

**STATE OF NEW MEXICO**  
**BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED AMENDMENTS TO:** **EIB 14-05(R)**  
**20.2.1 NMAC – *General Provisions***

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**STATEMENT OF REASONS**

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The New Mexico Environment Department (“Department”) proposes to amend 20.2.1 NMAC, *General Provisions*, to include language authorizing and requiring the electronic submittal of data, reports and permit applications in lieu of paper submittals. The purpose of 20.2.1 NMAC is to establish general provisions which apply to all parts of Chapter 2, *Air Quality (Statewide)*, of Title 20, *Environmental Protection* (i.e., 20.2.1 through 20.2.99 NMAC).

**Federal Requirement**

The Environmental Protection Agency (EPA) requires state agencies which currently accept required submittals electronically, in lieu of paper submittals, to comply with the federal *Cross-Media Electronic Reporting Rule* (CROMERR). “CROMERR was codified in the Code of Federal Regulations (CFR), Title 40, Part 3 on October 13, 2005. [FR Vol. 70, No. 197, 59848-89, 10/13/05]. It was then amended on December 24, 2008 to extend compliance dates for existing electronic document receiving systems (i.e. those that accepted e-reports in lieu of paper on or before October 13, 2005). [FR Vol. 73, No. 248, 78991-4]. Under this amendment, programs with an existing e-reporting system were required to submit an application to EPA for approval no later than January 13, 2010. This is an extension from the original deadline of October 13, 2007.” (EPA, 2014, *CROMERR 101*, p. ii<sup>1</sup>). The Air Quality Bureau (AQB) has several existing submittal programs that require EPA approval. Therefore, the AQB submitted a CROMERR application to EPA in August, 2012, and received comments in March, 2013. A rule amendment and subsequent certification of regulatory authority by the State Attorney General are required before EPA will approve this application (see *infra*). However, the AQB “may continue to operate the existing e-reporting systems while the application is under review” (EPA, 2014, *CROMERR 101*, p. 1-4).

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<sup>1</sup> Available at  
[http://www.epa.gov/CROMERR/training/cromerr101/cromerr\\_course\\_summary.pdf](http://www.epa.gov/CROMERR/training/cromerr101/cromerr_course_summary.pdf)

“The CROMERR rule provides the legal framework for electronic reporting to the EPA and states, tribes and local governments that are authorized to administer EPA programs.” (EPA, 2014, CROMERR webpage, <http://www.epa.gov/CROMERR/states.html>.) “The intent of CROMERR is to maintain the same level of corporate and individual responsibility and accountability that exists in the paper environment when reporting is done electronically.” (EPA, 2014, *CROMERR 101*, p. ii). CROMERR requirements ensure that documents submitted electronically “are as legally dependable as their paper counterparts.” [70 FR 59850].

EPA requires that authorized programs that receive e-reports in lieu of paper must:

I. “have sufficient legal authority to enforce its authorized program using electronically submitted documents.” (EPA, 2014, *CROMERR 101*, p. 1-1);

For EPA to approve the AQB’s program, “the State Attorney General must certify that the State can continue to enforce these authorized programs based on e-submissions.” (EPA, 2014, *CROMERR 101*, p. 3-1). The AQB already has the statutory and regulatory authority to accept e-submittals for “excess emissions” reporting, and “emissions inventory” (“EI”) data, but it is less clear whether the AQB currently has the authority to accept permitting submittals electronically. To ensure that the Attorney General is able to certify that the AQB has sufficient authority, the AQB is proposing to amend 20.2.1 NMAC to require that data/reports/permit applications be submitted electronically for any rule under Chapter 2, *Air Quality (Statewide)*, of Title 20, *Environmental Protection*, for which the AQB is accepting e-reports.

The proposed new language would be inserted under a new section entitled:

**20.2.1.117 ELECTRONIC REPORTING AND PERMIT APPLICATIONS.**

and would stipulate:

**A. Applicability.** Pursuant to the *Cross-Media Electronic Reporting Rule (CROMERR)* as defined by Title 40 of the Code of Federal Regulations (CFR) Part 3; and the *Uniform Electronic Transactions Act*, NMSA 1978, §§ 14-16-1 to -21 (2001 as amended through 2013); any submittal to the department required by any part under Chapter 2, *Air Quality (Statewide)*, of Title 20, *Environmental Protection*, of the New Mexico Administrative Code, for which the department has notified persons subject to the applicable requirement that it is accepting specified electronic documents in lieu of paper, shall be submitted electronically, provided that the method of submittal complies with applicable federal and state standards for electronic submissions. The department may grant a waiver of this requirement on a case-by-case basis if requested by the regulated source.

II. The system that the AQB proposes to use to receive the e-reports must meet the CROMERR standards for e-reporting systems. (EPA, *CROMERR 101*, p. 1-1). The final rule mandated numerous categories of standards that state governments utilizing electronic submittal systems would have to satisfy, including: 1) timeliness of data generation [40 CFR 3.2000(b)]; 2) copy of record [40 CFR 3.2000(b)]; 3) integrity of the electronic document [40 CFR 3.2000(b)(1)-(2)]; 4) submission knowingly [40 CFR 3.2000(b)(3)]; 5) opportunity to review and repudiate copy of record [40 CFR 3.2000(b)(4)]; 6) validity of the electronic signature [40 CFR 3.2000(b)(5)(i)]; 7) binding the signature to the document [40 CFR 3.2000(b)(5)(ii)]; 8) opportunity to review [40 CFR 3.2000(b)(5)(iii)]; 9) understanding the act of signing [40 CFR 3.2000(b)(5)(iv)]; 10) the electronic signature or subscriber agreement [40 CFR 3.2000(b)(5)(v)]; 11) acknowledgement of receipt [40 CFR 3.2000(b)(5)(vi)]; and 12) determining the identity of the individual uniquely entitled to use a signature device [40 CFR 3.2000(b)(5)(vii)].

The AQB is working with EPA to ensure that the AQB's e-reporting system is adequate. In addition the AQB is proposing amendments to 20.2.1 NMAC to accommodate computer system failure. The proposed new language would stipulate:

**B. Deadline extension due to computer system failure.**

(1) If electronic submittal capability is in place, but the department's electronic document receiving system is temporarily unavailable, then the department may grant a deadline extension to the regulated source.

(2) If electronic submittal capability is in place, but the regulated source's computer system or its internet service provider is temporarily unavailable, then the source may request a deadline extension. The department may grant a deadline extension to the regulated source.

**Legal Foundation**

Requiring e-reporting is not prohibited by any state law or regulation.

The *NM Air Quality Control Act*, NMSA 1978, Sections 74-2-1 to -22 (1953, as amended through 2009), does not specify the manner in which reports and applications must be submitted to the AQB.

The *Uniform Electronic Transactions Act* (UETA), NMSA 1978, Sections 14-16-1 to -21 (2001, as amended through 2013), establishes standards for transactions that are to occur electronically, and is applicable to both private and governmental entities. The UETA does not mandate that governmental entities utilize electronic records or signatures. NMSA 1978, §14-16-18. However, the UETA does provide that: “[. . .] a governmental agency [. . .] may [. . .] issue its

own rules that specify: ‘the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for these purposes.’” NMSA 1978, §14-16-18(A).

### **Current Ability/Authority to Accept e-reports/applications**

Within the State air quality regulations there is a reasonable argument that when the word “written” is not used, an electronic submission is acceptable.

### **Emissions Inventory**

The AQB currently accepts EI reports via an online system; therefore, it is obligated to submit a CROMERR application to EPA. Requirements for EI reporting are contained in 20.2.73 NMAC, *Notice Of Intent and Emission Inventory Requirements*. Fairly consistent language is used throughout, mandating that entities “shall submit an emissions report annually.” See 20.2.73.300.B.(1), (2), (3), (4), (6) and (7) NMAC. The regulations do not mandate the format in which the reports should be submitted (e.g., written, electronic). So, it can be argued based upon the regulatory language that any submission methodology required by the AQB would be acceptable, giving the AQB the authority to accept EIs electronically.

### **Excess Emissions Reporting**

Excess emissions are also being reported via an online system. The requirements for excess emissions reporting are found at 20.2.7 NMAC, *Excess Emissions*, and state that: “the owner or operator of a source having an excess emission shall report the following information to the department on forms provided by the Department. The Department may authorize the submittal of such reports in electronic format.” [20.2.7.110.A NMAC]. This language is explicit in allowing the Department to accept electronic submittals.

### **Federal Performance Standards**

New Source Performance Standards (NSPS) promulgated by EPA through September 23, 2013 are incorporated by reference in 20.2.77 NMAC, *New Source Performance Standards*. National Emissions Standards for Hazardous Air Pollutants (NESHAPs) promulgated by EPA through December 31, 2010 are incorporated by reference in 20.2.78 NMAC, *Emissions Standards for Hazardous Air Pollutants*. Maximum Achievable Control Standards promulgated by EPA through August 29, 2013 are incorporated by reference in 20.2.82 NMAC, *Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants*. Since these are federal standards, the EPA regulates whether specific required information can be submitted electronically.

### **Permit Applications**

The AQB does not currently accept permit applications electronically; however, the proposed amendments to 20.2.1 NMAC will make this possible if adopted.

**i      *Operating Permits, 20.2.70 NMAC***

20.2.70.300.D NMAC stipulates that: “any person seeking a permit under this part shall do so by filing a written application with the Department.” In addition, providing written notification to the Department and the Administrator is required for “Section 502(b)(10)” changes. [20.2.70.302.H(1)(b) NMAC]. However, the reporting requirements at 20.2.70.302.E NMAC can be submitted electronically. The legal remedy to these provisions is found within UETA which provides that: “If a law requires a record to be in writing, an electronic record satisfies this law.” [NMSA 1978, §14-16-7(C)].

**ii      *Construction Permits, 20.2.72 NMAC***

20.2.72.203.A NMAC stipulates that: “any person seeking a permit under Subsection A of 20.2.72.200 NMAC shall do so by filing a written application with the Department.” The legal remedy to this provision is found within UETA which provides that: “If a law requires a record to be in writing, an electronic record satisfies this law.” [NMSA 1978, §14-16-7(C)]. In addition, pursuant to 20.2.72.213 NMAC, *Startup and Followup Testing*, “a written report of the results of the [performance] test shall be submitted to the Department by the owner or operator within 30 days from the test date”; and at 20.2.72.305.C.(4) NMAC, the owner or operator shall “submit a written report to the Department of the results of the [performance] test within 30 days from the test date.”

**Miscellaneous Rules**

Many rules do not explicitly require written submittal of information and therefore information can be submitted electronically (e.g., 20.2.10 NMAC, *Woodwaste Burners*; 20.2.62 NMAC, *Municipal Waste Combustion*; and 20.2.63 NMAC, *Biomedical Waste Combustion*).

**Stack Testing and Reporting**

All stack testing protocols and reports, explicitly mentioned in the State air quality regulations allow for electronic submissions (e.g., 20.2.16 NMAC, *Nonferrous Smelters New & Existing – Particulate Matter*; 20.2.17 NMAC, *Nonferrous Smelters Existing – Particulate Matter*; 20.2.18 NMAC, *Oil Burning Equipment – Particulate Matter*; 20.2.19 NMAC, *Potash, Salt or Sodium Sulfate Processing Equipment – Particulate Matter*; 20.2.20 NMAC, *Lime Manufacturing Plants – Particulate Matter*; 20.2.37 NMAC, *Petroleum Processing Facilities*; and 20.2. 40 NMAC, *Sulfuric Acid Production Units – Sulfur Dioxide, Acid Mist and Visible Emissions*).

**Benefits of electronic reporting**

Facilitating and encouraging the electronic submittal of required reports and permit applications in lieu of paper by regulated sources would benefit both the regulated source and the Department. This is because electronic reporting:

- a. Reduces the burden and operating costs incurred by Department staff required to transfer data contained in paper reports, and reduces the economic and environmental cost to the regulated source of printing and mailing.
- b. “Fosters more rapid and accurate environmental reporting and posting of compliance information.” (EPA, 2014, *CROMERR 101*, p. ii). Data can now be transferred directly to the AQB databases, and transcription errors (from paper reports) will be eliminated.
- c. Makes reporting and application submission simpler and more efficient.

### **Additional Proposed Amendments**

The following amendments are proposed to correct typographical errors and to standardize formatting of rule language.

**20.2.1.108 SAVING CLAUSE:** Supersession of any Air Quality Control Regulation (AQCR) shall not ~~[effect]~~ affect any administrative or judicial enforcement action pending on the effective date of any part under Chapter 2 of Title 20, nor the validity of any permit issued pursuant to any AQCR.

[09/05/95; 20.2.1.108 NMAC - Rn, 20 NMAC 2.1.108 10/31/02; A, xx/xx/xx]

**20.2.1.111 AVAILABILITY OF MATERIALS INCORPORATED BY REFERENCE:** Materials incorporated by reference into any part under Chapter 2 of Title 20 may be viewed at the state records center [~~(404 Montezuma, Santa Fe, NM 87503) [1205 Camino Carlos Rey, Santa Fe, NM 87505]~~] or at the New Mexico environment department, air quality bureau [~~(Harold Runnels Building, 1190 St. Francis Dr., Santa Fe, NM 87503) [2048 Galisteo St., Santa Fe, NM 87505]~~].

[09/05/95; 20.2.1.111 NMAC - Rn, 20 NMAC 2.1.111 10/31/02; A, xx/xx/xx]

[As of xx/xx/xx, the State Records Center is located at 1205 Camino Carlos Rey, Santa Fe, NM 87505, and the New Mexico Environment Department, Air Quality Bureau is located at 525 Camino de los Marquez, Suite 1, Santa Fe, NM, 87505]

**20.2.1.116 SIGNIFICANT FIGURES:**

- A. All emissions standards are deemed to have at least two significant figures, but not more than three significant figures.
- B. At least five significant figures shall be retained in all intermediate calculations.
- C. In calculating emissions to determine compliance with an emission standard, the following rounding off procedures shall be used:

(1) if the first digit to be discarded is less than the number five, the last digit retained shall not be changed;

(2) if the first digit discarded is greater than the number five, or if it is the number five followed by at least one digit other than the number zero, the last figure retained shall be increased by one unit; and

(3) if the first digit discarded is exactly the number five, followed only by zeros, the last digit retained shall be rounded upward if it is an odd number, but no adjustment shall be made if it is an even number.

~~(4)~~D. The final result of the calculation shall be expressed in the units of the standard.

[20.2.1.116 NMAC - N, 06/01/10; A, xx/xx/xx]

Attachment A is the currently effective rule that the AQB proposes to amend, with changes shown in redline/strikeout format.

If a hearing is granted in this matter, the Department will present (in its Notice of Intent to present technical testimony) a more detailed analysis of the proposed amendments to 20.2.1 NMAC on a section by section basis.