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Air Quality Operating Permit Program Requirements

under the federal Clean Air Act (Title V) and federal regulations, the NM Air Quality Control Act, COA Ordinance, and Albuquerque-Bernalillo County Air Quality Control Bd. Regulations

1. Operating permit program: adequate fees required; costs that can be included in fees.

The federal Clean Air Act (CAA) requires the local authority (the COA EHD) to demonstrate that "the program will result in the collection, in the aggregate, from all *[operating permit program]* sources" an amount the Administrator determines "adequately reflects the reasonable costs of the *[operating]* permit program". 42 USC §7661a(b)(3)(B)(i).

The CAA also requires the EPA to adopt regulations that require the owner or operator of all sources subject to the operating permit program to obtain a permit and "pay an annual fee ... sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the *[operating]* permit program ...including the reasonable costs of -

(i) reviewing and acting upon any application for such a permit,
(ii) ... implementing and enforcing the ... permit (not including any court costs or other costs associated with any enforcement action),
(iii) emissions and ambient monitoring,
(iv) preparing generally applicable regulations, or guidance,
(v) modeling, analyses, and demonstrations, and
(vi) preparing inventories and tracking emissions." 42 USC §7661a(b)(3)(A).

See also the NM Air Quality Control Act list at NMSA 1978, Section 74-2-16(B).

2. Increase in operating permit fee each year to be based on Consumer Price Index (CPI). The CAA requires the fee to be "increased (consistent with the need to cover the reasonable *[program]* costs ...) in each *[program]* year beginning after 1990, by the percentage, if any, by which the CPI for the most recent calendar year ending before the beginning of such year exceeds the CPI for the calendar year 1989. ... ", and also provides additional requirements regarding the increase: "(T)he revision of the CPI which is most consistent with the CPI for calendar year 1989 shall be used". 42 USC 7661a(b)(3)(v). Federal regulations repeat the CPI requirement at 40 CFR § 70.9(b)(2)(iv).

3. Operating fees must be used solely for operating permit program.

The CAA specifies: "Any *operating permit program]* fee required to be collected by a ... local ... agency ... shall be utilized **solely** to cover all reasonable (direct and indirect) costs required to support the permit program" established by the CAA. 42 USC §7661a (b)(2)(C)(iii). Federal regulation repeat the requirement that the EHD operating permit fee program "shall ensure that any *[operating permit]* fee ... will be used solely for *[operating]* permit program costs". 40 CFR § 70.9(a).

4. All permit fees must be deposited in a separate fund.

The New Mexico Air Quality Control Act, which requires the local Air Board to adopt "provisions consistent with ... the Federal *[Clean Air]* Act (NMSA 74-2-7(B)) also states: "A local authority shall create within the municipal ... treasury a fund to be known as the ' _____ (name of municipality ...) air quality permit fund'. All *[permit]* fees collected by a municipality ... pursuant to Section 74-2-7 NMSA 1978 *[entitled 'Permits ... permit fees']* shall be deposited in the *[permit]* fund created pursuant to..." NMSA 74-2-16. NMSA 74-2-16(A).