

March 20, 2026

Environmental Improvement Board
New Mexico Environmental Department
Harold Runnels Building, P.O. Box 5469
Santa Fe, New Mexico 87502

Re: Operating and Construction Permit Emissions Fees Rulemaking (EIB 25-77)

Dear Members of the Environmental Improvement Board,

We, the undersigned organizations, write in strong support of New Mexico Environment Department's ("NMED") proposal to update air quality permitting and emissions fees to ensure the long-term stability and effectiveness of the Air Quality Bureau and the state's Compliance and Enforcement Division under 20.2.71 NMAC and 20.2.75 NMAC.

The Board's Statutory Responsibility

The Air Quality Control Act authorizes the Board to adopt a fee schedule sufficient to cover the reasonable costs of administering the state's air quality control program. Administration of that program necessarily includes permit evaluation, emissions inventories, monitoring needed to assess compliance, inspections, and enforcement activities tied to permitted sources.

The record now before the Board demonstrates that, absent fee updates, both the Title V Special Revenue Fund and the Construction Permit Fund face structural deficits within the next several fiscal years. The Title V Fund is projected to be exhausted by FY 2028, with the Construction Permit Fund following shortly thereafter.¹

This is not a theoretical concern. It is a documented fiscal trajectory that, if unaddressed, will result in position freezes, staff reduction, delayed permit processing, reduced inspections, lack of essential monitoring, and weakened enforcement capacity.

Addressing Claims of Excess Funds

Some parties have characterized current fund balances as evidence that additional revenue is unnecessary.² That framing overlooks the multi-year nature of program budgeting and the

¹ New Mexico Environment Department's Petition for Regulatory Change to Repeal and Replace 20.2.71 NMAC, Operating Permit Emissions Fees, and 20.2.75 NMAC, Construction Permit Fees, No. EIB 25-77 (R) (N.M. Env't Improvement Bd. Dec. 3, 2025), Page 5.

² Direct Testimony of Michael Sonenberg on Behalf of the New Mexico Mining Association, NMMA Ex. 2, No. EIB 25-77 (R) (N.M. Env't Improvement Bd. filed Dec. 2025).

volatility of fee revenues, as well as the Department's inability to balance program expenses and revenue across divisions due to restrictions on how each funding source can be used.

The existence of a balance does not indicate surplus capacity. It reflects prudent financial management designed to avoid abrupt program collapse. The statute authorizes recovery of reasonable program costs over time, not operation at the brink of insolvency. A multi-year revenue cushion is fiscally responsible program management, not mismanagement.

Expanded Workload and Compliance Demands

The increase in workload facing the Air Quality programs is not abstract. It is measurable and disproportionate to historic staffing levels.

According to NMED's January 15, 2026 public informational materials, total permitting actions have increased by approximately 126 percent in recent years. Oil and gas related general construction permit actions have increased by roughly 2,100 percent, and Notice of Intent facilities have grown by nearly 250 percent. Minor source permitting has increased by more than 200 percent. These increases are tied directly to sustained growth in oil and gas production and associated infrastructure across the Permian Basin and the San Juan Basin.

Each permit action requires technical review, emissions inventory validation, modeling analysis, and documentation sufficient to withstand legal and federal scrutiny. Increased permitting volume also drives increased inspection obligations, complaint response, and compliance oversight. Facilities operating under general permits and Notices of Intent still require monitoring, record review, and enforcement follow-up when violations occur.

At the same time, ozone exceedances in production regions have triggered expanded modeling, transport analysis, and monitoring responsibilities. Advances in satellite detection and atmospheric science have increased expectations for rapid investigation of large emissions events. When methane plumes or ozone spikes are identified, the Air Quality Bureau must have staff capacity to validate data, conduct field inspections, and initiate corrective action.

NMED reports creating and filling approximately 35 new Air Quality program positions over the past 18 months to begin addressing this surge in workload. However, staffing growth has not approached the scale of permitting expansion. A 2,100 percent increase in oil and gas construction permitting cannot be managed sustainably with marginal staffing adjustments.

These are structural changes in regulatory demand, not temporary fluctuations. Ensuring adequate numbers of permit writers, inspectors, monitoring specialists, modelers, and compliance staff is necessary to administer the program at its current scale. Without sufficient personnel, the current multi-year enforcement backlog will increase, inspections are delayed, complaints go unresolved.

Underfunding does not create efficiency. It shifts costs to communities through prolonged exposure, reduces regulatory credibility, and risks federal intervention if the State cannot demonstrate adequate program administration.

Federal law requires states to maintain sufficient resources to administer approved Title V programs. Ensuring long-term solvency strengthens New Mexico's ability to retain delegated authority and maintain local control over permitting decisions.

Real-World Impacts in the Permian and San Juan Basins

This rulemaking will determine whether the State has the capacity to detect, respond to, and prevent harmful emissions in communities affected by oil and gas pollution over the coming decades.

In the Permian and San Juan Basins, residents routinely report strong odors, visible emissions events, and flaring activity. Satellite observations from international, federal and private entities, have repeatedly identified methane “super-emitters” and elevated concentrations over these production regions. Optical gas imaging inspections conducted by independent observers, such as Earthworks, and state regulators have documented uncontrolled methane and volatile organic compound releases from wells, tanks, valves, and processing equipment. These emissions contribute directly to ozone formation, localized air toxics exposure, and the growing burden of a changing climate.

New Mexico's agencies and elected officials have acknowledged in multiple forums the direct consequences of climate change. A report commissioned by the New Mexico Legislature finds that the state's surface temperature will continue to rise over the next 50 years, leading to increased droughts, wildfires, and widespread water insecurity.³ The record low snowpack from this winter alone is evidence of a growing crisis. Because methane traps over 80 times more heat than carbon dioxide in the short-term, reducing methane emissions from key sources, like the oil and gas industry, is the only way to mitigate climate change in our lifetimes.

Air pollution from oil and gas development has documented impacts on children and families in New Mexico. In the San Juan Basin, researchers found benzene levels near schools, including one within a mile of 17 active wells, spiking during school hours to levels nearly double thresholds known to cause chronic health effects, contributing to symptoms such as headaches, nausea, and respiratory irritation among students.⁴ An Associated Press analysis estimates

³ <https://www.nmlegis.gov/handouts/WNR%20072522%20Item%205%20Gutzler1.pdf>

⁴ Associated Press, “Oil and gas have boomed in New Mexico. Its schools are contending with pollution's effects,” May 29, 2025, <https://www.ap.org/news-highlights/spotlights/2025/oil-and-gas-have-boomed-in-new-mexico-its-schools-are-contending-with-pollutions-effects/>

roughly 29,500 students in 74 New Mexico schools live within potential exposure zones of oil and gas emissions, with only 20 permanent state monitors in largely non-producing areas.⁵

Researchers at the University of New Mexico have shown that fine particulate matter (PM2.5) attributable to oil and gas activity contributes a significant portion of regional pollution and is statistically linked to hundreds of premature deaths nationwide. In 2017 alone, 638 premature deaths were estimated to be associated with PM2.5 from the Permian Basin oil and gas sector, including impacts locally in New Mexico and across state lines. Further, nationwide, the researchers found that the total premature mortality damages of Permian Basin oil and gas sourced PM2.5 were \$6.57 billion (in 2022 inflation-adjusted dollars) in 2017. They estimate that for each \$1 in revenue generated from the sale of oil and gas in the Permian Basin in 2017, \$0.11 in damages were created nationwide from premature mortality associated with PM2.5 from oil and gas activity in the basin.⁶

In southeastern New Mexico and downwind areas, ozone concentrations frequently exceed EPA health standards, and ground-level ozone, formed from precursor emissions tied to oil and gas, is known to cause respiratory irritation, reduced lung function, and worsened asthma symptoms even at moderate levels.

The Department has already acknowledged that counties in New Mexico remain above the National Ambient Air Quality Standard (NAAQS) for ground-level ozone and that additional monitoring and modeling capacity are necessary.⁷ Without sufficient funding, the State cannot expand monitoring networks, upgrade data systems, conduct timely inspections, or respond promptly to community complaints.

Sunland Park area in Doña Ana County is formally designated as ozone nonattainment, and multiple oil and gas impacted counties consistently approach or trigger regulatory thresholds tied to ozone precursors. Counties including Chaves, Eddy, Lea, Rio Arriba, Sandoval, San Juan, and Valencia have been identified in state ozone planning efforts because monitored precursor levels have reached 95 percent or more of the federal ozone standard.⁸

Yet New Mexico operates only approximately 20 permanent state air monitoring stations statewide,⁹ and several major production counties lack ozone monitoring altogether. In the Permian Basin, there is only one state ozone monitor in Lea County and one in Eddy County

⁵ *ibid*

⁶ Goodkind, Adam L., et al., *Fine Particulate Air Pollution and Mortality in the Oil and Gas Producing Regions of the United States* (University of New Mexico Bureau of Business and Economic Research, 2023), https://econ.unm.edu/common/documents/2023nm-research_goodkind-et-al.pdf

⁷ NMED Petition, EIB 25-77 (R) (Dec. 3, 2025).

⁸ New Mexico Environment Department, Air Quality Bureau, *Ozone Monitoring in New Mexico Fact Sheet* (Jul. 7, 2020), <https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2024/01/Ozone-Monitoring-in-New-Mexico-Fact-Sheet-7.7.2020.pdf>

⁹ *ibid*

despite the scale of development and emissions in those regions.³ One regulatory ozone monitor is insufficient to represent air quality conditions across counties such as Lea or Eddy, which span thousands of square miles and contain thousands of active wells, compressor stations, and processing facilities. Ozone concentrations can vary substantially based on proximity to emission sources, wind direction, and time of day. Areas without monitors are considered “unclassifiable,” meaning there is no definitive data to determine whether federal health standards are being met.

These monitoring limitations create significant data gaps in rural communities located near intensive oil and gas development. Without sufficient monitoring density, the State cannot fully characterize ozone formation, evaluate cumulative impacts, or validate emissions inventories used in permitting decisions. Monitoring data are foundational to enforcement and public health protection. If air quality exceedances are not measured, they cannot be corrected. Adequate funding is necessary to expand monitoring networks in production regions, strengthen data systems, support modeling capacity, and ensure timely inspection and complaint response in communities that may otherwise remain invisible in statewide air quality assessments.¹²

Communities should not have to live with the health impacts from persistent emissions in violation of state law that remain uncorrected due to lack of regulatory capacity. A fully funded Air Quality program ensures that the State has the capacity to verify emissions, investigate complaints, and require corrective action when necessary.

Technical testimony submitted in this proceeding confirms that air monitoring and modeling are foundational to effective permitting and enforcement. As Dr. Tammy Thompson explains in her direct testimony, monitoring data are required to validate emissions inventories, evaluate permit compliance, ground-truth satellite observations, and support legally defensible enforcement actions.¹⁰ Without sufficient investment in monitoring infrastructure and scientific capacity, the State cannot confidently link permitted emissions to real-world ambient concentrations or protect communities experiencing ozone exceedances and localized exposure.

Having clear air across New Mexico is important for so many reasons, including protecting the health of our communities, maintaining our ability to recreate outdoors, and finding inspiration in the scenic views across the state. In landscapes like those of the Greater Chaco Region, being able to see the color and clarity of geological formations from a distance is of crucial importance to the experience people seek when visiting this area, particularly for those with sacred and cultural ties to the area.

New Mexico’s economy benefits greatly from tourists to our state. In 2024, 2.4 million park visitors spent an estimated \$190 million in local gateway communities while visiting National

¹⁰ Notice of Intent to Present Technical Testimony, Citizens Caring for the Future, Earthworks, & N.M. Interfaith Power and Light, No. EIB 25-77 (R) (N.M. Env’t Improvement Bd. filed Feb. 20, 2026).

Park Service lands in New Mexico. Carlsbad Caverns National Park, one of New Mexico’s 9 Class I Areas, alone brought in over \$38.5 million in visitor spending and supported 335 jobs.

Yet, Carlsbad Caverns ranks fourth in most polluted parks for air quality issues like regional haze out of 399 across the country according to NPCA’s 2024 Polluted Parks Report¹¹. When air quality at national parks is polluted, visitation can drop by up to eight percent, harming local economies and businesses.¹²

Conclusion

This rulemaking aligns projected revenue with documented program costs, modernizes outdated fee structures, and provides a stable foundation for permitting, compliance, and enforcement in a state experiencing sustained industrial growth.

Air quality regulation requires trained staff, monitoring systems, modeling expertise, and enforcement capacity. Companies that benefit from state-issued permits should bear the reasonable cost of maintaining the regulatory infrastructure that authorizes those operations.

We respectfully urge the Board to approve the proposed fee updates to ensure the continued solvency, stability, and effectiveness of New Mexico’s air quality program.

Sincerely,



EARTHWORKS

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New Mexico Lead Campaigner
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¹¹National Parks Conservation Association. Polluted Parks Report. 2024. <https://www.npca.org/resources/3467-polluted-parks-report-2024-resources-and-analytical-methods>

¹² Keiser, D., Lade, G., & Rudik, I. (2018). Air pollution and visitation at U.S. national parks. *Science Advances*, 4(7). <https://doi.org/10.1126/sciadv.aat1613>



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