TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 85 MERCURY EMISSION STANDARDS AND COMPLIANCE SCHEDULES FOR ELECTRIC GENERATING UNITS

20.2.85.1 ISSUING AGENCY. Environmental Improvement Board.
[20.2.85.1 NMAC - N, 0X/XX/06]

20.2.85.2 SCOPE. All persons who currently operate or intend to construct or modify an electric generating unit within the jurisdiction of the Environmental Improvement Board.
[20.2.85.2 NMAC - N, 0X/XX/06]

20.2.85.3 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 74-2-5 (C)(2).
[20.2.85.3 NMAC - N, 0X/XX/06]

20.2.85.4 DURATION. Permanent.
[20.2.85.4 NMAC - N, XX/XX/06]

20.2.85.5 EFFECTIVE DATE. November 17, 2006 except where a later date is cited at the end of a section or paragraph.
[20.2.85.5 NMAC - N, 0X/XX/06]

20.2.85.6 OBJECTIVE. The objective of this part is to establish allocations for mercury emissions from electric generating units.
[20.2.85.6 NMAC - N0X/XX/06]

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

A. "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

B. "Allocate" or **"allocation"** means, with regard to mercury allowances, the determination of the amount of mercury allowances to be credited to a source.

C. "Boiler" means an enclosed fossil-or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

D. "Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

E. "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004).

F. "Coal-derived fuel" means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

G. "Coal-fired" means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.

H. "Cogeneration unit" means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine with the following characteristics.

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy.

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:

(a) for a topping-cycle cogeneration unit,

(i) useful thermal energy not less than 5 percent of total energy output; and

(ii) useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy

output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(b) for a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

I. **"Combustion turbine"** means:

(1) an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) if the enclosed device under paragraph 1 of this subsection is combined cycle, any associated heat recovery steam generator and steam turbine.

J. **"Electric generating unit"** means the following.

(1) Except as provided in paragraph (2) of this definition, a stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric producing electricity for sale.

(2) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 megawatts electric and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatt-hour, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (1) of this definition starting on the day on which the unit first no longer qualifies as a cogeneration unit.

K. **"Generator"** means a device that produces electricity.

L. **"Maximum design heat input"** means, starting from the initial installation of a unit, the maximum amount of fuel per hour in British thermal units per hour that a unit is capable of combusting on a steady-state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour in British thermal units that a unit is capable of combusting on a steady-state basis, such decreased maximum amount as specified by the person conducting the physical change.

M. **"Mercury allowance"** means a limited authorization issued by the permitting authority to emit one ounce of mercury during the specified calendar year for which the authorization is allocated.

N. **"Nameplate capacity"** means, starting from the initial installation of a generator, the maximum electric generating output, in megawatts, that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other derates) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electric generating output, in megawatts, that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other derates), such increased maximum amount as specified by the person conducting the physical change.

O. **"Operator"** means any person who operates, controls, or supervises an electric generating unit or a source that includes an electric generating unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such electric generating unit or source.

P. **"Ounce"** means 2.84×10^7 micrograms.

Q. **"Owner"** means any of the following persons:

(1) any holder of any portion of the legal or equitable title in a mercury unit at a source or a mercury unit;

(2) any holder of a leasehold interest in a mercury unit at a source or a mercury unit; or

(3) any purchaser of power from a mercury unit at a source or a mercury unit under a contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such mercury unit.

R. **"Potential electric output capacity"** means 33 percent of a unit's maximum design heat input, divided by 3,413 British thermal units per kilowatt-hour, divided by 1,000 kilowatt-hour per megawatt-hour, and multiplied by 8,760 hours per year.

S. **"Source"** means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons.

T. **"State"** means:

(1) for purposes of referring to a governing entity, the State of New Mexico; or

(2) for purposes of referring to a geographic area, all geographic areas within the jurisdiction of the Environmental Improvement Board.

U. **"Topping-cycle cogeneration unit"** means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

V. **"Unit"** means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

[20.2.85.7 NMAC - N, 0X/XX/06]

20.2.85.8 **DOCUMENTS.** Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau, 2048 Galisteo Street, Santa Fe, NM 87505.

[20.2.85.8 NMAC - N, 0X/XX/06]

20.2.85.9 **SEVERABILITY.** If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.85.9 NMAC - N, 0X/XX/06]

20.2.85.10 **CONSTRUCTION.** This part shall be liberally construed to carry out its purpose.

[20.2.85.10 NMAC - N, 0X/XX/06]

20.2.85.11 **SAVINGS CLAUSE.** Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.85.11 NMAC - N, 0X/XX/06]

20.2.85.12 **COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.85.12 NMAC - N, 0X/XX/06]

20.2.85.13 **LIMITATION OF DEFENSE.** The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.

[20.2.85.13 NMAC - N, 0X/XX/06]

20.2.85.14 to 20.2.85.99 [RESERVED]

20.2.85.100 **APPLICABILITY.** The following units, and any source that includes one or more such units, shall be subject to the requirements of this part.

A. Except as provided in subsection B of this section, a unit serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric producing electricity for sale is subject to this part.

B. For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 megawatts electric and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatt-hours, whichever is greater, to any utility power distribution system for sale is subject to this part. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to subsection A of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

[20.2.85.100 NMAC - N, 0X/XX/06]

20.2.85.101 **EMISSION STANDARDS AND COMPLIANCE SCHEDULES.**

A. The department shall allocate mercury allowances to existing and new electric generating units. Each mercury allowance shall represent emission of one ounce of mercury. The department shall not allocate mercury allowances for new electric generating units until such mercury allowances are requested pursuant to 20.2.85.105 NMAC. No electric generating unit regulated under this part shall emit a quantity of mercury greater than the number of annual mercury allowances the electric generating unit has been allocated under 20.2.85.103 NMAC.

B. The amount of the state's annual mercury budget, in pounds of mercury per year, shall be as follows for the indicated periods:

(1) for January 1, 2010 through December 31, 2017, 598 pounds per year; and

(2) for January 1, 2018 and thereafter, 236 pounds per year.

[20.2.85.101 NMAC – N, X/XX/06]

20.2.85.102 TIMING REQUIREMENT FOR MERCURY ALLOWANCE ALLOCATIONS.

A. By October 31, 2006, the state will submit to the administrator the number of annual mercury allowances allocated by the state, in a format prescribed by the administrator and in accordance with 20.2.85.103 NMAC, for the years 2010, 2011, 2012, 2013, and 2014.

B. By October 31, 2008 and October 31 of each year thereafter, the state will submit to the administrator the number of annual mercury allowances allocated by the state, in a format prescribed by the administrator and in accordance with 20.2.85.103 NMAC, for the sixth year after the year of applicable deadline for submission under this subsection.

[20.2.85.102 NMAC - N, 0X/XX/06]

20.2.85.103 ALLOCATION OF MERCURY ALLOWANCES.

A. The department shall allocate annually to existing electric generating units the number of mercury allowances requested pursuant to 20.2.85.105 NMAC, not to exceed the following amounts.

(1) For the years 2010 through 2017:

(a) san juan generating station - no more than 7,808 ounces; and

(b) escalante generating station - no more than 1,280 ounces.

(2) For the years 2018 and thereafter:

(a) san juan generating station - no more than 3,323 ounces; and

(b) escalante generating station - no more than 340 ounces.

B. The department shall allocate annually to new electric generating units the number of mercury allowances requested pursuant to 20.2.85.105 NMAC, not to exceed the following:

(1) for the years 2010 through 2017, no more than 480 ounces annually; and

(2) for the years 2018 and thereafter, no more than 113 ounces annually.

[20.2.85.103 NMAC - N, 0X/XX/06]

20.2.85.104 FEES FOR MERCURY ALLOWANCES.

A. For the years 2010 through 2017, the fee for mercury allowances shall be $8.88 per ounce annually.

B. For the years 2018 and thereafter, the fee for mercury allowances shall be $22.51 per ounce annually.

C. Beginning October 31, 2011, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[20.2.85.104 NMAC – N, OX/XX/06]

20.2.85.105 REQUESTS FOR MERCURY ALLOWANCE ALLOCATION.

A. Beginning in 2010, electric generating units regulated under this part shall submit notification to the department no later than January 31 of each year, requesting mercury allowances for that year, not to exceed the number of mercury allowances specified in 20.2.85.103 NMAC. Electric generating units shall submit the annual fee for the number of allowances requested with each notification.

B. If an electric generating unit determines that its annual mercury allowances requested in accordance with subsection A of this section are not sufficient to cover the amount of mercury emitted during that year, and the electric generating unit has not been allocated the full balance of its annual mercury allowances specified in 20.2.85.103 NMAC, the electric generating unit shall submit notification requesting additional mercury allowances to the department no later than September 30 of each year. The total number of allowances requested by an electric generating unit for each year shall not exceed the number of allowances specified in 20.2.85.103 NMAC. The electric generating unit shall submit any required fees with the notification requesting additional allowances.

[20.2.85.105 NMAC – N, OX/XX/06]

20.2.85.106 COMPLIANCE WITH 40 CFR PART 75. Sources subject to this part are required to comply with all requirements of 40 CFR Part 75 which reference mercury.

[20.2.85.106 NMAC – N, OX/XX/06]

HISTORY OF 20.2.85 NMAC: [RESERVED]