PENGAD 800-631-6989
AQP EXHIBIT
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**AQP EXHIBIT 5**

**Testimony of Neal T. Butt, M.S., Environmental Scientist**
**Environmental Health Department Air Quality Program**

**AQCB Petition No. 2013-7**
**Submitted for the Hearing on January 8, 2014 before the**
**Albuquerque-Bernalillo County Air Quality Control Board regarding:**

1) Petition to Amend:
    a. 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources;* and,
    b. 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources;*
2) Requesting Updated Delegation of Authority from the United States Environmental Protection Agency

**SLIDE 1**
**Caption**

Good evening, Mr. Hearing Officer, Madam Chair, and members of the Board. My name is Neal Butt. I am an Environmental Health Scientist with the Air Quality Program's Control Strategies Section. I would like to present for your consideration proposed amendments to:

1) 20.11.63 NMAC, *NEW SOURCE PERFORMANCE STANDARDS FOR STATIONARY SOURCES;* AND,
2) 20.11.64 NMAC, *EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR STATIONARY SOURCES.*

In addition, if you approve the amendments to these two rules, the Air Program is seeking your approval for the Environmental Health Department to request the corresponding updated delegation of authority from the United States Environmental Protection Agency ("EPA") to enable the Air Program to administer and enforce NSPS and NESHAPS promulgated since August 29, 2011 (the last update) and through September 13, 2013.

**SLIDE 2**
**Rationale**

The primary purpose of this hearing is to update two regulations: Title 20, Chapter 11, Parts 63 and 64, in the New Mexico Administrative Code. The update, if you approve would incorporate by reference the most up-to-date emissions standards that have been promulgated by the U.S. Environmental Protection Agency ("EPA") in the Federal Register since August 29, 2011 (the last update) and through September 13, 2013. A detailed listing of the specific standards to be incorporated is shown as **AQP Exhibit 1c**.

**SLIDE 3**
**Exhibits Supporting the Air Program's Petition**

Slide 3 lists the exhibits in the NOI which support the Air Program's Petition.

- **AQD Exhibit 1** - Petition to Amend Parts 63 and 64;
- **AQD Exhibit la** - Public Review Draft showing proposed amendments to 20.11.63 NMAC, dated September 13, 2013;
- **AQD Exhibit lb** - Public Review Draft showing proposed amendments to 20.11.64 NMAC, dated September 13, 2013;
- **AQP Exhibit 1c** - emissions standards that have been promulgated by the EPA in the Federal Register since August 29, 2011, and through September 13, 2013. These are proposed to be incorporated by reference. AQP Exhibit 1c also includes an electronic copy of these Federal Register notices;
- **AQP Exhibit 2** - legal advertisement for tonight's hearing (originally scheduled for 12/11/13 but then rescheduled for 1/8/14), published in the Albuquerque Journal on 10/13/13;
- **AQP Exhibit 3a** - notice of the 1/8/14 hearing sent to the Air Quality Announce List Serve on 11/4/13;
- **AQP Exhibit 3b** - legal advertisement for tonight's hearing published in the Albuquerque Journal on 11/6/13;
- **AQP Exhibit 3c** - Notice of Proposed Rulemaking published in the New Mexico Register on 11/14/13;
- **AQP Exhibit 4** – most recent Federal Register Notice approving the delegation of EPA authority to the Albuquerque-Bernalillo County Air Quality Control Board, for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources, as published in the Federal Register, through July 1, 2004;
- **AQP Exhibit 5** - my direct testimony.

I would like to move these exhibits into the record at this time.
[Hearing officer determines whether to admit exhibits into evidence] Thank you,

**SLIDE 4**
**Clean Air Act Requirements**

The Clean Air Act, Section 111 [42 U.S.C. §7411], *Standards of Performance of New Stationary Sources,* requires that performance standards be set for source categories which, in the judgment of the Administrator, cause or contribute significantly to air pollution. Section 111 includes the New Source Performance Standards (NSPS) found in 40 CFR Part 60, *Standards of Performance for New Stationary Sources*, which is incorporated by reference within 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*. An example of a source category subject to an NSPS are *Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units*, shown as item #7 in AQP Exhibit 1c.

Section 112 [42 U.S.C. §7412], *National Emission Standards for Hazardous Air Pollutants* (NESHAPs), requires that emission standards be established for hazardous air pollutants. Section 112 includes the standards for hazardous air pollutants promulgated within 40 CFR 61, *National Emission Standards for Hazardous Air Pollutants* and 40 CFR 63, *National Emission Standards for Hazardous Air Pollutants for Source Categories*, which are both incorporated by reference within 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants For Stationary Sources*. An example of a source category subject to a NESHAP are *Reciprocating Internal Combustion Engines* (RICE), shown as item #17 in AQP Exhibit 1c.

In addition, Sections 111(c) and 112(d) of the Clean Air Act provide the Administrator of the EPA with the authority to delegate the implementation and enforcement of both of these standards to State agencies.

**SLIDE 5**
**Requirements for EPA to Delegate Its Authority**

In order to delegate its authority, EPA must find that a State's procedures for implementing and enforcing New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) are adequate. In this case, Albuquerque-Bernalillo County is treated as a "State." EPA evaluates nine elements to determine whether a State agency can effectively implement and enforce the NSPS and NESHAPS programs. These elements are:

1. Emission limits consistent with Federal regulations;
2. Test methods consistent with Federal regulations;
3. Reporting and monitoring requirements;
4. Enforcement program;
5. Waiver (variance) procedures;
6. Surveillance capability;
7. Public notification and disclosure of information;
8. Resources adequate to implement and enforce all aspects of the rule, program, or requirement; and
9. Reporting to EPA.

**SLIDE 6**
**Requirements for Delegation of Authority (Continued)**

Once EPA has delegated its authority to enforce 40 CFR Parts 60, 61 and 63, the Program is required to periodically request an updated delegation of authority. For each delegation renewal, the Program must reaffirm that it has the resources and ability to satisfy these nine elements.

The Albuquerque – Bernalillo County Air Quality Control Board ("Air Board") first adopted 20.11.63 NMAC and 20.11.64 NMAC in 1985, and has obtained periodic updated delegations through the years. The most recent re-delegation hearing was held

on November 9, 2011. Generally the EPA reviews the Program's proposed amendments to 20.11.63 NMAC and 20.11.64 NMAC and the accompanying letter requesting re-delegation. If EPA approves the updated regulations and is satisfied with the Program's commitment to implement and enforce delegated programs, EPA will publish a notice of delegated authority in the Federal Register.

EPA's authority to administer and enforce the New Source Performance Standards and the National Emission Standards for Hazardous Air Pollutants, promulgated through 7/1/2004, was last delegated on December 9, 2005 in the Federal Register [Vol. 70, No. 236, 73138-48] effective 2/7/2006, shown as AQP Exhibit No. 4.

**SLIDE 7**
**Local Delegation of Authority**

The Program is proposing to incorporate by reference the Federal Emissions Standards found in Title 40 of the United States Code of Federal Regulations, ("CFR"), under Parts 60, 61 and 62, promulgated since August 29, 2011 and through September 13, 2013.

These standards are enforceable by EPA, irrespective of whether the Program incorporates them by reference into the Air Board's regulations or not. However, it is beneficial to the local businesses and industries to be able to work through the Program, as the local agency, when obtaining air quality permits, rather than having to go through EPA Region 6 in Dallas.

If the Air Board adopts these proposed amendments, the Program will request re-authorization of its delegation of authority to implement and enforce all NSPS and NESHAPs promulgated through September 13, 2013.

**SLIDE 8**
**Key Revisions**

The current delegation request includes four NSPSs to be incorporated by reference into 20.11.63 NMAC and 18 NESHAPs to be incorporated by reference into 20.11.64 NMAC. If the Air Board adopts the proposed updates and amendments to 20.11.63 NMAC and 20.11.64 NMAC, the Program will transmit the adopted and filed regulations to the U.S. EPA along with an updated request to renew the Program's delegation of authority to enforce these important emission standards.

**SLIDE 9**
**Questions**

That concludes my testimony, and I stand for questions.