

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

**IN THE MATTER OF PROPOSED
REPEAL AND REPLACEMENT OF
20.2.71 NMAC – *OPERATING PERMIT EMISSIONS FEES*
And 20.2.75 NMAC – *CONSTRUCTION PERMIT FEES***

No. EIB 24-12 (R)

**AIR QUALITY BUREAU
ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT,**

Petitioner.

STATEMENT OF JIM WINCHESTER

My name is Jim Winchester. I am Executive Director of the Independent Petroleum Association of New Mexico (“IPANM”). I hold a Bachelor of Science degree in Mechanical Engineering from the University of Notre Dame. I previously served as the Communications Director for both the New Mexico Energy, Minerals & Natural Resources Department (“EMNRD”) and the New Mexico Environment Department (“NMED”).

Description of IPANM & Its Members

Formed in 1978, IPANM advances and preserves the interests of independent oil and gas producers across New Mexico while educating the public to the importance of oil and gas to the state. Independent producers develop 91 percent of the wells in the United States – producing 83 percent of America’s oil and 90 percent of America’s natural gas. IPANM actively works to protect, defend, and promote the responsible oil and gas production of our members here New Mexico. That work includes working with the agencies, regulators, and legislators that oversee the oil and gas industry. We also provide technical education to members and communities on matters

of interest. When necessary, IPANM will litigate against rules that disregard due process or constitute illegal regulatory overreach.

IPANM is governed by an elected Board of Directors comprised of 17 members from across the State of New Mexico. As Executive Director, I am responsible for overseeing IPANM's functions and for carrying out the direction of the Board of Directors.

IPANM has over 350 members representing over 120 distinct member companies working in all aspects of the oil and gas industry. The oil and gas industry is sometimes divided into segments, with upstream referring to exploration and production, midstream referring to transportation and storage of oil and natural gas, and downstream referring to the conversion of crude oil and natural gas into a variety of finished products. IPANM members include companies working in upstream, midstream, and downstream segments of the industry. Our members are responsible for tens of thousands of oil and gas wells and related facilities, and represent hundreds of thousands of acres of oil and gas interests across the State of New Mexico.

The majority of IPANM members are New Mexico based companies and many are relatively small. In that sense, IPANM represents New Mexico businesses, owners, operators, workers, and families who are impacted by issues related to the oil and gas industry.

Air Permit Fees Program

IPANM understands that the New Mexico Air Quality Control Act, NMSA 1978, § 74-2-7(A) (20121) directs the Board to adopt regulations requiring “(1) a person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from [NMED] prior to such construction or modification; and (2) a person intending to operate any source for which an operating permit is required by the 1990 amendments

to the federal act, except as otherwise specifically provided by regulation, to obtain an operating permit from [NMED].”

The Act specifies that Board’s regulations include “(6) a schedule of construction permit fees sufficient to cover the reasonable costs of: (a) reviewing and acting upon any application for such permit; and (b) implementing and enforcing the terms and conditions of the permit, excluding any court costs or other costs associated with an enforcement action; (7) a schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the federal act.” Section 74-2-7(B)(6) & (7). As the New Mexico Court of Appeals noted when reviewing similar language in the New Mexico Mining Act:

In common parlance, a schedule is a “statement of details.” *The Random House Dictionary of the English Language* 1276 (1971). In the present context, we believe that the common understanding of the word “schedule,” and the meaning intended by the legislature, is a table that classifies mining operations by type and sets a specific, fixed fee for each type. See [*Hutton v. Gill*, 212 Ind. 164, 8 N.E.2d 818, 819–20 \(1937\)](#) (teacher salary schedule). An applicant for a permit could consult the schedule and, based on the type of operation for which the permit is being sought, could determine the fee that was to be paid.

Old Abe Co. v. New Mexico Mining Comm’n, 1995-NMCA-134, 908 P.2d 776. The Court has further stated:

Generally, a “fee” is a charge intended to defray, in whole or in part, the expense of regulating or providing a service, benefit or privilege. See *Thrifty Rent-A-Car Sys. v. City & County of Denver*, 833 P.2d 852, 855 (Colo.Ct.App.1992); *City of Kettering v. Berger*, 4 Ohio App.3d 254, 448 N.E.2d 458, 461 (1982); *Utah Restaurant Ass’n v. Salt Lake City–County Bd. of Health*, 771P.2d 671, 676 (Utah Ct. App.), *cert. denied*, 789 P.2d 33 (Utah1989); see also *Apodaca v. Wilson*, 86 N.M. 516, 525–26, 525P.2d 876, 885–86 (1974) (holding municipal sewer and water charges are charges, not taxes).

New Mexico Mining Ass’n v. New Mexico Mining Comm’n, 1996-NMCA-098, 924 P.2d 741.

IPANM recognizes that the Board has not reviewed the construction permit fees since 2003 and operating permit fees since 2009. IPANM notes that while the base fee amounts have not

changed since then, both regulations require NMED to adjust the fee amounts based on the Consumer Price Index. *See* 20.2.75.11.F NMAC (“the cost per point in Subsection B of this section and the annual fee in Subsection E of this section shall be adjusted each year on January 1 to reflect the increase, if any, by which the consumer price index for the most recent year exceeds the consumer price index for the year 2004.”) and 20.2.71.112.E NMAC (“Beginning on January 1, 2009, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.”). As the NMED website notes:

The NSR Permit Application Fee amounts have been updated for calendar year 2024. The new fee amounts are applied for all new permit applications beginning January 1, 2024. Please make sure to submit the correct fee amount with General Construction Permit applications (\$5,100), Streamline applications (\$5,100), and Relocation applications (\$510). The \$500 application fee for other NSR permit applications and for NOI submittals has not changed.

The current Title V fee per Fee Pollutant (20.2.71.7.C.1 NMAC) is **\$38.47/ton**. The corresponding Title V HAP fee (20.2.71.7.C.2 NMAC) is **\$244.51**

<https://www.env.nm.gov/air-quality/permit-fees-2/> last reviewed on June 17, 2024.

NMED Fee Proposal

NMED’s fee proposal would raise both the construction permit fees and the operating permit fees. Initially, my membership has raised concerns about the lack of public and regulated entity involvement in preparing the proposal prior to submittal. In the past, prior to NMED initially proposing air permit fees and prior to proposing revisions to the fees, the NMED’s Air Quality Bureau engaged the public and regulated entities in extensive pre-petition meetings to discuss the program’s need for revenue and the possible options available for obtaining those revenues. As a result, NMED’s proposals met with little or no opposition. In this case, NMED departed from that past successful process, and instead chose to submit a proposal before discussing it with the

regulated entities, including oil and gas companies that will be subject to a substantial increase in fees. IPANM urges the Board to consider requiring more public process prior to deciding whether or not to adopt the proposal or fashion some alternative.

IPANM notes that the fees collected for these permits is deposited into the Air Quality Permit Fund, created by NMSA 1978, § 74-2-15(A) (1992). IPANM acknowledges that money in the Fund is appropriated to NMED “for the purpose of paying the reasonable costs of:

- (1) reviewing and acting upon any application for a permit;
- (2) if the owner or operator receives a permit, implementing and enforcing the terms and conditions of such permit ***not including any court costs or other costs associated with any enforcement action;***
- (3) emissions and ambient monitoring;
- (4) preparing generally applicable regulations or guidance;
- (5) modeling, analysis and demonstrations; and
- (6) preparing inventories and tracking emissions.

Section 74-2-15(B) (emphasis added).

IPANM notes that the Fund is further divided into funds for the construction and operating permit programs. Based on its review of the relevant information, IPANM notes that the funds for each program have substantial balances, into the tens of millions of dollars. . Given the current balances and expected income from the existing fee requirements, IPANM asserts that NMED has not justified the need for fee increases at this time. To the extent that the fee proposals will generate income beyond that necessary for administering the current program, the fees amount to an impermissible tax on air emissions sources, including those in the oil and gas business.

Oil and Gas General Permits

NMED proposes to increase the fee paid for oil and gas facilities for general construction permits by 500%. Specifically, the fees for those permits would increase from \$5,100 to \$25,500, with no changes to the permits or required review. IPANM has not seen any justification for the proposed increase. While the number of permit applications may have increased substantially over

the last several years, the AQB's review of those applications has not substantially increased: under the applicable general permits, the AQB's review is limited to whether the proposed source includes emission units or emission rates beyond those authorized by the general construction permit. No source-specific regulatory review or modeling is conducted, nor is the AQB authorized to propose monitoring, recordkeeping, and reporting requirements beyond those in the general construction permits. Based on IPANM's members experience requesting general construction permits, IPANM believes that the required review of those applications should take no more than a day or so to complete. As such, \$25,500 seems well beyond the amount necessary to pay the reasonable costs of reviewing the permit application. IPANM has seen no evidence that other activities, such as permit review and update, document development, and other appropriated review activities. IPANM notes that Section 74-2-12(B) limits the use of the permit fees collected for "any court costs or other costs associated with any enforcement action."

Additionally, IPANM is concerned that the AQB is currently applying and will continue to apply the general construction permit fees to changes at sites to replace authorized compression or other emission sources. Those changes do not modify the permit conditions, only delineates the equipment authorized to operate under the permit. Review of those notices are limited to verifying that the replacement equipment is authorized by the permit. That review hardly justifies the proposed \$25,500 fee. IPANM notes that because of existing supply chain issues affecting the availability of certain equipment and the need to increase compression over the life of most new oil and gas wells, an operator may need to replace compression and other equipment a number of times over the life of the well. Those changes do not warrant the fees now proposed by the NMED. Moreover, IPANM does not believe that those notices constitute permit revisions under 20.2.72.219 NMAC, warranting the application of fees. *See* 20.2/75.7.D NMAC ("revision"

means “any change requested by an applicant to any term or condition of a permit including but not limited to emission limitations, control technology, operating conditions and monitoring requirements.”) If the Board decides to revise the construction permit fees, it should clarify that notices of equipment changes within those authorized by the general permit, are not subject to fee requirements.

Conclusion

For the reasons stated above, IPANM urges the Board to reject NMED’s fee proposal and request that the agency engage in meaningful discussions with all affected parties before proceeding with a revised proposal.