

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING
TO CONSIDER THE PROPOSED REPEAL AND REPLACEMENT OF 20.2.71 NMAC – OPERATING
PERMIT EMISSIONS FEES AND 20.2.75 NMAC – CONSTRUCTION PERMIT FEES, EIB 25-77 (R)**

The New Mexico Environmental Improvement Board (“EIB”) will hold a public hearing beginning on March 23, 2026, at 9:00 a.m. to consider EIB 25-77 (R) – In the Matter of Proposed Repeal and Replacement of 20.2.71 NMAC – Operating Permit Emissions Fees and 20.2.75 NMAC – Construction Permit Fees. The hearing will last as long as required to hear all testimony, evidence, and public comment, and is expected to last approximately three days. The EIB may deliberate and make a decision on the proposed regulatory changes at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal.

The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation. The in-person component will be held at the New Mexico State Capitol, 490 Old Santa Fe Trail (alternatively 411 S. State Capital Street), Santa Fe, New Mexico 87501. Hearing details, including the meeting room number and how to participate virtually, will be available on the New Mexico Environment Department (“NMED”) events calendar at <https://www.env.nm.gov/events-calendar/>, under the calendar entry corresponding to the hearing start date. For more information, contact the EIB Administrator at (505) 660-4305 or pamela.jones@env.nm.gov.

The purpose of the hearing is for the EIB to consider and take possible action on a petition by NMED requesting that the EIB repeal and replace 20.2.71 NMAC, Operating Permit Emissions Fees, and 20.2.75 NMAC, Construction Permit Fees. The petition, statement of reasons (attached to the petition as Exhibit A), proposed replacement rules 20.2.71 NMAC and 20.2.75 NMAC (attached to the petition as Exhibits B and C), and current rules 20.2.71 NMAC and 20.2.75 NMAC with proposed changes shown in redline fashion (attached to the petition as Exhibits D and E) are available on NMED’s docketed matters website at <https://www.env.nm.gov/opf/docketed-matters/>. To access these documents, click on “Environmental Improvement Board” to display the drop-down list of matters before the EIB, then click on “EIB 25-77 (R): In the Matter of Proposed Repeal and Replacement of 20.2.71 NMAC – Operating Permit Emissions Fees and 20.2.75 NMAC – Construction Permit Fees” to display the drop-down list of all documents filed in conjunction with this matter. Copies of the petition, statement of reasons, and proposed replacement rules can also be obtained by contacting Eric Peters at (505) 629-5299 or eric.peters@env.nm.gov, or at any of NMED’s offices statewide.

The purpose of proposed replacement rules 20.2.71 NMAC and 20.2.75 NMAC is to ensure that NMED’s emissions and construction permit fees are sufficient to cover the reasonable costs of NMED’s Title V Operating Permit Program and Construction Permit Program. The EIB is authorized to adopt the proposed rules pursuant to the Environmental Improvement Act, Section 74-1-8(A)(4), and the Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 17. The schedule of Title V operating permit emissions fees must be consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the federal Clean Air Act, which requires sources that are required to obtain an operating permit to pay fees sufficient to cover all reasonable direct and indirect costs of developing and administering the state’s Title V Operating Permit Program. See Air Quality Control Act, NMSA 1978, Section 74-2-7(B)(7). The schedule of construction permit fees must be sufficient to cover the reasonable costs of reviewing and acting upon any application for such permit and implementing and enforcing the terms and conditions of the permit, excluding any court costs or other costs associated with an enforcement action. See Air Quality Control Act, NMSA 1978, Section 74-2-7(B)(6).

20.2.71 NMAC establishes a schedule of emissions fees for sources required to obtain a Title V permit under 20.2.70 NMAC, Operating Permits. The schedule specifies the annual emissions fee for each fee pollutant expressed in dollars per ton of allowable emissions. Proposed replacement rule 20.2.71 NMAC revises the current definition of fee pollutant, adding particulate matter 10 micrometers or less in diameter (“PM10”) and particulate matter 2.5 micrometers or less in diameter (“PM2.5”) and removing mercury and total suspended particulate matter; reduces the maximum tons used in the fee calculation for each fee pollutant; provides that a fee shall be assessed for either PM10 or PM2.5, not both, depending on which has the higher allowable emission rate; increases the dollar per ton amount used in the fee calculation for each fee pollutant; establishes a late fee for failing to timely pay annual emissions fees; and confirms administrative compliance costs for enforcement of New Mexico’s air quality regulations. If adopted, replacement rule 20.2.71 NMAC will be submitted to the U.S. Environmental Protection Agency (“EPA”) as a revision to New Mexico’s Title V Operating Permit Program.

Similarly, 20.2.75 NMAC establishes a schedule of construction permit fees for notices of intent, permits to construct or modify a source, construction permit revisions, and technical reviews of existing construction permits under 20.2.72 NMAC, Construction Permits, and 20.2.73 NMAC, Notice of Intent and Emissions Inventory Requirements. The schedule includes a complexity-based points schedule for various actions and a cost per point, which is multiplied by the sum of all the points applicable to a given permitting action to determine the required permit fee. The schedule also includes an annual fee for sources that have already been issued a construction permit. Proposed replacement rule 20.2.75 NMAC revises the current complexity-based points schedule, increasing the points for certain actions and adding points for notices of intent; increases the cost per point used to calculate permit fees; increases the annual fee for sources that have already been issued a construction permit and institutes an annual fee for sources that have filed a notice of intent; establishes a late fee for failing to timely pay annual fees; and confirms administrative compliance costs for enforcement of New Mexico's air quality regulations. If adopted, replacement rule 20.2.75 NMAC will be submitted to EPA as a revision to the New Mexico State Implementation Plan.

The hearing will be conducted in accordance with 20.1.1 NMAC, Rulemaking Procedures – Environmental Improvement Board; the Environmental Improvement Act, NMSA 1978, Section 74-1-9; the Air Quality Control Act, NMSA 1978, Section 74-2-6; orders issued by the hearing officer appointed by the EIB; and other applicable procedures.

PUBLIC PARTICIPATION: The EIB's hearings and meetings are open to the public, and the general public is encouraged to participate. All interested persons will be given a reasonable opportunity to participate by filing a notice of intent to present technical testimony, filing an entry of appearance, or participating as a member of the general public. "Technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing. "General public" includes any person attending a hearing who has not submitted a notice of intent to present technical testimony.

Any member of the general public may testify at the hearing. Any person who provides testimony at the hearing is subject to cross-examination on the subject matter of his or her testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. All testimony will be taken under oath or affirmation which may be accomplished in mass or individually.

TECHNICAL TESTIMONY: Any person who wishes to present technical testimony at the hearing must file a written notice of intent with the EIB Administrator no later than February 20, 2026, in accordance with the EIB's Order Scheduling Hearing, Appointing Hearing Officer and Setting Certain Filing Dates (issued December 23, 2025), available on NMED's docketed matters website, and shall be a party. The notice of intent shall: (1) identify the person for whom the witness(es) will testify; (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present; (4) include a copy of the direct testimony of each technical witness in narrative form; (5) include the text of any recommended modifications to the proposed regulatory change; and (6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules. Any person who files a notice of intent shall serve a copy on NMED.

ENTRY OF APPEARANCE: Any person may file an entry of appearance as a party. The entry of appearance shall be filed with the EIB Administrator no later than February 20, 2026, in accordance with the EIB's Order Scheduling Hearing, Appointing Hearing Officer and Setting Certain Filing Dates (issued December 23, 2025).

PUBLIC COMMENT: The general public may submit a written public comment or testify orally at the hearing. A member of the general public who wishes to submit a written public comment as a statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Those wishing to submit a written public comment prior to the hearing may submit the written public comment online at <https://nmed.commentinput.com/?id=t8BRr4m76>, email the written public comment to pamela.jones@env.nm.gov, or mail the written public comment to EIB Administrator, New Mexico Environment Department – Harold Runnels Building, P.O. Box 5469, Santa Fe, New Mexico 87502. Additionally, there will be an opportunity each day of the hearing for oral testimony from members of the general public. No prior notification is required for the general public

to present non-technical testimony at the hearing. The general public may also offer non-technical exhibits in connection with their written public comment or oral testimony, so long as the exhibits are not unduly repetitious of the testimony and comply with 20.1.1.402 NMAC. The appointed hearing officer shall determine the process and times for the general public to testify during the hearing.

ACCESSIBILITY: Persons requiring language interpretation services or having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact the EIB Administrator at least 14 days prior to the hearing or as soon as possible at (505) 660-4305 or pamela.jones@env.nm.gov. To access this number via Relay New Mexico dial 711, or call (800) 659-8331 (TTY) or (800) 659-1779 (voice).

NOTICE OF NON-DISCRIMINATION: NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 CFR Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, New Mexico 87502, (505) 827-2855, nd.coordinator@env.nm.gov. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.