PENGAD 800-631-6989
AQD EXHIBIT
6

SLIDE 1

Good evening, Mr. Hearing Officer, Chairman, and members of the Board. My name is Neal Butt, and I work in the Control Strategies Section of the Air Quality Division. I would like to present for your consideration, proposed amendments to 20.11.42 NMAC, *Operating Permits*. The reasons for these amendments are to:

SLIDE 2

1. Change the definition of "Major Source". Currently, source categories subject to Section 111 of the Clean Air Act, entitled *New Source Performance Standards* (NSPS), or subject to Section 112 of the Act, entitled *National Emission Standards for Hazardous Air Pollutants* (NESHAPs), are required to include their fugitive emissions in addition to their stack emissions when calculating their total emissions. If/when their total combined emissions reach the limit of 100 Tons per Year (TPY) of a pollutant, then the source is deemed a "Major Source", which would require a Title V operating permit. The proposed

amendment would remove this requirement to include fugitive emissions as part of their total emissions, for those source categories subject to NSPS and NESHAPs promulgated after August 7, 1980, and that don't already fall within one of the listed source categories.

SLIDE 3

2. The language at Subsection D of 20.11.42.2 NMAC, '*Existing major sources, which are not required to have a permit under 20.11.41 NMAC*' is proposed to be deleted. This language was originally developed when the Division's Title V program first began, and was designed to capture "grandfathered" major sources. However, currently all major sources have either submitted a timely application or have already been permitted, thus this provision is no longer needed. In addition, this language is not approvable by EPA as shown by their comments in AQD Exhibit 5a.

SLIDE 4

3. Amend language in 20.11.42 NMAC to bring it into alignment with language in 40 CFR 70, *State Operating Permit Programs*; and

SLIDE 5

4. Fix style and formatting.

SLIDE 6

I would first like to review the exhibits and then I will proceed with the rest of my presentation:

- ✓ **AQD Exhibit 1** is the 'Petition to Amend' which was filed on April 28, 2009 and which includes the Public Review Draft, labeled as AQD Exhibit 1a, showing proposed amendments to 20.11.42 NMAC;
- ✓ **Exhibit 2** contains the November 27, 2001 Federal Register Notice which stipulates the changes made to the federal definition of "Major Source";
- ✓ **Exhibit 3** contains an electronic copy of 40 CFR 70, *State Operating Permit Programs;*

- ✓ The public notice of hearing, including the legal advertisement of this hearing in the Albuquerque Journal and the New Mexico Register, as well as the 'Notice of Availability of the Public Review Draft' which was sent to the *Air Quality Announce List Serve* as well as a list of those individuals' e-mail addresses, are shown as AQD Exhibit # 4a, 4b, and 4c respectively;
- ✓ **Exhibit 5a** shows the comments received from EPA
- ✓ **Exhibit 5b** shows the Division's rebuttal as well as EPA's subsequent response;
- ✓ **Exhibit 6** is a copy of my Direct Testimony and PowerPoint slides and
- ✓ **Exhibit 7** shows the staff's proposed Floor Amendments
- ✓ **Exhibit 8** is a draft of tonight's meeting agenda.
- ✓ **Exhibit 9** Shows public comment received

[Hearing officer moves them in] Thank you,

SLIDE 7

The alignment of the language in 20.11.42 NMAC with 40 CFR Part 70 as well as the changes made to make the rule more succinct will not impact the regulated community or the public negatively, therefore I won't spend time reviewing those changes. The federal rule language is shown in AQD Exhibit # 3 for your reference. However, the proposed changes to the definition of "Major Source" *are* substantive and so I will explain our rationale for this change in detail.

Effective November 27, 2001, the U.S. Environmental Protection Agency (EPA) revised their definition of "Major Source" under 40 CFR Part 70.2, *Definitions*. At that time, the EPA required that states either make a corresponding revision to their operating permit regulations by November 27, 2002 or ensure that their regulations were more stringent than the federal requirement. The New Mexico Environment Department's Air Quality Bureau proposed amendments to the Environmental Improvement Board's rule to make it as stringent as the federal rule. However the Air

Quality Control Board did not. Instead the Air Board's rule remained more stringent. To better understand why this was the case, I need to briefly review the history of EPA's regulatory efforts to modify the meaning of "major source"

SLIDE 8

History of EPA Revision

Before the EPA modified their definition of major source in 2001, if a source was subject to a standard under Section 111 of the Clean Air Act (New Source Performance Standards) or 112 of the Act (National Emission Standards for Hazardous Air Pollutants), then that source was required to count their fugitive emissions in addition to their stack emissions when calculating whether they were a "major source", which would necessitate a Title V operating permit. The changes implemented by the 2001 rule were first proposed on August 29, 1994 [59 FR 44460] and re-proposed on August 31, 1995 [60 FR 5530]. Specifically, the pre-2001definition of "major source" stated that:

[xxvii] "All other stationary source categories regulated by a standard promulgated under Section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category"

The 2001 rule removed the phrase *"but only with respect to those air pollutants that have been regulated for that category"*, and added the "August 7, 1980" cutpoint. The new language reads:

[xxvii] "Any other stationary source category which *as of August 7, 1980*, is being regulated under Section 111 or 112 of the Act"

This proposed revision was prompted by an industry petition, which contended that EPA must conduct a rulemaking under Section 302(j) of the Clean Air Act before requiring the counting of fugitive emissions for sources subject to a standard under Section 111 or 112 promulgated after August 7, 1980.

In the 11/27/01 Federal Register [66 FR 59161], shown as AQD Exhibit # 2, EPA required states to modify their definition of "major source". The 11/27/01 FR stated that: "State permitting authorities with programs that *currently* provide the August 7, 1980 limitation on including fugitive emissions need *take no*

action, since their rules would already be consistent with this final rule with respect to the 'August 7, 1980' date. Other permitting authorities *may*, but are NOT required to, revise their programs to include the 'August 7, 1980' limitation. That is, States may include requirements that are more stringent than Federal requirements, by requiring sources subject to Section 111 or 112 standards promulgated *after* 'August 7, 1980' to count their fugitive emissions in major source determinations under Section 302 or Part D of Title I".

SLIDE 9

The Air Board accepted the testimony of the Division, and exercised its option to keep their regulation more stringent by leaving out the 'August 7, 1980' cutpoint. This amendment was adopted by the Air Board on 11/13/02, and became effective locally on 2/1/03. This amendment constituted an update to the Division's Title V program, necessitating a public hearing which was held on 12/11/2002, to approve this update as well as the submittal of this update to EPA for review and approval. This

amendment to the Title V program became federally effective on November 8, 2004.

The result of the Air Board's action is that today when a determination is being made by the Division of whether a source that is subject to a NSPS or NESHAP qualifies as a "major source" of emissions or not, the Division can include the source's *fugitive* emissions in addition to the source's stack emissions in calculating the source's total emissions. If these summed emissions reach the limit of 100 Tons Per Year (TPY) or more, then the source is deemed "major" and will require a Title V Permit. Had the 'August 7, 1980' date been included in the definition of "major source" as it was for the State's rule, then *only* sources subject to NSPS and NESHAPS *on or before* 'August 7, 1980' would have had their fugitive emissions count towards the major source threshold of 100 TPY. In the intervening years between 2002 and now, the Division's position has changed, and we would now like to include this cutoff date. If the Air Board adopts the amendments proposed by the Division, then sources will still be

required to keep track of their fugitive emissions and report these to the Division. However, those sources that are currently subject to a NSPS or NESHAP that was promulgated after 'August 7, 1980', and don't fall within one of the listed source categories [at 20.11.42.7.R.(2).(a)-(y) NMAC] will no longer be required to include their fugitive emissions in calculating whether they are a "major" source or not.

SLIDE 10

That concludes my testimony, and I stand for questions.

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

AQCB Resolution No. 2009-X

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Air Quality Division
Control Strategies Section
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1

Proposed Amendments

I. Change definition of "Major Source"

- Limit number of sources required to count fugitive emissions as part of their 'total emissions'
- Only source categories subject to NSPS and NESHAPs promulgated on or before August 7, 1980
- Excluded sources covered under 'synthetic minor' permit system program, 20.11.40 NMAC, *Source Registration*.

2

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 been permitted
- Language is not codified within 40 CFR Part 70.

3

Proposed Amendments

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

4

Proposed Amendments

IV. Correct style and formatting.

5

Exhibits

- Petition to Amend Including PRD
- Federal Register Notice
- 40 CFR 70, *State Operating Permits*
- Public Notice
- EPA Comments
- Testimony
- Public Comment
- Draft AQCB Agenda

6

"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

7

"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

8

"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 NSPS or NESHAP as a "major source" can 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
- Today
  - Reduce the number of NSPS and NESHAP sources that are classified as "major" requiring a Title V permit
  - Excluded sources covered under "synthetic minor" permit program, 20.11.40 NMAC, *Source Registration*

9

QUESTIONS?