PENGAD 800-631-6989
AQD EXHIBIT
3

[Direct Testimony for Petition to Amend 20.11.60 NMAC, *Permitting In Nonattainment Areas*; 20.11.61 NMAC, *Prevention Of Significant Deterioration*; and 20.11.42 NMAC, *Operating Permits*. The Amendments to 20.11.42 NMAC Are Proposed As a Revision to the Title V Operating Permit Program, and the Amendments to 20.11.60 NMAC and 20.11.61 NMAC Are Proposed As a Revision to the New Mexico State Implementation Plan for Air Quality (SIP)]

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Thank you Chairman / Madam Chair _____, and members of the Board. My name is Neal Butt. I am an Environmental Health Scientist with the Air Quality Division, Control Strategies Section. I am here to respectfully request a hearing before the Air Board,

IN THE MATTER OF THE PETITION TO AMEND 20.11.60 NMAC, *PERMITTING IN NONATTAINMENT AREAS*; 20.11.61 NMAC, *PREVENTION OF SIGNIFICANT DETERIORATION*; AND 20.11.42 NMAC, *OPERATING PERMITS*. THE AMENDMENTS TO 20.11.42 NMAC ARE PROPOSED AS A REVISION TO THE TITLE V OPERATING PERMIT PROGRAM, AND THE AMENDMENTS TO 20.11.60 NMAC AND 20.11.61 NMAC ARE PROPOSED AS A REVISION TO THE NEW MEXICO STATE IMPLEMENTATION PLAN FOR AIR QUALITY (SIP).

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The provisions governing state implementation of the Nonattainment New Source Review (NNSR) permit program are contained in the CFR, Title 40, *Protection of Environment*, Part 51, *Requirements for Submittal of Implementation Plans*, Subpart I, *Review of New Sources and Modifications*, Section 165, *Permit Requirements*. Albuquerque - Bernalillo County's implementation of this program is governed by 20.11.60 NMAC, *Permitting In Nonattainment Areas*.

The provisions governing state implementation of the Prevention of Signification Deterioration (PSD) permit program are contained in the CFR Title 40, *Protection of Environment*, Part 51, *Requirements for Submittal of Implementation Plans*, Subpart I, *Review of New Sources and Modifications*, Section 166, *Prevention of Significant Deterioration of Air Quality*. The provisions governing direct federal implementation of PSD are found at Title 40, *Protection of Environment*, Part 52, *Approval and Promulgation of Implementation Plans*, Subpart A, *General Provisions*, Section 21, *Prevention of Significant Deterioration of Air Quality*. Albuquerque - Bernalillo County's implementation of the PSD program is governed by 20.11.61 NMAC, *Prevention of Significant Deterioration*.

The provisions governing major source operating permits pursuant to Title V of the Clean Air Act (CAA) are contained in 40 CFR Part 70, *State Operating Permit Programs*, and, in Albuquerque - Bernalillo County, at 20.11.42 NMAC, *Operating Permits*.

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On **May 16, 2008**, the U.S. Environmental Protection Agency (EPA) promulgated "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)", effective 7/15/08 [Federal Register Vol. 73, No. 96, 28321-50]. These amendments affect 40 CFR 51.165, and have already been incorporated into the currently effective version of 20.11.60 NMAC. These amendments also affect 40 CFR 51.166 and 52.21, and all but one amendment has been incorporated into the currently effective version of 20.11.61 NMAC. This remaining amendment adds an additional stationary source exemption, and is cited as 20.11.61.18.D.(3) NMAC in the proposed draft.

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On **October 20, 2010**, the EPA promulgated "PSD for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)", effective 12/20/10 [Federal Register Vol. 75, No. 202, 64864-907]. These amendments affect 40 CFR 51.165, and have been incorporated into the proposed draft of 20.11.60 NMAC. These amendments also affect 40 CFR 51.166 and 52.21 and have been incorporated into the proposed draft of 20.11.61 NMAC. One exception is for an amendment that would have been inserted at 20.11.61.15.B.(2) NMAC, re: "SILs" [see 40 CFR 51.166.(k)(2) & 52.21(k)(2)], but which EPA has conceded to be vacated and remanded to EPA, in response to *Sierra Club v. EPA*; another exception is the proposed SMC for $PM_{2.5}$ at 20.11.61.28 NMAC, which was also vacated by the US Court of Appeals [Case No . 10-1413, decided January 22,

2013]. Incorporation of changes to the federal PSD rule into the local PSD rule are required not only to keep the local PSD program up to date, but is also required for the Infrastructure SIP ("i-SIP") for the 2010 Nitrogen Dioxide (NO_2) NAAQS because EPA requires that any i-SIP submittal should address any new or revised PSD program requirements. The NO2 i-SIP is anticipated to be submitted to EPA in June, 2013.

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On **March 30, 2011**, the EPA promulgated "PSD and NNSR: Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions", effective 3/30/11 [Federal Register Vol. 76, No. 61, 17548-56]. These amendments affect 40 CFR 51.165, 51.166 and 52.21, and have been incorporated into the proposed drafts of 20.11.60 NMAC, and 20.11.61 NMAC.

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On **July 20, 2011**, EPA promulgated "Deferral for CO_2 Emissions From Bioenergy and Other Biogenic Sources Under the PSD and Title V Programs", effective 7/20/11. "State, local, and tribal permitting authorities may adopt the deferral at their option but the deferral is effective upon publication for the PSD and Title V permit programs that are implemented by EPA." [Federal Register Vol. 76, No. 139, 43490-43508]. These amendments affect 40 CFR 51.166 and 52.21, and have been incorporated into the proposed draft of 20.11.61 NMAC. They also affect 40 CFR 70, *State Operating*

Permit Programs, at 70.2, *Definitions*, and have been incorporated into the proposed draft of 20.11.42 NMAC, *Operating Permits*, at 20.11.42.7.II.(2) NMAC.

Adoption of the biomass deferral provisions will allow the Division to avoid the need to determine net carbon cycle impacts for bio-energy projects until EPA has adopted a consistent and practical framework for such calculations, and prevent the Division from spending valuable time and resources evaluating sources that may have de minimis, neutral or positive impact on net CO_2 levels in the atmosphere.

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On **July 12, 2012**, EPA promulgated "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits", effective 8/13/12 [Federal Register Vol. 77, No. 134, 41051-75]. These amendments affect 40 CFR 52.21, and have been incorporated into the proposed draft of 20.11.61 NMAC.

Adoption of the PAL amendments for GHGs would allow the Division to provide greater operational flexibility to permitted sources by issuing GHG PALs to GHG-only sources without requiring the sources to become a major source. GHG-only sources could obtain a GHG PAL and remain a minor source as long as their GHG emissions remain below the PAL.

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On **October 25, 2012**, EPA promulgated "Implementation of the NSR Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$): Amendment to the Definition of "Regulated NSR Pollutant" Concerning Condensable Particulate Matter", **effective 12/24/12** [Federal Register Vol. 77, No. 207, 65107-19]. These amendments affect 51.166 and 52.21, and have been incorporated into the proposed draft of 20.11.61 NMAC

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This hearing has been legally noticed as shown by AQD Exhibits 2a, 2b, and 2c. There have not been any negative comments received regarding this proposal, only a verbal "No comment" received by EPA. Therefore, the Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division, respectfully asks the Albuquerque-Bernalillo County Air Quality Control Board to adopt amendments to 20.11.60 NMAC, *Permitting In Nonattainment Areas* shown as AQD Exhibit #1a; 20.11.61 NMAC, *Prevention Of Significant Deterioration*, shown as AQD Exhibit #1b; and 20.11.42 NMAC, *Operating Permits*, shown as AQD Exhibit #1c; and submit the amended 20.11.42 NMAC to EPA as a proposed revision to the Title V Operating Permit Program, and the amended 20.11.60 NMAC and 20.11.61 NMAC as proposed revisions to the New Mexico State Implementation Plan for Air Quality (SIP).

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Questions

That concludes my testimony, and I request that exhibits 1, 1a, 1b, 1c, 2a, 2b, 2c, 3 and 4 be moved into the record {"so moved"}, and I stand for questions