

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 71 OPERATING PERMIT EMISSIONS FEES

20.2.71.1 ISSUING AGENCY: Environmental Improvement Board.

~~[[11/30/95;]]~~ 20.2.71.1 NMAC - ~~[Rn, 20 NMAC 2.71.100-10/31/02]~~ Rp, 20.2.71.1 NMAC, 6/1/2026]

20.2.71.2 SCOPE: This Part applies to all persons required to obtain a permit under 20.2.70 NMAC (Operating Permits).

~~[[11/30/95;]]~~ 20.2.71.2 NMAC - ~~[Rn, 20 NMAC 2.71.101-10/31/02]~~ Rp, 20.2.71.2 NMAC, 6/1/2026]

20.2.71.3 STATUTORY AUTHORITY: Environmental Improvement Act, Sections 74-1-1 to -18 NMSA 1978, including specifically [NMSA 1978, section 74-1-8 (A)(4)] Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, [NMSA 1978, Sections 74-2-1 et seq.] Sections 74-2-1 to -17 NMSA 1978, including specifically [section 74-2-7(B)(5)] Paragraph (7) of Subsection B of Section 74-2-7 NMSA 1978.

~~[[11/30/95;]]~~ 20.2.71.3 NMAC - ~~[Rn, 20 NMAC 2.71.102-10/31/02]~~ Rp, 20.2.71.3 NMAC, 6/1/2026]

20.2.71.4 DURATION: Permanent.

~~[[11/30/95;]]~~ 20.2.71.4 NMAC - ~~[Rn, 20 NMAC 2.71.103-10/31/02]~~ Rp, 20.2.71.4 NMAC, 6/1/2026]

20.2.71.5 EFFECTIVE DATE: ~~[November 30, 1995]~~ June 1, 2026, unless a later date is cited at the end of a section.

~~[[11/30/95;]]~~ 20.2.71.5 NMAC - ~~[Rn, 20 NMAC 2.71.104-10/31/02; A, 12/15/04]~~ Rp, 20.2.71.5 NMAC, 6/1/2026]

~~[[The latest effective date of any section in this part is 01/09/09.]]~~

20.2.71.6 OBJECTIVE: The objective of this Part is to establish a schedule of operating permit ~~[emission]~~ emissions fees.

~~[[11/30/95;]]~~ 20.2.71.6 NMAC - ~~[Rn, 20 NMAC 2.71.105-10/31/02]~~ Rp, 20.2.71.6 NMAC, 6/1/2026]

20.2.71.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part, the following definitions apply.

A. “Allowable emission rate” means the maximum emission allowed by the more stringent emission limitation applicable to the source contained in:

- (1) any New Mexico air quality control regulation;
- (2) any federal standard of performance, emission limitation, or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412; or
- (3) any condition within a construction or operating permit issued by the department.

B. “Emissions unit” means any part or activity of a stationary source that emits or has the potential to emit any fee pollutant.

C. “Fee pollutant” means:

- (1) sulfur dioxide, nitrogen dioxide, carbon monoxide, ~~[total suspended particulate matter]~~ PM10, PM2.5, and volatile organic compounds~~[-and mercury]~~; and
- (2) any hazardous air pollutant that is subject to any standard promulgated pursuant to section 112 of the federal act.

D. “Fugitive emissions” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

E. “Hazardous air pollutant” means an air contaminant that has been classified as a hazardous air pollutant pursuant to section 112 of the federal act.

F. “Operator” means the person or persons responsible for the overall operation of a facility.

G. “Owner” means the person or persons who own a facility or part of a facility.

~~[H. — “Part” means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.]~~

[H] H. “Stationary source” means any building, structure, facility, or installation that emits or may emit any air pollutant.

~~[[11/30/95;]]~~ 20.2.71.7 NMAC - ~~[Rn, 20 NMAC 2.71.107-10/31/02; A, 12/15/04; A, 06/15/07]~~ Rp, 20.2.71.7 NMAC, 6/1/2026]

20.2.71.8 AMENDMENT AND SUPERSESSON OF PRIOR REGULATIONS: This Part amends and supersedes Air Quality Control Regulation (AQCR) 771 - Operating Permit Emission Fees, filed November 15, 1993, as amended.

A. All references to AQCR 771 in any other rule shall be construed as a reference to this Part.

B. The amendment and supersession of AQCR 771 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 771.

~~[[11/30/95;]~~ 20.2.71.8 NMAC - ~~[Rn, 20 NMAC 2.71.106-10/31/02]~~ Rp, 20.2.71.8 NMAC, 6/1/2026]

20.2.71.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau ~~[, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505]]. [As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Santa Fe, New Mexico 87505].~~

~~[[11/30/95;]~~ 20.2.71.9 NMAC - ~~[Rn, 20 NMAC 2.71.108-10/31/02]~~ Rp, 20.2.71.9 NMAC, 6/1/2026]

20.2.71.10 SEVERABILITY: If any provision of this Part, or the application of this provision to any person or circumstance is held invalid, the remainder of this Part, or the application of this provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby.

[20.2.71.10 NMAC - N, 6/1/2026]

~~[20.2.71.10]~~ **20.2.71.11 to 20.2.71.108 [RESERVED]**

20.2.71.109 [APPLICABILITY: ~~Each owner or operator required to obtain an operating permit under 20.2.70 NMAC (Operating Permits) shall be subject to the requirements of this Part.] [RESERVED]~~

~~[[11/30/95;]~~ 20.2.71.109 NMAC - ~~[Rn, 20 NMAC 2.71.109-10/31/02]~~ Rp, 20.2.71.109 NMAC, 6/1/2026]

20.2.71.110 FEE REQUIREMENT

A. An annual ~~[operating permit emission]~~ emissions fee shall be paid to the department by each owner or operator subject to this part.

B. The annual emissions fee shall be assessed:

(1) for a major source as defined in 20.2.70 NMAC (Operating Permits), for all emissions units;

(2) for all other stationary sources, for emissions units which cause the source to be subject to 20.2.70 NMAC; and

(3) for emissions above annual allowable emission limits for the source categories in Paragraphs (1) and (2) of this Subsection ~~[B of Section 20.2.71.110 NMAC]~~.

C. The annual emissions fee shall be calculated in conformance with 20.2.71.111 NMAC.

~~[[11/30/95;]~~ 20.2.71.110 NMAC - ~~[Rn, 20 NMAC 2.71.110-10/31/02; A, 12/15/04]~~ Rp, 20.2.71.110 NMAC, 6/1/2026]

20.2.71.111 FEE DETERMINATION

A. Annual emissions fee calculation.

(1) The annual emissions fee shall be calculated by taking the product of the allowable emission rate for each fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC.

(2) The allowable emission rate which shall be used in the fee calculation for this Subsection is

~~[_____ (a) _____] the allowable emission rate which exists on December 31 for each year. [; and _____ (b) _____ the failure of an owner or operator to include the correct information in a permit application, resulting in incorrect allowable emissions in a permit issued under 20.2.70 NMAC, 20.2.72 NMAC, or 20.2.74 NMAC, shall not preclude the department from requiring payment for the correct emissions from the time payment would have been first due.]~~

(3) Allowable emission rates shall be calculated to the tenth of a ton for each [emission] emissions unit and then summed to determine the tons per year for the facility. Total facility tons per year quantities

shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.

(4) Emissions from those operations determined to be insignificant activities by the department under 20.2.70 NMAC shall not be included in the fee calculation for this Subsection.

(5) Fugitive emissions which have an allowable emission rate shall be included in the fee calculation for this Subsection.

(6) Any quantity of a pollutant which is assessed a fee pursuant to this Subsection because it is a hazardous air pollutant shall not be assessed additional fees.

(7) A maximum of ~~[six thousand]~~ 3,000 tons per year of any one fee pollutant shall be used in the fee calculation for this Subsection.

(8) For facilities with allowable emission rates for both PM10 and PM2.5, a fee shall only be assessed pursuant to this Subsection for one of these fee pollutants, and shall be based on whichever has the higher allowable emission rate.

(9) The failure of an owner or operator to include the correct information in a permit application, resulting in incorrect allowable emissions in a permit issued under 20.2.70 NMAC, 20.2.72 NMAC, or 20.2.74 NMAC, shall not preclude the department from requiring payment for the correct emissions from the time payment would have been first due.

B. Source shutdown.

(1) The annual emissions fee shall not be reduced due to lack of operation of any emissions unit, except when:

(a) the discontinued operation is accounted for in an allowable emission rate contained within a construction or operating permit issued by the department;

(b) a construction or operating permit issued by the department has been discontinued or terminated and the source ceased operation; or

(c) the emissions unit is located at a stationary source which meets the criteria of Paragraph (2) of this Subsection ~~[B of 20.2.71.111 NMAC]~~.

(2) The annual emissions fee shall be reduced when all operations at a stationary source have been ~~[shutdown]~~ shut down for a period greater than 60 consecutive days within a calendar year. In this case, the annual emissions fee calculation shall be adjusted by reducing the annualized allowable emission rate ~~[, or potential to emit if applicable,]~~ for each day the stationary source was ~~[shutdown]~~ shut down.

C. Annual emissions fee for emissions above annual allowable emission limits.

(1) The annual emissions fee for emissions above annual allowable emission limits shall be based on all emissions above annual allowable emission limits of fee pollutants reported or required to be reported by a stationary source through December 31 in accordance with Subsection E of 20.2.70.302 NMAC. The fee shall be calculated by taking the product of the emissions above annual allowable emission limits for each fee pollutant above and beyond the allowable annual emission limit per unit expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC.

(2) Total facility tons per year quantities of emissions above annual allowable emission limits shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.

(3) Any quantity of a pollutant which is assessed a fee pursuant to this ~~[section]~~ Subsection because it is a hazardous air pollutant shall not be assessed additional fees ~~[pursuant to this section]~~.

(4) A maximum of ~~[six thousand]~~ 3,000 tons per year of any one fee pollutant shall be used in the fee calculation for this ~~[section]~~ Subsection.

(5) For facilities with allowable emission rates for both PM10 and PM2.5, a fee shall only be assessed pursuant to this Subsection for one of these fee pollutants, and shall be based on whichever has higher emissions above annual allowable emission limits.

[11/30/95; 20.2.71.111 NMAC - [Rn, 20 NMAC 2.71.111 10/31/02; A, 12/15/04] Rp, 20.2.71.111 NMAC, 6/1/2026]

20.2.71.112 ~~[EMISSION]~~ EMISSIONS FEE

A. The fee for each fee pollutant shall be ~~[\$20.00]~~ \$85 per ton on an annual basis, except as provided for in Subsection B of ~~[20.2.70.112 NMAC]~~ this Section. ~~[This fee shall increase by \$2.00 per ton on an annual basis beginning on January 1, 2010 through the fees due on June 1, 2012.]~~

B. The fee for each hazardous air pollutant shall be ~~[\$165.00]~~ \$258 per ton on an annual basis for any stationary source which is only a major source, as defined in 20.2.70 NMAC, for any hazardous air pollutant.

1 ~~[C. Fees for mercury emissions.~~

2 ~~(1) For the calendar years 2010 through 2017, the fee for mercury emissions from stationary~~
3 ~~sources subject to 20.2.85 NMAC shall be \$8.88 per ounce annually.~~

4 ~~(2) For the calendar years 2018 and thereafter, the fee for mercury emissions] from stationary~~
5 ~~sources subject to 20.2.85 NMAC shall be \$22.51 per ounce annually.]~~

6 ~~[D] C.~~ The fee per ton of emissions above annual allowable emission limits shall be identical to the fee
7 per ton of allowable emissions.

8 ~~[E] D.~~ Beginning ~~[on January 1, 2009]~~ in 2028, the fees referenced in this section shall be changed
9 annually on January 1 by the percentage, if any, of any annual increase in the consumer price index (CPI) in
10 accordance with Section 502(b)(3)(B)(v) of the federal ~~[Clean Air]~~ Act. In the event there is a decrease or absence
11 of change in the CPI, fees shall remain the same until the next increase in the CPI.

12 ~~[[11/30/95;] 20.2.71.112 NMAC - [Rn, 20 NMAC 2.71.112 10/31/02; A, 12/15/04; A, 06/15/07; A, 01/09/09] Rp,~~
13 ~~20.2.71.112 NMAC, 6/1/2026]~~

14
15 **20.2.71.113 NOTIFICATION, [FEE] PAYMENT, LATE FEE AND ENFORCEMENT**

16 **A. Schedule.**

17 (1) The department shall by April 1 of each year provide to each owner or operator subject to
18 this part notification, which shall contain:

19 (a) the annual emissions fee based on the requirements of this part which is
20 currently due; and

21 (b) a summary of the basis for the required annual missions fee.

22 (2) Upon discovery of an error in any past notification of annual emissions fees due, the
23 department shall promptly notify the owner or operator and provide credit for overcharges or require payment for
24 undercharges.

25 (3) Each owner or operator shall pay by June 1 the annual emissions fee contained in the
26 department's notification required under Paragraph (1) of this Subsection ~~[A of Section 20.2.71.113 NMAC]~~.
27 Failure to remit the full annual emissions fee by this date shall subject the owner or operator to a late fee equal to
28 fifty percent of the annual emissions fee or \$5,000, whichever is less. The department shall provide to each owner
29 or operator assessed a late fee pursuant to this Subsection notification, which shall state the late fee and unpaid
30 annual emissions fee balance currently due. The owner or operator shall pay the amount stated in the department's
31 notification within 30 days of the date of the notification. If the amount stated in the notification is not timely paid,
32 the late fee shall increase to one hundred percent of the annual emissions fee or \$10,000, whichever is less, and shall
33 be due immediately without further notification from the department, along with the unpaid annual emissions fee
34 balance.

35 (4) Each owner or operator shall pay invoices based on notices of errors in past notifications
36 within 60 days of the invoice date.

37 ~~[The department shall commence invoicing for fees for emissions above annual allowable~~
38 ~~emission limits reported by the method specified by the department in calendar year 2007.]~~

39 **B. Payment.**

40 (1) Annual emissions fees shall be remitted in the form of a certified check or money order
41 made payable to the environment department ~~[and]~~ , electronic payment, or other method as allowed by the state.
42 Annual emissions fees remitted in the form of a certified check or money order shall be submitted to the air quality
43 bureau at the address specified in the notice.

44 (2) Upon receipt of the ~~[check or money order]~~ annual emissions fee payment, it shall be
45 deposited in the state air quality permit fund.

46 ~~(3) Annual emissions fees shall be paid in U.S. dollars.~~

47 **C. Nonpayment.** Failure to remit the full annual emissions fee, including any late fees, required by
48 the due date specified in Subsection A of this section is a violation of this part and may subject the owner or
49 operator to:

50 (1) civil penalties of up to \$15,000 for each day of noncompliance as provided for in the
51 ~~[New Mexico]~~ Air Quality Control Act, section 74-2-12.1 NMSA 1978; and

52 (2) the enforcement provisions of the ~~[New Mexico]~~ Air Quality Control Act, section 74-2-
53 12 NMSA 1978, which includes suspension or revocation of any permit.

54 **D. Non-compliance with Chapter 2, Title 20 NMAC or the Air Quality Control Act subjects each**
55 owner or operator to administrative compliance costs for enforcement of Chapter 2, Title 20 NMAC.

1 ~~[[11/30/95;]~~ 20.2.71.113 NMAC - ~~[Rn, 20 NMAC 2.71.113 10/31/02; A, 12/15/04]~~ Rp, 20.2.71.113 NMAC,
2 6/1/2026]
3

4 **HISTORY OF 20.2.71 NMAC:**

5 **Pre NMAC History:** The material in this part was derived from that previously filed with the commission of public
6 records - state records center and archives.

7 EIB/AQCR 771, Air Quality Control Regulation 771 - Operating Permit Emission Fees, filed 11/15/93.
8

9 **History of Repealed Material:** ~~[[RESERVED]]~~

10 20.2.71 NMAC, Operating Permit Emissions Fees, effective 10/31/02, repealed, effective 6/1/26.
11

12 **Other History:**

13 EIB/AQCR 771, Air Quality Control Regulation 771 - Operating Permit Emission Fees, filed 11/15/93 was
14 **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.71, Operating Permit
15 Emission Fees, filed 10/30/95;

16 20 NMAC 2.71, Operating Permit Emission Fees, filed 10/30/95 was **renumbered, reformatted and replaced** by
17 20.2.71 NMAC, Operating Permit Emission Fees, effective 10/31/02.