

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF:
THE APPLICATION OF YUCCA
GROWTH INFRASTRUCTURE, LLC
FOR AN AIR QUALITY PERMIT,
NO. NSR 10833**

AQB 26-57(P)

**NEW MEXICO ENVIRONMENT DEPARTMENT AIR QUALITY BUREAU'S
NOTICE OF ERRATA REGARDING EXHIBIT A TO MOTION FOR CORRECTION
OF THE HEARING RECORD**

The New Mexico Environment Department Air Quality Bureau ("Bureau"), respectfully submits this *Notice of Errata Regarding Exhibit A to the Bureau's Motion for Correction of the Hearing Record*. Attached here to is **Exhibit A**, AQB Procedure 02-013.00, New Source Review Permit Applications—Ruling Administratively Incomplete, Requesting More Information, Denials, and Extensions, at § 2.3 (Mar. 11, 2002).

Filed: October 23, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *New Mexico Environment Department Air Quality Bureau's Notice of Errata Regarding Exhibit A to the Bureau's Motion for Correction of the Hearing Record* was electronically filed and sent via electronic mail on this 23rd day of October 2026 to the following:

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Should the Hearing Clerk require a paper original, Robles, Rael, and Anaya, P.C. shall promptly provide the document upon request.

/s/Kelsea E. Sona
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AIR QUALITY BUREAU PROCEDURE**Effective Date: March 11, 2002****Policy Number: AQB 02-013.00****Title: New Source Review Permit Applications -- Ruling Administratively Incomplete, Requesting More Information, Denials, and Extensions****Reference: 20 NMAC 2.72, Sections 203, 207, 208, 219, 302, 304, 403 and 405.C.4; 20 NMAC 2.74, Section 301; and 20 NMAC 2.75.12.**

PURPOSE: To provide a procedure for ruling administratively incomplete, requesting more information, denying, or requesting an extension on an NSR permit.

POINT OF CONTACT: NSR Permit Program Manager

POLICY AND PROCEDURE:**1.0 RULING ADMINISTRATIVELY INCOMPLETE**

1.1 The Air Quality Bureau (AQB) must rule an application either administratively complete or incomplete within thirty days after receipt of an application for the following permit types: 20 NMAC 2.72 Section 203 (regular construction permits), Section 302 (Streamline permits), Section 403 (Toxic Air Pollutants) 20 NMAC 2.74 Sections 301 and 400A (PSD) or 20 NMAC 2.79 Section 111 (non-attainment). The permit engineer will base this determination on the absence of the required information on the appropriate permit form(s). If the permit engineer notices technical deficiencies during the completeness review, he may identify those deficiencies in the incompleteness letter, but may not base the decision on the existence of those deficiencies.

1.2 The permit engineer will send to the applicant a certified letter that details what specific information is needed to complete the application package and give the applicant a reasonable time, generally not to exceed thirty days, for supplying that information.

1.2.1 The letter should state that the streamline (thirty or sixty days); regular permit (ninety days) or PSD (one hundred eighty days) review period will not begin until the AQB receives the requested information and rules the application administratively complete. If the applicant does not submit a response by the deadline, the AQB will close the application file and the applicant will forfeit the filing fee.

- 1.3 The AQB will retain closed applications for a period of six months, after which they may be sent to archives, where they will be stored for the period set by the public document retention policy approved by the Commission of Public Records

2.0 REQUESTING ADDITIONAL INFORMATION

- 2.1 If the permit engineer determines that additional information is required to evaluate and take final action on an application, the applicant will be sent a fax, email or certified letter requesting such information. This request may be made either before or after the determination of administrative completeness is made. The letter will identify the information requested and the reason(s) why it is required, and will set a reasonable deadline for a response. The applicant is required by regulation to submit the required information on or before the deadline. (See 20 NMAC 2.72.203.E.2)
- 2.2 The goal of the AQB is to obtain all substantive additional information within seventy-five days from the date of the completion determination for ninety-day permit actions or one hundred fifty days from the date of the completion determination for one hundred eighty day permit actions. This is to ensure that enough time is available to evaluate the additional information and complete the permitting process within the prescribed deadlines. If all information necessary to review the application is not received by the above deadlines, the permit engineer will either request an extension (see 4.0 below) or deny the application (see 3.0 below).
- 2.3 If the application has changed substantially from what was originally submitted, the permit engineer may request a review by the Bureau Chief to determine if an extension by the Department Secretary is necessary or another action is more appropriate, such as: requesting the applicant withdraw the application, making a new completion determination that restarts the regulatory processing time, or issue the permit as originally requested, provided there is no adverse impact to ambient air quality standards or other applicable regulations.

3.0 DENYING A PERMIT

- 3.1 A permit will be denied under the conditions listed in 20 NMAC 2.72, 208 and 405.C.4.
- 3.2 In accordance with 20 NMAC 2.72.207.D and 208, the AQB may deny a permit for the following reasons:
 - 3.2.1 The applicant has not demonstrated that the permit should be issued. The failure to demonstrate that the permit should be issued

should be related to one of the regulatory reasons for denying permits in 20 NMAC 2.72.208.

3.2.2 Technical review identifies deficiencies in the application that cannot be corrected and allow permit issuance within the time provided. This inadequacy must be related to one of the regulatory reasons for denying permits in 20 NMAC 2.72, 208 (See also 20 NMAC 2.72, 207.D).

3.2.3 If the applicant submits a non-PSD application, but technical review shows that PSD applies.

3.2.4 The applicant has not paid the permit fee.

3.2.5 The applicant has not responded to the AQB's request for information.

3.3 TECHNICAL PERMIT REVISIONS:

3.3.1 The AQB has thirty days from the receipt of the application, or sixty days from the receipt of the application if there is significant public interest and the AQB holds a public meeting, to issue or deny a technical permit revision. For technical permit revisions there is no provision to rule an application complete or incomplete.

3.3.2 In addition to the criteria in 3.1 and 3.2 above, the AQB may deny an application for a Technical Permit Revision if it does not meet the criteria listed in 20 NMAC 2.72, Section 219.B or the construction/modification is subject to the toxic air pollutants applicability criteria listed in 20 NMAC 2.72, Section 402. Note that 402.B refers to potential to emit, and 405 states that controlled emissions are to be considered when evaluating toxic emissions, so this simply means that if the controlled, height-of-release-corrected emission rate of one or more TAPs exceeds the threshold of 502 and a modeling analysis would be required, it cannot practically be done as a technical revision.

3.4 GENERAL CONSTRUCTION PERMITS (GCPs):

3.4.1 Criteria in 3.1 and 3.2 above apply. Additionally, within thirty days of receiving an application to register under a general

construction permit, the AQB may deny the registration if the application is incomplete, or does not contain the required permit fee(s); the source is not one of the sources qualified to register for the general permit; or the source cannot meet the terms and conditions of the general permit.

- 3.5 The permit engineer will prepare a certified letter, for the Bureau chief's signature, to the permittee that details why a permit has been denied.
- 3.6 If the applicant still wants a permit after the AQB has denied the permit/modification/technical revision/GCP, AQB may require the applicant to re-submit a complete application package including the permit fee. Submission of a new application under these circumstances will restart the permitting or revision review process by the AQB. AQB will encourage a pre-application meeting if the applicant wants to resubmit an application.

4.0 REQUEST FOR AN EXTENSION

- 4.1 A request for an extension will be on a case-by-case basis and extensions are at the Secretary's discretion. The regulation (See 20 NMAC 2.72.207.C) offers these circumstances as examples of good cause for extension:
 - 4.1.1 a public hearing is approved by the Division Director;
 - 4.1.2 a health assessment is required under 20 NMAC 2.72 Sections 400-405;
 - 4.1.3 the permit is subject to the requirements of 20 NMAC 2.79 Permits – Nonattainment Areas;
 - 4.1.4 additional time is needed to complete the requirements for Federal review specified in 20 NMAC 2.74 Permits – Prevention of Significant Deterioration (this assumes the application was submitted for a PSD source);
 - 4.1.5 the permit application requires review of unusually complex technical and regulatory issues; and
 - 4.1.6 the AQB is unable to complete review of information submitted because of the timing and scope of the submittal.
- 4.2 Additional reasons to request an extension may include:
 - 4.2.1 a public request to review technical analysis adds a thirty day comment period to the review process, preventing permit issuance within ninety days;

- 4.2.2 inadequate performance by a contractor under the expedited review provisions, preventing permit issuance within ninety days;
 - 4.2.3 applicant has made changes to the application with good cause, either on his initiative or the Bureau's request, preventing permit issuance within ninety days; and an extension would provide enough time for additional review and permit issuance (see 4.1.6);
 - 4.2.4 applicant has not paid permit fee with good cause; and
 - 4.2.5 applicant has not responded in a timely manner to a request for information. If the applicant has not responded at all, denial is appropriate.
- 4.3 The permit engineer will prepare a certified letter to the applicant stating the reasons why an extension is sought, and the length of the requested extension (not to exceed ninety days). The permit engineer will notify the applicant by telephone concurrent with sending the letter.
- 4.4 The permit engineer will also prepare a memo to the Division Director, through the Bureau Chief, requesting an extension (if the Department Secretary has delegated this responsibility). This memo will specify why an extension is needed. The permit engineer will notify the applicant of the Director's decision using certified mail and by fax or email.
- 4.5 On a case-by-case basis staff will need to exercise their discretion when deciding to request an extension or deny a permit application. Here are a few examples that may help staff in determining which option (extend or deny) is best for their situation.
- 4.5.1 If the applicant is acting in good faith and has provided the additional information the engineer requested in a reasonable amount of time, but not in enough time to meet the permit deadline, an extension may be more appropriate.
 - 4.5.2 If the permit engineer does not receive the additional information during the extension period, denying the permit may be the more appropriate next action.
 - 4.5.3 Refusal to pay a permit fee until the permit is approved is not good cause for an extension and a permit should be denied. However, if an applicant's bank makes a mistake and the permit fee check bounces and the applicant was acting in good faith, the applicant should not be penalized and an extension should be requested.

Signed by Richard Goodyear
Permit Programs Manager

March 11, 2002
Date