Amending 20.2.7 NMAC
General Concepts

- In 1999, the U.S. Environmental Protection Agency (EPA) issued guidance on how states should address excess emissions during malfunction, startup, shutdown, and maintenance. The guidance states that, "EPA views all excess emissions as violations of the applicable emission limitation." EPA does recognize that there is a possibility of unavoidable malfunctions of equipment that might cause excess emissions. In the case of sudden and unavoidable excess emissions due to circumstances entirely beyond the control of the owner or operator of a facility, states can use enforcement discretion to determine when an enforcement action is warranted.

- To ensure compliance with EPA guidance, the New Mexico Environment Department (NMED) needs to revise the objective of 20.2.7 NMAC—Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance (Part 7) to include requirements for a detailed analytical analysis of excess emissions events that may be used to grant enforcement discretion.

- The amendments will reduce ambiguity within the rule, clearly define what is allowed and not allowed to qualify as an excess emissions event, and explain how reporting should take place.

- As part of the revised objective, NMED would need to remove most of the language in Section 109, Operations in Violation. In 2004, NMED received a letter from EPA stating that Section 109 is inconsistent with EPA's interpretation of the Clean Air Act because excess emissions might exacerbate existing air quality conditions and interfere with attainment of the federal ambient air quality standards.

- EPA considers startup, shutdown and scheduled maintenance as parts of a facility's normal operation and as such, should be accounted for in the planning, design and implementation of operating procedures for the source's process and control equipment. NMED must remove the startup, shutdown, and scheduled maintenance from the objective of Part 7, unless excess emissions for startup or shutdown are the result of unavoidable and unforeseeable malfunctions. NMED foresees revising the definition of malfunction to include unavoidable and unforeseeable excess emissions during startup and shutdown.

- As part of the required analysis for excess emissions events, NMED plans to require a "root cause analysis." This would be a detailed technical analysis of excess emission events that determines the underlying reason that the event occurred and all contributing factors to the malfunction, to the extent possible. The analysis would also require an evaluation of alternative measures (if any) that can be implemented to reduce the likelihood of a recurrence of an incident. Minimizing the likelihood of excess emissions from malfunctions will reduce the reporting burden for both facilities and NMED.