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STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REVISIONS TO
20.2.71 NMAC – OPERATING PERMIT EMISSIONS FEES

No. EIB 08-___ (R)

PETITION FOR REGULATORY CHANGE

The New Mexico Environment Department ("Department"), pursuant to 20.1.1 NMAC - Rulemaking Procedures, petitions the Environmental Improvement Board ("Board") to revise 20.2.71 NMAC - *Operating Permit Emissions Fees* ("Part 71"). The revisions and a statement of reasons are attached.

The Department requests that the Board schedule the hearing for December 1, 2008 during its regular meeting. The Department anticipates that its testimony regarding the Part 71 revisions will require approximately one hour.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

for

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STATEMENT OF REASONS

The Department proposes the following changes to Section 112 of Part 71:

20.2.71.112 EMISSION FEE

A. The fee for each fee pollutant shall be [~~\$12.00~~] \$20.00 per ton on an annual basis, except as provided for in Subsection B of 20.2.70.112 NMAC. This fee shall increase by \$2.00 per ton [~~to \$14.00 per ton~~] on an annual basis beginning on January 1, 2010 through the fees due on June 1, 2012 [~~for fees due June 1, 2006; to \$16.00 per ton on an annual basis for fees due June 1, 2007; and to \$18.00 per ton on an annual basis for fees due June 1, 2008 and thereafter~~].

B. The fee for each hazardous air pollutant shall be \$165.00 per ton on an annual basis for any stationary source which is only major as defined in 20.2.70 NMAC for any hazardous air pollutant.

C. The fee per ton of emissions above annual allowable emission limits shall be identical to the fee per ton of allowable emissions.

D. Beginning on January 1, 2009, 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.

[11/30/95; 20.2.71.112 NMAC - Rn, 20 NMAC 2.71.112 10/31/02; A, 12/15/04; A, xx/xx/xx]

The Department proposes these changes to comply with federal regulations, 40 CFR §70.9, that require the State to collect fees from major sources subject to 20.2.70 - *Operating Permits* which are sufficient to cover the costs of the Title V permitting program. Currently, the revenues collected pursuant to Part 71 are less than the costs of the Title V permitting program, and therefore, must be increased. The proposed increase is consistent with the fees previously authorized by the Board.

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 2 AIR QUALITY (STATEWIDE)**
3 **PART 71 OPERATING PERMIT EMISSIONS FEES**
4
5

6 **20.2.71.1 ISSUING AGENCY:** Environmental Improvement Board.
7 [11/30/95; 20.2.71.1 NMAC - Rn, 20 NMAC 2.71.100 10/31/02]
8

9 **20.2.71.2 SCOPE:** All persons required to obtain a permit under 20.2.70 NMAC (Operating Permits).
10 [11/30/95; 0.2.71.2 NMAC - Rn, 20 NMAC 2.71.101 10/31/02]
11

12 **20.2.71.3 STATUTORY AUTHORITY:** Environmental Improvement Act, NMSA 1978, section 74-1-8
13 (A)(4) and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-
14 7(B)(5).
15 [11/30/95; 20.2.71.3 NMAC - Rn, 20 NMAC 2.71.102 10/31/02]
16

17 **20.2.71.4 DURATION:** Permanent.
18 [11/30/95; 20.2.71.4 NMAC - Rn, 20 NMAC 2.71.103 10/31/02]
19

20 **20.2.71.5 EFFECTIVE DATE:** November 30, 1995, unless a later date is cited at the end of a section.
21 [11/30/95; 20.2.71.5 NMAC - Rn, 20 NMAC 2.71.104 10/31/02; A, 12/15/04]
22 [The latest effective date of any section in this part is xx/xx/xx.]
23

24 **20.2.71.6 OBJECTIVE:** The objective of this Part is to establish a schedule of operating permit emission
25 fees.
26 [11/30/95; 20.2.71.6 NMAC - Rn, 20 NMAC 2.71.105 10/31/02]
27

28 **20.2.71.7 DEFINITIONS.** In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this
29 part:

30 **A. "allowable emission rate"** means the maximum emission allowed by the more stringent emission
31 limitation applicable to the source contained in:

32 (1) any New Mexico air quality control regulation;

33 (2) any federal standard of performance, emission limitation, or emission standard adopted pursuant
34 to 42 U.S.C. Section 7411 or 7412; or

35 (3) any condition within a construction or operating permit issued by the department;

36 **B. "emissions unit"** means any part or activity of a stationary source that emits or has the potential
37 to emit any fee pollutant;

38 **C. "fee pollutant"** means:

39 (1) sulfur dioxide, nitrogen dioxide, carbon monoxide, total suspended particulate matter, and volatile
40 organic compounds; and

41 (2) any hazardous air pollutant that is subject to any standard promulgated pursuant to section 112 of
42 the federal act;

43 **D. "fugitive emissions"** means those emissions which could not reasonably pass through a stack,
44 chimney, vent, or other functionally-equivalent opening;

45 **E. "hazardous air pollutant"** means an air contaminant that has been classified as a hazardous air
46 pollutant pursuant to section 112 of the federal act;

47 **F. "operator"** means the person or persons responsible for the overall operation of a facility;

48 **G. "owner"** means the person or persons who own a facility or part of a facility;

49 **H. "part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico
50 Administrative Code, unless otherwise noted; as adopted or amended by the board;

51 **I. "stationary source"** means any building, structure, facility, or installation that emits or may emit
52 any air pollutant.

53 [11/30/95; 20.2.71.7 NMAC - Rn, 20 NMAC 2.71.107 10/31/02; A, 12/15/04]
54

1 **20.2.71.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:** This Part amends and
2 supersedes Air Quality Control Regulation (AQCR) 771 -- Operating Permit Emission Fees, filed November 15,
3 1993, as amended.

4 **A.** All references to AQCR 771 in any other rule shall be construed as a reference to this Part.

5 **B.** The amendment and supersession of AQCR 771 shall not affect any administrative or judicial
6 enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant
7 to AQCR 771.

8 [11/30/95; 20.2.71.8 NMAC - Rn, 20 NMAC 2.71.106 10/31/02]

9
10 **20.2.71.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment
11 Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo
12 St., Santa Fe, NM 87505].

13 [11/30/95; 20.2.71.9 NMAC - Rn, 20 NMAC 2.71.108 10/31/02]

14 **20.2.71.10 to 20.2.71.108 [RESERVED]**

15
16
17 **20.2.71.109 APPLICABILITY:** Each owner or operator required to obtain an operating permit under 20.2.70
18 NMAC (Operating Permits) shall be subject to the requirements of this Part.

19 [11/30/95; 20.2.71.109 NMAC - Rn, 20 NMAC 2.71.109 10/31/02]

20
21 **20.2.71.110 FEE REQUIREMENT**

22 **A.** An annual operating permit emission fee shall be paid to the department by each owner or operator
23 subject to this part.

24 **B.** The fee shall be assessed:

25 (1) for a major source as defined in 20.2.70 NMAC (Operating Permits), for all emissions units;

26 (2) for all other stationary sources, for emissions units which cause the source to be subject to 20.2.70
27 NMAC; and

28 (3) for emissions above annual allowable emission limits for the source categories in Paragraphs (1)
29 and (2) of Subsection B of Section 20.2.71.110 NMAC.

30 **C.** The fee shall be calculated in conformance with 20.2.71.111 NMAC.

31 [11/30/95; 20.2.71.110 NMAC - Rn, 20 NMAC 2.71.110 10/31/02; A, 12/15/04]

32
33 **20.2.71.111 FEE DETERMINATION**

34 **A.** Fee calculation.

35 (1) The annual fee shall be calculated by taking the product of the allowable emission rate for each
36 fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC.

37 (2) The allowable emission rate which shall be used in the fee calculation is:

38 (a) the allowable emission rate which exists on December 31 for each year; and

39 (b) the failure of an owner or operator to include the correct information in a permit
40 application, resulting in incorrect allowable emissions in a permit issued under 20.2.70 NMAC, 20.2.72 NMAC, or
41 20.2.74 NMAC, shall not preclude the department from requiring payment for the correct emissions from the time
42 payment would have been first due.

43 (3) Allowable emission rates shall be calculated to the tenth of a ton for each emission unit and then
44 summed to determine the tons per year for the facility. Total facility tons per year quantities shall be determined by
45 rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton
46 downward.

47 (4) Emissions from those operations determined to be insignificant activities by the department under
48 20.2.70 NMAC shall not be included in the fee calculation.

49 (5) Fugitive emissions which have an allowable emission rate shall be included in the fee calculation.

50 (6) Any quantity of a pollutant which is assessed a fee because it is a hazardous air pollutant shall not
51 be assessed additional fees.

52 (7) A maximum of six thousand tons per year of any one fee pollutant shall be used in the fee
53 calculation.

1 **B.** Source shutdown.

2 (1) The annual fee shall not be reduced due to lack of operation of any emissions unit, except when:

3 (a) the discontinued operation is accounted for in an allowable emission rate contained within a
4 construction or operating permit issued by the department;

5 (b) a construction or operating permit issued by the department has been discontinued or
6 terminated and the source ceased operation; or

7 (c) the emissions unit is located at a stationary source which meets the criteria of Paragraph (2)
8 of Subsection B of 20.2.71.111 NMAC.

9 (2) The annual fee shall be reduced when all operations at a stationary source have been shutdown for
10 a period greater than 60 consecutive days within a calendar year. In this case, the fee calculation shall be adjusted
11 by reducing the annualized allowable emission rate, or potential to emit if applicable, for each day the stationary
12 source was shutdown.

13 **C.** Fee for emissions above annual allowable emission limits.

14 (1) The fee for emissions above annual allowable emission limits shall be based on all emissions
15 above annual allowable emission limits of fee pollutants reported or required to be reported by a stationary source
16 through December 31 in accordance with Subsection E of 20.2.70.302 NMAC. The fee shall be calculated by taking
17 the product of the emissions above annual allowable emission limits for each fee pollutant above and beyond the
18 allowable annual emissions limit per unit expressed in tons per year and the appropriate fee per ton of pollutant
19 listed in 20.2.71.112 NMAC.

20 (2) Total facility tons per year quantities of emissions above annual allowable emission limits shall be
21 determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five
22 tenths of a ton downward.

23 (3) Any quantity of a pollutant which is assessed a fee pursuant to this section because it is a
24 hazardous air pollutant shall not be assessed additional fees pursuant to this section.

25 (4) A maximum of six thousand tons per year of any one fee pollutant shall be used in the fee
26 calculation for this section.

27 [11/30/95; 20.2.71.111 NMAC - Rn, 20 NMAC 2.71.111 10/31/02; A, 12/15/04]

28
29 **20.2.71.112 EMISSION FEE**

30 **A.** The fee for each fee pollutant shall be [~~\$12.00~~] \$20.00 per ton on an annual basis, except as
31 provided for in Subsection B of 20.2.70.112 NMAC. This fee shall increase by \$2.00 per ton [~~to \$14.00 per ton~~] on
32 an annual basis beginning on January 1, 2010 through the fees due on June 1, 2012 [~~for fees due June 1, 2006; to~~
33 ~~\$16.00 per ton on an annual basis for fees due June 1, 2007; and to \$18.00 per ton on an annual basis for fees due~~
34 ~~June 1, 2008 and thereafter~~].

35 **B.** The fee for each hazardous air pollutant shall be \$165.00 per ton on an annual basis for any
36 stationary source which is only major as defined in 20.2.70 NMAC for any hazardous air pollutant.

37 **C.** The fee per ton of emissions above annual allowable emission limits shall be identical to the fee
38 per ton of allowable emissions.

39 **D.** Beginning on January 1, 2009, the fees referenced in this section shall be changed annually by the
40 percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of
41 the federal Clean Air Act.

42 [11/30/95; 20.2.71.112 NMAC - Rn, 20 NMAC 2.71.112 10/31/02; A, 12/15/04; A, xx/xx/xx]

43
44 **20.2.71.113 FEE PAYMENT**

45 **A.** Schedule.

46 (1) The department shall by April 1 of each year provide to each owner or operator subject to this part
47 notification, which shall contain:

48 (a) the emissions fee based on the requirements of this part which is currently due; and

49 (b) a summary of the basis for the required fee.

50 (2) Upon discovery of an error in any past notification of emissions fees due, the department shall
51 promptly notify the owner or operator and provide credit for overcharges or require payment for undercharges.

52 (3) Each owner or operator shall pay by June 1 the emissions fee contained in the department's
53 notification required under Paragraph (1) of Subsection A of Section 20.2.71.113 NMAC.

54 (4) Each owner or operator shall pay invoices based on notices of errors in past notifications within
55 60 days of the invoice date.

1 (5) The department shall commence invoicing for fees for emissions above annual allowable
2 emission limits reported by the method specified by the department in calendar year 2007.

3 **B. Payment.**

4 (1) Fees shall be remitted in the form of a certified check or money order made payable to the
5 environment department and submitted to the air quality bureau at the address specified in the notice.

6 (2) Upon receipt of the check or money order, it shall be deposited in the state air quality permit fund.

7 **C. Nonpayment.** Failure to remit the full fee required by the due date specified in this section is a
8 violation of this part and may subject the owner or operator to:

9 (1) civil penalties for each day of noncompliance as provided for in the New Mexico Air Quality
10 Control Act, section 74-2-12.1, NMSA 1978;

11 (2) the enforcement provisions of the New Mexico Air Quality Control Act, section 74-2-12, NMSA
12 1978, which includes suspension or revocation of any permit.

13 [11/30/95; 20.2.71.113 NMAC - Rn, 20 NMAC 2.71.113 10/31/02; A, 12/15/04]

14
15 **HISTORY OF 20.2.71 NMAC:**

16 **Pre NMAC History:** The material in this part was derived from that previously filed with the commission of public
17 records - state records center and archives.

18 EIB/AQCR 771, Air Quality Control Regulation 771 - Operating Permit Emission Fees, filed 11/15/93.

19
20 **History of Repealed Material: [RESERVED]**

21
22 **Other History:**

23 EIB/AQCR 771, Air Quality Control Regulation 771 - Operating Permit Emission Fees, filed 11/15/93 was

24 **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.71, Operating Permit
25 Emission Fees, filed 10/30/95;

26 20 NMAC 2.71, Operating Permit Emission Fees, filed 10/30/95 was **renumbered, reformatted and replaced** by
27 20.2.71 NMAC, Operating Permit Emission Fees, effective 10/31/02.