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Environmental Improvement Board

STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REVISIONS
TO 20.2.70 NMAC – *OPERATING PERMITS* **No. EIB 08-___(R)**

PETITION FOR REGULATORY CHANGE

The New Mexico Environment Department ("Department"), pursuant to 20.1.1 NMAC – *Rulemaking Procedures*, hereby petitions the Environmental Improvement Board ("Board") to revise 20.2.70 NMAC – *Operating Permits.* The revisions and statement of reasons are attached.

The Department requests that the Board schedule the hearing for June 2, 2008, because these revisions are directly related to the hearing for the repeal and replacement of 20.2.7 NMAC– *Excess Emissions*, which is already scheduled for that day. The Department anticipates that its testimony regarding the Part 70 revisions will require less than thirty (30) minutes.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

Eric Ames
Assistant General Counsel
New Mexico Environment Department
1190 St. Francis Drive, Suite N-4050
Santa Fe, New Mexico 87505
Telephone: (575) 779-1627
eric.ames@state.nm.us

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IN THE MATTER OF PROPOSED REVISIONS
TO 20.2.70 NMAC – *OPERATING PERMITS* **No. EIB 08-___ (R)**

STATEMENT OF REASONS

The New Mexico Environment Department ("Department"), pursuant to 20.1.1 NMAC – *Rulemaking Procedures*, hereby petitions the Environmental Improvement Board ("Board") to adopt proposed revisions to 20.2.70 NMAC – *Operation Permits* ("Part 70").

1. Section 302.E.(2).

20.2.70.302 PERMIT CONTENT

. . .

E. Reporting. The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including all of the following.

(1) Submittal of reports of any required monitoring at least every six (6) months. The reports shall be due to the department within forty-five (45) days of the end of the permittee's reporting period. All instances of deviations from permit requirements, including emergencies, must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Subsection E of 20.2.70.300 NMAC.

(2) Prompt reporting of all deviations ~~(including emergencies)~~ from permit requirements, including those attributable to upset conditions as defined in the permit, the ~~date, time, duration and~~ probable cause of such deviations, ~~the quantity and pollutant type of excess emissions resulting from the deviation,~~ and any corrective actions or preventive measures taken. ~~Such reports shall include telephone, verbal or facsimile communication within twenty-four (24) hours of the start of the next business day and written notification within ten (10) days.~~ The report shall be contained in the report submitted in accordance with the timeframe given in paragraph (1) of this section.

(3) Submittal of compliance certification reports at least every twelve (12) months (or more frequently if so specified by an applicable requirement) certifying the source's compliance status with terms and conditions contained in the permit, including emission limitations, standards, or work practices. The reports shall be due to the department within thirty (30) days of the end of the permittee's reporting period. Such compliance certifications shall be submitted to the administrator as well as to the department and shall include....

Due to changes in the reporting requirements in the proposed repeal and replacement of 20.2.7 NMAC - *Excess Emissions*, the Department proposes to conform the reporting requirements for excess emissions in 20.2.70.302.E (2) NMAC.

2. Section 304.B(4).

20.2.70.304 EMERGENCY PROVISION

A. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

B. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(2) The permitted facility was at the time being properly operated;

(3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements of the permit; and

(4) ~~The permittee fulfilled notification requirements under Paragraph (2) of Subsection E of 20.2.70.302 NMAC.~~ The permittee submitted notice of the emergency to the Department within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of 20.2.70.302.E(2) NMAC. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

D. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

The Department proposes to conform the reporting requirements for emergencies with the applicable federal regulation.

3. Section 403.A(3).

20.2.70.403 PETITIONS FOR REVIEW OF FINAL ACTION

A. Hearing Before the Board:

(1) Any person who participated in a permitting action before the Department and who is adversely affected by such permitting action may file a petition for hearing before the Board. For the purposes of this section, permitting action shall include the failure of the Department to take final action on an application for a permit (including renewal) or permit modification within the time specified in this Part.

(2) The petition shall be made in writing to the Board within thirty (30) days from the date notice is given of the Department's action and shall specify the portions of the permitting action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by this paragraph, and attach a copy of the permitting action for which review is sought. Unless a timely request for hearing is made, the decision of the Department shall be final. The petition shall be copied simultaneously to the Department upon receipt of the appeal notice. If the petitioner is not the applicant or permittee, the petitioner shall mail or hand-deliver a copy of the petition to the applicant or permittee. The Department shall certify the administrative record to the Board.

(3) If a timely request for hearing is made, the Board shall hold a hearing within sixty (60) ~~ninety (90)~~ days of receipt of the petition in accordance with New Mexico Air Quality Control Act section 74-2-7 NMSA 1978.

B. Judicial Review:

(1) Any person who is adversely affected by an administrative action taken by the Board pursuant to subsection A of 20.2.70.403 NMAC may appeal to the Court of Appeals in accordance with New Mexico Air Quality Control Act section 74-2-9 NMSA 1978. Petitions for judicial review must be filed no later than thirty (30) days after the administrative action.

(2) The judicial review provided for by 20.2.70.403 NMAC shall be the exclusive means for obtaining judicial review of the terms and conditions of the permit.

The Department proposes to change the deadline for a hearing to conform with NMSA 1978, Air Quality Control Act, Section 74-2-7.