AQD EXHIBIT 7

AQD Exhibit 6. Direct Testimony for Hearing Regarding Amendments to 20.11.2 NMAC, *Fees*

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Caption

Thank you, Chairman Deichmann and members of the Board. My name is Margaret Nieto. I am an Environmental Health Supervisor with the Air Quality Division, Control Strategies Section. I am here

IN THE MATTER OF THE PETITION TO AMEND 20.11.2 NMAC, *FEES*, AND INCORPORATE AN AMENDED 20.11.2 NMAC INTO THE NEW MEXICO STATE IMPLEMENTATION PLAN (SIP) FOR AIR QUALITY.

AQCB Petition No. 2010-3

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<u>Reasons for Proposed Amendments to 20.11.2 NMAC, Fees</u>

The amendments before you are proposed for the following reasons:

1. Federal and New Mexico laws require or authorize (depending on type of permit) the collection of fees to cover specific costs. These amendments will provide funding to cover the cost of operating the Albuquerque-Bernalillo County Air Quality Program.
2. Current fees are insufficient and resulted in a projected budget deficit in FY/10 of $290,780. FY/11 current fees cover 68% of Title V program costs and 82% of other permitting program costs.
3. In past years, the Fees fund balance has covered program cost deficits. The fund balance is now depleted. If you will refer to AQD Exhibit 6b, you will see a bar

graph that shows Fund 242 revenues vs. operational costs since FY/06, and how expenses have been greater than generated revenue for at least that long.

4. Personnel and operating costs have increased steadily since the current fee structures were put in place between 1997 and 2004.
   - Current annual fee/ton rates for stationary sources have not changed since 1997.
   - Application review fees for stationary sources have not changed since 2001.
   - Fugitive Dust fee $/acre rate has not changed since 2001; Programmatic Fugitive Dust annual fees have not changed since 2004.
   - To date, fees have not been adjusted for CPI, although CPI adjustments are authorized in the Clean Air Act.
5. Programs have increased in both volume and complexity.
   - Federal requirements have increased in stringency, complexity and volume. See AQD Exhibits 6i, 6j and 6k for examples.
   - Local programs, such as 311 calls and community involvement have increased public access which results in higher demands on staff.
   - Increased technical complexity of permitting process requires more staff than is currently supported by application review fees.
6. Current Scope and Objectives sections are not in conformity with language in the New Mexico Air Quality Control Act, as required.
7. Some language and procedures are in need of clarification.

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<u>What are the proposed changes and how were they derived?</u>

Proposed fee increases apply to:

- Stationary Sources—application review fees, annual emissions fees
- Fugitive Dust—construction permit inspection fees; and programmatic permits for low, moderate and high impact sources
- Asbestos removal
- Miscellaneous fees

For **stationary sources**:

1. Proposed amendments change the basis for the application review fee calculation from "potential to emit" to "proposed allowable emission rate". The effect of this change is that it provides a more representative basis for determining base air quality review fees. It is not expected to reduce revenues since an increase is proposed to each of the base categories of permit review fees. Application review fees generate approximately 1/10 of the revenue generated by the annual fees (see AQD Exhibit 6h).

The current basis for determining air quality permit review fees is the "potential to emit" emissions which are the "theoretical" emissions. That typically assumes a business is operating 24 hours/day, 7 days/week, 365 days/year, which is most often not how many businesses operate in Albuquerque and Bernalillo County. The Air Quality Division workgroup proposes to use the "proposed allowable emission rate" for determining the base review fees for a permit application review because it is more representative of how businesses actually operate and provides a more realistic basis for determining review fees for air quality permits. An increase is being proposed for each of the base categories of permit review fees and a decrease in overall revenue is not expected. There could be a

savings to the permit applicant in that they would be paying for a review of their actual emissions as opposed to theoretical emissions. Please refer to AQD Exhibits # 6a and 6h. The shift from "potential to emit" to "proposed allowable emission rate" would not encourage underestimation of emissions on an application because that would be caught during the technical review of the permit application and would result in a higher base review fee, for which the permit applicant will be billed, and which payment of would be required prior to issuance of the permit. Additionally, the allowable emissions then become the established permit limits. Established permit limits are determined after a thorough technical review of the application which includes verifying the assumptions, information and calculations used to develop the permit emission limits. The established permit emission limits are enforceable and compliance is again verified during inspections. If an inspection finds non-compliance, then the appropriate enforcement action is taken by the Division. Intentional violations result in higher penalties than do other kinds of non-compliance issues.

2. Application review fees are increased based on a higher level of effort required to review applications and issue permits. See AQD Exhibits #6i, 6j, and 6k for examples.

3. Annual fees for most stationary source permits are increased from $31/ton to $44/ton, using EPA's presumptive minimum as the basis. It is recommended by EPA, and is based on CPI.

4. Annual fees for sources not subject to a $/ton fee are increased from $150 to $185 flat rate per year to address the increased effort required.

5. Annual fees for gasoline dispensing facilities and emergency generators are increased from $150 and $250 to $308 flat rate or from $31/ton to $44/ton, whichever is greater.

Fugitive dust program adjustments are based on the application of the CPI from 2004 to 2010. This fee was last updated in 2004.

Fugitive Dust construction permit per acre inspection fee will increase from $100/acre to $115/acre based on application of CPI from 2004 to 2010.

Fugitive Dust programmatic permit annual fees will increase based on application of CPI from 2004 to 2010.

There are no immediate changes proposed for fugitive dust filing and review fees, but CPI adjustments will be applied, effective January 2011.

Asbestos Program fees remain at the current level, but CPI adjustments will be made annually, effective January 2011.

Administrative fees are proposed to increase from $75/hour to $92/hour for Professional Services and Public Records Research fees will increase from $50/hour to $92/hour. The new rates were derived through a combination of application of CPI and a committee decision to make both categories the same. These fee categories are rarely, if ever used, but are included in the regulation in case an appropriate occasion might arise.

Other changes involve the expansion of the scope of the regulation to be consistent with Federal and State law, clarification of the refund and appeal processes, and applies CPI to all annual fees going forward.

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How do proposed fees compare with those in other jurisdictions?

It is difficult to make a completely fair comparison of fees, as jurisdictions vary greatly in their physical characteristics, organizational structures, types and numbers of pollution sources, fee structures, etc. However if you will refer to AQD Exhibit # 6c, you will see

that Albuquerque-Bernalillo County is compared with Clark County, Nevada, the State of Arizona, Maricopa County, Arizona, the State of New Mexico (outside of Bernalillo County) and Pima County, Arizona.

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How long has it been since these fees were updated?

Current annual fee/ton rates for stationary sources have not changed since 1997.

Application review fees for stationary sources have not changed since 2001.

Fugitive dust fee $/acre rate has not changed since 2001; programmatic fugitive dust annual fees have not changed since 2004.

To date, fees have not been adjusted for CPI, although CPI adjustments are authorized in the Clean Air Act.

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What kind of outreach was done in developing the proposal?

After the internal subcommittee worked on the first draft of the proposed regulation, a stakeholder meeting was conducted on July 20, 2010 after dissemination of the stakeholder review draft ; presentations were made to members of the City Council, City Council staff, and were offered to the Bernalillo County Commission. In addition, and at the suggestion of City Council members, an article was published in the City of Albuquerque Neighborhood News newsletter. Comments were received and responded to, some resulting in changes to the draft regulation.

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In summary, the proposed increase in fees does not expand the program. It allows the Division to collect adequate funds to maintain the program at current levels without a

budget deficit, to meet its obligations under the Federal Clean Air Act, and to continue to provide activities that protect the public health and the environment.

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Request

This hearing has been legally noticed as shown by AQD Exhibits 2a, b, and c.

Comments and responses to comments received in the process of developing this regulation are included in Exhibits 4a, b, c, d, e, f, g, h, i, j and

5a.

Therefore, the Environmental Health Department of the City of Albuquerque, by and through the Air Quality Division (AQD), asks the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) to adopt amendments to 20.11.2 NMAC, Fees, as shown in AQD Exhibit 1b, [if needed—and as amended by Staff Proposed Floor Amendments, shown as AQD Exhibit #?] and submit said amendments to U. S. Environmental Protection Agency (EPA) as a revision to the SIP.

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Before the floor is open for questions, I would like to introduce our Technical Panel. Panel members are Isreal Tavarez, Environmental Engineering Manager for AQD, who currently manages the Permitting Section of the Division; Christella Armijo, AQD Management Analyst who provides financial analysis for all fee and grant related programs; John Liberatore, AQD Supervisor in charge of the Small Business Program, and Damon Reyes, Supervisor in charge of AQD Enforcement Section.

Questions?

That concludes my presentation, I would like to have Exhibits 1 through 8 moved into the Record. [so moved]. I stand for questions.