

**HEARING TO AMEND
20.11.42 NMAC
OPERATING PERMITS, &
UPDATE TITLE V PROGRAM**

AQCB Resolution No. 2009-3

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Proposed Amendments

I. Change definition of “Major Source”

- Fugitive emission fraction of total emissions emitted by Non-Categorical Sources subject to Post-August 7, 1980 NSPS/NESHAPs is excluded from “major source” determination, requiring a Title V permit
- However, excluded sources will still be subject to permitting requirements under 20.11.41 NMAC, *Authority-To-Construct*

Proposed Amendments

II. Delete: “*Existing major sources, which are not required to have a permit under 20.11.41 NMAC*” [Paragraphs 20.11.42.2.D. (1) & (2) NMAC]

- Designed to capture “grandfathered” major sources
- All major sources have already submitted a permit application
- Language is not codified within 40 CFR Part 70.

Proposed Amendments

III. Align language in 20.11.42 NMAC with federal language in 40 CFR Part 70, *State Operating Permit Programs* and language in 20.2.70 NMAC, *Operating Permits*

Proposed Amendments

IV. Correct style and formatting.

Exhibits

AQD Ex. #1-1a	Petition to Amend Including PRD
AQD Ex #2	Federal Register Notice
AQD Ex #3	40 CFR 70, <i>State Operating Permits</i>
AQD Ex #4a/b/c	Public Notice
AQD Ex # 5a/b	EPA Comments
AQD Ex #6	Testimony
AQD Ex #7	Staff proposed floor amendments
AQD Ex #8	Draft AQCB Agenda

“Major Source”

- ❖ November 27, 2001, U.S. EPA revised definition of “Major Source”
- ❖ Corresponding revisions due by November 27, 2002
- ❖ The New Mexico Environment Department proposed amendments to the Environmental Improvement Board’s rule
 - Made as stringent
- ❖ The Air Quality Control Board did not.
 - Remained more stringent

“Major Source”

- Before 2001, if source subject to Section 111 of the Clean Air Act - *New Source Performance Standards* or Section 112 - *National Emission Standards for Hazardous Air Pollutants*, then source required to count fugitives in addition to direct emissions when determining whether they were a “major source”
- August, 1994, EPA proposed rule
 - Count fugitive emissions only for source categories subject to NSPS or NESHAPs promulgated before August 7, 1980
- Prompted by an industry petition
 - Contended that EPA must conduct a rulemaking under Section 302(j) of the Clean Air Act before requiring the counting of fugitive emissions
- November 27, 2001 Federal Register required states to modify their definition of “major source”
 - State permitting authorities with programs that *currently* provide the August 7, 1980 limitation on including fugitive emissions need take no action
 - Other permitting authorities may, but are NOT required to, revise their programs to include the August 7, 1980 limitation

“Major Source”

- November 13, 2002, Air Board adopted amended rule, effective locally February 1, 2003
- December 11, 2002, public hearing to update AQD Title V program, federally effective November 8, 2004
 - Determination of a source subject to any NSPS or NESHAP as a “major source” *shall* include *fugitive* emissions
 - Summed emissions of 100 Tons Per Year (TPY) or more, then the source is “major” and will require a Title V Permit
- Proposed
 - Fugitive emission fraction of total emissions from Non-Categorical Sources subject to Post- August 7, 1980 NSPS/NESHAP is excluded from “major source” determination, requiring a Title V permit
 - However, excluded sources will still be subject to permitting requirements under 20.11.41 NMAC, *Authority-To-Construct*



QUESTIONS?