



STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REVISIONS
TO THE STATE IMPLEMENTATION PLAN
FOR THE GRANT COUNTY SULFUR DIOXIDE
LIMITED MAINTENANCE PLAN

No. EIB 13-05(R)

**NEW MEXICO ENVIRONMENT DEPARTMENT'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY**

Pursuant to 20.1.302.A NMAC, the New Mexico Environment Department (NMED) hereby submits its Notice of Intent to Present Technical Testimony in this proceeding.

1. **The person for whom the witnesses will testify.**

The New Mexico Environment Department.

2. **The name and qualifications of each technical witness.**

Ms. Gail Cooke. Gail Cooke is an Environmental Planner in the Control Strategies Section of the Department's Air Quality Bureau. She has worked in the Air Quality Bureau since June 1999. Ms. Cooke holds a bachelor degree in Environmental Design from Texas A&M University and a master degree in Urban and Regional Planning from Virginia Tech. Her resume is attached as Exhibit 1.

Ms. Rita Bates. Rita Bates is the Section Chief of the Planning Section of the Air Quality Bureau. She has more than 20 years of experience in the environmental field, including fourteen years with the Department. In addition to her work for the Air Quality Bureau, Ms. Bates has worked in industry as an environmental coordinator and in environmental consulting as a project manager. Ms. Bates holds a B.S. in Biology from Humboldt State University. Her resume is attached as Exhibit 2.

3. A copy of the direct testimony of each witness in narrative form.

A copy of the direct testimony of Ms. Cooke is attached as NMED Exhibit 10. Ms. Cooke will provide a brief summary of her testimony during the hearing. The Department does not intend to present direct testimony by Rita Bates, but may present her as a rebuttal witness, and will make her available to assist in answering questions that may go beyond the expertise of the direct witnesses.

4. Text of any recommended modifications to the proposed regulatory change.

The Department does not have any recommended modifications to the proposed regulatory change. The Department supports adoption of the Grant County Sulfur Dioxide Limited Maintenance Plan as contained in NMED Exhibit 3.

5. List and attach all exhibits to be offered at the hearing.

The Department offers the following exhibits, which are attached hereto:

NMED Ex. 1	Resume of Gail Cooke
NMED Ex. 2	Resume of Rita Bates
NMED Ex. 3	Grant County Sulfur Dioxide Limited Maintenance Plan
NMED Ex. 4	68 Fed. Reg. 54,672 (Sept. 18, 2003) – Approval of Grant County Maintenance Plan
NMED Ex. 5	U.S. EPA Guidance on Limited Maintenance Plans – Nov. 16, 1994
NMED Ex. 6	20.2.74 NMAC
NMED Ex. 7	20.2.70 NMAC
NMED Ex. 8	Affidavits of Publication of Hearing Notice
NMED Ex. 9	Comments received from the U.S. EPA on NMED proposed SIP revisions
NMED Ex. 10	Written Testimony of Gail Cooke
NMED Ex. 11	Proposed Statement of Reasons and Order

6. Reservation of Rights

This Notice of Intent to Present Technical Testimony is based on the Department's petition. The Department reserves the right to call any person to testify and to present any exhibit in response to another notice of intent or public comment filed in this matter or to any

testimony or exhibit offered at the public hearing. The Department also reserves the right to call any person as a rebuttal witness and to present any exhibit in support thereof.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL



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Assistant General Counsel

New Mexico Environment Department

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Gail F. Cooke

EDUCATION

Master of Urban and Regional Planning, Concentration: Environmental Planning, Virginia Tech, Blacksburg, Virginia, 1998

Major Project: The Implementation of Virginia Erosion and Sediment Control Laws and Regulations.

Bachelor of Environmental Design, Texas A&M University, College Station, Texas, 1995

Other areas of study include Environmental Science, Soil Science, and Civil Engineering.

WORK HISTORY

State of New Mexico Environment Department, Air Quality Bureau *1999-Present*

Environmental Analyst/Planner – Public outreach, including preparing outreach material for the general public and organizing public meetings and open houses; preparation of emission inventory updates and maintenance plans for the State Implementation Plan submittals; development of local initiative plans to help reduce criteria air pollutants; reviewing of environmental assessments and environmental impact statements; grant writing; and regulatory development.

Taschek Environmental Consulting *1998-1999*

Environmental Planner – General environmental planning; conducted environmental assessments, and initial site assessments; assisted in public outreach; assisted in transportation planning, and land use planning projects; and worked extensively with state regulations and federal rules, including the National Environmental Policy Act.

RELEVANT PROJECT EXPERIENCE

Public Relations

Developed brochures, press releases, public service announcements, informational mail outs, and educational material on various air quality related issues throughout New Mexico. Assisted in the planning of open houses to educate the public on potential health and environmental risks resulting from air pollution. Presented technical information on air quality issues to the general public; local, state and federal employees; and industry representatives.

Grant Writing, Budget Development, and Project Management

Developed grant proposals and budgets for seven different grants over the last four years and have been awarded all seven grants. Have acted as project manager for three of the seven awarded grants. As a project manager for these awarded grants, I have been responsible for most budgetary and contractual related activities.

Plan and Regulation Development

Developed and authored several federally mandated plans on various air quality issues throughout New Mexico.

Assisted in the development of the Ozone Early Action Compact (EAC) plan for San Juan County, NM. The EAC was developed as a local initiative to control ozone levels within San Juan County, NM. Participants in the EAC include the Cities of Farmington, NM, Aztec, NM, and Bloomfield, NM; San Juan County, NM; the State of New Mexico; and the US Environmental Protection Agency. Job duties included plan development, preparation of fact sheets and other informational outreach material, the planning of open houses; and testifying before the Environmental Improvement Board

Developed SIP Maintenance plans for the Sunland Park, NM 1-hour ozone nonattainment area and the Grant County, NM sulfur dioxide nonattainment area. A maintenance plan is required by the federal government for areas that have violated federal ambient air quality standards to show compliance with the standard. Job duties for both plans included plan development; preparation of emission inventory; adoption of plan; public outreach, and testifying before the Environmental Improvement Board.

Acted as the lead in the adoption of revisions to 20.2.99 NMAC – *Conformity to the State Implementation Plan of Transportation Plans, Programs and Projects*. The revisions to 20.2.99 NMAC were in response to amendments made to the federal rule 40 CFR Part 93 – *Determining Conformity of Federal Actions to State or Federal Implementation Plans*. Revisions to this regulation were adopted by the Environmental Improvement Board in 2005, 2007 and 2009.

Coordinated the repeal and replacement of 20.2.7 NMAC – *Excess Emissions*. The repeal and replacement of 20.2.7 NMAC was done to conform to requirements in the Clean Air Act. Extensive outreach and negotiations were done throughout the regulatory development process for 20.2.7 NMAC. The repeal and replacement of this regulation was adopted by the Environmental Improvement Board in 2008.





RITA BATES

EDUCATION

HUMBOLDT STATE UNIVERSITY, ARCATA, CALIFORNIA
B.S., Biology, 1990. Minor in Botany, emphasis in Ecology. Attendance dates 1986-1990.

EXPERIENCE

STATE OF NEW MEXICO, ENVIRONMENT DEPARTMENT
AIR QUALITY BUREAU, PLANNING & POLICY SECTION

Section Chief, March 2005 – present
Program Manager (Natural Sciences Manager-2), March 2000 – March 2005
Environmental Specialist, December 1998 – March 2000
Environmental Scientist, August 1998 – December 1998

The Planning & Policy section of the Air Quality Bureau is responsible for the control strategy, dispersion modeling, emission inventory and small business assistance programs in the Air Quality Bureau. The control strategy section of the Air Quality Bureau is responsible for preparing state implementation plans, policies, and regulations for air quality. The modeling section ensures that all air dispersion modeling analyses submitted to our agency are accurate and complete. The Small Business Assistance Program assists small businesses in meeting air quality regulatory requirements.

EMPIRE GROUP, LLC
Empire, Nevada

Environmental Coordinator, June 1996 – July 1998

Empire Group, LLC is the parent company for several entities which own and operate a geothermal power plant, an onion and garlic dehydration plant, several ranches, and a garlic seed operation. In my position as environmental coordinator, I was responsible for permitting at all facilities.

JBR ENVIRONMENTAL CONSULTANTS, INC.
Reno, Nevada

Environmental Analyst IV, Reno Office Coordinator/Manager, July 1994 – July 1996
Environmental Analyst III, July 1993 – July 1994
Environmental Analyst I, June 1990 – July 1993

As the manager of the Reno office, I supervised seven technical staff and one administrative employee. During my employment with JBR, I worked on and managed numerous NEPA, environmental permitting and baseline projects.





**SULFUR DIOXIDE
LIMITED MAINTENANCE PLAN
FOR THE
GRANT COUNTY, NEW MEXICO
MAINTENANCE AREA**

**AIR QUALITY BUREAU
NEW MEXICO ENVIRONMENT DEPARTMENT
525 CAMINO DE LOS MARQUEZ, SUITE 1
SANTA FE, NEW MEXICO 87505**



NMED
Exhibit # 3

EXECUTIVE SUMMARY

Grant County was designated nonattainment in 1978 for the 24-hour sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). This designation was based on emissions from one major point source that mined and smelted copper ore. The nonattainment area included a 3.5 mile radius surrounding the copper smelter source and any land above 6,470 feet within an 8 mile radius around the smelter. Sulfur dioxide is a criteria pollutant regulated under the Federal Clean Air Act (CAA). Primarily industrial processes and emissions from fossil fuel fired boilers generate SO₂.

In February 2003, the New Mexico Environment Department (NMED) submitted a Redesignation Request and Maintenance Plan for the Grant County 24-hour SO₂ nonattainment area. This submittal was approved by the U.S. Environmental Protection Agency (EPA) on September 18, 2003. Section 175A of the CAA requires states to develop state implementation plans (SIPs) to provide for the maintenance of the NAAQS, or maintenance SIPs, for those areas that are nonattainment and have sufficient data to prove that area is now in compliance with the NAAQS.

Clean Air Act Section 175A(b) requires states to revise maintenance SIPs ten (10) years after EPA approves an area's initial maintenance plan. EPA guidance provides states the option to submit less rigorous maintenance plans (limited maintenance plans) if monitoring data for the nonattainment or maintenance area shows monitored air quality is at or below 85 percent of the exceedance level for a NAAQS.

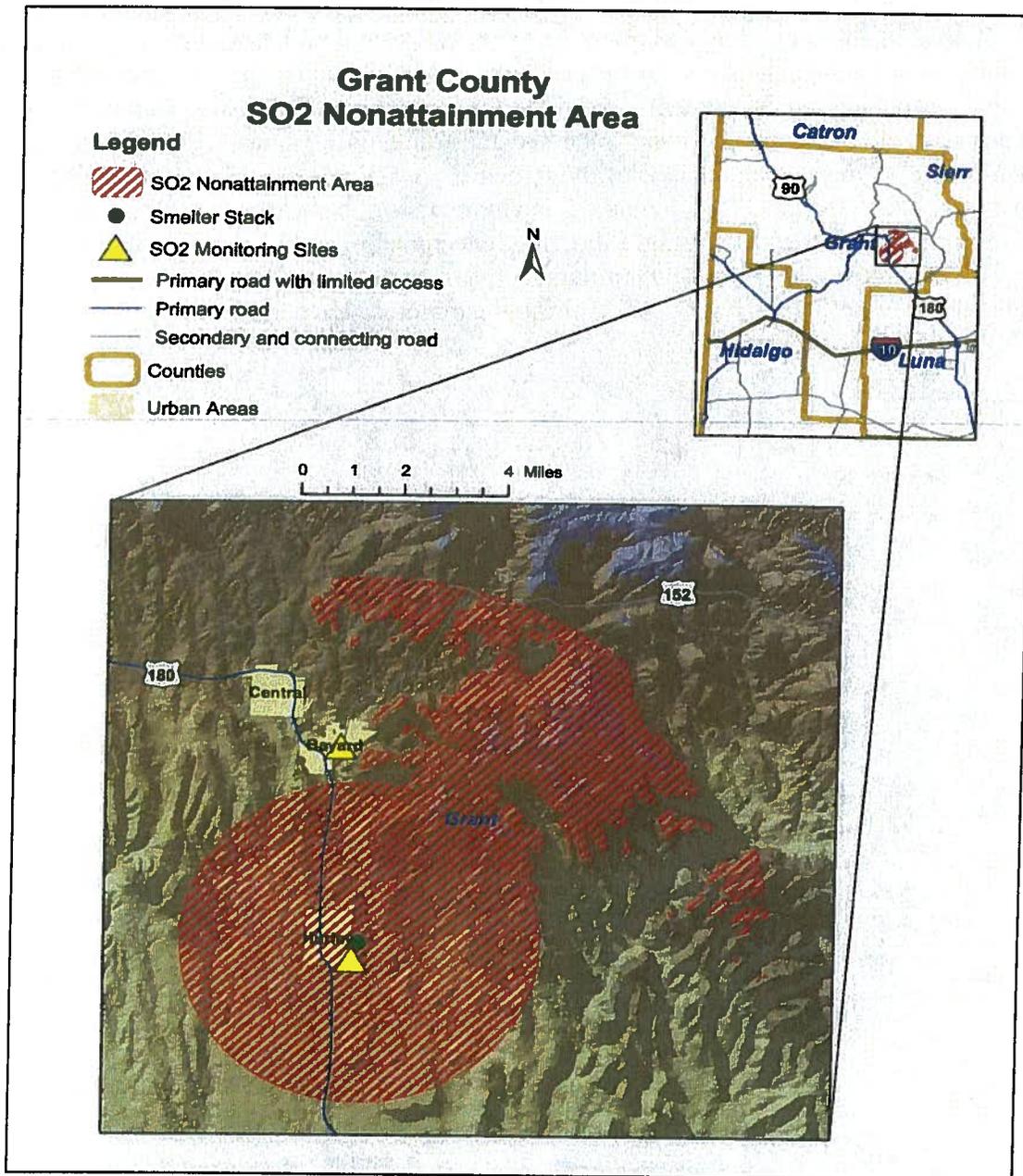
As required under CAA Section 175A(b), NMED is submitting a revised SO₂ limited maintenance plan for the continued maintenance of the 24-hour SO₂ NAAQS for an additional 10 year period after the expiration of the 2003 Grant County SO₂ Maintenance plan.

EPA is allowed up to 18 months to approve or disapprove a SIP submittal. To allow for EPA's review of the Grant County SO₂ limited maintenance plan and the state's rulemaking review process, while still affording for the 10 year CAA 175A planning period requirement, the proposed limited maintenance plan end date is October 2025.

I. INTRODUCTION

In 1978, the US Environmental Protection Agency (EPA) designated Air Quality Control Region 012: Grant County, New Mexico as a partial nonattainment area for violating the National Ambient Air Quality Standard (NAAQS) for sulfur dioxide (SO₂). This designation was based on emissions from one major point source within the nonattainment area. This source smelted and mined copper ore in Hurley, NM. The nonattainment area includes a 3.5 mile (mi) radius surrounding the former copper smelter facility and any land above 6,470 feet (ft) within an 8 mi radius of the former smelter (Figure 1).

Figure 1: Grant County SO₂ Nonattainment Area*



*The Bayard monitor was discontinued in August 2002.

Sulfur dioxide is a colorless gas with a pungent odor that is highly soluble in water. Sulfur dioxide belongs to the family of gases called sulfur oxides (SO_x). These gases are formed when fuel containing sulfur, mostly coal and oil, is burned, and during metal smelting. Sulfur dioxide and nitrogen oxides are the major precursors of acid rain. The major health concerns associated with exposure to high concentrations of SO₂ include effects on breathing, respiratory illness, alterations in pulmonary defenses, and aggravation of existing cardiovascular disease. Children, the elderly and people with asthma, cardiovascular disease or chronic lung disease (such as bronchitis or emphysema) are most susceptible to adverse health effects associated with exposure to SO₂.

The Clean Air Act (CAA) requires all areas of the United States to attain and maintain the NAAQS. If an area does not attain and maintain the NAAQS and violations occur, the area will be designated nonattainment by EPA for the particular NAAQS that has been violated. Once an area has been designated nonattainment it must show at least three consecutive years of clean data and provide EPA with a maintenance plan and a redesignation request to be eligible for redesignation to attainment/maintenance of the standard. A maintenance plan must meet the requirements of CAA Section 175A, including a demonstration that the area will maintain the NAAQS for a period of at least ten years following redesignation to attainment of the standard by EPA. The plan must also contain a contingency measure that would be implemented in the event that a violation of the standard occurs during the maintenance period.

II. GRANT COUNTY LIMITED SO₂ MAINTENANCE PLAN

The CAA Section 107(d)(3)(E) mandates that for a nonattainment area to be reclassified to attainment, EPA must fully approve a maintenance or limited maintenance plan for the area that meets the requirements of CAA Section 175A. A maintenance plan is a state implementation plan (SIP) revision that must provide for maintenance of a NAAQS for at least ten years after EPA redesignates the area to maintenance/attainment. NMED submitted a Redesignation Request and Maintenance plan for the Grant County 24-hour SO₂ nonattainment area to EPA in February 2003. This submittal was approved by EPA on September 18, 2003 (68 FR 54672). The end date for NMED's 2003 Grant County SO₂ Maintenance plan is 2015. As required under CAA Section 175A(b), NMED is submitting a revised SO₂ limited maintenance plan for the continued maintenance of the SO₂ NAAQS for an additional 10 year period after the expiration of the 2003 Grant County SO₂ Maintenance plan.

EPA allows nonattainment and maintenance areas that are at or below 85 percent of the exceedance level for a NAAQS at the time of redesignation to submit a less rigorous plan that EPA refers to as a limited maintenance plan.¹ The Grant County 24-hour SO₂ maintenance area currently has no major SO₂ sources and has monitored negligible levels of SO₂ for the past 5 years. Based on the lack of SO₂ major point sources and emissions within the Grant County maintenance area, New Mexico is choosing to submit a limited maintenance plan for the Grant County maintenance area.

EPA is allowed up to 18 months to approve or disapprove a SIP submittal. To allow for EPA's review of the Grant County SO₂ limited maintenance plan and the state's rulemaking review process, while still affording for the 10 year CAA Section 175A planning period requirement, the limited maintenance plan's end date will be 2025.

EPA guidance for limited maintenance plans under CAA Section 175A provides a general framework for developing a maintenance plan that includes five elements.

1. Attainment Inventory
2. Maintenance Demonstration
3. Monitoring Network
4. Verification of Continued Attainment
5. Contingency Plan

1. ATTAINMENT INVENTORY

The EPA guidance for limited maintenance plans (see Appendix A of this plan) provides that an emission inventory should be developed to identify the level of emissions in the maintenance area that is sufficient to attain the NAAQS. There are currently no major SO₂ sources in the

¹ See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," Memo from Sally L. Shaver to EPA regional air directors, Nov. 16, 1994 (see Appendix A of this plan). In the absence of guidance specific to SO₂, EPA Region 6 has directed New Mexico to follow the Guidance for ozone non-attainment areas. (Medina, Dayana. "EPA Guidance on Limited Maintenance Plan Option." Message to Rita Bates. 3 March 2012. Email)

Grant County maintenance area. In July 2006, the only major source of SO₂ located within the maintenance area boundary, the aforementioned copper ore smelting facility, was dismantled and the stacks removed. The facility also modified their Title V and New Source Review (NSR) permits (see Appendix B of this plan) to remove all equipment associated with the smelting of copper ore.

There are presently two Title V sources in Grant County (outside of the Grant County SO₂ maintenance area): the Chino Mine (formally the Hurley Mine) and the Tyrone Mine, neither of which are major sources for SO₂. The 2011 SO₂ actual emissions for the Chino Mine were 0.272 tons per year (tpy) and 6.3 tpy for the Tyrone Mine. The primary sources of SO₂ emissions for both facilities are blasting fugitives and diesel generator engines. Table 1 below shows the actual SO₂ emissions for Title V sources in Grant County for the years 2007-2011. As the table shows, the combined SO₂ emissions from these Title V sources are well below the major source threshold. Table 2 below shows the allowable SO₂ emissions for all minor point sources located in Grant County for the years 2007-2011. There are currently four (4) minor point sources located within the Grant County maintenance area with total allowable SO₂ emissions of 150.0 tpy for 2011. All of the minor point sources located within the Grant County maintenance area are aggregate quarrying, crushing and screening operations that are registered under General Construction Permit (GCP-2) for Quarrying, Crushing, and Screening Facilities that includes default allowable emission limits. Although the GCP-2 allowable SO₂ emission limit is set at 50.0 tpy, the actual SO₂ emissions generated from these types of sources are minimal.

Table 1
SO₂ Emission Inventory for Grant County Title V Sources

YEAR	ACTUAL EMISSIONS (TPY OF SO ₂)	** ACTUAL EMISSIONS WITH RULE EFFECTIVENESS (TPY OF SO ₂)	*** DAILY EMISSIONS (TPD OF SO ₂)
2007	*4.14	4.97	0.011
2008	0.82	0.98	0.002
2009	*4.66	5.59	0.013
2010	*5.70	6.84	0.016
2011	*6.57	7.88	0.018

* Actual emissions include un-permitted fugitive SO₂ emissions.

** EPA's default rule effectiveness of 80% compliance was applied to the actual emissions data.

***For the SO₂ daily emissions calculation, 365 days per year operation was assumed.

Table 2
SO₂ Emission Inventory for Grant County Minor Point Sources

YEAR	ALLOWABLE EMISSIONS (TPY OF SO ₂)	*DAILY EMISSIONS (TPD OF SO ₂)
2007	316.30	0.866
2008	316.30	0.866

2009	316.34	0.866
2010	316.34	0.866
2011	316.34	0.866

**For the SO₂ daily emissions calculation, 365 days per year operation was assumed.*

2. MAINTENANCE DEMONSTRATION

To demonstrate maintenance of the NAAQS for a nonattainment area, the CAA requires a state to show that future emissions of a pollutant or its precursor will not exceed the attainment inventory developed for the area or to provide modeling to show that future sources and emissions will not cause an exceedance of the NAAQS.

For limited maintenance plans, however, the maintenance demonstration requirement is considered to be satisfied for nonattainment areas if the monitoring data for the area shows that the monitored air quality is equal to or less than 85 percent of exceedance levels for a specific NAAQS. There is no requirement to project emissions over the maintenance period. EPA's guidance for limited maintenance plans states that if the area begins the maintenance period at or below 85 percent of exceedance levels, the air quality along with the continued applicability of PSD requirements, any control measures already in the SIP, and federal measures should provide adequate-assurance of maintenance over the initial 10-year maintenance period.

As discussed in the next section, the SO₂ design value for the 24-hour SO₂ NAAQS (0.14 parts per million (ppm)) has been 0.0 ppm for each of the five most recent years for which certified ambient air quality data is available for the Grant County maintenance area monitor. The maintenance demonstration is therefore satisfied.

3. MONITORING NETWORK

An appropriate air quality monitoring network must be maintained by the state to verify compliance with the NAAQS for SO₂ once an area has been redesignated to attainment/maintenance. The monitoring network must be in accordance with 40 CFR Part 58.

New Mexico currently operates one SO₂ monitor for the Grant County maintenance area in Hurley, NM (35-017-0003-42401-1). This monitor has been in operation since 1997. The state operated four (4) SO₂ monitors for more than thirty years in the area. Historical monitoring data for this area shows that there has not been a violation of the primary or secondary SO₂ NAAQS since 1975 (*Sulfur Dioxide Redesignation Request and Maintenance Plan for the Grant County, New Mexico Nonattainment Area; 2003*). Current monitoring data for Grant County (shown below in Table 3) shows zero concentrations of SO₂ in the Grant County maintenance area over the past four years.

Table 3: SO₂ Monitoring Data for Grant County Monitor 35-017-0003-42401-1

YEAR	DESIGN VALUE (ppm)
2007	0.0
2008	0.0
2009	0.0
2010	0.0
2011	0.0

Due to the limited amount of SO₂ emissions and emission sources within the Grant County maintenance area, NMED is requesting that EPA grant New Mexico a waiver to discontinue SO₂ monitoring within the maintenance area, and instead implement the alternative SO₂ monitoring methodology described in Section II.4.

4. ALTERNATIVE SO₂ MONITORING METHODOLOGY

New Mexico will implement an alternative SO₂ monitoring methodology for the Grant County SO₂ maintenance area which does not utilize a gaseous analyzer for determining compliance with the SO₂ NAAQS. The Grant County SO₂ maintenance area has monitored negligible levels of SO₂ for the last five (5) years (see Table 3). For this reason, the use of an alternative methodology other than gaseous monitoring is appropriate to monitor maintenance of the SO₂ NAAQS for the maintenance area. Such a method would not compromise data collection for the NAAQS and will continue to meet the requirements of 40 CFR Part 58, Appendix D.

The alternative SO₂ monitoring method will consist of the use of PSD and Title V modeling and any required post-construction monitoring for new and modified air quality permits and an annual emission review of all major SO₂ sources located in the Grant County SO₂ maintenance area. These two methodologies will allow the State to determine if there is a potential violation of the SO₂ NAAQS within the maintenance area.

Contingency Plan

If PSD or Title V modeling, PSD or Title V post-construction monitoring, or the annual emission review of major SO₂ sources within the Grant County maintenance area indicates there is a significant increase in SO₂ emissions that may cause a potential SO₂ NAAQS violation, NMED will reinstitute a gaseous SO₂ monitor at the Hurley, NM monitoring location (35-017-0003-42401-1) or at a site expected to read greater SO₂ levels than that site. If the monitored SO₂ values after one year are at or below 50% of the 24-hour or annual SO₂ NAAQS, or both, the monitor may again be removed and the alternative SO₂ monitoring methodology reinstated. This process will be repeated each time PSD or Title V modeling, PSD or Title V post-construction monitoring, or the annual emission review of major SO₂ sources within the maintenance area indicates a potential SO₂ NAAQS violation.

5. VERIFICATION OF CONTINUED ATTAINMENT

To ensure that attainment will be continued in the future, the state must retain the legal authority to implement and enforce all air quality measures needed to attain and maintain the NAAQS for SO₂. Current state regulations listed below verify that the State of New Mexico has the continued legal authority needed to implement and enforce air quality controls to maintain the NAAQS for SO₂ in Grant County in the future.

- 20.2.3 NMAC – Ambient Air Quality Standards
- 20.2.31 NMAC – Coal Burning Equipment – Sulfur Dioxide
- 20.2.35 NMAC – Natural Gas Processing Plant – Sulfur
- 20.2.36 NMAC – Petroleum Refinery – Sulfur
- 20.2.39 NMAC – Sulfur Recovery Plant – Sulfur
- 20.2.40 NMAC – Sulfuric Acid Production Units – Sulfur Dioxide, Acid Mist and Visible Emissions
- 20.2.41 NMAC – Nonferrous Smelters – Sulfur
- 20.2.70 NMAC – Operating Permits
- 20.2.72 NMAC – Construction Permits
- 20.2.74 NMAC – Permits – Prevention of Significant Deterioration (PSD)
- 20.2.77 NMAC – New Source Performance Standards
- 20.2.78 NMAC – Emission Standards for Hazardous Air Pollutants
- 20.2.81 NMAC – Western Backstop Sulfur Dioxide Trading Program
- 20.2.82 NMAC – Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants

6. CONTINGENCY PLAN

As a requirement of CAA Section 175A, a contingency plan must be developed to correct any violations of the SO₂ NAAQS in Grant County after the area has been redesignated. The plan must be an enforceable part of the SIP and must ensure that the appropriate measures will be adopted in the event that the SO₂ NAAQS is exceeded.

There are currently no major SO₂ sources within the Grant County SO₂ maintenance area. In the event that an SO₂ source(s) should move into or within close proximity to the Grant County SO₂ maintenance area, NMED will ensure that such source(s) will comply with all applicable state and federal SO₂ regulations and requirements. In addition, NMED will maintain a comprehensive compliance and enforcement program to identify sources of violation of the SO₂ NAAQS within the maintenance area and to undertake aggressive follow up measures to ensure compliance with the SO₂ NAAQS. In conformance with CAA Section 175A(d), NMED will implement all measures with respect to the control of air pollutants which were contained in the SIP for the area before its designation as an attainment area, to the extent such measures are applicable to any sources which may exist at the time of any NAAQS exceedance.

III. Conclusion

The NMED requests that EPA designate the Grant County maintenance area as a limited maintenance/attainment area. NMED also requests that EPA grant the state a waiver to shut down the current monitoring station (35-017-0003-42401-1) located in Hurley, NM and allow the State to implement the requested alternative SO₂ monitoring methodology. Due to the lack of major SO₂ point sources within the Grant County maintenance area, the limited number of SO₂ point sources within the area surrounding the maintenance area, and the negligible concentrations of SO₂ as shown by monitoring, New Mexico does not deem it necessary to continue utilizing a gaseous SO₂ analyzer to verify continued maintenance of the 24-hour and annual SO₂ standards.

Appendix A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

NOV 16 1994

MEMORANDUM

SUBJECT: Limited Maintenance Plan Option for Nonclassifiable
Ozone Nonattainment Areas

FROM: *Sally L. Shaver*
Sally L. Shaver, Director
Air Quality Strategies & Standards Division (MD-15)

TO: Director, Air, Pesticides and Toxics
Management Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
Director, Air, Pesticides and Toxics Division,
Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

I. Purpose

This memorandum sets forth new guidance on maintenance plan requirements for certain nonclassifiable ozone nonattainment areas seeking redesignation to attainment. In particular, nonclassifiable ozone areas whose design values are at or below 0.106 ppm (85 percent of exceedance levels of the ozone NAAQS) at the time of redesignation may choose to submit a less rigorous maintenance plan than was formerly required. This new option is being termed a limited maintenance plan. Nonclassifiable ozone areas with design values greater than 0.106 ppm will continue to be subject to full maintenance plan requirements described in the September 4, 1992 memorandum, "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, former Director of the OAQPS Air Quality Management Division to the Regional Air Division Directors.

There are three types of nonclassifiable ozone areas: submarginal, transitional, and incomplete/no data. A description of these areas is included as Attachment A.

II. Background

Section 107(d)(3)(E) of the Act provides that a nonattainment area can be redesignated to attainment if the following criteria are met:

1. The EPA has determined that the NAAQS for the applicable pollutant has been attained.

2. The applicable implementation plan has been fully adopted under section 110(k).

3. The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under section 110 and part D.

5. The EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

Section 175A of the Act provides the general framework for maintenance plans. The maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation,¹ including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as EPA deems necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the State will implement all control measures contained in the nonattainment SIP prior to redesignation.

Beyond these requirements, however, section 175A does not define the content of a maintenance plan. Thus, EPA has the authority to exercise reasonable discretion to determine those requirements. The EPA has previously issued guidance on meeting all five criteria for redesignation including maintenance plans (see Attachment B). The EPA now believes that it is justifiable and appropriate to apply a different set of maintenance plan requirements (described herein) to a limited category of ozone nonattainment areas--nonclassifiable areas whose monitored air quality is equal to or less than 85 percent of exceedance levels of the ozone NAAQS. The EPA does not believe that the full maintenance plan requirements need be applied to these areas because they have achieved air quality levels well below the

¹Section 175A also requires that 8 years after redesignation, the State must submit an additional plan to provide for maintenance for a second follow-on 10-year period.

standard without the application of control measures required by the Act for classified ozone nonattainment areas. Also, these areas do not have either a recent history of monitored violation of the ozone NAAQS or a long prior history of monitored air quality problems. The EPA believes that the continued applicability of prevention of significant deterioration (PSD) requirements, any control measures already in the SIP, and Federal measures (such as the Federal motor vehicle control program) should provide adequate assurance of maintenance for these areas.

III. Qualifying for the Limited Maintenance Plan Option

To qualify for the limited maintenance plan option, the ozone design value for the area, based on the 3 years of data used to demonstrate attainment, must be at or below 0.106 ppm (85 percent of exceedance levels of the ozone NAAQS). Additionally, the design value for the area must continue to be at or below 0.106 ppm until the time of final EPA action on the redesignation. The method for calculating design values is presented in the June 18, 1990 memorandum, "Ozone and Carbon Monoxide Design Value Calculations," from William G. Laxton, former Director of the OAQPS Technical Support Division to Regional Air Directors. The memorandum focuses primarily on determining design values for nonattainment areas in order to classify the areas as marginal, moderate, serious, severe, or extreme. Therefore, the document discusses determining the design value for an area based on the monitors which are exceeding the standard. In the case of a nonattainment area seeking redesignation to attainment, all monitors must be meeting the standard. To assess whether a nonclassifiable area meets the applicability cutoff for the limited maintenance plan, a separate design value must be developed for every monitoring site. The highest of these design values is the design value for the whole area. If the area design value is at or below 0.106 ppm, the State may select the limited maintenance plan option for the first 10-year maintenance period. If the design value for the area exceeds 0.106 prior to final EPA action on the redesignation, the area no longer qualifies for the limited maintenance plan and must instead submit a full maintenance plan. The EPA will issue guidance in the future on the applicability of the limited maintenance plan option to the second follow-on 10-year maintenance period.

IV. Limited Maintenance Plan Elements

Following is a list of core provisions which should be included in a limited maintenance plan. Any final EPA determination regarding the adequacy of a limited maintenance plan will be made following review of the plan submittal in light of the particular circumstances facing the area proposed for redesignation and based on all relevant available information.

a. Attainment Inventory

The State should develop an attainment emissions inventory to identify a level of emissions in the area which is sufficient to attain the NAAQS. This inventory should be consistent with EPA's most recent guidance² on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory should be based on actual "typical summer day" emissions of VOC and NOx (ozone precursors). Emissions of CO are not necessary in the attainment inventory because they will not be tracked for maintenance purposes.

b. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data show the area is meeting the air quality criteria discussed above. There is no requirement to project emissions over the maintenance period. The EPA believes if the area begins the maintenance period at or below 85 percent of exceedance levels, the air quality along with the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period.

When EPA approves a limited maintenance plan, EPA is concluding that an emissions budget may be treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the ozone NAAQS would result.

c. Monitoring Network/Verification of Continued Attainment

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved air quality monitoring network, in accordance with 40 CFR part 58. This is particularly important for areas using a limited maintenance plan because there will be no cap on emissions.

²The EPA's current guidance on the preparation of emissions inventories for ozone areas is contained in the following documents: "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I" (EPA-450/4-91-016), "Emission Inventory Requirements for Ozone State Implementation Plans" (EPA-450/4-91-010), and "Procedures for Emission Inventory Preparation: Volume IV, Mobile Sources" (EPA-450/4-81-026d).

d. Contingency Plan

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. These contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The contingency plan should identify the measures to be promptly adopted and provide a schedule and procedure for adoption and implementation of the measures. The State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. While a violation of the NAAQS is an acceptable trigger, States may wish to choose a pre-violation action level as a trigger, such as an exceedance of the NAAQS. By taking early action, a State may be able to prevent any actual violation of the NAAQS and, therefore, eliminate any need on the part of EPA to redesignate an area back to nonattainment.

V. Conformity Determinations Under Limited Maintenance Plans

The transportation conformity rule (58 FR 62188; November 24, 1993) and the general conformity rule (58 FR 63214; November 30, 1993) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. As discussed above in section IV(b), emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the initial maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the ozone NAAQS would result. In other words, EPA would be concluding that emissions need not be capped for the maintenance period. Therefore, in areas with approved limited maintenance plans, Federal actions requiring conformity determinations under the transportation conformity rule could be considered to satisfy the "budget test" required in sections 93.118, 93.119, and 93.120 of the rule. Similarly, in these areas, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) of the rule.

For further information regarding the limited maintenance plan option for nonclassifiable ozone areas, please contact Carla Oldham at (919) 541-3347. For information regarding transportation conformity requirements, please contact Kathryn Sargeant of the Office of Mobile Sources at (313) 668-4441. For

information regarding general conformity requirements, please contact Doug Grano at (919) 541-3292.

Attachments

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ATTACHMENT A

The EPA used 1987-89 as the primary data years in determining designations and classifications for ozone areas set forth in the November 6, 1991 final rule on Air Quality Designations and Classifications (56 FR 56694). Certain ozone nonattainment areas could not be classified as marginal or above under Table 1 of section 181(a)(1) of the Clean Air Act either because of incomplete monitoring data or because they were nonattainment pre-enactment but did not violate the standard during 1987-89. These areas are collectively called nonclassifiable areas. Nonclassifiable ozone areas consist of transitional, submarginal, and incomplete/no data areas.

Transitional areas

An area is considered transitional under section 185A if it was designated nonattainment both prior to enactment and at the time of enactment, and did not violate the primary NAAQS for ozone over the 3-year period from 1987-1989.

Section 185A of the Act required EPA to make a determination, by June 30, 1992, whether the designated transitional areas had continued to meet the ozone NAAQS through December 31, 1991. All 12 transitional areas were attaining the NAAQS through December 31, 1991 and none are known to have violated the standard since. In May and June of 1992, Regional Administrators sent letters to Governors of States with transitional areas notifying them of EPA's determination.

Submarginal areas

Compliance with the ozone NAAQS is determined on the basis of expected exceedances which include an adjustment for missing data.¹ The submarginal category includes areas that violated the ozone NAAQS during 1987-89 but had a design value for the period of less than .121 ppm (the lower limit for marginal areas) due to the adjustment for missing data when calculating expected exceedances. Presently, there are no submarginal areas.

Incomplete/no data areas

Certain ozone areas designated nonattainment prior to enactment and at enactment did not have sufficient air quality monitoring data to determine whether they were or were not violating the NAAQS. These areas are termed incomplete/no data areas. These include areas which do not have monitors. Currently, there are 47 incomplete/no data areas.

¹This adjustment procedure is described in 40 CFR part 50.9, appendix H.

ATTACHMENT B

The EPA policies for implementing sections 107 and 175A of the Act for redesignations are contained in the following memorandums.

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.
2. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.
3. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.
4. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.
5. "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498; April 16, 1992).

Appendix B



BILL RICHARDSON
Governor

State of New Mexico
ENVIRONMENT DEPARTMENT

Air Quality Bureau
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Santa Fe, NM 87505
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www.nmenv.state.nm.us



RON CURRY
Secretary

CINDY PADILLA
Deputy Secretary

Certified Mail No: 7004 0750 0001 3312 7028
Return Receipt Requested

OPERATING PERMIT NO: P066R1
Tempo/IDEA ID No.: 526-PRT20040001
AIRS No. 35-017-00001
FACILITY NAME: Chino Mine – Hurley Facility

PERMITTEE: Chino Mines Company
PO Box 7
Hurley, NM 88043

RESPONSIBLE COMPANY OFFICIAL: David F. Rhoades

Air Permit Contact: Timothy E. Eastep

ISSUED BY: New Mexico Environment Department

M. a. Uhl

Mary Uhl
Bureau Chief
Air Quality Bureau

MAY 23 2007

Date of Issuance

INTRODUCTION

Operating Permit Number **P066R1** is issued by the Air Quality Bureau of the New Mexico Environment Department ("Department") to Chino Mines Company pursuant to the federal Clean Air Act ("federal Act"), the New Mexico Air Quality Control Act ("state Act") and regulations adopted pursuant to the state and federal Acts, including Title 20, New Mexico Administrative Code, Chapter 2, Part 70 (20.2.70 NMAC) - Operating Permits. This permit authorizes the operation of this facility located at UTM Zone 12, UTMH 772.0 km UTMV 3620.0 km, near Hurley, New Mexico in Grant County.

This permit is valid only for the named permittee, owner, and operator. A permit modification is



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Bureau Chief
Air Quality Bureau

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INTRODUCTION

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This permit is valid only for the named permittee, owner, and operator. A permit modification is

required to change any of those entities. This facility is a support facility for mining operations. The major processes associated with the facility are power generation, copper ore mining, copper ore concentration, and concentrated ore storage and transportation via conveyors and rail.

This renewal consists of removal of all equipment associated with the former Hurley smelter, combining the remaining Hurley Facility operations (power plant and filter plant, NSR 0376M5R4, R3, R2, R1, M4, M3, M2) and the Ivanhoe Concentrator (NSR 0298M3 & M4R1, M4R2) into this permit.

The term of this permit is five (5) years. It will expire five years from the date of issuance, pursuant to 20.2.70.302.B NMAC. Application for renewal of this permit is due twelve (12) months prior to the date of expiration, pursuant to 20.2.70.300.B.2 NMAC.

Pursuant to 20.2.70.302.A.1 NMAC, the Department specifies with this permit, terms and conditions upon the operation of this facility to assure compliance with all applicable requirements, as defined in 20.2.70 NMAC at the time this permit is issued.

Pursuant to the New Mexico Air Quality Control Act NMSA 1978, Chapter 74, Article 2, all terms and conditions in this permit, including any provisions designed to limit this facility's potential to emit, are enforceable by the Department. Pursuant to 20.2.70.302.A.5 NMAC, all terms and conditions are enforceable by the Administrator of the United States Environmental Protection Agency ("EPA") and citizens under the federal Act, unless the term or condition is specifically designated in this permit as not being enforceable under the federal Act.

PERMIT SHIELD

Pursuant to 20.2.70.302.J NMAC, compliance with the conditions of this permit shall be deemed to be compliance with any applicable requirements existing as of the date of permit issuance and identified in Table A.1 of Appendix A. The requirements in Table A.1 are applicable to this facility with specific requirements identified for individual emission units.

The Department has determined that the requirements in Table A.2 of Appendix A as identified in the permit application are not applicable to this source, or they do not impose any conditions in this permit.

This permit shield does not extend to administrative amendments, to minor permit modifications, to changes made under Section 502(b)(10) of the federal Act, or to permit terms for which notice has been given to reopen or revoke all or part.

TOTAL POTENTIAL EMISSIONS

The total potential emissions from this facility, excluding insignificant or trivial activities, are shown in the following table. Emission limitations for individual units are shown in section 3.2.

Table 1, Total Potential Criteria Pollutant Emissions from Entire Facility (for information only, not an enforceable condition):

Pollutant	Emissions (tons per year)
Nitrogen Oxides (NO _x)	185.5
Carbon Monoxide (CO)	93.3
Volatile Organic Compounds (VOC)	15.1
Sulfur Dioxide (SO ₂)	1.9
Particulate Matter (total suspended)	62.0
Particulate Matter (10 microns or less)	48.5

Table 2, Total Potential HAPS that exceed 0.5 ton per year (for information only, not an enforceable condition):

Pollutant	Emissions (tons per year)
None greater than 0.5 tpy	

PERMIT TERMS AND CONDITIONS

1.0 GENERAL CONDITIONS

1.1 The following permit terms and conditions are placed upon the permittee in accordance with 20.2.70.301.B NMAC and 20.2.70.302.A.2 NMAC.

1.1.1 The permittee shall abide by all terms and conditions of this permit, except as allowed under Section 502(b)(10) of the federal Act, and 20.2.70.302.H.1 NMAC. Any permit noncompliance is grounds for enforcement action, and significant or repetitious noncompliance may result in termination of this permit. Additionally, noncompliance with federally enforceable conditions of this permit constitutes a violation of the federal Act.

1.1.2 It shall not be a defense for the permittee in an enforcement action to claim that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

1.1.3 If the Department determines that cause exists to modify, reopen and revise, revoke and reissue, or terminate this permit, this shall be done in accordance with 20.2.70.405 NMAC.

1.1.4 The permittee shall furnish any information the Department requests in writing to determine if cause exists for reopening and revising, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. This information shall be furnished within the time period specified by the Department. Additionally, the permittee shall furnish, upon request by the Department, copies of records required by the permit to be maintained by the permittee.

1.1.5 A request by the permittee that this permit be modified, revoked and reissued, or terminated, or a notification by the permittee of planned changes or anticipated noncompliance, shall not stay any conditions of this permit.

1.1.6 This permit does not convey property rights of any sort, or any exclusive privilege.

1.1.7 In the case where an applicant or permittee has submitted information to the Department under a claim of confidentiality, the Department may also require the applicant or permittee to submit a copy of such information directly to the Administrator of the EPA.

1.2 The issuance of this permit, or the filing or approval of a compliance plan, does not relieve the permittee from civil or criminal liability for failure to comply with the state or federal Acts, or any applicable state or federal regulation or law. This condition is pursuant to 20.2.70.302.A.6 NMAC and the New Mexico Air Quality Control Act NMSA 1978, Chapter 74, Article 2.

1.3 If any part of this permit is challenged or held invalid, the remainder of the permit terms and conditions are not affected and the permittee shall continue to abide by them. This condition is pursuant to 20.2.70.302.A.1.d NMAC.

1.4 The permittee shall pay fees to the Department consistent with the fee schedule in 20.2.71 NMAC - Operating Permit Emission Fees. The fees will be assessed and invoiced separately from this permit. This condition is pursuant to 20.2.70.302.A.1.e NMAC.

1.5 A responsible official (as defined in 20.2.70 NMAC) shall certify the accuracy, truth and completeness of every report and compliance certification submitted to the Department as required by this permit. These certifications shall be part of each document. This condition is pursuant to 20.2.70.300.E NMAC.

1.6 Revocation or termination of this permit by the Department terminates the permittee's right to operate this facility. This condition is pursuant to 20.2.70.201.B NMAC.

1.7 The permittee shall submit an emissions inventory for this facility annually. The emissions inventory shall be submitted by the later of April 1 or within 90 days after the Department makes such request. This condition is pursuant to 20.2.73 NMAC and 20.2.70.302.A.1 NMAC.

1.8 The source will continue to comply with all applicable requirements. For applicable

requirements that will become effective during the term of the permit, the source will meet such requirements on a timely basis. This condition is pursuant to sections 300.D.11.c and 302.G.3 of 20.2.70 NMAC.

1.9 Compliance with this operating permit is sufficient to comply with all NSR permits listed in Table A.1. This condition is pursuant to 20.2.70.302.A.1 NMAC.

2.0 FACILITY INFORMATION

The following conditions are placed upon the permittee pursuant to 20.2.70.302.A.7 NMAC and NSR Permits 0376M5R4, R3, R2, R1, M4, M3, and M2; 0298M3, M4R1, and M4R2.

2.1 All of the process equipment authorized for this facility is listed in the table(s) shown below (emission units that were identified as insignificant or trivial, and equipment not regulated pursuant to the Act are not included):

Table 2.1, Power Plant and Filter Plant:

Emission Unit No.	Equipment Type	Equipment Manufacturer & Model	Serial Number
F-1-1-4.1	Conveyor	N/A	N/A
F-1-1-4.2	Conveyor	N/A	N/A
F-1-1-4.3	Conveyor	N/A	N/A
F-1-1-4.4	Conveyor	N/A	N/A
F-1-1-4.5	Conveyor	N/A	N/A
F-1-3-2	Loading/Unloading Rack	N/A	N/A
F-2-1-1.4	455 MMBtu/hr, 37.5MW, Gas Turbine	Westinghouse, Model W251 B12	TBD
F-2-1-1.5	Heat Recovery Steam Generator w/ 48.8 MMBtu/hr Gas-Fired Duct Burner	Nooter/Ericksen, Model TBD	TBD
Misc Fugitives-all areas	Fugitives	N/A	N/A

N/A means Not Applicable; TBD means To Be Determined.

Table 2.1.1, Regulated Equipment for the Ivanhoe Concentrator

Unit #	Description	Capacity	Construction date
IC-01	Molybdenum heater treater (electric heat, w/ wet scrubber)	N/A	Prior to 1994
CV-01A	Coarse ore stockpile conveyer, flight #1	3750 TPH	Prior to 1994
CV-01B	Coarse ore stockpile conveyer, flight #2	3750 TPH	Prior to 1994

Unit #	Description	Capacity	Construction date
PC-01	Primary Crusher	3360 TPH	Prior to 1994
CTS-01	Conveyer Transfer System and associated controls (enclosed)	3360 TPH	Prior to 1994
CV-01C	Coarse Ore Conveyer Transfer	3360 TPH	Prior to 1994
SAG-F1	SAG Mill Feeders	3300 TPH	Prior to 1994
LUS-01	Lime Unloading System and associated controls (wet scrubber)	45.4 TPH	Prior to 1994
LHS-01	Lime Handling System and associated controls (wet scrubber)	45.4 TPH	Prior to 1994
PCB H-01	Primary crusher baghouse	NA	Prior to 1994

2.2 All the pollution control equipment required for this facility is listed in the table shown below. Each emission point is identified by the same number that was assigned to it in the permit application:

Table 2.2, Emission Control Equipment:

Control Unit No.	Control Equipment Type	Control Equipment Mfg & model (or equivalent)	Control For Unit(s)
N/A	Filter Plant - Conveyer Belts	Covered Belts with High moisture Concentrate	F-1-1-4.1 thru F-1-1-4.5
PCB H-01	Concentrator - Primary Crusher Baghouse	Ecolaire #625-4	PC-01
N/A	Concentrator - Moly Heat Treater Wet Scrubber	Ducon, Model TBD	Moly Heat Treater
LUS-01	Concentrator - Lime Unloading System Wet Scrubber	Emtrol, Model TBD	LUS-01
LHS-01	Concentrator - Lime Handling System Wet Scrubber	Emtrol, Model TBD	LHS-01

This control equipment is located within the facility at the following places and serves the following functions: particulate emissions are controlled through out the entire operation by covered conveyer belts.

3.0 REQUIREMENTS FOR INDIVIDUAL EMISSIONS UNITS

Information regarding applicable requirements, emission limits, operational limitations and requirements, work practices, and monitoring, testing and recordkeeping requirements is provided below for each emissions unit or set of similar units.

3.1 Applicable Requirements

All applicable requirements for this facility are listed in Appendix A, Table A.1. This condition is pursuant to 20.2.70.302.A.1 NMAC.

3.2 Emissions Limits

Table 3.2 lists the emission units, and their allowable emission limits. This condition is pursuant to 40CFR50, Paragraphs 1, 7 and 8 of 20.2.70.302.A NMAC and NSR Permits 0376M2, M4 and 0298M3.

Table 3.2: Maximum Allowable Non-Fugitive Emission Rates in lb/hr and ton/y*

Emission Unit No.	NO _x lb/hr	NO _x tons/y	CO lb/hr	CO tons/y	VOC lb/hr	VOC tons/y	TSP lb/hr	TSP tons/y	PM ₁₀ lb/hr	PM ₁₀ tons/y	SO lb/hr	SO ₂ tons/y
F-2-1-1.4	39.9	175	20.0	87.4	2.8	12.4	2.3	10.0	2.3	10.0	0.4	1.8
F-2-1-1.5	42.3	185.5	21.3	93.3	3.4	15.1	2.6	11.3	2.6	11.3	0.43	1.92
IC-01							1.1	4.3	1.1	4.3		
PCB H-01							2.2	9.6	1.0	4.5		
CTS-01							0.7	0.2	0.3	0.1		
SAG F1							0.7	0.2	0.3	0.1		
LUS-01							.032	.014	.032	.014		
LSH-01							.001	.0001	.001	.0001		
Total Allowables**		185.5		93.3		15.1		25.6		20.3		1.9

* Pounds per hour/tons per year

** Total Allowables are for information, not enforceable conditions, and used to determine annual Operating Fees.

*** Emission Limits for F-2-1-1.5 represent the combined total emissions of units F-2-1-1.4 and F-2-1-1.5.

Table 3.2.1 Performance Standards for Ivanhoe Concentrator Equipment

Unit	Grain Loading	Opacity
Molybdenum heater treater (electric heat, w/ wet scrubber)	0.022 g/dscf	NA
PCB H-01 (Primary crusher baghouse)	0.022 g/dscf	7%
(CTS-01) Conveyer Transfer systems	NA/NA	10%
SAG-F1 Mill Feeders	NA/NA	10%

3.2.1 Nitrogen Dioxide Emissions for Turbines: To comply with NSPS Subpart GG, the exhaust

gases to the atmosphere from the turbine shall not contain nitrogen oxides (NO_x) in excess of 184 parts per million by volume at 15 percent oxygen on a dry basis. Nitrogen oxide emissions include all oxides of nitrogen expressed as NO₂. This condition was brought forward from NSR Permit 376M4, Condition 2.g.

3.2.2 Sulfur Dioxide Emissions for Turbines: To comply with NSPS Subpart GG, the exhaust gases to the atmosphere from the turbine shall not contain sulfur dioxide in excess of 0.015 percent by volume at 15 percent oxygen and on a dry basis, or the fuel burned in the turbine shall not contain sulfur in excess of 0.8 percent by weight. This condition was brought forward from NSR Permit 376M4, Condition 2.h.

3.3 Operational Requirements

This condition is pursuant to Paragraphs 1, 7 and 8 of 20.2.70.302.A NMAC.

3.3.1 At the Ivanhoe Concentrator, the production rate of the concentrating circuit shall not exceed an annual average of 60,000 tons per day. The maximum single hourly production rate through the concentrator circuit shall not exceed 3,300 tons per hour. The maximum daily throughput for the crusher system shall not exceed 80,640 tons per day. This condition was brought forward from NSR 0298M3, Condition 1.c.

3.3.2 The Ivanhoe Concentrator operation is authorized to operate 24 hours per day, 7 days per week, and 52 weeks per year for a total of 8,760 hours per year. This condition was brought forward from NSR 0298M3, Condition 1.d.

3.4 Emissions Monitoring and Testing Requirements

The conditions of Section 3.4 are pursuant to 20.2.70.302.C NMAC and NSR Permits 0376M4 and 0298M3.

3.4.1 General Monitoring Requirements

3.4.1.1 The following monitoring and/or testing requirements shall be used to determine compliance with applicable requirements and emission limits. Any sampling, whether by portable analyzer or EPA reference method, that measures an emission rate over the applicable averaging period greater than an emission limit in this permit constitutes noncompliance with this permit. The Department may require, at its discretion, additional tests pursuant to EPA Reference Methods at any time, including when sampling by portable analyzer measures an emission rate greater than an emission limit in this permit; but such requirement shall not be construed as a determination that the sampling by portable analyzer does not establish noncompliance with this permit and shall not stay enforcement of such noncompliance based on the sampling by portable analyzer.

3.4.1.2 If the emission unit is shutdown at the time when periodic monitoring is due to be accomplished, the permittee is not required to restart the unit for the sole purpose of performing

the monitoring. Using electronic or written mail, the permittee shall notify the Department's Enforcement Section of a delay in emission tests prior to the deadline for accomplishing the tests. Upon recommencing operation, the permittee shall submit any pertinent pre-test notification requirements set forth in the current version of the Department's Standard Operating Procedures For Use Of Portable Analyzers in Performance Test, and shall accomplish the monitoring.

3.4.1.3 The requirement for monitoring during any monitoring period is based on the percentage of time that the unit has operated as follows:

3.4.1.3.1 If the emission unit has operated for more than 25% of a monitoring period, then the permittee shall conduct monitoring during that period.

3.4.1.3.2 If the emission unit has operated for 25% or less of a monitoring period then the monitoring is not required. After two successive periods without monitoring, the permittee shall conduct monitoring during the next period regardless of the time operated during that period, except that for any monitoring period in which a unit has operated for less than 10% of the monitoring period, the period will not be considered as one of the two successive periods.

3.4.1.3.3 A minimum of one of each type of monitoring activity shall be conducted during the five-year term of this permit.

3.4.1.4 The permittee is not required to report a deviation for any monitoring or testing in section 3.4.2 if the deviation was authorized in the General Monitoring Requirements section 3.4.1.

3.4.1.5 For all periodic monitoring events, except when a federal or state regulation is more stringent, three test runs shall be conducted at 90% or greater of the full normal load as stated in this permit, or in the permit application if not in the permit, and at additional loads when requested by the Department. If the 90% load cannot be achieved, the monitoring will be conducted at the maximum achievable load under prevailing operating conditions except when a federal or state regulation requires more restrictive test conditions. The load and the parameters used to calculate it shall be recorded to document operating conditions and shall be included with the monitoring report that is required to be furnished to the Department.

3.4.1.6 When requested by the Department, the permittee shall provide schedules of testing and monitoring activities. Compliance tests from previous NSR and Title V permits may be re-imposed if it is deemed necessary by the Department to determine whether the source is in compliance with applicable regulations or permit conditions.

3.4.1.7 Monitoring shall become effective 120 days after the date of permit issuance if the monitoring is new or in addition to monitoring imposed by an existing applicable requirement. Any pre-existing monitoring requirements incorporated in this permit shall continue to be in

force from the date of permit issuance.

3.4.1.8 Startup, Shutdown and Malfunction Conditions: For operations and equipment subject to 40CFR60, excess emissions, or operations under startup, shutdown, or malfunction shall be addressed in accordance with the requirements of 40CFR60.7(c) or 40CFR60.8(c), as appropriate. This condition is pursuant to 20.2.70.302.A.1 NMAC.

3.4.2 Unit Specific Monitoring Requirements: The following table lists emission units and their required monitoring. Descriptions of required monitoring follow the table.

Table 3.4.2, Required Monitoring

Emission unit Nos.	Parameters To Monitor	To Comply With	Monitoring Required	Monitoring Conditions
F-2-1-1.4 and F-2-1-1.5	Visible emissions	20.2.61 NMAC	Opacity	3.4.2.1
Monitoring for Turbines				
F-2-1-1.4	Maintenance and Repair Activities	Emission Limits specified in Table 3.2	Maintenance and Repair	3.4.2.2
F-2-1-1.4	NO _x , and SO ₂	40 CFR 60.330, Subpart GG and general provisions in Subpart A	Specific requirements of 40 CFR 60.330, Subpart GG and general provisions in Subpart A	3.4.2.3
F-2-1-1.4	Fuel Sulfur concentration	40CFR60 Subpart GG, and NSR 376M4, Condition 3.d.	Custom Fuel Monitoring Schedule Attachment A to NSR Permit 376M4 or Fuel Monitoring per 40 CFR 60, Subpart GG	3.4.2.4
F-2-1-1.5	Fuel Usage	NSR 376M4, Condition 3.e.	Meter fuel usage and record daily.	3.4.2.5
Monitoring for Ivanhoe Concentrator				
IC-01, CV-01A, CV-01B, PC-01, CTS-01, CV-01C, SAG-F1, LUS-01, LHS-01, & PCB H-01	TSP and PM ₁₀	40CFR60 Subpart LL, and NSR 298M3, Condition 2.b.	Pressure drop across wet scrubbers; liquid flow rate for wet scrubbers	3.4.2.6

Note: The numbering of conditions in this table are in the same sequence for the next three major Sections of the permit: Monitoring, Recordkeeping, and Reporting.

3.4.2.1 Opacity Monitoring (For Units F-2-1-1.4 and F-2-1-1.5): Use of pipeline quality natural

gas fuel or natural gas liquids constitutes compliance with 20.2.61 NMAC unless opacity exceeds 20%. At such time as fuel other than pipeline quality natural gas or natural gas liquids is used, opacity shall be measured in accordance with the procedures at 40CFR60, Appendix A, Method 9. Opacity measurements shall continue on a quarterly basis per calendar year for each effected unit until such time as pipeline quality natural gas or natural gas liquids are used.

3.4.2.1.1 Pipeline quality natural gas is defined as a naturally occurring fluid mixture of hydrocarbons that contains 20.0 grains or less of total sulfur per 100 standard cubic feet (scf) and is either composed of at least 70% methane by volume or has a gross calorific value between 950 and 1100 Btu per standard cubic foot.

3.4.2.1.2 For the purposes of Condition 3.4.2.1 of this permit, "natural gas liquids" means those substances meeting the definition in 40 CFR 60.631.

3.4.2.2 Maintenance and Repair Monitoring (For Turbine, Unit F-2-1-1.4): Maintenance and repair shall meet the minimum manufacturer's or permittee's recommended maintenance schedule. Maintenance and repair activities that involve adjustment, replacement, or repair of functional components with the potential to affect operation of an emission unit shall be documented as they occur for the following events.

- a) Routine Maintenance that takes a unit out of service for more than two hours during any twenty-four hour period.
- b) Unscheduled repairs that require a unit to be taken out of service for more than two hours in any twenty-four hour period.

3.4.2.3 Monitoring Requirements (For Turbine, Unit F-2-1-1.4):

This condition was brought forward from NSR Permit 0376M4, Condition 3.a, 3.b, and 3.c.

- a) A continuous emissions monitoring system (CEMS) shall be installed and operated to measure the oxides of nitrogen (NO_x) and oxygen (O₂) concentrations (ppmv) in the exhaust gas of the turbine (Unit F-2-1-1.4) and HRSG (Unit F-2-1-1.5). Monitoring for the turbine and HRSG shall meet the requirements of 40 CFR, Part 60, Section 60.13 – Monitoring requirements.

The CEMS shall obtain a reading of the NO_x and O₂ concentrations at least once every fifteen (15) minutes. A flow measurement device shall be installed to accurately measure the exhaust flow rates at various load rates during performance testing. This shall be achieved by:

- a pitot tube, or
- multiple pitot tubes, as necessary, or
- EPA Reference Method 19 to determine exhaust flow, or
- an equivalent flow measurement device

The output of the CEMS shall be (1) in ppmv of NO_x and %O₂ at actual stack conditions and (2) in pounds per hour (pph) of NO_x.

The CEMS shall be installed, certified and tested in accordance with NSR Permit 376M4, Condition 6. Certification for the NO_x monitor shall be done according to 40 CFR 60, Appendix B, Performance Specification 2 and for the O₂ monitor according to 40 CFR 60, Appendix B, Performance Specification 3.

b) All required continuous emissions monitoring equipment shall have a minimum data capture rate of ninety percent (90%) per calendar month. The data capture rate is defined as the amount of time the equipment generates the required data divided by the time the unit is in operation. The 10% non-capture residual is intended for periods of malfunction, calibration, or adjustment.

c) In the event that the 90% data capture rate cannot be met due to analyzer malfunction, an emission factor derived from the initial compliance test, along with fuel flow data, may be used to measure NO_x emissions from the turbine and HSRG upon approval from the Department.

3.4.2.4 To comply with the fuel monitoring requirements of NSPS Subpart GG, the permittee may use the custom fuel monitoring schedule contained in Attachment A. However, if the conditions of the custom schedule cannot be met, the permittee shall revert to the fuel monitoring requirements of NSPS Subpart GG, 60.334(h). This condition was brought forward from NSR Permit 0376M4, Condition 3.d.

Monitoring of fuel nitrogen content shall not be required while natural gas is the only fuel fired in the gas turbines as per USEPA document EMTIC GD-009 (March 12, 1990).

The permittee shall comply with all applicable NSPS monitoring, record keeping, and reporting requirements as specified in 40 CFR 60.334 - Monitoring of operations.

3.4.2.5 Fuel usage by the HRSG (Unit F-2-1-1.5) duct burner shall be monitored with a fuel meter and recorded daily. This condition was brought forward from NSR Permit 0376M4, Condition 3.e.

3.4.2.5.1 Measurements from the NO_x CEM, initial compliance test results, and fuel usage shall be used to tabulate a monthly emission rate to establish a twelve (12) month rolling average for the NO_x emissions limitation for the turbine and HRSG (Unit F-2-1-1.5) in Condition 3.2,

Emission Limits. This condition was brought forward from NSR Permit 0376M4, Condition 3.k.

3.4.2.6 Monitoring for 40CFR60, Subpart LL Compliance (Ivanhoe Facility): Any facility regulated by this permit, using a wet scrubber, shall be equipped with pressure gauges to measure pressure drop across the control device. Wet scrubbing systems shall be equipped with a continuous monitoring device to measure the scrubbing liquid flow rate. Pressure gauges and monitoring devices shall be installed, calibrated, maintained, and operated in accordance with the manufacturer specifications. Compliance with this will be based on Department inspections of the facility to verify that instruments have been installed and of the records as set forth in 40CFR60, Subpart LL. This condition was brought forward from NSR 0298M3, Condition 2.b.

4.0 RECORDKEEPING

Conditions of 4.0 are pursuant to 20.2.70.302.D NMAC.

4.1 General Recordkeeping Requirements:

Conditions of 4.1 are pursuant to 20.2.70.302.D.1 NMAC.

4.1.1 All sampling and measured data required by this permit for the emissions units in this facility shall be recorded. The minimum information to be included in these records is:

4.1.1.1 equipment identification (include make, model and serial number for all tested equipment and emission controls),

4.1.1.2 date, and time of sampling or measurements,

4.1.1.3 date analyses were performed,

4.1.1.4 the company or entity that performed the analyses,

4.1.1.5 analytical or test methods used,

4.1.1.6 results of analyses or tests,

4.1.1.7 operating conditions existing at the time of sampling or measurement.

4.1.2 The permittee shall keep copies of all monitoring and measurement data, equipment calibration and maintenance records, Data Acquisition and Handling System (DAHS) if used, other supporting information, and reports required by this permit for at least five (5) years from the time the data was gathered or the reports written. Each record shall show clearly to which emissions unit and/or piece of monitoring equipment it applies, and the date the data was gathered. This condition is pursuant to 20.2.70.302.D.2 NMAC.

4.1.3 The permittee shall keep a record describing off permit changes made at this source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under this permit, and the emissions resulting from those changes. This condition is pursuant to 20.2.70.302.I.2 NMAC.

4.2 Unit Specific Recordkeeping Requirements:

Conditions are pursuant to Subsection C and Paragraph D(1) of 20.2.70.302 NMAC.

4.2.1 Opacity Recordkeeping (For Units F-2-1-1.4 and F-2-1-1.5): The permittee shall record dates and duration of use of any fuels other than pipeline quality natural gas or natural gas liquids and the corresponding opacity measurements.

4.2.2 Maintenance and Repair Activities Recordkeeping (For Turbine, Unit F-2-1-1.4): Records of maintenance and repair activities shall be maintained. Records of maintenance and repair activities shall include identification of emission units and the work involved.

4.2.3 40CFR60.334, Subpart GG Recordkeeping (For Turbine, Unit F-2-1-1.4): Turbines subject to NSPS Subpart GG shall comply with the recordkeeping requirements of 40 CFR 60.334 and 40 CFR 60.7

4.2.4 Records of the fuel usage and hours of operation of the Westinghouse turbine (Unit F-2-1-1.4). This condition was brought forward from NSR Permit 0376M4, Condition 4.f.

4.2.5 Records of the fuel usage and hours of operation of the Nooter/Ericksen Heat Recovery Steam Generator duct burner, monitored and recorded daily. This condition was brought forward from NSR Permit 0376M4, Condition 4.g.

4.2.6 Recordkeeping for 40CFR60, Subpart LL Compliance (Ivanhoe Facility): The permittee shall comply with the notification and record keeping requirements as set forth in 40CFR60, Subpart LL shown here:

- a) The Owner/Operator shall submit a written report of the results of the performance tests as specified in 40 CFR §60.8(a).
- b) The Owner/Operator shall record the measurements of change in pressure of the gas stream across the scrubber and scrubbing fluid flow rate weekly.
- c) The Owner/Operator shall submit semiannual reports of occurrences when the measurements of the scrubber pressure loss (or gain) or liquid flow rate differ by more than $\pm 30\%$ from the average obtained from the most recent performance test. These reports shall be postmarked within 30 days following the end of June and December.

5.0 REPORTING

Conditions of 5.0 are pursuant to 20.2.70.302.E NMAC.

5.1 General Reporting Requirements:

5.1.1 Reports shall clearly identify the subject equipment showing the emission unit ID number according to the operating permit. In addition, all instances of deviations from permit requirements, including those that occur during emergencies, shall be clearly identified in the

required reports. Reports of all required monitoring activities for this facility shall be submitted to the Department on the following schedule. This condition is pursuant to 20.2.70.302.E.1 NMAC.

Table 5.1.1, Schedule of Monitoring Activity Report Submittal:

Report for Emissions Unit Nos.	Submittal Date
F-2-1-1.4 and F-2-1-1.5, and Ivanhoe units identified in Table 2.1.1	Within 45 days following the end of every 6-month period following the issuance date of permit P066, July 25, 2000.

5.1.2 The permittee shall submit reports of all deviations (including emergencies) from permit requirements to the Department. The permittee shall communicate initial notice of the deviation to the Department within twenty-four (24) hours of the start of the first business day following the discovery of the occurrence via telephone or facsimile. Within ten (10) calendar days of the start of the first business day following the discovery of the occurrence, written notice shall be submitted to the Department using the Department's Excess Emissions Form currently in use at time of discovery. This condition is pursuant to 20.2.70.302.E.2 NMAC.

5.1.3 At such time as new units are installed as authorized by NSR permit 0376M4, 0298M3, 0298M4R1, the permittee shall fulfill the notification requirements of condition 1 (Reporting) of the General Conditions in the NSR permit.

5.2 Unit Specific Monitoring Reports:
Conditions of 5.2 are pursuant to 20.2.70.302.E NMAC.

5.2.1 Opacity Reporting (For Units F-2-1-1.4 and F-2-1-1.5): The permittee shall report dates and duration of use of any fuels other than pipeline quality natural gas or natural gas liquids and the corresponding opacity measurements.

5.2.2 Maintenance and Repair Reporting (For Turbine, Unit F-2-1-1.4): These reports shall include a summary of the activities in section 4.2.2.

5.2.3 40CFR60.334, Subpart GG Reporting (For Turbine, Unit F-2-1-1.4): Turbines subject to NSPS Subpart GG (40 CFR 60.330) shall comply with the reporting requirements of 40 CFR 60.7.

5.2.4 and 5.2.5 Fuel Usage Reporting (For Turbine, Units F-2-1-1.4 and F-2-1-1.5): The permittee shall report the semi-annual results of hours of operation, and estimated emission rate based on fuel usage and compliance test results of the turbine (Unit F-2-1-1.4) and HSRG's (Unit F-2-1-1.5) twelve (12) month rolling average NOx emission limit. This condition was brought forward from NSR Permit 0376M4, Condition 5.1, and revised.

5.2.6 Reporting for 40CFR60, Subpart LL Compliance (Ivanhoe Facility): The permittee shall submit reports as required by 40CFR60, Subpart A and/or Subpart LL. This condition was brought forward from NSR 0298M3, Condition 9.

6.0 COMPLIANCE

6.1 The conditions of Section 6.1 are pursuant to 20.2.70.302.E.3 NMAC. The permittee shall submit compliance certification reports certifying the compliance status of this facility with respect to all permit terms and conditions, including applicable requirements. These reports shall be made on the current version of the Department's Compliance Certification Report Form (example attached to this permit) and submitted to the Department and to EPA at least every 12 months. This report is due no later than 30 days after each anniversary date of the first issued operating permit, **P066, July 25, 2000**.

6.1.1 For sources that have submitted air dispersion modeling that demonstrates compliance with state and federal ambient air quality standards, in accordance with 20.2.70.300.D.10 NMAC or 20.2.72.203.A.4 NMAC, compliance with the terms and conditions of this permit regarding source emissions and operation shall be deemed to be compliance with state and federal ambient air quality standards (20.2.3NMAC NMAAQS and 40CFR50 NAAQS).

6.2 Conditions of 6.2 are pursuant to 20.2.70.302.G.1 NMAC. The permittee shall allow representatives of the Department, upon presentation of credentials and other documents as may be required by law, to do the following:

6.2.1 enter the permittee's premises where a source or emission unit is located, or where records that are required by this permit to be maintained are kept,

6.2.2 have access to and copy, at reasonable times, any records that are required by this permit to be maintained,

6.2.3 inspect any facilities, equipment (including monitoring and air pollution control equipment), work practices or operation regulated or required under the permit,

6.2.4 sample or monitor any substances or parameters for the purpose of assuring compliance with this permit or applicable requirements or as otherwise authorized by the federal Act.

6.3 A copy of this permit shall be kept at the permitted facility and shall be made available to Department personnel for inspection upon request. This condition is pursuant to 20.2.70.302.G.3 NMAC.

7.0 EMERGENCIES

Conditions of 7.0 are pursuant to 20.2.70.304 NMAC.

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

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

- a) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
- b) This facility was at the time being properly operated;
- c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in this permit;
- d) The permittee fulfilled notification requirements under Condition 5.1.2 of this permit. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

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

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

8.0 PERMIT REOPENING AND REVOCATION

8.1 This permit will be reopened and revised when any one of the following conditions occurs, and may be revoked and reissued when 8.1.3 or 8.1.4 occurs. Conditions of 8.1 are pursuant to 20.2.70.405.A.1 NMAC.

8.1.1 Additional requirements under the federal Act become applicable to this source three (3)

or more years before the expiration date of this permit. If the effective date of the requirement is later than the expiration date of this permit, then the permit is not required to be reopened unless the original permit or any of its terms and conditions has been extended due to the Department's failure to take timely action on a request by the permittee to renew this permit.

8.1.2 Additional requirements, including excess emissions requirements, become applicable to this source under Title IV of the federal Act (the acid rain program). Upon approval by the Administrator, excess emissions offset plans will be incorporated into this permit.

8.1.3 The Department or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms and conditions of the permit.

8.1.4 The Department or the Administrator determines that the permit must be revised or revoked and reissued to assure compliance with an applicable requirement.

8.2 Proceedings to reopen or revoke this permit shall affect only those parts of this permit for which cause to reopen or revoke exists. Emissions units for which permit conditions have been revoked shall not be operated until new permit conditions have been issued for them. This condition is pursuant to 20.2.70.405.A.2 NMAC.

9.0 STRATOSPHERIC OZONE

This condition is pursuant to 20.2.70.302.A.1 NMAC.

9.1 The permittee shall comply with the following standards for recycling and emissions reductions pursuant to 40CFR82, Subpart F:

9.1.1 Persons opening appliances for maintenance, service, repair, or disposal must comply with the required practices pursuant to subsection 82.156.

9.1.2 Equipment used during the maintenance, service, repair, or disposal of appliances must comply with the standards for recycling and recovery equipment pursuant to subsection 82.158.

9.1.3 Persons performing maintenance, service, repair, or disposal of appliances must be certified by an approved technician certification program pursuant to subsection 82.161.

APPEAL PROCEDURES

Any person who participated in this permitting action before the Department and who is adversely affected by the action taken by the Department concerning this permit, may file a petition for a hearing before the Environmental Improvement Board ("board"). The petition must be made in writing to the board within thirty (30) days from the date notice is given of the Department's action.

This petition must specify the portions of the permitting action to which the petitioner objects and certify that a copy of the petition has been mailed or hand-delivered as required by 20.2.70.403.A.2 NMAC; a copy of the permitting action for which review is sought must be attached to the petition. Upon receipt of the appeal notice, the petitioner must mail or deliver a copy of the petition to the Department, and to the applicant or permittee if the petitioner is not the applicant/permittee. Requests for a hearing shall be sent to:

Secretary, New Mexico Environmental Improvement Board
1190 St. Francis Drive, Runnels Bldg.
P.O. Box 26110
Santa Fe, New Mexico 87502

Unless a timely request for a hearing is made, the decision of the Department will be final. If a timely request for hearing is made, the board will hold a hearing within sixty (60) days of receipt of the petition in accordance with the New Mexico Air Quality Control Act NMSA 1978 § 74-2-7 and 20.2.70.403.A.3 NMAC.

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

SUBMITTAL OF REPORTS AND CERTIFICATIONS

Test protocols, excess emission forms, test reports, compliance certification reports, monitoring results and reports, emissions sampling and measurement data, monitoring activity reports, compliance schedule progress reports, and any other compliance status information required by this permit shall be certified by the responsible official and submitted to:

Program Manager, **Compliance & Enforcement Section**
New Mexico Environment Department
Air Quality Bureau
P.O. Box 26110
Santa Fe, New Mexico 87502-0110

In accordance with 20.2.70.302.E.3 NMAC, Compliance Certifications Reports shall be submitted to the Administrator at the address below:

Chief, Air Enforcement Section
US EPA Region-6, 6EN-AA
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Questions about this permit should be referred to Joe Kimbrell of the Air Quality Bureau in Santa Fe at (505) 955-8026.

Copies of the following documents can be downloaded from the NMED web site at URL http://www.nmenv.state.nm.us/aqb/permit/app_form.html for your convenience, or requested from the Bureau.

- Documents:**
- 1) Excess Emission Form (for reporting deviations and emergencies)
 - 2) Compliance Certification Report Form
 - 3) Acronyms
 - 4) SOP for Stack Test Protocol
 - 5) SOP for Use of Portable Analyzers in Performance Tests
 - 6) SOP for Contents of Stack Test Reports
 - 7) Custom Fuel Monitoring Schedule Attachment A

APPENDIX A**Table A.1: APPLICABLE REQUIREMENTS FOR THIS FACILITY**

The permittee shall comply with all applicable sections of the requirements listed in the following table.

Applicable Requirements	Federally Enforceable	Entire Facility	Unit Nos.
20.2.7 NMAC - Excess Emissions during Malfunction Startup, Shutdown and Maintenance	X	X	
20.2.22 NMAC - Fugitive Particulate Matter Emissions from Roads Within the Town of Hurley	X	X	
20.2.61.109 NMAC Control of Smoke and Visible Emissions	X		F-2-1-1.4, F-2-1-1.5
20.2.70 NMAC Operating Permits	X	X	
20.2.71 NMAC Operating Permit Emission Fees	X	X	
Air Quality Bureau Permit No: NSR Permits 0376M5R4, R3, R2, R1, M4, M3, M2; 0298M3 & M4R1, M4R2.	X	X	
20.2.73 NMAC Notice of Intent and Emissions Inventory Requirements	X	X	
40 CFR 50 National Ambient Air Quality Standards	X	X	
40 CFR 60, General Provisions, Subpart A	X	X	
40 CFR 60.48c, Subpart Dc, Standards of performance for Small Industrial-Commercial-Institutional Steam Generating Units	X		F-2-1-1.5
40 CFR 60.330, Subpart GG, Stationary Gas Turbines	X		F-2-1-1.4
40 CFR 60.380, Subpart LL, Standards of Performance for Metallic Mineral Processing Plants	X		(1) CV-01A, CV-01B, PC-01, CTS-01, CV-01C, SAG-F1, LUS-01, LHS-01, & PCB H-01
40 CFR 61 General Provisions Subpart A, and Subpart M, National Emission Standards for Asbestos.	X	X	
40 CFR 82 Subpart F- Service, Maintenance and Repair of Air Conditioners	X	X	

(1) Applies to Ivanhoe Concentrator equipment only. Applies to the Molybdenum heater treater (electric

APPENDIX A

Table A.2: The Department has determined that the following requirements identified in the permit application are not applicable requirements for this facility, or the requirement does not impose any conditions in this permit.

Requirements identified in the Permit Application as applicable	Not Applicable For This Facility (1)	No Requirements (2)
20.2.1 NMAC - General Provisions (Sampling Equipment, Severability, Effective Date, and Conflicts)		X
20.2.2 NMAC Definitions		X
20.2.5 NMAC Source Surveillance		X
20.2.75 NMAC Permit Fees		X
20.2.72 NMAC Permits		X

- (1) No existing or planned operation/activity at this facility triggers the applicability of these requirements.
- (2) Although these regulations may provide guidance, they do not impose any specific requirements on the operation of the facility as described in this permit.



BILL RICHARDSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Air Quality Bureau
2048 Galisteo St.
Santa Fe, NM 87505
Phone (505) 827-1494
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RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

January 6, 2006

CERTIFIED MAIL NO. 7004 0750 0001 3309 4801
RETURN RECEIPT REQUESTED

Dennis Vaughn
Environmental Engineer
Chino Mines Co
PO Box 7
Hurley, NM 88043

Administrative Permit Revision
20.2.72.219.A.1 NMAC
NSR No. 0376-M5R3
IDEA ID No. 526 - PRN20060001
Chino Mine
AIRS No. 350170001

Dear Mr. Vaughn:

This letter is to acknowledge your letter of December 30, 2005 to revise Air Quality Permit 0376-M5 (R2) for Chino Mines Co, Chino Mine. This revision is pursuant to Title 20 of the New Mexico Administrative Code Chapter 2 Part 72 (20.2.72 NMAC) Construction Permits Section 219.A.1. This revision consists of removing many permitted emission sources related to the dismantling of the smelter. The emission units to be removed are associated with the flash furnace, the converters, the anode, the acid plant, and some of the power plant units. The request was received by the New Mexico Environment Department's Air Quality Bureau (Department) on January 4, 2006.

A review of the information you submitted confirms that the requirements specified in 20.2.72 NMAC, Construction Permits, Permit Processing and Requirements, Section 219.A are met.

20.2.72.219.A.3 NMAC specifies that administrative permit revisions become effective upon receipt of the notification by the Department.

This letter shall be attached to Air Quality Permit No. 0376-M5 issued by the Department on December 21, 2001 to serve as acknowledgment by the Department that this administrative





Exhibit 4.4d Bound Printed Matter Return Service Label

John Doe 123 Main St Washington DC 20260	NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES
BPM RETURN SERVICE PARCEL RETURNS PERMIT NO. 12345	
BMC ZIP - USPS PARCEL RETURN SVC  4206 0130 9157 0268 3733 1000 0010 15	RETURN BULK MAIL CTR 7500 ROOSEVELT RD FOREST PARK IL 60130-2296 <div style="background-color: black; color: white; padding: 5px; display: inline-block;">A01</div>

NMED
 Exhibit # 4

We will publish an appropriate amendment to 39 CFR to reflect these changes.

Stanley F. Mires,
 Chief Counsel, Legislative.
 [FR Doc. 03-23917 Filed 9-17-03; 8:45 am]
 BILLING CODE 7710-12-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NM-43-1-7600a; FRL-7556-7]

Approval and Promulgation of Implementation Plans; New Mexico; Redesignation of Grant County to Attainment for Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on a request to redesignate Grant County, New Mexico from nonattainment area to attainment for the sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). In conjunction with this action, EPA is also approving the maintenance plan, and its associated contingency measures

plan for the Grant County nonattainment area, which were submitted to ensure that the attainment of SO₂ NAAQS will continue to be maintained. The redesignation request and maintenance and contingency measures plans were submitted as a revision to the New Mexico State Implementation Plan (SIP) by the New Mexico Environment Department (NMED) on February 21, 2003. We are approving these revisions in accordance with the requirements of the Federal Clean Air Act (Act).

DATES: This rule is effective on November 17, 2003 without further notice, unless EPA receives relevant adverse comment by October 20, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted by mail to: Mr. Thomas Diggs (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the General Information section of this document.

FOR FURTHER INFORMATION CONTACT:

Carrie Paige, Air State and Tribal Operations Section (6PD-S), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6521, paige.carrie@epa.gov, or Alan Shar shar.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- A. What Action is EPA Taking?
- B. Why was this SIP Revision Submitted?
- C. What is the NAAQS for SO₂?
- D. What is a SIP?
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- F. What does Federal approval of a SIP mean to me?
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Final Action

General Information

Statutory and Executive Order Reviews

Throughout this document "we," "us," and "our" means EPA.

A. What Action Is EPA Taking?

The EPA designated Grant County, New Mexico as nonattainment for violating the secondary SO₂ NAAQS on March 3, 1978, at 43 FR 9016. On September 11, 1978, at 43 FR 40428, EPA designated Grant County, New Mexico as nonattainment for violating

the primary SO₂ NAAQS. Any area designated as not attaining the primary or secondary SO₂ NAAQS as of the date of enactment of the 1990 Amendments was designated nonattainment for SO₂ by operation of law upon enactment, pursuant to section 107(d)(1)(C)(i) of the Act (April 22, 1991, at 56 FR 16274).

On February 21, 2003, the Governor of New Mexico submitted to us a revision to the New Mexico SO₂ SIP (February 21, 2003 submittal). The February 21, 2003 submittal specifically requested EPA to redesignate the portion of Grant County, New Mexico, located in the Air Quality Control Region (AQCR) No. 021, from nonattainment to attainment for the SO₂ NAAQS. This particular portion of Grant County is restricted to a 3.5 mile radius around the Kennecott Copper Corporation (now owned by the Phelps Dodge Corporation and called the Hurley smelter) and land above 6470 feet Mean Sea Level within an 8 mile radius of the Hurley Smelter in Hurley, New Mexico. The air monitoring data for this area reveals values better than national standards for SO₂. The February 21, 2003, submittal also included a maintenance plan for this area to ensure that attainment of the SO₂ NAAQS will be maintained through permitting and the applicable SIP rules. The State also submitted a contingency measures plan that consists of monitoring measures.

In this document we are approving NMED's request to redesignate the Grant County primary and secondary SO₂ nonattainment areas to attainment of the SO₂ NAAQS. We are also approving the maintenance plan and the contingency measures plan for this area into the New Mexico SO₂ SIP. See our Technical Support Document (TSD) for additional information and our evaluation of this submittal.

B. Why Was This SIP Revision Submitted?

The NMED believes that the Grant County area is now eligible for redesignation because EPA approved New Mexico's SIP in 1982, and the SO₂ monitors in the nonattainment area of Grant County have not recorded exceedances of either the primary or secondary SO₂ NAAQS since 1979.

C. What Is the NAAQS for SO₂?

Under section 109 of the Act, EPA established the NAAQS to protect public health and welfare. The NAAQS address 6 criteria pollutants, which are carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide (SO₂).

High concentrations of SO₂ affect breathing and may aggravate existing

respiratory and cardiovascular disease. Sensitive populations include asthmatics, individuals with bronchitis or emphysema, children and the elderly. SO₂ is also a primary contributor to acid deposition or acid rain, which causes acidification of lakes and streams and can damage trees, crops, historic buildings and statues. In addition, sulfur compounds in the air contribute to visibility impairment in large parts of the country. This is especially noticeable in national parks.

Ambient SO₂ results largely from stationary sources such as coal and oil combustion, steel mills, refineries, pulp and paper mills and from nonferrous smelters. There are 3 NAAQS for SO₂:

- An annual arithmetic mean of 0.03 ppm (80 ug/m³);
- A 24-hour level of 0.14 ppm (365 ug/m³); and
- A 3-hour level of 0.50 ppm (1300 ug/m³).

The first two standards are primary (health-related) standards, while the 3-hour NAAQS is a secondary (welfare-related) standard. The annual mean standard is not to be exceeded, while the short-term standards are not to be exceeded more than once per year. Our TSD contains the ambient SO₂ monitored values for the Grant County, New Mexico nonattainment area.

D. What Is a SIP?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS that EPA has established.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each federally approved SIP is designed to protect air quality. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

E. What Is the Federal Approval Process for a SIP?

When a state wants to incorporate its regulations into the federally enforceable SIP, the state must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state adopts a rule, regulation, or control strategy, the state may submit the adopted provisions to us and request

that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive relevant adverse comments, we must address them prior to taking a final action.

Under section 110 of the Act, when we approve all state regulations and supporting information, those state regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

F. What Does Federal Approval of a SIP Mean to Me?

A state may enforce state regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

G. What Requirements Must the State Meet for Approval of a Redesignation and How Did the State Meet Them?

1. The State Must Show That the Area Is Attaining the Applicable NAAQS

An area is considered to be in attainment of the SO₂ NAAQS provided that the primary and secondary standards have not been violated within the last three years. Grant County has had two monitors in place that have shown no violations since 1997; these monitors are in Bayard, NM and Hurley, NM. The monitor in Bayard has been in place since 1974 (and has shown no violations since 1979) and the monitor in Hurley has been in place since 1997. These monitors meet the requirements of 40 CFR Parts 53 and 58.

The monitor in Hurley is located in the area of highest concentration for SO₂ within the nonattainment area, as studied by the EPA Regional Office and NMED before deployment of the monitor in 1997. The monitor was placed where modeling indicated the highest concentration was likely to occur. As a result of this modeling, NMED does not have to submit additional material reprobving that the data is representative of the point of

highest concentration in the nonattainment area.

2. The SIP for the Area Must Be Fully Approved Under Section 110(k) of the Act and Must Satisfy All Requirements That Apply to the Area

The Grant County SO₂ SIP revision was approved by EPA on May 5, 1982 (47 FR 19332) and contained limits pertaining to the sole source of SO₂, the Hurley Smelter. The EPA approved changes to New Mexico's SO₂ plan for Grant County on September 26, 1997 (62 FR 50514).

3. The EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

Air quality improvement in the Grant County SO₂ nonattainment area is attributed to the SO₂ emission limits in the SIP and to the operating restrictions within the Title V permit imposed on the facility that contributed to the nonattainment status. Reductions in emissions are therefore permanent and enforceable.

4. The State Has Met All Applicable Requirements Under Section 110 and Part D of the Act That Were Applicable Prior to Submittal of the Complete Redesignation Request

The requirements under Section 110 and Part D are met with the prior approval of the SIP revisions for the source in the area in 1982, the approval of revisions in 1997 (62 FR 50514), and with the detailed study of the modeling generated by the NMED in 1997.

5. EPA Is Fully Approving a Maintenance Plan, Including a Contingency Plan, for the Area Under Section 175A of the Act

Maintenance Plan

Section 175A of the Act requires states to submit a SIP revision which provides for the maintenance of the NAAQS in the area for at least 10 years after approval of the redesignation. The basic components needed to ensure proper maintenance of the NAAQS are: attainment inventory, maintenance demonstration, verification of continued attainment, ambient air monitoring network, and a contingency plan.

a. Attainment Inventory

The state's submittal contains the emission inventory of SO₂ sources in the Grant County nonattainment area, dating back to 1997. It clearly shows that Grant County has not exceeded the SO₂ NAAQS since 1997.

b. Maintenance Demonstration and Verification of Continued Attainment

Maintenance of the SO₂ NAAQS in the Grant County nonattainment area has been achieved through the SIP and Title V permit requirements. The SO₂ emitting source involved in the Grant County SO₂ redesignation (the Hurley Smelter) is meeting the SO₂ emission limits identified in the SIP rules and permit. NMED will track the maintenance plan through the semi-annual review of permit conditions, air emission inventory and state regulations 20.2.41 NMAC and 20.2.3 NMAC which verify that the State of New Mexico has the continued legal authority needed to implement and enforce air quality controls to maintain the SO₂ NAAQS in Grant County.

c. Monitoring Network

After a detailed study of the modeling generated by the NMED in 1997 for placement of a new monitor in the Grant County nonattainment area, the Regional Office determined (in a letter to NMED dated August 26, 2002) that "the monitor was placed where modeling indicated the highest concentration was likely to occur." A copy of this letter is being attached to our TSD for reference purposes. Therefore, the NMED will use the current SO₂ air monitoring station located in Hurley, New Mexico to verify continuing attainment of the NAAQS in the area. The Hurley monitoring station meets 40 CFR Part 58. The SO₂ monitoring station located in Bayard, New Mexico will be discontinued.

d. Contingency Plan

Section 175A of the Act requires that the maintenance plan include contingency provisions to correct any violation of the NAAQS after redesignation of the area. However, the General Preamble for the Implementation of Title I of the Act Amendments of 1990 (57 FR 13498) states that SO₂ provisions require special considerations. A primary reason is that SO₂ control methods are well established and understood. Therefore, contingency measures for SO₂ need only consist of a comprehensive program to identify sources of violations of the SO₂ NAAQS and to undertake an aggressive follow-up for compliance and enforcement.

Upon verification of a violation of either the 24-hour or 3-hour SO₂ NAAQS, if the Hurley Smelter is responsible for the violation, NMED will work with this source to ensure that the violation will not occur again. If necessary, NMED will write and adopt

rules or amend the company's Title V permit to control SO₂ emissions at the company.

The State will be utilizing both the currently approved SIP requirements and Title V permit as tools for implementation of SO₂ Maintenance Plan. The State will be utilizing both Title V reporting, testing, compliance certification, and recordkeeping controls combined with the Continuous Emission Monitoring System (CEMS) data for SO₂ emissions as its Contingency Plan. It is EPA's finding that these reporting, testing, compliance certification, recordkeeping controls and the CEMS data requirements are a comprehensive program for identifying violations caused by the smelter. The February 21, 2003 submittal does not propose to remove or relax any of the existing SIP approved measures for controlling SO₂ emissions. A new major source of SO₂ or an existing source with major modification, including a process that may have been shut down or ceased operation, will not only have to comply with the existing federally approved SO₂ SIP provisions, it will also need to comply with terms and conditions that may be more stringent than existing SIP requirements imposed on the source in its air permit to ensure the area will continue maintaining the attainment status.

As detailed above, the State has met the maintenance plan requirements of Section 175A of the Act and the maintenance plan is fully approvable. The contingency measures plan is also fully approvable.

Final Action

We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Act, and EPA regulations, and conforms to EPA policy. Therefore, we are approving the State of New Mexico's request to redesignate Grant County from a primary and secondary SO₂ nonattainment area to an SO₂ NAAQS attainment area. We are also approving the maintenance and contingency measures plans for Grant County into the New Mexico SIP. Furthermore, we are approving the NMED's request to discontinue the current SO₂ monitoring in Bayard, NM.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the Maintenance Plan if relevant adverse

comments are received. This rule will be effective on November 17, 2003 without further notice unless we receive relevant adverse comment by October 20, 2003. If EPA receives relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

General Information

A. What Is the Public Rulemaking File?

The EPA is committed to ensuring public access to the information used to inform the Agency's decisions regarding the environment and human health and to ensuring that the public has an opportunity to participate in the Agency's decision-making process. The official public rulemaking file consists of the documents specifically referenced in a particular agency action, any public comments received, and other information related to the action. The public rulemaking file does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute, although such information is a part of the Agency's official administrative record for the action.

B. How Can I Get Copies of This Document and Other Related Information?

1. An official public rulemaking file is available for inspection at the Regional Office. The Regional Office has established an official public rulemaking file for this action under Identification Number (ID No.) NM-43-1-7600. The public rulemaking file is available for viewing at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. If possible, schedule the appointment two working days in advance of your visit. Official hours of business for the Regional Office are Monday through Friday, 8:30 a.m. to 4 p.m. excluding Federal holidays. Copies of any State submittals and EPA's TSD are also available for public inspection at the New Mexico Environment Department, Air Quality Bureau, 2044 Galisteo Street, Santa Fe, New Mexico 87505 during official business by appointment.

2. You may access this **Federal Register** document electronically through the Regulations.gov Web site located at <http://www.regulations.gov>. The Regulations.gov Web site is the central online rulemaking portal of the United States government and is a public service to increase participation in the government's regulatory activities by offering a central point for submitting comments on regulations.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, through hand delivery/courier or by facsimile. Instructions for submitting comments by each method are discussed below. To ensure proper receipt by EPA, identify the appropriate ID No. in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section D below.

1. *Electronically.* To submit comments electronically (via e-mail, Regulations.gov, or on disk or CD-ROM), EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comments. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the public rulemaking file and may be made available in EPA's public Web sites. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be submitted by electronic mail (e-mail) to Diggs.Thomas@epa.gov, Attention "Public comment on ID No. NM-43-1-7600." In contrast to the Regulations.gov Web site, EPA's e-mail system is not an "anonymous" system. If you send an e-mail comment directly to EPA, your e-

mail address will be automatically captured and included as part of the comment that is placed in the official public rulemaking file.

ii. Regulations.gov. Comments may be submitted electronically at the Regulations.gov Web site, the central online rulemaking portal of the United States government. Every effort is made to ensure that the Web site includes all rule and proposed rule notices that are currently open for public comment. You may access the Regulations.gov Web site at <http://www.regulations.gov>. Select "Environmental Protection Agency" at the top of the page and click on the "Go" button. The list of current EPA actions available for comment will be displayed. Select the appropriate action and follow the online instructions for submitting comments. Unlike EPA's e-mail system, the Regulations.gov Web site is an "anonymous" system, which means that any personal information, e-mail address, or other contact information will not be collected unless it is provided in the text of the comment. See the Privacy Notice at the Regulations.gov Web site for further information. Please be advised that EPA cannot contact you for any necessary clarification unless your contact information is included in the body of comments submitted through the Regulations.gov Web site.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to: Thomas Diggs (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Please include the text "Public comment on ID No. NM-43-1-7600." on the disk or CD ROM. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. You should avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Thomas Diggs (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Please include the text "Public comment on ID No. NM-43-1-7600" in the subject line of the first page of your comments.

3. *By Hand Delivery or Courier.* Deliver your written comments or comments on a disk or CD ROM to: Thomas Diggs (6PD-L) Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Attention "Public comment on ID No. NM-43-1-7600." Such deliveries are only accepted during official hours of business, which are Monday through Friday, 8:30 a.m. to 4 p.m., excluding Federal holidays.

4. *By Facsimile.* Fax your comments to: 214-665-7263, Attention "Public comment on ID No. NM-043-1-7600."

D. How Should I Submit CBI to the Agency?

You may assert a business confidentiality claim covering CBI information included in comments submitted by mail or hand delivery in either paper or electronic format. CBI should not be submitted via e-mail or at the Regulations.gov Web site. Clearly mark any part or all of the information submitted which is claimed as CBI at the time the comment is submitted to EPA. CBI should be submitted separately, if possible, to facilitate handling by EPA. Submit one complete version of the comment that includes the properly labeled CBI for EPA's official administrative record and one copy that does not contain the CBI to be included in the public rulemaking file. If you submit CBI on a disk or CD ROM, mark the outside of the disk or the CD ROM that it contains CBI and then identify the CBI within the disk or CD ROM. Also submit a non-CBI version if possible. Information which is properly labeled as CBI and submitted by mail or hand delivery will be disclosed only in accordance with procedures set forth in 40 CFR Part 2. For comments submitted by EPA's e-mail system or through the Regulations.gov Web site, no CBI claim may be asserted. Do not submit CBI to the Regulations.gov Web site or via EPA's e-mail system. Any claim of CBI will be waived for comments received through the Regulations.gov Web site or EPA's e-mail system. For further advice on submitting CBI to the Agency, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements

under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a

rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 2, 2003.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR Parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

■ 2. In § 52.1620 paragraph (e) is amended by adding two new entries to the end of the table entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP," to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geo-graphic or non-attainment area	State submittal/effective date	EPA approval date	Explanation
Revision for Attainment, and Maintenance Plan of SO2 Standards.	Portion of Grant County, this portion is restricted to a 3.5 mile radius around the Kennecott Copper Corporation (now owned by the Phelps Dodge Corporation and called the Hurley smelter) and land above 6470 feet Mean Sea Level within an 8 mile radius of the Hurley Smelter/Concentrator in Hurley.	02/21/03	9/18/03 [insert FR page citation].	
Contingency Measures Plan.	Portion of Grant County, this portion is restricted to a 3.5 mile radius around the Kennecott Copper Corporation (now owned by the Phelps Dodge Corporation and called the Hurley smelter) and land above 6470 feet Mean Sea Level within an 8 mile radius of the Hurley Smelter/Concentrator in Hurley.	02/21/03	9/18/03 [insert FR page citation].	

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*
 ■ 2. In § 81.332 the SO₂ table is amended by revising the entry for the AQCR 012 to read as follows:

§ 81.332 New Mexico.

* * * * *

NEW MEXICO—SO₂

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 012:				
Grant County				X
Remainder of AQCR				X
* * * * *				

* * * * *
 [FR Doc. 03-23747 Filed 9-17-03; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-7560-9]

RIN: 2060-AF36

Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608 of the Clean Air Act; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: Through this action, EPA is correcting the final rule published in the *Federal Register* on July 24, 2003 (68 FR 43786). Specifically, EPA is clarifying that the effective date for the rule, as it applies to the certification of refrigerant recycling equipment is effective 90 days after the publication date (*i.e.*, October 22, 2003). The effective date for the remaining components of the final rule is September 22, 2003.

EPA is also including amendments to regulations that were discussed in the preamble to the July 24, 2003 final rule, but were inadvertently omitted from the *Federal Register*.

DATES: The final rule that was published on July 24, 2003 at 68 FR 43786 is effective on September 22, 2003, except for § 82.158(n) (*i.e.*, certification standards for refrigerant recycling only equipment) which is effective October 22, 2003.

FOR FURTHER INFORMATION CONTACT: Julius Banks; (202) 564-9870; Stratospheric Protection Implementation Branch, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J); 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The Stratospheric Ozone Information Hotline, 800-296-1996, and the Ozone Web page, <http://www.epa.gov/ozone/title6/608/regulations/index.html>, can also be contacted for further information concerning this correction.

SUPPLEMENTARY INFORMATION:

While the final rule published in the *Federal Register* on July 24, 2003 (68 FR 43786) lists the effective date for the certification of refrigerant recycling

equipment, as being effective 90 days after the publication date (*i.e.*, October 22, 2003), the notice failed to specify a regulatory citation associated with equipment certification. Therefore, EPA is clarifying that the effective date for the rule, as it applies to the certification of refrigerant recycling equipment, as stated in 40 CFR 82.158(n), is effective 90 days after the final rule publication date (*i.e.*, October 22, 2003).

The final rule discussed several edits to the appendices of 40 CFR part 82, subpart F that were omitted from the regulatory text published in the *Federal Register* (*i.e.*, reference list and standards for particulate used in standard contaminated refrigerant samples in Appendix B2 and the standards for becoming a certifying program for technicians in Appendix D). EPA is adding the reference list and the standards for particulate used in standard contaminated refrigerant samples to Appendix B2 (based on the ARI Standard 740-1995) that was inadvertently omitted from the *Federal Register* document. EPA is also adding edits to the regulatory text of Appendix D to subpart F—Standards for Becoming a Certifying Program for Technicians that were omitted from the final rule published on July 24, 2003. The edits







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

NOV 16 1994

MEMORANDUM

SUBJECT: Limited Maintenance Plan Option for Nonclassifiable
Ozone Nonattainment Areas

FROM: *Sally L. Shaver*
Sally L. Shaver, Director
Air Quality Strategies & Standards Division (MD-15)

TO: Director, Air, Pesticides and Toxics
Management Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
Director, Air, Pesticides and Toxics Division,
Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

I. Purpose

This memorandum sets forth new guidance on maintenance plan requirements for certain nonclassifiable ozone nonattainment areas seeking redesignation to attainment. In particular, nonclassifiable ozone areas whose design values are at or below 0.106 ppm (85 percent of exceedance levels of the ozone NAAQS) at the time of redesignation may choose to submit a less rigorous maintenance plan than was formerly required. This new option is being termed a limited maintenance plan. Nonclassifiable ozone areas with design values greater than 0.106 ppm will continue to be subject to full maintenance plan requirements described in the September 4, 1992 memorandum, "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, former Director of the OAQPS Air Quality Management Division to the Regional Air Division Directors.

There are three types of nonclassifiable ozone areas: submarginal, transitional, and incomplete/no data. A description of these areas is included as Attachment A.

NMED
Exhibit # 5

II. Background

Section 107(d)(3)(E) of the Act provides that a nonattainment area can be redesignated to attainment if the following criteria are met:

1. The EPA has determined that the NAAQS for the applicable pollutant has been attained.
2. The applicable implementation plan has been fully adopted under section 110(k).
3. The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.
4. The State has met all applicable requirements for the area under section 110 and part D.
5. The EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

Section 175A of the Act provides the general framework for maintenance plans. The maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation,¹ including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as EPA deems necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the State will implement all control measures contained in the nonattainment SIP prior to redesignation.

Beyond these requirements, however, section 175A does not define the content of a maintenance plan. Thus, EPA has the authority to exercise reasonable discretion to determine those requirements. The EPA has previously issued guidance on meeting all five criteria for redesignation including maintenance plans (see Attachment B). The EPA now believes that it is justifiable and appropriate to apply a different set of maintenance plan requirements (described herein) to a limited category of ozone nonattainment areas--nonclassifiable areas whose monitored air quality is equal to or less than 85 percent of exceedance levels of the ozone NAAQS. The EPA does not believe that the full maintenance plan requirements need be applied to these areas because they have achieved air quality levels well below the

¹Section 175A also requires that 8 years after redesignation, the State must submit an additional plan to provide for maintenance for a second follow-on 10-year period.

standard without the application of control measures required by the Act for classified ozone nonattainment areas. Also, these areas do not have either a recent history of monitored violation of the ozone NAAQS or a long prior history of monitored air quality problems. The EPA believes that the continued applicability of prevention of significant deterioration (PSD) requirements, any control measures already in the SIP, and Federal measures (such as the Federal motor vehicle control program) should provide adequate assurance of maintenance for these areas.

III. Qualifying for the Limited Maintenance Plan Option

To qualify for the limited maintenance plan option, the ozone design value for the area, based on the 3 years of data used to demonstrate attainment, must be at or below 0.106 ppm (85 percent of exceedance levels of the ozone NAAQS). Additionally, the design value for the area must continue to be at or below 0.106 ppm until the time of final EPA action on the redesignation. The method for calculating design values is presented in the June 18, 1990 memorandum, "Ozone and Carbon Monoxide Design Value Calculations," from William G. Laxton, former Director of the OAQPS Technical Support Division to Regional Air Directors. The memorandum focuses primarily on determining design values for nonattainment areas in order to classify the areas as marginal, moderate, serious, severe, or extreme. Therefore, the document discusses determining the design value for an area based on the monitors which are exceeding the standard. In the case of a nonattainment area seeking redesignation to attainment, all monitors must be meeting the standard. To assess whether a nonclassifiable area meets the applicability cutoff for the limited maintenance plan, a separate design value must be developed for every monitoring site. The highest of these design values is the design value for the whole area. If the area design value is at or below 0.106 ppm, the State may select the limited maintenance plan option for the first 10-year maintenance period. If the design value for the area exceeds 0.106 prior to final EPA action on the redesignation, the area no longer qualifies for the limited maintenance plan and must instead submit a full maintenance plan. The EPA will issue guidance in the future on the applicability of the limited maintenance plan option to the second follow-on 10-year maintenance period.

IV. Limited Maintenance Plan Elements

Following is a list of core provisions which should be included in a limited maintenance plan. Any final EPA determination regarding the adequacy of a limited maintenance plan will be made following review of the plan submittal in light of the particular circumstances facing the area proposed for redesignation and based on all relevant available information.

a. Attainment Inventory

The State should develop an attainment emissions inventory to identify a level of emissions in the area which is sufficient to attain the NAAQS. This inventory should be consistent with EPA's most recent guidance² on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory should be based on actual "typical summer day" emissions of VOC and NOx (ozone precursors). Emissions of CO are not necessary in the attainment inventory because they will not be tracked for maintenance purposes.

b. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data show the area is meeting the air quality criteria discussed above. There is no requirement to project emissions over the maintenance period. The EPA believes if the area begins the maintenance period at or below 85 percent of exceedance levels, the air quality along with the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period.

When EPA approves a limited maintenance plan, EPA is concluding that an emissions budget may be treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the ozone NAAQS would result.

c. Monitoring Network/Verification of Continued Attainment

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved air quality monitoring network, in accordance with 40 CFR part 58. This is particularly important for areas using a limited maintenance plan because there will be no cap on emissions.

²The EPA's current guidance on the preparation of emissions inventories for ozone areas is contained in the following documents: "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I" (EPA-450/4-91-016), "Emission Inventory Requirements for Ozone State Implementation Plans" (EPA-450/4-91-010), and "Procedures for Emission Inventory Preparation: Volume IV, Mobile Sources" (EPA-450/4-81-026d).

d. Contingency Plan

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. These contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The contingency plan should identify the measures to be promptly adopted and provide a schedule and procedure for adoption and implementation of the measures. The State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. While a violation of the NAAQS is an acceptable trigger, States may wish to choose a pre-violation action level as a trigger, such as an exceedance of the NAAQS. By taking early action, a State may be able to prevent any actual violation of the NAAQS and, therefore, eliminate any need on the part of EPA to redesignate an area back to nonattainment.

V. Conformity Determinations Under Limited Maintenance Plans

The transportation conformity rule (58 FR 62188; November 24, 1993) and the general conformity rule (58 FR 63214; November 30, 1993) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. As discussed above in section IV(b), emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the initial maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the ozone NAAQS would result. In other words, EPA would be concluding that emissions need not be capped for the maintenance period. Therefore, in areas with approved limited maintenance plans, Federal actions requiring conformity determinations under the transportation conformity rule could be considered to satisfy the "budget test" required in sections 93.118, 93.119, and 93.120 of the rule. Similarly, in these areas, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) of the rule.

For further information regarding the limited maintenance plan option for nonclassifiable ozone areas, please contact Carla Oldham at (919) 541-3347. For information regarding transportation conformity requirements, please contact Kathryn Sargeant of the Office of Mobile Sources at (313) 668-4441. For

information regarding general conformity requirements, please contact Doug Grano at (919) 541-3292.

Attachments

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ATTACHMENT A

The EPA used 1987-89 as the primary data years in determining designations and classifications for ozone areas set forth in the November 6, 1991 final rule on Air Quality Designations and Classifications (56 FR 56694). Certain ozone nonattainment areas could not be classified as marginal or above under Table 1 of section 181(a)(1) of the Clean Air Act either because of incomplete monitoring data or because they were nonattainment pre-enactment but did not violate the standard during 1987-89. These areas are collectively called nonclassifiable areas. Nonclassifiable ozone areas consist of transitional, submarginal, and incomplete/no data areas.

Transitional areas

An area is considered transitional under section 185A if it was designated nonattainment both prior to enactment and at the time of enactment, and did not violate the primary NAAQS for ozone over the 3-year period from 1987-1989.

Section 185A of the Act required EPA to make a determination, by June 30, 1992, whether the designated transitional areas had continued to meet the ozone NAAQS through December 31, 1991. All 12 transitional areas were attaining the NAAQS through December 31, 1991 and none are known to have violated the standard since. In May and June of 1992, Regional Administrators sent letters to Governors of States with transitional areas notifying them of EPA's determination.

Submarginal areas

Compliance with the ozone NAAQS is determined on the basis of expected exceedances which include an adjustment for missing data.¹ The submarginal category includes areas that violated the ozone NAAQS during 1987-89 but had a design value for the period of less than .121 ppm (the lower limit for marginal areas) due to the adjustment for missing data when calculating expected exceedances. Presently, there are no submarginal areas.

Incomplete/no data areas

Certain ozone areas designated nonattainment prior to enactment and at enactment did not have sufficient air quality monitoring data to determine whether they were or were not violating the NAAQS. These areas are termed incomplete/no data areas. These include areas which do not have monitors. Currently, there are 47 incomplete/no data areas.

¹This adjustment procedure is described in 40 CFR part 50.9, appendix H.

ATTACHMENT B

The EPA policies for implementing sections 107 and 175A of the Act for redesignations are contained in the following memorandums.

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

2. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

3. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

4. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

5. "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498; April 16, 1992).





TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 74 PERMITS - PREVENTION OF SIGNIFICANT DETERIORATION (PSD)

20.2.74.1 ISSUING AGENCY: New Mexico Environmental Improvement Board
[07/20/95; 20.2.74.1 NMAC - Rn, 20 NMAC 2.74.100, 10/31/02]

20.2.74.2 SCOPE: Any person constructing any new major stationary source or major modification as defined in this Part, that emits or will emit regulated pollutants in an attainment or unclassified area.
[07/20/95; 20.2.74.2 NMAC - Rn, 20 NMAC 2.74.101, 10/31/02]

20.2.74.3 STATUTORY AUTHORITY: The Environmental Improvement Board "shall promulgate regulations and standards in...air quality management" (NMSA 1978, section 74-1-8.A) and "the environmental improvement board...shall adopt...regulations to attain and maintain national ambient air quality standards and prevent or abate air pollution..." (NMSA 1978, section 74-2-5.B).
[07/20/95; 20.2.74.3 NMAC - Rn, 20 NMAC 2.74.102, 10/31/02]

20.2.74.4 DURATION: Permanent.
[07/20/95; 20.2.74.4 NMAC - Rn, 20 NMAC 2.74.103, 10/31/02]

20.2.74.5 EFFECTIVE DATE: July 20, 1995, except where a later date is cited at the end of a section or paragraph.
[07/20/95; 01/01/00; 20.2.74.5 NMAC - Rn, 20 NMAC 2.74.104, 10/31/02]
[The latest effective date of any section in this Part is 6/3/2011.]

20.2.74.6 OBJECTIVE: The purpose of this Part is to require any person constructing any new major stationary source or major modification as defined in this Part, that emits or will emit regulated pollutants in an attainment or unclassified area, to obtain a permit from the Department in accordance with the requirements of this Part prior to the construction or modification.
[07/20/95; 20.2.74.6 NMAC - Rn, 20 NMAC 2.74.105, 10/31/02]

20.2.74.7 DEFINITIONS: Terms used but not defined in this part shall have the meaning given them by 20.2.2 NMAC (Definitions) (formerly AQCR 100). As used in this part the following definitions shall apply.

A. "Act" means the Federal Clean Air Act, as amended, 42 U. S. C. Sections 7401 et seq.

B. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of this subsection.

(1) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.2.74.320 NMAC. Instead, Subsections G and AR of this section shall apply for those purposes.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

C. "Administrator" means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

D. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the class I federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with the following: 1)

times of visitor use of the class I federal area; and 2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

E. "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- (1) the applicable standards as set forth in 40 CFR Parts 60 and 61;
- (2) the applicable state implementation plan emissions limitation, including those with a future compliance date; or
- (3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

F. "Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any national ambient air quality standard for such pollutant, and is so designated under Section 107 (d) (1) (D) or (E) of the act.

G. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of this paragraph.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this part or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of this paragraph.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

H. "Baseline area" means all lands designated as attainment or unclassifiable in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than one microgram per cubic meter (annual average) for sulfur dioxide, nitrogen dioxide, or PM₁₀; or equal or greater than 0.3 microgram per cubic meter (annual average) for PM_{2.5}. The major source or major modification establishes the minor source baseline date (see the definition "minor source baseline date" in this part). Lands are designated as attainment or unclassifiable under Section 107(d)(1) (A)(ii) or (iii) of the act within each federal air quality control region in the state of New Mexico. Any baseline area established originally for TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments. A TSP baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date (see "minor source baseline date" in this part).

I. "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(1) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) the actual emissions, as defined in this section, representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of this subsection;

(b) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) actual emissions, as defined in this section, from any major stationary source on which construction commenced after the major source baseline date; and

(b) actual emissions increases and decreases, as defined in Subsection B of this section, at any stationary source occurring after the minor source baseline date.

J. "Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

K. "Best available control technology (BACT)" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated pollutant which would be emitted from any proposed major stationary source or major modification, which the secretary determines is achievable on a case-by-case basis. This determination will take into account energy, environmental, and economic impacts and other costs. The determination must be achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutants. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

L. **"Building, structure, facility, or installation"** means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two digit code) as described in the standard industrial classification (SIC) manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

M. **"Class I federal area"** means any federal land that is classified or reclassified as "class I" as described in 20.2.74.108 NMAC.

N. **"Commence"** means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake and complete, within a reasonable time, a program of actual construction.

O. **"Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

P. **"Continuous emissions monitoring system (CEMS)"** means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Q. **"Continuous emissions rate monitoring system (CERMS)"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

R. **"Continuous parameter monitoring system (CPMS)"** means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

S. **"Department"** means the New Mexico environment department.

T. **"Electric utility steam generating unit"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

U. **"Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric utility steam generating unit as defined in this section. For purposes of this section, there are two types of emissions units as described in the following.

(1) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

V. **"Federal land manager"** means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior dept.) with authority over such lands.

W. **"Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including:

(1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

(2) requirements within any applicable state implementation plan;

(3) any permit requirements established pursuant to 40 CFR 52.21; or

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

X. **"Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Y. **"Greenhouse gas"** for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Z. "High terrain" means any area having an elevation nine hundred (900) feet or more above the base of a source's stack.

AA. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

AB. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice. But such system would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

AC. "Low terrain" means any area other than high terrain.

AD. "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

AE. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in this section) of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis;

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.74.320 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.74.320 NMAC shall apply.

AF. "Major source baseline date" means:

- (1) in the case of PM₁₀ and sulfur dioxide, January 6, 1975;
- (2) in the case of nitrogen dioxide, February 8, 1988; and
- (3) in the case of PM_{2.5}, October 20, 2010.

AG. "Major stationary source" means the following.

(1) Any stationary source listed in table 1 (20.2.74.501 NMAC) which emits, or has the potential to emit, emissions equal to or greater than one hundred (100) tons per year of any regulated new source review pollutant.

(2) Any stationary source not listed in table 1 (20.2.74.501 NMAC) and which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant.

(3) Any physical change that would occur at a stationary source not otherwise qualifying under Paragraphs (1) or (2) of this subsection if the change would constitute a major stationary source by itself.

(4) A major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 (20.2.74.501 NMAC) or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

AH. "Mandatory class I federal area" means any area identified in the Code of Federal Regulations (CFR), 40 CFR Part 81, Subpart D. See 20.2.74.108 NMAC for a list of these areas in New Mexico.

AI. "Minor source baseline date" means the earliest date after the trigger date on which the owner or operator of a major stationary source or major modification subject to 40 CFR 52.21 or to this part submits a complete application under the relevant regulations.

(1) The trigger date is:

- (a) in the case of PM₁₀ and sulfur dioxide, August 7, 1977;
- (b) in the case of nitrogen dioxide, February 8, 1988; and
- (c) in the case of PM_{2.5}, October 20, 2011.

(2) Any minor source baseline date established originally for the TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. The department may rescind any TSP minor source baseline date where it can be shown, to the department's satisfaction, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date, did not result in a significant amount of PM-10 emissions.

AJ. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

AK. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

AL. "Net emissions increase" means, with respect to any regulated new source review pollutant emitted by a major stationary source, the following.

(1) The amount by which the sum of the following exceeds zero.

(a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.2.74.200 NMAC.

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided in Subsection G, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection G of this section shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Paragraph (2) of Subsection B of this section shall not apply for determining creditable increases and decreases.

AM. "Nonattainment area" means an area which has been designated under Section 107 of the federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by EPA.

AN. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

AO. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

AP. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

AQ. "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

AR. "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection G of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined in Subsection AR of this section.

AS. "Regulated new source review pollutant", for purposes of this part, means the following:

(1) any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph (Paragraph (1) of Subsection AS of 20.2.74.7 NMAC) as a constituent or precursor to such pollutant; precursors identified by the administrator for purposes of NSR are the following:

(a) volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas;

(c) nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

(d) volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

(2) any pollutant that is subject to any standard promulgated under Section 111 of the act;

(3) any class I or II substance subject to a standard promulgated under or established by title VI of the act; or

(4) any pollutant that otherwise is subject to regulation under the act as defined in Subsection AZ of this section;

(5) notwithstanding Paragraphs (1) through (4) of Subsection AS of this section, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in Section 112 of the act, or added to the list pursuant to Section 112(b)(2) of the act, and which have not been delisted pursuant to Section 112(b)(3) of the act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the act;

(6) particulate matter (PM) emissions, $PM_{2.5}$ emissions, and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in PSD permits; compliance with emissions limitations for PM, $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

AT. "Replacement unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

AU. "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

AV. "Secretary" means the cabinet level secretary of the New Mexico environment department or his or her successor.

AW. "Significant" means in reference to a net emissions increase or the potential of a source to emit air pollutants, a rate of emission that would equal or exceed any of the rates listed in table 2 (20.2.74.502 NMAC).

AX. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AW of this section) for that pollutant.

AY. "Stationary source" means any building, structure, facility, or installation which emits, or may emit, any regulated new source review pollutant.

AZ. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases (GHGs)" shall not be subject to regulation except as provided in paragraphs AZ(4) and (5) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in 20.2.74.320 NMAC, and complies with the PAL permit containing the GHG PAL;

(2) for purposes of Paragraphs (3) through (5) of Subsection AZ of this section, the term "tons per year CO₂ equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials; for purposes of this subparagraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);

(b) sum the resultant value from Subparagraph (a) of Paragraph (2) of Subsection AZ of this section for each gas to compute a tons per year CO₂e;

(3) the term "emissions increase" as used in Paragraphs (4) and (5) of Subsection AZ of this section shall mean that both a significant emissions increase (as calculated using the procedures in Subsection D of 20.2.74.200 NMAC) and a significant net emissions increase (as defined in Subsections AL, AW and AX of 20.2.74.7 NMAC) occur; for the pollutant GHGs, an emissions increase shall be based on tons per year CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tons per year CO₂e instead of applying the value in table 2 of 20.2.74 NMAC;

(4) beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) the stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tons per year CO₂e or more; or

(b) the stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of 75,000 tons per year CO₂e or more; and

(5) beginning July 1, 2011, in addition to the provisions in Paragraph (4) of this subsection, the pollutant GHGs shall also be subject to regulation:

(a) at a new stationary source that will emit or have the potential to emit 100,000 tons per year CO₂e; or

(b) at an existing stationary source that emits or has the potential to emit 100,000 tons per year CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tons per year CO₂e or more;

(6) if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3, 2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

BA. "Temporary source" means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

BB. "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

BC. "Volatile organic compound (VOC)" means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

[07/20/95; 01/01/00; 20.2.74.7 NMAC - Rn, 20 NMAC 2.74.107, 10/31/02; A, 1/22/06; A, 8/31/09; A, 1/1/11; A, 6/3/11; A, 2/6/13]

20.2.74.8 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS: This Part amends and supersedes Air Quality Control Regulation (AQCR) 707, which was originally filed on February 14, 1984, and subsequently refiled on July 15, 1986; August 1, 1988; and May 29, 1990. All references to AQCR 707 in any other rule shall be understood as a reference to this Part.

[07/20/95; 20.2.74.8 NMAC - Rn, 20 NMAC 2.74.106, 10/31/02]

20.2.74.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87503 [1301 Siler Rd., Bldg. B, Santa Fe, NM 87507].

[07/20/95; 20.2.74.9 NMAC - Rn, 20 NMAC 2.74.109, 10/31/02; A, 01/01/11]

20.2.74.10 SEVERABILITY. If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.74.10 NMAC - N, 1/22/06]

20.2.74.11 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.

[20.2.74.11 NMAC - N, 1/22/06]

20.2.74.12 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.74.12 NMAC - N, 1/22/06]

20.2.74.13 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.74.13 NMAC - N, 1/22/06]

20.2.74.14 LIMITATION OF DEFENSE. The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.

[20.2.74.14 NMAC - N, 1/22/06]

20.2.74.15 to 20.2.74.107 [RESERVED]

20.2.74.108 RESTRICTIONS ON AREA CLASSIFICATIONS:

A. Mandatory Class I Federal areas:

(1) The following areas which were in existence on August 7, 1977, shall be mandatory Class I Federal areas and may not be redesignated:

- (a) International parks (all of them);
- (b) National wilderness areas which exceed 5,000 acres in size;
- (c) National memorial parks which exceed 5,000 acres in size; and
- (d) National parks which exceed 6,000 acres in size.

(2) Specifically for New Mexico, these areas are:

- (a) Bandelier Wilderness, administered by NPS;
- (b) Bosque del Apache Wilderness, administered by NFWS;
- (c) Carlsbad Caverns National Park, administered by NPS;
- (d) Gila Wilderness, administered by NFS;
- (e) Pecos Wilderness, administered by NFS;
- (f) Salt Creek Wilderness, administered by NFWS;
- (g) San Pedro Parks Wilderness, administered by NFS;
- (h) Wheeler Peak Wilderness, administered by NFS; and
- (i) White Mountain Wilderness, administered by NFS; where: NPS = National Park Service,

NFWS = National Fish and Wildlife Service, NFS = National Forest Service.

B. Areas which may be redesignated only as Class I or Class II:

- (1) The following areas may be redesignated only as Class I or II:
- (a) an area, as of August 7, 1977, which exceeds 10,000 acres in size and is a national monument, national primitive area, national preserve, national recreational area, national wild and scenic river, national wildlife refuge; or
 - (b) a national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.

(2) Specifically for New Mexico, these areas include (but are not necessarily limited to):

- (a) Apache Kid Wilderness, administered by NFS;
- (b) Bandelier National Monument, administered by NPS;
- (c) Bitter Lake National Wildlife Refuge, administered by NFWS;
- (d) Blue Range Wilderness, administered by NFS;
- (e) Bosque del Apache National Wildlife Refuge, administered by NFWS;
- (f) Capitan Mountains Wilderness, administered by NFS;
- (g) Cebolla Wilderness, administered by BLM;
- (h) Chama River Canyon Wilderness, administered by NFS;
- (i) Cruces Basin Wilderness, administered by NFS;
- (j) De-na-zin Wilderness, administered by BLM;
- (k) El Malpais National Monument, administered by NPS;
- (l) Latir Peak Wilderness, administered by NFS;
- (m) Manzano Mountain Wilderness, administered by NFS;
- (n) San Andres National Wildlife Refuge, administered by NFWS;
- (o) Sandia Mountain Wilderness, administered by NFS;
- (p) Sevilleta National Wildlife Refuge, administered by NFWS;
- (q) West Malpais Wilderness, administered by BLM;
- (r) White Sands National Monument, administered by NPS; and
- (s) Withington Wilderness, administered by NFS; where: NFS = National Forest Service, NPS = National Park Service, NFWS = National Fish and Wildlife Service, BLM = Bureau of Land Management.

[07/20/95; 20.2.74.108 NMAC - Rn, 20 NMAC 2.74.108, 10/31/02]

20.2.74.109 to 20.2.74.199 [RESERVED]

20.2.74.200 APPLICABILITY.

A. The requirements of this part apply to the construction of any new major stationary source (as defined in 20.2.74.7 NMAC) or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

B. The requirements of Sections 300 through 306, 400 and 403 of this part apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this part otherwise provides.

C. No new major stationary source or major modification to which the requirements of Subsections A, B, C and D of 20.2.74.300 NMAC, and Sections 301, 302, 303, 304, 305, 306, 400 and 403 of this part apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

D. Applicability procedures.

(1) Except as otherwise provided in Subsections E and F of this section, and consistent with the definition of major modification contained in 20.2.74.7 NMAC, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in 20.2.74.7 NMAC), and a significant net emissions increase (as defined in Subsections AL and AX of 20.2.74.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) through (4) of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in 20.2.74.7 NMAC. Regardless of any such

preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in 20.2.74.7 NMAC) and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection G of 20.2.74.7 NMAC) for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in 20.2.74.7 NMAC) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection G of 20.2.74.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

(5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

E. For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.74.320 NMAC.
[07/20/95; 20.2.74.200 NMAC - Rn, 20 NMAC 2.74.200, 10/31/02; A, 1/22/06; A, 01/01/11]

20.2.74.201 EXEMPTIONS: This Part shall not apply to:

A. Each regulated pollutant emitted for which the area the source proposes to locate in is designated as nonattainment;

B. Sources or modifications that are part of a nonprofit health or nonprofit educational institution and are approved by the Secretary;

C. A portable stationary source which has previously received a permit pursuant to this Part; and

(1) The owner or operator proposes to relocate the source, and emissions from the source at the new location will be temporary; and

(2) The emissions from the source would not exceed its allowable emission rate; and

(3) The emissions from the source would not impact any Class I Federal area nor any area where an applicable increment is known to be violated; and

(4) Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and probable duration of operation at the new location. Such notice shall be given to the Department not less than ten (10) days in advance of the proposed relocation unless a different time interval is previously approved by the Department;

D. A source or modification that would be major only if fugitive emissions, to the extent they are quantifiable, are considered in calculating the potential to emit or net emissions increase, and the source does not belong to:

(1) Any category in Table 1 of this Part (20.2.74.501 NMAC); or

(2) Any other stationary source category which as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

[07/20/95; 20.2.74.201 NMAC - Rn, 20 NMAC 2.74.201, 10/31/02]

20.2.74.202 to 20.2.74.299 [RESERVED]

20.2.74.300 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:

A. Any owner or operator who begins actual construction or operates a source or modification without, or not in accordance with, a permit issued under the requirements of this part shall be subject to enforcement action.

B. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, sections 74-2-1 to 74-2-17, NMSA 1978; any applicable regulations of the board; and any other requirements under local, state, or federal law.

C. Approval to construct shall become invalid if: 1) construction is not commenced within eighteen (18) months after receipt of such approval; 2) if construction is discontinued for a period of eighteen (18) months or more; or 3) if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within eighteen (18) months of the projected and approved commencement date. The secretary may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

D. If a source or modification becomes a major stationary source or major modification solely due to a relaxation in any enforceable limitation (which limitation was established after August 7, 1980), on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this part shall apply to the source or modification as though construction had not yet commenced.

E. Except as otherwise provided in Paragraph (6) under this subsection (Subsection E of 20.2.74.300 NMAC), the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Paragraph (6) under this subsection (Subsection E of 20.2.74.300 NMAC), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AR of 20.2.74.7 NMAC for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) a description of the project;

(b) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AR of 20.2.74.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of this subsection to the department. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Subparagraph (b) of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Subparagraph (c) of Paragraph (1) of this subsection setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection) by a significant amount (as defined in 20.2.74.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and

(c) any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection);

(6) a "reasonable possibility" under this subsection (Subsection E of 20.2.74.300 NMAC) occurs when the owner or operator calculates the project to result in either:

(a) a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AX of 20.2.74.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) a projected actual emissions increase that, added to the amount of emissions excluded under Paragraph (3) of Subsection AR of 20.2.74.7 NMAC, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AX of 20.2.74.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; for a project for which a reasonable possibility occurs only within the meaning under this subparagraph (Subparagraph (b) of Paragraph (6) of Subsection E of 20.2.74.300 NMAC), and not also within the meaning of Subparagraph (a) under this paragraph (Paragraph (6) of Subsection E of 20.2.74.300 NMAC), then the provisions in Paragraphs (2) through (5) under this subsection (Subsection E of 20.2.74.300 NMAC) do not apply to the project.

F. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection E of this section available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii). [07/20/95; 20.2.74.300 NMAC - Rn, 20 NMAC 2.74.300, 10/31/02; A, 1/22/06; A, 1/1/11; A, 6/3/11]

20.2.74.301 SOURCE INFORMATION: The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this Part.

A. Information shall include, but is not limited to:

- (1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing the design and plant layout; and
- (2) A detailed schedule of construction of the source or modification; and
- (3) A detailed description of the planned system of continuous emission reduction for the source or modification, emission estimates, and other information necessary to determine that Best Available Control Technology will be applied.

B. Upon request by the Department, the owner or operator shall also provide information on:

- (1) The air quality impact of the source or modification, including meteorologic and topographic data necessary to estimate such impact; and
- (2) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977 in the area the source or modification would affect.

[07/20/95; 20.2.74.301 NMAC - Rn, 20 NMAC 2.74.301, 10/31/02]

20.2.74.302 CONTROL TECHNOLOGY REQUIREMENTS:

A. A new major stationary source shall apply Best Available Control Technology for each regulated pollutant that it would have the potential to emit in amounts equal to or greater than the significance levels as listed in Table 2 of this Part (20.2.74.502 NMAC). This requirement applies to each proposed emissions unit or operation that will emit such pollutant.

B. A major modification shall apply Best Available Control Technology for each regulated pollutant at the source when a significant net emissions increase occurs as defined in this Part. This requirement applies to each proposed emissions unit or operation where a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

C. For phased construction projects, the determination of Best Available Control Technology shall be reviewed and modified as appropriate at the latest reasonable time but no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of Best Available Control Technology for the source.

D. The Department may approve a system of innovative control technology for the major stationary source or major modification if:

- (1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function; and
- (2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Best Available Control Technology by a date specified by the Department. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance; and
- (3) The source or modification would meet the requirements of 20.2.74.302 NMAC and 20.2.74.303 NMAC based on the emission rate that the system of innovative control technology would be required to meet on the date specified by the Department; and

(4) During the interim period of achieving the permitted emission level, the source or modification would not:

- (a) Cause or contribute to a violation of an applicable national ambient air quality standard; nor
- (b) Impact any Class I Federal area; nor
- (c) Impact any area where an applicable increment is known to be violated; and

(5) All other applicable requirements including those for public participation have been met.

E. The Department shall withdraw any approval to employ a system of innovative control technology if:

(1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(3) The Department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

F. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection E of 20.2.74.302 NMAC, the Department may allow the source or modification up to an additional three (3) years to meet the requirement for the application of Best Available Control Technology. This shall be accomplished through use of a demonstrated system of control.

G. If the owner or operator of a major stationary source or major modification previously issued a permit under this Part applies for an extension (as provided for under subsection C of 20.2.74.300 NMAC), and the new proposed date of construction is greater than eighteen (18) months from the date the permit would become invalid, the determination of Best Available Control Technology shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of Best Available Control Technology for the source.

H. With respect to PM_{10} , for the case where PM_{10} emissions cannot be quantified, the Best Available Control Technology limitation may be defined in terms of particulate matter emissions. [07/20/95; 20.2.74.302 NMAC - Rn, 20 NMAC 2.74.302, 10/31/02]

20.2.74.303 AMBIENT IMPACT REQUIREMENTS:

A. The requirements of this section shall apply to each pollutant emitted by a new major stationary source or major modification in amounts equal to or greater than those in Table 2 of this Part (20.2.74.502 NMAC). For PM_{10} , the source will only be required to perform ambient impact analysis for PM_{10} when the source has the potential to emit significant amounts of PM_{10} (Table 2, 20.2.74.502 NMAC). For $PM_{2.5}$, the demonstration required in Subsection B of 20.2.74.303 NMAC is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than 0.06 micrograms per cubic meter (annual average) and 0.07 micrograms per cubic meter (24-hour average) for Class I federal areas and 0.3 micrograms per cubic meter (annual average) and 1.2 micrograms per cubic meter (24 hour average) for Class II and Class III federal areas.

B. The allowable emission increases from the proposed source or modification, including secondary emissions, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(1) any national ambient air quality standard in any location; or

(2) any applicable maximum allowable increase as shown in Table 4 of this Part (20.2.74.504 NMAC) over the baseline concentrations in any area;

(3) the owner or operator of the proposed major stationary source or major modification shall demonstrate that neither Paragraph (1) nor Paragraph (2) of 20.2.74.303 NMAC will occur.

[07/20/95; 20.2.74.303 NMAC - Rn, 20 NMAC 2.74.303, 10/31/02; A, 6/3/11]

20.2.74.304 ADDITIONAL IMPACT REQUIREMENTS:

A. The owner or operator of the proposed major stationary source or major modification shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value. The analysis can use data or information available from the Department.

B. The owner or operator shall also provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

[07/20/95; 20.2.74.304 NMAC - Rn, 20 NMAC 2.74.304, 10/31/02]

20.2.74.305 AMBIENT AIR QUALITY MODELING: All estimates of ambient concentrations required by this Part shall be based on applicable air quality models, data bases, and other requirements as specified in EPA's Guideline on Air Quality Models (EPA-450/2-78-027R, July, 1986), its revisions, or any superseding EPA document, and approved by the Department. Where an air quality impact model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Any substitution or modification of a model must be approved by the Department. Notification shall be given by the Department of such a substitution or modification and the opportunity for public comment provided for in fulfilling the public notice requirements in subsection B of 20.2.74.400 NMAC. The Department will seek EPA approval of such substitutions or modifications.

[07/20/95; 20.2.74.305 NMAC - Rn, 20 NMAC 2.74.305, 10/31/02]

20.2.74.306 MONITORING REQUIREMENTS:

A. Any application for a permit under this part shall contain an analysis of ambient air quality. Air quality data can be that measured by the applicant or that available from a government agency in the area affected by the major stationary source or major modification. The analysis shall contain the following:

(1) for a major stationary source, each pollutant for which the potential to emit is equal to or greater than the significant emission rates as listed in Table 2 of this part (20.2.74.502 NMAC); or

(2) for a major modification, each pollutant that would result in a significant net emission increase.

B. If no national ambient air quality standard (NAAQS) for a pollutant exists, and there is an acceptable method for monitoring that pollutant, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant.

C. Continuous air quality monitoring data shall be required for all pollutants for which a national ambient air quality standard exists. Such data shall be submitted to the department for at least the one (1) year period prior to receipt of the permit application. The department has the discretion to:

(1) determine that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year but not less than four months; or

(2) determine that existing air quality monitoring data is representative of air quality in the affected area and accept such data in lieu of additional monitoring by the applicant.

D. Ozone monitoring shall be performed if monitoring data is required for volatile organic compounds. Post construction ozone monitoring data may be submitted in lieu of providing preconstruction data as required under Subsection C of 20.2.74.306 NMAC if the owner or operator of the proposed major source or major modification satisfies all the provisions of 40 CFR Part 51, Appendix S, Section IV.

E. The department may require monitoring of visibility in any Class I federal area where the department determines that an adverse impact on visibility may occur due primarily to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the department and subject to the following:

(1) visibility monitoring methods specified by the department shall be reasonably available and not require any research and development; and

(2) the cost of visibility monitoring required by the department shall not exceed fifty percent (50%) of the cost of ambient monitoring required by this part; if ambient monitoring is not required, the cost shall be estimated as if it were required for each pollutant to which this part applies;

(3) both preconstruction and post construction visibility monitoring may be required; in each case, the duration of such monitoring shall not exceed one (1) year.

F. The owner or operator of a major stationary source or major modification shall conduct post construction ambient monitoring as the department determines is necessary to validate attainment of ambient air quality standards and to assure that increments are not exceeded.

G. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of this section.

H. The department has the discretion to exempt a stationary source or modification from the requirements of this section with respect to monitoring for a particular pollutant if the emissions of the pollutant

from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, increases in ambient concentrations less than the levels listed in Table 3 of this part (20.2.74.503 NMAC).

I. The department shall exempt a stationary source or modification from the requirements of this section with respect to preconstruction monitoring for a particular pollutant if:

- (1) for ozone, volatile organic compound emissions are less than one hundred (100) tons per year; or
- (2) the air pollutant is not a regulated pollutant; or
- (3) the existing ambient concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Table 3 of this part (20.2.74.503 NMAC); or
- (4) the pollutant is not listed in Table 3 of this part (20.2.74.503 NMAC).

[07/20/95; 20.2.74.306 NMAC - Rn, 20 NMAC 2.74.306, 10/31/02; A, 6/3/11]

20.2.74.307 TEMPORARY SOURCE EXEMPTIONS: The requirements of 20.2.74.304 NMAC and 20.2.74.306 NMAC shall not apply to a temporary source subject to this Part for a given pollutant if the allowable emissions of such pollutant would not impact any Class I Federal area or any areas where an applicable increment is violated and would be temporary.

[07/20/95; 20.2.74.307 NMAC - Rn, 20 NMAC 2.74.307, 10/31/02]

20.2.74.308 to 20.2.74.319 [RESERVED]

20.2.74.320 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs)

A. Applicability.

(1) The department may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO₂e basis, for any existing major stationary source or any other existing GHG-only source if the PAL meets the requirements in this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(2) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

- (a) is not a major modification for the PAL pollutant;
- (b) does not have to be approved through the requirements of this part; and
- (c) is not subject to the provisions in Subsection D of 20.2.74.300 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major new source review program); and

(d) does not make GHGs subject to regulation as defined by Subsection AZ of 20.2.74.7 NMAC.

(3) Except as provided under Subparagraph (c) of Paragraph (2) of this subsection, a major stationary source or GHG-only source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions applicable to this section.

(1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions (as defined in 20.2.74.7 NMAC) of all emissions units (as defined in 20.2.74.7 NMAC) at the source, that emit or have the potential to emit the PAL pollutant. For a GHG-only source, "actuals PAL" means a PAL based on the baseline actual emissions (as defined in Paragraph (13) of this subsection) of all emissions units (as defined in Paragraph (14) of this subsection) at the source, that emit or have the potential to emit GHGs.

(2) Allowable emissions means "allowable emissions" as defined in 20.2.74.7 NMAC, except as this definition is modified in accordance with the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in 20.2.74.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection AW of 20.2.74.7 NMAC or in the act, whichever is lower. For a GHG PAL issued on a CO₂e basis, "small emissions unit" means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO₂e basis defined as "significant" for the purposes of Paragraph (3) of Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued.

(4) Major emissions unit means:

(a) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the act for nonattainment areas; for example, in accordance with the definition of major stationary source in Section 182(c) of the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year; or

(c) for a GHG PAL issued on a CO₂e basis, any emissions unit that emits or has potential to emit equal to or greater than the amount of GHGs on a CO₂e basis that would be sufficient for a new source to trigger permitting requirements under Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued.

(5) Plantwide applicability limitation (PAL) means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO₂e for a CO₂e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with this section.

(6) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

(8) PAL major modification means, notwithstanding the definitions for major modification, net emissions increase, and subject to regulation in 20.2.74.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) PAL permit means the major new source review permit, the minor new source review permit, or the state operating permit under a program that is approved into the plan, or the title V permit issued by the department that establishes a PAL for a major stationary source or a GHG-only source.

(10) PAL pollutant means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

(11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AW of 20.2.74.7 NMAC or in the act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of this subsection. For a GHG PAL issued on a CO₂e basis, "significant emissions unit" means any emissions unit that emits or has the potential to emit GHGs on a CO₂e basis in amounts equal to or greater than the amount that would qualify the unit as a small emissions unit as defined in Paragraph (3) of this subsection, but less than the amount that would qualify the unit as a major emissions unit as defined in Subparagraph (c) of Paragraph (4) of this subsection.

(12) GHG-only source means any existing station source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Subsection AG of 20.2.74.7 NMAC and the amount of GHGs on a CO₂e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated new source review pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under 20.2.74.320 NMAC.

(13) Baseline actual emissions for a GHG PAL means the average rate, in tons per year CO₂e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under this section or by the department for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, "baseline actual emissions" for a GHG PAL means the average rate, in tons per year CO₂e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (13) of this subsection.

(14) Emissions unit with respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of this section, there are two types of emissions units as described in the following:

(a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that does not meet the requirements in subparagraph (a) of this paragraph.

(15) Minor source means any stationary source that does not meet the definition of major stationary source in Subsection AG of 20.2.74.7 NMAC for any pollutant at the time the PAL is issued.

C. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source or a GHG-only source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subsection M of this section.

(4) As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in Paragraphs (1) and (2) of Subsection AG of 20.2.74.7 NMAC or a GHG-only source as defined in Paragraph (12) of Subsection B of this subsection.

D. General requirements for establishing PALs.

(1) The department may establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO₂e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of this section.

(c) The PAL permit shall contain all the requirements of Subsection G of this section.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of this section for each emissions unit under the PAL through the PAL effective period.

(2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

E. Public participation requirements for PALs. PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source or GHG-only source shall be established as the sum of the baseline actual emissions (as defined in 20.2.74.7 NMAC or, for GHGs, Paragraph (13) of Subsection B of 20.2.74.320 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection AW of 20.2.74.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOx to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of this subsection, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(3) For CO₂e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in Paragraph (13) of Subsection B of 20.2.74.320 NMAC) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as "significant" on a CO₂e basis for the purposes of Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO₂e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level (in tons per year CO₂e) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or New Mexico regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tons per year CO₂e.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source or GHG-only source owner or operator applies to renew a PAL in accordance with Subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of Subsection I of this section.

(6) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection C of this section.

(7) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under Subsection M of this section.

(8) A requirement to retain the records required under Subsection M of this section on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of this section by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(11) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under Subsection AZ of 20.2.74.7 NMAC as long as the source complies with the PAL.

H. PAL effective period and reopening of the PAL permit.

(1) PAL effective period. The PAL effective period shall be 10 years.

(2) Reopening of the PAL permit.

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source or GHG-only source under the plan; and

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an AQRV that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of Paragraph (2) of this subsection for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of Subsection E of this section.

I. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of this section, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (b) of Paragraph (1) of Subsection I of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major new source review requirements if such change meets the definition of major modification in 20.2.74.7 NMAC.

(5) The major stationary source or GHG-only source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection D of 20.2.74.300 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of this section.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of this section in approving any request to renew a PAL for a major stationary source or GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) Application deadline. A major stationary source or GHG-only source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) Application requirements. The application to renew a PAL permit shall contain the following information.

(a) The information required in Subsection C of this section.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraphs (a) and (b) of this paragraph. However, in no case may any such adjustment fail to comply with Subparagraph (c) of this paragraph.

(a) If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of this paragraph.

(b) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(c) Notwithstanding Subparagraphs (a) and (b) of this paragraph:

(i) if the potential to emit of the major stationary source or GHG-only source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of Subsection K of this section (increasing a PAL).

(5) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the following provisions.

(a) The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions

unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of this paragraph, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major new source review process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of this section.

L. Monitoring requirements for PALs.

(1) General requirements.

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time or CO₂e per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of this subsection and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of this paragraph, you may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(2) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

- (a) mass balance calculations for activities using coatings or solvents;
- (b) CEMS;
- (c) CPMS or PEMS; and
- (d) emission factors.

(3) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

(b) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(5) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(a) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every 5 years after issuance of the PAL.

M. Recordkeeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus 5 years:

(a) a copy of the PAL permit application and any applications for revisions to the PAL; and

(b) each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the applicable title V operating permit program. The reports shall meet the following requirements.

(1) Semi-annual report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO₂e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section;

(c) all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

(d) a list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding 6-month period;

(e) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;

(f) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully

operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section; and

(g) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(2) Deviation report. The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to Paragraph (2) of Subsection E of 20.2.70.302 NMAC shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing Paragraph (2) of Subsection E of 20.2.70.302 NMAC. The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(3) Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

O. Transition requirements.

(1) The department may not issue a PAL that does not comply with the requirements in this section after the administrator has approved regulations incorporating these requirements into a plan.

(2) The department may supersede any PAL which was established prior to the date of approval of the plan by the administrator with a PAL that complies with the requirements of this section.
[20.2.74.320 NMAC - N, 1/22/06; A, 1/1/11; A, 2/6/13]

20.2.74.321 to 20.2.74.399 [RESERVED]

20.2.74.400 PUBLIC PARTICIPATION AND NOTIFICATION:

A. The Department shall, within thirty (30) days after receipt of an application, review such application and determine whether it is administratively complete or there is any deficiency in the application or information submitted. To be deemed administratively complete, the application must meet the requirements of 20.2.74.301 NMAC in addition to the requirements of 20.2.72 NMAC. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant.

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete. Upon receipt of the additional information or clarification, the Department shall promptly review such information and determine whether the application is administratively complete.

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

B. For purposes of determining minor source baseline date pursuant to 40 CFR 51:

(1) An application is complete when it contains all the information necessary for processing the application. Designating an application complete for purposes of 40 CFR 51 does not preclude the Department from requesting or accepting any additional information; and

(2) In the event that additional information is submitted to remedy any deficiency in the application or information submitted, the date of receipt of the application shall be the date on which the Department received all required information.

C. The Department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available at the Department district and local office nearest to the proposed source a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed:

(a) Of the application,

(b) The preliminary determination,

(c) The degree of increment consumption that is expected from the source or modification, and
(d) Of the opportunity for comment at a public hearing as well as written public comment. The public comment period shall be for thirty (30) days from the date of such advertisement.

(4) Send a copy of the notice of public comment to:

(a) The applicant,

(b) The Administrator, and

(c) Officials and agencies having jurisdiction over the location where the proposed construction would occur as follows:

(i) Any other state or local air pollution control agencies;

(ii) The chief executives of the city and county where the source would be located;

(iii) Any comprehensive regional land use planning agency; and

(iv) Any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the source.

(7) Within one hundred eighty (180) days after an application is deemed administratively complete, unless the Secretary, as specified in 20.2.72.207 NMAC, grants an extension not to exceed ninety (90) days for good cause:

(a) make a final determination of whether construction should be approved, approved with conditions, or disapproved; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source.

[07/20/95; 01/01/00; 20.2.74.400 NMAC - Rn, 20 NMAC 2.74.400, 10/31/02]

20.2.74.401 STACK HEIGHT CREDIT: The Department shall review all applications in accordance with the provisions of 20.2.80 NMAC (Stack Heights) (formerly Air Quality Control Regulation 710 -- Stack Height Requirements).

[07/20/95; 20.2.74.401 NMAC - Rn, 20 NMAC 2.74.401, 10/31/02]

20.2.74.402 EXCLUSIONS FROM INCREMENT CONSUMPTION: Following a public hearing, the Secretary may exclude the following concentrations in determining compliance with a maximum allowable increase:

A. Concentrations due to the increase in emissions from stationary sources, over the emissions from such sources before the effective date of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation). Sources must have converted from the use of petroleum products, natural gas, or both by reason of such order. This exclusion shall not apply more than five (5) years after the effective date of such an order; or

B. Concentrations due to the increase in emissions from sources, over the emissions from such sources before the effective date of a plan in effect pursuant to the Federal Power Act. Sources must have converted from using natural gas by reason of a natural gas curtailment plan. This exclusion shall not apply more than five (5) years after the effective date of such a plan; or

C. Concentrations of particulate matter due to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; or

D. The increase in concentrations due to new sources outside the United States over the concentrations attributed to existing sources which are included in the baseline concentrations.

[07/20/95; 20.2.74.402 NMAC - Rn, 20 NMAC 2.74.402, 10/31/02]

20.2.74.403 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING CLASS I FEDERAL AREAS:

A. The department shall transmit to the administrator and the federal land manager a copy of each permit application relating to a major stationary source or major modification proposing to locate within one hundred (100) kilometers of any Class I federal area. The complete permit application shall be transmitted within

thirty (30) days of receipt and sixty (60) days prior to any public hearing on the application. The department shall include all relevant information in the permit application. Relevant information shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I federal area. The department shall consult with all affected federal land managers as to the completeness of the permit application and shall consider any analysis performed by the federal land manager concerning the impact of the proposed major stationary source or major modification on air quality related values. This consideration shall include visibility, if such analysis is received within thirty (30) days after the federal land manager receives a copy of the complete application. Additionally, the department shall notify any affected federal land manager within thirty days (30) from the date the department receives a request for a pre-application meeting from a proposed source subject to this part. Notice shall be provided to the administrator and federal land manager of every action related to the consideration of such permit. The department shall also provide the federal land manager and the administrator with a copy of the preliminary determination required under 20.2.74.400 NMAC and shall make available to them any materials used in making that determination. In any case where the department disagrees with the federal land manager's analysis of source impact on air quality related values, the department shall, either explain its decision or give notice to the federal land manager as to where the explanation can be obtained. In the case where the department disagrees with the federal land managers' analysis, the department will also explain its decision or give notice to the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed, as to where the decision can be obtained.

B. The department shall transmit to air quality control agencies of neighboring states and Indian governing bodies a copy of each permit application having the potential to affect Class I federal areas or increment consumption in areas under their jurisdiction. The department shall also provide the affected air quality control agencies and Indian governing bodies with a copy of the preliminary determination required under 20.2.74.400 NMAC and shall make available to them any materials used in making that determination. The department shall include a provision for a sixty (60) day comment period for the federal land managers before any public hearing on a permit application is held.

C. Federal land managers may demonstrate to the department that emissions from a proposed source or modification would have an adverse impact on air quality related values, including visibility, of any Class I federal lands under their jurisdiction. This may be done even though the change in air quality resulting from emissions from the proposed source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I federal area. If the department concurs with this demonstration, then the source shall not be issued a permit.

D. Class I waivers: The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from a proposed source or modification would have no adverse impact on air quality related values, including visibility, of Class I federal lands under his or her jurisdiction. This may be done even though the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I federal area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may grant a waiver from such maximum allowable increases. Emission limitations must be included in the permit as necessary to assure that emissions of sulfur dioxide, PM_{10} , $PM_{2.5}$, and nitrogen oxides would not exceed the maximum allowable increases over minor source baseline concentrations shown in Table 5 of this part (20.2.74.505 NMAC).

E. For the case where the federal land manager does not perform an impact analysis with respect to visibility impairment in a Class I federal area, the department may perform such an analysis. The department shall not issue the source a permit if the department determines that an adverse impact on visibility would occur. The adverse impact must be due, primarily, to the operation of the proposed source or modification.

F. Sulfur dioxide waiver by governor: The owner or operator of a proposed major stationary source or major modification, which cannot be approved under Subsection D of 20.2.74.403 NMAC, may demonstrate to the governor that the source cannot be constructed by reason of an exceedance of a maximum allowable increase for a Class I federal area for sulfur dioxide for a period of twenty-four (24) hours or less. The owner or operator may also demonstrate that a waiver from this requirement would not adversely affect the air quality related values of the Class I federal area. The governor, after consideration of the federal land manager's recommendation and subject to his concurrence, may, after notice and public hearing, grant a waiver from such maximum allowable increase. If the waiver is granted, the department shall issue a permit to the owner or operator of the source or modification. Any owner or operator of a source or modification who obtains a permit under this section shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases of ambient concentrations, above the

baseline concentration, to exceed the levels found in Table 6 of this part (20.2.74.506 NMAC) for periods of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, in any annual period.

G. Sulfur dioxide waiver by governor with the president's concurrence. In any case where the governor recommends a waiver in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president through the office of the governor. If the president so directs, the department shall issue the permit. Any source or modification that obtains a permit under this section shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases in ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of this part (20.2.74.506 NMAC) for periods of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, in any annual period.

[07/20/95; 20.2.74.403 NMAC - Rn, 20 NMAC 2.74.403, 10/31/02; A, 6/3/11]

20.2.74.404 to 20.2.74.500 [RESERVED]

20.2.74.501 TABLE 1 - PSD SOURCE CATEGORIES.

- A. Carbon black plants (furnace process)
- B. Charcoal production plants
- C. Chemical process plants
- D. Coal cleaning plants (with thermal dryers)
- E. Coke oven batteries
- F. Fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU/hr heat input
- G. Fossil fuel-fired steam electric plants of more than 250 million BTU/hr heat input
- H. Fuel conversion plants
- I. Glass fiber processing plants
- J. Hydrofluoric acid plants
- K. Iron and steel mills
- L. Kraft pulp mills
- M. Lime plants
- N. Municipal incinerators capable of charging more than 50 tons of refuse per day
- O. Nitric acid plants
- P. Petroleum refineries
- Q. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
- R. Phosphate rock processing plants
- S. Portland cement plants
- T. Primary aluminum ore reduction plants
- U. Primary copper smelters
- V. Primary lead smelters
- W. Primary zinc smelters
- X. Secondary metal production plants
- Y. Sintering plants
- Z. Sulfur recovery plants
- AA. Sulfuric acid plants
- AB. Taconite ore processing plants

[07/20/95; 20.2.74.501 NMAC - Rn, 20 NMAC 2.74 Table 1, 10/31/02; A, 1/22/06]

20.2.74.502 TABLE 2 - SIGNIFICANT EMISSION RATES:

POLLUTANT	EMISSION RATE (TONS/YR)
Carbon monoxide	100
Fluorides	3
Lead	0.6
Municipal waste combustor	
Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
Metals (measured as particulate matter)	15 (14 megagrams/year)
Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)

Nitrogen oxides	40
Ozone (Volatile Organic Compounds or nitrogen oxides)	40
Particulate Matter	
Particulate matter emissions	25
PM ₁₀ emissions	15
Particulate Matter _{2.5}	
Direct PM _{2.5} emissions	10
Sulfur dioxide emissions	40
Nitrogen oxide emissions (unless demonstrated not to be a PM _{2.5} precursor under Subsection AS of 20.2.74.7 NMAC)	40
Sulfur compounds	
Hydrogen sulfide (H ₂ S)	10
Reduced sulfur compounds (incl. H ₂ S)	10
Sulfur dioxide	40
Sulfuric acid mist	7
Total reduced sulfur (incl. H ₂ S)	10
Any other pollutant regulated under the act that is not listed in this table	Any emission rate
Each regulated pollutant	Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any class I federal area located within 10 km of the source.

[07/20/95; 20.2.74.502 NMAC - Rn, 20 NMAC 2.74 Table 2, 10/31/02; A, 1/22/06; A, 8/31/09; A, 6/3/11]

20.2.74.503 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS.

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter	AVERAGING TIME
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months
Nitrogen dioxide	14	Annual
Ozone	b	
PM ₁₀	10	24 hours
PM _{2.5}	4	24 hours
Sulfur compounds		
Hydrogen sulfide (H ₂ S)	0.20	1 hour
Reduced sulfur compounds (incl. H ₂ S)	10	1 hour
Sulfur dioxide	13	24 hours
Sulfuric acid mist	a	
Total reduced sulfur (incl. H ₂ S)	10	1 hour
a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.		
b - No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.		

[07/20/95; 20.2.74.503 NMAC - Rn, 20 NMAC 2.74 Table 3, 10/31/02; A, 1/22/06; A, 8/31/09; A, 6/3/11]

20.2.74.504 TABLE 4 - ALLOWABLE PSD INCREMENTS:

	Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)		
	Class I	Class II	Class III
Nitrogen Dioxide annual arithmetic mean	2.5	25	50
Particulate Matter			
PM ₁₀ , annual arithmetic mean	4	17	34
PM ₁₀ , 24-hour maximum	8 ^a	30 ^a	60 ^a
PM _{2.5} annual arithmetic mean	1	4	8
PM _{2.5} 24-hour maximum	2 ^a	9 ^a	18 ^a
Sulfur Dioxide			
annual arithmetic mean	2	20	40
24-hour maximum	5 ^a	91 ^a	182 ^a
3-hour maximum	25 ^a	512 ^a	700 ^a
a - Not to be exceeded more than once a year.			

[07/20/95; 20.2.74.504 NMAC - Rn, 20 NMAC 2.74 Table 4, 10/31/02; A, 6/3/11]

20.2.74.505 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I WAIVERS:

	Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)
Nitrogen Dioxide annual arithmetic mean	25
Particulate Matter	
PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hour maximum	30
PM _{2.5} , annual arithmetic mean	4
PM _{2.5} , 24-hour maximum	9
Sulfur Dioxide	
annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

[07/20/95; 20.2.74.505 NMAC - Rn, 20 NMAC 2.74 Table 5, 10/31/02; A, 6/3/11]

20.2.74.506 TABLE 6 - MAXIMUM ALLOWABLE INCREASE FOR SULFUR DIOXIDE WAIVER BY GOVERNOR:

Period of Exposure	Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) Terrain Areas	
	Low	High
24-hr. maximum	36	62
3-hr. maximum	130	221

[07/20/95; 20.2.74.506 NMAC - Rn, 20 NMAC 2.74 Table 6, 10/31/02]

HISTORY OF 20.2.74 NMAC:

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

EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), 02/14/84;

EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), 07/15/86;

EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), 08/01/88;
EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), 05/29/90.

History of Repealed Material: [RESERVED]

Other History:

EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), filed 05/29/90 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.74, Permits -- Prevention Of Significant Deterioration (PSD), filed 06/20/95.
20 NMAC 2.74, Permits -- Prevention Of Significant Deterioration (PSD), filed 06/20/95 was **renumbered, reformatted and replaced** by 20.2.74 NMAC, Permits -- Prevention Of Significant Deterioration (PSD), effective 10/31/02.





TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 70 OPERATING PERMITS

20.2.70.1 ISSUING AGENCY: Environmental Improvement Board.
[11/30/95; 20.2.70.1 NMAC - Rn, 20 NMAC 20.2.70.100, 06/14/02]

20.2.70.2 SCOPE: All persons who own or operate a major source or any other source required to obtain a permit under this Part.
[11/30/95; 20.2.70.2 NMAC - Rn, 20 NMAC 20.2.70.101, 06/14/02]

20.2.70.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B), and (C) and (D).
[11/30/95; 20.2.70.3 NMAC - Rn, 20 NMAC 20.2.70.102, 06/14/02]

20.2.70.4 DURATION: Permanent.
[11/30/95; 20.2.70.4 NMAC - Rn, 20 NMAC 20.2.70.103, 06/14/02]

20.2.70.5 EFFECTIVE DATE: 11/30/95, except where a later date is cited at the end of a section.
[11/30/95; 20.2.70.5 NMAC - Rn, 20 NMAC 20.2.70.1.104, 06/14/02; A, 9/6/06]
[The latest effective date of any section in this part is 01/01/2011.]

20.2.70.6 OBJECTIVE: The objective of this Part is to establish the requirements for obtaining an operating permit.
[11/30/95; 20.2.70.6 NMAC - Rn, 20 NMAC 20.2.70.105, 06/14/02]

20.2.70.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part the following definitions shall apply.

A. "Acid rain source" has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV of the federal act.

B. "Affected programs" means all states, local air pollution control programs, and Indian tribes and pueblos, that are within 50 miles of the source.

C. "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N₂), oxygen (O₂), and ethane.

D. "Air pollution control equipment" means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

E. "Applicable requirement" means all of the following, as they apply to a Part 70 source or to an emissions unit at a Part 70 source (including requirements that have been promulgated or approved by the board or US EPA through rulemaking at the time of permit issuance but have future-effective compliance dates).

(1) Any standard or other requirement provided for in the New Mexico state implementation plan approved by US EPA, or promulgated by US EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52.

(2) Any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent.

(3) Any standard or other requirement under Section 111 of the federal act, including Section 111(d).

(4) Any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act.

(5) Any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder.

(6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act.

(7) Any standard or other requirement governing solid waste incineration under Section 129 of the federal act.

(8) Any standard or other requirement for consumer and commercial products under Section 183(e) of the federal act.

(9) Any standard or other requirement for tank vessels under Section 183(f) of the federal act.

(10) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit.

(11) Any national ambient air quality standard.

(12) Any increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act.

(13) Any regulation adopted by the board pursuant to the New Mexico Air Quality Control Act, Section 74-2-5(B) NMSA 1978.

F. "**CFR**" means the Code of Federal Regulations.

G. "**Draft permit**" means a version of a permit which the department offers for public participation or affected program review.

H. "**Emission limitation**" means a requirement established by US EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

I. "**Emissions allowable under the permit**" means:

(1) any state or federally enforceable permit term or condition that establishes an emission limit (including a work practice standard) requested by the applicant and approved by the department or determined at issuance or renewal to be required by an applicable requirement; or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

J. "**Emissions unit**" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

K. "**Federally enforceable**" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

L. "**Final permit**" means the version of an operating permit issued by the department that has met all review requirements of 20.2.70.400 NMAC - 20.2.70.499 NMAC.

M. "**Fugitive emissions**" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

N. "**General permit**" means an operating permit that meets the requirements of 20.2.70.303 NMAC.

O. "**Greenhouse gas**" for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

P. "**Hazardous air pollutant**" means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

Q. "**Insignificant activities**" means those activities which have been listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

R. "**Major source**" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the standard industrial classification manual, 1987, and that is described in Paragraphs (1), (2) or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as the following.

(a) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the

federal act, 25 or more tons per year of any combination of such hazardous air pollutants (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator), or such lesser quantity as the administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) For radionuclides, "major source" shall have the meaning specified by the administrator by rule.

(2) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this paragraph, unless the source belongs to one of the following categories of stationary sources:

- (a) coal cleaning plants (with thermal dryers);
- (b) kraft pulp mills;
- (c) portland cement plants;
- (d) primary zinc smelters;
- (e) iron and steel mills;
- (f) primary aluminum ore reduction plants;
- (g) primary copper smelters;
- (h) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) hydrofluoric, sulfuric, or nitric acid plants;
- (j) petroleum refineries;
- (k) lime plants;
- (l) phosphate rock processing plants;
- (m) coke oven batteries;
- (n) sulfur recovery plants;
- (o) carbon black plants (furnace process);
- (p) primary lead smelters;
- (q) fuel conversion plant;
- (r) sintering plants;
- (s) secondary metal production plants;
- (t) chemical process plants;
- (u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) taconite ore processing plants;
- (x) glass fiber processing plants;
- (y) charcoal production plants;
- (z) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (aa) any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the federal act.

(3) A major stationary source as defined in Part D of Title I of the federal act, including:

(a) for ozone non-attainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or more per year in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the federal act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons or more per year of volatile organic compounds;

(c) for carbon monoxide non-attainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide; and

(d) for particulate matter (PM10) non-attainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM10.

S. **"Operating permit" or "permit"** (unless the context suggests otherwise) means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to this part.

T. **"Operator"** means the person or persons responsible for the overall operation of a facility.

U. **"Owner"** means the person or persons who own a facility or part of a facility.

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

W. **"Part 70 source"** means any source subject to the permitting requirements of this part, as provided in 20.2.70.200 NMAC - 20.2.70.299 NMAC.

X. **"Permit modification"** means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in 20.2.70.404 NMAC.

Y. **"Permittee"** means the owner, operator or responsible official at a permitted Part 70 source, as identified in any permit application or modification.

Z. **"Portable source"** means any plant that is mounted on any chassis or skids and which can be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock, that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit. Portable sources may include sand and gravel plants, rock crushers, asphalt plants and concrete batch plants which meet this criteria.

AA. **"Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

AB. **"Proposed permit"** means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with 20.2.70.402 NMAC.

AC. **"Regulated air pollutant"** means the following:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act;

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including Sections 112(g), (j), and (r), including the following;

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act, any pollutant for which a subject source would be a major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement; or

(6) any other pollutant subject to regulation as defined in Subsection AL of this section.

AD. **"Renewal"** means the process by which a permit is reissued at the end of its term.

AE. **"Responsible official"** means one of the following.

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or b) the delegation of authority to such representative is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of US EPA).

(4) For an acid rain source: the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned, and for any other purposes under 40 CFR, Part 70.

AF. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

AG. "Shutdown" means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose.

AH. "Solid waste incineration unit" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). The term "solid waste incineration unit" does not include:

(1) incinerators or other units required to have a permit under Section 3005 of the federal Solid Waste Disposal Act;

(2) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(3) qualifying small power production facilities, as defined in Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), or qualifying cogeneration facilities, as defined in Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

(4) air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations established by the administrator by rule.

AI. "Startup" means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

AJ. "Stationary source" or "source" means any building, structure, facility, or installation, or any combination thereof that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

AK. "Subsidiary" means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

AL. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases" (GHGs) shall not be subject to regulation, unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year CO₂e equivalent emissions;

(2) the term "tons per year CO₂e equivalent emissions" (CO₂e) shall represent the aggregate amount of GHGs emitted by the regulated activity, and shall be computed by multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each gas; for purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);

(3) if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3,

2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

AM. "Temporary source" means any plant that is situated in one location for a period of less than one year, after which it will be dismantled and removed from its current site or relocated to a new site. A temporary source may be semi-permanent, which means that it does not have to meet the requirements of a portable source. Temporary sources may include well head compressors which meet this criteria.

AN. "Title I modification" means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is subject to the preconstruction regulations promulgated under Parts C and D of the federal act.

[11/30/95; 20.2.70.7 NMAC - Rn, 20 NMAC 2.70.I.107, 06/14/02; A, 11/07/02; A, 09/06/06; A, 01/01/11; A, 02/06/13]

20.2.70.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS: This Part amends and supersedes Air Quality Control Regulation ("AQCR") 770, - Operating Permits, filed November 15, 1993, as amended ("AQCR 770"). The original effective date of AQCR 770 was December 19, 1994, which was the effective date of approval, by the Administrator, of the New Mexico operating permit program. (See 59 FR 59656, November 18, 1994).

A. All references to AQCR 770 in any other rule shall be construed as a reference to this Part.

B. The amendment and supersession of AQCR 770 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 770.

[11/30/95; 20.2.70.8 NMAC - Rn, 20 NMAC 2.70.106, 06/14/02]

20.2.70.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [1301 Siler Rd., Bldg. B, Santa Fe, NM 87507].

[11/30/95; 20.2.70.9 NMAC - Rn, 20 NMAC 2.70.108, 06/14/02; A, 01/01/11]

20.2.70.10 to 20.2.70.199 [RESERVED]

20.2.70.200 PART 70 SOURCES: Operating permits must be obtained from the Department for the following sources:

A. Any major source;

B. Any source, including an area source, subject to a standard or other requirement promulgated under section 111 -- Standards of Performance for New Stationary Sources, or section 112 -- Hazardous Air Pollutants, of the Federal Act, but not including any source which:

(1) is exempted under Subsection B of 20.2.70.202 NMAC; or

(2) would be required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Federal Act;

C. Any acid rain source; and

D. Any source in a source category so designated by the Administrator, in whole or in part, by regulation, after notice and comment.

[11/30/95; 20.2.70.200 NMAC - Rn, 20 NMAC 2.70.200, 06/14/02]

20.2.70.201 REQUIREMENT FOR A PERMIT:

A. A Part 70 source may operate after the time that it is required to submit a timely and complete application under this part only if:

(1) the source is in compliance with an operating permit issued by the department or EPA; or

(2) a timely permit (including permit renewal) application has been submitted consistent with 20.2.70.300 NMAC; the ability to operate under these circumstances shall cease if the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application.

B. Revocation or termination of a permit by the department terminates the permittee's right to operate.

C. The submittal of a complete operating permit application shall not protect any source from any applicable requirement, including any requirement that the source have a preconstruction permit under Title I of the federal act or state regulations.

D. Requirement for permit under 20.2.72 NMAC.

(1) Part 70 sources that have an operating permit and do not have a permit issued under 20.2.72 NMAC or 20.2.74 NMAC shall submit a complete application for a permit under 20.2.72 NMAC within 180 days of September 6, 2006. The department shall consider and may grant reasonable requests for extension of this deadline on a case-by-case basis.

(2) Part 70 sources that do not have an operating permit or a permit under 20.2.72 NMAC upon the effective date of this subsection shall submit an application for a permit under 20.2.72 NMAC within 60 days after submittal of an application for an operating permit.

(3) Paragraphs 1 and 2 of this subsection shall not apply to sources that have demonstrated compliance with both the national and state ambient air quality standards through dispersion modeling or other method approved by the department and that have requested incorporation of conditions in their operating permit to ensure compliance with these standards.

[11/30/95; 20.2.70.201 NMAC - Rn, 20 NMAC 2.70.II.201, 06/14/02; A, 9/6/06]

20.2.70.202 SOURCE CATEGORY EXEMPTIONS:

A. The following source categories are exempted from the obligation to obtain an operating permit:

(1) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA -- Standards of Performance for New Residential Wood Heaters;

(2) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M -- National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation;

(3) Except as required under sections 20.2.70.500 NMAC - 20.2.70.599 NMAC, any source that would be required to obtain a permit solely because of emissions of radionuclides; and

(4) Any source in a source category exempted by the Administrator, by regulation, after notice and comment.

B. Non-major sources, including those subject to sections 111 or 112 of the Federal Act, are exempt from the obligation to obtain a Part 70 (20.2.70 NMAC) permit until such time that the Administrator completes a rulemaking that requires such sources to obtain operating permits.

C. Any source exempted from the requirement to obtain an operating permit may opt to apply for a permit under this Part.

D. No permit for a solid waste incineration unit shall be issued by the Department if a New Mexico state agency is responsible, in whole or in part, for the design and construction or operation of the unit. In such cases, applications shall be made to the Administrator. Department review or approval of solid waste incineration units shall not constitute responsibility for the design, construction, or operation of the unit.

[11/30/95; 20.2.70.202 NMAC - Rn, 20 NMAC 2.70.202, 06/14/02]

20.2.70.203 EXISTING MAJOR SOURCES WHICH ARE NOT REQUIRED TO HAVE A PERMIT UNDER 20.2.72 NMAC (CONSTRUCTION PERMITS):

A. The owner or operator of any major source may reverse or avoid designation as a major source under this Part by obtaining a permit under 20.2.72 NMAC (Construction Permits) which includes federally enforceable conditions which restrict the potential to emit of the source to non-major emission rates. Such conditions may include emissions limitations, process restrictions and/or limitations, restrictions on annual hours of operation, or other conditions which reduce the facility's potential to emit.

B. **[REPEALED]**

[11/30/95; A, 11/19/97; 20.2.70.203 NMAC - Rn, 20 NMAC 2.70.203, 06/14/02]

20.2.70.204 BERNALILLO COUNTY: For the operation of sources within Bernalillo County, the applicant shall make such applications to the Air Pollution Control Division of the Albuquerque Environmental Health Department or its successor agency or authority.

[11/30/95; 20.2.70.204 NMAC - Rn, 20 NMAC 2.70.204, 06/14/02]

20.2.70.205 INDIAN TRIBAL JURISDICTION: The requirements of this Part do not apply to sources within Indian Tribal jurisdiction. For the operation of sources in that jurisdiction, the applicant should make such applications to the Tribal Authority or to the Administrator, as appropriate.
[11/30/95; 20.2.70.205 NMAC - Rn, 20 NMAC 2.70.205, 06/14/02]

20.2.70.206 to 20.2.70.299 [RESERVED]

20.2.70.300 PERMIT APPLICATIONS:

A. Duty to apply. For each Part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this part.

B. Timely application. A timely application for a source applying for a permit under this part is:

(1) for first time applications, one that is submitted within twelve (12) months after the source commences operation as a Part 70 source;

(2) for purposes of permit renewal, one that is submitted at least twelve (12) months prior to the date of permit expiration;

(3) for the acid rain portion of permit applications for initial phase II acid rain sources under Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides;

C. Completeness of application.

(1) To be deemed complete, an application must provide all information required pursuant to Subsection D of 20.2.70.300 NMAC, except that applications for permit modifications need supply such information only if it is related to the proposed change.

(2) If, while processing an application, regardless of whether it has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(3) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(4) The applicant's ability to operate without a permit, as set forth in Paragraph (2) of Subsection A of 20.2.70.201 NMAC, shall be in effect from the date a timely application is submitted until the final permit is issued or disapproved, provided that the applicant adequately submits any requested additional information by the deadline specified by the department.

D. Content of application. Any person seeking a permit under this part shall do so by filing a written application with the department. The applicant shall submit three (3) copies of the permit application, or more, as requested by the department. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under 20.2.71 NMAC (operating permit emission fees). Fugitive emissions shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. All applications shall meet the following requirements.

(1) Be made on forms furnished by the department, which for the acid rain portions of permit applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations promulgated under Title IV of the federal act.

(2) State the company's name and address (and, if different, plant name and address), together with the names and addresses of the owner(s), responsible official and the operator of the source, any subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and corporate or partnership relationship to other permittees subject to this part, and the telephone numbers and names of the owners' agent(s) and the site contact(s) familiar with plant operations.

(3) State the date of the application.

(4) Include a description of the source's processes and products (by standard industrial classification code) including any associated with alternative scenarios identified by the applicant, and a map, such as the 7.5 minute topographic quadrangle map published by the United States geological survey or the most detailed map available showing the exact location of the source. The location shall be identified by latitude and longitude or by UTM coordinates.

(5) For all emissions of all air pollutants for which the source is major and all emissions of regulated air pollutants, provide all emissions information, calculations and computations for the source and for each emissions unit, except for insignificant activities (as defined in 20.2.70.7 NMAC). This shall include:

(a) a process flow sheet of all components of the facility which would be involved in routine operations and emissions;

(b) identification and description of all emissions points in sufficient detail to establish the basis for fees and applicability of requirements of the state and federal acts;

(c) emissions rates in tons per year, pounds per hour and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(d) specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent it is needed to determine or regulate emissions;

(e) identification and full description, including all calculations and the basis for all control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

(f) the maximum and standard operating schedules of the source, as well as any work practice standards or limitations on source operation which affect emissions of regulated pollutants;

(g) if requested by the department, an operational plan defining the measures to be taken to mitigate source emissions during startups, shutdowns and emergencies;

(h) other relevant information as the department may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to Section 123 of the federal act); and

(i) for each alternative operating scenario identified by the applicant, all of the information required in Subparagraphs (a) through (h) above, as well as additional information determined to be necessary by the department to define such alternative operating scenarios.

(6) Provide a list of insignificant activities (as defined in 20.2.70.7 NMAC) at the source, their emissions, to the extent required by the department, and any information necessary to determine applicable requirements.

(7) Provide a citation and description of all applicable air pollution control requirements, including:

(a) sufficient information related to the emissions of regulated air pollutants to verify the requirements that are applicable to the source; and

(b) a description of or reference to any applicable test method for determining compliance with each applicable requirement.

(8) Provide an explanation of any proposed exemptions from otherwise applicable requirements.

(9) Provide other specific information that may be necessary to implement and enforce other requirements of the state or federal acts or to determine the applicability of such requirements, including information necessary to collect any permit fees owed under 20.2.71 NMAC (operating permit emission fees).

(10) Provide certification of compliance, including all of the following.

(a) A certification, by a responsible official consistent with Subsection E of 20.2.70.300 NMAC, of the source's compliance status for each applicable requirement. For national ambient air quality standards, certifications shall be based on the following.

(i) For first time applications, this certification shall be based on modeling submitted with the application for a permit under 20.2.72 NMAC.

(ii) For permit renewal applications, this certification shall be based on compliance with the relevant terms and conditions of the current operating permit.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(c) A statement that the source will continue to be in compliance with applicable requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by the applicable requirement, meet additional applicable requirements that become effective during the permit term.

(d) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department.

(e) A statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the federal act.

(11) For sources that are not in compliance with all applicable requirements at the time of permit application, provide a compliance plan that contains all of the following.

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A narrative description of how the source will achieve compliance with such requirements for which it is not in compliance.

(c) A schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements. The schedule of compliance shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of compliance. Any such schedule of compliance shall be supplemental to, and shall not prohibit the department from taking any enforcement action for noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports no less frequently than every six (6) months.

(e) For the portion of each acid rain source subject to the acid rain provisions of Title IV of the federal act, the compliance plan content requirements specified in this paragraph, except as specifically superseded by regulations promulgated under Title IV of the federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

E. Certification. Any document, including any application form, report, or compliance certification, submitted pursuant to this part shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[11/30/95; A, 11/14/98; 20.2.70.300 NMAC - Rn, 20 NMAC 2.70.III.300, 06/14/02; A, 9/6/06; A, 01/01/11]

20.2.70.301 CONFIDENTIAL INFORMATION PROTECTION:

A. All confidentiality claims made regarding material submitted to the Department under this Part shall be reviewed under the provisions of the New Mexico Air Quality Control Act section 74-2-11 NMSA 1978 and the New Mexico Inspection of Public Records Act, sections 14-2-1 et seq. NMSA 1978.

B. In the case where an applicant or permittee has submitted information to the Department under a claim of confidentiality, the Department may also require the applicant or permittee to submit a copy of such information directly to the Administrator.

C. An operating permit is a public record, and not entitled to protection under section 114(c) of the Federal Act.

[11/30/95; 20.2.70.301 NMAC - Rn, 20 NMAC 2.70.301, 06/14/02]

20.2.70.302 PERMIT CONTENT:

A. Permit conditions.

(1) The department shall specify conditions upon a permit, including emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

(a) for major sources, include all applicable requirements for all relevant emissions units in the major source;

(b) for any non-major source subject to 20.2.70.200 NMAC - 20.2.70.299 NMAC, include all applicable requirements which apply to emissions units that cause the source to be subject to this part;

(c) specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(d) include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;

(e) include a provision to ensure that the permittee pays fees to the department consistent with the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees); and

(f) for purposes of the permit shield, identify any requirement specifically identified in the permit application or significant permit modification that the department has determined is not applicable to the source, and state the basis for any such determination.

(2) Each permit issued shall, additionally, include provisions stating the following.

(a) The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance is grounds for enforcement action. In addition, noncompliance with federally enforceable permit conditions constitutes a violation of the federal act.

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(c) The permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with 20.2.70.405 NMAC.

(d) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition.

(e) The permit does not convey any property rights of any sort, or any exclusive privilege.

(f) Within the period specified by the department, the permittee shall furnish any information that the department may request in writing to determine whether cause exists for reopening and revising, revoking and reissuing, or termination of the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required by the permit to be maintained.

(3) The terms and conditions for all alternative operating scenarios identified in the application and approved by the department:

(a) shall require that the permittee maintain a log at the permitted facility which documents, contemporaneously with any change from one operating scenario to another, the scenario under which the facility is operating; and

(b) shall, for each such alternative scenario, meet all applicable requirements and the requirements of this part.

(4) The department may impose conditions regulating emissions during startup and shutdown.

(5) All permit terms and conditions which are required under the federal act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally enforceable under the federal act any terms or conditions included in the permit that are not required under the federal act or under any of its applicable requirements.

(6) The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law or regulation.

(7) The department may include part or all of the contents of the application as terms and conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon emissions of regulated pollutants for which there are no applicable requirements, unless the source is major for that pollutant.

(8) Fugitive emissions from a source shall be included in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(9) The acid rain portion of operating permits for acid rain sources shall additionally:

(a) state that, where an applicable requirement of the federal act is more stringent than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator; and

(b) contain a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no permit modification under this part shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source; the permittee may not use allowances as a defense to noncompliance with any other applicable requirement; any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the federal act.

B. Permit duration. The department shall issue operating permits for a fixed term of five (5) years.

C. Monitoring.

(1) Each permit shall contain all emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.

(2) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Subsection E of 20.2.70.302 NMAC. Such

monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(3) The permit shall also contain specific requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

D. Recordkeeping.

(1) The permit shall require recordkeeping sufficient to assure and verify compliance with the terms and conditions of the permit, including recordkeeping of:

- (a) the date, place as defined in the permit, and time of sampling or measurements;
- (b) the date(s) analyses were performed;
- (c) the company or entity that performed the analyses;
- (d) the analytical techniques or methods used;
- (e) the results of such analyses; and
- (f) the operating conditions existing at the time of sampling or measurement.

(2) Records of all monitoring data and support information shall be retained for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

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

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

(2) Prompt reporting of all deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The report shall be contained in the report submitted in accordance with the timeframe given in Paragraph (1) of this section.

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

- (a) the identification of each term or condition of the permit that is the basis of the certification;
- (b) the compliance status of the source;
- (c) whether compliance was continuous or intermittent;
- (d) the method(s) used for determining the compliance status of the source, currently and

during the reporting period identified in the permit; and

(e) such other facts as the department may require to determine the compliance status of the source.

(4) Such additional provisions as may be specified by the administrator to determine the compliance status of the source.

F. Portable and temporary sources. The department may issue permits for portable and temporary sources which allow such sources to relocate without undergoing a permit modification. Such permits shall not apply to acid rain sources and shall include conditions to assure that:

(1) the source is installed at all locations in a manner conforming with the permit;

(2) the source shall comply with all applicable requirements and all other provisions of this part at all authorized locations;

(3) the owner or operator shall notify the department in writing at least fifteen (15) calendar days in advance of each change in location;

(4) notification shall include a legal description of where the source is to be relocated and how long it will be located there; and

(5) emissions from the source shall not, at any location, result in or contribute to an exceedance of a national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal act; the department may require dispersion modeling to assure compliance at any location.

G. Compliance. To assure and verify compliance with the terms and conditions of the permit and with this part, permits shall also include all the following.

(1) Require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the department to perform the following:

- (a) enter upon the permittee's premises where a source is located or emission related activity is conducted, or where records must be kept under the conditions of the permit;
- (b) have access to and copy any records that must be kept under the conditions of the permit;
- (c) inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
- (d) sample or monitor any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements or as otherwise authorized by the federal act.

(2) Require that sources required under Paragraph (11) of Subsection D of 20.2.70.300 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more frequently if specified in the applicable requirement or by the department. Such progress reports shall be consistent with the schedule of compliance and requirements of Paragraph (11) of Subsection D of 20.2.70.300 NMAC and shall contain:

- (a) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and
- (b) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(3) Include such other provisions as the department may require.

H. Operational flexibility.

(1) Section 502(b)(10) changes.

(a) The permittee may make Section 502(b)(10) changes, as defined in 20.2.70.7 NMAC, without applying for a permit modification, if those changes are not title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).

(b) For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(c) The permittee and department shall attach each such notice to their copy of the relevant permit.

(d) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

(2) Emissions trading within a facility.

(a) The department shall, if an applicant requests it, issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit in addition to any applicable requirements. Such terms and conditions shall include all terms and conditions required under 20.2.70.302 NMAC to determine compliance. If applicable requirements apply to the requested emissions trading, permit conditions shall be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval.

(b) The applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable requirements.

(c) For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(d) The permittee and department shall attach each such notice to their copy of the relevant permit.

I. Off-permit changes.

(1) Permittees are allowed to make, without a permit modification, changes that are not addressed or prohibited by the operating permit, if:

- (a) each such change meets all applicable requirements and shall not violate any existing permit term or condition;
 - (b) such changes are not subject to any requirements under Title IV of the federal act and are not Title I modifications;
 - (c) such changes are not subject to permit modification procedures under 20.2.70.404 NMAC;
- and
- (d) the permittee provides contemporaneous written notice to the department and US EPA of each such change, except for changes that qualify as insignificant activities. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted and any applicable requirement that would apply as a result of the change.

(2) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

J. Permit shield.

(1) Except as provided in this part, the department shall expressly include in a Part 70 (20.2.70 NMAC) permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

- (a) such applicable requirements are included and are specifically identified in the permit; or
- (b) the department, in acting on the permit application or significant permit modification, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A Part 70 (20.2.70 NMAC) permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide such a shield for that provision.

(3) Nothing in this section or in any Part 70 (20.2.70 NMAC) permit shall alter or affect the following:

- (a) the provisions of Section 303 of the federal act -- Emergency Powers, including the authority of the administrator under that section, or the provisions of the New Mexico Air Quality Control Act, Section 74-2-10 NMSA 1978;
- (b) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
- (c) the applicable requirements of the acid rain program, consistent with Section 408(a) of the federal act; or
- (d) the ability of US EPA to obtain information from a source pursuant to Section 114 of the federal act, or the department to obtain information subject to the New Mexico Air Quality Control Act, Section 74-2-13 NMSA 1978.

(4) The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to Subsection D of 20.2.70.400 NMAC.

(5) The permit shield shall extend to terms and conditions that allow emission increases and decreases as part of emissions trading within a facility pursuant to Paragraph (2) of Subsection H of 20.2.70.302 NMAC, and to all terms and conditions under each operating scenario included pursuant to Paragraph (3) of Subsection A of 20.2.70.302 NMAC.

(6) The permit shield shall not extend to administrative amendments under Subsection A of 20.2.70.404 NMAC, to minor permit modifications under Subsection B of 20.2.70.404 NMAC, to Section 502(b)(10) changes under Paragraph (1) of Subsection H of 20.2.70.302 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part under 20.2.70.405 NMAC.

[11/30/95; A, 11/14/98; 20.2.70.302 NMAC - Rn, 20 NMAC 2.70.III.302, 06/14/02; A, 9/6/06; A, 08/01/08]

20.2.70.303 GENERAL PERMITS:

A. Issuance of General Permits:

(1) The Department may, after notice and opportunity for public participation and US EPA and affected program review, issue a general permit covering numerous similar sources. Such sources shall be generally homogenous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.

(2) Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit.

B. Authorization to Operate under a General Permit:

- (1) The owner or operator of a Part 70 source which qualifies for a general permit must:
 - (a) Apply to the Department for coverage under the terms of the general permit; or
 - (b) Apply for an operating permit consistent with 20.2.70.300 NMAC.
- (2) The Department may, in the general permit, provide for applications which deviate from the requirements of subsection D of 20.2.70.300 NMAC, provided that such applications meet the requirements of the Federal Act and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The Department shall review the application for authorization to operate under a general permit for completeness within thirty (30) days after its receipt of the application.
- (3) The Department shall authorize qualifying sources which apply for coverage under the general permit to operate under the terms and conditions of the general permit. The Department shall take final action on a general permit authorization request within ninety (90) days of deeming the application complete.
- (4) The Department may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under 20.2.70.401 NMAC. Such an authorization shall not be a permitting action for purposes of administrative review under New Mexico Air Quality Control Act section 74-2-7.H NMSA 1978. Permitting action for the purposes of section 74-2-7 NMSA 1978 shall be the issuance of the general permit.
- (5) Authorization to operate under a general permit shall not be granted for acid rain sources unless otherwise provided in regulations promulgated under title IV of the Federal Act.
- (6) The permittee shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit.

[11/30/95; 20.2.70.303 NMAC - Rn, 20 NMAC 2.70.303, 06/14/02]

20.2.70.304 EMERGENCY PROVISION:

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

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

- (1) an emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (2) the permitted facility was at the time being properly operated;
- (3) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and
- (4) the permittee submitted notice of the emergency to the department within 2 working days of the time when emission limitations were exceeded due to the emergency; this notice fulfills the requirement of Paragraph (2) of Subsection E of 20.2.70.302 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

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

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

[11/30/95; 20.2.70.304 NMAC - Rn, 20 NMAC 2.70.III.304, 06/14/02; A, 9/6/06; A, 08/01/08]

20.2.70.305 to 20.2.70.399 [RESERVED]

20.2.70.400 ACTION ON PERMIT APPLICATIONS:

A. A permit (including permit renewal) or permit modification shall only be issued if all of the following conditions have been met:

- (1) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 20.2.70.303 NMAC;
- (2) Except for administrative and minor permit modifications, the Department has complied with the requirements for public participation procedures under 20.2.70.401 NMAC;

(3) Except for administrative amendments, the Department has complied with the requirements for notifying and responding to affected programs under 20.2.70.402 NMAC;

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this Part; and

(5) The Administrator has received a copy of the proposed permit and any notices required under 20.2.70.402 NMAC, and has not objected to issuance of the permit within the time period specified within that section.

B. The Department shall, within sixty (60) days after its receipt of an application for a permit or significant permit modification, review such application for completeness. Unless the Department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within sixty (60) days of receipt of an application, the application shall be deemed complete. When additional information is requested by the Department prior to ruling an application complete, receipt of such information shall be processed as a new application for purposes of this section. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

C. The Department shall take final action on each permit application (including a request for permit renewal) within eighteen (18) months after an application is ruled complete by the Department, except that:

(1) For sources in operation on or before December 19, 1994 and which submit to the Department timely and complete applications in accordance with 20.2.70.300 NMAC, the Department shall take final action on one third of such applications annually over a period not to exceed three (3) years after such effective date;

(2) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Federal Act shall be acted on within nine (9) months of deeming the application complete; and

(3) The acid rain portion of permits for acid rain sources shall be acted upon in accordance with the deadlines in title IV of the Federal Act and the regulations promulgated thereunder.

D. If a timely and complete application for a permit renewal is submitted, consistent with 20.2.70.300 NMAC, but the Department has failed to issue or disapprove the renewal permit before the end of the term of the previous permit, then the permit shall not expire and all the terms and conditions of the permit shall remain in effect until the renewal permit has been issued or disapproved.

E. Permits being renewed are subject to the same procedural requirements, including those for public participation, affected program and US EPA review, that apply to initial permit issuance.

F. The Department shall state within the draft permit the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions).

G. The Department shall grant or disapprove the permit based on information contained in the Department's administrative record. The administrative record shall consist of the application, any additional information submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the Department, and, if a public hearing is held, the evidence submitted at the hearing.

H. If the Department grants or disapproves a permit or permit modification, the Department shall notify the applicant by certified mail of the action taken and the reasons therefor. If the Department grants a permit or modification, the Department shall mail the permit or modification, including all terms and conditions, to the applicant by certified mail.

I. Voluntary Discontinuation. Upon request by the permittee, the Department shall permanently discontinue a Part 70 (20.2.70 NMAC) permit. Permit discontinuance terminates the permittee's right to operate the source under the permit. The Department shall confirm the permit discontinuance by certified letter to the permittee.

J. No permit shall be issued by failure of the Department to act on an application or renewal.
[11/30/95; 20.2.70.400 NMAC - Rn, 20 NMAC 2.70.400, 06/14/02]

20.2.70.401 PUBLIC PARTICIPATION:

A. Proceedings for all permit issuances (including renewals), significant permit modifications, reopenings, revocations and terminations, and all modifications to the Department's list of insignificant activities, shall include public notice and provide an opportunity for public comment. The Department shall provide thirty (30) days for public and affected program comment. The Department may hold a public hearing on the draft permit, a proposal to suspend, reopen, revoke or terminate a permit, or for any reason it deems appropriate, and shall hold such a hearing in the event of significant public interest. The Department shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

B. Public notice and notice of public hearing shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice, to persons on a mailing list developed by the Department, including those who request in writing to be on the list, and by other means if necessary to assure adequate notice to the affected public.

C. The public notice shall identify:

- (1) The affected facility;
- (2) The names and addresses of the applicant or permittee and its owners;
- (3) The name and address of the Department;
- (4) The activity or activities involved in the permit action;
- (5) The emissions change(s) involved in any permit modification;
- (6) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, and relevant supporting materials;
- (7) A brief description of the comment procedures required by the Department; and
- (8) As appropriate, a statement of procedures to request a hearing, or the time and place of any scheduled hearing.

D. Notice of public hearing shall identify:

- (1) The affected facility;
- (2) The names and addresses of the applicant or permittee and its owners;
- (3) The name and address of the Department;
- (4) The activity or activities involved in the permit action;
- (5) The name, address and telephone number of a person from whom interested persons may obtain additional information;
- (6) A brief description of hearing procedures; and
- (7) The time and place of the scheduled hearing.

E. Public hearings shall be held in the geographic area likely to be impacted by the source. The time, date, and place of the hearing shall be determined by the Department. The Department shall appoint a hearing officer. A transcript of the hearing shall be made at the request of either the Department or the applicant and at the expense of the person requesting the transcript. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

F. The Department shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his or her obligation under section 505(b)(2) of the Federal Act to determine whether a citizen petition may be granted. Such records shall be available to the public upon request.

G. The Department shall provide such notice and opportunity for participation by affected programs as is provided for by 20.2.70.402 NMAC.

[11/30/95; 20.2.70.401 NMAC - Rn, 20 NMAC 2.70.401, 06/14/02]

20.2.70.402 REVIEW BY THE ADMINISTRATOR AND AFFECTED PROGRAMS:

A. Notification: The Department shall not issue an operating permit (including permit renewal or reissuance), minor permit modification or significant permit modification, until affected programs and the Administrator have had an opportunity to review the proposed permit as required under this section. Permits for source categories waived by the Administrator from this requirement and any permit terms or conditions which are not required under the Federal Act or under any of its requirements are not subject to Administrator review or approval.

(1) Within five (5) days of notification by the Department that the application has been determined complete, the applicant shall provide a copy of the complete permit application (including the compliance plan and all additional materials submitted to the Department) directly to the Administrator. The permit or permit modification shall not be issued without certification to the Department of such notification. The Department shall provide to the Administrator a copy of each draft permit, each proposed permit, each final operating permit, and any other relevant information requested by the Administrator.

(2) The Department shall provide notice of each draft permit to any affected program on or before the time that the Department provides this notice to the public under 20.2.70.401 NMAC, except to the extent that minor permit modification procedures require the timing of the notice to be different.

(3) The Department shall keep for five (5) years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the state program complies with the requirements of the Federal Act or related applicable requirements.

B. Responses to Objections:

(1) No permit for which an application must be transmitted to the Administrator under this Part shall be issued by the Department if the Administrator, after determining that issuance of the proposed permit would not be in compliance with applicable requirements, objects to such issuance in writing within forty-five (45) days of receipt of the proposed permit and all necessary supporting information.

(2) If the Administrator does not object in writing under paragraph (1) of subsection B of 20.2.70.402 NMAC, any person may, within sixty (60) days after the expiration of the Administrator's 45-day review period, petition the Administrator to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 20.2.70.401 NMAC, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Department shall not issue the permit until the Administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the Administrator's objection.

(3) The Department, as part of the submittal of the proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under subsection B of 20.2.70.404 NMAC), shall notify the Administrator and any affected program in writing of any refusal by the Department to accept all recommendations for the proposed permit that the affected program submitted during the public or affected program review period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on federally enforceable applicable requirements.

[11/30/95; 20.2.70.402 NMAC - Rn, 20 NMAC 2.70.402, 06/14/02]

20.2.70.403 PETITIONS FOR REVIEW OF FINAL ACTION:

A. Hearing before the board:

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

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

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

B. Judicial review:

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

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

[11/30/95; 20.2.70.403 NMAC Rn, 20 NMAC 2.70.403, 06/14/02; A, 08/01/08]

20.2.70.404 PERMIT MODIFICATIONS:

A. Administrative Permit Amendments:

- (1) An administrative permit amendment is one that:
- (a) Corrects typographical errors;
 - (b) Provides for a minor administrative change at the source, such as a change in the address or phone number of any person identified in the permit;
 - (c) Incorporates a change in the permit solely involving the retiring of an emissions unit;
 - (d) Requires more frequent monitoring or reporting by the permittee; or

(e) Any other type of change which has been determined by the Department and the Administrator to be similar to those in this paragraph.

(2) Changes in ownership or operational control of a source may be made as administrative amendments provided that:

(a) A written agreement, containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee, has been submitted to the Department, and either the Department has determined that no other change in the permit is necessary, or changes deemed necessary by the Department have been made;

(b) The new owners have submitted the application information required in paragraph (2) of subsection D of 20.2.70.300 NMAC;

(c) No grounds exist for permit termination, as set out in subparagraphs (b) and (c) of paragraph (3) of subsection A of 20.2.70.405 NMAC; and

(d) The permittee has published a public notice of the change in ownership of the source in a newspaper of general circulation in the area where the source is located.

(3) The Department may incorporate administrative permit amendments without providing notice to the public or affected programs, provided that it designates any such permit modifications as administrative permit amendments and submits a copy of the revised permit to the Administrator.

(4) The Department shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on such request. The permittee may implement the changes outlined in subparagraphs (a) through (d) of paragraph (1) of subsection A of 20.2.70.404 NMAC immediately upon submittal of the request for the administrative amendment. The permittee may implement the changes outlined in subparagraph (e) of paragraph (1) of subsection A of 20.2.70.404 NMAC or paragraph (2) of subsection A of 20.2.70.404 NMAC upon approval of the administrative amendment by the Department.

B. Minor Permit Modifications:

(1) Minor permit modification procedures may be used only for those permit modifications that:

(a) Do not violate any applicable requirement;

(b) Do not involve relaxation of existing monitoring, reporting, or recordkeeping requirements in the permit;

(c) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(d) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions cap assumed to avoid classification as a title I modification and any alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Act;

(e) Are not title I modifications; and

(f) Are not required by the Department to be processed as a significant modification pursuant to subsection C of 20.2.70.404 NMAC.

(2) A permittee shall not submit multiple minor permit modification applications that may conceal a larger modification that would not be eligible for minor permit modification procedures. The Department may, at its discretion, require that multiple related minor permit modification applications be submitted as a significant permit modification.

(3) An application requesting the use of minor permit modification procedures shall meet the requirements of subsections C and D of 20.2.70.300 NMAC and shall include:

(a) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(b) The applicant's suggested draft permit;

(c) Certification by a responsible official, consistent with subsection E of 20.2.70.300 NMAC, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(d) If the requested permit modification would affect existing compliance plans or schedules, related progress reports, or certification of compliance requirements, an outline of such effects.

(4) The Department shall, within thirty (30) days after its receipt of an application for a minor permit modification, review such application for completeness. Unless the Department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within thirty (30)

days of receipt of an application, the application shall be deemed complete. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

(5) Within five (5) working days of notification by the Department that the minor permit modification application has been determined complete, the applicant shall meet its obligation under subsection A of 20.2.70.402 NMAC to notify the Administrator of the requested permit modification. The Department promptly shall send any notice required under paragraph (2) of subsection A of 20.2.70.402 NMAC and subsection B of 20.2.70.402 NMAC to the Administrator and affected programs.

(6) The permittee may make the change proposed in its minor permit modification application immediately after such application is deemed complete. After the permittee makes the change allowed by the preceding sentence, and until the Department takes any of the actions specified in paragraph (7) of subsection B of 20.2.70.404 NMAC below, the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(7) The Department may not issue a final minor permit modification until after the Administrator's 45-day review period of the proposed permit modification or until US EPA has notified the Department that the Administrator will not object to issuance of the permit modification, although the Department may approve the permit modification prior to that time. Within ninety (90) days of ruling the application complete under minor permit modification procedures or within fifteen (15) days after the end of the Administrator's 45-day review period, whichever is later, the Department shall:

- (a) Issue the permit modification as it was proposed;
- (b) Disapprove the permit modification application;
- (c) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- (d) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by subsection A of 20.2.70.402 NMAC.

C. Significant Permit Modifications:

(1) A significant permit modification is:

- (a) Any revision to an operating permit that does not meet the criteria under the provisions for administrative permit amendments under subsection A of 20.2.70.404 NMAC or for minor permit modifications under subsection B of 20.2.70.404 NMAC above;
- (b) Any modification that would result in any relaxation in existing monitoring, reporting or recordkeeping permit terms or conditions;
- (c) Any modification for which action on the application would, in the judgment of the Department, require decisions to be made on significant or complex issues; and
- (d) Changes in ownership which do not meet the criteria of paragraph (2) of subsection A of 20.2.70.404 NMAC.

(2) For significant modifications which are not required to undergo preconstruction permit review and approval, changes to the source which qualify as significant permit modifications shall not be made until the Department has issued the operating permit modification.

(3) For significant modifications which have undergone preconstruction permit review and approval, the permittee shall:

- (a) Before commencing operation, notify the Department in writing of any applicable requirements and operating permit terms and conditions contravened by the modification, emissions units affected by the change, and allowable emissions increases resulting from the modification; and
- (b) Within twelve (12) months after commencing operation, file a complete operating permit modification application.

(4) Where an existing operating permit would specifically prohibit such change, the permittee must obtain an operating permit modification before commencing operation or implementing the change.

(5) Significant permit modifications shall meet all requirements of this Part for permit issuance, including those for applications, public participation, review by affected programs and review by the Administrator.

(6) The Department shall complete review on the majority of significant permit modification applications within nine (9) months after the Department rules the applications complete.

D. Modifications to Acid Rain Sources: Administrative permit amendments and permit modifications for purposes of the acid rain portion of the permit shall be governed by regulations promulgated by the Administrator under title IV of the Federal Act.
[11/30/95; 20.2.70.404 NMAC - Rn, 20 NMAC 2.70.404, 06/14/02]

20.2.70.405 PERMIT REOPENING, REVOCATION OR TERMINATION:

A. Action by the Department:

(1) Each permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised for any of the following, and may be revoked and reissued for subparagraphs (c) or (d) of the following:

(a) Additional applicable requirements under the Federal Act become applicable to a major source with a remaining permit term of three (3) or more years. Such a reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms or conditions have been extended past the expiration date of the permit pursuant to subsection D of 20.2.70.400 NMAC;

(b) Additional requirements (including excess emissions requirements) become applicable to a source under the acid rain program promulgated under title IV of the Federal Act. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

(c) The Department or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or

(d) The Department or the Administrator determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

(2) Proceedings to reopen and revise, or revoke and reissue, a permit shall affect only those parts of the permit for which cause to reopen or revoke exists. Units for which permit conditions have been revoked shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.

(3) A permit, or an authorization to operate under a general permit, may be terminated when:

(a) The permittee fails to meet the requirements of an approved compliance plan;

(b) The permittee has been in significant or repetitious non-compliance with the operating permit terms or conditions;

(c) The applicant or permittee has exhibited a history of willful disregard for environmental laws of any state or Tribal authority, or of the United States;

(d) The applicant or permittee has knowingly misrepresented a material fact in any application, record, report, plan, or other document filed or required to be maintained under the permit;

(e) The permittee falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the permit;

(f) The permittee fails to pay fees required under the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees); or

(g) The Administrator has found that cause exists to terminate the permit.

(4) The Department shall, by certified mail, provide a notice of intent to the permittee at least thirty (30) days in advance of the date on which a permit is to be reopened or revoked, or terminated, except that the Department may provide a shorter time period in the case of an emergency. The notice shall state that the permittee may, within 30 (thirty) days of receipt, submit comments or request a hearing on the proposed permit action.

B. Action by the Administrator: Within ninety (90) days, or longer if the Administrator extends this period, after receipt of written notification that the Administrator has found that cause exists to terminate, modify or revoke and reissue a permit, the Department shall forward to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. Within ninety (90) days from receipt of an Administrator objection to a proposed determination, the Department shall address and act upon the Administrator's objection.

C. Compliance Orders: Notwithstanding any action which may be taken by the Department or the Administrator under subsections A and B of 20.2.70.405 NMAC, a compliance order issued pursuant to New Mexico Air Quality Control Act section 74-2-12 NMSA 1978 may include a suspension or revocation of any permit or portion thereof.

[11/30/95; 20.2.70.405 NMAC - Rn, 20 NMAC 2.70.405, 06/14/02]

20.2.70.406 CITIZEN SUITS: Pursuant to section 304 of the Federal Act, 42 USC 7604, any person may commence certain civil actions under the Federal Act.
[11/30/95; 20.2.70.406 NMAC - Rn, 20 NMAC 2.70.406, 06/14/02]

20.2.70.407 VARIANCES: Pursuant to New Mexico Air Quality Control Act section 74-2-8 NMSA 1978, applicants and permittees may seek a variance from the non-federally enforceable provisions of this Part.
[11/30/95; 20.2.70.407 NMAC - Rn, 20 NMAC 2.70.407, 06/14/02]

20.2.70.408 ENFORCEMENT: Notwithstanding any other provision in the New Mexico State Implementation Plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of the terms or conditions of a permit issued pursuant to this Part.

A. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

- (1) A monitoring or information gathering method approved for the source pursuant to this Part and incorporated in an operating permit; or
- (2) Compliance methods specified in the New Mexico State Implementation Plan.

B. The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

- (1) Any federally enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61 and 75; and
- (2) Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method under subsection A of 20.2.70.408 NMAC or paragraph (1) of subsection B of 20.2.70.408 NMAC.

[11/30/95; 20.2.70.408 NMAC - Rn, 20 NMAC 2.70.408, 06/14/02]

20.2.70.409 to 20.2.70.499 [RESERVED]

20.2.70.500 to 20.2.70.599 [RESERVED]

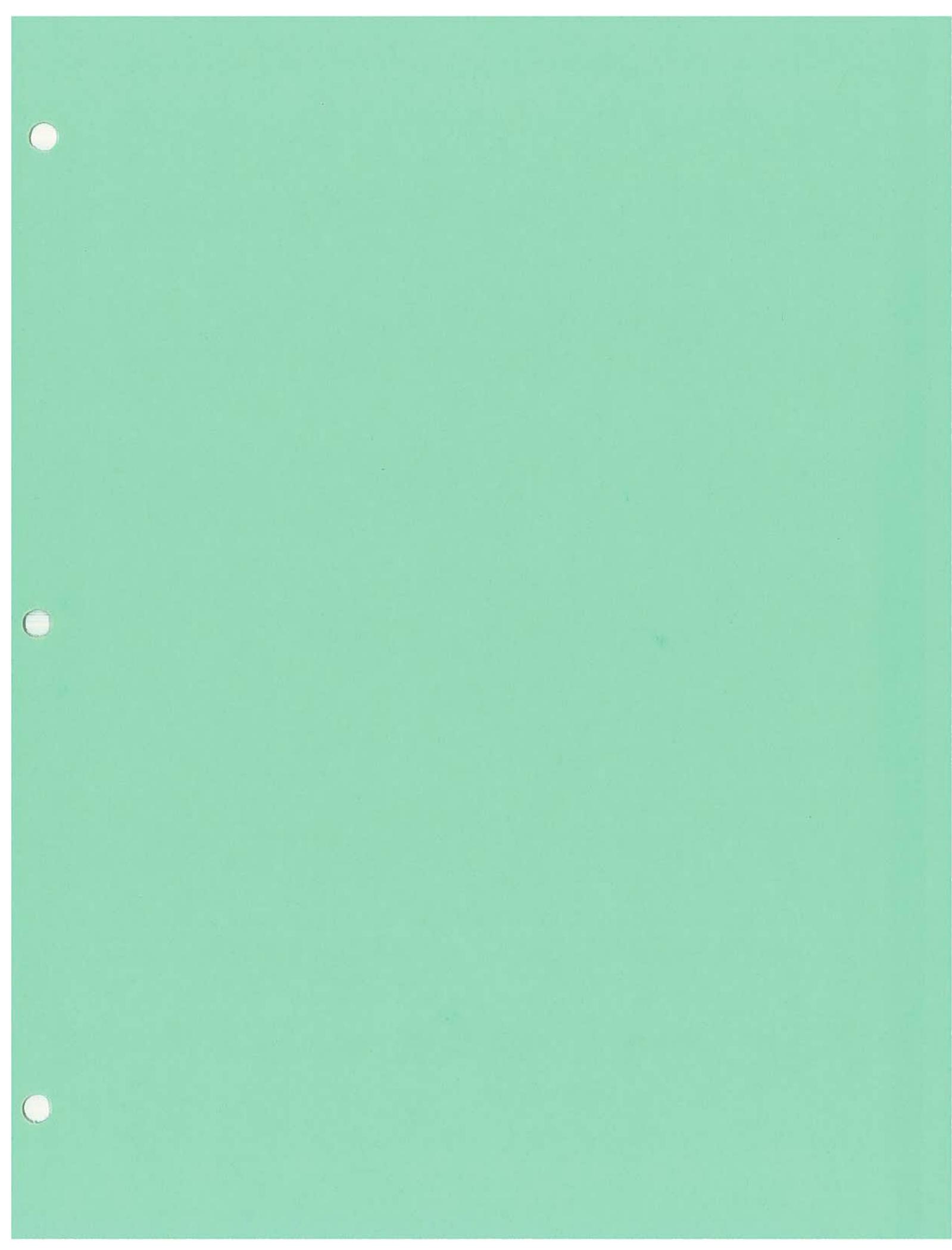
HISTORY OF 20.2.70 NMAC:

Pre NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.
EIB/AQCR 770, Air Quality Control Regulation 770 - Operating Permits, filed 11/15/93.

History of Repealed Material: [RESERVED]

Other History:

EIB/AQCR 770, Air Quality Control Regulation 770 - Operating Permits, filed 11/15/93 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.70, Operating Permits, filed 10/30/95; 20 NMAC 2.70, Operating Permits, filed 10/30/95 was **renumbered, reformatted and replaced** by 20.2.70 NMAC, Operating Permits, effective 06/14/02.





**Silver City Daily Press
and Independent**
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Silver City, New Mexico 88062
(575) 388-1576

INVOICE FOR PUBLICATION OF LEGAL NOTICE

New Mexico Air Quality Bureau
PO Box 26110
Santa Fe, NM87502

Date	Description	PO#	Inches	Lines	Total
7/31/13	State Implementation Plan Revision (S)	0000020209	26.25	183.75 @ .63	= \$115.76
				@ .49	=
				@ .49	=
				@ .49	=
				@ .49	=
				@ .49	=
				@ .49	=

Total Inches 26.25

Subtotal \$115.76

Tax \$8.54

Please include top portion with payment to ensure proper credit.

Grand Total \$124.30

Affidavit of Publication

STATE OF NEW MEXICO

County of Grant

SS

Christina Ely, being first duly sworn, on her oath says: That she is the publisher of the Silver City Daily Press and Independent, a newspaper printed and published in the Town of Silver City, in the County of Grant and the State of New Mexico, and that said newspaper is now, and was at all times herein mentioned, a newspaper of general circulation.

That the advertisement, copy of which is hereto attached, was published in said hereinbefore mentioned newspaper once each and every week for 1 consecutive week (s), the first publication thereof having been made on 7/31/13 and the last publication thereof having been made on . That said newspaper was regularly printed, published and issued with said notice herein upon the following dates, to wit:

7/31/13

Christina Ely

Subscribed and sworn to before me on this 2nd day of August 2013

Melanie K Rogers

Notary Public



OFFICIAL SEAL
Melanie K. Rogers
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 6/1/14

NMED
Exhibit # 8

Legal

DIRECCIÓN DE MEJORAS MEDIOAMBIENTALES DE NUEVO MÉXICO AVISO DE IMPLEMENTACION DE PLAN DE REVISION DEL ESTADO

La Dirección de Mejoras Medioambientales de Nuevo México ("Dirección") tendrá una audiencia pública el 8 de octubre del 2013, a las 10:00 a.m. en el Centro de Conferencias y Negocios del Condado Grant, sala Fort Bayard, 3031 Highway 180 East, Silver City, Nuevo México. El propósito de la audiencia es considerar el asunto de la EIB 13-05(R), propuestos cambios al Plan de Implementación del Estado de Nuevo México (SIP, por sus siglas en inglés), revisión del área de mantenimiento del dióxido de azufre para el Condado Grant, Nuevo México. El Departamento del Medio Ambiente de Nuevo México ("NMED", por sus siglas en inglés) es el que propone esta revisión y adopción normativa. El propósito de esta audiencia pública es considerar y tomar una posible acción sobre una petición del NMED con relación a la propuesta revisión al SIP del Mantenimiento del Dióxido de Azufre del Condado Grant. La Sección 175A de la Ley Federal del Aire Limpio (CAA, por sus siglas en inglés) requiere que los estados elaboren planes de implementación estatales para sufragar el mantenimiento de los Estándares Nacionales de la Calidad del Aire Ambiental (NAAQS, por sus siglas en inglés) para aquellas áreas que han violado un estándar (a las cuales se refiere como un área de no consecución) y tienen suficiente información para probar que esa área está ahora en cumplimiento del estándar. En febrero del 2003, el NMED presentó a la Agencia de Protección Ambiental de Estados Unidos (EPA, por sus siglas en inglés) una Petición de Redesignación y Plan de Mantenimiento del área de no consecución SO₂ de 24 horas para el Condado Grant, la cual aprobó la EPA el 18 de septiembre del 2003. Se requiere que los estados revisen el mantenimiento de los SIPs 10 años después de que la EPA aprueba el plan inicial de mantenimiento de un área. En cuanto la Dirección adopte la revisión del SIP para el área de mantenimiento del dióxido de azufre para el Condado Grant, Nuevo México, se presentaría a la EPA para incorporación al SIP de Nuevo México.

El NMED celebrará una reunión informativa sobre las propuestas modificaciones del SIP del área de mantenimiento del dióxido de azufre para el Condado Grant, Nuevo México, en sus oficinas del Air Quality Bureau, 525 Camino de los Marquez, Suite 1, Santa Fe, Nuevo México 87505, el 4 de septiembre del 2013, de las 12:00 p.m. a las 3:00 p.m. Para asistir a esta reunión, por favor comuníquese con Gail Cooke, en el 505-476-4319 o en gail.cooke@state.nm.us.

El propuesto plan modificado se puede revisar durante horas hábiles en la oficina de Campo del NMED del Distrito de Silver City, situado en 3082 32nd Street, By-Pass Road, Suite D, Silver City, Nuevo México. El texto completo de las propuestas normas modificadas del NMED está disponible en el sitio electrónico: www.nmenv.state.nm.us, o comunicándose con Gail Cooke en el (505) 476-4319 o gail.cooke@state.nm.us.

La audiencia se realizará de conformidad con 20.1 NMAC (Procedimientos de Reglamentación - Consejo par la Mejora del Medio Ambiente) la Ley de Mejora del Medio Ambiente Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire, Sección, 74-2-6 NMSA 1978, y otros procedimientos aplicables.

Todas las personas interesadas tendrán oportunidad razonable en la audiencia de presentar pruebas, datos, opiniones y argumentos importantes, ya sea en forma verbal o por escrito, así como de presentar anexos e Interrogar testigos. Las personas que deseen entregar testimonios técnicos deben presentar ante el Consejo una notificación por escrito de su intención. La notificación de intención deberá:

- (1) Identificar a la persona para quien testificará(n) el(los) testigo(s);
- (2) Identificar a cada uno de los testigos técnicos que las personas desean presentar y declarar las cualificaciones de los mismos, incluyendo una descripción de sus antecedentes de educación y trabajo;
- (3) resumir o incluir una copia del testimonio directo de cada testigo técnico y declarar la duración prevista del testimonio de ese testigo;
- (4) enumerar y describir, o adjuntar, cada uno de los anexos que dicha persona prevé ofre-

**Silver City Daily Press
and Independent**

3130A Hwy. 180 E.

Post Office Box 740

Silver City, New Mexico 88062

(575) 388-1576

INVOICE FOR PUBLICATION OF LEGAL NOTICE

New Mexico Air Quality Bureau

PO Box 26110

Santa Fe, NM87502

Date	Description	PO#	Inches	Lines1	Total
7/31/13	State Implementation Plan Revision	0000020209	22.75	159.25 @ .63	= \$100.33
				@ .49	=
				@ .49	=
				@ .49	=
				@ .49	=
				@ .49	=
				@ .49	=

Total Inches 22.75

Subtotal \$100.33

Tax \$7.40

Please include top portion with payment to ensure proper credit.

Grand Total \$107.73

Affidavit of Publication

STATE OF NEW MEXICO

SS

County of Grant

Christina Ely, being first duly sworn, on her oath says: That she is the publisher of the Silver City Daily Press and Independent, a newspaper printed and published in the Town of Silver City, in the County of Grant and the State of New Mexico, and that said newspaper is now, and was at all times herein mentioned, a newspaper of general circulation.

That the advertisement, copy of which is hereto attached, was published in said hereinbefore mentioned newspaper once each and every week for 1 consecutive week (s), the first publication thereof having been made on 7/31/13 and the last publication thereof having been made on . That said newspaper was regularly printed, published and issued with said notice herein upon the following dates, to wit:

7/31/13

Christina Ely

subscribed and sworn to before me on this 2nd day of August 2013

Melanie K Rogers

Notary Public



Legal

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF STATE IMPLEMENTATION PLAN REVISION

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 8, 2013 at 10:00 a.m. at the Grant County Business and Conference Center, Fort Bayard Room, 3031 Highway 180 East, Silver City, New Mexico. The purpose of the hearing is to consider the matter of No. EIB 13-05(R), proposed changes to the New Mexico State Implementation Plan ("SIP") revision for the Grant County, New Mexico sulfur dioxide maintenance area. The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED regarding proposed SIP revision to the Grant County Sulfur Dioxide Maintenance SIP, Section 175A of the Federal Clean Air Act ("CAA") requires states to develop state implementation plans to provide for the maintenance of the National Ambient Air Quality Standards ("NAAQS") for those areas that have violated a standard (referred to as a nonattainment area) and for which there is sufficient data to prove that area is now in compliance with the standard. In February 2003, NMED submitted to the U.S. Environmental Protection Agency ("EPA") a Redesignation Request and Maintenance Plan for the Grant County 24-hour SO₂ nonattainment area. This submittal was subsequently approved by EPA on September 18, 2003. States are required to revise maintenance SIPs 10 years after the EPA approves an area's initial maintenance plan. Upon adoption by the Board, SIP revision for the Grant County, New Mexico sulfur dioxide maintenance area would be submitted to EPA for incorporation into New Mexico's SIP.

The NMED will host an informational open house on the proposed SIP revision for the Grant County, New Mexico sulfur dioxide maintenance area at the NMED Air Quality Bureau Office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico 87505, from 12:00p.m.-3:00p.m. on September 4, 2013. To attend the informational open house, please contact Gail Cooke at 505-476-4319 or gail.cooke@state.nm.us.

The proposed revised plan may be reviewed during regular business hours at the NMED Silver City District Field office located at 3082 32nd Street, By-Pass Road, Suite D, Silver City, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at www.nmenv.state.nm.us.

or by contacting Gail Cooke at (505) 476-4319 or gail.cooke@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the Air Quality Control Act Section, NMSA 1978, 74-2-8, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) Identify the person for whom the witness(es) will testify;
- (2) Identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) Include a copy of the direct testimony of each technical witness in narrative form;
- (4) List and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) Attach the text of any recommended modifications to the proposed SIP revision.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on September 18, 2013 and should reference the docket number, EIB 13-05(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castaneda,
Board Administrator
Environmental Improvement
Board
P.O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425,
Fax (505) 827-0310

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing. Persons having a disability and needing help in being a part of this hearing process should contact Juan Carlos Borrego of the NMED Human Resources Bureau by September 23, 2013 at P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-0424 or email juancarlos.borrego@state.nm.us. TDY us-



Invoice

Commission of Public Records
 Administrative Law Division
 1205 Camino Carlos Rey
 Santa Fe, NM 87507-
 Phone: (505) 476-7907
 Fax: (505) 476-7910

Invoice Number: NMR-2014- 15

Date: 8/1/2013

Bill To: Gail Cooke Environment Department 525 camino de Los Marquez #1 Santa Fe, NM 87505-	Ship To (if different address): Environment Department 525 camino de Los Marquez #1 Santa Fe, NM 87505-
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SRC Authorization	Phone Number	Date Requested	Date Shipped	Shipped Via	Bill To (agency code)
Louise Wood	(505) 476-7875	7/31/2013		InterAgency	667

Quantity	Description	Revenue Code	Unit Price	Total
21	Columnar inch - Notice	431902	\$2.00	\$42.00
22	Columnar inch - Other Material	431902	\$2.00	\$44.00
Subtotal				\$86.00
Payment Amount				
Amount Due				\$86.00

For Internal Use Only

Payment Method: Purchase Order **Number:** 66700-0000020222
Payment Amount:

RECEIVED
 AUG 8 2013
 Air Quality Bureau

*Please pay promptly to Vendor Number 0000000729 State Records Center and Archives
 Commission of Public Records*



**New Mexico Commission of Public Records
Administrative Law Division**

1205 Camino Carlos Rey
Santa Fe, NM 87507
505-476-7907

Affidavit of Publication in the *New Mexico Register*

I, Art Bransford, certify that the agency noted below has published legal notices or rules in the New Mexico Register, and that payment has been assessed by invoice for said legal notice or publication, which appeared on the date and in the volume and issue number noted below.

Date of Publication: 7/31/2013

Volume: XXIV **Issue #:** 14

Invoice #: NMR-2014- 15

Amount: \$86.00

Agency:

Environment Department

Contact: Gail Cooke

525 camino de Los Marquez #1

Santa Fe, NM 87505-

Description:

Notice

Other

Other Material

Notice of Rulemaking Hearing

Notice of State Implementation Revision Plan

State of New Mexico, County of Santa Fe

Signed and affirmed before me on Thursday, August 01, 2013

by Art Bransford

Notary Public:

Louise Wood

[My commission expires: 5/15/17]

Affiant:

Publisher, *New Mexico Register*

Date: 8/1/2013

~Copies of the published material documented in this affidavit are enclosed~

(seal)

Other Material Related to Administrative Law

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

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The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED regarding proposed SIP revision to the Grant County Sulfur Dioxide Maintenance SIP. Section 175A of the Federal Clean Air Act ("CAA") requires states to develop state implementation plans to provide for the maintenance of the National Ambient Air Quality Standards ("NAAQS") for those areas that have violated a standard (referred to as a nonattainment area) and for which there is sufficient data to prove that area is now in compliance with the standard. In February 2003, NMED submitted to the U.S. Environmental Protection Agency ("EPA") a Redesignation Request and Maintenance Plan for the Grant County 24-hour SO₂ nonattainment area. This submittal was subsequently approved by EPA on September 18, 2003. States are required to revise maintenance SIPs 10 years after the EPA approves an area's initial maintenance plan. Upon adoption by the Board, SIP revision for the Grant County, New Mexico sulfur dioxide maintenance area would be submitted to EPA for incorporation into New Mexico's SIP.

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P.O. Box 5469
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Persons having a disability and needing help in being a part of this hearing process should contact Juan Carlos Borrego of the NMED Human Resources Bureau by September 23, 2013 at P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-0424 or email juancarlos.borrego@state.nm.us. TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed SIP revision at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

**End of Other Related Material
Section**





From: Medina, Davana
To: Cooke, Gail, NMENV
Cc: Bates, Rita, NMENV; Donaldson, Guy
Subject: Region 6 Comments on SO2 Limited Maintenance Plan for Grant County
Date: Tuesday, July 23, 2013 4:34:03 PM

Hi Gail,

Thank you for the opportunity to review the revised draft second 10-year maintenance plan for the Grant County maintenance area. Here are EPA's comments on the revised draft SIP.

1. A sentence in the introduction to section II of the draft SIP states that "EPA guidance for limited maintenance plans under CAA Section 175A requires five elements." Because interpretive guidance cannot "require" legal components, we suggest for clarity this language be revised to reflect that Section 175A of the Act provides the general framework for maintenance plans, and that EPA guidance for these plans under the limited maintenance plan option lists the five core provisions which should be included in a limited maintenance plan.
2. We recommend that the introductory paragraph under section II include a short discussion of EPA's policy on limited maintenance plans and an explanation of how the Grant County maintenance area meets the qualifications to submit a second 10-year maintenance plan under the limited maintenance plan option.
3. Section II.1 contains an SO2 emissions inventory of the Title V sources in Grant County. To provide the public with a more thorough understanding of all SO2 point sources, we recommend that the SIP include an SO2 emissions inventory for all point sources in the county and that it be specified which of these are contained within the maintenance area.
4. A sentence in Section II.2 states the following: "As discussed in the next section, the SO2 design value for the Grant County maintenance area is 0.0, which is well below 85 percent of the NAAQS." We recommend that the sentence be revised to specify that the design value for the 24-hour SO2 NAAQS of 0.14 ppm has been 0.0 ppm for each of the five most recent years for which certified ambient air quality data is available for the Grant County monitor. Similarly, we recommend that it be specified in Table 2 whether the monitoring data shown are design values or annual maximum 24-hour concentrations from the Grant County monitor. We also recommend that the table specify that the design values shown are in units of ppm.
5. We recommend that a discussion concerning NMED's request for a waiver to shut down the Grant County monitor be added to section II. 3, as it is this section which discusses the monitoring network requirements for attainment/maintenance areas.
6. Section III of the draft SIP includes a request by NMED that EPA grant the state a waiver to shut down the current monitoring station located in Hurley, New Mexico, and discontinue monitoring within the Grant County SO2 maintenance area. The CAA's maintenance plan requirement for continued maintenance of an area is typically satisfied by the verification of the attainment

status of the area through the continued operation of an EPA-approved air quality monitoring network. In the absence of any air monitoring stations in the maintenance area, the maintenance plan should include an alternative method of verifying that the area continues to attain the NAAQS. Given the source-oriented nature of SO₂, the lack of any large SO₂ point sources, and the long history of very low actual SO₂ emissions and monitored SO₂ concentrations in the Grant County maintenance area, we believe the likelihood of the area violating the standard is extremely low. We also believe any source that models attainment of the 1-hour SO₂ standard will be well under the 24-hour standard, since the new 1-hour standard is some 2 - 4 times more stringent than the 24-hour standard. Therefore, we agree with NMED's proposed alternative method for verifying continued attainment of the 24-hour SO₂ standard, which consists of the use of PSD and Title V modeling requirements for the 1-hour SO₂ standard for new and modified air quality permits and an annual emission review of all major SO₂ sources located in the Grant County SO₂ maintenance area to determine if there is a potential violation of the 24-hour SO₂ standard. However, if post-construction monitoring is conducted as part of the permitting requirements, we believe this data should also be used to determine if there is a potential violation of the 24-hour SO₂ standard in the Grant County SO₂ maintenance area. We also agree with NMED's proposed plan to reinstitute a gaseous SO₂ monitor at the Hurley, NM monitoring location or at a site expected to read greater SO₂ levels than that site if, based on the alternative method for verifying continued attainment of the 24-hour SO₂ standard, there is an indication of a potential violation of the 24-hour SO₂ NAAQS. EPA believes NMED's request for a waiver that would allow it to discontinue the only existing monitor in the Grant County maintenance area is approvable provided that 1-hour SO₂ post-construction monitoring conducted as part of the permitting requirements also be used to determine if there is a potential violation of the 24-hour SO₂ standard in the Grant County SO₂ maintenance area.

7. The draft SIP revision cites the "impending revocation of the 24-hour and annual SO₂ standards" as one of the justifications for shutting down the Grant County monitor. We wish to clarify that in the final SO₂ rule, EPA explained that it would revoke the prior 24-hour and annual SO₂ standards within one year of the effective date of designations under the 2010 1-hour SO₂ NAAQS. However, in a letter dated February 7, 2013, EPA informed states that at this time it is proceeding with designations for most areas with violating monitors, while deferring designations for all remaining areas in the country. At this time, it is anticipated that it may take several years for EPA to gather the data necessary to designate all remaining areas in the country. At this time, EPA has not determined how the deferral of designations under the 1-hour SO₂ standard for most areas in the country will impact the revocation of the 24-hour and annual SO₂ NAAQS. Therefore, EPA recommends NMED not cite to the "impending revocation of the 24-hour and annual SO₂ standards" as one of the justifications for shutting down the Grant County monitor.

We appreciate your work to satisfy the requirement for the second 10-year maintenance plan for the Grant County maintenance area. Please let me know if you have any questions related to our comments or if you would like to discuss further.

Thank you,

Dayana Medina

U.S. Environmental Protection Agency, Region 6
Multimedia Planning and Permitting Division
Air Planning Section (6PD-L)
214-665-7241

From: Bates, Rita, NMENV [mailto:Rita.Bates@state.nm.us]
Sent: Tuesday, July 23, 2013 2:28 PM
To: Donaldson, Guy; Medina, Dayana
Cc: Cooke, Gail, NMENV; Singleton, Kerwin, NMENV
Subject: SO2 Limited Maintenance Plan for Grant County

Hello Guy and Dayana,

We have revised our draft SO2 Limited Maintenance Plan for Grant County to incorporate an alternative method rather than continuing monitoring for SO2 there. Please review the attached, especially section II.6.

We would appreciate any comments ASAP as we are going to hearing on this on October 8 and our public comment period begins on July 31. Please send comments to Gail Cooke.

Thank you for your help!

Rita

Rita Bates, Planning Section Chief
Air Quality Bureau, New Mexico Environment Department
525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico 87505
Phone (505) 476-4304
Email rita.bates@state.nm.us





**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF THE PROPOSED STATE
IMPLEMENTATION MAINTENANCE PLAN FOR
THE GRANT COUNTY SULFUR DIOXIDE
LIMITED MAINTENANCE PLAN**

EIB 13-05 (R)

WRITTEN TESTIMONY OF GAIL COOKE

1 Witness Qualifications:

2
3 Gail Cooke is an Environmental Planner/Analyst in the Control Strategies Section of the
4 Air Quality Bureau. She has worked in the Air Quality Bureau since June 1999. Ms. Cooke
5 holds a bachelor degree in Environmental Design from Texas A&M University and a master
6 degree in Urban and Regional Planning from Virginia Tech. Her resume is attached as Exhibit 1.
7

8 I. INTRODUCTION

9
10 Madame Chair and Members of the Board, I am here to present testimony on the
11 Department's proposed revisions to the New Mexico State Implementation Plan (SIP) for the
12 adoption of the Grant County Sulfur Dioxide (SO₂) Limited Maintenance Plan. From now on, I
13 will refer to this plan as the Grant County Limited Maintenance plan. A copy of the proposed
14 Grant County Limited Maintenance plan is included as Exhibit 3.
15

16 In 1978, EPA designated Air Quality Control Region 012: Grant County, New Mexico as
17 nonattainment for the 24-hour SO₂ National Ambient Air Quality Standards (NAAQS). This
18 designation was based on emissions from one major point source that smelted and mined copper
19 ore within the nonattainment area. The nonattainment area included a 3.5 mile radius
20 surrounding the copper smelter source and any land above 6,470 feet within an 8 mile radius
21 around the smelter.
22

23 In February 2003, NMED submitted to EPA a Redesignation Request and Maintenance
24 Plan for the Grant County 24-hour SO₂ nonattainment area. This submittal was subsequently
25 approved by EPA on September 18, 2003 (68 Fed. Reg. 54,672) (Exhibit 4).
26

27 II. BACKGROUND

28 A. Sulfur Dioxide

29 Sulfur dioxide is a colorless gas with a pungent odor that is highly soluble in water.
30 Sulfur dioxide belongs to the family of gases called sulfur oxides (SO_x). These gases are formed
31 when fuel containing sulfur, mostly coal and oil, is burned, and during metal smelting. Sulfur
32 dioxide and nitrogen oxides are the major precursors of acid rain. The major health concerns
33 associated with exposure to high concentrations of SO₂ include effects on breathing, respiratory
34

1 illness, alterations in pulmonary defenses, and aggravation of existing cardiovascular disease.
2 Children, the elderly, and people with asthma, cardiovascular disease, or chronic lung disease
3 (such as bronchitis or emphysema) are most susceptible to adverse health effects associated with
4 exposure to SO₂.

5
6 In 1971, EPA promulgated the first national ambient air quality standards for SO₂. EPA
7 set a 24-hour primary standard at 140 parts per billion (ppb), an annual average standard at 30
8 ppb and a 3-hour secondary standard of 500 ppb. These standards were not revised until 2010,
9 when EPA established a new 1-hour standard at a level of 75 ppb. At that time, EPA also
10 revoked the 24-hour and annual standards previously set for SO₂.

11
12 **B. Sulfur Dioxide in Grant County, New Mexico**

13
14 There are presently two major point sources of SO₂ in Grant County, the Chino Mine
15 (formally the Hurley Mine) and the Tyrone Mine. The 2011 SO₂ actual emissions for the Chino
16 Mine were zero (0) tons per year (tpy) and for the Tyrone Mine 6.57 tpy. Table 1 below shows
17 the actual and permitted SO₂ emissions for major sources in Grant County for the years 2007-
18 2011. As the table shows, there are minimal SO₂ major point source emissions in Grant County.

19
20 Table 1
21 **SO₂ Emission Inventory for Grant County Title V Sources**
22

YEAR	ACTUAL EMISSIONS (TPY OF SO ₂)	** ACTUAL EMISSIONS WITH RULE EFFECTIVENESS (TPY OF SO ₂)	*** DAILY EMISSIONS (TPD OF SO ₂)
2007	*4.14	4.97	0.011
2008	0.82	0.98	0.002
2009	*4.66	5.59	0.013
2010	*5.70	6.84	0.016
2011	*6.57	7.88	0.018

23 * Actual emissions include un-permitted fugitive SO₂ emissions.

24 ** EPA's default rule effectiveness of 80% compliance was applied to the actual emissions data.

25 ***For the SO₂ daily emissions calculation, 365 days per year operation was assumed.

26
27 Table 2 below shows the allowable SO₂ emissions for all minor point sources located in
28 Grant County for the years 2007-2011. There are currently four (4) minor point sources located
29 within the Grant County maintenance area with total allowable SO₂ emissions of 150.0 tpy for
30 2011. All of the minor point sources located within the Grant County maintenance area are
31 aggregate quarrying, crushing and screening operations that are registered under General
32 Construction Permit (GCP-2) for Quarrying, Crushing, and Screening Facilities that includes
33 default allowable emission limits. Although the GCP-2 allowable SO₂ emission limit is set at
34 50.0 tpy, the actual SO₂ emissions generated from these types of sources are minimal.
35

Table 2
SO₂ Emission Inventory for Grant County Minor Point Sources

YEAR	ALLOWABLE EMISSIONS (TPY OF SO ₂)	*DAILY EMISSIONS (TPD OF SO ₂)
2007	316.30	0.866
2008	316.30	0.866
2009	316.34	0.866
2010	316.34	0.866
2011	316.34	0.866

III. PROPOSED GRANT COUNTY LIMITED MAINTENANCE PLAN

Section 175A of the Federal Clean Air Act (CAA) requires states to develop state implementation plans to provide for the maintenance of the NAAQS for those areas that have violated a standard (referred to as a nonattainment area) and have sufficient data to prove that area is now in compliance with the standard. States are required to revise maintenance SIPs 10 years after the U.S. Environmental Protection Agency (EPA) approves an area's initial maintenance plan.

The proposed Grant County Limited Maintenance plan has been developed to satisfy the 10 year plan revision as required under Section 175A of the Federal Clean Air Act. EPA allows nonattainment and maintenance areas that are at or below 85 percent of the exceedance level for a NAAQS at the time of redesignation to submit a less rigorous plan that EPA refers to as a limited maintenance plan (*see* EPA Guidance, Exhibit 5).¹ The Grant County 24-hour SO₂ maintenance area currently has no major SO₂ sources and has monitored negligible levels of SO₂ for the past 5 years. Based on the lack of SO₂ major point sources and emissions within the Grant County maintenance area, New Mexico is choosing to submit a limited maintenance plan for the Grant County maintenance area.

The proposed Gant County Limited Maintenance plan includes five elements.

1. Attainment Inventory
2. Maintenance Demonstration
3. Monitoring Network
4. Verification of Continued Attainment
5. Contingency Plan

¹ "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," Memo from Sally L. Shaver to EPA regional air directors, Nov. 16, 1994 (NMED Exhibit 5). In the absence of guidance specific to SO₂, EPA Region 6 has directed New Mexico to follow the Guidance for ozone non-attainment areas. (Medina, Dayana. "EPA Guidance on Limited Maintenance Plan Option." Message to Rita Bates. 3 March 2012. Email)

1 The proposed Limited Maintenance Plan revision does not impose any new regulatory
2 requirements. The Division is requesting that EPA approve the removal of the current SO₂
3 ambient air quality monitor that is located in Hurley, New Mexico, and the use instead of an
4 alternative SO₂ monitoring methodology. The alternative methodology would use the existing
5 requirements under 20.2.74 NMAC – *Permits - Prevent of Significant Deterioration* (Exhibit 6)
6 and 20.2.70 NMAC - *Operating Permits* (Exhibit 7) for modeling and post construction
7 monitoring for new and modified air quality permits and an annual emission review of all major
8 SO₂ source located in the Grant County SO₂ maintenance area to evaluate SO₂ emissions. In the
9 event that the alternative methodology does indicate there is a significant increase in SO₂
10 emissions that may cause a potential SO₂ NAAQS violation, the Division would relocate the SO₂
11 monitor in Hurley for one year. If after one year, the SO₂ monitored values are at or under 50%
12 of the current NAAQS for SO₂, then the SO₂ monitor would again be removed and the alternative
13 SO₂ monitoring methodology reinstated.

14 Due to the lack of major SO₂ point sources within the Grant County maintenance area,
15 the limited number of SO₂ point sources within the area surrounding the maintenance area, and
16 the negligible concentrations of SO₂ as shown by monitoring, the Division does not deem it
17 necessary to continue ambient air quality monitoring to verify continued maintenance of the 24-
18 hour and annual SO₂ standards. The use of the alternative methodology would reduce the
19 resource burden on the State associated with the operation of a monitor and monitoring site and
20 allow the monitor to potentially be utilized at another location if needed.

21 **IV. OUTREACH**

22
23 Outreach was conducted for the proposed Grant County Limited Maintenance plan in the
24 form of public notices (Exhibit 8) and an open house. The Department only received comments
25 from EPA (Exhibit 9). The Department had no attendance at the open house.
26

27 The Department does not foresee that the proposed SIP will have an adverse impact on
28 the citizens or businesses of New Mexico. As stated above, no additional regulations or
29 requirements are being proposed with the proposed Grant County Limited Maintenance plan.
30

31 **V. CONCLUSION**

32
33 This concludes my testimony to the Board on our proposed Grant County Limited
34 Maintenance plan. I respectfully request that the Board adopt this proposed SIP at the
35 conclusion of this hearing. A proposed statement of reasons for adoption and order is attached as
36 Exhibit 10.





**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED REVISIONS
TO THE STATE IMPLEMENTATION PLAN
FOR THE GRANT COUNTY SULFUR DIOXIDE
LIMITED MAINTENANCE PLAN**

No. EIB 13-05(R)

**NMED'S PROPOSED
ORDER AND STATEMENT OF REASONS**

This matter comes before the New Mexico Environmental Improvement Board ("Board") upon a petition filed by the New Mexico Environment Department ("NMED" or "Department"), proposing revisions to New Mexico's State Implementation Plan ("SIP") for the Grant County Sulfur Dioxide Limited Maintenance Plan. The Board heard testimony from the Department and admitted exhibits into the record. On October 8, 2013 the Board deliberated and voted to adopt the proposed repeal for the reasons that follow:

STATEMENT OF REASONS

1. In 1978, the U.S. Environmental Protection Agency ("EPA") designated certain portions of Grant County, New Mexico as being in non-attainment with the national ambient air quality standards ("NAAQS") for sulfur dioxide (SO₂). The nonattainment status was caused by emissions from a copper smelter located in Hurley, New Mexico.
2. For each state that requests re-designation of an area from non-attainment to attainment of a NAAQS, the federal Clean Air Act ("CAA") at Section 175A (42 U.S.C. § 7504a) requires the state to adopt and submit to EPA a SIP providing for the maintenance of relevant NAAQS for the next 10 years. The SIP must be subsequently revised and submitted to EPA for another 10 year period.

3. In February 2003, New Mexico submitted a re-designation request and maintenance plan for Grant County, which EPA approved in September 2003. The re-designation was based on the absence of any exceedences of the SO₂ NAAQS in Grant County since 1975. The maintenance plan entailed continued control of SO₂ emissions from the Hurley Smelter through permit conditions, as well as monitoring provisions, a contingency plan, and other elements.
4. In 2006, the Hurley Smelter was dismantled and its smoke stacks were removed.
5. The currently approved maintenance plan for Grant County expires in 2015. Submission of a revised maintenance plan in 2013 will ensure that EPA has up to 18 months to review the revised plan, as allowed by CAA § 110 (k).
6. The proposed SIP revisions meet EPA requirements for a “limited” maintenance plan applicable in areas with ambient concentrations of less than 85% of the NAAQS at issue. (Ambient levels of SO₂ in Grant County are zero according to the past 5 years of monitoring).
7. The proposed SIP revisions will ensure the maintenance of the SO₂ NAAQS in Grant County for the 10-year life of the maintenance plan, in accordance with NMSA 1978 § 74-2-5.C (requiring the Board to adopt regulations to achieve compliance with the NAAQS).
8. The proposal to discontinue SO₂ monitoring within the Grant County maintenance area, while providing contingency to measures to resume monitoring if necessary, will conserve state resources and is in the public interest.
9. Pursuant to 20.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.

10. On June 24, 2013 NMED filed a petition with the Board for a public hearing on proposed SIP revisions to adopt a revised 10-year maintenance plan for Grant County.
11. On July 15, 2013, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Department's request for a hearing.
12. On July 31, 2013, Notice of Hearing was published in the Silver City Daily Press (in English and Spanish), and in the New Mexico Register.
13. NMED filed a Notice of Intent to Present Technical Testimony (NOI) on September 18, 2013, in accordance with 20.1.1.302 NMAC.
14. A hearing was held in this matter on October 8, 2013 in Silver City, New Mexico.
15. The Board has the authority to approve these proposed amendments pursuant to NMSA 1978 § 74-2-5.C.
16. The proposed amendments satisfy the statutory requirements of the Air Quality Control Act, NMSA 1978, Section 74-2-5.E.
17. The notice and hearing requirements of NMSA 1978 Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.
18. The proposed amendments are adopted for any or all of the reasons stated above.

ORDER

By majority vote of a quorum of the Board members, the proposed Grant County Sulfur Dioxide Limited Maintenance Plan was approved by the Board on October 8, 2013. The plan is hereby adopted as revisions to New Mexico's State Implementation Plan. The Department shall submit the revisions as expeditiously as possible to the U.S. EPA for approval.

On Behalf of the Board

Dated: _____

