EXHIBIT 4d

Wright, Janice C.

From: Clark, Melissa B Civ USAF AFMC 377 MSG/CEANC [Melissa.Clark@kirtland.af.mil]
Sent: Monday, July 19, 2010 4:25 PM
To: Wright, Janice C.
Cc: Shupe, James Civ USAF AFMC AFNWC/JA; Dann, Jennifer L Civ USAF AFMC 377 MSG/CEANC
Subject: 20.11.2 NMAC Fees - Stakeholder Comments
Signed By: Verifying the signature. Click the icon for details.

Ms. Wright,

Please find attached comments from Kirtland AFB on the 20.11.2 NMAC Fees stakeholder review draft dated June 25, 2010.

Thank you,
Melissa

//SIGNED//

Melissa Clark
Air Program Manager
377 MSG/CEANC
(505) 853-1588

Kirtland AFB Comments
20.11.2 NMAC Stakeholder Review Draft (25 June 2010)
19 July 2010

General Comments:

1. 20.11.2.6.E NMAC – Why is the regulated public having to pay a fee for the regulator to develop program regulations? That function occurs whether or not there is a regulated population and should be funded from general funding activities.

2. 20.11.2.7.A. NMAC and 20.11.2.20.A. NMAC – In 20.11.2.7.A(2)(a) the definition of an "administrative revision" includes the correction of a typographical error in a permit issued pursuant to 20.11.41 NMAC. Is it the intention of the Division to charge the permittee a fee for an administrative revision associated with the correction of a typographical error in a 20.11.41 NMAC permit (20.11.2.20.A(1)) if the typographical error was not made by the permittee? What about a typographical error in a 20.11.40 NMAC source registration?

3. 20.11.2.11.D NMAC – No provision is provided for electronic fund transfers or credit card payments. Suggest allowing electronic transfers/credit card payments for entities that cannot provide payment by check/money order.

4. 20.11.2.12.B(3) NMAC – Has the department established procedures for determining "insignificant activities"? How is the regulated community as a whole assured that each applicant receives equitable treatment?

5. 20.11.2.12.E NMAC – This provision arbitrarily requires large regulated entities to subsidize regulated small business entities. What is the legal basis for this inequitable treatment? What supporting justification exists for reducing the fees for this segment of the regulated community? Has the AQD established a need for this?

6. 20.11.2.17.B NMAC – If there is an error in the invoice, as currently worded, the applicant would have to pay the fee and then seek a refund for the error. Suggest inserting wording that states "all incorrect fee challenges shall follow the appeal procedures set forth in 20.11.2.16."

7. 20.11.2.18.D(1), (2), (3) – For generators (or any other applicable sources) subject to NSPS that are also subject to NESHAP, will permittees be required to pay two $1,000 fees?

8. 20.11.2.19.A NMAC – Please provide a definition for "minor modification".

9. 20.11.2.19.B NMAC – Please provide a definition for "major modification".

10. 20.11.2.20.A(2) NMAC – The fee for technical revisions to permits issued pursuant to 20.11.41 NMAC is listed as $500.00. The definition for technical revision in 20.11.2.7.R(4)(b) NMAC includes the replacement of an emissions unit if it has the same or lower capacity and allowable emission rates. Currently in 20.11.41 NMAC ATC permits, Condition 5, Reporting there is a statement on substitution of equipment: "Any substitution

of equipment which has the same or lower process capacity as the piece of equipment being substituted within fifteen (15) days of equipment substitutions. Equipment that is substituted shall comply with the requirements in Condition 2, Unit Emission Limits." For existing permits containing the statement above, is it the Division's intent that the permittee pay the technical revision fee for an equipment substitution as described in the existing 20.11.41 NMAC ATC permit?

11. 20.11.2.20.B NMAC – Is the portable stationary source relocation fee associated with the relocation of one specific unit or can it apply to the entire permit if multiple units in the same permit are moving? For example if a portable stationary source permit has two units and both units are moving will the permittee need to pay the fee for each unit?

12. 20.11.2.20.B(2) NMAC and 20.11.2.22.A(3) NMAC – If air dispersion modeling is required for a portable stationary source relocation, will the permittee be required to pay the air quality impact analysis fee in 20.11.2.22.A.(3) in addition to the portable stationary source relation fee in 20.11.2.20.B.(2)?

13. 20.11.2.22.A(3) NMAC – There is no value for the air quality impact analysis fee, it is listed as "xxxx.xx".

14. 20.11.2.22.A(4) NMAC – There is no fee listed for copying of public records.

15. Summary of Proposed Fee Increases – Where is the supporting data to show the proposed fees are "reasonable" as identified in 20.11.2.6 NMAC? How have you determined the "reasonable costs?"

16. Summary of Proposed Fee Increases, Annual Emission Fees for Major and Non-Major Stationary Sources (Table) – The table cites EPA's recommended minimum for sources subject to cost/ton annual emission fee. Was this adjusted for regional economic differences?

<u>Kirtland AFB Specific Comments:</u>

1. How does AEHD plan to account for the status of fees for previously filed, non-approved applications?

2. 20.11.2.11 NMAC requires fees to be paid at the time of application submittal; however it is not possible for Kirtland AFB (governmental entities) to request payment without an invoice from the AEHD. Kirtland AFB is requesting that the AEHD allow for credit card payments at the time of application submittal which would allow payment in a timely manner.

Richard J. Berry, Mayor

City of Albuquerque
Environmental Health Department
Air Quality Division
One Civic Plaza NW, Room 3047
P.O. Box 1293
Albuquerque, NM 87103

Mary Lou Leonard, Director

August 6, 2010

Air Quality Division's Response to the July 19, 2010 Kirtland AFB Comments on 20.11.2 NMAC Stakeholder Review Draft

Kirtland AFB Air Program Manager Melissa Clark's Stakeholder General Comments:

1. 20.11.2.6.E NMAC – Why is the regulated public having to pay a fee for the regulator to develop program regulations? That function occurs whether or not there is a regulated population and should be funded from general funding activities.

Response: The New Mexico Air Quality Control Act, Section 74-2-16 addresses establishment of the air quality permit fund and the activities for the money in fund can be used for "paying the reasonable cost of". Specifically, Section 74.2-16.B(4) states: "preparing generally applicable regulations or guidance. Therefore, the money in the funds can be used for developing generally applicable regulations or guidance. New Mexico Air Quality Control Act, Section 74-2-16 is provided below for reference:

"A. A local authority shall create within the municipal or county treasury a fund to be known as the "_____
(name of municipality or county)
air quality permit fund". All fees collected by a municipality or county pursuant to Section 74-2-7 NMSA 1978 shall be deposited in the fund created pursuant to this section.
B. Money in the fund created pursuant to this section shall be used by the municipality or county only for the purpose of paying the reasonable costs of:
(1) appealing, reviewing and acting upon any application for a permit;
(2) if the owner or operator receives a permit, implementing and enforcing the terms and conditions of such permit, not including any court costs or other costs associated with any enforcement action;
(3) emissions and ambient monitoring;
(4) preparing generally applicable regulations or guidance;
(5) modeling, analysis and demonstrations; and
(6) preparing inventories and tracking emissions."

2. 20.11.2.7.A. NMAC and 20.11.2.20.A. NMAC – In 20.11.2.7.A(2)(a) the definition of an "administrative revision" includes the correction of a typographical error in a permit

issued pursuant to 20.11.41 NMAC. Is it the intention of the Division to charge the permittee a fee for an administrative revision associated with the correction of a typographical error in a 20.11.41 NMAC permit (20.11.2.20.A(1)) if the typographical error was not made by the permittee? What about a typographical error in a 20.11.40 NMAC source registration?

*Response: It is **not** the intention of the Division to charge the permittee a fee for an "administrative revision" associated with the correction of a typographical error in a 20.11.41 NMAC permit if the typographical error was **not** made by the permittee. The proposed changes in the 20.11.2 NMAC June 25, 2010 Stakeholder draft does not address a typographical error in a 20.11.40 NMAC source registration. The Division's recommendation is to not charge a fee for a typographical error in 20.11.40 NMAC registration since the registration format has been simplified. Language can be added to 20.11.2 NMAC, Fees to state that there is no charge for a typographical error in a 20.11.40 NMAC registration.*

3. 20.11.2.11.D NMAC – No provision is provided for electronic fund transfers or credit card payments. Suggest allowing electronic transfers/credit card payments for entities that cannot provide payment by check/money order.

Response: The Air Quality Division currently provides invoices for entities that cannot provide payment by check/money order. The Air Quality Division is working with the City of Albuquerque Treasury Department to evaluate allowing electronic transfers/credit card payments.

4. 20.11.2.12.B(3) NMAC Has the department established procedures for determining "insignificant activities"? How is the regulated community as a whole assured that each applicant receives equitable treatment?

Response: The department has an established list of insignificant activities which applies only to Title V sources subject to 20.11.42 NMAC, Operating Permits.

5. 20.11.2.12.E NMAC – This provision arbitrarily requires large regulated entities to subsidize regulated small business entities. What is the legal basis for this inequitable treatment? What supporting justification exists for reducing the fees for this segment of the regulated community? Has the AQD established a need for this?

Response: Clean Air Act, Title V – Permits, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program (42 U.S. Code 7661f.) requires the establishment of the Small Business Assistance Program as part of the Title V Air Permit Program. The Clean Air Act Amendments of 1990 require that all direct and indirect cost to administer the Title V Air Permit Program be funded via collection of annual emission fees from major air pollution sources. The Small Business Assistance Program is a component of the Title V Air Permit Program, therefore, the operation of the Small Business Assistance Program is funded by a portion of the Title V annual emission fees. All businesses pay full annual emissions fees and full federal

program review fees. The Clean Air Act allows for reduced fees for small business stationary sources and Air Quality Division has established a need for the reduced review fees for small businesses.

6. 20.11.2.17.B NMAC – If there is an error in the invoice, as currently worded, the applicant would have to pay the fee and then seek a refund for the error. Suggest inserting wording that states "all incorrect fee challenges shall follow the appeal procedures set forth in 20.11.2.16."

Response: As required by 20.11.2.13.A NMAC, beginning June 1 of each year, the department shall send a letter to each owner or operator stating the annual emission fee amount. If the owner or operator wishes to challenge or request a correction to the letter, then the owner or operator shall deliver a written request to the department challenging the letter or requesting a correction to the letter. As required by 20.11.2.13.B NMAC, the formal invoice is sent out after the 30 day period during which an owner or operator can challenge or request a correction.

7. 20.11.2.18.D(1), (2), (3) – For generators (or any other applicable sources) subject to NSPS that are also subject to NESHAP, will permittees be required to pay two $1,000 fees?

Response: Yes, for generators (or any other applicable sources) subject to NSPS that are also subject to NESHAP, permittees will be required to pay two $1,000 fees, one $1,000 fee for the NSPS (federal) review and one $1,000 fee for the NESHAP (federal) review. The review process is different for NSPS and NESHAP, and the analysis will need to be conducted twice.

8. 20.11.2.19.A NMAC – Please provide a definition for "minor modification".

Response: Yes, the Air Quality Division has revised 20.11.2.19.A NMAC to remove the phrase "minor". They are now all considered modifications unless the modification is a major modification under either 20.11.60 NMAC, Permitting in Nonattainment Areas or 20.11.61 NMAC, Prevention of Significant Deterioration (PSD).

9. 20.11.2.19.B NMAC – Please provide a definition for "major modification".

Response: The definition for "major modification" is found at 20.11.60.7.U NMAC for Permitting in Nonattainment and at 20.11.61.7.HH NMAC for Prevention of Significant Deterioration permitting.

The definition for major modification is: "any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated new source review pollutant, and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase from any emissions units or net emissions increase at a major

stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan for the state in which the project is located; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated new source review pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.11.61.20 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.11.61.20 NMAC shall apply."

10. 20.11.2.20.A(2) NMAC – The fee for technical revisions to permits issued pursuant to 20.11.41 NMAC is listed as $500.00. The definition for technical revision in 20.11.2.7.R(4)(b) NMAC includes the replacement of an emissions unit if it has the same or lower capacity and allowable emission rates. Currently in 20.11.41 NMAC ATC

permits, Condition 5, Reporting there is a statement on substitution of equipment: "Any substitution of equipment which has the same or lower process capacity as the piece of equipment being substituted within fifteen (15) days of equipment substitutions. Equipment that is substituted shall comply with the requirements in Condition 2, Unit Emission Limits." For existing permits containing the statement above, is it the Division's intent that the permittee pay the technical revision fee for an equipment substitution as described in the existing 20.11.41 NMAC ATC permit?

Response: The current 20.11.41 NMAC, Authority to Construct, regulation does not currently address technical revisions. However, technical revisions are included in proposed changes to 20.11.41 NMAC. Yes, it is the Air Quality Division's intent that the permittee pay the technical revision fee for an equipment substitution contingent upon the Albuquerque-Bernalillo County Air Quality Control Board and Environmental Protection Agency approval of the incorporating technical revisions in the proposed changes to 20.11.41 NMAC.

11. 20.11.2.20.B NMAC – Is the portable stationary source relocation fee associated with the relocation of one specific unit or can it apply to the entire permit if multiple units in the same permit are moving? For example if a portable stationary source permit has two units and both units are moving will the permittee need to pay the fee for each unit?

Response: The portable stationary source relocation fee applies to the entire air quality permit being relocated to one site. An air quality permit can include more than one unit. However, in order for the Air Quality Division to approve the relocation request the permittee must demonstrate through air dispersion modeling that the ambient standards will be met at the new site. If a portable stationary source permit has two units and both units are being moved to the same site, then the permittee will need to pay one relocation fee ($500 if no new air dispersion modeling required and $750 if new air dispersion modeling is required).

12. 20.11.2.20.B(2) NMAC and 20.11.2.22.A(3) NMAC – If air dispersion modeling is required for a portable stationary source relocation, will the permittee be required to pay the air quality impact analysis fee in 20.11.2.22.A.(3) in addition to the portable stationary source relation fee in 20.11.2.20.B.(2)?

Response: No, if air dispersion modeling is required for a portable stationary source relocation the permittee will ***not*** *be required to pay the air quality impact analysis fee in 20.11.2.22.A(3) NMAC. The proposed fees in 20.11.2.20.B(2) NMAC and 20.11.2.22.A(3) NMAC are not related. The proposed fee listed in 20.11.2.20.B(2) NMAC is for portable stationary sources and the proposed fee listed in 20.11.2.22.A(3) is for air quality impact analysis for site development plans which are required in City of Albuquerque Ordinance, §14-16-3-14, Air Quality Impact Regulations.*

13. 20.11.2.22.A(3) NMAC – There is no value for the air quality impact analysis fee, it is listed as "xxxx.xx".

Response: The City of Albuquerque Ordinance §14-16-3-14, Air Quality Impact Regulations do not have an associated fee for analysis. The requirement for conducting air quality impact analysis may no longer be required. Therefore, a fee has not yet been established. A fee of $100 is being proposed in the draft regulation currently under review by the Environmental Protection Agency.

14. 20.11.2.22.A(4) NMAC – There is no fee listed for copying of public records.

Response: The fees for copying of public records are provided for in City of Albuquerque Administrative Instruction No. 1-7, Subject: Inspection of Public Records Act Regulations and Open Meeting Act and Inspection of Records Act Compliance.

To obtain a copy of any non-exempt public record, as provided by the Public Records Act, the Division "may require advance payment of fees (for copying) before making copies of public records," NMSA 14-2-9.B.3. Consistent with NMSA 14-2-9.B.3 and City of Albuquerque Administration Instruction No.1-7, revised 5/7/07, the division requires payment of $0.10 per page for black and white copies 8.5" x 14" or less, and $0.90 per page for color copies before copying.

15. Summary of Proposed Fee Increases – Where is the supporting data to show the proposed fees are "reasonable" as identified in 20.11.2.6 NMAC? How have you determined the "reasonable costs?"

Response: Program expenses are in line for the reasonable cost of operations which is predominately personnel costs. The proposed increases are intended to pay for the operations and includes a minimal increase in personnel. The annual operating expenses are detailed in the City of Albuquerque Comprehensive Annual Financial Report (CAFR). The CAFR can be found at http://www.cabq.gov/investor/cafr/2008/.

16. Summary of Proposed Fee Increases, Annual Emission Fees for Major and Non-Major Stationary Sources (Table) – The table cites EPA's recommended minimum for sources subject to cost/ton annual emission fee. Was this adjusted for regional economic differences?

Response: No, the cost/ton annual emission fee was ***not*** *adjusted for regional economic differences. The cost/ton annual emission fee was adjusted by the consumer price index for all urban consumers, also known as the CPI-U which is defined in the 20.11.2.7 NMAC of the Stakeholder Review Draft 6/25/10 as: "means a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services as reported by the U.S. Department of Labor, Bureau of Labor Statistics."*

Kirtland AFB Specific Comments:

1. How does AEHD plan to account for the status of fees for previously filed, non-approved applications?

Response: The application review fees are used for processing applications as they are received. The current version of 20.11.2.11.H NMAC states: "No fee required by 20.1.2 NMAC 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 cost of staff involved in processing a permit or request."

2. 20.11.2.11 NMAC requires fees to be paid at the time of application submittal; however it is not possible for Kirtland AFB (governmental entities) to request payment without an invoice from the AEHD. Kirtland AFB is requesting that the AEHD allow for credit card payments at the time of application submittal which would allow payment in a timely manner.

Response: The Air Quality Division currently provides invoices for entities that cannot provide payment by check/money order. The Air Quality Division is working with the City of Albuquerque Treasury Department to evaluate allowing electronic transfers/credit card payments.

Wright, Janice C.

From: Butt, Neal T.
Sent: Thursday, September 23, 2010 4:56 PM
To: 'Clark, Melissa B Civ USAF AFMC 377 MSG/CEANC'
Cc: Wright, Janice C.; Reyes, Damon R.; Macias, Fabian ; Nieto, Margaret ; Stebleton, Matt B.; Armijo, Christella A.; Polisar, Roger; Kearny, Adelia W.; Tavarez, Isreal L.; Liberatore, John J.
Subject: RE: 20.11.2 NMAC Fees - Stakeholder Comments

Melisa,

In preparation for the release of the Public Review Draft for 20.11.2 NMAC, Fees, the Air Quality has decided to incorporate draft language to address your comment # 2 and comment #6. Thank you for your thorough review.

Regards,

Neal Butt

Environmental Health Scientist

Air Quality Division

(505) 768-2660

The mind is not a vessel that needs filling, but wood that needs igniting.
--Plutarch

From: Wright, Janice C.
Sent: Monday, July 19, 2010 4:52 PM
To: Butt, Neal T.; Liberatore, John J.; Tavarez, Isreal L.; Kearny, Adelia W.; Polisar, Roger; Armijo, Christella A.; Stebleton, Matt B.; Nieto, Margaret ; Macias, Fabian ; Reyes, Damon R.
Subject: FW: 20.11.2 NMAC Fees - Stakeholder Comments

FYI

Thank you,

Janice Campbell Wright
Air Quality Control Board Liaison & Hearing Clerk
City of Albuquerque
768-2601

From: Clark, Melissa B Civ USAF AFMC 377 MSG/CEANC [mailto:Melissa.Clark@kirtland.af.mil]
Sent: Monday, July 19, 2010 4:25 PM
To: Wright, Janice C.
Cc: Shupe, James Civ USAF AFMC AFNWC/JA; Dann, Jennifer L Civ USAF AFMC 377 MSG/CEANC
Subject: 20.11.2 NMAC Fees - Stakeholder Comments

Ms. Wright,

Please find attached comments from Kirtland AFB on the 20.11.2 NMAC Fees stakeholder review draft dated June 25, 2010.

Thank you,
Melissa

//SIGNED//

Melissa Clark
Air Program Manager
377 MSG/CEANC
(505) 853-1588