed in accordance
9 with the billing schedule provisions in this part."
10 While this provision benefits sources with
11 large allowable emissions and on the surface appears
12 to encourage emission reductions, these sources still
13 have the right to pollute at their permitted levels at
14 any time.
15 The division strongly supports emission
16 reduction through permit and by removing the ability
17 for sources to pay on their actual emissions will
18 encourage sources to truly reduce their emission
19 through federally enforceable permit conditions. The
20 division received three written comments concerning
21 the removal of the emission inventory provision from
22 the Department of Energy, General Mills and PNM.
23 Both the Department of Energy and General
24 Mills believe that by removing the provision to pay on
25 actual emissions will create a disincentive for

1 voluntary pollution reductions.
2 General Mills staff Exhibit Number 6 stated
3 in their letter that "The proposed system of fees
4 creates a disincentive to minimize air emissions
5 because the fee is based on potential worst case
6 activities and effectively disallows pollution
7 prevention activities from quickly recovering cost
8 savings associated with emission fee reduction."
9 The Department of Energy will also testify
10 the current provision encourages pollution prevention.
11 The Department disagrees that removing the
12 provision will discourage pollution prevention and is
13 proposing in the fee structure a pollution prevention
14 modification at no charge to encourage sources to
15 reduce their emissions through federally enforceable
16 pollution prevention techniques or process.
17 Pollution prevention means the reduction or
18 other practices that reduce or eliminate the creation
19 of pollutants through increased efficiencies and the
20 use of raw materials, energy, water or other resources
21 or protection of natural resources by conservation.
22 Source reduction includes any practice which
23 reduces the amount of any hazardous substance or
24 pollutant prior to recycling or treatment, including
25 equipment or technology modifications, process

1 modifications, reformulation or redesign of products,
2 substitution of raw materials and improvement in
3 housekeeping, maintenance, training and inventory
4 control.
5 Pollution prevention techniques or practices
6 do not include add-on air pollution controls used to
7 limit air emission or emission reductions based on
8 decreased production needs.
9 PNM, in its letter, Staff Exhibit Number 7,
10 understands that emission fees can be reduced through
11 permit modification, but chooses not to modify based
12 on its business needs, which is consistent with the
13 division's proposal that sources pay on what they are
14 allowed to emit by permit.
15 Page 9, line 21, Section 20.11.2.14, filing
16 and inspection fees for the removal of regulated
17 asbestos-containing material; fee calculations and
18 procedures describes the methods and procedures used
19 to calculate filing and inspection fees for the
20 removal of regulated asbestos-containing material.
21 The section remains unchanged from the
22 existing requirements; however, as required by the
23 general provisions of this part, all fees must be paid
24 at the time of application.
25 Currently, the inspectors invoice the sources

1 after the notification is received, increasing the
2 administrative burden on the staff by requiring fees
3 at the time of application.
4 The inspector will be free of this
5 administrative burden and spend more time in the field
6 conducting inspections.
7 Division estimates it takes approximately
8 $84,000 annually to minimally fund this program and
9 expects to collect approximately $63,000 a year in
10 fees based on average number of notifications
11 received. The remainder of the funding comes from
12 federal grant money and city general funds.
13 Page 11, line 8, Section 20.11.2.15, filing
14 and inspection fees for surface disturbance permits;
15 fee calculations and procedures describes the methods
16 and procedures in calculating filing and inspection
17 fees for surface disturbance permits issued pursuant
18 to 20.11.20 NMAC airborne particulate matter.
19 Currently, the division does not charge for these
20 permits and is proposing to charge a per acre fee to
21 cover the program cost to inspectors.
22 The dust control program is an important part
23 of the particulate matter SIP and must be adequately
24 funded. For 1999 and the first quarter of 2000,
25 monitors in Bernalillo County exceeded the annual

1 national ambient air quality standard for particulate
2 matter.
3 It's vital that we not continue this trend
4 and the division is aggressively addressing problem
5 areas, such as dust control, in an effort to avoid
6 nonattainment status. The fees for surface
7 disturbance permits not only funds the dust control
8 program, but hopefully will encourage businesses to
9 disturb only the acreage necessary for their project.
10 The division received one comment letter from
11 Sandia Properties Limited concerning the proposed fee
12 and I will address the comment letter in my
13 testimony.
14 Page 11, line 19, Section 20.11.2.16, fee
15 errors, corrections and refunds describes the
16 procedures to be taken to correct fee errors, make
17 corrections or request refunds as stated in general
18 provisions of this part, the director may deduct a
19 reasonable professional service fee to cover the costs
20 of staff time and processing a permit or request.
21 Page 12, line 19, Section 20.11.2.17, failure
22 to pay, establishes the violation for sources failing
23 to pay any fee required by this part and of procedures
24 to be used to calculate any penalty and interest due
25 consistent with the provisions of Section

502(-B)(-3)-(C) of the federal Clean Air Act.

Starting on page 13, line 5, continuing to the end of the regulation is the proposed fee schedule. The fee schedule is combined into one section for the convenience of the reader and to simplify future amendments to the fee schedule.

The first subsection addresses annual emission fees. The division is not proposing to change the fee pollutant rates for nonhazardous or hazardous air pollutants and will remain at $31 and at $250 per ton respectively.

The current federal presumptive fee rate for major sources is $34.87 per ton. The division is proposing to raise the minimum annual fee from $100 to $150. Sources will be required to pay $150 or $31 per ton, whichever is greater, unless otherwise stated.

Upon further review of the regulation, staff recommends the following floor amendments.

Starting at page 13, line 10, add the phrase "unless otherwise listed." Starting on line 14, add a new paragraph 4, "(4) annual emission fees for specific source categories," then list the following: Auto body repair and painting: One spray booth: No charge; two or more spray booths: $150; chromium electroplating: $150; degreasers using organic

solvents, nonhalogenated solvents using less than 2,200 gallons of any one solvent-containing material and 5,100 gallons of any combination of solvent-containing materials: $150.

Halogenated solvents using less than 1,200 gallons of any one solvent containing material and 2,900 gallons of any combination solvent-containing materials: $150; dry cleaners/nonmajor: $150; emergency generators: $150; gasoline service and fleet stations: $250 or $31 per ton, whichever is greater.

"Natural gas or distillate fuel-fired boiler less than 2 million BTUs used exclusively for residential, commercial or institutional heating and hot water: No charge. Printing, publishing and packaging operations: Sheetfed, nonheat set, offset lithograph, using less than 7,125 gallons of cleaning solvent and fountain solution additives: $150.

"Nonheat set web offset lithography using less than 7,125 gallons of solvent and fountain solution additives: $150. Heatset web offset lithography using less than 50,000 pounds of ink, cleaning solvent and fountain solution additives: $150.

"Screen printing using less than 7,125

gallons of total solvent used, including solvent-based inks, cleaning solvent adhesives and coating: $150.

"Flexography (water based) or UV-cured inks using less than 200,000 pounds total of inks, coatings and adhesives: $150. Soil and water remediation operations: $150. Stationary sources with de minimus emissions: No charge."

It is the intent of the division to use this list of specific source categories for nonmajor sources when determining source applicability and to ensure fair fee assessment.

The next two subsections of Section 18 establish the fee schedule for an initial air quality review to obtain a construction permit from the division.

On page 14, line 17, the division initially wanted to reserve this subsection for minor source general permits in lieu of case-by-case air quality review for new sources. Upon further review, the division proposes to add the following fees for general permit review to avoid having to open this regulation again for public hearing.

On page 14, starting on line 7, strike the word "reserved" and add the following paragraphs: One, auto body repair and painting: $500; two, dry

cleaners (nonmajor): $500; three, emergency generators: $500; four, generic coating and abrasive operations: $500; other fueling facilities receiving fuel by truck or rail, (non-NSPS): $1,000; non-NSPS boilers: $500; printing and packaging operations: $500; retail fleet gasoline service stations: $500; soil water remediation systems: $1,000.

On page 15, starting on line 2 are the proposed case-by-case air quality review fees for new sources. This is an emission-based fee schedule where fees increase as the source's potential to emit increases and will be based on the source's potential to emit all fee pollutants, including quantifiable fugitive emissions.

The fee not only covers the cost of permit review, but also includes costs for construction and baseline inspections, compliance test reviews and source's annual emissions fee until the next billing period.

For those sources with potentially low emissions of toxic or hazardous air pollutants, an additional air toxic review fee will be required which will offset the costs of these more complicated permits.

The fees proposed are substantially higher

1 than the current fee schedule. Currently, a source
2 with precontrolled emissions less than 100 tons would
3 pay only $500.
4 That covers about seven staff hours, assuming
5 $75 per staff hour. The proposed fee schedule would
6 require sources to pay up to $5,000, which offset up
7 to 67 staff hours, assuming 40 hours for permit review
8 and processing, eight hours air quality modeling
9 review, with the remaining fee covering construction
10 and baseline inspections, compliance testing and the
11 annual emission fees for the source until the next
12 billing period.
13 In addition to the emission-based air quality
14 review fee, any source that must comply with any
15 federally required performance standards or control
16 technologies would be assessed in additional review
17 fee to cover the cost of implementing the federal
18 program.
19 These federal review fees are found on page
20 15, starting on line 13, Section D. The most common
21 federal program reviewed are the new source
22 performance standards or NSPS found in 40 CFR 60,
23 which would add $1,000 to the initial air quality
24 review fee.
25 As a rule, NSPS requires additional

1 record-keeping reporting and compliance testing for
2 the source and the division.
3 On page 15, line 23, Section E establishes
4 the fee schedule for permit modification. The
5 division intends to revise 20.11.41 NMAC, authority to
6 construct, to establish modification criteria for
7 pollution prevention modifications, minor or flexible
8 permit modifications and major modifications.
9 Generally speaking, major modifications will
10 be those modifications that significantly increase the
11 source's potential to emit requiring more extensive
12 permit review and processing, modeling and inspection
13 and compliance activities.
14 As with the case-by-case air quality review,
15 any modification that must comply with federal program
16 requirement will be charged an additional federal
17 program review fee.
18 On page 16, line 2, the division proposes a
19 portable source relocation fee to cover the cost of
20 permit review and modeling at the different locations
21 a portable source may relocate.
22 When establishing the case-by-case air
23 quality review fees, we did not compare our fee
24 structure to other jurisdictions because the
25 emission-based fee schedule fit our needs. It is also

1 very difficult to compare permit fees with other
2 jurisdictions.
3 The State of New Mexico, for example, is
4 currently revising their fee structure to an
5 effort-based fee schedule; that is, the more emission
6 units a source proposes, the higher the permit fee.
7 In addition, the state charges fees for
8 sources that must comply with federal requirements
9 along with air quality modeling fee, toxic air
10 pollutant review fee and nonrefundable filing fee.
11 On reviewing the state's proposed regulation
12 and based on some sample calculations on recent
13 permits issued by our department, we believe our fee
14 schedule is comparable to the state's proposal.
15 However, I believe it's more telling to
16 compare our proposed fee structure with other
17 metropolitan areas in the southwest. For this
18 purpose, I picked Maricopa County, Arizona, which
19 includes Phoenix, and Clark County, Nevada, which
20 includes Las Vegas.
21 Staff Exhibit 13 outlines the different fee
22 approaches and compares tonight's proposal with the
23 state of New Mexico, Clark County and Maricopa
24 County.
25 Since each jurisdiction has developed a fee

1 program that fits its individual needs, it's difficult
2 to make a direct comparison. I believe, however, the
3 comparison does show that Albuquerque's new source
4 review fees are reasonable, even considering the
5 increases being discussed.
6 Page 16, line 4, Subsection H establishes
7 $100 per acre fee for surface disturbance permits.
8 The purpose of this fee is to cover the costs of
9 administering and enforcing the provisions of 20.11.20
10 NMAC airborne particulate matter.
11 As previously discussed, Albuquerque has
12 exceeded the annual national ambient air quality
13 standard for particulate matter in 1999 with high
14 levels continuing into the year 2000.
15 Albuquerque must act now to control dust
16 generated by land disturbance to avoid federal
17 action. Managing the dust control program takes a
18 minimum of two full-time positions to process permits,
19 conduct on-site inspections, respond to complaints and
20 perform the other administrative matters related to
21 the program.
22 Again, I compared our proposed dust control
23 permit program fees with those of Clark and Maricopa
24 Counties, Staff Exhibit Number 14.
25 Our proposed fee of $100 an acre is less than

1 Clark County's fee, but more than Maricopa's fee;
2 however, Maricopa's fee is an annual fee. The annual
3 block permit required by Maricopa County is available
4 for organizations that perform routine maintenance on
5 utilities, paved and unpaved roads, road shoulders,
6 alleys and public right-of-ways at noncontiguous
7 sites.
8 We have received one comment concerning our
9 proposed fees from Sandia Properties Limited, Staff
10 Exhibit Number 9, regarding master plan projects such
11 as Ventana Ranch, which encompassed approximately 900
12 acres.
13 When applying our proposed fee, the developer
14 would be required to pay $90,000 or approximately $30
15 per house assuming three houses per acre in addition
16 to the fees already paid to the city for project
17 approval.
18 Looking at other jurisdictions, the same
19 project would cost at least $32,510 or more in
20 Maricopa County since permits must be renewed
21 annually, and $98,100 in Clark County.
22 Staff believes that the proposed fee of $100
23 per acre is reasonable and expects to generate
24 approximately $80,000 in revenue per year based on the
25 average number of acres disturbed per year.

1 The asbestos unit fee found on page 16, line
2 5, Subsection I, will remain the same.
3 Page 16, starting on line 6, Section J,
4 establishes a miscellaneous administrative fees the
5 division will charge. The $75 per hour professional
6 service fee was established assuming an average
7 employee salary plus benefits and overhead.
8 Maricopa's professional service fee is $70 per hour
9 and staff believes the proposed fee is reasonable.
10 The fees established for photocopying and
11 regulation books are consistent with department
12 policy. The public records research fee has been
13 established to cover the direct staff costs of
14 complying with information requests concerning
15 permits, enforcement actions and complaints.
16 Mr. Hearing Officer, this concludes my
17 testimony and I wish to end by quoting Miguel de
18 Cervantes from his classic Don Quixote by saying "That
19 what costs little is valued less."
20 Thank you.
21 THE HEARING OFFICER: Thank you, Mr.
22 Smith, and you finished well in front of your 45
23 minutes, so good job.
24 At this time, I want to ask the members of
25 the Air Quality Board if they have any questions of

1 Mr. Smith or staff.
2 Mr. Silverman?
3 MR. SILVERMAN: Mr. Smith, when you go
4 to the dentist, do you have to pay him before he sits
5 you in his chair?
6 MR. SMITH: No, but he certainly asks
7 for my insurance.
8 MR. SILVERMAN: You know, when you go
9 see your lawyer, does he ask for money up front before
10 he hears your case?
11 MR. SMITH: Many do.
12 MR. SILVERMAN: Well, you are using the
13 wrong lawyer. It's my opinion that the concept of
14 having to pay the fees before you look at anything or
15 do anything sits really wrong with me, and I would
16 never vote to support that.
17 That's my comment on that subject.
18 THE HEARING OFFICER: Thank you, Mr.
19 Silverman.
20 Any other member of the board have a question
21 for Mr. Smith or the staff?
22 DR. PILON: Would you repeat the
23 rationale for charging a potential to emit rather than
24 the actual emissions as addressed by the General Mills
25 letter I was just looking at.

1 MR. SMITH: When we refer to potential
2 to emit, what we refer to is what's limiting the
3 ability for this source to emit. In many cases, it's
4 a permit, a federally enforceable permit that actually
5 limits the source to so many, let's say, tons per
6 year.
7 In absence of a permit, potential looks at
8 the process, itself, and assuming no controls other
9 than those controls along with production in the past,
10 or, rather, current fee regulation, I should say,
11 allows for sources to be charged on their actual
12 emissions.
13 That means emissions they are emitting which
14 are below their actual permit, but they are actually
15 permitted to emit so many hundreds of tons per year,
16 so the -- what we do is we tie up -- those emissions
17 are tied up.
18 For the purpose of many air quality programs,
19 for example, if we were to do modeling, we must take
20 into account that of the source's emissions that are
21 next to the proposed source. We must take in account
22 their worst case scenario when we do the modeling.
23 Also, at any time during any time that source
24 may be -- their allowable emissions may be -- let's
25 say they were emitting 50 tons per year and they are

1 allowable 100 at any time without our approval, they
2 Are allowed to emit up to 100 tons and what we had
3 done is actually inventory the emissions throughout
4 the county to figure out where our emissions are
5 totally, as a total picture, and we tried to use those
6 emissions in approving and disapproving projects.
7 MS. BASSETT: So what you are saying is
8 that a company would purchase a certain amount of
9 emissions, almost like a bank account, not knowing
10 whether they would use all of those, but hedge their
11 bets, they would purchase, say, 100 tons?
12 MR. SMITH: Well, no, they would not
13 purchase.
14 MS. BASSETT: Do they pay for those
15 100?
16 MR. SMITH: No. Right now, we allow
17 them to pay for their actual 50, even though they're
18 permitted to have 100.
19 MS. BASSETT: Why aren't they charged
20 for 100?
21 MR. SMITH: Because our current fee
22 regulations say they can pay on actuals.
23 MS. BASSETT: So what we are trying to
24 do is say "You have to know exactly what's in the bank
25 account because we need that money," quote, unquote,

1 "We need that money for the air shed for other
2 potential projects," and you are basically sort of
3 stockpiling that potential CO?
4 MR. SMITH: Well, it's really not
5 correct to say these emissions have any value. They
6 are permitted during the permit process. They are
7 allowed to emit so many tons per year of emissions
8 based on their proposed application modeling and so
9 forth.
10 At this time, we don't have what's referred
11 to as a capped-off trade where we have capped off the
12 emission levels, and, therefore, those emission levels
13 may have actual real value, but what we are trying to
14 do is eliminate sources that have, let's say, 100 tons
15 permitted, tying up those 100 tons within our air shed
16 and paying only on 50 tons, when, at any time, they
17 could use that 100 tons if production demands it.
18 MS. BASSETT: Okay.
19 DR. PILON: So by switching to a
20 potential to emit, as opposed to actual usage, you are
21 creating an incentive for the source to approach more
22 closely with its actual output to what it potentially
23 is allowed to do?
24 MR. SMITH: Actually, yes.
25 DR. PILON: Because then they will have

1 incentive to get a permit as close to what they
2 actually expect, leaving a margin for error, but they
3 are going to have incentive to get closer to their
4 actual output, and that would free up other emissions
5 sort of. That would give you an idea that the -- a
6 closer idea based on the permitting, what their actual
7 output is going to be.
8 Right now what you are saying is that the
9 range of actual emissions is anywhere from half the
10 permit to all of the permit and we don't know, but,
11 then, the question is -- the General Mills letter
12 raised the question: Why are they going to be charged
13 for emission; that is, they are not doing and you are
14 saying you are trying to create an incentive for them
15 to permit more closely to what they are actually going
16 to emit.
17 MR. SMITH: That's correct.
18 THE HEARING OFFICER: Mr. Silverman?
19 MR. SILVERMAN: What would be the
20 immediate penalty for exceeding the permit?
21 MR. SMITH: $15,000 a day.
22 MR. SILVERMAN: Would it be possible --
23 I mean, I can see both sides of this issue. I mean, I
24 certainly understand why we want to go to the
25 potential to emit, but at the same time, with

1 penalties for violating the permit being, you know, at
2 that level, you know, the need to pad the permit is
3 pretty obvious because you don't want to -- you just
4 simply can't take that risk, and my question is: Did
5 you look at a procedure that might encourage people to
6 permit closer to what they are going to -- what they
7 would use, but, then, if, you know, mid year, there is
8 a need for, you know, business spikes, I mean, PNM is
9 a great example.
10 I noticed today that they were out, you know,
11 burning Reeves generating plant primarily to send
12 electricity to California is my, you know,
13 supposition.
14 I think balance load on the grid, take Palo
15 Verde, send it west, generate on our power here, you
16 know, they didn't know that we were going to have a
17 crisis in California, and, you know, what is it to the
18 economy, you know, to have California go dark, and if
19 they had a permit level that was down, where they had
20 taken five years' worth of normal business, permitted
21 that amount, and, then, this spike happens, and, then,
22 they get hit with $15,000 a day, you know, that
23 doesn't -- that's putting handcuffs on the economy,
24 and, you know, I think if we want to encourage this,
25 the concept of potential to emit, then we probably

1 ought to come up with some type of mechanism that
2 would allow unexpected events.
3 I mean, you know, there is one thing to be,
4 you know, conscientious, you know, going to exceed,
5 exceed, exceed, but there is a whole other deal where
6 there is just unintended consequences that you cannot
7 foresee, and so I am not sure we have this totally
8 figured out given that thought process, and I might
9 like to see a couple of other scenarios that might
10 take that into account.
11 MR. SMITH: Well, since you brought up
12 PNM, in their letter, they are currently paying
13 $11,292 a year. I guess that was the last, and this
14 change would increase by -- would require an increase,
15 let's see, to $152,923. I have got sources that are
16 not major sources like PNM paying more than $11,292.
17 MR. SILVERMAN: Is that 11,000 based on
18 their actual emissions?
19 MR. SMITH: Yes. So I have got sources
20 out there paying more than $11,292 which aren't going
21 to enjoy the benefits of California's blackout.
22 MR. SILVERMAN: Why are people paying
23 more than that?
24 MR. SMITH: We charge $31 per ton.
25 MR. SILVERMAN: And?

1 MR. SMITH: $31 per ton.
2 MR. SILVERMAN: And what are you
3 charging the other folks?
4 MR. SMITH: I couldn't tell you right
5 off the top of my head.
6 MR. SILVERMAN: Well, I am clearly in
7 favor of everybody paying their fair share, which is
8 my next set of questions, if I could continue.
9 THE HEARING OFFICER: Please proceed.
10 MR. SMITH: Mr. Martinez was just
11 advising me that there are also other provisions
12 involved. In fact, they do have modifications,
13 provisions where they can make changes to their
14 permit.
15 MR. SILVERMAN: Yes, what's the time
16 line for doing that, though.
17 MR. SMITH: 90 days.
18 MR. SILVERMAN: 90 days, you know,
19 California would go dark.
20 MR. SMITH: Well, then I would think
21 that $159,000 is a bargain.
22 MR. SILVERMAN: Maybe it is and maybe
23 it's fair, I don't know, but I can tell you that from
24 a conceptual standpoint, we have a problem, and the
25 problem is that we are trying to get people not to

1 bank permitting tonnage by reserving more than, you
2 know, than what they need, so we have come up with a
3 mechanism to try to cut that down closer to what they
4 are actually using, the permit level, but at the same
5 time, I am not sure that you can move fast enough to
6 react to what happens in business on an ongoing
7 basis.
8 Clearly, 90 days is not fast enough.
9 MR. SMITH: Well, there are provisions,
10 especially with major sources, as to the type of
11 permits, to have alternative operating scenarios, so
12 that's, again, another opportunity that they have.
13 MR. SILVERMAN: Well, maybe you need to
14 explain that to us, because I don't understand that.
15 MR. SMITH: They have different -- Title
16 V allows for sources to create different operating
17 scenarios based on their need. One operating scenario
18 may be providing Albuquerque with power, the other
19 operating scenario may be providing California with
20 power.
21 Both of those options are in the permit so
22 that they don't have to repermit to go to those
23 particular operating scenarios.
24 MS. BASSETT: But they would be using --
25 they would be exceeding, then, the tonnage of the

1 permit that they originally purchased, so they would
2 be violating their permit.
3 MR. SMITH: One of those operating
4 scenarios would include the worst case scenario.
5 MR. SILVERMAN: And what do you permit
6 on?
7 MR. SMITH: I don't understand.
8 MR. SILVERMAN: Well, are you going to
9 permit on worst case scenario or normal scenario?
10 MR. SMITH: Both.
11 MR. SILVERMAN: What are you going to
12 charge for it?
13 MR. SMITH: Right now, we are proposing
14 to charge $31 a ton.
15 MR. SILVERMAN: So you are suggesting
16 that you can permit on either one, but you're going to
17 end up paying on the worst case scenario, even though
18 that might be a once in 15 year --
19 MR. SMITH: That's the benefit of having
20 that modification already in place and not having to
21 go 90 days.
22 MR. SILVERMAN: I think you are giving
23 business too much credit.
24 THE HEARING OFFICER: Mr. Martinez, do
25 you want to give a response? If so, you have to be

1 sworn.
2 ANGEL MARTINEZ
3 after having been first duly sworn under oath,
4 testified as follows:
5 THE HEARING OFFICER: Please state your
6 name and proceed, Mr. Martinez.
7 MR. MARTINEZ: My name is Angel Martinez
8 and I am the manager for the air quality division. I
9 think one of the things that needs to be explained is
10 that yes, we are trying to ensure that permitted
11 sources permit as close to their operations or as
12 close to their needs as possible, that may be as close
13 to the operations last year or as close to what they
14 perceive the market will be in the next few years.
15 There are provisions that allow the source to
16 modify, there are provisions from the prevention
17 program that allows the source to actually reduce on
18 one end of the source and basically take credit for
19 that.
20 The turnaround time is very, very short on
21 that and I believe it's a matter of notification
22 within 10, 15 days. It does not require public
23 hearing, it doesn't require anything. They can
24 basically just do it, so we have those provisions in
25 place.

1 The issue of the operating alternative
2 operating scenarios is that yes, the source can
3 actually design different scenarios into the permit.
4 What would have to happen is that notification would
5 have to be submitted to the department in order for
6 them to switch over to the next scenario.
7 One of the things that I need to be -- that
8 needs to be pointed out on this whole issue is that it
9 is -- you know, there are provisions within the
10 federal act that allow that if there is an
11 emergency-type situation, I mean, pretty much you have
12 no choice. I mean, if California goes dark tomorrow,
13 then I can guarantee you that all bets are off, I
14 mean, as far as complying with these particular
15 regulations because that is more of a national
16 emergency than anything else, and the federal act does
17 allow for that.
18 Now, what we are talking about is ensuring
19 that the facilities have taken into consideration and
20 are using good business practice to ensure that we
21 also understand what the impact to the economy or to a
22 specific area will be.
23 Keep in mind that if a facility has the
24 option, you know, and since we are talking about PNM,
25 to go ahead and pay for the full permit, and that is

1 fine, but what happens with us is that now, at this
2 point, we understand that those emission submissions
3 within that area are tied down and there is no taking
4 from them at that point.
5 You know, what makes it difficult for us is
6 that when we are looking at inventories, we basically
7 used to look at okay, what happened last year, but
8 there was a federal document in place that basically
9 gave the right to large sources to go up to where the
10 limit was, and so what that basically does to that
11 area is that we have to take that into the modeling
12 consideration.
13 We cannot continue to permit sources around
14 that area because nothing prohibits them from going to
15 the maximum, and when they do that, then we are
16 talking about serious economic impacts to the area and
17 that is going on the payment, which is far higher of
18 an economic impact, than pretty much anything else
19 within the realm of the Clean Air Act, but there are a
20 lot of provisions that are currently in place that
21 allows the facility to utilize good business
22 practices, good engineering practices, and we have
23 assistance that, you know, we go out there free of
24 charge and work for them on that particular issue.
25 Maybe there is an antiquated piece of

1 equipment that can be changed, maybe there is
2 configuration, maybe there is some kind of process or
3 alternative method that they can use and we don't take
4 those credits away because they are in a permit, but
5 we give them credit for additional process or
6 production, so those are there and they are somewhat
7 complicated, but there is -- by all means, there is
8 more than one provision that allows the facility to
9 make modifications during -- halfway through the
10 process to ensure that production is made, and, you
11 know again, to us, what the facility puts out as far
12 as production is irrelevant to us, it's just the
13 emissions that are tied to that production, so the
14 more efficient that they become, you know, the better
15 it is for everybody, and, you know, for the economy
16 and for the environment.
17 MR. SILVERMAN: I understand that, I am
18 supportive of it and I think that's great and that's
19 the way it ought to be, but, you know, that's the
20 normal course of business, and, you know, one thing
21 that I know is that normal is hard to find anymore,
22 and, you know, to be -- maybe we need to think about
23 how we are doing this.
24 If we pick up a lot of headroom as a result,
25 you know, of this permitting process, maybe what we

1 need to do is reserve a piece of that for the unknown,
2 and, then, maybe we need to build into our fee
3 structure and our regulatory system the ability for
4 the economy, i.e., individual businesses or groups of
5 them, to be able to use that safety margin, maybe they
6 have to pay double, you know, on an audit basis after
7 the fact for that tonnage, so, you know, maybe they
8 are paying $31 up to their permit level and they pay
9 $65, you know, a ton to go above it, which will
10 encourage squeezing the excess out of it, but not be
11 hit with $15,000 a day.
12 I mean, you know, I am just not sure that we
13 really, you know, are on the right track. Okay. I
14 fully support that, I just think that there is some
15 tweaking that needs to be done to take into account
16 the way the real world works.
17 The second set of questions, if I may, do we
18 have any idea what the loss of revenue would be if all
19 of our small business permittees took advantage of the
20 50 percent or whatever the discounts are for small
21 business?
22 MR. SMITH: No.
23 MR. SILVERMAN: Is there any way of
24 quantifying it?
25 MR. SMITH: Not without a lot of effort,

1 because we simply don't have the information of who is
2 a small business by that definition.
3 MR. SILVERMAN: So we don't have any
4 idea of how much of a cost of operating this program
5 is going to get shifted to the larger operations as a
6 result of what we are suggesting is credits for small
7 business?
8 MR. SMITH: No.
9 MR. SILVERMAN: Well, I think that's
10 unfortunate and I think we need to make a good-faith
11 effort to try to determine that, and the reason
12 being --
13 MR. SMITH: Well, we couldn't honestly
14 get that information without months and months of
15 going out there, and, actually, getting -- actually
16 asking the questions, are you a small business.
17 MR. SILVERMAN: Well, you know, I guess
18 my response would be that, you know, to quote
19 Cervantes, that "That which cost little is valued
20 less."
21 I mean, if we don't have any idea what we are
22 giving away, I don't know how it can have any value,
23 so, you know, if a ton of pollution is worth X, it's
24 worth X to a small business, just like it is to a big
25 business.

1 MR. SMITH: Well, the small business
2 reduction or whatever, it is consistent with the Clean
3 Air Act, and in trying to provide for relief from
4 these regulations -- it's right out of the Clean Air
5 and it -- you know, the small business systems was
6 passed by this board.
7 MR. SILVERMAN: I guess we can unpass
8 it, then, can't we?
9 MR. SMITH: No.
10 MR. SILVERMAN: I think we can.
11 MR. SMITH: Well, then there would be a
12 federal program in place.
13 MR. SILVERMAN: The other part of this
14 is -- and you brought to light in comparing Clark
15 County and Maricopa County, which I guess it's Clark
16 County that has the annual permits?
17 MR. SMITH: Maricopa.
18 MR. SILVERMAN: Maricopa has the annual
19 permits. It seems to me, and I will use topsoil
20 disturbances as a particular, okay, the program that
21 we worked out with Rio Grande Cement, the four-people
22 program I believe is what it was called that we were
23 awarded --
24 MR. SMITH: P-4.
25 MR. SILVERMAN: The P-4 program where we

1 went out, we worked with them, we adjusted the --
2 worked with them to adjust their systems and make all
3 that work, it seems to me that particularly in the
4 topsoil disturbance that there is probably, I am
5 guessing, four or five, six, maybe eight folks that do
6 large-scale development, probably do 80 percent, you
7 know, of all the masquerading in town, and it seems to
8 me that we need to take that same carrot and stick
9 proposal and instead of maybe doing landowner permits
10 that what we do is we come up with a quality assurance
11 program for the larger contractors that do the
12 majority of this work and work with them to make sure
13 that their operations are as good as they possibly can
14 be, because if you can get the 80 percent with eight
15 people doing an excellent job of maintaining, you
16 know, PNM, 2.5, or PNM dust control work, then your
17 problem gets to be a whole lot smaller and maybe you
18 have a whole lot more time to focus on, you know, the
19 renegades, I guess is what I might call them, and so I
20 have a problem, I guess, with the hundred dollars an
21 acre.
22 I think we need to come up with a different
23 thought process, given the structure of people that do
24 topsoil disturbance, what different way of approaching
25 that.

1 And I think we need to think through that, as
2 well, for a different approach because I think it will
3 be much more effective, you take a whole lot less time
4 and have a lot better end result for air quality if we
5 do that.
6 That's all my questions and comments.
7 THE HEARING OFFICER: Thank you, Mr.
8 Silverman.
9 Any other members of the board have any
10 questions to the city staff at this time?
11 DR. MULLOY: I guess I want to go back
12 to what Mr. Silverman said, just so I understand,
13 since he was so vehement about the paying up front and
14 the process is to pay for the permit fee up front, is
15 that right, is that what you are -- was part of your
16 application?
17 MR. SMITH: Pay the permit fee up
18 front. For example, the dust control permits, we
19 would -- I would hope that the contractor would know
20 how many acres he plans to disturb since that's
21 probably part of his bid.
22 I don't see where there would be a problem of
23 paying up front there as far as asbestos. Again, if
24 the contract is going to remove asbestos, I would hope
25 the contractor would know how much asbestos he is

1 going to be removing prior to getting the permit.
2 As for authority-to-construct permits, I
3 would hope that the sources have an application in
4 place where it states what their potential emission
5 rates are going to be so that they, themselves, can
6 make a determination as to what the applicability
7 would be, so I totally disagree with Mr. Silverman.
8 DR. MULLOY: Since you do a different
9 process at this point, has it been prior to this that
10 you have expected them to pay something and either
11 they had to pay more or pay less than what their
12 provisional permit was?
13 MR. SMITH: Well, for the asbestos
14 program, what we have found out is that they are
15 making us do the work in determining how much it's
16 going to cost as opposed to having them do the
17 complete application and submitting it to us.
18 MS. BASSETT: Can you explain that?
19 What do you mean by you "doing the work"?
20 MR. SMITH: Well, they don't come in
21 with a complete application.
22 MS. BASSETT: Half-filled-out
23 application?
24 MR. SMITH: They have not filled it
25 completely out.

1 MR. SILVERMAN: Give it back to them.
2 MR. SMITH: Well, that's what we do, and
3 with the fees exactly, and that will expedite the
4 process.
5 DR. PILON: But what you are saying is
6 that your administrators wind up handling the
7 paperwork over and over again rather than having it
8 completed once and handed to you.
9 MR. SMITH: We want it complete up
10 front. Now, one of the comments that Mr. Silverman
11 made about businesses, you know, 90 days may seem like
12 a long time for a business, but keep in mind that if a
13 business sends us a permit that is incomplete, we send
14 it back to them, yet we are the ones that are, you
15 know, causing the problems, what we are proposing in
16 this regulation and on into the amendments to 41, is
17 that we want a complete application, we will discuss
18 the matter ahead of time, if you want to, as we will
19 go with the business to make sure they have a complete
20 application, we will charge for that $75 an hour, but
21 at the time that it is submitted into the -- to us for
22 processing, it will be a complete application and we
23 don't have to return it in 30 days because it's
24 incomplete.
25 MR. SILVERMAN: How does paying the fee

1 up front ensure that the application is going to be
2 completed?
3 I mean --
4 MR. SMITH: It's a part of the complete
5 application packet, just as it's going to be the
6 public information or the public notice requirements
7 that we will ask the businesses to submit, it's a
8 complete application. We want complete paperwork
9 which includes a calculation of the fees and payment.
10 DR. MULLOY: I see this as similar to
11 kind of a licensing, and, I mean, obviously, I have a
12 license, I have to complete my application and send my
13 fee in.
14 MR. SMITH: Up ahead, exactly.
15 DR. MULLOY: Up ahead. If they find
16 some problem with it, you know, I don't necessarily
17 get my money back or whatever, but, you know, I don't
18 see a problem with that because it's not just you are
19 adding service on top of it and somehow you're going
20 to take your money back or take it before or whatever,
21 I think this is for paying for all of the
22 administrative costs and not adding costs on it, and
23 it should be known up front what it is.
24 MR. SMITH: You know you're going to be
25 assessed that fee.

1 THE HEARING OFFICER: Steve?
2 DR. PILON: It seems to me that it's
3 also a sign of good faith that they are serious about
4 doing what they are saying they are going to do to
5 submit the fee.
6 My question is: If one of the problems or if
7 one of the delays is the fact that the application has
8 to be submitted -- has to be returned, and, then,
9 resubmitted, is there any way that the department can
10 commit to a shorter time period than 90 days, maybe
11 cut it in half, maybe cut it by a third, if the clock
12 starts running from the time that the money is paid
13 and the application is completed?
14 MR. SMITH: Currently, we have 30 days
15 from the date we receive an application to determine
16 just if it's complete, administratively complete.
17 That, of course, you know, the permit reviewer
18 actually takes the application, goes through, and, for
19 the most part, it's an administrative check, because
20 the application is filled out, is it signed correctly,
21 is the air quality modeling attached.
22 If there is something missing, usually we
23 make contact with the source and they will supply that
24 to us, so, actually, there is usually no stopping the
25 clock, per se, but does that answer your question?

1 MR. MARTINEZ: If I may, one of the
2 things I need to point out, and this is, you know, we
3 feel that this is a far more simplistic approach to
4 the fee and the permit connection, if you will, and
5 the reason for that is that we basically simplify the
6 process and basically put a price on what the
7 application is, so if you are a dry cleaner, this is
8 what we are going to charge you, you know, until this
9 regulation is modified, and you pay up front.
10 It is similar to a licensing fee because what
11 it does, you know, we do review the application and we
12 are basically going to issue authority to construct
13 for that particular site.
14 Now, one of the things that the state is
15 going to is that is going to an effort, unit effort,
16 if you will, that the engineer basically gets the
17 application and they determine how hard that
18 application was, and, then, that's how they determine
19 the fee.
20 Now, we decided not to go to that and
21 basically say up front "This is going to be the
22 price," which, again, comparatively, I can guarantee
23 you, it's far lower than anything around this region.
24 Another thing that I'll point out, as far as
25 the 90 days, we do have the fastest -- you know, one

1 of the fastest permitting processes within the entire
2 region, and I mean EPA Region 6.
3 You know, an audit was done within all the
4 states within Region 6 and we basically issued most of
5 our permits within that 90 days' time period, as
6 compared to the State of New Mexico where a very, very
7 low percentage is issued within that time frame and
8 that is because we try to figure out ways to simplify
9 the process, and so people know up front what they
10 have to do in order to deal with us.
11 Another issue that needs to be pointed out on
12 this whole issue of why we are going to the fee up
13 front, and that is, it keeps us from being bill
14 collectors. The way that the city process basically
15 works is that they submit the application.
16 Now, we issue an invoice, and, then, that
17 goes to the treasury department. What happens at the
18 treasury department is that then they will issue an
19 invoice within 30, 45 days that they get it, and,
20 then, it goes out, and, then, what happens is that we
21 don't really get any sense of when that fee was
22 actually submitted to city treasury until, you know,
23 months later, sometimes it will be up to six,
24 sometimes even a year, and so then what happens after
25 a year, we realize that the sources have not paid, and

1 we do have a lot of that, and I gave you that copy of
2 what was actually billed and what was collected, so
3 then what happens at that point, it takes about --
4 sometimes it will take up to seven months before we
5 realize that the source has not paid, and, then, so we
6 have to bring an enforcement action and that's a
7 seven-month enforcement action, if you will.
8 What we are saying now, this is the bill, pay
9 it now, that starts our review process, and, then, at
10 least from that administrative aspect, we are done
11 with that and there is not an enforcement action, at
12 least on that part of it, so it does simplify the
13 process quite a bit.
14 THE HEARING OFFICER: Mr. Silverman?
15 MR. SILVERMAN: When does the applicant
16 get his permit?
17 MR. MARTINEZ: Typically, within a few
18 weeks of the end of the --
19 MR. SILVERMAN: How does he get it
20 physically?
21 MR. MARTINEZ: Through certified mail,
22 typically.
23 MR. SILVERMAN: Well, why couldn't the
24 applicant, when it's all processed, it's all done,
25 it's all ready, simply come down, pick up the permit,

1 show you his receipt for the fees?
2 MR. MARTINEZ: Well, actually, that's
3 something that they would have to do. When they
4 submit the application, we get a receipt that the fee
5 has already been sent.
6 MR. SILVERMAN: So why can't they
7 exchange a copy of that receipt for the permit when
8 you are through fooling with it? And, then, that
9 eliminates all the bill collecting.
10 MR. MARTINEZ: Then we would have to go
11 back and modify the reg because then we are going to
12 be holding up the permit until payment is made.
13 MR. SILVERMAN: You are doing that
14 anyway.
15 MR. MARTINEZ: Actually, you know, what
16 we are asking for is for the application review to be
17 up front. The permit basically comes from that, you
18 know.
19 MR. SILVERMAN: So now the application
20 review fee is the full amount of the permit, right?
21 MR. MARTINEZ: It's the full amount that
22 -- the application review fee, correct.
23 THE HEARING OFFICER: Okay. Any other
24 questions?
25 MR. SMITH: May I just add to that?

1 THE HEARING OFFICER: Yes.
2 MR. SMITH: We do have businesses that
3 come in to start permits, and, then, stop, okay,
4 because of whatever the case may be, the money dried
5 up, they weren't being well-received and whatever they
6 were going to be billed, and is it then fair for the
7 division to have gone through all that work and
8 effort?
9 MR. SILVERMAN: That's why you are
10 called public servants.
11 MR. SMITH: I'm sorry, Mr. Silverman,
12 that's an unfair statement.
13 MR. MARTINEZ: If I may, that issue, one
14 of the facts that you have to understand is that
15 currently, for this process, the taxpayers pick up
16 most of the program, even with the new fee changes,
17 the taxpayers basically pick up 50 percent of the
18 program and that is through the gross receipt taxes.
19 Federal funding equates to about 20 percent,
20 even with the changes, what the permitted sources
21 contribute to maybe running the program is about 30
22 percent.
23 I mean, you know --
24 DR. PILON: And that's the current
25 program?

1 MR. MARTINEZ: That would be under this
2 current level. I mean, the changes are not going to
3 be significant to most of the sources that are out
4 there, and I think that needs to be clear, you know,
5 we have done a lot of -- to try to simplify the
6 particular reg, you know, we have done a lot to try to
7 look at what, you know, we can do to ensure that there
8 is some emission reductions.
9 If there is no emission reductions, we want
10 to make sure that okay, we are always going to count
11 on the fact that that facility used the max, but it
12 doesn't change that much.
13 I mean, the generated funds in this
14 particular change is not going to be that substantial,
15 as Mike pointed out. I mean, we are still going to
16 depend on the others, but, I mean, the idea is that
17 the general public has to pay for the auto emissions
18 program already, you know, that equates to about $7
19 million, which, right now, it's about, you know, our
20 current budget is about $2 million and that's
21 basically all we are trying to make just to cover
22 expenses, so the general public is already paying
23 three times the amount that -- actually more than
24 that, you know, than our current budget is, and so not
25 only that they are paying for half of the industrial

1 source permitting program, and, you know, we are
2 trying to make this as equitable as possible, you
3 know, short of just basically getting rid of the
4 program as a whole, which really doesn't change
5 anything regulatorily, and it makes it even worse for
6 the industry and the economy because then we don't run
7 it, the feds run it, and I guarantee you the feds
8 aren't going to run it with $2 million, there's no
9 way, but we have created incentives and programs to
10 reduce plus, we have created programs that allow the
11 facility to take credit for the good things they do
12 within their facility and be able to use those
13 emissions for something else, we have created programs
14 that allow the facility to modify certain things, and,
15 again, you know, federal law allows modifications in
16 case of national emergency, so that's covered there,
17 but, again, still at this point, even with the
18 changes, you know, for the industrial source
19 permitting program, the gross receipts tax still pick
20 up 50 percent of that program, you know, facilities
21 industry is only picking up 30 percent still, and so I
22 just want to make sure that we keep that in mind, that
23 if the money doesn't come from somewhere, then we are
24 going to have to go to the taxpayers and that's not a
25 very good thing to do, I mean, in my opinion, when we

are already paying for a substantial amount of the overall air quality permitting programs and air quality protection programs.

THE HEARING OFFICER: Okay. Thank you, Mr. Martinez.

At this -- Mr. Silverman?

MR. SILVERMAN: I need to leave and I just want to apologize to the members of the public that I won't be able to personally hear their testimony, but I do have another commitment that I need to get to.

I will read the transcript and I assume we are not voting on this tonight since we didn't have a quorum.

THE HEARING OFFICER: That's correct, it's not on the agenda of the board this evening.

MR. SILVERMAN: I thought it was.

THE HEARING OFFICER: It was, but it's been moved.

MR. SMITH: We were going to ask that the hearing record be open for two weeks.

THE HEARING OFFICER: I suspect it will be on the next.

MR. SILVERMAN: I am out of town the last week of February.

MR. SMITH: Well, just the hearing record will be held open until the 26th, and, then, at the regularly scheduled Air Board meeting, we will have a discussion and vote on it.

THE HEARING OFFICER: Next board meeting?

MR. SILVERMAN: That's fine.

THE HEARING OFFICER: Thank you, Mr. Silverman.

MR. SILVERMAN: My apologies to my other board members.

THE HEARING OFFICER: At this time, this portion of the hearing will now be -- any member of the public may step forth and ask questions of the cities staff regarding this proposed detail replacement of part 2 of the regulations; in other words, just like the Air Quality Board members have asked the staff questions, any member of the public may step forward, just state your name and you can ask Mr. Smith, Mr. Martinez, members of the city staff questions.

You cannot give testimony, that's a different portion of this public hearing; rather, this is just your opportunity if you have questions about the regulation and Mr. Smith's and Mr. Martinez'

testimonies, you may step forward and ask them questions.

So if anybody from the public would like to do so, please step forward to the microphone.

THE HEARING OFFICER: State your name.

MR. GRANDJEAN: Michael Grandjean, G-r-a-n-d-j-e-a-n.

THE HEARING OFFICER: Yes, sir.

MR. GRANDJEAN: I have a question concerning the asbestos portion, and I understand there is going to be some administrative fees and I am not sure how the administrative fees are going to work and are they going to be, you know, for inspections, for additional inspections or for any of those kind of things?

How does that work?

MR. SMITH: I am sorry?

MR. MARTINEZ: The administrative fees, what Mr. Smith mentioned, administrative fees, it's things that are related to photocopying, asking, you know, sometimes we have requests.

I will give you a great example: The Ponderosa Pine Potters file, that's like six drawers, and so the time it takes for us to make those copies and run that, what he is referring to, not anything

related to inspections as far as the asbestos program is concerned, there are no changes from the previous regulation with the exception of making sure that payment is attached to the application, that is the only change that was proposed for that.

MR. GRANDJEAN: Okay. Thank you.

THE HEARING OFFICER: Please state your name.

MR. CAUDILL: My name is Larry Caudill. I live at 4519 Watercrest and I want to ask a specific question about the fee for surface disturbance permits.

THE HEARING OFFICER: Please proceed.

MR. CAUDILL: I notice there was no mention of any waiving of fees or exemptions or rate structure, whatever, for public projects, and often, the fees are waived because it takes money in one department and puts it into another, and I am just curious as to the steps or action to -- did they consider this, and if not, why not; or if they did consider it, why was it not --

MR. SMITH: We don't propose to waive any fee for public organizations, nor do we waive any fee for permitting, for what it costs for a public organization; let's say the public works department or

1 the treatment plant or the landfill also was a major
2 source and they are also required to pay fees, so all
3 sources would be required to pay fees, yes.
4 THE HEARING OFFICER: Does any other
5 member of the public have any questions for the city
6 staff regarding the VPO replacement of part 2?
7 Okay. At this point, the hearing will now
8 shift to any individual organization or public member
9 who wishes to give testimony regarding the proponent;
10 in other words, in favor of this repeal and
11 replacement, please step forward and give testimony.
12 Again, Mr. Caudill, please state your full
13 name.
14 MR. CAUDILL: Larry Caudill, 4915
15 Watercrest, Northeast, Albuquerque, New Mexico, 87113.
16 THE HEARING OFFICER: Before you begin,
17 Mr. Caudill, now that you have given testimony, please
18 be sworn.
19 LARRY CAUDILL
20 after having been first duly sworn under oath,
21 testified as follows:
22 THE HEARING OFFICER: Please proceed,
23 sir.
24 MR. CAUDILL: Again, my comments are
25 specific to the surface disturbance permitting fee

1 process, and for those that I am not acquainted with,
2 I would point out that for 15 years, I did the dust
3 control work for the city of Albuquerque and so what I
4 ask and what I say has some basis in experience and
5 it's from that point of view that I would raise the
6 following issues: First of all, I support the fee
7 increase for service disturbance permitting.
8 The circumference, the area under
9 consideration, is in excess of 100 miles, that's how
10 long -- that's the distance around the typical service
11 area that is involved. And in recent years, '98 and
12 '99, approximately 300 permits were issued, 275 in
13 '98 and 295 in '99, I don't know what the total was
14 in 2000, but that's a terrific work load and involves
15 an awful lot of staff, time and energy to even begin
16 to keep up with, and for the time that I was doing
17 that, we did not have this additional support that
18 this fee increase would provide, so I am heartily in
19 favor of a fee for this work.
20 I don't, however, believe it goes far
21 enough. As I will illustrate for you in the near
22 future, either the next meeting or the meeting after
23 that, depending on the pleasure of the board, there is
24 a very direct correlation between the size of the area
25 disturbed and its capacity to generate particulates.

1 You can deal with a 25-acre site reasonably
2 well. If you double the size of that site to 50
3 acres, the rate of erosion, and, therefore, the
4 quantity of airborne particulates increases
5 geometrically, it's at least four times as bad as a
6 25-acre site, so what we should be looking at if we
7 want to effect a change in air quality is that a part
8 of the permitting process would be some incentive to
9 reduce the total acres disturbed at any one time in
10 any one project, so I would suggest that there be an
11 escalating fee schedule for each 25-acre increment and
12 that it should basically go up, perhaps even double,
13 with each increment; in other words, if it's $100 for
14 a 25-acre project, it would be $200 for a 50-acre
15 project and so on.
16 There is absolutely a very direct correlation
17 in terms of the quantity of the dust and the
18 difficulty in dealing with it. An additional
19 advantage here would be that this would stimulate the
20 development community and their engineers to engineer
21 projects incrementally or in phases that would allow
22 for putting a portion of the job to bed before they
23 disturb the next portion, projects can be engineered
24 incrementally.
25 The tendency of some of our tunnel vision

1 engineers is to attack the world at one whack and that
2 increases the insult to the environment and to the
3 neighbors significantly. This would provide an
4 incentive to do things in a more responsible way.
5 I would point out that a number of projects
6 have involved this process, Cottonwood Mall, Vista Del
7 Norte, recent industrial parks in the north portion of
8 the city have been held and the permitting process to
9 require that they not be allowed to disturb more than
10 perhaps a quarter to a third of the job at any one
11 time just as a condition of the permit.
12 Thirdly, there is no provision for penalty if
13 the actual disturbance area exceeds that permitted and
14 on which the per-acre fee is based. It's very common
15 for a contractor to come in and get a permit for an
16 acre and tear up the acre next door, parking, driving,
17 stacking dirt pile, materials and so forth and so on,
18 so I suggest as a disincentive to be very conservative
19 in their estimate of the disturbance area, that they
20 pay a doubled fee for any excess beyond that which is
21 originally permitted.
22 Either adjacent or remote, what I mean by
23 remote, suppose they are bringing in dirt from another
24 site or stockpiling dirt from their site onto another
25 parcel, it may be clear across town, they may not

1 consider that in their original permit and they
2 certainly should because it's all tied together as a
3 part of that one project.
4 Finally, no provision is made for public
5 sector projects in terms of a -- some sort of a
6 different fee schedule or waiving of fees or something
7 of that sort.
8 If there is to be a sliding scale for
9 disturbance exceeding 25 acres, say, and that's not
10 fact at this moment, but I would suggest that it be
11 considered, then there should be a provision for
12 dealing with projects that are not speculative in
13 nature, such as industrial parks, residential areas,
14 subdivisions and so forth, but which are of necessity
15 involving so many acres, example, Big I, they didn't
16 have a whole lot of choice about that one because
17 that's just how big the project was, so there needs to
18 be some consideration given to speculative disturbance
19 versus necessary disturbance.
20 Something that is overlooked here, and this
21 was discussed by staff in terms of the problems we are
22 experiencing with particulates prevention, is
23 absolutely the best way to deal with airborne
24 particulates from soil disturbance; therefore, things
25 like holding down the size of the area disturbed,

1 requiring stabilization on completion or stabilization
2 on an incrementing basis and certainly stabilization
3 of excess disturbance area, that is that which is not
4 developed and just left behind, all of these things
5 should be considered in the permitting process, and I
6 would point out that there are a lot of other benefits
7 to this process, as well, that I would call collateral
8 or incidental benefits and these include things like
9 traffic safety.
10 In terms of visibility, I have seen dirt flow
11 from sites so severely that you absolutely could not
12 see beyond the hood ornament of your vehicle. That
13 creates a significant accident hazard, when streets
14 blow full of sand, that sands has to be picked up by
15 somebody.
16 Recently, it has been the person who caused
17 the mess because that's what's required in the
18 permit. Prior to that being implemented, it was
19 common for the city to take city equipment and city
20 crews to clean up a mess created by the private
21 sector, so those costs went to the public at large and
22 that's simply not right.
23 Another benefit of stabilization would be to
24 cover these bare areas with native vegetation rather
25 than tumbleweeds. I guarantee you, this spring,

1 you'll see city trucks out there picking up
2 tumbleweeds piled as high as this city building
3 because adjacent land wasn't stabilized and it's
4 disturbed and unrevegetated and unreseeded land that
5 produces the weeds, again, a savings to the city and a
6 benefit to the city that occurs.
7 As part of this process, I will provide
8 written testimony within that specified time, and I
9 stand for questions.
10 THE HEARING OFFICER: Any questions by
11 members of the board?
12 Members of the staff, any questions of Mr.
13 Caudill?
14 I'm sorry, Steve, go ahead.
15 DR. PILON: You say that an area of 25
16 acres is the impact and is much smaller than an area
17 of 50 acres. Now, obviously, if you had 25 one-parcel
18 acres, the impact would be much smaller, so you are
19 saying that the bigger the contiguous area, the longer
20 the impact even for the same number of acres
21 disturbed?
22 MR. CAUDILL: That's correct, the reason
23 being that on the edge of a disturbing parcel, the
24 greater the distance blows across that surface, the
25 more the waves build.

1 The same thing applies to moving material or
2 suspended load, if we are talking wind, which is also,
3 you know, that's a fluid working on a solid surface as
4 opposed to water, but as those particles are knocked
5 loose, each one NOx loose more and that one NOx its
6 share, so you may have, in fact, a logarithm increase
7 in moving material on a site as you proceed across it,
8 and at an absolute minimum, there is a geometric
9 increase at least four times as difficult to deal with
10 because of accelerated erosion rates and the greater
11 volume of airborne materials, and by -- it's possible
12 to do this incrementally.
13 If a guy has a 100-acre site he wants to tear
14 up, what's wrong with a requirement that says we will
15 give you 25 acres at a time and when you put that 25
16 to bed, you can do the next 25?
17 DR. PILON: So what you are proposing is
18 a fee schedule that reflects that?
19 MR. CAUDILL: Not necessarily the whole
20 hundred acres, but maybe he could do it on a 25-acre
21 rotating basis. The example was used of Ventana
22 Ranch. I can assure you that all 900 acres have not
23 and will not be torn up, they do it in parcels, and so
24 he is not looking at, you know, $90,000 in a given
25 time frame, over the total development of the

1 project.
2 Yes, I would agree that that's the case, but
3 the thing we don't consider is the public costs
4 associated with his failure to control that material,
5 clean up of the streets, clean up of adjacent
6 property, clean up of drainage works.
7 Again, I have got some slides that will
8 illustrate this very graphically, as Mr. Olona will
9 testify, and I hope we will be able to provide those
10 to you in the near future.
11 THE HEARING OFFICER: Jeanne?
12 MS. BASSETT: Will your testimony have
13 more specifics about actually how you would do the fee
14 structure?
15 MR. CAUDILL: Yes, the way I proposed it
16 would be a doubling of fees for each increment.
17 MS. BASSETT: Right, so you'll get into
18 those details.
19 MR. CAUDILL: Yes, ma'am, as far as
20 permitting, time frames of the permits that were
21 issued in '98 and '99, and I suspect that Mike and his
22 crew are holding pretty much to the same numbers. We
23 turned completed permits around in five and a half to
24 six days, that's about as fast as you can get a permit
25 for anything, for anything, anywhere, anyplace.

1 Now, that's completed permits that don't have
2 to go back because the guy didn't follow very complete
3 instructions on the back of the form; in other words,
4 there is very little excuse for turning in an
5 inadequate package because there are very good
6 directions that tell you exactly what to do and why
7 it's required.
8 And so the numbers that I gave you for
9 turnaround time on permits relate to review, which
10 includes a site visit, it's very important to know
11 what's around that site, what its grade is relative to
12 surrounding property, things of this sort, and they
13 were still turned around and that's a pretty good
14 record.
15 I mean, that's nothing for the city to be
16 ashamed of for a second. I know that's not true in
17 very many cases, but I am not responsible for what
18 other departments do.
19 DR. PILON: Are we allowed to sort of
20 ask the city, the department folks, to respond to what
21 he is saying, or is that like inappropriate?
22 THE HEARING OFFICER: No, you can ask
23 the city if they have any response to Mr. Caudill's
24 suggestions or comments.
25 DR. PILON: Do you guys have anything --

1 do you agree with his assessment that the size of --
2 the actual size of the project has a significant
3 impact on the amount of particulate matter generated
4 by a project?
5 I mean, that 25 one-acre projects are going
6 to develop less than one 25-acre project?
7 MR. MARTINEZ: Actually, Mr. Caudill's
8 comments on basically the dispersion of physics full
9 of an area, certainly, a disturbed area, they are
10 correct, and we don't have any disagreement with that
11 particular -- with that issue.
12 I think that one of the things that we took
13 into consideration and we don't disagree with, the
14 validity of having sort of a sliding scale, dependent
15 on -- you know, dependent on an area disturbed because
16 yes, there is a higher impact.
17 I think what -- you know, we have had this
18 program in place for, as Mr. Caudill pointed out, 15
19 years. In 15 years, this program basically has been
20 funded out of other programs that have come in, again,
21 out of basically taxpayers' money that comes in, too,
22 so for 15 years, this program has not been funded at
23 all, this is our first fee that was set up for this
24 program.
25 I don't really -- you know, as things change,

1 you know, I do see, you know, in another five, 10
2 years for this fee to change based, you know, on
3 circumstances, but, you know, since it is the first,
4 we are trying to make it as simple as possible.
5 We do feel, you know, that it is, you know,
6 going from paying nothing to disturb a 40-acre site,
7 to paying $100 per each acre; that, in itself, is a
8 disincentive, you know, and basically, it requires
9 that much effort.
10 You know, if, indeed, you know, we continue
11 to see the same trends that we have seen in the past
12 years of how much soil was actually disturbed in one
13 shot, you know, if anything, at this point, we will be
14 able to potentially fund additional personnel to take
15 care of that, but, again, I mean, I don't have any
16 disagreements with Mr. Caudill's comments, you know,
17 but what we are attempting to do at this point is, you
18 know, being the first fee ever in 15 years developed
19 for this particular program, you know, to keep it as
20 simple as we can, keep it as still be able to pay,
21 again, we are not going to be able to pay for the
22 entire program, but pay for the majority of the
23 program.
24 THE HEARING OFFICER: The other thing
25 you can do, Dr. Pilon, because the record is being

1 held open for two weeks, is once Mr. Caudill submits
2 his written suggestions, you can ask in a board
3 meeting for the city to respond, if that's your
4 desire.
5 Any other questions by board members of Mr.
6 Caudill?
7 Members of the staff, any questions for Mr.
8 Caudill?
9 Any member of the public can step forward and
10 ask questions of Mr. Caudill at this time if they so
11 decide.
12 MR. CAUDILL: May I be allowed a final
13 comment?
14 THE HEARING OFFICER: Please do.
15 MR. CAUDILL: The stated intent of the
16 fee was to deal with our problems, our growing
17 problems with particulates. One of the best ways to
18 do that is to reduce the active disturbance area in a
19 disturbance at any given time, and I promise you
20 you'll see that this spring, I have already seen it a
21 couple of times on some big subdivisions on the west
22 side which I can see clear across town, the average
23 size of the parcel based on averages of 10 of those 15
24 years, year in, year out, it averages within half an
25 acre to 10 acres per permit, so if you issue 300

1 permits in a year, you have experienced 3,000
2 disturbed acres in that year or something very close
3 to it, and that is the most effective way to deal with
4 particulates from that source is to simply reduce the
5 amount of active disturbed area open and unstabilized
6 at any one time.
7 I would point out that you can go in and
8 mulch and stabilize an area, effectively taking it out
9 of the base of that which reduces blowing particulates
10 and it's put to bed, you can forget about it, and at
11 that point, then proceed to the next portion and you
12 could do the same amount of disturbance at,
13 essentially, the same cost, but without the
14 environmental insult that accompanies the larger
15 parcel disturbance.
16 THE HEARING OFFICER: Are you no longer,
17 for lack of better terminology, the dust control
18 monitor?
19 MR. CAUDILL: I retired a year ago.
20 THE HEARING OFFICER: I'm sorry to hear
21 that.
22 MR. CAUDILL: I was, too, it wasn't my
23 intent, but circumstances changed and I decided it was
24 the best for me to hit the trail.
25 THE HEARING OFFICER: Fine. I wish you

1 well.
2 Any other questions of Mr. Caudill?
3 And, as a former board member, I will suggest
4 to the other -- current board members, I have worked
5 with Mr. Caudill in the past, he has some excellent
6 educational and disturbing slides and photographs --
7 MS. BASSETT: No pun intended.
8 THE HEARING OFFICER: -- of the dust
9 control problems and I think at another time, we can
10 arrange for Mr. Smith to have Mr. Caudill give you a
11 presentation.
12 MR. CAUDILL: Thank you, Mr. Chairman,
13 for those kind comments. It's my intention -- I
14 mentioned this a couple months ago and I was going to
15 do it now, but they indicated there was to be a
16 hearing this month, so my intent is to request a slot
17 on the agenda for next month's meeting.
18 It will be the heart of the dust season,
19 so-called windy season, so it will be timely,
20 informative and highly educational, I promise you.
21 THE HEARING OFFICER: Thank you, Mr.
22 Caudill, it's always a pleasure, your testimony, and,
23 also, as my former high school biology teacher and
24 former high school tennis coach, it's always a
25 pleasure to see you again.

1 Thank you.
2 MR. CAUDILL: Thank you, Mr. Hearing
3 Officer, I didn't know I was going to have such good
4 influence on him to become a lawyer. I hope that's
5 good influence.
6 THE HEARING OFFICER: Maybe you should
7 have taught me to play better tennis.
8 All right. Does any other individual or
9 organization wish to step forward and give testimony
10 in favor of this repeal and/or replacement of part 2?
11 If so, please step forward and give testimony.
12 Okay. Now, we will go to the fun part. We
13 are back on the record again, it's five minutes after
14 7:00 and we will now proceed with the next phase of
15 the hearing, which is those individuals and/or
16 organizations who wish to give testimony to the board
17 regarding the opposition of the repeal or replacement
18 of part 2, I would ask you to step forward and give
19 testimony. There is a sign-up sheet, but I don't
20 believe we need to go in order of the sign-up sheet,
21 just come on forward and give your name, be sworn in,
22 give your testimony.
23 Please state your name, sir.
24 MR. Du MOND: Mike du Mond.
25 THE HEARING OFFICER: Do you represent

1 an organization?
2 MR. du MOND: I represent Sandia
3 National Laboratories.
4 THE HEARING OFFICER: Okay. Please
5 raise your right hand and be sworn.
6 MIKE du MOND
7 after having been first duly sworn under oath,
8 testified as follows:
9 THE HEARING OFFICER: Could you please
10 give your professional address before you begin your
11 testimony, sir.
12 MR. du MOND: Yes, my address is Post
13 Office Box 5800, Albuquerque, New Mexico, zip code
14 87185-1042.
15 THE HEARING OFFICER: Please proceed,
16 Mr. du Mond.
17 MR. du MOND: Good evening, my name is
18 Mike du Mond, I am an employee of Sandia Corporation
19 or Sandia. My current responsibilities are as project
20 leader of the air quality compliance team at Sandia
21 National Laboratories/New Mexico, located out at
22 Kirtland Air Force Base.
23 Sandia is a research and development
24 laboratory owned by the United States Department of
25 Energy and operated by Sandia for DOE.

1 I am here today to share with you our view of
2 the importance and positive impact of retaining the
3 annual emissions inventory provision of Title 20,
4 Chapter 11, Part 02, permit fees, of the board's air
5 quality control regulations.
6 We believe that removing the provision will
7 have a negative effect on our operations. As
8 currently promulgated, the provision allows an annual
9 accounting of emissions and provides a means for
10 Sandia to implement pollution prevention or P-2
11 activities to reduce actual emissions.
12 Sandia as the prime contractor to DOE is
13 responsible for research and development supporting
14 national security interests. In support of this
15 mission, Sandia's steam plant supplies an average 1.5
16 million pounds per day of saturated steam for space
17 heating and laboratory processes for Sandia's
18 technical Area One and an eastern portion of Kirtland
19 Air Force Base.
20 The primary fuel is natural gas with diesel
21 fuel for backup. The five boilers range in rated
22 capacity from 60,000 to 150,000 pounds of steam per
23 hour. The steam plant has been in continuous
24 operation since 1949.
25 Sandia's steam plant is located along Wyoming

1 Boulevard, Southeast, which is situated in the eastern
2 portion of Kirtland Air Force Base across the street
3 from the Atomic Museum.
4 Exhibit 1 is a map giving the boundaries of
5 the Air Force base and the steam plant's location
6 relative to the east mountain community and downtown
7 Albuquerque.
8 Exhibit 2 is a photograph of the steam plant
9 looking north, with the three smaller units, boilers
10 1, 2 and 3, on the left, and the two larger units,
11 boilers 5 and 6, on the right. Boiler number 4 was
12 removed in 2000.
13 THE HEARING OFFICER: Can I stop you for
14 a quick second, Mr. du Mond. I apologize.
15 Are you going to place these exhibits into
16 evidence?
17 MR. du MOND: Yes, I am.
18 THE HEARING OFFICER: How many exhibits
19 do you have?
20 MR. du MOND: Six in total.
21 THE HEARING OFFICER: I'm sorry, please
22 proceed.
23 MR. du MOND: The steam plant is DOE's
24 largest source of air emissions and has the potential
25 of being a major source under the Clean Air Act's

1 Title V operating permit program.
2 A Title V operating permit application was
3 submitted to the City of Albuquerque on March 1st,
4 1996 and the application was deemed complete on May
5 1st, 1996.
6 An updated application was requested by the
7 city and resubmitted on February 23rd, 1998.
8 The existing provision was found at part 02,
9 Section 2.4F and reads: "An annual emissions
10 inventory may be submitted for review by the
11 department for the purpose of annual fee adjustments.
12 This shall be restricted to sources with established
13 permit allowable emission rates or sources which have
14 submitted a timely permit application pursuant to Part
15 42, Section 1.2.2A.2.
16 "The emissions inventories shall be submitted
17 to the department by no later than June 1st, 1997 and
18 by April 1st each year thereafter for review
19 consideration for every year an adjustment is sought.
20 "Within 30 days of receipt, the department
21 will bill the source for the review pursuant to Table
22 One of this part. Any adjustments to the source's
23 permitted or otherwise established emission fee shall
24 be incorporated and adjusted and billed in accordance
25 with the building schedule provisions of this part."

1 This provision became effective on May 30th, 1997.
2 Exhibit 3 is a table of Sandia's submissions
3 under this annual emissions inventory provision. The
4 first column is the calendar year in which the annual
5 emissions were inventoried beginning in 1997 with a
6 calendar year 2000 emissions to be submitted by April
7 1, 2001.
8 The second column is Sandia's actual
9 inventory reported for that year with the majority of
10 the emissions from the steam plant and only a few tons
11 per year from the standby diesel generator power
12 plant.
13 The third column is the annual Title V fee
14 calculated from the actual emissions in column two
15 times $31 per ton.
16 The fourth column is the $1,000 fee from part
17 02's Table 1, fee number 7, annual emissions inventory
18 review for major source emissions fee adjustment.
19 The final column is the sum of the two
20 previous columns yielding the total fee assessed for
21 each calendar year.
22 When the annual emissions inventory provision
23 of part 02 became effective in May 1997, Sandia
24 recognized an opportunity to reduce its fees by
25 reducing its actual emissions.

1 Because the steam plant is the largest source
2 of actual emissions, a study was conducted in 1997 at
3 the steam plant to determine if operational
4 improvements could be accomplished.
5 As the largest pollutant, the primary goal
6 was to determine if nitrogen oxide or NOx emissions
7 could be minimized. The initial focus was to reduce
8 emissions by maximizing combustion efficiency, and,
9 hence, reduce fuel usage and emissions.
10 The first phase of the study included
11 evaluating the tuning of the five boilers and
12 reprogramming the boiler's digital control system, or
13 DCS. Process optimization, that is, operating the
14 more efficient boilers to cover the steam demands, was
15 also evaluated.
16 In addition, the study evaluated if
17 installation of additional emission reduction
18 equipment such as flue gas for recirculation, or FGR,
19 could effectively reduce emissions.
20 The study concluded that an increase in fuel
21 efficiency and decrease in emissions could be realized
22 through boiler tuning, process optimization and
23 installation of emission reduction equipment.
24 These studies were funded partially based on
25 the "return on investment" related to the savings of

1 fuel and reductions in emissions fees. Without the
2 financial incentives, these studies may not have been
3 initiated.
4 Sandia next embarked on carrying out the
5 recommendations of its study. During the
6 boiler-tuning phase, the three smaller boilers were
7 tuned during the summer of 1997, while the two larger
8 boilers were tuned in the winter of 1998.
9 Exhibit 4 shows the graph of the results of
10 the boiler tuning with, in some cases, a several
11 percentage point increase over the baseline values.
12 During the reprogramming phase, the new
13 operational ranges were coded into the software. The
14 evaluation phase evaluating each boiler and the
15 feasibility of installing emission reduction
16 equipment.
17 The 1999 emission reduction phase involved
18 retrofitting FGR in boilers 5 and 6 while the 2000
19 phase involved retrofitting FGR on boiler 3 to
20 evaluate potential performance for boilers 1 and 2.
21 Again, the tuning and subsequent installation of
22 emissions reduction equipment were funded based on
23 return of investment, or ROI strategy. Without the
24 reduction in emissions fee, these projects may not
25 have been funded.

1 As a direct result of this effort, the
2 operation of the steam plant is estimated to be 1.5
3 percent more fuel efficient.
4 The fuel efficiency results in a total NOx
5 reduction of 2.3 tons per year, tpy, of actual
6 emissions with an additional 44.4 tpy of actual NOx
7 reduction from FGR on three boilers.
8 Exhibit 5 is a table showing an analysis of
9 Sandia's emission reduction efforts. The first column
10 is a progression of improvements starting with the
11 baseline in 1997, followed by boiler tuning, and,
12 then, two phases of FGR retrofit.
13 The second column is the potential NOx
14 emissions starting with the baseline value and
15 decreasing with each improvement. The third column is
16 the cost savings from boiler tuning and the reduced
17 fuel consumption based on 1997 natural gas rates.
18 The fourth column is the cost of these
19 pollution prevention efforts. The final column is the
20 payback in years based on initial fuel savings. The
21 cost of retrofitting FGR in boilers 1 and 2 is
22 estimated at $120,000.
23 Exhibit 6 is a list of the awards received
24 for the emission reduction efforts at the steam
25 plant. The joint industry and government pollution

1 prevention air quality award from the New Mexico
2 facilities managers from the network, in conjunction
3 with the City of Albuquerque, was issued in 1997 as a
4 pollution prevention honorable mention to Sandia for
5 "Demonstrating exemplary management commitment to the
6 environment." The joint industry and government
7 pollution prevention award in 1999 was for the large
8 industry air quality award category issued to Sandia
9 for their reduction of air emissions through "process
10 optimization projects."
11 An honorable mention joint industry and
12 government pollution prevention award in 2000 was for
13 the innovative P-2 award category issued to the
14 Department of Energy and Sandia for their continued
15 "reduction of air emissions through process
16 optimization project."
17 Governor Gary Johnson presented the 2000
18 commitment level award for the Green Zia Environmental
19 Excellence programs at Sandia's steam plant, "Hereby
20 commits to environmental excellence by integrating the
21 core values of the Green Zia program, which are
22 management commitment, efficient product process and
23 service design, partnerships, valuing employees and
24 continuous improvement and learning into daily
25 business practices.

1 "Furthermore, your commitment to seek
2 continuous improvement in these efforts demonstrates
3 leadership in providing a safe and healthy workplace,
4 assuring a clean community and contributing to the
5 ourganization's economic well-being." Sandia also has
6 issued several internal awards.
7 As a result of the experiences with the
8 annual emissions inventory, Sandia has concluded that
9 it encourages pollution activities to reduce actual
10 emissions.
11 If the retrofit of boilers 1 and 2 with FGE
12 is funded, Sandia will have spent nearly a
13 half-a-million dollars to reduce emissions.
14 Without this existing provision in part 02,
15 there would not have been the financial incentive to
16 reduce actual emissions. As noted, our first goal of
17 reducing emissions focused on receiving the "biggest
18 bang for the buck" by targeting the largest source of
19 emissions, and, hence, realizing the largest reduction
20 in actual emission fees and emission fees.
21 As we carry forward towards more P-2 options
22 to reduce emissions, the reduction fees will become
23 more and more important to fund the projects.
24 If we remove this option to have our fees
25 based on potential emissions, we are removing

1 opportunities to reduce actual emissions in our
2 community.
3 Thank you for your consideration and I'd be
4 happen to answer any questions.
5 THE HEARING OFFICER: At this time, I
6 would admit Sandia National Laboratory's Exhibits 1
7 through 6 into the record.
8 Do you have the originals, Mr. du Mond?
9 MR. du MOND: I do.
10 THE HEARING OFFICER: Okay. Can you
11 hand those to Mr. Smith and he will get them to me to
12 make sure they are admitted into the record, and,
13 also, before we begin questioning your testimony, for
14 the record, I have also received page 8 of Exhibit --
15 of Staff Exhibit 11, which was missing, and I will now
16 place that into the record.
17 I understand members of the board have
18 received copies, and, members of the public, page 8
19 has been distributed.
20 Thank you.
21 Okay. Questions?
22 MS. BASSETT: Thank you, Mr. du Mond,
23 for your testimony. I was just a little confused. So
24 you are saying that under this new fee structure that
25 if you estimate your tonnage and you pay a certain fee

1 that the idea as running as an efficient government
2 agency, you want to reduce your fee to next year, and
3 let's just take a net thousand tons and you pay X
4 amount for that thousand tons and you decide well,
5 actually, we want to be more efficient because we
6 ended up not using that thousand tons that we thought
7 we might, and so we want to reduce our fees, so we
8 will implement these types of programs so that our fee
9 is less the following year?
10 I don't understand why you wouldn't still get
11 to energy efficient programs by -- if reducing your
12 fees is your goal, you still want to reduce your fees,
13 right?
14 I don't know why this would change that.
15 MR. du MOND: Under the current
16 provision where we can apply for and be billed on
17 actual emissions, there is that real incentive under
18 the proposed plan to eliminate, basically, that
19 provision, so we would pay on this potential to emit,
20 so even though our actual emissions are actually going
21 down where we should realize some cost savings, we are
22 still paying this potential to emit fee.
23 MS. BASSETT: But, I mean, if you are
24 doing your balancing properly, you would pay for --
25 what you are estimating to emit would be based on real

1 numbers.
2 I mean, I assume you would go back over five
3 years and look at what you have usually emitted and do
4 some sort of average and pay that. If it turns out
5 you use less than that, then the incentive would be to
6 guarantee you use less than that the following year by
7 implementing energy-efficient measures to make sure
8 that next year, you buy one that's 900 tons, because
9 you have actually -- you know, you have done energy
10 efficient programs and you're going to reduce your
11 emissions.
12 MR. du MOND: Correct.
13 MS. BASSETT: I guess I don't see why
14 you don't get at the same end result.
15 MR. du MOND: Okay. Your analogy of
16 buying a permit is not quite accurate. We apply for a
17 permit based on our expected emissions and we also
18 have to remain flexible based on our demand. A third
19 of our steam production actually goes to Kirtland Air
20 Force Base.
21 If they were to change their operations, that
22 would increase the steam demand. Also, as a
23 contractor with DOE, we have to meet the emission
24 goals, so we have to be flexible and we have to
25 provide that steam demand.

1 As you are aware, the last several winters
2 have been relatively mild, so these numbers actually
3 reflect those mild winters. And with the crisis in
4 California, with the natural gas rates going up, our
5 steam plant is actually dual-fueled.
6 We normally burn natural gas. We can burn
7 diesel, in fact, we are burning more diesel now to
8 offset the increased cost of burning natural gas, and
9 because of this, our potential to emit is based on
10 both fuels and we cannot burn both fuels
11 simultaneously, but in a permit, we have to have that
12 capability.
13 In fact, in the past, PNM has asked us to
14 curtail our natural gas consumption so that Four Hills
15 and other portions of the city could have gas, and so
16 we have gone to oil, but we need that capability in
17 our permit to be able to meet that demand, so I don't
18 know if that quite answers your question.
19 MS. BASSETT: No. Thank you.
20 THE HEARING OFFICER: Any other
21 questions?
22 Steve?
23 DR. PILON: I understand, I mean, the
24 last point you made is similar to the point that Mr.
25 Silverman was making before that there are sort of

1 unforeseen variations in the amount of emissions that
2 are to be produced because of changes in natural gas,
3 that kind of thing, but what your original
4 presentation was about was the incentive to continue
5 making efficiency improvements.
6 I don't see how that is affected by the
7 proposed changes if you are ratcheting down the amount
8 of emissions you are expected to produce, Sandia Labs
9 can ratchet down the amount of the emissions that they
10 permit, and it seems to me that the savings, if
11 instead of -- well, one of my questions is exactly,
12 okay, you have 71 tons per year of emissions in 2000,
13 what is your current permit for?
14 MR. du MOND: Our current one -- we
15 don't have a permit, we have an application that we
16 filed in 1996.
17 DR. PILON: Well, what's your potential
18 to emit at this point?
19 MR. du MOND: Our potential to emit, and
20 this is unreasonable, but it's based on as if all five
21 boilers are operating all the time, every day, all
22 year round, on both natural gas and on oil, which is
23 impossible.
24 DR. PILON: So it sounds like there is
25 plenty of room to bring down your application to the

1 amount that you are actually applying for, and as I
2 understand, the department folks are saying "Yes, we
3 want to get a better handle on really" -- "we want the
4 permitted emissions to really more accurately reflect
5 what the sources are emitting"?
6 MR. du MOND: That's correct, and we
7 have looked into that, but if the proposed rule goes
8 through as planned and we pay more for some potential
9 that we are not actually emitting, then to us, that
10 cuts into funds that we could apply towards these P-2
11 projects of further emission reductions, actual
12 emission reductions; instead of paying the fee, you
13 know, we would actually be paying it to some kind --
14 putting it to some kind of beneficial use.
15 MS. BASSETT: So if you have applied for
16 a permit now and you are permitted to -- you actually
17 gave us an area that's actually impossible, so how
18 would you solve what we are hearing from the
19 administrative staff, that, you know, we have got this
20 problem where entities like yourself are making an
21 impossible amount, if, God forbid, what happens, so
22 then what would be your solution because you are
23 exactly the kind of entity we are trying to -- you
24 know, you are holding up all this stuff in the bank
25 account that we then can't use for economic

1 development and other industries, saying "We want to
2 do this and we need this much CO2", and, "Well, sorry,
3 Sandia Lab has it all so we can't give you any," so
4 how do we get at this problem?
5 MR. du MOND: That's correct. One of
6 the solutions we have looked at is, like you suggest,
7 possibly applying for a permit to reduce those
8 emissions and the question is how far would we reduce
9 that and still leave us enough room for the demand,
10 both from the DOD and the DOE side on the Air Force
11 base, and, you know, potential growth of our own
12 facility, change of emissions, plus having to do a
13 fuel capability, is it natural gas or is it oil, and
14 still, at some point, though, there is going to be a
15 gap between this allowable level and what we are
16 actually emitting, and so there would be some excess
17 fee payments that would be -- come about from that.
18 MS. BASSETT: But it seems like with all
19 the smart scientists at Sandia Lab, they must be able
20 to calculate it pretty close to what's really going to
21 happen.
22 MR. du MOND: Right.
23 MS. BASSETT: A little more what the
24 staff is trying to get at, I have not yet heard a
25 solution, I can understand where you're coming from,

1 but I also understand what the staff is saying, and I
2 don't -- I have not yet heard of a better way of
3 closing that gap, so I am open to it, but it has not
4 yet been done.
5 MR. du MOND: Well, what we wouldn't
6 want to do is somehow be in noncompliance, is reduce
7 loads to such a point that it would impact our
8 emission, our operations and put us in some type of a
9 bad situation, and, then, other fines would kick in,
10 which would not be beneficial at all.
11 MS. BASSETT: So is that the greatest
12 fear, then, the issue that you cut yourself too close
13 to what you actually use, and, then, you get into
14 noncompliance?
15 MR. du MOND: Yes, that, and like I
16 stated, the facility was originally built in 1949 and
17 is actually grandfathered. It's the Title V program
18 that's come into play since then that is adding some
19 of these additional requirements, so we have had some
20 long-term history of operations of emissions prior to
21 some of these regulations.
22 MS. BASSETT: That's all.
23 THE HEARING OFFICER: Any other
24 questions by members of the board?
25 DR. PILON: So how much variation do you

1 see?
2 You know, you say the last couple of years
3 have been kind of warm winters and so you don't have
4 to produce as much steam for heating, but give us a
5 ballpark idea of how much variation we would see in
6 this over any two years, you know, figure the coldest
7 winter in the last 30 years and the warmest winter
8 over the last 30 years and kind of put yourself in the
9 middle there and what kind of variation in emission
10 are we talking about?
11 MR. du MOND: Well, you could see from
12 the one table, the drop of over 100 tons per year, of
13 course, some of that was realized by some of our
14 actual emission reduction, but there is an example of
15 just a four-year period right there, and we have had
16 values much higher than that.
17 People talk about the winter of '71 as some
18 kind of a baseline.
19 THE HEARING OFFICER: I have a question
20 of Mr. Smith before you leave, Mr. du Mond. I
21 understand his problem.
22 Is there currently a procedure for a person
23 who was issued a permit to amend the permit; in other
24 words, it's getting near that permit level, in order
25 to avoid fines or other things, can they then request

1 the city to amend the permit?
2 See what I am getting at?
3 MR. SMITH: Yes, there are methods to
4 amend the permit, and, as I testified, we are
5 proposing to add even more flexible ways to amend the
6 permit.
7 For example, a P-2 modification where -- I
8 defined what P-2 meant. Basically, it's not a
9 response to decrease production, it's not a response
10 to controls, but true P-2 would be free, we are not
11 even going to charge for that, we are not going to
12 spend time to incur P-2 changes.
13 That's what Mike may be requiring to be more
14 in the line of a more minor permit modification, which
15 would probably be fairly quick to obtain without any
16 problems or, I mean, our regulation has even been
17 interpreted to allow for an emission reduction to be
18 administratively amended, so, yes, I think there are
19 many other options.
20 The thing is we want to get sources into a
21 federally enforceable permit that we can enforce, as
22 opposed to adding, you know, a permit that has so much
23 emissions here that, you know, there is so much gray
24 area where the source can be -- it's very difficult
25 for us to enforce.

1 An analogy for our problem is, you know,
2 potential to emit for a source may be like a Ferrari,
3 yet you are only driving in school zones, why do you
4 have this Ferrari if all you're going to do is drive
5 in school zones?
6 Obviously, there is a reason why you have
7 your permit set at higher levels, and we are not
8 talking about 10 percent higher, we are talking about
9 significant amounts, such as PNM.
10 DR. PILON: So what time frame and how
11 much expense are you speaking about for the Sandia
12 folks to make a change?
13 Say the winter is way colder than they
14 expected and they have to use diesel instead of
15 natural gas and they realize that they are going to be
16 out of compliance with their permit, how much money is
17 it going to cost them to make the change and what time
18 frame are they going to have to be able to see ahead?
19 MR. du MOND: I would assume that that's
20 probably an alternative.
21 MR. SMITH: I think you are talking
22 about a permit.
23 MR. MARTINEZ: I think what we are
24 talking about here is two different things, we are
25 talking about making sure that the board understands,

1 and I think that the public understands, that we have
2 not really created -- we feel strongly that we have
3 not created a disincentive for sources to go in there
4 and modify their source, and in a way, that lowers
5 their emissions.
6 I think that's still there and we are not
7 going to charge for that review, but what we are
8 saying is that if you want to take credit for that
9 particular reduction, then it has to be within the
10 enforceable limits of a permit, you know; otherwise,
11 you really don't get credit for that.
12 Now, the other things, the other issue that
13 Mr. du Mond is asking is that increase -- that's kind
14 of a different situation, you know, we have been
15 working on trying to create flexibility with a permit
16 that looks at production increases.
17 For example, you know, the facility has
18 specific emission sources within their boundaries, and
19 for them to keep a good management of close emission
20 sources, and if they need to increase production, then
21 they are able to go back and make modifications at the
22 other end and still keep emissions within the same
23 rate.
24 Now, what happens with Sandia, it's a little
25 bit different because they really don't fit the mold

1 of a manufacturing type of side where they are
2 actually on an hourly basis trying to get something
3 out, so their situation is actually quite different
4 and it's far more complicated because it involves very
5 different types of operations, you know, so we kind of
6 wanted to deal with a facility like that to create
7 incentives within the permit that says "Okay, we know
8 that you have," you know, "so many boilers, so many
9 generating sets, so many things that equate to so much
10 emissions, you can assign yourself a specific number
11 to that, and, then, if you do need to increase
12 somewhere else, then you probably have to modify and
13 not use some of these other things," that's probably
14 the only way that we could do it without actually
15 triggering another permit.
16 Because if there is an actual increase in
17 what's already an enforceable document, you know, say
18 go back to those thousand tons, if the document says
19 you are allowed to emit a thousand tons, and here is a
20 big document that says how we are going to ensure that
21 you stay within those thousand tons, you know, if, for
22 some reason, they need to go to 1,100, then that is
23 going to trigger a permit modification, that is going
24 to require public comment review because you have to
25 inform the public that you are increasing the

1 potential impact of that area, so there is really no
2 way that I could think of of getting out of that,
3 other than going through a full permitting process.
4 If you are going to increase the emissions
5 that you are allowed to do, regardless of the changes,
6 you know, if they need to increase now, they would
7 have to come in for a permit modification.
8 If they have to decrease now, they could
9 actually do it through administrative modification,
10 and there is no charge for that and that will stay the
11 same.
12 One of the things I want to also point out is
13 that when you look at the productions and the way the
14 fee registered is, okay, we say in the past, if your
15 actuals are only a certain percentage of what's in
16 your permit, come in, you know, past $1,000 to review
17 it, and, then, we will give you credit for that, well,
18 we want to make sure if that's going to be the case
19 that those conditions are enforceable, and we dropped
20 the fee, there is basically a $100 modification fee,
21 so we even dropped that particular fee, so they still
22 can reduce that, you know, but they are going to have
23 to basically plan to manage the emissions, you know,
24 action, and there is a lot of flexibility of that we
25 have been working on for years to try to give that,

1 but, again, if it's going to be an increase on what's
2 permitted, keep in mind that it is the model,
3 everything around that is based on that model, based
4 on that impact.
5 Five more sources might have come in within
6 that particular quadrant and so now everything has
7 been changed and it's been cumulative, so if they are
8 going to increase, there is really no way of getting
9 out of that without going through a full-fledged
10 permitting process, because, again, you have to inform
11 the public that the impact of that will be
12 increasing.
13 THE HEARING OFFICER: Thank you, Mr.
14 Martinez.
15 Any other questions by members of the board
16 of Mr. du Mond?
17 Does any member of the public have any
18 questions of Mr. du Mond in regard to his testimony?
19 Sir, you have to come forward and state your
20 name on the record.
21 MR. DAMON: My name is George Damon, I
22 am a member of the air quality staff and I just wanted
23 to ask Mr. du Mond if their measurements of the
24 emissions reductions properly accounted for any
25 increase in emissions.

1 I know typically, when you reduce NOx in a
2 boiler, you get an increase in carbon monoxide, and he
3 did not specifically mention that, so I was curious
4 about that.
5 THE HEARING OFFICER: Mr. du Mond?
6 MR. du MOND: We based our emission
7 numbers strictly on the EPA factors, it's a published
8 document, either a natural gas or on oil, there is no
9 indication of any other changes in those emissions
10 other than the NOx emissions for inclusion of the gas
11 recirculation, so I understand Mr. Damon's question,
12 but -- so we were able to reduce our NOx emissions
13 based on emission factors with no other change in the
14 other emissions.
15 THE HEARING OFFICER: Any other member
16 of the public have any questions for Mr. du Mond?
17 Members of the board?
18 There being no further questions, thank you,
19 sir.
20 Did you give your exhibits to Mr. Smith so we
21 can put them in the record?
22 Any other member of the public wish to step
23 forward and give testimony to the board in regards to
24 their opposition to the proposed regulation, part 2?
25 Please come forward. Please state your name

1 on the record.
2 MR. GRANDJEAN: Michael Grandjean, ATI,
3 4011 Carlisle, Northeast.
4 MICHAEL GRANDJEAN
5 after having been first duly sworn under oath,
6 testified as follows:
7 MR. GRANDJEAN: I have some concerns
8 about the specifics to the asbestos and paying the
9 fees ahead of time.
10 Originally, when the board put the fee
11 schedule into place, which I believe was three years
12 ago now.
13 MR. du MOND: '96.
14 MR. GRANDJEAN: Originally, when we had
15 a public comment, the fees were to go specifically to
16 the owner, and the reason it was to go specifically to
17 the owner is so that contractors like myself, I am a
18 hazardous substance remediation contractor, we remove
19 asbestos lead-based paint so that the contractors as a
20 whole could not go to the owners and say "Well, I have
21 this permit fee and with this permit fee that you need
22 to pay, it's only $40, but I'm going to charge you
23 $100," and they would have no idea because of, you
24 know, the regulations and all those kind of things how
25 the actual permit fees were calculated, what AU was a

1 best test unit, all of those kinds of things, and so
2 it was specifically set by the board at that time to
3 have the owner specifically pay the fee.
4 The permits, themselves, are actually filled
5 out by the contractors, so being filled out by the
6 contractor and being professional, we know what we
7 have to put in there, what the air quality, you know,
8 City of Albuquerque is looking for in air quality,
9 what sections we need to fill out and all those kinds
10 of things in accordance with the regulation, so by
11 doing that, we provide the service to the actual
12 owner, filling out the documentation, turning that
13 documentation in, because it's very specific in the
14 documentation about actually, you know, giving ten
15 days' notice before we actually disturb an
16 asbestos-containing material, exactly what day we are
17 going to start, what day we are going to be on site,
18 what day we are going to leave the site, what day we
19 are going to finish, those kinds of things, and so
20 there is lots of very detailed information that needs
21 to be filled out.
22 So we fill those out for the owner, as a
23 courtesy, basically, to the owner to be able to submit
24 that.
25 One of the problems that I see is that by

1 having the contractor turn in the permit fee, okay,
2 with turning in the application is twofold: One, the
3 contractor then becomes the bank and has to then turn
4 all of the money in for the fees before he gets paid
5 on a project, and that may be 30, 60, 90, 120 days,
6 depending on the length of the project and depending
7 on the fee.
8 In itself, some fees can be very remedial. I
9 mean, it can be $100, it can be $75, they can be
10 really nothing, which really wouldn't be any big deal,
11 but some of the fees could be extremely substantial
12 and could be $2,000 or $3,000 out of pocket for a
13 particular size job based on that, which is a fairly
14 substantial amount of money for the contractor to be
15 able to pay up front and have to wait to be able to
16 get the money back later on, which is one problem that
17 I see.
18 The other problem that I see is that by doing
19 that, the contractor can then up the permit fees, not
20 allowing the owner of that particular facility to know
21 that he has increased the permit fees and turned it
22 in, because he actually never sees them, which I
23 couldn't believe was the intent of the board until the
24 original application of the fees in those kinds of
25 things, so those are a couple of the things that I

1 see, especially in the asbestos portion, because in
2 that, you are working with the owner and a contractor
3 who is selling services to a particular owner to be
4 able to be paid based on those particular fees and not
5 necessarily an entity that actually calculates how
6 much tonnage they are going to use in a year, pays for
7 those fees and all of those kinds of things for that
8 particular owner in itself.
9 So those are a couple of concerns that I
10 have.
11 THE HEARING OFFICER: Questions by
12 members of the board?
13 DR. MULLOY: And I can see the problem,
14 there. Would it be a problem if, you know, in your --
15 how you usually do business, that you help fill out
16 the application form, so it was correct, but, then,
17 give it to the owner and say "I cannot start this job
18 until you go down to pay this fee" so that you
19 wouldn't have to be up front, and, then, you are just
20 billing for the job that you are doing?
21 MR. GRANDJEAN: Absolutely. I could see
22 that particular logic, but in most cases, what ends up
23 happening is that we the owners usually want to move
24 as quickly as they can to be able to do a particular
25 project.

1 I mean, as the notification is written, now
2 it's 10 workings days before we can actually go in and
3 do any kind of asbestos remediation, and, typically,
4 what has ended up happening in 99 percent of the
5 projects is that nobody knows that they have the
6 problem until somebody says "Hey, wait a minute, I
7 think there is this over here, let's go check," and,
8 then, by that time, they find out that they have a
9 huge problem and they call us and they want it done
10 immediately, and I say "Hey, man, I'm sorry, I can't
11 help you for ten days."
12 So by being able to fill out that immediately
13 and say "Hey, I can get it in today, wait 10 days, we
14 will go from there," that's one of the services that
15 we provide by doing that. The dates that we put on
16 the notification are absolutely, positively,
17 critical.
18 If we do not give ten days' notification for
19 the date that we are going to disturb an
20 asbestos-containing material, we are then subject to
21 fines of -- you know, whatever that fine is, $15,000
22 per day per inch extraction, basically, of not
23 starting that notification.
24 If we leave that responsibility, then, up to
25 the owner and he misses it by a day because he didn't

1 get down there that day, he didn't get the fee paid
2 that day, he didn't get the, you know, receipt or any
3 of those kinds of things, and what will end up
4 happening is we will have to end up redoing the
5 paperwork, turn it back in to them, have them try to
6 go back down again at that point and match those days
7 up, and it's very hard to be able to match the days
8 and match your schedule in trying to do all of this
9 work by getting another entity involved, in trying to
10 go down and pay the fee and do all of those kinds of
11 things.
12 One of the things that I believe was brought
13 up earlier was that one of the reasons why they want
14 these fees to be paid up front is so that the
15 application can be filled out and filled out
16 correctly.
17 Well, I have been in this business for ten
18 years and been a contractor for six years, and in six
19 years, I have never had a notification turned back to
20 me because it was filled out incorrectly. I mean, I
21 never have.
22 And, typically, what happens is we simply put
23 the amount of asbestos-containing materials that we
24 are going to remove in that particular building, and,
25 then, at that point, that is when the city actually

1 calculates what the fee is going to be based on the
2 number of linear footage or square footage that we are
3 actually going to remove, and so by adding that third
4 party, I think what happens is already to a confusing
5 system of trying to get this permit and do all of
6 those kinds of things and meet those deadlines, some
7 days to be sure that we are going to be exactly where
8 we need to be on that day so we are not in violation
9 of the regulations, I think that it would make it a
10 little bit more cumbersome to be able to get this work
11 done and get it done properly and correctly,
12 especially to the clients that we are trying to work
13 with.
14 Yes, ma'am?
15 MS. BASSETT: I am just trying to
16 understand, this is a last dramatic example,
17 obviously, but it's not unusual, for instance, if you
18 build a home and you go before an architectural review
19 committee to have your plans submitted, you have to
20 pay $400 or whatever the amount, and the development
21 is to that architectural review committee before they
22 will review your architectural plan, that's part of
23 the cost of reviewing the plan, and usually what
24 happens is that the developer will ask that the
25 homeowner, obviously, for that check to be submitted

1 when they submit the blueprints for the plan, so I
2 guess I am just a little concerned why would it be so
3 difficult to say to the person who immediately wants
4 this asbestos removed, "Well, you can have the form
5 filled out tomorrow, but I need the $2,000 check
6 because I'm going to go down and submit the
7 application, and, you know, I need your money to" --
8 "and I am showing you this is for your job," so it's
9 even more -- I mean, I feel like there is another
10 accountability to the person who you are contracting
11 with because it's their job and their permit and their
12 fee for their job, so they are not paying anyone
13 else's job, it's their job and their permit and their
14 fees.
15 MR. GRANDJEAN: Absolutely, that's a
16 great point. The problem is that in most of the
17 cases, what happens is we are usually a subcontractor
18 to the general contractor, who is then either
19 subcontracted to somebody, and, then, contracted to
20 the owner, and so in most cases, what ends up
21 happening is you have a lot of governmental agencies,
22 federal agencies, things like that, in trying to walk
23 in and say "I'm sorry, I can't do your work, but I
24 need $2,000 before I can get the permit or I can do
25 it."

1 They would laugh, they would say "Well, we
2 cannot cut you a check." I mean, you have to put in a
3 purchase order. Once you put in the purchase order,
4 we have to get it approved.
5 Once we get it approved, then we have got to
6 wait 30 days, and once you wait 30 days, we can get
7 you the check, and, then, two weeks later, you can
8 have it, and that's 60 days later, and, then, we could
9 actually go in and start the project, and so in that
10 instance, it's really unfeasible to be able to go in
11 and ask for money up front from, you know, 90 percent
12 of our clients because we are either a subcontractor
13 or we are working with a government agency, we are
14 working with Kirtland Air Force Base or we are working
15 with, you know, the County of Santa Fe or the City of
16 Albuquerque or whoever it is, and say "Well, I'm
17 sorry, I can't do that until you pay the fee," and so
18 at that point, it makes it real difficult.
19 MS. BASSETT: So what percentage, I
20 mean, just as a guess, of your clients are actually a
21 federal or state or local government?
22 MR. GRANDJEAN: I would say that we
23 probably have -- a rough guess, about 65 percent would
24 be federal, state or local governmental agencies, and,
25 then, the rest would be commercial and industrial,

1 and, then, out of that, we would probably have about 5
2 percent that would actually be residential types.
3 THE HEARING OFFICER: Any other
4 questions of the witness?
5 Does any member of the public have any
6 questions for this witness?
7 MS. HALL: I am B.J. Hall, management
8 analyst, and what I would like to comment on is one of
9 the problems that has occurred from a fiscal side,
10 accounting side, and that is many times, what we have
11 been dealing with is that we will bill --
12 THE HEARING OFFICER: Can I stop you one
13 second? If you are going to give testimony, I need to
14 swear you in.
15 B.J. HALL
16 after having been first duly sworn under oath,
17 and testified as follows:
18 THE HEARING OFFICER: Okay. Thank you.
19 MS. HALL: One of the problems that we
20 have had is that we'll go ahead and issue a bill for
21 the asbestos permit to the owner or to the government
22 agency, and, then, what happens is the bill doesn't
23 get paid, it doesn't get paid, it doesn't get paid;
24 six months later, then my office picks it up and we
25 are dealing with the owner and the owner is telling me

1 "Well, the contractor has taken care of all that, I
2 cut one purchase order and they were going to pay it,"
3 so, then, we call the contractor and the contractor
4 says "Oh, no, the regulation says they are responsible
5 for it," and so the bottom line is that we are in this
6 vicious circle, then we get into the middle between
7 contractor and owner, which is not where we want to
8 be, and on many occasions, we do not collect a fee
9 because the contractor and the owner cannot settle up,
10 so it goes on, and after five years, we have to write
11 it up, write it off as a governmental agency, so I
12 think that the other issue is that we have tremendous
13 problem collecting on asbestos.
14 DR. MULLOY: Do you have any sense or do
15 you have any figures about how much that has been over
16 the years or per year?
17 MS. HALL: I don't have that with me,
18 but I can certainly get that for the board.
19 THE HEARING OFFICER: Mr. Martinez?
20 MR. MARTINEZ: Just, Mr. Hearing
21 Officer, one last thing I want to mention on that
22 issue is that when that does happen, and B.J. Hall,
23 she is our management analyst for our fiscal issues,
24 is that then, eventually, it gets turned over to the
25 enforcement and compliance division and it's dealt

1 with.
2 What we have had happen numerous times is
3 that a lot of the buildings, and this is basically as
4 related to some of the private entities that we deal
5 with, not necessarily APS or Kirtland or the
6 government agencies, they don't go anywhere, so we
7 know where to find them, but a lot of the private
8 entities, you know, a lot of these commercial
9 buildings, you know, they are either owned by a
10 conglomerate or owned by people out of town, so it
11 basically becomes impossible for us to track the owner
12 down after everything has been done, and, again, we
13 are trying to simplify the process from our fiscal
14 standpoint because, again, as Ms. Hall mentioned, the
15 way it works is, you know, the permit engineer issues
16 out a billable invoice, and, then, that gives 30 days
17 for the treasury to then issue their official invoice,
18 so, then, by that time, we are at about like 45 days,
19 it's about two and a half months, you know, that the
20 project has already been completed, for the most part,
21 and, you know, a lot of times, you don't find the
22 owner.
23 We do get a lot of those returned letters,
24 and I can probably get you a number of those, and we
25 never are able to track this person down or this

1 conglomerate or really talk to somebody, so, again, we
2 are trying to simplify the process and we will be
3 willing to work with the government entities that seem
4 to be the primary customer, you know, to set up some
5 kind of process, you know, whether it's city or, you
6 know, some kind of process, that we have at least some
7 assurance that the they are cognizant of the billing,
8 you know.
9 As Ms. Hall mentioned, a lot of the times,
10 they are not, you know, cognizant of the billing, they
11 just think okay, we are going to hire the contractor
12 and pay that contractor, and, then, it's over, and so,
13 you know, we really lose a lot of money on that
14 particular program, and, you know, again, the
15 alternative is just to turn it back to the federal
16 government, and I am not sure if that's the best
17 alternative at this point, but, again, you know,
18 simplification, what we are looking for and everybody
19 has their idea about that.
20 We are willing to listen to that,
21 specifically with the asbestos program.
22 MR. GRANDJEAN: I absolutely agree. I
23 mean, I have a real problem when I go in and I will
24 tell the owner, I will tell that federal agency, I
25 will say "Hey, you are going to be getting a permit

1 and it goes directly to the owner and I don't pay that
2 permit fee because it goes directly to you and you
3 need to pay that permit fee," and the problem is the
4 way contracting and all of those kinds of things work,
5 it's set up for a specific job for a specific amount
6 of money, and what's written in the specification of
7 that actual job is that the contractor pays all of the
8 fees.
9 Well, that's the problem with the situation
10 in a whole, that the way the regulations are set up,
11 they are set up to be paid by the actual owner, so
12 that there are no markups in fees, so there are none
13 of these additional costs and those kind of things,
14 and, typically, what ends up happening and has
15 happened in the past is that I will have an owner come
16 back and, say, five, six, seven, eight, nine, 10, a
17 year later and say "Hey, we keep getting this letter
18 from the city and they want us to pay this fee," and I
19 say "Oh, yes, remember, you're supposed to pay that
20 fee, it's in your contract," and they are like "Well,
21 it's not in my contract because you guys are supposed
22 to pay the fee."
23 There is a real problem with that asbestos
24 and the permitting and the fee.
25 MS. BASSETT: So, potentially, we will

1 have to, at our next board meeting, decide this:
2 Would you be open to that, there was some notarized
3 letter that had to be signed by the owner saying, you
4 know, "I realize I am responsible for the fee that
5 would go in with the permit," so that we would have
6 some way of knowing, you know, so it's on paper that
7 as the owner, they are -- "Here is what we are
8 estimating the fee to be," and, you know, "I
9 understand it's going to take you 60 days because you
10 have to get approval from Washington, D.C." or
11 whatever it is "to get the money, but you have to sign
12 here and it's got to be notarized and I have to
13 include it."
14 MR. GRANDJEAN: That's very possible,
15 it's a very possible thing to do, although from a
16 contracting standpoint, I think it would be somewhat
17 difficult because of the way things are budgeted in
18 contracting and those kind of things, for them to turn
19 around and say, "Okay, well, now I have to pay this
20 $1500 bill and I have already paid the general
21 contractor," whoever that was, you know, "all of his
22 portion of his money, now how am I going to cost code
23 that basically back to that project to be able to cut
24 that check?"
25 MS. BASSETT: That's another problem,

1 but you are saying that's the current way it works,
2 that they have to still pay it, so whether they code
3 it properly is their problem, you know what I mean?
4 MR. GRANDJEAN: Absolutely, but because
5 of federal government contracting and things like
6 that, they cannot just turn around and say "Okay, we
7 have got to pay this person this bill for this
8 contract" because all the money is paid to the general
9 contractor.
10 MS. BASSETT: Right, I wasn't saying it
11 was a bill, I was just saying it was proof that they
12 will pay it.
13 MR. GRANDJEAN: Right, and that's one of
14 the hard things that they have, and, I mean, it's
15 coming down to the case, and I have done it a couple
16 of times where T-VI is a prime example, I mean, we had
17 a bill hanging out for T-VI for 12 or 14 months and
18 finally, I said "Look, just give me the bill, I will
19 pay the $202," you know, "I will take care of that
20 bill," because we were getting letters, they were
21 getting letters, everyone was getting letters, and I
22 could really see the problem in how that works, but I
23 am not quite sure how to solve the problem, if, in
24 fact, we still want the owner to be able to pay the
25 bill so that it doesn't get marked up by the

1 contractors and those kinds of things into the cost of
2 the projects, but it is a definite concern.
3 THE HEARING OFFICER: Steve?
4 DR. PILON: My understanding is that say
5 the owner contracts with the general contractor to
6 take care of the job, so they are going to rip out the
7 inside of a building, say the old Digital equipment
8 building, and they come across asbestos and so they
9 call you, and it's something they had not anticipated
10 or maybe they had anticipated some remediation, what
11 would happen if you were to go to the contractor and
12 say "Well, your project is basically stopped until you
13 give me the fees so that I can pay for the permit"?
14 Now, he may just say "Well, okay, if you're
15 not willing to front the money, pay the bank for the
16 permit fee, I will just go to some other contractor,"
17 that is essentially what would happen?
18 MR. GRANDJEAN: That's a very good
19 possibility, yes, I mean, it's a very good
20 possibility, they would just turn around and say
21 "Okay, we will just go someplace else."
22 DR. PILON: Okay, but, typically, it's
23 the contractor that's going to be paying for -- I
24 mean, it's the owner basically pays the contractor to
25 handle the whole project, and out of that will come --

1 I mean, they are going to pay a fixed amount, and,
2 then, out of that fixed amount will come the asbestos
3 removal permit fee, right?
4 So there is no question of markup or anything
5 because the deal has already been made between the
6 owner and the general contractor.
7 MR. GRANDJEAN: To some degree, I guess,
8 yes, it could be. I mean, basically, if you have --
9 you know, like I said, in most cases, they don't even
10 find that they have a problem until it's already --
11 you know, the contract is already stated, the
12 contracts have already been cut, it's already been
13 awarded for X number of dollars and all of those kinds
14 of things.
15 DR. PILON: Is that going to be a change
16 order, the typical thing where the contractor would
17 have to go back to the owner and say "This is going to
18 cost us. The fee is really only $500, but we are
19 going to charge you $1,000 for it"?
20 MR. GRANDJEAN: Right, so, basically, it
21 goes in as a change order at that point for that
22 additional work that would need to be done by removing
23 the asbestos-containing materials, and so at that
24 point, then, when that change order is cut, then
25 that's when we would actually go in to be able to do

1 the work to be able to get that done, so, you know, I
2 guess who pays the fee?
3 If the contractor pays the fee, he could
4 certainly pay the fee and he would then have to go
5 back and include that into his price and give it back
6 to the owner, okay, and, then, the owner would be able
7 to pay that money to be able to get the fee, but part
8 of that problem is it comes down to, you know, again,
9 like I said, the contractor being the bank to pay all
10 of the money up front to be able to get that permit
11 fee before the work can even be started, when he may
12 not even get paid for 60 days or 90 days or whatever.
13 DR. PILON: But isn't the general
14 contractor getting, you know, cuts of money all the
15 time in the project?
16 MR. GRANDJEAN: Oh, no, you're not going
17 to get any money from the contractor.
18 DR. PILON: Until the job is finished?
19 MR. GRANDJEAN: Until you have got a
20 completion done on, you know, usually what happens is
21 you have a job and it's two, three months, whatever it
22 is that first month, they give you 25 percent of the
23 money, and so at that point, it's, you know, on a
24 progressive scale of how much work is actually
25 completed, so to go in and say "Hey, I can't even do

1 this work and you have not gotten paid yet, but I want
2 you to pay the fee to me that you are not going to get
3 until the end of next month," it's a circular
4 nightmare, it makes it very difficult.
5 DR. MULLOY: Right, and I can see we are
6 -- obviously, I don't think the staff was thinking
7 that the subcontractor should be the bank for somebody
8 else; on the other hand, if there are a number of fees
9 never being paid or there is a real problem with that
10 or having to spend, then the general taxpayers are
11 paying for these projects, so that's a problem, too.
12 MR. GRANDJEAN: Yes, absolutely.
13 DR. MULLOY: Some way we are obviously
14 needing to make the owners responsible for the
15 removal, you know, of hazardous substances.
16 MR. MARTINEZ: And, ultimately, really,
17 the project, really, for the most part at least, where
18 the asbestos was found, is going to stop until the
19 abatement is done, you know.
20 Real world scenario is what we mentioned
21 about T-VI, 14 months to collect $250. I mean, it
22 cost a substantial amount, way above $250 for the city
23 to just get to that point and collect it.
24 I mean, the treasury was involved, compliance
25 enforcement was involved, our fiscal management

1 analyst is involved, and so that is the real case and
2 so what we say is, you know, pay it up front, asbestos
3 has to be abated, so that portion of the project is
4 not going to continue until he gets done with his
5 work.
6 The other issue, too, is that yes, it does
7 happen in the real world and it has happened where,
8 yes, the reputable abatement contractor that says
9 "This is what it's going to cost you to abate it," it
10 has happened where they said "Well, get out of my
11 face, we will just go with" -- you know, someone
12 that's not qualified and just basically has a
13 front-end loader, and we have caught that, we have
14 caught that, and there are a lot of fines that are
15 issued and we do catch that, but, then, again, it
16 would have been cheaper for that person, guarantee it,
17 and we have had many scenarios to pay the contractor,
18 pay the $250 and get rid of the asbestos.
19 I can't think of a single case where it has
20 been more cost effective to bypass federal law and not
21 pay a contractor and pay the $250, I really can't
22 think of one scenario that it's worked out better, so,
23 again, our efforts are to simplify the process.
24 MR. SMITH: If I can add, we are out to
25 simplify the process, but we want to put the inspector

1 out in the field instead of at the desk writing memos,
2 that's what I testified to.
3 MR. GRANDJEAN: And I absolutely agree.
4 I mean, I absolutely agree. How we actually solve the
5 problem, I am not sure, because there are many, many
6 more people that are involved in being able to get
7 that fee paid by, you know, the different owners and
8 the general contractor and the money, money, money,
9 but, you know, I absolutely agree that, you know, we
10 need to get the inspectors to the field, we need to
11 get them out there more often, we need to have these
12 inspections because, you know, I try to run the most
13 positively reputable company that I can and do
14 everything that I can to follow the law exactly to the
15 letter and I know that there are other contractors out
16 there that don't do that, and I am well in favor of
17 getting as many inspectors out there to do as many
18 jobs as possible because I know they are not being
19 completed properly and that makes it extremely hard
20 for me to do business as a contractor when this guy
21 doesn't follow the law, he only does half of what he
22 needs to do and he charges half the money, and I am
23 trying to do what I need to do and I can't get it
24 done, and so, you know, I agree, how you get that done
25 and how we streamline that process without making me

1 up front all the money to be able to get it done, I am
2 not sure.
3 Yes, ma'am?
4 MS. BASSETT: Since you do this on a
5 regular basis and are obviously much more aware of the
6 nuances of this problem, the public comments are open
7 for two more weeks, if you could spend a little time
8 thinking about this --
9 MR. GRANDJEAN: Okay.
10 MS. BASSETT: -- and you could write the
11 regulation yourself, how you would get at this problem
12 of not having to contact people for 12 months to get
13 the money.
14 MR. GRANDJEAN: Okay.
15 MS. BASSETT: But not having to have
16 contractors pay out of pocket, come up with a proposal
17 and submit it to us.
18 MR. GRANDJEAN: Sure, I can do that.
19 DR. PILON: How are building permits in
20 general handled?
21 I don't know, I am not familiar enough with
22 construction the development process to know, but, I
23 mean, when you go in and say we are going to move dirt
24 on a project and start pouring concrete, there must be
25 some up-front fees that they pay up front.

1 Now, why should the permitting process for
2 asbestos abatement be any different than the fees that
3 you pay to an electrical inspector or the plumbing
4 inspector?
5 I mean, those fees are paid up front, aren't
6 they?
7 MR. GRANDJEAN: I believe they are. I
8 am not real familiar with that side of it in actual --
9 how they get the plans through and how they pay for
10 them and that kind of thing, but I believe they are --
11 but I believe, and I don't know what the cost
12 associated with those plans, of getting those plans
13 through the city are, I think that it's, you know, I
14 think it's like $100 to get the plans through, and
15 that's all it is, and so from that standpoint, that's
16 a very reasonable expense to say "Okay, well, I can
17 front $100 until I get paid," but on some of these
18 abatement projects, I mean, it's all based on a
19 varying quantity of asbestos and that varying quantity
20 can differ from mom and pop gas stations, which might
21 be a $30 permit to a $3,000 permit, and in that case,
22 and, see, there is no cap on what the permit can be,
23 the permit is based on $21 an asbestos unit, but there
24 is no cap, so if you removed a million asbestos units
25 because it was a huge project, you would have a

1 $40,000 fee that you had to turn in. Well, I know I
2 can't pay that.
3 DR. PILON: Right. And there is no cap
4 on that part of the fee, but, you know, I also believe
5 that, you know, in some way of being able to get the
6 permits and get the permits through, I think that, and
7 I am not sure exactly how all that works with
8 construction, but I think that, you know, it might be
9 in some way associated with sending it to
10 environmental, and, then, at that point, it could be
11 paid up front by the general contractor putting that
12 permit through if it was a permitted job for
13 construction and not necessarily for strictly
14 abatement, if somebody just called in and said "All we
15 want you to do is come remove this and go" and it
16 wasn't associated with remodeling.
17 MR. GRANDJEAN: Yes, in most cases,
18 that's the only time that you run into it because
19 there is no provision in the regulation that says you
20 have to remove your asbestos. You don't have to
21 remove it, you can keep it as long as you like.
22 I mean, it's still the greatest thing they
23 have ever made, it happens to cause cancer, you know,
24 so we don't really want to keep it, but you can keep
25 it as long as you want, you don't have to remove it.

1 THE HEARING OFFICER: Any other
2 questions from the members of the board, members of
3 the public?
4 Thank you, sir, and if you could just submit
5 those comments to Mr. Smith and he will ensure that
6 they get to the board.
7 MR. GRANDJEAN: Okay. Thank you.
8 THE HEARING OFFICER: Any other member
9 of the public in opposition to the proposed VPO
10 replacement of part 2, please step forward and give
11 testimony.
12 MS. BASSETT: I can't believe all of you
13 are just sitting there because this is an interesting
14 hearing.
15 THE HEARING OFFICER: There being no
16 other individuals stepping forward in opposition, at
17 this time, the hearing will turn towards the
18 interested parties section; in other words, anyone who
19 wishes to step forward and give testimony as an
20 interested party, not for or against, but just your
21 opportunity to step forward and talk to the board.
22 Please step forward.
23 Please state your name for the record, sir.
24 MR. McGILL: My name is Brian D.
25 McGill.

BRIAN D. McGILL
after having been first duly sworn under oath,
testified as follows:
THE HEARING OFFICER: Please give us your professional address, sir.
MR. McGILL: My professional address is P.O. Box 100, Tijeras, New Mexico, company name is Rio Grande Portland Cement. I am the environmental manager for Rio Grand Portland.
THE HEARING OFFICER: Please proceed, sir.
MR. McGILL: I will attempt to be brief. A lot of the points that I was going to touch upon in my testimony tonight have already been talked about to a certain extent, but I will go ahead and give my introduction.
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 local economy. This is especially true in

light of the present trends 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 staff efforts to obtain 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 that 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, training and air quality attainment.
Please make no mistake, we support the local operating permit program, and as the members 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 just a few moments to describe a few basics of how facilities are regulated under the air program and the regulatory mechanisms for assessing fees.
Air quality permitting requirements for a given source will vary depending on the process type and the typing 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 number of such sources. Various levels of air quality permitting, including source registration, authority to construct, new source performance standards, national emissions standards for hazardous air pollutants, major NSR/PSD and Title V operating permits.
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 weakest link to the federal Clean Air Act. At the state level, these permits are more

commonly known as "construction permits."
In federal clean air terms, the local authority to construct program falls into the category of "minor new source review."
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 30 of Title 70 of the Code of Federal Regulations.
Title V sources are called "major sources" because of their status under the regulations. The New Mexico 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.
Significantly, the New Mexico 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.
The two types of fees have a different basis in state and federal law and each has a different

1 purpose. One is for permitting -- one is a permitting
2 fee dedicated towards funding the construction permit
3 program; and the other is an emissions fee dedicated
4 toward funding the state and local Title V programs.
5 The difference is highlighted in the federal
6 requirements for the Title V program and emission
7 fees.
8 Under the federal law, local programs must
9 guarantee that Title V emission fees will be used
10 exclusively for the costs of the Title V permit
11 program.
12 The idea behind this requirement is fairly
13 straightforward. It is inequitable or unfair to
14 require major sources subject to Title V to shoulder
15 the expense of regulating all other industry.
16 In order to provide uniform accountability
17 and a level of transparency in the management of these
18 fees, the state law requires that local authority
19 establish a designated air quality permit fund to be
20 used exclusively for meeting the costs of the permit
21 program.
22 In addition, the federal part 70 regulation
23 requires an initial accounting and periodic
24 accountings of how the fee revenues are used solely to
25 cover the costs of the permitting program.

1 Now, some of the considerations with regards
2 to the air permit application process, some of these
3 points were discussed a little earlier. Tonight I
4 will try to get through them very quickly.
5 Despite the level of permitting, all air
6 quality permits will contain federally enforceable
7 limitations, either process or emissions, that
8 restrict the amount of pollutants that can be emitted
9 on an hourly and annual basis. These emissions are
10 termed to be emissions allowed by permit or "allowable
11 emissions."
12 These limitations are imposed to ensure
13 compliance with federal, state and local air quality
14 standards that are designed to protect the public's
15 health and the environment.
16 These federally enforceable limitations are
17 based, at least partially, on information contained in
18 the permit application.
19 By regulation, a permit must base their
20 emissions estimates on a facilities "potential to
21 emit" or PTE. Emissions based on PTE are theoretical
22 emissions that have been derived assuming that the
23 process is running 100 percent capacity. A fuller
24 definition of PTE can be found in Section 20.11.2.7.E
25 -- sorry for all that -- on page 3 of the proposed

1 regulation.
2 As a strategy to ensure both compliance with
3 hourly and annual emission limitations contained in an
4 air quality permit and to have a certain degree of
5 operational flexibility in an unpredictable market, a
6 source will often slightly overstate emissions beyond
7 what is indicated by PTE or potential to emit.
8 Current fees are based on actual emissions.
9 Actual emissions are derived through performing an
10 annual emissions inventory submitted by Title V
11 sources. This inventory is reviewed by the city staff
12 and approved and the current system allows the sources
13 to pay fees based on actual emissions, not theoretical
14 maximum.
15 This allows for a fluctuating economy. It
16 also promotes pollution prevention, a source as an
17 economic incentive to reduce emissions, just as
18 indicated in the previous presentation by the
19 Department of Energy.
20 A couple of comments on economic conditions,
21 the industry that I work in is very closely tied to
22 the general health of the economy. Where we are at
23 right now with regard to our actual emissions versus
24 our potential to emit, we typically run anywhere from
25 90 to 95 percent of what our allowable or PTE is.

1 Over the last several years, we have enjoyed
2 a very robust healthy economy and hope to be able to
3 take advantage of it for several more years, but
4 economies being cyclic things, sooner or later, there
5 is going to be a slowdown or downturn in the economy
6 that will have a direct effect or direct impact on the
7 industry that I work in.
8 Potentially, what could happen if the economy
9 slows or even goes into a recession, we would most
10 likely have to cut back on our production, even go to
11 half production basis.
12 This has happened in the past, however, under
13 the proposed regulation, even at half production, we
14 are still paying full permit fees. Emission fees
15 under the proposed regulations, as I have mentioned,
16 will be based on theoretical maximum emissions. No
17 provisions for fluctuating economic conditions, and,
18 also, incentives in the -- economic-based incentives
19 for pollution prevention is removed.
20 Now, getting to the second handout that I
21 passed out, I believe that this is some information
22 that was handed out in January's board meeting. I
23 can't attest for sure on that, I wasn't present at
24 that meeting.
25 MS. BASSETT: It was.

1 MR. McGILL: But I believe this was
2 passed out. The first page, Title V fee projections,
3 indicate that amending the regulation as proposed for
4 Title V sources would increase fees from $224,000 a
5 year to nearly $463,000 a year. This is over 100
6 percent increase of approximately $239,000.
7 I'm looking through a great deal of numbers,
8 I thought these were important. The city's analysis,
9 I believe, on the second page of the air quality
10 division fund 242 indicated that the change in
11 collection for Title V sources is zero dollars, so
12 it's a little confusing to me, and the comments
13 section on that particular table on the right-hand
14 side of the page, that indicates that the fee, Title V
15 sources paid fees based on allowables.
16 Now, assuming that an error was made in this
17 table and factoring in increased Title V into the
18 analysis based on the proposed regulation indicates
19 that the air quality division budget, total budget,
20 would be right around $859,000, of which the Title V
21 fees are roughly a 54 percent share of that.
22 The division's line item budget for the
23 fiscal years 1999, 2000 and 2001 was not sufficiently
24 detailed to determine the number of staff positions
25 and resources that the Title V fees are supporting.

1 Now, I would like to go through a list of
2 concerns that Rio Grande Portland has and we have a
3 number of questions that we believe merit careful
4 consideration.
5 The fee regulation presented tonight really
6 goes to the fiscal direction of the program, and,
7 therefore, is fundamentally -- it fundamentally forms
8 the basis for the program.
9 As fee payers, permittees and citizens with a
10 stake in the community, we have a vital interest in
11 this regulation.
12 I'd like to run through some of our
13 questions, and, then, invite the board to revisit them
14 individually after I am done. First, on the face of
15 the state and federal law, this board appears to be
16 the entity that may be ultimately liable for the fee
17 system, the management of the fund and the program
18 priorities that are supported by the fund.
19 As the entity that may be ultimately
20 responsible, how does this board interact with the
21 city program? We are all aware of the city/county
22 merger with the trends towards regionalism. How will
23 the board and the city manage these funds and the
24 program in light of the consolidation of governments?
25 What is the relation of Title V budget to the general

1 city budget or the city enterprise funds?
2 We are all aware of the city's
3 well-publicized fiscal woes. In times of revenue
4 shortfalls, the Title V program cannot be caught up in
5 local budgetary politics. How can the board and the
6 city ensure that the Title V program is managed "off
7 budget" from other budgetary considerations so as to
8 be protected from other unrelated fiscal concerns?
9 Is there a separate Title V budget or is it
10 intermingled with the general permit program budget?
11 If they are intermingled, how can we account for Title
12 V revenues and expenditures? Has there been an
13 accounting as described in the part 70 rule? If not,
14 when will there be?
15 How can stakeholders gain access to this
16 information? Is there a formal mechanism for
17 stakeholders to request an accounting? It's without
18 question that this board and the city need resources
19 to provide an adequate level of service.
20 How are the Title V budgetary requirements
21 derived, number of employees, hours, other resources?
22 Is half the budget derived from Title V fees? Is half
23 the staff time dedicated to administering the Title V
24 program? How are these details tracked? What can we
25 do as stakeholders to ensure that the Title V program

1 is adequately staffed?
2 Those are -- because our concerns will
3 require some research and consultation with the city's
4 program staff, we believe it is prudent for the board
5 to hear our concerns tonight and to defer action on
6 this regulation until after we have had a chance to
7 consult more fully with the city staff.
8 I know that at the very beginning of the
9 hearing that the hearing officer indicated that there
10 would be -- the hearing record will be kept open for a
11 period of two weeks, I would urge the board to perhaps
12 keep the hearing record open until the next monthly
13 meeting, given some of the questions and issues that
14 need to be discussed in this matter.
15 That concludes my formal testimony.
16 THE HEARING OFFICER: Before we go to
17 the questions, Mr. McGill, I received two documents,
18 one appears to be your testimony in the written form,
19 and the second is the document which you referred to
20 as Title V fees billed for 2000/2001.
21 Do you wish these two document to be entered
22 in the record as your exhibits?
23 MR. McGILL: Yes, sir.
24 THE HEARING OFFICER: Okay. I will so
25 mark them as Rio Grande Portland Cement Corporation,

1 Exhibit 1 and Exhibit 2.
2 Any questions for Mr. McGill from members of
3 the board?
4 MS. BASSETT: Have you talked to the
5 staff before about the separate Title V accounting?
6 MR. McGILL: We have not explicitly
7 discussed this in the past. We would have hoped to
8 have done it, perhaps this go-round, but we didn't
9 receive notice of the hearing until after the proposed
10 amendments had gone to the public notice, and we
11 started investigating what some of the proposed
12 changes were and as we worked through this process,
13 kind of came to the realization that some of the
14 concerns that we have would basically or at least have
15 a potential of significantly changing the proposed
16 regulation as was submitted for public notice, and
17 because of that, we had not had a chance to visit with
18 the city staff and work together in addressing some of
19 these issues.
20 THE HEARING OFFICER: Any other
21 questions for Mr. McGill from members of the board?
22 Any questions for Mr. McGill from members of
23 the staff or members of the public?
24 MS. HALL: I am B.J. Hall, management
25 analyst for the city.

1 THE HEARING OFFICER: State your name
2 again.
3 MS. HALL: I am B.J. Hall, I am the
4 management analyst for the Environmental Health
5 Department. Actually, I don't have -- I do have one
6 question for Mr. McGill, but then I have a couple of
7 other statements, and the first question is that I
8 think it would be prudent for the two of us to meet
9 because I don't agree with the numbers that he had
10 purported here, and in Section 5, Program Budget, in
11 Sections A and B of that document, I don't know, I
12 have no idea where he got the EHD analysis of the air
13 quality division fund 242 budget because I usually do
14 those analyses and I am not aware of any of us coming
15 up with these numbers, so I'd like to get together
16 with Brian, if I could, to answer some of his other
17 questions regarding the insurance that the City of
18 Albuquerque has, how these funds that are collected
19 would not be, let's say, used by the city for any
20 other purpose.
21 In calendar year 1994 and fiscal year, city
22 fiscal year 1995, the City of Albuquerque established
23 the air quality fund, fund 242. This fund is a
24 dedicated fund and is completely separate from the
25 general fund. All money is collected and the

1 authority to construct permits in the Title V portion
2 is deposited into this fund, and if this fund houses
3 two programs, the vehicle plus management program and
4 the operating permits program of air quality operating
5 permits is Title V and all the other authority to
6 construct permits, these two are kept separated by
7 city accounting activities system, where, at any time,
8 we could tell you how much revenue has come in for
9 operating permits and how much has been expended just
10 for that program.
11 It also can tell you the interest gained on
12 that money, on that fund balance for just operating
13 permits, and, also, for just vehicle plus management
14 program.
15 There is no option for the mayor, the
16 administration or anyone else to be able to borrow any
17 of that money for any other city function or purpose,
18 so we do have that and that is assured and that
19 complies with federal law that says it has to be a
20 dedicated fund.
21 Those same rulings apply to the pollution
22 management program, so to respond to his question here
23 about how does the city ensure that this money isn't
24 going anyplace else, we have that in place, and what
25 our city council staff does do is they have the

1 ability to appropriate from the fund balance to run a
2 program, but they cannot appropriate any money out of
3 that to run any other program, so whether they choose
4 to fund this at a level we request or at a level
5 that's less than that, it still remains in fund
6 balance, that money does not go away, it does not
7 revert to the general fund, it is there to be used for
8 the program needs.
9 We have done analysis of the costs of the
10 Title V section of that program and we have increased
11 our staffing to support that fund. In years past, we
12 had to report by percentage the amount of staff time
13 both in air qualities and in finance and everyplace
14 else that did some work in operating permits, and,
15 then, we had to charge the fund appropriately.
16 In fiscal year '01, we met, we evaluated and
17 we analyzed the program and we took steps to fund the
18 people that appropriately do nothing but work in
19 operating permits of the fund and that is charged
20 indirectly for city services that are provided to the
21 fund, and that's at the -- that's at a very low rate
22 for the Environmental Health Department this year and
23 will probably go up this year.
24 MS. BASSETT: So as a public agency,
25 your budgets are available to the public, right?

1 MS. HALL: Yes.
2 MS. BASSETT: So, Mr. McGill, you had
3 asked about that, could you see the accounting, so I
4 think that information is available to you, so it
5 seems like a lot of the questions that you raised here
6 are something that you could fairly quickly get the
7 answers from, so if you could maybe work with them to
8 get your questions answered, its seems like you are
9 concerned about misuse of Title V moneys. I think you
10 need to contact the department.
11 MR. McGILL: Right, right, I am
12 characterizing the concern as just wanting to make
13 sure that the fund is protected.
14 MS. BASSETT: Sure.
15 MR. McGILL: And that staffing levels
16 are adequately provided for.
17 MS. BASSETT: Right.
18 MR. McGILL: And I would be happy to
19 meet with B.J. and discuss some of the fine details of
20 the accounting mechanism.
21 MS. BASSETT: So I think what would be
22 more helpful, certainly, for myself, as a board
23 member, is that since it seems like B.J. is saying
24 these questions are maybe not instantly answered, but
25 fairly readily answered, that if you then have further

1 questions, it would be helpful that then you bring
2 them to the board.
3 MR. McGILL: Yes. If the first round of
4 answers generates a new round of questions, I could
5 certainly be back and provide some additional
6 testimony.
7 DR. PILON: I think what Mr. McGill --
8 one of the things he was raising was the fact that on
9 the first page that the current condition with fee
10 adjustments, that the total was $224,000, roughly,
11 and, then, potential condition without the adjustment
12 462,000, 463,000, and, then, that change isn't
13 reflected on the next page.
14 Is that one of the things?
15 MR. McGILL: That's correct.
16 DR. PILON: And I would just like the
17 city staff to address that. My understanding is that
18 they don't expect the estimated collections to change
19 all that much and that's why, but maybe, you know,
20 maybe they could explain why that, why on this page
21 there is a big jump of $220,000 or $240,000, but
22 that's not reflected on the next page.
23 MR. MARTINEZ: Let me explain a little
24 bit about the budgetary process and how that works,
25 and I won't spend a lot of time on that, and it is

1 based on the people that we determine work
2 specifically on operating permits primarily, permit
3 writers, and, then, some of the compliance that goes
4 into that.
5 Again, you know, our budget, you know, our
6 total budget is a little over $2 million a year. The
7 operating permit program accounts for about a quarter
8 of that, and, again, you know, that's a relatively --
9 you know, it's not by any means the majority of what
10 we fund.
11 One of the things that I want to -- and so we
12 do sit down, and as this sheet basically sets out, I
13 mean, we can break it down by each person and how much
14 each person earns and that kind of stuff, and, I mean,
15 you know, but, basically, just what it costs for us to
16 pay for wages and benefits and that kind of thing
17 that's on this page.
18 MS. BASSETT: Can I interrupt a second?
19 I don't think that's Steve's question. I think the
20 question is just that here we are seeing one number at
21 the bottom, there is a $220,000 difference.
22 MR. MARTINEZ: Right.
23 MS. BASSETT: When you turn the page up
24 here and you look at the very first entry, it says
25 "Estimated collection of the current fees" and

1 "estimated collection of the proposed," that number
2 stays the same; whereas, on the front page, it's a
3 $220,000 difference, so that's what he is not clear
4 on.
5 MR. MARTINEZ: Right. This estimate
6 accounts for not just only Title V, but for all the
7 other sources that are in the program.
8 MS. BASSETT: I realize that, but under
9 here, it says "Title V Sources Annual Billing." It
10 doesn't show this calculation.
11 MR. MARTINEZ: I see what you are
12 saying.
13 MS. BASSETT: You are saying this is
14 462, but, instead, this is entered as the same as 224,
15 that's the question.
16 MR. MARTINEZ: Okay. Now, on that, we
17 really haven't, you know, until recently, we really
18 haven't had any indication that anybody was going to
19 be paying, you know, be paying more than what they had
20 been paying in the past.
21 I mean, they had been paying for a certain
22 level of production and that's been like that since
23 1997, basically, so we are entering our fourth year,
24 and, basically, the production has stayed within the
25 same range, so we really couldn't assume that all of a

1 sudden, everybody was going to say "Okay, we are going
2 to pay for a full permit," so we really couldn't
3 assume that.
4 DR. PILON: My understanding was there
5 was going to be adaptive behavior on the part of the
6 people whose rates were going up.
7 MR. MARTINEZ: And that was the idea.
8 Obviously, they want to go ahead and pay for the full
9 permit and not modify, then that's their choice, you
10 know, and so that's, you know -- but we really
11 couldn't account for that in there.
12 One of the things that I will point out, and
13 this was on the issue of collection, is just to give
14 you an example, it was 224,000, that was -- that's
15 estimated here that was collected, I guess, under the
16 current level, and what was actually collected overall
17 was about $360,783 in 1999.
18 If you look at our budget for 1999, it was
19 about $464,000, so we were about $100,000 shy of that,
20 you know, and it wasn't attributed primarily to the
21 Title V sources and we didn't count on that money
22 coming in from them, you know, but we did count on
23 additional money coming in from the additional sources
24 to account for that amount.
25 MS. BASSETT: It sounds like -- Mr.

1 McGill, sounds like your concerns are that the budgets
2 at one level show Title V, and, then, another level
3 mix the department, and so you are trying to decipher
4 which is really Title V income and expenditures versus
5 the rest of the department's income.
6 MR. McGILL: That's correct, looking for
7 the details on the Title V operating permits.
8 MS. BASSETT: Right.
9 MR. McGILL: Now, I have heard the term
10 "operating permits" kind of being used as a general
11 term in some of the answers to questions, and perhaps
12 Mr. Martinez and I need to get together and discuss
13 this a little further, but I am a little confused, on
14 the federal level, you have Title V operating permits
15 that are not regulated, the manner in which major
16 sources operate, then I believe that the local board
17 has a minor source operating permits or sources that
18 are designated as smaller sources, nonmajor sources,
19 and I am hearing -- if what I am hearing is correct,
20 the term "operating permits" is being applied to both
21 sets of sources, and, in my mind, there is a clear
22 distinction between Title V major source versus --
23 that's regulated by federal law versus a local minor
24 source operating permit program.
25 THE HEARING OFFICER: Any other

1 questions of the witness?
2 Mr. Martinez?
3 MR. MARTINEZ: I just comment on that
4 the programs that are in place do not -- in our
5 regulatory structure aren't part of our SIPs, so,
6 therefore, they are federally enforceable, so they are
7 -- I think that there is a misconception, and I have
8 had numerous meetings and discussions on this issue
9 with EPA at EPA headquarters on the whole issue of
10 major source and minor source.
11 I mean, you know, you are comparing basically
12 apples to oranges because what distinguishes a major
13 source from a minor source, one is below 100 times and
14 one is above 100 times of the emissions, but that
15 doesn't really make a direct correlation to the
16 concentration, which is ultimately what the Clean Air
17 Act protects.
18 The standards do not measure tons, they are
19 measured by the monitors, which is measured in
20 concentration. When you look at it from that
21 perspective, it is just as important for us to
22 regulate at the same effort and the same level, you
23 know, and in a lot of instances, a 50-ton source, a
24 100-ton source, and because in a lot of instances a
25 50-ton source has a higher impact because of

1 configuration, because of engineering to the depth
2 than the 100-ton source, so in the budget, we don't
3 distinguish between one or the other, but we do
4 understand that there is specific federal requirements
5 in Title V for major sources, and, then, the other
6 requirements basically are within our regulatory
7 structure, which, again, are also federally
8 enforceable.
9 I do want to point out one thing, that at one
10 point, we did, from the budget, set up in that fashion
11 where we basically took one inspector and said "Okay,
12 how much time does this inspector spend on minor
13 sources, how much time does this inspector spend on
14 what we consider grant objectives, how much time does
15 this inspector spend over Title V and how much time
16 cost this inspector spend on city issues," and so what
17 we have had in our budget, we have basically close now
18 to 30 people and we have, you know, three quarters of
19 those people basically broken out into okay, this
20 person, you know, keeps their time and charges 25
21 percent to this budget and another 25 percent, you
22 know, so it was basically a budgetary nightmare to do
23 that, and so we said "Let's just break it up into
24 groups, which is operating permits, and, then, grant
25 objectives and the people that work on grant

1 objectives, give it to the grants," which is -- you
2 know, which basically accounts for about 70 percent of
3 what we get paid for, and, then, the people which is
4 the smaller group that specifically work on the
5 operating permit issues get paid out of that and, yes,
6 there's an inspector that will spend time on Title V,
7 time on resources, and, then, time on asbestos,
8 because I only have one inspector for basically all
9 four areas, and so, you know, we try to spread that as
10 equally as possible, but we charge it to one fine.
11 I am not sure that makes a lot of sense, but
12 if you could imagine, I would have to go back and say
13 "Okay, and we can do that, we have done that in the
14 past," because we did an audit on where everybody
15 spends their time and that's basically where the 1997
16 rate came from, and, you know, that's where the number
17 came from, but in this particular case, we didn't go
18 to that level because we felt that we addressed it
19 back in 1997, and you said -- and, again, we don't
20 expect to get any more than what we did in '97, we
21 just expect to pay the bills, basically.
22 THE HEARING OFFICER: Any other
23 questions for the witness?
24 Mr. McGill, we thank you for your time and
25 your testimony.

1 MR. McGILL: Thank you very much.
2 THE HEARING OFFICER: Does any other
3 interested person or party have testimony that they
4 wish to give to the board or present to the record,
5 and if so, please step forward.
6 Okay. There being no further parties giving
7 testimony, at this time, that portion of the hearing
8 will be closed. Before we adjourn, again, the
9 comments section for this proposed VPO and replacement
10 is open until February 26th at 5:00 p.m.
11 Please submit those comments to Mr. Smith at
12 the Environmental Health Department directly or at
13 P.O. Box 1293, Albuquerque, New Mexico, 87103, they
14 will be admitted as exhibits.
15 All exhibits submitted to me hereby are
16 admitted into the record, and, remember, immediately
17 after this hearing is closed tonight, the Air Board
18 will hold its monthly meeting; however, again, this
19 regulation 2 will not be on the agenda for the board
20 meeting.
21 Mr. Smith, anything further?
22 MR. SMITH: I was just a little
23 confused. Mr. McGill's evidence is in the record?
24 THE HEARING OFFICER: Yes, I have marked
25 my copies of Rio Grande Portland Cement Corporation

1 Exhibits 1 and 2, 1 being the written testimony, 2 is
2 the three-page document.
3 MR. SMITH: You want to use your
4 copies?
5 THE HEARING OFFICER: Yes. Anything
6 further, Mr. Smith?
7 Members of the board?
8 MS. BASSETT: I just want to thank you
9 all for spending your Valentine's evening with us and
10 I hope that you are celebrating Valentine's Day
11 tomorrow evening with your husband's or partners.
12 Thanks for all your time and hanging out all
13 night with us.
14 THE HEARING OFFICER: Okay. I'd also
15 like to thank the court reporter, Ms. Kopan, for three
16 and a half hours of nonstop typing. I apologize, I
17 should have asked you earlier if you were okay and
18 needed a break.
19 I would also like to thank the city staff as
20 always for their wonderful professionalism, and, Mr.
21 Smith, thank you to you and your staff. I'd like to
22 thank the board for allowing me to act as hearing
23 officer.
24 It is 8:48 p.m. The hearing is adjourned.
25 Thank you all.

1 (Proceedings concluded at 8:48 p.m.)
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1 STATE OF NEW MEXICO :
2 : SS. REPORTER'S CERTIFICATE
3 COUNTY OF BERNALILLO :
4 I, the undersigned Court Reporter, HEREBY
5 CERTIFY that the foregoing hearing was recorded by me
6 by machine shorthand; that I later caused my notes to
7 be transcribed under my personal supervision; and that
8 the foregoing is a true and accurate record, to the
9 best of my ability, of said proceedings.
10 I FURTHER CERTIFY that I am not a relative or
11 employee of any of the parties or attorneys involved
12 in this matter and that I have no personal interest in
13 the final disposition of this matter.
14 DATED this 5th day of March 2001.
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22 DENISE KOPAN, NM CCR #124
License Expiration: 12/31/01
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