

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 73 NOTICE OF INTENT AND EMISSIONS INVENTORY REQUIREMENTS

20.2.73.1 ISSUING AGENCY: Environmental Improvement Board.
 [11/30/95; 20.2.73.1 NMAC - Rn, 20 NMAC 2.73.100 02/18/02]

20.2.73.2 SCOPE: All persons who own or operate a source or who intend to construct or modify a source.
 [11/30/95; 20.2.73.2 NMAC - Rn, 20 NMAC 2.73.101 02/18/02]

20.2.73.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-7(A)(1) and (B).
 [11/30/95; 20.2.73.3 NMAC - Rn, 20 NMAC 2.73.102 02/18/02]

20.2.73.4 DURATION: Permanent.
 [11/30/95; 20.2.73.4 NMAC - Rn, 20 NMAC 2.73.103 02/18/02]

20.2.73.5 EFFECTIVE DATE: November 30, 1995 except where a later date is cited at the end of a section or paragraph.
 [11/30/95, 10/01/97; 20.2.73.5 NMAC - Rn, 20 NMAC 2.73.104 02/18/02]
 [The latest effective date of any section in this Part is January 1, ~~2004~~2008.]

20.2.73.6 OBJECTIVE: The objective of this Part is to establish requirements for the submission of certain relevant information to ensure that the regulations and standards under the Air Quality Control Act and the Federal Act will not be violated, and to facilitate the quantification of greenhouse gas emissions in New Mexico.
 [11/30/95; 20.2.73.6 NMAC - Rn, 20 NMAC 2.73.105 02/18/02]

20.2.73.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

A. "air pollution control equipment" means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or convert for the purposes of control any air contaminant to another form, another chemical or another physical state;

B. "commencement" means that an owner or operator has undertaken a continuous program of construction or modification;

C. "construction" means fabrication, erection, installation or relocation of a stationary source, including but not limited to temporary installations and portable stationary sources;

D. "emission report or inventory" means a listing, by source, of the amount of air pollutants discharged into the atmosphere of a community;

E. "fuel carbon content" means the mass of carbon per unit of heat content of a fuel.

F. "fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening;

G. "greenhouse gas" means a substance that is released into the air as a result of human activity and whose presence in the atmosphere inhibits the release of outgoing terrestrial radiation. For purposes of this part, greenhouse gases are limited to those substances for which the united nations framework convention on climate change has established global warming potential values: (BP: the definition of "greenhouse gas" or "greenhouse gases" or GHG should be changed to specify the 6 "Kyoto" gasses as follows: carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFC), perfluorocarbon (PFC) or sulfur hexafluoride (SF6)

~~F.H.~~ **"modification"** means any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted, but does not include:

- (1) a change in ownership of the source;
- (2) routine maintenance, repair or replacement;

(3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the federal Clean Air Act; or

(4) unless previously limited by enforceable permit conditions;

(a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) an increase in the hours of operation; or

(c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas;

G-I. "nonattainment area" means, for any air pollutant, an area which has been designated as a nonattainment area under Section 107 of the Federal Act;

H-I. "operator" means the person or persons responsible for the overall operation of a facility;

I-K. "owner" means the person or persons who own a facility or part of a facility;

J-L. "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;

K-M. "portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly, including for example but not limited to moveable sand and gravel processing operations and asphalt plants;

L-N. "potential emission rate" means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the Department pursuant to the Air Quality Control Act or the Federal Act;

M-O. "potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design; any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable; the potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen;

N-P. "regulated air contaminant" means any air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the Federal Act;

O-Q. "shutdown" means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units;

P-R. "stationary source" or "source" means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant; any research facility may group its sources for the purpose of this Part at the discretion of the Secretary of the Department;

Q-S. "WEB source" means a stationary source that meets the applicability requirements of 20.2.81.101 NMAC;

R-T. "western backstop sulfur dioxide trading program" means 20.2.81 NMAC, triggered as a backstop in accordance with the provisions in the sulfur dioxide milestones and backstop trading program implementation plan, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

[11/30/95, 10/01/97; 20.2.73.7 NMAC - Rn, 20 NMAC 2.73.107 & A, 02/18/02; A, 12/31/03; A, 01/01/08]

20.2.73.8 to 20.2.73.105 [RESERVED]

20.2.73.106 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS: This Part amends and supersedes Air Quality Control Regulation ("AQCR") 703.1 - Notice of Intent and Emissions Inventory Requirements last filed May 29, 1990, as amended ("AQCR 703.1").

A. All references to AQCR 703.1 in any other rule shall be construed as a reference to this Part.

B. The amendment and supersession of AQCR 703.1 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 703.1.

[11/30/95; 20.2.73.106 NMAC - Rn, 20 NMAC 2.73.106 02/18/02]

20.2.73.107 to 20.2.73.199 [RESERVED]**20.2.73.200 NOTICE OF INTENT:****A. Applicability:**

(1) Any owner or operator intending to construct a new stationary source which has a potential emission rate greater than 10 tons per year of any regulated air contaminant or 1 ton per year of lead shall file a Notice of Intent with the Department. (BP: The Department should explicitly clarify that GHG's are subject to inventory requirements only and that the permitting, notice, and control requirements do not apply to GHG sources in this rulemaking)

(2) Any owner or operator intending to modify a stationary source which either prior to or following the modification has a potential emission rate greater than 10 tons per year of any regulated air contaminant or 1 ton per year of lead shall file a Notice of Intent with the Department.

(3) The requirements of 20.2.73.200 NMAC do not apply to stationary sources or modifications located in Bernalillo County.

(4) The Notice of Intent shall be filed prior to the commencement of construction. Construction shall not begin prior to issuance of a written determination by the Department that a permit is not required, or if a permit is required, prior to the issuance of the permit under 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC.

B. Contents of Notice: Notices of intent shall be filed on forms furnished by the Department, which shall be identical to the extent practicable, as those used for 20.2.72 NMAC (Construction Permits) and shall include:

(1) The applicant's name and address, the person to contact regarding the application, and the name and address of the new source or modification.

(2) The date of the application.

(3) A description of the new facility or modification including all operations affecting air emissions.

(4) The anticipated operating schedule.

(5) A map such as a 7.5 minute United States Geological Survey Topographic Quadrangle showing the location of the stationary source.

(6) The nature and quantities of any regulated air contaminants the new source or modification will emit, including all calculations utilized to estimate emissions.

(7) A description of any air pollution control device or method to be utilized, including the basis for the estimated control efficiency.

(8) The stack and exhaust gas parameters for all emission points.

(9) Any other relevant information as the Department may reasonably require.

(10) Be signed under oath or affirmation by the operator, the owner, or an authorized representative, certifying to the best of his or her knowledge the truth of all information submitted.

C. Review of Notice: Within thirty days from the date a notice is received, the Department shall review its content and by certified letter indicate to the applicant:

(1) The notice is incomplete and indicate specific additional material or clarification required; or

(2) A permit is not required and construction may commence; or

(3) A permit is required before construction may commence. For this case, the Department will indicate whether the application is complete with respect to the requirements of each applicable permit regulation and specify additional material or clarification required if it is not complete.

D. Verification: In verifying information submitted in response to the requirements of this Part, the Department may:

(1) Enter at all reasonable times in or upon any private or public property, except private residences, which the Department has reasonable cause to believe is or will become a source of air contaminants contributing to air pollution; and

(2) Require the production of information relating to emissions which cause or contribute to air pollution, including the sampling of emissions in accordance with methods and at locations and intervals as may be prescribed by the Department.

E. Notification Requirements:

(1) The owner or operator of a portable stationary source shall notify the Department in writing of the date and site of any relocation at least fifteen days prior to its occurrence.

(2) Any owner or operator of a stationary source which will be shut down for a period of one year or more shall notify the Department in writing of the actual date of shut down within thirty days after the shut down occurs.

(3) Any new owner or operator of a stationary source shall notify the Department within thirty days of assuming ownership of his or her name and address.
[11/30/95; 20.2.73.200 NMAC - Rn, 20 NMAC 2.73.200-204 02/18/02]

20.2.73.201 to 20.2.73.299 [RESERVED]

20.2.73.300 EMISSION INVENTORY REQUIREMENTS:

A. Applicability. The requirements of 20.2.73.300 NMAC apply to the owner or operator of any stationary source located outside of Bernalillo County which:

- (1) has been issued a permit under 20.2.72 NMAC (Construction Permits) during any period of time, except for toxic air pollutant permits issued under Sections 401 to 499 of 20.2.72 NMAC;
- (2) is required to file a Notice of Intent under 20.2.73.200 NMAC; or
- (3) emits in excess of 1 ton of lead or 10 tons of total suspended particulate, PM10, PM2.5, sulfur dioxide, nitrogen oxides, carbon monoxide, or volatile organic compounds in any calendar year including and subsequent to 1990.

B. Reporting requirements.

- (1) Any source which emits, or has the potential to emit, 5 tons per year or more of lead or lead compounds, or 100 tons per year or more of PM10, PM2.5, sulfur oxides, nitrogen oxides, carbon monoxide, or volatile organic compounds shall submit an emissions report annually.
- (2) Any source defined as a major source of hazardous air pollutants under 20.2.70 NMAC (Operating Permits) shall submit an emissions report annually.
- (3) Any source which is located in an ozone nonattainment area and which emits, or has the potential to emit, 25 tons per year or more of nitrogen oxides or volatile organic compounds shall submit an emissions report annually.
- (4) Any source which is not required by Paragraph (1), (2), or (3) of Subsection B of this section (20.2.73.300 NMAC) to submit an emission report shall submit an emissions report under this Part upon request by the Department, but no more frequently than annually.
- (5) Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC), the Department shall provide to the owner or operator required by this section (20.2.73.300 NMAC) to submit an emissions report a complete copy of the most current emissions report for their stationary source which is on file with the Department. The Department shall provide this copy to the owner or operator at least 90 days prior to the date when the source is required to submit an emissions report.
- (6) The owner or operator shall submit to the Department a complete, correct and current emissions report in the format specified by the Department which reflects emissions during the previous calendar year.
- (7) Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC) the owner or operator shall submit the emission report by April 1 of each year in which the source is required to submit an emission report.
- (8) Sources for which a date for submitting an annual emission report is specified in a current operating permit issued under 20.2.70 NMAC (Operating Permits) shall submit such report on that date. The Department shall provide a copy of the previous emissions report upon request by the owner or operator of such source;

(9) Any source that is requested by the Department to submit a report of greenhouse gas emissions shall submit such report on the schedule and according to the requirements established by the Department. In determining the schedule and requirements of such reports, the Department shall provide an opportunity for public comment, and shall consider: (BP: This seems a bit to broad. The Department should state the intent for no more than an annual inventory)

- (a) public comments regarding the (BP:scope,) schedule and requirements of such reports;
- (b) emissions quantification standards and best practices approved or recommended by federal and state agencies, by greenhouse gas emissions registries, and by non-governmental bodies having expertise in greenhouse gas emissions quantification;
- (c) the level of contribution of greenhouse gases from the source or source type; and
- (d) the relative contribution of specific greenhouse gases to the total greenhouse gas emissions from the source or source type.

C. Content of emissions reports. Emissions report contents shall include:

- (1) the name, address, and physical location of the stationary source;
- (2) the name and telephone number of the person to contact regarding the emissions report;

(3) a certification signed by the owner, or operator, or a responsible official as defined in 20.2.70 NMAC attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official; for sources subject to 20.2.70 NMAC, the certification shall be made as required under that part;

(4) smelters shall submit an annual report of sulfur input, in tons/year;

(5) for each emission point, as required by the Department:

(a) stack and exhaust gas parameters and location information;

(b) type of control equipment and estimated control efficiency;

(c) schedule of operation;

(d) estimated actual emissions in tons per year, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime of:

(i) total suspended particulate, PM10, PM2.5, ammonia, sulfur oxides, nitrogen oxides, carbon monoxide, volatile organic compounds, and lead, and,

(ii) if requested by the Department, speciated hazardous air pollutants; ~~in tons per year~~

~~and~~ (iii) if requested by the Department, greenhouse gases; *(BP: Including greenhouse gas reporting in this provision/section seems to raise the potential for reporting each individual emissions point. For dispersed field operations this is neither workable nor reasonable. The Department should clarify that GHG reporting by emission point will not be required)*

(e) a description of the methods utilized to make such estimates of emissions, including calculations; *(BP: The Department should adopt/approve standard protocols – such as the API compendium or better – that have been widely reviewed and recognized globally. There should not be a need to regurgitate these methodologies nor should the department craft a “custom” set of methodologies or protocols which are not reciprocally acceptable across jurisdictional boundaries).*

~~(e)(f)~~ the annual process or fuel combustion rates; and

~~(f)(g)~~ the fuel type, the fuel heat, sulfur, and ash content, and, if requested by the Department, the fuel carbon content; *(BP: Reporting of fuel use and specification should not be required. Companies would be required to maintain the information and methodologies used to estimate/calculate reported GHG emissions and make this available to the Department upon request.)*

(6) all information required under the Federal Act.

D. Additional content for emissions reports from sources in ozone nonattainment areas.

Emissions reports from sources located in ozone nonattainment areas shall include, in addition to the contents specified by Subsection C of this section (20.2.73.300 NMAC), the following information:

(1) typical daily process rate during the peak ozone season, where the peak ozone season is specified by the Department; and

(2) estimated actual emissions of nitrogen oxides and volatile organic compounds, which shall be reported:

(a) for each emissions point;

(b) for each process and fuel type contributing to emissions from each point;

(c) in units of tons per year for annual emissions; and

(d) in units of pounds per day for a typical day during the peak ozone season.

E. Waiver of reporting requirements for insignificant emissions. The Department may waive the requirements of Paragraph (5) of Subsection C of this section (20.2.73.300 NMAC) for emissions which the Department determines to be insignificant under 20.2.70 NMAC, except that:

(1) for sources in nonattainment areas, reporting of emissions of pollutants for which the area is nonattainment shall not be waived; and

(2) reporting of emissions for which reporting is required under the Federal Act shall not be waived.

F. Emission tracking requirements for sulfur dioxide emission inventories. All stationary sources with actual emissions of one hundred (100) tons per year or more of sulfur dioxide in the year 2000, or in any subsequent year, shall submit an annual inventory of sulfur dioxide emissions, beginning with the 2003 emission inventory. A source that meets these criteria that then emits less than 100 tons per year in a later year shall submit a sulfur dioxide inventory for tracking compliance with the regional sulfur dioxide milestones until the western backstop sulfur dioxide trading program has been fully implemented and emission tracking has occurred under 20.2.81.106 NMAC.

(1) All WEB sources will be subject to the following federally enforceable provisions:

- (a) submit an annual inventory of sulfur dioxide emissions;
 - (b) document the emissions monitoring/estimation methodology used, and demonstrate that the selected methodology is acceptable under the inventory program;
 - (c) include emissions from start up, shut down, and upset conditions in the annual total inventory;
 - (d) use 40 CFR Part 75 methodology for reporting emissions for all sources subject to the federal acid rain program;
 - (e) maintain all records used in the calculation of the emissions, including but not limited to the following:
 - (i) amount of fuel consumed;
 - (ii) percent sulfur content of fuel and how the content was determined;
 - (iii) quantity of product monitoring data;
 - (iv) emissions monitoring data;
 - (v) operating data; and
 - (vi) how the emissions are calculated;
 - (f) maintain records of any physical changes to facility operations or equipment, or any other changes that may affect the emissions projections; and
 - (g) retain records for a minimum of ten years from the date of establishment, or if the record was the basis for an adjustment to the milestone, five years after the date of an implementation plan revision, whichever is longer.
- (2) The state shall retain emission inventory records for non-utilities for 1996 and 1998 until the year 2018 to ensure that changes in emissions monitoring techniques can be tracked.
 [11/30/95, 10/01/97; 2.20.73.300 NMAC - Rn, 20 NMAC 2.73.300 - 304 02/18/02; A, 12/31/03; A, 12/31/04; A, 01/01/08]

HISTORY OF 20.2.73 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the commission of public records - state records center and archives.
 EIB/AQCR 703.1, Air Quality Control Regulation 703.1 - Notice of Intent and Emissions Inventory Requirements, 5/29/90.

History of Repealed Material: [RESERVED]

Other History:

EIB/AQCR 703.1, Air Quality Control Regulation 703.1 - Notice of Intent and Emissions Inventory Requirements, filed 5/29/90, was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.73, Notice of Intent and Emissions Inventory Requirements, filed 10/30/95.
 20 NMAC 2.73, Notice of Intent and Emissions Inventory Requirements, filed 10/30/95, was **renumbered, reformatted, amended and replaced** by 20.2.73 NMAC, Notice of Intent and Emissions Inventory Requirements, effective 02/18/02.