Albuquerque/Bernalillo County
Air Quality Control Board

Staff's Proposal to Repeal and Replace 20.11.2 NMAC, Permit Fees

List of Staff Exhibits

Number	Title
Exhibit #1	New Mexico Register, Vol. XI, No. 24, 12/29/00
Exhibit #2	Albuquerque Journal Notice, 1/7/01
Exhibit #3	Mailing List
Exhibit #4	Letter From Ms. Jole C. Luehrs, Region 6, U.S. Environmental Protection Agency
Exhibit #5	Letter From Mr. George K. Laskar, Department of Energy, Albuquerque Operations Office
Exhibit #6	Letter From Mr. Jim Goins, Plant Manager, General Mills
Exhibit #7	Letter From Ms. Nancy Norem, Principal Engineer, PNM
Exhibit #8	Letter From Mr. Brian McGill, Corporate Environmental Manager, Rio Grande Portland Cement
Exhibit #9	Letter From Mr. Kurt Browning, Land Development Manager, Sandia Properties Ltd.
Exhibit #10	Current Version of 20.11.2 NMAC, Permit Fees
Exhibit #11	Proposed Draft of 20.11.2 NMAC, Permit Fees, with Floor Amendments Added.
Exhibit #12	Testimony of Mr. Michael D. Smith, Environmental Health Department, Air Quality Division
Exhibit #13	Table 1 – New Source Review (NSR) Fee Comparison
Exhibit #14	Table 2 – Fee Comparison for Dust Control Activities

NOTICES OF RULE MAKING AND PROPOSED RULES

NEW MEXICO ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF HEARINGS AND MEETING

On Wednesday February 14, 2001, at 5:00 p.m., the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold a public hearing and a public meeting in the Council/Commission Chambers, lower level, Albuquerque/Bernalillo County Government Center (A/BCGC) One Civic Plaza, 400 Marquette Avenue NW Fifth Street and Marquette NW downtown Albuquerque, NM.

The purpose of the hearing is to hear testimony on repealing and replacing 20.11.2 NMAC Permit Fees

As required by the New Mexico Air Quality Control Act 74-2-7 NMSA the Board must establish reasonable fees to cover the costs of reviewing and acting on any air quality permit applications received including the ongoing costs of inspection and implementing and enforcing the permits In addition, the New Mexico Act requires the Board to establish a schedule of emission fees consistent with the provisions of section 502(b)(3) of the federal Clean Air Act (federal Act) for sources that require an operating permit pursuant to Title V of the federal Act To meet these requirements the staff for the Board is proposing to repeal and replace 20.11.2 NMAC. Permit Fees

Application Review Fees The staff is also proposing that the following fees be paid with an application for or modification to and Authority-to-Construct Permit:

1) Proposed sources with a potential-to-emit regulated air pollutants greater than 5 tons per year and less than 25 tons per year: $1,000 00.

2) Proposed sources with a potential-to-emit regulated air pollutants equal to or greater than 25 tons per year and less than 50 tons per year $2,000 00;

3) Proposed sources with a potential-to-emit regulated air pollutants equal to or greater than 50 tons per year and less than 75 tons per year $3,000.00;

4) Proposed sources with a potential-to-emit regulated air pollutants emissions equal to or greater than 75 tons per year and less than 100 tons per year: $4,000.00;

5) Proposed sources with a potential-to-emit regulated air pollutants equal to or greater than 100 tons per year: $5,000.00.

Permit Modifications:

1) Pollution Prevention (P2) Modifications: No Charge;

2) Minor/Flexible Permit Modifications: $1,000.00;

3) Major Modifications: $5,000.00.

Additional Proposed Requirements: Any source that must comply with following federal standards shall pay the following fees in addition to the above fees:

1) 40 CFR 60 Standards: $1,000.00;

2) 40 CFR 61 Standards: $1,000.00;

3) 40 CFR 63 Standards:

a) Promulgated Standards: $2,000.00;

b) Case-By-Case MACT Review: $10,000.00;

4) PSD/Non-Attainment Review: $5,000.00;

5) Acid Rain Review: $5,000.00.

Annual Fees: The staff is proposing to remove the current provision that allow major and non-major sources to pay annual fees based on the source's actual emission during the previous year. Sources wishing to reduce their potential-to-emit may apply for a modification through the provisions 20.11.41 NMAC, Authority-to-Construct.

The proposed Part 02 requires all air pollution sources that have registrations or permits issued by the Environmental Health Department (Department) to pay an annual emission fee based on the source's potential-to emit. The proposed fees are:

1) Non-Hazardous Fee Pollutants: $31.00 per ton;

2) Hazardous Fee Pollutants (Non-Major Sources): $31.00 per ton; and

3) Hazardous Fee Pollutants (Major Sources): $250 per ton.

Surface Disturbance Permit Fee: Also, as part of the changes to 20.11.2 NMAC, Permit Fees, the Department is proposing an inspection and filing fee to obtain a Surface Disturbance Permit pursuant to 20.11.20 NMAC. Airborne Particulate Matter at $100.00 per acre disturbed.

Asbestos Inspection Fee: The Department is not proposing to change the current Asbestos Unit (AU) fee, which will remain at $21.00.

The following administrative fees are also proposed:

1) Permit Amendments (Administrative Corrections): $100.00;

2) Professional Services Fee: $75.00 per staff hour;

3) Photocopying:

a) First 10 Pages: $0.50 per page;

b) Additional Pages: $1.00 per page;

4) Regulation Books: $20.00;

5) Public Records Research Fee: $50.00 per staff hour.

Persons desiring to present technical testimony should submit a written notice of intent to: Attn: 20.11.2 NMAC Hearing, Mr. Michael D. Smith, Environmental Health Department, P.O. Box 1293, Albuquerque NM 87103, or in person in Room 3032, A/BCGC, by February 7, 2001. The notice must include: name, address and qualifications of each technical witness; identification of whether the witness is a proponent, opponent or interested person; description of the nature of the anticipated testimony; anticipated length of each witnesses' presentation; identification of the specific aspects of the proposed action to which testimony will be directed; any alternative language proposals, where appropriate; and list and describe technical exhibits anticipated to be offered in connection with the witness testimony.

In addition, written statements to be incorporated into the public record should also be sent to above address by February 7, 2001, and must include the name and address of the individual submitting the statement.

Immediately following the hearing the Board will hold its regularly scheduled monthly meeting and may consider the staff's proposal to repeal and replace 20.11.2 NMAC, Permit Fees.

Interested persons may obtain a copy of the staff's proposal at the Environmental Health Department Office or contact Mr. Michael D. Smith at (505) 768-1961 (mdsmith@cabq.gov).

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact Mr. Michael D. Smith, Environmental Health Department, Room 3023, Albuquerque/Bernalillo County Government Center, 768-1961 (Voice), 768-1977 (FAX) or 768-2482 (TTY), as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

Staff Exhibit #1 – New Mexico Register Notice, Vol. XI, No. 24, 12/29/00

STATE OF NEW MEXICO
County of Bernalillo SS

Bill Tafoya, being duly sworn, declares and says that he is Classified Advertising Manager of **The Albuquerque Journal**, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 times, the first publication being on the 7 day of Jan, 2001, and the subsequent consecutive publications on _____, 2001.

Sworn and subscribed to before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 8 day Jan of 2001.

PRICE 101.03

Statement to come at end of month.

ACCOUNT NUMBER C80520

CLA-22-A (R-1/93)

My Commission

Albuquerque/Bernalillo County Air Quality Control Board
Notice of Hearings and Meeting

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The purpose of the hearing is to hear testimony on repealing and replacing 20.11.2 NMAC, Permit Fees.

As required by the New Mexico Air Quality Control Act, 74-2-7, the Board must establish reasonable fees to cover the costs of processing and acting on any air quality permit applications received, including ongoing costs of inspection and implementing and enforcing the permit. In addition, the New Mexico Act requires the Board to establish a schedule of emission fees consistent with the provisions of section 502(b)(3) of the federal Clean Air Act (federal Act) for sources that require an operating permit pursuant to Title V of the federal Act. To meet these requirements, the staff for the Board is proposing to repeal and replace 20.11.2 NMAC, Permit Fees.

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Permit Modifications:
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3) 40 CFR 63 Standards:
a) Promulgated Standards: $2,000.00;
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Annual Fees: The staff is proposing to remove the current provision that allow major and non-major sources to pay annual fees based on the source's actual emission during the previous year. Sources wishing to reduce their potential-to-emit may apply for a modification through the provisions 20.11.41 NMAC, Authority-to-Construct.

The proposed Part 02 requires all air pollution sources that have regist-

Staff Exhibit #2 – Albuquerque Journal Notice, 1/7/01

Environmental Health Department(Department) to pay an annual emission fee based on the source's potential to emit. The proposed fees are:

1) Non-Hazardous Fee Pollutants: $31.00 per ton;
2) Hazardous Fee Pollutants (Non-Major Sources): $31.00 per ton; and
3) Hazardous Fee Pollutants (Major Sources): $250 per ton;

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   a) First 10 Pages: $0.50 per page;
   b) Additional Pages: $1.00 per page;
4) Regulation Books: $20.00;
5) Public Records Research Fee: $50.00 per staff hour.

Persons desiring to present technical testimony should submit a written notice of intent to: Attn: 20.11.2 NMAC Hearing, Mr. Michael D. Smith, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3032, A/BCGC, by February 7, 2001. The notice must include: name, address and qualifications of each technical witness; identification of whether the witness is a proponent, opponent or interested person; description of the nature of the anticipated testimony; anticipated length of each witnesses' presentation; identification of the specific aspects of the proposed action to which testimony will be directed; any alternative language proposals, where appropriate; and list and describe technical exhibits anticipated to be offered in connection with the witness testimony.

In addition, written statements to be incorporated into the public record should also be sent to above address by February 7, 2001, and must include the name and address of the individual submitting the statement.

Immediately following the hearing the Board will hold its regularly scheduled monthly meeting and may consider the staff's proposal to repeal and replace 20.11.2 NMAC, Permit Fees.

Interested persons may obtain a copy of the staff's proposal at the Environmental Health Department Office or contact Mr. Michael D. Smith at (505) 768-1968 (mdsmith@cabq.gov).

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact Mr. Michael D. Smith, Environmental Health Department, Room 3023, Albuquerque/Bernalillo County Government Center, 768-1961 (Voice), 768-1977 (FAX) or 768-2482 (TTY), as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

Journal: January 7, 2001

Staff Exhibit #3 – Mailing List (Available Upon Request)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

Mr. Mike Smith
Environmental Health Department
P.O. Box 1293
Albuquerque, NM 87103

RE: 20 New Mexico Administrative Code 2.11.2, Permit Fees

Dear Mr. Smith:

This is in response to your January 11, 2001, letter for the subject item proposals for your February 14, 2001, Albuquerque Air Quality Board hearing. These proposals are to meet requirements of the New Mexico Air Quality Control Act, 74-2-7, NMSA.

Your proposals for these Permit Fees regulations are a thoughtful fee schedule that comports with Federal and State law. These proposals are easy to apply and adjust, and are equitable to sources filing Air Permit Applications received, including the ongoing costs of inspections and implementing and enforcing the permits. We will not object to the Air Quality Board's efforts to pay for the New Source Review Construction Permitting Program through the collection of these fees from applicants and permittees.

Thank you for the opportunity to comment on these proposals. Please contact Terry Thomas of my staff at (214) 665-7160 if you have any questions.

Sincerely yours,

Jole C. Luehrs
Chief
Air Permits Section

Staff Exhibit #4 – Letter From Ms. Jole C. Luehrs, EPA Region 6

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (40% Postconsumer)

Department of Energy
Albuquerque Operations Office
Kirtland Area Office
PO Box 5400
Albuquerque, New Mexico 87185-5400

FEB 0 7 2001

Mr. Michael D. Smith
Environmental Health Department
P. O. Box 1293
Albuquerque, New Mexico 87103-1293

Dear Mr. Smith:

Enclosed is a notice of intent to testify at the Air Quality Control Board hearing and regular monthly meeting on February 14, 2001. Testimony will be presented on the proposed changes to the New Mexico Administrative Code (NMAC) Chapter 20, Title 11, Part 02, Permit Fees. If you have any questions, or need additional information, please contact Susan Lacy of my staff at 845-5542. Thank you for your assistance.

Sincerely,

Elizabeth J. Sm

for George K. Laskar
Assistant Area Manager
Laboratory Operations

Enclosure

cc w/o enclosure:
K. Griffith, KAO
M. du Mond, 7575, MS 1042

Staff Exhibit #5 – Letter From Mr. George K. Laskar, DOE

Sandia National Laboratories

Operated for the U.S. Department of Energy by
Sandia Corporation

P.O. Box 5800
Albuquerque, NM 87185-1114

Phone: (505) 845-9296
Fax: (505) 845-9968
Internet: lawest@sandia.gov

L. A. West
Director
Integrated Safety & Security Center

FEB 7 2001

Mr. George K. Laskar
Laboratory Operations
DOE / Kirtland Area Office
Post Office Box 5800
Albuquerque, NM 87185-5400

Attention: Susan D. Lacy

Dear Mr. Laskar:

Subject: **City of Albuquerque's Proposed Permit Fee Regulation Revision: Notice of Intent**

Background

The legal notice published in the *Albuquerque Journal* on January 7, 2001, states that persons desiring to present technical testimony before the Air Quality Control Board on February 14 should submit a written notice of intent.

Key information

The notice must include:

- *Name, address, and qualifications of each technical witness:*
  - *Name:* Mike du Mond
  - *Address:* Post Office Box 5800, Albuquerque, N. M. 87185-1042
  - *Qualification:* Sandia's Air Quality Compliance Team Project Leader
- *Identification of whether the witness is a proponent or opponent:*
  - *Opponent:* To removal of 20 NMAC 11.02.II.2.4F *Annual Inventory.*
- *Description of the nature of the proposed testimony:*
  - To provide evidence that inventories encourage pollution prevention.
- *Anticipated length of each witness' presentation:*
  - The presentation should be no more than fifteen minutes in length.
- *Identification of the specific aspects of the proposed action to which testimony will be directed:* The technical testimony will specifically address the reasons for retaining the annual emission inventory provision.
- *Any alternative language proposals, where appropriate:*
  - Retain the current language of 20 NMAC 02.II2.4.F dated 5-30-97.
- *List and describe technical exhibits anticipates to be offered in connection with the witness testimony:* None.

Deadline A written notice of intent should be sent by February 7, 2001.

Transmit Please transmit a written statement regarding these impacts by February 7, to:

Attn: 20.11.2 NMAC Hearing
Mr. Michael D. Smith
Environmental Health Department
Post Office Box 1293
Albuquerque, NM 87103

Information If you have any questions, please contact Mike du Mond at 505/845-7914.

Certification By my signature, I certify that the author and technical reviewers of documents are qualified, and that the process defined in AOP95-45, "Preparation, Review, and Approval of Permit Applications/Amendments/Modification Requests and Other Regulatory Deliverables" has been followed. I understand that Sandia policy is to provide true, accurate, and complete information to all government regulators. To the best of my knowledge and belief, based upon the process followed, and my inquiry of the person(s) responsible for overseeing the implementation of that process, the document meets that policy.

Sincerely,

L. A. West, Director
Sandia National Laboratories

LAW:7131:md

General Mills
Operations

3501 Paseo del Norte NE
Albuquerque, New Mexico 87113

Attn: 20.11.2 NMAC Hearing
Mr. Michael D. Smith
Environmental Health Department
P.O. Box 1293
Albuquerque, NM 87103

Re: Written Statement to be incorporated into Public Record of Albuquerque/Bernalillo County Air Quality Control Board Public Hearing on 20.11.2 Permit Fees

February 6, 2001

Dear Mr. Smith:

General Mills Operations, Inc. owns and operates a packaged foods plant at 3501 Paseo del Norte NE, Albuquerque, NM 87113. I am the Plant Manager and represent General Mills in matters pertaining to the operation of this facility. On January 25, 2001 we received from the City of Albuquerque a Notice of Hearings and Meeting to address a proposal to repeal and replace 20.11.2 NMAC Permit Fees. We wish to place in the public record the following concerns and comments pertaining to the proposed fee modification:

1) The proposed modification would change the annual fee calculation from actual air emissions to potential-to-emit. General Mills presently pays air emission fees based on actual emissions. Our actual emissions are approximately half the total emissions allowed under our permit. The current method of fee calculation is more logical because:
   a. It accurately reflects our use of the resource.
   b. There is a built in incentive to control and reduce emissions.

2) We are concerned that the proposed system of fees creates a disincentive to minimize air emissions because:
   a. The fee is based on potential worst-case activities, and effectively disallows pollution prevention activities from quickly recovering cost savings associated with emission fee reduction.
   b. Emission fees can only be reduced by modification of an existing permit. In some cases this fee is $5000, potentially more than the fee for a new source and also potentially more than the reduced emissions fees associated with a pollution prevention activity.

3) If a modification to the fee calculation is deemed necessary, we are concerned about the use of the term "potential-to-emit"(PTE). This term is used in several federal and state regulations and definitions vary with each regulation. We feel that the use of the term "potential-to-emit" could cause confusion. We are concerned that it could be interpreted differently and fee assessments could become inconsistent with the intent of the annual emission fee revision. We would propose that a more precise term to use in this instance is "permitted emissions" or "permitted emission limits".

Staff Exhibit #6 – Letter From Mr. Jim Goins, General Mills

4) We are concerned that an adequate period for public comment may not take place because of the short time period between receiving the notice and the due date for written statements.

Thank you for the opportunity to comment on this proposal and thank you in advance for addressing our concerns relating to this proposal. Please feel free to contact me if you have any questions or if we can further clarify our concerns for the record.

Sincerely

Jim Goins
Plant Manager
General Mills Operations, Inc.
3501 Paseo del Norte NE
Albuquerque, NM 87113

Public Service Company
of New Mexico
Alvarado Square
Albuquerque, NM 87158

February 5, 2001

CERTIFED MAIL
RETURN RECEIPT REQUESTED

Attn: 20.11.2 NMAC Hearing
Mr. Michael Smith
Environmental Health Department
P.O. Box 1293
Albuquerque, NM 87103

Subject: Public Service Company of New Mexico's Comments on Repealing and Replacing 20.11.2 NMAC, Permit Fees

Dear Mr. Smith:

The Public Service Company of New Mexico (PNM) is submitting these comments on the proposed changes to 20.11.2 NMAC, Permit Fees to be incorporated into the public record.

PNM has numerous air emission sources located in Bernalillo County that have air permits issued by the Albuquerque Environmental Health Department and the Albuquerque/Bernalillo County Air Quality Board. One of these sources, Reeves Generating Station, is a major source and has applied for and received an operating permit.

The proposed changes to 20.11.2 NMAC, Permit Fees will eliminate the current provisions that allow major and non-major sources to pay annual fees based on the source's actual emissions during the previous year. This change will result in the annual permit fee for Reeves Generating Station to increase from $11,292 to $152, 923. PNM realizes that this fee increase can be reduced by applying for a permit modification to reduce the station's potential to emit. Due to overriding business concerns, PNM does not believe this approach to reduce the station's potential to emit is in our or our customer's best interests. Therefore, PNM does not object to the increase in the annual fee.

PNM does request that the change in the regulation that removes the current provision to pay annual fees based on a source's actual emissions not become effective until 2002. PNM has completed the 2001 budget several months ago, and this large increase in the Reeves Generating Station annual fee was not included in the 2001 budget. Since the annual fee paid in 2001 is for 2000 emissions and it is too late to change budgets or emissions, PNM believes it is only fair to delay the effective date of this change until 2002.

Staff Exhibit #7 – Letter From Ms. Nancy Norem, PNM

PNM would also like to request that the Air Quality Division prepare and provide to the sources paying permitting fees an annual reconciliation of the permit fees collected and how the fees were used.

Finally, PNM hopes that the increased fees will enable the Air Quality Division to improve their services to the regulated community.

Sincerely,

Nancy J. Norem

Nancy J. Norem
Principal Engineer

RIO GRANDE
PORTLAND CEMENT CORPORATION

February 6, 2001

Attn: 20.11.2 NMAC Hearing
Mr. Mike Smith
Albuquerque Environmental Health Dept.
P.O. Box 1293
Albuquerque, NM 87103

Sent By Facsimile
Original Sent By U.S. Mail

Dear Mr. Smith,

This letter is being submitted by Rio Grande Portland Cement (RGPC) as written notice of intent to provide oral testimony as an interested party at the February 14, 2001 public hearing before the Albuquerque / Bernalillo County Air Quality Control Board. This hearing is being held to hear testimony regarding the proposed repeal and replacement of 20.11.2 NMAC, Permit Fees.

My testimony will include a very brief description of the air quality permitting process, how emission fees are assessed, equitability in fee assessment, and how collected emissions fees support the administration of the local air quality regulatory programs in Albuquerque and Bernalillo County.

The mailing address for RGPC is as follows:

Rio Grande Portland Cement
P.O. Box 100
Tijeras, NM 87059

If you have questions regarding this information, please feel free to contact me at (505) 286-6026.

Sincerely,

Brian D. McGill

Brian D. McGill
Corporate Environmental Manager
Rio Grande Portland Cement

cc: Mr. Gary Romontio, Tijeras Plant Manager

Staff Exhibit #8 – Letter From Mr. Brian McGill, Rio Grande Portland Cement

Tijeras Plant
P.O. Box 100
Tijeras, NM 87059-0100

January 29, 2001

Mr. Michael D. Smith
Environmental Health Department
City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

Re: Albuquerque/Bernalillo County Air Quality Control Board Proposed Permit Fees

Dear Mr. Smith:

Thank you for the opportunity to comment on the proposed permit fees as outlined in your recent Notice of Hearings for the Air Quality Board.

It appears the department is proposing an inspection and filing fee to obtain a surface disturbance permit at $100 per disturbed acre. As a land developer who develops lots for area homebuilders, we are usually responsible for the clearing and grubbing, mass grading and finish grading of the lots prior to the start of home construction. The fee of $100 per disturbed acre seems excessive, given the actual time involved from city staff for reviewing and implementing the required permits.

For example, a master planned project such as Ventana Ranch, which encompasses approximately 900 acres of land, would generate $90,000 in inspection and filing fees for the City for the surface disturbance permit. The City currently charges an average of $30,000 in fees for each subdivision *phase* through the City's One-Stop Subdivision Improvement Agreement process; this should be taken into consideration.

If a fee is proven to be truly needed, it should be graduated over time. Given the larger earthwork operations, perhaps the larger master planned communities could have a "sliding scale" based on size, or even a *flat fee* may be more appropriate.

We ask that our concerns regarding this proposed surface disturbance permit fee be considered given the fee structure currently in place for new subdivisions.

Thank you for this opportunity to comment on these proposed fees.

Sincerely,

Kurt Browning
Land Development Manager
Sandia Properties Ltd., Co.

cc: Bob Murphy
Jim Folkman, NM Homebuilders Association
Albuquerque/Bernalillo County Air Quality Control Board Members

Staff Exhibit #9 – Letter From Mr. Kurt Browning, Sandia Properties Ltd.

SANDIA PROPERTIES LTD. CO.
#10 TRAMWAY LOOP NE • ALBUQUERQUE, NEW MEXICO 87122 • (505) 856-6419 • FAX (505) 856-6335
LAND DEVELOPMENT MANAGEMENT

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
ALBUQUERQUE ENVIRONMENTAL HEALTH DEPARTMENT
P.O. BOX 1293
ALBUQUERQUE, NM 87103
(505) 768-2600

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 02 PERMIT FEES

1. GENERAL PROVISIONS

1 **ISSUING AGENCY**: Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600. [7-9-75...12-1-95]

2 **SCOPE**: Each owner or operator required to obtain either an Authority-to-Construct Permit pursuant to 20 NMAC 11.41, or an Operating Permit pursuant to 20 NMAC 11.42 may be subject to the requirements of Permitting Nonattainment Areas, 20 NMAC 11.60; Prevention of Significant Deterioration, 20 NMAC 11.61; Acid Rain , 20 NMAC 11.62; New Source Performance Standards, 20 NMAC 11.63; and Emission Standards for Hazardous Air Pollutants, 20 NMAC 11.64 in addition to the requirements of this Part. [12-16-94...12-1-95; 5-12-97]

2.1 **EXEMPT:** This Part does not apply to sources within Bernalillo County which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control Board lacks jurisdiction. [12-1-95]

3 **STATUTORY AUTHORITY:** This Part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 §§ 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 § 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 § 9-5-1-4. [7-9-75...12-1-95]

4 **DURATION**: Permanent. [12-1-95]

5 **EFFECTIVE DATE:** December 1, 1995. [12-1-95]

6 **OBJECTIVE**: The objective of this Part is to offset the costs of review, analysis, issuance or denial, compliance monitoring, and enforcement of Source Registration, Authority-to-Construct Permits and Operating Permits required by regulation and adopted pursuant to the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978. [8-19-83...12-1-95, 5-12-97]

7 **DEFINITIONS**: In addition to the definitions in this Section I.7, the definitions in 20 NMAC 11.01 apply unless there is a conflict between definitions, in which case the definition

Staff Exhibit #10 – Current Version of 20.11.2 NMAC, Permit Fees

in this Part shall govern. [12-1-95]

7.1 **ALLOWABLE EMISSION RATE:** means the maximum emission allowed by the most stringent emission limitation applicable to the source contained in: [12-16-94, 5-12-97]

A. Any Board Regulation; [12-16-94]

B. Any federal standard of performance, emission limitation, or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412; or [12-16-94]

C. Any condition within a construction or operating permit issued by the department. [12-16-94]

7.2 **ANNUAL EMISSIONS INVENTORY:** for the purposes of this Part, an annual emissions inventory means a report which presents data, calculations and supporting technical information that provides the Department with documentation of emission rates based on the source's preceding calendar year actual process rates, actual production rates, or actual equipment rate of operation. The emissions shall be calculated or specified based on one or more of the following methods as approved by the Department:

A. any EPA or Department approved monitoring or testing methods as approved by the Department, including but not limited to those in 40 CFR parts 51, 60, 61, 63, and 75; and/or; [5-12-97]

B. recognized EPA emission factor calculations (e.g., AP-42) as approved by the Department and/or; [5-12-97]

C. presumptively credible evidence as defined in 20 NMAC 11.41.II.15.2.B. [5-12-97]

Emissions measurements based on the EPA or Department approved monitoring or testing methods will govern those based on presumptively credible evidence if they are not in agreement. [12-16-94; R 5-12-97; 5-12-97]

7.3 EMISSIONS UNIT: means any part or activity of a stationary source that emits or has the potential to emit any fee pollutant or hazardous air pollutant. [12-16-94; R 5-12-97; 20 NMAC 11.02.I.7.2, 5-12-97]

7.4 EXISTING STATIONARY SOURCE: means a stationary source which commenced operation on or before December 31, 1993. [12-16-94; R 5-1-97; 20 NMAC 11.02.I.7.3, 5-1-97]

A. Reserved. [12-16-94; R 5-12-97]

B. Reserved. [12-16-94; R 5-12-97]

7.5 FEE POLLUTANT: means: [12-16-94; Rn, 20 NMAC 11.02.I.7.4, 5-12-97]

A. Sulfur dioxide, nitrogen dioxide, carbon monoxide, total suspended particulate matter, and volatile organic

compounds; and [12-16-94; Rn, 20 NMAC 11.02.I.7.4.A, 5-12-97]

B. Any air pollutant that is listed as a hazardous air pollutant under section 112 of the Federal Clean Air Act (CAA) (40 CFR Part 61 and 63). [12-16-94; Rn, 20 NMAC 11.02.I.7.4.B, 5-12-97, 5/12/97]

7.6 FORM 1: The form attached to an operating permit which is utilized to inform the Department of any approved or pre-approved modifications, new sources, notification of pollution prevention projects, new applicable requirements, and any other changes at the source as approved pursuant to the operating permit. [5-12-97]

7.7 FUGITIVE EMISSIONS: means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening. [12-16-94; R 5-12-97; Rn, 20 NMAC 11.02.I.7.5, 5-12-97]

7.8 NEW STATIONARY SOURCE: means a stationary source which commenced operation subsequent to December 31, 1993. [12-16-94; R 5-12-97; Rn, 20 NMAC 11.02.I.7.6, 5-12-97]

7.9 Repealed. [12-16-94; R 5-12-97]

7.10 STANDBY EQUIPMENT: means an emissions unit which is used at a stationary source on a temporary basis, to replace equipment (at the same stationary source) used in normal operation and which has an allowable emission rate or potential-to-emit (PTE) for each fee pollutant which is equal to or less than the equipment replaced. [12-16-94, 5-12-97]

7.11 Repealed. [12-16-94; R 5-12-97]

8 VARIANCES: Reserved

9 SAVINGS CLAUSE: Any amendment to Part 02 which is filed with the State Records Center shall not affect actions pending for violation of a federal or state statute, a City or County ordinance, Board Regulation 21, or Part 02. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part or regulation section in effect at the time the violation was committed. [12-16-94,5-12-97]

10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of this Part is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part. [12-16-94...12-1-95]

11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102. [12-1-95]

12 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS: This Part amends and supersedes Albuquerque/Bernalillo County, Air Quality Control Board Regulation No. 21 - Permit Fees, filed on December 16, 1994. All references to this regulation shall be understood as a reference to this Part. [12-1-95]

II. APPLICABLE REQUIREMENTS

1 PERMITS:

1.1 Every person, including any federal, state or local governmental agency, who files an application as required by 20 NMAC 11.41 for an initial or a modification to an existing Authority-to-Construct Permit shall pay the fee(s) required in the following Table One fee schedule. The fee is calculated by determining the sum of the highest applicable base fee and any additional review fees. For source registration initial fee(s) refer to Part 40. [8-19-83...12-16-94, 5-12-97]

1.2 If an application is filed for an Authority-to-Construct Permit for any stationary or portable source only as a

result of transfer from one location to another, and if a permit had previously been granted under Part 41 and, except for location, the information given in 20 NMAC 11.41.II.2 is still valid, the applicant shall pay a $50 transfer fee. [8-19-83...12-1-95, 5-12-97]

1.3 An application permit fee bill consistent with Table One of this Part will be sent to the owner or operator within thirty (30) days of the application being deemed complete by the Department. After an owner or operator receives a bill or invoice from the City, the owner or operator shall pay the fee within thirty (30) days check or money order made payable, to the Albuquerque Environmental Health Department, and delivered to the City Treasury. [8-19-83...12-1-95, 5-12-97]

1.4 Any fees required herein shall not be refunded. [8-19-83]

1.5 The Department may provide an informal pre-application consultation for any person wishing to determine if the source is subject to Part 41. There is no fee for this service. If, however, the person requests a written applicability determination from the Department stating that the source is not subject to Part 41, the applicant will be assessed a fee of $50 per hour of staff time expended in preparing the determination. [8-19-83...12-1-95, 5-12-97]

2 ANNUAL EMISSIONS FEES FOR MAJOR AND NON-MAJOR SOURCES: [12-16-94, 5-12-97]

2.1 Every owner or operator of a source which is required to obtain a source registration pursuant to Part 40, an operating permit pursuant to Part 42, an Authority-to-Construct permit pursuant to Part 41, or a preconstruction permit pursuant to Part 60, 61, or 62 shall pay an annual emissions fee under this section in addition to any application fee which is required by Part 02. [12-16-94, 5-12-97]

2.2 The fee shall be assessed: [12-16-94]

A. for a stationary source as defined in 20 NMAC Chapter 11 Part 40, 41, 42, 60, 61, or 62, for all emissions units; or [12-16-94...12-1-95; 5-12-97]

B. For all other stationary sources, for emissions units which cause the source to be subject to Part 42. [12-16-94...12-1-95]

2.3 The annual fee shall be calculated in conformance with 02.II.2.4 of this Part. [12-16-94...12-1-95; 5-12-97]

2.4 Annual Fee Calculation. [12-16-94, 5-12-97]

A. The annual fee shall be calculated by taking the product of the allowable emission rate for each fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in 02.II.2.6. If an allowable emission rate does not exist, the fee shall be calculated using the (PTE). [12-16-94...12-1-95; 5-12-97]

B. The allowable emission rate or the PTE which shall be used in the fee calculation is:

1. for sources which do not posses an operating or construction permit, or are not protected by the provisions pursuant to Part 42, Section I.2.2.A.2 the PTE which exists on December 31, 1993; or

2. for a new stationary source or a permitted existing source, the allowable emission rate as specified in the most recent and applicable Authority-to-Construct or operating permit issued pursuant to Part 41, 60, 61 and/or Part 42 respectively.

[12-16-94, 5-12-97]

C. Allowable emission rates or PTE shall be calculated to the tenth of a ton for each emission unit and then totaled to determine the tons per year for the facility. Total facility TPY quantities shall be determined by rounding up amounts equal to or greater than five tenths of a ton and rounding down amounts lower than

five tenths of a ton. [12-16-94, 5-12-97]

D. Emissions from those operations determined to be insignificant activities by the Department pursuant to 20 NMAC 11.42 shall not be included in the annual fee calculation for all sources subject to this section, including 20 NMAC 11. Parts 41, 60, and 61 sources. [12-16-94, 5-12-97]

E. Fugitive emissions which have an allowable emission rate shall be included in the fee calculation. [12-16-94]

F. An annual emissions inventory may be submitted for reviews by the Department for the purpose of annual fee adjustments. This shall be restricted to sources with established permit allowable emission rates or sources which have submitted a timely permit application pursuant to Part 42 Section I.2.2.A.2. The emissions inventories shall be submitted to the Department by no later than June 1, 1997 and by April 1 each year thereafter for review consideration for every year an adjustment is sought. Within thirty (30) days of receipt the Department will bill the source for the review pursuant to Table One of this Part. Any adjustments to the source's permitted or otherwise established emission fees shall be incorporated and adjusted and billed in accordance with the billing schedule provisions of this Part. [12-16-94; R 5-12-97; 5-12-97, 5-30-97]

G. Any quantity of a pollutant which is assessed a fee because it is a hazardous air pollutant shall not be assessed additional fees as a criteria pollutant. [12-16-94, 5-12-97]

2.5 SOURCE SHUTDOWN:

A. The annual fee shall not be reduced due to lack of operation of any emissions unit, except when:

1. the discontinued operation is accounted for in an allowable emission rate contained within an Authority-to-Construct or Operating Permit issued by the Department;

2. an Authority-to-Construct or Operating Permit issued by the Department has been discontinued or terminated and the source ceased operation; and

3. with respect to equipment for which the potential to emit is used as the basis for fee calculation, the equipment has been removed from the stationary source and the owner or operator provided written notification to the Department prior to December 31 of the year it was removed.

[12-16-94]

2.6 ANNUAL FEE: [12-16-94, 5-12-97]

A. The fee for each fee pollutant shall be $31.00 per ton on an annual basis, except as provided for in Section 02.II.2.6.B, 2.7, 2.8, or 2.9of Part 02.II. [12-16-94...12-1-95; 5-12-97]

B. The fee for each hazardous air pollutant, for which the source is major as defined in section 112 of the federal Act, shall be $250.00 per ton on an annual basis. Hazardous air pollutants, for which a source is major, which are also VOC or particulates shall be subject only to fees as a hazardous air pollutant. [12-16-94...12-1-95; 5-12-97]

2.7 ANNUAL FEE FOR SOURCES SUBJECT TO GENERAL PERMITS AND SOURCE REGISTRATIONS:

A. The owner and/or operator of a source required to obtain a general operating permit pursuant to 20 NMAC 11.42.II.1.4 shall pay the fee established in the applicable Part, unless a different fee is required by Section II.2.8 or 2.9 of Part 02. [5-12-97]

B. The owner and/or operator of a source required to obtain a source registration pursuant to 20 NMAC 11.40 shall pay an annual renewal registration fee of $100.00. [5-12-97]

2.8 ANNUAL FEE FOR SOURCES SUBJECT TO MACT REQUIREMENTS:

A. The owner and/or operator of a source subject to a maximum achievable control technology (MACT) standard for hazardous air pollutants promulgated by the federal EPA at 40 CFR Part 63 shall pay the following fees:

1. if the source is not considered a major source pursuant to section 112 of the federal Act or the applicable MACT standard, an annual fee of $100.

[5-12-97]

2.9 ANNUAL FEE FOR RETAIL GASOLINE DISTRIBUTION STATIONS:

A. The owner and/or operator of a retail gasoline distribution station shall pay the following fees:

1. if the actual emissions of volatile organic compounds (VOC) from the facility equal or exceed 50 tons per year, calculated as a rolling average based on throughput and considering vapor recovery equipment, an annual fee of $500; or

2. if the actual emissions of volatile organic compounds (VOC) from the facility are less than 50 tons per year and more than 1 ton, calculated as a rolling average based on throughput and considering vapor recovery equipment, an annual fee of $250.

[5-12-97]

2.10 CALCULATING EMISSION FEE PER ASBESTOS UNIT (AU):

A. The emission fee per AU shall be paid by those sources which meet the applicability pursuant to 40 CFR Part 61, Section 61.145(a)(1)(I)(ii).

1. An AU is derived by dividing the asbestos removed at or above the levels specified pursuant 40 CFR Part 61, Section 61.145.(a)(1)(I)(ii) by the corresponding factor and unit of measure in square feet, linear feet, or cubic feet.

2. The total fee paid to the Department for each asbestos demolition and renovation project shall be the product of the total number of AUs removed multiplied by $21.00.

3. The Department shall, within ten days of receiving the notification pursuant to 40 CFR, Part 61, Section 61.145, bill the source for the amount due.

$$AU = \frac{Asbestos\ Removed}{factor}$$

$$Fee\ due = Total\ AUs x \$21.00$$

Example:
Factors and units of measure:

$$160\ SF\ (square\ feet)$$
$$260\ LF\ (linear\ feet)$$
$$35\ CF\ (cubic\ feet)$$

Sample Problem:

A contractor proposes to remove 320 SF, 260 LF, and 70 CF of asbestos.

$$\frac{320\ SF}{160\ SF} + \frac{260LF}{260\ LF} + \frac{70\ CF}{35\ CF} = Total\ AUs$$
$$2 + 1 + 2 = 5\ AUs$$
$$5\ AUsx\$21.00 = Fee\ Due$$
$$= \$105.00$$

Calculations:
[5-12-97]

2.11 BILLING AND PAYMENT SCHEDULE: [12-16-94; Rn, 20 NMAC 11.02.II.2.7, 5-12-97; 512-97]

1. By July 1, 1997, and by each May 1 thereafter, the Department shall send a written bill or invoice to each owner or operator which the Department determines is subject to Part 02. The bill or invoice shall state:

   1. the required annual fee due for the immediately following 1 year period from July 1 to June 30; and

   2. the authority for, and method of calculating the required annual fee.

[12-16-94; Rn, 20 NMAC 11.02.II.2.7.A, 5-12-97; 5-12-97]

B. The required annual fee shall be paid by July 1, 1997 and by each July 1 thereafter. [12-16-94; Rn, 20 NMAC 11.02.II.2.7.A.2, 5-12-97; 5-12-97]

C. For stationary sources which commence operation after June 30, but prior to July 1 of any year:

   1. the annual fee shall be prorated based upon the number of days from the commencement of operations to the following June 30; and

   2. the required fee shall be paid by the date operations commence.

[12-16-94; Rn, 20 NMAC 11.02.II.2.7.B, 5-12-97; 5-12-97]

2.12 **PAYMENT:**

A. After an owner or operator receives a bill or invoice from the City, the owner or operator shall pay the fee within thirty (30) days by certified check or money order made payable to the Albuquerque Environment Health Department and delivered to the City Treasury.

B. Upon receipt of the check or money order, it shall be deposited in the Air Quality permit fund.

C. Any person who receives an invoice from the Department for fees under this Part may request an informal review of the basis for the invoice, and may pay the invoice under protest. The request for informal review shall specify the areas of dispute and shall be made in writing to the Director within 30 days of receipt of the invoice.

The Director shall conduct an informal review of the invoice within thirty (30) days of receipt of the request. At the discretion of the Director, the Director may meet and confer with the requesting party during or before the informal review. The Director shall review whether the invoice is correct based on information available to the Department under this Part, and the Director may revise the invoice based on the informal review.

Disposition of the informal review shall be mailed to the requester within ten working days after the informal review. The Director's decision after the informal review shall become final unless within thirty (30) days after receipt of the decision the requesting person requests in writing a hearing before the Board.

[12-16-94; Rn, 20 NMAC 11.02.II.2.8, 20 NMAC 11.02.II.2.8.A, 20 NMAC 11.02.II.2.8.B, 5-12-97; 5-12-97]

2.13 NONPAYMENT: Failure to pay the entire fee by the due date specified in this Part is a violation of this Part and may subject the owner or operator to: [12-16-94...12-1-95; Rn, 20 NMAC 11.02.II.2.9, 5-12-97]

A. the civil penalties provisions of the City of Albuquerque and Bernalillo County Joint Air Quality Control Board Ordinances; and [12-16-94; Rn, 20 NMAC 11.02.II.2.9.A, 5-12-97]

B. the enforcement provisions of the City of Albuquerque and Bernalillo County Joint Air Quality Control Board Ordinances. [12-16-94; Rn, 20 NMAC 11.02.II.2.9.B, 5-12-97]

TABLE ONE
Application Fee Schedule

BASE APPLICATION FEES FOR NEW SOURCES AND MODIFICATIONS	FEES
1) Part 41 - Pre-controlled emission greater than 10 lbs./hr.; or pre-controlled emissions greater than 25 tons/yr (TPY), and less than 100 TPY.	$500.00
2) Part 41 - Pre-controlled emissions greater than 100 TPY.	$1,000.00
3) Part 60 or Part 61 - Any application for a Nonattainment Area Permit or Prevention of Significant Deterioration (PSD) Permit.	$1,500.00

ADDITIONAL REVIEW FEES	FEES
4) Any application requiring an analysis review of hazardous air pollutant emissions.	$500.00
5) Any application requiring federal source category review of NSPS, NESHAPS (to exclude asbestos), or Part 62.	$500.00
6) Form 1 review for Authority-to-Construct pre-approval or emission offset credits.	$250.00
7) Annual emissions inventory review for major source emission fee adjustments.	$1000.00
8) Annual emissions inventory review for non-major source emission fee adjustments.	$500.00
9) Fees per Asbestos Unit (AU)	$21.00

[8-19-83...12-1-95; 5-12-97, 7-15-97]

TITLE 20 ENVIRONMENTAL PROTECTION

CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

PART 2 PERMIT FEES

20.11.2.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

20.11.2.2 SCOPE:

A. Applicability:

(1) Any person ~~requiring~~ required to obtain a permit pursuant to 20.11.42 NMAC, Operating Permits;

(2) Any person ~~requiring~~ required to obtain a permit pursuant to 20.11.41 NMAC, Authority-to-Construct;

(3) Any person with a valid registration or permit issued pursuant to 20.11.40 NMAC, Source Registration, 20.11.41 NMAC, Authority-to-Construct, or 20.11.42 NMAC, Operating Permits;

(4) Any person requesting a Surface Disturbance Permit pursuant to 20.11.20 NMAC, Airborne Particulate Matter;

(5) Any person ~~requiring~~ required to provide notification regarding removing regulated asbestos containing material pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources; and

(6) Any person requesting professional or administrative services.

B. Exempt: This Part does not apply to sources within Bernalillo County that are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control Board lacks jurisdiction.

C. Variance: Any person may request a timely variance to this Part in accordance with Variance Procedures, 20.11.7 NMAC, if allowed by federal, state or local laws and regulations.

20.11.2.3 STATUTORY AUTHORITY: This Part is adopted pursuant to the authority provided in the New Mexico Air Quality Act, NMSA 1978 § 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 sections 3 and 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 § 9-5-1-3 and § 9-5-1-4.

20.11.2.4 DURATION: Permanent.

20.11.2.5 EFFECTIVE DATE: ***INSERT DATE***, unless a later date is cited at the end of a section or paragraph.

20.11.2.6 OBJECTIVE:

A. To implement the requirements of 74-2-7 NMSA by establishing:

(1) Reasonable fees to cover the cost of reviewing and acting on any permit application received by the Department;

(2) Reasonable fees to cover the cost of implementing and enforcing the terms and conditions of any permit issued by the Department; and,

(3) A schedule of operating permit fees consistent with section 502(b)(3) of Clean Air Act and the Joint Air Quality Control Board Ordinances;

B. To implement the requirements of section 507 of federal Clean Air Act by establishing adequate funding for a small business stationary source technical and environmental compliance assistance program; and

C. To establish reasonable fees to cover the administrative expenses incurred by the Department in implementing and enforcing the provisions of the New Mexico Air Quality Control Act, the Joint Air Quality Control Board Ordinances, and the Albuquerque/Bernalillo County Air Quality Control Board Regulations.

20.11.2.7 DEFINITIONS: Throughout this Part, the terms defined shall have the following meanings. For the purpose of this Part, ~~I~~if there is any apparent conflict between the meaning of a definition in this Part and a definition in another Part, the definition in this Part shall prevail and apply.

A. "Allowable Emission Rate" means the most stringent emission limit that has been established by a permit issued by the Department or the source's potential-to-emit.

B. "Emissions Unit" means any part or activity of a stationary or portable source that emits or has the potential to emit any fee pollutant.

C. "Fee Pollutant" means:

(1) Sulfur dioxide (SOx);

(2) Nitrogen dioxide based on total oxides of nitrogen (NOx);

(3) Carbon monoxide (CO);

(4) Particulate matter with an aerodynamic diameter less than or equal to 30 micrometers (TSP);

(5) Any volatile organic compound as defined in 40 CFR 51.100(s), as amended;

(6) Any hazardous air pollutant listed pursuant to section 112(b) of the Federal Clean Air Act; and,

(7) Any regulated substance listed pursuant to section 112(r) of the federal Clean Air Act.

(8) Any other pollutant determined by the Board after public hearing.

D. "Fugitive Emissions" means those emissions that cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

E. "Major Source" shall have the meaning defined in 40 CFR 71.2.

F. "Potential-To-Emit" or "PTE" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of source to emit an air pollutant, including air pollution control equipment, restrictions on hours of operation or on type or amount of material combusted, stored or processed, shall be treated as part of its design if integral to the process or the limitation is federally enforceable through permit or regulation. Any limitation on emissions due to process

design must be unchanging and unavoidable physical constraints. The potential-to-emit for nitrogen oxide shall be based on total oxides of nitrogen.

G. "Qualified Small Business" means:

(1) a business that has 100 or fewer employees;

(2) is a small business concern as defined by the federal Small Business Act;

(3) does not emit more than 50 tons per year of any regulated air pollutant, or 75 tons per year of all regulated air pollutants; and

(4) is not a major source of hazardous air pollutants.

H. "Regulated Air Pollutant" means the following:

(1) Nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

(2) Any pollutant for which a national, state or local ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard ~~promulgated under~~ established in Section 111 of the Federal Act;

(4) Any Class I or II substance subject to any standard ~~promulgated under or~~ established in ~~by~~ Title VI of the federal Act; or

(5) Any pollutant subject to a standard~~s~~ or requirement~~s~~ ~~promulgated under~~ established in Section 112 of the federal Act, including:

(a) Any pollutant subject to requirements under Section 112(j) of the federal Act; and

(b) Any pollutant for which the requirements of section 112(g)(2) of the federal Act have been met, but only with respect to the individual source subject to the requirements.

I. "State Air Toxic Review" means a case-by-case permit application review of the potential emissions of toxic air pollutants listed in 20.2.72 NMAC, Construction Permits, Subsection IV, Permits for Toxic Air Pollutant Emissions.

J. "Stationary Source with De Minimis Emissions" means a source, unless otherwise regulated, with a potential-to-emit:

(1) less than 5 tons per year of any regulated air pollutant, excluding hazardous air pollutants;

(2) less than 2 tons per year of any hazardous air pollutant;

(3) 5 tons or less of any combination of hazardous air pollutants per year; or

(4) 20 percent of any lesser threshold per year for a single hazardous air pollutant established by the Environmental Protection Agency by rule.

20.11.2.8 SAVINGS CLAUSE: Any amendment to 20.11.2 NMAC that is filed with the State Records Center shall not affect actions pending for violation of a federal or state statute or regulation, a City or County ordinance, or any Board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed.

20.11.2.9 SEVERABILITY: If any section, paragraph, sentence, clause or word of this Part or federal, state or local standard incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of the remaining provisions of this Part.

20.11.2.10 DOCUMENTS: Documents cited and incorporated in this Part may be viewed at the Albuquerque Environmental Health Department, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102.

20.11.2.11 GENERAL PROVISIONS:

A. At the time of application, any person, including a federal, state or local governmental agency, who files an application pursuant to 20.11.41 NMAC, Authority-to-Construct, for an initial air quality review and authority to proceed with construction or requesting to modify an existing air quality permit shall pay the ~~applicable~~ permit fee ~~pursuant to~~ required by this Part.

B. Any new or existing stationary source that meet~~ings~~ the applicability requirements of this Part shall pay an annual emission fee based on the source's potential-to-emit. Sources wishing to reduce their potential-to-emit may do so at any time through the provisions of 20.11.41 NMAC, Authority-to-Construct.

C. At the time of submittal, any person filing an application for a Surface Disturbance Permit with the Department pursuant to 20.11.20 NMAC, Airborne Particulate Matter, shall pay the applicable filing and inspection fee ~~pursuant to~~ required by this Part.

D. At the time of notification, any person notifying the Department pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Source, of the removal of regulated asbestos containing material shall pay the applicable fee ~~pursuant to~~ required by this Part.

E. No application will be reviewed or permit issued ~~review may proceed, application or permit be considered complete, nor shall a source be issued an Operating Permit~~ unless the owner/operator provides documentary proof satisfactory to the Department that either all applicable fees have been paid ~~in accordance with~~ as required by this Part, or the owner/operator has been granted a variance in accordance with 20.11.7 NMAC, Variance Procedures.

F. All fees required to be paid at the time of application shall be paid by check or money order payable to the "City of Albuquerque, Permits Program (Fund 242)" and either be delivered in person to the Environmental Health Department, Finance Section, 3rd floor, Room 3023, Albuquerque/Bernalillo County Government Center (City Hall), One Civic Plaza NW, Albuquerque, NM, or mailed to Attn: Finance Section, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. The Finance Section then shall send a receipt to the applicant. The applicant shall attach a copy of the receipt issued by the Finance Section to the application as proof of payment. The Air Quality Division cannot accept direct payments.

G. No person required to pay an annual emission fee pursuant to this Part shall be in compliance with their permit unless all applicable fees are paid ~~in accordance with~~ as required by this Part.

H. No fee required by this Part shall be refunded without the written approval of the Director. When determining the amount of the refund, the Director may deduct a reasonable professional service fee to cover the costs of staff time involved in processing a permit or request.

20.11.2.12 AUTHORITY-TO-CONSTRUCT PERMIT FEES; FEE CALCULATIONS AND PROCEDURES

A. General Permits for Minor and Area Sources: Sources applying for a General Permit pursuant to 20.11.41 NMAC, Authority-to-Construct, shall pay the applicable fee found in section 18 of this Part.

B. Case-by-Case Air Quality Review Prior to the Construction of a Stationary Source:

(1) Case-by-case air quality application review ~~application~~ fees shall be calculated based on the proposed source's potential-to-emit fee pollutants ~~for each regulated pollutant for each proposed emission unit~~. Federally approved State Implementation Plan limitations may be used to determine a source's potential-to-emit.

(2) Fugitive emissions shall be included in the source's potential-to-emit.

(3) Emissions from ~~those~~ operations determined by the Department to be insignificant activities shall not be included in the calculation.

(4) For each fee pollutant, calculate ~~T~~the potential-to-emit ~~from~~ for each proposed emission unit to the nearest tenth of a ton ~~shall be totaled and expressed in tons per calendar year as a whole number~~. Total the fee pollutants from each emission unit and express the value in tons per calendar year as a whole number. When rounding, if the number after the decimal point is less than 5, the whole number remains unchanged. If the number after the decimal point is 5 or greater, ~~round~~ the whole number shall be rounded up to next whole number.

(5) The application review fee shall be determined by comparing the source's calculated potential-to-emit with the fee schedule found in section 18 of this Part.

(6) In addition to the application review fees, a source proposing to construct any emission unit or units that must comply with the provisions of 20.11.60 NMAC, Permitting in Nonattainment Areas, 20.11.61 NMAC, Prevention of Significant Deterioration, 20.11.62 NMAC, Acid Rain, 20.11.63 NMAC, New Source Performance Standards for Stationary Sources, or 20.11.64 NMAC, Emission Standards for Hazardous Air

receipt of the letter to contact the Department to request a correction to the records or ~~to request a modification to~~ submit an application to modify an existing permit ~~to reduce~~ reducing the source's allowable emission rate.

B. ~~By~~ Starting August 1 of each year, each owner/operator shall be sent an official invoice by the City of Albuquerque stating the annual emission fee due, which the owner/operator shall ~~be~~ pay ~~in accordance~~ consistent with the directions stated in the invoice.

C. As required by 74-2-16 NMSA, all monies received pursuant to this section shall be deposited in the ~~Albuquerque/Bernalillo County Air Quality Permit Fund~~ City of Albuquerque, Permits Program (Fund 242).

D. Calculating Annual Emission Fees:

(1) For each source, the potential-to-emit for each fee pollutant shall be totaled and expressed in tons per calendar year as a whole number. When rounding, if the number after the decimal point is less than 5, the whole number remains unchanged. If the number after the decimal point is 5 or greater, ~~round~~ the whole number shall be rounded up to next whole number.

(2) The ~~source's potential-to-emit~~ sum of each fee pollutant shall be multiplied by the appropriate annual emission fee ~~found~~ listed in section 18 of this Part then totaled, to determine the annual emission fee due.

(3) The source shall pay either the minimum annual emission fee or the calculated emission fee whichever is greater.

E. Sources wishing to reduce their potential-to-emit may apply for a permit or ~~modification~~ modify their existing permit ~~through~~ consistent with the provisions of 20.11.41 NMAC, Authority-to-Construct.

20.11.2.14 FILING AND INSPECTION FEES FOR THE REMOVAL OF REGULATED ASBESTOS CONTAINING MATERIAL; FEE CALCULATIONS AND PROCEDURES

A. At the time of notification, a filing and inspection fee shall be paid by the owner/operator removing regulated asbestos containing material pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, and the federal regulations incorporated therein.

B. The filing and inspection fee shall be calculated by multiplying the Asbestos Unit (AU) by the applicable fee in section 18 of this Part. Equation 1 shall be used to calculate the total Asbestos Units (AU) and amount due:

Total Due = [(SF / 160) + (LF / 260) + (CF / 35)] x AU

(Equation 1)

Where:

SF = Square feet of asbestos containing material to be removed;

LF = Linear feet of asbestos containing material to be removed;

CF = Cubic feet of asbestos containing material to be removed;

AU = Asbestos Unit.

Example: A contractor proposes to remove 320 square feet (SF), 260 linear feet (LF) and 70 cubic feet (CF) of regulated asbestos containing material.

From the example above:

SF=320

LF=260

CF=70

AU=$21.00 (From section 18 of this Part)

From Equation 1:

[(SF / 160) + (LF / 260) + (CF / 35)] x AU =

[(320 / 160) + (260 / 260) + (70 / 35)] x $21.00=

(2 + 1 + 2) x $21.00=

5 x $21.00 = $105.00

Result: The contractor must pay $105.00 at the time of notification.

C. All fees due pursuant to this section shall be paid in accordance with the procedures found in section 11, paragraph D and E of this Part.

20.11.2.15 FILING AND INSPECTION FEES FOR SURFACE DISTURBANCE PERMITS; FEE CALCULTIONS AND PROCEDURES

A. A filing and inspection fee shall be paid by each person requesting a Surface Disturbance Permit pursuant to 20.11.20 NMAC, Airborne Particulate Matter.

B. The filing and inspection fee shall be calculated by multiplying the acreage to be disturbed, expressed as a whole number, by the applicable fee found in section 18 of this Part. When rounding, if the number after the decimal point is less than 5, the whole number remains unchanged. If the number after the decimal point is 5 or greater, ~~round~~ the whole number shall be rounded up to the next whole number.

C. All fees due pursuant to this section shall be paid in accordance with the procedures found in section 11, paragraph C and E of this Part.

20.11.2.16 FEE ERRORS, CORRECTIONS AND REFUNDS

A. Within 30 days of receiving any invoice from the City ~~or bill~~, any person who does not agree with the amount due may request a review by the Director to correct any errors or challenge the basis upon which the fee was computed. If the Director has not received a written request or challenge within 30 days after the ~~payee~~ payor receives ~~a bill or~~ the invoice, the ~~bill or~~ invoice shall be final.

B. ~~For~~ If fees are due at the time of application, the ~~payee~~ payor must pay the required fee, then request a review within 30 days of payment.

C. ~~Within 30 days after receipt of any bill or invoice from the Department, the payee may submit a~~ All written requests for review shall be sent to: Division Manager, Air Quality Division, Environmental Health Department, Air Quality Division, P.O. Box 1293, Albuquerque, NM 87103

D. The request for review must include:

(1) The name of the owner/operator, address and telephone number;

(2) The dollar amount of the alleged error; and

(3) A description of the alleged error and any other information the ~~payee~~ payor believes may support the claim.

E. Within 30 days of receiving the request for review, the Director shall audit the account and, either:

(1) Amend the invoice or bill and refund any money due the ~~payee~~ payor; or

(2) State the invoice or bill is correct.

F. The Director may confer with the ~~payee~~ payor to obtain additional information during the audit period.

G. Within 10 working days of the Director's decision concerning the review, the decision shall be sent by certified mail to address provided by the ~~payee~~ payor.

H. If a refund is due, the Department shall refund any money due consistent with the policies and procedures of the City of Albuquerque.

I. The Director's decision may be appealed to the Board.

20.11.2.17 FAILURE TO PAY

A. It shall be a violation of this Part to fail to pay ~~a~~ any fee ~~by the date specified in a bill or invoice~~ required by this Part, Director's decision, or ~~as required by~~ Board regulation.

B. Stating an ~~bill or~~ invoice is in error shall not be a defense to this section.

C. In addition to ~~the collection~~ paying ~~of~~ past due fees ~~and any penalties allowed by law, the Department may collect all reasonable attorney fees and collection costs,~~ the payor shall pay a penalty of 50 percent of the fee

amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of federal taxes).

[*This section was expanded to specifically state the penalty for failure to pay consistent with the provisions of federal Clean Air Act, section 502(b)(3)(C)(ii).*]

20.11.2.18 FEE SCHEDULE

A. Annual Emission Fees: Sources issued a registration or permit pursuant to 20.11.40 NMAC, Source Registration, 20.11.41 NMAC, Authority-To-Construct, or 20.11.42 NMAC, Operating Permits, shall pay a minimum annual emission fee of $150.00 or the annual emission fee calculated consistent with section 13 of this Part, which ever is greater. The following fee pollutant rates ~~apply~~ shall be used in calculating the annual emission fee, unless otherwise listed:

(1) Non-Hazardous Fee Pollutants: $31.00 per ton;

(2) Hazardous Fee Pollutants (Non-Major Sources): $31.00 per ton;

(3) Hazardous Fee Pollutants (Major Sources): $250.00 per ton.

(4) Annual Emission Fees for Specific Source Categories:

(a) Auto Body Repair and Painting:

(i) One Spray Booth: No Charge

(ii) Two or more spray booths: $150.00

(b) Chromium Electroplating: $150.00

(c) Degreasers Using Organic Solvents:

(i) Non-halogenated solvents- using less than 2,200 gallons of any one solvent-containing material, and 5,400 gallons of any combination of solvent-containing materials: $150.00

(ii) Halogenated solvents- using less than 1,200 gallons on any one solvent-containing material, and 2,900 gallons of any combination of solvent-containing materials: $150.00

(d) Dry Cleaners (Non-Major): $150.00

(e) Emergency Generators: $150.00

(f) Gasoline Service and Fleet Stations: $250 or $31.00 per ton, which ever is greater;

(g) Natural gas or distillate fueled fired boilers less than 10 million BTU used exclusively for residential, commercial or institutional heating and hot water: No Charge

(h) Printing, Publishing and Packaging Operations:

(i) Sheetfed (nonheatset) offset lithography using less than 7,125 gallons of clean solvent and fountain solution additives per year: $150.00

(ii) Nonheatset web offset lithography using less than 7,125 gallons of solvent and foutain solution additive per year: $150.00

(iii) Heatset web offset lithography using less than 50,000 pounds of ink, cleaning solvent, and fountain solution additives: $150

(iv) Screen printing using less than 7,125 gallons of total solvent used including solvent-based inks, cleaning solvents, adhesives and coatings: $150.00

(v) Flexography (water-based or UV-cured inks, coating and adhesives) using less than 200,000 pounds total of inks, coatings and adhesives: $150.00

(i) Soil and/or water remediation operations: $150.00

(j) Stationary sources with de minimis emissions: No Charge

B. General Air Quality Review Fees for New Sources (Minor Source General Permits):

(1) Auto body repair and painting: $500.00

(2) Dry cleaners: $500.00

(3) Emergency generators (natural gas or distillate fuel): $500.00

(4) Generic coating and abrasive operations: $500.00

(5) Other fueling facilities receiving fuel by truck or rail (Non-NSPS): $1000.00

(6) Non-NSPS Boilers (Greater than 10 Million BTU): $500.00

(7) Printing and packaging operations: $500.00

(8) Retail and fleet gasoline service stations: $500.00

(9) Soil/water remediation systems: $1000.00

C. Case-by-Case Air Quality Review Fees for New Sources (Based on a Source's Potential-to-Emit):

(1) Proposed sources with a potential-to-emit equal to or greater than 5 tons per year and less than 25 tons per year: $1,000.00

(2) Proposed sources with a potential-to-emit equal to or greater than 25 tons per year and less than 50 tons per year: $2,000.00

(3) Proposed sources with a potential-to-emit equal to or greater than 50 tons per year and less than 75 tons per year: $3,000.00

(4) Proposed sources with a potential-to-emit equal to or greater than 75 tons per year and less than 100 tons per year: $4,000.00

(5) Proposed sources with a potential-to-emit equal to or greater than 100 tons per year: $5,000.00

D. Federal Program and State Toxic Air Pollutant Review Fees; In Addition to the Air Quality Review Fees:

(1) 40 CFR 60 Standards: $1,000.00

(2) 40 CFR 61 Standards: $1,000.00

(3) 40 CFR 63 Standards:

(a) Promulgated Standards: $2,000.00

(b) Case-By-Case MACT Review: $10,000.00

(4) PSD/Non-Attainment Review: $5,000.00

(5) Acid Rain Review: $5,000.00

(6) State Toxic Air Pollutant Review: $500.00

E. Permit Modifications:

(1) P2 Modifications: No Charge

(2) Minor/Flexible Permit Modifications: $1,000.00

(3) Major Modifications: $5,000.00

F. Portable Source Relocation Fee: $250.00

G. Administrative Modifications to Existing Permit: $100.00

H. Surface Disturbance Permit Filing and Inspection Fee: $100.00 per acre

I. Asbestos Unit (AU): $21.00

J. Administrative Fees:

(1) Professional Services Fee: $75.00 per staff hour

(2) Photocopying:

(a) First 10 Pages: $0.50 per page

(b) Additional Pages: $1.00 per page

(3) Regulation Compilation: $20.00

(4) Public Records Research Fee: $50.00 per staff hour

Albuquerque/Bernalillo County
Air Quality Control Board

Staff's Proposal to Repeal and Replace 20.11.2 NMAC, Permit Fees

Testimony of Mr. Michael D. Smith, Environmental Health Department, Air Quality Division

Good evening Mr. Hearing Officer, members of the Board, my name is Mike Smith with Albuquerque Environmental Health Department, Air Quality Division. I am an Environmental Health Scientist responsible for research and revising air quality rules and regulations. I have been with the Department for more than 10 years and have worked as an air quality inspector, permit writer and supervisor. I have a Bachelor of Geological Science Degree from New Mexico State University and have worked in resource law enforcement for twenty years at the federal, state and local levels.

Before I start my testimony, I would like to explain, for the benefit of the newer Board members, some the requirements of the New Mexico Air Quality Control Act important in tonight's hearing.

The basic duty of the local air quality board is to "prevent and abate air pollution." To that end, the Board is required to "adopt, promulgate, publish and repeal regulations consistent with the Air Quality Control Act." When considering new regulations or amendments the Board must take in account the "character and degree of injury to or interference with health, welfare, visibility and property." Take in account "the public interest, including the social and economic value of the sources and subjects of air contaminants;" and finally, take in account the "technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved." Also, when considering a new regulation, as staff, we must provide you with substantial evidence to support a new regulation or amendment. To satisfy that requirement, and to meet the requirements of the New Mexico Air Quality Control Act, we are having this hearing tonight to hear testimony from staff and public concerning this regulation to provide you with the information you need to make an informed decision.

In tonight's hearing I will make every effort to avoid using acronyms without first defining the term. If I should use a term or phrase that you do not understand, please interrupt me and I will explain the word or phrase.

As required by the New Mexico Air Quality Control Act, the Division must provide public notice of hearing at least 30 days prior to the hearing. To meet this requirement the Division published notice of tonight's hearing in New Mexico State Register on December 29, 2000, Staff Exhibit No. 1, and in the Albuquerque Journal on January 7, 2001, Staff Exhibit No. 2. In addition, the Notice of Hearing was posted in City Hall as required by City of Albuquerque Ordinance, section 2-6-1-4(C)(2)(a). Also, as required

by the New Mexico Air Quality Control Act, the Division mailed the Notice of Hearing to all persons who have made written request to receive advanced notice of hearings and to every company with a permit or registration issued by the Department, and to contractors issued Surface Disturbance Permits pursuant to 20.11.20 NMAC, Airborne Particulate Matter. This mailing list is Staff Exhibit No 3. All letters sent were postdated on January 10th or 11th, 2001. Staff believes we have met and exceeded the public notice requirements for this hearing.

As a result of this notice, the Department has received seven written comments or requests to testify. These are marked as Staff Exhibits Nos. 4 through 9.

Staff Exhibit No. 10 is a copy of our current regulation.

Exhibit No. 11 is copy of the proposed regulation with minor editorial changes made on January 18, 2001 with the proposed floor amendments we wish to introduce tonight. I will be referring to this exhibit during my testimony.

Staff Exhibit No.12 is copy of my testimony for the record.

Finally, Staff Exhibits Nos. 14 and 15 are fee comparison tables I will refer to later in my testimony.

Mr. Hearing Officer, at this time I would like to introduce these exhibits into the record.

My testimony, tonight, is to explain the changes we propose to 20.11.2 NMAC, Permit Fees, the purpose of the fee regulation, how the permit fee regulation will be implemented and explain the rational for the proposed fee schedule. Following my testimony, Mr. Angel Martinez, Division Manager, will discuss issues specific to the Division's budget.

Why do we have fee regulation in the first place? As required by New Mexico Air Quality Control Act, 74-2-7 NMSA, and the Joint Air Quality Control Board ordinances, the Board is required to establish a schedule of construction fees sufficient to cover the reasonable cost of reviewing and acting upon any application for a permit, including the costs of implementing and enforcing the terms of any permit, excluding the costs of any court costs or other costs associated with an enforcement action. In addition, the Board is required to establish a schedule of emission fees consistent with the provisions of section 502(b)(3) of the federal Clean Air Act that requires any air contaminant source that emits 100 tons or more per year of any regulated air pollutant, or 10 tons per year of any single hazardous air pollutant, or 25 tons per year of combined hazardous air pollutants, to pay annual emission fees sufficient to cover the direct and indirect costs of a federally approved major source permitting program.

With this regulation the Division is also establishing new elements for a minor source operating permit program requiring all sources with a permit or registration with the Division to pay annual emission fees to cover the direct and indirect costs of ongoing inspection and compliance activities.

This regulation also establishes fees to cover the direct and indirect costs of administering and enforcing the asbestos and dust control programs required by Board regulation.

At this time, please refer to Staff Exhibit No. 11, the proposed fee regulation with floor amendments. Since this is a new regulation, and staff is proposing to repeal the current regulation, I am going to discuss the major elements of the proposed regulation and proposed floor amendments.

First, page 1, line 8, section 20.11.2.2 outlines the sources that will be affected by this regulation. The only major change to this section from the current regulation is the requirement that persons requesting a Surface Disturbance Permit, pursuant to 20.11.20 NMAC, Airborne Particulate Matter, shall be required to pay a filing and inspection fee to cover the direct and indirect costs of administering and enforcing the dust control program, which will be discussed later in my testimony.

Page 2, line 11, section 20.11.2.6, Objectives, outlines the objective of the regulation and states the statutory requirement for establishing permit fees.

Starting on page 3, line 1, section 20.11.2.7, Definitions, lists the definitions that will used in this Part. The Division is adding several new definitions that will be used to implement the fee program.

The first new definition is found on page 3, line 21, "potential-to-emit," which defines the method the Division uses to determine a source potential emissions. This definition has been crafted to be similar to the federal definition for regulatory consistency. This definition will benefit sources since it takes in account controls that are integral to the production process.

At this time, staff would like to present the following floor amendments to add several new definitions to this section.

The first new definitions is on page 4, line 3, "qualified small business," which shall mean a business that has 100 or fewer employees; is a small business concern as defined by the federal Small Business Act; does not emit more than 50 tons per year of any regulated air pollutant, or 75 tons per year of all regulated air pollutants; and is not a major source of hazardous air pollutants. This definition is consistent with the Small Business Stationary Source Technical and Environmental Compliance Assistance Program approved the Board on October 7, 1992. The staff is proposing that qualified small businesses may be eligible for reduced permit and emission fees required by this Part.

The second new definition we wish to propose is on page 4, line 22, "state air toxic review," which shall mean a case-by-case permit application review of the potential emissions of air toxics listed in state regulation 20.2.72 NMAC, subsection IV. This definition has been added so the Division can establish an appropriate review fee for toxic air pollutants. Depending on the source's potential-to-emit of toxic air pollutants, a permit review becomes more complicated and may require additional research and air dispersion modeling; increasing staff time and effort justifying the additional fee.

The last definition the Division wishes to add is "stationary source with de minimis emissions," which means a source with a potential-to-emit less than 5 tons per year of any regulated air pollutant, excluding hazardous air pollutants; less than 2 tons per year of any hazardous air pollutant; 5 tons or less of any combination of hazardous air pollutants per; or 20 percent of any lesser threshold per year for a single hazardous air pollutant established by the Environmental Protection Agency by rule. This definition establishes the emission limits the Division will use to determine the applicability of a source in paying permit or emission fees. This definition is not intended to exempt sources from this regulation, or any other Board regulation. Current and future regulations may require sources that meet the minimum limits established by this definition to obtain permits and pay emission fees, such as, dry cleaners and other hazardous pollutant sources that are specifically regulated.

Starting on page 5, line 21, section 20.11.2.11, are the general provisions for this regulation. A major change from the current regulation is the requirement to pay all fees that the time of application. Currently, staff invoices the applicants for any fees due after the application is processed. By collecting fees at the time of application, not only is the Division reducing the administrative burden on the staff, but streamlines the review process by having a complete application package submitted to the Division for review. All permit fees will be required to sent or delivered directly to the Environmental Health Department's Finance Section prior to the application being submitted to the Division. This process will ensure that all fees are deposited into the correct air quality accounts.

Subsection B requires all sources to pay an annual emission based on the source's potential-to-emit. Sources wishing to reduce their potential-to-emit may do so through the provisions of 20.11.41 NMAC, Authority-to-Construct.

Annual permit fees will also be sent directly to the Department's Finance Section.

This section also requires that any person submitting an application for a Surface Disturbance Permit, or notifying the Department of the removal of asbestos containing material pursuant to 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants For Stationary Sources, shall also be required to pay all fees due at the time of application.

To ensure compliance with this Part, subsection G, page 6, line 22, states that no source will be in compliance with its permit unless all applicable fees are paid as required by this Part. As part of an inspection or annual compliance statement, sources must demonstrate that all applicable permit fees have been paid.

Starting on page 7, line 5, section 20.11.2.12, Authority-to-Construct Permit Fees; Fee Calculations and Procedures, describes the methods and procedures used to determine the permit fee required to process an Authority-to-Construct permit application. The Division intends stay with an emissions-based fee schedule when determining permit fees, that is, the more you potentially pollute the higher the fee. When determining the application fee, the applicant must determine the potential-to-emit of all regulated fee pollutants and fugitive emissions. This procedure, along with increased application fees,

generally, will mean higher application fees to the applicant. The Division believes these increased fees are justified since the fee not only pays for the permit review process, but includes initial baseline inspections, performance testing review, EPA reporting and the source's annual emission fee until the next invoice cycle.

In addition to the emission-based fees, sources that must comply with federal performance standards or major source review programs shall be required to pay an additional fee depending on the federal program being reviewed. Federal programs include new source performance standards, hazardous air pollutant standards, and federal major source review programs such as, Prevention of Significant Deterioration, Non-attainment Area Permitting and Acid Rain.

Fees to modify an existing permit will also be emission-based in determining if the modification is a 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.

At this time, staff would like to offer the following floor amendments. Backing up to page 7, line 6, section 20.11.12, subsection 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 section 18 of this Part."

The Division intends to amend 20.11.41 NMAC, Authority-to-Construct, to allow general permits to be establish for specific source categories eliminating the need for case-by-case air quality review, expediting the permit issuing process.

At the end of section 20.11.2.12, page 8, line 19, 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. The small business would still be responsible for paying for any federal program and air toxic review fees. This provision is not applicable to sources applying for a general permit since the costs of the permit has already been reduced.

The Division estimates, under the proposed regulation and based on the average number of permit applications received, to collect about $111,000 per year in application fees. Under the current regulation we have invoiced $87,500 for the past year. The Division estimates it costs approximately $252,000 per year to minimally fund a new source review program. The remainder of the funding comes from annual emission fees, federal grant money and City general funds.

Starting on page 8, line 22, section 20.11.2.13, Annual Emission Fees, Fee Calculations and Procedures, describes the methods and procedures for invoicing and calculating annual emission fees. All invoicing will be done by the City of Albuquerque with annual

fees sent to the Department's Finance Section for deposit. As required by law, all fees will be deposited into City of Albuquerque, Permits Program Fund.

All annual emission fees will be determined based on the source's potential-to-emit taking in account any permits and SIP-approved regulatory limits. Sources with registrations issued pursuant to 20.11.40 NMAC, Source Registration, will be reviewed on a case-by-case basis, and if permitting is required, the Division will permit these sources at no charge. The Division will be proposing to repeal 20.11.40 NMAC, Source Registration, and establish a federally enforceable operating permit program for all applicable sources. Staff will also be proposing several floor amendments to section 18 creating annual emission fees for specific source categories that currently have Registrations in lieu of Authority-to-Construct Permits.

Annual emission fees will be used primarily to fund the compliance and inspection activities required by the state Air Quality Control Act, the Joint Air Quality Control Board Ordinances and Board regulations. In addition, the annual emission fees will also fund the Small Business Assistance Program. Under the proposed regulation, the Division estimates it will collect about $756,850 per year in annual emission fees. The Division estimates it takes approximately $819,000 to minimally fund the inspection, compliance and small business assistance activities within the Division. Funds from annual emission fees will also be used for staff training, regulatory development and federal emission inventory reporting and other activities required by section 502 of federal Clean Air Act. Remainder of the funding comes from federal grant money and City general funds.

One major change staff is proposing is to remove the provision in the current regulation to allow sources to pay emission fees based on actual emissions. This provision is found in section II.2.4.F that reads, "An annual emissions inventory may be submitted for reviews by the Department for the purpose of annual fee adjustments. This shall be restricted to sources with established permit allowable emission rates or sources which have submitted a timely permit application pursuant to Part 42, section I.2.2.A.2. The emissions inventories shall be submitted to the Department by no later than June 1, 1997, and by April 1 each year thereafter, for review consideration for every year an adjustment is sought. Within thirty (30) days of receipt the Department will bill the source for the review pursuant to Table One of this Part. Any adjustments to the source's permitted or otherwise established emission fee shall be incorporated and adjusted and billed in accordance with the billing schedule provisions of this Part." While this provision benefits sources with large allowable emissions, and on the surface appears to encourage emission reductions, these sources still have the right to pollute at there permitted levels at any time. The Division strongly supports emission reduction through permit and by removing the ability for sources to pay on their actual emissions will encourage sources to truly reduce their emission through federally enforceable permit conditions.

The Division received three written comments concerning the removal of the emission inventory provision from the Department of Energy, General Mills and PNM. Both the Department of Energy and General Mills believe that by removing the provision to pay on actual emissions will create a disincentive for voluntary pollution reductions. General

Mills, Staff Exhibit No. 6, stated in their letter, "that the proposed system of fees creates a disincentive to minimize air emissions because...the fee is based on potential worst-case activities, and effectively disallows pollution prevention activities from quickly recovering cost savings associated with emission fee reduction."

The Department of Energy will also testify the current provision encourages pollution prevention.

The Department disagrees that removing the provision will discourage pollution prevention, and is proposing in the fee structure a pollution prevention modification at no charge to encourage sources to reduce their emissions through federally enforceable pollution prevention techniques or processes. Pollution prevention means the reduction, or other practices that reduce or eliminate the creation of pollutants, through increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation. Source reduction includes any practice which reduces the amount of any hazardous substance or pollutant prior to recycling or treatment, including equipment or technology modifications, process modifications, reformulation or redesign of products, substitution of raw materials and improvement in housekeeping, maintenance, training, and inventory control. Pollution prevention techniques or practices do not include add-on air pollution controls used to limit air emissions or emission reductions based on decreased production needs. PNM, in its letter, Staff Exhibit No. 7, understands that emission fees can be reduced through permit modification but chooses not to modify based on its business needs which is consistent with the Division's proposal that sources pay on what they are allowed to emit by permit.

Page 9, line 21, section 20.11.2.14, Filing and Inspection Fees for the Removal of Regulated Asbestos Containing Material; Fee Calculations and Procedure, describes the methods and procedures used to calculate filing and inspection fees for the removal of regulated asbestos containing material. The section remains unchanged from the existing requirements, however, as required by the general provisions of this Part, all fees must be paid at the time of application. Currently the inspectors invoice the sources after the notification is received increasing the administrative burden on the staff. By requiring fees at the time of application, the inspector will be free of this administrative burden and spend more time in the field conducting inspections.

The Division estimates it takes approximately $84,000 annually to minimally fund this program, and expects to collect approximately $63,000 year in fees based on average number of notifications received. Remainder of the funding comes from federal grant money and City general funds.

Page 11, line 8, section 20.11.2.15, Filing and Inspection Fees for Surface Disturbance Permits; Fee Calculations and Procedures, describes the methods and procedures in calculating filing and inspection fees for Surface Disturbance Permits issued pursuant to 20.11.20 NMAC, Airborne Particulate Matter. Currently, the Division does not charge for these permits and is proposing to charge a per acre fee to cover the program costs of two inspectors. The dust control program is an import part of our Particulate Matter SIP and must be adequately funded. For 1999 and the first quarter of 2000, monitors in

Bernalillo County exceeded the annual National Ambient Air Quality Standard for Particulate Matter. It's vital we not continue this trend and the Division is aggressively addressing problem areas, such as dust control, in an effort to avoid non-attainment status. The fees for Surface Disturbance Permits not only funds the dust control program, but hopefully will encourage businesses to disturb only the acreage necessary for their project.

The Division received one comment letter from Sandia Properties Limited concerning the proposed fee and will address the comment later in my testimony.

Page 11, line 19, section 20.11.2.16, Fee Errors, Corrections and Refunds, describes the procedures to be taken to correct fee errors, make corrections or request refunds. As stated in the general provisions of this Part, the Director may deduct a reasonable professional service fee to cover the costs of staff time in processing a permit or request.

Page 12, line 19, section 20.11.2.17, Failure to Pay, establishes the violation for sources failing to pay any fee required by this Part, and the procedures to be used to calculate any penalty and interest due consistent with the provision section 502(b)(3)(C)(ii) of the federal Clean Air Act.

Starting on Page 13, line 5 continuing to end of the regulations is the proposed fee schedule. The fee schedule was 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 non-hazardous or hazardous air pollutants and will remain at $31.00 and $250.00 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 $100.00 to $150.00. Sources will be required to pay $150.00 or $31.00 per ton whichever is greater, unless otherwise stated. Upon further review of the regulation, staff recommends the following floor amendments. Starting 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:

"(a) Auto Body Repair and Painting:

(i) One Spray Booth: No Charge

(ii) Two or More Spray Booths: $150.00

(b) Chromium Electroplating: $150.00

(c) Degreasers Using Organic Solvents

(i) Non-halogenated solvents- using less than 2,200 gallons of any one solvent-containing material, and 5,400 gallons of any combination of solvent-containing materials: $150.00

(ii) Halogenated solvents- using less than1,200 gallons of any one solvent-containing material, and 2,900 gallons of any combination of solvent-containing materials: $150.00

(d) Dry Cleaners (Non-Major): $150.00

(e) Emergency Generators: $150.00

(f) Gasoline Service and Fleet Stations: $250.00 or $31.00 ton, which ever is greater

(g) Natural gas or distillate fueled fired boiler less than 10 million BTU used exclusively for residential, commercial or institutional heating and hot water: No Charge

h) Printing, Publishing and Packaging Operations:

(i) Sheetfed (nonheatset) Offset Lithography using less than 7,125 gallons of cleaning solvent and fountain solution additives: $150.00

(ii) Nonheatset Web Offset Lithography using less than 7,125 gallons of solvent and fountain solution additive: $150.00

(iii) Heatset Web Offset Lithography using less than 50,000 pounds of ink, cleaning solvent, and fountain solution additives: $150.00

(iv) Screen Printing using less than 7,125 gallons of total solvent used including solvent based inks, cleaning solvent, adhesives and coatings: $150.00

(v) Flexography (Water-based or UV-cured inks, Coatings and Adhesives) using less than 200,000 pounds total of inks, coatings and adhesives: $150.00

(i) Soil or Water Remediation Operations: $150.00

(j) Stationary Sources with De Minimis Emissions: No Charge"

It is the intent of the Division to use this list of specific source categories for non-major sources when determining source applicability and ensure fair fee assessment.

The next two subsections of section 18 establishes 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 a 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 17, strike the word "reserved" and add the following paragraphs:

"(1) Auto Body Repair and Painting: $500.00

(2) Dry Cleaners (Non-Major): $500.00

(3) Emergency Generators: $500.00

(4) Generic Coating and Abrasive Operations: $500.00

(5) Other Fueling Facilities Receiving Fuel by Truck or Rail (Non-NSPS): $1000.00

(6) Non-NSPS Boilers: $500.00

(7) Printing and Packaging Operations: $500.00

(8) Retail and Fleet Gasoline Service Stations: $500.00

(9) Soil/Water Remediation Systems: $1000.00"

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 were 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 emission. The fee not only covers the cost of permit review, but also includes costs for construction and baseline inspections, compliance test reviews and the 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 than the current fee schedule. Currently, a source with pre-controlled emission less 100 tons would pay only $500.00. That covers about 7 staff hours, assuming $75.00 per staff hour. The proposed fee schedule would require sources to pay up to $5000.00 which offset up to 67 staff hours; assuming 40 hours for permit review and processing, 8 hours air quality modeling review, with the remaining fee covering construction and baseline inspections, compliance testing, and annual emission fees for the source until the next billing period.

In addition to the emission-based air quality review fee, any source that must comply with any federally required performance standards or control technologies will be assessed an additional review fee to cover the cost of implanting the federal program. These federal review fees are found on page 15, starting on line 13, section D. The most common federal program reviewed are the new source performance standards, or NSPS, found in 40 CFR 60; which would add $1000.00 to the initial air quality review fee. As a rule, NSPS requires additional recordkeeping, reporting and compliance testing for the source and the Division.

On page 15, line 23, section E, establishes the fee schedule for permit modifications. The Division intends to revise 20.11.41 NMAC, Authority-to-Construct, to establish modification criteria for pollution prevention modifications, minor or flexible permit modifications and major modifications. Generally speaking, major modifications will be those modifications that significantly increase a source's potential-to-emit requiring more extensive permit review and processing, modeling, and inspection and compliance activities. As with the case-by-case air quality review, any modification that must comply with a federal program requirement will be charged an additional federal program review fee.

On page 16, line 2, the Division proposes a Portable Source Relocation Fee to cover the costs of permit review and modeling at the different locations a portable source may relocate.

When establishing the case-by-case air quality review fees we did not compare our fee structure to other jurisdictions because the emission-based fee schedule fit our needs. It is also very difficult to compare permit fees with other jurisdictions. The State of New Mexico, for example, is currently revising their fee structure to an effort-based fee schedule, that is, the more emission units a source proposes, the higher the permit fee. In addition, the State charges fees for sources that must comply with federal requirements along with an air quality modeling fee, toxic air pollutant review fee and a nonrefundable filing fee. On reviewing the State's proposed regulation, and based on some sample calculations on recent permits issued by our Department, we believe our fee schedule is comparable to the State's proposal. However, I believe its more telling to compare our proposed fee structure with other metropolitan area in the Southwest. For this purpose I picked Maricopa County, Arizona, which includes Phoenix, and Clark County, Nevada, which includes Las Vegas.

Staff Exhibit 13 outlines the different fee approaches and compares tonight's proposal with the State of New Mexico, Clark County and Maricopa County. Since each jurisdiction has developed a fee program that fits its individual needs, it is difficult to make a direct comparison. I believe, however, the comparison does show that Albuquerque's new source review fees are reasonable even considering the increases being discussed.

Page 16, line 4, subsection H, establishes a $100 per acre fee for Surface Disturbance Permits. The purpose of this fee to cover the costs of administering and enforcing the provisions of 20.11.20 NMAC, Airborne Particulate Matter. As previously discussed, Albuquerque has exceeded the annual National Ambient Air Quality Standard for Particulate Matter in 1999 with high levels continuing into the year 2000. Albuquerque must act now to control dust generated by land disturbance to avoid federal action. Managing the dust control program takes a minimum of two full-time positions to process permits, conduct on-site inspections, respond to complaints and perform the other administrative matters related to the program. Again, I compared our proposed dust control program fees with those of Clark and Maricopa Counties, Staff Exhibit No. 14. Our proposed fee of $100 per acre is less than Clark County's fee but more than Maricopa County's fee, however, Maricopa County's fee is annual fee. The Annual

Block Permit required by Maricopa County is available for organizations that perform routine maintenance on utilities, paved and unpaved roads, road shoulders, alleys and public right-of-ways at non-contiguous sites.

We have received one comment concerning our proposed fees from Sandia Properties Limited, Staff Exhibit No. 9, regarding master planned projects, such as Ventana Ranch, which encompassed approximately 900 acres. When applying our proposed fee the developer would be required to pay $90,000, or approximately $30.00 per house assuming 3 houses per acre in addition to fees already paid to the City for project approval.

Looking at other jurisdictions, this same project would cost at least $32,510 or more in Maricopa County, since permits must be renewed annually, and $98,100 in Clark County. Staff believes that the proposed fee $100 per acre is reasonable and expects to generate approximately $80.000 in revenue per year based on the average number of acres disturbed per year.

The Asbestos Unit fee found on Page 16, line 5, subsection I, will remain the same.

Page 16, starting on line 6, section J, establishes miscellaneous administrative fees the Division will charge. The $75 per hour Professional Service Fee was established assuming an average employee salary, plus benefits and overhead. Maricopa County's professional service fee is $70 per hour and staff believes the proposed fee is reasonable.

The fees established for photocopying and regulation books are consistent with Department policy.

The public records research fee has been established to cover the direct staff costs of complying with information requests concerning permits, enforcement actions and complaints.

Mr. Hearing Officer this concludes my testimony and wish to end by quoting Miguel De Cervantes from his classic Don Quixote by saying, "that what costs little is valued less."

Table 1 - New Source Review (NSR) Fee Comparison

JURISDICTION	FILING FEE	MINOR SOURCE REVIEW	MAJOR SOURCE REVIEW	MODIFICATIONS	ADDITIONAL FEES
City of Albuquerque / Bernalillo County (Proposed)	None	$1,000 – $4,000	$5,000	P2 – No Charge Minor - $1,000 Major - $5000	NSPS- $1,000 NESHAP- $1,000 MACT- $2,000 – $10,000 PSD/Non-Attainment - $5,000 Acid Rain - $5,000 Air Toxic Review - $500 Admin. Permit Amend. - $100
State of New Mexico (Proposed)	$500	$1,160 - $4,640			NSPS - $1,160 NESHAP - $1,160 MACT $1,160 – $23,200 PSD/Non-Attainment - $17,400 PSD (Netting Only) - $4,640 Model Review Fee - $3,480 Air Toxic Review - $1,856 - $23,200
Clark County, Nevada* (Las Vegas)	$251	$44.80/ton (Based on the PTE of All Regulated Air Pollutants) + $179/emission unit (NSR Emission Unit Fee) = Total NSR Fee			Admin. Permit Amend. - $100
Maricopa County, Arizona (Phoenix)	$160	Depending on Source, Either Actual Time @ $70/hr or $650 - $250	$7,000 - $40,000	Minor - $225 - $1,500 Major - $10,000	Annual Permit Renewal Fee - $2,500 - $225 Performance Tests - $640 - $450 Permit Transfer - $250 - $200 Admin. Permit Amend. - $120 - $70

* In Clark County, all fees adjusted annually to reflect changes in the Urban Consumer Price Index (CPI-U)

Staff Exhibit #13 – New Source Review (NSR) Fee Comparison

Table 2 – Fee Comparison for Dust Control Activities

Jurisdiction	Permit Requirements	Fee	Fee Duration
City of Albuquerque / Bernalillo County (Proposed)	Soil Disturbance ≥0.75	$100/acre	End of Project
State of New Mexico	Not Regulated	N/A	N/A
Clark County, Nevada (Las Vegas)	Soil Disturbance ≥ 0.25 acres Trenching ≥ 100 feet Demolition ≥ 1000 square feet	$109[1]/acre	End of Project
Maricopa County (Phoenix)	Soil Disturbance ≥ 0.1 acre	Annual Block Permit[2]- $2,000 0.1 acre < 1.0 acre- $75 ≥ 1.0 acre- $36/acre plus $110	Annual

[1] In Clark County, all fees adjusted annually to reflect changes in the Urban Consumer Price Index (CPI-U)

[2] One permit covering multiple locations at which construction will start within 12 months of permit issuance.

Staff Exhibit #14 – Fee Comparison for Dust Control Activities