



## Public Involvement Plan

New Mexico Environment Department

Air Quality Bureau, Planning Section

Project: Proposed Repeal & Replacement of 20.2.70 NMAC, *Operating Permits*, and Title V Permit Program Revision

Planning timeframe: August 2023 – August 2025

Project Planner: Neal Butt

Approval: DocuSigned by:  
*Cindy Hollenberg*  
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Cindy Hollenberg, Air Quality Bureau Chief

Date: 2/24/2025

## Purpose

The New Mexico Environment Department (“NMED” or “Department”) developed this Public Involvement Plan (“Plan”) to provide public participation opportunities and information that may be needed to participate in the proposed repeal and replacement of 20.2.70 NMAC, *Operating Permits*, and corresponding Title V Permit Program revision. The rule change and Title V revision are being undertaken to address a mandate by the U. S. Environmental Protection Agency (“EPA”) directing the removal of certain affirmative defense provisions from the New Mexico Title V Permit Program. (88 FR 47029, 7/21/23). Pursuant to the federal code of regulations, 40 CFR 70.6(g), NMED is required to develop and submit to EPA a revised Title V Permit Program by August 21, 2024.

The Air Quality Bureau (“AQB” or “Bureau”) has developed this Plan to increase transparency regarding the planning and decision-making processes. This Plan integrates information about potentially affected communities and identifies resources needed by the Bureau to successfully incorporate community participation activities into the decision-making process. The Plan identifies the NMED staff and resources needed to accomplish these activities.

In developing this Plan, community participation needs across the State were assessed to ensure appropriate promotion of public outreach, by identifying whether there is a combination of environmental and demographic factors (e.g., low-income communities, minority communities, limited English proficient individuals, linguistically isolated households, etc.) that may impact public participation. This assessment identifies community outreach needs, provides for public access opportunities beyond statutory requirements, and supports the provision of adequate public access to information about the proposed revisions.

The rule and program revision may require public participation throughout different stages of planning and decision-making. The Bureau will follow this Plan, designed to ensure nondiscriminatory access to all applicable public participation opportunities related to policy, regulatory actions and statutory requirements.

## Project Overview

1. On July 12, 2023 (88 FR 47029, 7/21/23), the EPA removed the “emergency” affirmative defense provisions from Clean Air Act (“CAA”) operating permit program regulations at 40 CFR 70.6(g) (applicable to state/local/tribal permitting authorities) and 71.6(g) (applicable when EPA is the permitting authority).

2. These provisions established an affirmative defense that stationary sources could have asserted to avoid liability in enforcement cases brought for noncompliance with technology-based emission limits contained in the source’s Title V permit, provided that the source demonstrated that excess emissions occurred due to qualifying “emergency” circumstances.

3. These provisions, which have never been required elements of state operating permit programs, are being removed because they are inconsistent with the EPA’s interpretation of the enforcement structure of the CAA in light of recent court decisions from the U.S. Court of Appeals for the D.C. Circuit, specifically the Court’s decision in *NRDC v. EPA*, 749 F.3d 1055. (D.C. Cir. 2014).

4. The July 21, 2023, EPA Rule requires state, local, and tribal permitting authorities to submit program revisions to the EPA to remove similar Title V affirmative defense provisions from their

EPA-approved Title V programs (i.e. 20.2.70.304 NMAC, *Emergency Provision*), no later than August 21, 2024. On August 21, 2024, the Bureau submitted a letter to EPA requesting an extension of this deadline until August 21, 2025. On September 17, 2024, this request was granted.

5. In order to implement the program revisions, Title V affirmative defense provisions included within individual operating permits will also need to be removed. EPA expects these permit changes will occur in the ordinary course of business as permits are periodically renewed, revised, or reopened for other reasons. At the latest, states would be expected to remove affirmative defense provisions from individual permits by the next periodic permit renewal that occurs following either (1) the effective date of the federal rule change (August 21, 2023) (for permit terms based on 40 CFR 70.6(g) or 71.6(g)) or (2) the EPA's approval of state program revisions (for permit terms based on a state affirmative defense provision).

6. To comply with the requirements of the EPA mandate, the Department will file a Petition for Regulatory change with the Environmental Improvement Board ("Board") to remove the affirmative defense provision of its operating permit standards at 20.2.70.304 NMAC, *Emergency Provision*.

Because permitted Title V sources are located throughout the State, this project is expected to receive Statewide interest. Thus, outreach will be Statewide as well.

#### Contacts

The following are the contacts for this action. These contacts will be included in public notices and outreach materials

#### Project and Public Involvement Plan contacts:

Neal Butt  
Environmental Analyst  
Air Quality Bureau  
8801 Horizon Blvd NE  
Albuquerque, NM 87113  
(505) 629-2972  
[Neal.Butt@env.nm.gov](mailto:Neal.Butt@env.nm.gov)

Eric Peters  
Control Strategies Manager  
Air Quality Bureau  
525 Camino de los Marquez  
Santa Fe, New Mexico 87505  
(505) 476-4327  
[eric.peters@env.nm.gov](mailto:eric.peters@env.nm.gov)

Cindy Hollenberg  
Bureau Chief, Air Quality Bureau,  
525 Camino de los Marquez.  
Santa Fe, New Mexico 87505  
(505) 629-8732  
[cindy.hollenberg@env.nm.gov](mailto:cindy.hollenberg@env.nm.gov)

Brian Polgar  
Planning Section Chief, AQB  
525 Camino de los Marquez  
Santa Fe, New Mexico, 87505  
505-629-3466  
[brian.polgar@env.nm.gov](mailto:brian.polgar@env.nm.gov)

#### Website:

Outreach materials and notices will include links to the following website: <https://www.env.nm.gov/air-quality/proposed-regs/>

**Non-English Language Speaker Assistance and Accommodations:** The Bureau will provide Spanish interpretation services upon request at all public meetings, including public hearings, and will also include information in public notices about how persons may request interpretation services, along with accommodations for persons with disabilities. If any person requires an auxiliary aid (e.g., accommodations for persons who are disabled) to participate in any aspect of the Initiative, they may contact one of the project contacts above, preferably 14 days prior to the end of any given public comment period. TDD or TTY users may access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users, 1-800-659-8331.

**Community Description / LEP Analysis**

To address potential or existing environmental justice areas, the Bureau completed an initial screening of the potentially affected communities, using the EJSCREEN tool developed by the EPA and the US Census Bureau website as support. This tool helps identify communities with demographic factors which may benefit from a variety of approaches for notification and outreach communication. Statistics are derived from American Community Survey reports (2018 – 2023) via the U.S. Census Bureau Website.

**Table 1:** Potentially affected communities and their estimated demographics.

Potentially Affected Communities	Total number of households	Per capita income	Persons of Color population (%)	Limited English-Speaking Household* (%)	Predominant Language in Linguistically Isolated Households	LEP Individuals† (%)
USA	127,482,865	\$43,289	44.3%	4.2%	Spanish	8.4%
New Mexico	825,021	\$34,823	67.8%	5.2%	Spanish	8.7%

\* Limited English-Speaking Households are those “in which no member 14 years old and over (1) speaks only English at home or (2) speaks a language other than English at home and speaks English ‘Very well’”. US Census Bureau – American Community Survey – 2023 5-year estimate “Limited English-speaking households” [ [https://data.census.gov/table/ACSST5Y2023.S1602?q=s1602&g=010XX00US\\_040XX00US35](https://data.census.gov/table/ACSST5Y2023.S1602?q=s1602&g=010XX00US_040XX00US35) ]

† Limited English Proficient Individuals are those that speak a language other than English at home **and** who speak English “less than very well.” US Census Bureau - American Community Survey - 2023 5-year estimate “Population 5 years and over”[ <https://data.census.gov/table/ACSST5Y2023.S1601?q=new%20mexico&g=010XX00US&d=ACS%205-Year%20Estimates%20Subject%20Tables&moe=false> ]

The results of the American Community Survey Reports indicate that a significantly larger percentage of the population in New Mexico are persons of color (67.8%), compared with the percentage of persons of color in the United States (44.3%). Households in New Mexico are 5.2% Limited English Speaking, which is comparable to the U.S. average ( 4.2%). Spanish is the predominant language in these households. The per capita income is \$34,823 in New Mexico, which is lower than the average of U.S. per capita income (\$43,289).

The results of this screening suggest that attention should be paid to the linguistic and logistical needs of the low income, minority, linguistically isolated, and limited English proficiency populations. Attention should be paid to additional language assistance, especially Spanish, but also Navajo.

Historically, participation by LEP individuals in New Mexico-led rulemaking activities has been through organized environmental groups, such as Diné C.A.R.E. (Citizens Against Ruining our Environment) or Juntos: Our Air, Our Water, that participate in other non-regulatory issues, such as public meetings

regarding VW Settlement Funds or issues related to the Four Corners Air Quality Group. Participation by Spanish-only stakeholders has recently been limited to Albuquerque/Bernalillo County. The Bureau arranged for live translation services at the public information meetings on the VW Settlement held in Albuquerque and Las Cruces in 2017. Members of Juntos attended the VW Settlement meeting in Albuquerque, advocating for the purchase of electric school buses. No Spanish-only speakers attended the meeting in Las Cruces. Public notices for the public meetings held on the proposed repeal of the ambient air quality standard for Total Suspended Particulate (“TSP”) (20.2.3.109 NMAC) and the proposed Fugitive Dust Control rule (20.2.23 NMAC) were provided in Spanish, but the Bureau did not receive any requests for translation for those meetings. Despite the historically infrequent participation by LEP individuals in similar proceedings, it is still important for the Bureau to incorporate the linguistic and communication needs of these communities when conducting public outreach and participation activities to foster and support further participation by these communities.

To help accomplish this, the Bureau will translate all legal notices into Spanish. The same materials will also be provided to the various Native American Tribes, Pueblos and Nations for distribution. Should additional Spanish or Navajo translation services be requested, the following are average costs associated with various services:

- Costs associated with translation: \$1,000;
- Costs associated with providing a language interpreter: \$2,500 – 5,000, depending on the number and length of the proceeding(s) and the language assistance requested;
- Costs for a court reporter: \$2,000.

The Bureau strives to make public participation efforts as inclusive as possible within budget and time limitations. In addition, interpretation services will be made available upon request to the appropriate contact person listed in the “Contacts” section of this Plan.

**Details of Outreach Activities**

Based on the demographics outlined above, the history of public involvement for related projects, and projected impacts to potentially affected communities, the Bureau will provide important documents and legal notices in Spanish as well as English, and will also provide documents to Native American Tribes, Pueblos and Nations for distribution as they deem appropriate. All notices will include information on how to request additional materials in another language or how to request other communication assistance through NMED.

The following table offers information on how the public will be invited to participate in this project. Note that dates may be approximate. Notices will contain final dates, and specific locations and times.

**Table 2:** Timeline of public involvement opportunities.

<b>Date(s)</b>	<b>Activity</b>	<b>Venue / Location</b>	<b>Time</b>	<b>Language service</b>
<b>February 3, 2025</b>	Announcement of availability of Stakeholder Review Draft of 20.2.70 NMAC and opportunity to provide comments	EPA Region 6. AQB List serves – Border Air Quality, Four Corners Air Quality Group, Oil and Gas, Permitting, Construction Industries, Regional Haze, Regulatory and SIP Announcements and Small	30 days	English

Date(s)	Activity	Venue / Location	Time	Language service
		Business Environmental Assistance Program		
<b>February 2025</b>	Stakeholder Review Draft, 20.2.70 NMAC, posted on “Proposed Air Quality Regulations & Plans” web page	<a href="https://www.env.nm.gov/air-quality/proposed-regs/">https://www.env.nm.gov/air-quality/proposed-regs/</a>		English
<b>March 12, 2025</b>	Petition For Regulatory Change, including a Statement of Reasons and Public Review Draft, filed with to EIB	<a href="https://www.env.nm.gov/environmental-improvement/main-2/">https://www.env.nm.gov/environmental-improvement/main-2/</a>	15 days prior to EIB meeting	English
<b>March 28, 2025</b>	EIB meeting to consider hearing request	Hybrid – State Capital Building and Webex	TBD	English
<b>April 20, 2025</b>	Publication of notice of proposed rulemaking hearing in newspaper of general circulation in the State	Albuquerque Journal	At least 60 days prior to the hearing	English and Spanish
<b>April 22, 2025</b>	Publication of Notice of Proposed Rulemaking in NM Register	NM Register	At least 60 days prior to the hearing	English and Spanish
<b>April 2025</b>	“Provide to the Public” rulemaking information	AQB website, Sunshine Portal, NMED field offices, AQB list serve, NM Legislative Council	At least 60 days prior to the hearing	English and Spanish
<b>April 2025</b>	Provide a copy of the proposed rule to the Small Business Regulatory Advisory Commission	Letter	At the same time as persons who have requested advance notice of rulemaking.	English
<b>June 6, 2025</b>	Notice of Intent to Present Technical Testimony filed with the EIB	No later than 20 days prior to hearing		English
<b>June 6, 2025</b>	Entry of Appearance	No later than 20 days prior to hearing		English
<b>June 27, 2025</b>	Public Hearing	Hybrid – State Capital Building and Webex	TBD	English; Spanish interpretation upon request

Public notices and outreach materials will inform the public that they can receive email updates through NMED’s listserv by signing up at <https://public.govdelivery.com/accounts/NMED/subscriber/new>, then choosing which topics they are most interested in. This project will periodically send updates to the AQB *Regulatory and SIP Announcements* list serve.

The following web sites provide access to the official notices electronically, per the publication outlets described above:

Albuquerque Journal

<http://legals.abqjournal.com/>

There are many land grants within the state. Notices to land grants will be sent to the New Mexico Land Grant Council contact:

NM Land Grant Council  
1829 Sigma Chi Rd SE  
Albuquerque NM 87106  
[nmlandgrantcouncil@unm.edu](mailto:nmlandgrantcouncil@unm.edu)

The draft rule was also sent to the Pueblos, Nations, and Tribes listed below via email, which the Department maintains an active list for:

- Pueblo of Acoma
- Pueblo of Cochiti
- Pueblo of Isleta
- Pueblo of Jemez
- Pueblo of Laguna
- Pueblo of Nambe
- Pueblo of Ohkay Owingeh
- Pueblo of Picuris
- Pueblo of Pojoaque
- Pueblo of San Felipe
- Pueblo of San Ildefonso
- Pueblo of Sandia
- Pueblo of Santa Ana
- Pueblo of Santa Clara
- Pueblo of Santo Domingo
- Pueblo of Taos
- Pueblo of Tesuque
- Pueblo of Zia
- Pueblo of Zuni
- Pueblo of Ysleta Del Sur
- Navajo Nation
- Navajo Council
- Jicarilla Apache Nation
- Mescalero Apache Tribe
- Fort Sill Apache Tribe
- Ute Mountain Ute Tribe

### Document Repositories

The following is a list of locations where copies of relevant documents will be available to the community. Public notices and outreach materials will inform the public of these locations, as appropriate.

#### **NMED District I Field Offices**

##### **Albuquerque**

121 Tijeras Ave. NE STE 1000  
Albuquerque, NM 87102-3400  
Phone (505) 222-9500

##### **Clovis Field Office**

100 E. Manana, Unit 3  
Clovis, NM 88101  
Phone (575) 762-3728

##### **Gallup Field Office**

1720 East Aztec Ave  
Gallup, NM 87301  
Phone (505) 470-2473

##### **Milan**

708 Uranium Ave.  
Milan, NM 87021  
Phone (505) 209-4042

##### **Los Lunas**

475 Courthouse Rd SE Suite B  
Los Lunas, New Mexico 87031  
Phone (505)841-5280

##### **Rio Rancho**

4359 Jager Drive NE, Suite B

Rio Rancho, NM 87144  
Phone (505) 771-5980

**Tucumcari**

113 W. Center  
Tucumcari, NM 88401  
Phone (575) 461-1671

**NMED District II Field Offices**

**Santa Fe**

2540 Camino Edward Ortiz  
Santa Fe, NM 87507  
Phone (505) 827-1840

**Española**

912 N. Railroad Ave, Espanola, NM,  
87532  
Phone (505) 753-7256

**Farmington**

1800 East 30<sup>th</sup> St, Suite B  
Farmington, NM 87401  
Phone (505) 566-9741

**Las Vegas**

2538 Ridgerunner Road  
Las Vegas, New Mexico 87701  
Phone (505) 454-2801

**Raton**

1277A South Second Street  
Raton, NM 87740  
Phone (575) 445-3621

**Taos**

145 Roy Road, Suite B  
Taos, NM 87571  
Phone (575) 758-8808

**NMED District III Field Offices**

**Las Cruces**

2301 Entrada del Sol  
Las Cruces, NM 88001  
Phone (575) 288-2050

**Alamogordo**

811 E. First St, Suite D  
Alamogordo, NM 88310  
Phone (575) 437-7115

**Carlsbad**

406 N. Guadalupe, Suite C

Carlsbad, NM 88220  
Phone (575) 885-9023

**Hobbs**

2120 N Alto  
Hobbs, NM 88240  
Phone (575) 397-6910

**Roswell**

1914 W. Second  
Roswell, NM 88201  
Phone (575) 624-6046

**Ruidoso**

1216 E. Mechem, Building 2  
Ruidoso, NM 88345  
Phone (575) 258-3272

**Silver City**

3082 32nd St Bypass Road, Suite D  
Silver City, NM 88061  
Phone (575) 388-1934

Electronic copies will be available at the following link, which will be included in public notices and outreach materials as appropriate: <https://www.env.nm.gov/air-quality/proposed-regs/>