NMED

New Mexico Environment Department

Improving Environmental Permitting

November 14

2012

Recognizing the importance of permitting to environmental protection and conducting business in New Mexico, the New Mexico Environment Department is undertaking a review of the Department's permitting processes. This report summarizes the findings and recommendations related to the Air Quality Bureau construction permit program.

Air Quality Bureau

DRAFT

IMPROVING ENVIRONMENTAL PERMITTING

AIR QUALITY BUREAU

EXECUTIVE SUMMARY

Recognizing the importance of permitting to environmental protection and conducting business in New Mexico, the New Mexico Environment Department is undertaking a review of the Department's permitting processes. This report summarizes the findings and recommendations related to the Air Quality Bureau construction permit program (also known as the New Source Review program).

The internal permit review team ("Team") spent last several months evaluating the Air Quality permitting program and used several sources of data to develop findings and recommendations. It is important to note that the Team found that the Air Quality Bureau consistently issues construction permits within the regulatory and statutory time frame, though permit issuance times have lengthened on average over the past two years.

The Team developed several recommendations for review and implementation by the Bureau and Department Senior Management. Some of the key recommendations include:

1. **Improve staffing levels**: Staffing levels in the permitting program are critically low due to a hiring freeze initiated during the Richardson administration. Low staffing levels combined with a dramatic increase in the number of construction permitting actions have put considerable strain on the permitting program.

2. **Better utilization of Information Technologies**: The Bureau has a great opportunity to make the program more efficient and improve customer service through better utilization of information technologies. Some of the recommendations for online services include accepting permit applications online, accepting payments online, providing the status of permit applications online, and providing access to all active issued permits online. In addition, applicants would like to see the Bureau webpage become better organized and easier to use.

3. **Regulatory changes**: The Bureau has identified several regulations that may be outdated and should be considered for repeal or amendment. In addition, some applicants suggested that developing a permit by rule would help new construction get up and running more quickly.

DRAFT

4. **Improve workflow**: The program should consider contract assistance to evaluate the permitting work flow to identify and eliminate unnecessary steps.

Over the next several years as the Bureau makes changes in the permitting program, it will be important for them to continue to track permit issuance times and other key performance metrics to monitor success. Program reevaluation will be key to ongoing improvement.

ACKNOWLEDGEMENTS

The Air Quality Permit Review Team gratefully acknowledges the contributions of the applicants, staff and the general public whose assistance and input led to the completion of this report.

DRAFT

TABLE OF CONTENTS

Executive Summary 2

Acknowledgements 3

Introduction/Problem Statement 7

Air Quality 7

Background 8

- Air Quality Permit Overview 8
- Red Team Review 8
- Processing an NSR Permit Application 9

Findings and Recommendations 10

- Pre-Application Meetings with the Applicant 10
  - Findings 10
  - Recommendations 11
- Permitting Guidance and Forms 11
  - Findings 11
  - Recommendations 12
- Small Business Assistance 12
  - Findings 12
  - Recommendations 13

Communications with the Applicants 13

- Findings 13
- Recommendations 13
- NSR Permit Conditions 14
  - Findings 14
  - Recommendations 14

DRAFT

Air Dispersion Modeling 15
Findings 15
Recommendations 15
Application Quality 16
Findings 16
Recommendations 17
Permit Denial 17
Findings 17
Recommendations 17
Staff Knowledge 17
Findings 18
Recommendations 18
Staffing Levels 18
Findings 19
Recommendations 19
Permit Issuance Time 20
Recommendations 21
Work Flow 22
Recommendations 22
AQB Website 22
Findings 23
Recommendations 23
Online Services 23
Findings 23
Recommendations 23

DRAFT

Other IT Fixes 24
Regulatory Changes 24
Findings 24
Recommendations 24
Inter-Program Permit Coordination 24
Findings 25
Recommendation 25
Next Steps 25
Appendix A: Air Quality Bureau Permit Review Team 26
Appendix B: Applicant Interview Questions 27
Appendix C: Survey Monkey Questions 30
Appendix D: Staff Interview Questions 32
Appendix E: AQB Permit Flow Chart 38
Appendix F: Air Quality Bureau Rule Revision Table 39

DRAFT

INTRODUCTION/PROBLEM STATEMENT

In response to concerns about the efficiency of environmental permitting by the Department, the Department initiated an effort to assess the permitting programs. The Permit Process Workgroup, consisting of staff from the permitting programs and exempt staff, was formed to identify areas of potential improvement and best practices, and to develop recommendations to enhance existing services and address problem areas. Because stakeholder outreach is vital to the success of improving permitting issuance, the Department is engaging stakeholders throughout this process. Stakeholders include applicants, the general public and Bureau staff.

The Permit Process Workgroup is evaluating each Department permit program individually starting with the Air Quality and Ground Water Quality permit programs. Two teams were formed to conduct these initial permit program reviews, the Air Quality Permit Team and the Ground Water Quality Permit Team. The Workgroup hopes to complete the majority of the analysis and planning by November of this year.

AIR QUALITY

Any facility that may potentially emit air pollutants above a certain threshold must apply for a permit from the Air Quality Bureau (AQB). The issuance of these permits is one of the primary means by which the New Mexico Air Quality Bureau performs its mission to protect the inhabitants of New Mexico by preventing the deterioration of air quality. By applying for and receiving an air quality permit to emit air pollutants, businesses are granted rights and informed of their responsibilities with regards to that activity.

Businesses are eager to obtain air quality construction permits, also called New Source Review (NSR) permits, as soon as practical because state and federal law prohibits the construction or modification of a facility until the permit is issued. Timely issuance of these permits can help support new businesses in the state while at the same time protect the environment and public health.

The Air Quality Bureau Permit Review Team ("Team") consists of eight exempt and career Department employees (See Appendix A: Air Quality Bureau Permit Review Team). Air Quality Bureau staff provided the team with formal presentations on the permit and modeling programs. The team reviewed pertinent state regulations and statutes as well as the AQB website. Team members conducted one-on-one interviews with 12 former applicants and 10 permit staff and established an online survey to solicit feedback from the broader public on permitting and other bureau activities (See Appendix B: Applicant Interview Questions, Appendix C: Survey Monkey Questions, Appendix D: Staff Interview Questions). The Team received 81 total responses to the online survey including 43 related to permitting activities. The team also evaluated the results of the

surveys that are sent out with each permit application and collected by the Bureau over several years. Lastly, the team gathered information from air quality programs in other jurisdictions both over the internet and through telephone interviews.

In addition to NSR (air quality construction) permits, the Air Quality Bureau issues Title V permits, also referred to as Operating Permits. Only large (major) sources are subject to permits under Title V of the federal Clean Air Act. While the focus of this review is on construction permits because the timely issuance of these permits can impact New Mexico businesses, the Team also collected some data on the Operating Permit program. While Operating Permits are important for environmental protection, their timely issuance has less impact on the construction activities of New Mexico businesses.

BACKGROUND

AIR QUALITY PERMIT OVERVIEW

The primary responsibility of the Air Quality Bureau is to protect the health of all New Mexicans. Before constructing a facility that will emit air pollutants above set minimum levels, the owners must apply for and obtain a construction permit in order to ensure the proposed facility's emissions will not cause concentrations of pollutants that exceed state and federal standards in the surrounding public air.

The permit applicant quantifies the pollutants it proposes to emit into the air, and demonstrates through dispersion modeling that it will not exceed federal and state health standards and that it will not violate regulations. The Air Quality permit program reviews the application to ensure calculations are realistic, regulations are followed and the modeling is correct. Subsequently, a construction permit is written to legally bind the owner to operate the facility as represented in the application.

The state Air Quality Bureau has jurisdiction for all of New Mexico, with the exception of Bernalillo County and Tribal Lands. Sources in Bernalillo County are regulated by the City of Albuquerque/Bernalillo Air Quality Program. All major and minor sources on tribal lands are permitted by the U.S. Environmental Protection Agency or through the local tribe.

RED TEAM REVIEW

In 1999, then Secretary Peter Maggiore requested an Independent Technical Review team (also known as the Red Team) to assess the issuance of NSR permits and make recommendations for improvement. This team of ten volunteers released their findings in a report issued in August of

1999. In response to the Red Team report, numerous changes were made in the Bureau including the development of performance metrics, expanded exemptions, a tiered process that allowed less significant permit revisions to be accomplished more quickly, general construction permits for commonly permitted sectors, accelerated permit provisions, and new permit application forms. In addition, the Bureau implemented measures to retain experienced staff by improving morale and employee satisfaction, including changes to salary, improved training, development of a career ladder and Bureau reorganization including a change in management.

Many of these changes are still in place and the Bureau and the regulated community has clearly benefited from their implementation. The continued use of performance measures has made it possible to evaluate trends over time and progress made on the timely issuance of permits.

PROCESSING AN NSR PERMIT APPLICATION

Some common equipment that is subject to permitting includes engines, heaters, boilers, rock crushers, asphalt equipment, and concrete batch plants. The large majority of the applications received by the NSR permitting program are from the oil and gas industry and the construction industry. Five General Construction Permits (GCPs) have been adopted to allow the more common and simpler of these facilities to be permitted more quickly and easily (for example, no additional dispersion modeling is required) using pre-established permit conditions; 2 for the oil and gas sector and 3 for the construction industry sector. In addition, specific streamlined provisions have existed for some oil and gas facilities since 1990. However, 50 % of all construction permit applications are submitted under the broader construction permit provisions that require case-by-case review of the proposed facility and its air quality impacts. In general, applications from larger companies with more air permitting experience are more likely to be complete and easier to process.

There are several steps in processing a case-by-case (not GCP or streamlined) permit application.

1. **Pre-application**: During the pre-application submittal phase a pre-application meeting may take place or communication with an applicant may occur over the phone to help the applicant determine which permit type or emissions calculations to use. The applicant for a case-by-case permit may also submit a proposed modeling protocol for review and approval by the Air Dispersion Modeling program. The applicant may also work with the Bureau's Small Business Assistance Program to determine which permit type is appropriate and get help to complete the application. The applicant may download information and forms off the AQB website before completing the application. The applicant notifies the public of the intended project and submits the complete application and modeling analysis to the Bureau along with the appropriate fees.

2. **Draft permit generated**: Once the case-by-case permit application is received, staff determine whether it is administratively complete. If the application is determined to be

complete, the first public comment period is initiated with formal public notice published by the Bureau. If the application is incomplete it is ruled incomplete until the applicant submits the required information.. Once complete, the Bureau performs a technical review of the application. Staff identifies the applicable regulations, develops permit requirements and conditions, generates a Statement of Basis for the permit and writes a draft permit. The modeling analysis is reviewed for accuracy and to assure that state and federal ambient air quality standards will not be exceeded. The draft permit may go to hearing if there is "significant public interest" the during the public comment period.

3. **Permit review**: The application and draft permit are available for public review and comment. These documents are also reviewed by the Bureau's enforcement section and in some cases draft permits are also subject to comment from EPA. The draft permit may then be revised before it is reviewed by bureau management and, finally, issued.

4. **Final permit issuance:** The Bureau issues or denies the permit and requires permit fees are paid within 30 after issuance.

5. **Post- issuance activities**: The applicant is responsible for complying with permit conditions. The Bureau assures compliance by reviewing reports submitted by the applicant and conducting onsite inspections. Typically NSR permits don't expire, but the applicant may have to have the permit revised if the facility is modified.

FINDINGS AND RECOMMENDATIONS

PRE-APPLICATION MEETINGS WITH THE APPLICANT

For applicants that are not familiar with air quality permitting in New Mexico, the Air Quality Bureau suggests the applicant meet with Bureau staff prior to submitting an application. They also suggest a pre-application meeting for unique or complex permitting actions. Pre-application meetings can be very useful in assuring that the Bureau receives all essential information to efficiently process the application and minimize the processing time. In addition, when air pollutant dispersion modeling is required, the Bureau highly recommends that a written modeling protocol be submitted to the agency for approval prior to submitting the application.

FINDINGS

Both staff and applicants were generally very positive about the benefits of the pre-application meeting. Some applicants would like Bureau staff to be able to commit more to a specific approach at these meetings, but staff is hesitant to make a determination without a complete application. Staff

suggested that these meetings would be more productive if the meetings had more structure and the applicant and staff were better prepared.

An internet search revealed that few jurisdictions mandate pre-application meetings, though many strongly recommend them for very complex (e.g. Prevention of Significant Deterioration, or PSD) permit applications. Those states that do mandate these meetings require them prior to reviewing a PSD permit application, for projects to be constructed in a nonattainment area or for certain complex projects such as a new ethanol plant. Some jurisdictions provide very specific information about what happens at a pre-application meeting including who will participate, where the meeting will take place, the timing of the meeting in relation to application submittal, material that must be submitted to the agency ahead of the meeting and the meeting agenda. The websites for most air agencies also includes contact information or links to set up a pre-application meeting.

RECOMMENDATIONS

- Provide more structure and pre-meeting preparation guidance. Develop a checklist of items for applicants to bring to the meeting, including a list of questions, issues and, if possible, a proposal on how to permit the facility. Look to other jurisdictions for examples.
- Have the assigned permit writer and modeler attend the pre-application meeting whenever possible.
- Provide better advertisement of the availability of these meetings.
- Make pre-application meetings available by phone or webinar.

PERMITTING GUIDANCE AND FORMS

The Bureau has a number of guidance documents to explain Bureau procedures and help the applicant determine whether they need a certain type of permit. They also have a series of forms that may be used for different source types (e.g. oil and gas, construction, and cotton gins), and different types and volumes of emissions (e.g. toxic air pollutant, major source and minor source permits). Forms that are available to the public can generally be found on the AQB webpage.

FINDINGS

Many applicants thought that the guidance documents are often helpful, but could be improved. Applicants would like access to internal guidance documents and staff is agreeable to providing access to these once they are updated. Applicants thought that some forms are confusing and difficult to complete and would like better guidance on completing an application.

DRAFT

Applicants are not always aware of changes in the permit application language because stakeholders are not notified ahead of time. If an applicant uses a form that is more than 30 days old, the application may be ruled incomplete. Current Bureau policy on new and revised permit application forms states that:

"Periodically, the AQB will create new application forms or revise existing ones.

In the conceptual phase of the development or revision, AQB *will use appropriate measures to seek the input of the affected parties."*

(http://www.nmenv.state.nm.us/aqb/procedures/NSR-Form-Procedure.pdf)

RECOMMENDATIONS

- Work with stakeholders to update and publish internal guidance documents.
- Work with stakeholders to make applications and forms easier to use.
- As written in the Bureau guidance, seek and consider stakeholder input when updating forms and notify stakeholders as forms are changed.

SMALL BUSINESS ASSISTANCE

The Air Quality Bureau's Small Business Environmental Assistance Program (SBEAP) provides publications and technical assistance for small businesses with respect to the New Mexico air quality regulations and requirements. The SBEAP assists small businesses in understanding the environmental regulatory requirements associated with doing business in New Mexico, helps small businesses meet air quality regulation exemptions, and provides assistance in filling out permit applications.

For sources that satisfy the definition of "small business", the permit, relocation and annual fees are reduced by 50%. A small business is defined in the air quality fee regulation as

"A company that employs no more than ten (10) employees at any time during the calendar year." In addition, a "small business" does not include any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are National or New Mexico Ambient Air Quality Standards, and any major source for hazardous air pollutants under 20.2.70 NMAC.

FINDINGS

The Team had little success in finding small business applicants that could make themselves available to be interviewed. Numerous calls and emails were sent to small business representatives, but with minimal response, most likely because these businesses have little extra time to respond to this type of inquiry. The concerns we heard include the inability of small businesses subject to AQB enforcement proceedings to seek SBEAP assistance, the inability for SBEAP to help with (often expensive) air dispersion modeling, and that the permit fees are too high for some small businesses even though they are 50% less than for other applicants.

RECOMMENDATIONS

- Consider how to better provide compliance assistance to small businesses including more classes for small businesses, post permit issuance meetings, creating a line manager position in permitting to assist small businesses and revising Bureau policy regarding assistance for businesses under enforcement action.
- Simplify the modeling review processes for small businesses.
- Consider revising fees for these establishments.

COMMUNICATIONS WITH THE APPLICANTS

FINDINGS

The data sources indicate that permitting staff are generally courteous, cooperative and responsive to the applicant. Communication with applicants is generally by email, sometimes by phone and not often in person.

The initial contact with the applicant is generally near the end of the 30-day administrative completeness determination period to request more information or to notify them that the application is complete. Applicants would like more communication regarding the draft permit especially early in the process rather than right before permit issuance. Applicants would also like to be better informed of changes to forms, guidelines and regulations.

RECOMMENDATIONS

- Send a courtesy email when the application has been received including the name of the permit writer and modeler assigned.
- Provide the status of the permit application online including such information as the date the application is received, the date the application is ruled administratively complete, and the date the air dispersion modeling is complete.

- Seek constructive opportunities to meet in person with stakeholders and applicants including field trips to emission sources and joint training sessions.
- Utilize list-serves to notify applicants and seek input on program changes.

NSR PERMIT CONDITIONS

Construction permits impose operating conditions to ensure compliance with health based federal and state ambient air quality standards. Permit conditions establish emission limits as well as monitoring, recordkeeping, and reporting requirements to ensure practical enforceability.

FINDINGS

The Team found that staff is generally willing to work with applicants on site-specific conditions in case-by-case permits, and less frequently on the 'boiler plate' conditions that have been established to address the common aspects of all permits. Applicants were quite concerned about the lack of consistency between the permit writers regarding permit conditions and most staff agreed that consistency is an issue. Some applicants thought that permit conditions may be difficult to understand especially for people without a technical background and even those with technical experience thought that some of the reporting requirements are vague. While most applicants agreed that the permit conditions were reasonable, others thought that staff is not practical in determining potential to emit (PTE) and applying AP-42 emission factors.

RECOMMENDATIONS

- Clarify how boiler plate conditions may be changed. Consider options for improving case-by-case permit flexibility and assessing net effects (e.g. plant wide applicability limits and equipment substitutions)
- Notify and seek input from stakeholders as permit templates and applications are being updated. Provide a summary of how a new template differs from the previous version.
- Post all active issued permits on the web.
- Managers should review permits for consistency and discuss the issue with staff if they are not.
- Provide the option for a post-application or post-permit meeting to ensure the applicant understands the permit conditions.
- Review reporting requirements and consider how to make them more specific.

DRAFT

- Consider how to be consistent and fair in assessing PTE and emission factors.
- Consider the creation of an advanced technical review team in permitting to address complex and/or broadly applicable issues.

AIR DISPERSION MODELING

The program is required by regulation to assure that the conditions established in all air quality permits will not result in concentrations of air pollutants above levels that the State and Federal governments agree protect human health and the environment, and also to ensure that concentrations in areas with clean air do not deteriorate significantly. Air quality impacts are predicted using dispersion modeling. The Air Dispersion Modeling staff evaluates air quality data and modeling submitted with the permit applications.

For a case-by-case permit application, modeling is normally required for all pollutants. In some cases, a modeling waiver may be granted if previously submitted modeling demonstrates that ambient air quality standards and PSD increments will not be violated. An applicant may receive a modeling waiver if they meet certain criteria and they submit a waiver form to the modeling program. The intention of the waiver is to assure that air quality is protected and at the same time limit the amount of new modeling that is required. Permitting staff must approve the total emission rates during the technical review for this waiver to be valid. During the 2011 calendar year over 50% of permit actions by the Bureau that could have required new modeling received a modeling waiver from the Bureau. These waivers saved both the applicant and the Bureau time and money while assuring environmental protection.

FINDINGS

Generally applicants understand what the expectations are for air dispersion modeling, especially if a modeling protocol was submitted ahead of time for approval. They think the modeling guidance is helpful, though one thought they were a bit complicated and another complained that the guidelines did not match what was required by modelers. Applicants appreciated that the guideline are developed with public input. Some applicants would like to know the name of the assigned modeler earlier in the application review process to better enable communication. In general, communication is only with the permit writer. The Team received complaints about the modeling review not being complete until well into the application review process. Permitting staff expressed concern about inconsistent communication between modeling and permitting staff. Lastly, some applicants thought that the Bureau should streamline the modeling process for small gravel operators and that the state Total Suspended Particulate (TSP) standard is a burden to some applicants.

RECOMMENDATIONS

- Encourage pre-application modeling protocol submittals.
- Notify the applicant of the assigned modeler to better enable communication between the two.
- Consider how to speed up the modeling review so that it is complete earlier in the process. Some ideas brought forth include hiring more modelers, revising performance appraisals, limiting the number of modeling scenarios an applicant may submit and requiring pre-approval of all non-standard emission factors.
- Standardize communications between the permitting and modeling programs.
- Consider repealing the state standard for TSP and developing standard conditions for road dust.

APPLICATION QUALITY

FINDINGS

A complete permit application should contain all the information necessary to develop an enforceable permit. Unfortunately, the program frequently receives applications that are either incomplete or contain information that is incorrect. When applications are incomplete or incorrect, staff generally works with the applicant to gather the essential data rather than ruling the application incomplete. The multiple reviews of the same application and back and forth communication with the applicant to complete a permit application was identified by staff as one of the major reasons permit issuance is slowed down. It was also noted that at times an applicant may resubmit an application after reviewing the draft permit without restarting the permit issuance clock or paying additional fees.

State Air Quality regulations require the application to be ruled either administratively complete or incomplete within 30 days of receipt. Bureau policy only allows the permit writer to base the completeness determination on the absence of required information, not whether the information is technically deficient (Policy Number AQB 02-013.00). Anytime a permit writer proposes to rule an application incomplete, they must obtain management approval.

The team found at least one jurisdiction, Idaho, which will not solicit the applicant to supply more information if a submitted application is incomplete. In Idaho, if the application is lacking necessary information, then the application will either be deemed incomplete or denied, and the applicant forfeits the filing fee. The applicant may resubmit the application with all the necessary information along with a new filing fee.

DRAFT

RECOMMENDATIONS

- Consider revising Bureau policy to allow staff to rule an application incomplete in the absence of required information and for technical deficiencies. It is appropriate for staff to continue to seek management approval to rule any application incomplete.
- Consider revising Bureau policy to clarify that whenever the applicant submits a new application, the issuance clock is restarted and new fees are paid.

PERMIT DENIAL

FINDINGS

The Bureau denies only a small percentage of permits. Last year the Bureau denied only one permit (See Table 1 below). Air Quality Regulations require the Bureau to deny a permit in certain circumstances including if ambient standards would be exceeded, or if any provision of the Air Quality Control Act or federal air quality requirements would be violated (20.2.72.208 NMAC and 20.2.72.405.C.4 NMAC). Bureau policy in support of the regulation allows for permit denial if there are a number of technical deficiencies in the permit application that cannot be corrected or if the applicant does not respond the Bureau's request for information (Policy Number AQB 02-013.00).

Should the Bureau deny more permits rather than try to correct inadequate applications, it is likely that the bureau would receive better quality applications in the first place. In the past, staff has been concerned about receiving management support to deny permits.

RECOMMENDATIONS

- Work with senior management to consider how to strengthen Bureau policy and practice for denying permits for inadequate applications.

STAFF KNOWLEDGE

The Air Quality program is frequently required to implement new federal and state rules. In recent years the program has implemented newly promulgated federal rules regarding the permitting of greenhouse gas emissions and air toxics. Staying up to speed on these new and complicated rules can be a challenge. In addition to being familiar with state and federal regulations, staff must also understand the complexities of the sources they regulate.

In addition, the Bureau is rarely able to hire new staff with air quality permitting experience. New hires generally require two to three years to become an experienced and knowledgeable permit writer.

FINDINGS

Applicants generally consider staff knowledgeable, but applicants want them to have a better understanding of their industries. More knowledgeable permit writers are more likely to be flexible regarding permit conditions.

Applicants have seen improvements in staff knowledge with the reorganization of the permit program to create a new major source section. This section allows the same staff person to work on both the major source NSR permit and the Title V Operating permit for one facility.

Staff has expressed a strong interest in getting out in the field more to see the sources they regulate, but are concerned about taking time away from the office to write permits.

RECOMMENDATIONS

- After getting staffing levels up, consider providing staff with more field trips to regulated sources.
- Consider having more staff with specialties in a specific field (e.g. oil and gas, construction, electrical generation, etc.).
- Provide more training on permitting, new federal regulations, source types and control methods, air dispersion modeling and emission calculations.
- Reactivate the permitting training program for new hires (update training checklist, update and resume training classes, etc.).

STAFFING LEVELS

Since the Red Team report was published in 1999, the Bureau has tracked a number of performance metrics including staffing levels, work load and permit processing times. Table 1 summarizes much of the information gathered by the program since 2001. One metric that has dramatically changed over the last few years is the increase in the normalized work load and the decrease in filled positions. The current staffing levels in permitting are critically low while the work load has more than doubled over the last eight years.

DRAFT

Fiscal Year	Number of NSR Actions	Average Normalized Work Load	NSR Staffing Level Authorized/Actual	Average Number of Days to Issue or Deny NSR Permits	Number of Permits Denied	Applications Ruled Incomplete
2001	331	14.8	11/8	59	0	17
2002	344	15.8	11/9	62	8	23
2003	531	16.8	10/8	53	2	15
2004	399	12.6	10/8	59	0	18
2005	546	15.5	10/10	56	6	19
2006	527	16.2	10/9	52	3	22
2007	507	15	10/8	50	13	26
2008	746	15.6	11/9	53	7	26
2009	711	16.2	11/8	50	2	16
2010	706	16.4	11/8	51	3	9
2011	941	22	11/8	59	4	30
2012	918	23.5	11/7	59	1	26

Table 1: AQB Metrics from FY 2001 through 2012

FINDINGS

Poor staffing levels are the number one problem in the permitting program right now and have led to stress, poor morale and increased average permit issuance time. While the number of permit actions has increased dramatically since 2007, the number of NSR FTEs has remained fixed since 2008. Both applicants and staff have noted the problems with staffing levels. While the Martinez Administration lifted the hiring freeze, the hiring process itself takes time and the Air Quality is still working to address staffing levels.

In addition, permitting staff are responsible for all aspects of the permit, including the collection of permit fees; administrative tasks, such as fee collection, takes time away from the more technical aspects of permitting.

RECOMMENDATIONS

- Consider adding FTEs to the NSR permitting program.
- Fill current vacancies as quickly as possible.
- Assess and fix bottlenecks in the hiring process.

DRAFT

- Hire interns and temporary staff as available to relieve permitting staff of some of their duties.
- Consider having administrative staff be responsible for fee collection.
- Develop online payment options to help with the collection of fees.
- Consider having administrative staff assist with some correspondence (scanning and emailing notifications, etc.).

PERMIT ISSUANCE TIME

In 1998, prior to the Red Team review, the average permit issuance time was 104 days. Beginning in 2000, new legislation required the Bureau to issue minor source construction permits within 90 days of ruling the application complete and major source permits within 180 days of ruling the application complete. The statutory mandate and recommendations from the Red Team led to a lengthy review of the NSR permit program and implementation of numerous permit efficiencies including the development of five general construction permits. In 2009, the permit issuance time dropped to an average of 50 days from the time the application is ruled complete.

Permit issuance time has crept up over the last few years, most likely because of the critically low staffing levels and an increase in work load. Despite these draw backs, the performance metrics in Table 1 show that on average the Bureau has been able to issue minor source permits according to the statutory time frame. This can be attributed to staff and management that are dedicated to getting permits out on time and the implementation of numerous permitting efficiency measures since 2000. Most applicants expect the permit to be issued within the regulatory time frame unless the permit goes to hearing.

The review team attempted to compare permit issuance times with surrounding jurisdictions, but found that few jurisdictions actually track this metric. We did find that most jurisdictions have regulatory or statutory time frames for permit issuance. As noted in Table 2, only two other Western states (Utah and Wyoming) have regulatory requirements for permit issuance times as stringent as New Mexico's, and no other state has a requirement that is more stringent. The other state that tracks permit issuance times is Wyoming. In 2011 NSR permits in that state were issued on average, 98 days after the permit was ruled complete. In New Mexico, for the same year, NSR permits were issued on average in 59 days. Comparisons among the jurisdictions are difficult since the permitting programs may operate very differently. For example, some jurisdictions may have a "permit by rule" (similar to a general construction permit) and may not consider this type of permit in their issuance time.

Jurisdiction/Permit Action	Regulatory Requirement	Average Number of Days Used in 2011
New Mexico		
Days to Determine Application Complete	30	25
NSR Minor: Days to Issue or Deny Permit After Application Complete	90	59
Albuquerque/Bernalillo County		
Days to Determine Application Complete	N/A	Does not track
NSR Minor: Days to Issue or Deny Permit After Application Complete	180	Does not track
Arizona		
Days to Determine Application Complete	60	Does not track
NSR Minor: Days to Issue or Deny Permit After Application Complete	240	Does not track
Colorado		
Days to Determine Application Complete	60	Does not track
NSR Minor: Days to Issue or Deny Permit After Application Complete	90	Does not track
Oklahoma		
Days to Determine Application Complete	60	Does not track
NSR Minor: Days to Issue or Deny Permit After Application Complete	180	Does not track
Texas		
Days to Determine Application Complete	90	Not available
NSR Minor: Days to Issue or Deny Permit After Application Complete	180	Not available
Utah		
Days to Determine Application Complete	30	Does not track
NSR Minor: Days to Issue or Deny Permit After Application Complete	90	Does not track
Wyoming		
Days to Determine Application Complete	30	Does not track
NSR Minor: Days to Issue or Deny Permit After Application Complete	90	98

Table 2: Air Quality Minor Source Permit Issuance Times by Jurisdiction

There was no consistent response from applicants when asked how the applicants' permitting experience in New Mexico compares with that in other jurisdictions, though applicants suggested that the Bureau should consider strategies adopted by other jurisdictions to improve permit issuance times (e.g. Texas' "permit by rule")

RECOMMENDATIONS

- Leave the regulatory and statutory permit issuance times unchanged.

DRAFT

- Address staffing levels so that when possible, permits may be issued more quickly than the regulatory time frame.
- Evaluate strategies adopted by other jurisdictions to improve permit issuance times including Texas' "permit by rule".

WORK FLOW

There are a number of internal and external steps to processing a permit application. The flow chart in Appendix E demonstrates the case-by-case construction permit process from pre-application meeting to permit issuance at a high level. The review team did not analyze the permit work flow in detail, though a few work flow issues were identified during staff interviews (e.g. the number of manager draft permit reviews, communications with modeling, and data entry into TEMPO).

To really understand how to develop the most efficient work flow in the permit program, the Bureau should consider undertaking a thorough analysis and possibly bringing in an outside consultant.

The Arizona Department of Environmental Quality recently went through a process called Kaizen for their air permitting program and found it to be very useful in improving permitting processes. Kaizen is a process of evaluating the work flow to identify and eliminate all steps that don't add value to developing the end product. By improving standardized activities and processes, Kaizen aims to eliminate waste. In 2008, the Air Enforcement and Compliance program went through a Kaizen process and also found it to be helpful.

RECOMMENDATIONS

- Consider contractor assistance in applying the Kaizen method, or a similar efficiency oriented method, to the permitting program.

AQB WEBSITE

The Air Quality Bureau website is the public's primary source for information about the Bureau and its program. To effectively communicate with the public and to serve their informational needs, the website needs to be easy to use and contain relevant documents and information.

DRAFT

FINDINGS

Applicants thought that the AQB website has a lot of very good information, but finding information is not intuitive and the web page could be better organized. Applicants also complained of not being able to find permit staff contact information on the webpage.

RECOMMENDATIONS

- Redesign the website so that it is better organized and easier to navigate. Consider contracting with a web designer for the initial makeover.
- Make permitting staff contact information easy to find.
- Consider implementing a document management system to allow the public to search and query Air Quality Bureau documents.
- Consider allowing the public to directly access TEMPO, the Air Quality Bureau database. To accomplish this task, security issues will have to be addressed.

ONLINE SERVICES

The Bureau is trying to better utilize online services to make the program more efficient and to provide better customer service. The Bureau is currently working with a contractor to develop the ability to accept the online submittal of certain types of permit applications (Universal Application) and will soon be able to accept excess emission reports and the annual emissions inventory reports online. The Bureau is interested in knowing what other online services would be useful to the public.

FINDINGS

Most applicants are interested in the ability to submit applications electronically. Some suggested that applying for Notices of Intent (NOI) online would greatly help streamline this process. Some applicants would like to submit reports online. Many applicants and staff are interested in online payment options. Many applicants expressed interest in having online access to active issued permits. Some applicants would like to access the status of their permit application on line (including assigned permit writer and modeler). The team has heard from non-regulated members of the public that they are interested in accessing permit information online.

RECOMMENDATIONS

- Continue to develop the ability to accept online permit applications and expand the scope to include NOIs.

- Develop the ability to accept more reports online.
- Consider online payment options.
- Make all active issued permits available on the web.
- Provide the status of permit applications online.

OTHER IT FIXES

Staff offered a few other IT solutions that may help them accomplish their work more efficiently including having a dedicated computer for air dispersion modeling, providing permit writers with two computer screens to ease navigation between two documents and developing a new intranet site for permitting to improve program communications.

REGULATORY CHANGES

FINDINGS

Bureau permitting and planning staff identified several regulations that maybe outdated and could be evaluated for repeal or amendment (See Appendix F: Air Quality Bureau Rule Revision Table). Some applicants and the program suggested developing a permit by rule to help new construction get up and running more quickly. The program managers and staff believe that several of the General Construction Permits need to be updated.

RECOMMENDATIONS

The Bureau should consider all the regulatory changes suggested by staff and applicants.

INTER-PROGRAM PERMIT COORDINATION

The Department-wide permit process review team was concerned that new businesses in the state may not have adequate assistance in determining which types of environmental permits would be applicable to their business. A new business could be required to obtain any number of permits including an air quality permit, ground water discharge permit, or a surface water runoff permit. One option the group considered was creating a "permit coordinator" that could sit in NMED or the Office of Economic Development to help businesses navigate New Mexico's permitting requirement and provide them with the right contacts in NMED and potentially other state agencies.

DRAFT

FINDINGS

None of the applicants we interviewed thought that the Department needed to create an inter-program permitting coordinator, though the AQB Review Team only received feedback from sources already in New Mexico. One person suggested an ombudsman in the Economic Development Department would be useful to small businesses.

RECOMMENDATION

If a permit coordinator is created to assist new businesses through the NM permitting processes, consider having that person also serve as an ombudsman for small businesses.

Consider providing staff in the Economic Develop Department with a workshop on NMED permitting processes.

NEXT STEPS

The Air Quality Bureau and Department management have been apprised of the findings and recommendations from the Team. After final public review, the Bureau and management team will need to determine which recommendations to prioritize, how to find the resources for implementation and the timing of implementation. Frequent feedback from the regulated community and the general public should help guide the implementation process.

Over the next several years as the Bureau makes changes in the permitting program, it will be important for the Bureau to continue to employ performance metrics to monitor the success and effectiveness of new strategies. Program reevaluation will be key to ongoing improvement.

DRAFT

APPENDICES

APPENDIX A: AIR QUALITY BUREAU PERMIT REVIEW TEAM

Name	Title
Butch Tongate	Deputy Secretary
Ted Schooley	Technical Services Staff Manager, Air Quality Bureau
George Schuman	Permit Staff Manager, Solid Waste Bureau
Ryan Flynn	NMED General Counsel
Mary Rose	Acting Environmental Protection Division Director
Morgan Nelson	Policy Analyst, Office of General Counsel
Sandra Ely	Environment and Energy Policy Coordinator, Office of General Counsel
Mary Montoya	Information Technology Division Director
Cathy Atencio	Acting Administrative Services Division Director

DRAFT

APPENDIX B: APPLICANT INTERVIEW QUESTIONS

New Mexico Air Quality Bureau (AQB) Permit Applicant Interview Questions

Interviewer Script: "The Air Quality Bureau is considering how to improve their permitting processes. To best do this, we need the opinions of our customers. This is why we are very pleased you have agreed to be interviewed. Your candid responses will help us provide the best service possible.

"This initiative is a priority of senior staff at the Environment Department and the results of these surveys will be communicated to them."

"If you like, your responses will be kept confidential."

APPLICANT INFORMATION:

Applicant Name: Optional

Applicant Contact Information: Optional

Type(s) of permitting activity:

Briefly describe the project permitted by AQB:

What type of permit(s) did you apply for?

Permit Type Cue:

Minor New Source Review Permit?

General Construction Permit?

Relocation?

No Permit Required?

Notice of Intent?

PSD?

PERMIT PROCESS:

1. Did you participate in a pre application meeting with staff?
    a. If so, was this service helpful?
2. Do you have any suggestions for improving these meetings?
3. Was the permitting guidance (either written or oral) clear?
4. If you asked for assistance with your permit application, was staff helpful and courteous?
5. Did you use the Small Business of Assistance Program?
    a. If so, was that service helpful?
    b. Do you have any suggestions for improving this service?
6. When were you initially contacted by permitting staff?

DRAFT

Cues:

Within one day?

Within one week?

Two to four weeks?

Longer than a month?

7. When you submitted your application, what was your expectation about the permit issuance time?
8. Were you informed of the time it would take to issue your permit?
9. Was your permit issued in a timely manner?
    a. If not, were you notified promptly about the delay?
10. Was the explanation for the delay reasonable?
11. Were the permit conditions clear?
12. Were you satisfied with the permit conditions?
    a. If no, please explain.
13. Were questions about the conditions answered and alternatives considered?
14. Did your permit application require air dispersion modeling?
    a. If so, how would you describe your experience with the modeling review process?
15. Do you have any suggestions for improving the modeling review process?
16. Did you use the AQB modeling guidelines?
    a. If so, was it helpful?
17. Do you have suggestions for improving the guidelines?
18. Have you applied for an air quality permit in another jurisdiction?
    a. If yes, how does your permitting experience with the New Mexico Air Quality Bureau compare with your experience in other jurisdictions?

PROMPTNESS:

19. When applying for the permit, how long did it usually take staff to respond to:
    a. Phone calls?
    b. Emails?
    c. Letters?
    d. Materials you requested?

DRAFT

WEBSITE:

20. Have you visited the Air Quality Bureau website?
    a. If so, was it useful to you? If not, why not?
21. Which pages of the website do you use most often?
22. Do you have suggestions for improving the website?
23. Would you use more "online" services if they were available? (e.g. application submittal and fee payments)
    a. If so, what additional services would you recommend?
24. How could the Department improve access to online permit information?

MISCELLANEOUS:

25. Did your project require environmental permits from other programs?
    a. If so, were the permitting programs involved well coordinated?
26. Do you have any other suggestions for improving the permit application process with the AQB?

Interviewer Script: "Thank you for your help with this important effort. Later this year, we will produce a report summarizing our overall findings including suggestions for improving the permit program. Should you have any questions, please don't hesitate to call me or the project manager, Sandra Ely, at 505-827-0351."

DRAFT

APPENDIX C: SURVEY MONKEY QUESTIONS

Questions for all Air Quality Bureau Customers

Our goal is to provide you with the best possible service and your feedback is helpful to us in meeting this goal. Please help us serve you better by taking a few minutes to answer the questions below.

1. Please describe the task you are commenting on.
    a. Air dispersion modeling review
    b. Complaint response
    c. Educational program or training
    d. Enforcement
    e. Environmental monitoring
    f. Gathering information from the Air Quality Bureau website
    g. Inspection
    h. Permitting
    i. Small Business Assistance Program
    j. Telephone or email inquiry
    k. Other (please specify)
2. Tell us how you feel:

    Strongly Disagree Disagree Neutral Agree Strongly Agree Not Applicable

    a. Staff knowledge- Staff demonstrated thorough knowledge of their business.
    b. Courtesy- Service was provided in a professional and courteous manner.
    c. Cooperation- Staff worked to meet my needs and solve my problems.
    d. Procedures- Forms and procedures were easy to understand and use.
    e. Response Time- The service was provided in a reasonable amount of time.
    f. Service Quality- The quality of service satisfied my needs.

DRAFT

g. Convenience- The location and hours of operation met my needs.

h. Website- Website information/services met my needs.

Please help us understand any rating of Disagree or Strongly Disagree, by providing an explanation in the comments field below.

Comments:

3. Overall Satisfaction- How would you rate your satisfaction with the service overall?

    a. Very Dissatisfied

    b. Dissatisfied

    c. Neutral

    d. Satisfied

    e. Very Satisfied

    f. No Opinion

4. Please let us know how we can improve our programs and services.

5. May we contact you?

    If yes, please tell us how to reach you. Provide your name and an email address or a phone number and the best time to call.

Thank you for taking this survey. The information you provide is very valuable to us and will help us make improvements to all the services provided by the New Mexico Air Quality Bureau. The results of this survey will be consolidated and made available through a final reported posted on our website. If you have any questions about this survey, please contact Sandra Ely at (505) 827-0351

DRAFT

APPENDIX D: STAFF INTERVIEW QUESTIONS

AQB Permitting Staff Survey

PERMIT PROCESS

1. How long have you worked in the permitting program?
2. What section of the permitting program do you work in?
3. Do you think the permitting program works effectively with the other programs in the Bureau? If not, do have suggestions for improvements?
4. What steps(s) in the permit workflow slows down permit issuance the most? Do you have ideas for improving the work flow in permitting program?
5. In the past, industry has raised concerns regarding the consistency of permit conditions. Do you think this is a valid concern? Do you have ideas on how to address this issue?
6. In what ways do you interact with the regulated community? Do have ideas on how to improve those interactions?
7. In general, do feel knowledgeable about the industries you regulate?
8. What type of additional training would you like to have?
9. Do you participate in pre-application meetings? If yes, do you have ideas on how to improve these meetings?
10. Some industry representatives would like the internal permitting guidance to be published. Would that pose a problem?
11. Do have suggestions for improving the AQB permitting web page?
12. What types of online services would help you do your job (e.g. electronic application and report submittals)?
13. Any other ideas on how would you improve or streamline the issuance of NSR permits?

EMPLOYEE WORK ENVIRONMENT

1. When you ask for guidance, information or help, how helpful is your supervisor?
    a. Very Helpful
    b. Helpful

DRAFT

c. Neither Helpful or Unhelpful

d. Unhelpful

e. Very Helpful

Comments:

2. When you raise issues or concerns, how well does your supervisor listen or respond?

a. Very Well

b. Well

c. Neither well nor poorly

d. Poorly

e. Very Poorly

Comments:

3. Are expectations of your performance easy to understand?

a. Very easy

b. Easy

c. Neither Easy nor Hard

d. Hard

e. Very Hard

Comments:

4. Are the expectations reasonable?

a. Very Reasonable

b. Reasonable

c. Neither Reasonable nor Unreasonable

d. Unreasonable

e. Very unreasonable

Comments:

DRAFT

5. Does AQB management provide the leadership you need to do your job?
    a. Always
    b. Often
    c. Sometimes
    d. Rarely
    e. Never

    Comments:

6. Does NMED Senior management provide the leadership you need to do your job?
    a. Always
    b. Often
    c. Sometimes
    d. Rarely
    e. Never

    Comments:

7. Do you have access to the resources you need to do your job well?
    a. Have Access
    b. Have Some Access
    c. Neutral
    d. Have Minimal Access
    e. Have No Access

    Comments:

8. How many opportunities do you have to get promoted in AQB?
    a. A Great Deal
    b. A Lot
    c. A Moderate Amount

DRAFT

d. A Few

e. None At All

Comments:

9. Are you satisfied with your employee salary and benefits?

a. Very Satisfied

b. Satisfied

c. Neither Satisfied nor Dissatisfied

d. Dissatisfied

e. Very Dissatisfied

Comments:

10. How often do you feel stressed at work?

a. Extremely Often

b. Very Often

c. Moderately Often

d. Slightly Often

e. Not Often

Comments:

11. How satisfied are you with your office (e.g. physical location and office space)?

a. Very Satisfied

b. Satisfied

c. Neither Satisfied nor Dissatisfied

d. Dissatisfied

e. Very Dissatisfied

Comments:

12. How satisfied are you to work in the permitting section?

DRAFT

a. Very satisfied

b. Satisfied

c. Neither Satisfied nor Dissatisfied

d. Dissatisfied

e. Very Dissatisfied

Comments:

13. How satisfied are you to work in the Air Quality Bureau?

a. Very Satisfied

b. Satisfied

c. Neither Satisfied nor Dissatisfied

d. Dissatisfied

e. Very Dissatisfied

Comments:

14. How satisfied are you to work in the Environment Department?

a. Very Satisfied

b. Satisfied

c. Neither Satisfied nor Dissatisfied

d. Dissatisfied

e. Very Dissatisfied

Comments:

15. Overall satisfaction in your job:

a. Very satisfied

b. Satisfied

c. Neither satisfied nor dissatisfied

d. Dissatisfied

DRAFT

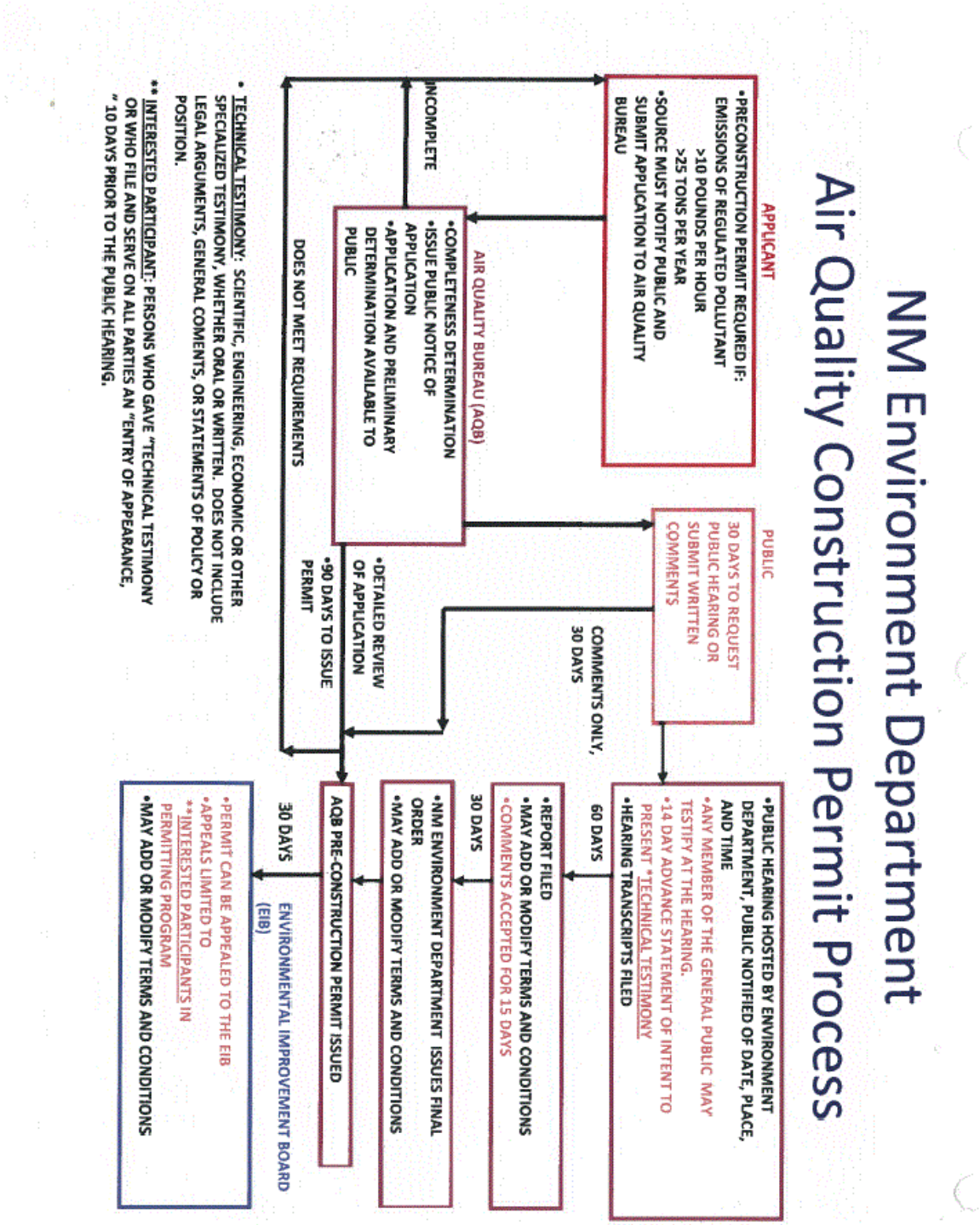
e. Very Dissatisfied

16. How could the AQB work environment be improved?

17. Is there anything you would like to add or clarify before finishing this interview?

DRAFT

APPENDIX E: AQB PERMIT FLOW CHART



APPENDIX F: AIR QUALITY BUREAU RULE REVISION TABLE

Potential Air Quality Rules to Repeal or Revise

Citation (NMAC)	Rule Purpose	Required by USEPA?	Potentially Affected Businesses or Industry Groups	Possible Revisions	Recommendation	Resources to Repeal or Revise[i]
Easiest						
20.2.36 NMAC - Petroleum refineries - sulfur	Minimize emissions of sulfur compounds from refineries	No	Refineries	None	Repeal	~$1,500 plus 0.25 FTE for 6-9 months
20.2.37 NMAC - Petroleum processing facilities	Minimize emissions from natural gas plants and refineries	No	Refineries and natural gas processing plants	None	Repeal	~$1,500 plus 0.25 FTE for 6-9 months
Slightly more difficult/time consuming						
20.2.38 NMAC - Hydrocarbon storage facilities	Minimize emissions of sulfur compounds from hydrocarbon storage	No	Oil & gas industry	None	Repeal	~$1,500 plus 0.5 FTE for 6-9 months
20.2.11 NMAC - Asphalt process equipment	Limit emissions from asphalt plants	Yes (SIP[ii] rule)	Asphalt plants	None	Repeal	~$1,500 plus 0.5 FTE for 6-9 months
20.2.12 NMAC - Cement kilns	Limit particulate emissions from cement kilns.	Yes (SIP rule)	Cement kilns (none currently exist in jurisdiction of NMED Air Quality)	None	Repeal	~$1,500 plus 0.5 FTE for 6-9 months
20.2.20 NMAC - Lime manufacturing plants	Limit particulate emissions from lime manufacturing	Yes (SIP rule)	Lime manufacturers (none currently exist in jurisdiction of NMED Air Quality)	None	Repeal	~$1,500 plus 0.5 FTE for 6-9 months
20.2.85 NMAC - Mercury emission standards	Establishes mercury emission limits for existing power plants	No longer required by EPA.	San Juan Generating Station and Tri-State Escalante	None	Repeal	~$2,500 plus 0.75 FTE for 9-12 months

Citation (NMAC)	Rule Purpose	Required by USEPA?	Potentially Affected Businesses or Industry Groups	Possible Revisions	Recommendation	Resources to Repeal or Revise[i]
20.2.98 NMAC - General conformity	Ensure conformity of federal projects (airport expansions) with the SIP in nonattainment areas	No longer required by EPA.	Airports	None	Repeal	~$1,500 plus 0.25 FTE for 6-9 months
More likely to be difficult/time consuming						
20.2.3 NMAC - Ambient air standards	Establishes state ambient air standards	Yes (SIP rule)	Aggregate industry	Revise to eliminate total suspended particulate (TSP) standard.	Revise	~$50,000 to $80,000 plus 2.0 FTEs for 12 months
20.2.70.7 (E) NMAC- Operating permits	Consolidates applicable requirements for Title V sources	Yes	Title V	Revise	Revise	~$2,000 plus 1 FTE for 12 months

[i] Resources include costs of publishing notices, contracting with court reporters, and conducting public meetings, if necessary. Estimates of staff time and rulemaking timeframe are also included.

[ii] SIP means State Implementation Plan. These rules have been approved by the U.S. Environmental Protection Agency (EPA). Consultation with EPA would be required to revise or repeal SIP rules.

DRAFT