

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 71 OPERATING PERMIT EMISSIONS FEES**

**20.2.71.1 ISSUING AGENCY:** Environmental Improvement Board.

~~[[11/30/95; 20.2.71.1 NMAC – Rn, 20 NMAC 2.71.100-10/31/02]~~ 20.2.71.1 NMAC – Rp, 20.2.71.1 NMAC,  
07/15/2024]

**20.2.71.2 SCOPE:** All persons required to obtain a permit under 20.2.70 NMAC (Operating Permits).

~~[[11/30/95; 0.2.71.2 NMAC – Rn, 20 NMAC 2.71.101-10/31/02]~~ 20.2.71.2 NMAC – Rp, 20.2.71.2 NMAC,  
07/15/2024]

**20.2.71.3 STATUTORY AUTHORITY:** Environmental Improvement Act, ~~[NMSA 1978, section 74-1-8 (A)(4)]~~ Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978 and Air Quality Control Act, ~~[NMSA 1978,]~~ Sections 74-2-1 et seq., NMSA 1978, including specifically, ~~[section 74-2-7(B)(5)]~~ Paragraph (7) of Subsection B of Section 74-2-7.

~~[[11/30/95; 20.2.71.3 NMAC – Rn, 20 NMAC 2.71.102-10/31/02]~~ 20.2.71.3 NMAC – Rp, 20.2.71.3 NMAC,  
07/15/2024]

**20.2.71.4 DURATION:** Permanent.

~~[[11/30/95; 20.2.71.4 NMAC – Rn, 20 NMAC 2.71.103-10/31/02]]~~ 20.2.71.4 NMAC – Rp, 20.2.71.4 NMAC,  
07/15/2024]

**20.2.71.5 EFFECTIVE DATE:** ~~[November 30, 1995]~~ July 15, 2024, unless a later date is cited at the end of a section.

~~[[11/30/95; 20.2.71.5 NMAC – Rn, 20 NMAC 2.71.104-10/31/02; A, 12/15/04]]~~ 20.2.71.5 NMAC – Rp, 20.2.71.5 NMAC, 07/15/2024]

[The latest effective date of any section in this part is ~~[01/09/09]~~ 07/15/2024.]

**20.2.71.6 OBJECTIVE:** The objective of this Part is to establish a schedule of operating permit emission fees.

~~[[11/30/95; 20.2.71.6 NMAC – Rn, 20 NMAC 2.71.105-10/31/02]~~ 20.2.71.6 NMAC – Rp, 20.2.71.6 NMAC,  
07/15/2024]

**20.2.71.7 DEFINITIONS.** In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part, the following definitions apply.

**A. "Allowable emission rate"** means the maximum emission allowed by the more stringent emission limitation applicable to the source contained in:

- (1) any New Mexico air quality control regulation;
- (2) any federal standard of performance, emission limitation, or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412; or

- (3) any condition within a construction or operating permit issued by the department.

**B. "Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any fee pollutant.

**C. "Fee pollutant"** means:

- (1) sulfur dioxide, nitrogen dioxide, carbon monoxide, ~~[total suspended particulate matter]~~ particulate matter 10 microns or less (PM<sub>10</sub>), particulate matter 2.5 microns or less (PM<sub>2.5</sub>), and volatile organic compounds ~~[, and mercury]~~; and

- (2) any hazardous air pollutant that is subject to any standard promulgated pursuant to section 112 of the federal act.

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

**E. "Hazardous air pollutant"** means an air contaminant that has been classified as a hazardous air pollutant pursuant to section 112 of the federal act.

**F. "Operator"** means the person or persons responsible for the overall operation of a facility.

**G. "Owner"** means the person or persons who own a facility or part of a facility.

1           **H. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico  
2 Administrative Code, unless otherwise noted; as adopted or amended by the board.

3           **I. "Stationary source"** means any building, structure, facility, or installation that emits or may emit  
4 any air pollutant.

5 ~~[[11/30/95; 20.2.71.7 NMAC – Rn, 20 NMAC 2.71.107-10/31/02; A, 12/15/04; A, 06/15/07] 20.2.71.7 NMAC – Rp,~~  
6 ~~20.2.71.7 NMAC, 07/15/2024]~~

7  
8 **20.2.71.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:** This Part amends and  
9 supersedes Air Quality Control Regulation (AQCR) 771 -- Operating Permit Emission Fees, filed November 15,  
10 1993, as amended.

11           **A.** All references to AQCR 771 in any other rule shall be construed as a reference to this Part.

12           **B.** The amendment and supersession of AQCR 771 shall not affect any administrative or judicial  
13 enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant  
14 to AQCR 771.

15 ~~[[11/30/95; 20.2.71.8 NMAC – Rn, 20 NMAC 2.71.106-10/31/02] 20.2.71.8 NMAC – Rp, 20.2.71.8 NMAC,~~  
16 ~~07/15/2024]~~

17  
18 **20.2.71.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment  
19 Department, Air Quality Bureau ~~[, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo~~  
20 ~~St., Santa Fe, NM 87505]].~~

21 ~~[[11/30/95; 20.2.71.9 NMAC – Rn, 20 NMAC 2.71.108-10/31/02] 20.2.71.9 NMAC – Rp, 20.2.71.9 NMAC,~~  
22 ~~07/15/2024] [As of April 2013, the Air Quality Bureau is located at 525 Camino de los Marquez, Santa Fe~~  
23 ~~NM, 87505.]~~

24  
25 **20.2.71.10 to 20.2.71.108 [RESERVED]**

26  
27 **20.2.71.109 APPLICABILITY:** Each owner or operator required to obtain an operating permit under 20.2.70  
28 NMAC (Operating Permits) shall be subject to the requirements of this Part.

29 ~~[[11/30/95; 20.2.71.109 NMAC – Rn, 20 NMAC 2.71.109-10/31/02] 20.2.71.109 NMAC – Rp, 20.2.71.109 NMAC,~~  
30 ~~07/15/2024]~~

31  
32 **20.2.71.110 FEE REQUIREMENT**

33           **A.** An annual operating permit emission fee shall be paid to the department by each owner or operator  
34 subject to this part.

35           **B.** The fee shall be assessed:

36               (1) for a major source as defined in 20.2.70 NMAC (Operating Permits), for all emissions  
37 units;

38               (2) for all other stationary sources, for emissions units which cause the source to be subject  
39 to 20.2.70 NMAC; and

40               (3) for emissions above annual allowable emission limits for the source categories in  
41 Paragraphs (1) and (2) of Subsection B of Section 20.2.71.110 NMAC.

42           **C.** The fee shall be calculated in conformance with 20.2.71.111 NMAC.

43 ~~[[11/30/95; 20.2.71.110 NMAC – Rn, 20 NMAC 2.71.110-10/31/02; A, 12/15/04] 20.2.71.110 NMAC – Rp,~~  
44 ~~20.2.71.110 NMAC, 07/15/2024]~~

45  
46 **20.2.71.111 FEE DETERMINATION**

47           **A.** Fee calculation.

48               (1) The annual fee shall be calculated by taking the product of the allowable emission rate  
49 for each fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112  
50 NMAC.

51               (2) The allowable emission rate which shall be used in the fee calculation is:

52                   (a) the allowable emission rate which exists on December 31 for each year; and

53                   (b) the failure of an owner or operator to include the correct information in a permit  
54 application, resulting in incorrect allowable emissions in a permit issued under 20.2.70 NMAC, 20.2.72 NMAC, or  
55 20.2.74 NMAC, shall not preclude the department from requiring payment for the correct emissions from the time  
56 payment would have been first due.

(3) Allowable emission rates shall be calculated to the tenth of a ton for each emission unit and then summed to determine the tons per year for the facility. Total facility tons per year quantities shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.

(4) Emissions from those operations determined to be insignificant activities by the department under 20.2.70 NMAC shall not be included in the fee calculation.

(5) Fugitive emissions which have an allowable emission rate shall be included in the fee calculation.

(6) Any quantity of a pollutant which is assessed a fee because it is a hazardous air pollutant shall not be assessed additional fees.

(7) ~~[A maximum of six thousand tons per year of any one fee pollutant shall be used in the fee calculation.]~~ For permits with allowable emission rates for both PM<sub>10</sub> and PM<sub>2.5</sub>, the fee shall only be assessed for the higher of the two emission rates and shall not double charge for both pollutants.

**B. Source shutdown.**

(1) The annual fee shall not be reduced due to lack of operation of any emissions unit, except when:

(a) the discontinued operation is accounted for in an allowable emission rate contained within a construction or operating permit issued by the department;

(b) a construction or operating permit issued by the department has been discontinued or terminated and the source ceased operation; or

(c) the emissions unit is located at a stationary source which meets the criteria of Paragraph (2) of Subsection B of 20.2.71.111 NMAC.

(2) The annual fee shall be reduced when all operations at a stationary source have been shut down for a period greater than 60 consecutive days within a calendar year. In this case, the fee calculation shall be adjusted by reducing the annualized allowable emission rate, or potential to emit if applicable, for each day the stationary source was shutdown.

**C. Fee for emissions above annual allowable emission limits.**

(1) The fee for emissions above annual allowable emission limits shall be based on all emissions above annual allowable emission limits of fee pollutants reported or required to be reported by a stationary source through December 31 in accordance with Subsection E of 20.2.70.302 NMAC. The fee shall be calculated by taking the product of the emissions above annual allowable emission limits for each fee pollutant above and beyond the allowable annual emissions limit per unit expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC.

(2) Total facility tons per year quantities of emissions above annual allowable emission limits shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.

(3) Any quantity of a pollutant which is assessed a fee pursuant to this section because it is a hazardous air pollutant shall not be assessed additional fees pursuant to this section.

~~[(4) — A maximum of six thousand tons per year of any one fee pollutant shall be used in the fee calculation for this section.]~~

~~[[11/30/95; 20.2.71.111 NMAC – Rn, 20 NMAC 2.71.111 10/31/02; A, 12/15/04] 20.2.71.111 NMAC – Rp, 20.2.71.111 NMAC, 07/15/2024]~~

**20.2.71.112 EMISSION FEE**

**A.** The fee for each fee pollutant shall be ~~[\$20.00]~~ \$81.00 per ton on an annual basis, except as provided for in Subsection B of 20.2.70.112 NMAC. ~~[This fee shall increase by \$2.00 per ton on an annual basis beginning on January 1, 2010 through the fees due on June 1, 2012.]~~

**B.** The fee for each hazardous air pollutant shall be ~~[\$165.00]~~ \$250.00 per ton on an annual basis for any stationary source which is only major as defined in 20.2.70 NMAC for any hazardous air pollutant.

~~[ — C. — Fees for mercury emissions.~~

~~———— (1) — For the calendar years 2010 through 2017, the fee for mercury emissions from stationary sources subject to 20.2.85 NMAC shall be \$8.88 per ounce annually.~~

~~———— (2) — For the calendar years 2018 and thereafter, the fee for mercury emissions] from stationary sources subject to 20.2.85 NMAC shall be \$22.51 per ounce annually.]~~

~~[D] C.~~ The fee per ton of emissions above annual allowable emission limits shall be identical to the fee per ton of allowable emissions.

~~[E. 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.]~~

D. The fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index (CPI) in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act. In the event there is a decrease or absence of change in the CPI, fees shall remain the same until the next increase in CPI as described above.

~~[[11/30/95; 20.2.71.112 NMAC – Rn, 20 NMAC 2.71.112 10/31/02; A, 12/15/04; A, 06/15/07; A, 01/09/09] 20.2.71.112 NMAC – Rp, 20.2.71.112 NMAC, 07/15/2024]~~

## **20.2.71.113 FEE PAYMENT, COLLECTION, AND COSTS**

### **A. Schedule.**

(1) The department shall by April 1 of each year provide to each owner or operator subject to this part notification, which shall contain:

(a) the emissions fee based on the requirements of this part which is currently due; and

(b) a summary of the basis for the required fee.

(2) Upon discovery of an error in any past notification of emissions fees due, the department shall promptly notify the owner or operator and provide credit for overcharges or require payment for undercharges.

(3) Each owner or operator shall pay by June 1 the emissions fee contained in the department's notification required under Paragraph (1) of Subsection A of Section 20.2.71.113 NMAC.

(4) Each owner or operator shall pay invoices based on notices of errors in past notifications within 60 days of the invoice date.

~~[(5) The department shall commence invoicing for fees for emissions above annual allowable emission limits reported by the method specified by the department in calendar year 2007.]~~

### **B. Payment.**

(1) Fees shall be remitted in the form of a certified check or money order, electronic payment, or other method as allowed by the State of New Mexico made payable to the environment department and submitted to the air quality bureau at the address specified in the notice.

(2) Upon receipt of ~~[the check or money order,]~~ the payment of the fees, it shall be deposited in the state air quality permit fund.

**C. Nonpayment.** Failure to remit the full fee required by the due date specified in this section is a violation of this part and may subject the owner or operator to:

(1) civil penalties for each day of noncompliance as provided for in the New Mexico Air Quality Control Act, section 74-2-12.1, NMSA 1978;

(2) the enforcement provisions of the New Mexico Air Quality Control Act, section 74-2-12, NMSA 1978, which includes suspension or revocation of any permit.

D. Non-compliance with Chapter 2, Title 20 NMAC or the Air Quality Control Act subjects each owner or operator to administrative compliance costs for enforcement of Chapter 2, Title 20 NMAC.

~~[[11/30/95; 20.2.71.113 NMAC – Rn, 20 NMAC 2.71.113 10/31/02; A, 12/15/04] 20.2.71.113 NMAC – Rp, 20.2.71.113 NMAC, 07/15/2024]~~

## **HISTORY OF 20.2.71 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 771, Air Quality Control Regulation 771 - Operating Permit Emission Fees, filed 11/15/93.

**History of Repealed Material:** [RESERVED]

## **Other History:**

EIB/AQCR 771, Air Quality Control Regulation 771 - Operating Permit Emission Fees, filed 11/15/93 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.71, Operating Permit Emission Fees, filed 10/30/95;

20 NMAC 2.71, Operating Permit Emission Fees, filed 10/30/95 was **renumbered, reformatted and replaced** by 20.2.71 NMAC, Operating Permit Emission Fees, effective 10/31/02;

- 1 20.2.71 NMAC, Operating Permit Emission Fees, effective 10/31/02 was **reformatted and replaced** by 20.2.71
- 2 NMAC, Operating Permit Emission Fees, effective 07/15/2024.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 75 CONSTRUCTION PERMIT FEES**

**20.2.75.1 ISSUING AGENCY:** Environmental Improvement Board.

~~[[20.2.75.1 NMAC - Rp 20 NMAC 2.75.100, 03/02/04]~~ 20.2.75.1 NMAC - Rp, 20.2.75.1 NMAC, 07/15/2024]

**20.2.75.2 SCOPE:**

~~[A.]~~ All persons who apply for a permit to construct or modify a source or revise a permit, or who request a technical review of an existing permit under 20.2.72 NMAC. Part 70 (20.2.70 NMAC) operating permit emission fees are covered under 20.2.71 NMAC.

~~[B.] The requirements concerning the payment of an annual fee shall apply to sources with an air quality construction permit for which the application to either revise, modify or for a new permit was received following the effective date of this regulation.]~~

~~[[20.2.75.2 NMAC - Rp 20 NMAC 2.75.101, 03/02/04]~~ 20.2.75.2 NMAC - Rp, 20.2.75.2 NMAC, 07/15/2024]

**20.2.75.3 STATUTORY AUTHORITY:** Environmental Improvement Act, Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, including specifically, Paragraph (6) of Subsection B of Section 74-2-7 NMSA 1978.

~~[[20.2.75.3 NMAC - Rp 20 NMAC 2.75.102, 03/02/04]~~ 20.2.75.3 NMAC - Rp, 20.2.75.3 NMAC, 07/15/2024]

**20.2.75.4 DURATION:** Permanent.

~~[[20.2.75.4 NMAC - Rp 20 NMAC 2.75.103, 03/02/04]~~ 20.2.75.4 NMAC - Rp, 20.2.75.4 NMAC, 07/15/2024]

**20.2.75.5 EFFECTIVE DATE:** ~~[March 2, 2001]~~ July 15, 2024 except where a later date is cited at the end of a section.

**A.** For applications received prior to the effective date of this regulation, the provisions in 20.2.75 NMAC, as effective as of the date of the receipt of the application, remain effective, and fees shall be so determined.

**B.** For applications received following the effective date of this regulation, fees shall be based on the current regulation.

~~[[20.2.75.5 NMAC - Rp 20 NMAC 2.75.104, 03/02/04; A, 12/01/03]~~ 20.2.75.5 NMAC - Rp, 20.2.75.5 NMAC, 07/15/2024]

[The latest effective date of any section in this Part is ~~[12/01/03]~~ 07/15/2024.]

**20.2.75.6 OBJECTIVE:** The objective of this Part is to establish a schedule of fees for the construction permit program, including construction permits, permit revisions, and technical reviews of existing permits.

~~[[20.2.75.6 NMAC - Rp 20 NMAC 2.75.105, 03/02/04]~~ 20.2.75.6 NMAC - Rp, 20.2.75.6 NMAC, 07/15/2024]

**20.2.75.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC (definitions) or 20.2.72 NMAC (construction permits), as used in this Part:

**A. “Air toxics review”** means the required review of a permit application for the potential emission of an air toxic regulated by 20.2.72.400 NMAC - 20.2.72.499 NMAC. As used in this Part, a level I air toxics review consists of modeling to determine whether one one-hundredth (1/100) of the occupational exposure limit, as defined in 20.2.72.401 NMAC, is met; a level II air toxics review consists of either a health assessment or best available control technology (BACT) determination, whichever is required by 20.2.72.400 NMAC - 20.2.72.499 NMAC.

**B. “Applicable regulations”**, for the purpose of assessing permit fee points, mean those regulations that are applicable to the source and not the review to determine whether the regulation is applicable. Applicable regulations do not include 20.2.1 NMAC (general provisions), 20.2.2 NMAC (definitions), 20.2.3 NMAC (ambient air quality standards), 20.2.5 NMAC (source surveillance), 20.2.7 NMAC (excess emissions during malfunctions, startup, shutdown, or scheduled maintenance), 20.2.8 NMAC (emissions leaving New Mexico), 20.2.60 NMAC (open burning), 20.2.70 NMAC (operating permits), 20.2.71 NMAC (operating permit emission fees), 20.2.72 NMAC (construction permits), 20.2.73 NMAC (notice of intent and emission inventory requirements), 20.2.74 NMAC (prevention of significant deterioration (PSD)), 20.2.75 NMAC (construction permit fees), 20.2.77 NMAC (new source performance standards), 20.2.78 NMAC (emission standards for hazardous air pollutants), 20.2.79 NMAC (permits - nonattainment areas), 20.2.80 NMAC (stack heights), and 20.2.82 NMAC (maximum achievable

control technology standards for source categories of hazardous air pollutants). All other Title 20, Chapter 2 NMAC Parts and all new source performance standards (excluding Subpart A) and national emission standards for hazardous air pollutants/maximum achievable control technology (NESHAP/MACT) (excluding 40 CFR Part 61 Subparts A and M and 40 CFR Part 63 Subpart A) regulations that are applicable to the source shall be counted and shall result in additional points for permit fees purposes, in accordance with the permit fee schedule in this Part.

**C. “Fee unit”** means any equipment or process which generates, creates, or is the source of a regulated air contaminant, which is listed or identified in a construction permit application or application to revise a permit and which requires review and evaluation against state and federal regulations and standards. This definition does not include sources which are exempt under 20.2.72.202 NMAC or sources for which no applicable requirements are identified in the permit. In the case of a permit modification, revision or technical review of an existing permit, the requirements of Subsection A of 20.2.75.11 NMAC apply only to the equipment or process involved in such modification, revision or review.

**D. “Fugitive emissions fee unit”** means sources of fugitive emissions for which applicable requirements are identified in the permit. A maximum of one fugitive emissions fee unit shall be applied to any given application.

**E. “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. For the purposes of this regulation, revision does not include administrative revision as used in 20.2.72 NMAC.

**F. “Small business”** means, for the purposes of this Part, a company that employs no more than ten (10) employees at any time during the calendar year. Employees include part-time, temporary, or limited service workers. For new sources, the responsible company official shall certify that the source does not expect to employ any more than ten (10) employees in the first year of operations. In addition, "small business" does not include (1) any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and (2) any major source for hazardous air pollutants under 20.2.70 NMAC.

**G. “Technical review of an existing permit”** means the department’s technical review of new information submitted by a permittee as required by an existing permit condition and in conjunction with proposed changes at the source that do not involve any changes to the existing permit. The review must be necessary to demonstrate that all applicable state and federal regulations and standards will continue to be met and that the existing permit will continue to be valid. This does not include required periodic reports.

~~[[20.2.75.7 NMAC – Rp 20 NMAC 2.75.107, 03-02-01; A, 12/01/03] 20.2.75.7 NMAC – Rp, 20.2.75.7 NMAC, 07/15/2024]~~

**20.2.75.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:** This Part amends and supersedes Air Quality Control Regulation 700 - Filing and Permit Fees, filed November 20, 1989, as amended (AQCR 700).

**A.** All references to AQCR 700 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 700 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 700.

~~[[20.2.75.8 NMAC – Rp 20 NMAC 2.75.106, 03/02/01] 20.2.75.8 NMAC – Rp, 20.2.75.8 NMAC, 07/15/2024]~~

**20.2.75.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Santa Fe, NM.

~~[[20.2.75.9 NMAC – Rp 20 NMAC 2.75.108, 03/02/01] 20.2.75.9 NMAC – Rp, 20.2.75.9 NMAC, 07/15/2024]~~ [The Air Quality Bureau is located at 525 Camino de los Marquez, Santa Fe NM, 87505]

**20.2.75.10 FILING FEE:**

**A.** A filing fee of ~~[five hundred dollars (\$500)]~~ two thousand dollars (\$2,000) shall be submitted with each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit. The filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC.

**B.** For applications submitted under 20.2.72.221 NMAC, accelerated review, an accelerated review filing fee of ~~[one thousand dollars (\$1,000)]~~ five thousand dollars (\$5,000) shall be submitted in lieu of any other

filing fees under this section. One-half of the accelerated review filing fee shall be applied to the cost of the accelerated review submitted by the qualified outside firm. In the event that:

(1) There are no qualified outside firms on contract with the department, or if all of the qualified outside firms have a conflict of interest, the entire filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC;

(2) No qualified outside firm submits a proposal for the accelerated permit review, one-half of this filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC;

(3) One or more qualified outside firms submit a proposal but all such proposals are rejected by the applicant, the accelerated review filing fee shall be forfeited and retained by the department; or

(4) The applicant withdraws the application for any reason, the accelerated review filing fee shall be forfeited and retained by the department.

C. The filing fee and accelerated review fee in Subsections A and B 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 (CPI) for the previous year. The amount of the change in the fee shall be determined by multiplying the existing fee by the change in the CPI and rounding the result to the nearest dollar. The CPI for any year is the average of the CPI for all-urban consumers published by the United States department of labor, as of the close of the twelve-month period ending on August 31 of that year. In the event there is a decrease or absence of change in the CPI, fees shall remain the same until the next increase in CPI.  
~~[[20.2.75.10 NMAC – Rp 20 NMAC 2.75.109, 03/02/01; A, 12/01/03] 20.2.75.1 NMAC – Rp, 20.2.75.1 NMAC, 07/15/2024]~~

**20.2.75.11 PERMIT FEE:**

**A.** The permit fee shall be based on the following point-based fee schedule.

| ACTION  |                    | # OF POINTS        |
|---|--------------------|--------------------|
| 1. CONSTRUCTION PERMIT/TECHNICAL REVIEW OF EXISTING PERMIT                      |                    |                    |
| Technical Complexity  |                    |                    |
| 1-5 Fee Units   | 5                  | point per fee unit |
| 6-15 Fee Units  | 1                  |                    |
| >15 Fee Units   | 15                 |                    |
| Fugitive Emissions Fee Unit   | 5                  |                    |
| Portable Source Relocation<br>(Paragraph 3 of Subsection D of 20.2.72.202 NMAC) | 1                  |                    |
| Non-Attainment Area (20.2.79 NMAC)  | 75                 |                    |
| Modeling Review   | <del>[15]</del> 30 |                    |
| Air Toxics Review (20.2.72.400 NMAC – 20.2.72.499 NMAC)                         |                    |                    |
| Level I   | 8                  |                    |
| Level II  |                    |                    |
| Best Available Control Technology (BACT) Analysis                               | 60                 |                    |
| Health Assessment   | 100                |                    |
| Applicable Regulations  |                    |                    |
| 20.2.X NMAC (per each)  | 3                  |                    |
| NSPS (per each)   | 5                  |                    |
| NESHAP/MACT (per each)  | 5                  |                    |
| Case-by-Case MACT (20.2.83 NMAC)  | 100                |                    |
| PSD netting only (no additional PSD analysis is required)                       | 20                 |                    |
| PSD review (including netting) (20.2.74 NMAC)                                   | 75                 |                    |

2. OTHER PERMITTING ACTIONS

|  |                |
|--|----------------|
| General permits (20.2.72.220 NMAC) <u>for Oil and Gas Facilities</u>     | <u>[10] 50</u> |
| <u>General Permits (20.2.72.220 NMAC) for non-Oil and Gas Facilities</u> | <u>10</u>      |
| Streamline (each site) (20.2.72.300 NMAC)                                | 10             |

B. The fee shall be the sum of all of the points that are applicable to the permitting action, multiplied by ~~three hundred fifteen dollars (\$315)~~ the calculated cost per point (\$510 in Calendar Year 2024).

C. For sources that satisfy the definition of "small business" as defined in Subsection F of 20.2.75.7 NMAC, the permit fee determined by Subsections B and E of 20.2.75.11 NMAC shall be divided by two.

D. For applications processed under 20.2.72.221 NMAC, Accelerated Review, the permit fee determined by Subsection B of 20.2.75.11 NMAC shall be divided by two, and shall be in addition to the cost of the accelerated review bid, as described in 20.2.72.221 NMAC.

E. Sources that have been issued a construction permit under 20.2.72 NMAC shall be assessed an annual fee of ~~one thousand five hundred dollars (\$1,500)~~ two thousand four hundred and thirty dollars (\$2,430). This fee shall not apply to sources which are assessed an annual fee in accordance with 20.2.71 NMAC.

F. ~~[Beginning in 2005,]~~ 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] CPI for the most recent year exceeds the [consumer price index] CPI for the previous year [2004]. The amount of the change in the fee shall be determined by multiplying the existing fee by the change in the [consumer price index] CPI and rounding the result to the nearest dollar. The [consumer price index] CPI for any year is the average of the [consumer price index] CPI for all-urban consumers published by the United States department of labor, as of the close of the twelve-month period ending on August 31 of that year. In the event there is a decrease or absence of change in the CPI, fees shall remain the same until the next increase in CPI as described in Subsection F of 20.2.75.11 NMAC.

~~[[20.2.75.11 NMAC – Rp 20 NMAC 2.75.110, 03/02/01; A, 12/01/03] 20.2.75.1 NMAC – Rp, 20.2.75.1 NMAC, 07/15/2024]~~

**20.2.75.12 [PAYMENT OF FEES] FEE PAYMENT, COLLECTION, AND COSTS:**

A. The department shall refuse to accept any permit application without payment of the filing fee at the time the application is received by the department. The filing fee and the accelerated review filing fee are non-refundable.

B. An invoice for permit fees shall be mailed, or transmitted electronically or otherwise allowed by the State of New Mexico, to the applicant at the time the department finds the application administratively complete pursuant to 20.2.72.203 NMAC. The department shall deny any permit application or request for permit revision if the required permit fee has not been paid within thirty (30) days of invoicing, unless the department has granted an extension. If, upon completion of the permit review, the department determines additional fees are due, the department shall mail an invoice to the applicant along with the signed permit. The permittee shall pay this invoice within thirty (30) days of invoicing, unless the department has granted an extension. In the event excess fees were paid, the department shall issue a refund for excess fees and mail the refund to the applicant.

C. An invoice for a request for technical review of an existing permit shall accompany the department's response. The applicant or permittee shall pay for the review within thirty (30) days of invoicing.

D. Except for the refund of excess fees paid, all fees paid under this Part shall be non-refundable.

E. All fees paid pursuant to this Part shall be remitted in the form of a corporate or certified check or money order, electronic payment, or other method as allowed by the State of New Mexico made payable to the environment department at the address specified in the notice. Upon receipt of the ~~[check,]~~ payment, it shall be deposited in the "state air quality permit fund" established by ~~[NMSA 1978, 74-2-15 (1992)]~~ Section 74-2-15, NMSA 1978 (1992).

F. Permittees shall pay annual fees within thirty (30) days of receipt of an invoice for annual fees for a permitted facility.

G. All fees shall be paid in U.S. dollars.

H. Non-compliance with Chapter 2, Title 20 NMAC or the Air Quality Control Act subjects each owner or operator to administrative compliance costs for enforcement of Chapter 2, Title 20 NMAC, civil penalties of up to \$15,000 per day and other remedies available under law and Chapter 2, Title 20 NMAC.

~~[[20.2.75.12 NMAC – Rp 20 NMAC 2.75.111, 03/02/01] 20.2.75.12 NMAC – Rp, 20.2.75.12 NMAC, 07/15/2024]~~

1 **20.2.75.13 PERIODIC REVIEW:** The ~~d~~Department shall prepare a review of the construction permit fees  
2 and construction permit program costs annually. The review shall include information on the budgets, expenditures,  
3 fund balance, and related projections. ~~[The review shall be presented to the Board within six months following the~~  
4 ~~end of the fiscal year.]~~

5 ~~[[20.2.75.13 NMAC – N, 03/02/01]~~ 20.2.75.13 NMAC – Rp, 20.2.75.13 NMAC, 07/15/2024]  
6

7 **HISTORY OF 20.2.75 NMAC:**

8 **Pre-NMAC History:** Material in the part was derived from that previously filed with the commission of public  
9 records - state records center and archives:

10 AQCR 700, Air Quality Control Regulation 700 - Filing and Permits Fees, filed 11/20/89.  
11

12 **History of Repealed Material:**

13 20 NMAC 2.75, Air Quality Statewide - Construction Permit Fees, filed 10/30/95, repealed effective 03/02/01;  
14 20.2.75 NMAC, Air Quality Statewide - Construction Permit Fees, filed 03/02/01, repealed effective 07/15/2024.  
15

# **MICHELLE T. MIANO**

121 Tijeras Ave NE, Albuquerque, NM 87102 | 505-479-2596 | [michelle.miano@env.nm.gov](mailto:michelle.miano@env.nm.gov)

## **WORK EXPERIENCE**

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### **Director, Environmental Protection Division New Mexico Environment Department**

- 📅 January 2023 - current    📍 Albuquerque, NM
- Oversee all aspects of the New Mexico Environment Department's Environmental Protection Division, which includes the Air Quality, and Radiation Control, and Climate Change Bureaus.
  - Develop and oversee implementation of strategies, including policy and legislative proposals, and manage Division budget.

### **Senior Attorney**

#### **Barnhouse Keegan Solimon & West LLP**

- 📅 Oct 2016 – January 2023    📍 Albuquerque, NM
- Litigated against State of Texas to secure the ability of Tribal client to continue bingo operations.
  - Filed amicus brief in U.S. Supreme Court on behalf of *amicus curiae* to support constitutionality of Indian Child Welfare Act.
  - Drafted petitions for writ of certiorari against government defendants resulting in grants of the petitions by the New Mexico Court of Appeals.
  - Litigated and tried breach of trust case in the U.S. Court of Federal Claims resulting in significant findings of liability in clients' favor.
  - Assisted in creating Section 17 holding company for Tribally-owned bank in Southern California to deliver services to Tribal members and the larger community.

### **Associate Counsel**

#### **New Mexico State Land Office**

- 📅 Sep 2015 - Sep 2016    📍 Santa Fe, NM
- Led enforcement action against oil and gas company after discovery of oil spill on New Mexico State Trust Lands.
  - Defended Commissioner of Public Lands in legal action challenging denial of permit to use State water resources for oil and gas drilling purposes.
  - Drafted memoranda analyzing legal issues presented by the Commissioner of Public Lands and General Counsel.

### **Staff Attorney**

#### **Advocates for Community and Environment**

- 📅 Sep 2014 - Sep 2015    📍 El Prado, NM
- Litigated NEPA issues against Southern Nevada Water Authority's (SNWA) proposal to pump billions of gallons of water per year from rural Nevada and Utah to Las Vegas, which SNWA ultimately abandoned.
  - Litigated on behalf of historic rural livestock owners seeking to secure ability to graze livestock on U.S. Forest Service lands.

## **EDUCATION**

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### **Juris Doctor University of New Mexico School of Law**

- 📅 May 2014  
📍 Albuquerque, NM

#### **Awards**

- Albert E. Utton Natural Resources Law Award (2014)
- D.C. Semester at U.S. Environmental Protection Agency (2013)
- James E. Sperling Memorial Scholarship Award (2013)
- Association of Public Interest Law Summer Fellowship Award (2012)

### **Bachelor of Arts Writing Seminars Johns Hopkins University**

- 📅 May 2007  
📍 Baltimore, MD

**STATE OF NEW MEXICO  
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)**

**DIRECT TESTIMONY OF MICHELLE MIANO**

**I. Introduction**

My name is Michelle Miano, and I serve as the Director of the Environmental Protection Division at the New Mexico Environment Department (NMED). My position directly manages and supports the bureaus in my division, which are: the Air Quality Bureau, the Climate Change Bureau, and the Radiation Control Bureau. My position duties include directing and working closely with the Air Quality Bureau to develop public health and environmental management policy, regulatory and compliance assurance strategies, directing operational activities, leading collaboration efforts with stakeholders; initiating, reviewing, and drafting legislation; and developing compliance and enforcement strategies. My full educational and work background are set forth in my resume, marked and attached to the Notice of Intent (“NOI”) as NMED Exhibit 3. This Direct Technical Testimony is marked and attached to the Notice of Intent (“Notice” or “NOI”) as NMED Exhibit 4.

As a leader at NMED, one of my roles is to help fulfill the agency’s stated mission – to protect and restore the environment and foster a healthy and prosperous New Mexico for present and future generations. As a key component to fulfilling this directive – I, along with my team at NMED, are responsible for ensuring the financial stability, continuation and improvement of NMED programs at the highest level possible to serve all who live and work in New Mexico from Santa Fe to Carlsbad – and to all corners of our state – so that we have a robust economy and jobs

for families – while ensuring those same families enjoy a healthy environment now and into the future.

It is with this backdrop that NMED respectfully requests the Environmental Improvement Board (Board) accept our proposal to update the air quality regulations at 20.2.71 NMAC, Operating Permit Emissions Fees (Part 71) and 20.2.75 NMAC, Construction Permit Fees (Part 75).

Part 71 and Part 75 have not been updated for approximately twenty years – a generation. Over this time, a lot has changed. The Permian Basin booms with oil; prices for commodities, like copper, have skyrocketed as demand increases<sup>1</sup>; and companies that have historically had high emissions rates are finding innovative ways to decrease air pollution. At the same time, the federal and state governments have created, and continue to develop in real time, new sets of regulations to drive emissions down for improved health and environmental outcomes, and the complexities of both regulations and technologies are increasing. In addition, low-income and historically underserved communities rightfully expect increased government transparency, engagement and a seat at the table regarding permitting actions to ensure harm does not disproportionately affect their neighborhoods.

NMED's Air Quality Bureau has tried to adjust and absorb these changes into its programs over the years but its ability to do so has been outpaced. Like many other state air programs across the country, our Air Quality Bureau is in need of a substantial and lasting upgrade to ensure it can meet these increasing demands, while also improving its services. Unlike many other state air programs, the Board possesses the direct statutory authority granted by the New Mexico

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<sup>1</sup> E.g., "Producer Price Index by Commodity: Metals and Metal Products: Copper Base Scrap," Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, last accessed June 4, 2024, <https://fred.stlouisfed.org/series/PCOPPUSDM>; "Copper, Outlook for Key Energy Transition Minerals," International Energy Agency, last accessed June 5, 2024, <https://www.iea.org/reports/copper>.

Legislature to take action and update Part 71 and Part 75 to fully support NMED's air quality programs and the programs' changing needs over time. For these reasons and the ones below, AQB respectfully requests the Board accept its Part 71 and Part 75 proposal.

## **II. Overview of Air Quality Bureau Programs and Funding**

The Air Quality Bureau (AQB) currently consists of 94 positions that serve in a number of capacities, including monitoring air quality, issuing air quality permits for a variety of sources, implementing and enforcing air permits and regulations, and ensuring sources that are non-compliant with air regulations or permit conditions take appropriate corrective action.

Specifically, AQB consists of four distinct programs:

- The Operations Section gathers accurate quality-assured ambient air data, maintains and replaces monitoring equipment, and writes, updates, and obtains annual approval for quality assurance documents required by the U.S. Environmental Protection Agency (EPA). The section also provides administrative assistance to support AQB functions including managing AQB financial operations. The section contains three units: the Monitoring Unit, the Quality Assurance Unit, and the Administrative Services Unit.
- The Permitting Section reviews air quality permit applications, issues or denies air quality permits, and performs analysis of state and federal regulations. This section also manages permit hearings and provides permit-based technical assistance. The section contains three units: the Technical Services Unit, the Minor Source Unit, and the Major Source Unit.
- The Planning Section ensures the state maintains attainment and maintenance of National Ambient Air Quality Standards (NAAQS), performs air dispersion modeling,

and conducts emissions inventories for submittal to EPA.<sup>2</sup> The section helps address the state's two current non-attainment areas: (1) Sunland Park (for ozone); and (2) Anthony (for particulate matter). Additionally, the section assists small businesses with air quality permitting and compliance matters and reviews environmental impact statements for federal projects to determine the adequacy and acceptability of the environmental impacts of proposed actions. This section contains three units: the Control Strategies Unit, the Modeling and Emissions Inventory Unit, and the Small Business Environmental Assistance Program.

- The Compliance and Enforcement Section responds to air quality complaints from concerned residents, conducts onsite inspections, and determines compliance with state and federal regulations. The section evaluates, documents, and reports air emission sources' noncompliance with regulations and permit requirements. The section initiates appropriate enforcement actions and participates in litigation and settlement negotiations to resolution. This section contains three units: the Compliance Inspection Unit, the Compliance Reports Unit, and the Enforcement Unit. NMED Exhibit 36.

Funding for AQB's programs comes from (1) Title V Operating Permits Emissions Fees from Part 71; and (2) Construction Permit Fees from Part 75. These fees are paid, not by the general public, but by those entities that require permits related to the emissions – i.e. air pollution – produced during their industrial operations. AQB also received funding from EPA grants. In the event that AQB collects any civil penalties pursuant to an enforcement action, AQB delivers those monies to the state's General Fund to reimburse the state for the impact of non-compliance. Civil

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<sup>2</sup> The [Clean Air Act](#), which was last amended in 1990, requires EPA to set National Ambient Air Quality Standards (40 CFR part 50) for six principal pollutants ("[criteria air pollutants](#)") which can be harmful to public health and the environment. Those pollutants are ozone, particulate matter, carbon monoxide, lead, sulfur dioxide and nitrogen dioxide.

penalties cannot be used to fund AQB programs. Moreover, AQB does not generally receive appropriations from the state's General Fund for its regular operations; the New Mexico Legislature granted the Board the statutory authority to ensure AQB's fees under Part 71 and Part 75 are sufficient.

### **III. Overview of Statutory Fee Requirements and Proposed Fee Updates**

#### **A. Title V Operating Permit Program**

The federal Clean Air Act (CAA) and New Mexico Air Quality Control Act (AQCA) establish New Mexico's Title V operating permit program, which helps to ensure that stationary sources of air pollution—such as large gas processing plants, compressor stations, power plants, and copper and potash facilities—comply with applicable laws and regulations. A facility must obtain a Title V operating permit if it emits more than 100 tons per year of a regulated air pollutant, or more than 10 tons per year of a single hazardous air pollutant or 25 tons per year of combined hazardous air pollutants.<sup>3</sup> Title V operating permits also apply to sources in non-attainment areas, depending on an area's non-attainment status, as well as other specific situations.<sup>4</sup>

To support a Title V operating permit program, the CAA and AQCA both require the Environmental Improvement Board to ensure the state's Title V program is in alignment with minimum program elements set forth under 40 CFR part 70. This law requires that permit fees must be paid by "part 70 sources,"<sup>5</sup> and that permit fees must cover all "reasonable (direct and indirect) costs required to develop and administer" the permit program (*e.g.*, the permit fees must

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<sup>3</sup> Hazardous air pollutants are those known to cause cancer and other serious health impacts. The Clean Air Act requires the EPA to regulate hazardous air pollutants, also known as air toxics, from categories of industrial facilities.

<sup>4</sup> Establish nationally uniform, technology-based maximum emission levels for categories of new major stationary sources, such as power plants, steel mills, etc. The goal is to require the installation of new pollution control technology and thus prevent new pollution problems.

<sup>5</sup> 40 CFR §70.2.

be sufficient to at least cover the total permit program costs).<sup>6</sup> The elements also require that any fee required by part 70 must “be used solely for permit program costs,” and not be diverted for non-part 70 purposes.<sup>7</sup> Nothing in part 70 restricts air agencies from collecting additional fees beyond the minimum amount needed to cover part 70 program costs.

EPA has issued discretionary guidance on how it reviews the Title V fee programs of permitting authorities such as NMED.<sup>8</sup> For example, direct and indirect costs can include labor, materials/equipment, contracted services, public hearings and engagement and program development and implementation, utilities and rent, administrative support, training and staff development, data systems, technical assistance and ambient monitoring or emission inventories necessary to implement the part 70 program.<sup>9</sup> EPA’s most recent guidance noted that the costs of those activities will differ depending on many factors associated with the particular permitting authority.<sup>10</sup>

The New Mexico Legislature granted the Environmental Improvement Board authority to adopt updates to Part 71 pursuant to Section 74-1-8(A)(4) of the New Mexico Environmental Improvement Act and 74-2-7(B)(7) of the AQCA. NMED proposes to repeal and replace Part 71 so that AQB can properly administer and implement the requirements of the federal CAA including 40 CFR part 70.

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<sup>6</sup> CAA section 502(b)(3)(A); 40 CFR § 70.9(a).

<sup>7</sup> 40 CFR § 70.9(a).

<sup>8</sup> "Title V Permit Fees," U.S. Environmental Protection Agency, last accessed June 4, 2024, <https://www.epa.gov/title-v-operating-permits/title-v-permit-fees>.

<sup>9</sup> John S. Seitz, "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V," U.S. Environmental Protection Agency, August 4, 1993, last accessed June 4, 2024, <https://www.epa.gov/sites/default/files/2015-08/documents/fees.pdf>.

<sup>10</sup> Scott Mathias, "Fee Evaluation and Oversight Guidance for 40 CFR Part 70," U.S. Environmental Protection Agency, May 25, 2023, last accessed June 4, 2024, <https://www.epa.gov/system/files/documents/2023-06/Final%20Title%20V%20Fee%20Evaluation%20and%20Oversight%20Guidance%205-25-23.pdf>

## **B. Proposed Updates for Part 71**

NMED specifically proposes to update the fee rate in its Title V operating permit fee schedule at Part 71. The Board last set the fee rate in 2004 at \$20.00 per ton, from which the rate has been slowly increasing annually under the Consumer Price Index. AQB's fee rate for Calendar Year 2024 is \$38.47 per ton. This is much lower than EPA's presumptive minimum fee rate of \$61.73 per ton for Calendar Year 2024 (effective September 1, 2023, through August 31, 2024). NMED Exhibit 53. NMED proposes to reset its baseline and update its fee rate to \$81.00, while continuing to apply adjustments tied to the annual Consumer Price Index. NMED also proposes to increase the fee for each hazardous air pollutant from \$165.00 to \$250.00 per ton.

NMED's proposed updates to Part 71 also include: updating the current physical address of AQB's main office; removing mercury emission fees; updating language to clarify that sources will not be charged twice for particulate matter less than 10 micrometers (PM<sub>10</sub>) and particulate matter less than 2.5 micrometers (PM<sub>2.5</sub>) emission limits; and providing for fee payments through electronic means. NMED Exhibit 1.

NMED also seeks to ensure invoicing, and payment of fees can occur electronically through these rule updates.

Amendments also include meeting the State Records Center and Archives style and format requirements.

## **C. Construction Permit Program**

AQB's Construction Permit Program regulates new construction and the modification of facilities that emit pollution into the atmosphere. A wide range of activities are necessary to implement this program, including but not limited to (1) preparing regulations that serve as the basis for regulating emissions and enforcing permits; (2) reviewing and acting on permit

applications; (3) modeling and monitoring source emissions and regional air quality; (4) maintaining emission inventories and tracking emission trends; and (5) implementing and enforcing the terms of permits. New Mexico's State Implementation Plan (SIP), which has been approved by EPA, ensures that National Ambient Air Quality Standards are maintained in New Mexico. The Construction Permit Program is an integral part of New Mexico's SIP.

New Mexico's Construction Permit Program includes the General Construction Permit (GCP), which is a particular type of minor source permit adopted under 20.2.72.220 NMAC. Sources registered for coverage under GCPs are identified by industry, as they are required to be generally homogeneous 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. Most sources subject to Part 75 fees are oil and gas sources.

The New Mexico Legislature granted the Board authority to adopt updates to Part 75 pursuant to Section 74-1-8(A)(4) of the New Mexico Environmental Improvement Act and Section 74-2-7(B)(6) of the AQCA. Section 74-2-7(B)(6) specifically requires 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.

#### **D. Construction Permit Program and Updates for Part 75**

NMED proposes to update the construction permit schedule at 20.2.75 NMAC (Part 75) in several ways, including:

- *Filing Fee* – NMED currently assesses a \$500 filing fee (or submittal fee) for each Notice of Intent (NOI) application,<sup>11</sup> application for a permit to construct or modify a source, or revision of a permit. NMED proposes to increase the filing fee to \$2,000 and to tie it to gradual increases under the Consumer Price Index.
- *Accelerated Review Fee* – The accelerated review fee is required under Section 74-2-7(B)(8) of the Air Quality Control Act which states the following:
  - (8) a method for accelerated permit processing that may be requested at the sole discretion of the applicant at the time the applicant submits a construction permit application and that:
    - (a) allows the department or local agency to contract with qualified outside firms to assist the department or local agency in its accelerated review of the construction permit application; provided that the department or local agency can contract with a qualified firm that does not have a conflict of interest; and
    - (b) establishes a process for the department or local agency to account for the expenditure of the accelerated permit processing fees;

NMED has never received a request from an applicant to conduct an accelerated review by an outside qualified firm and, thus, this provision has never been utilized.

Nonetheless, NMED is proposing to increase the accelerated review fee to \$5,000 from the current \$1,000 in the event an accelerated review is requested.

- *Points Assessed for Air Dispersion Modeling Reviews and General Construction Permits for the Oil and Gas Industry* – Construction permit fees are based on a point-based fee schedule pursuant to 20.2.75.11 NMAC in Part 75. NMED is proposing to increase the fee points assessed for reviewing air dispersion modeling analyses from

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<sup>11</sup> A Notice of Intent (NOI), per [20.2.73 NMAC](#), is not a permit. Construction may not begin prior to issuance of a written determination by the Department that a permit is not required, based on the information submitted in the NOI forms.

15 points to 30 points, and for reviewing and processing general construction permits for the oil and gas industry (GCP-Oil and Gas) from 10 points to 50 points.

- *Fee Point and Annual Fee* – As part of this fee update, NMED is proposing to establish the 2024 Consumer Price Index adjusted fee point of \$510 in the point-based fee schedule as the new baseline fee point. This fee point of \$510 will continue to be adjusted annually by the Consumer Price Index. Similarly, for annual construction permit fees, NMED is proposing to establish the 2024 Consumer Price Index adjusted fee of \$2,430 as the new baseline. The annual fee also will continue to be adjusted annually by the Consumer Price Index.
- *Electronic Invoicing and Payment* – As with Part 71, NMED also seeks to ensure invoicing, and payment of fees can occur electronically through these rule updates.

Amendments also include meeting the State Records Center and Archives style and format requirements. NMED Exhibit 2.

#### **E. Administrative Compliance Costs**

Pursuant to the Board's and NMED's authority under Part 71 and Part 75, NMED also proposes to confirm administrative compliance costs for these programs. NMED issued guidance on administrative compliance costs in October 2023, which AQB has and does implement. NMED Exhibit 54. Per NMED's guidance, administrative compliance costs address NMED's efforts to ensure that the costs to the agency of entities who are non-compliant with applicable regulations are borne by those non-compliant entities. Routine compliance activities, such as inspections and record reviews, will continue to be funded through the existing Part 71 and Part 75 schedule described above. However, instead of increasing fees for all regulated entities to account for particular non-compliant sources, AQB proposes to confirm its exercise of discretion to only

collect monies via administrative compliance costs for non-compliant sources directly from the sources themselves. In this way, AQB will save compliant sources from an additional fee increase that would be needed to support AQB's efforts to address only a particular subset of sources that are non-compliant and thus require more agency resources.

#### **IV. The Air Quality Bureau's Fee Updates Are Reasonable to Support Growing Needs of the Programs and are in the Public Interest.**

##### **A. Critical Need for Baseline Correction**

Although Parts 71 and 75 allow for annual adjustments using the Consumer Price Index (CPI), baseline resets for Part 71 and Part 75 are reasonable to support the growing needs of the program. Part 71 has received limited changes since its original promulgation on December 15, 1993, as Air Quality Control Regulation 771. This rule was reformatted twice to conform to changing style requirements mandated by the State Records Center and Archives, once on November 30, 1995, and again on October 31, 2002. The last major revision was promulgated on December 15, 2004, with limited updates on June 15, 2007, to revise fees for mercury emissions, and on January 9, 2009, to increase "Emissions Fees" at 20.2.71.112 NMAC, with this increase being capped in 2012.

The current regulation at Part 75 has received limited changes since its inception on December 20, 1989, as Air Quality Control Regulation 700. This rule was reformatted twice to conform to changing style requirements mandated by the State Records Center and Archives, once on November 30, 1995, and again on March 2, 2001. Part 75 was revised on December 1, 2003, to implement a fee schedule for "Portable Source Relocation" (one point per fee unit) at 20.2.75.11.A NMAC; to increase the annual fee for a construction permit at 20.2.75.11.E NMAC; and to institute an annual adjustment in cost per point and annual fees, commensurate with the Consumer Price Index (CPI) at 20.2.75.11.F NMAC.

For Part 71, NMED calculates that the baseline reset is reasonable based upon a number of factors, including rising commodity prices, technological advancements and permitting complexity and community interest. NMED also calculates this is reasonable given the anticipated decreases in emissions over time from these sources.

For Part 75, NMED calculates that the baseline reset is reasonable given the significant changes to the oil and gas production industry technologies during this time that have increased permitting volumes beyond NMED's original projections, as well as community interest. The modest funding increase afforded by the CPI has not allowed AQB to keep pace.

For all of the programs supported by Part 71 and Part 75 – significant support is needed as described below.

#### **B. Support Needed for Current and Future Full-Time Employees**

The cost of doing business and ensuring the protection of New Mexicans and the environment has steadily increased over time while AQB's Part 71 and Part 75 fees have not.

NMED calculates that it needs to at least double the size of its program given the increasing workload, by adding additional technical experts for permitting review, monitoring and compliance; additional financial staff for fund management; additional project managers and information technology specialists; and community engagement liaisons to assist with specific community needs, amongst other professionals. By comparison, the Colorado Department of Public Health and the Environment's Air Pollution Control Division current staff number is already approximately 350 employees, or almost four times the number of New Mexico staff – and even with such high employee funding, Colorado is actively seeking to increase their own numbers to address additional demands. Currently NMED is increasing its reliance on contract support to assist to keep up with workload; however, even with contract support NMED is straining

current staff to manage the current workload and needs additional full-time employees.

In FY 2024, NMED took the initiative to invest in its staff and become the first state executive agency to align its employees' salaries in accordance with State Personnel Office's 100% "appropriate placement" regulatory requirements. [1.7.4 NMAC]. Prior to NMED undertaking the "appropriate placement" salary alignment, AQB employees' salaries were significantly underfunded based on education and years of experience. By investing in this correction, NMED has not only ensured a permanent salary correction for its existing dedicated staff, it opened the door for retaining current staff and preventing costly personnel turnover by compensating staff and higher and more competitive rates.

In addition to "appropriate placement", AQB also seeks to further invest in its employees by providing them with appropriate office and laboratory space to support AQB's growing needs, and expanding staff to relieve overworked staff from current demands. AQB also seeks to providing training in current and incoming employees in new compliance equipment and techniques and implementation of regulatory updates to create a modern and streamlined work environment.

### **C. Support Needed to Upgrade Technology to Continue and Improve Service**

To support not only the work of its employees, but the regulated community and the public at large, AQB must modernize its technology to serve the current and present needs of the programs supported by Part 71 and Part 75. As a threshold upgrade, AQB needs to invest in new equipment and consistent and reliable high-speed internet, so that AQB employees can conduct video conferences and more efficiently and effectively complete any and all tasks that involve software programs. AQB also needs technology upgrades to better serve permit applicants, such as development of an electronic payment system, and permit tracking services so that permittees

know the status of their permits in the regulatory process and can timely communicate with agency staff if needed. AQB needs to create and maintain a new database for its permits and data, as the time-intensive system it now uses was installed in the 1990s. AQB also needs to ensure that it can proactively share permit, emissions and compliance data with the public in easier ways. All of these technological upgrades require significant technical advisory teams from AQB staff themselves that are familiar with the current and developing processes to ensure that the upgrades are developed in alignment with the needs of the AQB employees.

#### **D. Support Needed to Ensure Implementation of State and Federal Regulatory Advancements**

Over the past twenty years, the state and federal regulatory landscape has drastically changed to create a more protective environment – and, while important, has created more demands on AQB in the process that have stressed AQB in its entirety. NMED Exhibit 15. EPA has promulgated numerous major federal air quality regulations since 2004, including regulations that require emissions reductions from equipment operated across the oil and gas production, processing, transmission and storage segments. NMED Exhibit 15. These rules have significantly increased the scope and number of regulated equipment under AQB’s jurisdiction, and yet, each regulatory update does not automatically come with a commensurate increase in staffing resources to administer the new federal requirements.

In addition to the change in federal regulations over time, the Environmental Improvement Board passed a new state air quality regulation in 2022 (20.2.50 NMAC – Oil and Gas Sector—Ozone Precursor Pollutants) (“Part 50”) that is currently phasing in to target emissions reductions from the oil and gas sector, covering over fifteen types of process and control equipment as well as other activities and processes commonly used in oil and gas production, transmission, processing, and storage. Part 50 also established requirements for monitoring fugitive emissions

from all active oil and gas wells in certain counties in the state, which added over 50,000 sources to the Bureau's regulatory responsibilities with increasing requirements for other regulated entities over time.

Recently, EPA has also finalized additional multiple actions to reduce air pollution emissions, including methane emissions, from EPA's new power plant rule<sup>12</sup> to Crude Oil and Natural Gas source category (New Source Performance Standards (NSPS) OOOOb and Emission Guidelines OOOOc).<sup>13</sup> The impact of these actions on the workload of AQB is predicted to be significant, as they are in addition to previous federal rules and the requirements of Part 50, the costs of which the air program is already absorbing.

#### **E. Support Needed for Workload under Part 75**

By any measure, AQB's workload in programs supported by Part 75 has climbed sharply. NMED Exhibit 15. Oil and gas production has substantially increased in New Mexico and New Mexico is now the second largest oil producer in the country. Oil and gas is by far the largest regulated industry, constituting approximately 80 percent of all permits issued by AQB. From 2012 to 2023, the number of oil and gas general construction permits (GCPs) issued by AQB increased by over 2235 percent (from 34 permits to approximately 794 permits), and on average, AQB annually receives 84 new oil and gas general construction permit applications under Part 75 – all of which require significant attention during the permitting review process. The volume and complexity of NOI and permit applications have become greater and more complicated especially with the Permian Basin oil boom and advancing technologies. To cover its regulatory obligations

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<sup>12</sup> EPA, Final Rule: NSPS for Greenhouse Gas (GHG) Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units (EGUs); Emission Guidelines for GHG from Existing EGUs and Repeal of the Affordable Clean Energy Rule, <https://www.regulations.gov/docket/EPA-HQ-OAR-2023-0072>.

<sup>13</sup> EPA, Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations/epas-final-rule-oil-and-natural-gas>.

while meeting its permitting deadlines, AQB is relying more and more on contractor support – for which prices have increased over the last several years.

Apart from the sheer volume of work, technological advances in the oil and gas industry since 2004 have increased the complexity of NOI and permitting applications for AQB and employees. Due to the additional equipment, higher production, and increased emissions from the regulated facilities, permits now require additional analysis by AQB and increased time for staff to properly evaluate the applications under required deadlines.

#### **F. Support Needed in Advance of Non-Attainment Designation for Ozone Pollution**

AQB has been closely monitoring levels of ground-level ozone pollution in several counties in New Mexico that are currently exceeding the federal threshold of 70 parts per billion under the National Ambient Air Quality Standards set by EPA and the corresponding state threshold of 95% of the NAAQS that triggers additional state management action under AQCA Section 74-2-5(C). The main pollutants that form ozone are oxides of nitrogen and volatile organic compounds (VOC). They are considered “precursor” pollutants because they fuel the complex photochemical reactions that form ozone. Ground-level ozone is a public health concern, as it can harm the respiratory system by inflaming cells that line the upper airways and the lungs, much like a sunburn damages skin. Such inflammation of the airways can cause symptoms such as chest pain, coughing, wheezing and shortness of breath, even in healthy people. The Bureau’s ground-level ozone design values, *i.e.*, statistics that describe the air quality status of a given location relative to the National Ambient Air Quality Standards, identify, for example, that monitors in Doña Ana County and Eddy County have shown exceedances of the federal threshold for several years. NMED Exhibit 37. There are other counties, such as San Juan County and Lea County, that have been at or close to these thresholds as well.

This data informs much of the Bureau's current workload and projected workload, as two of the objectives of the Bureau are (1) to prevent areas of New Mexico from being designated as non-attainment by EPA, and (2) to bring New Mexico's non-attainment areas into attainment status. Under the federal Clean Air Act, nonattainment areas require air quality permits to include the lowest achievable emission rate technology and permit emission offsets for any new or modified operations. Offsets are emission reductions, generally obtained from existing sources located in the vicinity of a proposed source, that must (1) offset the emissions increase from a new source or modification and (2) provide a net air quality benefit. Although some growth can still occur under a non-attainment designation, such designation brings with it additional federal oversight. With the increase in permitted facilities, largely due to oil and gas production, the Bureau's compliance effort to ensure all of the permitted facilities are meeting state and federal air quality requirements to prevent non-attainment status designations are inadequate. For approximately 1975 permitted facilities, the Bureau only has nine inspector positions and eight positions in its compliance reporting section.

Although there have been advances in compliance technologies in the oil and gas industry and with satellite imagery, generally, such as NASA EMIT or Carbon Mapper, the sheer volume of permitted facilities has meant that the Bureau cannot swiftly identify specific out-of-compliance facilities, compared to the adjacent compliant facilities. NMED Exhibit 38. For example, it would take AQB's existing inspectors 9.6 years to complete inspection of all necessary facilities. NMED Exhibits 55 and 56. Moreover, AQB inspection rates this year have demonstrated between 15-50% compliance rates, NMED Exhibits 55 and 56, and AQB has only been able to timely address half of the cases on its current docket, which has resulted in staff time on tolling agreements with operators to extend deadlines, instead of addressing outstanding backlogs. Without the proper staff

levels to conduct this work, all permitted facilities – whether compliant or not – face further regulatory oversight if a non-attainment designation for ozone occurs, while the public is unnecessarily exposed to worsening air quality.

### **G. Support Needed to Continue and Improve Service for the Public Interest**

Although AQB’s programs have public notice and participation requirements, AQB seeks to align with EPA’s lead<sup>14</sup> in developing more inclusive public engagement opportunities for a growing number of constituents of varying backgrounds and communities to more readily participate in the regulatory processes under Part 71 and Part 75. This includes developing programs translating what is often complicated air monitoring and permitting data into a readily understandable form so that AQB can engage meaningfully with community members, including those who have concern about air pollution in their neighborhoods. This also includes timely and comprehensively responding to complaints and compliance issues, conducting listening sessions about local concerns, and addressing environmental justice issues. AQB is already developing a tool to assist with transparency on excess emissions events from permitted sources and needs to expand the tool to other categories where there are increased emissions to ensure residents are equipped with knowledge about source activities.

## **V. NMED Met All Regulatory Requirements for this Rulemaking.**

### **A. Public Notice**

Pursuant to the public notice requirements in NMSA 1978, Section 14-4-2(E) (2017); NMSA 1978, Section 14-4-5.2 (2017); NMSA 1978, Section 14-4-5.3 (2017); 20.1.1.7(N) NMAC; 20.1.1.301 NMAC; and 1.24.15.9 NMAC, AQB prepared, published, posted and distributed the “New Mexico Environmental Improvement Board Notice of Rulemaking Hearing to Consider

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<sup>14</sup> "EPA Research on Environmental Justice and Air Pollution," U.S. Environmental Protection Agency, last accessed June 4, 2024, <https://www.epa.gov/ej-research/epa-research-environmental-justice-and-air-pollution>.

Proposed Repeal and Replacement of 20.2.71 NMAC and 20.2.75 NMAC in both English and Spanish (“Public Notice”). (NMED Exhibits 20-33). The Department described in the Public Notice all of the statute-required and rule-required information about the rulemaking matter and rule-making process (NMED Exhibits 20-33), thus complying with NMSA 1978, Section 14-4-2(E) (2017); NMSA 1978, Section 14-4-5.2 (2017); NMSA 1978, Section 14-4-5.3 (2017); 20.1.1.7(N) NMAC; 20.1.1.301 NMAC; and 1.24.15.9 NMAC. For example, for public participation, the Public Notice contained details about how to attend the EIB hearing in person or via WebEx and listed three ways to provide public comment: via 1) a Smart Comment link; 2) via email to the board administrator’s email address; and 3) via physical delivery or mailing address to the board administrator’s physical address. (NMED Exhibits 20-33) The Public Notice also included the board administrator's telephone number in case the public had questions or comments. As of June 5, 2024, four Smart Comments regarding the proposed rule changes were received (NMED Exhibit 14).

Pursuant to 20.1.1.301 NMAC, the Department published the Public Notice, in both English and Spanish, in the Albuquerque Journal, Carlsbad Current Argus and Farmington Daily Times on April 7, 2024 (NMED Exhibits 21-23).

The Department also complied with NMSA 1978, Section 14-4-5.2(A) (2017) of the State Rules Act by publishing the Public Notice in the New Mexico Register, Volume XXXV, Issue 8, on April 23, 2024. (NMED Exhibit 24).

The Department also complied with NMSA 1978, Section 14-4A-4 (2005) of the Small Business Regulatory Relief Act by providing Public Notice to the Small Business Regulatory Advisory Commission via email on April 8, 2024 (NMED Exhibit 12). Pursuant to NMSA 1978, Section 14-4-5.2; NMSA 1978, Section 14-4-5.3 (2017); and 20.1.1.7(N) NMAC, the Department

provided Public Notice to the public, which included:

- 1) Posting it on the Department's website (NMED Exhibit 25);
- 2) Posting it on the New Mexico Sunshine Portal (NMED Exhibit 26);
- 3) Making it available at the Department's district, field and regional offices (NMED Exhibit 28);
- 4) Sending it by email to persons who made a written request for notice of announcements addressing the subject matter of the rulemaking proceeding and who provided an email address to the board administrator. (NMED Exhibit 20);
- 5) Sending it by email to the person who participated in the rulemaking by filing an Entry of Appearance and providing an email address to the board administrator;
- 6) Providing it to the New Mexico Legislative Council for distribution to appropriate interim and standing legislative committees (NMED Exhibit 30).

In furtherance of public outreach, the Department developed a Public Involvement Plan which was posted on AQB's webpage (NMED Exhibit 33).

## **B. Format**

The proposed changes repeal and replace, rather than amend, 20.2.71 NMAC and 20.2.75 NMAC, per State Records Center and Archives Rule 1.24.11.9(C) NMAC. The Board has the statutory authority to adopt and promulgate the proposed rule changes that repeal and replace 20.2.71 NMAC and 20.2.75 NMAC.

## **C. The Air Quality Bureau Conducted Additional Public Engagement.**

Stakeholder outreach on this rulemaking was initiated on March 8, 2024, when NMED sent out a bilingual notice to potentially affected parties via the Air Quality Bureau's list serves (including AQB Four Corners Air Quality Group, AQB Oil and Gas Announcements, AQB Permit

Announcements, AQB Regarding Construction Industries, AQB Regulatory and SIP Announcements, and AQB Small Business Environmental Assistance Program), announcing a March 20, 2024, virtual stakeholder engagement meeting to discuss the proposed revisions to both regulations. The list serve notice also included links to the Petition for Regulatory Change and the EIB hearing docket. The list serve notice is shown as NMED Exhibits 19-20. NMED posted notice of the public informational meeting on its websites, including its Trumba Calendar. The March 20, 2024, meeting was attended by approximately 10 people representing industry associations, industrial sources, and the general public. NMED Exhibit 17. AQB posted on its website its presentation at the meeting. NMED Exhibit 18. AQB also met with industry representatives, including New Mexico Oil & Gas Association, the Independent Petroleum Association of New Mexico, the New Mexico Chamber of Commerce, and the New Mexico Mining Association to discuss the specifics of the fee proposal.

#### **VI. The Proposed Fee Updates Fulfill the Strategic Plans of NMED and the Environmental Protection Division.**

NMED's FY24 and FY25 Strategic Plans help the agency explain the goals within its divisions and help define what mission fulfillment means for our programs. For the FY24 Strategic Plan ( NMED Exhibit 34), the Environmental Protection Division includes the following program goals:

- Monitor and improve air quality and be proactive in areas where air quality is degrading by implementing emission control strategies through timely, fair, and consistent enforcement.
- Ensure facilities that are non-compliant with air quality regulations or permit conditions take immediate and appropriate corrective action.
- Develop and implement regulatory programs that reduce greenhouse gas emissions

from the transportation and oil and gas sectors and improve air quality for healthier communities.

- Implement federal requirements that protect visibility and mandate that the clarity of our skies return to preindustrial levels by 2064.

To achieve these program goals, the Environmental Protection Division recognized specific actions, were necessary including to:

- Implement and enforce regulations to control volatile organic compounds and nitrogen oxides in areas that exceed 95 percent of the 2015 National Ambient Air Quality Standard for Ozone; and
- Build and retain a skilled and trained team of air quality scientists, climate scientists..., including permit writers, environmental analysts, enforcement specialists, and inspectors to ensure timely permit and certification issuance and compliance with air quality ... regulations.

For its FY25 Strategic Plan, NMED presents an agency-wide objective to “[e]nsure robust staffing and resources to improve the implementation of our mission.”<sup>15</sup> NMED Exhibit 35 - [NMED FY25 Strategic Plan. Moreover, the Environmental Protection Division not only affirms its program goals from FY 2024, it also specifically adds a directive to “[e]nsure [its] programs have sufficient funding via fee increases to support program objectives.” The proposed rule changes are essential for the Environmental Protection Division to accomplish these program goals and objectives as described above.

The Air Quality Bureau has structured the fee updates to reset the baseline for fees needed

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<sup>15</sup> "NMED FY25 Strategic Plan," New Mexico Environment Department, August 31, 2023, page 2, last accessed June 4, 2024, <https://www.env.nm.gov/wp-content/uploads/2023/09/2023-08-31-NMED-FY25-Strategic-Plan-Final.pdf>.

to align with FY 2025 needs to support AQB's current needs now and for the foreseeable future. This reset will reflect the actual cost of reviewing, administering and updating air quality programs. Over the past several years, the Air Quality Bureau has adjusted work flows to match staff levels rather than increase staff levels or incorporate needed resources, due to the outdated fee structure. This is not sustainable for the air quality programs, and needs to be updated to meet high volume and fast-paced present-day demands. This has been recognized by both the Environmental Council of the States, which has requested the federal government provide an increase of funding for state air programs<sup>16</sup> and has prioritized capacity-building and advancing innovation and productivity as part of its own priorities.<sup>17</sup> It has also been identified as a need by the National Association of Clean Air Agencies, which recently submitted a letter to EPA regarding the new power plant rules expressing that "all agencies already face inadequate resources to meet their existing and emerging Clean Air Act responsibilities"<sup>18</sup>

To sustain and improve its programs under Part 71 and Part 75, AQB calculates that it will annually require approximately \$30 million, which this proposal will provide. This includes an increase of salaries from \$11.4 million to approximately \$22 million, with an increase in contractual needs from \$1.5 million to approximately \$5 million.

## **VII. Significant Consequences Await if the Board Does Not Update Part 71 and Part 75.**

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<sup>16</sup> "Increased Federal Support Needed for State Implementation of Federal Programs" Environmental Council of the States, April 2024, last accessed June 4, 2024, <https://www.ecos.org/wp-content/uploads/2024/04/Categorical-Grants-Hill-Leave-Behind-FY25-revised-April-2024.pdf>.

<sup>17</sup> Government group entities are prioritizing the need for increased capacity and services to support environmental programs. <https://www.ecos.org/wp-content/uploads/2024/04/ECOS-Priorities-2024.pdf>.

<sup>18</sup> National Association of Clean Air Agencies, "Comments on EPA Existing Gas Section 111 Nonregulatory Docket," May 28, 2024, last accessed June 4, 2024, [https://www.4cleanair.org/wp-content/uploads/NACAA-5\\_28\\_2024-Comments--EPA-Existing-Gas-Sec-111-Nonregulatory-Docket.pdf](https://www.4cleanair.org/wp-content/uploads/NACAA-5_28_2024-Comments--EPA-Existing-Gas-Sec-111-Nonregulatory-Docket.pdf).

For Part 71 and Part 75, if AQB is not collecting adequate fees, it risks corrective action by EPA<sup>19</sup> and failing to fulfill its duties under the AQCA. If the Board does not adopt Part 71 and Part 75 as proposed, it will entrench AQB in an overloaded workflow and risk AQB's ability to meet regulatory deadlines by which to act on permits. Failure to adopt AQB's proposal will also risk additional federal oversight if AQB cannot meet its duties. For administrative compliance costs in particular, a rejection of those additional fees by the Board will result in additional increased fees for all sources, as AQB will be forced to collect costs from all the sources to account for those specific sources that are non-compliant.

### **VIII. Conclusion**

For these reasons, NMED respectfully requests the Board to strengthen New Mexico's regulatory capacity, and support the proposed rules change so that the Air Quality Program can receive predictable, stable and adequate funding to fully support its critical work and services throughout the State of New Mexico to protect our residents and our environment.

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<sup>19</sup> See e.g., *Disapproval Warning of Michigan's Renewable Operating Permit Program Fee Demonstration* <https://www.epa.gov/sites/default/files/2015-08/documents/fees3.pdf>.

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### **Professional Summary of Air Quality Experience**

In July 2007 I was hired by the Air Quality Bureau to work in the Technical Services Unit. My primary responsibilities included processing construction industry General Construction Permit and Notice of Intent for the oil and gas industry. My job tasks built upon my UNM academic background, which primarily focused on the oil and gas industry. In 2008, the AQB Bureau Chief recommended I apply for the Major Source Section. I applied and was accepted into the more complex permitting unit. I enjoyed the more challenging work, understanding the various processes and details. I continued processing both NSR and TV applications in the Major Source Section until the TV Permit Program Manager became available. In August of 2014 I accepted the position, which involved managing TV Program and four staff and their work. I was promoted to the Permitting Section Chief position in October of 2023. The following includes my responsibilities and work during my career at the Air Quality Bureau:

- Established and implemented organizational goals, objectives, and procedures for the Permitting Section and for the Air Quality Bureau
- Collaborated with other Air Quality Bureau environmental scientists and specialists on various air quality issues, such as enforcement, compliance, interpretation of federal and state regulations and how to implement them
- Provide leadership and direction for permitting staff, helping to establish goals and objectives, and when necessary, employee improvement plans
- Prepare and conduct all employee interim and annual evaluations on time. Meet all deadlines on hiring, whether advertising, interviewing, or submitting hiring packages
- Created teamwork throughout the Permitting Section through effective communication, group problem solving, positive managerial interaction, encouraging collaborative efforts
- Reviewed technical data, calculated emissions, and determined state and federal regulation applicability in New Source Review and Title V air quality permit applications, primarily oil and gas operations
- Successfully achieved deadlines while maintaining multiple air quality permit actions with varying time constraints and complexity, ensured staff complied with all internal and external deadlines, prioritized and organized work activities, with frequently shifting priorities in a deadline intensive environment
- Maintained proper, legal permit file documentation, including applications, statement of basis, database summary, letters, fees, analytical data, electronic files, application regulations, emission calculations
- Reviewed and analyzed NSR and Title V permit applications, processing them to completion
- Knowledgeable of Code of Federal Regulations, particularly 40 CFR 60 and 40 CFR 63
- Experienced interpretation of New Mexico Administrative Code, Chapter 2-Air Quality
- Proficiency with Microsoft Word & Excel
- Skilled with a variety of air quality software applications

- Computed and determined validity of emission calculations to ensure compliance with state and federal environmental regulations
- Utilized emissions calculations protocols, methodology, and computation software
- Reviewed and implemented environmental technical standards, guidelines, policies, and regulations that meet all appropriate applicable requirements
- Developed appropriate monitoring and permit conditions and Standard Operating Procedures
- Analyzed appropriate applicable regulations and determined required control technology
- Developed proficiency to interpret and implement state and federal regulations, explaining and assisting staff understand and correctly apply the regulations to ensure compliance
- Reviewed proposed operational changes, modifications, or installations to ensure compliance with applicable air regulation and/or permits
- Participated in revision permit templates and monitoring protocols, organizing field trips
- Established and maintained working relationships with companies, consultants, and stakeholders
- Negotiated permit conditions with companies, consultants, and EPA
- Project manager for EPA Petitions and Orders
- Expert testimony in public hearing

#### Education

- Associate in Science in Pre-Engineering, Santa Fe Community College, Santa Fe, NM, December 2002, GPA: 3.81, Graduate with High Honors
- Bachelor of Science in Chemical Engineering, University of New Mexico, Albuquerque, NM, May 2003, GPA: 3.12

**STATE OF NEW MEXICO  
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)**

**TECHNICAL TESTIMONY OF MELINDA OWENS**

**I. INTRODUCTION**

My name is Melinda Owens, and I am the Permitting Section Chief for the Air Quality Bureau (“Bureau”) of the New Mexico Environment Department (“NMED” or “Department”). I have a Bachelor of Science degree in Chemical Engineering from the University of New Mexico. I have worked in the NMED Air Quality Bureau (“AQB” or “Bureau”) Permitting Section for 17 years. Since October of 2023, I have been the Permitting Section Chief and am responsible for the management of the Bureau’s permit application reviews and issuances. Additional details about my qualifications can be found in my resume [NMED Exhibit 5].

**II. PURPOSE OF TESTIMONY**

The purpose of my testimony is to explain the permitting process in support of the proposed fee increase under 20.2.71 NMAC and 20.2.75 NMAC. The focus of my testimony is on how the proposed fee increase will impact the administration and implementation of the Minor Source Construction Permit Program.

**III. OVERVIEW OF MINOR SOURCE PERMITS, PERMITTING VOLUMES, AND FEES**

I will discuss 20.2.72 NMAC New Source Review (NSR) Construction Permits, 20.2.72 NMAC Oil and Gas General Construction Permits (GCP), and 20.2.73 NMAC Notice of Intent (NOI) review requirements. Almost eighty percent (80%) of the permits in New Mexico are issued

to oil and gas facilities. The current 20.2.75 NMAC fee structure was promulgated on December 1, 2003. Although the regulation allows consumer price index adjustments, CPI increases have not been sufficient to cover the Department's original projections of permitting actions, nor has it recognized the complexity of applications or revisions. Particularly in recent years, oil and gas air quality permitting actions have expanded in the Permian Basin due to higher production levels. A comparison of NSR, GCP, and NOI issuances for calendar years 2003, year of fee promulgation, and 2023 are noted in the table below.

Table 1: Comparison of NSR Permit Issuances in 2003 and 2023

| NSR Permit Type            | 2003 | 2023 |
|----------------------------|------|------|
| Notice of Intent (NOI)     | 125  | 633  |
| New NSR                    | 28   | 18   |
| NSR Significant Revision   | 31   | 22   |
| Oil and Gas GCP - New*     | 0    | 337  |
| Oil and Gas GCP - Revised* | 0    | 510  |

\* GCP Promulgated March 2018

Note: only certain types of NSR permits are noted.

As shown in Table 1, the NOI applications have increased from 125 in 2003 to 633 in 2023. An NOI must meet the criteria of 20.2.73 NMAC, with maximum emissions of 10 pounds per hour and ten tons per year. An NOI has a 30-day issuance deadline. Of the 633 NOIs issued in 2023, 97% of them were related to oil and gas permitting actions. An NOI has a flat fee of \$500 in accordance with 20.2.75 NMAC [NMED Exhibit 46] and is proposed to increase to \$2,000.

The GCP O&G Permit [NMED Exhibit 44] was promulgated in March of 2018. The 337 new GCP permits and 510 GCP revision permits issued last year demonstrates expanded New Mexico oil and gas activity and permitting. A GCP O&G permit has a 30-day issuance deadline. Modeling is not required for GCPs because the original 2018 permit incorporates a general modeling for every GCP based on multiple factors, such as stack heights and velocity of exiting emissions. The current GCP review and processing fee is \$5,100.00.

The number of new and revised NSR permit applications received by the Bureau has decreased slightly over the past twenty years, as noted in Table 1. That is primarily due to oil and gas companies opting for the expedited and less costly GCP. NSR permits have a regulatory deadline of 30 days to be deemed complete or incomplete, followed by a 90-day issuance deadline. [NMED Exhibits 43 & 45]. An NSR permit, new or revised, also has a requirement for modeling or a modeling waiver. For new and significant revisions to NSR permits the review and processing is established according to the complexity and is based on fee points. These points create an equitable assessment method for applicants based on permitting activities, equipment types, operation changes, and review and determination of applicable state and federal regulations. The current modeling review is assessed based on 15 points, or \$7,650. The overall NSR review fee can easily be upwards of \$20,000-\$25,000. [NMED Exhibit 39].

When comparing the GCP O&G and NSR permit types, oil and gas companies readily utilize the GCP because it is a 30-day versus 120-day action and because of the set GCP fee versus the much higher NSR fee.

#### **IV. JUSTIFICATION FOR INCREASED GCP OIL AND GAS FEE**

Before the GCP O&G was issued March of 2018, applicants were required to submit NSR permit applications. From the Department's experience, the level of effort to process a GCP permit is comparable to the level of effort to issue an NSR permit despite lower fees. Both require extensive evaluations and review, including but not limited to reviewing the process flow, emission factors and spec sheets, verifications of emission calculations, gas analyses, applicability of state and federal regulations. [NMED Exhibits 40, 41, and 43].

Instead of a modeling fee paid by the applicant, Bureau permit writers must review the stack parameters for height and exit velocity to ensure compliance with air dispersion

requirements. Generally, NSR and GCP applications and facilities are of comparable complexity. It is critical that permit writers perform a thorough and complete review on every aspect of the application review in order to ensure the health and safety of New Mexicans. Since the 20.2.75 NMAC fee promulgation in 2003, federal air quality regulations have changed significantly, adding time and complexity to the review process. Since 2003, the new federal rules that must be analyzed in the permit review process include 40 CFR 60, Subpart JJJJ, 40 CFR 60, Subparts OOOO and OOOOa, and 40 CFR 63, Subpart ZZZZ. EPA recently issued 40 CFR 60, Subparts OOOOb and OOOOc that will be incorporated as well. Applicants identify which regulations apply as part of their application submission, however, it is incumbent on the Bureau permit writer to verify each unit for its applicability.

State regulations also cover a variety of equipment and operations. On August of 2022, the EIB promulgated a comprehensive regulation called the Ozone Precursor Rule, or 20.2.50 NMAC [NMED Exhibit 48]. This rule covers oil and gas facilities located in certain New Mexico counties. This regulation thoroughly addresses oil and gas industrial processes, not only units that are subject to the regulations, but also their control devices and the routing of the emissions. This adds additional responsibility and review time to the permit issuance process.

Technological advances in the oil and gas industry in recent years have required additional factors for permit writers to address and consider in their review. Applications that the Bureau is receiving include more equipment types that help yield better products and the facilities covered by the permits continue to get larger and more complex compared to the permit applications that the Bureau was receiving in 2003 when the current fee was established.

In response to the volume of permit applications and to ensure compliance with the statutory deadlines, the Bureau has engaged contractors to support AQB permit writers. In addition

to the volume, time and complexity of application reviews, the Bureau is anticipating that the EPA will issue a non-attainment designation based on measured exceedances for ozone in the southeast part of New Mexico. The issuance of a non-attainment designation indicates exceedances of health-based limits for pollutants [<https://www.epa.gov/green-book>]. A non-attainment designation will require New Mexico bring that area into attainment status, further increasing the volume of work and supporting the need for additional staff and resources to support the Bureau in continuing to meet its statutory and federally delegated responsibilities [NMED Exhibit 45].

## **V. CONCLUSION**

With the increase of oil and gas operation applications, the complexity of the applications, and the 30-day issuance deadlines, the AQB permitting section is not sufficiently staffed to process the volume of permits within the required timeframe to allow for a complete and thorough review to ensure that all regulatory requirements are met to thus ensure the protection of public health and the environment. A fee increase will enable AQB to fulfill its statutory and federally delegated responsibility to administer and implement the Clean Air Act [<https://www.epa.gov/clean-air-act-overview>] and the Air Quality Control Act [NMED Exhibit 47] to ensure that New Mexico inhabitants have a safe place to live.

# ERIC C. PETERS

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## PROFILE

Knowledgeable, understanding, diplomatic builder of teamwork with a passion for innovation and adaptation. I have great motivation and good experience writing and using computer programs and databases as well as experience in environmental management areas such as air dispersion modeling and hazardous waste remediation. I communicate well both orally and in writing.

## CAREER HIGHLIGHTS

**New Mexico Environment Department/Air Quality Bureau ☐ Santa Fe, NM ☐ Control Strategies Manager/Air Dispersion Modeler/Computer System Analyst ☐ November 1997 to present ☐ 40 hours per week (average)**

### ***Job classification timeline:***

- Started working as Air Dispersion Modeler (Environmental Specialist) on November 3, 1997.
- Change position to Information System Systems Analyst II (ISSA II) on 11/15/2000.
- Reclassified as ESS-O (Air Dispersion Modeler) on 3/30/2002.
- Designated as Lead worker in 2010.
- Reclassified as ESS-A (Air Dispersion Modeler) in October 2012.
- Changed position to Control Strategies Manager on May 11, 2024.

### ***Job accomplishments:***

- Analyzed and performed air dispersion modeling for hundreds of projects involving use of ISCST3, Calpuff, AERMOD, CTScreen, and other modeling software for evaluation of power plants, mining operations, and numerous other facility types.
- Performed modeling for the development of at least five General Construction Permits.
- Acted as primary author and editor for New Mexico Air Dispersion Modeling Guidelines.
- Trained over six employees to conduct air dispersion modeling reviews.
- Trained at least five employees to operate emissions inventory programs.
- Analyzed air quality regulations for use and potential modifications.
- Worked with groups to develop and implement regulations for prescribed burning and general permits.
- Assisted with legal strategy and testified as expert witness at over ten hearings.
- Created MergeMaster data conversion program using Microsoft Access and Visual Basic in 1998. The program analyzes and transforms input data into formats needed to efficiently run computer models, draws maps using the data, and writes reports to describe the results in detail.
- Rewrote MergeMaster location queries into PL/SQL in Oracle and JavaScript for better accessibility and future support. Program converts and QAs TEMPO data to produce PDF, Google Earth, HTML, and AERMOD file formats: <https://air.web.env.nm.gov/mergemaster/>.
- Mapped and migrated data to Oracle and MS Access databases from various relational database formats.
- Created database to store and manage emissions inventory and permit tracking for the state of New Mexico and helped migrate this data to TEMPO when NMED purchased TEMPO license.
- Extracted, analyzed, and transformed data from Oracle databases using SQL programming scripts.
- Researched, designed, and created Calcatenate program and training resources to calculate emissions for many air emission source types. Program writes SQL equations that to solve themselves while showing the work behind the solution. Program produces XML format output to upload into

# ERIC C. PETERS

📍 525 Camino de Los Marquez, Santa Fe, NM 87505    📧 [Eric.Peters@env.nm.gov](mailto:Eric.Peters@env.nm.gov)    ☎ (505)629-5299

SEP/AEIR for Emission Inventory submittal completion. <https://www.env.nm.gov/air-quality/calcatenate/>.

- Wrote Oil & Gas General Construction Permit calculator program to automate determination of compliance. Converted calculator into PL/SQL for automatic ePermitting Portal use.
- Maintained Air Quality Bureau webpage using WordPress: <https://www.env.nm.gov/air-quality/>.
- Created and Maintained AQB Quick Links webpage using SharePoint to provide internal users easy and organized access to commonly needed resources.

## **Desert Research Institute ☐ Las Vegas, NV ☐ Technical Temporary ☐ Sept. 2003- March 2007 (part time)**

- Designed MS Access database tools to describe and analyze visibility and pollutant monitoring stations.
- Programmed database to export data in HTML format for use in web pages.
- Wrote Visual Basic program to convert HYSPLIT output text files into GIS Shapefiles for use in ArcGIS.

## **Santa Fe Striders ☐ Santa Fe, NM ☐ President ☐ December 2000 to December 2002 (part time)**

- Made management decisions for 100-member running club.
- Coordinated volunteers, police protection, insurance, sponsors, and technical support for races.
- Created database to track membership and race entries.

## **Environmental Protection Agency ☐ Kansas City, KS ☐ Environmental Engineer ☐ Jun.1992 to Sept. 1994 ☐ 40 hours per week**

- Managed Pilot Projects to develop guidance on selecting treatment technologies for Superfund sites contaminated by polychlorinated biphenyls (PCBs), manufactured gas plants, or grain fumigation.
- Helped develop, procure, and manage contracts.
- Researched treatment techniques for PCB, manufactured gas plant, and grain fumigation sites.
- Compiled and analyzed data and wrote reports and guidance documents for treatment of site types.

## **University of Illinois ☐ Urbana-Champaign, IL ☐ Research Assistant ☐ 1991 ☐ part time**

- Simulated protein folding by molecular dynamics using Silicon Graphics and Cray supercomputers.
- Analyzed and created computer codes written in Fortran using UNIX and Macintosh operating systems.

## **EDUCATION**

### **Master of Science in Environmental Engineering**

University of Kansas ☐ Lawrence, Kansas ☐ June, 1995

### **Bachelor of Science in Mechanical Engineering and**

### **Bachelor of Science in Honors Biology with a minor in Chemistry**

University of Illinois ☐ Champaign-Urbana, Illinois ☐ December, 1991

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

**IN THE MATTER OF THE 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**

**TECHNICAL TESTIMONY OF ERIC PETERS**

**I. INTRODUCTION AND QUALIFICATIONS**

My name is Eric Peters. I have Bachelor of Science degrees in Mechanical Engineering and Biology from the University of Illinois and a Master of Science degree in Environmental Engineering from the University of Kansas. I have worked for the Air Quality Bureau (“AQB” or “Bureau”) of the New Mexico Environment Department (“NMED” or “Department”) for over twenty-six years. I have been the Control Strategies Manager since May 11<sup>th</sup>, 2024, but I worked as an Air Dispersion Modeler for most of my time at AQB. Additional details about my qualifications can be found in my resume [NMED Exhibit 7].

**II. PURPOSE OF TESTIMONY**

The purpose of my testimony is to explain the proposed changes to air dispersion modeling fees in the fee regulation 20.2.75 NMAC, Construction Permit Fees. No modeling fee is being considered for 20.2.71 NMAC.

**III. MODELING FEE BACKGROUND**

Construction permit fees are calculated according to the fee regulations in 20.2.75.11 NMAC. The regulation assigns points to a permit application for certain activities or characteristics to determine how complicated the analysis of the permit will be. The number of points is multiplied by a factor to determine the total cost of the permit. In this way, the cost of the permit is based on the amount of staff effort required to review the application.

It is often difficult to predict how long a modeling review will take. One major factor that influences modeling time is how close the modeling results are to the air quality standards. Models that are close to the standards take more time to review because more advanced modeling techniques may be required, and more refined analysis of nearby sources is likely to be needed. These types of refinements may be more related to the location of the facility than the total emissions of the facility. Other factors that may make modeling reviews take extra time include the number of operating scenarios used at a facility and cases where the emission rates are high relative to the release heights of those sources.

Because of the unpredictable nature of the modeling reviews, NMED utilizes a uniform fee method as referenced in 20.2.75.11 NMAC. This uniform fee method provides for better budget planning before and during the permit review process.

#### **IV. INCREASE IN AVERAGE COMPLEXITY OF MODELING**

20.2.75.11 NMAC, which lists the points for permitting actions, was last changed in 2003. Since that time, various changes have taken place to modeling review and to permits.

GCP Oil & Gas was issued. Small compressor stations and similar facilities used to make up most of the modeling projects, and these facilities normally required much less modeling time than large oil and gas facilities. These small facilities are now able to get GCPs that don't require modeling. This removed most of the relatively quick and easy modeling projects, so the average complexity and review time of modeling projects increased greatly.

The construction industry has seen similar effects from general permits issued after the last fee updates. General Construction Permits for gravel crushers, concrete batch plants, and asphalt plants have eliminated the requirement to do modeling for most of the simple examples of these facilities. It is usually the more complex applications that need to submit modeling. These facilities

are frequently portable, meaning that they will require additional modeling to determine the distance between their emission sources and the fence line. These sources frequently have multiple operating scenarios, and each scenario could be considered a separate modeling review, but the modeling fee is only charged once per permit.

The combined effects of all types of GCPs can be seen by graphing the total number of GCPs registrations issued and the number of regular permits issued. [NMED Exhibit 49], “AQB Count of GCP and NSR Permits Issued by Year”, shows the number of annual permitting actions of each of these two groups from 2003 to 2023. These are the years for which we have complete permit tracking in our database. The results illustrate a swift increase in GCP registrations after the GCP Oil and Gas was issued. These permits would have required modeling before the GCPs were developed, but now only the most complex, largest or closest to restricted areas for permitting are still getting regular permits.

Mining and construction industry sources have emissions that are low to the ground compared to oil and gas sources, and low releases are predicted by the model to create high concentrations, which may require advanced modeling techniques and other refinements to the modeling. These sources are more likely to operate near communities because they produce materials that are used within the communities. When a source operates near a community there tends to be more public hearings, which will often require great amounts of time for modelers and other staff involved in the hearings but does not add any fees to the application. Normally, mining and construction industry modeling has been some of the most complex and time-consuming sources for modeling review. Large mines, such as copper mines, use great numbers of emission sources and cover vast areas. It may take multiple weeks for the computer to complete one model run for one of these facilities.

Changes to regulations, guidance and air quality standards have also made modeling more time-consuming since the last fee updates. Air quality standards have been revised over the years to provide better protection of human health and the environment. Compliance with the updated standards requires improved controls and more advanced modeling techniques. Increased numbers of facilities have increased the computer time and staff time that is required to run a model. Checking for data errors is also magnified by the increased number of surrounding sources. Five years of meteorological data are frequently used now instead of only one year that was normally used at the time fees were last revised and this means that it takes five times as long to run the model each time and may require more time for processing meteorological data.

In addition to time directly spent reviewing modeling, modeling staff spend considerable time maintaining the infrastructure required for modeling review. Modeling staff updates the New Mexico Modeling Guidelines, reviews new regulations, reviews modeling protocols and waiver requests, provides background information used in modeling, and develops software to provide or analyze modeling content.

## **V. PROPOSED MODELING FEE INCREASE**

When a permit application requires an air dispersion modeling analysis, the schedule currently assigns fifteen points to that application. The proposed fee regulation will account for the increased complexity of modeling analyses by doubling the modeling points to thirty points. The proposed fee is more reflective of the staff time required for an average modeling project in the current environment.

## **VI. GCP FEE INCREASE**

Extensive modeling work is required at the outset to develop and revise General Construction Permits (GCPs). This work is required to simulate the effects of nearly endless

possibilities of equipment on the environment and translate the results into effective permit conditions. The cost of GCP creation and maintenance is not reflected in the current fees for the GCPs themselves, as no modeling is required with each GCP application, and no modeling fee is charged. Some of the proposed increases to GCP fees may be used to absorb these expenses.

## **VII. CONCLUSIONS**

Large increases to the average review time for air dispersion modeling require similar changes to the modeling fee structure if the Department is to recover these labor and related costs through the permitting process that the modeling is required for.

**Donna J. Intermont BSMT(ASCP), CHA, MBA**

3 Kennebec Circle Bath, Maine 04530

or

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Cellular 505-321-9992

[donna.intermont1@env.nm.gov](mailto:donna.intermont1@env.nm.gov) ; [d\\_intermont@yahoo.com](mailto:d_intermont@yahoo.com)

**EMPLOYMENT OBJECTIVE**

A challenging leadership position in a growth-oriented organization.

**PROFESSIONAL ACCOMPLISHMENTS**

Recognized for high ethical standards in all work performed.

- Proven effective leader of both large and small organizational groups.
- Developed strategical plans and spending plans.
- Developed annual budgets, and quarterly progress reports on financial and project status.
- Reputation as a dependable and accountable employee, concentrates on quality and process improvements.
- Proven leader in ensuring the development of policies and procedures for organizations.
- Persistent with the completion of projects to attain organizational and departmental goals.
- Talented and determined individual who accomplishes results and holds staff accountable for the same. Successful at personnel management.
- Skilled in analytical problem solving and troubleshooting.
- Experienced interfacing with Government Regulatory Agencies and always professional in interactions with internal and external customers.
- Knowledgeable with and successful in achieving full compliance with EPA, JCAHO, CLIA, CMS, CAP, COLA, FMCSA and other Federal and State Regulatory Agencies.

**QUALIFICATIONS**

- Utilized statistical software for quality analysis.
- Successful experience in project management of projects such as implementation of instrumentation, new computer systems and interfaces, resolving non-compliance issues, process improvements, policy and procedural development, etc.
- Familiar with the Code of Federal Regulations (ie. Title 40 (EPA) Parts 20, 50, & 58; Title 2 (Federal Grants))
- Strong negotiation and communication skills.
- Analyzed and improved departmental operations resulting in increased productivity and accuracy of results.
- Detail oriented person with strong organizational abilities. Very accurate in all areas of work.
- Proficient with Microsoft Office software systems, Office 365, and Sharepoint.

## **EDUCATION**

**Southern New Hampshire University, Manchester, NH**

- **Master in Business Administration (MBA)**

**Southern New Hampshire University, Manchester, NH**

- **Graduate Certificate in Health Administration**

**University of New Mexico, Albuquerque, NM**

- **Bachelor of Science, Medical Technology**

**ASCP Certified (Board of Registry)**

**Florida State Supervisor License in 6 areas of the laboratory**

## **EMPLOYMENT HISTORY**

**State of New Mexico-Environment Department-Environmental Protection Division**

**Air Quality Bureau – Operations Section**

**525 Camino del los Marquez**

**Santa Fe, NM 87505**

**Administrative Operations Manager II – Operations Section Chief**

**November 2011 to present Staff of 92 in Bureau and 17 in Operations Section**

Summary: My position manages the operations of the administrative staff, operation of the statewide air quality monitoring network, quality assurance of ambient air monitoring data, and oversees the Bureau budgets and EPA grants.

*Management of AQB Financial Operations -*

Coordinated annual budget planning such that future needs of the Air Quality Bureau programs are anticipated and projects are adequately funded. In the event of budgetary shortfalls or special, unexpected fiscal needs, developed innovative solutions. Developed and managed contracts to support the bureau mission (Request for Proposals, Sole Source, Professional Services, Invitation to Bid, Price Agreements, Memorandums of Understanding, etc.). Prepared budgets for future years so that revenue increases and program changes are accommodated.

*Managed AQB Operations -*

Developed processes and procedures to improve the operations of the Bureau and the Operations Section. Coordinated NMED Information Technology management support to assure that Bureau application development, application operation, and PC needs are met. Developed a motivated, organized and effective staff that provided effective administrative support services to the Bureau. Managed the assignment, use, repair, and maintenance of office space. Coordinated office lease activities and issues with the landlord, NMED, and GSD. Procurement of goods and supplies as needed for Bureau needs. Responsible as the role of Emergency Evacuation Coordinator/Safety Officer for the Bureau, working with Occupational Health & Safety Bureau (OHSB), coordinating Emergency Evacuation drills, directing the accounting of personnel, revising protocol if warranted, and overall employee safety within the building and perimeter.

*Ambient Air Monitoring and Quality Assurance Operations –*

Developed strategic directions for NMED's air monitoring program that incorporate requirements and priorities of National Monitoring Strategy that followed Environment Protection Agency (EPA) Regulations. Continued to upgrade the monitoring network to state of the art technology. Revised and reviewed annual network reviews and five year network assessments. Ensured that all federal and grant requirements pertaining to monitoring and quality assurance responsibilities were fulfilled on time. Reviewed and certified quarterly and annual ambient air data prior to submission to EPA. Oversee and review the development of the Bureau's Quality Management Plan (QMP) and Quality Assurance Plans (QAPPs) prior to submission to EPA. Responsible for achieving compliance with EPA when non-compliance issues or deficiencies were identified through EPA Technical Systems Audits. Developed or revised policies if required to achieve compliance. Created an audit protocol and coordinated a laboratory audit as required by EPA. Oversee the laboratory management of the AQB Monitoring laboratory.

*Grant and Financial –*

Prepared and monitored federal grants to support AQB functions in conformance with EPA rules and procedures. Ensured grant applications were prepared and submitted in proper format and in a timely manner so there was no interruption in bureau functions. Monitored grants reporting requirements, including section grant matrixes and work plans. Worked with programs to make adjustments to program activities and budget if there is a difference between grant application amount and grant amount actually received. Monitored grants' expenditures to ensure maximum use of federal funding. Prepared grant amendments when required.

*Employee Supervision –*

Maintained a team of well-trained, motivated, informed, and productive staff. Recruited staff and filled vacancies. Encouraged staff participation in the decision making process. Conducted bi-monthly organized and informative staff meetings and section meetings. Maintained a well trained staff by developing a prescribed training plan. Provided guidance and oversight to staff on program procedures, guidelines, policies and regulations. Evaluated staff work product to make sure that it is accurate, professionally presented and completed on time as requested by management or required by policy or rule. Conducted meaningful and constructive performance reviews following the guidelines as set forth by State Personnel Board Rules and NMED Policies. Ensured submittal and approval of accurate and timely timesheets for subordinate staff at the end of pay periods according to NMED policies

**State of New Mexico-Environment Department-Environmental Protection Division**

**Air Quality Bureau – Permitting Section**

**525 Camino del los Marquez**

**Santa Fe, NM 87505**

**Minor Source Permitting Staff Manager**

**November 2011 to June 2012 Staff of 6**

Managed the minor source Air Quality permit developments. Review and approved permits for

issuance and according to protocols. Assess and distribute workload. Manage staff. Interview and fill vacancies. Perform staff performance evaluation assessments. Schedule staff accordingly.

**State of New Mexico-Taxation & Revenue Department-Motor Vehicle Division  
Commercial Driver and Vehicle Bureaus**

**Joseph M. Montoya Bldg.**

**P.O. Box 1028**

**Santa Fe, NM 87504-1028**

**Administrative Operations Manager II - Transportation Bureau Chief of 2 Bureaus**

**November 2007 – November 2011 Staff of 35**

Provide a high level of management for the Motor Vehicle Division's Commercial Vehicle Bureau and Commercial Driver Licensing Bureau, which includes federal grant management, contract management, employee management and implementation of federal, state, and international initiatives. The Transportation Chief promotes a high level of customer service; ensure compliance with federal regulations and MVD statutes, regulations, policies and procedures; contributes to organizational development and improvement; and contributes to the development and implementation of policies and procedures that are consistent with legislative and executives' directives and federal mandates. Additionally, the Transportation Chief must professionally represent the division in interactions with other state agencies, jurisdictions, federal government, vendors and a variety of contractors.

**SED Medical Laboratories 5601 Office Blvd. NE Albuquerque, NM 87109**

**Reference Laboratory Manager November 2005 – January 03, 2007 Staff of 34**

Reports to the Chief Operating Officer administratively and the Medical Director clinically, the Laboratory Manager manages continuously the provision of laboratory services in an effective and efficient manner to maintain standards of patient care. Responsible for planning, organizing, and coordinating planned projects to provide optimum services to clients and to complete organizational goals and objectives. Develops the laboratory budget annually and manages the expenditure of funds and adjusts departmental operations within budgeted limitations. Provides administrative and technical oversight to the day-to-day function of the laboratory, monitoring staff proficiency, QA, and abilities in conjunction with Lead Technologists. Monitors scheduling of staff to assure within budget and also to meet workload needs. Responsible for planning, organizing, coordinating, evaluating all resources (personnel, equipment, supplies, facilities and financials) toward the attainment of organizational goals and objectives. Maintains thorough knowledge of, and applies personnel policies and procedures to laboratory operations. Hires employees qualified for position. Establishes standards of work performance; informs employees what these standards are; assists them in attaining them and counsels employees when necessary. Completes performance evaluations for all personnel within the laboratory. Communicates with employees on management actions and responds to employees' questions or problems. Conducts leadership and department meetings and coordinates setting and completing action plans. Serves as liaison between the laboratory, other hospital departments, Medical Staff, and other site locations.

**Tricare Reference Laboratories University Hospital, 2211 Lomas Blvd. NE Albuquerque, NM 87106**

**Hospital Laboratory Manager May 2004 - August 2005 Staff of 100**

Reports to the Director administratively and the Medical Director clinically, the Laboratory Manager manages continuously the provision of laboratory services in an effective and efficient manner to maintain standards of patient care. Provides administrative and technical oversight to the day-to-day function of the laboratory, monitoring staff proficiency, QA, and abilities in conjunction with technical supervisors. Monitors scheduling of staff to assure within budget and also to meet workload needs. Responsible for planning, organizing, coordinating, evaluating all resources (personnel, equipment, supplies, facilities and financials) toward the attainment of organizational goals and objectives. Provides optimum provision of services to patients, Medical Staff, other departments, employees, general public, and clinics and advises them in matters related to laboratory services. Maintains thorough knowledge of, and applies personnel policies and procedures to laboratory operations. Assists with hiring employees qualified for position. Establishes standards of work performance; informs employees what these standards are; assists them in attaining them and counsels employees when necessary. Assists in performance evaluations for all personnel within the laboratory. Communicates with employees on management actions and responds to employees' questions or problems. Conducts leadership and department meetings and coordinates setting and completing action plans. Develops the laboratory budget annually and manages the expenditure of funds and adjusts departmental operations within budgeted limitations. Serves as liaison between the laboratory, other hospital departments, Medical Staff, and other site locations. Core team member to integrate the new Cerner hospital system into production.

**Maine Center for Cancer and Blood Research, 100 Campus Dr. Suite 108 Scarborough, ME 04074**

**Laboratory Supervisor October 2002 – May 2004 Staff of 8**

Reported to the Chief Executive Officer administratively and the Laboratory Director clinically. Accountable for the provision of quality patient care for adult patients. Ensured compliance with CLIA and COLA standards as well as the accuracy and reliability of all tests. Ensured that the physical and environmental conditions of the laboratory were appropriate for the testing performed and provided a safe environment. Adhered to the Maine Center for Cancer's established policies when test systems deviated from acceptable levels of performance. Implemented and complied with the MCCM supervisory expectations with appropriate documentation. Responsible for satellite laboratories overall performance and certification. Ensured that test results were completed accurately and delivered to providers in a timely manner. Troubleshoot instrumentation. Ensured that no patient results would be reported until all corrective actions have been taken and the test system is functioning properly. Assisted and participated in technical services as needed, i.e., phlebotomy and testing. Maintained appropriate inventory par levels and ordered sufficient quantities to prevent delays in testing for all sites. Developed, updated, and implemented procedures for the laboratory and satellite laboratories and implemented necessary measures to

ensure CLIA, COLA, HIPAA and OSHA regulation compliance. Attended meetings and assisted with special reports and projects when requested. Participated in the developmental and implementation of organizational policies and procedures. Ensured that the laboratories participated in an approved proficiency testing program. Performed the appropriate correlation studies in the implementation of new instrumentation. Ensured that preventive maintenance calibration check and linearity studies were performed and documented on equipment used. Maintained and monitors quality assurance activities in the laboratory. Supervised staff members and delegated responsibilities as appropriate. Coordinated vacation schedules and prepared weekly time sheets. Provided the appropriate mix of qualified staffing to perform tests during hours of operation. Interviewed perspective staff as needed. Conducted yearly performance appraisals. Planned, directed and participated in regularly scheduled staff meetings to share information and problem solve. Maintained necessary clinical skills through direct practice. Active role in the integration of a new laboratory system (Orchard) and patient medical record system (IKNOWMED) into production.

**Miles Health Care Center Laboratory, 35 Miles St. Damariscotta, ME 04543**

**Hematology/Hemostasis Technical Supervisor/Generalist Sept 1993 – Oct 2002 Staff of 15**

Responsible for management and supervision of department. Responsible for daily review of all hematology/hemostasis patient results. Checking for transcription errors, analysis errors, and correlation with clinical condition. Daily, weekly, and monthly review of control results and statistics. Responding to all analytical problems with documentation. Responsibilities also include the institution of new instrumentation, correlation, calibration, linearity, and personnel training documentations. Further responsibilities included inventory control and the writing of procedure manuals.

As a Generalist, performing laboratory testing in all areas of the laboratory (microbiology, chemistry, blood bank, serology, as well as hematology and hemostasis) using manual techniques and numerous automated instruments. In addition to these duties, responsibilities included the point of care glucose monitoring, training and competencies of nursing personnel, quality control and quality assurance reporting of the glucose monitors. Reviewing and documentation of all CAP surveys within the laboratory. Knowledgeable with patient process from admissions to patient discharge. Active participation in hospital and laboratory compliance inspections. Participated as a member of a laboratory audit team performing CAP inspections on other laboratories within the state. Core team member to integrate the Meditech hospital computer system into production.

**Vivigen (Genzyme-Integrated Genetics), 2000 Vivigen Way Santa Fe, NM 87505**

**Biochemistry Technologist, May 1993 – August 1993**

Primary responsibility for performance of RIA testing, data entry, assessing quality control, transmission of results, collating reports, trouble-shooting of assays and equipment, disposal and recording of radioactive waste according to protocol.

**Midcoast Hospital Laboratory, 123 Medical Center Dr. Brunswick, ME 04011**

**Microbiology Technologist & Generalist, May 1988 – May 1993**

Laboratory testing in Microbiology, Hematology, Chemistry, Coagulation, Blood Bank, Serology, and Phlebotomy. Extensive microbiology testing experience including both manual and automated instrumentation. Responsible for the monitoring of the quality control and analytical performance of the blood gas section of the laboratory. Further responsibilities included inventory control and the writing of procedure manuals.

**Professional References available upon request****(Intermont, Donna resume continued)****Additional Education, Training, Workshops, and Certifications**

Civil Rights Annual Requirement-State of New Mexico State Personnel Office–January 15, 2024

Essentials of Supervision and Management-May 2023

Managing Employee Performance-March 2023

Creating Success Through Performance-February 2023

Succeeding at Delegation-February 2023

Promoting Diversity and Avoiding Bias-February 2023

Giving Employee Feedback-February 2023

Introduction to Managing a Team-February 2023

Conducting Effective Job Interviews-February 2023

Holding Productive Meetings-February 2023

Managing Employee Conflict-February 2023

Motivating Your Team-February 2023

Department of Finance Administration Travel 101–June 15, 2021

Met-One Instruments Virtual E-SEQ FRM Training–March 2021

Lean and Six Sigma for Environmental Professionals–Introduction to Process Improvement

Lean and Six Sigma for Environmental Professionals–Tools for Process Improvement

PEP PM2.5 Audits-Understanding their Usefulness-National Ambient Air Monitoring Conference 2014

Continuous PM2.5 FRM/FEM Performance Evaluation-National Ambient Air Monitoring Conference 2014

Performance Evaluation of a Low-Cost, Real Time Community Air Monitoring Station-National Ambient Air Monitoring Conference 2014

Laboratory System Improvement Program-Performance Measurement Tool–September 2013

Quality Project & Program Management-US EPA–May 14-16, 2013

Civil Rights Annual Requirement-State of New Mexico State Personnel Office–May 13, 2013

Professional Grant Development Workshop-University of New Mexico–January 23-25, 2013

Environmental Negotiation Skills for Scientists and Resource Managers–September 7, 2012

Advanced New Source Review/Prevention of Significant Deterioration (NSR/PSD)-WESTAR Council–April 10-13, 2012

Managing Employees Using the Fundamentals of Supervision-State of New Mexico State Personnel Office–April 30, 2012

Visible Emissions Evaluation– Eastern Technical Associates-February 28, 2012  
Microsoft Excel Pivot Table,Tips&Tricks–State of New Mexico Taxation & Revenue Department  
August 29, 2011  
Workplace Etiquette-State of New Mexico Taxation & Revenue Department-July 7, 2011  
Customer Service Leadership-State of New Mexico Taxation & Revenue Department-January 19,  
2011  
Living in a Union Environment-State of New Mexico State Personnel Office-April 29, 2010  
Living in a Union Environment-State of New Mexico State Personnel Office-August 10,2009  
Conducting Internal Investigations Specialized Knowledge & Applications-Association of Certified  
Fraud Examiners-June 15-16, 2009  
Principles of Business Analysis-Management Concepts-June 22-24, 2009  
Effective Business Writing Part 1-State of New Mexico Taxation & Revenue Department-May 22,  
2008  
Sexual Harassment Prevention for Supervisors-State of New Mexico Taxation & Revenue  
Department-December 27, 2007  
CAP/LAP Inspector Training Seminar-College of American Pathologists-March 11, 2006  
Service Excellence Award–Tricare Reference Laboratories-May 20, 2005  
Best Results Trending of PSN-Quality Outcomes Management-May 2005  
HIPAA Security Training-Tricare Reference Laboratories-April 25, 2005

**(Intermont, Donna resume continued)**

**Additional Education, Training, Workshops, and Certifications continued**

Service Excellence Award-Tricare Reference Laboratories-November 24, 2004  
Superuser of the Cerner Implementation of Millennium PM & Orders-University of New Mexico  
Health Sciences Center University Hospitals-November 7, 2004  
Power Chart & Power Chart Office Inquiry CLT182- University of New Mexico Health Sciences  
Center University Hospitals-October 20, 2004 & June 23, 2004  
How to Use Process Mapping to Improve Customer Satisfaction, Reduce Cost, & More-  
Albuquerque Quality Network-July 22, 2004  
Education & Consulting Services CLT145-University of New Mexico Health Sciences Center  
University Hospitals-July 7, 2004  
Resolving Employee Conflicts OPD648-University of New Mexico Hospitals Organizational &  
Professional Development-July 1, 2004  
Journey to Service Excellence Workshop-Tricare Reference Laboratories-June 29, 2004  
Groupwise New Hire Orientation- University of New Mexico Health Sciences Center University  
Hospitals-June 22, 2004  
Tricare Financials-Tricare Reference Laboratories-June 10, 2004



**STATE OF NEW MEXICO  
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)**

**DIRECT TESTIMONY OF DONNA INTERMONT**

My name is Donna Intermont, and I am the Operations Section Chief for the Air Quality Bureau (“Bureau”) of the New Mexico Environment Department (“NMED” or “Department”). As the Operations Section Chief, I am responsible for the management of the Bureau’s operations and finances, which I have done since June of 2012.

**I. AIR QUALITY BUREAU BUDGET**

I will present data regarding the financing of the Air Quality Bureau (AQB). The data is presented in New Mexico Fiscal Years format. The New Mexico fiscal year begins July 1 and ends the following June 30. We are now in New Mexico Fiscal Year 24 (FY24), which began July 1, 2023, and will end June 30, 2024. The fiscal data in my testimony was derived from reports and information collected by the Department’s Administrative Services Division Budgets Bureau and fiscal staff working in the Air Quality Bureau.

I will describe the budgeting process that affects the AQB. A budget is analogous to a personal checking account, with one budget for each funding source. Each budget in the AQB has three categories of authorized expenditures:

- Personnel Salaries and Employee Benefits (200 category)
- Contractual Services (300 category)

- Other (rent, supplies, travel, court reporters, public notices, utilities, etc.) (400 category)

Of the three categories, across the AQB budget, the first category, Personnel Salaries and Employee Benefits, constitutes 75 to 80 percent of total expenditures.

Air Quality Bureau has four recurring funding sources:

- Construction Permit Fees (SRF 63100) – also known as the New Source Review or “NSR” Fees
- Title V Operating Permit Fees (SRF 09200) – also known as the Title V or “TV” Fees
- EPA Clean Ambient Air Section (CAA) 105 Federal Grant Funds – also known as the “105 Grant”
- EPA Clean Ambient Air Section (CAA) 103 Federal Grant Funds – also known as the “103 Grant.”

Enabling statutes, regulations and grant funds dictate how the funds may be expended. All funding sources except for the 103 Grant are subject to an “indirect cost” assessment to pay for administrative services provided by the Department. In addition, the 105 Grant must be matched with state dollars (60% federal and 40% state). The Construction Permit Fee Fund is used to meet the 40% match requirement for the 105 Grant and is used for fiscal year expenditures. The 103 Grant is 100% federal and is provided for EPA special projects only.

The AQB generally does not receive General Funds to support its core programs but in recent years the AQB has received special appropriations from the general fund to develop, update and/or implement new programs. The AQB has been fortunate to utilize special appropriation funding for the following projects:

1. 2022 - \$250,000 to purchase optical gas imaging equipment to monitor environmental compliance.
2. 2023 - \$450,000 for ozone related activities.

3. 2024 - \$2,000,000 to meet national ozone standards and develop a State Implementation Plan for Ozone Non-Attainment.

AQB's FY24 state revenue funded annual operating budget has increased from \$9.3M to \$13.6M (NMED Exhibit 51 Final Financial Analysis). The Title V Operating Permit Program operates solely on Title V Annual Emission Fees. The Asbestos Demolition and Renovation Program, the Ambient Air Monitoring Program, Air Quality Assurance Program, and, partially, the Planning Program are funded by the 105 Grant with state matching dollars from the Construction Permits Fee Fund. The Construction Permit Program is funded from three sources: (1) Construction Permit Fees; (2) the EPA Section 105 Grant with state dollars from the Construction Permit Fees Fund; and (3) Title V Annual Emission Fees.

## **II. CONSTRUCTION PERMIT FEES**

The Environmental Improvement Board (EIB) is required to adopt a fee schedule sufficient to pay the reasonable cost of operating a construction permit program (NMED Exhibit 51). Historically, the fee schedule has not satisfied this requirement.

Exhibit 51 displays the construction permit fees collected since FY12. The EIB revised the fee schedule in March 2001. Each year AQB utilizes the change in the Consumer Price Index to calculate the construction permit annual fees. The annual revenues increased marginally between FY12 and FY18, but not enough to cover the full cost of the construction permit program.

The Construction Permit Fee Budget fully funds thirty-six AQB positions, including the Bureau Chief, twelve NSR permit writers and managers, four compliance inspectors, three enforcement specialists and managers, five compliance reporters, five regulation developers, two environmental specialists, and four administrative staff, as well as the associated amounts of the Bureau's rent, telecommunications, travel, equipment and other expenses. The 105 Grant is the

primary mechanism for EPA involvement in air quality issues in New Mexico. Section 105 of the federal Clean Air Act authorizes the EPA to make these grants to states for implementation of air pollution control programs, but EPA awards from the 105 Grant only support 22% of the overall needs of the program. In addition, EPA awards the 105 Grant each year pursuant to a negotiated set of grant commitments. Some of these grant commitments involve the Construction Permit Program. As stated earlier, one of these grant commitments requires AQB to match the 105 Grant at least 40 percent state to 60 percent federal. This commitment rises each year under the principle of "maintenance of effort." For the 105 Grant, this principle means that the AQB must increase the percentage of state match each year. While the difference in actual state dollars can be quite small, the AQB's failure to demonstrate "maintenance of effort" could result in the loss of the entire Section 105 Grant. Furthermore, the state does not receive any General Funds to support the Section 105 program.

### **III. ALLOWABLE COSTS**

Construction permit fees are deposited into the Air Quality Permit Fund and monies from this fund are budgeted and expended to support the Construction Permit Program (SRF63100). Two Air Quality Control Act (AQCA) provisions govern the collection and use of these monies. NMED Exhibit 52.

The first provision is Section 74-2-7(B)(4), which authorizes the collection of construction permit fees.

*Regulations adopted by the environmental improvement board or the local board shall include at least the following provisions:*

*(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 ....*

The second provision is Section 74-2-15, which requires construction permit fees to be deposited in the Air Quality Permit Fund and authorizes their expenditure:

*A. There is created in the state treasury the "state air quality permit fund" to be administered by the department. All fees collected by the department pursuant to Section 74-2-7 NMSA 1978 shall be deposited in the state air quality permit fund.*

*B. Money in the state air quality permit fund is appropriated to the department 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.*

These provisions clearly require construction permit fees to pay for the Construction Permit Program. The fees may be used to pay for a wide range of activities, each of which is necessary and appropriate for the AQB to review applications and act on construction permits. To review an application and ultimately issue a construction permit, the AQB must find that the permit will ensure that the source complies with applicable state and federal requirements, including ambient air quality standards. To make this finding, the AQB needs emission inventories, monitoring, and modeling, as well as the underlying regulations that establish the review process and substantive requirements.

The Construction Permit Program is the backbone of the New Mexico State Implementation Plan (SIP). Through the Program, New Mexico implements a complex series of regulations for the protection of National Ambient Air Quality Standards and the implementation

of federal technology standards and New Source Review (NSR) requirements. In addition to the constant work of regulatory analysis and development, the AQB must collect and manage data, monitor and track emissions, and coordinate activities with federal and state agencies. In preparing the actual permit, the AQB must engage in discussions and negotiations with the applicant, the public, and EPA, organize and run public meetings and hearings, and defend appeals to the Board when necessary.

None of this work is possible without trained staff. Construction Permit Program staff must be knowledgeable about current state and federal requirements (as well as proposed ones) and possess a working knowledge about the complex industrial processes and air pollution control equipment under construction or in operation in New Mexico. Every profession requires continuing education, and air quality regulation is no exception. Within the last few years, several AQB staff have attended the EPA New Source Review Workshop, which trains permitting staff how to implement the federal technology standards New Source Performance Standards (NSPS) and Maximum Achievable Control Technology (MACT) and NSR programs (Prevention of Significant Deterioration and nonattainment). The magnitude of information involved in implementing these standards and programs is astounding, literally hundreds of pages of statutes, regulations, guidelines, policies, and determinations. Similarly, the EPA Combustion Evaluation Training teaches permitting staff how to evaluate and calculate emissions from combustion sources, while the EPA Inspector Training teaches enforcement staff how to conduct inspections for compliance with state and federal regulations. All of this training and more is essential to ensure that the AQB has knowledgeable staff to implement the Construction Permit Program.

In summary, the fee schedule must collect sufficient fees to pay the following costs of implementing the Construction Permit Program, which includes, but is not limited to:

- Hiring staff
- Training staff
- Compensating staff (salary and benefits)
- Preparing regulations
- Reviewing permit applications
- Communicating with applicants, consultants, and public
- Obtaining legal assistance (other than required for enforcement actions)
- Entering and managing data
- Preparing emissions inventories
- Planning and implementing inspections
- Reviewing monitoring reports
- Reviewing test protocols
- Observing compliance tests
- Attending public meetings and hearings
- Rent, equipment, and supplies.

#### **IV. TITLE V OPERATING PROGRAM**

The New Mexico Title V program was adopted by the EIB in late 1993, approved by the EPA in 1994, and the Bureau has been collecting Title V fees since 1994. In accordance with federal restrictions on Title V programs, the Bureau deposits the fees into the Air Quality Permit Fund, which was created by the New Mexico Air Quality Control Act for this purpose.

The fees are identified as Title V revenues and are drawn monthly to pay the expenses of the Title V program.

The Bureau's billing and budget process provides context for the proposed changes to the

Title V fee regulations. Between January and April of each year, the Bureau's technical staff verifies that its data system accurately reflects the allowable emissions for Title V sources within our jurisdiction. These data are derived from each source's most recently issued Title V or New Source Review permit effective on December 31 of the previous year. Based on these allowable emissions, no later than April 1, the Bureau generates and mails an invoice to the owners of each source. The invoices must be paid no later than June 1. During June of each year, the Bureau's management and fiscal staff prepare a Title V budget for the following fiscal year based on the revenues expected from the newly issued invoices and in part on the balance in the Fund. It is critical that the Bureau be able to demonstrate that planned recurring expenditures from the Fund can be supported by the projected revenues and Fund balance. After the budget is adjusted to obtain Department, Department of Finance and Administration, and Legislative Finance Committee approval, it is incorporated into a spending bill that is passed by the legislature and signed by the Governor. This budget becomes effective on July 1 of that year.

In recent years, Title V revenues have declined. Title V revenues from 2012-2023 are shown on a chart titled "Final Financial Analysis" at NMED Exhibit 51. The data for this chart was obtained from the Department's annual audited financial statements.

The chart makes two important points. First, it shows the relative stability of Title V revenues. As older sources are taken off-line and newer sources are constructed or modified, the billable emissions have remained stable and without significant variation. Clearly, using allowable emissions as the basis for billing has little effect on revenues from year to year. Over a longer period, however, the situation is different. The chart shows the gradual decline of revenues in recent years. Two major factors contribute to this decline. First, several facilities have reduced allowable emissions through modifications or pollution controls (in some cases, to

resolve enforcement actions). Some of these facilities have reduced allowable emissions so significantly that they became "synthetic minor" sources, and no longer pay Title V fees at all. Second, some facilities have avoided Title V fees through the "source shutdown" provision in 20.2.71.111.B NMAC. This provision states that facilities shut down for more than sixty (60) consecutive days may pay a reduced fee. In particular, the recent shutdown of the San Juan Generating Station in the northwestern part of the state on 11/01/2022 has reduced Title V revenues by approximately \$556,055 per year.

In 1989, EPA established an original presumptive minimum fee of \$25.00 per ton (NMED Exhibit 53). EPA assumes that a state air agency is sufficiently funded to carry out the functions of a Title V program if the state assesses at least the presumptive minimum fee. EPA updates the presumptive minimum fee amount annually, and the current presumptive minimum Title V fee (effective September 1, 2023, through August 31, 2024) is \$61.73. New Mexico's current Title V fee (\$38.47 per ton) is less than EPA's current presumptive minimum (\$61.73 per ton), and it is appropriate that the fee be increased. NMED Exhibit 53 (Presumptive Minimum Title V Fee Schedule (2023 and 2024)). If EIB grants the NMED an increase in the presumptive minimum, then after the first year of the new base level, the fees will increase according to the Consumer Price Index.

In closing, it is important to describe some fundamental aspects of the Bureau's budget. First, the vast majority of the Bureau's Title V expenditures are to pay staff salaries and benefits. In FY23, the last state fiscal year, of \$4.1M spent on the Title V program, the Bureau spent \$2.6 million on salaries and benefits (including indirect and overhead). Each new technical employee costs the Bureau about \$130,000 to ensure quality permits and active enforcement into the future.

## **V. CONSEQUENCES OF EIB DENIAL**

The consequences of not increasing the fees as proposed are serious. If the EIB delays its decision or rejects all of the fee schedule options, there would be an immediate adverse effect on the Construction Permit Program. The Bureau would not be able to fully fund AQB programs.

The AQB cannot count on other revenue sources to avoid this consequence. The AQB cannot reliably predict the amount of monies that the Legislature would appropriate from the General Fund, the amount of future 105 Grants, nor the portion of those grants allocated to the Construction Permit Program.

The AQB will continue to use the available funds in the most efficient manner possible, but without the proposed fee schedule increase, it will be difficult to maintain the existing level of service. EIB's approval of the proposed fee schedule will ensure that the AQB is able to satisfy its statutory obligation and federally delegated responsibilities.

## 14-4-2. Definitions.

As used in the State Rules Act:

A. "agency" means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government;

B. "person" includes individuals, associations, partnerships, companies, business trusts, political subdivisions and corporations;

C. "proceeding" means a formal agency process or procedure that is commenced or conducted pursuant to the State Rules Act;

D. "proposed rule" means a rule that is provided to the public by an agency for review and public comment prior to its adoption, amendment or repeal, and for which there is specific legal authority authorizing the proposed rule;

E. "provide to the public" means for an agency to distribute rulemaking information by:

(1) posting it on the agency website, if any;

(2) posting it on the sunshine portal;

(3) making it available in the agency's district, field and regional offices, if any;

(4) sending it by electronic mail to persons who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and who have provided an electronic mail address to the agency;

(5) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;

(6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and

(7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

F. "rule" means any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule, nor shall it constitute specific adoption thereof by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or any hospital; rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from any educational institution; and

G. "rulemaking" means the process for adoption of a new rule or the amendment, readoption or repeal of an existing rule.

**History:** 1953 Comp., § 71-7-2, enacted by Laws 1967, ch. 275, § 2; 1969, ch. 92, § 1; **2017, ch. 137, § 1.**

## ANNOTATIONS

**The 2017 amendment**, effective July 1, 2017, defined "proceeding", "proposed rule", "provide to the public", and "rulemaking", and revised the definitions of certain terms, as used in the State Rules Act; in Subsection B, after "business trusts", added "political subdivisions", and deleted "and" at the end of the subsection; added new Subsections C through E and redesignated former Subsection C as Subsection F; in Subsection F, after "regulation", deleted "order" and added "or", after "standard", deleted "statement of policy", after "including", added "those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and", after "repeals", added "and renewals", after "the issuing agency", added ", including affecting persons served by the agency", deleted "Such term shall" and added "'Rule' does", after "charitable institution, the", deleted "Springer" and added "New Mexico", after "welfare home", deleted "of" and added "or", after "any hospital", deleted "nor to", after "elementary or otherwise", deleted "nor to", after the semicolon, added "or", and after "graduation of students", deleted "therefrom" and added "from any educational institution; and"; and added Subsection G.

**A standard is a rule**, if the proper procedure has been followed in promulgating it. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, **1979-NMSC-090, 93 N.M. 546, 603 P.2d 285.**

**Prison rules.** — The Legislature could not have made it more clear that rules relating to the management, confinement, discipline or release of inmates are not subject to filing under the State Rules Act since, although the Corrections Department Act requires that all rules be filed in accordance with the State Rules Act, the latter clearly excludes certain rules relating to inmates from its definition of rules, in **14-4-2 NMSA 1978. *Johnson v. Francke*, 1987-NMCA-029, 105 N.M. 564, 734 P.2d 804.**

**"Rules" and "standards".** — The terms "rule" and "standard" include procedural standards, manuals, directives and requirements if they purport to affect one or more agencies besides the issuing agency or persons other than the issuing agencies' members or employees. 1993 Op. Att'y Gen. No. **93-01.**

**Museum resolution.** — A resolution of the Museum of New Mexico permitting only Indians to sell handicrafts under the portal of the Palace of the Governors in Santa Fe was a rule within the meaning of the State Rules Act. *Livingston v. Ewing*, **1982-NMSC-110, 98 N.M. 685, 652 P.2d 235**; *State v. Joyce*, **1980-NMCA-086, 94 N.M. 618, 614 P.2d 30.**

**Orders and decisions excluded by definition from class of rules** to which State Rules Act applies are not subject to the provisions of those sections and, in particular, are not governed by **14-4-3** and **14-4-5 NMSA 1978. 1979 Op. Att'y Gen. No. 79-32.**

**Law reviews.** — For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

## 14-4-5.2. Notice of proposed rulemaking.

A. Not later than thirty days before a public rule hearing, the agency proposing the rule shall provide to the public and publish in the New Mexico register a notice of proposed rulemaking. The notice shall include:

- (1) a summary of the full text of the proposed rule;
- (2) a short explanation of the purpose of the proposed rule;
- (3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;
- (4) information on how a copy of the full text of the proposed rule may be obtained;
- (5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
- (6) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and
- (7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

B. An agency may charge a reasonable fee for providing any records in nonelectronic form when provided to a person pursuant to this section. An agency shall not charge a fee for providing any records in electronic form when provided to a person pursuant to this section.

C. An internet link providing free access to the full text of the proposed rule shall be included on the notice of proposed rulemaking.

D. If the agency changes the date of the public rule hearing or the deadline for submitting comments as stated in the notice, the agency shall provide notice to the public of the change.

E. The state records administrator or the administrator's designee shall timely publish the notice of proposed rulemaking in the next publication of the New Mexico register.

**History:** [Laws 2017, ch. 137, § 4.](#)

### ANNOTATIONS

**Effective dates.** — [Laws 2017, ch. 137, § 11](#) made [Laws 2017, ch. 137, § 4](#) effective July 1, 2017.



### 14-4-5.3. Public participation, comments and rule hearings.

A. The notice of proposed rulemaking shall specify a public comment period of at least thirty days after publication in the New Mexico register during which a person may submit information and comment on the proposed rule. The information or comment may be submitted in an electronic or written format or at a public rule hearing pursuant to Subsection B of this section. The agency shall consider all information and comment on a proposed rule that is submitted within the comment period.

B. At the public rule hearing, members of the public shall be given a reasonable opportunity to submit data, views or arguments orally or in writing. Each agency shall determine, in accordance with governing statutory and case law, the manner in which parties to the proceeding and members of the public will be able to participate in public hearings. All public hearings shall be conducted in a fair and equitable manner. Except as otherwise provided by law, an agency representative or hearing officer shall preside over a public rule hearing.

C. The public rule hearing shall be open to the public and be recorded.

**History:** Laws 2017, ch. 137, § 5.

#### ANNOTATIONS

**Effective dates.** — Laws 2017, ch. 137, § 11 made Laws 2017, ch. 137, § 5 effective July 1, 2017.



**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL**  
**PART 1 RULEMAKING PROCEDURES - ENVIRONMENTAL IMPROVEMENT BOARD**

**20.1.1.1 ISSUING AGENCY:** Environmental Improvement Board.

[20.1.1.1 NMAC - Rp, 20.1.1.1 NMAC, 04/14/2018]

**20.1.1.2 STATUTORY AUTHORITY:** This part is adopted pursuant to Sections 14-4-1 to -11, 50-9-12, 74-1-5, 74-1-8, 74-1-9, 74-2-6, 74-3-5, 74-4-5 and 74-9-27 NMSA 1978.

[20.1.1.2 NMAC - Rp, 20.1.1.2 NMAC, 04/14/2018]

**20.1.1.3 SCOPE:** This part governs the procedures in all rulemaking hearings before the board, except to the extent that this part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part.

[20.1.1.3 NMAC - Rp, 20.1.1.3 NMAC, 04/14/2018]

**20.1.1.4 DURATION:** Permanent.

[20.1.1.4 NMAC - Rp, 20.1.1.4 NMAC, 04/14/2018]

**20.1.1.5 EFFECTIVE DATE:** April 14, 2018, unless a later date is cited at the end of a section.

[20.1.1.5 NMAC - Rp, 20.1.1.5 NMAC, 04/14/2018]

**20.1.1.6 OBJECTIVE:** The purposes of this part are:

- A.** to standardize the procedures used in rulemaking proceedings before the board;
- B.** to encourage public participation in the hearings conducted by the board for the promulgation of regulations;
- C.** to make possible the effective presentation of the evidence and points of view of parties and members of the general public; and
- D.** to assure that board hearings are conducted in a fair and equitable manner.

[20.1.1.6 NMAC - Rp, 20.1.1.6 NMAC, 04/14/2018]

**20.1.1.7 DEFINITIONS:** As used in this part:

- A.** “board administrator” means the department employee designated by the secretary of environment to provide staff support to the board;
- B.** “board” means the environmental improvement board;
- C.** “department” means the New Mexico environment department;
- D.** “document” means any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a proceeding under this part, or brought to or before the board for its consideration, but does not include a cover letter accompanying a document transmitted for filing;
- E.** “exhibit” means any document or tangible item submitted for inclusion in the hearing record;
- F.** “general public” includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;
- G.** “governing law” means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change;
- H.** “hearing officer” means the person designated by the board to conduct a hearing under this part;
- I.** “hearing record” means:
  - (1) the transcript of proceedings; and
  - (2) the record proper;
- J.** “participant” means any person who participates in a rulemaking proceeding before the board;
- K.** “party” means the petitioner; any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance;
- L.** “person” means an individual or any entity, including federal, state and local governmental entities, however organized;
- M.** “petitioner” means the person who petitioned the board for the regulatory change that is the subject of the hearing;

**N.** “provide to the public” means for the board to distribute rulemaking information by:

- (1) posting it on the board’s website;
- (2) posting it on the New Mexico sunshine portal;
- (3) making it available at the department’s district, field, and regional offices;
- (4) sending it by email to persons who have made a written request for notice of announcements addressing the subject of the rulemaking proceeding and who have provided an email address to the board administrator;
- (5) sending it by email to persons who have participated in the rulemaking and who have provided an email address to the board administrator;
- (6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provided a postal address; and
- (7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees.

**O.** “record proper” means all documents related to the hearing and received or generated by the board prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

- (1) the petition for hearing and any response thereto;
- (2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;
- (3) the notice of hearing;
- (4) affidavits of publication;
- (5) a copy of all publications in the New Mexico register relating to the proposed rule;
- (6) notices of intent to present technical testimony;
- (7) all written pleadings, including motions and responsive pleadings and orders;
- (8) a copy of any technical information that was relied upon in formulating the final rule;
- (9) statements for the public record or other relevant materials received by the agency during the public comment period;
- (10) the hearing officer’s report, if any;
- (11) a copy of the full text of the initial proposed rule, the full text of the final adopted rule, and the concise explanatory statement filed with the state records administrator;
- (12) post-hearing submissions, if allowed;
- (13) the audio recordings (or an appropriate extract of the recordings) of the meeting(s) at which the board deliberated on the adoption of the proposed regulatory change;
- (14) the board’s decision and the reasons therefore; and
- (15) any corrections made by the state records administrator pursuant to Section 14-4-3

NMSA 1978.

**P.** “regulation” means any rule, regulation or standard promulgated by the board and affecting one or more persons, besides the board and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts;

**Q.** “regulatory change” means the adoption, amendment or repeal of a regulation;

**R.** “service” means personally delivering a copy of the document, exhibit or pleading to the person required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by facsimile or electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by facsimile or electronic transmission is complete upon the transmission of the document.

**S.** “technical testimony” means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

**T.** “transcript of proceedings” means the verbatim record (audio recording or stenographic) of the proceedings, testimony and argument in the matter, together with all exhibits proffered at the hearing, whether or not admitted into evidence, including the record of any motion hearings or prehearing conferences.

[20.1.1.7 NMAC - Rp, 20.1.1.7 NMAC, 04/14/2018]

#### **20.1.1.8 - 20.1.1.106 [RESERVED]**

#### **20.1.1.107 POWERS AND DUTIES OF BOARD AND HEARING OFFICER:**

**A.** Board: The board shall exercise all powers and duties prescribed under this part and not otherwise delegated to the hearing officer or the board administrator.

**B.** Hearing officer: The board shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer may be a member of the board. The hearing officer shall conduct a fair and equitable proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

- (1) conducting hearings under this part;
- (2) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;
- (3) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;
- (4) if requested by the board, preparing and filing a report of the hearing, with recommendations for board action;
- (5) requesting parties to file original documents with the board administrator; and
- (6) requesting a party to submit a proposed statement of reason in support of the board's decision.

[20.1.1.107 NMAC - Rp, 20.1.1.107 NMAC, 04/14/2018]

**20.1.1.108 LIBERAL CONSTRUCTION:** This part shall be liberally construed to carry out their purpose.  
[20.1.1.108 NMAC - Rp, 20 NMAC 1.1.108, 04/14/2018]

**20.1.1.109 SEVERABILITY:** If any part or application of this part is held invalid, the remainder of this part, or their application to other persons or situations, shall not be affected.  
[20.1.1.109 NMAC - Rp, 20.1.1.109 NMAC, 04/14/2018]

**20.1.1.110 GENERAL PROVISIONS - COMPUTATION OF TIME:**

**A.** Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the act.

**B.** Extension of time: The board or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.1.110 NMAC – Rp, 20.1.1.110 NMAC, 04/14/2018]

**20.1.1.111 GENERAL PROVISIONS - RECUSAL:** No board member shall participate in any action in which his or her impartiality of fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the board and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the board member may rely upon the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, the Financial Disclosures Act, Sections 10-16A-1 through 10-16A-8 NMSA 1978, or any other relevant authority.

[20.1.1.111 NMAC – RP, 20.1.1.111 NMAC, 04/14/2018]

**20.1.1.112 GENERAL PROVISIONS - EX PARTE DISCUSSIONS:** At no time after the initiation and before the conclusion of a proceeding under this part, shall the department, or any other party, interested participant, or their representatives discuss ex parte the merits of the proceeding with any board member or the hearing officer.

[20.1.1.112 NMAC – Rp, 20.1.1.112 NMAC, 04/14/2018]

**20.1.1.113 - 20.1.1.199 [RESERVED]**

**20.1.1.200 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:**

**A.** The filing of any document as required by this part shall be accomplished by delivering the document to the board administrator and the board legal counsel.

**B.** Any person filing any document shall:

(1) provide the board administrator with the original and nine copies of the document, provided that the board administrator may waive the requirement to provide nine copies if an electronic copy of the original is provided in a format acceptable for distribution to the board members;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner;

(3) any document filed pursuant to this part shall be filed with the board administrator at least 20 days before any meeting at which the board will consider the document. If the document is a motion seeking an order from the hearing officer in a rules hearing, the motion must also be served at the same time with the hearing officer and the board legal counsel.

**C.** Whenever this part requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by facsimile or by electronic transmission to that person. Agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to this part. Service shall also be made upon the board's legal counsel. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document. Service by facsimile or electronic transmission is complete upon transmission of the document.

**D.** The petitioner and any person who has filed a timely notice of intent to present technical testimony under this part may inspect all documents that have been filed in a proceeding in which they are involved as participants. Such inspection shall be permitted in accordance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. The board administrator shall notify the petitioner and all persons who have filed a timely notice of intent to present technical testimony by email whenever any document is filed in a proceeding under this part. Any such person who does not provide an email address shall instead be notified by mail.

**E.** All documents filed under this part shall be made available to any person for inspection upon request and shall, to the extent required by law, be made available on the department's website and the New Mexico sunshine portal.

**F.** The board administrator shall provide copies of all documents to each board member at least 15 days before the meeting at which the board will consider the documents. With regard to those documents filed in conjunction with any rules hearing, the hearing officer may make exception to this requirement.  
[20.1.1.200 NMAC - Rp, 20.1.1.200 NMAC, 04/14/2018]

#### **20.1.1.201 EXAMINATION OF DOCUMENTS FILED:**

**A.** Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the board. Such documents shall be made available by the board administrator, as appropriate, and shall also be made available on the New Mexico sunshine portal. If the board administrator determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the New Mexico sunshine portal, the board administrator shall describe that part of the record, shall note on the New Mexico sunshine portal that the part of the record is not displayed, and shall provide instructions for accessing or inspecting that part of the record.

**B.** Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents, but the board administrator shall not charge a fee for providing the notice of proposed rulemaking in electronic form.  
[20.1.1.201 NMAC - Rp, 20.1.1.201 NMAC, 04/14/2018]

#### **20.1.1.202 - 20.1.1.299 [RESERVED]**

#### **20.1.1.300 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:**

**A.** Any person may file a petition with the board to adopt, amend or repeal any regulation within the jurisdiction of the board.

**B.** The petition shall be in writing and shall include a statement of the reasons for the regulatory change. The petition shall cite the relevant statutes that authorize the board to adopt the proposed rules and shall estimate the time that will be needed to conduct the rules hearing, if at all possible. A copy of the entire rule, including proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to

the petition. The entire rule and its proposed changes shall be submitted to the board in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit the petition in the form required by these rules.

**C.** The board shall determine, at a public meeting occurring at least 15 days and no later than 60 days, after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting.

**D.** If the board determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate to fully inform the board of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination  
[20.1.1.300 NMAC - Rp, 20.1.1.300 NMAC, 04/14/2018]

#### **20.1.1.301 NOTICE OF HEARINGS:**

**A.** Unless otherwise allowed by governing law and specified by the board, the board shall provide to the public notice of the proposed rulemaking at least 60 days prior to the hearing. Notice of the proposed rulemaking shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, and such other means of providing notice as the board may direct or are required by law.

**B.** The notice of proposed rulemaking shall state:

- (1) the subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule;
- (2) a citation to the specific legal authority authorizing the proposed rule and a short explanation of the purpose of the proposed rule;
- (3) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained;
- (4) the statutes, regulations and procedural rules governing the conduct of the hearing;
- (5) the manner in which persons may present their views or evidence to the board, including the time, place, and information on participating in the public hearing;
- (6) the location where persons may secure copies of the full text of the proposed regulatory change;
- (7) an internet link providing free access to the full text of the proposed rule; and
- (8) if applicable, that the board may make a decision on the proposed regulatory change at the conclusion of the hearing.

[20.1.1.301 NMAC - Rp, 20.1.1.301 NMAC, 04/14/2018]

#### **20.1.1.302 TECHNICAL TESTIMONY:**

**A.** Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 20 days prior to the hearing, file a notice of intent to present technical testimony with the board administrator. The notice shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;
- (4) include a copy of the direct testimony of each technical witness in narrative form;
- (5) include the text of any recommended modifications to the proposed regulatory change;

and

- (6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

**B.** The hearing officer may enforce the provisions of this section through such action as the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to hearing.

[20.1.1.302 NMAC - Rp, 20.1.1.302 NMAC, 04/14/2018]

**20.1.1.303 ENTRY OF APPEARANCE:** Any person may file an entry of appearance as a party. The entry of appearance shall be filed with the board administrator no later than 20 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.  
[20.1.1.303 NMAC – Rp, 20.1.1.303 NMAC, 04/14/2018]

**20.1.1.304 PARTICIPATION BY GENERAL PUBLIC:**

**A.** 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 non-technical exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

**B.** 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. Written comment must be mailed or delivered to the board administrator; email comments will not be accepted. However, comments may be submitted electronically on the board webpage.

**C.** If the board changes the date of the hearing or the deadline for submitting comments as stated in the notice of proposed rulemaking, the board shall provide to the public notice of the change.  
[20.1.1.304 NMAC - Rp, 20.1.1.304 NMAC, 04/14/2018]

**20.1.1.305 LOCATION OF HEARING:** Unless otherwise provided by governing law, the board may hold hearings on proposed regulatory changes of statewide application in Santa Fe or within any area of the state substantially affected by the proposed regulatory change, and shall hold hearings on proposed changes of local application within the area affected by the proposal.  
[20.1.1.305 NMAC - Rp, 20.1.1.305 NMAC, 04/14/2018]

**20.1.1.306 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:**

**A.** A member of the board may participate in a meeting or hearing of the board by means of a conference telephone or other similar communications equipment, when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the board who speaks at the meeting or hearing. A board member's participation by such means shall constitute presence in person at the meeting or hearing. A board member who wishes to participate in a rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing so as to permit the board administrator to arrange for adequate telephone hookup.

**B.** A witness may participate in a rules hearing of the board by means of a telephone conference or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who wishes to participate in a rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing. No witness may participate in a rules hearing by telephone conference unless he makes a request sufficiently in advance of the rules hearing so as to permit the board administrator to arrange for an adequate telephone hookup. Each witness participating by telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.  
[20.1.1.306 NMAC - Rp, 20.1.1.306 NMAC, 04/14/2018]

**20.1.1.307 MOTIONS:**

**A.** General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.1.200 NMAC.

**B.** Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

**C.** Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

**D.** Response to motions: Any party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

**E.** Reply to response: The moving party may, but is not required to, submit a reply to any response within 10 days after service of the response.

**F.** Decision: All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer *sua sponte* or upon written request of any party. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the board for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the board administrator.

[20.1.1.307 NMAC - Rp, 20.1.1.307 NMAC, 04/14/2018]

#### **20.1.1.308 - 20.1.1.399 [RESERVED]**

#### **20.1.1.400 HEARING PROCEDURES - CONDUCT OF HEARINGS:**

**A.** The rules of civil procedure and the rules of evidence shall not apply.

**B.** The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.1.404 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

**C.** If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.1.400 NMAC - Rp, 20.1.1.400 NMAC, 04/14/2018]

#### **20.1.1.401 TESTIMONY AND CROSS-EXAMINATION:**

**A.** All testimony will be taken under oath or affirmation which may be accomplished in mass or individually.

**B.** The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of or against the proposed rule.

**C.** Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[20.1.1.401 NMAC - Rp, 20.1.1.401 NMAC, 04/14/2018]

**20.1.1.402 EXHIBITS:**

**A.** Any person offering an exhibit at hearing, other than a document filed and served before the hearing, shall provide at least an original and nine copies for the board, and a sufficient number of copies for every other party.

**B.** All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he shall identify each exhibit with an index tab or by other appropriate means.

**C.** Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.1.1.402 NMAC - Rp, 20.1.1.402 NMAC, 04/14/2018]

**20.1.1.403 TRANSCRIPT OF PROCEEDINGS:**

**A.** Unless specified by the board or hearing officer, a verbatim transcript shall be made of the hearing. The cost of the original transcript of the proceeding and of providing a copy for each board member shall be borne by the petitioner.

**B.** Any person may obtain a copy of the transcript of a proceeding. It shall be obtained directly from the court reporter, and the cost of the transcript shall be paid directly to the source.

[20.1.1. 403 NMAC - Rp, 20.1.1.403 NMAC, 04/14/2018]

**20.1.1.404 POST-HEARING SUBMISSIONS:** The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[20.1.1. 404 NMAC - Rp, 20.1.1.404 NMAC, 04/14/2018]

**20.1.1.405 HEARING OFFICER'S REPORT:** If the board directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals and the evidence supporting those proposals, including discussion or recommendations as requested by the board, and shall be filed with the board administrator within the time specified by the board. The board administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.

[20.1.1.405 NMAC - Rp, 20.1.1.405 NMAC, 04/14/2018]

**20.1.1.406 DELIBERATION AND DECISION:**

**A.** If a quorum of the board attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the board may immediately deliberate and make a decision on the proposed regulatory change.

**B.** If the board does not reach a decision at the conclusion of the hearing, the board administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each board member that did not attend the hearing and, if necessary, to other board members, board counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

**C.** The board shall reach its decision on the proposed regulatory change within 60 days following the close of the record or the date the hearing officer's report is filed, whichever is later.

**D.** If, during the course of its deliberations, the board determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the board may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

**E.** The board shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

**F.** The board's written decision is the official version of the board's action, and the reasons for that action. Other written or oral statements by board members are not recognized as part of the board's official decision or reasons.

**G.** If the board fails to act on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the board acts to extend the period for an additional two years by filing a statement of good cause for the extension in the

rulemaking record. If the board extends the rulemaking period, it shall provide for additional public participation, comments, and hearing prior to adopting the rule.

**H.** The board may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If the board terminates a rulemaking in this manner, it shall provide to the public notice of its action.

[20.1.1.406 NMAC - Rp, 20.1.1.406 NMAC, 04/14/2018]

**20.1.1.407 NOTICE OF BOARD ACTION:**

**A.** The board administrator shall provide to the public notice of the board's action and a concise explanatory statement.

**B.** The adopted rule shall not take effect unless within 15 days of adoption of the rule, the board delivers the final rule to the state records administrator, accompanied by a concise explanatory statement that contains:

- (1) the date that the board adopted the rule;
- (2) a reference to the specific statutory or other authority authorizing the rule; and
- (3) any findings required by law for adoption of the rule.

**C.** Adoption of the final rule occurs upon signature of the written decision.

**D.** If the state records administrator notifies the board of having made any minor, nonsubstantive corrections in spelling, grammar, and format in the filed rule, the board administrator shall provide to the public notice of the correction within 30 days of receiving the state records administrator's record of correction.

[20.1.1.407 NMAC - Rp, 20.1.1.407 NMAC, 04/14/2018]

**20.1.1.408 - 20.1.1.499 [RESERVED]**

**20.1.1.500 APPEALS AND STAYS - APPEAL OF REGULATIONS:**

**A.** Appeal of any regulatory change by the board shall be taken in accordance with governing law.

**B.** The appellant shall serve a copy of the notice of appeal on the board and on each party.

**C.** The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the expense of appellant.

**D.** Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the regulatory change being appealed.

[20.1.1.500 NMAC - Rp, 20.1.1.500 NMAC, 04/14/2018]

**20.1.1.501 STAY OF BOARD REGULATIONS:**

**A.** Any person who is or may be affected by a rule adopted by the board may file a motion with the board seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant shall file the motion with the board administrator at least 30 days before the meeting at which the board will consider the motion. The movant shall serve the motion for a stay as provided by this part, and shall further serve all parties in the rulemaking proceeding. The board chair will decide at which meeting the stay motion will be heard.

**B.** Unless otherwise provided by governing law, the board may grant a stay pending appeal of any regulatory change promulgated by the board. The board may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

**C.** In determining whether good cause is present for the granting of a stay, the board, upon at least a two-thirds vote of the members voting shall consider:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) whether the moving party will suffer irreparable harm if a stay is not granted;
- (3) whether substantial harm will result to other interested persons; and
- (4) whether harm will ensue to the public interest.

**D.** If no action is taken within 60 days after filing of the motion, the board shall be deemed to have denied the motion for stay.

[20.1.1.501 NMAC - Rp, 20.1.1.501 NMAC, 04/14/2018]

**HISTORY OF 20.1.1 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 under:

EIB 93-1, Rules of Procedure for Environmental Improvement Board Regulation Hearings, filed 1/21/93.

**History of Repealed Material:** 20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board (filed 10/27/95) repealed 08/27/06.

20.1.1 NMAC, Rulemaking Procedures - Environmental Improvement Board, filed 08/27/06, repealed 04/14/18.

**Other History:**

EIB 93-1, Rules of Procedure for Environmental Improvement Board Regulation Hearings (filed 1/21/93) was renumbered, reformatted, amended and replaced by 20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board, effective 11/30/95.

20 NMAC 1.1, Rulemaking Procedures - Environmental Improvement Board (filed 10/27/95) was renumbered, reformatted, and replaced by 20.1.1 NMAC, Rulemaking Procedures - Environmental Improvement Board, effective 08/27/06.



**SENT VIA EMAIL**

April 8, 2024

Small Business Regulatory Advisory Commission  
c/o Shani Harvie, Administrator  
New Mexico Economic Development Department  
1100 S. St. Francis Drive  
Santa Fe, NM 87505-4147  
[Shani.harvie@edd.nm.gov](mailto:Shani.harvie@edd.nm.gov)

**RE: Proposed Repeal and Replacement of 20.2.71 NMAC – *Operating Permits Emissions Fees*; and 20.2.75 NMAC – *Construction Permit Fees***

Dear Chair and Members of the Small Business Regulatory Advisory Commission,


The New Mexico Environment Department (“Department”) hereby provides notice to the Small Business Regulatory Advisory Commission pursuant to NMSA 1978, Section 14-4A-4(A), that the Environmental Protection Division, Air Quality Bureau (“Bureau”) of the Department has petitioned the Environmental Improvement Board (“EIB”) to repeal and replace Air Quality Control Regulations 20.2.71 NMAC – *Operating Permits Emissions Fees* (“Part 71”), and 20.2.75 NMAC – *Construction Permit Fees* (“Part 75”). Copies of the proposed rules are enclosed.

Part 71 and Part 75 govern the permit fees that the Bureau collects to cover the cost of administering the air quality control regulations required under the federal Clean Air Act and New Mexico Air Quality Control Act. The proposed fee adjustments will allow the Bureau to better serve the public through improved permitting timelines, enhanced technical assistance, and effective enforcement of the air quality regulations. Part 75 will continue to provide permit fee discounts for eligible small businesses (see 20.2.75.11(C) NMAC).

The EIB will hold a public hearing on the proposed changes to Part 71 and Part 75 beginning at 9:00 a.m. MDT on June 27 and, if necessary, June 28, 2024. The hearing will be held at the New Mexico State Capitol, 490 Old Santa Fe Trail, Santa Fe, NM, Room 321 and accessible virtually via WebEx. Information on how to access the meetings will be available on the NMED Events Calendar on the NMED webpage at <https://www.env.nm.gov/events-calendar/>.

If you have further questions, comments, or would like to meet with Bureau staff and discuss the proposed changes to Part 71 and Part 75, please feel free to contact me directly at 505-531-7887 or via email at [michael.prinz@env.nm.gov](mailto:michael.prinz@env.nm.gov).

Sincerely,

  
Michael Prinz  
Assistant General Counsel

*Enclosure*

cc: Elizabeth Kuehn, Air Quality Bureau Chief, [Elizabeth.kuehn@env.nm.gov](mailto:Elizabeth.kuehn@env.nm.gov)  
Kirby Olson, AQB Planning Section Chief, [Kirby.Olson@env.nm.gov](mailto:Kirby.Olson@env.nm.gov)

**From:** [Olson, Kirby, ENV](#)  
**To:** [Butt, Neal, ENV](#); [Paz, Armando, ENV](#)  
**Subject:** FW: Letter to SBRAC Re: Proposed Rule Changes to Air Quality Control Regulations Part 71 & Part 75  
**Date:** Tuesday, April 16, 2024 9:21:45 AM  
**Attachments:** [NMED letter to SBRAC - proposed rule changes.pdf](#)  
[Part 71 proposed changes.pdf](#)  
[Part 75 proposed changes.pdf](#)

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Hi Neal and Armando,

Here is the email and attachments Michael Prinz sent for the SBRAC letter.

Regards,

Kirby

Kirby Sue Olson, Ph.D.  
Planning Section Chief  
Air Quality Bureau  
New Mexico Environment Department  
525 Camino de los Marquez, Suite 1  
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Phone: (505) 629-5107  
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<https://www.env.nm.gov>

“Science, Innovation, Collaboration, Compliance”

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**From:** Prinz, Michael, ENV <michael.prinz@env.nm.gov>  
**Sent:** Monday, April 8, 2024 9:48 AM  
**To:** Harvie, Shani, EDD <Shani.Harvie@edd.nm.gov>; Myers, Jennifer, EDD <Jennifer.Myers@edd.nm.gov>  
**Cc:** Kuehn, Elizabeth, ENV <Elizabeth.Kuehn@env.nm.gov>; Olson, Kirby, ENV <Kirby.Olson@env.nm.gov>  
**Subject:** Letter to SBRAC Re: Proposed Rule Changes to Air Quality Control Regulations Part 71 & Part 75

Dear Ms. Harvie and Ms. Myers,

Please find attached a letter to the SBRAC regarding proposed changes to Air Quality Control Regulations 20.2.71 NMAC (Operating Permits Emissions Fees) (“Part 71”), and 20.2.75 NMAC (Construction Permit Fees) (“Part 75”). Also attached are the proposed rule changes.

Please feel free to contact me if you have any questions about this matter.

Thank you.

Michael Prinz  
Assistant General Counsel  
New Mexico Environment Department  
1190 S. Saint Francis Drive, Suite N-4050  
Santa Fe, NM 87505  
Tel: 505.531.7887  
[Michael.prinz@env.nm.gov](mailto:Michael.prinz@env.nm.gov)  
[www.env.nm.gov](http://www.env.nm.gov)



**I-1:****Comment I-1-1**

As someone who has both worked for the Air Quality Bureau as a regulatory authority as well as the industry side as a compliance specialist, I am in a unique position to understand the Department's reasoning behind petitioning these revisions. But I fear the Department isn't considering the impact it will have on the oil and gas industry in New Mexico (NM) which is one of its largest revenue sources.

While I do agree with increasing the fees, I do not agree with targeting General Construction Permit's for Oil and Gas (GCP-O&G) registrations with the steepest increase, raising the fee points from 10 (currently \$5,100 for 2024) to 50 (would be \$25,500 at the 2024 fee rate). I know firsthand the burden the exponentially growing number of GCP-O&G registrations submitted to the Department since its conception has had on the Permitting Section. It's caused staff to be overworked and pressed for the time necessary to provide thorough reviews of technically complex material. I can see where increasing associated fees is a simple solution that would allow for additional staff to be hired and existing staff to be fairly compensated, but quintupling the fee without addressing the deficiencies in the GCP-O&G may tip the cost benefit ratio for owners out of favor of doing business in NM and may not be beneficial to the Department or NM in the long run. While I know this is not a hearing on the GCP-O&G permit I would like to address areas in the permit itself that are contributors and ask the Board and the Department to consider that there are additional solutions that would ease the burden on the Bureau to compensate for a more realistic and reasonable fee point increase.

The GCP-O&G permit will need to be opened and revised in the coming years to address facilities in Eddy and Lea County as they are inevitably designated as non-attainment areas that would otherwise be required to transition to an NSR permit compounding the workload. As part of that revision, adding conditions to allow for engine options, which is an option in every other oil and gas permit, would reduce the number of superfluous revisions submitted to just substitute engines due to supply chain issues. The permit also stipulates the Department has 30 days to review and make a determination from the date the registration is received. Increasing the review period to 60 days or adding a 30-day period to review for administrative completeness would be a considerate and efficient utilization of staff time and resources. Increasing the fees alone will not ease or compensate for the burden on the Department by the GCP-O&G and could have the consequence of adding an additional burden by making the GCP-O&G less appealing compared to a standard NSR Permit. Rectifying the deficiencies in the GCP-O&G coupled with a moderate fee point increase would create an environment that inspires quality comprehensive registrations and reviews and reduces staff workload while congruently increasing revenue for the Department and the state without putting unnecessary burden on the industry to the point it drives business elsewhere.

Thank you for your consideration.

**Response to I-1-1**

No draft response has been entered.

## **I-2:**

### **Comment I-2-1**

The fee increase from \$500 to \$2000 for NOI's is out of touch. If you look at the similar type of permit fees in other states like Texas and Louisiana, a PBR in Texas is \$100 for companies with under 100 employees or \$450 for larger companies. The larger Non-Rule Standard Permits in Texas only go up to \$900 per application. In Louisiana, the fee for a minor source oil and gas permit (MSOG) is only \$500 with a 25% surcharge if the facility is subject to NSPS. These fees may change over time but not by a four fold increase. These applications in other states often undergo the same type of review process as applications submitted to the NMED.

Furthermore, the review process should be easier than ever on the permit reviewer since the state has started making operators use the AQB ePermitting Portal. In the past, the permit writers had to plug all of the information into the database; however, the operator is responsible for plugging in the information now. The fee should not go up if the amount of time for a review goes down.

### **Response to I-2-1**

No draft response has been entered.

## **I-3:**

### **Comment I-3-1**

On or about 20 March 2024 Ms. Liz Bisbey-Kuehn, Air Quality Bureau Chief gave a presentation entitled "PUBLIC INFORMATIONAL MEETING ON UPDATES TO AIR QUALITY PERMITTING FEES." ([https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2024/04/Public-informational-meeting-on-updates-to-air-quality-permitting-fees\\_2024-03-18.pptx](https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2024/04/Public-informational-meeting-on-updates-to-air-quality-permitting-fees_2024-03-18.pptx)). On slide 4 of the presentation, the following was asserted:

Current fees per ton for Operating Permits are far below the "presumptive minimum fee" developed by US EPA for assessing fees sufficient to administer an operating permit program.

- EPA presumptive minimum fee per ton = \$61.73
- Current New Mexico fee per ton = \$38.47

According to the EPA's definition, the presumptive minimum fee per ton is based on 12-month actual emissions, not potential emissions.

EPA will presume that a fee schedule meets the requirements of part 7017 if that schedule would result in fees above the "presumptive minimum." The "presumptive minimum" is generally defined to be "an amount not less than \$25 per year [adjusted for increases in the Consumer Price Index] times the total tons of the actual emissions of each "regulated air pollutant (for presumptive fee calculation)" emitted from part 70 sources." Note that the calculation of the "presumptive minimum" also excludes certain emissions and adds a "GHG cost adjustment." (emphasis added)

(see <https://www.epa.gov/system/files/documents/2023-06/Final%20Title%20V%20Fee%20Evaluation%20and%20Oversight%20Guidance%205-25-23.pdf>)

Additionally, "Any fee required by part 70 must "be used solely for permit program costs" – in other

words, required permit fees may not be diverted for non-part 70 purposes. (40CRF70.9(a))

Therefore, since New Mexico's current fee rate is based on potential emissions, the comparison is not applicable. AQB must either: 1) reevaluate the fee basis without reference to the US EPA presumptive minimum fee; or 2) switch to basing fees on actual emissions in lieu of potential emissions.

Finally, EPNG notes that the proposed fee structure assesses fees of \$81 per ton for VOCs and PM10 or PM2.5 and \$250 for HAPs. A significant number of HAPs are either VOCs or particulate matter, thus the fee structure double counts these emissions. EPNG requests that the HAP fee be omitted or not applied to HAPs that are also considered VOCs, PM10 or PM2.5. Alternately, Kinder Morgan requests that if the HAP fee remains, that VOC or PM10/PM2.5 fees not also be assessed on those pollutants. Stated otherwise, each emitted substance should only be assessed one fee and not multiple fees.

#### **Response to I-3-1**

No draft response has been entered.

#### **I-4:**

##### **Comment I-4-1**

The Environmental Improvement Board's (the "EIB") proposed addition of administrative compliance costs to its list of fees and costs applicable to construction and operating air permits may violate state and/or federal air permitting requirements that prohibit the inclusion of court and enforcement action costs in permitting fee schedules. As such, Kinder Morgan requests that the EIB either (A) remove the addition of "administrative compliance costs for enforcement" from proposed Sections 20.2.75.12.(H) and 20.2.71.113(D) or (B) clarify what costs are included in the "administrative compliance costs" to ensure compliance with statutory limitations.

The EIB bases its authority to implement the proposed rules on the New Mexico Air Quality Act and the federal Clean Air Act. See NMED, New Mexico Environmental Improvement Board Notice of Rulemaking Hearing to Consider Proposed Repeal and Replacement of 20.2.71 NMAC and 20.2.75 NMAC, <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2024/04/English-Public-Hearing-Notice-4.3.24-FINAL.pdf> (last visited, May 13, 2024). Under these authorities, the EIB may not assess air permit fees (whether relating to construction or operating air permits) associated with "any court costs or other costs associated with an enforcement action." See NMSA. §§ 74-2-7(B)(6) (excluding "any court costs or other costs associated with an enforcement action" from the fees that EIB may collect for construction permits); id. at § 74-2-7(B)(7)(requiring the EIB to implement emission fees "consistent with the provisions of Section 502(b)(3) . . . of the federal act"); 42 USC § 7661a(b)(3)(excluding "any court costs or other costs associated with any enforcement action" from the fees that state permitting programs may collect from permittees).

Despite these prohibitions, the EIB's proposed rule revisions would allow for the assessment of

enforcement costs against permittees. If adopted, such a rule would be unlawful and in direct conflict with its authorizing statutes. See *Foster v. Bd. of Dentistry of State of N.M.*, 103 N.M. 776, 777 (1986) (holding that "[w]here rulings by administrative agencies are not in accord with the basic requirements of the statutes relating to those agencies, the decisions of the agencies are void.") (citing *La Jara Land Developers, Inc. v. Bernalillo County Assessor*, 97 N.M. 318 (1982)); NMSA §§ 12-8-16 (subjecting final agency decisions to judicial review under NMSA § 39-3-1.1) and 39-3-1.1(D). To avoid this outcome, Kinder Morgan respectfully recommends that the EIB either (A) remove the "administrative compliance cost" provisions from its proposed rules; or (B) clarify what enforcement costs would be included under these provisions, ensuring that such clarification conforms with authorizing legislation.

**Response to I-4-1**

No draft response has been entered.



# Memo

To: New Mexico Air Quality Bureau

From: ERG

Date: June 5, 2024

Re: Economic Analysis in Support of Proposed Increases to  
Air Quality Operating Permit Emission (Title V) Fees and Construction Permit (NSR) Fees

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Below we summarize our economic analysis in support of the New Mexico Air Quality Bureau's (AQB) proposed fee increases for the Title V and New Source Review (NSR) programs.

The current fee structures were established in 2003 and 2004, for NSR and Title V respectively. Over the past twenty years, several factors have strained AQB's ability to conduct adequate and timely permit reviews and associated monitoring and enforcement within this fee structure. Below, we present an overview of AQB's current revenues in relation to these factors. Our analysis is structured as follows:

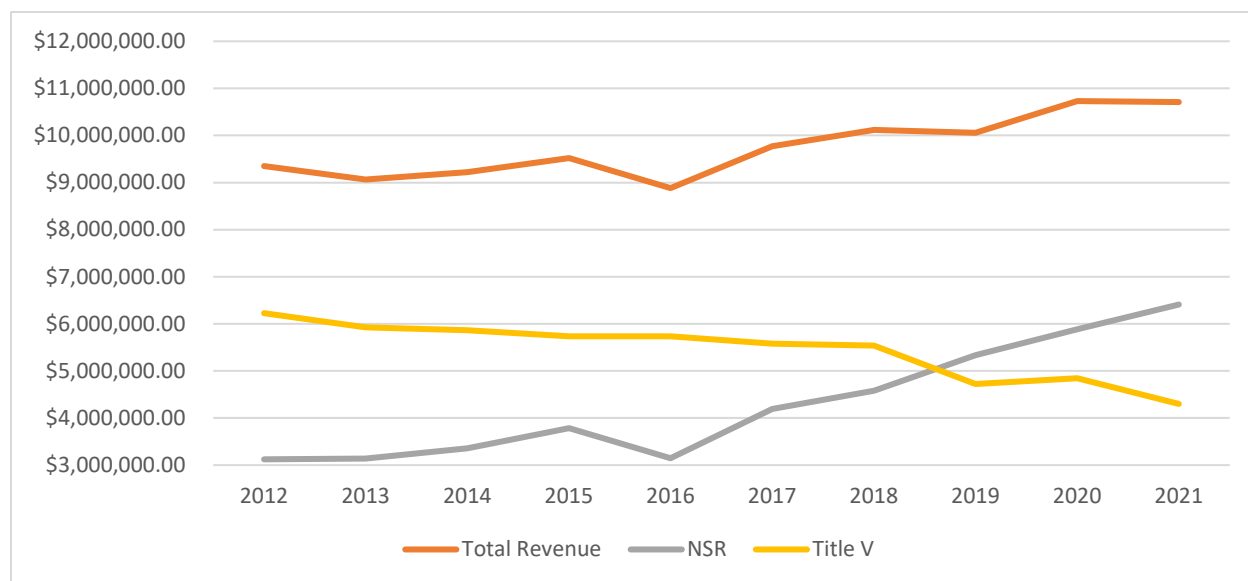
- Revenue has increased
- Increased workload has outpaced increasing revenue
- Regulatory complexity contributes to increased workload
- Facility complexity further contributes to increased workload
- AQB has experienced persistent understaffing
- Title V fees are below EPA's presumptive minimum
- Additional staffing is needed to support increased NSR workload
- Implementation of Part 50 will require additional staffing

We conclude by presenting conclusions and recommendations related to AQB's contemplated fee increases.

## Revenue has increased

AQB's budget is primarily funded through fees collected under the Title V and NSR programs. Total fee revenue has increased by 14.5 percent since 2012 (Figure 1). This increase has been largely driven by an increase in NSR annual fee revenue and General Construction Permit (GCP) revenue, which have compensated for a decrease in revenue from Title V fees.

**Figure 1. Revenue from Title V, NSR and Total Revenue 2012-2021**

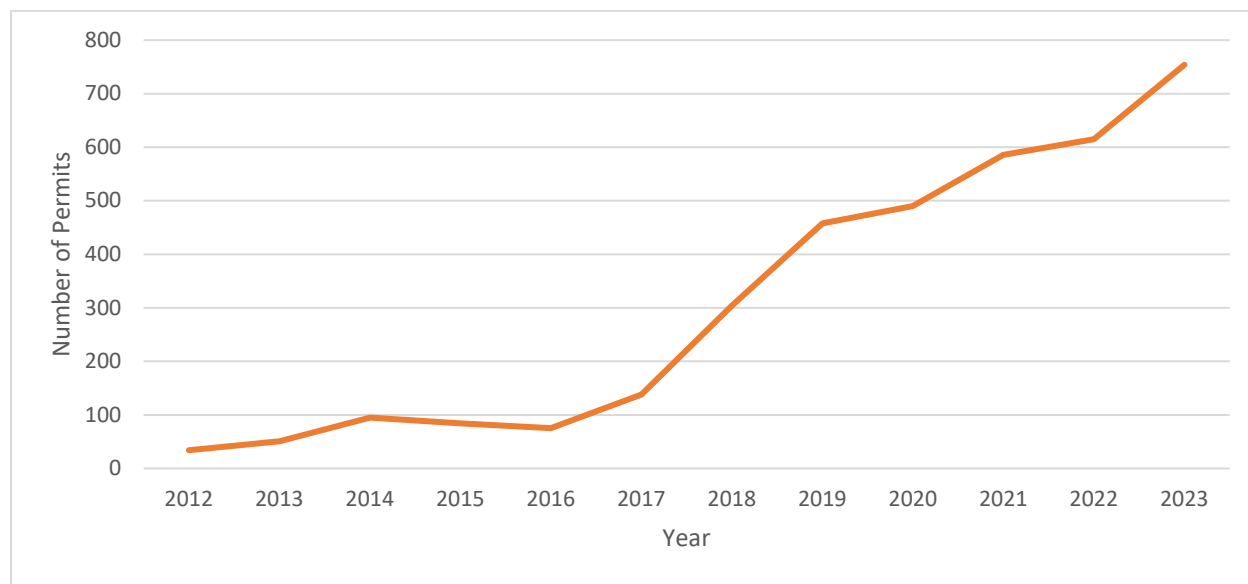


Notes: Revenue from TEMPO provided by NMAQB. Annual revenues have been adjusted to 2021 dollars using the Consumer Price Index (<https://fred.stlouisfed.org/series/CPALTT01USA661S>).

## Increased workload has outpaced increasing revenue

Over the same period, from 2012 through 2021, the number of oil and gas general construction permits (GCPs) has increased by over 1600 percent, and has continued to increase in the past two years (Figure 2). Oil and gas GCPs account for approximately 90 percent of AQB's total NSR permitting (Table 1).

**Figure 2. Oil and Gas General Construction Permits-New or Revision**



Note: Data provided by AQB

**Table 1. Count of NSR Permitting Actions by Type**

| Year | O&G Related GCPs | NOIs | Construction Related GCPs | Relocations | Streamlines | Regular New & Significant Revisions | Technical Revisions | Admin Review & Related | PSD-New & Major Modifications | PSD-Minor Modifications | PSD-Technical Review | TOTAL |
|------|------------------|------|---------------------------|-------------|-------------|-------------------------------------|---------------------|------------------------|-------------------------------|-------------------------|----------------------|-------|
| 2012 | 34               | 366  | 13                        | 113         | 36          | 73                                  | 24                  | 280                    | 1                             | 8                       | 1                    | 949   |
| 2013 | 51               | 478  | 9                         | 61          | 11          | 44                                  | 32                  | 320                    | 2                             | 5                       | 6                    | 1019  |
| 2014 | 95               | 769  | 13                        | 65          | 25          | 48                                  | 21                  | 315                    | 1                             | 17                      | 2                    | 1371  |
| 2015 | 84               | 748  | 22                        | 44          | 23          | 56                                  | 20                  | 424                    | 1                             | 17                      | 3                    | 1442  |
| 2016 | 75               | 579  | 15                        | 60          | 12          | 38                                  | 14                  | 444                    | 0                             | 11                      | 13                   | 1261  |
| 2017 | 138              | 406  | 13                        | 62          | 35          | 84                                  | 18                  | 511                    | 0                             | 13                      | 3                    | 1283  |
| 2018 | 304              | 575  | 16                        | 63          | 19          | 71                                  | 10                  | 712                    | 1                             | 10                      | 6                    | 1787  |
| 2019 | 458              | 411  | 16                        | 53          | 5           | 36                                  | 6                   | 624                    | 1                             | 13                      | 7                    | 1630  |
| 2020 | 490              | 449  | 23                        | 67          | 0           | 32                                  | 10                  | 601                    | 0                             | 10                      | 4                    | 1686  |
| 2021 | 586              | 326  | 11                        | 55          | 2           | 27                                  | 14                  | 645                    | 1                             | 6                       | 18                   | 1691  |
| 2022 | 615              | 312  | 14                        | 45          | 2           | 16                                  | 8                   | 604                    | 0                             | 0                       | 4                    | 1620  |
| 2023 | 754              | 332  | 16                        | 51          | 3           | 9                                   | 13                  | 771                    | 0                             | 1                       | 10                   | 1960  |

Note: Data provided by AQB. Preliminary data for 2022 and 2023.

Abbreviations used: NOI=Notices of Intent and PSD=Prevention of Significant Deterioration

## Regulatory complexity contributes to increased workload

Since Title V and NSR fee structures were established in 2003 and 2004, several federal oil and gas air regulations have gone into effect that increase the regulatory requirements that AQB is charged with enforcing. These include:

- 2004, Subpart YYYY—National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
- 2004, Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
- 2006, Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
- 2006, Subpart KKKK—Standards of Performance for Stationary Combustion Turbines
- 2008, NSPS Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
- 2012 – NSPS OOOO, Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews
- 2015 – NSPS OOOOa, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources

In addition to these federal regulations that have already gone into effect, the state passed a new air quality regulation in 2022 (Part 50, Oil and Gas Sector—Ozone Precursor Pollutants) that targets emissions reductions from the oil and gas sector, covering over fifteen types of process and control equipment as well as other activities and processes commonly used in oil and gas production, transmission, processing, and storage. Part 50 also established requirements for monitoring fugitive emissions from all active wells in the state, which adds over 50,000 sources to AQB’s regulatory oversight.

EPA is also finalizing multiple actions to reduce air pollution emissions from the Crude Oil and Natural Gas source category (NSPS OOOOb and NSPS OOOOc, Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review). The potential impact of these actions on the workload of AQB is not considered here.

### Facility complexity further contributes to increased workload

Since 2010, technological improvements reduced drilling costs and improved drilling efficiency in major shale oil and gas-producing areas, including the Permian Basin, which has increased U.S. production of shale oil significantly.<sup>1</sup> Initial efforts to use horizontal drilling with hydraulic fracturing in southeastern New Mexico began in 2009, resulting in explosive growth in oil production.<sup>2</sup> Figure 3 shows the increase in oil production from horizontal wells in the Permian Basin, while figure 4 shows how many active oil wells are in Permian Basin. Figure 5 shows how many active oil and gas wells are in New Mexico by production bracket and illustrates that the growth of oil and gas wells in the state has been driven by an increase in high production facilities.

The oil boom has increased both the number and complexity of oil and gas facilities in the state. Horizontal wells allow access to a wider area for oil extraction than conventional vertical wells, and they are larger and more complex than vertical wells. Figures 6 and 7 show the above ground footprint of a conventional vertical drilling facility that might be considered typical in the early 2000’s compared to an unconventional horizontal drilling facility more typical today. Figures 8 and 9 show the change in productivity per well in New Mexico, with oil production per well increasing sharply in recent years.

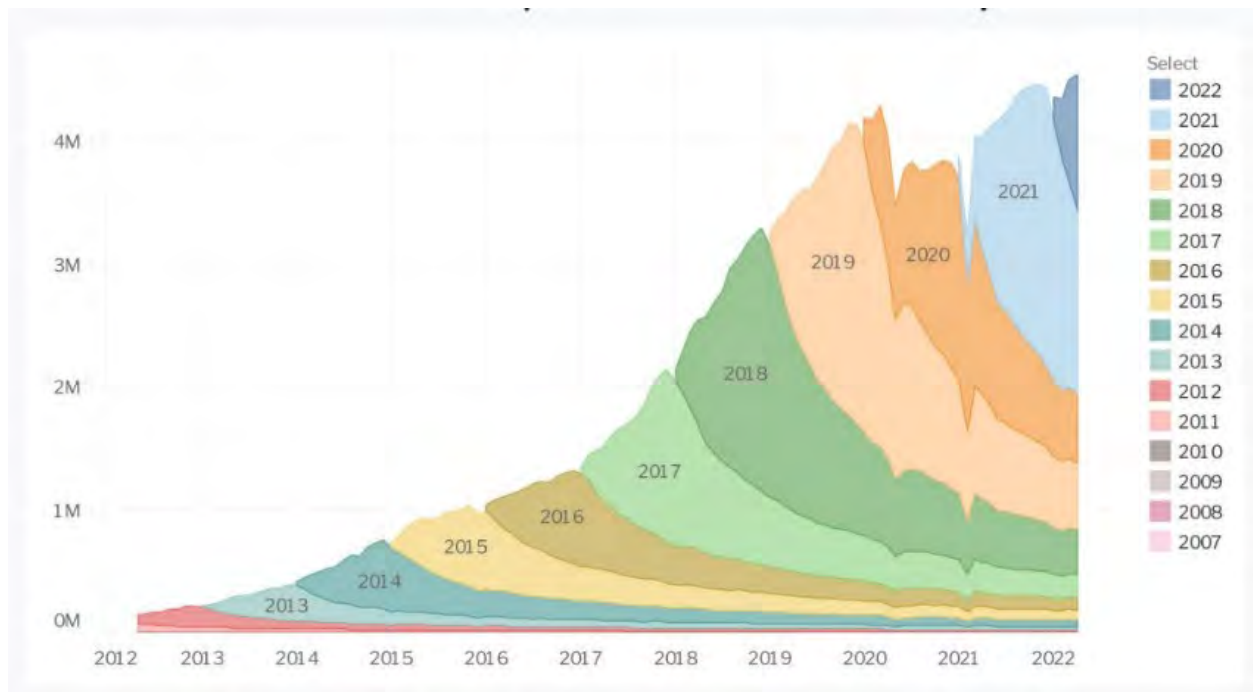
The increase in complexity of facilities contributes to increased workload for AQB due to additional equipment, higher production, and higher emissions from these facilities that requires additional analysis by the AQB in the permitting, review, and enforcement processes.

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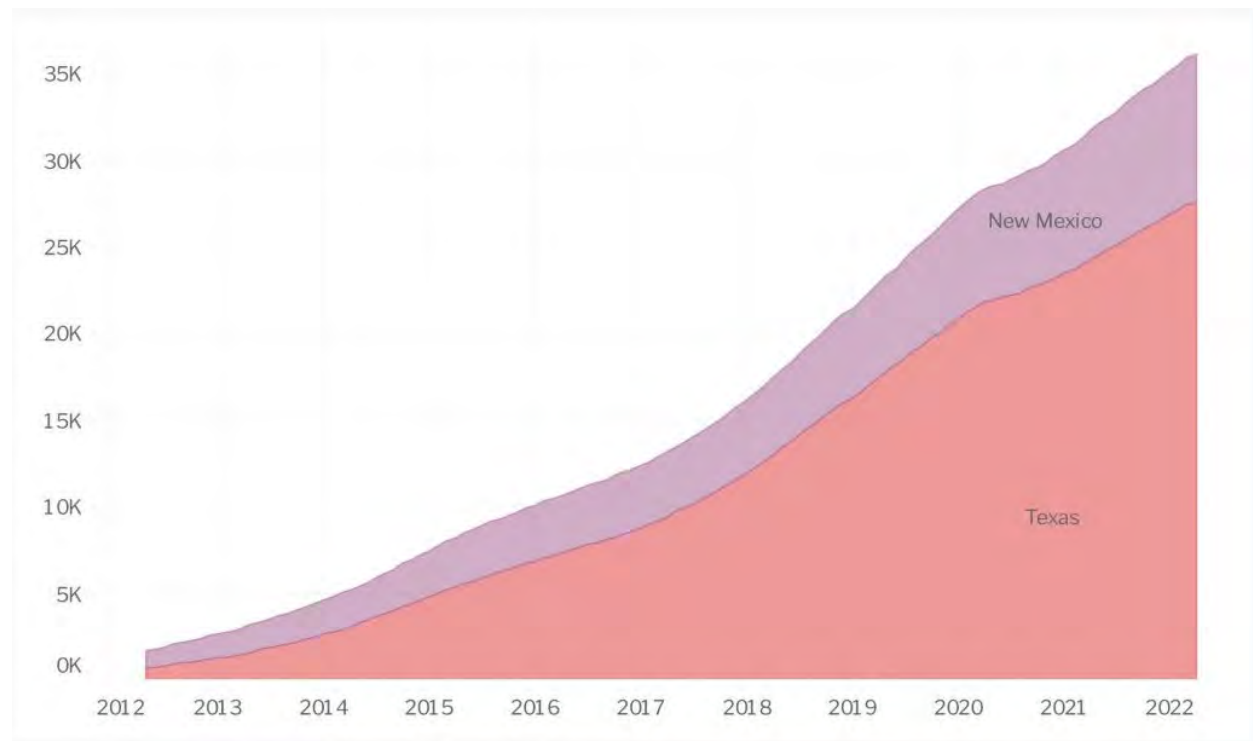
<sup>1</sup> Hayes, Adam, 2022, “Shale Oil: Overview, Benefits and Examples,” <https://www.investopedia.com/terms/s/shaleoil.asp>, accessed February 26, 2024.

<sup>2</sup> Broadhead, Ron, 2014, “New Technologies in the Oil and Gas Industry,” *Lite Geology*, New Mexico Bureau of Geology and Mineral Resources, [https://geoinfo.nmt.edu/publications/periodicals/litegeology/35/lg\\_v35.pdf](https://geoinfo.nmt.edu/publications/periodicals/litegeology/35/lg_v35.pdf), accessed February 26, 2024.

**Figure 3. Horizontal Well Daily Oil Production in the Permian Basin (barrels)<sup>3</sup>**

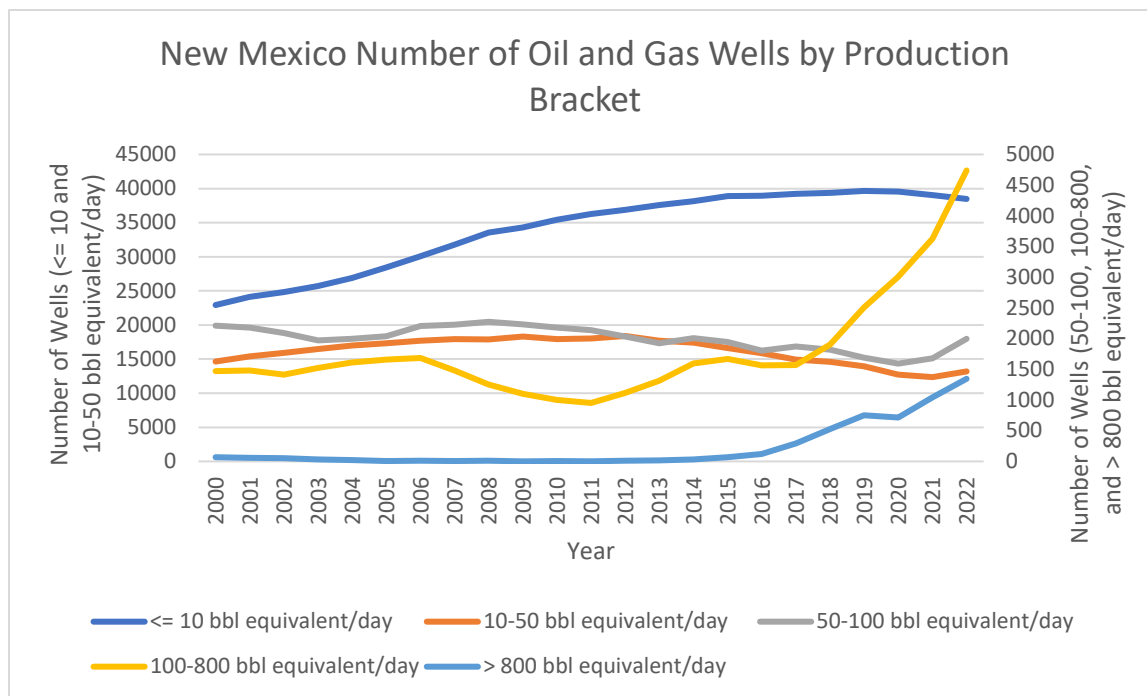


**Figure 4. Number of Oil Wells with Reported Production in Permian Basin for New Mexico and Texas<sup>3</sup>**



<sup>3</sup> Anonymous, 2024, "Permian Basin Oil and Gas," <https://novilabs.com/permian-basin/>, accessed February 26, 2024.

**Figure 5. Number of Oil and Gas Wells in New Mexico by Production Bracket**



Note: Data from U.S. Energy Information Administration

**Figure 6. Example of a Conventional Vertical Drilling Facility**



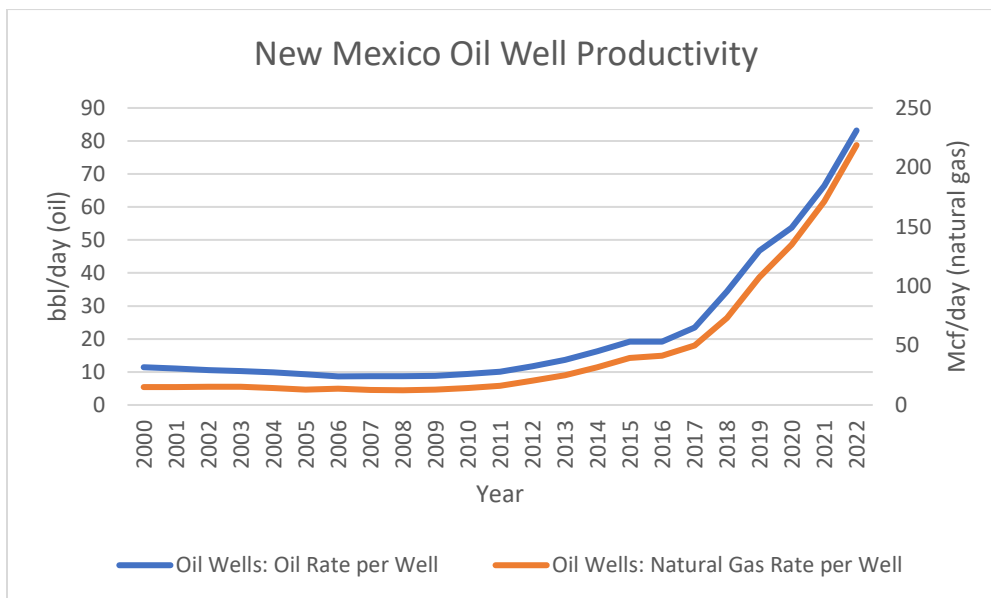
Source: Image provided by AQB

**Figure 7. Example of an Unconventional Horizontal Drilling Facility**



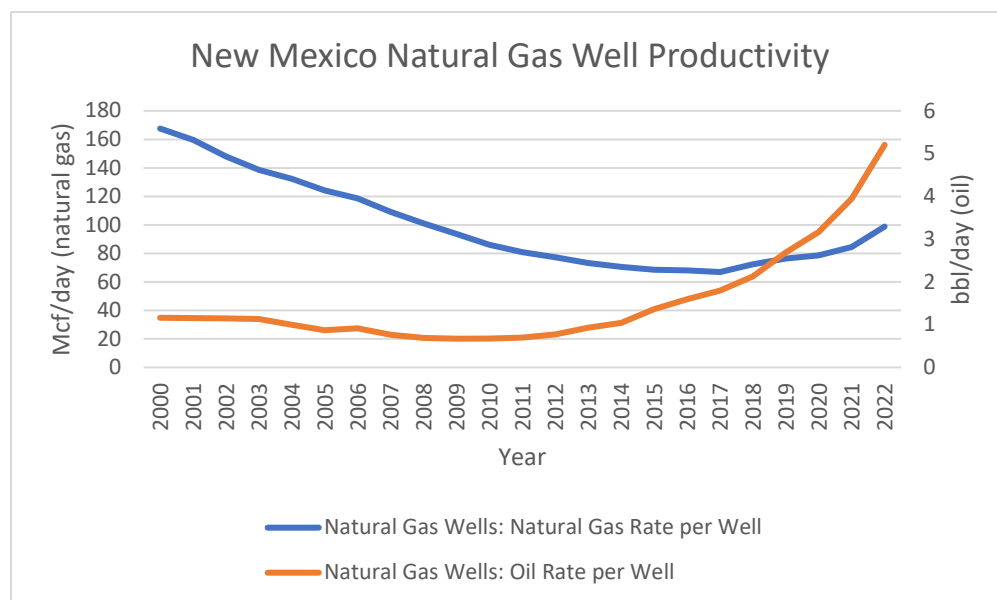
Source: Image provided by AQB

**Figure 8. New Mexico Oil Well Productivity**



Note: Data from U.S. Energy Information Administration

**Figure 9. New Mexico Natural Gas Well Productivity**



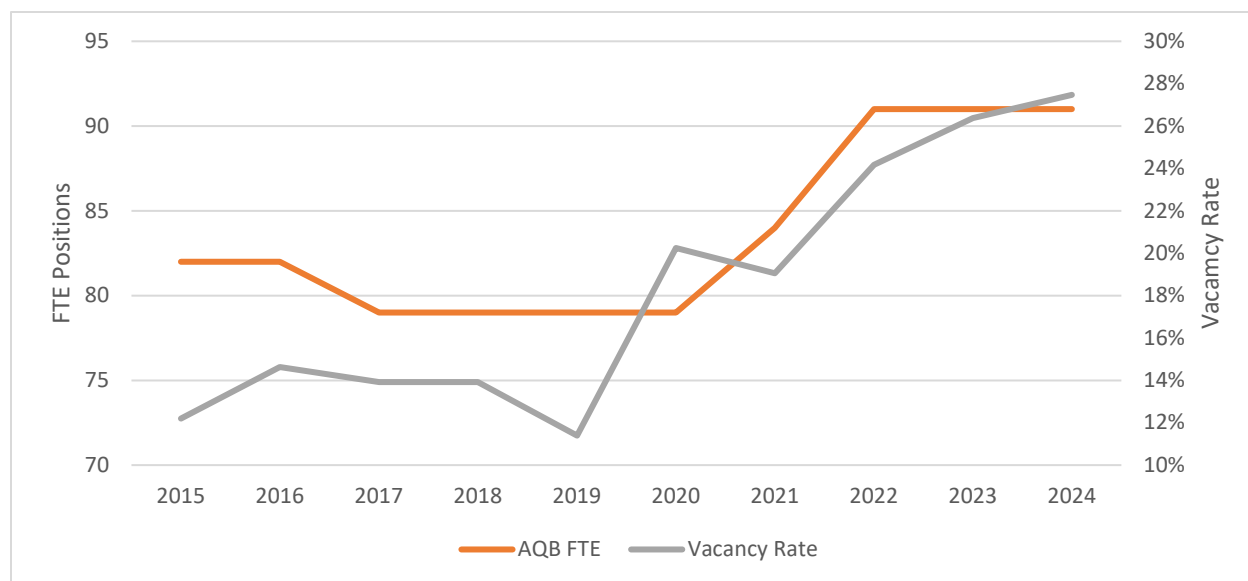
Note: Data from U.S. Energy Information Administration

### AQB has experienced persistent understaffing

A key finding of the 2019 STRONGER report was that AQB had not received authorization to hire additional FTEs needed to fulfill their mandated requirements.<sup>4</sup> In addition to understaffing, the AQB has experienced expert level staff retirements and high staff turnover, particularly in the compliance and enforcement unit. The AQB has increased their number of authorized FTEs from 79 to 91 in 2022, but the vacancy rate has also increased, such that average staffing has only increased from 63 in 2020 to 66 in 2024 (Figure 10).

<sup>4</sup> STRONGER (State Review of Oil and Natural Gas Environmental Regulations), 2019, *2019 New Mexico State Review Report: Environment Department Air Quality Bureau + Energy, Minerals and Natural Resources Department Oil Conservation Division*, <https://www.strongerinc.org/wp-content/uploads/2019/10/2019-New-Mexico-State-Review-Report-NMED-EMNRD.pdf>.

**Figure 10. AQB Staffing Trends**



### Title V fees are below EPA’s presumptive minimum

Under Title V, AQB collects annual fees per ton of emissions. Criteria pollutants and hazardous air pollutants are charged set fees, which are currently \$38.47 and \$244.51 per ton, respectively.<sup>5</sup> Excess emissions above allowable amounts are currently charged at the same rate as allowable emissions. EPA has set a presumptive minimum fee for criteria pollutants, which is the level at which EPA considers total program revenue to be presumptively adequate to fund reasonable permit program costs.<sup>6</sup> In addition, each state sets fees based on their unique needs. Table 2 summarizes Title V fees. For criteria pollutants, New Mexico’s current fee is just over the 25<sup>th</sup> percentile of all states, and is well below the EPA presumptive minimum.

<sup>5</sup> In 2004, per ton fees were set at \$20.00 for fee pollutants and \$165.00 for hazardous air pollutants with annual increases equal to any increase in the consumer price index.

<sup>6</sup> US EPA, 2024, “Title V Operating Permits: Permit Fees,” <https://www.epa.gov/title-v-operating-permits/permit-fees>, accessed February 26, 2024.

**Table 2. Current Title V Fees for Criteria and Hazardous Air Pollutants**

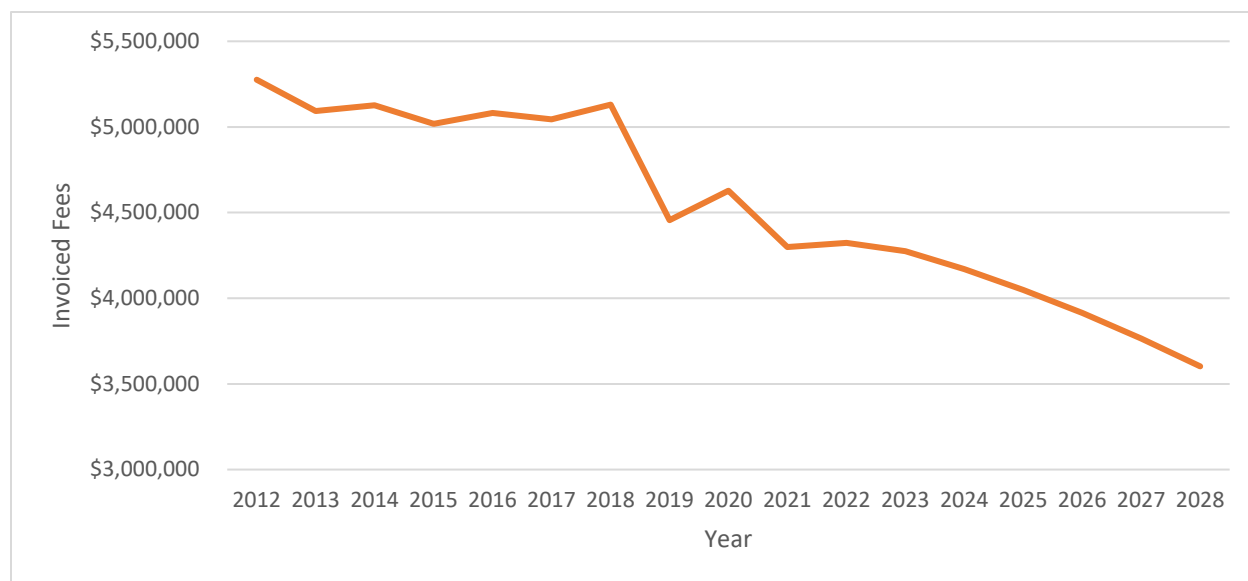
| <b>Air Program</b>      | <b>Criteria Pollutants (\$/ton)</b> | <b>Hazardous Air Pollutants (\$/ton)</b> |
|-------------------------|-------------------------------------|--|
| New Mexico              | \$38.47                             | \$244.51                                 |
| EPA Presumptive Minimum | \$61.73                             | \$61.73                                  |
| City of Albuquerque     | \$61.00                             | \$427.00                                 |
| Alabama                 | \$69.00 <sup>1</sup>                | \$69.00 <sup>1</sup>                     |
| Alaska                  | \$84.29                             | \$84.29                                  |
| Arizona                 | \$56.27                             | \$56.27                                  |
| Arkansas                | \$28.14                             | \$28.14                                  |
| Colorado                | \$36.00                             | \$239.00                                 |
| Connecticut             | \$418.00 <sup>1</sup>               | \$418.00 <sup>1</sup>                    |
| Delaware                | see table footnote 3                | see table footnote 3                     |
| Florida                 | \$30.00                             | \$30.00                                  |
| Georgia                 | \$35.50 <sup>4</sup>                | \$35.50 <sup>4</sup>                     |
| Hawaii                  | \$66.07 <sup>5</sup>                | \$66.07 <sup>5</sup>                     |
| Idaho                   | \$61.73                             | \$61.73                                  |
| Illinois                | \$21.50                             | \$21.50                                  |
| Indiana                 | \$52.38                             | \$52.38                                  |
| Iowa                    | \$70.00                             | \$70.00                                  |
| Kansas                  | \$53.00                             | \$80.00 <sup>11</sup>                    |
| Louisiana               | \$16.61                             | \$156.82 <sup>12</sup>                   |
| Maine                   | \$23.65 <sup>6</sup>                | \$23.65 <sup>6</sup>                     |
| Maryland                | \$73.57                             | \$73.57                                  |
| Massachusetts           | \$47.89 <sup>1</sup>                | \$47.89 <sup>1</sup>                     |
| Michigan                | \$53.00                             | \$53.00                                  |
| Minnesota               | \$149.66                            | \$149.66                                 |
| Mississippi             | \$37.00                             | \$37.00                                  |
| Missouri                | \$55.00                             | \$55.00                                  |
| Montana                 | \$44.35                             | \$44.35                                  |
| Nebraska                | \$51.00                             | \$51.00                                  |
| Nevada                  | \$0.00 <sup>7</sup>                 | \$0.00 <sup>7</sup>                      |
| New Hampshire           | \$286.84                            | \$286.84                                 |
| New Jersey              | \$148.03                            | \$148.03                                 |
| New York                | \$75.00 <sup>8</sup>                | \$75.00 <sup>8</sup>                     |
| North Carolina          | \$46.78                             | \$46.78                                  |
| North Dakota            | \$19.06                             | \$39.70                                  |
| Ohio                    | \$61.73                             | \$61.73                                  |
| Oklahoma                | \$47.70 <sup>5</sup>                | \$47.70 <sup>5</sup>                     |
| Oregon                  | \$95.00                             | \$95.00                                  |
| Pennsylvania            | \$110.41                            | \$110.41                                 |
| Rhode Island            | \$467.27 <sup>2</sup>               | \$467.27 <sup>2</sup>                    |

|                |                         |                         |
|----------------|-------------------------|-------------------------|
| South Carolina | \$58.55                 | \$58.55                 |
| South Dakota   | \$8.30 <sup>9</sup>     | \$8.30 <sup>9</sup>     |
| Tennessee      | \$71.38 <sup>5,10</sup> | \$71.38 <sup>5,10</sup> |
| Texas          | \$69.92                 | \$69.92                 |
| Utah           | \$101.75                | \$101.75                |
| Vermont        | \$67.00                 | \$67.00                 |
| Virginia       | \$102.23                | \$102.23                |
| Washington     | \$79.21                 | \$79.21                 |
| West Virginia  | \$24.29                 | \$24.29                 |
| Wisconsin      | \$35.71                 | \$35.71                 |
| Wyoming        | \$34.50                 | \$34.50                 |

1. Fee is from 2020
2. Fee is from 2022
3. Delaware's emission fee isn't per ton but rather is based on categories: Less than 6 tons per year: \$3,950; 6-25 tons per year: \$4,100; 26-50 tons per year: \$6,000; 51-100 tons per year: \$9,000; 101-200 tons per year: \$12,000; 201-500 tons per year: \$28,000; 501-1,000 tons per year: \$60,000; 1,001-2,000 tons per year: \$100,000; greater than 2,000 tons per year: \$350,000.
4. Georgia has a different per ton fee of \$37.34 for coal-fired electric generation units.
5. The state has a per ton fee for minor sources. The per ton fees for minor sources are the following: Hawaii: \$16.09 per ton; Oklahoma \$36.50 per ton; Tennessee \$18.75 per ton.
6. Maine has 3 different per ton fees based on the total annual amount emitted by a source: 1-1,000 tons per year: \$11.82 per ton; 1,001-4,000 tons per year: \$23.67 per ton; greater than 4,000 tons per year: \$35.47. The \$23.65 figure in the table is the average of these 3 fees.
7. Nevada eliminated its Title V emissions fee in 2020.
8. New York has 4 different per ton fees based on the total annual amount emitted by a source: less than 1,000 tons per year: \$60; 1,000-2,000 tons per year: \$70; 2,000-5,000 tons per year: \$80, greater than 5,000 tons per year: \$90. The \$75.00 figure in the table is the average of these 4 fees.
9. South Dakota has a different per ton fee of \$40.00 for ethanol plants.
10. Tennessee has 4 different per ton fees based on the type of source. If the source has an allowable amount of emissions as part of its permit, then the fee is \$68.00 per allowed ton for electric generating units and \$48.50 per allowed ton for other sources. If the source does not have an allowable amount of emissions as part of its permit, then the emissions fee is based on the actual amount of criteria pollutants emitted by the source that year: \$98.50 per ton for electric generating units and \$70.50 per ton for other sources. The \$71.38 figure in the table is the average of these 4 fees.
11. Starting in 2025
12. This is the fee for class 1 toxic air pollutants (known and probable carcinogens). The fee for class 2 toxic air pollutants (suspected human carcinogens and known or suspected human reproductive toxins) is \$78.41 per ton, and the fee for class 3 toxic air pollutants (acute and chronic non-carcinogenic toxins) is \$39.20 per ton.

Revenues under Title V have decreased in recent years, primarily due to decommissioning of coal fired power plants, and are projected to continue to decrease in the coming years under the current fee structure, based on projections for regulated emissions (Figure 11).

**Figure 11. Title V recent and projected invoiced fees under current fee structure**



### Additional staffing is needed to support increased NSR workload

The AQB issues permits and reviews notices of intent for facilities that emit pollutants into the air to assure compliance with state and federal regulations.<sup>7</sup> Fees for these permits are calculated based on a point-based schedule. Fees for construction permits or technical reviews of existing permits are based on points depending on technical complexity, portable source re-location, non-attainment, modeling review, air toxics review, applicable regulations, case-by-case MACT, and PSD netting only or PSD review including netting. Other permitting actions include general construction permits and streamlined permits. Fees are calculated currently at a cost per point of \$510, adjusted annually by the consumer price index. In addition, annual fees are charged for construction permits falling under 20.2.72 NMAC, currently set at \$2,344.35. Notices of Intent are charged a filing fee of \$500.

Increases in the number of permitting actions, driven largely by a surge in the oil and gas industry, coupled with increased regulatory and facility complexity, have increased the workload to a point where current staffing is inadequate. Below, we provide a rough estimate the staffing and related costs that would be needed to fully staff the program in relation to current workloads.

#### **Assumptions:**

Current AQB staffing: 20

Average number of NSR permitting actions 2012: 949

Number of NSR permitting actions in 2023: 1960

Average FTE cost: \$130,000<sup>8</sup>

#### **Calculations:**

Additional FTE's needed to process increased workload: 21

<sup>7</sup> NMED, 2024, "Air Quality Bureau: Permitting," <https://www.env.nm.gov/air-quality/permitting-section-home-page/>, accessed February 27, 2024.

<sup>8</sup> Average FTE cost including benefits from AQB.

Total annual cost of increased staff: \$2,730,000

The calculation presented above assumes that the number of NSR permitting actions is an appropriate index of the overall workload of the AQB staff responsible for NRS permitting and that 2012 is an appropriate baseline. Given that staffing was already deemed inadequate in 2019, taking an earlier baseline is supported. The estimate may be conservative, given current trends in the oil and gas industry that suggest increases over the 2023 level.

## Implementation of Part 50 will require additional staffing

As mentioned above, the number of facilities that AQB is charged with regulating has recently increased with the adoption of Part 50-Oil and Gas Sector Ozone Precursor Pollutants Regulation, and anticipated regulations from EPA pose additional challenges for AQB moving forward. Below, we provide an estimate of the staffing and related costs that would be needed to fully support implementation of the Part 50 regulation based on information provided by AQB.

### **Assumptions<sup>9</sup>:**

Number of new facilities regulated: 55,000

Hours/facility for review: 12

Years for 100 percent review of facilities: 5

Percent of facilities requiring enforcement action: 2 percent

Hours/facility for enforcement (1 month FTE): 173

Average FTE cost: \$130,000

### **Calculations:**

New FTE's needed to staff review: 63

New FTE's needed to staff enforcement: 18

Total FTE's for review and enforcement: 82

Total Annual Cost: \$10,660,000

## Conclusion and Recommendations

Since the current fee structure was established, the AQB has experienced a surge in permit applications accompanied by regulatory and technological changes. The surge in permit applications alone supports the need for increased staffing. Regulatory and technological changes have fundamentally changed the workload associated with any single permit, which also supports the need for increased staffing and necessitates updates to the fee structure.

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<sup>9</sup> Total number of new facilities to be regulated under Part 50, hours per facility for review, years for 100 percent coverage, hours per facility for enforcement and percent of facilities requiring enforcement action all provided by AQB.

Based on the analysis presented above, we make the following recommendations for AQB fee increases to the Title V and NSR programs:

- **AQB should increase Title V fees to at least the EPA presumptive minimum.** Current Title V fees are currently substantially lower than the EPA presumptive minimum and well below the median of all states for which we have information. AQB may be justified in increasing Title V fees above the presumptive minimum based on unique circumstances that might include the high level of oil and gas production in the state and current levels of air quality.
- **NSR fee increases are justified based on increased regulatory and facility complexity.** The time required to enforce all regulatory requirements has increased to an extent that CPI adjusted fees are no longer adequate to support necessary staffing.
- **AQB staffing increases will need to be supported by fee increases.** Title V and NSR program fees make up near all of the AQB's revenue and will need to be increased to support recommended staff increases.
- **Staff increases are needed to fully support current workloads as well as to staff implementation of the Part 50 regulation.** Combined, these 103 additional FTE staff positions are estimated to cost approximately \$13.4 million annually.
- **Estimated staffing costs may be considered a proxy for other types of costs that may increase productivity.** Staff may be supplemented with technology or capital expenditures to increase productivity, which may reduce additional staff increases over time.
- **Targeting fee increases to the oil and gas industry is warranted given the proportion of AQB's workload that is devoted to serving this industry.** To the extent possible, it is appropriate to target assessed fees to the sector that is generating the increased workload.



From: Bruce Baizel, Compliance and Enforcement Director

Through: James C. Kenney, Cabinet Secretary

cc: Sydney Lienemann, Deputy Cabinet Secretary of Administration  
Danielle Gilliam, Deputy Cabinet Secretary of Operations

To: New Mexico Environment Department ("NMED" or "Department") Managers

Date: October 31, 2023

Re: Guidance on Administrative Compliance Costs

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## INTRODUCTION

This document provides guidance for managers at NMED for the recovery of administrative costs necessary to ensure compliance with the laws and regulations governing NMED programs.

Compliance is one of the key tenets by which NMED implements its mission. Compliance ensures NMED achieves the objectives and intent set forth in its statutory mandates. Compliance also ensures fair and equitable treatment of the regulated community.

An important set of statutes serve as the foundation by which NMED exercises its authority to assure compliance. These statutes include: the Air Quality Control Act (NMSA 1978, Sections 74-2-1 to -22); Water Quality Act (NMSA 1978, Sections 74-6-1 to -17); Hazardous Waste Act (NMSA 1978, Sections 74-4-1 to -14); and Occupational Health and Safety Act (NMSA 1978, Sections 50-9-1 to -25), as well as their implementing regulations. A full list of state authority governing NMED's programs is attached at Appendix A.

The intent of this guidance is: (a) to be detailed enough to allow individual NMED programs to develop policies and procedures that will consistently further NMED's compliance goals; and (2) to be general enough to allow each program to tailor its policies and procedures to the particular statutory and regulatory priorities of each program.

## ADMINISTRATIVE COMPLIANCE COSTS

### A. Background

NMED relies on funding from the federal government and the New Mexico Legislature to administer its permitting, licensing and compliance verification programs. NMED may also establish and assess fees and costs for these programs commensurate with federal and state law.

That said, there are instances in which NMED must take resource-intensive compliance actions beyond simply permit or license compliance verification. For example, NMED may conduct a routine inspection and

uncover an alleged violation that requires additional investigation; or NMED may identify reporting discrepancies that require information requests and further analysis. In these instances, the costs of ensuring compliance may substantially increase. Such compliance matters – whether at a stage of post-inspection notice, investigation, negotiation, or formal administrative proceedings – require significant technical and legal resources of NMED. The time and expense for NMED to investigate, obtain additional data and review materials to actively address open compliance matters can reach hundreds of hours, depending on the matter’s complexity, the responsiveness of the regulated party, and other factors.

The resource-intensive nature of resolving compliance matters at NMED puts the ability of NMED to fulfill its statutory and regulatory directives at risk.

## **B. Assessment**

To ensure that NMED retains the ability to fulfill its statutory mandates, each NMED program shall assess administrative compliance costs on permittees, licensees or other potentially responsible parties in accordance with applicable state law. Such costs shall be assessed in addition to any permit fees, license fees or civil penalties that may otherwise be due. The compliance cost calculation set forth at Section C of this guidance for the Air Quality Bureau can be one option an NMED program may follow.

Once assessed, each NMED program shall transmit the administrative compliance costs through a separate invoice to a permittee, licensee or other potentially responsible party with a deadline for payment. Failure to pay administrative compliance costs may result in loss of permit or license, referral to a collection agency, and additional legal action.

Additional administrative compliance costs may accrue depending on how a specific compliance matter proceeds.

Fees and costs accrued pursuant to judicial proceedings will be separately assessed pursuant to any separate applicable procedures.

## **C. Example Program: Air Quality Bureau Administrative Compliance Costs**

By way of example, NMED’s Air Quality Bureau (AQB), assesses administrative compliance costs as follows:

1. AQB and the Office of General Counsel (OGC) identify a predetermined number of conservative person-hours for AQB and OGC to complete each step along AQB’s administrative compliance timeline based on experience.
2. AQB and OGC then multiply the person-hours by the average hourly wages, including the calculation of indirect costs and state benefits, for those AQB and OGC staff involved in the process.
3. Next, AQB and OGC multiply the resulting number based on the following factors:
  - (a) number of potential violations identified;
  - (b) number of violations alleged;

- (c) number of settlement offers between the parties; and
  - (d) number of administrative compliance steps necessary to move forward to compliance resolution.
4. Finally, AQB and OGC take the number and apply an adjustment factor to account for additional circumstances that may decrease or increase the calculation. Additional circumstances shall include:
- (a) quality of information submitted to NMED;
  - (b) completeness of information submitted to NMED;
  - (c) compliance status;
  - (d) quality of negotiations; and
  - (e) complexity of the compliance matter.

This adjusted number is the amount of administrative compliance costs that AQB will transmit via invoice.

#### **DISCLAIMER**

This guidance does not represent a final agency action and is intended as guidance only. The guidance does not create any right, duty, obligation, or defense in any person. AQB may revise, amend, supplement, or revoke all or part of the guidance without public notice or comment.

#### **APPENDIX A**

- NMSA 1978, §§ 3-29-1 to -21 – Sanitary Projects Act
- NMSA 1978, §§ 9-7A-1 to -17 – Department of Environment Act
- NMSA 1978, §§ 10-15-1 to -4 – Open Meetings Act
- NMSA 1978, §§ 13-1-1 to -199 – Procurement Code
- NMSA 1978, §§ 14-2-1 to -12 – Inspection of Public Records Act
- NMSA 1978, §§ 14-3-1 to -24 – State Records Act
- NMSA 1978, §§ 14-4-1 to -11 – State Rules Act
- NMSA 1978, §§ 14-4A-1 to -6 – Small Business Regulatory Relief Act
- NMSA 1978, §§ 14-16-1 to -21 – Uniform Electronic Transactions Act
- NMSA 1978, §§ 25-1-1 to -16 – Food Service Sanitation Act
- NMSA 1978, §§ 25-2-1 to -21 – Adulterated or Misbranded Food Act
- NMSA 1978, §§ 26-2C-1 to -42 – Cannabis Regulation Act
- NMSA 1978, §§ 50-9-1 to -25 – Occupational Health and Safety Act
- NMSA 1978, §§ 61-33-1 to -10 – Utility Operators Act
- NMSA 1978, §§ 70-13-1 to -5 – Produced Water Act
- NMSA 1978, §§ 71-8-1 to -8 – Sustainable Development Testing Site Act
- NMSA 1978, §§ 74-1-1 to -17 – Environmental Improvement Act

- NMSA 1978, §§ 74-2-1 to -22 – Air Quality Control Act
- NMSA 1978, §§ 74-3-1 to -16 – Radiation Protection Act
- NMSA 1978, §§ 74-4-1 to -14 – Hazardous Waste Act
- NMSA 1978, §§ 74-4G-1 to -12 – Voluntary Remediation Act
- NMSA 1978, §§ 74-4H-1 to -4 – San Juan Generating Station Facility and Mine  
Remediation and Restoration Study Act
- NMSA 1978, §§ 74-6-1 to -17 – Water Quality Act
- NMSA 1978, §§ 74-6A-1 to -15 – Wastewater Facility Construction Loan Act
- NMSA 1978, §§ 74-6B-1 to -14 – Ground Water Protection Act
- NMSA 1978, §§ 74-9-1 to -43 – Solid Waste Act
- NMSA 1978, §§ 74-13-1 to -20 – Recycling and Illegal Dumping Act
- NMSA 1978, §§ 76-24-1 to -10 Hemp Manufacturing Act

| Meeting Name                       | Meeting Start Time  | Meeting End Time    | Display Name     | First Name | Last Name | Role     | Attend | Join Time       | Leave Time            | Attendance | Connecti  | Session Name                         |
|------------------------------------|---------------------|---------------------|------------------|------------|-----------|----------|--------|-----------------|-----------------------|------------|-----------|--------------------------------------|
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Armando Paz      | N/A        | N/A       | attendee | armar  | 2024-03-20 16:0 | 2024-03-20 16 28 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Bill Siegel      | N/A        | N/A       | attendee | bsieg  | 2024-03-20 15:5 | 2024-03-20 16 40 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Donna Intermont  | N/A        | N/A       | attendee | donni  | 2024-03-20 16:0 | 2024-03-20 16 31 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Eric Peters      | N/A        | N/A       | attendee | eric.p | 2024-03-20 15:5 | 2024-03-20 16 35 mins |            | Web app   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Janet Carpenter  | N/A        | N/A       | attendee | janet. | 2024-03-20 16:0 | 2024-03-20 16 28 mins |            | Mobile ap | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Janet Carpenter  | N/A        | N/A       | attendee | janet. | 2024-03-20 16:0 | 2024-03-20 16 1 min   |            | Mobile ap | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Ken Miller       | N/A        | N/A       | attendee | kenne  | 2024-03-20 16:0 | 2024-03-20 16 30 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Liz Kuehn        | N/A        | N/A       | attendee | elizab | 2024-03-20 15:4 | 2024-03-20 16 45 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Madai Corral     | N/A        | N/A       | coHost   | mada   | 2024-03-20 15:3 | 2024-03-20 16 58 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Mariana          | N/A        | N/A       | attendee | mmur   | 2024-03-20 16:0 | 2024-03-20 16 28 mins |            | Mobile ap | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Mark Jones       | N/A        | N/A       | attendee | mark.  | 2024-03-20 16:0 | 2024-03-20 16 27 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Maria Shoats     | N/A        | N/A       | attendee | evan7  | 2024-03-20 16:0 | 2024-03-20 16 24 mins |            | Mobile ap | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Michael Prinz    | N/A        | N/A       | attendee | miche  | 2024-03-20 16:0 | 2024-03-20 16 30 mins |            | Web app   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Michelle Miano   | N/A        | N/A       | attendee | miche  | 2024-03-20 15:4 | 2024-03-20 16 44 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Naomi Valenzuela | N/A        | N/A       | attendee | naom   | 2024-03-20 16:0 | 2024-03-20 16 31 mins |            | Web app   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Neal Butt        | Neal       | Butt      | attendee | neal.t | 2024-03-20 16:0 | 2024-03-20 16 28 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Neal Butt        | Neal       | Butt      | attendee | neal.t | 2024-03-20 16:0 | 2024-03-20 16 3 mins  |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Pamela Jones     | Pamela     | Jones     | host     | pame   | 2024-03-20 15:3 | 2024-03-20 16 60 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Paula Tocora     | N/A        | N/A       | attendee | paula  | 2024-03-20 16:0 | 2024-03-20 16 9 mins  |            | Web app   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Paula Tocora     | N/A        | N/A       | attendee | paula  | 2024-03-20 16:0 | 2024-03-20 16 27 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Ricardo Duarte   | N/A        | N/A       | attendee | ricard | 2024-03-20 16:0 | 2024-03-20 16 28 mins |            | Web app   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Roger Armstrong  | N/A        | N/A       | attendee | rarms  | 2024-03-20 16:0 | 2024-03-20 16 30 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | Sherry           | N/A        | N/A       | attendee | sburt  | 2024-03-20 15:5 | 2024-03-20 16 32 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |
| AQB Stakeholder Engagement Meeting | 2024-03-20 15:31:21 | 2024-03-20 16:31:13 | W Daly           | N/A        | N/A       | attendee | weiw   | 2024-03-20 15:5 | 2024-03-20 16 33 mins |            | Desktop   | : AQB Stakeholder Engagement Meeting |



# New Mexico Environment Department

## PUBLIC INFORMATIONAL MEETING ON UPDATES TO AIR QUALITY PERMITTING FEES

Liz Bisbey-Kuehn, Air Quality Bureau Chief

March 20, 2024

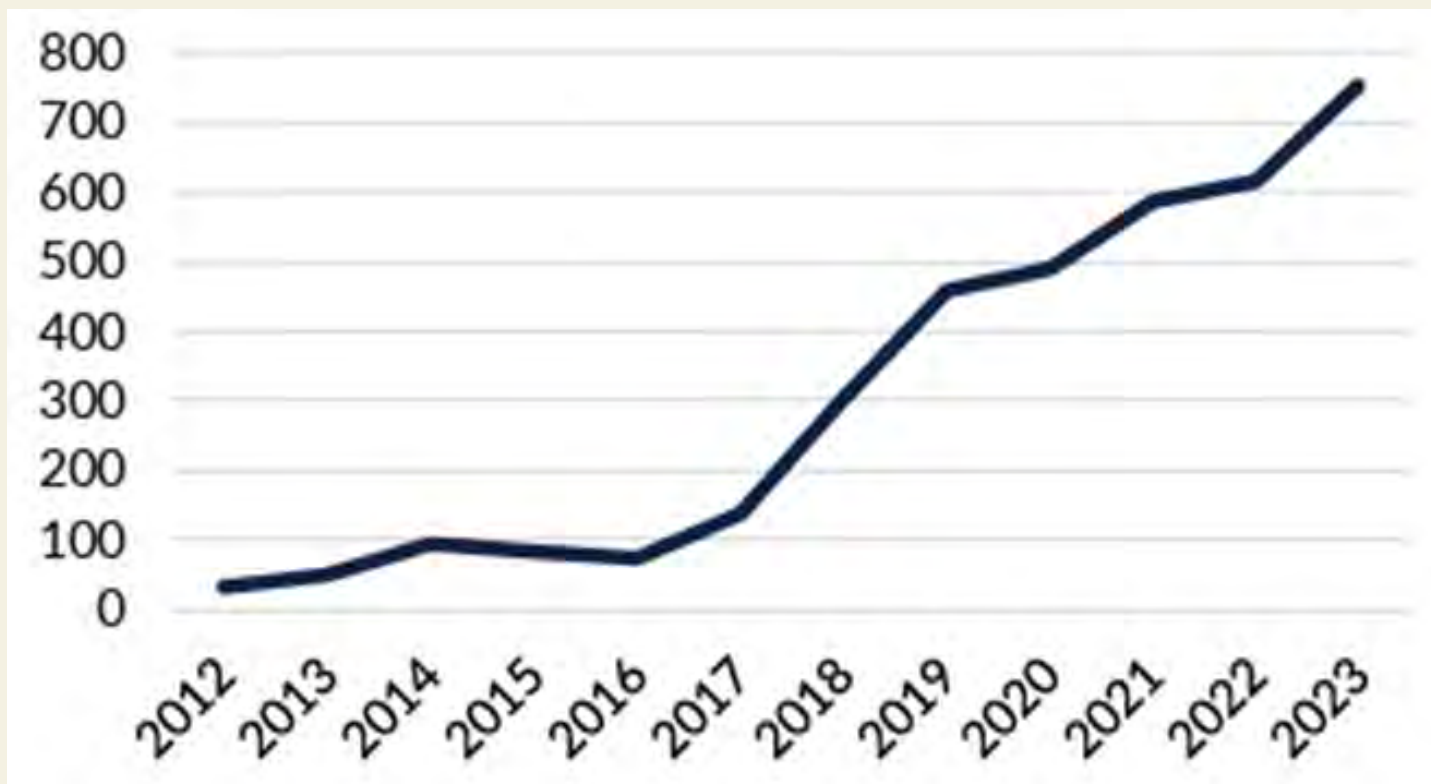


# Why Fee Increases are Needed

- Increase in GCP-Oil and Gas permit applications of over 1600% between 2012 and 2023
  - 754 GCP – Oil & Gas applications in 2023
- Resources needed for some types of review are underestimated by the current fee structure
  - GCP-Oil and Gas
  - Air dispersion modeling reviews
  - Facilities applying for regular NSR permits are larger and have increased in complexity
- New state air rule 20.2.50 NMAC (Ozone Precursor Pollutants from the Oil and Gas Industry) and federal air regulations increased the complexity of permitting and compliance determinations



# GCP-Oil and Gas Applications





# Why Fee Increases are Needed

- Additional staff and resources needed to keep pace with higher workload and to retain expert staff to evaluate more complex permit applications
- Current fees per ton for Operating Permits are far below the “presumptive minimum fee” developed by US EPA for assessing fees sufficient to administer an operating permit program.
  - ▣ EPA presumptive minimum fee per ton = \$61.73
  - ▣ Current New Mexico fee per ton = \$38.47
- New Mexico’s current fee is just over the 25th percentile of all states
- Settlements collected by New Mexico’s Air Quality Bureau for enforcement actions do not become part of the air program budget (sent to state general fund)



# Benefits of Increase in Fees

- **Increased permitting program capacity**
  - ▣ Supports growth of New Mexico's economy
  - ▣ Decreases the time to process complex permit applications
  - ▣ Enhanced technical assistance for applicants because each permit writer will have more time for review and resolution of issues, and changes to application
- **Increased compliance and enforcement program capacity**
  - ▣ Emissions reductions due to increased oversight of compliance
- **Increasing permit fees may have the secondary benefit of reducing emissions. Permittees may reduce emissions to stay below certain permitting thresholds (Title V or PSD).**



# Proposed Changes to Regulations

## ❖ Part 75 (Construction Permit Fees)

- Filing fee for permit applications, including Notices of Intent (NOI), increase from \$500 to \$2,000 dollars and becomes tied to increases in the Consumer Price Index (CPI)
- Increase in the number of points for some reviews under the point-based fee schedule:
  - Reviews of submitted air dispersion modeling revised from 15 points to 30 points
  - Reviews of General Construction Permits (GCP) for Oil and Gas revised from 10 points to 50 points
  - Reviews for other GCPs (concrete, asphalt, aggregate crushers, etc.) remain unchanged
  - Small business fee reduction continues
- Electronic payment option added to regulation



# Proposed Changes to Regulations

## ❖ Part 71 (Operating Permit fees)

- Fee pollutants revised to include  $PM_{2.5}$  and  $PM_{10}$  and remove Total Suspended Particulates (TSP) and mercury. Fee only for emissions of  $PM_{10}$  or  $PM_{2.5}$  whichever is higher.
- Increase in the fee per ton for fee pollutants and Hazardous Air Pollutants (HAPs)
  - Fee pollutants ( $NO_2$ ,  $SO_2$ , CO, VOCs,  $PM_{10}$  or  $PM_{2.5}$ ) increased to \$81 per ton
  - Fee for HAPs increased to \$250 per ton
- Administrative compliance cost for enforcement actions added
- Electronic payment option added to regulation



# Estimated Change to Fees

| Type of facility                   | Type of fee                 | Current fee  | Proposed Fee |
|------------------------------------|-----------------------------|--|--------------|
| Regular NSR                        | Air dispersion modeling fee | \$7,650  | \$15,300     |
| GCP-O&G                            | Application                 | \$5,100  | \$25,500     |
| Other (construction industry) GCPs | Application                 | \$5,100  | \$5,100      |
| Notice of Intent (NOI)             | Application filing fee      | \$500  | \$2,000      |
| All other types of facilities      | Application filing fee      | \$2,000 filing fee credited against total permit app fee, so no net change in total cost |              |
| Title V fee pollutant              | Annual fee per ton          | \$38.47  | \$81         |
| Title V HAP                        | Annual fee per ton          | \$244.51   | \$250        |



# Next Steps

- The Petition and Statement of Reasons for the proposed changes to the fee regulations was filed with Environmental Improvement Board on 3/7/24 as EIB 24-12.
- These documents are available on the webpage at <https://www.env.nm.gov/opf/docketed-matters> under the EIB heading
- On Friday 3/22/24, NMED will request a June hearing before the EIB. Other parties may participate in the hearing and submit Notices of Intent to present technical testimony.



# Questions and Discussion

- ❑ Are there questions from the meeting attendees?
- ❑ Are there concerns or issues you'd identified and would like to bring up at this point?
- ❑ Does your organization/group want to meet separately with us about the proposed changes to the regulations?
- ❑ Contact for questions and requests for additional meetings: EPD Division Director Michelle Miano [michelle.miano@env.nm.gov](mailto:michelle.miano@env.nm.gov) or AQB Planning Section Chief Kirby Olson [Kirby.olson@env.nm.gov](mailto:Kirby.olson@env.nm.gov) and (505) 629-5107

**From:** [New Mexico Environment Department](#)  
**To:** [Butt, Neal, ENV](#)  
**Subject:** Stakeholder Engagement Meeting to Discuss Proposed Amendments to 20.2.71 NMAC, Operating Permit Emission Fees and 20.2.75 NMAC, Construction Permit Fees  
**Date:** Friday, March 8, 2024 12:22:05 PM

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NMED Banner



## Air Quality Bureau

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Having trouble viewing this email? [View it as a Web page.](#)

On March 7, 2024, the Air Quality Bureau (aqb) [petitioned the Environmental Improvement Board](#) to repeal and replace 20.2.71 NMAC, *Operating Permit Fees* (Part 71), and 20.2.75 NMAC, *Construction Permit Fees* (Part 75), to increase air permit fees to cover the costs of administering and implementing the requirements of the New Mexico Air Quality Control Act and federal Clean Air Act.

AQB will hold a [virtual stakeholder engagement meeting](#) on Wednesday, March 20 from 4:00 – 6:00 p.m. The proposed revisions to both regulations will be discussed in detail and

there will be time for questions from the public.

The full text of the Bureau's proposed amendments to Part 71 and 75 and related documents are available for download on the [Environmental Improvement Board's Docketed Matters webpage](#) or in hard copy at the Bureau's main office, 525 Camino de los Marquez, Santa Fe, New Mexico, 87505.

Persons requiring language interpretation services or having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting should contact Kirby Olson no later than 5:00 p.m. on March 15, 2024 at [kirby.olson@env.nm.gov](mailto:kirby.olson@env.nm.gov). TDD or TDY users please access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779; TTY users: 1-800-659-8331).

El 7 de marzo de 2024, la Oficina de Calidad del Aire (AQB, por sus siglas en inglés) [presentó una petición](#) a la Junta de Mejora Ambiental para derogar y reemplazar la Parte 71, *Tarifas de Permisos de Operación* y la Parte 75, *Tarifas de Permisos de Construcción* para aumentar las tarifas de los permisos de aire para cubrir los costos de administración e implementación de los requisitos de la Ley de Control de Calidad del Aire de Nuevo México y la Ley Federal de Aire Limpio.

La AQB celebrará una [reunión virtual](#) de participación con las partes interesadas el miércoles, 20 de marzo de 4:00 p. m. a 6:00 p. m. Las revisiones propuestas a ambas regulaciones se discutirán en detalle y habrá tiempo para preguntas del público.

El texto completo de las enmiendas propuestas por la Oficina a los documentos relacionados con las Partes 71 y 75 están disponibles para descargar en [la página web Docketed Matters de la Junta de Mejoramiento Ambiental](#) o en copia impresa en la oficina principal de la Oficina, 525 Camino de los Márquez, Santa Fe, Nuevo México, 87505.

Las personas que requieran servicios de interpretación de idiomas o que tengan una discapacidad que necesiten un lector, un amplificador, un intérprete de lenguaje de señas calificado o cualquier otra forma de ayuda o servicio auxiliar para asistir o participar en la reunión deben comunicarse con Kirby Olson a más tardar a las 5:00 p. m. el 15 de marzo de 2024 en [kirby.olson@env.nm.gov](mailto:kirby.olson@env.nm.gov). Los usuarios de TDD o TDY pueden acceder a este número a través de New Mexico Relay Network (usuarios de TDD de Albuquerque: (505) 275-7333; fuera de Albuquerque: 1-800-659-1779; usuarios de TTY: 1-800-659-8331).

For additional information or questions about this bulletin, please contact either Kirby Olson at [kirby.olson@env.nm.gov](mailto:kirby.olson@env.nm.gov) or Liz Kuehn at [elizabeth.kuehn@env.nm.gov](mailto:elizabeth.kuehn@env.nm.gov)

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**From:** [New Mexico Environment Department](#)  
**To:** [Butt, Neal, ENV](#)  
**Subject:** Environmental Improvement Board Notice of Rulemaking Hearing  
**Date:** Thursday, April 25, 2024 2:43:33 PM

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## Air Quality Bureau

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The New Mexico Environmental Improvement Board (“Board”) will hold a hybrid public hearing (in person and virtual) on June 27, 2024 at 9:00 a.m., and continuing at the direction of the Board, in the NM State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87505 and via video conferencing. The purpose of the hearing is to consider the matter of [EIB 24-12 \(R\)](#), which are proposed revisions to *the* Operating Permit Fees Regulation (20.2.71 NMAC) and *Construction Permit Fees Regulation* (20.2.75 NMAC). The proposed revisions will enable the New Mexico Environment Department’s Air Quality Bureau (“Bureau”) to effectively administer and implement the requirements of the federal Clean Air Act and New Mexico Air Quality Control Act.

The proposed revisions to 20.2.71 NMAC include increasing the annual dollar per ton to \$81 for each criteria pollutant and to \$250 per ton for hazardous air pollutants. The Bureau proposes to revise the fee pollutant definition to add “particulate matter 10 microns or less (PM10)” and “particulate matter 2.5 microns or less (PM2.5)”; and remove “total suspended particulate matter” and “mercury” from the definition. The Bureau also proposes to remove the cap of six thousand tons that can be assessed for a single facility; add a condition charging for only the higher of the two particulate matter emissions; and remove the obsolete mercury emission fee schedule.

The proposed revisions to 20.2.75 NMAC include increasing the filing fee to \$2,000 for each notice of intent registration, permit application to construct or modify a source, or revision of a permit. The Bureau proposes to increase the accelerated review filing fee to \$5,000. The Bureau also proposes to increase the point-based fee to 30 points for air dispersion modeling reviews and to 50 points for general construction permits for the oil and gas industry. The Bureau’s proposal will also set the individual fee point at \$510, which will continue to be adjusted annually by the consumer price index (CPI), while setting the annual fee at \$2,430, which will now be adjusted annually by the CPI.

Revisions to both rules also include new language preventing the annual CPI adjustment mechanism from negatively affecting revenues for years with no increase to the CPI; the option for electronic invoices and payments to facilitate payment of fees to the department; and language confirming the recovery of administrative compliance costs.

The proposed revisions are available on the [Air Quality Bureau’s website](#) or by contacting Armando Paz at 505-629-3242 or [Armando.paz@env.nm.gov](mailto:Armando.paz@env.nm.gov). **The Air Quality Bureau will be accepting comments on the proposed revisions via its [Public Comment Portal](#) through June 6, 2024.** Comments may also be made via email to [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov) through the conclusion of the public hearing.

For questions or additional information on the proposed revisions, please contact Armando Paz at 505-629-3242 or [Armando.paz@env.nm.gov](mailto:Armando.paz@env.nm.gov).

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La Junta de Mejora Ambiental de Nuevo México (“Junta”) llevará a cabo una audiencia pública híbrida (en persona y virtual) el 27 de junio de 2024 a las 9:00 a. m., y continuará bajo la dirección de la Junta, en el edificio del Capitolio del Estado de Nuevo México, Sala 321, 490 Old Santa Fe Trail, Santa Fe, Nuevo México 87505 y mediante videoconferencia. El propósito de la audiencia es considerar el asunto de [EIB 24-12 \(R\)](#), que son revisiones propuestas al Reglamento de Tarifas de Permisos de Operación (20.2.71 NMAC) y al Reglamento de Tarifas de Permisos de Construcción (20.2.75 NMAC). Las revisiones propuestas permitirán a la Oficina de Calidad del Aire del Departamento de Medio Ambiente de Nuevo México (“Oficina”) administrar e implementar de manera efectiva los requisitos de la Ley federal de Aire Limpio y la Ley de Control de Calidad del Aire de Nuevo

México.

Las revisiones propuestas a 20.2.71 NMAC incluyen aumentar el dólar anual por tonelada a \$81 para cada contaminante criterio y a \$250 por tonelada para contaminantes atmosféricos peligrosos. La Oficina propone revisar la definición de contaminante tarifario para agregar “materia particulada de 10 micrones o menos (PM<sub>10</sub>)” y “materia particulada de 2.5 micrones o menos (PM<sub>2.5</sub>)”; y eliminar de la definición el “total de materia particulada en suspensión” y el “mercurio”. La Oficina también propone eliminar el límite de seis mil toneladas que pueden evaluarse para una sola instalación; añadir una condición por la que únicamente se cobre la mayor de las dos emisiones de materia particulada; y eliminar el obsoleto programa de tarifas por emisiones de mercurio.

Las revisiones propuestas a 20.2.75 NMAC incluyen aumentar la tarifa de tramitación a \$2,000 por cada aviso de intención de registro, solicitud de un permiso de construcción, modificación de una fuente, o revisión de un permiso. La Oficina propone aumentar la tarifa de tramitación de revisión acelerada a \$5,000. La Oficina también propone aumentar la tarifa basada en puntos a 30 puntos para revisiones de modelos de dispersión del aire y a 50 puntos para permisos generales de construcción para la industria del petróleo y gas. La propuesta de la Oficina también fijará la tarifa individual en \$510, que continuará ajustándose anualmente según el índice de precios al consumidor (IPC), mientras que fija la tarifa anual en \$2,430, que ahora se ajustará anualmente según el IPC.

Las revisiones de ambas normas también incluyen una nueva redacción que impide que el mecanismo de ajuste anual del IPC afecte negativamente a los ingresos de años sin aumento del IPC; la opción de facturas y pagos electrónicos para facilitar el pago de tarifas al departamento; y lenguaje que confirme la recuperación de los costos de cumplimiento administrativo.

Las revisiones propuestas están disponibles en el [sitio web de la Oficina de Calidad del Aire](#) o comunicándose con Armando Paz llamando al 505-629-3242 o [Armando.paz@env.nm.gov](mailto:Armando.paz@env.nm.gov). La Oficina de Calidad del Aire aceptará comentarios sobre las revisiones propuestas a través de su [Portal de Comentarios Públicos](#) hasta el 6 de junio de 2024. También se pueden mandar comentarios por correo electrónico a [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov) hasta la conclusión de la audiencia pública.

Si tiene preguntas o información adicional sobre las revisiones propuestas, comuníquese con Armando Paz llamando al 505-629-3242 o [Armando.paz@env.nm.gov](mailto:Armando.paz@env.nm.gov).

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### Text

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING TO CONSIDER PROPOSED REPEAL AND REPLACEMENT OF 20.2.71 NMAC AND 20.2.75 NMAC The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on June 27, 2024 at 9:00 a.m., and continuing at the direction of the Board, in the NM State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87505. The purpose of the hearing is to consider the matter of EIB 24-12(R), proposed repeal and replacement of the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.71 NMAC (Operating Permit Emissions Fees) and 20.2.75 NMAC (Construction Permit Fees). The proponent of these regulatory repeals and replacements is the New Mexico Environment Department ("NMED"). The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC that would allow the NMED to recoup the reasonable costs of operating the NMED's Air Quality Bureau programs as required by the federal Clean Air Act and New Mexico Air Quality Control Act, respectively. The Environmental Improvement Act, Section 74-1-8(A)(4) NMSA 1978 and the Air Quality Control Act, Section 74-2-5 NMSA 1978 specifically authorize the Environmental Improvement Board to adopt rules that are necessary for air quality management as provided in the Air Quality Control Act. The proposed repeal and replacements are required by the State Records Center and Archives under 1.24.11.9(C) NMAC to meet current style and formatting requirements. The proposed repeal and replacement for 20.2.71 NMAC (Operating Permit Emissions Fees) will update the fee pollutant definition to add "particulate matter 10 microns or less (PM10)" and "particulate matter 2.5 microns or less (PM2.5)" and remove "total suspended particulate matter" and "mercury"; increase annual emissions fees to \$81.00 per ton for each fee pollutant and \$250.00 per ton of hazardous air pollutants; remove the cap of six thousand tons that can be assessed a charge; allow charging the fee for the higher of the two PM10 or PM2.5 emission rates to prevent double charging; remove the outdated mercury emission fee schedule; update annual Consumer Price Index (CPI) adjustments to prevent a decrease in revenues for years with no increase; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions.

Additionally, the proposed repeal and replacement will include updates to Section 3 of 20.2.71 NMAC to incorporate the New Mexico Legislature's statutory amendment to Paragraph (7) of Subsection B of 74-2-5 NMSA 1978. These increases will enable the NMED to comply with federal requirements to collect operating permit emissions fees sufficient to cover the reasonable costs of the Title V permitting program. The proposed repeal and replacement for 20.2.75 NMAC (Construction Permit Fees) will increase the filing fee to \$2000 for each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit; increase the accelerated review filing fee to \$5,000; update annual CPI adjustments to prevent a decrease in revenues for years with no increase; increase the point-based fee schedule value to 30 points for modeling review fees; increase the point-based value to 50 points separately for oil and gas general permits; increase the cost to the point-based value to \$510 per point; increase the annual fee to \$2,430; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions of up to \$15,000 per day. These increases will enable the NMED to comply with the Air Quality Control Act to collect sufficient fees to cover the reasonable costs of the construction permitting program and is considered a revision to the State Implementation Plan. The proposed fee increases will enable the NMED to comply with the federal Clean Air Act and New Mexico Air Quality Control Act requirements to collect sufficient fees to cover the reasonable costs of the air program and is considered a revision to the State Implementation Plan and Title V program. The proposed regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Santa Fe, New Mexico, on NMED's website at <https://www.env.nm.gov/opf/docketed-matters/>, or by contacting Armando Paz at 505-629-3242 or [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov). The hearing will be conducted in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality control Act Section 74-2-6 NMSA 1978, and other applicable procedures. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation. All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and 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 the person intends to present and state the qualifications of that 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 all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (5) Include the text of any recommended modifications to the proposed regulatory change. Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on June 6, 2024, and should reference the docket number, EIB 24-12(R) and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator Environmental Improvement Board P.O. Box 5469 Santa Fe, NM 87502; Phone (505) 660-4305; Fax (505) 827-2836; email: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov). 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 that testimony as 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. From now until the conclusion of the hearing, public comments will be received via electronic mail to or via physical

mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed. Persons having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than June 6, 2024 at (505) 660-4305 or [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov). The Board may make a decision on the proposed regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal. NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855 [nd.coordinator@env.nm.gov](mailto:nd.coordinator@env.nm.gov). If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination. Journal: April 7, 2024

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NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD  
NOTICE OF RULEMAKING HEARING TO CONSIDER PROPOSED REPEAL AND REPLACEMENT OF 20.2.71 NMAC AND 20.2.75 NMAC

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on June 27, 2024 at 9:00 a.m., and continuing at the direction of the Board, in the NM State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87505.

The purpose of the hearing is to consider the matter of EIB 24-12(R), proposed repeal and replacement of the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.71 NMAC (Operating Permit Emissions Fees) and 20.2.75 NMAC (Construction Permit Fees). The proponent of these regulatory repeals and replacements is the New Mexico Environment Department ("NMED"). The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC that would allow the NMED to recoup the reasonable costs of operating the NMED's Air Quality Bureau programs as required by the federal Clean Air Act and New Mexico Air Quality Control Act, respectively. The Environmental Improvement Act, Section 74-1-8(A)(4) NMSA 1978 and the Air Quality Control Act, Section 74-2-5 NMSA 1978 specifically authorize the Environmental Improvement Board to adopt rules that are necessary for air quality management as provided in the Air Quality Control Act.

The proposed repeal and replacements are required by the State Records Center and Archives under 1.24.11.9(C) NMAC to meet current style and formatting requirements. The proposed repeal and replacement for 20.2.71 NMAC (Operating Permit Emissions Fees) will update the fee pollutant definition to add "particulate matter 10 microns or less (PM10)" and "particulate matter 2.5 microns or less (PM2.5)" and remove "total suspended particulate matter" and "mercury"; increase annual emissions fees to \$81.00 per ton for each fee pollutant and \$25 0.00 per ton of hazardous air pollutants; remove the cap of six thousand tons that can be assessed a charge; allow charging the fee for the higher of the two PM10 or PM2.5 emission rates to prevent double charging; remove the outdated mercury emission fee schedule; update annual Consumer Price Index (CPI) adjustments to prevent a decrease in revenues for years with no increase; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions. Additionally, the proposed repeal and replacement will include updates to Section 3 of 20.2.71 NMAC to incorporate the New Mexico Legislature's statutory amendment to Paragraph (7) of Subsection B of 74-2-5 NMSA 1978. These increases will enable the NMED to comply with federal requirements to collect operating permit emissions fees sufficient to cover the reasonable costs of the Title V permitting program.

The proposed repeal and replacement for 20.2.75 NMAC (Construction Permit Fees) will increase the filing fee to \$2000 for each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit; increase the accelerated review filing fee to \$5,000; update annual CPI adjustments to prevent a decrease in revenues for years with no increase; increase the point-based fee schedule value to 30 points for modeling review fees; increase the point-based value to 50 points separately for oil and gas general permits; increase the cost to the point-based value to \$510 per point; increase the annual fee to \$2,430; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions of up to \$15,000 per

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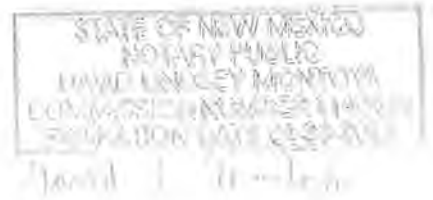
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and subscribed before me, a Notary Public, in and County of Bernalillo and State of New Mexico this ay of May of 2024 \$390.12

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long to the proposed regulatory change.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on June 6, 2024, and should reference the docket number, EIB 24-121H and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator Environmental Improvement Board P.O. Box 5488 Santa Fe, NM 87502; Phone (505) 860-4305; Fax (505) 827-2835; email: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

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The Board may make a decision on the proposed regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5488, Santa Fe, NM 87502, (505) 827-2855 [nd.coordinator@env.nm.gov](mailto:nd.coordinator@env.nm.gov).

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

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day. These increases will enable the NMED to comply with the Air Quality Control Act to collect sufficient fees to cover the reasonable costs of the construction permitting program and is considered a revision to the State Implementation Plan.

The proposed fee increases will enable the NMED to comply with the federal Clean Air Act and New Mexico Air Quality Control Act requirements to collect sufficient fees to cover the reasonable costs of the air program and is considered a revision to the State Implementation Plan and Title V program.

The proposed regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Santa Fe, New Mexico, on NMED's website at <https://www.env.nm.gov/oculated-matters/>, or by contacting Armando Paz at 505-629-3242 or [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

The hearing will be conducted in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act, Section 74-2-6 NMSA 1978, and other applicable procedures. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and 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 the person intends to present and state the qualifications of that 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 all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (5) include the text of any recommended modifications to the proposed regulatory change.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Board no later than 5:00 pm on June 6, 2024, and should reference the docket number, EIB 24-12(R) and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator Environmental Improvement Board P.O. Box 5468 Santa Fe, NM 87502; Phone (505) 660-4305; Fax (505) 627-2638; email: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

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 that testimony as 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.

From now until the conclusion of the hearing, public comments will be received via electronic mail to or via physical mail to Pamela Jones, P.O. Box 5468, 1120 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed.

Persons having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than June 6, 2024 at (505) 660-4305 or [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

The Board may make a decision on the proposed regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 46 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cadenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1120 St. Francis Dr., Suite 14050, P.O. Box 5468, Santa Fe, NM 87502, (505) 627-2638 [nc.coordinator@env.nm.gov](mailto:nc.coordinator@env.nm.gov).

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

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### Text

JUNTA DE MEJORA AMBIENTAL DE NUEVO MEXICO AVISO DE AUDIENCIA PARA LA ELABORACION DE NORMAS PARA CONSIDERAR LA PROPUESTA DE DEROGACION Y REEMPLAZO DE 20.2.71 NMAC Y 20.2.75 NMAC La Junta de Mejora Ambiental de Nuevo Mexico ("Junta") llevar a cabo una audiencia publica los dias 27 de junio de 2024, a las 9:00 a. m., y continuar segun lo disponga la Junta, en el edificio del Capitolio del Estado de Nuevo Mexico, Sala 321, 490 Old Santa Fe Trail, Santa Fe, Nuevo Mexico 87505. El proposito de la audiencia es considerar el asunto de EIB 24-12(R), propuesta de derogacion y reemplazo de las Regulaciones de Control de Calidad del Aire codificadas en el Cdigo Administrativo de Nuevo Mexico (NMAC, por sus siglas en ingles) en 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operacion) y 20.2.75 NMAC (Tarifas de Permisos de Construccin). El proponente de estas derogaciones y reemplazos regulatorios es el Departamento de Medio Ambiente de Nuevo Mexico ("NMED" por sus siglas en ingles). El proposito de la audiencia publica es considerar y tomar posibles medidas sobre la peticin del NMED para derogar y reemplazar 20.2.71 NMAC y 20.2.75 NMAC que permitira al NMED recuperar los costos razonables de operar los programas de la Oficina de Calidad del Aire del NMED segun lo exigen la Ley federal de Aire Limpio y la Ley de Control de Calidad del Aire de Nuevo Mexico, respectivamente. 20.2.71 NMAC autoriza la evaluacin de las tarifas anuales de permisos de operacin para financiar el programa del Ttulo V, de acuerdo con 40 CFR 70. 20.2.75 NMAC autoriza las tarifas anuales y de revisin de solicitudes de permisos de construccin para financiar el programa areo, de acuerdo con las Secciones 74 -2-7 y 74-2-15 NMSA 1978. La derogacin y los reemplazos propuestos son requeridos por el Centro de Registros y Archivos del Estado segun 1.24.11.9(C) NMAC para cumplir con los requisitos actuales de estilo y formato. Los aumentos de tarifas propuestos permitirn al NMED cumplir con los requisitos de la Ley de Aire Limpio federal y la Ley de Control de Calidad del Aire de Nuevo Mexico para recaudar tarifas suficientes para cubrir los costos razonables del programa de y se considera una revisin del Plan Estatal de Aplicacin y del programa del Ttulo V. La derogacin y reemplazo propuestos para 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operacin) actualizar la definicin de contaminante de la tarifa para aadir "materia particulada de 10 micras o menos (PM10)" y "materia particulada de 2.5 micras o menos (PM2.5)" y suprimir "total de materias particuladas" y

"mercurio"; aumentar las tarifas de emisiones anuales a \$81.00 por tonelada por cada contaminante tarifario y \$250.00 por tonelada de contaminantes atmosféricos peligrosos; eliminar el límite de seis mil toneladas que se puede cobrar por contaminante y sustituir por el cobro de la tarifa por el mayor de los dos índices de emisión de PM10 o PM2.5 para evitar el doble cobro; suprimir la tarifa obsoleta de las emisiones de mercurio; actualizar los ajustes anuales del índice de Precios al Consumidor (IPC) para evitar una disminución de los ingresos durante años sin aumento; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo. Además, la derogación y reemplazo propuestos incluirán actualizaciones de la Sección 3 de 20.2.71 NMAC para incorporar la enmienda estatutaria de la Legislatura de Nuevo México al Párrafo (7) de la Subsección B de 74-2-5 NMSA 1978. Estos aumentos permitirán al NMED cumplir con los requisitos federales para cobrar tarifas por emisiones de permisos de operación suficientes para cubrir los costos razonables del programa de permisos del Título V. La derogación y reemplazo propuestos para 20.2.75 NMAC (Tarifas de Permisos de Construcción) aumentar la tarifa de presentación a \$2000 por cada presentación de un aviso de intención, solicitud de un permiso para construir o modificar una fuente, o revisión de un permiso; aumentar la tarifa de presentación de revisión acelerada a \$5,000; actualizar los ajustes anuales del IPC para evitar una disminución de los ingresos durante años sin aumento; aumentar el valor de la lista de tarifas basada en puntos a 30 puntos para las tarifas de revisión de modelos; aumentar el valor basado en puntos a 50 puntos por separado para permisos generales de petróleo y gas; aumentar el costo al valor basado en puntos a \$510 por punto; aumentar la tarifa anual a \$2,430; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo de hasta \$15,000 por día. Estos aumentos permitirán al NMED cumplir con la Ley de Control de Calidad del Aire para recaudar tarifas suficientes para cubrir los costos razonables del programa de permisos de construcción y se considera una revisión del Plan de Implementación Estatal. Las regulaciones propuestas pueden revisarse durante el horario normal de oficina en la Oficina de Calidad del Aire de NMED, 525 Camino de los Marquez, Santa Fe, Nuevo México, en el sitio web de NMED en <https://www.env.nm.gov/opf/docketed-matters/> o comunicándose con Armando Paz llamando al 505-629-3242 o en [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov). La audiencia se llevará a cabo de conformidad con 20.1.1 NMAC Procedimientos de Elaboración de Normas Junta de Mejora Ambiental, la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire Sección 74-2-6 NMSA 1978 y otros procedimientos aplicables. La audiencia se llevará a cabo en un formato híbrido para permitir la participación tanto en persona como virtual. A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, opiniones y argumentos relevantes, de forma oral y por escrito, presentar pruebas instrumentales e interrogar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta una notificación por escrito de su intención de hacerlo. La notificación de intención deberá: (1) Identificar a la persona por quien los testigos testificarán; (2) Identificar cada testigo técnico que la persona pretende presentar y declarar las calificaciones del testigo, incluida una descripción de su historial académico y laboral; (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 prueba instrumental que se prevé ofrecer esa persona en la audiencia; y (5) Adjuntar el texto de cualquier modificación recomendada a las regulaciones nuevas y revisadas propuestas. Las notificaciones de intención de presentar testimonio técnico en la audiencia deben recibirse en la Oficina de la Junta a más tardar a las 5:00 p. m. del 6 de junio de 2024, y deben hacer referencia al número de expediente, EIB 24-12(R) y la fecha de la audiencia. Los avisos de intención de presentar testimonio técnico deberán enviarse a: Pamela Jones, administradora de la

Junta de Mejora Ambiental P.O. Box 5469 Santa Fe, Nuevo Mexico 87502; Telfono (505) 660-4305; Fax (505) 827-2836; correo electrnico: pamela.jones@env.nm.gov. Cualquier miembro del pblico en general podr testificar en la audiencia. No se requiere notificacin previa para presentar testimonios no tcnicos en la audiencia. Cualquiera de dichos miembros tambin podr ofrecer pruebas instrumentales en relacin con ese testimonio, siempre que la prueba instrumental no sea una repeticin excesiva del testimonio. El pblico en general que desee presentar una declaracin por escrito para que conste en acta, en lugar de proporcionar un testimonio oral en la audiencia, deber presentar la declaracin por escrito antes de la audiencia o presentarla durante la audiencia. Desde ahora hasta la conclusin de la audiencia, los comentarios pblicos se enviarn por correo electrnico o por correo postal a Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Los comentarios recibidos una vez concluida la audiencia no se tendrn en cuenta. Las personas con discapacidad que necesiten un lector, un amplificador, un intrprete de lenguaje de seas calificado o cualquier otra forma de ayuda o dispositivo auxiliar para asistir o participar en la audiencia deben comunicarse con Pamela Jones a ms tardar el 6 de junio de 2024 llamando al (505) 660-4305 o en pamela.jones@env.nm.gov. La Junta puede tomar una decisin sobre las regulaciones propuestas al concluir la audiencia, o la Junta puede convocar una reunin despus de la audiencia para considerar la accin sobre la propuesta. El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administracin de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinacin de los esfuerzos de cumplimiento y la recepcin de las consultas relativas a los requisitos de no discriminacin implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Ttulo VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Seccin 504 de la Ley de Rehabilitacin de 1973; la Ley de Discriminacin por Edad de 1975, el Ttulo IX de las Enmiendas de Educacin de 1972, y la Seccin 13 de las Enmiendas de la Ley Federal de Control de Contaminacin del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, polticas o procedimientos de no discriminacin del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Kate Cardenas, coordinadora de no discriminacin, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@env.nm.gov. Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con el Coordinador de No Discriminacin identificado anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cmo y dnde presentar una denuncia por discriminacin. Journal: April 7, 2024

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Bernadette Gonzales, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

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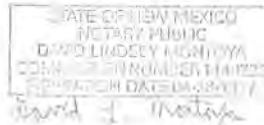


Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 13 day of May of 2024

PRICE \$434.03

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## Air Quality Bureau



**JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO**  
**AVISO DE AUDIENCIA PARA LA ELABORACIÓN DE NORMAS PARA CONSIDERAR LA PROPOSTA DE DEROGACIÓN Y REEMPLAZO DE 20.271 NMAC Y 20.275 NMAC**

La Junta de Mejora Ambiental de Nuevo México ("Junta") llevará a cabo una audiencia pública los días 27 de junio de 2024, a las 9:00 a. m., y continuará según lo disponga la Junta, en el edificio del Capitolio del Estado de Nuevo México, Sala 321, 490 Old Santa Fe Trail, Santa Fe, Nuevo México 87505.

El propósito de la audiencia es considerar el asunto de EIB 24-12(R), propuesta de derogación y reemplazo de las Regulaciones de Control de Calidad del Aire codificadas en el Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés) en 20.271 NMAC (Tarifas de Emisiones de Permisos de Operación) y 20.275 NMAC (Tarifas de Permisos de Construcción). El propósito de estas derogaciones y reemplazos regulados es el Departamento de Medio Ambiente de Nuevo México ("NMED" por sus siglas en inglés). El propósito de la audiencia pública es considerar y tomar decisiones medidas sobre la petición del NMED para derogar y reemplazar 20.271 NMAC y 20.275 NMAC por permisos al NMED recuperar los costos razonables de operar los programas de la Oficina de Calidad del Aire del NMED según lo exigen la Ley federal de Aire Limpio y la Ley de Control de Calidad del Aire de Nuevo México, respectivamente. 20.271 NMAC aumenta la evaluación de las tarifas anuales de permisos de operación para financiar el programa del Título V, de acuerdo con 40 CFR 70. 20.275 NMAC, autoriza las tarifas anuales y de revisión de solicitudes de permisos de construcción para financiar el programa aéreo, de acuerdo con las Secciones 74-2-7 y 74-2-15 NMSA 1979. La derogación y los reemplazos propuestos son requeridos por el Centro de Registros y Archivos del Estado según 124.11, 9(C) NMAC para cumplir con los requisitos actuales de estilo y formato. Los aumentos de tarifas propuestos permitirán al NMED cumplir con los requisitos de la Ley de Aire Limpio federal y la Ley de Control de Calidad del Aire de Nuevo México para recaudar tarifas suficientes para cubrir los costos razonables del programa de y se considera una revisión del Plan Estatal de Aplicación y del programa del Título V.

La derogación y reemplazo propuestos para 20.271 NMAC (Tarifas de Emisiones de Permisos de Operación) actualizarán la definición de contaminante de la tarifa para añadir "materia particulada de 10 micras o menos (PM10)" y "materia particulada de 2.5 micras o menos (PM2.5)" y asimismo "total de materias particuladas" y "mercado"; aumentar las tarifas de emisiones anuales a \$81.00 por tonelada por cada contaminante tóxico y \$250.00 por tonelada de contaminantes atmosféricos peligrosos; eliminar el límite de seis mil toneladas que se puede cobrar por contaminante y sustituir por el costo de la tarifa por el mayor de los dos índices de emisión de PM10 ó PM2.5 para evitar el doble cobro; suavizar la tarifa asociada de las emisiones de mercurio; actualizar los ajustes anuales del índice de Precios al Consumidor (IPC) para evitar una disminución de los ingresos durante años sin aumento; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo. Asimismo, la derogación y reemplazo propuestos incluirán actualizaciones de la Sección 3 de 20.271 NMAC para incorporar la enmienda estatutaria de la Legislatura de Nuevo México al Párrafo (7) de la Subsección B de la 74-2-5 NMSA 1979. Estos aumentos permitirán al NMED cumplir con los requisitos federales para cobrar tarifas por emisiones de permisos de operación suficientes para cubrir los costos razonables del programa de permisos del Título V.

La derogación y reemplazo propuestos para 20.275 NMAC (Tarifas de Permisos de Construcción) aumentará la tarifa de inscripción a \$6000 por cada presentación de un aviso de intención, solicitud de un permiso para construir o modificar una fuente, o revisión de un permiso; aumentar la tarifa de presentación de revisión acelerada a \$5,000; actualizar los ajustes anuales del IPC para evitar una disminución de los ingresos durante años sin aumento; aumentar el valor de la lista de tarifas basada en puntos a 30 puntos para las tarifas de revisión de modelos; aumentar el valor basado en puntos a 50 puntos por separado para permisos generados de pérdida y gas; aumentar el costo al valor basado en puntos a \$510 por xavo; aumentar la tarifa anual a \$2,430; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; añadir disposiciones de costos de cumplimiento administrativo de hasta \$15,000 por día. Estos aumentos permitirán al NMED cumplir con la Ley de Control de Calidad del Aire para recaudar tarifas suficientes para cubrir los costos razonables del programa de permisos de construcción y se considera una revisión del Plan de Implementación Estatal.

**IDAVIT OF PUBLICATION**  
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I, Gonzales, the undersigned, authorized Representative of the Albuquerque Journal, on this 13th day of May, 2024, do hereby certify that this newspaper is duly qualified to publish legal notices or advertisements within the provisions of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of as court cost; and that the notice, copy of which is hereto attached, was published in said newspaper on the regular daily edition, for 1 time(s) on the following date(s):

024

*[Signature]*

and subscribed before me, a Notary Public, in and County of Bernalillo and State of New Mexico this 13th day of May of 2024

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Las regulaciones propuestas pueden revisarse durante el horario normal de oficina en la Oficina de Calidad del Aire de NMED, 525 Camino de los Illegales, Santa Fe, Nuevo México, en el sitio web de NMED en <https://www.env.nm.gov/cpl/doc/ehed-matters/> o comunicándose con Armando Paz llamando al 505-629-3242 o en [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

La audiencia se llevará a cabo de conformidad con 20.1.1 IMAC Procedimientos de Elaboración de Normas Junta de Asesoría Ambiental, la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire Sección 74-1-8 NMSA 1978 y otros procedimientos aplicables. La audiencia se llevará a cabo en un formato híbrido para permitir la participación tanto en persona como virtual.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, opiniones y argumentos relevantes, de forma oral y por escrito, presentar pruebas instrumentales o informar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta una notificación por escrito de su intención de hacerlo. La notificación de intención deberá: (1) Identificar a la persona por quien los testigos testificarán; (2) Identificar cada testigo técnico que la persona pretende presentar y declarar las calificaciones del testigo, incluida una descripción de su historial académico y laboral; (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 prueba instrumental que se prevé ofrecerá esa persona en la audiencia; y (5) Adjuntar el texto de cualquier modificación recomendada a las regulaciones nuevas y revisadas propuestas.

Las notificaciones de intención de presentar testimonio técnico en la audiencia deben recibirse en la Oficina de la Junta a más tardar a las 5:00 p. m. del 6 de junio de 2024, y deben hacer referencia al número de expediente, EIB 24-12(R) y la fecha de la audiencia. Los avisos de intención de presentar testimonio técnico deberán enviarse a: Pamela Jones, administradora de la Junta de Mejora Ambiental P.O. Box 5469 Santa Fe, Nuevo México 87502; Teléfono (505) 660-4305; Fax (505) 827-2838; correo electrónico: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

Cualquier miembro del público en general podrá testificar en la audiencia. No se requiere notificación previa para presentar testimonios no técnicos en la audiencia. Cualquiera de dichos miembros también podrá ofrecer pruebas instrumentales en relación con ese testimonio, siempre que la prueba instrumental no sea una repetición excesiva del testimonio. El público en general que desee presentar una declaración por escrito para que conste en acta, en lugar de proporcionar un testimonio oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia o presentarla durante la audiencia.

Desde ahora hasta la conclusión de la audiencia, los comentarios públicos se enviarán por correo electrónico o por correo postal a Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Los comentarios recibidos una vez concluida la audiencia no se tendrán en cuenta.

Las personas con discapacidad que necesitan un lector, un amplificador, un intérprete de lenguaje de señas calificado o cualquier otra forma de ayuda o dispositivo auxiliar para asistir o participar en la audiencia deben comunicarse con Pamela Jones a más tardar el 6 de junio de 2024 llamando al (505) 660-4305 o en [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

La Junta puede tomar una decisión sobre las regulaciones propuestas al concluir la audiencia, o la Junta puede convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED es responsable de la continuación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975; el Título IX de las Enmiendas de Educación de 1972; y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Kate Cardenas, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2835, [coordinator@env.nm.gov](mailto:coordinator@env.nm.gov).

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con el Coordinador de No Discriminación identificado anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una denuncia por discriminación.

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se prevé ofrecerá esa persona en la audiencia; y (5) Adjuntar el rfo de cualquier modificación recomendada a las regulaciones nuevas y revisadas propuestas.

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## **Govt Public Notices**

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### **NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING TO CONSIDER PROPOSED REPEAL AND REPLACEMENT OF 20.2.71 NMAC AND 20.2.75 NMAC**

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on June 27, 2024 at 9:00 a.m., and continuing at the direction of the Board, in the NM State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87505. The purpose of the hearing is to consider the matter of EIB 24-12(R), proposed repeal and replacement of the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.71 NMAC (Operating Permit Emissions Fees) and 20.2.75 NMAC (Construction Permit Fees). The proponent of these regulatory repeals and replacements is the New Mexico Environment Department ("NMED"). The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC that would allow the NMED to recoup the reasonable costs of operating the NMED's Air Quality Bureau programs as required by the federal Clean Air Act and New Mexico Air Quality Control Act, respectively. The Environmental Improvement Act, Section 74-1-8(A)(4) NMSA 1978 and the Air Quality Control Act, Section 74-2-5 NMSA 1978 specifically authorize the Environmental Improvement Board to adopt rules that are necessary for air quality management as provided in the Air Quality Control Act.

The proposed repeal and replacements are required by the State Records Center and Archives under 1.24.11.9(C) NMAC to meet current style and formatting requirements. The proposed repeal and replacement for 20.2.71 NMAC (Operating Permit Emissions Fees) will update the fee pollutant definition to add "particulate matter 10 microns or less (PM10)" and "particulate matter 2.5 microns or less (PM2.5)" and remove "total suspended particulate matter" and "mercury"; increase annual emissions fees to \$81.00 per ton for

each fee pollutant and \$250.00 per ton of hazardous air pollutants; remove the cap of six thousand tons that can be assessed a charge; allow charging the fee for the higher of the two PM10 or PM2.5 emission rates to prevent double charging; remove the outdated mercury emission fee schedule; update annual Consumer Price Index (CPI) adjustments to prevent a decrease in revenues for years with no increase; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions. Additionally, the proposed repeal and replacement will include updates to Section 3 of 20.2.71 NMAC to incorporate the New Mexico

permit emissions fees sufficient to cover the reasonable costs of the Title V permitting program.

The proposed repeal and replacement for 20.2.75 NMAC (Construction Permit Fees) will increase the filing fee to \$2000 for each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit; increase the accelerated review filing fee to \$5,000; update annual CPI adjustments to prevent a decrease in revenues for years with no increase; increase the point-based fee schedule value to 30 points for modeling review fees; increase the point-based value to 50 points separately for oil and gas general permits; increase the cost to the point-based value to \$510 per point; increase the annual fee to \$2,430; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions of up to \$15,000 per day. These increases will enable the NMED to comply with the Air Quality Control Act to collect sufficient fees to cover the reasonable costs of the construction permitting program and is considered a revision to the State Implementation Plan.

The proposed fee increases will enable the NMED to comply with the federal Clean Air Act and New Mexico Air Quality Control Act requirements to collect sufficient fees to cover the reasonable costs of the air program and is considered a revision to the State Implementation Plan and Title V program.

The proposed regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Santa Fe, New Mexico, on NMED's website at <https://www.env.nm.gov/opf/docketed-matters/> , or by contacting Armando Paz at 505-629-3242 or [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

The hearing will be conducted in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality control Act Section 74-2-6 NMSA 1978, and other applicable procedures. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and 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 the person intends to present and state the qualifications of that 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 all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (5) Include the text of any recommended modifications to the proposed regulatory change.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on June 6, 2024, and should reference the docket number, EIB 24-12(R) and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator Environmental Improvement Board P.O. Box 5469 Santa Fe, NM 87502; Phone (505) 660-4305; Fax (505) 827-2836; email: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

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 that testimony as 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.

From now until the conclusion of the hearing, public comments will be received via electronic mail to or via physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed.

Persons having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than June 6, 2024 at (505) 660-4305 or [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

The Board may make a decision on the proposed regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855 [nd.coordinator@env.nm.gov](mailto:nd.coordinator@env.nm.gov).

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

4/7/2024 #10043417

## Govt Public Notices

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### JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO AVISO DE AUDIENCIA PARA LA ELABORACIÓN DE NORMAS PARA CONSIDERAR LA PROPUESTA DE DEROGACIÓN Y REEMPLAZO DE

#### 20.2.71 NMAC Y 20.2.75 NMAC

La Junta de Mejora Ambiental de Nuevo México ("Junta") llevará a cabo una audiencia pública los días 27 de junio de 2024, a las 9:00 a. m., y continuará según lo disponga la Junta, en el edificio del Capitolio del Estado de Nuevo México, Sala 321, 490 Old Santa Fe Trail, Santa Fe, Nuevo México 87505.

El propósito de la audiencia es considerar el asunto de EIB 24-12(R), propuesta de derogación y reemplazo de las Regulaciones de Control de Calidad del Aire codificadas en el Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés) en 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) y 20.2.75 NMAC (Tarifas de Permisos de Construcción). El proponente de estas derogaciones y reemplazos regulatorios es el Departamento de Medio Ambiente de Nuevo México ("NMED" por sus siglas en inglés). El propósito de la audiencia pública es considerar y tomar posibles medidas sobre la petición del NMED para derogar y reemplazar 20.2.71 NMAC y 20.2.75 NMAC que permitiría al NMED recuperar los costos razonables de operar los programas de la Oficina de Calidad del Aire del NMED según lo exigen la Ley federal de Aire Limpio y la Ley de Control de Calidad del Aire de Nuevo México, respectivamente. 20.2.71 NMAC autoriza la evaluación de las tarifas anuales de permisos de operación para financiar el programa del Título V, de acuerdo con 40 CFR 70. 20.2.75 NMAC autoriza las tarifas anuales y de revisión de solicitudes de permisos de construcción para financiar el programa aéreo, de acuerdo con las Secciones 74 -2-7 y 74-2-15 NMSA 1978. La derogación y los reemplazos propuestos son requeridos por el Centro de Registros y Archivos del Estado según 1.24.11.9(C) NMAC para cumplir con los requisitos actuales de estilo y formato. Los aumentos de tarifas propuestos permitirán al NMED cumplir con los requisitos de la Ley de Aire Limpio federal y la Ley de Control de Calidad del Aire de Nuevo México para recaudar tarifas suficientes para cubrir los costos razonables del programa de y se considera una revisión del Plan Estatal de Aplicación y del programa del Título V.

La derogación y reemplazo propuestos para 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) actualizará la definición de contaminante de la tarifa para añadir "materia particulada de 10 micras o menos (PM10)" y "materia particulada de 2.5 micras o menos (PM2.5)" y suprimir "total de materias particuladas" y "mercurio"; aumentar las tarifas de emisiones anuales a \$81.00 por tonelada por cada contaminante tarifario y NMED Exhibit 22

\$250.00 por tonelada de contaminantes atmosféricos peligrosos; eliminar el límite de seis mil toneladas que se puede cobrar por contaminante y sustituir por el cobro de la tarifa por el mayor de los dos índices de emisión de PM10 o PM2.5 para evitar el doble cobro; suprimir la tarifa obsoleta de las emisiones de mercurio; actualizar los ajustes anuales del Índice de Precios al Consumidor (IPC) para evitar una disminución de los ingresos durante años sin aumento; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo. Además, la derogación y reemplazo propuestos incluirán actualizaciones de la Sección 3 de 20.2.71 NMAC para incorporar la enmienda estatutaria de la Legislatura de Nuevo México al Párrafo (7) de la Subsección B de 74-2-5 NMSA 1978. Estos aumentos permitirán al NMED cumplir con los requisitos federales para cobrar tarifas por emisiones de permisos de operación suficientes para cubrir los costos razonables del programa de permisos del Título V.

La derogación y reemplazo propuestos para 20.2.75 NMAC (Tarifas de Permisos de Construcción) aumentará la tarifa de presentación a \$2000 por cada presentación de un aviso de intención, solicitud de un permiso para construir o modificar una fuente, o revisión de un permiso; aumentar la tarifa de presentación de revisión acelerada a \$5,000; actualizar los ajustes anuales del IPC para evitar una disminución de los ingresos durante años sin aumento; aumentar el valor de la lista de tarifas basada en puntos a 30 puntos para las tarifas de revisión de modelos; aumentar el valor basado en puntos a 50 puntos por separado para permisos generales de petróleo y gas; aumentar el costo al valor basado en puntos a \$510 por punto; aumentar la tarifa anual a \$2,430; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo de hasta \$15,000 por día. Estos aumentos permitirán al NMED cumplir con la Ley de Control de Calidad del Aire para recaudar tarifas suficientes para cubrir los costos razonables del programa de permisos de construcción y se considera una revisión del Plan de Implementación Estatal.

Las regulaciones propuestas pueden revisarse durante el horario normal de oficina en la Oficina de Calidad del Aire de NMED, 525 Camino de los Marquez, Santa Fe, Nuevo México, en el sitio web de NMED en <https://www.env.nm.gov/opf/docketed-matters/> o comunicándose con Armando Paz llamando al 505-629-3242 o en [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

La audiencia se llevará a cabo de conformidad con 20.1.1 NMAC Procedimientos de Elaboración de Normas Junta de Mejora Ambiental, la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire Sección 74-2-6 NMSA 1978 y otros procedimientos aplicables. La audiencia se llevará a cabo en un formato híbrido para permitir la participación tanto en persona como virtual.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, opiniones y argumentos relevantes, de forma oral y por escrito, presentar pruebas instrumentales e interrogar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta una notificación por escrito de su intención de hacerlo. La notificación de intención deberá: (1) Identificar a la persona por quien los testigos testificarán; (2) Identificar cada testigo técnico que la persona pretende presentar y declarar las calificaciones del testigo, incluida una

descripción de su historial académico y laboral; (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 prueba instrumental que se prevé ofrecerá esa persona en la audiencia; y (5) Adjuntar el texto de cualquier modificación recomendada a las regulaciones nuevas y revisadas propuestas.

Las notificaciones de intención de presentar testimonio técnico en la audiencia deben recibirse en la Oficina de la Junta a más tardar a las 5:00 p. m. del 6 de junio de 2024, y deben hacer referencia al número de expediente, EIB 24-12(R) y la fecha de la audiencia. Los avisos de intención de presentar testimonio técnico deberán enviarse a: Pamela Jones, administradora de la Junta de Mejora Ambiental P.O. Box 5469 Santa Fe, Nuevo México 87502; Teléfono (505) 660-4305; Fax (505) 827-2836; correo electrónico: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

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87502, (505) 827-2855, nd.coordinator@env.nm.gov.

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4/7/2024 #10043436

**PROOF OF PUBLICATION**

Jennifer Trujillo  
NM Environmental Dept. Air Quality Bureau  
525 Camino De Los Marquez # 1  
Santa Fe NM 87505-1816

STATE OF WISCONSIN, COUNTY OF BROWN

The Carlsbad Current Argus, a newspaper published in the city of Carlsbad, Eddy County, State of New Mexico, and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspapers in the issue:

04/07/2024

and that the fees charged are legal.  
Sworn to and subscribed before on 04/07/2024

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**Air Quality Bureau**

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KATHLEEN ALLEN  
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State of Wisconsin

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING TO CONSIDER PROPOSED REPEAL AND REPLACEMENT OF 20.2.71 NMAC AND 20.2.75 NMAC

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on June 27, 2024 at 9:00 a.m., and continuing at the direction of the Board, in the NM State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87505.

The purpose of the hearing is to consider the matter of EIB 24-12(R), proposed repeal and replacement of the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.71 NMAC (Operating Permit Emissions Fees) and 20.2.75 NMAC (Construction Permit Fees). The proponent of these regulatory repeals and replacements is the New Mexico Environment Department ("NMED"). The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC that would allow the NMED to recoup the reasonable costs of operating the NMED's Air Quality Bureau programs as required by the federal Clean Air Act and New Mexico Air Quality Control Act, respectively. The Environmental Improvement Act, Section 74-1-8(A)(4) NMSA 1978 and the Air Quality Control Act, Section 74-2-5 NMSA 1978 specifically authorize the Environmental Improvement Board to adopt rules that are necessary for air quality management as provided in the Air Quality Control Act.

The proposed repeal and replacements are required by the State Records Center and Archives under 1.24.11.9(C) NMAC to meet current style and formatting requirements. The proposed repeal and replacement for 20.2.71 NMAC (Operating Permit Emissions Fees) will update the fee pollutant definition to add "particulate matter 10 microns or less (PM10)" and "particulate matter 2.5 microns or less (PM2.5)" and remove "total suspended particulate matter" and "mercury"; increase annual emissions fees to \$81.00 per ton for each fee pollutant and \$250.00 per ton of hazardous air pollutants; remove the cap of six thousand tons that can be assessed a charge; allow charging the fee for the higher of the two PM10 or PM2.5 emission rates to prevent double charging; remove the outdated mercury emission fee schedule; update annual Consumer Price Index (CPI) adjustments to prevent a decrease in revenues for years with no increase; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions. Additionally, the proposed repeal and replacement will include updates to Section 3 of 20.2.71 NMAC to incorporate the New Mexico Legislature's statutory amendment to Paragraph (7) of Subsection B of 74-2-5 NMSA 1978. These increases will enable the NMED to comply with federal requirements to collect operating permit emissions fees sufficient to cover the reasonable costs of the Title V permitting program.

The proposed repeal and replacement for 20.2.75 NMAC (Construction Permit Fees) will increase the filing fee to \$2000 for each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit; increase the accelerated review filing fee to \$5,000; update annual CPI adjustments to prevent a decrease in revenues for years with no increase; increase the point-based fee schedule value to 30 points for modeling review fees; increase the point-based value to 50 points separately for oil and gas general permits; increase the cost to the point-based value to \$510 per point; increase the annual fee to \$2,430; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions of up to \$15,000 per day. These increases will enable the NMED to comply with the Air Quality Control Act to collect sufficient fees to cover the reasonable costs of the construction permitting program and is considered a revision to the State Implementation Plan.

The proposed fee increases will enable the NMED to comply with the federal Clean Air Act and New Mexico Air Quality Control Act requirements to collect sufficient fees to cover the reasonable costs of the air program and is considered a revision to the State Implementation Plan and Title V program.

The proposed regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de las Marquez, Santa Fe, New Mexico, on NMED's website at <https://www.env.nm.gov/opf/docketed-matters/>, or by contacting Armando Paz at 505-629-3242 or [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

The hearing will be conducted in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality control Act Section 74-2-6 NMSA 1978, and other applicable procedures. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and 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 the person intends to present and state the qualifications of that 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 all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (5) Include the text of any recommended modifications to the proposed regulatory change.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on June 6, 2024, and should reference

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the docket number, EIB 24-12(R) and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator Environmental Improvement Board P.O. Box 5469 Santa Fe, NM 87502; Phone (505) 660-4305; Fax (505) 827-2836; email: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

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 that testimony as 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.

From now until the conclusion of the hearing, public comments will be received via electronic mail to or via physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed.

Persons having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than June 6, 2024 at (505) 660-4305 or [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

The Board may make a decision on the proposed regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855 [nd.coordinator@env.nm.gov](mailto:nd.coordinator@env.nm.gov).

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

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**PROOF OF PUBLICATION**

Jennifer Trujillo  
NM Environmental Dept. Air Quality Bureau  
525 Camino De Los Marquez # 1  
Santa Fe NM 87505-1816

STATE OF WISCONSIN, COUNTY OF BROWN

The Carlsbad Current Argus, a newspaper published in the city of Carlsbad, Eddy County, State of New Mexico, and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspapers in the issue:

04/07/2024

and that the fees charged are legal.  
Sworn to and subscribed before on 04/07/2024

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**Air Quality Bureau**

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**JUNTA DE MEJORA AMBIENTAL DE NUEVO MEXICO AVISO DE AUDIENCIA PARA LA ELABORACIÓN DE NORMAS PARA CONSIDERAR LA PROPUESTA DE DEROGACIÓN Y REEMPLAZO DE 20.2.71 NMAC Y 20.2.75 NMAC**

La Junta de Mejora Ambiental de Nuevo México ("Junta") llevará a cabo una audiencia pública los días 27 de junio de 2024, a las 9:00 a. m., y continuará según lo disponga la Junta, en el edificio del Capitolio del Estado de Nuevo México, Sala 321, 490 Old Santa Fe Trail, Santa Fe, Nuevo México 87505.

El propósito de la audiencia es considerar el asunto de EIB 24-12(R), propuesta de derogación y reemplazo de las Regulaciones de Control de Calidad del Aire codificadas en el Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés) en 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) y 20.2.75 NMAC (Tarifas de Permisos de Construcción). El proponente de estas derogaciones y reemplazos regulatorios es el Departamento de Medio Ambiente de Nuevo México ("NMED" por sus siglas en inglés). El propósito de la audiencia pública es considerar y tomar posibles medidas sobre la petición del NMED para derogar y reemplazar 20.2.71 NMAC y 20.2.75 NMAC que permitiría al NMED recuperar los costos razonables de operar los programas de la Oficina de Calidad del Aire del NMED según lo exigen la Ley federal de Aire Limpio y la Ley de Control de Calidad del Aire de Nuevo México, respectivamente. 20.2.71 NMAC autoriza la evaluación de las tarifas anuales de permisos de operación para financiar el programa del Título V, de acuerdo con 40 CFR 70. 20.2.75 NMAC autoriza las tarifas anuales y de revisión de solicitudes de permisos de construcción para financiar el programa aéreo, de acuerdo con las Secciones 74-2-7 y 74-2-15 NMSA 1978. La derogación y los reemplazos propuestos son requeridos por el Centro de Registros y Archivos del Estado según 1.24.11.9(C) NMAC para cumplir con los requisitos actuales de estilo y formato. Los aumentos de tarifas propuestos permitirán al NMED cumplir con los requisitos de la Ley de Aire Limpio federal y la Ley de Control de Calidad del Aire de Nuevo México para recaudar tarifas suficientes para cubrir los costos razonables del programa de y se considera una revisión del Plan Estatal de Aplicación y del programa del Título V.

La derogación y reemplazo propuestos para 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) actualizará la definición de contaminante de la tarifa para añadir "materia particulada de 10 micras o menos (PM10)" y "materia particulada de 2.5 micras o menos (PM2.5)" y suprimir "total de materias particuladas" y "mercurio"; aumentar las tarifas de emisiones anuales a \$81.00 por tonelada por cada contaminante tarifario y \$250.00 por tonelada de contaminantes atmosféricos peligrosos; eliminar el límite de seis mil toneladas que se puede cobrar por contaminante y sustituir por el cobro de la tarifa por el mayor de los dos índices de emisión de PM10 o PM2.5 para evitar el doble cobro; suprimir la tarifa obsoleta de las emisiones de mercurio; actualizar los ajustes anuales del Índice de Precios al Consumidor (IPC) para evitar una disminución de los ingresos durante años sin aumento; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo. Además, la derogación y reemplazo propuestos incluirán actualizaciones de la Sección 3 de 20.2.71 NMAC para incorporar la enmienda estatutaria de la Legislatura de Nuevo México al Párrafo (7) de la Subsección B de 74-2-5 NMSA 1978. Estos aumentos permitirán al NMED cumplir con los requisitos federales para cobrar tarifas por emisiones de permisos de operación suficientes para cubrir los costos razonables del programa de permisos del Título V.

La derogación y reemplazo propuestos para 20.2.75 NMAC (Tarifas de Permisos de Construcción) aumentará la tarifa de presentación a \$2000 por cada presentación de un aviso de intención, solicitud de un permiso para construir o modificar una fuente, o revisión de un permiso; aumentar la tarifa de presentación de revisión acelerada a \$5,000; actualizar los ajustes anuales del IPC para evitar una disminución de los ingresos durante años sin aumento; aumentar el valor de la lista de tarifas basada en puntos a 30 puntos para las tarifas de revisión de modelos; aumentar el valor basado en puntos a 50 puntos por separado para permisos generales de petróleo y gas; aumentar el costo al valor basado en puntos a \$510 por punto; aumentar la tarifa anual a \$2,430; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo de hasta \$15,000 por día. Estos aumentos permitirán al NMED cumplir con la Ley de Control de Calidad del Aire para recaudar tarifas suficientes para cubrir los costos razonables del programa de permisos de construcción y se considera una revisión del Plan de Implementación Estatal.

Las regulaciones propuestas pueden revisarse durante el horario normal de oficina en la Oficina de Calidad del Aire de NMED, 525 Camino de los Marquez, Santa Fe, Nuevo México, en el sitio web de NMED en <https://www.env.nm.gov/opf/docketed-matters/> o comunicándose con Armando Paz llamando al 505-629-3242 o en [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

La audiencia se llevará a cabo de conformidad con 20.1.1 NMAC Procedimientos de Elaboración de Normas Junta de Mejora Ambiental, la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire Sección 74-2-6 NMSA 1978 y otros procedimientos aplicables. La audiencia se llevará a cabo en un formato híbrido para permitir la participación tanto en persona como virtual.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, opiniones y argumentos relevantes, de forma oral y por escrito, presentar pruebas instrumentales e interrogar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta una

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notificación por escrito de su intención de hacerlo. La notificación de intención deberá: (1) Identificar a la persona por quien los testigos testificarán; (2) Identificar cada testigo técnico que la persona pretende presentar y declarar las calificaciones del testigo, incluida una descripción de su historial académico y laboral; (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 prueba instrumental que se prevé ofrecerá esa persona en la audiencia; y (5) Adjuntar el texto de cualquier modificación recomendada a las regulaciones nuevas y revisadas propuestas.

Las notificaciones de intención de presentar testimonio técnico en la audiencia deben recibirse en la Oficina de la Junta a más tardar a las 5:00 p. m. del 6 de junio de 2024, y deben hacer referencia al número de expediente, EIB 24-12(R) y la fecha de la audiencia. Los avisos de intención de presentar testimonio técnico deberán enviarse a: Pamela Jones, administradora de la Junta de Mejora Ambiental P.O. Box 5469 Santa Fe, Nuevo México 87502; Teléfono (505) 660-4305; Fax (505) 827-2836; correo electrónico: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

Cualquier miembro del público en general podrá testificar en la audiencia. No se requiere notificación previa para presentar testimonios no técnicos en la audiencia. Cualquiera de dichos miembros también podrá ofrecer pruebas instrumentales en relación con ese testimonio, siempre que la prueba instrumental no sea una repetición excesiva del testimonio. El público en general que desee presentar una declaración por escrito para que conste en acta, en lugar de proporcionar un testimonio oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia o presentarla durante la audiencia. Desde ahora hasta la conclusión de la audiencia, los comentarios públicos se enviarán por correo electrónico o por correo postal a Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Los comentarios recibidos una vez concluida la audiencia no se tendrán en cuenta.

Las personas con discapacidad que necesiten un lector, un amplificador, un intérprete de lenguaje de señas calificado o cualquier otra forma de ayuda o dispositivo auxiliar para asistir o participar en la audiencia deben comunicarse con Pamela Jones a más tardar el 6 de junio de 2024 llamando al (505) 660-4305 o en [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

La Junta puede tomar una decisión sobre las regulaciones propuestas al concluir la audiencia, o la Junta puede convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972, y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Kate Cardenas, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, [nd.coordinator@env.nm.gov](mailto:nd.coordinator@env.nm.gov).

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con el Coordinador de No Discriminación identificado anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una denuncia por discriminación.

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## Public Notices

Originally published at [daily-times.com](https://daily-times.com) on 04/07/2024

### NEW MEXICO

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#### ENVIRONMENTAL IMPROVEMENT BOARD NOTICE

#### OF RULEMAKING HEARING TO CONSIDER PROPOSED REPEAL AND REPLACEMENT OF 20.2.71 NMAC AND 20.2.75 NMAC

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increases will enable the NMED to comply with federal requirements to collect operating permit emissions fees sufficient to cover the reasonable costs of the Title V permitting program.

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The hearing will be conducted in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality control Act Section 74-2-6 NMSA 1978, and other applicable procedures. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation.

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Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on June 6, 2024, and should reference the docket number, EIB 24-12(R) and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator

Environmental Improvement Board P.O. Box 5469 Santa Fe, NM 87502; Phone (505) 660-23

4305; Fax (505) 827-2836; email: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

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April 7,2024 10043250

## **Public Notices**

Originally published at [daily-times.com](https://daily-times.com) on 04/07/2024

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### **JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO AVISO DE AUDIENCIA PARA LA ELABORACIÓN DE NORMAS PARA CONSIDERAR LA PROPUESTA DE DEROGACIÓN Y REEMPLAZO DE**

#### **20.2.71 NMAC Y 20.2.75 NMAC**

La Junta de Mejora Ambiental de Nuevo México ("Junta") llevará a cabo una audiencia pública los días 27 de junio de 2024, a las 9:00 a. m., y continuará según lo disponga la Junta, en el edificio del Capitolio del Estado de Nuevo México, Sala 321, 490 Old Santa Fe Trail, Santa Fe, Nuevo México 87505.

El propósito de la audiencia es considerar el asunto de EIB 24-12(R), propuesta de derogación y reemplazo de las Regulaciones de Control de Calidad del Aire codificadas en el Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés) en 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) y 20.2.75 NMAC (Tarifas de Permisos de Construcción). El proponente de estas derogaciones y reemplazos regulatorios es el Departamento de Medio Ambiente de Nuevo México ("NMED" por sus siglas en inglés). El propósito de la audiencia pública es considerar y tomar posibles medidas sobre la petición del NMED para derogar y reemplazar 20.2.71 NMAC y 20.2.75 NMAC que permitiría al NMED recuperar los costos razonables de operar los programas de la Oficina de Calidad del Aire del NMED según lo exigen la Ley federal de Aire Limpio y la Ley de Control de Calidad del Aire de Nuevo México, respectivamente. 20.2.71 NMAC autoriza la evaluación de las tarifas anuales de permisos de operación para financiar el programa del Título V, de acuerdo con 40 CFR 70. 20.2.75 NMAC autoriza las tarifas anuales y de revisión de solicitudes de permisos de construcción para financiar el programa aéreo, de acuerdo con las Secciones 74 -2-7 y 74-2-15 NMSA 1978. La derogación y los reemplazos propuestos son requeridos por el Centro de Registros y Archivos del Estado según 1.24.11.9(C) NMAC para cumplir con los requisitos actuales de estilo y formato. Los aumentos de tarifas propuestos permitirán al NMED cumplir con los requisitos de la Ley de Aire Limpio federal y la Ley de Control de Calidad del Aire de Nuevo México para recaudar tarifas suficientes para cubrir los costos razonables del programa de y se considera una revisión del Plan Estatal de Aplicación y del programa del Título V.

La derogación y reemplazo propuestos para 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) actualizará la definición de contaminante de la tarifa para añadir "materia particulada de 10 micras o menos (PM10)" y "materia particulada de 2.5 micras o menos (PM2.5)" y suprimir "total de materias particuladas" y "mercurio"; aumentar las tarifas de emisiones anuales a \$81.00 por tonelada por cada contaminante tarifario y

\$250.00 por tonelada de contaminantes atmosféricos peligrosos; eliminar el límite de seis mil toneladas que se puede cobrar por contaminante y sustituir por el cobro de la tarifa por el mayor de los dos índices de emisión de PM10 o PM2.5 para evitar el doble cobro; suprimir la tarifa obsoleta de las emisiones de mercurio; actualizar los ajustes anuales del Índice de Precios al Consumidor (IPC) para evitar una disminución de los ingresos durante años sin aumento; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo. Además, la derogación y reemplazo propuestos incluirán actualizaciones de la Sección 3 de 20.2.71 NMAC para incorporar la enmienda estatutaria de la Legislatura de Nuevo México al Párrafo (7) de la Subsección B de 74-2-5 NMSA 1978. Estos aumentos permitirán al NMED cumplir con los requisitos federales para cobrar tarifas por emisiones de permisos de operación suficientes para cubrir los costos razonables del programa de permisos del Título V.

La derogación y reemplazo propuestos para 20.2.75 NMAC (Tarifas de Permisos de Construcción) aumentará la tarifa de presentación a \$2000 por cada presentación de un aviso de intención, solicitud de un permiso para construir o modificar una fuente, o revisión de un permiso; aumentar la tarifa de presentación de revisión acelerada a \$5,000; actualizar los ajustes anuales del IPC para evitar una disminución de los ingresos durante años sin aumento; aumentar el valor de la lista de tarifas basada en puntos a 30 puntos para las tarifas de revisión de modelos; aumentar el valor basado en puntos a 50 puntos por separado para permisos generales de petróleo y gas; aumentar el costo al valor basado en puntos a \$510 por punto; aumentar la tarifa anual a \$2,430; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo de hasta \$15,000 por día. Estos aumentos permitirán al NMED cumplir con la Ley de Control de Calidad del Aire para recaudar tarifas suficientes para cubrir los costos razonables del programa de permisos de construcción y se considera una revisión del Plan de Implementación Estatal.

Las regulaciones propuestas pueden revisarse durante el horario normal de oficina en la Oficina de Calidad del Aire de NMED, 525 Camino de los Marquez, Santa Fe, Nuevo México, en el sitio web de NMED en <https://www.env.nm.gov/opf/docketed-matters/> o comunicándose con Armando Paz llamando al 505-629-3242 o en [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

La audiencia se llevará a cabo de conformidad con 20.1.1 NMAC Procedimientos de Elaboración de Normas Junta de Mejora Ambiental, la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire Sección 74-2-6 NMSA 1978 y otros procedimientos aplicables. La audiencia se llevará a cabo en un formato híbrido para permitir la participación tanto en persona como virtual.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, opiniones y argumentos relevantes, de forma oral y por escrito, presentar pruebas instrumentales e interrogar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta una notificación por escrito de su intención de hacerlo. La notificación de intención deberá: (1) Identificar a la persona por quien los testigos testificarán; (2) Identificar cada testigo técnico que la persona pretende presentar y declarar las calificaciones del testigo, incluida una

descripción de su historial académico y laboral; (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 prueba instrumental que se prevé ofrecerá esa persona en la audiencia; y (5) Adjuntar el texto de cualquier modificación recomendada a las regulaciones nuevas y revisadas propuestas.

Las notificaciones de intención de presentar testimonio técnico en la audiencia deben recibirse en la Oficina de la Junta a más tardar a las 5:00 p. m. del 6 de junio de 2024, y deben hacer referencia al número de expediente, EIB 24-12(R) y la fecha de la audiencia. Los avisos de intención de presentar testimonio técnico deberán enviarse a: Pamela Jones, administradora de la Junta de Mejora Ambiental P.O. Box 5469 Santa Fe, Nuevo México 87502; Teléfono (505) 660-4305; Fax (505) 827-2836; correo electrónico: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

Cualquier miembro del público en general podrá testificar en la audiencia. No se requiere notificación previa para presentar testimonios no técnicos en la audiencia. Cualquiera de dichos miembros también podrá ofrecer pruebas instrumentales en relación con ese testimonio, siempre que la prueba instrumental no sea una repetición excesiva del testimonio. El público en general que desee presentar una declaración por escrito para que conste en acta, en lugar de proporcionar un testimonio oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia o presentarla durante la audiencia.

Desde ahora hasta la conclusión de la audiencia, los comentarios públicos se enviarán por correo electrónico o por correo postal a Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Los comentarios recibidos una vez concluida la audiencia no se tendrán en cuenta.

Las personas con discapacidad que necesiten un lector, un amplificador, un intérprete de lenguaje de señas calificado o cualquier otra forma de ayuda o dispositivo auxiliar para asistir o participar en la audiencia deben comunicarse con Pamela Jones a más tardar el 6 de junio de 2024 llamando al (505) 660-4305 o en [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

La Junta puede tomar una decisión sobre las regulaciones propuestas al concluir la audiencia, o la Junta puede convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972, y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Kate Cardenas, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM

87502, (505) 827-2855, nd.coordinator@env.nm.gov.

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con el Coordinador de No Discriminación identificado anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una denuncia por discriminación.

April 7, 2024 10043288

**PROOF OF PUBLICATION**

Nm Environment Dept-Air Quality B  
Nm Environment Dept-Air Quality Bureau  
525 Camino De Los Marquez Suite 1  
Santa Fe NM 87505

STATE OF WISCONSIN, COUNTY OF BROWN

The Farmington Daily Times, a daily newspaper published in the city of Farmington, San Juan County, State of New Mexico, and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspapers in the issue:

04/07/2024

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NEW MEXICO  
ENVIRONMENTAL  
IMPROVEMENT BOARD  
NOTICE  
OF RULEMAKING  
HEARING TO CONSIDER  
PROPOSED REPEAL  
AND REPLACEMENT OF  
20.2.71 NMAC AND 20.2.75  
NMAC

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on June 27, 2024 at 9:00 a.m., and continuing at the direction of the Board, in the NM State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87505.

The purpose of the hearing is to consider the matter of EIB 24-12(R), proposed repeal and replacement of the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.71 NMAC (Operating Permit Emissions Fees) and 20.2.75 NMAC (Construction Permit Fees). The proponent of these regulatory repeals and replacements is the New Mexico Environment Department ("NMED"). The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC that would allow the NMED to recoup the reasonable costs of operating the NMED's Air Quality Bureau programs as required by the federal Clean Air Act and New Mexico Air Quality Control Act, respectively. The Environmental Improvement Act, Section 74-1-8(A) (4) NMSA 1978 and the Air Quality Control Act, Section 74-2-5 NMSA 1978 specifically authorize the Environmental Improvement Board to adopt rules that are necessary for air quality management as provided in the Air Quality Control Act.

The proposed repeal and replacements are required by the State Records Center and Archives under 1.24.11.9(C) NMAC to meet current style and formatting requirements. The proposed repeal and replacement for 20.2.71 NMAC (Operating Permit Emissions Fees) will update the fee pollutant definition to add "particulate matter 10 microns or less (PM10)" and "particulate matter 2.5 microns or less (PM2.5)" and remove "total suspended particulate matter" and "mercury"; increase annual emissions fees to \$81.00 per ton for each fee pollutant and \$250.00 per ton of hazardous air pollutants; remove the cap of six thousand tons that can be assessed a charge; allow charging the fee for the higher of the two PM10 or PM2.5 emission rates to prevent double charging; remove the outdated mercury emission fee schedule; update annual Consumer Price Index (CPI) adjustments to prevent a decrease in revenues for years with no increase; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions. Additionally, the proposed repeal and replacement will include updates to Section 3 of 20.2.71 NMAC to incorporate the New Mexico Legislature's statutory amendment to Para-

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graph (7) of Subsection B of 74-2-5 NMSA 1978. These increases will enable the NMED to comply with federal requirements to collect operating permit emissions fees sufficient to cover the reasonable costs of the Title V permitting program.

The proposed repeal and replacement for 20.2.75 NMAC (Construction Permit Fees) will increase the filing fee to \$2000 for each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit; increase the accelerated review filing fee to \$5,000; update annual CPI adjustments to prevent a decrease in revenues for years with no increase; increase the point-based fee schedule value to 30 points for modeling review fees; increase the point-based value to 50 points separately for oil and gas general permits; increase the cost to the point-based value to \$510 per point; increase the annual fee to \$2,430; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions of up to \$15,000 per day. These increases will enable the NMED to comply with the Air Quality Control Act to collect sufficient fees to cover the reasonable costs of the construction permitting program and is considered a revision to the State Implementation Plan.

The proposed fee increases will enable the NMED to comply with the federal Clean Air Act and New Mexico Air Quality Control Act requirements to collect sufficient fees to cover the reasonable costs of the air program and is considered a revision to the State Implementation Plan and Title V program.

The proposed regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Santa Fe, New Mexico, on NMED's website at <https://www.env.nm.gov/opf/docketed-matters/>, or by contacting Armando Paz at 505-629-3242 or [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

The hearing will be conducted in accordance with 20.1.1 NMAC Rule-making Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 74-2-6 NMSA 1978, and other applicable procedures. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and 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 the person intends to present and state the qualifications of that witness, including a description of their education and work background;

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(3) Include a copy of the direct testimony of each technical witness in narrative form; (4) List and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (5) Include the text of any recommended modifications to the proposed regulatory change.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on June 6, 2024, and should reference the docket number, EIB 24-12(R) and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator, Environmental Improvement Board P.O. Box 5469 Santa Fe, NM 87502; Phone (505) 660-4305; Fax (505) 827-2836; email: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

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 that testimony as 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.

From now until the conclusion of the hearing, public comments will be received via electronic mail to or via physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed.

Persons having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than June 6, 2024 at (505) 660-4305 or [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

The Board may make a decision on the proposed regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may

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contact: Kate Cardenas,  
Non-Discrimination Coordi-  
nator, New Mexico Envi-  
ronment Department, 1190  
St. Francis Dr., Suite  
N4050, P.O. Box 5469, Santa  
Fe, NM 87502, (505) 827-  
2855  
nd.coordinator@env.nm.go  
v.

If you believe that you  
have been discriminated  
against with respect to a  
NMED program or activ-  
ity, you may contact the  
Non-Discrimination Coordi-  
nator identified above or  
visit our website at  
<https://www.env.nm.gov/no-n-employee-discrimination-complaint-page/> to learn  
how and where to file a  
complaint of discrimina-  
tion.

April 7, 2024 10043250

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Nm Environment Dept-Air Quality B  
Nm Environment Dept-Air Quality Bureau  
525 Camino De Los Marquez Suite 1  
Santa Fe NM 87505

STATE OF WISCONSIN, COUNTY OF BROWN

The Farmington Daily Times, a daily newspaper published in the city of Farmington, San Juan County, State of New Mexico, and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspapers in the issue:


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JUNTA DE MEJORA  
AMBIENTAL DE NUEVO  
MÉXICO AVISO DE  
AUDIENCIA PARA LA  
ELABORACIÓN DE  
NORMAS PARA CONSID-  
ERAR LA PROPUESTA  
DE DEROGACIÓN Y  
REEMPLAZO DE  
20.2.71 NMAC Y 20.2.75  
NMAC

La Junta de Mejora Ambiental de Nuevo México ("Junta") llevará a cabo una audiencia pública los días 27 de junio de 2024, a las 9:00 a. m., y continuará según lo disponga la Junta, en el edificio del Capitolio del Estado de Nuevo México, Sala 321, 490 Old Santa Fe Trail, Santa Fe, Nuevo México 87505.

El propósito de la audiencia es considerar el asunto de EIB 24-12(R), propuesta de derogación y reemplazo de las Regulaciones de Control de Calidad del Aire codificadas en el Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés) en 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) y 20.2.75 NMAC (Tarifas de Permisos de Construcción). El proponente de estas derogaciones y reemplazos regulatorios es el Departamento de Medio Ambiente de Nuevo México ("NMED" por sus siglas en inglés). El propósito de la audiencia pública es considerar y tomar posibles medidas sobre la petición del NMED para derogar y reemplazar 20.2.71 NMAC y 20.2.75 NMAC que permitiría al NMED recuperar los costos razonables de operar los programas de la Oficina de Calidad del Aire del NMED según la exigen la Ley federal de Aire Limpio y la Ley de Control de Calidad del Aire de Nuevo México, respectivamente. 20.2.71 NMAC autoriza la evaluación de las tarifas anuales de permisos de operación para financiar el programa del Título V, de acuerdo con 40 CFR 70. 20.2.75 NMAC autoriza las tarifas anuales y de revisión de solicitudes de permisos de construcción para financiar el programa aéreo, de acuerdo con las Secciones 74-2-7 y 74-2-15 NMSA 1978. La derogación y los reemplazos propuestos son requeridos por el Centro de Registros y Archivos del Estado según 1.24.11.9(C) NMAC para cumplir con los requisitos actuales de estilo y formato. Los aumentos de tarifas propuestos permitirán al NMED cumplir con los requisitos de la Ley de Aire Limpio federal y la Ley de Control de Calidad del Aire de Nuevo México para recaudar tarifas suficientes para cubrir los costos razonables del programa de y se considerará una revisión del Plan Estatal de Aplicación y del programa del Título V. La derogación y reemplazo propuestos para 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) actualizará la definición de contaminante de la tarifa para añadir "materia particulada de 10 micras o menos (PM10)" y "materia particulada de 2.5 micras o menos (PM2.5)" y suprimir "total de materias particuladas" y "mercurio"; aumentar las tarifas de emisiones anuales a \$81.00 por tonelada por cada contaminante tarifario y \$250.00 por tonelada de contami-

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nantes atmosféricos peligrosos; eliminar el límite de seis mil toneladas que se puede cobrar por contaminante y sustituir por el cobro de la tarifa por el mayor de los dos índices de emisión de PM10 o PM2.5 para evitar el doble cobro; suprimir la tarifa obsoleta de las emisiones de mercurio; actualizar los ajustes anuales del Índice de Precios al Consumidor (IPC) para evitar una disminución de los ingresos durante años sin aumento; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo. Además, la derogación y reemplazo propuestas incluirán actualizaciones de la Sección 3 de 20.2.71 NMAC para incorporar la enmienda estatutaria de la Legislatura de Nuevo México al Párrafo (7) de la Subsección B de 74-2-5 NMSA 1978. Estos aumentos permitirán al NMED cumplir con los requisitos federales para cobrar tarifas por emisiones de permisos de operación suficientes para cubrir los costos razonables del programa de permisos del Título V. La derogación y reemplazo propuestos para 20.2.75 NMAC (Tarifas de Permisos de Construcción) aumentará la tarifa de presentación a \$2000 por cada presentación de un aviso de intención, solicitud de un permiso para construir o modificar una fuente, o revisión de un permiso; aumentar la tarifa de presentación de revisión acelerada a \$5,000; actualizar los ajustes anuales del IPC para evitar una disminución de los ingresos durante años sin aumento; aumentar el valor de la lista de tarifas basada en puntos a 30 puntos para las tarifas de revisión de modelos; aumentar el valor basado en puntos a 50 puntos por separado para permisos generales de petróleo y gas; aumentar el costo al valor basado en puntos a \$510 por punto; aumentar la tarifa anual a \$2,430; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo de hasta \$15,000 por día. Estos aumentos permitirán al NMED cumplir con la Ley de Control de Calidad del Aire para recaudar tarifas suficientes para cubrir los costos razonables del programa de permisos de construcción y se considera una revisión del Plan de Implementación Estatal. Las regulaciones propuestas pueden revisarse durante el horario normal de oficina en la Oficina de Calidad del Aire de NMED, 525 Camino de los Marquez, Santa Fe, Nuevo México, en el sitio web de NMED en <https://www.env.nm.gov/opf/docketed-matters/> o comunicándose con Armando Paz llamando al 505-629-3242 o en [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov). La audiencia se llevará a cabo de conformidad con 20.1.1 NMAC Procedimientos de Elaboración de Normas Junta de Mejora Ambiental, la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire Sección 74-2-6 NMSA

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1978 y otros procedimientos aplicables. La audiencia se llevará a cabo en un formato híbrido para permitir la participación tanto en persona como virtual.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, opiniones y argumentos relevantes, de forma oral y por escrito, presentar pruebas instrumentales e interrogar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta una notificación por escrito de su intención de hacerlo. La notificación de intención deberá: (1) Identificar a la persona por quien los testigos testificarán; (2) Identificar cada testigo técnico que la persona pretende presentar y declarar las calificaciones del testigo, incluida una descripción de su historial académico y laboral; (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 prueba instrumental que se prevé ofrecerá esa persona en la audiencia; y (5) Adjuntar el texto de cualquier modificación recomendada a las regulaciones nuevas y revisadas propuestas.

Las notificaciones de intención de presentar testimonio técnico en la audiencia deben recibirse en la Oficina de la Junta a más tardar a las 5:00 p. m. del 6 de junio de 2024, y deben hacer referencia al número de expediente, EIB 24-12(R) y la fecha de la audiencia. Los avisos de intención de presentar testimonio técnico deberán enviarse a: Pamela Jones, administradora de la Junta de Mejora Ambiental P.O. Box 5469 Santa Fe, Nuevo México 87502; Teléfono (505) 660-4305; Fax (505) 827-2836; correo electrónico:

pamela.jones@env.nm.gov. Cualquier miembro del público en general podrá testificar en la audiencia. No se requiere notificación previa para presentar testimonios no técnicos en la audiencia. Cualquiera de dichos miembros también podrá ofrecer pruebas instrumentales en relación con ese testimonio, siempre que la prueba instrumental no sea una repetición excesiva del testimonio. El público en general que desee presentar una declaración por escrito para que conste en acta, en lugar de proporcionar un testimonio oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia o presentarla durante la audiencia.

Desde ahora hasta la conclusión de la audiencia, los comentarios públicos se enviarán por correo electrónico o por correo postal a Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Los comentarios recibidos una vez concluida la audiencia no se tendrán en cuenta.

Las personas con discapacidad que necesiten un lector, un amplificador, un intérprete de lenguaje de señas calificado o cualquier otra forma de ayuda o dispositivo auxiliar para asistir o participar en la audiencia deben

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comunicarse con Pamela Jones a más tardar el 6 de junio de 2024 llamando al (505) 660-4305 o en [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov). La Junta puede tomar una decisión sobre las regulaciones propuestas al concluir la audiencia, o la Junta puede convocar una reunión después de la audiencia para considerar la acción sobre la propuesta. El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972, y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Kate Cardenas, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, [nd.coordinator@env.nm.gov](mailto:nd.coordinator@env.nm.gov).

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con el Coordinador de No Discriminación identificado anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/no-n-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una denuncia por discriminación.

April 7, 2024 10043288

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**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING  
TO CONSIDER PROPOSED REPEAL AND REPLACEMENT OF 20.2.71 NMAC AND 20.2.75 NMAC**

The New Mexico Environmental Improvement Board (“Board”) will hold a public hearing on June 27, 2024 at 9:00 a.m., and continuing at the direction of the Board, in the NM State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87505.

The purpose of the hearing is to consider the matter of EIB 24-12(R), proposed repeal and replacement of the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.71 NMAC (Operating Permit Emissions Fees) and 20.2.75 NMAC (Construction Permit Fees). The proponent of these regulatory repeals and replacements is the New Mexico Environment Department (“NMED”). The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC that would allow the NMED to recoup the reasonable costs of operating the NMED’s Air Quality Bureau programs as required by the federal Clean Air Act and New Mexico Air Quality Control Act, respectively. The Environmental Improvement Act, Section 74-1-8(A)(4) NMSA 1978 and the Air Quality Control Act, Section 74-2-5 NMSA 1978 specifically authorize the Environmental Improvement Board to adopt rules that are necessary for air quality management as provided in the Air Quality Control Act.

The proposed repeal and replacements are required by the State Records Center and Archives under 1.24.11.9(C) NMAC to meet current style and formatting requirements. The proposed repeal and replacement for 20.2.71 NMAC (Operating Permit Emissions Fees) will update the fee pollutant definition to add “particulate matter 10 microns or less (PM<sub>10</sub>)” and “particulate matter 2.5 microns or less (PM<sub>2.5</sub>)” and remove “total suspended particulate matter” and “mercury”; increase annual emissions fees to \$81.00 per ton for each fee pollutant and \$250.00 per ton of hazardous air pollutants; remove the cap of six thousand tons that can be assessed a charge; allow charging the fee for the higher of the two PM<sub>10</sub> or PM<sub>2.5</sub> emission rates to prevent double charging; remove the outdated mercury emission fee schedule; update annual Consumer Price Index (CPI) adjustments to prevent a decrease in revenues for years with no increase; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions.

Additionally, the proposed repeal and replacement will include updates to Section 3 of 20.2.71 NMAC to incorporate the New Mexico Legislature’s statutory amendment to Paragraph (7) of Subsection B of 74-2-5 NMSA 1978. These increases will enable the NMED to comply with federal requirements to collect operating permit emissions fees sufficient to cover the reasonable costs of the Title V permitting program.

The proposed repeal and replacement for 20.2.75 NMAC (Construction Permit Fees) will increase the filing fee to \$2000 for each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit; increase the accelerated review filing fee to \$5,000; update annual CPI adjustments to prevent a decrease in revenues for years with no increase; increase the point-based fee schedule value to 30 points for modeling review fees; increase the point-based value to 50 points separately for oil and gas general permits; increase the cost to the point-based value to \$510 per point; increase the annual fee to \$2,430; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions of up to \$15,000 per day. These increases will enable the NMED to comply with the Air Quality Control Act to collect sufficient fees to cover the reasonable costs of the construction permitting program and is considered a revision to the State Implementation Plan.

The proposed fee increases will enable the NMED to comply with the federal Clean Air Act and New Mexico Air Quality Control Act requirements to collect sufficient fees to cover the reasonable costs of the air program and is considered a revision to the State Implementation Plan and Title V program.

The proposed regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Santa Fe, New Mexico, on NMED’s website at <https://www.env.nm.gov/opf/docketed-matters/>, or by contacting Armando Paz at 505-629-3242 or [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

The hearing will be conducted in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality control Act Section 74-2-6 NMSA 1978, and other applicable procedures. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and 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 the person intends to present and state the qualifications of that 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 all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (5) Include the text of any recommended modifications to the proposed regulatory change.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on June 6, 2024, and should reference the docket number, EIB 24-12(R) and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator Environmental Improvement Board P.O. Box 5469 Santa Fe, NM 87502; Phone (505) 660-4305; Fax (505) 827-2836; email: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

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 that testimony as 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.

From now until the conclusion of the hearing, public comments will be received via electronic mail to or via physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed.

Persons having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than June 6, 2024 at (505) 660-4305 or [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

The Board may make a decision on the proposed regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855 [nd.coordinator@env.nm.gov](mailto:nd.coordinator@env.nm.gov).

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

**JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO AVISO DE AUDIENCIA PARA LA  
ELABORACIÓN DE NORMAS PARA CONSIDERAR LA PROPUESTA DE DEROGACIÓN Y  
REEMPLAZO DE  
20.2.71 NMAC Y 20.2.75 NMAC**

La Junta de Mejora Ambiental de Nuevo México (“Junta”) llevará a cabo una audiencia pública los días 27 de junio de 2024, a las 9:00 a. m., y continuará según lo disponga la Junta, en el edificio del Capitolio del Estado de Nuevo México, Sala 321, 490 Old Santa Fe Trail, Santa Fe, Nuevo México 87505.

El propósito de la audiencia es considerar el asunto de EIB 24-12(R), propuesta de derogación y reemplazo de las Regulaciones de Control de Calidad del Aire codificadas en el Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés) en 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) y 20.2.75 NMAC (Tarifas de Permisos de Construcción). El proponente de estas derogaciones y reemplazos regulatorios es el Departamento de Medio Ambiente de Nuevo México (“NMED” por sus siglas en inglés). El propósito de la audiencia pública es considerar y tomar posibles medidas sobre la petición del NMED para derogar y reemplazar 20.2.71 NMAC y 20.2.75 NMAC que permitiría al NMED recuperar los costos razonables de operar los programas de la Oficina de Calidad del Aire del NMED según lo exigen la Ley federal de Aire Limpio y la Ley de Control de Calidad del Aire de Nuevo México, respectivamente. 20.2.71 NMAC autoriza la evaluación de las tarifas anuales de permisos de operación para financiar el programa del Título V, de acuerdo con 40 CFR 70. 20.2.75 NMAC autoriza las tarifas anuales y de revisión de solicitudes de permisos de construcción para financiar el programa aéreo, de acuerdo con las Secciones 74 -2-7 y 74-2-15 NMSA 1978. La derogación y los reemplazos propuestos son requeridos por el Centro de Registros y Archivos del Estado según 1.24.11.9(C) NMAC para cumplir con los requisitos actuales de estilo y formato. Los aumentos de tarifas propuestos permitirán al NMED cumplir con los requisitos de la Ley de Aire Limpio federal y la Ley de Control de Calidad del Aire de Nuevo México para recaudar tarifas suficientes para cubrir los costos razonables del programa de y se considera una revisión del Plan Estatal de Aplicación y del programa del Título V.

La derogación y reemplazo propuestos para 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) actualizará la definición de contaminante de la tarifa para añadir “materia particulada de 10 micras o menos (PM<sub>10</sub>)” y “materia particulada de 2.5 micras o menos (PM<sub>2.5</sub>)” y suprimir “total de materias particuladas” y “mercurio”; aumentar las tarifas de emisiones anuales a \$81.00 por tonelada por cada contaminante tarifario y \$250.00 por tonelada de contaminantes atmosféricos peligrosos; eliminar el límite de seis mil toneladas que se puede cobrar por contaminante y sustituir por el cobro de la tarifa por el mayor de los dos índices de emisión de PM<sub>10</sub> o PM<sub>2.5</sub> para evitar el doble cobro; suprimir la tarifa obsoleta de las emisiones de mercurio; actualizar los ajustes anuales del Índice de Precios al Consumidor (IPC) para evitar una disminución de los ingresos durante años sin aumento; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo. Además, la derogación y reemplazo propuestos incluirán actualizaciones de la Sección 3 de 20.2.71 NMAC para incorporar la enmienda estatutaria de la Legislatura de Nuevo México al Párrafo (7) de la Subsección B de 74-2-5 NMSA 1978. Estos aumentos permitirán al NMED cumplir con los requisitos federales para cobrar tarifas por emisiones de permisos de operación suficientes para cubrir los costos razonables del programa de permisos del Título V.

La derogación y reemplazo propuestos para 20.2.75 NMAC (Tarifas de Permisos de Construcción) aumentará la tarifa de presentación a \$2000 por cada presentación de un aviso de intención, solicitud de un permiso para construir o modificar una fuente, o revisión de un permiso; aumentar la tarifa de presentación de revisión acelerada a \$5,000; actualizar los ajustes anuales del IPC para evitar una disminución de los ingresos durante años sin aumento; aumentar el valor de la lista de tarifas basada en puntos a 30 puntos para las tarifas de revisión de modelos; aumentar el valor basado en puntos a 50 puntos por separado para permisos generales de petróleo y gas; aumentar el costo al valor basado en puntos a \$510 por punto; aumentar la tarifa anual a \$2,430; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo de hasta \$15,000 por día. Estos aumentos permitirán al NMED cumplir con la Ley de Control de Calidad del Aire para recaudar tarifas suficientes para cubrir los costos razonables del programa de permisos de construcción y se considera una revisión del Plan de Implementación Estatal.

Las regulaciones propuestas pueden revisarse durante el horario normal de oficina en la Oficina de Calidad del Aire de NMED, 525 Camino de los Marquez, Santa Fe, Nuevo México, en el sitio web de NMED en <https://www.env.nm.gov/opf/docketed-matters/> o comunicándose con Armando Paz llamando al 505-629-3242 o en [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

La audiencia se llevará a cabo de conformidad con 20.1.1 NMAC Procedimientos de Elaboración de Normas Junta de Mejora Ambiental, la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire Sección 74-2-6 NMSA 1978 y otros procedimientos aplicables. La audiencia se llevará a cabo en un formato híbrido para permitir la participación tanto en persona como virtual.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, opiniones y argumentos relevantes, de forma oral y por escrito, presentar pruebas instrumentales e interrogar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta una notificación por escrito de su intención de hacerlo. La notificación de intención deberá: (1) Identificar a la persona por quien los testigos testificarán; (2) Identificar cada testigo técnico que la persona pretende presentar y declarar las calificaciones del testigo, incluida una descripción de su historial académico y laboral; (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 prueba instrumental que se prevé ofrecerá esa persona en la audiencia; y (5) Adjuntar el texto de cualquier modificación recomendada a las regulaciones nuevas y revisadas propuestas.

Las notificaciones de intención de presentar testimonio técnico en la audiencia deben recibirse en la Oficina de la Junta a más tardar a las 5:00 p. m. del 6 de junio de 2024, y deben hacer referencia al número de expediente, EIB 24-12(R) y la fecha de la audiencia. Los avisos de intención de presentar testimonio técnico deberán enviarse a: Pamela Jones, administradora de la Junta de Mejora Ambiental P.O. Box 5469 Santa Fe, Nuevo México 87502; Teléfono (505) 660-4305; Fax (505) 827-2836; correo electrónico: [pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov).

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La Junta puede tomar una decisión sobre las regulaciones propuestas al concluir la audiencia, o la Junta puede convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972, y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Kate Cardenas, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, [nd.coordinator@env.nm.gov](mailto:nd.coordinator@env.nm.gov).

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**NM Commission of Public Records**

1205 Camino Carlos Rey

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Environment Department

Environ. Protection Division

1190 St Francis Dr, Rm S4100

Santa Fe, NM 87505

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| DATE       | DESCRIPTION  | QTY | RATE | AMOUNT |
|------------|--|-----|------|--------|
| 04/23/2024 | <b>NM Register - 431902</b><br>New Mexico Environmental Improvement Board Notice of Rulemaking Hearing to Consider Proposed Repeal and Replacement of 20.2.71 NMAC and 20.2.75 NMAC, hearing date: 6/27/2024                             | 23  | 3.00 | 69.00  |
| 04/23/2024 | <b>NM Register - 431902</b><br>Junta De Mejora Ambiental De Nuevo Mexico Aviso De Audiencia Para La Elaboracion De Normas Para Considerar La Propuseta De Derogacion Y Reemplazo De 20.2.71 NMAC Y 20.2.75 NMAC, hearing date: 6/27/2024 | 49  | 3.00 | 147.00 |

Thank you for your business!

**BALANCE DUE****\$216.00**



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**Affidavit of Publication in New Mexico Register**

I, Matthew Ortiz, certify that the agency noted on Invoice # 7518 has published legal notice of rulemaking or rules in the NEW MEXICO REGISTER, VOLUME XXXV, that payment has been assessed for said legal notice of rulemaking or rules, which appears on the publication date and in the issue number noted on Invoice # 7518, and that Invoice # 7518 has been sent electronically to the person(s) listed on the *Billing Information Sheet* provided by the agency.

Affiant:

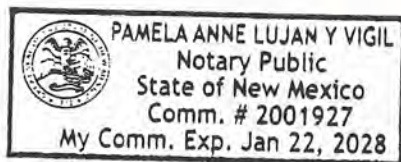
  
Matthew Ortiz

Subscribed, sworn and acknowledged before me this 23<sup>rd</sup> day of April, 2024.

Notary Public:

My Commission Expires:

  
1/22/2028



1205 Camino Carlos Rey | Santa Fe, NM 87507 | [www.srca.nm.gov](http://www.srca.nm.gov)

Hon. Raúl Torrez  
*Attorney General*

Hon. Joseph Maestas  
*State Auditor*

Hon. Maggie Toulouse Oliver  
*Secretary of State*

Debra Garcia y Griego  
*Secretary, Department of Cultural Affairs*

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NMED Exhibit 24

# Permit Fees

[Air Quality Bureau Home](#)[Air Pollutants](#)[Air Monitoring](#)[Permitting](#)[Planning](#)[Funding Opportunities](#)[Emission Inventory](#)[Modeling](#)[Compliance and Enforcement](#)

## Proposed Permitting Fee Regulation Changes

Changes to the permitting fee regulations are being proposed. For more information go to [Proposed Air Quality Permitting Fee Updates](#).

## Recent Fee Updates

**New NSR Permit Fee Schedule (effective 1/1/2024):** 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. See below for the new fee calculation methodology and more details.

## Specific Permitting Fee Information

The New Mexico Environment Department charges permit fees (NSR Construction Fees), annual NSR fees, and fees based on the quantity of emissions the Title V permit allows (Title V Fees) to cover the cost of administering each program. The fee requirement for each program is described below.

### Notice of Intent Filing Fee:

The NOI filing fee of \$500 is required with the NOI submittal.

### NSR Application Filing Fee:

The NSR Application Filing Fee is \$500. This fee is due with the NSR application. During the application review a General Review fee will be calculated using the current NSR Fee Point value of \$510 and an invoice will be issued for the fee balance (total less \$500). The Construction Permit Fee Calculator will allow you to enter the appropriate parameters for your facility to determine the approximate fee for a specific application.

### NSR General Review Fee:

Each application for a permit or a permit modification (regulated under 20.2.72 NMAC, 20.2.74 NMAC and 20.2.79 NMAC) is assessed a permit fee per Construction Permit Fees – 20.2.75 NMAC. This Construction Permit Fee regulation assesses fees based on a complexity schedule. The calculator will allow you to enter the appropriate parameters for your facility to determine the approximate fee for a specific application. **The calculator for 2024 becomes effective on 1/1/2024.** Except for a few fixed-fee permitting action types, the actual fee assessed will be determined during the application review process. In these cases, the Department will issue a balance due invoice.

[Construction Permit Fees Calculator 2023](#)

[Construction Permit Fees Calculator 2024](#)

In addition to the permit fee, NSR Construction Permits are assessed an annual fee at the beginning of each year. This fee is adjusted each year relative to the Consumer Price Index. The new fees take effect January 1 of each calendar year.

### Annual CPI adjustments to NSR Fees:

Below you will find the methodology on how the NSR Fee values and annual fees are calculated to include the CPI adjustment:

[CPI Adjustment Methodology for 2024 NSR Fees](#)

### General Construction Permit Application Fee:

All new GCP permit applications and modifications require a **\$5,100** fee with the application submittal.

### The Streamline Application Fee:

All streamline permit applications, both for new sources and modifications to existing sources, require 10 point fee due with the application. In the case of portable permits for multiple sites (packages), this fee is due for each site (package). **The fee for the streamline permit application is \$5,100.**

### Relocation Fees:

All portable permit relocation applications are assessed this relocation fee, which is due with the application submittal. **Fee is \$510.00**

Relocations of specific portable sources (those permitted under 20.2.72.202.D.3 NMAC) require a processing fee for each relocation action. There is a form to be prepared and submitted to the Department, which must be approved before the relocation is permitted. These forms vary according to which type of permit the facility has. If the facility has a General Construction Permit, its corresponding relocation form must be used. For GCPs use one of the following GCP-2 Multi-Form, the GCP-3 Multi-Form, or the GCP-5 Multi-Form. Facilities with regular NSR permits must use the NSR Relocation Form.

### Small Businesses:

If your company meets the definition of a Small Business under 20.2.75.7.F NMAC, it is eligible to receive discounts as specified in 20.2.75.11.C NMAC. The definition of a "small business" can be found on the [Small Business Environmental Assistance Program Home Page](#). To register as a Small Business, fill out the Small Business Certification Form.

### NSR Annual Fee:

The current NSR Annual Fee is: calendar year 2024 – \$2,430 (billed January 2024). The Department will send an invoice in January of the following year for this annual fee.

### TV Annual Fees:

Each Title V permit (regulated under 20.2.70 NMAC) is assessed an annual fee per (Operating permit fees – 20.2.71 NMAC) based upon the allowable emissions in the facility's permit.

These new fees will be effective 1/1/2024 and will be used to calculate invoices for annual Title V fees billed in early 2024 for permits in effect as of 12/31/2023.

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**.

### Title V Excess Emissions Fees:

Facilities with emissions that are above annual allowable limits are required to pay a fee based on the quantity of those emissions per 20.2.71.111.C NMAC. Additionally, these emissions may also be regulated under 20.2.7 NMAC as excess emissions which may result in a Notice of Violation (NOV) and a civil penalty fine.

[Instructions](#)

[Reporting Form](#)

### Annual CPI adjustments to TV Fees:

Below you will find the methodology on how the TV Fee values are calculated to include the CPI adjustment:

For calendar year 2024, effective 1/1/2024: [CPI Adjustment Methodology for 2024 TV Fees](#)

If you have any questions regarding the fees regulations, please contact Donna Intermont, Operations Section Chief (505) 377-7583 or [Donna.Intermont1@env.nm.gov](mailto:Donna.Intermont1@env.nm.gov)

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[Air Quality Permitting Home Page](#)

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Rule Hearing Search

Hearing Date:

All

Comments

Deadline Date:

All

Agency:

Environment Department

Search

[Return to Search Results](#)

Proposed Rule Name:

Proposed Repeal and Replacement to 20.2.71 and 20.2.75 NMAC, EIB 24-12(R)

Agency:

Environment Department

Purpose:

The purpose of the hearing is to consider the matter of EIB 24-12(R), proposed repeal and replacement of the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.71 NMAC (Operating Permit Emissions Fees) and 20.2.75 NMAC (Construction Permit Fees). The proponent of these regulatory repeals and replacements is the New Mexico Environment Department ("NMED"). The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC that would allow the NMED to recoup the reasonable costs of operating the NMED's Air Quality Bureau programs as required by the federal Clean Air Act and New Mexico Air Quality Control Act, respectively. The Environmental Improvement Act, Section 74-1-8(A)(4) NMSA 1978 and the Air Quality Control Act, Section 74-2-5 NMSA 1978 specifically authorize the Environmental Improvement Board to adopt rules that are necessary for air quality management as provided in the Air Quality Control Act.

Summary:

On June 27, 2024 the Environmental Improvement Board will hold a public hearing, EIB 24-12(R), to consider the New Mexico Environment Department's proposal to repeal and replace 20.2.71 NMAC – Operating Permit Emissions Fees and 20.2.75 NMAC – Construction Permit Fees which can be viewed at <https://www.env.nm.gov/air-quality/proposed-regs/>.

Administratives Codes:

<https://www.srca.nm.gov/parts/title20/20.002.0071.html>, <https://www.srca.nm.gov/parts/title20/20.002.0075.html>

Rule Complete Copy :

The adopted revised regulations and the list of federal standards to be incorporated by reference may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Santa Fe, New Mexico, on NMED's website at <https://www.env.nm.gov/air-quality/proposed-regs/>, or by contacting Armando Paz at 505-629-3242 or [armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov).

Corrections:

[Click Here to access Rule Corrections](#)

Rule Explanatory Statement:

[Click Here to access the Rule Explanatory Statement](#)

Related New Mexico Register Publications:

Not available

For any additional information or questions concerning this rule making or posting please contact:

Pamela Jones, Board Administrator Environmental Improvement Board

[pamela.jones@env.nm.gov](mailto:pamela.jones@env.nm.gov)

(505) 660-4305

Last Updated Date

4/16/2024 1:27 PM

How to submit Comments:

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 that testimony as 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.

From now until the conclusion of the hearing, public comments will be received via electronic mail to or via physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed.

When are comments due:

6/28/2024 6:00 PM

Hearing Date:

6/27/2024 9:00 AM

Public Hearing Location:

NM State Capitol Building, Room 321

490 Old Santa Fe Trail

Santa Fe, New Mexico 87505 6/27/2024 (9:00 AM -5:00 PM )

How to participate:

The hearing will be conducted in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 74-2-6 NMSA 1978, and other applicable procedures. All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and 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 the person intends to present and state the qualifications of that 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 all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (5) Include the text of any recommended modifications to the proposed regulatory change.

🔍 If the document is not visible on the previewer, please download the file

**From:** [Paz, Armando, ENV](#)  
**To:** [Abeyta, Monica](#); [dcave@mrcog-nm.gov](mailto:dcave@mrcog-nm.gov); [admin@epcog.org](mailto:admin@epcog.org); [jarmijo@sccog-nm.com](mailto:jarmijo@sccog-nm.com); [info@swnmcog.org](mailto:info@swnmcog.org); [mburr@snmedd.com](mailto:mburr@snmedd.com); [ewilliams@nwnmcog.org](mailto:ewilliams@nwnmcog.org)  
**Subject:** New Mexico Environment Department Air Quality Fee Revisions Rulemaking Public Notice  
**Date:** Tuesday, April 9, 2024 11:13:00 AM  
**Attachments:** [English Public Hearing Notice 4.3.24 FINAL.docx](#)  
[Spanish Public Hearing Notice 4.3.24 FINAL.docx](#)

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Good Morning,

Attached is the public notice for the fee revisions rulemaking that the New Mexico Environment Department's Air Quality Bureau will be proposing before the Environmental Improvement Board June 27, 2024. Please contact me if you have any questions.

Thank you,

Armando Paz  
Environmental Analyst  
New Mexico Environment Department  
Air Quality Bureau – Control Strategies  
2301 Entrada del Sol  
Las Cruces, NM 88001  
(505) 629-3242  
[armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov)  
[www.env.nm.gov/air-quality/](http://www.env.nm.gov/air-quality/)

**“Science, Innovation, Collaboration, & Compliance”**

**From:** [Chavez, William, ENV](#)  
**To:** [Kesler, Michael, ENV](#); [Cole, Levi, ENV](#); [Vigil, Thomas X, ENV](#)  
**Cc:** [Paz, Armando, ENV](#)  
**Subject:** FW: Fee Revisions Field Offices Public Notice Posting  
**Date:** Monday, April 8, 2024 2:49:44 PM  
**Attachments:** [English Public Hearing Notice 4.3.24 FINAL.docx](#)  
[Spanish Public Hearing Notice 4.3.24 FINAL.docx](#)

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DM's,

Please ensure the attached "public Hearing Notice" from the AQB is posted / made available in each field office.

Thank you.

Bill

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**From:** Paz, Armando, ENV <Armando.Paz@env.nm.gov>  
**Sent:** Monday, April 8, 2024 2:47 PM  
**To:** Chavez, William, ENV <william.chavez@env.nm.gov>  
**Subject:** Fee Revisions Field Offices Public Notice Posting

Hi Bill,

I hope you have been doing good! I have a public notice posting that needs to please be posted at each of our field offices for our Fee Revision rulemaking that we are proposing to the EIB in June. Please let me know if you have any questions.

Thank you,

Armando Paz  
Environmental Analyst  
New Mexico Environment Department  
Air Quality Bureau – Control Strategies  
2301 Entrada del Sol  
Las Cruces, NM 88001  
(505) 629-3242  
[armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov)  
[www.env.nm.gov/air-quality/](http://www.env.nm.gov/air-quality/)

**"Science, Innovation, Collaboration, & Compliance"**

**From:** [Paz, Armando, ENV](#)  
**To:** [vlgarcia31@hotmail.com](#); [stoney.jaramillo@antonchicolandgrant.org](#); [jaime@ruralco.org](#); [coolarrow505@gmail.com](#); [Kilino.Marquez@yahoo.com](#); [chillilnmlgc@gmail.com](#); [beverlyarmijo@yahoo.com](#); [jamesdeanchavez@gmail.com](#); [taoslandgrant@gmail.com](#); [higiniagallegos@yahoo.com](#); [jasoncq2415@gmail.com](#); [rskartwed@gmail.com](#); [cynthiaraelvigil@yahoo.com](#); [lenmtznm@gmail.com](#); [jchavez1055@msn.com](#); [bonifacio@windstream.net](#); [stevevigil99@gmail.com](#); [alexjlopez13@gmail.com](#); [Tajique1834@gmail.com](#); [chatoymaria1961@gmail.com](#); [russellpacheco234@gmail.com](#); [sjpolac@gmail.com](#); [acfanta@hotmail.com](#); [anaya1senaida@gmail.com](#)  
**Subject:** New Mexico Environment Department Air Quality Fee Revisions Rulemaking Public Notice  
**Date:** Tuesday, April 9, 2024 10:39:00 AM  
**Attachments:** [English Public Hearing Notice 4.3.24 FINAL.docx](#)  
[Spanish Public Hearing Notice 4.3.24 FINAL.docx](#)

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Good Morning,

Attached is the public notice for the fee revisions rulemaking that the New Mexico Environment Department's Air Quality Bureau will be proposing before the Environmental Improvement Board June 27, 2024. Please contact me if you have any questions.

Thank you,

Armando Paz  
Environmental Analyst  
New Mexico Environment Department  
Air Quality Bureau – Control Strategies  
2301 Entrada del Sol  
Las Cruces, NM 88001  
(505) 629-3242  
[armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov)  
[www.env.nm.gov/air-quality/](http://www.env.nm.gov/air-quality/)

**“Science, Innovation, Collaboration, & Compliance”**

**From:** [Paz, Armando, ENV](#)  
**To:** [lcs@nmlegis.gov](mailto:lcs@nmlegis.gov)  
**Subject:** New Mexico Environment Department Air Quality Fee Revisions Rulemaking Public Notice  
**Date:** Tuesday, April 9, 2024 3:25:00 PM  
**Attachments:** [English Public Hearing Notice 4.3.24 FINAL.docx](#)  
[Spanish Public Hearing Notice 4.3.24 FINAL.docx](#)

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Good Afternoon,

Attached is the public notice for the fee revisions rulemaking that the New Mexico Environment Department's Air Quality Bureau will be proposing before the Environmental Improvement Board June 27, 2024. Please contact me if you have any questions.

Thank you,

Armando Paz  
Environmental Analyst  
New Mexico Environment Department  
Air Quality Bureau – Control Strategies  
2301 Entrada del Sol  
Las Cruces, NM 88001  
(505) 629-3242  
[armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov)  
[www.env.nm.gov/air-quality/](http://www.env.nm.gov/air-quality/)

**“Science, Innovation, Collaboration, & Compliance”**

**From:** [Paz, Armando, ENV](#)  
**To:** [Vicente, Randall](#); [fmarinez@poamail.org](#); [governor@pueblodecochiti.org](#); [Jayson.romero@cochiti.org](#); [max.zuni@isletapueblo.com](#); [Clint.lente@isletapueblo.com](#); [cynthia.naha@isletapueblo.com](#); [Loretto, Raymond](#); [clarice.madalena@jemezpuablo.org](#); [mkowemy@lagunapueblo-nsn.org](#); [mandalla@lagunapueblo-nsn.org](#); [gjojola@lagunapueblo-nsn.gov](#); [Porter, Nathaniel](#); [vatencio@nambepueblo.org](#); [Aguino, Joseph](#); [larry.phillips@ohkay.org](#); [Quanchello, Craig](#); [administrativeassistantppe@picurispueblo.org](#); [governor@pojoaque.org](#); [Edwards, Loise](#); [aduran@pojoaque.org](#); [gov.ortiz@sfpueblo.com](#); [Stout, Pinu](#); [Moquino, Christopher](#); [rmartinez@sanipueblo.org](#); [govchavez@sandiapueblo.nsn.us](#); [snmontoya@sandiapueblo.nsn.us](#); [gkaufman@sandiapueblo.nsn.us](#); [Sanchez, Joseph](#); [Chavarria, J. Michael](#); [dinoc@santaclarapueblo.org](#); [esquipula.tenorio@kewa-nsn.com](#); [kevin.montoya@kewa-nsn.com](#); [Romero, ClydeM](#); [mvigil@taospueblo.com](#); [Mora, Robert](#); [sagem@pueblooftesuque.org](#); [Galvan, Gabrial](#); [Ken.lucero@ziapueblo.org](#); [arden.kucate@ashiwi.org](#); [tammy.parker@ashiwi.org](#); [tribalcouncil@ydsp-nsn.gov](#); [ecruz@ydsp-nsn.gov](#); [buunygren@navajo-nsn.com](#); [s.etsitty@navajo-nsn.gov](#); [crystalynne.curley@navajo-nsn.com](#); [evelarde@janadmin.com](#); [ltafoya@janadmin.com](#); [cltecube@yahoo.com](#); [emartinez@mescaleroapachetribe.com](#); [thora@mescaleroairport.org](#); [jennifer.heminokeky@fortsillapache-nsn.gov](#); [monte.scammahorn@fortsillapache-nsn.gov](#)  
**Subject:** New Mexico Environment Department Air Quality Fee Revisions Rulemaking Public Notice  
**Date:** Monday, April 8, 2024 3:18:00 PM  
**Attachments:** [Spanish Public Hearing Notice 4.3.24 FINAL.docx](#)  
[English Public Hearing Notice 4.3.24 FINAL.docx](#)

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Good Afternoon,

Attached is the public notice for the fee revisions rulemaking that the New Mexico Environment Department's Air Quality Bureau will be proposing before the Environmental Improvement Board June 27, 2024. Please contact me if you have any questions.

Thank you,

Armando Paz  
Environmental Analyst  
New Mexico Environment Department  
Air Quality Bureau – Control Strategies  
2301 Entrada del Sol  
Las Cruces, NM 88001  
(505) 629-3242  
[armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov)  
[www.env.nm.gov/air-quality/](http://www.env.nm.gov/air-quality/)

**“Science, Innovation, Collaboration, & Compliance”**

**From:** [Wiley, Adina](#)  
**To:** [Paz, Armando, ENV](#)  
**Subject:** [EXTERNAL] RE: Parts 71 and 75 Review  
**Date:** Tuesday, March 19, 2024 7:41:08 AM

---

**CAUTION:** This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Thanks so much Armando. Please keep us posted as the rulemaking process proceeds and let us know if you have questions or need any assistance from EPA.

**Adina R. Wiley, Environmental Engineer**

U.S. EPA Region 6  
Air Permits Section (ARPE)  
1201 Elm Street, Suite 500  
Dallas, TX 75270  
(214) 665-2115  
[wiley.adina@epa.gov](mailto:wiley.adina@epa.gov)

POSITIONS or VIEWS EXPRESSED DO NOT REPRESENT OFFICIAL EPA POLICY

---

**From:** Paz, Armando, ENV <Armando.Paz@env.nm.gov>  
**Sent:** Monday, March 18, 2024 4:39 PM  
**To:** Wiley, Adina <Wiley.Adina@epa.gov>  
**Subject:** RE: Parts 71 and 75 Review

**Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Adina,

We had submitted our petition to request for a hearing with the public review drafts available [online](#) March 7, 2024. Attached are the final word versions from the last email I had sent you. The only difference is that the track changes were removed, and the lines were numbered.

Thank you,

Armando Paz  
Environmental Analyst  
New Mexico Environment Department  
Air Quality Bureau – Control Strategies  
2301 Entrada del Sol  
Las Cruces, NM 88001  
(505) 629-3242  
[armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov)  
[www.env.nm.gov/air-quality/](http://www.env.nm.gov/air-quality/)

**“Science, Innovation, Collaboration, & Compliance”**

---

**From:** Paz, Armando, ENV  
**Sent:** Tuesday, March 5, 2024 3:09 PM  
**To:** Wiley, Adina <[Wiley.Adina@epa.gov](mailto:Wiley.Adina@epa.gov)>  
**Subject:** Parts 71 and 75 Review

Hi Adina,

It was nice talking with you today about our proposed fee revisions. Attached are the finalized drafts. Please let me know if you have any questions by April 17, 2021.

Thank you,

Armando Paz  
Environmental Analyst  
New Mexico Environment Department  
Air Quality Bureau – Control Strategies  
2301 Entrada del Sol  
Las Cruces, NM 88001  
(505) 629-3242  
[armando.paz@env.nm.gov](mailto:armando.paz@env.nm.gov)  
[www.env.nm.gov/air-quality/](http://www.env.nm.gov/air-quality/)

**“Science, Innovation, Collaboration, & Compliance”**



CLOSE

## Public Notices

This page lists public notices for rulemakings, permitting actions and any appeals of the action. Any rulemaking hearing or specific permitting or enforcement matter appealed to a board, commission or Environment Department Secretary is found on our [Docketed Matters webpage](#) once it is docketed.

Historical actions (e.g., public notices and associated documents) are archived on the previous NMED site.

Page Search:

### Statewide/Across Multiple Counties

#### Air Quality Permit Fees – Repeal and Replacement of 20.2.71 NMAC AND 20.2.75 NMAC

Public Notice – Air Quality Bureau

- [Public Hearing Notice – Aviso de Audiencia Pública \(Spanish\)](#)
- [Public Involvement Plan and Limited English Proficiency Services Evaluation](#)

#### Continuation of Rulemaking Hearing – New Mexico Environment Department’s Proposed Water Reuse Regulations, Ground and Surface Water Protection – Supplemental Requirements For Water Reuse (20.6.8 NMAC)

#### Draft Air Quality Bureau 2024 Annual Air Quality Monitoring Network Review





# New Mexico Environment Department Fiscal Year 2024 Strategic Plan

September 1, 2022 | [www.env.nm.gov](http://www.env.nm.gov)

# Fiscal Year 2024 Strategic Plan



**James C. Kenney**  
**Cabinet Secretary**

In Fiscal Year 2024, the New Mexico Environment Department (NMED or the Department) will continue its noble mission of protecting public health and the environment as outlined in this strategic plan. We will measure our success throughout the fiscal year per our performance measures which focus on public health, the environment, compliance, economic investments and operational effectiveness. We will continue to invest in our employees and workplace culture to ensure NMED is the best place to work in state government. We will assess our progress through quarterly performance reports published to our website and continue to inform the public and our employees of all our efforts through effective communication strategies, including social media.



# Table of Contents

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# Vision, Mission, and Values

## Vision

To foster a thriving and trusted, nationally leading organization known for protecting public health and the environment through its dedicated public servants.

## Mission

Protect and restore the environment and foster a healthy and prosperous New Mexico for present and future generations.

## Values



**Science** - Embracing the best available science to inform decision-making in support of our vision and mission.



**Innovation** - Employing creative engineering and technological solutions to address challenges.

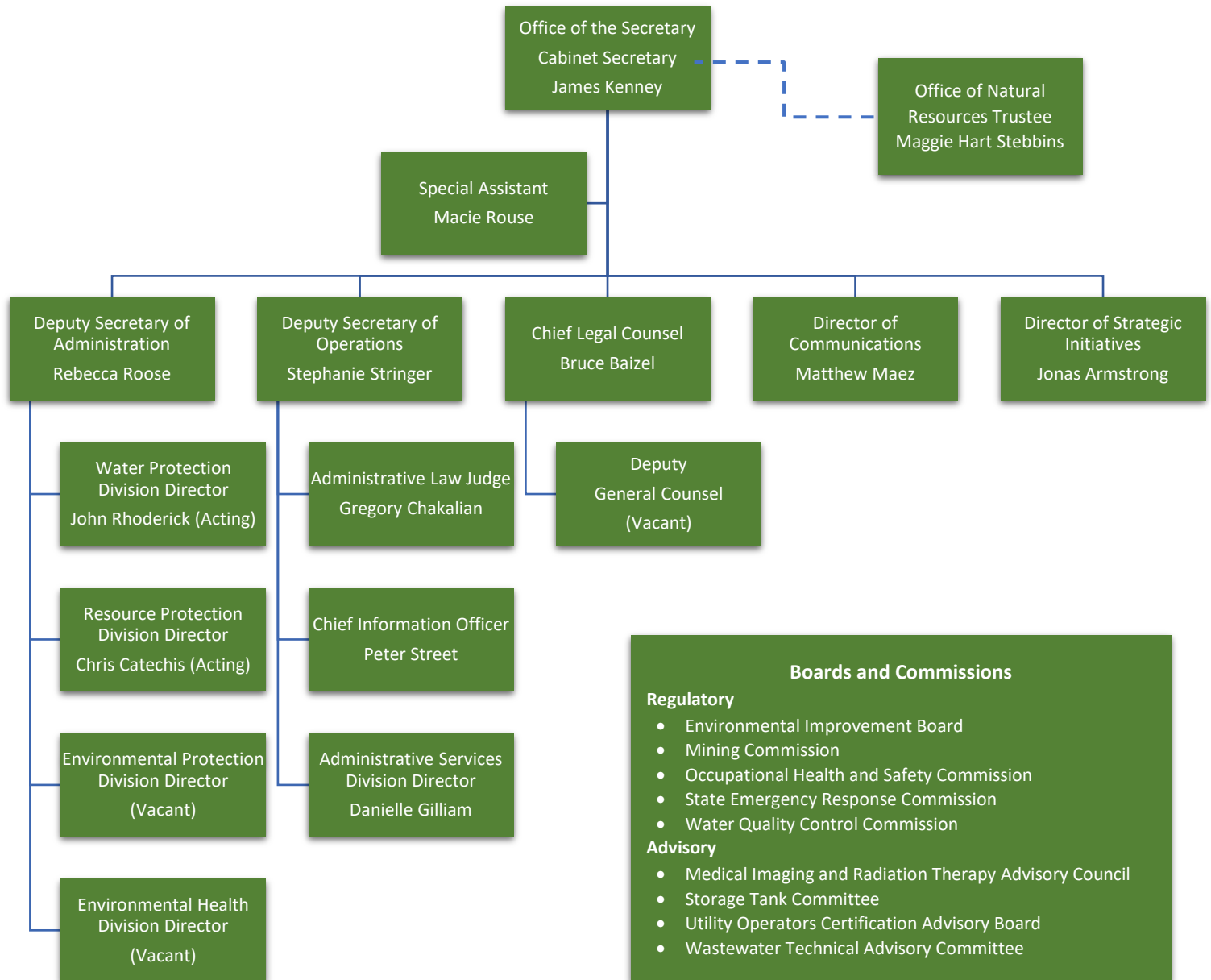


**Collaboration** - Engaging communities and interested stakeholders in decision-making and outcomes.



**Compliance** - Ensuring accountability with permits and rules while maintaining a fair and level playing field.

# Organizational Structure



# Resource Management Division (P567)

## Purpose of the Program

To provide leadership and strategic vision across the Department. To empower all management and staff to implement the Department's mission to the fullest extent possible. To create and foster a professional, diverse, and accountable workforce.

## Program Users

All stakeholders, the public, Tribes, Nations, and Pueblos who place their trust in the air they breathe, water they drink, and land on which they live. Internally, the NMED employees who work and live across New Mexico to fulfill our critical mission.

## Benefits to New Mexicans

- A well-funded and highly functioning NMED can protect public health and the environment equally for all New Mexicans and communities served.
- Responsive communication of complex scientific and technical issues in a clear manner to all members of the public in multiple languages.
- Timely, accurate, equitable and transparent access to public health and environmental information for community and family-based decision-making.
- Accountability and oversight of public funds.
- Expanded online program delivery that strengthens traditional program access where essential.
- Compliance with public health and environmental protections that provides a level playing field for all businesses and deterrence through vigorous enforcement when violations occur.
- Strong collaborations with stakeholders and other state agencies with a responsive and productive workforce.
- A highly-engaged workforce that advances efficient and safe customer service options.

## Budget and Full-Time Equivalent (FTE)

| Resources Management Division    | FTE   | Budget      |
|----------------------------------|-------|-------------|
| Office of the Secretary          | 14.00 | \$2,320,100 |
| Office of General Counsel        | 15.00 | \$2,369,900 |
| Office of Information Technology | 28.00 | \$3,200,100 |
| Administrative Services Division | 28.25 | \$5,723,900 |

*See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.*



# Resource Management Division (P567)

## Program Goals and Objectives

### Office of the Secretary

- Implement the NMED's vision, mission and values in accordance with the Governor's and Secretary's vision, legislative authority, and federal delegation, primacy, and grant agreements.
- Provide open avenues of communication with Tribal governments to increase collaboration earlier in the rulemaking or permitting process and surrounding NMED action in other areas of interest.

### Office of General Counsel

- Provide strategic, innovative, and effective legal advice and representation to NMED management and staff.
- Ensure accountability for noncompliance through strong and consistent enforcement policy and actions.
- Administer NMED's Inspection of Public Records Act program in an efficient and consistent manner.

### Office of Communications

- Improve transparency of NMED's work and operations through the public-facing website and media, including the online performance dashboard.
- Deliver quality and timely communications on matters affecting public health and the environment.
- Ensure equitable access to NMED information by individuals with limited English proficiency.
- Foster strong internal communication across NMED to enhance teamwork, efficiency and cross-program engagement.

### Office of Strategic Initiatives

- Provide leadership in executing NMED's core values of science, innovation, collaboration, and compliance through superior customer service to internal and external stakeholders.
- Improve our stewardship of federal funds through tools like Performance Partnership Grants.
- Foster strong, collaborative relationships with the New Mexico Legislature and Legislative Finance Committee.
- Increase regulatory compliance through assertive and consistent enforcement policies.
- Maintain robust public participation in federal regulation and policymaking that promotes equity and defends the interests of New Mexico communities.

### Office of Information Technology

- Transform information technology (IT) by establishing consistent standards, practices, and governance as well as adopting enterprise-oriented approaches to automate processes, data management, and document storage.
- Implement new IT products and services, utilizing NMED-developed frameworks based on current technologies and best practices.
- Modernize and enable NMED's core business processes of permitting, licensing and certification, compliance monitoring, enforcement and oversight, environmental corrective action, reporting, electronic transmission of large datasets to federal agencies, public outreach, and education.
- Facilitate compliant online payments for NMED's core business processes.

### Administrative Services Division

- Manage NMED's resources in an equitable and compliant manner that facilitates our mission while maintaining the public's trust.
- Provide excellent customer service and comprehensive administrative support to programs.

# Resource Management Division (P567)

## Program Goals and Objectives (cont.)

### Office of Public Facilitation

- Facilitate exceptional customer service to the public and ensure public participation in docketed matters of the boards and commissions that the Office of Public Facilitation administers (including the Water Quality Control Commission and Environmental Improvement Board), public hearings assigned by the Secretary as a result of significant public interest, and due process compliance orders served on respondents by bureaus that benefit from public participation.

## Strategic Actions

### Office of the Secretary

- Build and maintain meaningful relationships with community members, elected officials, governmental agencies, the business community, industry, nongovernmental organizations and Tribal governments to inform sound policy and decision-making.
- Advocate for the Administration's legislative and fiscal priorities and sustained state investment in services and policies for the betterment of New Mexicans.



### Office of General Counsel

- Expand the scope and range of legal advice and representation provided to NMED.
- Support all divisions and offices in integrating equity throughout delivery of services and operation of programs.
- Increase consistency and timeliness in compliance across programs to ensure a level playing field.

### Office of Communications

- Proactively highlight NMED's many contributions to a resilient state economy and healthy communities.
- Timely coverage of news media and public inquiries to increase the public's understanding of NMED programs and community impacts.

### Office of Strategic Initiatives

- Increase environmental justice capacity within NMED, including community-based mobile monitoring for health risks and impacts.
- Facilitate quarterly performance measures reporting and annual strategic planning process across NMED, including online publication of NMED's quarterly performance report.
- Develop and coordinate cross-divisional grant applications to support NMED priorities.
- Apply principles of continuous improvement through implementation and analysis of the annual Employee Engagement Survey to ensure NMED operations are informed by employee perspectives and concerns.
- Increase community engagement across New Mexico through strategic events and messaging.
- Coordinate Civil Rights Act compliance through oversight and implementation of NMED's non-discrimination program.



# Resource Management Division (P567)

## Strategic Actions (cont.)

### Office of Information Technology

- Establish and govern consistent IT policies, processes, standards, and best practices.
- Drive cloud, cybersecurity, data, and geospatial technology modernizations.
- Implement enterprise-oriented low code application development platforms that will lead to process and workflow efficiencies and improvements to NMED's core business processes.
- Continue NMED's online payments program development while ensuring continuing Payment Card Industry compliance.
- Increase information available on NMED's website by creating informative charts, graphs, infographics, automating document posting, and implementing an online document management system.
- Provide excellent customer service by ensuring reliable network, data, project portfolio, application development, web development, and geographic information systems.

### Administrative Services Division

- Maintain delivery of services to New Mexicans and the regulated community, commensurate with funding.
- Streamline and modernize administrative processes to improve public health and environmental outcomes and transparency of operations.
- Provide a broad range of technical and administrative assistance services to NMED that build program assets and develop new resources.
- Increase the enterprise-level funding capacity of NMED with a robust grant management and procurement operation.
- Identify, develop, and implement internal process improvements necessary to work smarter, not harder.
- Develop and implement innovative initiatives to improve employee recruitment, retention, and development.
- Reduce NMED's vacancy rate through data-driven process improvements supported by implementation of new business technologies (e.g., paperless and automation initiatives).
- Systematically implement recruitment and retention incentive programs through flex schedules, alternative work schedules, flex locations, and telework opportunities, for example.
- Create, track, and expand employee training and development programs, focused on leadership development.
- Engage in compensation and classification analysis across NMED in order to ensure internal equity and balanced workloads, adjust to market conditions, and orient NMED's staffing strategy to align with strategic growth and career advancement pathways.
- Foster high levels of employee engagement and productivity through an internal culture of mutual trust, respect, diversity, and inclusion.

### Office of Public Facilitation

- Improve access to and maintain timely and accurate information relating to docketed matters for members of the public through the OPF Webpage, the Public Calendar, the Docketed Matters webpage, and the Public Comment Portal.
- Implement a training program on preservation and presentation of evidence to support and improve burdens of proof at administrative hearings.



# Water Protection Division (P568)

## Purpose of the Program

To ensure the cleanest and safest water supplies for New Mexicans today and into the future through the protection of surface water and groundwater quality. To provide financing for and oversight of water infrastructure projects across the state with added emphasis on projects related to the impacts of climate change.

## Program Users

A public that expects to consume clean and safe drinking water whether in an urban or rural community. A public that recreates in and along New Mexico's lakes, rivers, and streams. Regulated entities who rely on relationships with regulators to provide technical and consistent expertise. Local governments, municipalities, and private utilities in need of technical and/or financial assistance to repair, update, or add water and wastewater infrastructure. Tribes, Pueblos, and Nations whose water quality may be impacted by others. All others who ensure our accountability to our mission, including: the Governor, Legislature, Federal Government, and the public.

## Benefits to New Mexicans

- Safe, reliable, and trusted sources of drinking water for today's growing economy and future generations of New Mexicans.
- Healthy rivers and lakes that fully support recreation, tourism, and agriculture, which are essential components of a thriving state economy.
- Modernized and reliable infrastructure for our counties, cities, and towns that fosters healthy communities.
- Economic development opportunities on formerly contaminated properties that reinvigorate communities.
- Easily accessible information about drinking water, groundwater, and surface water quality, including in the aftermath of catastrophic events, such as devastating wildfires.

## Budget and FTE

| Water Protection Division    | FTE   | Budget       |
|------------------------------|-------|--------------|
| Office of the Director       | 5.25  | \$811,200    |
| Construction Programs Bureau | 24.00 | \$3,892,800  |
| Drinking Water Bureau        | 57.00 | \$11,817,500 |
| Ground Water Quality Bureau  | 62.00 | \$9,940,700  |
| Surface Water Quality Bureau | 43.00 | \$7,877,200  |

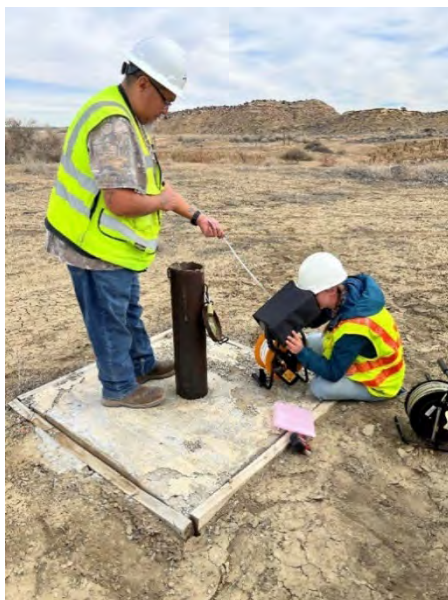
*See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.*



# Water Protection Division (P568)

## Program Goals and Objectives

- Develop and implement strategic actions to identify and address water contaminated with per- and polyfluoroalkyl substances (PFAS) and other emerging contaminants, as existing resources allow.
- Leverage available federal and state funding to maximize financing opportunities for water, wastewater, surface water, and solid waste infrastructure investments, and assist communities in utilizing available funding.
- Implement the Produced Water Act to preserve freshwater resources, protect water quality and public health, and provide regulatory certainty.
- Improve public drinking water system compliance with health-based standards in large, mid-size, and small communities.
- Support municipalities and public drinking water systems through robust implementation of the Water Conservation Fund Act.
- Improve the resiliency and efficiency of the groundwater discharge permit program to better serve the public.
- Strengthen enforcement and compliance for groundwater permits and facilities under abatement for groundwater contamination.
- Actively address clean-up and remediation of Superfund sites and other contaminated properties in New Mexico.
- Enhance the protection of surface waters by using all available tools, programs, and resources and seeking additional tools, such as permits, to control pollution.
- Identify and implement innovative approaches to leverage existing authorities to build communities and natural resource systems that are resilient to the impacts of climate change, consistent with the Governor's Executive Order 2019-003 on addressing Climate Change and Energy Waste Prevention and the 50 Year Water Plan.
- Effectively collaborate and communicate with key stakeholders across all programs to enhance program outcomes.



*Photo 1: Avery Young of the Ground Water Quality Bureau views the progress of a well camera as it descends the well casing to determine if well construction was properly completed and to check for any compromised sections. She is aided by a local utility operator.*

# Water Protection Division (P568)

## Strategic Actions

- Develop and maintain informative and interactive public facing tools, including story maps on drought and other water related emergencies and PFAS, to provide resources and current public health information to regulated entities, community leaders, and other stakeholders.
- Lead action-oriented discussions with key partners and stakeholders to develop needed reforms to capital outlay funding for water infrastructure projects to improve outcomes for communities.
- Leverage innovative partnerships and conduct marketing outreach for water infrastructure financing programs to increase loan utilization rates, including federal Bipartisan Infrastructure Law funding.
- Support the ongoing work of the New Mexico Produced Water Research Consortium to fill science and technology gaps related to treatment and use of produced water for purposes outside the oil and gas sector.
- Work closely with the New Mexico Oil Conservation Division to ensure the appropriate use of produced water and treated produced water under the Produced Water Act.
- Finalize new rules to prevent contamination of water resources through implementation of the Produced Water Act prohibition on discharges of oil and gas wastewater outside of the oil and gas industry without an NMED-issued permit.
- Maximize the number of drinking water contaminants covered by NMED's sampling program through efficient management of Water Conservation Fund fees and supplemental funding, thereby avoiding additional costs for drinking water utilities.
- Maintain an enhanced drinking water compliance and enforcement program by increasing staff capacity to perform complex analysis of system monitoring data, conduct onsite inspections, and take appropriate enforcement actions.
- Strengthen the Utility Operator Certification Program's support for more than 3,000 certified drinking water and wastewater utility operators through implementation of updated regulations, online exams, targeted technical assistance, and partnerships to increase recruitment and training of new operators.
- Implement updated state water quality management plans and ambient monitoring plans that integrate climate change science to assess water quality of rivers, streams, lakes, and wetlands and improve watershed health and resiliency.
- Execute a robust public outreach and education campaign about the importance of new state permitting authority to protect surface waters from pollution, which will inform development of legal and policy requirements, program structure and costs, funding mechanisms, and public engagement tools.
- Oversee remediation activities at Superfund sites and ensure NMED has ample funding for all state cost obligations associated with remediation at these sites.
- Develop innovative approaches to address groundwater contamination associated with sites that lack a responsible party and require adequate financial assurance from entities that receive a discharge permit.
- Build more resilient communities through technical assistance and training on strategies to address climate change impacts through local source water planning.
- Implement enforcement policies and leverage modernized data management systems for surface water, groundwater, and drinking water regulatory programs.
- Actively participate with other agencies and stakeholders to advance the New Mexico Water Data Initiative.



# Resource Protection Division (P569)

## Purpose of the Program

To maximize the prevention of new contamination and expeditiously address legacy pollution in New Mexico for the protection of public health and the environment. To ensure environmental justice for the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits. To ensure hazardous waste is managed – from cradle to grave – and contaminated sites are cleaned up as quickly as possible to lessen the burden to communities, their health, and our environment. To closely monitor the environment within and around U.S. Department of Defense (DOD) and U.S. Department of Energy (DOE) facilities in New Mexico, taking swift and meaningful compliance actions when warranted. To ensure petroleum storage tanks are managed to prevent releases and that any releases are remediated as expeditiously as possible and as eligibility and the Corrective Action Fund allows. To ensure solid waste – including infectious waste – and recyclable materials are responsibly managed.

## Program Users

A public that trusts and expects that New Mexico's natural resources will not diminish their family's health, safety, or economic prosperity regardless of where they live, work, or play. This includes New Mexico's service members who are stationed at U.S. Air Force installations, employees and contractors at DOE facilities and the residents who live in proximity to these installations. Regulated entities who rely on relationships with regulators to provide technical and consistent expertise. County and municipal governments who rely on our expertise for emergency response and technical guidance, including best management practices to minimize costs to taxpayers where possible. Tribes, Pueblos, and Nations whose natural resources may be impacted by others. All others who ensure our accountability to our mission, including: the Governor, Legislature, Federal Government, and the public.

## Benefits to New Mexicans

- Timely responses to releases of hazardous substances that prevent exposure to people and the environment.
- Accountability and consequences for those who put New Mexicans at risk from improper management of waste.
- Federal facilities that comply with regulations and properly manage and clean up their waste.
- Robust surveillance of DOE facilities to confirm environmental results and inform surrounding communities.
- Financial assurance and incentives for the petroleum industry to prevent or clean up petroleum spills/releases.
- Landfills that are designed, operated, and monitored to safely isolate waste from the environment, thereby protecting human health and the environment.
- Timely response to illegal dumping of trash.
- Reuse and recycling programs that encourage New Mexicans to turn their trash into treasures.

## Budget and FTE

| Resource Protection Division  | FTE   | Budget      |
|-------------------------------|-------|-------------|
| Office of the Director        | 5.25  | \$661,900   |
| DOE Oversight Bureau          | 17.00 | \$3,063,800 |
| Hazardous Waste Bureau        | 41.00 | \$5,288,700 |
| Petroleum Storage Tank Bureau | 57.00 | \$6,205,700 |
| Solid Waste Bureau            | 24.00 | \$2,159,100 |



*See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.*



# Resource Protection Division (P569)

## Program Goals and Objectives

- Provide increased regulatory oversight and accountability over hazardous waste generators, permittees, petroleum storage tank operators, and solid waste facilities.
- Ensure new and legacy contaminated sites are cleaned up in a manner that is quick, safe, and protective of human health and the environment and compliant with state and federal regulations.
- Maximize use of the Corrective Action Fund to clean up petroleum storage tank release sites.
- Increase public and stakeholder knowledge and awareness of environmental matters at DOE facilities and other regulated facilities through collaborative efforts.
- Effectively engage, collaborate, and communicate with key stakeholders across all programs to ensure transparency and enhance program outcomes.
- Strengthen compliance and enforcement for waste management and corrective action in a manner that is consistent, fair, and timely.
- Support state and local economic development by protecting and restoring New Mexico's natural resources and ensuring high quality public health.
- Further the state's climate change and emissions reductions goals by exploring emerging technologies that turn waste into energy.

## Strategic Actions

- Hold the DOD accountable for PFAS contamination at DOD facilities, as well as resulting offsite contamination, that creates an imminent and substantial risk to public health and hurts the local economy.
- Hold the DOD accountable to finalize an expedited remedy selection plan and clean-up of the bulk fuel release at Kirtland Air Force Base.
- Collaborate with affected communities and stakeholders to facilitate the best possible environmental solutions and outcomes when addressing new and legacy contamination.
- Seek resources to build an illegal dumping prevention program.
- Address the most common and repeated violations by focused community outreach and enforcement, where appropriate.
- Implement environmental monitoring programs at high priority contamination or hazardous material storage sites, such as Los Alamos National Laboratory (LANL) and the Waste Isolation Pilot Plant (WIPP), and the surrounding areas, that align with NMED's programs and strategic initiatives.
- Strengthen the Compliance Order on Consent for LANL to provide greater accountability and enforcement of pace of clean-up activities of legacy waste at LANL.
- Maximize use of the Corrective Action Fund for the remediation of petroleum release sites through collaboration with New Mexico's Economic Development Department.
- Provide funding for local governments to develop recycling programs and abate illegal dumpsites.
- Leverage available resources, expertise, and partnerships to implement waste-to-energy pilot projects, such as anaerobic digestion.
- Develop and implement updated enforcement policies to ensure compliance and accountability on a level playing field.

# Environmental Health Division (P570)

## Purpose of the Program

To promote and regulate New Mexico businesses, products and services in a manner that prevents adverse impacts and risks to public health and the environment; this includes commercially prepared foods, manufactured foods, hemp-finished products, adult use and medical edible cannabis products, public swimming pools and spas and liquid waste systems. To prevent workplace illnesses, injuries and fatalities to move our economy forward.

## Program Users

A public that eats at restaurants, purchases manufactured foods for their family, enjoys public pools and spas and expects and requires a safe working environment, as well as on-site septic system/property owners. The regulated community, including hemp and cannabis product manufacturers and food establishment owners. Other state agencies and institutions, county and local governments, and Tribes, Pueblos, and Nations who participate in consultation. All others who ensure our accountability to our mission, including: the Governor, Legislature, Federal Government, and the public.

## Benefits to New Mexicans

- Safe food in restaurants and from New Mexico manufacturing facilities.
- Economic development, job growth, and human health protection through responsible hemp and cannabis manufacturing.
- Safe public swimming pools and spas for recreation, fitness and medical care.
- Septic tanks for onsite liquid waste that protect local ground water supplies and residents.
- Workers and workplaces that are safe and protected from hazards both day-to-day and during public health emergencies.
- Successful businesses with safe and productive workplaces.

## Budget and FTE

| Environmental Health Division         | FTE   | Budget      |
|---------------------------------------|-------|-------------|
| Office of the Director                | 2.5   | \$300,500   |
| Environmental Health Bureau           | 99.5  | \$9,517,600 |
| Occupational Health and Safety Bureau | 49.00 | \$4,558,100 |
| Cannabis and Hemp Bureau              | 5.00  | \$561,400   |



Photo 2: NMED industrial hygienists prepare sampling equipment for workplace safety inspection.

*See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.*

# Environmental Health Division (P570)

## Program Goals and Objectives

- Ensure consumers and the general public are protected from adverse health and safety conditions through the inspection and enforcement of hemp and cannabis manufacturing facilities.
- Develop and maintain a timely and flexible response capacity to emergent public health risks that create workplace hazards.
- Protect employees and the public from adverse health and safety conditions in workplaces and worksites through inspection and enforcement.
- Protect consumers and the public from adverse health and safety conditions, such as foodborne and other illness, in public food establishments through inspection and enforcement.
- Prevent and abate public health hazards from surface and groundwater contamination by regulating onsite treatment and disposal of liquid waste.
- Ensure compliance at public swimming pools, baths, and spas to protect public health.
- Develop recommendations for establishing or strengthening employee safety and health programs.
- Establish strategic partnerships with groups of employers and employees to encourage, assist and recognize efforts to eliminate serious hazards and achieve a high degree of employee safety and health.
- Develop and launch program to administer the liquid waste indigent fund to help low-income residents with the cost to repair, replace or construct wastewater systems or alternative systems or connect to sewer systems.
- Collaborate with restaurants and the food, hemp and cannabis manufacturing sectors to reduce greenhouse gas emissions and protect consumers from emerging contaminants, such as PFAS, in food packaging and solid waste.

## Strategic Actions

- Continue to develop and implement a hemp and adult-use cannabis program, including permitting, compliance monitoring and enforcement functions, that ensures the protection of public health while supporting growth and sustainability of the industry.
- Provide free and confidential compliance assistance to businesses at their request by identifying workplace hazards, analyzing safety and health management systems.
- Manage funding and staffing levels to ensure timely permit issuance and compliance with liquid waste regulations.
- Administer the liquid waste indigent fund and execute associated professional services contracts to provide financial support to low income families across New Mexico to ensure they operate a safe and legal onsite wastewater system, including focused outreach to potentially eligible residents.
- Develop dynamic, adaptative strategies to address emerging workplace hazards, including regulatory requirements to address the growing cases of heat illness.
- Expand and retain NMED's skilled and trained team of food safety inspectors to keep pace with growth in food establishments across New Mexico and support local economies.
- Develop and implement training and retention strategies to maintain a team of workplace safety inspectors that provides requisite coverage of workplaces and worksites in New Mexico.
- Prevent workplace injuries by developing new and implementing existing occupational health and safety emphasis programs for emerging industries, such as hemp and adult-use cannabis manufacturing, and established industries, such as the oil and gas sector, where employees may be exposed to serious health and safety hazards.
- Integrate long-term pandemic and infectious disease prevention strategies into healthcare industry emphasis programs to protect workers from illness.



# Environmental Protection Division (P570)

## Purpose of the Program

To mitigate and prevent the impacts of climate change on our population, industries and infrastructure by decarbonizing our thriving economy. To protect New Mexico's inhabitants and our natural beauty through clean and clear air for all to breathe. To prevent unnecessary risks to public health when medical or veterinary services are needed. To protect communities and the environment by assuring the proper licensing and financial assurance of industrial activities that use or concentrate radioactive materials.

## Program Users

A public that breathes air and receives radiologic exams. The regulated community, including oil and gas producers. Other state agencies and institutions, county and local governments, including Tribes and Pueblos who participate in consultation. All others who ensure our accountability to our mission, including: the Governor, Legislature, Federal Government, and the public.

## Benefits to New Mexicans

- Clean air for all New Mexicans, including children, elderly and other vulnerable populations.
- Clear air for tourism and recreational opportunities from improved visibility at national and state parks and wilderness areas.
- Mitigating impacts of climate change by reducing greenhouse gas emissions and preparing for a warmer planet.
- Expanded energy options for families and businesses.
- Protection for workers and the public from the ill effects on human health and natural resources of radioactive materials in academic, medical, and industrial applications.
- Reduced exposure to indoor radon.
- Critical assistance to current and former DOE or DOE-contracted facility nuclear workers who are ill because of exposure to radiation, chemicals, or both.

## Budget and FTE

| Environmental Protection Division | FTE   | Budget       |
|-----------------------------------|-------|--------------|
| Office of the Director            | 4.35  | \$591,500    |
| Air Quality Bureau                | 92.00 | \$13,864,600 |
| Climate Change Bureau             | 7.4   | \$788,500    |
| Radiation Control Bureau          | 18.00 | \$2,304,300  |

*See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.*



# Environmental Protection Division (P570)

## Program Goals and Objectives

- Monitor and improve air quality and be proactive in areas where air quality is degrading by implementing emission control strategies and through timely, fair, and consistent enforcement.
- Ensure facilities that are non-compliant with air quality regulations or permit conditions take immediate and appropriate corrective action.
- Partner with other state agencies to implement the Governor's Executive Order 2019-003 on addressing Climate Change and Energy Waste Prevention and develop climate adaptation strategies, including the development of the renewable energy, clean hydrogen and other energy sources.
- Develop and implement regulatory programs that reduce greenhouse gas emissions from the transportation and oil and gas sectors and improve air quality for healthier communities.
- Reduce exposure to and increase knowledge on indoor radon through public outreach and education and targeted compliance initiatives.
- Protect and promote public and environmental health by preventing unnecessary radiation exposure through effective licensing, registration, inspection, special investigations, and enforcement.
- Implement federal requirements that protect visibility and mandate that the clarity of our skies return to preindustrial levels by 2064.

## Strategic Actions

- Update the greenhouse gas emissions inventory and projections.
- Develop a market-based program for reducing greenhouse gas emissions.
- Support implementation of the Climate Change Task Force's Equity Principles across applicable program and policy actions.
- Support the directives of Executive Order 2022-013 Establishing the Clean Hydrogen Development Initiative.
- Provide a pathway for auto manufacturers to voluntarily comply with early-action provisions of the New Motor Vehicle Emission Standards and promote incentive-based clean transportation strategies.
- Implement and enforce regulations to control volatile organic compounds and nitrogen oxides in areas that exceed 95 percent of the 2015 National Ambient Air Quality Standard for Ozone.
- Build and retain a skilled and trained team of air quality scientists, climate scientists, and radiation specialists, including permit writers, environmental analysts, enforcement specialists, and inspectors to ensure timely permit and certification issuance and compliance with air quality and radiation regulations.
- Assess and assure compliance with the radioactive materials regulations for the oil and gas industry.



*Photo 3: Secretary Kenney visits a distributor of electric and hydrogen fueled trucks in Albuquerque.*

# Appendix A

## Performance Measures

### Public Health

Percent of the population breathing air meeting federal health standards

Percent of the population served safe and healthy drinking water

Number of drinking water systems serving drinking water that did not meet at least one standard compared to the total number of drinking water systems

Number of community water system violations returned to compliance as a result of NMED assistance

Number of superfund sites cleaned up as compared to the number of superfund sites remaining

Employers that did not meet occupational health and safety requirements for at least one standard

### Environmental Protection

Amount of volatile organic compounds emitted statewide, in tons

Amount of volatile organic compounds emitted illegally, in tons

Amount of nitrogen oxides emitted statewide, in tons

Amount of nitrogen oxides emitted illegally, in tons

Quantity of nutrient-based pollutants reduced due to implementation of watershed restoration and on-the-ground improvement projects, in pounds

Reduction in nonpoint source sediment loading attributed to implementation of watershed restoration and on-the-ground improvement projects

Number of nonpoint source impaired waterbodies restored by the Department relative to the number of impaired water bodies

Number of underground storage tank sites cleaned up compared to the total number of leaking underground petroleum storage tank sites remaining

Number of completed cleanups of petroleum storage tank release sites that require no further action

### Economic Investment

Total investment of grants dollars awarded to communities, year to date

Number of brownfield acres of contaminated land cleaned up and available for reuse

Investments in water infrastructure, in dollars

Number of new water infrastructure projects

# Appendix A

## Compliance

|   |   |
|---|---|
| <b>Air</b>                                    | Percent of air emitting sources inspected                                 |
|   | Percent of air emitting sources in compliance                             |
|   | Percent of air emitting sources in violation                              |
| <b>Groundwater</b>                            | Percent of groundwater permittees inspected                               |
|   | Percent of groundwater permittees in compliance                           |
|   | Percent of groundwater permittees in violation                            |
| <b>Hazardous Waste</b>                        | Percent of hazardous waste facilities inspected                           |
|   | Percent of hazardous waste facilities in compliance                       |
|   | Percent of hazardous waste facilities in violation                        |
| <b>Restaurants and Food Manufacturing</b>     | Percent of restaurants/food manufactures inspected                        |
|   | Percent of restaurants/food manufactures in compliance                    |
|   | Percent of restaurants/food manufactures in violation                     |
| <b>Septic Systems</b>                         | Percent of new or modified liquid waste systems inspected                 |
|   | Percent of new or modified liquid waste systems in compliance             |
|   | Percent of new or modified liquid waste systems in violation              |
| <b>Solid and Infectious Waste</b>             | Percent of solid and infectious waste management facilities inspected     |
|   | Percent of solid and infectious waste management facilities in compliance |
|   | Percent of solid and infectious waste management facilities in violation  |
| <b>Surface Water</b>                          | Percent of surface water permittees inspected                             |
|   | Percent of surface water permittees in compliance                         |
|   | Percent of surface water permittees in violation                          |
| <b>Radiation Sources in Medical Equipment</b> | Percent of ionizing/non-ionizing radiation sources inspected              |
|   | Percent of ionizing/non-ionizing radiation sources in compliance          |
|   | Percent of ionizing/non-ionizing radiation sources in violation           |

## Operational

Total dollars collected by NMED and transferred to the general fund resulting from successful prosecutions and/or settlements stemming from non-compliance with laws, rules, or permits administered by the Department

Vacancy rate by month

Percent of NMED financial transactions completed online by the public or regulated community

# Appendix B

## Statutory Authority

- NMSA 1978, §§ 3-29-1 to -21
- NMSA 1978, §§ 9-7A-1 to -15
- NMSA 1978, §§ 10-15-1 to -4
- NMSA 1978, §§ 13-1-1 to -199
- NMSA 1978, §§ 14-2-1 to -12
- NMSA 1978, §§ 14-3-1 to -24
- NMSA 1978, §§ 14-4-1 to -11
- NMSA 1978, §§ 14-4A-1 to -6
- NMSA 1978, §§ 14-16-1 to -21
- NMSA 1978, §§ 25-1-1 to -16
- NMSA 1978, §§ 25-2-1 to -21
- NMSA 1978, §§ 26-2C-1 to -42
- NMSA 1978, §§ 50-9-1 to -25
- NMSA 1978, §§ 61-33-1 to -10
- NMSA 1978, §§ 70-13-1 to -5
- NMSA 1978, §§ 71-8-1 to -8
- NMSA 1978, §§ 74-1-1 to -17
- NMSA 1978, §§ 74-2-1 to -22
- NMSA 1978, §§ 74-3-1 to -16
- NMSA 1978, §§ 74-4-1 to -14
- NMSA 1978, §§ 74-4G-1 to -12
- NMSA 1978, §§ 74-6-1 to -17
- NMSA 1978, §§ 74-6A-1 to -15
- NMSA 1978, §§ 74-6B-1 to -14
- NMSA 1978, §§ 74-9-1 to -43
- NMSA 1978, §§ 74-13-1 to -20
- NMSA 1978, §§ 76-24-1 to -10
- Sanitary Projects Act
- Department of Environment Act
- Open Meetings Act
- Procurement Code
- Inspection of Public Records Act
- State Records Act
- State Rules Act
- Small Business Regulatory Relief Act
- Uniform Electronic Transactions Act
- Food Service Sanitation Act
- Adulterated or Misbranded Food Act
- Cannabis Regulation Act
- Occupational Health and Safety Act
- Utility Operators Act
- Produced Water Act
- Sustainable Development Testing Site Act
- Environmental Improvement Act
- Air Quality Control Act
- Radiation Protection Act
- Hazardous Waste Act
- Voluntary Remediation Act
- Water Quality Act
- Wastewater Facility Construction Loan Act
- Ground Water Protection Act
- Solid Waste Act
- Recycling and Illegal Dumping Act
- Hemp Manufacturing Act



**Fiscal Year 2024  
New Mexico Environment Department  
IT STRATEGIC PLAN  
September 1, 2022**

**Peter Street  
Chief Information Officer**

**James C. Kenney  
Cabinet Secretary**

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# EXECUTIVE SUMMARY

The purpose of the New Mexico Environment Department (NMED) is to protect and restore the State's environment, and to foster a healthy and prosperous New Mexico for present and future generations. Our vision is to foster a thriving and trusted, nationally leading organization known for protecting public health and the environment through its dedicated public servants.

Priorities for NMED's Office of Information Technology (OIT) include delivering excellent customer service to constituents, the regulated community, and staff by providing access to timely, accurate, and secure information; facilitating the Department's ability to conduct business with the public, stakeholders and the regulated community, professionally and consistently; meeting the increasing demand for applications and electronic data sharing and reporting requirements; and, partnering between Department business units and external stakeholders. NMED OIT is directing its solutions- and operations-oriented resources towards the fulfillment of these priorities via improvements to its application, data, integration, infrastructure, and security systems

NMED OIT has accomplished a variety of substantive improvements in Fiscal Year 2022 (FY22). For example, progress has been made in standardizing the department's infrastructure and security domains. Additionally, the agency has modernized its applications and data domains. In FY22 NMED began replacing outdated commercial off the shelf applications with custom developed applications including an instance of Licensing, Permitting, and Inspection. NMED continues their ongoing automation and modernization of their external and internal facing websites as well as began custom development of applications to automate Finance Services, Human Resources, and IT workflows and approval paths. Substantial progress was made in consolidating and scaling on premises data servers which will reduce IT costs and improve resilience as well as standing up instances of Azure and Oracle cloud services which will host and facilitate sharing NMED's data. Supporting NMED's data sharing efforts, refinement of NMED's Application Program Interface (API) platform continued in FY22 which facilitates data access, data sharing, as well as improved and expanded accessibility of our geospatial mapping toolkit. Updates to NMED's infrastructure focused on designing and upgrading wi-fi coverage at the Marquez, Springer, and Runnels facilities as well as ensuring broadband coverage at our remote office locations. NMED OIT created a cyber security governance, management, and response team comprised of IT leaders, Helpdesk, Network, Data, and Application section team members. These improvements ensure the agency's cyber security stance is integrated, employed, and practiced at every level in the NMED landscape.

NMED's goals for Fiscal Year 2023 include: transform agency applications with continued deployment of custom developed applications that automate and modernize the agency's core capabilities with the goal of reducing IT costs and improving efficiency; transform agency data by modernizing cloud-based infrastructure according to best practices with the goal of providing high quality data with minimal downtime; standardize agency integrations with the goal of facilitating high quality data sharing with an expanding population of stakeholders; modernize agency infrastructure by upgrading wi-fi services at remote locations with the goal of enabling a mobile workforce; modernize agency cyber security by augmenting monthly security scans with penetration testing which will ensure the agency's applications, data, integration, and infrastructure are secure.

NMED's goals for Fiscal Year 2024 include:

continued transformation of agency applications by replicating specific instances of custom developed applications automating the agency's core capabilities enterprise wide with the goal of reducing IT costs and improving efficiency; continued transformation of agency data to cloud-based services with the goal of providing high quality data at a lower cost with minimal downtime; modernize agency integrations with the goal of transforming virtual machine based application and data hosting to containerized disaggregated hosting which will improve efficiency, scalability, and security; transform agency infrastructure by

removing most instances of fixed telecommunications, upgrading bandwidth and wi-fi services at all remote locations with the goal of reducing IT costs and enabling a truly mobile and virtual workforce; transform agency cyber security by participating in a planned enterprise wide implementation of an Intrusion Detection and Prevention System (IDPS) which will ensure the agency's applications, data, integration, and infrastructure are constantly monitored for breaches and respond to breaches in a timely and efficient manner which will substantially reduce cyber security risk.

The challenges we face in meeting these goals include: funding, integrating and formalizing best practices as well as requirements and workflow improvements while developing custom developed applications; gaining enterprise oversight approval to use Azure and Oracle cloud instances, migrating applications and data to approved cloud instances, as well as testing applications and data on the cloud; further consolidating our server footprint to reduce our operating costs and properly prepare for migrating our on-premises servers to the cloud for improved application resilience, scalability, and security; achieving the next level of cybersecurity via the implementation of regular penetration testing and the creation of plans for incident response and disaster recovery.

# **I. AGENCY OVERVIEW**

## **A. AGENCY MISSION**

NMED's mission is to Protect and restore the environment and foster a healthy and prosperous New Mexico for present and future generations. NMED OIT supports the agency's mission by providing applications, automations, data, integrations, and infrastructure platforms on which the agency monitors and measures environmental quality as well as licensing, permitting, and inspection of permitted facilities.

## **B. AGENCY GOALS**

Science - Embracing the best available science to inform decision-making in support of our mission.

Innovation - Employing creative engineering and technological solutions to address challenges.

Collaboration - Engaging communities and interested stakeholders in decision-making outcomes.

Compliance - Ensuring accountability with permits and rules while maintaining a fair and level playing field.

## **C. VISION AND PRIORITIES**

In Fiscal Year 2024, NMED will continue its noble mission of protecting public health and the environment as outlined in the agency strategic plan. We will measure our success throughout the fiscal year per our performance measures which focus on public health, the environment, compliance, economic investments and operational effectiveness. We will assess our progress through quarterly performance reports published to our website.

## **D. AGENCY DESCRIPTION AND ORGANIZATION STRUCTURE**

NMED is comprised of five essential functions including Resource Management Division, Environmental Health Division, Environmental Protection Division, Resource Protection Division, and Water Protection Division.

The mission of the Resource Management Division is to provide leadership and strategic vision across the Department. To empower all management and staff to implement the Department's mission to the fullest extent possible. To create and foster a professional, diverse, and accountable workforce. Resource Management Division is composed of the Office of the Secretary, Administrative Services Division, Office of General Council, and Office of Information Technology. The Resource Management Division performs a majority of their work in either Runnels Building in Santa Fe or the Springer Building in Albuquerque.

| Resource Management Division     | FTE   |
|----------------------------------|-------|
| Office of the Secretary          | 14.00 |
| Administrative Services Division | 28.25 |
| Office of General Counsel        | 15.00 |
| Office of Information Technology | 28.00 |

The mission of the Environmental Health Division is to promote and regulate New Mexico businesses, products and services in a manner that prevents adverse impacts and risks to public health and the environment; this includes commercially prepared foods, manufactured foods, hemp-finished products, adult use and medical edible cannabis products, public swimming pools and spas and liquid waste systems. To prevent workplace illnesses, injuries and fatalities to move our economy forward. The Environmental Health Division is composed of the Office of the Director, the Environmental Health Bureau, Occupational Health and Safety Bureau, as well as the Cannabis and Hemp Bureau. A majority of the work completed by the Environmental Health Division is completed at either the Runnels building in Santa Fe, or the Springer building in Albuquerque, or any one of NMED's field offices.

| Environmental Health Division         | FTE   |
|---------------------------------------|-------|
| Office of the Director                | 2.50  |
| Environmental Health Bureau           | 99.50 |
| Occupational Health and Safety Bureau | 49.00 |
| Cannabis and Hemp Bureau              | 5.00  |

The mission of the Environmental Protection Division is to mitigate and prevent the impacts of climate change on our population, industries and infrastructure by decarbonizing our economy. To protect New Mexico's inhabitants and our natural beauty through clean and clear air. To prevent unnecessary risks to public health when medical or veterinary services are needed. To protect families and pets from over-exposure to radiation from x-ray equipment. The Environmental Protection Division is composed of Office of the Director, Air Quality Bureau, Climate Change Bureau, and Radiation Control Bureau. A majority of the work completed by the Environmental Protection Division is completed at either the Runnels building in Santa Fe, or the Springer building in Albuquerque, or any one of NMED's field offices.

| Environmental Protection Division | FTE   |
|-----------------------------------|-------|
| Office of the Director            | 4.35  |
| Air Quality Bureau                | 92.00 |
| Climate Change Bureau             | 7.40  |
| Radiation Control Bureau          | 18.00 |

The mission of the Resource Protection Division is to maximize the prevention of new contamination and expeditiously address legacy pollution in New Mexico for the protection of public health and the environment. To ensure environmental justice for the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits. To ensure hazardous waste is managed – from cradle to grave – and contaminated sites are cleaned up as quickly as possible to lessen the burden to communities, their health, and our environment. To closely monitor the environment within and around U.S. Department of Defense (DOD) and U.S. Department of Energy (DOE) facilities in New Mexico, taking swift and meaningful compliance actions when warranted. To ensure petroleum storage tanks are managed to prevent releases and that any releases are remediated as expeditiously as possible and as eligibility and the Corrective Action Fund allows. To ensure solid waste – including infectious waste – and recyclable materials are responsibly managed. A majority of the work completed by the Resource Protection Division is completed at either the Runnels building in Santa Fe, or the Springer building in Albuquerque, or any one of NMED’s field offices.

| Resource Protection Division  | FTE   |
|-------------------------------|-------|
| Office of the Director        | 5.25  |
| DOE Oversight Bureau          | 17.00 |
| Hazardous Waste Bureau        | 41.00 |
| Petroleum Storage Tank Bureau | 57.00 |
| Solid Waste Bureau            | 24.00 |

The mission of the Water Protection Division is to ensure the cleanest and safest water supplies for New Mexicans today and into the future through the protection of surface water and groundwater quality. To provide financing for and oversight of water infrastructure projects across the state with added emphasis on projects related to the impacts of climate change. The Resource Protection Division is composed of the Office of the Director, Construction Programs Bureau, Drinking Water Bureau, Ground Water Quality Bureau, and Surface Water Quality Bureau. A majority of the work completed by the Water Protection Division is completed at either the Runnels Building in Santa Fe, or the Spring Building in Albuquerque, or any one of NMED’s field offices.

| Water Protection Division    | FTE   |
|------------------------------|-------|
| Office of the Director       | 5.25  |
| Construction Programs Bureau | 24.00 |
| Drinking Water Bureau        | 57.00 |
| Ground Water Quality Bureau  | 62.00 |
| Surface Water Quality Bureau | 43.00 |

|                        |   |            |                       |             |
|------------------------|---|------------|-----------------------|-------------|
| NMED<br>Main<br>Office | Harold Runnels Building<br><br>1190 S. St. Francis Drive<br><br>Santa Fe, NM 87505  |            |                       |             |
| Santa Fe<br>Locations  | Rodeo Plaza (Hazardous Waste Bureau and Petroleum Storage Tank Bureau)<br><br>Marquez Plaza (Air Quality Bureau and Occupational Health and Safety Bureau)<br><br>Montoya Building (Radiation Control Bureau)<br><br>Camino Edward Ortiz Office (Environmental Health Bureau District 2 Office) |            |                       |             |
| District<br>Offices    | District 1 – Albuquerque<br><br>District 3 – Las Cruces   |            | District 2 – Santa Fe |             |
| Field<br>Offices       | Alamogordo  | Española   | Las Vegas             | Roswell     |
|                        | Albuquerque   | Farmington | Los Lunas             | Ruidoso     |
|                        | Carlsbad  | Gallup     | Milan                 | Silver City |
|                        | Clovis  | Hobbs      | Raton                 | Taos        |
|                        | Deming  | Las Cruces | Rio Rancho            | Tucumcari   |

## **II. IT ENVIRONMENT**

### **1. Major Applications**

NMED's mission-critical applications broadly support the Department's functions of licensing and permitting, inspections and enforcement, and data analysis, consolidation and review.

NMED has a current application inventory of over 100 applications and web services, of which the principal, mission-critical applications are identified in Appendix A. Unlike many agencies of similar size, NMED does not utilize enterprise-wide operational user applications except for TEMPO (Tool for EnvironMental Protection Organizations), a legacy system. TEMPO is currently still partially in use by the NMED Air Quality Bureau (AQB) for some mission-critical needs not yet fulfilled by other, more modern applications still under development, and also partially by the NMED Ground Water Quality Bureau (GWQB) for tracking their permitting process and monitoring compliance of regulated entities. NMED OIT is primarily a custom-development shop utilizing mostly (but not exclusively) Java and PHP development languages, as the needs of NMED's programs and bureaus are often complex and unique in terms of both data and process flow, and the funding model supporting the bureaus is likewise complex and unique with many constraints.

### **2. Infrastructure**

NMED maintains a Wide Area Network (WAN) that connects the offices throughout New Mexico. Standards for infrastructure components such as network equipment, servers, printers, software and client devices are maintained to support the business needs of NMED staff. NMED leverages the use of the Department of Information Technology (DoIT) Data Center in Santa Fe for a secure and reliable environment for NMED servers. NMED maintains a hyper-converged virtual server hosting and storage platform to meet the computing and storage needs of the organization.

The Department's virtual server infrastructure, which hosts the Department's managed file server (File Depot), is backed up regularly by an enterprise backup solution. The hyper-converged storage solution that hosts the virtual server infrastructure retains snapshots of virtual servers. File Depot is backed up nightly by additional enterprise backup software and these backups are retained on disk for one month. Weekly backups of File Depot are retained on tape for three months.

NMED data is managed using three different relational database management systems (RDBMS). The bulk of our data is stored and maintained using the Oracle RDBMS. Other data management systems used by NMED include Microsoft SQL Server and MySQL.

### **3. Security**

NMED continues to maintain security as an agency priority. We are continuing with the DoIT-sponsored RiskSense vulnerability testing on a monthly basis. NMED's cyber security score is 796 as of September 01, 2022, compared to the statewide average score of 762. Our virtual private network (VPN) capabilities have been expanded substantially and with complete success to accommodate work-from-home requirements dictated by the pandemic. NMED is in the process of leveraging our Google Apigee API Management platform to ensure application security at a core API-access level. NMED plans on completing an annual security assessment, which will include agency wide cybersecurity training for contractors and staff in December 2022. Additionally, NMED OIT hosts quarterly "Lunch and Learn" events which focus on cybersecurity and new functionality.

#### 4. Agency IT Certified Projects

| PROJECT NAME            |  |
|-------------------------|--|
| Project Description     | Enterprise System Modernization Phase I<br>Page 209 - Laws 2021, Chapter 137, Section 7 (32) |
| Estimated Project Costs | \$3,180,600  |
| Current Funding         | \$1,580,600  |
| Certified Project Phase | Planning   |
| Estimated Completion    | 06/30/2023   |
| Strategic Priority      | 1  |
| PROJECT NAME            |  |
| Project Description     | Document Digitization Phase 1<br>Page 217 - Laws 2022, Chapter 54, Section 7 (43)            |
| Estimated Project Costs | \$2,000,000  |
| Current Funding         | \$500,000  |
| Certified Project Phase | Pending Initiation   |
| Estimated Completion    | 06/30/2024   |
| Strategic Priority      | 1  |

**TABLE II.1: Current Certified IT Projects**

#### 5. Workforce

##### A. Full Time Employees

NMED OIT has thirty one (31) authorized IT full time employees (FTE) of which two (2) positions are planned vacancies, nineteen (19) are filled. Of the ten (10) vacant position, two (2) are in the interview stage and the remaining eight (8) are pending approval for advertisement. All OIT staff members are teleworking while eight (8) work both in the office as well as teleworking.

##### B. IT Professional Services Contractors

NMED utilizes contracted IT professionals to assist with intra agency collaborations as well as staff augmentations. Generally, NMED contractors providing staff augmentation support are funded with NMED's OIT budget. Contractors working on intra agency collaborations are generally funded with C2 or Federal grant budgets.

#### 6. Challenges

NMED has a significant need to replace COTS legacy applications to modernize automations, processes, and workflows with custom developed solutions. NMED's data domain has matured to a point where an updated and comprehensive data governance plan is required. Developing integration best practices when migrating existing functionality and services to Platform as a Service (PaaS) and Software as a Service (SaaS) is a challenge that NMED must address and document. Continued consolidation and migration of on-premises servers to the cloud is necessary to ensure NMED's modernization. Application, network and server cybersecurity are supported by monthly vulnerability scans. These scans ensure we are prepared to mitigate known attacks. On

the other hand, NMED must take the next step on our journey to cybersecurity maturity. Penetration testing, and an IDPS instance are the next major milestones NMED must complete to ensure a secure computing environment. NMED's Geographic Information System (GIS) Section migrated to ESRI's cloud environment and implemented Extract-Transform-Load (ETL) software. These migration and implementation efforts facilitate better utilization of high-quality GIS data. Utilizing data on ESRI's cloud platform allows NMED's mission-critical programs to self-publish dashboards and web maps. The recommended GIS standardization improvements include developing data update, quality and control processes as well as socializing publishing process and workflow best practices.

### III. FY22 KEY ACCOMPLISHMENTS

#### A. FY22 STRATEGIC IT ACCOMPLISHMENTS

| STRATEGIC PRIORITY 1 – [STRATEGY NAME]                   |   |
|--|---|
| [STRATEGY STATEMENT – WHAT DOES THE STRATEGY ACCOMPLISH] |   |
| <b>FY22 Strategy 1</b>                                   | Modernize Cloud   |
| Accomplishments  | Expand, update and refresh technology and organizational practices to keep up with the accelerating pace of technological advancement and support New Mexico to adopt and leverage the most modern technologies   |
| Outcomes/Metrics   | 100% of NMED staff are utilizing modernized cloud offerings on a daily basis. Approximately 25% of staff are exclusively utilizing cloud document storage as document repositories and for document sharing.  |
| <b>FY22 Strategy 2</b>                                   | Standardize Cybersecurity   |
| Accomplishments  | Established and implemented consistent standards, practices and governance across the Department to help implement new IT products and services while providing technical and strategic direction.  |
| Outcomes/Metrics   | The entire NMED IT Landscape is audited monthly to identify vulnerabilities. Instead of tasking cybersecurity to one individual, every member of NMED's OIT is responsible for cybersecurity. NMED OIT created a cyber security governance, management, and response team comprised of IT leaders, Helpdesk, Network, Data, and Application section team members. These improvements ensure the agency's cyber security stance is integrated, employed, and practiced at every level in the NMED landscape. |
| <b>FY22 Strategy 3</b>                                   | Standardize Data  |
| Accomplishments  | Established consistent standards, practices and governance across the Department to help maintaining and implementing new IT products and services while providing technical and strategic direction.   |
| Outcomes/Metrics   | Although NMED's data governance has taken its first step on the path to standardized data, much remains to be completed. While the data governance established in FY22 ensures that newly developed custom solutions accept only validated and verified data, that shared data is the "source of truth", existing data sets require additional effort. The Agency's next step must include managing existing data quality by ensuring data sets are complete, valid, and verified.                          |
| <b>FY22 Strategy 4</b>                                   | Standardize GIS   |
| Accomplishments  | Standardized GIS data editing, publication, and sharing. Implemented Esri's Enterprise Portal system allowing non-GIS-professionals to publish web maps. Fulfilled NMED's commitment to the Water Data Initiative via sharing water data compliant with the SensorThings API format.  |
| Outcomes/Metrics   | This strategic goal was met in FY22. Currently the GIS team is working refinements to the portal to improve data quality and process automations.   |

**TABLE III.1: FY22 Strategic IT Accomplishments**

## B. OTHER KEY IT ACCOMPLISHMENTS – FY22

| APPLICATION         |  |
|---------------------|--|
| Accomplishment      | Provision and commission of Power Platform & started LPI custom development  |
| Value or Impact     | Developing one custom solution for NMED's LPI activities will save the agency \$375,000 in license fees per year.  |
| Accomplishment      | Released new version of Air Emissions Inventory Reporting (AEIR)   |
| Value or Impact     | Increased stakeholder engagement from 300 users to over 4,000 users.   |
| Accomplishment      | Smart Comment  |
| Value or Impact     | Overlaying Smart Comment on the NMED public facing website allows agency staff to digitally collect comments for boards and commissions, hearings, and permit applications in a centralized, compliant, and efficient manner.  |
| Accomplishment      | Website content management and promotion controls and tools  |
| Value or Impact     | Allowing staff to directly upload content to NMED's public facing website ensures the correct content is posted in a timely manner and facilitates website change management activities.   |
| DATA                |  |
| Accomplishment      | Azure and Oracle cloud test instances  |
| Value or Impact     | In preparation for full enterprise approval, OIT has begun consolidating servers, reduce virtual machine storage capacity, and training staff on cloud services. These activities ensure OIT staff are prepared to migrate to cloud instances and manage those instances at "go live". |
| PROCESS IMPROVEMENT |  |
| Accomplishment 1    | CODA Budget Tracker  |
| Value or Impact     | A database-like online collaborative tool based in Coda.io for tracking OIT 400s purchases and 300s Purchase Orders. Provides means for tracking PORF process steps, subscriptions and other renewal-based purchases, as well as one-time purchases and POs for contractors, etc.      |
| Accomplishment 2    | IT Landscape Inventory   |
| Value or Impact     | IT Landscape Inventory v1.0 -- Coda.io-based collaborative tool for documenting and tracking changes to ENV solutions inventory items. Over 120 solutions currently documented, along with database and server information.  |
| Accomplishment 3    | Replaced access/excel based online tools with CODA collaborative tool  |
| Value or Impact     | ENV Mission-oriented business process improvements – replaced several onerous, time-intensive spreadsheets used by the Bureaus and programs with Coda.io-based collaborative tools that enable automated synchronization with the source data, easy updating and information sharing.  |
| WORKFORCE           |  |
| Accomplishments     | Two new hires and two promotions   |

|                         |  |
|-------------------------|--|
| Value or Impact         | New hires are essential for reducing the agency's vacancy rate as well as ensuring OIT is staffed to meet existing agency demands. Internal promotions are essential for retaining key staff and providing staff a professional growth path. |
| <b>CUSTOMER SERVICE</b> |  |
| Accomplishments         | Processed \$4.4M in online payments.   |
| Value or Impact         | NMED gladly supports online payments for license, permit, and inspection fees. Online payments reduce Financial Services Bureau's processing bank deposit activities as well as provides an added convenience for the regulated community.   |
| <b>TELEWORK</b>         |  |
| Accomplishments         | NMED OIT ensures an accessible yet secure virtual work environment for all staff members.  |
| Value or Impact         | Staff have the flexibility to complete the agency's mission critical work in the field, at home, or in the office. Morale is improved and productivity is increased.   |
| <b>SECURITY</b>         |  |
| Accomplishments         | Substantially improve security stance.   |
| Value or Impact         | NMED's cyber security score is 796 as of September 01, 2022, compared to the statewide average score of 762.   |

**TABLE III.2: Other Key IT Accomplishments – FY22**

## IV. FY24 IT STRATEGIC GOALS AND STRATEGIES

| STRATEGIC PRIORITY 1 – Application |   |
|------------------------------------|---|
| Goal Statement                     |   |
| <b>FY24 Strategy 1</b>             | Transform agency applications by replicating specific instances of custom developed applications automating the agency’s core capabilities enterprise wide with the goal of reducing IT costs and improving efficiency; |
| Outcomes/Metrics                   | Custom develop License, Permitting, and Inspection applications for the Environmental Health Division, Resource Protection Division, and Water Protection Division.   |
| <b>FY24 Strategy 2</b>             | Automate ASD  |
| Outcomes/Metrics                   | Develop custom automated workflows, with approval paths, for federal grant time reporting, purchase order creation, and hiring processes.   |

| STRATEGIC PRIORITY 2 – Data |   |
|-----------------------------|---|
| Goal Statement              |   |
| <b>FY24 Strategy 1</b>      | Transform agency data to cloud-based services                   |
| Outcomes/Metrics            | Provide high quality data with 25% reduction over FY21 costing. |
| Outcomes/Metrics            | Maintain a greater than 95% server uptime.                      |

| STRATEGIC PRIORITY 3 – Integration |  |
|------------------------------------|--|
| Goal Statement                     |  |
| <b>FY24 Strategy 1</b>             | Modernize agency integrations  |
| Outcomes/Metrics                   | Transform 25% of FY22 virtual machine based applications and data hosting to containerized disaggregated hosting which will improve efficiency, scalability, and security. |

| STRATEGIC PRIORITY 4 – Infrastructure |                                 |
|---------------------------------------|---------------------------------|
| Goal Statement                        |                                 |
| <b>FY24 Strategy 1</b>                | Transform agency infrastructure |

|                  |  |
|------------------|--|
| Outcomes/Metrics | Remove all non-essential instances of fixed telecommunications with the goal of reducing IT costs and enabling a truly mobile and virtual workforce. |
| Outcomes/Metrics | Upgrade bandwidth and wi-fi services at all remote locations with the goal of reducing IT costs and enabling a truly modern mobile workforce.        |

| <b>STRATEGIC PRIORITY 5 – Cyber Security</b> |   |
|--|---|
| <b>Goal Statement</b>                        |   |
| <b>FY24 Strategy 1</b>                       | Transform agency cyber security by participating in a planned enterprise wide implementation of an Intrusion Detection and Prevention System (IDPS)   |
| Outcomes/Metrics                             | Ensure the agency's applications, data, integration, and infrastructure are constantly monitored for breaches and respond to breaches in a timely and efficient manner which will substantially reduce cyber security risk and breach impact. |

**TABLE IV.1. FY24 IT Strategic Goals and Strategies**

## V. IT FISCAL AND BUDGET MANAGEMENT

### A. Information Technology (IT) Operating Budget (C1)

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| Information Technology Base Operating Budget  |  |                |   |               |                                       |
|---|--|----------------|---|---------------|---------------------------------------|
| Agency Name:  | New Mexico Environment Department (NMENV)      |                |   | Agency Code:  | 66700                                 |
| Base Request Operational Support of IT. Check one of the options below:<br><input checked="" type="checkbox"/> Flat Budget or <input type="checkbox"/> Expansion from previous year |  |                |   |               |                                       |
| Revenue IT Base Budget (dollars in thousands)   |  |                |   |               |                                       |
| Appropriation Funding Type  | FY21 Actual                                    | FY22 Actual    | FY23 OpBud  | FY24 Request  | FY25 Estimate                         |
| General Fund  | 1,676.9  | 1462.3         | 2003.9  | 2013.5        | 2013.5                                |
| Other State Funds   | 0.0  | 3.5            | 90.5  | 100.5         | 100.5                                 |
| Internal Services Funds/ Interagency Transfers  | 3,104.2  | 3095.3         | 2679.3  | 2700.5        | 2700.5                                |
| Federal Funds   | 1,662.9  | 1629.7         | 1759.8  | 1850.0        | 1850.0                                |
| <b>Total</b>  | <b>6,444.0</b>                                 | <b>6190.80</b> | <b>6399.5</b>   | <b>6664.5</b> | <b>6664.5</b>                         |
| Expenditure Categories (dollars in thousands)   |  |                |   |               |                                       |
| Category or Account Description   | FY21 Actual                                    | FY22 Actual    | FY23 Op Bud   | FY24 Request  | FY25 Estimate                         |
| Personal Services & Employee Benefits   | 2842.5   | 2228.9         | 2805.6  | 2800.0        | 2800.0                                |
| Contractual & Professional Services   | 1085.5   | 1192           | 1122.6  | 1260.2        | 1260.2                                |
| IT Other Services   | 2516   | 2247           | 2471.3  | 2604.3        | 2604.3                                |
| Other Financing Uses  | 0.0  | 0.0            | 0   | 0.0           | 0.0                                   |
| <b>Total</b>  | <b>6444.0</b>                                  | <b>5667.9</b>  | <b>6399.5</b>   | <b>6664.5</b> | <b>6664.5</b>                         |
|   | Agency Cabinet Secretary/ Director (mandatory) |                | Chief information Officer or IT Lead (mandatory)                      |               | Chief Finance Officer (mandatory)     |
| Print Name  | James Kenney                                   |                | Peter Street  |               | Danielle Gilliam                      |
| Signature   | DocuSigned by:<br>James C. Kenney              |                | Digitally signed by Peter Street<br>Date: 2022.08.31 21:56:41 -06'00' |               | DocuSigned by:<br>Danielle L. Gilliam |
| Date  | 8/31/2022                                      |                | Street  |               | 8/31/2022                             |
| Phone   | 505.470.6161                                   |                | 505.670.4494  |               | 505.470.1704                          |
| Email Address   | James.Kenney@state.nm.us                       |                | Peter.Street@state.nm.us  |               | Danielle.Gilliam@state.nm.us          |

TABLE V.1: IT Operating Budget

## VI. SPECIAL FUNDING, SUPPLEMENTAL, COMPUTER SYSTEM ENHANCEMENT (C2) FUNDING AND REAUTHORIZATION OF C2 APPROPRIATIONS

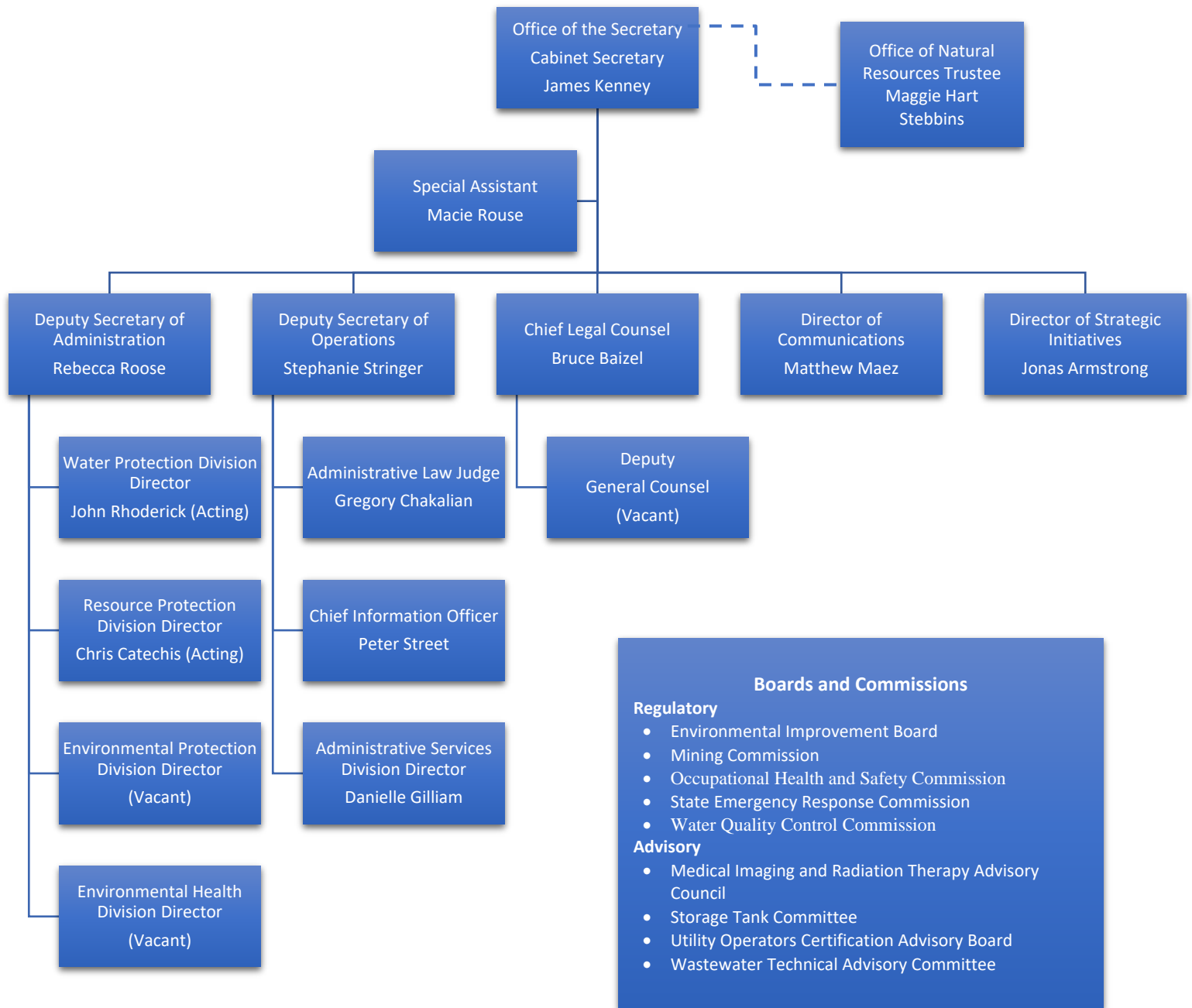
- A. NMED is not requesting any special or supplemental funding.
- B. NNED is requesting new C2 funding for ESMI Phase II in the amount of \$1,600,00.
- C. NMED is requesting reauthorization of ESMI Phase 1 Page 209 - Laws 2021, Chapter 137, Section 7 (32) in the amount of \$1,098,800. for \$1,581,000.

### REQUEST FOR REAUTHORIZATION OF C2 APPROPRIATIONS

| Information Technology Request for Reauthorization of C2 Appropriations                                 |  |   |  |
|---|--|---|--|
| <b>Agency Name</b>  | New Mexico Environment Department                  | <b>Agency Code</b>  | 66700  |
| <b>Lead Agency Name Listed on Appropriation</b>   | James Kenney Cabinet Secretary<br>Peter Street CIO | <b>Project Name</b>   | ESMI   |
| <b>Source of Authorization</b><br>(e.g., Laws 2022, Chapter 54, Section 7 (12) or Grant/Federal Fund #) |  | <b>Appropriation Amount</b><br>(in thousands)                     | <b>Remaining Balance</b><br>(in thousands)                             |
| Enterprise System Modernization Phase I<br>Page 209 - Laws 2021, Chapter 137, Section 7 (32)            |  | \$1,580.6   | \$1,098.8  |
|   |  | 0.0   | 0.0  |
|   |  | 0.0   | 0.0  |
|   |  | 0.0   | 0.0  |
|   |  | 0.0   | 0.0  |
|   |  | 0.0   | 0.0  |
|   |  | 0.0   | 0.0  |
| <b>Total amount appropriated for project life</b><br>(in thousands)                                     | \$1,580.6  | <b>Will the project be completed within the next fiscal year?</b> | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No |
| <b>Reason for Requesting Reauthorization</b>  | Funds from previous authorization remain unspent.  |   |  |

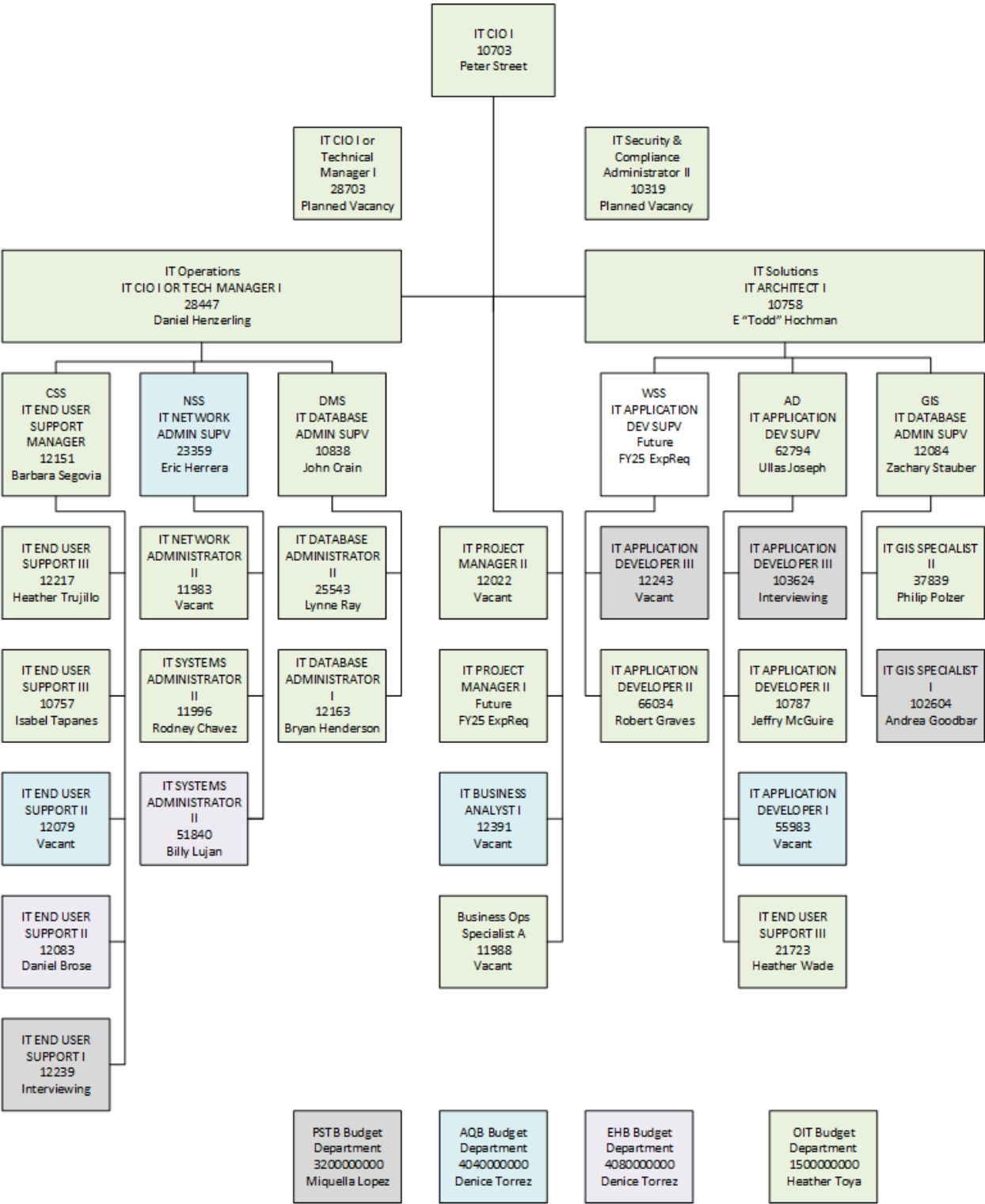
**TABLE VI.1: Request for Reauthorization of C2 Appropriations**

# APPENDIX A-I: AGENCY ORGANIZATION CHART



# APPENDIX A-II: IT ORGANIZATION CHART

New Mexico Environment Department  
Office of Information Technology  
2022.09.01 Organization Chart



# APPENDIX A-III: C2 IT DATA PROCESSING CSEF

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## C2: Information Technology Data Processing - Computer Systems Enhancement Fund (CSEF)

| Agency Name                       | Agency Code            | Project Name |          |                      |                    |
|-----------------------------------|------------------------|--------------|----------|----------------------|--------------------|
| New Mexico Environment Department | 66700                  | ESMI         |          |                      |                    |
| Multi-Agency Project              | Participating Agencies |              | Priority | Projected Start Date | Projected End Date |
| No                                |                        |              | 1        | 4/1/2021             | 6/30/2026          |

| Revenue Project Cost (dollars in thousands)             |                    |             |                |               |                |
|---|--------------------|-------------|----------------|---------------|----------------|
| Category or Account Description                         | FY22 & Prev Actual | FY23 Budget | FY24 Request   | FY25 Estimate | Total          |
| General Fund (CSEF)                                     | 1,580.6            | 0.0         | 1,600.0        | 0.0           | 3,180.6        |
| Other State Funds (*specify funds below)                | 0.0                | 0.0         | 0.0            | 0.0           | 0.0            |
| Federal Funds   | 0.0                | 0.0         | 0.0            | 0.0           | 0.0            |
| Internal Svc Funds/Interagency Transfer                 | 0.0                | 0.0         | 0.0            | 0.0           | 0.0            |
| <b>Total</b>  | <b>1,580.6</b>     | <b>0.0</b>  | <b>1,600.0</b> | <b>0.0</b>    | <b>3,180.6</b> |
| *If Other State Funds, Specify Funding Source/Fund Name |                    |             |                |               |                |

| Expenditure Categories (dollars in thousands) |                    |                |              |               |                |
|---|--------------------|----------------|--------------|---------------|----------------|
|   | FY22 & Prev Actual | FY23 Budget    | FY24 Request | FY25 Estimate | Total          |
| Personal Services & Employee Benefits         | 0.0                | 0.0            | 0.0          | 0.0           | 0.0            |
| Professional Services                         | 281.61             | 747.7          | 586.0        | 266.0         | 1,881.3        |
| Travel/Lodging                                | 0.0                | 0.0            | 0.0          | 0.0           | 0.0            |
| IT Hardware                                   | 0.0                | 24.0           | 24.0         | 24.0          | 72.0           |
| IT Software                                   | 177.3              | 350.0          | 350.0        | 350.0         | 1,227.3        |
| Other   | 0.0                | 0.0            | 0.0          | 0.0           | 0.0            |
| <b>Total</b>                                  | <b>458.9</b>       | <b>1,121.7</b> | <b>960.0</b> | <b>640.0</b>  | <b>3,180.6</b> |

|   | Signature            | Date  |
|---|----------------------|---|
| Cabinet Secretary/Director                | DocuSigned by:       | 8/31/2022   |
| Chief Information Officer/Technology Lead | Peter Street         | Digitally signed by Peter Street<br>Date: 2022.08.31 21:54:58 -0600 |
| Budget Director                           | DocuSigned by:       | 8/31/2022   |
|   | Denielle L. Sullivan |   |
|   | BD0C44E900D540F      |   |

## APPENDIX A-III: C2 IT Data Processing CSEF

# STRATEGIC PLAN FY2025



NMED Exhibit 35

**NEW MEXICO ENVIRONMENT DEPARTMENT**

# Fiscal Year 2025 Strategic Plan



**James C. Kenney**  
**Cabinet Secretary**

In Fiscal Year 2025, NMED will continue its focus on recruitment and retention which starts with fair and equitable compensation for all employees. The strength of our agency and our ability to achieve our mission of protecting the public health and environment of New Mexico is entirely dependent on our dedicated and expert staff. For this reason, our priority this year is to address both our staffing shortages though renewed focus on hiring as well as the root cause of our staffing shortages. In addition, NMED will continue to aggressively safeguard our state both according to our statutory requirements and by looking at emerging risks to public health. Our strategic plan for FY25 is centered around four agency-wide program goals and objectives:

**Program Goal and Objective 1:** Ensure robust staffing and resources to improve the implementation of our mission.

**Program Goal and Objective 2:** Create and support economic development opportunities that mitigate climate change, improve air quality, protect freshwater resources, reduce wastes, and ensure environmental justice for marginalized communities.

**Program Goal and Objective 3:** Protect communities from emerging public health and environmental contaminants.

**Program Goal and Objective 4:** Protect the public health and the environment through innovative and traditional compliance assurance activities.

NMED will qualitatively and quantitatively measure our progress through reports to the Legislative Finance Committee and by publishing quarterly performance reports. NMED maintains a webpage on Agency performance that is available to the public, legislators, and our employees. NMED's performance webpage is found here: <https://www.env.nm.gov/performance-measures/>.

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# Vision, Mission, Values

## Vision

To foster a thriving and trusted, nationally leading organization known for protecting public health and the environment through its dedicated public servants.

## Mission

Protect and restore the environment and foster a healthy and prosperous New Mexico for present and future generations.

## Values



**Science** - Embracing the best available science to inform decision-making in support of our vision and mission.



**Innovation** - Employing creative engineering and technological solutions to address challenges.

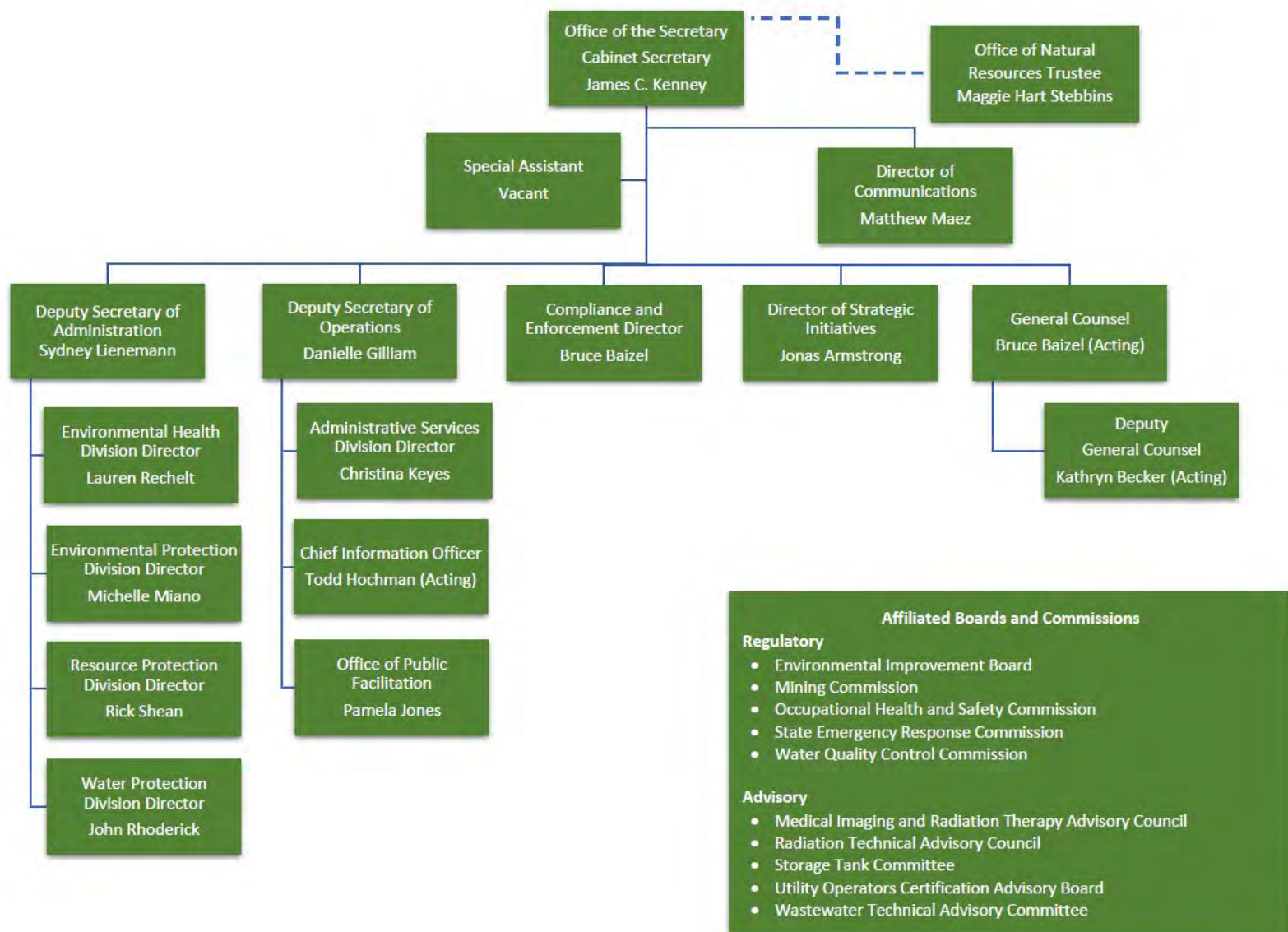


**Collaboration** - Engaging communities and interested stakeholders in decision-making and outcomes.



**Compliance** - Ensuring accountability with permits and rules while maintaining a fair and level playing field.

# Organizational Structure



# Resource Management Division (P567)

## Purpose of the Program

The Office of the Secretary (OOTS) is responsible for translating NMED's vision, mission, and values into action. This execution aligns with the Governor's and Secretary's vision, legislative authority, and federal delegation, primacy, and grant agreements.

OOTS not only implements NMED's core principles but also ensures transparent communication and cooperation with Tribal, local, federal, and international governments and stakeholders. Services include strategic leadership and decision-making in all programmatic and policy matters within the agency.

OOTS fosters meaningful relationships with community members, elected officials, governmental agencies, tribal governments, the business community, industry, and nongovernmental organizations, and tribal governments to inform sound policy and decision-making and advocate for the Administration's legislative priorities and sustain state investment in services and policies for the betterment of New Mexicans. OOTS plays a pivotal role in ensuring the continuous provision of essential services by actively engaging with and listening to the NMED workforce. Through these efforts, OOTS contributes to the enhancement of workforce culture and its ongoing improvement.

## Program Users

Businesses, stakeholders, the public, tribes and pueblos. Anyone who places their trust in the air they breathe, water they drink, land on which they live, food they eat, etc. Internally, our employees who work and live across New Mexico to fulfill our mission.

## Benefits to New Mexicans

- A well-funded and highly functioning NMED can protect public health and the environment equally for all New Mexicans and communities served.
- Responsive communication of complex scientific and technical issues in a clear manner to all members of the public in multiple languages.
- Timely, accurate, equitable and transparent access to public health and environmental information for community and family-based decision-making.
- Accountability and oversight of public funds.
- Expanded online program delivery that strengthens traditional program access.
- Compliance with public health and environmental protections that provides a level playing field for all businesses and deterrence through vigorous enforcement when violations occur.
- Strong collaborations with all stakeholders and state agencies with a responsive and productive workforce.
- A highly-engaged workforce that advances efficient and safe customer service options.

## Budget and FTE

| Resources Management Division    | FTE   | Budget      |
|----------------------------------|-------|-------------|
| Office of the Secretary          | 15.10 | \$2,744,400 |
| Office of General Counsel        | 20.00 | \$2,900,200 |
| Office of Information Technology | 28.00 | \$4,290,900 |
| Administrative Services Division | 37.00 | \$7,875,700 |

*See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.*

# Resource Management Division (P567)

## Program Goals, Objectives, and Strategic Actions

### **Program Goal and Objective 1: Ensure robust staffing and resources to improve the implementation of our mission.**

- Build and retain a skilled and trained team of professional and support staff to implement our mission.
- Prioritize hiring, leadership training, and succession planning.
- Increase spending of funds to support NMED's mission.
- Advocate for increased flexibility of special revenue funds.).
- Support all divisions and offices in integrating equity and renewed focus on environmental justice throughout delivery of services and operation of programs by providing clear guidance and staffing support.
- Reduce NMED's vacancy rate through data-driven process improvements supported by implementation of new business technologies (e.g., paperless and automation initiatives)
- Engage in compensation and classification analysis across NMED in order to ensure internal equity and balanced workloads, adjust to market conditions, and orient NMED's staffing strategy to align with strategic growth and career advancement pathways.

### **Program Goal and Objective 2: Create and support economic development opportunities that mitigate climate change, improve air quality, protect freshwater resources, reduce wastes, and ensure environmental justice for marginalized communities.**

- Maximize federal bipartisan infrastructure law and inflation reduction act funding and spending to create jobs and support economic development.
- Coordinate across state, local, federal, and Tribal governments to maximize the quantity and effectiveness of federal funds benefiting the people of New Mexico.
- Ensure services provided to New Mexicans are easy to access and modernize business processes making it easier to conduct business online where possible. Streamline and modernize administrative processes to improve public health and environmental outcomes and transparency of operations.
- Lead and coordinate New Mexico's work to clean up uranium sites among state agencies and with impacted communities, other states, federal agencies, and Native American nations, tribes and pueblos.

### **Program Goal and Objective 3: Protect communities from emerging public health and environmental contaminants.**

- Take every necessary measure to safeguard communities from newly arising contaminants that pose risks to public health and the environment, encompassing a range of activities such as establishing and maintaining laws and regulations, adherence to these regulations, and their diligent enforcement.
- Build robust partnerships to increase collaboration including in rulemaking or permitting processes, grantmaking, and surrounding NMED action in other areas of interest.



# Resource Management Division (P567)

**Program Goal and Objective 4: Protect the public health and the environment through innovative and traditional compliance assurance activities.**

- Ensure accountability for violations through strong and consistent enforcement policy and actions through NMED's Compliance and Enforcement unit.
- Increase consistency and timeliness in compliance across programs to ensure a level playing field.
- Provide strategic, innovative, and effective legal advice and representation to NMED management and staff.
- Facilitate exceptional customer service to the public and ensure public participation in docketed matters of the boards and commissions that the Office of Public Facilitation administers (including the Water Quality Control Commission and Environmental Improvement Board), public hearings assigned by the Secretary as a result of significant public interest, and due process compliance orders served on respondents by bureaus that benefit from public participation.

# Water Protection Division (P568)

## Purpose of the Program

To ensure the reliable, clean and safe water supplies for New Mexicans today and into the future through the protection of surface water and groundwater quality. To provide financing for and oversight of water infrastructure projects across the state with added emphasis on projects related to the impacts of climate change, emerging contaminants, etc.

## Program Users

A public that expects to consume clean and safe drinking water whether in an urban or rural community. A public that recreates in and along New Mexico's lakes, rivers, and streams. Regulated entities who rely on relationships with regulators to provide technical and consistent expertise. Local governments, municipalities, and private utilities in need of technical and/or financial assistance to repair, update, or add water and wastewater infrastructure. Tribes, Pueblos, and Nations whose water quality may be impacted by others. All others who ensure our accountability to our mission, including: the Governor, Legislature, Federal Government, and the public.

## Benefits to New Mexicans

- Safe, clean, and reliable sources of drinking water for today's growing economy and future generations of New Mexicans.
- Healthy rivers and lakes that fully support recreation, tourism, and agriculture, which are essential components of a thriving state economy.
- Modernized and reliable infrastructure for our counties, cities, and towns that fosters healthy communities.
- Economic development opportunities on formerly contaminated properties that reinvigorate communities.
- Easily accessible information about drinking water, groundwater, and surface water quality, including in the aftermath of catastrophic events, such as devastating wildfires.

## Budget and FTE

| Water Protection Division    | FTE  | Budget       |
|------------------------------|------|--------------|
| Office of the Director       | 5.25 | \$1,145,900  |
| Construction Programs Bureau | 24.0 | \$3,717,800  |
| Drinking Water Bureau        | 57.0 | \$21,644,300 |
| Ground Water Quality Bureau  | 67.0 | \$21,657,000 |
| Surface Water Quality Bureau | 47.0 | \$8,359,000  |

***See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.***

# Water Protection Division (P568)

## Program Goals, Objectives, and Strategic Actions

**Program Goal and Objective 1:** Ensure robust staffing and resources to improve the implementation of our mission.

- Build and retain a skilled and trained team of professional and support staff to implement our mission.
- Prioritize hiring, leadership training, and succession planning.
- Increase spending of funds to support WPD's mission.

**Program Goal and Objective 2:** Create and support economic development opportunities that mitigate climate change, improve air quality, protect freshwater resources, reduce wastes, and ensure environmental justice for marginalized communities.

- Leverage available federal and state funding to maximize financing opportunities for water, wastewater, surface water infrastructure investments, and assist communities in utilizing available funding.
- Lead action-oriented discussions with key partners and stakeholders to develop needed reforms to capital outlay funding for water infrastructure projects to improve outcomes for communities.
- Leverage innovative partnerships and conduct marketing outreach for water infrastructure financing programs to increase loan utilization rates, including federal Bipartisan Infrastructure Law funding.
- Work with local governments, agency partners, other service providers to develop regionalization partnerships between public drinking water and wastewater systems to enhance resiliency, viability, and ability to provide safe drinking water and functional wastewater systems to the public.

**Program Goal and Objective 3:** Protect communities from emerging public health and environmental contaminants.

- Implement water reuse regulations.
- Support the ongoing work of the New Mexico Produced Water Research Consortium to fill science and technology gaps related to treatment and use of produced water for purposes outside the oil and gas sector.
- Implement the Produced Water Act to preserve freshwater resources, protect water quality and public health, and provide regulatory certainty.
- Implement state surface water permitting program by FY27 to protect from fluctuations in the definition of "waters of the United States" under the federal Clean Water Act.
- Identify and implement innovative approaches to leverage existing authorities to build communities and natural resource systems that are resilient to the impacts of climate change, consistent with the Governor's Executive Order 2019-003 on addressing Climate Change and Energy Waste Prevention and the 50 Year Water Plan.
- Develop and implement strategic actions to identify and address water contaminated with per- and polyfluoroalkyl substances (PFAS) and other emerging contaminants, as resources allow.



# Water Protection Division (P568)

- Implement federal grant for Emerging Contaminants in disadvantaged communities including sampling, evaluation, solution development, and deployment.
- Develop and maintain informative and interactive public facing tools, including story maps on drought and other water related emergencies and PFAS, to provide resources and current public health information to regulated entities, community leaders, and other stakeholders.
- Oversee and support lead service line inventory by October 10, 2024.

**Program Goal and Objective 4:** Protect the public health and the environment through innovative and traditional compliance assurance activities.

- Improve the consistency and efficiency of the groundwater discharge permit program to better serve the public.
- Improve the consistency and efficiency of enforcement on public drinking water systems that fail to provide safe drinking water to their customers.

# Resource Protection Division (P569)

## Purpose of the Program

Preventing new contamination and expeditiously addressing legacy pollution in New Mexico for the protection of public health and the environment. Ensuring there is environmental justice for the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits. Ensuring that all hazardous waste is managed – from cradle to grave – and contaminated sites are cleaned up as quickly as possible to lessen the burden to communities, their health, and our environment. Effectively monitoring the environment within and around U.S. Department of Defense (DOD) and U.S. Department of Energy (DOE) facilities in New Mexico, taking swift and meaningful compliance actions when warranted. Ensuring that petroleum storage tanks are managed to prevent releases and that any releases are remediated as expeditiously as possible and as eligibility and the Corrective Action Fund allows. Ensuring that all solid waste – including infectious waste – and recyclable materials are responsibly managed.

## Program Users

A public that trusts and expects that New Mexico's natural resources will not diminish their family's health, safety, or economic prosperity regardless of where they live, work, or play. This includes New Mexico's service members who are stationed at U.S. Air Force installations, employees and contractors at DOE facilities and the residents who live in proximity to these installations. Regulated entities who rely on relationships with regulators to provide technical and consistent expertise. County and municipal governments who rely on our expertise for emergency response and technical guidance, including best management practices to minimize costs to taxpayers where possible. Tribes, Pueblos, and Nations whose natural resources may be impacted by others. All others who ensure our accountability to our mission, including: the Governor, Legislature, Federal Government, and the public.

## Benefits to New Mexicans

- Timely responses to hazardous substance releases to prevent exposure to people and environment.
- Accountability and consequences for those who put New Mexicans at risk from improper management of waste.
- Federal facilities that comply with regulations and properly manage and clean up their waste.
- Robust surveillance of DOE facilities to confirm environmental results and inform communities.
- Financial assurance and incentives for the petroleum industry to prevent or clean up petroleum spills/releases.
- Landfills that are designed, operated, and monitored to safely isolate waste from the environment, thereby protecting human health and the environment.
- Timely response to illegal dumping of trash.
- Reuse and recycling programs that encourage New Mexicans to turn their trash into treasures.

## Budget and FTE

| Resource Protection Division  | FTE  | Budget      |
|-------------------------------|------|-------------|
| Office of the Director        | 5.25 | \$940,700   |
| DOE Oversight Bureau          | 16.0 | \$3,611,300 |
| Hazardous Waste Bureau        | 52.5 | \$6,801,600 |
| Petroleum Storage Tank Bureau | 57.0 | \$5,683,000 |
| Solid Waste Bureau            | 24.0 | \$3,604,800 |

*See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.*

# Resource Protection Division (P569)

## Program Goals, Objectives, and Strategic Actions

**Program Goal and Objective 1:** Ensure robust staffing and resources to improve the implementation of our mission.

- Build and retain a skilled and trained team of professional and support staff to implement our mission.
- Prioritize hiring, leadership training, and succession planning.
- Increase spending of funds to support RPD's mission.

**Program Goal and Objective 2:** Create and support economic development opportunities that mitigate climate change, improve air quality, protect freshwater resources, reduce wastes, and ensure environmental justice for marginalized communities.

- Maximize federal bipartisan infrastructure law and inflation reduction act funding and spending to create jobs and support a circular economy in New Mexico.
- Coordinate across state, local, federal, and Tribal governments to maximize the quantity and effectiveness of federal and state funds benefiting the people of New Mexico.
- Maximize use of the Corrective Action Fund including for clean-up petroleum storage tank release sites and other contaminated facilities.
- Provide funding for local governments to develop recycling programs and abate illegal dumpsites.

**Program Goal and Objective 3:** Protect communities from emerging public health and environmental contaminants.

- Further the state's climate change and emissions reductions goals by exploring emerging technologies that turn waste into energy.
- Protecting New Mexicans by reducing their exposure to nonessential PFAS-containing products.

**Program Goal and Objective 4:** Protect the public health and the environment through innovative and traditional compliance assurance activities.

- Provide increased regulatory oversight and accountability over hazardous waste generators, hazardous waste permittees, solid waste facilities, and petroleum storage tank operators.
- Strengthen corrective action, compliance assurance, and enforcement response so it is consistent and timely.
- Hold federal agencies accountable for contamination and remediation.
- Strengthen the Compliance Order on Consent to provide greater accountability and enforcement for the legacy waste clean-up activities at Los Alamos National Laboratory.
- Increase enforcement of Resource Conservation and Recovery Act and Hazardous Waste Act violations discovered during inspections of hazardous waste generators through the Hazardous Waste Bureau, decreasing referrals to abatement under the Water Quality Regulations.

# Environmental Protection Division (P570)

## Purpose of the Program

To mitigate and prevent the impacts of climate change on our population, industries and infrastructure by decarbonizing our thriving economy. To protect New Mexico's inhabitants and our natural beauty through clean and clear air for all to breathe. To prevent unnecessary risks to public health when medical or veterinary services are needed. To protect communities and the environment by assuring the proper licensing and financial assurance of industrial activities that use or concentrate radioactive materials.

## Program Users

A public that breathes air and receives radiologic exams. The regulated community, including oil and gas producers. Other state agencies and institutions, county and local governments, including Tribes and Pueblos who participate in consultation. All others who ensure our accountability to our mission, including: the Governor, Legislature, Federal Government, and the public.

## Benefits to New Mexicans

- Clean air for all New Mexicans, including children, elderly and other vulnerable populations.
- Clear air for tourism and recreational opportunities from improved visibility at national and state parks and wilderness areas.
- Decrease greenhouse gas emissions to reduce the adverse effects of climate change.
- Expanded energy options for families and businesses.
- Protection for workers and the public from the ill effects on human health and natural resources of radioactive materials in academic, medical, and industrial applications.
- Reduced exposure to indoor radon.
- Critical assistance to current and former DOE or DOE-contracted facility nuclear workers who are ill because of exposure to radiation, chemicals, or both.

## Budget and FTE

| Environmental Protection Division | FTE   | Budget       |
|-----------------------------------|-------|--------------|
| Office of the Director            | 4.0   | \$864,200    |
| Air Quality Bureau                | 110.0 | \$17,044,200 |
| Climate Change Bureau             | 9.0   | \$1,195,800  |
| Radiation Control Bureau          | 27.0  | \$3,844,900  |

***See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.***

# Environmental Protection Division (P570)

## Program Goals, Objectives, and Strategic Actions

**Program Goal and Objective 1:** Ensure robust staffing and resources to improve the implementation of our mission.

- Build and retain a skilled and trained team of air quality scientists, climate scientists, and radiation specialists, including permit writers, environmental analysts, enforcement specialists, and inspectors.
- Prioritize hiring, leadership training, and succession planning.
- Increase spending of funds to support EPD's mission.
- Ensure EPD programs have sufficient funding via fee increases to support program objectives.

**Program Goal and Objective 2:** Create and support economic development opportunities that mitigate climate change, improve air quality, protect freshwater resources, reduce wastes, and ensure environmental justice for marginalized communities.

- Coordinate with local and Tribal governments, community-based organizations and other entities to ensure technical synergies across federal funding opportunities.
- Coordinate with other state agencies to ensure that those agencies have the best technical solutions when applying for federal funding.
- Encourage and implement hydrogen development strategies to ensure decarbonizing occurs in alignment with economic development and protected public health.
- Reduce exposure to and increase knowledge about the dangers of indoor radon to the public.
- Support implementation of the Climate Change Task Force's Equity Principles across applicable program and policy actions, including the Climate Pollution Reduction Grant and Climate Change Task Force actions.

**Program Goal and Objective 3:** Protect communities from emerging public health and environmental contaminants.

- Implement Advanced Clean Cars II/Advanced Clean Trucks Rulemaking and other programs focused on transportation equity and decarbonization.
- Implement the Climate Pollution Reduction Grant to refine priority climate actions to achieve the state's greenhouse gas reduction goals.
- Update the New Mexico greenhouse gas emissions inventory and projections.

**Program Goal and Objective 4:** Protect the public health and the environment through innovative and traditional compliance assurance activities.

- Increase the amount of monitoring data as a basis for compliance and enforcement actions.
- Prioritize and implement air emission control strategies to maximize compliance.
- Implement federal requirements that reduce haze to preindustrial levels by 2064.
- Implement and enforce regulations to control volatile organic compounds and nitrogen oxides in areas that exceed 95 percent of the 2015 National Ambient Air Quality Standard for Ozone.
- Ensure ongoing compliance with the Naturally Occurring Radioactive Materials regulations for the oil and gas industry.

# Environmental Health Division (P571)

## Purpose of the Program

To develop and implement preventive strategies to mitigate threats posed by emerging environmental health hazards. To promote and regulate New Mexico businesses, products and services in a manner that prevents adverse impacts and risks to public health and the environment; this includes commercially prepared foods, manufactured foods, hemp-finished products, adult use and medical edible cannabis products, public swimming pools and spas and liquid waste systems. To prevent workplace illnesses, injuries and fatalities to move our economy forward. To develop and implement preventive strategies to mitigate threats posed by emerging environmental health hazards related to public health.

## Program Users

Residents of New Mexico who are impacted by environmental conditions negatively influencing the health of their communities. A public that eats at restaurants, purchases manufactured foods for their family, enjoys public pools and spas and expects and requires a safe working environment, as well as on-site septic system/property owners. The regulated community, including hemp and cannabis product manufacturers and food establishment owners. Other state agencies and institutions, county and local governments, and Tribes, Pueblos, and Nations who participate in consultation. All others who ensure our accountability to our mission, including: the Governor, Legislature, Federal Government, and the public.

## Benefits to New Mexicans

- A more engaged public that is aware of the positive and negative impacts of environmental conditions on their future health.
- Safe food in restaurants and from New Mexico manufacturing facilities.
- Economic development, job growth, and human health protection through responsible hemp and cannabis manufacturing.
- Safe public swimming pools and spas for recreation, fitness and medical care.
- Septic tanks for onsite liquid waste that protect local ground water supplies and residents. Workers and workplaces that are safe and protected from hazards both day-to-day and during public health emergencies.
- Successful businesses with safe and productive workplaces.

## Budget and FTE

| Environmental Health Division         | FTE   | Budget       |
|---------------------------------------|-------|--------------|
| Office of the Director                | 3.0   | \$456,200    |
| Environmental Health Bureau           | 101.0 | \$11,773,300 |
| Occupational Health and Safety Bureau | 55.0  | \$5,353,300  |
| Cannabis and Hemp Bureau              | 5.0   | \$812,100    |

***See Appendix A for our performance measures and Appendix B for a comprehensive listing of our statutory authority.***

# Environmental Health Division (P571)

## Program Goals, Objectives, and Strategic Actions

**Program Goal and Objective 1:** Ensure robust staffing and resources to improve the implementation of our mission.

- Build and retain a skilled and trained team of professional and support staff to implement our mission.
- Prioritize hiring, leadership training, and succession planning.
- Increase spending of funds to support EHD's mission.

**Program Goal and Objective 2:** Create and support economic development opportunities that mitigate climate change, improve air quality, protect freshwater resources, reduce wastes, and ensure environmental justice for marginalized communities.

- Increase engagement for State of New Mexico and local government health agencies to identify key areas of environmental concern.
- Expand liquid waste and septic public relations campaign.
- Expand the liquid waste indigent fund to help low-income residents with the cost to repair, replace, or construct wastewater systems or alternative systems or connect to sewer systems.
- Provide free and confidential compliance assistance to businesses at their request by identifying workplace hazards, analyzing safety and health management systems.
- Implement a Special Emphasis Program to assist employers in high-risk industries such as agriculture to protect employees from heat related injury.
- Expand and retain NMED's skilled and trained team of food safety inspectors to keep pace with growth in food establishments across New Mexico and support local economies.

**Program Goal and Objective 3:** Protect communities from emerging public health and environmental contaminants.

- Implement heat standards for Occupational Health and Safety Bureau.
- Hire State of New Mexico Heat Officer to oversee response to emerging heat stress threat.
- Maintain a timely and flexible response capacity to emergent public health risks that create workplace hazards.
- Identify hazards specific to the Cannabis and Hemp industry, engaging other agencies as needed in mitigation and policy development.
- Increase public input into environmental health planning.

**Program Goal and Objective 4:** Protect the public health and the environment through innovative and traditional compliance assurance activities.

- Develop and implement standard operating procedures to ensure consistency in enforcement.
- Publish all permits and findings online.
- Strive to align with the federal Food and Drug Administration goals for a highly effective and responsive program for regulating food service and retail food establishments bringing the State into compliance with (the Voluntary National Retail Food Program Standards), as budget allows.

# Appendix A: Performance Measures

## Public Health

|  |
|--|
| Percent of the population breathing air meeting federal health standards   |
| Percent of the population served safe and healthy drinking water   |
| Number of drinking water systems serving drinking water that did not meet at least one standard compared to the total number of drinking water systems |
| Number of community water system violations returned to compliance as a result of NMED assistance  |
| Number of superfund sites cleaned up as compared to the number of superfund sites remaining  |
| Employers that did not meet occupational health and safety requirements for at least one standard  |

## Environmental Protection

|  |
|--|
| Amount of volatile organic compounds emitted statewide, in tons  |
| Amount of volatile organic compounds emitted illegally, in tons  |
| Amount of nitrogen oxides emitted statewide, in tons   |
| Amount of nitrogen oxides emitted illegally, in tons   |
| Quantity of nutrient-based pollutants reduced due to implementation of watershed restoration and on-the-ground improvement projects, in pounds |
| Reduction in nonpoint source sediment loading attributed to implementation of watershed restoration and on-the-ground improvement projects     |
| Number of nonpoint source impaired waterbodies restored by the Department relative to the number of impaired water bodies                      |
| Number of underground storage tank sites cleaned up compared to the total number of leaking underground petroleum storage tank sites remaining |
| Number of completed cleanups of petroleum storage tank release sites that require no further action  |
| Number of zero-emission vehicles registered in New Mexico  |

## Economic Investment

|  |
|--|
| Total investment of grants dollars awarded to communities, year to date            |
| Number of brownfield acres of contaminated land cleaned up and available for reuse |
| Investments in water infrastructure, in dollars                                    |
| Number of new water infrastructure projects  |



| Compliance                                    |  |
|---|--|
| <b>Air</b>                                    | Percent of air emitting sources inspected  |
|   | Percent of air emitting source inspections showing compliance                              |
|   | Percent of air emitting sources with active/ongoing violations                             |
| <b>Groundwater</b>                            | Percent of groundwater permittees inspected  |
|   | Percent of groundwater permittee inspections showing compliance                            |
|   | Percent of groundwater permittees with active/ongoing violations                           |
| <b>Hazardous Waste</b>                        | Percent of hazardous waste facilities inspected  |
|   | Percent of hazardous waste facility inspections showing compliance                         |
|   | Percent of hazardous waste facilities with active/ongoing violations                       |
| <b>Restaurants and Food Manufacturing</b>     | Percent of restaurants/food manufactures inspected   |
|   | Percent of restaurants/food manufacturer inspections showing compliance                    |
|   | Percent of restaurants/food manufactures with active/ongoing violations                    |
| <b>Septic Systems</b>                         | Percent of new or modified liquid waste systems inspected                                  |
|   | Percent of new or modified liquid waste system inspections showing compliance              |
|   | Percent of new or modified liquid waste systems with active/ongoing violations             |
|   | Number of liquid waste system violations resulting from complaints                         |
| <b>Solid and Infectious Waste</b>             | Percent of solid and infectious waste management facilities inspected                      |
|   | Percent of solid and infectious waste management facility inspections showing compliance   |
|   | Percent of solid and infectious waste management facilities with active/ongoing violations |
| <b>Surface Water</b>                          | Percent of surface water permittees inspected  |
|   | Percent of surface water permittee inspections showing compliance                          |
|   | Percent of surface water permittees with active/ongoing violations                         |
| <b>Radiation Sources in Medical Equipment</b> | Percent of ionizing/non-ionizing radiation sources inspected                               |
|   | Percent of ionizing/non-ionizing radiation source inspections showing compliance           |
|   | Percent of ionizing/non-ionizing radiation sources with active/ongoing violations          |



| Compliance (Continued)                |   |
|---------------------------------------|---|
| <b>Occupational Health and Safety</b> | Percent of high-hazard facilities inspected                                 |
|                                       | Percent of all employers inspected  |
| <b>Cannabis and Hemp</b>              | Percent of cannabis and hemp permittees inspected                           |
|                                       | Percent of cannabis and hemp permittee inspections showing compliance       |
|                                       | Percent of cannabis and hemp permittees with active/ongoing violations      |
| <b>Petroleum Storage Tanks</b>        | Percent of petroleum storage tank permittees inspected                      |
|                                       | Percent of petroleum storage tank permittee inspections showing compliance  |
|                                       | Percent of petroleum storage tank permittees with active/ongoing violations |

| Operational  |
|--|
| Total dollars collected by NMED and transferred to the general fund resulting from successful prosecutions and/or settlements stemming from non-compliance with laws, rules, or permits administered by the Department |
| Vacancy rate by month  |
| Percent of NMED financial transactions completed online by the public or regulated community   |

| Environmental Protection   |
|--|
| Amount of volatile organic compounds emitted statewide, in tons  |
| Amount of volatile organic compounds emitted illegally, in tons  |
| Amount of nitrogen oxides emitted statewide, in tons   |
| Amount of nitrogen oxides emitted illegally, in tons   |
| Quantity of nutrient-based pollutants reduced due to implementation of watershed restoration and on-the-ground improvement projects, in pounds |
| Reduction in nonpoint source sediment loading attributed to implementation of watershed restoration and on-the-ground improvement projects     |
| Number of nonpoint source impaired waterbodies restored by the Department relative to the number of impaired water bodies                      |
| Number of underground storage tank sites cleaned up compared to the total number of leaking underground petroleum storage tank sites remaining |
| Number of completed cleanups of petroleum storage tank release sites that require no further action  |
| Number of zero-emission vehicles registered in New Mexico  |

# Appendix B: Statutory Authority

- NMSA 1978, §§ 3-29-1 to -21
  - NMSA 1978, §§ 9-7A-1 to -17
  - NMSA 1978, §§ 10-15-1 to -4
  - NMSA 1978, §§ 13-1-1 to -199
  - NMSA 1978, §§ 14-2-1 to -12
  - NMSA 1978, §§ 14-3-1 to -24
  - NMSA 1978, §§ 14-4-1 to -11
  - NMSA 1978, §§ 14-4A-1 to -6
  - NMSA 1978, §§ 14-16-1 to -21
  - NMSA 1978, §§ 25-1-1 to -16
  - NMSA 1978, §§ 25-2-1 to -21
  - NMSA 1978, §§ 26-2C-1 to -42
  - NMSA 1978, §§ 50-9-1 to -25
  - NMSA 1978, §§ 61-33-1 to -10
  - NMSA 1978, §§ 70-13-1 to -5
  - NMSA 1978, §§ 71-8-1 to -8
  - NMSA 1978, §§ 74-1-1 to -17
  - NMSA 1978, §§ 74-2-1 to -22
  - NMSA 1978, §§ 74-3-1 to -16
  - NMSA 1978, §§ 74-4-1 to -14
  - NMSA 1978, §§ 74-4G-1 to -12
  - NMSA 1978, §§ 74-4H-1 to -4
  - NMSA 1978, §§ 74-6-1 to -17
  - NMSA 1978, §§ 74-6A-1 to -15
  - NMSA 1978, §§ 74-6B-1 to -14
  - NMSA 1978, §§ 74-9-1 to -43
  - NMSA 1978, §§ 74-13-1 to -20
  - NMSA 1978, §§ 76-24-1 to -10
- Sanitary Projects Act
  - Department of Environment Act
  - Open Meetings Act
  - Procurement Code
  - Inspection of Public Records Act
  - State Records Act
  - State Rules Act
  - Small Business Regulatory Relief Act
  - Uniform Electronic Transactions Act
  - Food Service Sanitation Act
  - Adulterated or Misbranded Food Act
  - Cannabis Regulation Act
  - Occupational Health and Safety Act
  - Utility Operators Act
  - Produced Water Act
  - Sustainable Development Testing Site Act
  - Environmental Improvement Act
  - Air Quality Control Act
  - Radiation Protection Act
  - Hazardous Waste Act
  - Voluntary Remediation Act
  - San Juan Generating Station Facility and Mine Remediation and Restoration Study Act
  - Water Quality Act
  - Wastewater Facility Construction Loan Act
  - Ground Water Protection Act
  - Solid Waste Act
  - Recycling and Illegal Dumping Act
  - Hemp Manufacturing Act



# **New Mexico Environment Department**

## **Functional Statements**

### **January 2024**

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## Overview

The New Mexico Environment Department (NMED) has five divisions, four offices, and 16 bureaus within five budgetary programs: the Resource Management Division (P567), Water Protection Division (P568), Resource Protection Division (P569), Environmental Protection Division (P570), and Environmental Health Division (P571).

This document includes functional statements for all NMED work units. The functional statements provide an overview of each unit's purpose, major functions, and operating relationships with other work units. Statements are organized hierarchically, beginning with the budgetary program (P-code), followed by divisions or offices, bureaus, and sections or programs.

The Office of Strategic Initiatives will review, work with NMED divisions, and update this document annually.

## NMED Vision, Mission, Values

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### Vision

To foster a thriving and trusted, nationally leading organization known for protecting public health and the environment through its dedicated public servants.

### Mission

Protect and restore the environment and foster a healthy and prosperous New Mexico for present and future generations.

### Values



**Science** - Using the best available science to inform our decision-making in protecting public health and the environment.



**Innovation** - Employing creative engineering and technological solutions to address environmental challenges.



**Collaboration** - Engaging communities and interested stakeholders in environmental decision-making outcomes.



**Compliance** - Ensuring meaningful compliance with state regulations and permits; leveling the playing field through enforcement.

## Resource Management Division (P567)

The Resource Management Division is the dynamic hub of leadership, strategic direction, and core business infrastructure behind NMED. The Resource Management Division is comprised of the Office of the Secretary, Office of Communications, Office of General Counsel, Office of Information Technology, Office of Public Facilitation, Office of Strategic Initiatives, and Administrative Services Division.

### Office of the Secretary (OOTS)

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The Office of the Secretary (OOTS) is responsible for translating NMED's vision, mission, and values into action. This execution aligns with the Governor's and Secretary's vision, legislative authority, and federal delegation, primacy, and grant agreements. OOTS not only implements NMED's core principles but also ensures transparent communication and cooperation with tribal, local, federal, and international governments and stakeholders. Services include strategic leadership and decision-making in all programmatic and policy matters within NMED.

OOTS fosters meaningful relationships with community members, elected officials, governmental agencies, tribal governments, the business community, industry, and nongovernmental organizations to inform sound policy and decision-making, advocate for the Administration's legislative priorities, and sustain state investment in services and policies for the betterment of New Mexicans. OOTS plays a pivotal role in ensuring the continuous provision of essential services by actively engaging with and listening to the NMED workforce. Through these efforts, OOTS contributes to the enhancement of workforce culture and its ongoing improvement.

Key leadership positions in this work unit include: the Cabinet Secretary, Deputy Cabinet Secretary of Administration, Deputy Cabinet Secretary of Operations, Director of Compliance and Enforcement, Environmental Crimes Task Force Coordinator, and Special Projects Coordinator.

### Office of Communications

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The Office of Communications improves transparency of NMED's work and operations, delivers quality and timely communications on matters affecting public health and the environment, and ensures equitable access to NMED information by all constituents, including those with limited English proficiency. The Office proactively highlights NMED's contributions to a resilient state economy and healthy communities through traditional and social media, a public-facing website, and a performance dashboard. The Office also provides timely coverage of news media and public inquiries related to NMED to increase the public's understanding of NMED programs and community impacts.

The Office of Communications fosters strong internal communication across NMED to enhance teamwork, efficiency, and cross-program engagement, including management of the internal employee intranet and the Weekly Activity Report. To facilitate executive level communication, the Office of Communications oversees a front office administrative services unit which manages mail correspondence, senior leadership travel processing, and customer greeting and referral for walk-in and telephone traffic.

## Office of General Counsel (OGC)

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The Office of General Counsel (OGC) provides legal counsel to NMED's senior management, divisions, and bureaus on all matters of the law. OGC performs written and oral advocacy on behalf of NMED in court and administrative proceedings at the federal, state, and local level. This includes, but is not limited to, representing NMED in rulemaking proceedings, adjudicatory proceedings, enforcement proceedings, permit proceedings, and appellate proceedings. Similarly, OGC advises clients regularly on the legal terrain of planned actions, proposed regulations, and NMED priorities. Additionally, OGC administers NMED's Inspection of Public Records Act (IPRA) program, in which it receives, tracks, and ensures fulfillment of IPRA requests submitted to NMED.

OGC legal support staff assist attorneys by filing pleadings, preparing exhibits, proofreading, and conducting research, as well as monitoring environmental and legal developments in New Mexico and other states that may impact New Mexico. Finally, OGC coordinates with the New Mexico Office of the Attorney General on specific legal cases that affect the entire State of New Mexico.

## Office of Information Technology (OIT)

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The Office of Information Technology (OIT), under the leadership of the Chief Information Officer (CIO), expedites NMED's core mission by shepherding technology that protects NMED's data, enables its communications, accelerates its workflows, and sustains internal business processes.

Broadly, OIT's vision is to use technology to secure, modernize, and otherwise facilitate the execution of NMED business processes - both mission critical and internal - and to safeguard, secure, and integrate NMED's data to make it more quickly and easily accessible. More specifically, this vision includes everything from initiating and managing technology-oriented projects to supporting, developing, maintaining, administering, researching, acquiring, and implementing those technologies themselves, all in support of NMED's mission and function. OIT expects and intends to accomplish this while remaining in alignment with NMED and New Mexico Department of Information Technology (DoIT) strategic direction and in compliance with relevant DoIT and federal agency requirements and standards.

Structurally, OIT is divided into three primary groups:

- **The Operations Group** is comprised of the Network and Systems Section (NSS), which is responsible for NMED network and server administration and infrastructural support. The Operations Group is also responsible for the Client Support Section (CSS), which contains NMED's IT help desk unit and performs all desktop and end user support for NMED.
- **The Solutions Group** is comprised of the Geographic Information System (GIS) Section which oversees and creates all maps and online geographically-presented information published by NMED and related geographic data; the Solutions & Applications Section (SAS) which is responsible for maintaining legacy applications and executing all new in-house development; and the Web Solutions Section (WSS) which supports and administers NMED's public and intranet websites and Commercial Off-the-Shelf (COTS) web applications and collaborates with the SAS as needed.

- **The Office of the CIO (OCIO)** handles OIT business and finances and manages contracts, contractors, and certified and non-certified IT projects. OCIO is responsible for the submission and management of NMED's C2 Special Appropriation requests and awards. OCIO also performs all requirements gathering and analysis for development projects and liaises with other NMED work units.

## Office of Public Facilitation (OPF)

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The Office of Public Facilitation (OPF) operates independently within OOTS and is accountable for orchestrating impartial administrative law hearings. These hearings lead to determinations of factual findings, legal conclusions, and decisions concerning cases involving environmental permits, enforcement issues, and rulemaking. A core aspect of OPF's mission is to assist the public in the hearing process by providing them with the opportunity to provide substantive contributions through spoken and written comments.

OPF ensures public engagement in the matters listed on the dockets of boards and commissions affiliated with NMED, including significant bodies like the Water Quality Control Commission and Environmental Improvement Board.

OPF is entrusted with upholding transparency, accessibility, and accuracy of information related to docketed affairs, in addition to providing the public with ease of access through the OPF webpage, public calendar, docketed matters webpage, and the public comment portal. OPF also offers education and training to stakeholders, reinforcing the integrity of this crucial public undertaking.

## Office of Strategic Initiatives (OSI)

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The Office of Strategic Initiatives (OSI) provides leadership in executing NMED's core values of science, innovation, collaboration, and compliance through superior customer service to internal and external partners.

OSI is positioned to provide comprehensive, specialized services that enhance the day-to-day program and operational skills of NMED so that leadership and managers have time to address medium- and long-term departmental needs, including Cabinet-level requisites and big-picture improvements.

The specialized cross-agency services OSI is responsible for include

- Overseeing constituent communications and supporting community engagement.
- Coordinating NEPA and other environmental reviews across NMED.
- Managing legislative relations, including session activities through bill tracking and analysis, legislative communications and outreach, and fostering collaboration and relationships with the New Mexico Legislature and Legislative Finance Committee.
- Supporting NMED staff in developing the needed cultural competencies to build ongoing relationships and trust with Indian nations, tribes, or pueblos.
- Administering multi-jurisdictional and multi-disciplinary scientific outreach and collaboration.
- Coordinating efforts to clean up and reclaim former uranium mine and mill sites across the state.

- Maintaining robust participation by NMED subject matter experts and equitable representation in NMED comments on proposed federal regulations and policymaking.
- Increasing environmental justice capacity within NMED.
- Coordinating Civil Rights Act compliance through oversight and implementation of NMED's non-discrimination program.
- Developing and coordinating cross-divisional grant applications to support NMED priorities.
- Conducting surveys and reporting on NMED employee engagement.

## Administrative Services Division (P567)

The Administrative Services Division (ASD) provides comprehensive administrative support to programs and equitably manages NMED's resources to maintain delivery of services to New Mexicans. ASD provides a broad range of technical and administrative assistance that help build program assets and create new tools, trainings, and systems. ASD also works to streamline and modernize administrative processes to improve operational outcomes.

ASD houses the Financial Services Bureau and Employee Operations and Facilities.

### Financial Services Bureau

The Financial Services Bureau (FSB) provides responsive, accurate, and timely management of NMED's financial operations to support NMED's mission. FSB also helps secure programmatic funding through robust grant management and procurement operations.

FSB has four sections that support financial management activities in NMED:

- **The Budget Section** supports the planning, development, and implementation of NMED's operational budget while supporting NMED's bureaus to fund programmatic goals.
- **The General Ledger Section** oversees cash management, deposits, accounts receivable, billing, payroll, and vehicle, capital asset expenses, and invoicing. The section also oversees monthly reconciliations.
- **The Grants Section** oversees grant management activities including compliance with federal and state regulations, certifications, routings, and close-outs.
- **The Purchasing, Payables, and Contracts Section** manages and oversees NMED's procurement and payable activities and ensures that NMED adheres to the New Mexico State Procurement Code, Procurement Rules and Regulations, Department of Finance and Administration's Manual of Model Accounting Practices, and applicable federal and state laws, rules, and regulations. The section includes an accounts payables unit, which oversees internal audits of payables activities, vendor maintenance requests, in-state and out-of-state employee travel, and associated fiscal year-end deadlines.

### Employee Operations and Facilities

The Employee Operations and Facilities unit provides direction, guidance, training, and services to a talented and diverse workforce while maximizing NMED's ability to serve its employees, partners, and customers. Employee Operations and Facilities provides support in the areas of recruitment, retention, benefits, professional development, policies, and procedures. Employee

Operations and Facilities also builds partnerships at all levels of NMED to create a diverse culture while acting openly, equitably, and consistently.

Employee Operations and Facilities focuses on reducing NMED's vacancy rate through data-driven process improvements and developing initiatives to improve employee recruitment, retention, and development. Employee Operations and Facilities leads compensation and classification analysis across NMED to ensure internal equity and balanced workloads and aligns NMED's staffing strategy with professional growth and career advancement pathways.

Employee Operations and Facilities oversees labor relations and union negotiations and also manages NMED facilities and coordinates employee health and safety including addressing workplace safety concerns, providing employee training, and assessing workers' compensation.

Employee Operations and Facilities has several sections that support activities in NMED:

- **The Employee, Labor Relations, and Staff Development Section** advises NMED management on discipline matters and manages corrective actions, NMED complaint procedures, NMED personnel policies, labor relations, State Personnel Board rules, the substance abuse prevention program, American with Disabilities Act (ADA) accommodations, annual leave donations, Family Medical Leave (FML), alternative work schedules, workers compensation, and COVID-19 leave. The section covers all unemployment claims, EEOC claims, and the Employee Assistance Program. The section also manages NMED training including training on policies and procedures and professionalism in the workplace. The section oversees New Employee Orientation (NEO), the NMED training catalog, and ELM training. Additionally, the section is responsible for managing Employee Operations and Facilities' Weekly Activity Report (WAR) items and the Employee Operations and Facilities intranet page.
- **The Facilities Section** manages NMED facilities including space needs assessments, lease contract management and lease Request for Proposals, office moves, position moves, and staff safety in buildings. The section also serves as the liaison for building maintenance and the State's General Services Department.
- **The Health and Safety Section** manages internal employee health and safety including addressing workplace safety, providing health and safety training, and creating related training in the Enterprise Learning Management (ELM) system on topics relevant to the section (e.g., agency-wide safety and defensive driving trainings). The section also manages the Job Hazard Analysis (JHA), hazardous waste removal training, Safety Data Sheets (SDS), and the Defensive Driving Certifications.
- **The Organizational Development, Compensation, Classification, Payroll, and Recruitment Section** manages position or classification action requests, personnel or compensation action requests, reclassifications, reorganizations, in-pay band adjustments, and temporary promotions or salary increases. The section also manages time and leave administration, pay period adjustments, deductions, federal withholding, direct deposit authorization, deferred compensation, employment verification, and personnel file review. In addition, this section works on recruitment activities such as career fairs, postings and advertisements, as well as general organizational development activities.

All of these sections conduct risk management and loss prevention and control activities.

## Water Protection Division (P568)

The Water Protection Division (WPD) protects drinking water, surface water, and groundwater to ensure New Mexicans have access to clean and safe water supplies to support domestic, agricultural, recreational, environmental, and drinking water interests. WPD assists qualifying entities in obtaining funding for water, wastewater, and stormwater projects across the state. Oversight of infrastructure projects is provided as applicable. WPD also regulates the quality of drinking water, surface water, and groundwater through compliance and enforcement programs and provides information to the public on drinking water, surface water, and groundwater quality, including in the aftermath of catastrophic events.

WPD works in coordination with federal agencies, state agencies, local governments, and citizen groups to maintain, improve, and protect the quality of the state's water resources, modernize water infrastructure, and ensure water, wastewater, and stormwater systems are designed and constructed to meet regulatory standards. WPD also provides economic development opportunities through improved water quality used for agriculture and outdoor recreation as well as infrastructure and river and wetland restoration projects.

WPD includes the Construction Programs Bureau, Drinking Water Bureau, Ground Water Quality Bureau, and Surface Water Quality Bureau.

### Construction Programs Bureau (CPB)

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The Construction Programs Bureau (CPB) helps communities develop sustainable and secure water, wastewater, and solid waste infrastructure through state and federal funding, technical assistance, and project oversight. CPB also leverages partnerships and conducts marketing for water infrastructure financing programs.

CPB administers Capital Outlay projects appropriated to NMED by the legislature, the Clean Water State Revolving Fund, Rural Infrastructure Loan Programs, and the Sewer Overflow and Stormwater Reuse Municipal Grant Program.

CPB oversees the following sections:

- **The Administration Section** oversees CPB administrative operations and provides support services to CPB staff and programs. For example, the section develops business operations procedures, manages contracts, assists with website updates, and manages assets and records. This section also helps market CPB loan programs.
- **The Grants Section** oversees capital outlay funding provided by the legislature and assists funding recipients in complying with state requirements.
- **The Loan Section** is responsible for the fiscal administration of the loan programs and oversees the financial analysis of loan applications, prepares loan agreements, and works with applicants to determine debt capacity. Loan staff process pay requests and repayments for loans in process or in repayment.
- **The Technical Section** provides engineering review and approval of technical documents for projects. This section also provides guidance to funded entities on the technical and contractual requirements of funding projects, conducts site visits of projects in construction, and reviews payment requests.

## Drinking Water Bureau (DWB)

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The Drinking Water Bureau (DWB) protects public health by providing regulatory oversight of New Mexico's nearly 1,100 public drinking water systems. DWB oversees public water systems and provides technical, managerial, and financial assistance to ensure protection of public health and safe and sustainable drinking water for New Mexicans.

DWB administers the Water Conservation Fund (WCF), which covers collection and analysis of water samples for public drinking water systems across the state, supporting compliance with requirements that protect public health. Additionally, DWB oversees the Utility Operator Certification Program which administers Water and Wastewater Operator Certifications for all public water system and wastewater utilities in New Mexico. DWB, in conjunction with the New Mexico Finance Authority, administers the Drinking Water State Revolving Fund (DWSRF), which includes additional funding from the Bipartisan Infrastructure Law (BIL).

DWB oversees the Safe Drinking Water Act and Drinking Water Bureau Quality Management Plan and assists the U.S. Environmental Protection Agency (EPA) with the Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) and New Mexico drinking water regulation compliance.

DWB includes the following groups:

- **The Public Water System Supervision Group** supports the implementation and regulatory oversight of federal and state regulations, provides public water system (PWS) monitoring for regulation compliance, and issues violations to PWS that are out of compliance. DWB has primacy for the federal Safe Drinking Water Act (SDWA), which means it has the authority to implement and enforce SDWA regulations.
- **The Sustainable Water Infrastructure Group (SWIG)** provides assistance to public water systems in order to ensure their adherence to federal and state regulations, their successful operations, and the provision of quality water to their customers. SWIG's work includes providing technical, managerial, and financial assistance to public water systems, providing utility operator certification, providing engineering oversight of infrastructure projects, promoting Drinking Water State Revolving Loan Fund programs for infrastructure improvements, and promoting regional collaboration to community water systems in support of long-term sustainability of these systems.
- **The Water Conservation Fund Group** administers the WCF and monitors public water systems in accordance with fund requirements. This group is responsible for collecting water samples from regulated public water systems, publishing New Mexico's annual contaminant list, and processing public water system sampling waivers. The group also manages the WCF fee and issues regulatory sampling waivers when appropriate.

## Ground Water Quality Bureau (GWQB)

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The Ground Water Quality Bureau (GWQB) protects the environmental quality of New Mexico's groundwater resources for future use by issuing and enforcing permits to prevent contamination and by identifying, investigating, and cleaning up contaminated sites that pose significant risks to human health and the environment. GWQB strives to increase industry and public awareness of the importance of safe groundwater supplies in sustaining the quality of life in New Mexico for this and future generations and the importance of protecting groundwater quality through pollution prevention initiatives. GWQB activities include:

- Issuing groundwater discharge permits to prevent contamination of resources.
- Conducting permit, spill response, abatement, and public participation activities for mining facilities.
- Developing ground water pollution assessment and abatement regulations and underground injection control requirements.
- Identifying, investigating, and remediating inactive hazardous waste sites through implementation of the federal Superfund Program.
- Implementing the Voluntary Remediation Program and Brownfields Program.
- Overseeing groundwater investigations and remediation activities.
- Conducting free testing of domestic wells at “water fairs” throughout the state, educating well owners about water quality issues, and preserving or improving water quality in their communities.

GWQB houses the following sections:

- **The Agriculture Compliance Section (ACS)** is responsible for all permitting, spill response, corrective action, abatement, and public participation activities for dairy and similar agricultural facilities in New Mexico pursuant to the Ground and Surface Water Protection Regulations (20.6.2 NMAC) and the Supplemental Permitting Requirements for Dairy Facilities (20.6.6 NMAC). ACS conducts permitting, enforcement, and inspection of approximately 206 dairy and chili processing facilities with wastewater discharge permits. ACS is currently preparing to engage and regulate the nascent cannabis industry, as appropriate. ACS shares in the administration of the 319 Grant Water Fairs.
- **The Mining Environmental Compliance Section (MECS)** conducts all permitting, spill response, corrective action, abatement, and public participation activities for mining facilities in New Mexico pursuant to the Ground and Surface Water Protection Regulations (20.6.2 NMAC) and the Supplemental Permitting Requirements for Copper Mine Facilities (20.6.7 NMAC). Additionally, MECS participates in the implementation of the New Mexico Mining Act and Non-Coal Mining Regulations by reviewing and commenting on mine permits and closeout plans, coordinating environmental protection requirements at mine sites with the Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD), and providing determinations that environmental standards will be met after closure of New Mexico mining operations.
- **The Pollution Prevention Section (PPS)** is responsible for permitting, enforcement, and inspection of approximately 443 domestic and industrial waste discharge permits. The legislature and other entities have tasked PPS with additional non-regulatory responsibilities including development of Public Involvement Plans for all permitting actions, fulfillment of public notice requirements for all GWQB sections, administration of the 319 Grant Water Fairs, development of regulations for the 2019 Produced Water Act, and potentially other water reuse regulations. PPS duties also include permitting, compliance, and enforcement actions in front of the Water Quality Control Commission as well as public hearings for discharge permits that the public or applicants object to. Additionally, PPS is responsible for permitting discharges at some of the most controversial and complex sites in New Mexico, including Los Alamos National Lab

(LANL), Cannon Air Force Base, Waste Isolation Pilot Plant (WIPP), San Juan Generating Station, and many others.

- **The Remediation Oversight Section (ROS)** is responsible for overseeing and tracking assessment and remediation of approximately 165 contaminated sites at any given time. The program consists of two teams: 1) the State Cleanup Program that handles responses to discharges under Section 1203 of 20.6.2 NMAC and longer-term soil, soil vapor, and ground water cleanups under the abatement regulations (Section 4000 of 20.6.2 NMAC); and 2) the Voluntary Remediation Program/Brownfields Program team. The Voluntary Remediation Program (VRP) handles Voluntary Remediation Agreements under 20.6.3 NMAC that promote voluntary clean up and redevelopment of contaminated sites that are not under an enforcement program. NMED issues a certificate of completion to a participant that completes the VRP and issues a covenant not to sue to a subsequent property owner. The Brownfields Program performs Targeted Brownfield Assessments which include Phase I/Phase II environmental site assessments, as well as Phase III cleanup planning. This work is generally performed for local and tribal governments and non-profit organizations. The Brownfields Revolving Loan Fund (BRLF) provides subgrants and loans (50:50) to government (subgrants and loans) and private entities (loans only).
- **The Superfund Oversight Section (SOS)** is responsible for both overseeing and executing the Federal Superfund Program in New Mexico. The various responsibilities and commitments undertaken by SOS are documented in 11 Superfund Cooperative Agreements between EPA and NMED. The program provides stakeholder input and oversight (management assistance) on National Priorities List (NPL) sites with Responsible Parties under Federal Superfund cleanup enforcement and on orphan NPL sites that are being managed and cleaned up by the EPA. The program is responsible for executing all Superfund Site Assessment investigations, most Superfund Five-Year Reviews, three State-lead orphan NPL site cleanups (Eagle Picher, Grants Chlorinated, and McGaffey and Main), and two State-lead orphan NPL Operations and Maintenance sites (Fruit Avenue Plume and North Railroad Avenue Plume). The section conducts approximately eight site evaluations in an average year.

## Surface Water Quality Bureau (SWQB)

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SWQB preserves, protects, and improves New Mexico's surface water quality for present and future generations and increases public awareness of the importance of healthy watersheds and aquatic ecosystems in sustaining the quality of life in New Mexico.

SWQB collects essential data to report on water quality status and make informed decisions about protection, use, and restoration of surface waters; administers the nonpoint source program to reduce and eliminate pollution from dispersed nonpoint sources across the landscape; maps, classifies, assesses, and protects wetland resources; ensures all permits for pollutant discharges to surface waters meet state water quality standards; and advocates for strong federal policies and regulations to protect rivers, lakes, reservoirs, and wetlands. SWQB is engaged in the development of a state surface water permitting program to protect waters not federally protected and will ultimately pursue primacy to take on National Pollution Discharge Elimination System (NPDES) permitting from EPA.

- **The Monitoring, Assessment, and Standards Section** collects surface water quality

data using robust scientific methods in a way that is transparent to water quality agencies and the public, defines water quality goals for surface waters in New Mexico by developing and amending surface water quality standards, performs water quality assessments to determine whether water quality is attaining water quality standards and supporting designated uses, reports on the status of water quality, and develops water quality planning documents, which identify the pollutant load reductions necessary to attain water quality standards.

- **The Point Source Regulation Section** implements ground and surface water protection regulations related to point source discharge permitting and spill reporting. This section assists EPA in implementing the NPDES Program by reviewing federally issued discharge permits, certifying that the permits comply with New Mexico law and regulations, and conducting compliance evaluation inspections of regulated facilities on behalf of EPA. This section also responds to complaints and spill reports to ensure compliance with water quality standards.
- **The Watershed Protection Section** protects watersheds by reducing or eliminating nonpoint source pollution through projects that address nonpoint source pollution and certification of federally issued dredge or fill permits to ensure compliance with New Mexico law and regulations. This section administers funds and awards subgrants to qualifying entities for watershed-based planning and watershed restoration projects. This section also implements the River Stewardship Program, a state-funded program that restores rivers and riparian habitat, improves water quality, and mitigates the effects of catastrophic wildfires, floods, and drought common to high desert climates. Additionally, this section manages NMED's Wetlands Program, which maps, monitors, restores, and protects wetlands.

## Resource Protection Division (P569)

The Resource Protection Division (RPD) oversees and coordinates hazardous waste, solid waste, and petroleum storage tank management. RPD works to prevent new contamination and promptly address legacy pollution for the protection of public health and the environment. When addressing new and legacy contamination, RPD collaborates with affected communities to facilitate the best possible environmental solutions and outcomes.

RPD closely monitors the environment within and around U.S. Department of Defense (DOD) and U.S. Department of Energy (DOE) facilities in New Mexico, taking swift and meaningful compliance actions when warranted. RPD also coordinates NMED efforts on perfluorinated compound (PFAS) related activities.

## Department of Energy Oversight Bureau (DOE-OB)

The DOE Oversight Bureau (DOE-OB) conducts independent environmental monitoring and oversight of DOE operations in New Mexico to help assure that activities at DOE facilities are protective of public health and the environment.

DOE-OB develops and implements robust environmental monitoring programs at LANL, Sandia National Laboratories/New Mexico (SNL/NM), WIPP, and areas surrounding these facilities. DOE-OB monitors and evaluates environmental multi-media including air, groundwater,

stormwater, biota and terrestrial, soils and sediments atmospheric deposition, and direct-penetrating radiation (DPR) for metals, radionuclides, and organic and inorganic compounds. The work of the DOE-OB increases public knowledge and awareness of environmental matters at DOE facilities and provides transparent, unbiased, and publicly available information to New Mexico residents and other interested parties.

DOE-OB houses three sections:

- **The LANL Oversight Section** conducts monitoring and surveillance activities of ambient air, groundwater, stormwater, biota, terrestrial, soils, sediments, atmospheric deposition, DPR, and NPDES permit outfalls. The section develops and publishes data from LANL environmental monitoring activities to the main LANL database at [www.intellusnm.com](http://www.intellusnm.com). Additionally, the section participates in LANL groups and forums and provides technical review of reports, protocols, and environmental assessments.
- **The SNL/NM Oversight Section** conducts monitoring and surveillance activities of ambient air, groundwater, stormwater, terrestrial, soils, sediments, atmospheric deposition, DPR, and wastewater. The section develops and publishes environmental monitoring data and data interpretation reports related to its activities. The section also participates in SNL/NM forms and provides technical review of reports, protocols, and environmental assessments.
- **The WIPP Oversight Section** conducts monitoring and surveillance activities of ambient air, exhaust air, groundwater, surface water, terrestrial, sediments, and DPR. The section develops and publishes environmental monitoring data and data interpretation reports related to its activities. The section also participates in WIPP forms and provides technical review of reports, protocols, and environmental assessments.

## **Hazardous Waste Bureau (HWB)**

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The Hazardous Waste Bureau (HWB) ensures management of hazardous waste and cleanup of contaminated sites as quickly as possible to lessen the burden to communities, their health, and the environment. HWB programs prevent people from being exposed to hazardous substances and ensure that any hazardous substances releases are addressed in a timely manner.

HWB provides regulatory actions and oversight associated with hazardous waste generators and treatment, storage, and disposal facilities (TSDFs). HWB issues permits to TSDFs, issues and resolves New Mexico Hazardous Waste Act (HWA) enforcement actions, and inspects hazardous waste, used oil generators, and TSDFs. HWB also issues permit and enforces corrective actions for legacy and new releases of hazardous constituents from regulated facilities. Additionally, HWB coordinates NMED's response to hazardous waste spills and unanticipated releases in coordination with appropriate NMED bureaus and other state and local agencies.

HWB activities are guided by the federal Resource Conservation and Recovery Act (RCRA), HWA, regulations promulgated under the HWA, and other state and federal rules and policies.

HWB is made up of the following sections:

- **The Business Operations Section** is responsible for the monitoring of the RCRA Info Database, New Mexico Public Records Act, Biennial Reporting System (BRS), Federal Grant Process, and Record Management. The section is also responsible for the implementation of budgetary, accounting, grants management, procurement, contracts, and all administrative functions and support projects for HWB.

- **The Compliance and Technical Assistance Program (CTAP) Section** conducts inspections and compliance assistance site visits at facilities that generate or may generate hazardous waste or used oil. When necessary, the section pursues and issues enforcement actions. The section also manages incident response actions associated with spills, releases, or other incidents that cause or may cause environmental or human health impact.
- **The LANL Permitting and Corrective Action Section** develops and issues the LANL hazardous waste permits and oversees the implementation of permit provisions. The section also manages oversight of corrective action activities at LANL. When necessary, the section pursues and issues enforcement actions.
- **The Permitting Section** manages the administration and oversight of 19 permitted hazardous waste TSDFs in accordance with RCRA. The section develops and issues hazardous waste permits, oversees the implementation of permit provisions, and enforces corrective actions. When necessary, the section pursues and issues enforcement actions.
- **The WIPP Permitting Section** develops and issues WIPP hazardous waste permits and oversees the implementation of permit provisions. The Section provides regulatory oversight of the hazardous waste facility permit to ensure compliance which includes review and issuance of permit modifications, and observation, review, and approval of generator site audits. When necessary, the section pursues and issues enforcement actions.

## **Petroleum Storage Tank Bureau (PSTB)**

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The Petroleum Storage Tank Bureau (PSTB) works to reduce, mitigate, and eliminate threats to the environment posed by petroleum products and hazardous material or wastes released from regulated underground and above ground storage tanks. PSTB activities include:

- Preventing equipment leaks and spills through inspections, monitoring, testing, and oversight of installations and removals.
- Providing oversight of cleanup or corrective action from spills and leaks from tank systems.

PSTB activities are guided by the Petroleum Products Loading Fee Act, Groundwater Protection Act, Hazardous Waste Act, regulations promulgated under the Acts, and other state and federal rules and policies.

PTSB has the following programs:

- **The Prevention and Inspection Program** performs compliance inspections and oversight for tank installations, repairs, modifications and removals, and enforcement actions against out-of-compliance tanks and facilities.
- **The Reimbursement Section** manages eligible payments from the Corrective Action Fund (CAF) through reimbursement and direct payments. These payments from the CAF are for work approved by the Remedial Action Program.
- **The Remedial Action Program** is responsible for the oversight of all corrective actions and cleanups caused by regulated leaking petroleum storage tanks. The program is also responsible for enforcement against responsible parties not in compliance with the corrective action parts of 20.5 NMAC, PSTB's regulations.
- **The Tank Operations and Support Program** is responsible for tank registration, tank fee collection, and certification of installers. The program also manages the Class A/B operator training program, maintains the list of qualified testers, and manages records

related to tank installations, tank closure, compliance inspections, and tank system enforcement actions.

## Solid Waste Bureau (SWB)

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The Solid Waste Bureau (SWB) promotes and assures solid waste management practices that improve public health and protect New Mexico's air, land, and water. SWB ensures landfills do not leach toxic substances into the environment and cause harm to the public. SWB also helps divert trash from landfills through reuse and recycling programs. Additionally, SWB administers grant programs to fund projects that prevent and abate illegal dumpsites and promote environmentally sound methods for reuse and recycling.

SWB regulates solid waste facilities and operations including commercial haulers, landfills, transfer stations, collection centers, recycling and composting facilities, and infectious waste processing facilities. SWB also regulates scrap tire generators, scrap tire haulers, tire recycling facilities, and construction projects using more than 100 scrap tires throughout New Mexico.

SWB activities are guided by the New Mexico Solid Waste Act; Solid Waste Rules; Recycling and Illegal Dumping Act; Recycling, Illegal Dumping, and Scrap Tire Management Rules; and other state and federal rules and policies.

SWB includes the following sections:

- **The Compliance and Enforcement Section** supports compliance assistance and assurance activities by strategically inspecting regulated facilities and their operations. The section also investigates complaints of illegal dumping and the mismanagement of solid waste or scrap tires; processes tire recycling facility permits and scrap tire hauler registrations; and reviews various operations, special waste disposal management, and waste excavation plans. When necessary, the section pursues and issues enforcement actions, including requests for voluntary compliance and formal enforcement actions.
- **The Permitting Section** supports the management of all solid waste permitting matters including review and approval of applications for permits and registrations. The section also reviews landfill environmental monitoring reports, reviews engineering designs and construction certification reports for waste disposal cell and final cover construction, manages permit hearings and appeals, and develops and updates legislation, rules, policy, and guidance.
- **The Planning and Outreach Section** assists with the implementation of SWB strategic plans for programmatic and fiscal objectives. The section reports on performance measures, compiles annual reporting data from regulated facilities, maintains the SWB webpage, provides SWB administrative support, and administers grants made from the Recycling and Illegal Dumping (RAID) fund. The section also coordinates solid waste management outreach and education, conducts operator certification courses, and provides technical assistance to the regulated community, private businesses, local governments, and public.

## Environmental Protection Division (PF70)

The Environmental Protection Division (EPD) protects New Mexican's air and environment and keeps the public safe from unnecessary radiation exposure. EPD activities include developing

and implementing mitigation strategies that reduce climate-change-inducing greenhouse gas emissions, monitoring and improving air quality, and assuring the proper licensing and financial assurance of industrial, medical, and research activities that use or concentrate radioactive materials.

EPD houses the Air Quality Bureau, Climate Change Bureau, and Radiation Control Bureau.

## Air Quality Bureau (AQB)

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The Air Quality Bureau (AQB) prevents the deterioration of air quality and ensures all New Mexicans benefit from clean air. AQB monitors air quality, implements and enforces air permits and regulations, issues air quality permits for a variety of sources, and ensures sources that are non-compliant with air regulations or permit conditions take appropriate corrective action.

AQB has authority over air quality in all areas of New Mexico except in Bernalillo County and on Tribal lands.

AQB consists of the following sections:

- **The Compliance and Enforcement Section** responds to air quality complaints from concerned citizens, conducts onsite inspections, and determines compliance with state and federal regulations. The section evaluates, documents, and reports air emission sources' noncompliance with regulations and permit requirements. The section initiates appropriate enforcement actions and participates in litigation and settlement negotiations to resolution. This section contains three units: the Compliance Inspection Unit, the Compliance Reports Unit, and the Enforcement Unit.
- **The Operations Section** gathers accurate quality-assured ambient air data, maintains and replaces monitoring equipment, and writes, updates, and obtains annual approval for quality assurance documents required by EPA. The section also provides administrative assistance to support AQB functions including managing AQB financial operations. This section contains three units: the Monitoring Unit, the Quality Assurance Unit, and the Administrative Services Unit.
- **The Permitting Section** reviews air quality permit applications, issues or denies federally enforceable air quality permits, and performs analysis of state and federal regulations. This section also manages permit hearings and provides permit-based technical assistance. This section contains three units: the Technical Services Unit, the Minor Source Unit, and the Major Source Unit.
- **The Planning Section** ensures the state maintains attainment and maintenance of National Ambient Air Quality Standards, performs air dispersion monitoring, and conducts the annual emissions inventory for submittal to the EPA. Additionally, the section assists small businesses with air quality permitting and compliance and reviews environmental impact statements for federal projects to determine the adequacy and acceptability of the environmental impacts of proposed actions. This section contains three units: the Control Strategies Unit, the Modeling and Emissions Inventory Unit, and the Small Business Environmental Assistance Program.

## Climate Change Bureau (CCB)

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The Climate Change Bureau (CCB) identifies, implements, and monitors progress on actions to reduce greenhouse gas emissions by at least 45% by 2030 as compared to 2005 levels as directed by Executive Order 2019-03 (On Addressing Climate Change and Energy Waste). CCB also serves as staff to the Climate Change Task Force (CCTF) and leads and participates in collaborative efforts that address climate change across all levels of government, business sectors, and communities.

CCB consists of the following sections:

- **The Community Engagement and Support Section** (in development) will lead community engagement and support and coordinate with communities in their efforts to reduce greenhouse gases. This section will develop and facilitate collaboration opportunities and educational workshops and will concentrate its outreach and engagement to impacted communities.
- **The Compliance and Enforcement Section** (pending) will support all compliance assistance and compliance assurance activities to reduce greenhouse gas emissions in accordance with state rules and identify opportunities to improve compliance with established greenhouse gas emission goals.
- **The Permitting Section** identifies and implements new regulations to mitigate New Mexico emissions. Currently, this section is working with the Planning and Operations Section to provide technical expertise on developing and updating legislation, rules, policy, and guidance to support climate mitigation. When rules are enacted, the section will be responsible for administering, monitoring, and managing all corresponding permits and certifications.
- **The Planning and Operations Section** oversees CCB administrative operations and develops strategic plans for programmatic and fiscal goals and objectives in support of climate change mitigation by supporting rulemaking, process development, and grant management. This section tracks and evaluates New Mexico's greenhouse gas emissions data and forecasts greenhouse gas emission reductions from climate policies. This section also provides guidance to the regulated community, private businesses, and the general public by developing and facilitating collaboration opportunities and educational workshops and by providing one-on-one technical assistance.

## Radiation Control Bureau (RCB)

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The Radiation Control Bureau (RCB) oversees beneficial uses of ionizing and nonionizing radiation and helps protect workers, the public, and the environment from the potential hazard radiation can pose.

RCB consists of the following sections:

- **The Medical Imaging and Radiation Therapy Program Section** maximizes the protection of New Mexicans from ionizing and non-ionizing radiation in the practice of medical imaging and radiation therapy.
- **The Radiation and Chemical Advocacy Program Section** assists the DOE or DOE subcontract employees who become ill as a result of past exposures to radioactive materials and toxic chemicals with their claims and provides technical assistance and

advocacy for those whose claims have been denied or who have encountered obstacles with the claims process.

- **The Radiation Protection Program Section** regulates and conducts: (1) radioactive materials licensing and inspections, (2) radiation machine (X-Ray) registration and inspections, (3) radioactive material and x-ray machine reciprocity acknowledgement, (4) radiological service providers certification, (5) mammography inspection, and (6) incident and allegation inspections and reporting. The section also regulates Naturally Occurring Radioactive Material (NORM) in oil and gas operations through licensing, inspection, and enforcement.
- **The State Indoor Radon Outreach Program** provides public education about the health risks of radon gas and disseminates information on methods for mitigating exposure. The program also prepares public service announcements and distributes, on a first-come-first-served basis, free radon testing kits to the public, one per household.
- **The WIPP Emergency Preparedness Program** supports emergency response capabilities among the city, county, medical, volunteer, and state emergency management units along the designated WIPP corridor route through monitoring, planning, and training.

## Environmental Health Division (P571)

The Environmental Health Division (EHD) regulates New Mexico businesses, products, and services to prevent adverse impacts on public health and the environment. EHD has regulatory oversight over commercially prepared foods, manufactured foods, public swimming pools, spas, onsite wastewater (septic) systems, hemp-finished products, and edible cannabis products.

EHD identifies emerging environmental threats to public health and collaborates with communities and other federal, state, and local agencies to address these threats jointly and proactively, focusing on prevention when possible. EHD collaborates with the food, hemp, and cannabis manufacturing sectors to protect consumers from emerging contaminants in solid waste and food and cannabis preparation and packaging. EHD also helps prevent workplace illnesses and injuries to support the New Mexico economy and its workers.

EHD consists of the Cannabis and Hemp Bureau, Environmental Health Bureau, and Occupational Health and Safety Bureau.

### Cannabis and Hemp Bureau (CHB)

The Cannabis and Hemp Bureau (CHB) ensures cannabis edible products and hemp products that are consumed, absorbed, or inhaled are produced in accordance with applicable regulations to protect public health. CHB regulates cannabis edible manufacturers, hemp warehouses, hemp extraction facilities, hemp manufacturing facilities, and hemp processing facilities through permitting, compliance monitoring, and enforcement. CHB also provides technical assistance to business owners, facility operators, and other government agencies.

### Environmental Health Bureau (EHB)

The Environmental Health Bureau (EHB) regulates food facilities and food manufacturers, septic systems, and public pools and spas. EHB protects the health and safety of New Mexico residents and guests through permitting, inspecting, and providing technical assistance to food facility and

pool operators and homeowners. EHB collaborates with other agencies as needed to prevent outbreaks caused by foodborne pathogens or improper liquid waste disposal.

EHB has three programs which help protect consumers and the public from adverse health and safety conditions:

- **The Food Safety Program** is responsible for permitting, inspecting, and providing technical assistance to food establishments to prevent foodborne illness. The Food Safety Program also responds to foodborne illness complaints and outbreaks to determine the source and eliminate the cause.
- **The Onsite Wastewater Program** prevents and abates public health hazards from surface and groundwater contamination by regulating onsite treatment and disposal of liquid waste.
- **The Public Pool and Spa Safety Program** inspects all public swimming pool and aquatic venues and works with other state agencies to prevent and identify legionella outbreaks.

## Occupational Health and Safety Bureau (NMOSHA)

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The Occupational Health and Safety Bureau (NMOSHA) works to ensure that all employees in New Mexico have a safe and healthful workplace. NMOSHA accomplishes this through:

- Providing compliance assistance to employers through consultations.
- Developing recommendations for establishing or strengthening employee safety and health programs.
- Assisting employees who have concerns or complaints about workplace safety and taking further action if warranted.
- Implementing and enforcing the New Mexico Occupational Health and Safety Act.

NMOSHA establishes strategic partnerships with groups of employers and employees to encourage, assist, and recognize efforts that eliminate workplace hazards and achieve a high degree of employee safety and health. NMOSHA provides timely and flexible responses to emergent public health risks that create workplace hazards.

NMOSHA's jurisdiction includes private industry and public entities such as city, county, and state government.

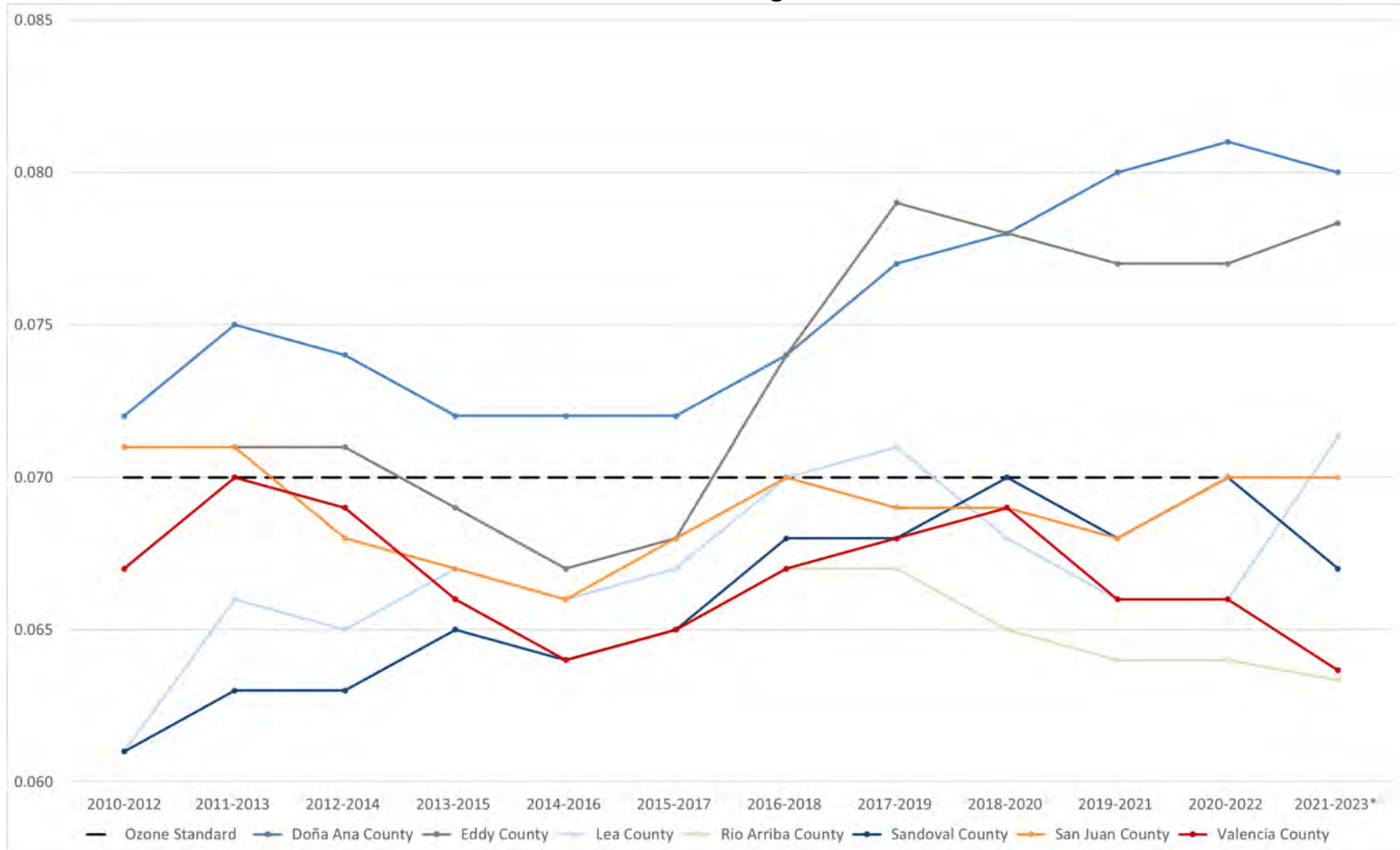
NMOSHA is made up of the following sections:

- **The Certification and Assistance Section** engages with the regulated community to conduct onsite verifications and determine if applicants meet certification requirements for recognition and exemption programs. The section also provides onsite consultative assistance for small companies and those in high-hazard industries, develops guidance materials for the regulated public, and provides environmental health and safety education and training to the New Mexico workforce.
- **The Compliance and Enforcement Section** regulates thousands of worksites in New Mexico. The section conducts inspections and investigations at worksites statewide to ensure workers are protected from illness, injuries, and death. The section also ensures the protection of workers who exercise their statutory rights from discrimination by employers.
- **The Operations and Planning Section** supports NMOSHA by establishing long term strategic plans for programmatic and administrative goals. The section reports on

performance measures, supports operational and long-term fiscal planning, and coordinates internal and external NMOSHA training activities. The section also provides statistics on the rate and number of work-related injuries, illnesses, and fatalities.



## Ozone NAAQS Design Values



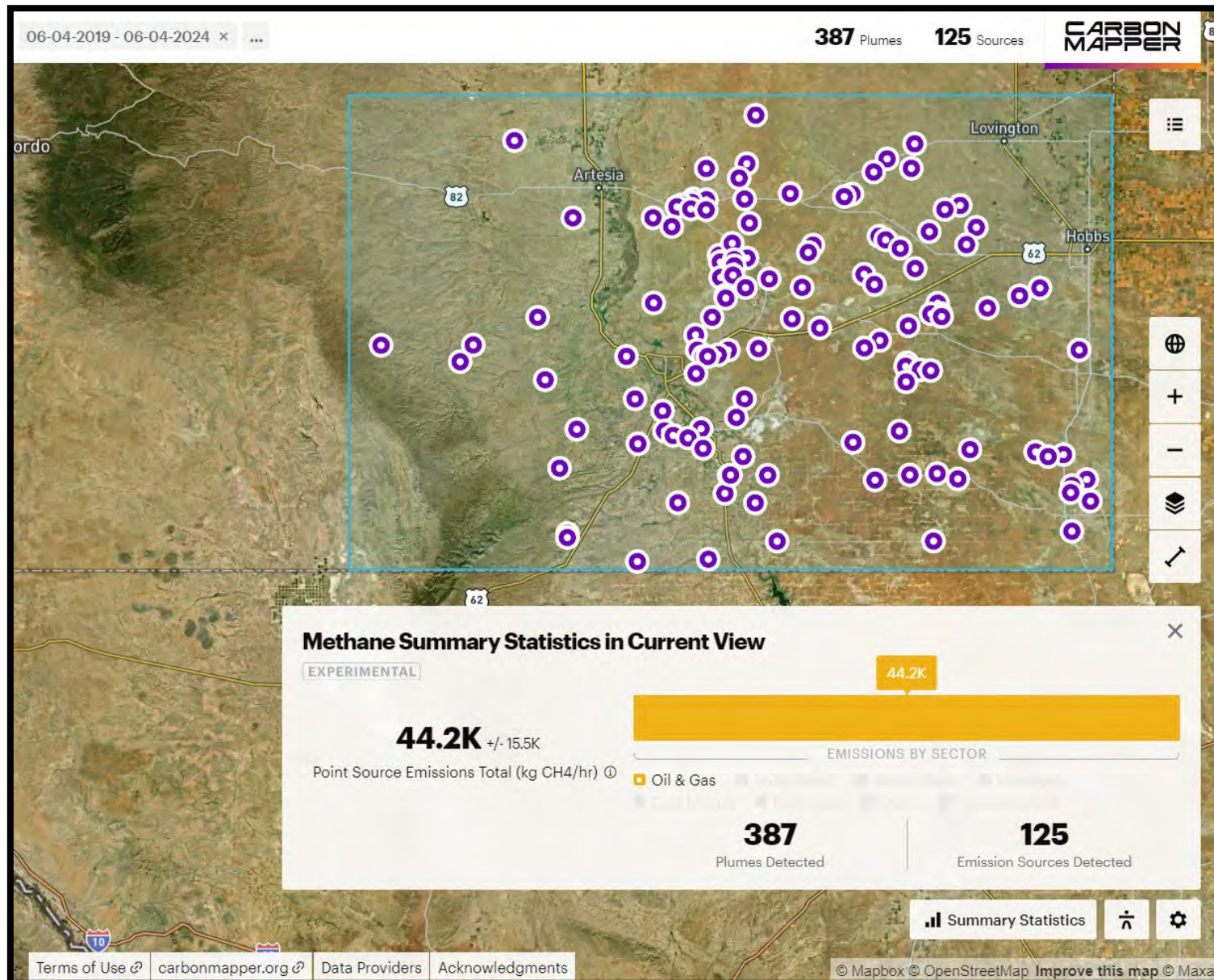
\*1st Quarter 2021 – 4th Quarter 2023

A design value is a statistic that describes the air quality status of a given location relative to the level of the National Ambient Air Quality Standards (NAAQS). Design values are typically used to designate and classify nonattainment areas, as well as to assess progress towards meeting the NAAQS.

*This graph is updated quarterly and newly added data has not been certified by U.S. EPA. All data displayed should be considered preliminary and used with discretion. The New Mexico Environment Department is not responsible for the accuracy of the data or any interpretations or conclusions that may be drawn from the data.*

NMED Exhibit 37

# Super-Emitter Sources in the Permian Basin of New Mexico



Accessed From:

<https://carbonmapper.org/data/>

Settings:

Date range:

06/04/2019 – 06/04/2024

Source Emission Rate:

100kg/hr and higher

Source Persistence:

50% and higher

Coverage and clusters  
layers off, satellite  
basemap

**Points-Based Fee Calculator 1/1/2024 to 12/31/2024**

20.2.75 NMAC

Permit Number & Site Name  
Engineer Name & Telephone:

Date of First Invoice:

NA

**Balance Due:** -\$500

Date of Second Invoice:

NA

CPI Adjusted Point Fee

Fee (\$/point)

\$510 per point

**PERMITTING ACTIONS****Technical Complexity**

# of Units

Total Points

Emission Units -

(does not include 202 exempt)

"x" if present or req'd

0

Fugitive Emissions

0

Nonattainment Area

0

Modeling Review

0

**Air Toxics**

"x" if present or req'd

Level I

0

Level II

BACT

0

Health Assessment

0

**Applicable Regulations**

# of app. regs.

20.2.X NMAC(number of regs)

0

NSPS (number of NSPS)

0

NESHAPs (number of NESHAPS)

0

"x" if present or req'd

Case-by-case MACT

0

**PSD**

PSD Netting (no other analysis)

0

PSD review, with any netting eval.

0

**Other Actions**

General Permit

0

Streamlined (# of Sites)

0

Technical Review

0

TOTAL OTHER ACTIONS

0

Small business or accel review?

Amount submitted with Application

500

Filing fee (enter 500 or 1000)

500

Credit/Debits

0

**Total Points**

0

**Fee**

\$ -

**Small business discount N/A**

N/A

**Fee (minus filing fee)**

\$ (500.00)

**Credits/Debits**

\$ -

**Balance Due**

\$ (500.00)

**First Invoice Amount:**

\$ -

**Second Invoice Amount:**

\$ -

**Non-applicable regulations: (do not count these)**

| NMAC Parts | NSPS      | NESHAP              |
|------------|-----------|---------------------|
| 1          | Subpart A | 40 CFR 61 Subpart A |
| 2          |           | 40 CFR 61 Subpart M |
| 3          |           | 40 CFR 63 Subpart A |
| 5          |           |                     |
| 7          |           |                     |
| 8          |           |                     |
| 60         |           |                     |
| 70         |           |                     |
| 71         |           |                     |
| 72         |           |                     |
| 73         |           |                     |
| 74         |           |                     |
| 75         |           |                     |
| 77         |           |                     |
| 78         |           |                     |
| 79         |           |                     |
| 80         |           |                     |
| 82         |           |                     |

**COMMENTS:****DIRECTIONS:****Lines 25, 26, 27 (Applicable Regs):** Insert number of applicable regulations using tables above to identify regs

Insert "X" or any symbol for other applicable fee points

**Line 12 (Emission Units):** Insert number of units - only count those emission units for which there is an applicable requirement in the permit. Do not add any fugitive sources to the total units listed in cell 12B**Line 14 (Fugitive Emissions):** If fugitive sources are present that have applicable requirements in the permit, put an "X" in cell 14B

Do not charge for a reg that is not applicable to the current revision.

rev. 1/1/2024

### Standard Operating Procedure: General Construction Permit Oil and Gas (GCP O&G)

To aid with review of a GCP O&G application you will need the following documents (Print them out or keep them open on your desktop and utilize them for each application review):

- GCP O&G Permit
- Portal Review SOP

The GCP O&G documents can be found at the following link:

<https://www.env.nm.gov/air-quality/air-quality-oil-and-gas-gcp-application-forms/>

The AQB ePermitting Portal documents can be found at the following link:

<https://www.env.nm.gov/air-quality/aqb-epermitting-portal/>

The TEMPO Data Entry Procedure can be found in File Depot at the following location:

[\\FS01\\ServerShares\\$\\EPD\\AQB\\Permitting\\TEMPO\\1 - TEMPO SOP aka TEMPO Short Procedures](\\FS01\\ServerShares$\\EPD\\AQB\\Permitting\\TEMPO\\1 - TEMPO SOP aka TEMPO Short Procedures)

The Portal Review SOP Procedure can be found in the File Depot at the following location:

[\\FS01\\ServerShares\\$\\EPD\\AQB\\Permitting\\Technical Services\\22 - Software Projects\\03 ePermitting Portal\\Internal Support Docs\\Portal Review SOP 23.04.25.docx](\\FS01\\ServerShares$\\EPD\\AQB\\Permitting\\Technical Services\\22 - Software Projects\\03 ePermitting Portal\\Internal Support Docs\\Portal Review SOP 23.04.25.docx)

1. Read the GCP O&G Permit issued on 4/27/2018.
2. Read through the entire GCP O&G registration form submitted by the applicant.
3. You will receive an automated email indicating an action has been assigned to you through the ePortal.
4. Download files from Tempo or from the Portal by logging onto the SEP <https://sep.net.env.nm.gov/sep/application-list>, click AQB ePermitting Portal and enter the Agency ID (AI) for All Active Organizations.
5. Scroll down to the bottom of the page and download the most recent Copy of Record (CoR) zip file. The most recent CoR will be at the top of the list.
6. Verify that the facility is allowed to operate under the GCP O&G with the 4 digit SIC Code they are requesting in the registration form. This can be found in Section 1, Part 1, subpart a of the registration form and Condition A102.A of the GCP O&G Permit. Other SIC codes are allowed provided that all of the equipment and operating conditions are enforceable in the permit. Discuss with your manager if you are not sure.
7. Verify that the location, siting, stack parameter verification, and public notice information meets the siting requirements of the permit. Refer to the GCP O&G Initial Review MasterCopy – 2023.05.23.docx located at the following link.

[\\NMENV\\ServerShares\\$\\EPD\\AQB\\Permitting\\Technical Services\\01 - Permit](\\NMENV\\ServerShares$\\EPD\\AQB\\Permitting\\Technical Services\\01 - Permit)

Assignment

8. If the online application has been received, then it has been certified. Verify that the proper Public Notice requirements have been met. Note: Public notice is only required for new GCP O&G applications. Revisions to GCP O&G permits or transitioning from a GCP-1 or GCP-4 does not require public notice. If a facility is transitioning from an NOI or NSR, public notice is required.
  - a. An applicant has two alternatives under Section 9 Proof of Public Notice, in the registration to provide Proof of Newspaper Publication: 1. Attach a copy of published notice that appeared at least once in the legal notices section of a newspaper of general circulation in the county in which the owner or operator is proposing to construct and operate. Or 2. Attach an affidavit from the newspaper or publication in general circulation in the applicable county stating that the advertisement was published.
  - b. A copy of a picture of the notice posted at the entrance of the existing or proposed location, or other publicly conspicuous place, on the property.
  - c. If a copy or picture isn't included, we can accept the certification signature in Section 9 as proof of General Posting of Notice.
  - d. The applicant is required to utilize the Department's templates (found in Section 9 of the registration form) for the public notices. Check the version date from the template posted on the NMED-AQB- Permitting website to ensure the correct template was utilized and that all the requirements for public notice have been met. You may also verify this by reviewing the change log attached to each permitting form.
  - e. Review the information that was represented in the public notices. Verify what is represented in the registration form also matches what was published in the public notices. This includes exact location (latitude/longitude or UTM) information, approximate location distance and direction from nearest NM town or city.
  - f. The registration form may not be approved until at least 15 days have passed since the Public Notice was initially published by the applicant.
9. Review the Allowable Equipment in the GCP O&G Permit (Part A, Condition A104, Table 104) and verify that the equipment represented in the registration form is allowed.
10. Review the equipment that has control devices installed on them. Verify that the control is allowed in the GCP O&G Permit. If you are unsure about a specific equipment type check with your manager.
11. If Enclosed Combustion Device(s) or Thermal Oxidizer(s) are installed verify that the unit(s) meet Condition A208.A.
12. Review the registration restrictions in the GCP O&G Permit (Part A, Condition A100.H) and verify that the applicant can operate based on what is represented in their application.
13. Review the Maximum Eligible Emission rates to register under the GCP O&G Permit (Part A, Table 106). Verify that what is represented in Table 2E and Table 2I for

HAPs is allowable in the Permit.

14. Review the allowable fuels in the GCP O&G Permit (Part A, Condition A110) and verify that the fuels being utilized at the facility meet the requirements of the Permit.
15. Review the oil and water throughputs in Section 1-C and Table 2-L of the Registration Form and ensure that they match. Check that the correct throughput was also used in the tank and loading calculations.
16. Review the emission calculations. The applicant is required to submit the calculations using the Department's Air Emissions Calculation Tool (AEC Tool). Supplemental calculations may be submitted if the AECT is unable to represent their facility emissions accurately.
  - A. Verify that oil and gas analyses have been submitted. Ensure that they are not older than 3 years old. Identify whether the analyses were site specific or from another location. Justification for a representative analysis is required at the end of Section 6 of the Registration Form.
  - B. Review the oil and gas analyses and ensure that the oil and gas components i.e. H<sub>2</sub>S, pentane etc. match what they used in the emission calculations.
  - C. Verify that the calculated emissions match what is in Table 2-E.
  - D. Verify that the appropriate emission factors are used in the calculations. AP-42 emission factors are acceptable for most equipment types. For engines the catalyst manufacturer emission factors shall be used for determining controlled emissions. For flares TCEQ emission factors are allowed.
  - E. Simulation software is typically used to calculate emissions for tanks.
17. Request updates as needed via email, have them submit responses in email but certify updates through the ePermitting Portal.
18. After you have received all updates through the Portal, lock and reconcile final version of the Application S-1 and create a Permit-D1. Follow the Portal Review SOP doc at the following link to complete the data entry steps.  
[\\NMENV\ServerShares\\$\EPD\AOB\Permitting\Technical Services\22 - Software Projects\03 ePermitting Portal\Internal Support Docs](\\NMENV\ServerShares$\EPD\AOB\Permitting\Technical Services\22 - Software Projects\03 ePermitting Portal\Internal Support Docs)
19. If the facility is designated as Synthetic Minor > 80 generate the Statement of Basis/Database Summary (SOB/DBS) from the Permit-D1 and complete it.
20. Speak with your manager as early as possible if you think there is reason the permit may need to be denied or withdrawn.
21. Follow the instructions in the red bold text and fill out all required fields in the SOB/DBS and the approval letter.
22. The following documents are required to be uploaded and locked under the greybar and are included in the Administrative Record (XXXX) checklist. All applicable documents should be included in the greybar.:
  - a. Emission calculation verification (if applicable).
  - b. Proof of location verification.

- c. SOB/DBS (If applicable)
  - d. All email communication with applicant
  - e. Word and signed PDF versions of letters sent to the applicant.
  - f. Any citizen comments & letters sent in response (if applicable)
  - g. Proof of certified mailout, (WDF with certification number from Admin)
  - h. The digitally signed pdf of the Administrative Record Checklist
23. Mail out approval letter:
- a. Generate Approval Letter from the locked Permit D-1 (Create New Document->Word Processing->GCP OG Approval (XXXX)). Save as a .rtf file and save as a PDF and electronically sign.
  - b. Fill out WDF Form found [here](#) using information from the Approval Letter
  - c. Create Approval & Reg (XXXX) document to mail out. This is a combination of two documents.
    - The current registration is the most recent U\_App (XXXX) found in the zip file CoR or if no updates were required to the original submittal the N App (XXXX).
    - Insert the signed PDF of the GCP-O&G Approval (XXXX) before the first page of the current registration.
  - d. Approval & Reg (XXXX) and WDF (XXXX) should be copied and pasted into the [Mailout Request](#) folder so the A-Team can send hardcopies of the Approval Letter and Permit, if applicable. Create a new folder named Permit #, Permit Type, Air Permit Contact Last Name, Date. (i.e. 9999M1 GCP O&G Smith 5.22.23)
24. Email an electronic copy of the Approval & Reg (XXXX) and the GCP O&G Permit to the applicant and copy the consultant if applicable.
25. Combine all of the email correspondence about the permit into a PDF by highlighting all the emails, right click, and select Convert to Adobe PDF save as Emails (XXXX) and upload to Tempo.

26. Citizen Comments: If there are citizen comments on a registration that is assigned to you follow this process:

- a. Notify your manager as soon as possible.
- b. Upload the comments to the TEMPO greybar.
- c. Email Clayton Hengst and copy Leslee Kimbrell the PDF of the entire registration form and request they post to our [website](#). To help them post quickly, please send the language for the link in the body of the email: Company Name – Facility Name – Permit Number – County

Received MM/DD/YY. We are posting the original application and will send any revisions with the Final Citizen Letter.

- d. Review the comments and discuss with your manager any that are new to you.
- e. Follow instructions that are built into the letter builder citizen letters to draft citizen letters appropriately.
- f. Initial Citizen Letter: Send as soon as possible after comments are received. Depending on how the applicant submitted comments you will respond the same way. If the citizen submits comments through email you will respond through email. If the citizen submits comments through mail, you will respond by mailing the letter out. The initial citizen letter does not need to be sent through certified mail. If the letter is being mailed, send the letter via email and route to A-Team for regular mailing.
- g. Final Citizen Letter: Immediately after the permit issuance, send the final citizen letter. If the citizen submits comments through an email it is ok to respond to them through email only, be sure to copy yourself when you send the final citizen letter through email and save this email in Tempo and the permit file. If the citizen submits comments through the mail: send the complete package via email and route to A-Team for certified mail. Ensure you include the final citizen letter, the approval letter, the permit and the registration form as sent to the applicant in both the email and hard copy. Be sure to keep track of the certified mail receipts in your permit folder (if applicable), as the receipt of the letter begins the deadline for appealing the permit decision. If an email to the citizen was sent keep track of the email with the final citizen letter. (Blind Copy (BC) or forward the email to Clayton Hengst and copy Leslee Kimbrell, and they will ensure that the documents are uploaded on APMAP within a week, and they will remove the original application from the [website](#).
- h. If you receive comments on an action after it has been issued: Upload the comments in the greybar and post to the shared folder. We will **not** post the application online and we will not send the initial citizen letter. We **will** send the Final Citizen letter package.
- i. If a citizen files a petition for an appeal of the final action of a GCP-O&G, the *petitioner* is required to notify the applicant/permit holder, the Department, and the EIB. The Department certifies the administrative record to the EIB.
- j. Ensure the administrative record is complete in Tempo.

## Tempo SOP for ePermitting Portal Applications

If you come across problems, please email Leslee with the AI and details of issue.

**IMPORTANT:** "Air Quality" needs to be in the Regulatory Program page in order data to show up in the Portal (if Air Quality is not selected, for an existing AI/SI in Tempo, it will not show up in the Portal).

If these items are deleted in the Permit-D1, they must also be deleted from the MF.

AI General Attributes

AI/SI Regulations

AI/SI Pollutants (ex: TSP)

AI SIC/NAICS

### Locking Application-S1 and Creating Permit D-1

\*\*Refresh Master Entities Before you lock!!\*\*

Lock but **DO NOT** Reconcile, all of the previous versions of the Application-S1.

1. Click lock, and "Uncheck all". When it asks you "Do you want to update the Master file" click "No"

Create the Approval letter and update the first sentence to say:

This letter is in response ..... application/form received via the AQB ePermitting Portal for an oil and gas facility in New Mexico.

Only lock **AND** reconcile the final Application-S1 from the company with all the current updates. This is the information that will update the MF.

1. Lock and Reconcile the Application-S1, click "Check All". "Yes" you want to continue, and "Yes" you want to update the MF. **This must be done immediately after issuance, once you have received all the updates.**
2. Once the App-S1 is locked, highlight it, select "Create New Document"
3. Under "Form" select "Permit-D1 (XXXX)" and enter the correct permit number in the parenthesis.
4. Check "Bring forward from an existing locked document" in the popup window.
5. From the dropdown, select the last "Application-S1" that you locked, it should be the first selection if you did it in the right order.
6. This will create a Permit-D1 with data from the App-S1 and the MF.
7. Check the Permit-D1 and make updates as indicated in the AI and SIs below.
  - a. Check to make sure there are no duplicate stacks in the SI's
  - b. If you delete items in the Permit-D1 they **MUST** be deleted in the Masterfile.

### AI Cleanup and QC in the New Permit-D1

Yellow highlight means you **MUST** review or enter data in Tempo

#### Designation

- o Check that it has the current permit number. Update if incorrect.

#### Estimated Quantities

- o **Emission Class:** needs to be entered (for AI only)
- o Delete TSP pollutant rows, or any rows that have the wrong quantity type (potential vs allowable), these will also need to be deleted in the MF.

Version 04/25/2023

[\\NMENV\ServerShares\\$\EPD\AQB\Permitting\Technical Services\22 - Software Projects\03 ePermitting Portal\Internal Support Docs](\\NMENV\ServerShares$\EPD\AQB\Permitting\Technical Services\22 - Software Projects\03 ePermitting Portal\Internal Support Docs)

## General Attributes

- **Facility Source Category:** add/update regulation categories. (If you delete, you will also have to delete in the MF)

## General Information

- **Status date:** will be blank for the AI, please put the date the permit was/will be issued.

## Location – Cultural

- **AQCR:** needs to be selected, does not auto populate (number based on county on colored map).

## Location—Physical

- **UTM:** make sure UTM's were entered in meters not kilometers (will have extra zeros if entered in km and will give an error when trying to save).

## Regulatory Program

- Verify all federal regulations that are applicable to the entire facility are listed, delete ones that are not relevant (Check regs in SIs if you have to delete any. will also need to be deleted from the MF.)
- Make sure they selected the correct regulation. For example: 60 Subpart JJJJ vs 63 Subpart JJJJ.
- Don't enter facility classification (minor) or Subparts A. (Do not have to delete if already there)

## Source Classification

- SIC/NAICS: If there are multiple rows, deleted them (they will also have to be deleted in the MF). The Portal will only update the first row.

## SI Cleanup and QC in Permit-D1

**\*These steps need to be followed for each SI\***

### Air

- There should only be 1 row of stack information, and the same stack ID cannot be used for more than one SI.
- If you see multiple stacks or the same stack ID used more than once see the section at the end of this document for [Fixing stacks](#).

### Estimated Quantities

- Delete TSP pollutant rows, or any rows that have the wrong quantity type (potential vs allowable) these will also need to be deleted in the MF
- Check that the PSD increment was entered correctly, if the facility is close the border of the Area or the state it may not work correctly. (Check one piece of combustion equipment, if its right or wrong for one it will be the same for all the other SIs.)  
(Email Leslee your AI if the increment didn't work correctly. This will help us fix the problem)

### General Information (only important on MSEI reporting years)

- **Status date:** for existing equipment the date should be the same date that was in the MF. New equipment will have the date the application was migrated to Tempo, or the construction date if one was provided.

## Regulatory Program

- Make sure only regulations that apply to that specific piece of equipment are listed. (if you have to delete regulations in Central File, you will also have to delete them in MF)

### Final Steps:

1. Now you can refresh master entities, lock and reconcile the Permit-D1, and set effective dates.

Tempo is the official location for NMED made documents for the legal copy of record and **all records MUST be uploaded to Tempo and the admin record completed (including locking the D1) within 2 weeks of issuance.**

2. End effective dates for previous D1 and close previous greybars if the Permit type changed.
3. Upload the location verification from Merge Master.
4. Do and upload the SOB/DBS if the facility is SM80.
5. Upload all emails
6. Upload signed approval letter.
7. Fill out the Work Distribution form and send to the A team and email the electronic docs to the permit contact and consultant.
  - a. Hard copies of the approval letter and registration (for GCPs) still have to be mailed via certified mail per the NMAC rules.
8. Upload the completed electronic WDF with the cert #.
9. Fill out and sign the Admin Record Checklist and upload.

### Fixing stacks

To edit an existing stack:

1. Click on the row you need to change.
2. Click the "Edit Existing Stack" button at the bottom center of the window.
3. In the Edit Existing Stack dialog box, select the *second* option "Edit stack information....."
4. Click "OK".
5. Make whatever changes are necessary, based on the requirements below.
  - After all changes have been made, click "OK" or move down to Estimated Quantities.

**There should only be 1 row of stack information, cannot use same stack ID for more than one SI. -D1**

- If you have the same stack ID for more than 1 SI click on the stack and select the *first* option, this will give the stack a new ID number
- Use the MF-TEMPO channel to request a data steward delete the old stack from the Masterfile (MF).
  - **Duplicate stacks:** there should also only be one stack ID for each piece of equipment. Usually the higher numbered stacks should be deleted. Check with Leslee or Joe K if you are unsure which should be deleted.
  - Delete in the D1 and request that it be deleted from the MF.

## **Standard Operating Procedure: Notices of Intent**

Notice of Intent (NOI) Requirements are in [20.2.73 NMAC](#).

### **General Review of Application**

The full application comes on a compact disc (CD). Only Section 1 Facility Information and Section 7 Certification are required as hard copies.

- Verify the Air Emission Calculation Tool (AECT) was submitted.
- Review the certification page – must be original, signed, dated, and notarized.

### **Technical Review of Application**

#### ***Section 1 – Facility Information***

- Verify “yes” is checked in Section 1-B.1, that it is a single source.
- Verify “no” is checked in Section 1-B.2, that it is not a Title V or PSD source.
- Location information does not need to be verified.

#### ***Section 2 – Application Summary and Routine Operations***

- Read the application summary to understand the customer’s intent. (Section 3 has a process flow sheet if needed for further clarity.)
- Verify a Facility Type is selected.
- Verify an SSM option is selected.

#### ***Section 3 – Process Flow Sheet***

Review not required.

#### ***Section 4 – All Calculations and Emissions Summary***

- Verify equipment match in the AECT and on Table 2: Potential Emission Rate.
- Compare the totals in Table 2: Potential Emission Rate and Table 3: Potential Emission Rate of HAPs to the Total Allowable NOI Emissions From All Facility Equipment table in the AECT (last page).
  - If emission totals in the tables do not match, determine the source of the discrepancy and evaluate.
- Assume that emission calculations using the AECT are correct. Briefly review calculation methodology if they submitted calculations for equipment not on the AECT or in place of portions of the AECT.
- Emission calculations must be based on 8760 hours per year. (Emergency generators cannot limit hours of operation to 500 h/y.)
- Vapor Recovery Units that are not federally enforceable require the Process vs. Control determination.

- Verify emissions in Table 2: Potential Emission Rate and Table 3: Potential Emission Rate of HAPs are within NOI parameters
  - PER greater than (>) 10 tpy<sup>1</sup> for any regulated air contaminant.
  - PER less than (<) 25 tpy for each regulated air contaminant under NAAQS<sup>2</sup> or NMAAQS.<sup>3</sup>
  - PER less than (<) 100 tpy for VOC's, and
  - Individual HAPs less than (<) 10 tpy and Total HAPs less than (<) 25 tpy<sup>4</sup>.

### **Section 5 – Maps**

Review not required.

### **Section 6 – Applicable State & Federal Regulations**

- Review tables for accuracy.
  - New Oil and Gas sources; expect NSPS OOOOa (tanks or fugitives), NSPS JJJJ or IIII for engines, MACT ZZZZ for engines.
  - New Oil and Gas sources cannot be subject to NSPS OOOO (only construction dates after August 23, 2011 and on or before September 18, 2015).
- Review there are no control devices listed in Tables 2 or 3 that do not correspond to a federally enforceable regulation (e.g., flares controlling loading emissions are not federally enforceable.)

### **NOI Issuance**

- Follow Tempo Data Entry instructions.
- Use the NOI (XXXX) New Stationary letter builder template to draft the letter.
- Upload all documents to Tempo:
  - Application (XXXX) – everything on the CD as a zipped file.
  - Scan of the tracking sheet, cover letter, check, and certification page.
  - A PDF of the signed letter and the Word version of the letter.
  - Any emails or updates to the application.
- Email the letter to NOI Permit Contact at the company, and cc consultant.
- Mail letter, certified with no return receipt requested.
- Recycle application and CD.

<sup>1</sup> Under 10 tpy does not require an NOI. No permit required (NPR), [20.2.73.200 NMAC](#).

<sup>2</sup> National Ambient Air Quality Standards <https://www.epa.gov/criteria-air-pollutants/naaqs-table>

<sup>3</sup> NM Ambient Air Quality Standards ([20.2.3 NMAC](#) – TSP, sulfur compounds, carbon monoxide, nitrogen dioxide) (Construction permit in Part 72 NMAC needed if PER greater than (>) 10 lb/hr or 25 tpy.)

<sup>4</sup> Definition of Major Source for Title V, [20.2.70.7.R NMAC](#).

## Technical Review Tips

- Applicants cannot request more than 4 engine options.
- Any emission reductions from the maximum capacity of the equipment must be federally enforceable.
- Operating time of all equipment is 8760 hours per year. I.e., emergency generators cannot limit operation to 500 hours per year, as there is no federally enforceable limit on hours of operation.
- Malfunction emissions cannot be authorized under an NOI.
- Haul road calculations address the 'area of operation.'
- Operators can voluntarily control emissions, but cannot take an emissions reduction unless federally enforceable. The form states: Voluntary flaring of emissions that are not federally enforceable (such as maintenance or loading emissions) should be represented both as flared emissions, and as uncombusted emissions. This is necessary to demonstrate that the products of combustion from flaring the emissions do not exceed the applicability threshold for a permit under 20.2.72.200.A(1) NMAC; and that the VOC emissions (if they are not flared) will not cause the site to be defined as a Title V Major Source under 20.2.70.7.4.R NMAC.
- For tank and loading emission calculations, the annual throughput used for calculations is not required to be the daily throughput times 365 days. The annual throughput of the facility used for calculations must be consistent throughout the application, and a brief rationale should be included in the notes sections on the appropriate pages of the AECT."

**5.0 – HOW TO PROCESS NSR PERMITS** (Significant Permit Revisions and Technical Permit Revisions) – Version June 8, 2016, rev June 13, 2018. Cember updated the doc links to look in new File Depot 12-20-17. Added instructions when to prepare PIP/LEP June 2018.

These NSR Permit Review steps do not include procedures for pre-application mail-outs, (i.e. application forms, modeling checklist, modeling guidance documentation, permitting guidance, forms, etc.) and pre-application meetings. To ensure all regulatory requirements are met, permit writers should review and be familiar with the regulations (**especially PSD**). Do not simply rely on this checklist.

**STEP DESCRIPTION** \*S=support staff; P=Permitter; M=manager; D= data entry person, TA = technical analysis (Modeling)

|      |  |
|------|--|
| 1P   | <p>Permit writer attends pre-permit application meeting with applicant, if meeting is requested.</p> <p><b>[PSD ONLY: PSD pre-application meetings require addressing PSD Pre-Construction Monitoring; ozone and/or secondary PM2.5 ambient impact analysis; &amp; Class I areas</b> –The applicant's pre-construction monitoring submittal &amp; our subsequent determination; ozone &amp; secondary PM2.5 ambient impact analysis (if required); and distance from any Class I area should be discussed at the pre-app meeting. A modeler needs to attend the meeting since they make the pre-construction monitoring, ozone impact analysis, and secondary PM2.5 impact analysis determination. If ozone or secondary PM2.5 ambient impact analyses are required, the modeler must obtain guidance and approval from EPA which can take a year or more. The permit writer must forward or be copied on the modeler's pre-construction monitoring requirements and ambient impact analysis methods for ozone and secondary PM2.5 to the applicant in writing before the application is submitted. If subject to additional requirements for Class I areas (20.2.74.403 NMAC) the permit writer must notify the FML of affected Class I areas of the pre-application meeting by the deadline in 20.2.74. You won't have a place in tempo or application number yet, so put copies of applicant's pre-construction monitoring submittal; our pre-construction determination from modeler; ozone and/or secondary PM2.5 analysis; and any notifications to Class I areas in an application file located in your office and electronic copies in aurora in the read-write folder so others can access the files.</p> |
| 2S   | Stamp the application with the date received, process filing fee (fill out form, make copies, one copy to permit writer for permit file and one copy to black three ring binder for acknowledgment of payment), prepare file folder, and give to Technical Services Staff, Kerry Carr.   |
| 3M/S | Assign permit number and assign applications to permit writer. (Sample Assigning Criteria = more complex permits to experienced permit writers and NOIs, streamlined permits and revisions to newer permit writers; assign modifications to permit writer who did the original permit; and multiple applications from the same company to one permit writer.) Give a copy of the application to the permit writer.   |
| 4D   | Create graybar in TEMPO and other administrative information (e.g. permit writer assigned, company name & address, facility name and address, received date, permit type, permitting action, size class and application fee information).  |
|      | <b>TASKS TO BE COMPLETED AS SOON AS APPLICATION IS RECEIVED</b>  |
| 5.1P | <p><b>When application is received, prepare the Public Involvement Plan (PIP) and Limited English Proficiency (LEP) evaluations for manager and Bureau Chief review</b> to allow plenty of time for review so that it will be ready and signed when the application is ruled complete.</p> <p>Here are the procedures and templates:<br/> <a href="#">..\..\NSR TV Common\PIP &amp; LEP</a></p>  |
| 5.2P | <p><b>If modeling is submitted</b> with the application, <b>immediately upon receiving the application</b></p> <ul style="list-style-type: none"> <li>send an email to Sufi Mustafa, modeling manager, that includes the following information: application number,</li> </ul>   |

|     |  |
|-----|--|
|     | <ul style="list-style-type: none"> <li>○ AI number,</li> <li>○ company name,</li> <li>○ facility name, <b>and a deadline for the modeling completeness determination</b> (request the deadline a week to few days before the complete deadline to allow yourself time to prepare complete/incomplete letter).</li> </ul> <p><b>Do not rule the application complete if modeling or a modeling waiver is required but was not submitted with the application. Discuss with your manager before ruling incomplete.</b></p> <ul style="list-style-type: none"> <li>• Immediately upon receiving the application, provide the application copy (hard copy or CD) and CD with modeling files to Sufi Mustafa with a copy of the Permit Tracking Cover Sheet and your email to Sufi.</li> </ul> <p>Sufi will notify the permit writer which modeler is assigned to the permit application. <b>If you don't hear from Sufi, please follow up with him to verify that he received the message.</b> He may be out, etc.</p> <p><b>Notify Modeler when Calculations approved and set model report deadline:</b> When you have verified the emission rates by email notify the assigned modeler that the emission rates in the application are correct and it is ok to proceed with the modeling review. Include in the email a negotiated deadline for submitting their modeling report to you. The permit writer must provide to the modeler, any updated application tables or other documents related to modeling. <b>The permit writer needs to provide a sufficient amount of time to allow the modeler to complete their review.</b></p> <p><b>[PSD Applications ONLY:</b> Submit an electronic file on CD of the application to the attention of our EPA-region 6 permit contact (Randy Pitre as of Dec 2012), and if required by 20.2.74.403 NMAC, to the FLM of any affected Class I area.]</p> |
| 6TA | <p>Review modeling application for completeness. If the application is incomplete modeling will notify permit writer by the deadline requested.</p> <p><b>Note to Permit Writer: If the modeler says that the modeling is not complete, do not rule the application complete. Discuss with your manager before ruling incomplete.</b></p>  |
| 7P  | <p>Verify that correct permit number is used and that permitting action type is correct (eg. Significant Permit Revision, Technical Permit Revision, etc).</p>   |
| 8P  | <p>Receive <b>File folder</b> with original permit application from support staff.</p> <ul style="list-style-type: none"> <li>• Put Permit Tracking Coversheet and all documents (including copies of all emails) in file folder in chronological order.</li> <li>• Resubmitted application forms should be placed on the top of their associated section of the application form with the date received noted on each resubmitted form.</li> <li>• Flag important documents used for final review (e.g. ruled complete letter, public notice, etc). See NSR Permit Review Checklist for items that are supposed to be flagged.</li> </ul>   |
| 9P  | <p><b>You will need to send the application fee invoice with the complete letter.</b></p> <p><b>Calculate Permit fee</b> using “NSRFeeWkst (20XX)” from the AQB Website:<br/> <a href="https://www.env.nm.gov/air-quality/permit-fees-2/">https://www.env.nm.gov/air-quality/permit-fees-2/</a></p> <ul style="list-style-type: none"> <li>• Put the NSR Fee worksheet with Permit Tracking Coversheet and copy of \$500 filing fee in the Admin Staff's Invoice Box at Theresa's desk.</li> <li>• Put a copy of the invoice and fee worksheet in the permit folder and in TEMPO,</li> <li>• Include a copy of the fee invoice with the hard copy complete complete letter</li> <li>• Send the invoice with the compete letter by email (see complete process steps below).</li> </ul>   |

|     |   |
|-----|---|
|     | <ul style="list-style-type: none"> <li>For Technical Permit Revisions the invoice goes with the issued permit. However if you know that permittee wants to make the change asap after the permit is issued, you can send the invoice to them by electronic mail. They can't make the change until the permit fee is paid.</li> <li>If the permit fee is not paid at permit issuance, include the fee condition language in the permit and attach the invoice to the end of the final permit.</li> </ul>   |
| 10S | Prepare permit fee invoice and put in permit writer in-box.   |
| 11P | <p><b>Review Application for Administrative Completeness:</b></p> <ul style="list-style-type: none"> <li>For <b>New or Significant Permit Revisions (20.2.72.219.D)</b>, review the entire application for completeness (2.72, Paragraph 203).</li> <li>This is <b>not</b> a technical review of the application, but a determination as to whether or not all the required elements have been submitted as part of the application.</li> <li>The assigned modeler should notify you if the modeling is complete before ruling the application complete.</li> </ul> <p><b>Important: This is when you verify that applicant's PUBLIC NOTICE was done correctly, including listing all regulated pollutants from the facility, including PM 2.5, PM10, TAPS, and total HAPs. Do not rule the application complete if the public notice was done incorrectly. Discuss with your manager before ruling incomplete.</b></p> <p><b>[PSD applications ONLY: Complete/Incomplete – Do not rule the PSD application complete until you have determined BACT requirements.]</b></p> <p><b>DO NOT</b> issue an incomplete determination without prior approval of your supervisor.</p> <p>It is recommended to keep notes of what is missing. Prior to ruling an application incomplete, it may be worth a call to the applicant or consultant, as some issues may be settled over the phone and through email submittals.</p> <p><b>Send an EMAIL to the Enforcement Section (Shannon Duran) requesting compliance status of the facility.</b></p> <ul style="list-style-type: none"> <li>Identify the compliance status identified in Section 1-F of the application form (For TV Permit applications, this is found in Section 19 of the application). If the application references or contains terms of an outstanding Notice of Violation or Settlement Agreement, make it available to Compliance for approval.</li> <li>Provide 2 to 3 weeks for compliance verification. Use the following email template in File Depot under permitting, NSR, other forms and documents. Here is the link:<br/> <a href="#">..\Forms and Templates\C&amp;E compliance verification Email</a></li> </ul> |
| 12P | <p><b>For Technical Permit Revisions (20.2.72.219.B NMAC)</b></p> <ul style="list-style-type: none"> <li>1<sup>st</sup> verify that the application can be processed as a Tech Rev and that the applicant cited the correct Tech Rev option.</li> <li>The completeness determination in 20.2.72.203 does apply to Tech Revs.</li> <li>Within 30 days from receiving the application, Tech Revs are either issued, denied, or a determination is made that it must be processed as a Significant Permit Revision per 20.2.72.219.B(4).</li> <li>Review the application to determine whether all of the required elements have been submitted as part of the application.</li> <li><u>Pay special attention to the applicant's public notice and that it includes <b>all</b> regulated pollutants when required, including PM 2.5, PM10, HAPs, and TAPS.</u></li> <li>Complete a technical review of the Technical Permit Revision.</li> </ul>  |

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|       | <b>DO NOT deny the application or notify the applicant that it must be processed as a Significant Permit Revision without prior approval of your supervisor.</b>  |
| 13D/P | <p><b>TEMPO Data Entry</b></p> <ul style="list-style-type: none"> <li>• <b>You may complete the data entry or ask Teri Waldron if she can complete the data entry.</b> Just verify that Teri is able to complete the data entry within the time frames that you need. <ul style="list-style-type: none"> <li>○ Regardless of who completes the data entry it is the permit writer's responsibility to ensure data is accurate and complete.</li> <li>○ <b>Data entry can be done during the application review process or after the permit is issued.</b> Completing the data entry after the permit is issued, can be more efficient since you have already determined and reflect what is correct in the administrative record (application updates, SoB, Permit, DBS).</li> <li>○ If done after the permit is issued, you will need to manually correct any Draft DBS data that may be out of date.</li> </ul> </li> <li>• <b>Use TEMPOProcedures_Short.docx located in SharePoint, Permitting, Tempo</b><br/> <a href="#">../..\\TEMPO\\TEMPOProcedures_Short.docx</a></li> <li>• <b>IMPORTANT – DELETE ALL ACTUAL EMISSIONS -</b><br/> <b>Before locking an Application-S1 or Permit-D1 make sure that there no pollutants in the “Estimated Quantity” fields entered as “actual” emissions.</b> If so delete them manually or request a data steward delete them. Data stewards are Teri Waldron, Laurie Lebowitz, and Theresa Gallegos. These entries will write over emissions inventory and corrupt their data.</li> </ul> <p><b>TV AND PSD SOURCE DEFINITIONS FOR TEMPO ENTRY – New October 2017</b></p> <p>In Tempo you will enter if a facility is Major Title V, Minor (for TV), Synthetic Minor (for TV), PSD Major with BACT, PSD Major without BACT, PSD Minor with BACT, or is a No Permit Required (NPR), a Notice of Exemption (NOE), and/or a Notice of Intent (NOI) only facility. In addition, in TEMPO we always enter “SIP” (state implementation plan) for all facilities that have an NOI or minor source construction permit. See TEMPO data entry procedures for more details.</p> <p><b>Title V Source Classifications – TEMPO Data Used for EPA Reporting:</b></p> <ul style="list-style-type: none"> <li>• Major Title V (20.2.70.7.R NMAC) – A facility that has a potential to emit (PER) of <math>\geq 10</math> tpy for a single HAP from all sources including fugitive sources, <math>\geq 25</math> tpy total HAPs from all sources including fugitive sources, <math>\geq 100</math> tpy for all other regulated air pollutants emitted from source with stacks, or from both stack and fugitive sources if the facility is on the list of 28 or subject to an NSPS/MACT/NESHAP promulgated on or before August 7, 1980.</li> <li>• Major Title V for Nonattainment (20.2.79.7.V NMAC) – <math>\geq 100</math> tpy to <math>\geq 10</math> tpy depending on the pollutant and designated severity of the nonattainment area.</li> <li>• Title V Due to NSPS or MACT (20.2.70.200.A NMAC) – Enter “Major Title V” for facilities that may not have emissions at the major source levels but must have a Title V permit because an NSPS, MACT, or other federal regulation says so. This can include landfills, air curtain incinerators, and power plants that require an acid rain pemrit.</li> <li>• Synthetic Minor (for Title V) – A facility that would be a Title V major source, but is not because its emissions are limited by a federally enforceable control or other limit, such as a limit on operating hours or production rate. A federally enforceable requirement includes emission standards in 40 CFR 60, 61, or 63 or a condition in a construction permit or Title V permit.</li> <li>• Synthetic Minor <math>\geq 80\%</math> (for Title V) – A facility that is synthetic minor for Title V with after controlled emissions that are equal to or greater than 80% of the Title V Major Source thresholds. This would be <math>\geq 8</math> tpy single HAP, <math>\geq 20</math> tpy total HAPs, <math>\geq 80</math> tpy other pollutants except GHGs.</li> </ul> |

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|     | <p><b>Prevention of Significant Deterioration (PSD) Facility Source Category – Used by AQB:</b></p> <ul style="list-style-type: none"> <li>• PSD Major with BACT (20.2.74.7.AE/AG NMAC) – An application for a new PSD major source or an existing PSD major source that has had a PSD permit issued for some or all pollutants and equipment. A facility that has a PSD permit would have at least one BACT requirement or limit.</li> <li>• PSD Major without BACT – An existing PSD major source that has never triggered a PSD permit application pursuant to 20.2.74.200.C NMAC.</li> <li>• PSD Minor with BACT – This is a PSD minor source that at one time was a new or existing PSD Major Source because it has PSD BACT requirements. Emissions from a facility can come below the PSD major source levels either due to the BACT requirement or by reducing its emissions after it obtained a PSD permit. The BACT still applies unless the equipment subject to the BACT is removed.</li> <li>• PSD Minor – Do not Use in TEMPO. For TEMPO use the “SIP” designation, not PSD Minor so that EPA reports will generate correctly from TEMPO. A PSD Minor Source is a new facility or an existing facility that is subject to the minor source construction permit regulation 20.2.72 NMAC but its emissions are not PSD major.</li> </ul>   |
| 14P | Permit writer verifies accuracy of Tempo entries, if completed by someone else.  |
| 15P | <p>This Step Does Not Apply to Technical Permit Revisions -<br/>If <b>INCOMPLETE</b>:</p> <ul style="list-style-type: none"> <li>• AFTER RECEIVING YOUR SUPERVISOR’S APPROVAL, prepare certified* incomplete letter using TEMPO LetterBuilder**.</li> <li>• Phone applicant and email PDF to applicant/consultant.</li> <li>• Update the TEMPO WAL with the incomplete date.</li> <li>• Once the applicant submits information responding to an incomplete determination, a new completeness determination must be performed within 30 days.</li> <li>• If still incomplete, send an email requesting the needed information.</li> </ul>   |
| 16P | <p>This Step Does Not Apply to Technical Permit Revisions<br/>If <b>COMPLETE</b>:</p> <ul style="list-style-type: none"> <li>• Prepare certified* complete letter using TEMPO LetterBuilder**.</li> <li>• The complete letter includes the public notice and memo for district/field office to retain a copy of the application until the permit is issued.</li> <li>• Update TEMPO WAL with complete date.</li> <li>• Note that after ruling the application complete, you may still call or email the applicant at any time to ask for additional info.</li> <li>• Email the PDF complete letter to applicant and consultant.</li> </ul> <p><b>Prepare Legal/Public Notice and Submit it with Complete letter and WDF to Admin Staff.</b></p> <ul style="list-style-type: none"> <li>• If the facility is located in a largely Spanish speaking area, speak with your supervisor about whether to also publish in Spanish (non-English speaking language requirements for public notices will be changing soon).</li> <li>• Prepare the public notice using the template from letter builder (notice is not separate, but at end of complete letter).</li> <li>• Copy the application to a CD which will be sent to NMED field office closest to the facility (20.2.72.206.A(2) NMAC).</li> <li>• Fill out WDF for admin staff requesting they mail the complete letter with the public notice and fee invoice to the permittee. Copy Morgan Hibberd on the email where invoice is sent at <a href="mailto:morgan.hibberd@env.nm.gov">morgan.hibberd@env.nm.gov</a></li> </ul> |

- Provide a hard copy of the WDF, complete letter with attachments, and CD to the admin staff.
- The admin staff will also mail a copy of the complete letter with the CD of application and field office 'Attachment B' that requests they keep the application at the office until the permit is issued. Indicate in the WDF which field office is closest to the facility.
- Indicate in the WDF to which newspaper the public notice should be published.
- To select newspaper, see the local paper and journal distribution lists in the administrative staff's folder in Aurora. Here is that link <P:\admin\Administrative Staff Specific Instruction\Legal Notices>
- This is the link to a folder with a list of current newspapers: <P:\admin\Administrative Staff Specific Instruction\Legal Notices\Newspaper Listings FY17 - Updated 03.21.17 KD.xlsx>
- If unsure about choosing a newspaper, use the one residents would be most likely to read which most likely the newspaper used by the applicant.

**Email Word version of Legal Notice and WDF to Admin staff** Carol Campbell, and CC Kristina Romero and Theresa Gallegos, requesting publication in a newspaper. Kristina and Theresa are Carol's backups when she is out.

- **Submit the legal notice publication request email as follows:**
- Subject line: **Public Notice Request:** permit#, company name, facility name [use of the exact words "Public Notice Request" is required to be in the Subject Line of this e-mail to trigger a Outlook e-mail processing rule.]
- Attach: Work Distribution form, word version of public notice
- This is a link to legal notice procedures located in Aurora: <P:\admin\Administrative Staff Specific Instruction\Legal Notices\Publishing Public Notices 3-3-17 Final.pdf>
- Put a reminder on your calendar for about a month out to follow up on the newspaper affidavit. This needs to be added to the permit file and is verification/proof that the notice was published.

**Send an email to Denise Huff in Tech Service to post the public notice to the AQB website.**  
<https://www.env.nm.gov/air-quality/public-notices-of-permitting-actions/>

**Email a copy of the public notice and "affected parties" letter to other states, Bernalillo County, or Class I area that is located within 50 km of the facility (20.2.72.206.A(7) NMAC).**

- Put copies of the "affected parties" letter(s) and email(s) in the permit file.

**Email a copy of the public notice to each person who has requested to be on a list to receive NSR public notices (20.2.72.206.A(4) NMAC).** These people and their email addresses are listed at the end of the public notice template. Do not include an "affected parties" aka agency letter.

- Put a copy of the email(s) in the permit file.

**Email a copy of the public notice to EPA using this email address:** [r6airpermits@epa.gov](mailto:r6airpermits@epa.gov) and CC the current EPA Permit Contact who is Erica LeDoux.

- The email template is in File Depot under Permitting, NSR, Other Forms and Documents, EPA Email Templates.
- Here is the link: <..\Forms and Templates\EPA Email Templates>
- Put a copy of the EPA email in the permit file.

**Quality Bonus** (up to 1 quality point) will be awarded if draft SOB is issued to the applicant with the completeness determination. Ensure to have your supervisor document this bonus at the time of the completeness determination. (Bonus does not apply to admins and tech revisions).

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|     | <p><b>[PSD applications ONLY: Complete/Incomplete</b> – Do not rule the PSD application complete until you have determined BACT requirements.<br/>         If subject to 20.2.74.403 NMAC, consult with the FLM of the completeness of the application.<br/>         Submit an electronic copy on CD of the “complete” application to EPA and the FLM (required within 30 days from receipt and 60 days before any hearing, if subject to 20.2.74.403). Mention if there are changes or are no changes to the application submitted to them previously.<br/>         Use the PSD specific incomplete/complete letter templates from tempo for PSD permitting actions.<br/>         Notify modeling (Eric Peters) if a new Minor Source Baseline date has been triggered (see 20.2.74.400.B NMAC).]</p> <p><b>[PSD applications ONLY: Public Notice</b> – Both 20.2.72.206 and 20.2.74.400 Public Notice requirements apply to PSD applications. Review 20.2.74.400.C to ensure the additional PSD public notice requirements are met. If subject to 20.2.74.403 NMAC, EPA and FLM(s) must be emailed both the public notice and SOB/DBS (materials used to make our “preliminary determination”). Your BACT determination should be included in the SOB at this stage of the process.]</p> |
| 17S | <p>Send certified* completion/incomplete letter (with fee invoice, invoice worksheet, application CD, and legal notice) to applicant and field office, or incompleteness letter to applicant or others as specified by Permit writer.<br/>         If complete, submit legal notice to newspaper for publishing.</p>   |
| 18S | <p>Pay newspaper for cost of publication of Preliminary Determination and give copy of publication/affidavit to permit writer for permit file (be aware that companies sometimes have the newspaper bill us for their own news release requirements which we do not pay).</p>  |
| 19P | <p><b>Update TEMPO WAL “Comment Period Begun”</b> with the date the legal notice was published in the newspaper. You will receive an estimated date from admin staff at first which can then be verified once the newspaper affidavit is received.</p>   |
|     | <p><b>TECHNICAL AND REGULATORY REVIEW OF APPLICATION</b></p>   |
| 20P | <p><b>Verify that data in TEMPO</b> Application-S1 and, later the Permit-D1(XXXX) is correct. Tempo entries can also be entered after the permit is issued. However, you will need to update information in the DBS manually.</p>  |
| 21P | <p><b>First, check the emissions calculations.</b></p> <ul style="list-style-type: none"> <li>• Check their math and that the input values make sense.</li> <li>• We do this first, so that modeling can be resubmitted if we don’t agree with the emission estimates and/or so the modeler has ample time to complete their modeling analysis.</li> <li>• Add your emissions calculations review to the permit file.</li> </ul> <p>You can review calculations using the applicant’s spreadsheets or make hand written notes on a hard copy. You may also create your own spreadsheets, examples of which are located in File Depot, Permitting, NSR-TV Comment, Links and Calc tools. Here is that link: <a href="#">..\..\Links &amp; Calc Tools</a></p>  |
| 22P | <p><b>Generate from TEMPO and prepare the statement of basis (SOB) and database summary (DBS).</b><br/>         The SoB will include, but is not limited to:</p> <ul style="list-style-type: none"> <li>• the reasons/basis for unique permit conditions,</li> <li>• State and federal regulatory analysis</li> <li>• PSD or Nonattainment applicability determination</li> <li>• information about modeling,</li> <li>• permit history</li> </ul>   |

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|     | <p>The SOB should be in enough detail to explain adequately what the application is about, verification that all emission points have been identified, which regulations apply and why, whether or not compliance with the regulations can be attained, list of units for which you have verified emission rates, and explanation as necessary for certain conditions in the permit (unique and/or an issue with applicant/citizens).</p> <p>Someone who has never seen the file before should be able to fully understand this source and permit based on the permit writer's SOB and DBS. Outside of standard template language there should be nothing in the permit that isn't addressed and explained in the SoB and/or DBS. Future questions about permitting and compliance issues or applicability of regulations often depend on the memos, SoB, and documentation that the reviewer puts in the permit file.</p> <p><b>[PSD applications ONLY: BACT – The department's BACT review and determination is considered part of the SOB .]</b></p>  |
| 23P | <p><b>Public Interest - If there is public interest speak to your manager ASAP.</b></p> <ul style="list-style-type: none"> <li>You need to plan ahead since you will most likely need a 2<sup>nd</sup> 30-day comment period on the Department's analysis (statement of basis) so will need to plan ahead to get the 2<sup>nd</sup> 30-day comment period in before the permit issue deadline.</li> </ul> <p><b>If you receive citizen interest in your application:</b></p> <ul style="list-style-type: none"> <li>Document all phone calls and letters to and from you and the public. Bring these documents to your manager for review.</li> <li>You will need to request that the following documents, when ready, be posted on our website on the 'Permitting Actions with Public Interest' webpage: 1<sup>st</sup> public notice, draft statement of basis, draft database summary, 2<sup>nd</sup>-30 day public notice, AQB modeling report, draft permit, and final permit, once issued.</li> <li>Here is the link to that webpage: <a href="https://www.env.nm.gov/air-quality/permit-applications-with-public-interest-public-meeting-or-public-hearing/">https://www.env.nm.gov/air-quality/permit-applications-with-public-interest-public-meeting-or-public-hearing/</a></li> </ul> <p><b>Initial Citizen Letter:</b></p> <ul style="list-style-type: none"> <li>Respond in writing using the initial citizens letter to all those who commented in writing (regular mail or email) at any time before the permit is issued. (required by policy, not regs).</li> <li>The letter is located in SharePoint, Permitting, NSR, LetterTemplates, Citizen Interest.</li> </ul> <p><b>Notification Letter &amp; Web Notice of Analysis/2<sup>nd</sup> 30-day Comment Period:</b></p> <ul style="list-style-type: none"> <li>Link to the 2<sup>nd</sup> 30-day notification is in SharePoint, NSR, LetterTemplates, Citizen Interest. <a href="#">..\Public Notice\Citizen Interest\2nd 30-day notice of Analysis</a></li> <li>When the statement of basis and database summary are available, mail/email this 2<sup>nd</sup> 30-day notice of analysis letter notifying that the analysis is available to anyone who submitted letters in writing during the 1<sup>st</sup> 30 day comment period (20.2.72.206.A(3) NMAC).</li> <li>Prepare and request that Denise Huff post to the AQB website the 2<sup>nd</sup> 30-day comment period Web notice. Posting this notice to the web is required by the Secretary's letter dated 11-7-2012 and has been incorporated into our SIP (see FR SIP 3-11-2013). A copy of the Secretary's letter is in the 2<sup>nd</sup> 30-day notice letter The second 30-day comment period begins on the web posting date. 20.2.72.206.A(3) and B(1) NMAC.</li> <li>The permit writer may provide copies of the SOB, DBS, modeling report, and draft permit to any public that requests it. Send this information only if it is requested (per regulation). Alternatively if you know the citizen can access the website, you may provide the AQB weblink that has these documents.</li> </ul> |

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|     | <p><b>Hearing Recommendation Memo:</b></p> <ul style="list-style-type: none"> <li>• See your manager to discuss if a hearing recommendation should be submitted to the Division Director (the Secretary's hearing determination designee). Ask your manager for a current example of this memo (20.2.72.206.C NMAC).</li> <li>• You will need to review and attach to the end of your memo the 11-30-12 Policy and Procedure – Considerstions regarding Significant Public Interest Related to Public Hearings. This is located in SharePoint, Permitting, NSR-TV Common, Internal Guidance Documents, Permit Process, Public Hearings, hearings.</li> </ul> <p><b>Final Citizen Letter</b> – At the time the permit is issued or denied, mail/email a letter to all citizens who commented in writing at any time during the application review process and before the permit was issued. 20.2.72.206.A(6) NMAC.</p> <p>All citizen letters and the 2<sup>nd</sup> 30 day notice web posting can be found in SharePoint at the internet link above.</p> |
| 24P | <p>Request a permit <b>extension if there will be a hearing.</b></p> <ul style="list-style-type: none"> <li>• If permit deadline is extended, the applicant must be notified by certified mail per 20.2.72.207.C</li> </ul>  |
| 25P | <p><b>Prepare Draft permit</b> using most currently issued NSR or TV permit from tempo and the current permit templates and monitoring protocols in SharePoint.</p> <p>Permit Templates and monitoring protocols are in SharePoint at these locations.</p> <ul style="list-style-type: none"> <li>• NSR Permit Template: Permitting, NSR, Permits - 2.72 – General Templates</li> <li>• Monitoring Protocols: Permitting, NSR-TV Common, Monitoring Protocols</li> <li>• Miscellaneous Monitoring Protocols and Examples (for protocols waiting approval): Permitting, Red-Write, Miscellaneous Monitoring Protocols</li> </ul>  |
| 26P | <p><b>By email, provide copy of draft permit and SOB/DBS to Compliance &amp; Enforcement</b> Section using this email template in File Depot, NSR, Forms and Templates, C&amp;E draft permit review email <a href="#">..\Forms and Templates\C&amp;E draft permit review email</a></p> <ul style="list-style-type: none"> <li>• Allow a minimum of 5 working days days to comment (optional for Tech Revs).</li> </ul> <p><b>By email, provide applicant draft permit SOB, and DBS. CC consultant unless directed by applicant not to do so.</b></p> <p>Allow at least 10 days for applicant/consultant to provide written comments by email.</p> <p><b>If permit is subject to EPA review</b> (i.e. PSD, PSD minor mod, NNSR), email draft to Region VI and Erica LeDoux.</p>   |
| 27P | <p><b>Verify that all required documents are included in the permit file:</b></p> <ul style="list-style-type: none"> <li>• Print the excel “<b>NSR Permit Review Checklist</b>” from SharePoint, Permitting, NSR, Other Forms &amp; Documents and verify that all documents are in correct order and place in the permit file.</li> <li>• Here is the File Depot Link:<br/><a href="https://nmenvonline.sharepoint.com/sites/AQB/permitting/NSR/Forms/AllItems.aspx?id=%2Fsites%2FAQB%2Fpermitting%2FNSR%2FOther%20Forms%20%26%20Documents">https://nmenvonline.sharepoint.com/sites/AQB/permitting/NSR/Forms/AllItems.aspx?id=%2Fsites%2FAQB%2Fpermitting%2FNSR%2FOther%20Forms%20%26%20Documents</a></li> </ul>  |
| 28P | <p><b>Run the TEMPO admin check.</b></p> <ul style="list-style-type: none"> <li>• Explain why blanks exist with handwritten notes on report. Include the admin check “loose” in the file folder.</li> </ul>  |
| 29P | <p>Develop the <b>final permit</b> integrating comments from enforcement and applicant/consultant.</p>   |

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|        | <ul style="list-style-type: none"> <li>• Print the permit comments from Enforcement and the applicant. Respond to each comment in writing, either accepting and implementing the comment (a checkmark is OK) or explaining the basis of rejecting each comment. Place these documents in the permit file.</li> <li>• <b>Submit final permit, permit file, and NSR Permit Review Checklist to supervisor for review at least three (3) days before the due date.</b></li> <li>• Put a sticky note on top of the permit file with the issue deadline and any other note you deem important (e.g. don't issue until we received modeling review approval from AQB modeler).</li> <li>• This is the quality review of your permit. The permit and the file folder should be ready for review and signing.</li> </ul> <p><b>[PSD Permits ONLY: BACT limits</b> – Ensure that the permit clearly identifies all BACT emissions limits in the emissions limit table and all control equipment/methods/practices in the the control equipment table. You may revise the tables or their headings as needed.]</p> <p><b>Quality Bonus:</b> Quality bonus (up to 1 quality point) if the final permit is SUBMITTED to your immediate supervisor within 60 days after the completeness determination. (Bonus does not apply to GCPs, NOIs, Admin, Tech rev, and streamline permits)</p> |
| 30P &M | <b>Organize and prepare for public hearing/meeting, if necessary.</b> See 20.1.2 NMAC – Adjudicatory Procedures – Environment Improvement Board  |
| 31M    | Manager performs final review  |
| 32M    | Submit to Bureau Chief for review/signature along with the permit file folder.   |
| 33M    | Return NSR Permit Review Checklist with attached requested edits, signed permit, and file to permit writer.<br><b>EAFA Bonus:</b> 1 EAFA point if permit is ISSUED within 60 days of the completeness determination.   |
| 34P    | <p><b>Finish process and Distribute final permit:</b></p> <ul style="list-style-type: none"> <li>• Create a pdf of the permit using the ‘save as PDF file’ function in MS-Word. Scan the signature page (first page only) of the permit and then attach the signature page to beginning the permit pdf doc.</li> <li>• Email the final signed permit (pdf version), final Word version of permit, SOB, DBS, and AQB modeling report, if any, to applicant and copy consultant.</li> <li>• Fill out WDF for support staff to mail out final hard copy permit to applicant by certified mail, return receipt requested. The hard copy of the permit is single sided.</li> <li>• If the fee is not paid, include the fee invoice with the mail out.</li> <li>• A copy of the final signed permit goes in the permit file.</li> </ul> <p><b>[PSD Permits ONLY:</b> Email a copy of the final PSD permit, SoB, and DBS to EPA, Region 6, attention EPA permit contact (e.g. Randy Pitre). PSD minor mods reviewed by EPA should also be submitted.]</p>   |
| 35P    | <p><b>Send Final Citizen Letter if written comments received:</b></p> <ul style="list-style-type: none"> <li>• At time permit is issued/denied, notify citizens who commented in writing (email or regular mail) at anytime before the permit was issued.</li> <li>• This notifies citizens who participated in the permit process of the action taken on the application.</li> <li>• The “final citizen letter” in SharePoint, Permitting, NSR, Letter Templates, Citizen Interest.</li> <li>• Citizens who participated (submitted written comments) can appeal the permit decision within 30 days of notification of the permit decision 20.2.72.206.B(1) NMAC.</li> </ul>  |
| 36S    | Mail permit to applicant (by <b>Return Receipt Mail – need green card</b> ). If requested, <b>make a two sided top-to-bottom paper copy for permit file and place in Permitter’s IN box.</b>   |
| 37P    | <b>Complete TEMPO entries.</b>   |

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|     | <ul style="list-style-type: none"> <li>• Finish WAL entries (issue date). Don't delete any tasks in the Work Activity Log (WAL) in Tempo until after the permit is issued. Deleting tasks will disable the auto correction of due dates.</li> <li>• lock the Permit-D1(XXXX)</li> <li>• set effective dates</li> <li>• All TEMPO entries must be completed within 7 days if issuing/denying permit.</li> </ul> <p><b>PSD Permits ONLY: RBLC Entry</b> – Per EPA requirement, enter any BACT requirements into the RBLC database within 30 days of issuing the permit. Complete the hard-copy RBLC data input form and provide to Liz Bisbey-Kuehn, or if not available to Cember Hardison. Liz is our main AQB RBLC contact. Both Liz and Cember are authorized to complete RBLC data entry. Print out the RBLC data entry, including the RBLC facility ID number, and put a copy in the permit file.]</p> |
| 38P | <b>Return complete file and NSR Review Checklist with requested supervisor edits attached to supervisor for final permit review rating.</b> Do not submit for final review before completing the WAL, locking, and setting effective dates.  |
| 39P | <b>Attach all remaining documents to the current activity in TEMPO including a copy of the final permit document, both Word and PDF format.</b> Do not attach unnecessary files about trivial issues.  |
| 40P | Attach green and white postage receipt and the Return Receipt green card to permit copy in file folder.  |
| 41P | Ensure that all <b>Post Issuance Tasks</b> on NSR Permit Review Checklist are complete   |
| 42P | Put complete permit folder in file room. : )   |
| 43P | <b>Use standardized appeal procedures if permit is appealed.</b> See Guidance Document in SharePoint, Permitting, NSR TV Common, Internal Guidance - Public Notice & Hearings folder and 20.1.2 NMAC – Adjudicatory Procedures – Environmental Improvement Board.  |

\* Certified (return receipt not required)

\*\* All files should be kept in TEMPO for access by others

| <b>List WAL Entries that need populating and what they mean</b> |   |  |
|---|---|--|
| <b>WAL Entry</b>  | <b>What it Means</b>  | <b>Notes</b>   |
| Application received  | Date application received   | Entered by data steward  |
| Review for incompleteness                                       | Date application ruled incomplete   | Delete row if not ruled incomplete   |
| Review for completeness   | Date application ruled complete   |  |
| Analysis comment period begins                                  | 2 <sup>nd</sup> 30-day comment period begins. Begins when SOB/DBS becomes available on our website. | N/A if no written comments received during the 1 <sup>st</sup> 30-day comment period. Delete if N/A. |
| Analysis comment period ends                                    | End of 2 <sup>nd</sup> 30-day comment period  | Delete if N/A  |
| deny  | If application denied   | Delete if not denied   |
| close   | If application closed   | Delete if not closed   |
| withdraw  | If applicant requests the application be withdrawn  | Delete if not withdrawn  |
| Request extension   | Date permit deadline extension requested from Secretary   | Delete if extension not requested  |
| Approve extension   | Date extension approved   | Delete if extension not requested  |

|                                 |  |  |
|---------------------------------|--|--|
| Comment period begins           | 1 <sup>st</sup> 30-day comment period begins         | 1 <sup>st</sup> 30-day comment period begins on the date that AQB's public notice posted in the newspaper                                  |
| Comment period ends             | End of 1 <sup>st</sup> 30-day comment period         | Ends 30 days after publishing date   |
| request additional information  | Date additional info requested                       | optional   |
| Received additional information | Date additional info received                        | optional   |
| Receive fee                     | Date permit fee received (Sig Revs)                  | N/A for tech revs or for permit fees not paid at permit issuance. In those cases, we don't invoice for the fee until the permit is issued. |
| issue                           | Date permit is issued                                |  |
| Set effective dates             | Date the effective dates are set                     | Must lock Permit-D1, then set effective dates.   |
| Review modeling analysis        | Date permit writer reviewed modelers modeling report |  |



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DEPUTY SECRETARY

**AIR QUALITY BUREAU  
GENERAL CONSTRUCTION PERMIT  
for**

**OIL AND GAS FACILITIES  
GCP-Oil & Gas**

Issued under 20.2.72 NMAC

*JCBg*

Acting Director  
Juan Carlos (JC) Borrego  
Environmental Protection Division

*4/27/18*

Date

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**PART A      FACILITY SPECIFIC REQUIREMENTS****A100   Introduction and Applicability**

- A. Air Quality Permit GCP-Oil and Gas (“Permit”) is issued by the Air Quality Bureau (AQB) of the New Mexico Environment Department (Department) under Title 20 Chapter 2 Part 72 of the New Mexico Administrative Code [20.2.72.220 NMAC]. The Department issues general permits in order to register groups of sources that have similar operations, processes, and emissions and that are subject to the same or substantially similar requirements [20.2.72.220.A(1) NMAC]. General permits provide an additional permitting option for specific types of sources that can meet the predetermined permit requirements [20.2.72.220.C(1) NMAC].
- B. This Permit authorizes an owner or operator to construct, modify, and operate an oil and gas facility in New Mexico (excluding Bernalillo County, tribal lands, non-attainment areas, and City of Sunland Park) under the conditions set forth herein.
- C. An owner or operator that registers for and receives approval to construct under this Permit will have satisfied the State of New Mexico’s requirement for obtaining an air quality permit prior to constructing, modifying, or operating a source of air pollutants. However, other federal, state, or local agencies may have additional requirements such as zoning restrictions.
- D. All sources for which the Department has approved a Registration Form under GCP-Oil and Gas are subject to GCP-Oil and Gas terms and conditions. No source may construct or operate under GCP-Oil and Gas unless the Department has approved its Registration Form in writing. No source may operate under GCP-Oil and Gas unless such operation meets all the requirements of GCP-Oil and Gas.
- E. Construction or modification of a source shall not begin until the Department has approved the Registration Form and the owner or operator has been notified in writing. [20.2.72.200.E NMAC and 20.2.72.220.C(6)(a) NMAC]
- F. The Facility shall operate as specified in the Registration Form. The emission limits and equipment specified in the Registration Form are federally enforceable, and shall become the terms and conditions of this Permit.
- G. The owner or operator may apply for registration of a Facility under this Permit if:
  - (1) The Facility can comply with all of the requirements of this Permit; and
  - (2) The Facility includes any combination of the emissions units listed in Table 104.
- H. The Department shall deny a Registration Form if:

- (1) The Registration Form is not complete;
- (2) The source, as proposed, is not qualified to register for GCP-Oil and Gas;
- (3) The source, as proposed, includes emission units not allowed under GCP-Oil and Gas;
- (4) The source is, or contains, a petroleum refinery, chemical manufacturing plant, flare pits, or bulk gasoline terminal, or is a listed source in Table 1 of 20.2.74.501 NMAC;
- (5) The source, as proposed, cannot meet the terms and conditions of GCP-Oil and Gas as determined by the review of the Registration Form(s);
- (6) The Facility is located in a nonattainment area [defined by 20.2.72.216 and 20.2.79 NMAC], Bernalillo County, or tribal lands;
- (7) The public notice performed for the Facility is inadequate to meet the requirements in Condition C100.B – *Public Notification*; or
- (8) Any criteria listed in 20.2.72.208 NMAC is applicable.

**A101 Permit Duration (expiration)**

- A. The term of this permit is permanent unless withdrawn or cancelled by the Department.

**A102 Facility: Description**

- A. The function of the Facility is to treat, process, store and/or transport gases and liquids associated with the production of oil and gas, and/or inject those substances or their byproducts into the earth. [SIC 1311, 1321, 4619, and 4922]

**A103 Facility: Applicable Regulations**

- A. The permittee shall comply with all applicable sections of the requirements listed in Table 103.

**Table 103.: Applicable Requirements**

| <b>Applicable Requirements</b>              | <b>Federally Enforceable</b> |
|---|------------------------------|
| 20.2.1 NMAC General Provisions              | X                            |
| 20.2.3 NMAC Ambient Air Quality Standards   | X                            |
| 20.2.7 NMAC Excess Emissions                | X                            |
| 20.2.38 NMAC Hydrocarbon Storage Facilities |                              |
| 20.2.61 NMAC Smoke and Visible Emissions    | X                            |
| 20.2.72 NMAC Construction Permit            | X                            |

| <b>Applicable Requirements</b>                                     | <b>Federally Enforceable</b> |
|--|------------------------------|
| 20.2.73 NMAC Notice of Intent and Emissions Inventory Requirements | X                            |
| 20.2.75 NMAC Construction Permit Fees                              | X                            |
| 20.2.77 NMAC New Source Performance                                | X                            |
| 20.2.82 NMAC MACT Standards for Source Categories of HAPS          | X                            |
| 40 CFR 50 National Ambient Air Quality Standards                   | X                            |
| 40 CFR 60, Subpart A, General Provisions                           | X                            |
| 40 CFR 60, Subpart D, Da, Db, Dc                                   | X                            |
| 40 CFR 60, Subpart K, Ka, or Kb                                    | X                            |
| 40 CFR 60, Subpart GG  | X                            |
| 40 CFR 60, Subpart KKK   | X                            |
| 40 CFR 60, Subpart LLL   | X                            |
| 40 CFR 60, Subpart IIII  | X                            |
| 40 CFR 60, Subpart JJJJ  | X                            |
| 40 CFR 60, Subpart KKKK  | X                            |
| 40 CFR 60, Subpart OOOO  | X                            |
| 40 CFR 60, Subpart OOOOa   | X                            |
| 40 CFR 63, Subpart A, General Provisions                           | X                            |
| 40 CFR 63, Subpart HH  | X                            |
| 40 CFR 63, Subpart ZZZZ  | X                            |
| Additional CAA Regulations Adopted by EIB                          | X                            |

#### **A104 Facility: Regulated Sources**

- A. Table 104 lists the emission units authorized for this facility. Emission units identified as exempt activities (as defined in 20.2.72.202 NMAC) and/or equipment not regulated pursuant to the Act are authorized, but not included in Table 104.

**Table 104: Allowable Equipment**

| <b>Equipment List</b>   |
|---|
| Storage Tanks   |
| Flares, Enclosed Combustion Devices, Thermal Oxidizers  |
| Engines, Turbines, and Generators   |
| Dehydrators, Cryogenic Units, Acid Gas Removal, Amine (Sweetening) Units, other Natural Gas Processing Equipment  |
| Auxiliary Equipment and Activities (includes heaters, separators, loading, Vapor Recover Unit (VRU), Vapor Recovery Tower (VRT), Ultra Low Pressure Separator (ULPS), Flash Tower, blowcase vessels, condensers, associated piping and connectors, pneumatics, pumps, compressors and other equipment as approved by the Department). |

All units must be evaluated for applicability to NSPS and NESHAP requirements.

**A105 Facility: Control Equipment**

- A. The authorized control equipment is established in the Registration Form. The permittee shall comply with all applicable requirements in this Permit for any control device selected in the Registration Form.

**A106 Facility: Allowable Emissions**

- A. The allowable hourly and annual emission limits are established in the Registration Form. In order to qualify for this permit, the Facility's annual emissions may not exceed those amounts in Table 106. These limits ensure the facility will not be a major Title V or PSD source under 20.2.70 or 20.2.74 NMAC.
- B. Table 106 does not establish facility emission limits, but establishes the eligibility criteria to register under this permit. If, at any time, these emission rates are exceeded, the applicant shall re-evaluate permit applicability.

**Table 106: Maximum Eligible Emission Rates to Register Under this Permit**

| <b>Pollutant</b>  | <b>Tons per Year (tpy)</b> |
|---|----------------------------|
| Nitrogen Oxides (NO <sub>x</sub> )                            | 95 tpy                     |
| Carbon Monoxide (CO)  | 95 tpy                     |
| Volatile Organic Compounds (VOC)* (non-fugitive)              | 95 tpy                     |
| Sulfur Dioxide  | 95 tpy                     |
| Hydrogen Sulfide  | 25 tpy                     |
| Total Suspended Particulates (TSP)                            | 25 tpy                     |
| Particulate Matter less than 10 Microns (PM <sub>10</sub> )   | 25 tpy                     |
| Particulate Matter less than 2.5 Microns (PM <sub>2.5</sub> ) | 25 tpy                     |
| Any Individual Hazardous Air Pollutant (HAP)                  | < 10 tpy                   |
| Total HAP   | < 25 tpy                   |

\* Fugitive emissions of VOC do not typically count toward Title V or PSD applicability. Thus, the total VOC emissions, including fugitive sources, may exceed 100 tpy without triggering additional permitting requirements.

**C. Allowable Hourly and Annual Emission Limits**

**Requirement:** For each regulated emission unit in the Registration Form, the emissions specified in the Registration Form shall be the allowable emission limits in this Permit. For each piece of equipment with an hourly emission limit established in the Registration Form, compliance shall be demonstrated by complying with the specific conditions for the emission unit in this Permit.

Compliance with the allowable annual emission limits shall be demonstrated by complying with the process parameters required for each piece of authorized equipment (e.g. tank throughput, engine test and/or run time, glycol circulation rates, control device inspection, etc.) as represented in the Registration Form.

If one of the process parameters required to be monitored has been exceeded, the permittee shall prepare calculations to determine compliance with each applicable emission limit for that piece of equipment. If the permittee determines its emission limit has been exceeded, the permittee shall also determine if that exceedance caused an exceedance of the facility's annual emission limit.

**Monitoring:** The permittee shall comply with the monitoring requirements as stated in the specific conditions of the permit.

**Recordkeeping:** Compliance with each annual emission limit shall be demonstrated by complying with the process parameters required for each piece of authorized equipment, except flares. For flares, the permittee shall comply with the requirements in Condition A207.

Compliance with the allowable emission limits for SSM and Malfunction events (non-flaring) shall be demonstrated by complying with Condition A107.

Upon request by the Department, the permittee shall provide calculations of the facility's monthly cumulative total emissions, or the monthly rolling 12-month total emissions in tons per year. Compliance with the annual emission limits in the Registration Form shall be demonstrated during the first twelve months of operation on a cumulative monthly basis, and after the first twelve months, on a monthly rolling 12-month total basis.

The permittee shall record in accordance with Section B109.

**Reporting:** The permittee shall report in accordance with Section B110.

#### **A107 Facility: Allowable Startup, Shutdown, & Maintenance (SSM) and Malfunction Emissions**

- A. The allowable SSM and Malfunction emission limits for this facility are established in the Registration Form and were relied upon by the Department to determine compliance with applicable regulations.
- B. Conditions for SSM flaring events are established in Condition A207.
- C. If selected by the permittee in the Registration Form, the permittee may select to authorize up to 10 tons per year of VOC from malfunction events. If this option is not selected, Condition A107.D does not apply. The Permit does not authorize combustion emissions due to malfunction events.
- D. **Malfunction Emissions of VOC (Non-combustion Malfunction Emissions)**

**Requirement:** The permittee shall complete the following recordkeeping to demonstrate compliance with malfunction (M) emission limits in the Registration Form.

For emissions due to malfunctions, the permittee has the option to report these as excess emissions of the ton per year limit specified in the Registration Form, in accordance with 20.2.7 NMAC, or include the emissions under the malfunction limit, unless the requested malfunction

limit has been exceeded.

Excess emissions of the malfunction limits shall be reported in accordance with the requirements at 20.2.7 NMAC as follows:

- (1) During the first 12 months of monitoring, if the cumulative monthly total of emissions exceeds the specified allowable annual emission limit.
- (2) After the first 12 months of monitoring, if the monthly rolling 12-month total exceeds the specified allowable annual emission limit.

Once emissions from a malfunction event are submitted in the final report per 20.2.7.110.A(2) NMAC, the event is considered an excess emission and cannot be applied toward the malfunction limit in this permit.

**Monitoring:** The permittee shall monitor all malfunction events that result in VOC emissions including identification of the equipment or activity that is the source of emissions.

**Recordkeeping:**

- (1) To demonstrate compliance, each month records shall be kept of the cumulative total of malfunction VOC emissions during the first 12 months and, thereafter of the monthly rolling 12-month total VOC emissions.
- (2) Records shall also be kept of the percent VOC of the gas based on the most recent gas analysis, of the volume of total gas vented in MMscf used to calculate the VOC emissions, and whether the emissions resulting from the event will be used toward the permitted malfunction emission limit or whether the event is reported as excess emissions of the ton per year limit in the Registration Form under 20.2.7 NMAC.
- (3) The permittee shall record the demonstrated compliance in accordance with Condition B109, except the requirement in B109.C to record the start and end times of malfunction events shall not apply to the venting of known quantities of VOC.

**Reporting:** The permittee shall report in accordance with Section B110.

E. SSM Emissions of VOC (Non-combustion SSM)

**Requirement:** The permittee shall complete the following recordkeeping to demonstrate compliance with routine and predictable startup, shutdown, and maintenance (SSM) emission limits specified in the Registration Form.

**Monitoring:** The permittee shall monitor the permitted routine and predictable startups, shutdowns, and scheduled maintenance events.

**Recordkeeping:**

- (1) To demonstrate compliance, each month records shall be kept of the cumulative total of SSM VOC emissions during the first 12 months and, thereafter of the monthly rolling 12-month total SSM VOC emissions.
- (2) Records shall also be kept of the percent VOC and H<sub>2</sub>S of the gas based on the most recent

gas analysis, and of the volume of total gas vented in MMscf used to calculate the SSM VOC emissions.

- (3) The permittee shall maintain records in accordance with Condition B109, except the requirement in B109.C to record the start and end times of SSM events shall not apply to the venting of known quantities of VOC.

**Reporting:** The permittee shall report in accordance with Section B110.

#### **A108 Facility: Allowable Operations**

- A. This facility is authorized for continuous operation if continuous operation is specified in the Registration Form. Monitoring, recordkeeping, and reporting are not required to demonstrate compliance with continuous hours of operation.
- B. If the facility or any emission unit is operated less than 8760 hours per year, the applicant may request a reduced number of hours of operation for the facility or emission unit in the Registration Form. The permittee shall demonstrate compliance with the allowable hours of operation for the facility or emission unit by complying with Condition A108.C.
- C. Hours of Operation (For Facility or Emission Units requested in Registration Form to operate less than 8760 hours per year)

**Requirement:** To ensure compliance with allowable emission limits in the Registration Form, the permittee shall comply with the following requirements.

**Monitoring:** The permittee shall monitor the hours of operation of each emission unit authorized to operate less than 8760 hours of operation on a monthly rolling 12-month period.

**Recordkeeping:** The permittee shall record the hours of operation of each such emission unit monthly, shall calculate and record the monthly rolling 12-month total hours of operation, and shall meet the recordkeeping requirements in Section B109.

**Reporting:** The permittee shall report in accordance with Section B110.

#### **A109 Facility: Reporting Schedules**

- A. The permittee shall report according to the Specific Conditions and General Conditions of this permit.

#### **A110 Facility: Fuel and Fuel Sulfur Requirements**

- A. Fuel and Fuel Sulfur Requirements for Equipment other than Flares

**Requirement:** Combustion emission units (except flares) may combust only field gas, natural gas, diesel fuel, propane, or other Department-approved fuel. The SO<sub>2</sub> limit for each engine and

turbine is limited by the NO<sub>x</sub> emission rate of the unit. The allowable SO<sub>2</sub> emission limit for engines and turbines is 20% of the NO<sub>x</sub> emission rate of the unit. Diesel fuel must meet ULSD specifications (15 ppm).

**Monitoring:** None

**Recordkeeping:** The permittee shall demonstrate compliance with the fuel or fuel oil limit on H<sub>2</sub>S content by maintaining records of a current purchase contract, tariff sheet, or transportation contract for the gaseous or liquid fuel, or fuel gas analysis, specifying the allowable limit or less. If a fuel gas analysis is used, the analysis shall not be older than one year.

**Reporting:** The permittee shall report in accordance with Section B110.

#### **A111 Facility: 20.2.61 NMAC Opacity**

##### **A. 20.2.61 NMAC Opacity Limit (All Combustion Units)**

**Requirement:** Visible emissions shall meet the requirements of 20.2.61.109 NMAC.

**Monitoring:**

- (1) Use of natural gas constitutes compliance with 20.2.61 NMAC unless visible emissions are observed. When any visible emissions are observed during operation other than during startup mode, opacity shall be measured over a 10-minute period, in accordance with the procedures at 40 CFR 60, Appendix A, Reference Method 9 (EPA Method 9) as required by 20.2.61.114 NMAC, or the operator will be allowed to shut down the equipment to perform maintenance/repair to eliminate the visible emissions. Following completion of equipment maintenance/repair, the operator shall conduct visible emission observations following startup in accordance with the following procedures:
  - (a) Visible emissions observations shall be conducted over a 10-minute period during operation after completion of startup mode in accordance with the procedures at 40 CFR 60, Appendix A, Reference Method 22 (EPA Method 22). If no visible emissions are observed, no further action is required.
  - (b) If any visible emissions are observed during completion of the EPA Method 22 observation, subsequent opacity observations shall be conducted over a 10-minute period, in accordance with the procedures at EPA Method 9 as required by 20.2.61.114 NMAC.

For the purposes of this condition, *Startup mode* is defined as the startup period that is described in the facility's SSM plan.

**Recordkeeping:**

- (1) If any visible emissions observations were conducted, the permittee shall keep records in accordance with the requirements of Section B109 and as follows:
  - (a) For any visible emissions observations conducted in accordance with EPA Method 22, record the information on the form referenced in EPA Method 22, Section 11.2.

- (b) For any opacity observations conducted in accordance with the requirements of EPA Method 9, record the information on the form referenced in EPA Method 9, Sections 2.2 and 2.4.

**Reporting:** The permittee shall report in accordance with Section B110.

## **EQUIPMENT SPECIFIC REQUIREMENTS**

### **OIL AND GAS INDUSTRY**

#### **A200 Oil and Gas Industry**

- A. This section has common equipment related to most oil and gas operations. Only sections specific to operational and control equipment established on the Registration Form apply.

#### **A201 Gas Analysis Requirements**

- A. Sites with the following equipment shall perform an annual gas analysis to include H<sub>2</sub>S concentration: Flares, Vents, Enclosed Combustion Devices, Thermal Oxidizers;
- B. Sites with the following equipment shall perform an annual extended gas analysis to include H<sub>2</sub>S: Glycol Dehydrators that vent to the atmosphere, Amine units that vent to the atmosphere;
- C. For equipment that uses fuel gas other than natural gas, measure and record the H<sub>2</sub>S concentration annually; and
- D. For all other sites, perform a gas analysis to include H<sub>2</sub>S concentration at least once every 24-month period.

#### **A202 Engines and Turbines (including generators)**

- A. The permittee shall comply with the minimum engine and turbine stack parameter requirements of this permit.
- B. Maintenance and Repair Monitoring for Engines and Turbines under 180 hp and Located at Facilities with a PER Greater than 80 tpy of NO<sub>x</sub> and CO

**Requirement:** Compliance with the allowable emission limits in the Registration Form shall be demonstrated by properly maintaining and repairing the units. Maintenance and repair shall meet the minimum manufacturer's or permittee's recommended maintenance schedule.

**Monitoring:** Activities that involve maintenance, adjustment, replacement, or repair of

functional components with the potential to affect the operation of an emission unit shall be documented as they occur for any maintenance that takes a unit out of service for more than two hours during any twenty-four hour period.

**Recordkeeping:** The permittee shall maintain records in accordance with Section B109, including records of maintenance and repair activities and a copy of the manufacturer's or permittee's recommended maintenance schedule.

**Reporting:** The permittee shall report in accordance with Section B110.

#### C. Initial Compliance Test (Engines and Turbines > 180 hp)

**Requirement:** Compliance with the allowable emission limits in the Registration Form shall be demonstrated by performing an initial compliance test. Existing units tested within the last five years shall not be required to perform an initial compliance test.

**Monitoring:** The permittee shall perform an initial compliance test in accordance with the General Testing Requirements of Section B111. Emission testing is required for NO<sub>x</sub> and CO. Test results that demonstrate compliance with the CO emission limits shall also be considered to demonstrate compliance with the VOC emission limits. Test results that show an exceedance of a CO emission limit are not considered to show an exceedance of a VOC emission limit. The Department may require an initial compliance test to demonstrate compliance with the VOC emission limit.

The monitoring exemptions of Section B108 do not apply to this requirement.

**Recordkeeping:** The permittee shall maintain records in accordance with the applicable Sections in B109, B110, and B111.

**Reporting:** The permittee shall report in accordance with the applicable Sections in B109, B110, and B111.

#### D. Periodic Emissions Testing (Engines and Turbines > 180 hp)

**Requirement:** Compliance with the allowable emission limits in the Registration Form shall be demonstrated by completing periodic emission tests during the monitoring period.

**Monitoring:** The permittee shall test using a portable analyzer or EPA Reference Methods subject to the requirements and limitations of Section B108, General Monitoring Requirements. Emission testing is required for NO<sub>x</sub> and CO and shall be carried out as described below.

Test results that demonstrate compliance with the CO emission limits shall also be considered to demonstrate compliance with the VOC emission limits. Test results that show an exceedance of a CO emission limit are not considered to show an exceedance of a VOC emission limit. The Department may require a compliance test to demonstrate compliance with the VOC emission limit.

Facilities with a PER less than 80 tpy of each regulated air pollutant shall perform periodic testing every three years for each engine and turbine > 180 hp.

Facilities with a PER greater than 80 tpy of any regulated air pollutant shall perform periodic testing once per calendar year for each engine and turbine > 180 hp.

For annual testing, the first test shall occur within the twelve months after permit issuance. All subsequent monitoring events for engines and turbines shall occur no later than one year from the previous event.

For 3-year testing, the first test shall occur within 36 months after permit issuance, and at least once per 36-month period thereafter.

The permittee shall follow the General Testing Procedures of Section B111.

**Recordkeeping:** The permittee shall maintain records in accordance with Section B109, B110, and B111.

**Reporting:** The permittee shall report in accordance with Section B109, B110, and B111.

E. 40 CFR 63, Subpart ZZZZ (Engines subject to NESHAP ZZZZ)

**Requirement:** For units subject to 40 CFR 63, Subpart A and ZZZZ, the permittee shall comply with all applicable requirements of Subpart A and Subpart ZZZZ.

**Monitoring:** The permittee shall comply with all applicable monitoring requirements of 40 CFR 63, Subpart A and Subpart ZZZZ.

**Recordkeeping:** The permittee shall comply with all applicable recordkeeping requirements of 40 CFR 63, Subpart A and Subpart ZZZZ.

**Reporting:** The permittee shall comply with all applicable reporting requirements of 40 CFR 63, Subpart A and ZZZZ.

F. 40 CFR 60, Subpart IIII and JJJJ (Engines subject to NSPS IIII and/or JJJJ)

**Requirement:** For units subject to 40 CFR 60, Subparts A and IIII and/or JJJJ, the permittee shall comply with the notification requirements in Subpart A and the specific requirements of Subpart IIII and/or JJJJ.

**Monitoring:** The permittee shall comply with all applicable monitoring requirements in 40 CFR 60, Subpart A and IIII and/or JJJJ.

**Recordkeeping:** The permittee shall comply with all applicable recordkeeping requirements in 40 CFR 60, Subpart A and IIII and/or JJJJ.

**Reporting:** The permittee shall comply with all applicable reporting requirements in 40 CFR 60, Subpart A and IIII and/or JJJJ.

G. 40 CFR 60, Subpart GG or KKKK (Turbines subject to NSPS GG and/or KKKK)

**Requirement:** For units subject to 40 CFR 60, Subparts A and GG and/or KKKK, the permittee shall comply with the applicable requirements of 40 CFR 60, Subpart A and GG and/or KKKK.

|   |
|---|
| <b>Monitoring:</b> The permittee shall comply with all applicable monitoring requirements in 40 CFR 60, Subpart A and GG and/or KKKK.       |
| <b>Recordkeeping:</b> The permittee shall comply with all applicable recordkeeping requirements in 40 CFR 60, Subpart A and GG and/or KKKK. |
| <b>Reporting:</b> The permittee shall comply with all applicable reporting requirements in 40 CFR 60, Subpart A and GG and/or KKKK.         |

#### H. Engine and Turbine Control Device Operation

|  |
|--|
| <p><b>Requirement:</b> Each unit equipped and operated with an oxidation catalytic converter, non-selective catalytic converter, or other control device specified in the Registration Form, shall comply with the requirements of this condition. Except for recommended burn-in period for catalysts, the units may not be operated in normal service without the control device. Units with a non-selective catalytic (NSCR) converter shall also be equipped with an AFR controlling device, or similar device that performs the same function of maintaining an appropriate air-fuel ratio.</p> <p>During periods of catalyst maintenance, the permittee shall either (1) shut down the engine or turbine; or (2) replace the catalyst with a functionally equivalent spare to allow the engine or turbine to remain in operation.</p> <p>The permittee shall maintain the units per the manufacturers supplier's or permittee's recommended maintenance.</p> |
| <b>Monitoring:</b> Units equipped with a catalyst shall be operated with a catalyst except during unit burn in periods.  |
| <b>Recordkeeping:</b> The permittee shall maintain records in accordance with Section B109.  |
| <b>Reporting:</b> The permittee shall report in accordance with Section B110.  |

#### I. Engine and Turbine Stack Parameter Requirements

##### Engine Stack Parameter Requirements

There is no limit on the number of engines that can operate under the GCP-Oil and Gas, provided that each engine has at least the minimum stack parameters determined by the facility total emission rate, and the facility total emission rate remains below the permit limit.

The minimum stack heights for engines are determined by performing the following calculation, and comparing the calculated emission rate with the stack parameters in Table 1:

- Step 1) Add up the maximum pound per hour NO<sub>x</sub> emission rate of all NO<sub>x</sub> emission sources (except flares and thermal oxidizers). The NO<sub>x</sub> emission rate from any enclosed combustion device (ECD) must be multiplied by two before adding to the total, as the dispersion from ECD causes twice the impact of other sources.

- Step 2) Use the calculated facility total NO<sub>x</sub> emission rate in Table 1 to determine the minimum stack parameters for engines.
- Step 3) An engine with a temperature or velocity that is less than the minimum that would apply to that unit may choose to add 3.3 feet to the unit's required minimum stack height to be considered to be in compliance with these stack parameter requirements. If both temperature and velocity are low, then 6.6 feet may be added. The minimum temperature and velocity for this exception to apply are 206°F and 26.2 feet per second.

Engines are limited to fuels that produce SO<sub>2</sub> emission rates of equal to or less than 20% of the NO<sub>x</sub> emission rate of that engine.

**Engines (and Heaters) that do not Meet the Minimum Stack Parameters**

Engines (and heaters) that do not meet the minimum stack parameters in Table 1 are authorized if:

1. The minimum height of engine stacks determined in Step 2 above is raised by 3.3 feet, and
2. The applicant adds the pound per hour NO<sub>x</sub> emission rates from the remaining engines, turbines, and heaters that do not meet the minimum stack parameters after Step 3 above, and those units are able to meet the new minimum stack parameters from Table 1 based on the total emission rate of the remaining engines, turbines, and heaters.

Any number of these engines and heaters are authorized, so long as all of the requirements and facility total emission limits in this condition are met.

**Table 1: Engines**

| <b>Facility total NOx emission rate (lb/hr)</b> | <b>Height (ft)</b> | <b>Temperature (°F)</b> | <b>Velocity (ft/s)</b> | <b>Diameter (ft)</b> |
|---|--------------------|-------------------------|------------------------|----------------------|
| 21.7  | 23                 | 854                     | 91.9                   | 1.0                  |
| 21  | 19.7               | 854                     | 91.9                   | 1.0                  |
| 20  | 18                 | 854                     | 91.9                   | 1.0                  |
| 19  | 14.8               | 854                     | 91.9                   | 1.0                  |
| 17 – 18   | 14.8               | 854                     | 88.6                   | 1.0                  |
| 15 – 16   | 14.8               | 854                     | 88.6                   | 0.8                  |
| 13 – 14   | 14.8               | 782                     | 72.2                   | 0.8                  |
| 10 - 12   | 14.8               | 782                     | 72.2                   | 0.7                  |
| 9   | 14.8               | 782                     | 65.6                   | 0.7                  |
| 8   | 14.8               | 782                     | 59.1                   | 0.7                  |
| 7   | 14.8               | 782                     | 49.2                   | 0.7                  |
| 6   | 14.8               | 710                     | 49.2                   | 0.7                  |
| 5   | 11.5               | 571                     | 49.2                   | 0.7                  |
| 4   | 11.5               | 571                     | 49.2                   | 0.5                  |
| 3   | 9.8                | 571                     | 49.2                   | 0.3                  |
| 2   | 8.2                | 571                     | 49.2                   | 0.3                  |
| 1   | 5.9                | 571                     | 49.2                   | 0.3                  |

**Turbine Stack Parameter Requirements**

There is no limit on the number of turbines that can operate under the GCP-Oil and Gas, provided that each turbine has at least the minimum stack parameters determined by the facility total emission rate, and the facility total emission rate remains below the permit limit.

The minimum stack heights for turbines are determined by performing the following calculation, and comparing the calculated emission rate with the stack parameters in Table 2:

- Step 1) Add up the maximum pound per hour NO<sub>x</sub> emission rate of all NO<sub>x</sub> emission sources (except flares and thermal oxidizers). The NO<sub>x</sub> emission rate from any enclosed combustion device (ECD) must be multiplied by two before adding to the total, as the dispersion from ECD causes twice the impact of other sources.
- Step 2) Use this facility total NO<sub>x</sub> emission rate in Table 2 to determine the minimum stack parameters for turbines.
- Step 3) A turbine with a temperature or velocity that is less than the minimum that would apply to that unit may choose to add 3.3 feet to the unit's required minimum stack height to be considered to be in compliance with these stack parameter requirements. If both temperature and velocity are low, then 6.6 feet may be added. The minimum temperature and velocity for this exception to apply are 206°F and 26.2 feet per second.

**Turbines (and Heaters) that do not Meet the Minimum Stack Parameters**

Turbines (and heaters) that do not meet the minimum stack parameters in Table 2 are authorized if:

1. The minimum height of turbine stacks determined in Step 2 above is raised by 3.3 feet, and
2. The applicant adds the pound per hour NO<sub>x</sub> emission rates from the remaining turbines, engines, and heaters that do not meet the minimum stack parameters after Step 3 above, and those units are able to meet the new minimum stack parameters from Table 2 based on the total emission rate of the remaining turbines, engines, and heaters.

Any number of these turbines and heaters are authorized, so long as all of the requirements and facility total emission limits in this condition are met.

**Table 2: Turbines**

| <b>Facility total NO<sub>x</sub> emission rate (lb/hr)</b> | <b>Height (ft)</b> | <b>Temperature (°F)</b> | <b>Velocity (ft/s)</b> | <b>Diameter (ft)</b> |
|--|--------------------|-------------------------|------------------------|----------------------|
| 21.7   | 23                 | 598.7                   | 32.8                   | 2.3                  |
| 21   | 19.7               | 598.7                   | 32.8                   | 2.3                  |
| 20   | 16.4               | 598.7                   | 32.8                   | 2.3                  |
| 19   | 16.4               | 598.7                   | 32.8                   | 2.0                  |
| 17 – 18  | 14.8               | 598.7                   | 32.8                   | 2.0                  |
| 14 – 16  | 14.8               | 598.7                   | 32.8                   | 1.6                  |
| 12 – 13  | 13.1               | 598.7                   | 32.8                   | 1.6                  |
| 9 – 11   | 11.5               | 598.7                   | 32.8                   | 1.6                  |
| 8  | 11.5               | 598.7                   | 32.8                   | 1.3                  |
| 6 – 7  | 9.8                | 598.7                   | 32.8                   | 1.3                  |
| 4 – 5  | 8.2                | 598.7                   | 32.8                   | 1.3                  |
| 3  | 6.6                | 598.7                   | 32.8                   | 1.1                  |
| 2  | 5.9                | 598.7                   | 32.8                   | 0.8                  |
| 1  | 5.9                | 598.7                   | 32.8                   | 0.8                  |

**A203 Heaters and Reboilers**

- A. Any number of heaters and reboilers are authorized if the units are able to meet the minimum stack parameter requirements in either Table 1 or Table 2 of Condition A202.I.

A heater or reboiler with a temperature or velocity less than the minimum that would apply to that unit in Table 1 or 2 of Condition A202.I may choose to add 3.3 feet to the unit's required minimum stack height to be considered to be in compliance with

these stack parameter requirements. If both temperature and velocity are low, then 6.6 feet may be added. The minimum temperature and velocity for this exception to apply are 206°F and 26.2 feet per second.

- B. If any units do not meet the minimum stack parameters in Table 1 or Table 2 of Condition A202.I, an adjustment may be made using the conditions for **Engines or Turbines (and Heaters) that do not Meet the Minimum Stack Parameters** requirement in Condition A202.I of this permit.
- C. If, after the above adjustments, any heater or reboiler is unable to meet the minimum stack parameter requirements in Table 1 or 2 of Condition A202.I, the maximum total emission rate allowed for those heaters and reboilers is 1.23 lb/hr of NO<sub>x</sub>. This limit is based upon the air dispersion modeling used in the development of this permit.

#### **A204 Glycol Dehydrators**

##### **A. Glycol Pump Circulation Rate**

**Requirement:** Compliance with the allowable emission limits in the Registration Form shall be demonstrated by monitoring the glycol pump circulation rate for each unit. The permittee shall not exceed the throughput in gallons per minute as requested in the Registration Form.

**Monitoring:** The permittee shall monitor the circulation rate quarterly unless specified as using the maximum design pump rate in the Registration Form. Monitoring shall include a visual inspection of pump rate setting or other method previously approved by the Department.

**Recordkeeping:** The permittee shall maintain records that include a description of the monitoring and are in accordance with Section B109.

**Reporting:** The permittee shall report in accordance with Section B110.

##### **B. Extended Gas Analysis and GRI-GLYCalc Calculation**

**Requirement:** Compliance with the allowable emission limits in the Registration Form shall be demonstrated by conducting an annual extended gas analysis on the dehydrator inlet gas and by calculating emissions using GRI-GLYCalc or Department-approved equivalent.

**Monitoring:** The permittee shall conduct an annual GRI-GlyCalc analysis using the most recent extended gas analysis, and verify the input data. The permittee may use a method of calculating dehydrator emissions other than the most current version of GRI-GlyCalc if approved by the Department. Changes in the calculated emissions due solely to a change in the calculation methodology shall not be deemed an exceedance of an emission limit.

**Recordkeeping:** The permittee shall identify in a summary table all parameters that were used as inputs in the GRI-GLYCalc or equivalent software model. A printout of calculation inputs will suffice as the summary table. The permittee shall keep a record of the results, noting the VOC and HAP emission rates for the dehydrator obtained from estimates using GRI-GLYCalc or equivalent.

**Reporting:** The permittee shall report in accordance with Section B110.

### C. Control Device Inspection

**Requirement:** To demonstrate compliance with the allowable emission limits in the Registration Form, the permittee shall control the still vent and/or flash tank emissions as indicated in the Registration Form. If no control device is selected, the permit shall demonstrate compliance with Conditions A204.A and B.

The permittee shall comply with Requirement 1 below, and the control device requirement in Requirement 2 below, for control devices selected in the Registration Form:

- 1) At no time during normal operations shall any emissions from the still vent, condenser, or flash tank be vented to the atmosphere, if controlled.

**Control Options (selected in Registration Form):**

- 2) Still vent, condenser, and/or flash tank emissions shall be captured and routed at all times to the selected control or recovery device.
  - a) If sending still vent, BTEX condenser, or flash tank emissions to a combustion device, the control device must be in operation at all times the dehydrator is in operation.
  - b) If still vent, BTEX condenser, or flash tank emissions are being recovered, those emissions shall at all times be routed to a process point that allows the off-gas to be recycled and recompressed, and not vented to the atmosphere.
  - c) Any closed loop system shall be designed and operated so that there are no detectable emissions.
  - d) If using a vapor recovery unit (VRU), the still vent and/or flash tank emissions shall be routed to the VRU and re-injected into the process stream. The VRU shall consist of a closed loop system of seals, ducts, and compressor. The VRU shall be operational at all times the glycol dehydrator is in operation.
  - e) All control devices and VRU shall be installed, operated, and maintained according to manufacturer's or supplier's or permittee's specifications. The permittee shall develop and implement an annual maintenance program or maintenance checklist for each control device and VRU.
  - f) Or other written Department approved method.

**Monitoring:** The permittee shall inspect the glycol dehydrator, the piping to any capture or control equipment, and any capture and control equipment semi-annually to ensure it is operating as designed.

**Recordkeeping:** The permittee shall record the inspection, the name of the inspector, and the results of all equipment and control device inspections chronologically, noting any maintenance or repairs needed to bring the dehydrator into compliance. The permittee shall maintain a copy of the control device and VRU maintenance recommendations, and the annual maintenance program or checklist.

**Reporting:** The permittee shall report in accordance with Section B110.

## D. 40 CFR 63, Subpart HH

**Requirement:** For units subject to 40 CFR 63, Subpart HH, the permittee shall comply with all applicable requirements.

**Monitoring:** The permittee shall comply with the monitoring requirements of 40 CFR 63.773.

**Recordkeeping:** The permittee shall comply with the recordkeeping requirements of 40 CFR 63.774 and in Section B109.

**Reporting:** The permittee shall comply with the applicable reporting requirements of 40 CFR 63.775 and in Section B110.

**A205 Tanks**

## A. Tank Throughput and Separator Pressure

**Requirement:** Compliance with the allowable emission limits in the Registration Form shall be demonstrated by limiting the hydrocarbon liquid throughput and average separator pressure to the amount and pressure (psia or psig) as listed in the Registration Form.

If tank emissions are controlled by a closed vent system and routed back to facility inlet, then the separator pressure limit shall not apply.

**Monitoring:** The permittee shall monitor the monthly total throughput of any hydrocarbon liquid, and the upstream separator pressure once per month. The upstream separator pressure shall be measured at the separator or flashing vessel directly prior to the crude oil or condensate entering the tanks.

**Recordkeeping:** The permittee shall record the monthly total throughput of hydrocarbon liquids and the monthly separator pressure.

Each month the permittee shall use these values to calculate and record:

- 1) during the first 12 months of monitoring, the cumulative total hydrocarbon liquid throughput and after the first 12 months of monitoring, the monthly rolling 12-month total hydrocarbon liquid throughput, and
- 2) during the first 12 months of monitoring, the average separator pressure, and after the first 12 months of monitoring, the monthly rolling 12-month average separator pressure.

Emission rates computed using the same parameters, but with a different Department-approved calculation methodology that exceed these values will not be deemed non-compliance with this permit.

Records shall specify the unit of pressure (psia or psig) and shall be consistent with the representation in the Registration Form. Records shall be maintained in accordance with Section B109.

**Reporting:** The permittee shall report in accordance with Section B110.

## B. Control Device Options, Requirements, and Inspections for Tanks

**Requirement:** The permittee shall demonstrate compliance with the allowable emission limits in the Registration Form by:

- 1) limiting the throughput and average separator pressure to the amount listed in the Registration Form; and/or,
- 2) operating a Department approved control device; and/or,
- 3) routing emissions to process.

In the case of #2 and #3 above, compliance with the allowable emission limits in the Registration Form shall be demonstrated by operating the control device and/or vapor recovery units as a closed vent system that captures and routes all emissions from tanks back to the process stream or to the control device, and does not vent to the atmosphere. The requested control device is selected in the Registration Form. The permittee may elect to control emissions from any storage vessel in the Registration Form.

**Monitoring:** At least once per month, the permittee shall inspect the piping from the tanks to vapor recovery unit or control device for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the event that a leak or defect is detected, the permittee shall repair the leak or defect within 30 calendar days and in a manner that minimizes VOC and HAP emissions to the atmosphere.

Alternatively to the above, and if selected in the Registration Form, the Permittee may implement a program that meets the requirements of NSPS OOOOa (40 CFR 60.5416a).

**Recordkeeping:** The permittee shall record the results of the control device and/or vapor recovery unit inspections chronologically, the name of the inspector, noting any maintenance or repairs that are required.

**Reporting:** The permittee shall report in accordance with Section B110.

## A206 Truck Loading

### A. Truck Loading

**Requirement:** Compliance with the allowable emission limits in the Registration Form shall be demonstrated by limiting the total annual loadout volume to the monthly rolling 12-month total volume as requested in the Registration Form.

**Monitoring:** The permittee shall monitor the truck loadout volume on a monthly basis.

**Recordkeeping:** The permittee shall record the monthly truck loadout volume. Each month, during the first 12 months of monitoring, the permittee shall record the cumulative condensate or crude oil loadout volume, and after the first 12 months of monitoring, the permittee shall calculate and record a monthly rolling 12-month total loadout volume.

Records shall also be maintained in accordance with Section B109.

**Reporting:** The permittee shall report in accordance with Section B110.

### B. Truck Loading Control Device Inspection

**Requirement:** If selected in the Registration Form, all emissions from truck loading shall be captured and routed to the selected control device and shall not vent to atmosphere. Compliance

with the allowable emission limits in the Registration Form shall be demonstrated by operating the control device as a closed vent system that captures and routes all emissions from loading to the control device, and by complying with the specific conditions in this permit for that control device.

**Monitoring:** At least once per month, the permittee shall inspect the piping from the loading rack to the control device for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the event that a leak or defect is detected, the permittee shall repair the leak or defect within 30 calendar days and in a manner that minimizes emissions to the atmosphere.

Alternatively to the above monitoring requirement, and if selected in the Registration Form, the Permittee may implement a program that meets the requirements of NSPS OOOOa (40 CFR 60.5416a).

**Recordkeeping:** The permittee shall record the results of the control device inspections chronologically, noting any maintenance or repairs that are required.

**Reporting:** The permittee shall report in accordance with Section B110.

#### C. Vapor Balancing During Truck Loading

**Requirement:** If selected in the Registration Form, the permittee shall comply with the following requirements. Compliance with the allowable emission limits in the Registration Form shall be demonstrated by operating a vapor balancing system in accordance with the following:

- 1) install and operate the vapor collection and return equipment to collect vapors during loading of tank compartments of outbound transport trucks, and return these vapors to the stationary storage vessels,
- 2) implement signage and written operating procedures requiring vapor collection equipment,
- 3) operate all recovery equipment at a back pressure less than the pressure relief valve setting of transport vehicles, and
- 4) inspect thief hatch seals semi-annually for proper operation and integrity and replace as necessary.

**Monitoring:** Semi-annually, inspect the vapor balance system, hoses, thief hatch seals, and PRD, and include an indication of condition, description of any maintenance, and repairs required.

Alternatively to the above, and if selected in the Registration Form, the Permittee may implement a program that meets the requirements of NSPS OOOOa (40 CFR 60.5416a).

**Recordkeeping:** The permittee shall record the date of the inspection, the results of the above inspections chronologically, and note any maintenance or repairs that are required.

**Reporting:** The permittee shall report in accordance with Section B110.

**A207 Flares**

- A. This permit does not authorize flaring of gas with a H<sub>2</sub>S content greater than 6 mole percent by volume (pre-combustion). This condition is based upon the air dispersion modeling analysis for this permit.

B. Pilot Flame, Visible Emissions, and Operational Requirements

**Requirement:** Compliance with the allowable emission limits for flare(s) in the Registration Form shall be demonstrated by the following:

- 1) The flare is limited to the daily and annual throughput, H<sub>2</sub>S concentration, and hours of operation, as specified in the Registration Form.
- 2) The flare shall combust only gas streams represented in the Registration Form.
- 3) The flare shall be equipped with a continuous pilot flame or an auto-igniter, or require manual ignition.
- 4) For flares with a continuous pilot flame or an auto-igniter, the flare shall be equipped with a system to ensure that the flare is operated with a flame present at all times that gas is sent the flare.
- 5) For flares with manual ignition, the permittee shall inspect and ensure that a flame is present upon initiating each flaring event.
- 6) The flare shall combust gas at all times gas is sent to the flare.
- 7) The flare shall be installed, operated, and maintained according to manufacturer's or equivalent specifications.
- 8) The flare shall be operated with no visible emissions except for periods not to exceed a total of sixty (60) seconds during any fifteen (15) consecutive minutes.
- 9) Compliance with the allowable hourly and annual emission limits in the Registration Form shall be demonstrated by complying with the requirements of this condition.

Malfunction flaring is not authorized under this permit, but is required to be reported under 20.2.7 NMAC. For each malfunction flaring event, the permittee is required to comply with the flow meter requirements in this condition. This information will be used to calculate emissions reported under 20.2.7 NMAC.

**Monitoring:**

- 1) For flares with a continuous pilot or an auto igniter, the permittee shall continuously monitor the presence of a flare pilot flame using a thermocouple equipped with a continuous recorder and alarm, to detect the presence of a flame, or any other equivalent device approved by the Department.
- 2) For manually ignited flares, the permittee shall monitor the presence of a flame using visual observation during each flaring event.

- 3) When any visible emissions are observed, the permittee shall perform a Method 22 observation while the flare pilot flame is present to certify compliance with the visible emission requirements. The observation shall be a minimum of fifteen minutes.
- 4) For flaring of the following event types, the permittee shall monitor in accordance with the following:

For startup, shutdown, maintenance, and emergency flaring at high pressure, a gas flow meter and flow totalizer, equipped with a chart recorder or data logger (electronic storage), shall be installed in the flare line to measure and record the total standard cubic feet (scf) of gas sent to the flare during any flaring event.

Monitoring for low pressure flaring is satisfied by the parametric monitoring of the equipment controlled by the flare.
- 5) The permittee shall measure the H<sub>2</sub>S content, VOC content, and the heating value (Btu/scf) of the gas sent to the flare for combustion with a gas analysis in accordance with Condition A201.
- 6) For all high pressure flares, the flow meter, totalizer, and if used, the inline monitor shall be operated, calibrated, and maintained as specified by the manufacturer, permittee, or equivalent and as necessary to ensure correct and accurate readings.

**Recordkeeping:** The permittee shall record:

- 1) Chronologically, all instances of alarm activation, including the date and cause of alarm activation, actions taken to bring the flare into normal operating conditions, the name of the personnel conducting the inspection, and maintenance activities.
- 2) The results of the Method 22 observations and flame inspection for manual flares.
- 3) The results of the gas analysis including H<sub>2</sub>S, VOC content, and heating value.
- 4) Both the hourly and monthly flow meter and flow totalizer measurements of gas sent to the flare during each flaring event.
- 5) Monthly, based on the data monitored and recorded in this condition and the throughput of the gas streams sent to any high pressure flare, the calculations and the basis of the calculations of the maximum hourly emission rate and the monthly total emissions in tons per month.
- 6) If the maximum hourly emission rate calculated in requirement 5 above, exceeds the allowable hourly emission limit, calculate and record the hourly emission rate for each hour of each flaring event of that month.
- 7) If one of the process parameters for a controlled unit has been exceeded, calculate and record the hourly and annual emission calculations for low and high pressure flares, to determine compliance with each applicable emission limit for that piece of equipment.

**Reporting:** The permittee shall report in accordance with Section B110 and in accordance with 20.2.7 NMAC.

### C. Flare Stack Parameter Requirements

The facility can have any number of flares, provided that each flare has at least the minimum stack parameters determined by the SO<sub>2</sub> emission rate, and so long as the facility total emission rate remains below the permit limit. Flares that burn pipeline quality natural gas need to be designed for at least the flow rate they are burning, but have no specified height in this permit. Flares that are not limited to pipeline quality natural gas have height restrictions listed in the following table.

**Table 3: Flare Minimum Stack Height Requirements**

| <b>SO<sub>2</sub> Emission Rate</b> | <b>Height</b> |
|-------------------------------------|---------------|
| <b>(lb/hr)</b>                      | <b>(ft)</b>   |
| 4501 – 5000                         | 59.1          |
| 4001 – 4500                         | 52.5          |
| 3501 – 4000                         | 45.9          |
| 3001 – 3500                         | 39.4          |
| 2501 – 3000                         | 29.5          |
| 20 – 2500                           | 19.7          |
| 10 – 19                             | 13.1          |
| 5 – 9                               | 11.5          |
| 3 – 4                               | 9.8           |
| 2                                   | 8.2           |
| 0 – 1                               | 6.6           |

Flare gas shall contain no higher than 6% H<sub>2</sub>S by volume (pre-combustion). If flare gas contains more than 6% H<sub>2</sub>S by volume, then assist gas may be added to reduce the gas composition to 6% H<sub>2</sub>S or less by volume.

### **A208 Enclosed Combustion Device (ECD) or Thermal Oxidizer (TO)**

- A. ECD are not permitted to burn gas with high sulfur content. The SO<sub>2</sub> emission limit for ECD is 0.9 lb/hr if all ECD operate with a velocity of at least two (2) feet per second. The SO<sub>2</sub> limit for ECD is 0.7 lb/hr if all ECD operate with a velocity of at least one (1) foot per second. This limit is based upon the air dispersion modeling used in the development of this permit.

#### B. Pilot Flame, Visible Emissions, and Operational Requirements

**Requirement:** Compliance with the allowable emission limits for each ECD(s) and TO(s) in the Registration Form shall be demonstrated by the following:

- 1) The permittee shall at all times operate the ECD or TO as a closed vent system that captures and routes all VOC and HAP emissions from the units listed in the Registration Form to the control device.
- 2) The permittee shall ensure that the controlled units do not vent uncombusted gas to the atmosphere.
- 3) Each ECD and TO is limited to the daily and annual throughput, H<sub>2</sub>S concentration, and hours of operation as requested in the Registration Form.
- 4) The units shall be equipped with a continuous pilot flame or an auto-igniter.
- 5) The units shall be equipped with a system to ensure that it is operated with a flame present at all times that gas is sent the unit.
- 6) ECD and TO combustion shall be maintained for the duration of time gas is sent to the unit.
- 7) ECD and TO shall be installed, operated, and maintained according to manufacturer's, or permittee's equivalent specifications.
- 8) The ECD and TO shall be operated with no visible emissions except for periods not to exceed a total of sixty (60) seconds during any fifteen (15) consecutive minutes.

**Monitoring:**

- 1) The permittee shall continuously monitor the presence of a pilot flame using a thermocouple equipped with a continuous recorder and alarm, to detect the presence of a flame, or any other equivalent device approved by the Department.
- 2) Once per calendar year, or when any visible emissions are observed, the permittee shall perform a Method 22 observation while the pilot flame is present to certify compliance with the visible emission requirements. The observation period shall be fifteen minutes.
- 3) A gas flow meter and flow totalizer, equipped with a chart recorder or data logger (electronic storage), shall be installed in the incoming gas line to measure and record the total standard cubic feet (scf) of gas sent to the unit during any high pressure operation.
- 4) Monitoring of low pressure combustion by the ECD or TO is satisfied by the parametric monitoring of the equipment controlled by the ECD or TO.
- 5) The permittee shall measure the H<sub>2</sub>S content, VOC content, and the heating value (Btu/scf) of the gas sent for combustion with a gas analysis in accordance with Condition A201.
- 6) The flow meter, totalizer, and if used, the inline monitor, shall be operated, calibrated, and maintained as specified by the manufacturer, or permittee, or equivalent and as necessary to ensure correct and accurate readings.

**Recordkeeping:** The permittee shall record:

- 1) Chronologically, all instances of alarm activation, including the date and cause of alarm activation, actions taken to bring the unit into normal operating conditions, and maintenance activities,

- 2) The results of the Method 22 observations,
- 3) The results of the gas analyses including H<sub>2</sub>S, VOC content, and heating value,
- 4) For high pressure units, both the hourly and monthly flow meter and flow totalizer measurements of gas sent to the unit, and
- 5) Calculations if one of the process parameters has been exceeded to determine compliance with each applicable emission limit for that piece of equipment.

**Reporting:** The permittee shall report in accordance with Section B110.

## **A209 Vapor Recovery Units, Vapor Recovery Towers, and Ultra Low-Pressure Separators**

### **A. Vapor Recovery Unit or Department-approved Equivalent**

**Requirement:** Compliance with the allowable emission limits for any of these units in the Registration Form shall be demonstrated by the following:

- 1) The permittee shall at all times operate the vapor recovery unit (VRU) as a closed vent system that captures and routes all VOC and HAP emissions from units listed in the Registration Form back to the process stream or to a sales pipeline, and does not vent to the atmosphere.
- 2) The permittee may select in the Registration Form a backup control device or redundant VRU to control emissions during SSM or VRU downtime.

**Monitoring** At least once per month, the permittee shall inspect the VRU and associated piping from the controlled units, and blowcase vessels, for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the event that a leak or defect is detected, the permittee shall repair the leak or defect within 30 calendar days and in a manner that minimizes VOC and HAP emissions to the atmosphere.

Alternatively to the above, and if selected in the Registration Form, the Permittee may implement a program that meets the requirements of NSPS OOOOa (40 CFR 60.5416a).

**Recordkeeping:** The permittee shall record the results of the VRU inspections chronologically, the name of the personnel conducting the inspection, and noting any maintenance or repairs that are required.

**Reporting:** The permittee shall report in accordance with Section B110.

## **A210 Amine Unit**

### **A. Amine Unit Throughput and Amine Circulation Rate**

**Requirement:** To demonstrate compliance with the allowable emission limits in the Registration Form, the inlet stream shall not exceed the amount represented in the Registration Form, and the amine pump circulation rate shall not exceed the circulation rate requested (in gallons per minute) in the Registration Form.

The permittee shall install, calibrate, and maintain a flow meter that measures the flow rate into the contactor. A flow meter is not required if the permitted capacity of the unit, and the emission calculations as represented in the Registration Form, is equal to and based upon the unit's maximum capacity.

**Monitoring:** The permittee shall:

- 1) calibrate the flow meter semi-annually in accordance with the manufacturer's, permittee's, or equivalent recommended schedule. The calibration shall be in accordance with the specifications at 40 CFR 98, and
- 2) monitor the flow rate daily (in units of MMscf/day) and monitor the circulation rate monthly.

**Recordkeeping:** The permittee shall keep records in accordance with Section B109, and of the following:

- 1) flow meter calibration results,
- 2) daily total of natural gas or NGL throughput each day in units of MMscf/day or barrels/day,
- 3) the pump flow rate in gpm and the basis for determination of flow rate, and
- 4) the manufacturer's specification sheet indicating the maximum flow rate of the pump.

**Reporting:** The permittee shall report in accordance with Section B110.

#### B. Amine Unit Control Device Inspection

**Requirement:** The permittee shall select the amine unit control device, if any, in the Registration Form. To demonstrate compliance with the allowable emission limits in the Registration Form, the permittee shall ensure a controlled amine sweetening unit is a closed system where all still vent emissions and flash tank emissions are collected and routed at all times back into the process point, and not vented to the atmosphere, or routed to a control device.

**Monitoring:** The permittee shall inspect the amine treatment unit, piping, and, if selected, the control equipment semi-annually to ensure it is operating as designed.

Alternatively to the above, and if selected in the Registration Form, the Permittee may implement a program that meets the requirements of NSPS OOOOa (40 CFR 60.5416a).

**Recordkeeping:** The permittee shall record the date, the name of the personnel conducting the inspection, and the results of all equipment and control device inspections chronologically, noting any maintenance or repairs needed to bring the amine treatment unit into compliance. The permittee shall maintain a copy of the manufacturer's, permittees, or equivalent maintenance recommendations.

**Reporting:** The permittee shall report in accordance with Section B110.

### A211 NSPS KKK, OOOO, OOOOa, and Fugitives

#### A. 40 CFR 60, Subpart KKK (Equipment and Compressors at Onshore Natural Gas Processing Plants subject to NSPS KKK)

**Requirement:** Equipment and compressors in VOC or in wet gas service (as defined in 40 CFR §60.631) within process unit(s) are subject to Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants, 40 CFR 60, Subpart KKK. The permittee

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| shall comply with all applicable requirements in Subparts A and KKK.   |
| <b>Monitoring:</b> The permittee shall implement a leak detection and repair program and shall comply with the standards as specified at 40 CFR §60.632 except as provided in §60.633. |
| <b>Recordkeeping:</b> The permittee shall comply with the recordkeeping requirements specified at 40 CFR §60.486 except as provided in §§60.633 and 60.635.                            |
| <b>Reporting:</b> The permittee shall comply with the reporting requirements specified at 40 CFR §60.487 except as provided in §§60.633 and 60.636.                                    |

B. 40 CFR 60, Subpart OOOO and/or OOOOa

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| <b>Requirement:</b> For units subject to 40 CFR 60, Subpart OOOO and/or OOOOa, the permittee shall comply with all applicable requirements in Subpart A and Subpart OOOO and/or OOOOa.                      |
| <b>Monitoring:</b> The permittee shall comply with all applicable monitoring requirements of these subparts. Where applicable, this requirement satisfies the monitoring inspection conditions of this GCP. |
| <b>Recordkeeping:</b> The permittee shall comply with all applicable recordkeeping requirements of these subparts.  |
| <b>Reporting:</b> The permittee shall comply with all applicable reporting requirements of these subparts.  |

## **A212 Setbacks and Other Requirements for Facilities Registering under this Permit**

### **Haul road emissions:**

Haul road emissions do not have additional requirements in this permit.

### **Fugitive H<sub>2</sub>S emissions from truck loading, tank venting, and leaks:**

The Department has established screening thresholds for fugitive H<sub>2</sub>S monitoring. The applicant may either (1) comply with Condition A212.A below, or (2) calculate and provide in the Registration Form the potential emission rate of fugitive H<sub>2</sub>S. If the emission rate is equal to or lower than the screening thresholds, the fugitive emission monitoring in Condition A212.A below is not required.

The screening thresholds are:

- 1) 0.01 lb/hr for all areas except the Pecos Permian Basin.
- 2) 0.1 lb/hr for the Pecos Permian Basin.

If a facility is above the screening thresholds, the following condition applies:

A. Fugitive Emission Monitoring for Facilities Receiving or Processing Sour Gas

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| <b>Requirement:</b> Facilities registered under this permit that are receiving or processing sour gas (greater than 4 ppm of H <sub>2</sub> S in all areas except the Pecos Permian Basin and greater than 24 ppm |
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of H<sub>2</sub>S in the Pecos Permian Basin) are required to conduct routine fugitive emission leak detection monitoring of each process equipment and control device that contacts the sour gas stream.

**Monitoring:** At least once per month, the permittee shall conduct a leak detection and repair program (LDAR) utilizing instrumentation and/or audio, visual and olfactory (AVO) inspection for all process equipment and control devices that are in contact with sour gas. The detection program shall include inspecting the piping from process equipment to any control device. Defects include, but are not limited to, visible cracks, holes, or gaps; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the event that a leak or defect is detected, the permittee shall repair the leak or defect within 30 calendar days and in a manner that minimizes emissions to the atmosphere. If the repair of the fugitive leak requires a unit shutdown, the repair may be delayed until the next scheduled shutdown. If a repair cannot be completed within 30 calendar days, the equipment shall be documented and tracked through completion of repair.

**Recordkeeping:** The permittee shall record the results of the LDAR inspections chronologically, noting any maintenance or repairs that are required and, if applicable, the reason describing why maintenance or repairs were not completed within 30 calendar days.

**Reporting:** The permittee shall report in accordance with Section B110.

**Terrain:**

Equipment shall be at least 100 meters from any stack to terrain that is five (5) or more meters above the top of a stack.

**Nearby facilities:**

The facility must be at least 150 meters from any source that emits over 25 tons/year of NO<sub>x</sub>.

**Class I areas:**

The facility must be at least (three) 3 miles from any Class I area.

## **PART B    GENERAL CONDITIONS**

### **B100    Introduction**

- A. The Department has determined that all facilities registered under and operating in accordance with this permit will meet all applicable requirements under the federal Clean Air Act, the New Mexico Air Quality Control Act, and Title 20, Chapter 2 NMAC, including 20.2.74 NMAC (Prevention of Significant Deterioration), 20.2.77 NMAC (New Source Performance Standards), 20.2.78 (Emission Standards for Hazardous Air Pollutants), 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants), and will not cause or contribute to air contaminant levels in excess of any national or New Mexico ambient air quality standard.

- B. Where the permit refers to “Department approved” or “approved by the Department,” means for the purposes of this permit to have been approved in writing by the Department. Guidance published on the AQB website meets this requirement.

**B101 Legal**

- A. The permittee shall construct or modify and operate the Facility in accordance with all of the conditions of the permit, including the representations in the Registration Form. 20.2.72.210.D NMAC, states that any term or condition imposed by the Department on a permit is enforceable to the same extent as a regulation of the Environmental Improvement Board.
- B. Unless otherwise specified in Part A or Part C of this permit, any future physical changes, changes in the method of operation, or changes in the authorized area may constitute a modification as defined by 20.2.72 NMAC, Construction Permits. Unless the source or activity is exempt under 20.2.72.202 NMAC, no modification shall begin prior to written approval of a Registration Form. (20.2.72.200.A.2 and E, and 210.B.4 NMAC)
- C. Registrations which require notification under Condition C101.A or Condition C101.B for permit revisions and modifications shall be submitted to:
- Permit Programs Manager  
New Mexico Environment Department  
Air Quality Bureau  
525 Camino de los Marquez, Suite 1  
Santa Fe, New Mexico 87505-1816
- D. The GCP-Oil and Gas supersedes GCP-1 and GCP-4 permits issued by the Department. For permittees operating under an existing GCP-1 or GCP-4, the Department will provide a transition schedule for converting to operate under the GCP-Oil and Gas, or for obtaining a regular Part 72 permit.

Within nine (9) months of issuance of this GCP-Oil and Gas, each permittee operating under an existing GCP-1 or GCP-4 shall determine if each facility qualifies to operate under the GCP-Oil and Gas, or if the permittee must obtain a regular Part 72 permit for that facility, and for each existing facility, the permittee shall provide notification to the Department of one of the following:

- 1) The facility qualifies to operate under the GCP-Oil and Gas, and the date that the permittee commenced operating under the GCP-Oil and Gas, or
- 2) The facility does not qualify to operate under the GCP-Oil and Gas, and the permittee shall obtain a regular Part 72 permit.

The Department shall establish a transition schedule for each existing facility and shall require the permittee to either (1) submit a Registration Form to operate under the GCP-Oil and Gas, or (2) to submit a regular Part 72 permit application. There is no public notice or fees required for transitioning an existing facility operating under a GCP-1 or GCP-4 permit under the GCP-Oil and Gas. Public notice and fees do apply to facilities applying for a regular Part 72 permit.

- E. On an as needed basis, the Department may revise the Registration Form and Air Emission Calculation Tool in order to make necessary revisions, improvements, and updates to the Forms.

#### **B102 Authority**

- A. This permit is issued pursuant to the Air Quality Control Act (Act) and regulations adopted pursuant to the Act including Title 20, Chapter 2, Part 72 of the New Mexico Administrative Code (NMAC), (20.2.72 NMAC), Construction Permits, including 20.2.72.220, General Permits, and is enforceable pursuant to the Act and the air quality control regulations applicable to this source.
- B. The Secretary of the Department is the Administrator for 40 CFR Parts 60, 61, and 63 pursuant to the delegation and exceptions of Section 10 of 20.2.77 NMAC (NSPS), 20.2.78 NMAC (NESHAP), and 20.2.82 NMAC (MACT).

#### **B103 Fees**

- A. Each Registration Form shall include a certified check or money order for 10 fee points. The current fee is available on the Permitting website.
- B. The Department will assess an annual fee for this Facility. The current annual fee amount is available by contacting the Department or can be found on the Department's website. The AQB will invoice the permittee for the annual fee amount at the beginning of each calendar year. This fee does not apply to facilities which are assessed an annual fee in accordance with 20.2.71 NMAC. For facilities that satisfy the definition of "small business" in 20.2.75.7.F NMAC, this annual fee will be divided by two. (20.2.75.11 NMAC)
- C. All fees shall be remitted in the form of a corporate check, certified check, or money order, or other Department approved method, and made payable to the "NM Environment Department, AQB."

#### **B104 Appeal Procedures**

- A. 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

Environmental Improvement Board. The petition shall be made in writing to the Environmental Improvement 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 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. Petitions for a hearing shall be sent or hand delivered to: (20.2.72.207.F NMAC)

Secretary, New Mexico Environmental Improvement Board  
Post Office Box 5469  
1190 St. Francis Drive, Runnels Bldg. Rm. N2153  
Santa Fe, New Mexico 87502-5469

**B105 Submittal of Reports and Certifications**

- A. Stack Test Protocols and Stack Test Reports shall be submitted electronically to [Stacktest.AQB@state.nm.us](mailto:Stacktest.AQB@state.nm.us).
- B. Excess Emission Reports shall be submitted electronically to [eereports.aqb@state.nm.us](mailto:eereports.aqb@state.nm.us). (20.2.7.110 NMAC)

**B106 NSPS and/or MACT General Conditions**

- A. If a facility is subject to a NSPS standard in 40 CFR 60, the requirements of 40 CFR 60, Subpart A, General Provisions, also apply.
- B. If a facility is subject to a MACT standard in 40 CFR 63, the requirements of 40 CFR 63, Subpart A, General Provisions, also apply.

**B107 Startup, Shutdown, and Maintenance Operations**

- A. The owner or operator of a source having an excess emission shall comply with 20.2.7 NMAC and, to the extent practicable, operate the source, including associated air pollution control equipment, in a manner consistent with good air pollutant control practices for minimizing emissions. (20.2.7.109 NMAC). The establishment of allowable malfunction emission limits does not supersede this requirement.
- B. The establishment of permitted startup, shutdown, and maintenance (SSM) emission limits does not supersede the requirements of 20.2.7.14.A NMAC. Except for operations or equipment subject to Condition B106, the permittee shall establish and

implement a plan to minimize emissions during routine or predictable start up, shut down, and scheduled maintenance (SSM work practice plan) and shall operate in accordance with the procedures set forth in the plan. (SSM work practice plan) (20.2.7.14.A NMAC)

**B108 General Monitoring Requirements**

- A. These requirements do not supersede or relax requirements of federal regulations.
- B. The following monitoring 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 the Registration Form 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 the Registration Form; 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.
- C. 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 Air Quality Bureau's Compliance and 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.
- D. The requirement for monitoring during any monitoring period is based on the percentage of time that the unit has operated. However, to invoke the monitoring period exemption at B108.D(2), hours of operation shall be monitored and recorded.
  - (1) If the emission unit has operated for more than 25% of a monitoring period, then the permittee shall conduct monitoring during that period.
  - (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) If invoking the monitoring period exemption in B108.D(2), the actual operating time of a unit shall not exceed the monitoring period required by this permit before the

required monitoring is performed. For example, if the monitoring period is annual, the operating hours of the unit shall not exceed 8760 hours before monitoring is conducted. Regardless of the time that a unit actually operates, a minimum of one of each type of monitoring activity shall be conducted during any five-year period.

- E. 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 unit's capacity as stated in the Registration Form, and at additional loads when requested by the Department. If the 90% capacity 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.
- F. When requested by the Department, the permittee shall provide schedules of testing and monitoring activities.
- G. If monitoring is new or is in addition to monitoring imposed by an existing applicable requirement, it shall become effective 120 days after the date of permit issuance. For emission units that have not commenced operation, the associated new or additional monitoring shall not apply until 120 days after the units commence operation.

#### **B109 General Recordkeeping Requirements**

- A. The permittee shall maintain records to assure and verify compliance with the terms and conditions of this permit and any other applicable requirements that become effective after permit issuance. The minimum information to be included in these records is:

Records required for testing and sampling:

- (1) equipment identification (include make, model and serial number for all tested equipment and emission controls)
- (2) date(s) and time(s) of sampling or measurements
- (3) date(s) analyses were performed
- (4) the qualified entity that performed the analyses
- (5) analytical or test methods used
- (6) results of analyses or tests
- (7) operating conditions existing at the time of sampling or measurement

Records required for equipment inspections and/or maintenance required by this permit:

- (1) equipment identification number (including make, model and serial number)
- (2) date(s) and time(s) of inspection, maintenance, and/or repair
- (3) date(s) any subsequent analyses were performed (if applicable)

- (4) name of the person or qualified entity conducting the inspection, maintenance, and/or repair
  - (5) copy of the equipment manufacturer's or the owner or operator's maintenance or repair recommendations (if required to demonstrate compliance with a permit condition)
  - (6) description of maintenance or repair activities conducted
  - (7) all results of any required parameter readings
  - (8) a description of the physical condition of the equipment as found during any required inspection
  - (9) results of required equipment inspections including a description of any condition which required adjustment to bring the equipment back into compliance and a description of the required adjustments
- B. Except as provided in the Specific Conditions, electronic records shall be maintained on-site or if unstaffed, at the permittee's local business office for a minimum of two (2) years from the time of recording and shall be made available to Department personnel upon request.
- C. Unless otherwise indicated by Specific Conditions, the permittee shall keep the following records for malfunction emissions and routine or predictable emissions during startup, shutdown, and scheduled maintenance (SSM):
- (1) The owner or operator of a source subject to this permit shall establish and implement a plan to minimize emissions during routine or predictable startup, shutdown, and scheduled maintenance through work practice standards and good air pollution control practices. This requirement shall not apply to any affected facility defined in and subject to an emissions standard and an equivalent plan under 40 CFR Part 60 (NSPS), 40 CFR Part 63 (MACT), or an equivalent plan under 20.2.72 NMAC - Construction Permits. The permittee shall keep records of all sources subject to the plan to minimize emissions during routine or predictable SSM and shall record if the source is subject to an alternative plan and therefore, not subject to the plan requirements under 20.2.7.14.A NMAC.
  - (2) If the facility has allowable SSM emission limits in the Registration Form, the permittee shall record all SSM events, including the date, the start time, the end time, a description of the event, and a description of the cause of the event. This record also shall include a copy of the manufacturer's, or equivalent, documentation showing that any maintenance qualified as scheduled. Scheduled maintenance is an activity that occurs at an established frequency pursuant to a written protocol published by the manufacturer or other reliable source. The authorization of allowable SSM emissions does not supersede any applicable federal or state standard. The most stringent requirement applies.
  - (3) If the permittee has allowable malfunction emission limits in the Registration Form, the permittee shall record all malfunction events to be applied against these limits. The permittee shall also include the date, the start time, the end time, and a

description of the event. The authorization of allowable malfunction emissions does not supersede any applicable federal or state standard. The most stringent requirement applies.

**B110 General Reporting Requirements**

(20.2.72 NMAC Sections 210 and 212)

- A. Records and reports shall be maintained on-site or at the permittee's local business office unless specifically required to be submitted to the Department or EPA by another condition of this permit or by a state or federal regulation.
- B. The permittee shall notify the Air Quality Bureau's Compliance and Enforcement Section using the current Submittal Form posted to NMED's Air Quality web site under Compliance and Enforcement/Submittal Forms in writing of, or provide the Department with (20.2.72.212.A and B):
  - (1) the anticipated date of initial startup of each new or modified source not less than thirty (30) days prior to the date. Notification may occur prior to issuance of the permit, but actual startup shall not occur earlier than the permit issuance date;
  - (2) after receiving authority to construct, the equipment serial number as provided by the manufacturer or permanently affixed if shop-built and the actual date of initial startup of each new or modified source within fifteen (15) days after the startup date; and
  - (3) the date when each new or modified emission source reaches the maximum production rate at which it will operate within fifteen (15) days after that date.
- C. Unless otherwise specified in Parts A or C of this permit, the permittee shall notify the Bureau's Permitting Program Manager, in writing of, or provide the Department with (20.2.72.212.C and D):
  - (1) any change of operators or any equipment substitutions within fifteen (15) days of such change;
  - (2) any necessary update or correction no more than sixty (60) days after the operator knows or should have known of the condition necessitating the update or correction of the permit.
- D. Results of emission tests and monitoring for each pollutant (except opacity) shall be reported in pounds per hour (unless otherwise specified) and tons per year. Opacity shall be reported in percent. The number of significant figures corresponding to the full accuracy inherent in the testing instrument or Method test used to obtain the data shall be used to calculate and report test results in accordance with 20.2.1.116.B and C NMAC. Upon request by the Bureau, tabular data shall be submitted in editable, MS Excel format.

- E. The permittee shall submit reports of excess emissions in accordance with 20.2.7.110.A NMAC.
- F. Excess Emissions Reporting for Regulated Sources with no Pound per Hour (pph) and/or Ton per Year (tpy) Emission Limits:
  - (1) Emissions in excess of 1.0 pph or 1.0 tpy for each regulated air pollutant (except for H<sub>2</sub>S).
  - (2) For H<sub>2</sub>S, emissions in excess of 0.1 pph or 0.44 tpy.

**B111 General Testing Requirements****A. Compliance Tests**

- (1) Compliance test requirements from previous permits (if any) remain in effect, unless the tests have been satisfactorily completed. Compliance test requirements 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. (20.2.72 NMAC Sections 210.C and 213)
- (2) Compliance tests shall be conducted within sixty (60) days after the unit(s) achieve the maximum normal production rate. If the maximum normal production rate does not occur within one hundred twenty (120) days of source startup, then the tests must be conducted no later than one hundred eighty (180) days after initial startup of the source.
- (3) Unless otherwise indicated by Specific Conditions or regulatory requirements, the default time period for each test run shall be at least 60 minutes and each performance test shall consist of three separate runs using the applicable test method. For the purpose of determining compliance with an applicable emission limit, the arithmetic mean of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Department approval, be determined using the arithmetic mean of the results of the two other runs.
- (4) Testing of emissions shall be conducted with the emissions unit operating at 90 to 100 percent of the maximum operating rate allowed by the permit. If it is not possible to test at that rate, the source may test at a lower operating rate, subject to the approval of the Department.
- (5) Testing performed at less than 90 percent of permitted capacity will limit emission unit operation to 110 percent of the tested capacity until a new test is conducted.

- (6) If conditions change such that unit operation above 110 percent of tested capacity is possible, the source must submit a protocol to the Department within 30 days of such change to conduct a new emissions test.

**B. EPA Reference Method Tests**

- (1) All compliance tests required by this permit, unless otherwise specified by Specific Conditions of this permit, shall be conducted in accordance with the requirements of CFR Title 40, Part 60, Subpart A, General Provisions, and the following EPA Reference Methods as specified by CFR Title 40, Part 60, Appendix A:
  - (a) Methods 1 through 4 for stack gas flow rate
  - (b) Method 5 for TSP
  - (c) Method 6C and 19 for SO<sub>2</sub>
  - (d) Method 7E for NO<sub>x</sub> (test results shall be expressed as nitrogen dioxide (NO<sub>x</sub>) using a molecular weight of 46 lb/lb-mol in all calculations (each ppm of NO/NO<sub>x</sub> is equivalent to  $1.194 \times 10^{-7}$  lb/SCF))
  - (e) Method 9 for opacity
  - (f) Method 10 for CO
  - (g) Method 19 may be used in lieu of Methods 1-4 for stack gas flow rate upon approval of the Department. A justification for this proposal must be provided along with a contemporaneous fuel gas analysis (preferably on the day of the test) and a recent fuel flow meter calibration certificate (within the most recent quarter).
  - (h) Method 7E or 20 for Turbines per 60.335 or 60.4400
  - (i) Method 22 for Visible Emissions
  - (j) Method 201A for filterable PM<sub>10</sub> and PM<sub>2.5</sub>
  - (k) Method 202 for condensable PM
  - (l) Method 320 for organic Hazardous Air Pollutants (HAPs)
  - (m) Method 25A for VOC reduction efficiency
  - (n) ASTM D6348-03 may be used for RICE only
- (2) Alternative test method(s) may be used if the Department approves the change

**C. Periodic Monitoring and Portable Analyzer Requirements**

- (1) Periodic emissions tests (periodic monitoring) may be conducted in accordance with EPA Reference Methods or by utilizing a portable analyzer. Periodic monitoring utilizing a portable analyzer shall be conducted in accordance with the requirements of the current version of ASTM D 6522. However, if a facility has

met a previously approved Department criterion for portable analyzers, the analyzer may be operated in accordance with that criterion until it is replaced.

- (2) Unless otherwise indicated by Specific Conditions or regulatory requirements, the default time period for each test run shall be at least 20 minutes.

Each performance test shall consist of three separate runs. The arithmetic mean of results of the three runs shall be used to determine compliance with the applicable emission limit.

- (3) Testing of emissions shall be conducted in accordance with the requirements at Section B108.E.
- (4) During emissions tests, pollutant and diluent concentration shall be monitored and recorded. Fuel flow rate shall be monitored and recorded if stack gas flow rate is determined utilizing Method 19. This information shall be included with the test report furnished to the Department.
- (5) Stack gas flow rate shall be calculated in accordance with 40 CFR 60, Appendix A, Method 19 utilizing fuel flow rate (scf) determined by a dedicated fuel flow meter and fuel heating value (Btu/scf) determined from a fuel sample obtained preferably during the day of the test, but no earlier than three months prior to the test date. Alternatively, stack gas flow rate may be determined by using EPA Methods 1-4.

D. Test Procedures:

- (1) The permittee shall notify the Program Manager of the Air Quality Bureau's Compliance and Enforcement Section consistent with the Section's current published reporting procedures.
- (2) Equipment shall be tested in the "as found" condition. Equipment may not be adjusted or tuned prior to any test for the purpose of lowering emissions, and then returned to previous settings or operating conditions after the test is complete.
- (3) Contents of test notifications, protocols and test reports shall conform to the format specified by the Department's Universal Test Notification, Protocol and Report Form and Instructions. Current forms and instructions are posted to NMED's Air Quality web site under Compliance and Enforcement Testing.
- (4) The permittee shall provide (a) sampling ports adequate for the test methods applicable to the facility, (b) safe sampling platforms, (c) safe access to sampling platforms and (d) utilities for sampling and testing equipment.
- (5) The stack shall be of sufficient height and diameter and the sample ports shall be located so that a representative test of the emissions can be performed in accordance with the requirements of EPA Method 1 or ASTM D 6522-00 as applicable.
- (6) Where necessary to prevent cyclonic flow in the stack, flow straighteners shall be installed.

- (7) Unless otherwise indicated by Specific Conditions or regulatory requirements, test reports shall be submitted to the Department no later than 30 days after completion of the test.

**B112 Compliance**

- A. The Department has the right to enter the facility at all reasonable times to verify the terms and conditions of this permit. Required records shall be organized by date and subject matter and shall at all times be readily available for inspection. The permittee, upon verbal or written request from an authorized representative of the Department who appears at the facility, shall immediately produce for inspection or copying any records required to be maintained at the facility. Upon written request at other times, the permittee shall deliver to the Department paper or electronic copies of any and all required records maintained on site or at an off-site location. Requested records shall be copied and delivered at the permittee's expense within three business days from receipt of request unless the Department allows additional time. Required records may include records required by permit and other information necessary to demonstrate compliance with terms and conditions of this permit. (NMSA 1978, Section 74-2-13)
- B. A copy of the most recent air quality permit and Registration Form issued by the Department shall be kept at the permitted facility or (for unstaffed sites) at the nearest company office and shall be made available to Department personnel for inspection upon request. (20.2.72.210.B.4 NMAC)

**B113 Permit Cancellation and Revocation**

- A. The Department may revoke this permit if the applicant or permittee has knowingly and willfully misrepresented a material fact in the Registration Form. Revocation will be made in writing, and an administrative appeal may be taken to the Secretary of the Department within thirty (30) days. Appeals will be handled in accordance with the Department's Adjudicatory Procedures, 20.1.5 NMAC.
- B. The Department shall automatically cancel any permit for any source which ceases operation for five (5) years or more, or permanently. Reactivation of any source after the five (5) year period shall require a new permit. (20.2.72 NMAC)
- C. The Department may cancel a permit if the construction or modification is not commenced within two (2) years from the date of issuance or if, during the construction or modification, work is suspended for a total of one (1) year. (20.2.72 NMAC)

**B114 Notification to Subsequent Owners**

- A. The permit and conditions apply in the event of any change in control or ownership of the Facility. No permit modification is required in such case. However, in the event of any such change in control or ownership, the permittee shall notify the succeeding owner of the permit and conditions and shall notify the Bureau's Program Manager, Permits Section of the change in ownership within fifteen (15) days of that change. (20.2.72.212.C NMAC)
- B. Any new owner or operator shall notify the Program Manager of the Air Quality Bureau's, Permits Section, within thirty (30) days of assuming ownership, the date of assuming ownership, and the new owner's or operator's name and address. (20.2.73.200.E.3 NMAC)

**B115 Asbestos Demolition**

- A. Before any asbestos demolition or renovation work, the permittee shall determine whether 40 CFR 61 Subpart M, National Emissions Standards for Asbestos applies. If required, the permittee shall notify the Program Manager of the Air Quality Bureau's Compliance and Enforcement Section using forms furnished by the Department.

**B116 Short Term Engine Replacement**

- A. The following Alternative Operating Scenario (AOS) addresses engine breakdown or periodic maintenance and repair, which requires the use of a short-term replacement engine. The following requirements do not apply to engines that are exempt per 20.2.72.202.B(3) NMAC. Changes to exempt engines must be reported in accordance with 20.2.72.202.B NMAC. A short-term replacement engine may be substituted for any engine specified in the Registration Form for no more than 120 days in any monthly rolling twelve month period per permitted engine. The compliance demonstrations required as part of this AOS are in addition to any other compliance demonstrations required by this permit. If the engine will remain onsite for longer than 120 days, a Registration Form shall be submitted and approved by the Department prior to the expiration of the 120 day period authorized by this condition.
- (1) The permittee may temporarily replace an existing engine that is subject to the emission limits established in the Registration Form with another engine regardless of manufacturer, model, and horsepower without modifying the Registration Form. The permittee shall submit written notification to the Department within 15 days of the date of engine substitution according to condition B110.C(1).
  - (a) The potential emission rates of the replacement engine shall be determined using the replacement engine's manufacturer specifications and shall comply with the permitted emission limits of the engine being replaced as specified in the Registration Form.

- (b) The direction of the exhaust stack for the replacement engine shall be either vertical or the same direction as for the existing engine. The replacement engine's stack height and flow parameters shall be at least as effective in the dispersion of air pollutants as the modeled stack height and flow parameters for the existing permitted engine. The following equation may be used to show that the replacement engine disperses pollutants as well as the existing engine. The value calculated for the replacement engine on the right side of the equation shall be equal to or greater than the value for the existing engine on the left side of the equation. The permitting page of the Air Quality Bureau website contains a spreadsheet that performs this calculation.

EXISTING ENGINEREPLACEMENT ENGINE

$$\frac{[(g) \times (h1)] + [(v1)^2/2] + [(c) \times (T1)]}{q1} \leq \frac{[(g) \times (h2)] + [(v2)^2/2] + [(c) \times (T2)]}{q2}$$

Where

g = gravitational constant = 32.2 ft/sec<sup>2</sup>

h1 = existing stack height, feet

v1 = exhaust velocity, existing engine, feet per second

c = specific heat of exhaust, 0.28 BTU/lb-degree F

T1 = absolute temperature of exhaust, existing engine = degree F + 460

q1 = permitted allowable emission rate, existing engine, lbs/hour

h2 = replacement stack height, feet

v2 = exhaust velocity, replacement engine, feet per second

T2 = absolute temperature of exhaust, replacement engine = degree F + 460

q2 = manufacturer's potential emission rate, replacement engine, lbs/hour

The permittee shall keep records showing that the replacement engine is at least as effective in the dispersion of air pollutants as the existing engine.

- (c) Test measurement of NO<sub>x</sub> and CO emissions from the temporary replacement engine shall be performed in accordance with Section B111 with the exception of Condition B111A(2) and B111B for EPA Reference Methods Tests or Section B111C for portable analyzer test measurements. Compliance test(s) shall be conducted within fifteen (15) days after the unit begins operation, and records of the results shall be kept according to section B109.B.
- i. These compliance tests are not required for an engine certified under 40CFR60, subparts IIII, or JJJJ, or 40CFR63, subpart ZZZZ if the permittee demonstrates that one of these requirements causes such engine to comply with all emission limits of the Registration Form. The permittee shall submit this demonstration to the Department within 48

hours of placing the new unit into operation. This submittal shall include documentation that the engine is certified, that the engine is within its useful life, as defined and specified in the applicable requirement, and shall include calculations showing that the applicable emissions standards result in compliance with the emission limits.

- ii. These compliance tests are not required if a test was conducted by portable analyzer or by EPA Method test (including any required by 40CFR60, subparts IIII and JJJJ and 40CFR63, subpart ZZZZ) within the last 12 months. These previous tests are valid only if conducted at the same or lower elevation as the existing engine location prior to commencing operation as a temporary replacement. A copy of the test results shall be kept according to section B109.B.
  - (d) Compliance tests for NO<sub>x</sub> and CO shall be conducted if requested by the Department in writing to determine whether the replacement engine is in compliance with applicable regulations or permit conditions.
  - (e) Upon determining that emissions data developed according to B116.A.1(c) fail to indicate compliance with either the NO<sub>x</sub> or CO emission limits, the permittee shall notify the Department within 48 hours. Also within that time, the permittee shall implement one of the following corrective actions:
    - i. The engine shall be adjusted to reduce NO<sub>x</sub> and CO emissions and tested per B116.A.1(c) to demonstrate compliance with the emission limits.
    - ii. The engine shall discontinue operation or be replaced with a different unit.
  - (2) Short term replacement engines, whether of the same manufacturer, model, and horsepower, or of a different manufacturer, model, or horsepower, are subject to all federal and state applicable requirements, regardless of whether they are set forth in this permit (including monitoring and recordkeeping), and shall be subject to any shield afforded by this permit.
  - (3) The permittee shall maintain a contemporaneous record documenting the unit number, manufacturer, model number, horsepower, emission factors, emission test results, and serial number of any existing engine that is replaced, and the replacement engine. Additionally, the record shall document the replacement duration in days, and the beginning and end dates of the short-term engine replacement.
  - (4) The permittee shall maintain records of a regulatory applicability determination for each replacement engine (including 40CFR60, subparts IIII and JJJJ and 40CFR63, subpart ZZZZ) and shall comply with all associated regulatory requirements.
- B. All records required by this section shall be kept according to section B109.

**PART C REGISTRATION PROCEDURE****C100 Registration Forms****A. General Requirements**

- (1) The owner or operator of a Facility to be registered under GCP-Oil and Gas shall complete the following steps. All submittals shall be made on the current Registration Form provided by the Department. The owner or operator shall:
  - (a) Complete the public notice requirements as required in C100.B. Public notice is required for new facilities, and existing, constructed facilities that are registering under Part 72 for the first time.
  - (b) At a minimum, complete the following sections of the GCP-Oil and Gas Registration Form:
    - (i) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. This includes the AECT.
  - (c) Submit a complete GCP-Oil and Gas Registration Form, including proof of Public Notice and a payment of 10 fee points as required by 20.2.75 NMAC, to the Department.
- (2) Within thirty (30) calendar days of receiving a Registration Form for the GCP-Oil and Gas, the Department shall review the Registration Form and shall approve or deny the registration. The Department may not grant approval of a Registration Form until fifteen (15) days after Public Notice has been published and posted. Approval or denial, once effective, of a Registration Form is a determination by the Department of whether or not the source qualifies to register for coverage under GCP-Oil and Gas. The Department shall notify the owner or operator of its decision by certified mail.

**B. Public Notification**

- (1) The applicant's public notice requirements shall be completed and submitted as part of the Registration Form.
- (2) In accordance with 20.2.72.220.A(2)(b)ii NMAC, the applicant's public notice requirements include:
  - (a) a notice published once in the legal notices section of a newspaper in general circulation in the county or counties in which the Facility is proposed to be constructed or operated is located. The applicant's legal notice may include up to ten (10) separate facilities if required location information for each facility is included in the notice; and
  - (b) a notice posted at the proposed or existing Facility entrance in a publicly accessible and conspicuous place on the property on which the Facility is, or is proposed to be, located, until the general permit registration is granted or denied.

- (3) In accordance with 20.2.72.220.C(2) NMAC, the Department shall not grant the registration until at least fifteen (15) days after the date the applicant's public notice was initiated.

### **C101 Revision Processes**

#### **A. Administrative Changes that Require Notification**

- (1) Owners or operators shall, at a minimum, submit Sections 1 and 10 of the Registration Form to the Department for the following change(s). The notification shall include all information required by the Department to review the request and shall be submitted within fifteen (15) calendar days of the change(s):
  - (a) Change of owner/operator,
  - (b) Adding exempt equipment,
  - (c) Correcting a typographical error, or
  - (d) Change of contact information for any person identified in the Registration Form.
- (2) No public notification is required.
- (3) No permit fees under 20.2.75 NMAC apply.

#### **B. Modifications that Require Notification**

- (1) Prior to any modification of a source, the owner or operator shall, at a minimum, submit Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and the AECT of the Registration Form to the Department.
- (2) No construction of a modification shall begin prior to receiving written approval by the Department.
- (3) Types of modifications that require notification include construction of any new regulated equipment, changes in the method of operation, or any other physical changes which modifies any requested allowable hourly or annual emission limit.
- (4) The owner or operator shall maintain the current Registration Form on-site or at the permittee's local business office.
- (5) The revised Registration Form, including the lb/hr and tpy emission limits of new or altered emissions units, becomes part of the registration and is enforceable.
- (6) No public notification is required.
- (7) General Construction Permit fees under 20.2.75 NMAC **do** apply. A fee of 10 fee points is required to be submitted with the Registration Form. The current value of a fee point can be found on the Department's Permitting website.

#### **C. Changes that Prevent Meeting General Permit Limits**

- (1) Changes or equipment additions that prevent the Facility from meeting the requirements of GCP-Oil and Gas shall not occur before the owner or operator applies for and is issued an individual construction permit under 20.2.72.200 NMAC. [20.2.72.220.D(2) NMAC]

**PART D MISCELLANEOUS: SUPPORTING ON-LINE DOCUMENTS; DEFINITIONS; ACRONYMS**

**D100 Supporting On-Line Documents**

- A. Copies of the following documents can be downloaded from NMED's website under Compliance and Enforcement or requested from the Bureau:
  - 1) Excess Emission Form (for reporting deviations and emergencies)
  - 2) Universal Stack Test Notification, Protocol and Report Form and Instructions
  - 3) SOP for Use of Portable Analyzers in Performance Tests

**D101 Definitions**

- A. **"Enclosed Combustion Device"** means a direct, enclosed, ground level combustion device.
- B. **"Flare"** means a direct combustion device in which air and all combustible gases react at the burner with the objective of complete and instantaneous oxidation of the combustible gases.
- C. **"Malfunction"** means any sudden and unavoidable failure of air pollution control equipment or process equipment beyond the control of the owner or operator, including malfunction during startup or shutdown. A failure that is caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered a malfunction. (20.2.7 NMAC)
- D. **"Monthly Rolling"** is a concept of incorporating the most recent month's emission s data into a 12-month period. To determine the current monthly rolling total (or average), subtract the oldest month's data from the calculation and add the current (most recent) month's data and perform the required calculation.
- E. **"Natural Gas Liquids"** means the hydrocarbons, such as ethane, propane, butane, and pentane that are extracted from field gas. (40 CFR 60.631)
- F. **"National Ambient Air Quality Standards"** means, unless otherwise modified, the primary (health-related) and secondary (welfare-based) federal ambient air quality standards promulgated by the US EPA pursuant to Section 109 of the Federal Act.

- G. **"NO<sub>x</sub>"** or "Nitrogen dioxide" means the chemical compound containing one atom of nitrogen and two atoms of oxygen, for the purposes of ambient determinations. The term **"nitrogen dioxide,"** for the purposes of stack emissions monitoring, shall include nitrogen dioxide (the chemical compound containing one atom of nitrogen and two atoms of oxygen), nitric oxide (the chemical compound containing one atom of nitrogen and one atom of oxygen), and other oxides of nitrogen which may test as nitrogen dioxide and is sometimes referred to as NO<sub>x</sub> or NO<sub>x</sub>. (20.2.2 NMAC)
- H. **"Potential Emission Rate"** or "PER" means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, 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 physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department pursuant to the Air Quality Control Act or the federal Act.
- I. **"Produced Water"** means water that is extracted from the earth from an oil or natural gas production well, or that is separated from crude oil, condensate, or natural gas after extraction.
- J. **"Property Boundary"** means the outside edge of the property, which includes all the equipment, registered under this Permit. The property may consist of one or more continuous and adjacent properties if they are owned, leased, or under direct control of the owner or operator.
- K. **"SSM"**, for requirements under 20.2.7 NMAC, means routine or predictable startup, shutdown, or scheduled maintenance.
- L. **"Shutdown"**, for requirements under 20.2.7 NMAC, means the cessation of operation of any air pollution control equipment or process equipment.
- M. **"Startup"**, for requirements under 20.2.7 NMAC, means the setting into operation of any air pollution control equipment or process equipment.
- N. **"Storage Vessel"** means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support.
- O. **"Thermal Oxidizer"** means a combustion device that eliminates VOC, CO, and volatile HAP emissions by combusting them to carbon dioxide (CO<sub>2</sub>) and water. The device maintains a minimum temperature in the combustion chamber to eliminate pollutants.

- P. **“Vapor Recovery Unit (VRU)”** means a unit capable of collecting hydrocarbon vapors and gases and routing such hydrocarbon vapors and gases back into the process or to a sales pipeline.

## **D102 Acronyms**

|                        |  |
|------------------------|--|
| 2SLB .....             | 2-stroke lean burn                                       |
| 4SLB .....             | 4-stroke lean burn                                       |
| 4SRB .....             | 4-stroke rich burn                                       |
| acfm .....             | actual cubic feet per minute                             |
| AFR .....              | air fuel ratio   |
| AP-42 .....            | EPA Air Pollutant Emission Factors                       |
| AQB .....              | Air Quality Bureau                                       |
| AQCR .....             | Air Quality Control Region                               |
| ASTM .....             | American Society for Testing and Materials               |
| BTU .....              | British Thermal Unit                                     |
| CAA .....              | Clean Air Act of 1970 and 1990 Amendments                |
| CEM .....              | continuous emissions monitoring                          |
| cfh .....              | cubic feet per hour                                      |
| cfm .....              | cubic feet per minute                                    |
| CFR .....              | Code of Federal Regulation                               |
| CI .....               | compression ignition                                     |
| CO .....               | carbon monoxides   |
| COMS .....             | continuous opacity monitoring system                     |
| EIB .....              | Environmental Improvement Board                          |
| EPA .....              | United States Environmental Protection Agency            |
| gr./100 cf .....       | grains per one hundred cubic feet                        |
| gr./dscf .....         | grains per dry standard cubic foot                       |
| GRI .....              | Gas Research Institute                                   |
| HAP .....              | hazardous air pollutant                                  |
| hp .....               | horsepower   |
| H <sub>2</sub> S ..... | hydrogen sulfide   |
| IC .....               | internal combustion                                      |
| KW/hr .....            | kilowatts per hour                                       |
| lb/hr .....            | pounds per hour  |
| lb/MMBtu .....         | pounds per million British Thermal Unit                  |
| MACT .....             | Maximum Achievable Control Technology                    |
| MMcf/hr .....          | million cubic feet per hour                              |
| MMscf .....            | million standard cubic feet                              |
| N/A .....              | not applicable   |
| NAAQS .....            | National Ambient Air Quality Standards                   |
| NESHAP .....           | National Emission Standards for Hazardous Air Pollutants |
| NG .....               | natural gas  |

|                         |   |
|-------------------------|---|
| NGL .....               | natural gas liquids   |
| NMAAQS .....            | New Mexico Ambient Air Quality Standards                            |
| NMAC .....              | New Mexico Administrative Code                                      |
| NMED .....              | New Mexico Environment Department                                   |
| NMSA .....              | New Mexico Statues Annotated  |
| NO <sub>x</sub> .....   | nitrogen oxides   |
| NSCR .....              | non-selective catalytic reduction                                   |
| NSPS .....              | New Source Performance Standard                                     |
| NSR .....               | New Source Review   |
| PEM .....               | parametric emissions monitoring                                     |
| PM .....                | particulate matter (equivalent to TSP, total suspended particulate) |
| PM <sub>10</sub> .....  | particulate matter 10 microns and less in diameter                  |
| PM <sub>2.5</sub> ..... | particulate matter 2.5 microns and less in diameter                 |
| pph .....               | pounds per hour   |
| ppmv .....              | parts per million by volume   |
| PSD .....               | Prevention of Significant Deterioration                             |
| RATA .....              | Relative Accuracy Test Assessment                                   |
| RICE .....              | reciprocating internal combustion engine                            |
| rpm .....               | revolutions per minute  |
| scfm .....              | standard cubic feet per minute                                      |
| SI .....                | spark ignition  |
| SO <sub>2</sub> .....   | sulfur dioxide  |
| SSM .....               | Startup Shutdown Maintenance (see SSM definition)                   |
| TAP .....               | Toxic Air Pollutant   |
| TBD .....               | to be determined  |
| THC .....               | total hydrocarbons  |
| TSP .....               | Total Suspended Particulates  |
| tpy .....               | tons per year   |
| ULPS .....              | ultra low pressure separator  |
| ULSD .....              | ultra low sulfur diesel   |
| USEPA .....             | United States Environmental Protection Agency                       |
| UTM .....               | Universal Transverse Mercator Coordinate system                     |
| UTMH .....              | Universal Transverse Mercator Horizontal                            |
| UTMV .....              | Universal Transverse Mercator Vertical                              |
| VHAP .....              | volatile hazardous air pollutant                                    |
| VOC .....               | volatile organic compounds  |
| VRT .....               | vapor recovery tower  |
| VRU .....               | vapor recovery unit   |

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 72 CONSTRUCTION PERMITS**

**20.2.72.1 ISSUING AGENCY:** Environmental Improvement Board.  
[20.2.72.1 NMAC - Rn, 20 NMAC 2.72.100, 2/2/01]

**20.2.72.2 SCOPE:** All persons who intend to construct or modify a source, except as otherwise provided by this Part.  
[20.2.72.2 NMAC - Rn, 20 NMAC 2.72.101, 2/2/01]

**20.2.72.3 STATUTORY AUTHORITY:** Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4) and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-7(A)(1), (B), (C) and (D).  
[20.2.72.3 NMAC - Rn, 20 NMAC 2.72.102, 2/2/01]

**20.2.72.4 DURATION:** Permanent. Notwithstanding the applicability provisions of 20.2.72.402 NMAC, the Department is stayed from enforcing requirements relating to asphalt fumes as a toxic air pollutant for new or modified sources until September 1, 1997.  
[20.2.72.4 NMAC - Rn, 20 NMAC 2.72.103, 2/2/01]

**20.2.72.5 EFFECTIVE DATE:** November 30, 1995 except where a later date is cited at the end of a section or paragraph.  
[The latest effective date of any section in this Part is 9/6/06.]  
[20.2.72.5 NMAC - Rn, 20 NMAC 2.72.104, 2/2/01]

**20.2.72.6 OBJECTIVE:** The objective of this part is to establish the requirements for obtaining a construction permit.  
[20.2.72.6 NMAC - Rn, 20 NMAC 2.72.105, 2/2/01]

**20.2.72.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC (Definitions) as used in this part:

**A. "Accelerated review"** means an optional process of permit application review that allows the department to utilize a qualified outside firm to assist in review of a construction permit application.

**B. "Affiliate,"** for the purposes of accelerated review, means a person that directly or indirectly, through one or more intermediaries, controls or is under common control with another person. Control includes the possession of the power to direct or cause the direction of management and policies of a person, whether directly or indirectly through the ownership, control or holding with the power to vote ten percent or more of the person's voting securities.

**C. "Air pollution control equipment"** means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

**D. "Ambient air"** means the outdoor atmosphere, but does not include the area entirely within the boundaries of the industrial or manufacturing property within which the air contaminants are or may be emitted and public access is restricted within such boundaries.

**E. "Coal mining operation"** means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur. This definition does not include coal preparation plants.

**F. "Coal preparation plant"** means any facility which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

**G. "Commencement"** means that an owner or operator has undertaken a continuous program of construction or modification.

**H. "Conflict of interest,"** for the purposes of accelerated review, means any direct or indirect relationship between the qualified outside firm and the applicant or other interested person that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the qualified outside firm in review of the application. A conflict of interest does not include any gifts, gratuities, financial or

contractual relationship of less than one hundred dollars (\$100) in value for the twelve month period preceding Department receipt of the application. A conflict of interest includes but is not limited to the following examples:

- (1) Gifts or gratuities of value have been exchanged between the qualified outside firm and the applicant.
- (2) The qualified outside firm has provided goods or services to the applicant within one year prior to the start, or during the term, of the accelerated review process.
- (3) An express or implied contractual relationship exists between the qualified outside firm and the applicant and the qualified outside firm has provided goods or services to the applicant through that relationship within five years prior to the start of the accelerated review process.
- (4) There is a current financial relationship between the qualified outside firm and the applicant. Current financial relationships include, but are not limited to:
  - (a) The qualified outside firm owes anything of value to, or is owed anything of value by the applicant.
  - (b) The qualified outside firm has provided goods or services to the applicant and has issued a warranty or guarantee for the work that is still in effect during the time the contracted work for accelerated review is being performed.
- (5) A director, officer, or employee of the qualified outside firm, who will perform services under a contract pursuant to this section (20.2.72.221 NMAC), has one or more personal, business, or financial interests or relationships with the applicant or any director, officer or employee of the applicant which would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a contract.
- (6) A director, officer or employee of the qualified outside firm was a director, officer or employee of the applicant within one year prior to the start of the accelerated review process.
- (7) Except where allowed by the department, communication has been made between the qualified outside firm and the applicant regarding the substance of the application before a qualified outside firm has been selected to perform accelerated review of an application. Direct communication between the qualified outside firm and the applicant may take place once the qualified outside firm has been selected by the department.
- (8) Any affiliate of the applicant has any of the above identified relationships with the qualified outside firm.
- (9) Any affiliate of the qualified outside firm has any of the above identified relationships with the applicant.
- (10) Any affiliate of the applicant has any of the above identified relationships with any affiliate of the qualified outside firm.

**I. "Construction"** means fabrication, erection, installation or relocation of a stationary source, including but not limited to temporary installations and portable stationary sources.

**J. "Emergency"** means unforeseen circumstances resulting in an imminent and substantial endangerment to health, safety, or welfare which requires immediate action.

**K. "Federally enforceable"** means all limitations and conditions which are enforceable by the administrator of the US EPA, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, 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. "Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**M. "Hazardous air pollutant"** means an air contaminant which has been classified as a "hazardous air pollutant" by the administrator of the US EPA and is subject to a NESHAP.

**N. "Interested person,"** as used in the definition of conflict of interest, means any person, other than the department, that is reasonably expected to provide or has provided substantive comment or technical evidence on the permit application.

**O. "Malfunction"** means any sudden and unavoidable failure of air pollution control equipment, process equipment, or process to operate in an expected manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered a malfunction.

**P. "Modification"** means any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted

by the source or which results in the emission of any regulated air contaminant not previously emitted, but does not include:

- (1) a change in ownership of the source;
- (2) routine maintenance, repair or replacement;
- (3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the federal act; or
- (4) unless previously limited by enforceable permit conditions:
  - (a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source;
  - (b) an increase in the hours of operation; or
  - (c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

**Q. "National Ambient Air Quality Standard"** means, unless otherwise modified, the primary (health-related) and secondary (welfare-based) federal ambient air quality standards promulgated by the US EPA pursuant to Section 109 of the federal act.

**R. "National Emission Standards for Hazardous Air Pollutants" or "NESHAP"** mean the regulatory requirements, guidelines and emission limitations promulgated by the US EPA pursuant to Section 112 of the federal act.

**S. "New Source Performance Standard" or "NSPS"** means the regulatory requirements, guidelines and emission limitations promulgated by the US EPA pursuant to Section 111 of the federal act.

**T. "Nonattainment area"** means for any air contaminant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national or New Mexico ambient air quality standard for such contaminant. Such term includes any areas identified under Sub-paragraphs (A) through (C) of Section 107 (d)(1) of the federal act.

**U. "Operator"** means the person or persons responsible for the overall operation of a facility.

**V. "Owner"** means the person or persons who own a facility or part of a facility.

**W. "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.

**X. "Portable stationary source"** means a source which can be relocated to another operating site with limited dismantling and reassembly, including for example but not limited to moveable sand and gravel processing operations and asphalt plants.

**Y. "Potential emission rate"** means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, 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 physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department pursuant to the Air Quality Control Act or the federal Act.

**Z. "Qualified outside firm"** means any person who has entered into a contract with the department to provide assistance in the accelerated review of construction permit applications.

**AA. "Regulated air contaminant"** means, any air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the federal act.

**BB. "Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

**CC. "Standard Industrial Classification" or "SIC"** means the code from the classification manual created by the Executive Office of the President-Office of Management and Budget, which categorizes industrial, manufacturing and commercial facilities, as listed in the Standard Industrial Code Manual published by the U.S. Government Printing Office, Washington D.C. 1972.

**DD. "Startup"** means the setting into operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing in of batch process units.

**EE. "Stationary source" or "source"** means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant. Any research facility may group its sources for the purpose of this part at the discretion of the secretary.

[20.2.72.7 NMAC - Rn, 20 NMAC 2.72.107, 2/2/01; A, 3/30/01; A, 2/18/02]

**20.2.72.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:** This part amends and supersedes Air Quality Control Regulation ("AQCR") 702 - Permits, filed May 29, 1990, as amended ("AQCR 702").

A. All references to AQCR 702 in any other rule shall be construed as a reference to this part.  
B. The amendment and supersession of AQCR 702 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 702.

[20.2.72.8 NMAC - Rn, 20 NMAC 2.72.106, 2/2/01]

**20.2.72.9 DOCUMENTS:** Documents incorporated and 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 87505.

[20.2.72.9 NMAC - Rn, 20 NMAC 2.72.108, 2/2/01]

**20.2.72.10 - 20.2.72.199 [RESERVED]**

**20.2.72.200 APPLICATION FOR CONSTRUCTION, MODIFICATION, NSPS, AND NESHAP - PERMITS AND REVISIONS:**

- A. Permits must be obtained from the department by:
- (1) Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted are subject to permit review. Within this subsection, the potential emission rate for nitrogen dioxide shall be based on total oxides of nitrogen;
  - (2) Any person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard with a potential emission rate greater than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the modification. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted by the modification are subject to permit review. Within this subsection, the potential emission rate for nitrogen dioxide shall be based on total oxides of nitrogen;
  - (3) Any person constructing or modifying any source or installing any equipment which is subject to 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants), or any other New Mexico Air Quality Control Regulation which contains emission limitations for any regulated air contaminant;
  - (4) For toxic air pollutants, see 20.2.72.400 NMAC - 20.2.72.499 NMAC;
  - (5) Any person constructing a stationary source which has a potential emission rate for lead greater than 5 tons per year or modifying a stationary source which either prior to or following the modification has a potential emission rate for lead greater than 5 tons per year; or
  - (6) Sources which are major sources of hazardous air pollutants by the definitions in 20.2.83 NMAC (Construction or Modification of Major Sources of Hazardous Air Pollutants).
- B. Fugitive dust emissions from a coal mining operation shall not be subject to the requirements of Paragraph 1 of Subsection A of 20.2.72.200 NMAC. Note: New coal mining operations are required to have an approved air pollution control plan for fugitive dust emissions by the New Mexico surface coal mining commission.
- C. Any source or modification meeting the applicability requirements of this part, but which is a major stationary source or a major modification as defined in 20.2.74 NMAC, shall in addition be subject to 20.2.74 NMAC (Prevention of Significant Deterioration).
- D. Any source or modification meeting the applicability requirements of this part but which is a major stationary source or a major modification as defined in 20.2.79 NMAC, shall in addition be subject to 20.2.79 NMAC (Permits - Nonattainment Areas).
- E. For all sources subject to this part, applications for permits shall be filed prior to the commencement of the construction, modification or installation. Regardless of the anticipated commencement date, no construction, modification or installation shall begin prior to issuance of the permit.
- F. Temporary installations and portable stationary sources are subject to this part.

**G.** If a source consists of more than one unit, a separate permit may be required for each unit which is not substantially interrelated with another unit. A common connection leading to ductwork, pollution control equipment or a single stack shall not, by itself, constitute a substantial interrelationship.

**H.** Any source which previously did not require a permit because it was in existence before August 31, 1972 shall be subject to the requirements of this Part if operations cease for a period of five years or more and the source has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard.

**I.** Any source meeting the applicability requirements of this part, but which is a major source of hazardous air pollutants, shall in addition be subject to 20.2.83 NMAC (Construction or Modification of Major Sources of Hazardous Air Pollutants).

[20.2.72.200 NMAC - Rn, 20 NMAC 2.72.II.200, 2/2/01]

**20.2.72.201 NEW SOURCE REVIEW COORDINATION:** In cases where the new source review requirements of either 20.2.74 NMAC, 20.2.77 NMAC, 20.2.78 NMAC, 20.2.79 NMAC, or 20.2.83 NMAC (Construction or Modifications of Major Sources of Hazardous Air Pollutants) apply to a new stationary source or modification in addition to this Part, the following provisions apply:

**A.** Only one permit application shall be submitted. The applicant shall submit a sufficient number of copies to meet the requirement of the applicable Part which requires the most copies;

**B.** The application shall be ruled administratively complete when information required by all applicable Parts has been submitted;

**C.** Definitions and requirements of each applicable Part are applied separately and do not supersede each other; and

**D.** After the requirements of all applicable Parts are met, only one permit shall be issued.  
[20.2.72.201 NMAC - Rn, 20 NMAC 2.72.II.201, 2/2/01]

**20.2.72.202 EXEMPTIONS:** The following exemptions are made to the following requirements of 20.2.72.200 NMAC - 20.2.72.299 NMAC. The exemptions in this section do not apply to emissions of toxic air pollutants listed under 20.2.72.502 NMAC, do not alter the calculation of the potential emissions of toxic air pollutants for applicability under 20.2.72.402 NMAC, and do not exempt the department or the owner or operator of any source from any requirement under 20.2.72.403 NMAC, 20.2.72.404 NMAC, or 20.2.72.405 NMAC.

**A.** The following sources and activities shall not be reported in the permit application. Emissions from such activities shall not be included in the calculation of facility-wide potential emission rate under Paragraphs 1 or 2 of Subsection A of 20.2.72.200 NMAC. Such activities may be commenced or changed without a permit or permit revision under 20.2.72.200 NMAC - 20.2.72.299 NMAC:

(1) Activities which occur strictly for maintenance of grounds or buildings, including: lawn care, pest control, grinding, cutting, welding, painting, woodworking, sweeping, general repairs, janitorial activities, and building roofing operations;

(2) Activities for maintenance of equipment or pollution control equipment, either inside or outside of a building, including cutting, welding, and grinding, but excluding painting;

(3) Exhaust emissions from forklifts, courier vehicles, front end loaders, graders, carts, maintenance trucks, and fugitive emissions from fleet vehicle refueling operations, provided such emissions are not subject to any requirements under this Chapter (Air Quality), NSPS or NESHAP;

(4) Use of fire fighting equipment and fire fighting training;

(5) Government military activities such as field exercises, explosions, weapons testing and demolition to the extent that such activities:

(a) Do not result in visible emissions entering publicly accessible areas; and

(b) Are not subject to a NSPS or NESHAP;

(6) Office activities, such as photocopying;

(7) Test drilling for characterization of underground storage tank and waste disposal sites;

(8) Non-anthropogenic wind blown dust;

(9) Residential activities such as use of fireplaces, woodstoves, and barbecue cookers;

(10) Gases used to calibrate plant instrumentation, including continuous emission monitoring (CEM) systems;

(11) Food service, such as cafeteria activities;

(12) Automotive repair shop activities, except painting and use of solvents;

(13) Use of portable aerospace ground equipment (such as power generators, compressors, heaters, air conditioners, lighting units) in direct support of aircraft operations and on or in the immediate vicinity of an airfield;

(14) Activities which occur strictly for preventive maintenance of highway bridges, displays and water towers, including: grinding, cutting, welding, painting, and general repairs;

(15) The act of repositioning or relocating equipment, pipes, ductwork, or conveyors within the plant site, but only when such change in physical configuration does not:

(a) Reposition or relocate any source of air emissions or the emission points from any such source; or

(b) Increase the amount of air emissions or the ambient impacts of such emissions.

**B.** The presence of the following new or modified sources and activities at the facility shall be reported as provided for in the permit application forms supplied by the department. Emissions from such sources and activities shall not be included in the calculation of facility-wide potential emission rate under Paragraphs 1 or 2 of Subsection A of 20.2.72.200 NMAC. Construction of such sources or commencement of such activities after issuance of the permit shall be subject to the administrative permit revision procedures in 20.2.219 NMAC.

(1) Fuel burning equipment which is used solely for heating buildings for personal comfort or for producing hot water for personal use and which:

(a) Uses gaseous fuel and has a design rate less than or equal to five (5) million BTU per hour; or

(b) Uses distillate oil (not including waste oil) and has a design rate less than or equal to one (1) million BTU per hour;

(2) VOC emissions resulting from the handling or storing of any VOC if:

(a) Such VOC has a vapor pressure of less than two tenths (0.2) PSI at temperatures at which the compound is stored and handled; and

(b) The owner or operator maintains sufficient record keeping to verify that the requirements of Sub-paragraph (a) of this paragraph are met;

(3) Standby generators which are:

(a) Operated only during the unavoidable loss of commercial utility power;

(b) Operated less than 500 hours per year; and

(c) Either are:

(i) The only source of air emissions at the site; or

(ii) Accompanied by sufficient record keeping to verify that the standby generator is operated less than 500 hours per year;

(4) The act of repositioning or relocating sources of air emissions or emissions points within the plant site, but only when such change in physical configuration does not increase air emissions or the ambient impacts of such emissions;

(5) Any emissions unit, operation, or activity that has a potential emission rate of no more than one-half (1/2) ton per year of any pollutant for which a national or New Mexico ambient air quality standard has been set or one-half (1/2) ton per year of any VOC. Multiple emissions units, operations, and activities that perform identical or similar functions shall be combined in determining the applicability of this exemption;

(6) Surface coating of equipment, including spray painting, roll coating, and painting with aerosol spray cans, if:

(a) The potential emission rate of VOCs do not exceed ten (10) pounds per hour;

(b) The facility-wide total VOC content of all coating and clean-up solvent use is less than two (2) tons per year; and

(c) The owner or operator maintains sufficient record keeping to verify that the requirements in Sub-paragraphs (a) and (b) of this paragraph are met;

(7) Particulate emissions resulting from abrasive blasting operations, if:

(a) Blasting operations are entirely enclosed in a building; and

(b) No visible particulate emissions are released from the building.

**C.** For sources and units subject to 40 CFR Part 60 (NSPS), 40 CFR Part 61 (NESHAP) or other Parts of this Chapter (Air Quality), except 40 CFR Part 60 Subparts I (asphalt plants) and OOO (rock crushers), 40 CFR Part 61 Subpart C (Beryllium), and 40 CFR Part 61 Subpart D (Beryllium Rocket Motor Firing):

(1) Such sources and units shall be exempt from the applicability requirements in Paragraph 3 of Subsection A of 20.2.72.200 NMAC if such sources or units:

(a) Are included in a notice of intent filed under 20.2.73 NMAC (Notice of Intent and Emissions Inventory); or  
(b) Have met the notification requirements to which they are subject under NSPS or NESHAP;  
and

(2) Applicability determinations under Paragraphs 1 and 2 of Subsection A of 20.2.72.200 NMAC shall take into account all federally enforceable emission limits established for such sources or units under NSPS, NESHAP and other parts of this chapter.

**D.** Portable source relocation. For a portable source which has been issued a permit under this part:

(1) Such source may relocate without undergoing a permit revision if:

- (a) The source is installed in a manner conforming with the initial permit;
- (b) The source continues to meet all applicable emission limitations and permit conditions; and
- (c) The source meets the applicable requirements in Paragraphs 2 and 3 of Subsection D of

20.2.72.202 NMAC below;

(2) For each portable compressor engine which has been issued a streamlined permit in accordance with Paragraph 1 of Subsection D of 20.2.72.301 NMAC, the owner or operator shall complete the appropriate forms provided by the department and maintain such records on file for at least two (2) years;

(3) For all other portable sources, including but not limited to rock crushers and asphalt plants:

(a) The owner or operator shall notify the department, on the form provided by the department, at least fifteen (15) days prior to beginning installation at the new location;

(b) Operation at a new location of such source shall not commence until the department has approved the relocation in writing;

(c) The department shall not approve the relocation if it would result in exceedances of any national or New Mexico ambient air quality standard at the new location; and

(d) The department shall approve, deny, or approve with conditions, the relocation request within fifteen (15) days of receipt of the notice form.

[20.2.72.202 NMAC - Rn, 20 NMAC 2.72.II.202, 2/2/01]

### **20.2.72.203 CONTENTS OF APPLICATIONS:**

**A.** Any person seeking a permit under Subsection A of 20.2.72.200 NMAC shall do so by filing a written application with the department. The applicant shall submit the number of copies of the permit application specified in the applicable application form. The items of this section, if requested on the applicable application form, are required before the department may deem an application administratively complete. The items may be modified by the department, as appropriate, for emergency permits processed under 20.2.72.215 NMAC. All applications shall, as required by the department:

(1) Be filled out on the form(s) furnished by the department;

(2) State the applicant's name and address, together with the names and addresses of all owners or operators of the source, and the applicant's state of incorporation or principal registration to do business;

(3) Provide all information, including all calculations and computations, to describe the specific chemical and physical nature and to estimate the maximum quantities of any regulated air contaminants the source will emit through routine operations after construction, modification or installation is completed, and estimate maximum potential emissions during malfunction, startup, shutdown. With respect to a toxic air pollutant as defined by Subsection H of 20.2.72.401 NMAC this requirement only applies when the toxic air pollutant is emitted in such a manner that a permit is required under the provisions of 20.2.72.400 NMAC - 20.2.72.499 NMAC;

(4) Contain a regulatory compliance discussion demonstrating compliance with each applicable air quality regulation, ambient air quality standard, prevention of significant deterioration increment, and provision of 20.2.72.400 NMAC - 20.2.72.499 NMAC. The discussion must include an analysis, which may require use of US EPA-approved air dispersion model(s), to (1) demonstrate that emissions from routine operations will not violate any New Mexico or National Ambient Air Quality Standard or prevention of significant deterioration increment, and (2) if required by 20.2.72.400 NMAC - 20.2.72.499 NMAC, estimate ambient concentrations of toxic air pollutants.

(5) Provide a preliminary operational plan defining the measures to be taken to mitigate source emissions during malfunction, startup or shutdown;

(6) Include a topographical map, at least as detailed as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey, showing the exact location and geographical coordinates of the proposed construction, modification or installation of the source;

(7) Include a process flow sheet, including a material balance, and a site diagram of all components and locations of emissions to the atmosphere of the facility which would be involved in routine operations and emissions;

(8) Include a full description, including all calculations of controlled and uncontrolled emissions and the basis for all control efficiencies presented, of the equipment to be used for air pollution control, including a process flow sheet, or, if the department so requires, layout and assembly drawings;

(9) Include a description of the equipment or methods proposed by the applicant to be used for emission measurement;

(10) State the maximum and standard operating schedules of the source after completion of construction, modification or installation or after permit revision in terms of which and how many hours per day, days per week, days per month and days per year;

(11) Contain such other specifically identified relevant information as the department may reasonably require;

(12) Be notarized and signed under oath or affirmation by the operator, the owner or an authorized representative, certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any;

(13) Contain payment of any fees which are specified in 20.2.75 NMAC (Construction Permit Fees) as payable at the time the application is submitted;

(14) Contain documentary proof of applicant's public notice, if applicable, as specified in Subsection B of 20.2.72.203 NMAC; and

(15) At the sole discretion of the applicant, contain a request for accelerated review of the application.

**B.** The applicant's public notice for technical permit revisions shall be as specified in Paragraph 6 of Subsection B of 20.2.72.219 NMAC. The applicant's public notice for a permit or significant permit revision shall be:

(1) Provided by certified mail, to the owners of record, as shown in the most recent property tax schedule, of all properties:

(a) Within one hundred (100) feet of the property on which the facility is located or proposed to be located, if the facility is or is proposed to be located in a Class A or Class H county or a municipality with a population of more than two thousand five hundred (2500) persons; or

(b) Within one-half (1/2) mile of the property on which the facility is located or is proposed to be located if the facility is or will be in a county or municipality other than those specified in Sub-paragraph (a) of Paragraph 1 of Subsection B of 20.2.72.203 NMAC;

(2) Provided by certified mail to all municipalities and counties in which the facility is or will be located and to all municipalities, Indian tribes, and counties within a ten (10) mile radius of the property on which the facility is proposed to be constructed or operated;

(3) Published once in a newspaper of general circulation in each county in which the property on which the facility is proposed to be constructed or operated is located. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish;

(4) Posted in at least four (4) publicly accessible and conspicuous places, including:

(a) The proposed or existing facility entrance on the property on which the facility is, or is proposed to be, located, until the permit or significant permit revision is issued or denied; and

(b) Three (3) locations commonly frequented by the general public, such as a nearby post office, public library, or city hall; and

(5) Submitted as a public service announcement to at least one radio or television station which serves the municipality or county in which the source is or is proposed to be located.

**C.** The notice specified in Paragraphs 1 through 4 of Subsection B of 20.2.72.203 NMAC shall contain the following:

(1) The applicant's name and address, together with the names and addresses of all owners or operators of the facility or proposed facility;

(2) The actual or estimated date that the application was or will be submitted to the department;

(3) The exact location of the facility or proposed facility;

(4) A description of the process or change for which a permit is sought, including an estimate of the maximum quantities of any regulated air contaminant the source will emit after proposed construction is complete or permit is issued;

(5) The maximum and standard operating schedules of the facility after completion of proposed construction or permit issuance; and

(6) The current address of the department to which comments and inquiries may be directed.

**D.** The public service announcement request specified in Paragraph 5 of Subsection B of 20.2.72.203 NMAC shall contain the following information about the facility or proposed facility:

(1) The name, location, and type of business;

(2) The name of the principal owner or operator;

(3) The type of process or change for which a permit is sought;

(4) Locations where the notices required under Paragraph 4 of Subsection B of 20.2.72.203 NMAC have been posted; and

(5) The address or telephone number at which comments and inquiries may be directed to the department.

**E. Changing, Supplementing or Correcting Applications:**

(1) Prior to a final decision on an application, the applicant shall have a duty to promptly supplement and correct information submitted in the application. The duty to supplement shall include relevant information thereafter acquired or otherwise determined to be relevant.

(2) If, while processing an application, regardless of whether it has been determined to be administratively complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information. The request shall be in writing, identify the additional information requested and the need for the additional information, and set a reasonable deadline for a response. The applicant shall submit the requested information in writing on or before the deadline set by the department.

[20.2.72.203 NMAC - Rn, 20 NMAC 2.72.II.203, 2/2/01; A, 3/30/01]

**20.2.72.204 CONFIDENTIAL INFORMATION PROTECTION:** All confidentiality claims made regarding material submitted to the department under this part shall be reviewed under the provisions of 20.2.1 NMAC (General Provisions).

[20.2.72.204 NMAC - Rn, 20 NMAC 2.72.II.204, 2/2/01]

**20.2.72.205 CONSTRUCTION, MODIFICATION AND PERMIT REVISION IN BERNALILLO COUNTY:** For the construction or modifications of sources within Bernalillo county, the applicant shall make such applications to the air quality control staff of the joint Albuquerque-Bernalillo county air quality control board, unless that board loses, rejects or fails to exercise authority for the administration and enforcement of the Air Quality Control Act, at which time this part shall apply in full in Bernalillo county.

[20.2.72.205 NMAC - Rn, 20 NMAC 2.72.II.205, 2/2/01]

**20.2.72.206 PUBLIC NOTICE AND PARTICIPATION:**

**A.** The department shall:

(1) Make available for public inspection a list of all pending applications for permits or permit revisions;

(2) Make available for public inspection the permit application and the department's preliminary determination. This material shall be available both at the department's central office and the district or field office nearest to the proposed source. Copies of any permit application, except those portions of which may be determined as confidential in accordance with 20.2.1 NMAC (General Provisions), will be supplied upon written request and payment of reasonable costs;

(3) Subsequent to an affirmative administrative completeness determination, publish a public notice in a newspaper of general circulation in the area closest to the location of the source. The notice shall include: the applicant's name and address, the location and brief description of the source, a summary of estimated emissions and ambient impact, and the department's preliminary intent to issue the permit if the construction or modification requested in the application will comply with air quality requirements, including ambient standards. The notice shall identify the location of the permit application and department's analysis (when available) for public review and describe the manner in which comments or evidence may be submitted to the department, including that persons must inform the department in writing of their interest in the permit application in order to have a 30 day period to

review and comment on the analysis under Subsection B of 20.2.72.206 NMAC below. The notice shall clearly state that any person who does not express such interest in writing prior to the end of the initial 30 day comment period will not receive notification of the availability of the analysis and thus forewarn such person of the need to express interest in writing if they desire to review and comment on the analysis;

(4) Provide the notice under Paragraph 3 of Subsection A of 20.2.72.206 NMAC above by mail, which may include electronic mail, to all individuals and organizations identified on a list maintained by the department of those who have indicated in writing a desire to receive notices of all applications under this part;

(5) Allow all interested persons thirty (30) days from the date the public notice is published to express an interest in writing in the permit application;

(6) Mail written notice of the action taken on a permit application to any person who expresses an interest in writing in the application; and

(7) Mail a copy of the public notice at the same time it is sent for publication to the appropriate agency in the following locations if the source will locate within fifty kilometers of the boundary of other states, Bernalillo county, or a Class I area. Copies of all public notices shall be sent to US EPA Region VI, if requested by US EPA.

**B.** In the event that any person expresses an interest in writing in the permit application, the department shall also:

(1) Notify each person who expressed an interest in writing in the permit application of the date and the location that the department's analysis was or will be available for review; and

(2) Not issue the permit until at least thirty (30) days after the department's analysis is available for review. During this thirty (30) day period, any person may submit written public comments or request a public hearing.

**C.** The department shall hold a public hearing if the secretary determines that there is a significant public interest. 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 give notice of the hearing to the applicant and the public. The secretary may 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.

[20.2.72.206 NMAC - Rn & A, 20 NMAC 2.72.II.206, 2/2/01]

#### **20.2.72.207 PERMIT DECISIONS AND APPEALS:**

**A.** The department shall, within thirty (30) days after its receipt of an application for a permit or significant permit revision, review such application and determine whether it is administratively complete. 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.** The department shall either grant, grant subject to conditions or deny the permit or significant permit revision:

(1) within ninety (90) days after the department deems the application administratively complete, if the application is not subject to the requirements of 20.2.74 NMAC (Prevention of Significant Deterioration); or

(2) within one hundred eighty (180) days after the department deems the application administratively complete, if the application is subject to the requirements of 20.2.74 NMAC (Prevention of Significant Deterioration).

**C.** If the department fails to take action on the application within the deadlines specified in Subsection B of 20.2.72.207 NMAC, the department shall notify the applicant by certified mail that an extension of time is necessary to process the application and shall specify, in detail, the grounds for the extension. The secretary may grant an extension, not to exceed ninety (90) days, to the deadlines specified in Subsection B of 20.2.72.207 NMAC, if the secretary determines that good cause exists for the extension. The secretary shall notify the applicant by certified mail of the decision on the extension. If the secretary grants the extension, the notification shall include the length of the extension and the reasons therefore. The authority under this paragraph may be delegated by the

secretary only to the deputy secretary or a division director. Examples of good cause for extension include, but are not limited to:

- (1) the need to have public hearings;
- (2) a health assessment is required under 20.2.72.400 NMAC - 20.2.72.499 NMAC;
- (3) the permit application is subject to the requirements of 20.2.79 NMAC (Permits - Nonattainment Areas);
- (4) additional time is needed to complete the requirements for federal review specified in 20.2.74.403 NMAC;
- (5) the permit application requires review of unusually complex technical and regulatory issues; or
- (6) the department is unable to complete review of information submitted, because of the timing and scope of the submittal.

**D.** The department shall grant the permit, grant the permit subject to conditions, or deny the permit based on information contained in the department's administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the department, a statement of matters officially noticed, and if a public hearing is held, the evidence submitted at the hearing. The applicant has the burden of demonstrating that a permit or permit revision should be approved.

**E.** Any person who participated in a permitting action before the department shall be notified by the department of the action taken and the reasons for the action. Notification of the applicant shall be by certified mail.

**F.** 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. 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.

**G.** If a timely request for a hearing is made, the board shall hold a hearing within sixty (60) days of receipt of the petition in accordance with Section 74-2-7 of the New Mexico Air Quality Control Act, NMSA 1978.

**H.** Any person adversely affected by an administrative action taken by the board may appeal in accordance with Section 74-2-9 of the New Mexico Air Quality Control Act, NMSA 1978.  
[20.2.72.207 NMAC - Rn, 20 NMAC 2.72.II.207, 2/2/01]

**20.2.72.208 BASIS FOR DENIAL OF PERMIT:** The department shall deny any application for a permit or permit revision if considering emissions after controls:

**A.** It appears that the construction, modification or permit revision will not meet applicable regulations adopted pursuant to the Air Quality Control Act;

**B.** The source will emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board;

**C.** For toxic air pollutants, see 20.2.72.400 NMAC - 20.2.72.499 NMAC;

**D.** The construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico ambient air quality standard unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable;

**E.** The construction, modification, or permit revision would cause or contribute to ambient concentrations in excess of a prevention of significant deterioration (PSD) increment;

**F.** Any provision of the Air Quality Control Act will be violated;

**G.** It appears that the construction of the new source will not be completed within a reasonable time; or

**H.** The department chooses to deny the application due to a conflict of interest in accelerated review as provided for under Subsection C of 20.2.72.221 NMAC.

[20.2.72.208 NMAC - Rn, 20 NMAC 2.72.II.208, 2/2/01; A, 3/30/01]

**20.2.72.209 ADDITIONAL LEGAL RESPONSIBILITIES ON APPLICANTS:** The issuance of a permit 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.  
[20.2.72.209 NMAC - Rn, 20 NMAC 2.72.II.209, 2/2/01]

**20.2.72.210 PERMIT CONDITIONS:**

**A.** The contents of the application specifically identified by the department shall become terms and conditions of the permit or permit revision.

**B.** The department shall, as appropriate, specify conditions upon a permit, including:

(1) Placement of individual emission limits determined on a case-by-case basis on the source for which the permit is issued, but such individual emission limits shall be only as restrictive as the more stringent of the following:

(a) the extent necessary to meet the requirements of the Air Quality Control Act and the federal act; or

(b) the emission rate specified in the permit application;

(2) A requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of the Air Quality Control Act and the federal act and regulations promulgated under either;

(3) Compliance with applicable NSPS and NESHAP;

(4) Imposition of reasonable restrictions and limitations other than restrictions and limitations relating to emission limits or emission rates; or

(5) Any combination of the above;

(6) In the case of a modification, the requirements of Subsection B of 20.2.72.210 NMAC apply only to the facility or facilities involved in such modification.

**C.** The department may impose such other reasonable conditions upon a permit, including a schedule of construction, a condition requiring timely revision of permit terms or conditions in order to meet new requirements, if any, under any federally required and approved State Implementation Plan revision, and conditions requiring the source to be provided with or to undertake:

(1) Sampling ports of a size, number and location as the department may require;

(2) Safe access to each port;

(3) Instrumentation to monitor and record emission data including continuous emission monitoring, if appropriate;

(4) Any other reasonable sampling, testing and ambient monitoring and meteorological facilities and protocols; and

(5) Periodic testing pursuant to 20.2.72.213 NMAC.

**D.** Any term or condition imposed by the department on a permit or permit revision is enforceable to the same extent as a regulation of the board.

**E.** The department will as a condition of each permit require the permittee to establish and maintain such records of the nature and amount of emissions and to make such periodic reports to the department regarding the nature and amounts of emissions and the performance of air pollution control equipment, as are necessary to carry out the purpose of the Air Quality Control Act.

**F. [RESERVED]**

[20.2.72.210 NMAC - Rn, 20 NMAC 2.72.II.210, 2/2/01]

**20.2.72.211 PERMIT CANCELLATIONS:**

**A.** The department shall automatically cancel any permit for any source which ceases operation for five years or more, or permanently. Reactivation of any source after the five year period shall require a new permit.

**B.** The department may cancel a permit if the construction or modification is not commenced within two years from the date of issuance or, if during the construction or modification, work is suspended for a total of one year, such cancellation shall be subject to the following procedures:

(1) At least thirty days prior to the cancellation of a permit, the department shall notify the permittee by certified mail of the impending cancellation. The department shall notify the permittee by certified mail of the cancellation of his permit and the reasons therefor. Construction, modification and, if required, interim operation shall cease upon the effective date of cancellation contained in the notice of cancellation. A permittee who has received notice that a permit is or will be cancelled may request a hearing before the board. The request must be

made in writing to the board within thirty days after notice of the department's action has been received by the permittee. Unless a timely request for hearing is made, the decision of the department shall be final; and

(2) If a timely request for hearing is made, the board shall hold a hearing within thirty days after receipt of the request. The department shall notify the permittee by certified mail of the date, time and place of the hearing. In the hearing the burden of proof shall be upon the permittee. The board may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action of the department.

[20.2.72.211 NMAC - Rn, 20 NMAC 2.72.II.211, 2/2/01]

**20.2.72.212 PERMITTEE'S NOTIFICATION REQUIREMENTS TO DEPARTMENT:** Any owner or operator subject to this part shall notify the department in writing of or provide the department with:

- A. Anticipated date of initial startup of a source not less than thirty (30) days prior to the date;
- B. Actual date of initial startup of a source within fifteen (15) days after the startup date;
- C. Any change of operators within fifteen (15) days of such change;
- D. Any necessary update or correction no more than sixty (60) days after the operator knows or

should have known of the condition necessitating the update or correction of the permit.

[20.2.72.212 NMAC - Rn, 20 NMAC 2.72.II.212, 2/2/01]

**20.2.72.213 STARTUP AND FOLLOWUP TESTING:** Within sixty (60) days after achieving the maximum production rate at which the source will be operated but not later than one hundred eighty (180) days after initial startup of the source, the owner or operator of the source may be required to conduct a performance test. The test method utilized shall be approved by the department. Whenever the requirements of 40 CFR 60 or 61 apply, test methods must be utilized as specified in those regulations. The owner or operator shall notify the department at least thirty (30) days prior to the test date and allow a representative of the department to be present at the test. A written report of the results of the test shall be submitted to the department by the owner or operator within thirty (30) days from the test date. This requirement may be reimposed on a source as necessary if inspections of the source indicate noncompliance with permit conditions subject to such testing, or the previous test showed noncompliance or was technically unsatisfactory. In such cases, the test requirement may be reimposed as frequently as necessary until compliance is achieved and testing is performed in a technically satisfactory manner. This testing requirement may be waived if the source is a member of a class subject to an exemption from this requirement pursuant to 20.2.72.214 NMAC, and has agreed to comply with, and its permit contains, enforceable design, operational and locational protocols set by the department for the class of sources to which the source belongs.

[20.2.72.213 NMAC - Rn, 20 NMAC 2.72.II.213, 2/2/01]

**20.2.72.214 SOURCE CLASS EXEMPTION PROCESS (PERMIT STREAMLINING):**

A. Upon application by any person or group of persons, or upon the initiative of the department, the board may exempt any source or class of sources, from any procedural requirement of this part except the requirement to obtain a permit prior to commencement of construction if the board finds that the conditions set forth below in this section have been met. When possible, comprehensive exemptions shall be established for source classes in order to conduct expedited, streamlined permit processing for any applicant whose source is a member of such class. Exemptions may be granted only after a public hearing of the board, at which time the basis for such exemption shall be presented and any interested person allowed to comment and to question any witness. The board's decision that an exemption under this section is justified shall be based at a minimum on each of the following findings:

(1) The department has substantial actual experience with or knowledge of the specific class of sources proposed for exemption, that such experience or knowledge is material to the application for exemption, and that such experience or knowledge includes modeling and analysis of a representative sample of such sources. Such knowledge may be acquired through, but not limited to, direct department experience with such sources, or the review of other regulatory agencies' experience, records, documentation and formal actions, or through publications of professional organizations and societies upon which engineers and scientists would conventionally rely in formulating a professional judgment;

(2) The sources possess sufficiently common characteristics of operation, process technology, emissions, emission control technology and impact on air quality that with respect to the specific requirements proposed to be exempted, protocols have been developed which, if applied to all members of that class, will ensure that air quality is protected at least as well as would be accomplished by the full permit review process; and

(3) Under such an exemption, compliance with all federal and state air quality laws, regulations, standards and emissions limitations will be assured.

B. Exemptions may apply statewide or regionally and may be revoked by the board only after a public hearing following at least sixty days public notice.

C. As may be required under federal law, all protocols established hereunder shall be submitted to the US EPA for review and approval as revisions to the State Implementation Plan. Such protocols shall be established contingent upon approval by the US EPA.

D. There shall be no exemptions under this section from the requirements of 20.2.74 NMAC, 20.2.77 NMAC, 20.2.78 NMAC, or 20.2.79 NMAC.

[20.2.72.214 NMAC - Rn, 20 NMAC 2.72.II.214, 2/2/01]

#### **20.2.72.215 EMERGENCY PERMIT PROCESS:**

A. The department may issue an emergency permit when the secretary determines an emergency exists which threatens the public health, safety or welfare, and which requires the rapid construction or modification of, or installation of equipment in, a facility subject to this part in order to mitigate, prevent or remedy such emergency.

B. Department personnel shall verify that the source, operating in accordance with the permit issued, can and will meet all applicable standards, emissions limitations and conditions before authorizing start-up in order to ensure that the public emergency is not worsened by excess or improperly controlled air pollution.

C. An emergency caused by any negligent or unlawful action or operation of the facility or the facility owner or operator, including but not limited to failure to apply timely for a permit or revision, shall not constitute an emergency for the purposes of this section.

D. The requirements of Paragraphs 5 and 6 of Subsection A of 20.2.72.206 NMAC, Subsection C of 20.2.72.206 NMAC, and Subsections A and B of 20.2.72.207 NMAC shall not apply to emergency permits processed under this section.

E. Construction shall not commence until the emergency permit is issued.  
[20.2.72.215 NMAC - Rn & A, 20 NMAC 2.72.II.215, 2/2/01]

#### **20.2.72.216 NONATTAINMENT AREA REQUIREMENTS:**

A. The requirements of this section apply to:

(1) a new source or modification of an existing source that will emit a regulated air contaminant such that the ambient impact of the contaminant would exceed the significant ambient concentration in 20.2.72.500 NMAC, table 1, at any location that does not meet the New Mexico ambient air quality standard for the contaminant;

(2) a new source or modification of an existing source that is not a major stationary source or major modification as defined in 20.2.79 NMAC and that will emit a regulated air contaminant such that the ambient impact of the contaminant would exceed the significant ambient concentration in table 1 at any location that does not meet the national ambient air quality standard for the contaminant; or

(3) an existing source that does not propose an increase in emissions and that will emit a regulated air contaminant such that the ambient impact of the contaminant would exceed the significant ambient concentration in 20.2.72.500 NMAC (table 1) at any location that does not meet the national or New Mexico ambient air quality standard for the contaminant.

B. A new source or modification of an existing source subject to this section shall offset the ambient impact of its emissions by:

(1) obtaining emission offsets for proposed emissions in an amount greater than one-to-one such that a net air quality benefit will occur; and

(2) ensuring emission offsets are quantifiable, enforceable, and permanent by meeting the following sections of 20.2.79 NMAC:

(a) 20.2.79.114 NMAC (emission offset baseline);

(b) 20.2.79.115 NMAC (emission offsets); and

(c) 20.2.79.117 NMAC (air quality benefit).

C. An existing source that is subject to this section shall demonstrate a net air quality benefit of at least a 20 percent reduction in ambient impact for each applicable contaminant. The 20 percent reduction shall be calculated as the projected source impact subtracted from the existing source impact divided by the existing source impact. The net air quality benefit must also meet the requirements of 20.2.79.117 NMAC (air quality benefit).

[20.2.72.216 NMAC - Rn, 20 NMAC 20.2.72.II.216, 2/2/01; A, 9/6/06]

**20.2.72.217 COMPLIANCE CERTIFICATIONS:**

**A.** Notwithstanding any other provision in the New Mexico State Implementation Plan approved by the administrator, for the purpose of determining compliance, an owner or operator is not prohibited from using monitoring as required under 20.2.70 NMAC and incorporated into an operating permit in addition to any specified compliance methods.

**B.** The requirements of this section are only applicable to those sources which, in addition to being subject to this part are either: defined as a major source under 20.2.70 NMAC (Operating Permits), or; subject to 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants).

[20.2.72.217 NMAC - Rn, 20 NMAC 20.2.72.II.217, 2/2/01]

**20.2.72.218 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, including permits for sources meeting the applicability requirements 20.2.74 NMAC (Prevention of Significant Deterioration), or 20.2.79 NMAC (Permits - Nonattainment Areas).

**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 20.2.70 NMAC 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 in Subsection A of 20.2.72.218 NMAC or Paragraph 1 of Subsection B of 20.2.72.218 NMAC, above.

**C.** The requirements of this section are only applicable to those sources which, in addition to being subject to this part, are either: defined as a major source under 20.2.70 NMAC (Operating Permits), or; subject to 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants).

[20.2.72.218 NMAC - Rn, 20 NMAC 20.2.72.II.218, 2/2/01]

**20.2.72.219 PERMIT REVISIONS:**

**A. Administrative Permit Revisions:**

(1) Administrative permit revision procedures may be used only for those permit revisions that:

(a) Correct typographical errors;

(b) Provide for a minor administrative change at the source, such as a change in ownership or a change in the address or phone number of any person identified in the permit;

(c) Incorporate a change in the permit solely involving the retiring of a source or closing of a facility upon notification of the department that the permittee has ceased operations of the source or facility;

(d) Incorporate a change in the permit solely involving the deletion from the permit of a source or sources upon notification of the department that the source or sources have not been and will not be built; or

(e) Incorporate a source or activity at the facility which is exempted under Subsection B of 20.2.72.202 NMAC;

(2) The permittee shall apply for an administrative permit revision by filing a certified written notification of the proposed revision with the department which includes all information required by the department to review the request. The certification shall be made as required under Paragraph 12 of Subsection A of 20.2.72.203 NMAC;

(3) The administrative permit revision is effective upon receipt of the notification by the department;

(4) Administrative permit revisions shall not be subject to public notification requirements under Subsection B of 20.2.72.203 NMAC and 20.2.72.206 NMAC. The department shall attach the revision to the permit;

(5) Administrative permit revisions shall not be subject to filing fees or permit fees under 20.2.75 NMAC (Construction Permit Fees);

(6) The department is not required to reissue the permit to incorporate an administrative permit revision.

**B. Technical Permit Revisions:**

(1) Technical permit revision procedures may be used only for:

(a) Permit revisions that incorporate a change in the permit solely involving a change to monitoring, record keeping, or reporting requirements by the permittee, provided that the department determines that such change does not reduce the enforceability of the permit;

(b) Permit revisions that incorporate a change in the permit solely involving additional equipment with a potential emission rate of no more than one (1) pound per hour for any pollutant for which a National or New Mexico Ambient Air Quality Standard has been set or one (1) pound per hour for any VOC;

(c) Permit revisions that incorporate a change in the permit solely involving the placement of permit conditions, including emissions limitations, on sources which existed on August 31, 1972 and which have been regularly operated since that time;

(d) Modifications that replace an emissions unit for which the allowable emissions limits have been established in the permit, provided that the new emissions unit:

(i) Is equivalent to the replaced emissions unit, and serves the same function within the facility and process;

(ii) Has the same or lower capacity and potential emission rates;

(iii) Has the same or higher control efficiency, and stack parameters which are at least as effective in the dispersion of air pollutants;

(iv) Would not result in an increase of the potential emission rate of any other equipment at the facility;

(v) Shall be subject to the same or lower allowable emissions limits under the permit, and to all other permit conditions which have applied to the replaced emissions unit;

(vi) Would not, when operated under applicable permit conditions, cause or contribute to a violation of any national or New Mexico ambient air quality standard; and

(vii) Would not, as determined by the department, require additional permit conditions in order to ensure the enforceability of the permit, such as additional record keeping or reporting to show compliance;

(e) Permit revisions that make adjustments to the emissions limitations based on the result of the initial compliance test(s), provided that:

(i) The test is performed in accordance with permit conditions;

(ii) Such adjustment occurs within six (6) months of the compliance test;

(iii) No other such adjustment has occurred since the most recent permit issuance or reissuance;

(iv) Such adjustment does not: alter any other permit condition; trigger additional requirements under any other part, including 20.2.74 NMAC (Prevention of Significant Deterioration); or result in allowable emissions which could contribute to a violation of any national or New Mexico ambient air quality standard;

(v) Such request does not increase the permitted allowable emissions of the unit(s) on which the initial compliance test(s) have been performed by more than ten (10) percent; and

(vi) Where the permit fee calculated under 20.2.75 NMAC (Construction Permit Fees) would have been greater if it had been based on the potential emission rate as indicated by the compliance test, the balance of the permit fee is submitted as part of the technical permit revision application;

(f) Permit revisions that incorporate a change in the permit solely involving the addition of air pollution control equipment or the substitution of a different type of air pollution control equipment to existing equipment provided that such addition or substitution shall not result in an increase in the potential emission rate of more than one (1) pound per hour for any pollutant for which a national or New Mexico ambient air quality standard has been set, or one (1) pound per hour for total VOCs; or

(g) Permit revisions that incorporate terms and conditions in the permit, such as a cap on hours of operation, limitations on throughput of a specific product or products, or limitations on equipment capacity, for the purpose of reducing the potential emission rate of a unit or source.

(2) A request for a technical permit revision shall be accomplished by filing a certified written notification of the proposed revision with the department on forms provided by the Department and shall include all

information required by the department to review the request. The certification shall be made as required under Paragraph 12 of Subsection A of 20.2.72.203 NMAC;

(3) The department shall approve or deny the technical permit revision, or inform the applicant that the request must be submitted as a significant permit revision:

(a) Within thirty (30) days of receipt of the application; or

(b) If in response to significant public interest the department holds a public meeting regarding the technical permit revision, within sixty (60) days of receipt of the application;

(4) The department may deny an application for a technical permit revision or require that such application be submitted as a significant permit revision if:

(a) Such revision does not meet the criteria of this section;

(b) In the judgment of the department the revision would require a decision on a significant or complex issue; or

(c) In the judgment of the department the permittee has submitted multiple or subsequent applications for technical permit revisions under this Part that segment a larger revision or modification that would not be eligible for a technical permit revision;

(5) The technical permit revision shall become effective upon written approval from the department;

(6) Technical permit revisions shall not be subject to public notification requirements under Paragraphs 1, 4 and 5 of Subsection B of 20.2.72.203 NMAC, and 20.2.72.206 NMAC. The department shall attach the technical permit revision to the permit.

**C. [RESERVED]**

**D. Significant Permit Revisions:**

(1) A significant permit revision is required for any modification to a source, and for revisions to any term or condition of such permit, including but not limited to emissions limitation, control technology, operating conditions, and monitoring requirements; that:

(a) Do not meet the criteria under the provisions for administrative or technical permit revisions under Subsections A or B of 20.2.72.219 NMAC; or

(b) Meet the applicability criteria under 20.2.72.402 NMAC regarding toxic air pollutants;

(2) Applications for significant permit revisions shall meet all requirements of this part for permits and shall be processed in accordance with the public notice, review, and hearing procedures set forth in this part for such permits.

[20.2.72.219 NMAC - Rn, 20 NMAC 2.72.II.219, 02/02/01; A, 08/27/03]

**20.2.72.220 GENERAL PERMITS:**

**A. Issuance of general construction permits:**

(1) The department may, after notice under Subsections A and B of 20.2.72.206 NMAC and a public hearing with opportunity for public participation under Subsection C of 20.2.72.206 NMAC issue one or more general construction permits, each covering numerous similar sources. Sources registered for coverage under a general permit shall be generally homogeneous 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) Each general construction permit shall:

(a) Describe which sources may qualify to register under the general construction permit;

(b) Specify the contents of a complete application to register under the general construction permit. The department may, in the general construction permit, provide for applications which deviate from the requirements under 20.2.72.203 NMAC, provided that such applications include:

(i) All information necessary to determine qualification for, and to assure compliance with, the general construction permit; and

(ii) Applicant's public notice requirements including, at a minimum, a notice: a) published once in the legal notices section of a newspaper in general circulation in the county or counties in which the property on which the facility is proposed to be constructed or operated is located; and b) posted at the proposed or existing facility entrance in a publicly accessible and conspicuous place on the property on which the facility is, or is proposed to be, located, until the general permit registration is granted or denied;

(c) Contain permit terms and conditions which apply to all sources registered under the general construction permit, and which include:

(i) Sufficient terms and conditions to assure that all sources registered under and operating in accordance with the general construction permit will meet all applicable requirements under the federal act, the New Mexico Air Quality Control Act and this chapter (Air Quality), including 20.2.74 NMAC (Prevention

of Significant Deterioration), 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants), 20.2.79 NMAC (Permits - Nonattainment Areas), and 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants), and will not cause or contribute to air contaminant levels in excess of any national or New Mexico ambient air quality standard; and

(ii) Monitoring, record keeping and reporting requirements appropriate to the source and sufficient to ensure compliance with the general construction permit. At a minimum, the general permit shall specify where the records shall be maintained, how long the records shall be retained and that all records or reports shall be made available upon request by the department;

(iii) As appropriate, terms and conditions to address and report emissions occurring during upsets, startups and maintenance; and

(d) Specify that any document, including any application form, report, compliance certification and supporting data, submitted pursuant to this section (20.2.72.220 NMAC) shall contain a certification that meets the requirements of Paragraph 10 of Subsection A of 20.2.72.203 NMAC.

**B. Revisions to a General Construction Permit:**

(1) The department may, after notice under Subsections A and B of 20.2.72.206 NMAC and a public hearing with opportunity for public participation under Subsection C of 20.2.72.206 NMAC, revise a general construction permit. Notice of the proposed revision shall also be sent to the owner or operator of all sources registered under the general construction permit.

(2) Revisions to a general construction permit shall include a reasonable transition schedule for existing registered sources to comply with the revised permit. The department shall revise the general permit terms and conditions only to the extent necessary to ensure that the requirements of Sub-paragraph (c) of Paragraph 2 of Subsection A of 20.2.72.220 NMAC are met.

**C. Registration under a General Construction Permit:**

(1) The owner or operator of a source required to obtain a permit pursuant to this part and which qualifies to register under a general construction permit shall either:

- (a) Apply to the department to register under the terms of the general construction permit; or
- (b) Apply for a construction permit under 20.2.72.200 NMAC.

(2) Within thirty (30) days of receiving an application to register under a general construction permit, the department shall review the application for completeness and shall grant or deny the registration. The department shall not grant the registration until at least fifteen (15) days after the date the applicant's public notice was initiated. The department shall notify the applicant of its determination by certified mail. The department shall attach a copy of the general construction permit to registration approvals.

(3) The department shall grant registration under a general permit to a source only if:

(a) The application is complete and meets the requirements of this section (20.2.72.220 NMAC); and

(b) The source meets the terms and conditions of the general permit.

(4) The department may grant or deny an application to register under a general construction permit without repeating the public notice and participation procedures required under 20.2.72.206 NMAC.

(5) Administrative review under Sections 74-2-7.H through L NMSA 1978 shall be available for a determination made by the department of whether or not a source qualifies to register for coverage under a general construction permit. However, administrative review of a registration for coverage under a general construction permit shall not extend to administrative review of the general permit itself. Administrative review of the general construction permit shall be available under Sections 74-2-7.H through L NMSA 1978 only upon issuance or revision of the general permit as a permitting action.

(6) Sources shall be subject to enforcement action for construction without a permit if:

(a) Construction of a source is commenced prior to the receipt of the department's written approval of registration under a general construction permit; or

(b) It is determined after construction commences that a source does not qualify for coverage under the general construction permit.

(7) A general permit registration may be canceled, consistent with the provisions of 20.2.72.211 NMAC, for any source which ceases operation for five years or more, or permanently, and for any source for which the construction or modification is not commenced within two years from the date of issuance or, if during the construction or modification, work is suspended for a total of one year. The owner or operator shall notify the department of the anticipated and actual startup of a source, consistent with the provisions of 20.2.72.212 NMAC.

**D. Modifications to Sources Registered Under a General Construction Permit:** Each general construction permit shall provide that, prior to modification of a source which is registered under a general construction permit, the owner or operator shall:

(1) For those modifications for which the facility will continue to meet the conditions of the general construction permit after the modification, notify the department in writing of such modification; and

(2) For those modifications for which the source will not continue to meet the conditions of the general construction permit after such modification, obtain a construction permit from the department under this part prior to the modification.

[20.2.72.220 NMAC - Rn & A, 20 NMAC 2.72.II.220, 2/2/01]

**20.2.72.221 ACCELERATED REVIEW:**

**A. Qualified Outside Firms:**

(1) The department shall request proposals from persons interested in providing assistance as a qualified outside firm in the accelerated review of construction permit applications under this part.

(2) The department shall evaluate the proposal submitted by the person. To be eligible to contract with the department as a qualified outside firm a person must:

(a) Be legally qualified to contract with the department; and

(b) Be qualified to assist the department in review of permit applications, as determined by the department in the department's sole discretion.

(3) Persons who are selected as qualified outside firms shall be under contract with the department for accelerated review of construction permit applications under this section.

**B. Requests for Accelerated Review:**

(1) At the sole discretion of the applicant, a construction permit applicant under this part may request accelerated permit review of the application by a qualified outside firm. Applications for accelerated review shall be preceded by a pre-application meeting between the applicant and the department. Requests for accelerated review shall not be granted unless there is at least one qualified outside firm under contract with the department pursuant to Paragraph 3 of Subsection A of 20.2.72.221 NMAC. If there are no firms under contract to provide accelerated review, the department shall review the application in accordance with 20.2.72.207 NMAC.

(2) Such request for accelerated permit review shall be submitted with the construction permit application along with a corporate check or money order for the amount of the accelerated review filing fee as specified in 20.2.75 NMAC. The department shall notify the applicant of the names and addresses of the qualified outside firms. The applicant shall deliver a copy of the application, by mail or hand delivery, to each qualified outside firm identified by the department, unless the applicant is aware of a conflict of interest.

(3) Participation in the accelerated permit review process shall not relieve the applicant of any responsibilities specified in this chapter.

(4) Applicants who have opted for accelerated review under this section shall be subject to supplementary fees pursuant to 20.2.75 NMAC which shall be assessed in addition to all other applicable fees levied under 20.2.75 NMAC.

(5) Qualified outside firms under contract which are interested in performing the accelerated review on a specific application shall submit to the department:

(a) A statement of interest;

(b) A statement of qualifications for that specific application;

(c) An estimate of the cost and schedule for the review; and

(d) A notarized affidavit attesting that no conflict of interest exists on the specific permit application.

(6) If no qualified outside firm submits the four items required by Paragraph 5 of Subsection B of 20.2.72.221 NMAC, the department shall apply the accelerated review filing fee to the permit fee in accordance with 20.2.75 NMAC and review the application without the assistance of a qualified outside firm and in accordance with 20.2.72.207 NMAC.

(7) The department shall review the submittals and determine, in the department's sole discretion, which firms qualify for any specific application.

(8) Prior to determining any application administratively complete for which accelerated review has been requested as allowed under 20.2.72.203 NMAC, the department shall provide the applicant a written summary of the qualified submittals showing the costs to the applicant of the accelerated review and the anticipated schedule for application review, permit development and permit issuance.

(9) Applicant's responsibilities for response to submittal summary:

(a) Within five (5) working days of receipt of the department's bid summary the applicant shall either: (i) submit to the department a written recommendation to accept one of the accelerated review bids, or a prioritized list of more than one of the accelerated review bids, including a brief justification for the recommendation(s) along with a corporate check or money order payable to the department for the amount of the accelerated review bid and a notarized affidavit attesting that no conflict of interest exists on the specific permit application; or (ii) submit to the department a written withdrawal of the request for accelerated review.

(b) The request for accelerated review is deemed withdrawn if the applicant fails to submit a written recommendation or withdrawal within five (5) working days of receipt of the department's bid summary unless the Department has granted an extension.

**(10) Department's selection of qualified outside firm**

(a) If the request for accelerated review is withdrawn, the department shall retain the accelerated review filing fee in accordance with 20.2.75 NMAC and shall review the application without the assistance of a qualified outside firm and in accordance with 20.2.72.207 NMAC.

(b) If the applicant recommends a qualified submittal, the department shall determine whether to accept the recommended submittal. If the department accepts the recommended submittal it shall instruct the qualified outside firm to begin review of the application. If the department rejects the recommended submittal, it shall inform the applicant and allow the applicant to recommend an alternate submittal pursuant to Paragraph 9 of Subsection B of 20.2.72.221 NMAC or, if there are no other qualified submittals, the department shall retain the accelerated review filing fee in accordance with 20.2.75 NMAC and review the application without the assistance of a qualified outside firm and in accordance with 20.2.72.207 NMAC.

**C. Disclosure of Conflicts During Accelerated Review:**

(1) The applicant and the qualified outside firm have a continuing obligation to investigate potential conflicts of interest and to immediately disclose, in writing, any conflict of interest to the department. If a conflict of interest was not disclosed pursuant to Subparagraph d of Paragraph 5 of 20.2.72.221 NMAC or Subparagraph a of Paragraph 9 of Subsection B of 20.2.72.221 NMAC, and is later disclosed or discovered, the department may:

(a) Deny the application pursuant to 20.2.72.208 NMAC;

(b) Terminate accelerated review and review the application pursuant to 20.2.72.207 NMAC;

or

(c) Allow accelerated review to continue after elimination of the conflict.

(2) In choosing between these options the department shall consider whether the conflict of interest was disclosed or discovered, the timing of the disclosure or discovery, diligence in investigating potential conflicts of interest, any indication of intentional or willful failure to disclose, significance of the conflict of interest, and ability to eliminate the conflict of interest in a timely manner.

**D. Issuance of a Permit After Accelerated Review:**

(1) Upon completion of the review, the qualified outside firm shall provide the department with all documentation, including but not limited to all communications, notes, and drafts, pertaining to the permit application. At any time during the review, the qualified outside firm shall provide all documentation pertaining to a specific application to the department upon request. Such documentation shall be subject to the Inspection of Public Records Act, Chapter 14, Article 2 NMSA 1978, and the Confidential Information Section of the Air Quality Control Act, Section 74-2-11 NMSA 1978.

(2) The department shall review the analysis prepared by the qualified outside firm and shall issue a permit or deny the permit application in accordance with this part. The qualified outside firm's analysis is not binding on the department. The department retains final authority to accept or reject the qualified outside firm's analysis regarding the permit application.

(3) The department shall not issue the permit until both the accelerated review processing fee and any fees due pursuant to 20.2.75 NMAC have been paid.

[20.2.72.221 NMAC - N, 3/30/01]

**20.2.72.222 - 20.2.72.299 [RESERVED]**

**20.2.72.300 DEFINITIONS:** In addition to the definitions in 20.2.72.7 NMAC, the following definitions apply to 20.2.72.300 NMAC - 20.2.72.399 NMAC:

**A. "Compressor station"** means a facility whose primary function is the extraction of crude oil, natural gas, or water from the earth with compressors, or movement of any fluid, including crude oil or natural gas, or products refined from these substances through pipelines or the injection of natural gas or CO<sub>2</sub> back into the earth using compressors. A compressor station may include engines to generate power in conjunction with the other

functions of extraction, injection or transmission and may contain emergency flares. A compressor station may have auxiliary equipment which emits small quantities of regulated air contaminants, including but not limited to, separators, de-hydration units, heaters, treaters and storage tanks, provided the equipment is located within the same property boundaries as the compressor engine.

**B. "Good engineering practice stack height"** means  $H_{subGEP} = H + 1.5L$ , where H equals the height of any building or obstruction within 5L of the stack, and L equals the lesser of the height or maximum projected width of the building or obstruction.

**C. "Impact area"** means the circular area with a radius extending from the source to the most distant point where the total potential emissions from the facility will cause a significant ambient impact (i.e., equal or exceed the applicable significant ambient impact level in 20.2.72.500 NMAC).

**D. "Maximum projected width"** means the largest crosswind building or obstruction dimension.

**E. "Potential to emit" or "potential emissions"** means the maximum capacity of a stationary source to emit a regulated air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, 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 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.

**F. "Secondary emissions"** means emissions of an air contaminant which occur as a result of the construction or operation of a stationary source or modification, but do not come from the stationary source or modification itself. 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 stationary source or 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.

**G. "SUM"** means the sum of the potential emissions for oxides of nitrogen from all adjacent sources.

**H. "SUM15"** means the sum of the potential emissions for oxides of nitrogen from all adjacent sources within 15 km of the NO<sub>2</sub> impact area.

**I. "SUM25"** means the sum of the potential emissions for oxides of nitrogen from all adjacent sources within 25 km of the NO<sub>2</sub> impact area.

**J. "Sweet natural gas"** means natural gas containing no more than 0.25 grains of hydrogen sulfide per 100 standard cubic feet of gas.

[20.2.72.300 NMAC - Rn & A, 20 NMAC 2.72.III.300, 2/2/01]

#### **20.2.72.301 APPLICABILITY:**

**A.** Any owner or operator intending to construct or modify a source which requires a permit under the provisions of 20.2.72.200 NMAC may elect to obtain a permit under 20.2.72.300 NMAC - 20.2.72.399 NMAC if the source category is listed in 20.2.72.501 NMAC.

**B.** 20.2.72.300 NMAC - 20.2.72.399 NMAC shall not apply to:

- (1) Any "major stationary source" as defined in 20.2.74 NMAC;
- (2) Any facility, either before or after construction or modification, with a total potential to emit of any regulated air contaminant greater than 200 tons per year (tpy);
- (3) Any source subject to the requirements of 20.2.78 NMAC or 20.2.72.400 NMAC - 20.2.72.499 NMAC;
- (4) Any reciprocating internal combustion (IC) engines and/or turbines located at petroleum refineries, chemical manufacturing plants, bulk gasoline terminals, natural gas processing plants, or at any facility containing sources in addition to IC engines and/or turbines for which an air quality permit is required through state or federal air quality regulations;
- (5) Any source which emits or proposes to emit those contaminants for which the impact area from the facility intersects an area, or for which the area itself is: 1) designated nonattainment for federal ambient air quality standards; or 2) nonattainment for federal PSD increments or state ambient air quality standards according to ambient data or air quality modeling; or 3) shown by air quality data or dispersion or other air quality modeling that air contaminants have consumed more than 80% of state or federal ambient air quality standards or PSD increments for those areas where the baseline has been triggered for the specific PSD increments;
- (6) Any source with the nearest property boundary located less than:

(a) 1 kilometer (km) from a school, residence, office building, or occupied structure. Buildings and structures within the immediate industrial complex of the source are not included.

(b) 3 km from the property boundary of any state park, Class II wilderness area, Class II national wildlife refuge, national historic park, state recreation area, or community with a population of more than twenty-thousand people.

(c) 10 km from the boundary of any community with a population of more than forty-thousand people, or

(d) 30 km from the boundary of any Class I area;

(7) Any source located in Bernalillo county or within 15 km of the Bernalillo county line.

C. The following sections and subsections of 20.2.72.200 NMAC - 20.2.72.299 NMAC apply to permit applications submitted pursuant to 20.2.72.300 NMAC - 20.2.72.399 NMAC: Subsections A, B and E through H of 20.2.72.200 NMAC, 20.2.72.202 NMAC, 20.2.72.204 NMAC, 20.2.72.205 NMAC, Subsection C of 20.2.72.206 NMAC, Subsections D through G of 20.2.72.207 NMAC, 20.2.72.208 NMAC, 20.2.72.209 NMAC, 20.2.72.210 NMAC, 20.2.72.211 NMAC, 20.2.72.212 NMAC, 20.2.72.214 NMAC and 20.2.72.215 NMAC. The remainder of 20.2.72.200 NMAC - 20.2.72.299 NMAC does not apply to applications submitted pursuant to 20.2.72.300 NMAC - 20.2.72.399 NMAC.

D. Any source, including compressor stations, consisting of IC engines and/or turbines must comply with one of the following three criteria, Paragraph 1, 2, or 3 of Subsection D of 20.2.72.301 NMAC, in order to qualify for source class permit streamlining under 20.2.72.300 NMAC - 20.2.72.399 NMAC (In demonstrating compliance with Subsection D of 20.2.72.301 NMAC, the department shall give no credit for modeled reductions in ambient air concentrations due to so much of a source's stack which exceeds good engineering stack height, or fifty (50) feet in situations where there are not obstructions or buildings associated with the source):

(1) The total potential to emit of each regulated contaminant from all sources at the facility shall be less than 40 tpy. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen; or

(2) The total potential to emit of each regulated contaminant from all emission sources at the facility shall be less than 100 tons per year (tpy) and the impact on ambient air from all sources at the facility shall be less than the ambient significance levels in 20.2.72.500 NMAC, Table 1. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen expressed as nitrogen dioxide; or

(3) The maximum modeled ambient impact from the total potential emissions at the facility shall be less than 50 percent of each applicable PSD increment, for those areas where the baseline has been triggered for the specific PSD increments, and state and federal ambient air quality standards; and

(a) There shall be no adjacent sources emitting the same regulated air contaminant(s) as the source within 2.5 km of the modeled nitrogen dioxide (NO<sub>2</sub>) impact area; and

(b) The "sum of the potential emissions for oxides of nitrogen from all adjacent sources" (SUM) within 15 km of the NO<sub>2</sub> impact area (SUM15) shall be less than 740 tpy; and

(c) The SUM25 within 25 km from the NO<sub>2</sub> impact area shall be less than 1540 tpy.

(4) Modifications to the auxiliary emission generating equipment at a facility qualifying and electing source class permit streamlining may commence without obtaining a permit for such modification as long as the total potential to emit of all auxiliary equipment remains at or below 1.0 lb/hr for any one regulated air contaminant and as long as the total potential to emit of each regulated air contaminant from the compressor station meets the requirements of Paragraphs 1 or 2 of Subsection D of 20.2.72.301 NMAC or previously qualified under Paragraph 3 of Subsection D of 20.2.72.301 NMAC. The applicant shall provide, in writing, the nature of all changes to the department no later than 15 days prior to the expected change.

[20.2.72.301 NMAC - Rn & A, 20 NMAC 2.72.III.301, 2/2/01]

[Annotated Note: Section 20.2.72.202 - Permit Revisions, which is referenced in Subsection C of this section, was renumbered to Section 20.2.72.219 NMAC, effective 1/7/1998]

#### **20.2.72.302 CONTENTS OF APPLICATION:**

A. Any person seeking a permit under 20.2.72.300 NMAC - 20.2.72.399 NMAC shall do so by filing a written application with the department. For those applications not qualifying under Subsection A of 20.2.72.303 NMAC, the applicant shall also:

(1) Provide by certified mail a complete copy of the application and public notice to the department's field or district office nearest the source; and

(2) Provide by certified mail a copy of the public notice to the appropriate federal land manager if the source will locate within 50 km of the boundary of a Class I area.

**B.** The items of this section, if requested on the applicable application form, are required before the department may deem an application administratively complete. The applicant shall submit the number of copies of the permit application specified in the applicable application form. All applications shall be filed on the forms furnished by the department and shall include:

- (1) The applicant's name and address, the person to contact regarding the application, and the name and address of the new source or modification;
- (2) A description of the new facility or modification including all operations effecting air emissions;
- (3) The anticipated operating schedule;
- (4) A topographical map, at least as detailed as a 7.5 minute United States Geological Survey Topographic Quadrangle, showing the exact location and geographical coordinates of the stationary source;
- (5) The Universal Transverse Mercator (UTM) horizontal and vertical coordinates for the facility;
- (6) A plot plan showing the location of emission units with respect to the plant's property boundaries and the dimensions of any buildings, terrain, or obstructions which may cause emissions to be down-washed;
- (7) A detailed description of any air pollution control device or method to be utilized, including the basis for the estimated control efficiency;
- (8) The stack and exhaust gas parameters for all emission points, including calculations and manufacturer's or supplier's data which documents the emission rates and exhaust gas parameters;
- (9) A comprehensive regulatory compliance review, including all pertinent data and calculations, for each applicable new source performance standard, such as 40 CFR 60, Subpart GG - Standards of Performance for Stationary Gas Turbines;
- (10) Documentation of the manufacturer's or supplier's recommended maintenance schedules and procedures for all air pollution control equipment;
- (11) A compliance demonstration based on US EPA approved modeling or analysis, including all pertinent calculations and computations, for all applicable requirements of 20.2.72.300 NMAC - 20.2.72.399 NMAC for any facility electing to obtain a permit under 20.2.72.300 NMAC - 20.2.72.399 NMAC;
- (12) Documentary proof that the requirements of Paragraphs 1 and 2 of Subsection A of 20.2.72.302 NMAC have been satisfied;
- (13) The notarized signature under oath or affirmation by the operator, the owner, or an authorized representative, certifying to the best of his or her knowledge the truth of all information submitted;
- (14) Payment of any fees which are specified in 20.2.75 NMAC (Construction Permit Fees) as payable at the time the application is submitted; and
- (15) Any other specifically identified relevant information as the department may reasonably require. [20.2.72.302 NMAC - Rn & A, 20 NMAC 2.72.III.302, 2/2/01]

#### **20.2.72.303 PUBLIC NOTICE AND PARTICIPATION:**

**A.** Applications qualifying under the following paragraphs of 20.2.72.300 NMAC - 20.2.72.399 NMAC are not subject to Subsection B of 20.2.72.303 NMAC and Paragraph 2 of Subsection C of 20.2.72.303 NMAC: Paragraphs 1 and 2 of Subsection D of 20.2.72.301 NMAC.

**B.** The applicant shall:

- (1) Publish notice once in a newspaper of general circulation in the area closest to the location of the source. This notice shall appear in either the classified or legal advertisements section of the newspaper. Notice shall be published in accordance with department guidance documents and must include:
  - (a) The applicant's name and address;
  - (b) The address and phone number of the department's air quality bureau in Santa Fe, and the address of the field or district office where a copy of the application will be sent as required in Subsection A of 20.2.72.302 NMAC;
  - (c) The location and a brief description of the source;
  - (d) A summary of estimated emissions and ambient impact for each regulated contaminant for the entire facility;
  - (e) Where required in 20.2.72.300 NMAC - 20.2.72.399 NMAC, the applicant's public notice shall contain the following statement: "Any comments submitted on this permit application should address the relevant requirements of state and federal air quality regulations and the Federal Clean Air Act and the state Air Quality Control Act. The comments shall be submitted to the department's air quality bureau in Santa Fe within thirty (30) days following the date of publication";
  - (f) Any other information required by the department; and

(2) Post the notice at the proposed or existing facility entrance on the property on which the facility is, or is proposed to be located prior to submittal of the application and remaining posted until the department takes final action on the permit.

C. The department shall:

(1) Make available for public inspection the permit application. Copies of any permit application, except those portions of which may be determined as confidential in accordance with 20.2.1 NMAC (General Provisions), will be supplied upon written request and payment of reasonable costs.

(2) Allow all interested persons thirty (30) days from the date of publication of the applicant's public notice in a newspaper of general circulation, to submit written comments or evidence on the application. [20.2.72.303 NMAC - Rn & A, 20 NMAC 2.72.III.303, 2/2/01]

#### **20.2.72.304 PERMIT DECISIONS:**

A. The department shall within thirty (30) days after its receipt of an application for a permit or permit revision review such application and determine whether it is administratively complete.

(1) If the application is deemed administratively complete, a certified letter to that effect shall be sent to the applicant.

(2) If the application is deemed administratively incomplete, a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete. Upon receipt of such information, the department shall promptly review such information and determine whether the application is administratively complete.

(3) If the application is deemed administratively complete but no permit is required, a certified letter shall be sent to the applicant informing the applicant of the determination.

B. The department shall either grant, grant subject to conditions, or deny the permit or permit revision as soon as practicable after the department deems the application administratively complete but not to exceed the times specified below:

(1) For applications qualifying under the Paragraphs 1 and 2 of Subsection D of 20.2.72.301 NMAC, within thirty (30) days;

(2) For all other applications, within sixty (60) days, or ninety (90) days if there is a hearing under 20.2.72.206 NMAC.

[20.2.72.304 NMAC - Rn & A, 20 NMAC 2.72.III.304, 2/2/01]

#### **20.2.72.305 GENERAL REQUIREMENTS:** All sources permitted pursuant to 20.2.72.300 NMAC - 20.2.72.399 NMAC shall operate in compliance with the following conditions:

A. A copy of the most recent permit issued by the department shall be made available to department personnel for inspection upon request. If the permit is not kept at the plant location, a notice at the plant site shall be located in a conspicuous place stating the facility name and ownership, air quality permit number, and the address and phone number of the department in Santa Fe;

B. The source shall operate in compliance with all applicable state and federal regulations, including federal new source performance standards incorporated by 20.2.77 NMAC and permit conditions;

C. The owner or operator of the source shall be required to conduct such performance tests as specified by the department to determine compliance with emission limitations or technology requirements as specified in an applicable regulation or permit condition. Specific schedules and requirements will be listed in 20.2.72.306 NMAC for each source class and/or in the permit. Performance test requirements may be reimposed on a source as necessary if inspections of the source or other information available to the department, indicate noncompliance, or the previous test showed noncompliance or was technically unsatisfactory. In such cases, the department may reimpose such tests as frequently as necessary until compliance is achieved and testing is performed in a manner technically satisfactory to the department. The owner or operator shall:

(1) Arrange a pretest meeting with the department at least two weeks prior to the anticipated test date for all tests;

(2) Notify the department at least thirty (30) days prior to the date and time of performance testing, and provide the department an opportunity to have an observer present during testing;

(3) Conduct performance tests in accordance with methods and procedures specified by the department. Whenever the requirements of 40 CFR 60 apply, test methods must be utilized as specified in those regulations;

(4) Submit a written report to the department of the results of the test within thirty (30) days from the test date; and

**D.** The owner or operator using a catalytic converter to meet the requirements of 20.2.72.300 NMAC - 20.2.72.399 NMAC shall satisfactorily test the reduction efficiency across the catalyst bed and report the results of the test to the department according to the permit conditions, within ninety (90) days following initial start-up and on a quarterly basis thereafter, unless an alternative testing schedule is specified by the department. The tests shall be conducted in accordance with the requirements of Subsection C of 20.2.72.305 NMAC and as required in the permit, except that the requirements of Paragraphs 1 and 2 of Subsection C of 20.2.72.305 NMAC shall be waived unless the department specifically requests a pretest meeting or notification of the next test date. [20.2.72.305 NMAC - Rn & A, 20 NMAC 2.72.III.305, 2/2/01]

**20.2.72.306 SOURCE CLASS REQUIREMENTS:**

**A.** In addition to the general conditions of 20.2.72.305 NMAC, each permitted source listed in 20.2.72.501 NMAC (Table 2) shall also comply with the applicable source class requirements below:

**(1)** Requirements for source class category 1 - reciprocating internal combustion (IC) engines:

**(a)** Gas fuel shall be produced natural gas, sweet natural gas, liquid petroleum gas, or fuel gas. No gas fuel shall contain more than 0.1 grain of total sulfur per dry standard cubic foot. Liquid fuel shall be first run refinery grade diesel or No. 2 fuel oil that is not a blend containing waste oils or solvents and contains less than 0.3% by weight sulfur;

**(b)** Within ninety (90) days after initial start-up of the source, the owner or operator shall conduct NOx and carbon monoxide (CO) performance tests on one or more engines (turbines) at the facility to ensure the facility is in compliance with 20.2.72.300 NMAC - 20.2.72.399 NMAC and permit requirements, including emission limits and any applicable pollution control device reduction efficiency requirements for NOx. The department shall specifically identify in the permit each engine or turbine subject to initial performance testing requirements. Tests shall be conducted in accordance with the requirements of Subsection C of 20.2.72.305 NMAC;

**(c)** Any engine which operates with a non-selective catalytic converter shall comply with the following requirements:

**i.** Any spark ignited gas-fired or any compression ignited dual fuel-fired engine shall be equipped and operated with an automatic air-fuel ratio (AFR) controller which maintains AFR in the range required to minimize NOx emissions, as recommended by the manufacturer; and

**ii.** The owner or operator shall make and maintain records to demonstrate that the manufacturer's or supplier's recommended maintenance is performed, including replacement of the oxygen sensor as necessary for oxygen-based AFR controllers, and cleaning, regeneration, and/or replacement of catalyst(s) as necessary to maintain at least the NOx reduction efficiencies across the catalyst bed that are specified in the permit.

**B.** Requirements for source class category 2 - turbines: The source must comply with Paragraphs 1 and 2 of Subsection A of 20.2.72.306 NMAC.

[20.2.72.306 NMAC - Rn & A, 20 NMAC 2.72.III.306, 2/2/01]

**20.2.72.307 - 20.2.72.399 [RESERVED]**

**20.2.72.400 PREAMBLE:** The board is concerned about the increasingly common presence of toxic air pollutants in the ambient air. The board believes that the best approach to regulating sources of toxic air pollutants over the long term is to set ambient standards for each pollutant of concern. However, because of financial constraints, the unavailability of sufficient information to establish such ambient standards, the time necessary to establish such standards for the contaminants identified as toxic air pollutants and because the board wishes to implement a toxic air pollutant permitting program as soon as possible, the board has adopted a source-by-source permit-based approach for the present. Under this permit-based approach, the board has given limited authority to the department to use factors of the OELs (occupational exposure limits) in evaluating permit applications. The board recognizes that the use of OELs, or factors of them, as ambient air standards would be inappropriate; therefore, the board has authorized their use for screening purposes only. This authorization is not intended to represent, and should not be interpreted as, a finding by the board that these factors are suitable for determining safe or unsafe ambient air concentrations. Various respected groups, such as the American Conference of Governmental Industrial Hygienists (ACGIH), may develop ambient air exposure guidelines in the future. Development of ambient air guidelines by groups such as this could be the basis for developing toxic air pollutant ambient air standards. The board also notes that the department currently is developing an emissions inventory of toxic air pollutants. An emissions inventory may identify toxic air pollutants that are of particular concern in New Mexico. The board believes that efforts like these may facilitate the development of toxic air pollutant ambient air

standards. For these reasons, the board requests the department to prepare and present a report to the board within five years of the effective date of the toxic air pollutant permitting requirements. The report shall review and evaluate the implementation of the toxic air pollutant permitting program, summarize the results of the toxic air pollutant inventory gathered pursuant to AQCR 752, and review scientific and technical progress made in the area of toxic air pollutants that might facilitate the development of toxic air pollutant ambient air standards. The board shall schedule a discussion of this report at a regular monthly meeting within three months of the publication of this report.

[20.2.72.400 NMAC - Rn & A, 20 NMAC 2.72.IV.400, 2/2/01]

**20.2.72.401 DEFINITIONS:** In addition to the definitions in 20.2.72.7 NMAC, the following definitions apply to 20.2.72.400 NMAC - 20.2.72.499 NMAC:

**A. "Best available control technology"** means an emission limitation based on the maximum degree of reduction in emissions of each contaminant subject to this part which the secretary (or the board), on a case-by-case basis, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts resulting from the use of such technology, determines is achievable for the source, through application of measures, processes, methods, systems, or techniques including, but not limited to, measures which:

(1) Reduce the volume of such pollutants through process changes, substitutions of materials, or other modifications, or

(2) Enclose systems or processes to eliminate emissions, or

(3) Collect, capture or treat such pollutants when released from a process, stack, storage, or fugitive emission point.

**B. "Existing source"** means any source, the construction or modification of which was commenced on or before December 31, 1988.

**C. "Fixed capital costs"** means that capital needed to provide all the depreciable components.

**D. "New source"** means any source, the construction of which is commenced after December 31, 1988. The term does not include any new source which is integrally related with and integrally connected to the process of an existing source. The term includes the reconstruction of an existing source.

**E. "Occupational Exposure Limit" or "OEL"** means the eight-hour time weighted average concentration specified for workroom air in "Threshold Limit Values and Biological Exposure Indices for 1986-1987" as adopted by the American Conference of Governmental Industrial Hygienists, or for compounds not assigned an OEL in that document, the minimum detection limit specified in the National Institute for Occupational Safety and Health "Manual of Analytical Methods", Third Edition.

**F. "Oil and gas production facilities"** means facilities for the exploration, development, production, treatment, separation, storage, transport, and sale of unrefined hydrocarbons, natural gas liquids, and CO<sub>2</sub> (e.g., major SIC group 13, oil and gas extraction, SIC industry group no. 4612, crude, petroleum, pipeline and SIC industry no. 4922, natural gas transmission). Natural gas processing plants and refineries are not included for purposes of this definition.

**G. "Reconstruction"** means a modification which results in the replacement of the components or addition of integrally related equipment to an existing source to such an extent that the fixed capital cost of the new components or equipment exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility.

**H. "Toxic air pollutant"** means any air contaminant in 20.2.72.502 NMAC.

[20.2.72.401 NMAC - Rn & A, 20 NMAC 2.72.IV.401, 2/2/01]

**20.2.72.402 APPLICABILITY:**

**A.** All the requirements of 20.2.72.400 NMAC - 20.2.72.499 NMAC for toxic air pollutants shall supplement other provisions of this Part (20.2.72 NMAC).

**B.** A permit must be obtained from the department by any person prior to the construction or modification of a new source which has total potential emissions of a toxic air pollutant into the ambient air that exceed the emission level in pounds per hour specified in 20.2.72.502 NMAC, and one or more of the following conditions are met:

(1) The toxic air pollutant is listed under applicable primary and secondary SIC codes appropriate for the source in the US EPA SIC/Pollutant Index (Appendix C of EPA-450/4-86-010); or

(2) The toxic air pollutant is known by the owner or operator to be emitted into the ambient air because of:

(a) Information from material safety data sheets and hazard labelling required under the OSHA Hazard Communications Standard 29 CFR 1910.1200, or

(b) Information from reports required under the Federal Emergency Planning and Community Right-to-Know Act of 1986, P.L. 99-499, Title III, Sections 300-330, or

(c) Other information reasonably available to the owner or operator based on the source's obligations under other regulatory programs; or

(3) The toxic air pollutant is identified by the department on or before the date the application is determined to be complete, as likely to be emitted from a source. The department shall also provide the owner or operator a reasonable basis to support the belief that the source will emit such toxic air pollutant.

C. The following classes of sources are exempt from the permitting requirements for toxic air pollutants:

(1) Gasoline Service Stations - SIC No. 5441

(2) Automotive Repair Shops - SIC No. 753

(3) Laundry, Cleaning, and Garment Services - SIC No. 721

(4) Domestic Woodstoves and Fireplaces

(5) Oil and Gas Production Facilities

(6) Agricultural Production - Crops, SIC No. 01

(7) Agricultural Production - Livestock, SIC No. 02

(8) Agricultural Services - SIC No. 07

(9) Containers, such as tanks, barrels, drums, cans and buckets, unless equipped with a vent that emits or may emit any toxic air pollutant, which are used in connection with the operation, maintenance or repair of a stationary source.

(10) Non-process fugitive emissions of toxic air pollutants from stationary sources, such as construction sites, unpaved roads, coal piles, tailings piles, waste piles, and fuel and ash handling operations.

D. An exemption or exclusion from the permitting requirements for toxic air pollutants does not relieve a source from any other requirements in this part (20.2.72 NMAC).  
[20.2.72.402 NMAC - Rn & A, 20 NMAC 2.72.IV.402, 2/2/01]

#### **20.2.72.403 CONTENTS OF APPLICATION:**

A. For the department to deem administratively complete a permit application for the emission of a toxic air pollutant, the application shall contain, in addition to the requirements of 20.2.72.203 NMAC, the following items:

(1) Identification of all toxic air pollutants that may be emitted in excess of the screening level (specified in pounds per hour) in 20.2.72.502 NMAC;

(2) Air quality modeling, in accordance with methods approved by the US EPA or the department, that estimates ambient concentrations that would be caused by the proposed emissions. The modeling for the toxic air pollutants will include available emissions supplied by the department from registration and permitting information from all registered or permitted sources in the area of the source being permitted.

B. If the modeling shows that the eight-hour average ambient concentration of the toxic air pollutant exceeds one-one hundredth of the OEL and the toxic air pollutant is not identified as a known or suspected human carcinogen in 20.2.72.502 NMAC, Table B, the permit application shall also include, as a requirement for administrative completeness, a health assessment for the toxic air pollutant under consideration. The assessment shall include consideration of the following:

(1) Source to potential receptor data and modeling;

(2) Relevant environmental pathway and effects data;

(3) Available health effects data such as:

(a) Functional diseases;

(b) Mutagenicity data as an index of genotoxic effects including heritable diseases;

(c) Reproductive effects data;

(d) Other diseases; and

(4) An integrated assessment of the human health effects for projected exposures from the applicant's facility. The assessment should use existing relevant data obtained from epidemiological studies, controlled human exposure studies, laboratory animal studies, and studies using tissues and cells.

C. If the toxic air pollutant is identified as a known or suspected human carcinogen in 20.2.72.502 NMAC and air quality modeling shows that the eight-hour average concentration of the toxic air pollutant exceeds one one-hundredth of the OEL or the minimum detection level in 20.2.72.502 NMAC, the permit application shall

include, as a requirement for administrative completeness, information necessary to demonstrate the source will install the best available control technology to control that pollutant.  
[20.2.72.403 NMAC - Rn & A, 20 NMAC 2.72.IV.403, 2/2/01]

**20.2.72.404 PUBLIC NOTICE AND PARTICIPATION:** In addition to the requirements of 20.2.72.206 NMAC:

**A.** The department shall meet with the applicant during the permit application process, prior to deeming the application administratively complete, to discuss the need for additional data and information not initially submitted by the applicant; and

**B.** The department shall promptly advise the applicant of all medical or other scientific evidence the department uses to evaluate the health effects of the toxic air pollutant emissions and make available to the applicant in a timely manner all information, including all previous decisions on the toxic air pollutant in question.

[20.2.72.404 NMAC - Rn & A, 20 NMAC 2.72.IV.404, 2/2/01]

**20.2.72.405 PERMIT DECISIONS:** In making its decisions, the department shall consider emissions after control.

**A.** Ambient concentrations not exceeding one one-hundredth of the OEL or the minimum detection level for compounds without an OEL: If the department finds that the eight-hour average concentration of the toxic air pollutant in the ambient air does not exceed one one-hundredth of the OEL, or for compounds without an OEL, the minimum detection levels as shown in 20.2.72.502 NMAC, the department shall grant the permit. The administrative screening level of one one-hundredth the OEL and the OEL shall not be a basis for denying a permit and shall not constitute an ambient air quality standard.

**B.** Ambient concentrations exceeding one one-hundredth of the OEL or the minimum detection level for compounds without an OEL for substances identified as known or suspected human carcinogens in 20.2.72.502 NMAC: If the toxic air pollutant being considered is identified as a known or suspected carcinogen in 20.2.72.502 NMAC, Table B, and the department finds the eight-hour concentration of the toxic air pollutant in the ambient air exceeds one one-hundredth of the OEL, or for compounds without an OEL, the minimum detection level, the department shall grant the permit if the applicant implements the best available control technology to control that pollutant.

**C.** Ambient concentrations exceeding one one-hundredth of the OEL for substances not identified as carcinogens in 20.2.72.502 NMAC:

**(1)** If the applicant has been required to prepare a health assessment under Subsection B of 20.2.72.403 NMAC, the department shall prepare a Summary Review Statement (SRS) which indicates the department's opinion of the adequacy of the applicant's health assessment. The SRS will include a summary recommendation on whether the issuance of a permit will or will not with reasonable probability injure human health.

**(2)** If the applicant does not agree with the recommendation contained in the SRS, the applicant's assessment and the SRS will be provided to the Air Toxics Scientific Advisory Committee (ATSAC). The ATSAC will be composed of five members appointed by the Secretary. They will include physicians, toxicologists, industrial hygienists, or others knowledgeable of the potential health and environmental effects of air pollution. The committee will include at least one member nominated by the applicant. The ATSAC will review the applicant's assessment and the SRS in a public meeting. The ATSAC shall provide a letter to the Secretary stating: (1) whether the submitted documents provide a scientifically adequate basis to determine whether the proposed source will with reasonable probability injure human health and (2), if the documents do provide an adequate basis, whether the proposed source will with reasonable probability injure human health. If the documents are scientifically inadequate, the ATSAC shall return them to the department and indicate their inadequacies.

**(3)** The department will make a final decision on the issuance of the permit after consideration of the following factors:

**(a)** The nature of the toxic air pollutant and the size, susceptibility, and proximity of the human population;

**(b)** The pathways of human exposure (e.g., ingestion, inhalation, skin absorption);

**(c)** The short term and long term health effects associated with the toxic air pollutant at levels of exposure commensurate with the anticipated exposure level;

**(d)** Existing epidemiological data on health effects associated with the anticipated levels of exposure;

(e) The character of the land use of the predicted area of impact (e.g., residential, industrial, and recreational); and

(f) The scientific adequacy of the health and environmental assessment submitted by the applicant and the recommendation of the ATSAC. The department shall not rely on the OEL or on the administrative screening level of one one-hundredth the OEL, and it shall not be bound by prior permit decisions when considering pending applications.

(4) The department shall deny any application for a permit evaluated under Subsection C of 20.2.72.405 NMAC if the source will emit a toxic air pollutant in such quantities and duration as may with reasonable probability injure human health.

**D.** The department shall document, in the administrative record, all processes, facts, and reasoning relied on in making the permit decision, including citations to the relevant technical data, publications, and expert opinions considered.

(1) The final deliberations of the ATSAC shall be open to the public. Except for requests by members of the ATSAC for input from the applicant or department, no other comments from the applicant, department, or audience shall be allowed during final deliberations.

(2) Prior to a final decision, the ATSAC members may communicate among themselves in order to facilitate the evaluation process. However, all ATSAC members shall be apprised of such communications.

(3) Prior to a final decision, the ATSAC members may also communicate with the department and applicant in order to clarify information or secure additional information concerning the applicant's health assessment or the department's SRS. The department, applicant, and all ATSAC members shall be apprised of such communication.

[20.2.72.405 NMAC - Rn & A, 20 NMAC 2.72.IV.405, 2/2/01]

#### **20.2.72.406 - 20.2.72.499 [RESERVED]**

#### **20.2.72.500 TABLE 1 - SIGNIFICANT AMBIENT CONCENTRATIONS:**

| <u>Pollutant</u>            |            | <u>Averaging Time</u> |
|-----------------------------|------------|-----------------------|
| Total Suspended Particulate | 1.0 ug/m3  | (Annual)              |
|                             | 5.0 ug/m3  | (24-hour)             |
| PM10                        | 1.0 ug/m3  | (Annual)              |
|                             | 5.0 ug/m3  | (24-hour)             |
| Sulfur Dioxide              | 1.0 ug/m3  | (Annual)              |
|                             | 5.0 ug/m3  | (24-hour)             |
|                             | 25.0 ug/m3 | (3-hour)              |
| Hydrogen Sulfide            | 1.0 ug/m3  | (1-hour)              |
|                             | 5.0 ug/m3  | (1/2-hour)            |
| Carbon Monoxide             | 0.5 mg/m3  | (8-hour)              |
|                             | 2.0 mg/m3  | (1-hour)              |
| Nitrogen Dioxide            | 1.0 ug/m3  | (Annual)              |
|                             | 5.0 ug/m3  | (24-hour)             |
| Non-Methane Hydrocarbons    | 5.0 ug/m3  | (3-hour)              |

[20.2.72.500 NMAC - Rn & A, 20 NMAC 2.72.V.500, 2/2/01]

#### **20.2.72.501 TABLE 2 - PERMIT STREAMLINING SOURCE CLASS CATEGORIES:**

1. Reciprocating internal combustion engines including portable or temporary engines

2. Turbines

[20.2.72.501 NMAC - Rn & A, 20 NMAC 2.72.V.501, 2/2/01]

**20.2.72.502 TOXIC AIR POLLUTANTS AND EMISSIONS:**

Table A- Noncarcinogens

| SUBSTANCE<br>mg/m <sup>3</sup> per hour        | OEL   | Emissions<br>in pounds |
|--|-------|------------------------|
| Acetic acid.....                               | 25.0  | 1.67                   |
| Acetic anhydride.....                          | 20.0  | 1.33                   |
| Acetylene dichloride, See 1,2-Dichloroethylene |       |                        |
| Acetylene tetrabromide.....                    | 15.0  | 1.00                   |
| Acetylsalicylic acid.....                      | 5.00  | 0.333                  |
| Aldrin.....                                    | 0.25  | 0.0167                 |
| Allyl alcohol.....                             | 5.00  | 0.333                  |
| Allyl glycidol ether.....                      | 22.0  | 1.47                   |
| Allyl propyl disulfide.....                    | 12.0  | 0.800                  |
| Aluminum                                       |       |                        |
| metal & oxide.....                             | 10.0  | 0.667                  |
| pyro powders.....                              | 5.00  | 0.333                  |
| welding fumes.....                             | 5.00  | 0.333                  |
| soluble salts.....                             | 2.00  | 0.133                  |
| alkyls not otherwise classified.....           | 2.00  | 0.133                  |
| 2-Aminoethanol, See Ethanolamine               |       |                        |
| 2-Aminopyridine.....                           | 2.00  | 0.133                  |
| 3-Amino 1, 2, 4-triazole, See Amitrole.....    |       |                        |
| Amitrole.....                                  | 0.200 | 0.0133                 |
| Ammonia.....                                   | 18.0  | 1.20                   |
| Ammonium chloride fume.....                    | 10.0  | 0.667                  |
| Ammonium sulfamate.....                        | 10.0  | 0.667                  |
| n-Amyl acetate.....                            | 530   | 35.3                   |
| Sec-Amyl acetate.....                          | 665   | 44.3                   |
| Aniline homologues.....                        | 10.0  | 0.667                  |
| Anisidine (p-isomer).....                      | 0.500 | 0.0333                 |
| Antimony as Sb.....                            | 0.500 | 0.0333                 |
| ANTU.....                                      | 0.300 | 0.0200                 |
| Asphalt (petroleum) fumes.....                 | 5.00  | 0.333                  |
| Atrazine.....                                  | 5.00  | 0.333                  |
| Azinphos-methyl.....                           | 0.200 | 0.0133                 |
| Barium, soluble compounds, as Ba.....          | 0.500 | 0.0333                 |
| Benomyl.....                                   | 10.00 | 0.667                  |
| Benzoyl peroxide.....                          | 5.00  | 0.333                  |
| Bismuth telluride.....                         | 10.0  | 0.667                  |
| Se-doped.....                                  | 5.00  | 0.333                  |
| Borates, tetra, sodium salts.....              |       |                        |
| anhydrous.....                                 | 1.00  | 0.0667                 |
| decahydrate.....                               | 5.00  | 0.333                  |
| pentahydrate.....                              | 1.00  | 0.0667                 |
| Boron oxide.....                               | 10.0  | 0.667                  |
| Boron tribromide.....                          | 10.0  | 0.667                  |

|  |        |         |
|--|--------|---------|
| Boron trifluoride.....                               | 3.00   | 0.200   |
| Bromacil.....  | 10.0   | 0.667   |
| Bromine.....   | 0.700  | 0.0467  |
| Bromine pentafluoride.....                           | 0.700  | 0.0467  |
| Bromochloromethane, see Chlorobromomethane.....      |        |         |
| Butanethiol, see Butyl mercaptan                     |        |         |
| 2-Butoxyethanol.....                                 | 120    | 8.00    |
| n-Butyl acetate.....                                 | 710    | 47.3    |
| sec-Butyl acetate.....                               | 950    | 63.3    |
| tert-Butyl acetate.....                              | 950    | 63.3    |
| Butyl acrylate.....                                  | 55.0   | 3.67    |
| n-Butyl alcohol.....                                 | 150    | 10.0    |
| Sec-Butyl alcohol.....                               | 305    | 20.3    |
| tert-Butyl alcohol.....                              | 300    | 20.0    |
| Butylamine.....                                      | 15.0   | 1.00    |
| tert-Butyl chromate, as CrO3.....                    | 0.100  | 0.00667 |
| n-Butyl glycidol ether (BGE).....                    | 135    | 9.00    |
| n-Butyl lactate.....                                 |        | 25.0    |
| Butyl mercaptan.....                                 | 1.50   | 0.10    |
| o-sec-Butylphenol.....                               | 30.0   | 2.00    |
| p-tert-Butyltoluene.....                             | 60     | 4.00    |
| Cadmium Dusts as Cd.....                             | 0.0500 | 0.00333 |
| fume as Cd.....                                      | 0.0500 | 0.00333 |
| Calcium hydroxide.....                               | 5.00   | 0.333   |
| Calcium oxide.....                                   | 2.00   | 0.133   |
| Camphor, synthetic.....                              | 12.0   | 0.800   |
| Captafol.....  | 0.100  | 0.00667 |
| Carbofuran.....                                      | 0.100  | 0.00667 |
| Carbon black.....                                    | 3.50   | 0.233   |
| Carbon tetrabromide.....                             | 1.40   | 0.0933  |
| Carbonyl fluoride.....                               | 5.00   | 0.333   |
| Cesium hydroxide.....                                | 2.00   | 0.133   |
| Chlorinated diphenyl oxide.....                      | 0.500  | 0.0333  |
| Chlorine dioxide.....                                | 0.300  | 0.0200  |
| Chlorine trifluoride.....                            | 0.400  | 0.0267  |
| Chloroacetaldehyde.....                              | 3.00   | 0.200   |
| a-Chloroacetophenone.....                            | 0.300  | 0.0200  |
| Chloroacetyl chloride.....                           | 0.200  | 0.0133  |
| O-Chlorobenzylidene malononitrile.....               | 0.400  | 0.0267  |
| Chlorobromomethane.....                              | 1050   | 70.0    |
| 2-Chloro-1,3-butadiene, see B-Chloroprene            |        |         |
| Chlorodiphenyl (42% chlorine).....                   | 1.00   | 0.0667  |
| Chlorodiphenyl (54% chlorine).....                   | 0.500  | 0.033   |
| 2-Chloroethanol, see Ethylene chlorohydrin           |        |         |
| 1-Chloro-1-nitropropane.....                         | 10.0   | 0.667   |
| Chloropicrin.....                                    | 0.700  | 0.0467  |
| o-Chlorostyrene.....                                 | 285    | 19.0    |
| o-Chlorotoluene.....                                 | 250    | 16.7    |
| 2-Chloro-6-(trichloromethyl)pyridine, see Nitrapyrin |        |         |
| Chlorpyrifos.....                                    | 0.200  | 0.0133  |
| Chromium metal.....                                  | 0.500  | 0.0333  |
| Clopidol.....  | 10.0   | 0.667   |
| Cobalt as Co.....                                    | 0.100  | 0.00667 |
| metal, dust & fume.....                              | 0.100  | 0.00667 |
| Copper   |        |         |
| fume.....  | 0.200  | 0.0133  |

|  |       |         |
|--|-------|---------|
| dusts & mists, as Cu.....  | 1.00  | 0.0667  |
| Cotton dust, raw.....  | 0.200 | 0.0133  |
| Crotonaldehyde.....  | 6.00  | 0.400   |
| Cruformate.....  | 5.00  | 0.333   |
| Cyanamide.....   | 2.00  | 0.133   |
| Cyanogen.....  | 20.0  | 1.33    |
| Cyanogen chloride.....   | 0.600 | 0.0400  |
| Cyclohexane.....   | 1050  | 70.0    |
| Cyclohexanol.....  | 200   | 13.3    |
| Cyclohexanone.....   | 100   | 6.67    |
| Cyclohexene.....   | 1015  | 67.7    |
| Cyclohexylamine.....   | 40.0  | 2.67    |
| Cyclonite.....   | 1.50  | 0.100   |
| Cyclopentadiene.....   | 200   | 13.3    |
| Cyhexatin.....   | 5.00  | 0.333   |
| DDT (Dichlorodiphenyl trichloroethane).....                      | 1.00  | 0.0667  |
| Decaborane.....  | 0.300 | 0.0200  |
| Demeton.....   | 0.100 | 0.00667 |
| Diacetone alcohol.....   | 240   | 16.0    |
| 1,2-Diaminoethane See Ethylenediamine                            |       |         |
| Diazinon.....  | 0.100 | 0.00667 |
| Diborane.....  | 0.100 | 0.00667 |
| 2-N-Dibutylaminoethanol.....                                     | 14.0  | 0.933   |
| Dibutyl phosphate.....   | 5.00  | 0.333   |
| Dichloroacetylene.....   | 0.400 | 0.0267  |
| o-Dichlorobenzene.....   | 300   | 20.0    |
| 1,3-Dichloro-5,5-dimethyl hydantoin.....                         | 0.200 | 0.0133  |
| 1,2-Dichloroethylene.....  | 790   | 52.7    |
| Dichlorofluoromethane.....                                       | 40.0  | 2.67    |
| 1,1-Dichloro-1-nitroethane.....                                  | 10.0  | 0.667   |
| 2,2-Dichloropropionic acid.....                                  | 6.00  | 0.400   |
| Dicrotophos.....   | 0.250 | 0.0167  |
| Dicyclopentadiene.....   | 30.0  | 2.00    |
| Dicyclopentadienyl iron.....                                     | 10.0  | 0.667   |
| Dieldrin.....  | 0.250 | 0.167   |
| Diethylamine.....  | 30.0  | 2.00    |
| 2-Diethylaminoethanol.....                                       | 50.0  | 3.33    |
| Diethylene triamine.....   | 4.00  | 0.267   |
| Diethyl ether, see Ethyl ether                                   |       |         |
| Diethyl Ketone.....  | 705   | 47.0    |
| Diethyl phthalate.....   | 5.00  | 0.333   |
| Difluorodibromomethane.....                                      | 860   | 57.3    |
| Diglycidal ether (DGE) 0.500 0.0333                              |       |         |
| Diisobutyl ketone.....   | 250   | 16.7    |
| Diisopropylamine.....  | 20.0  | 1.33    |
| Dimethyl acetamide.....  | 35.0  | 2.33    |
| Dimethylamine.....   | 18.0  | 1.20    |
| Dimethylaminobenzene, see Xylidene                               |       |         |
| Dimethyl-1,2-dibromo-2-dichloroethyl phosphate, see Naled        |       |         |
| 2,6-Dimethyl-4-heptanone, see Diisobutyl ketone                  |       |         |
| Dinitolmide.....   | 5.00  | 0.333   |
| Dinitrobenzene (all isomers).....                                | 1.00  | 0.0667  |
| 3,5-Dinitro-o-toluamide, see Dinitolmide                         |       |         |
| Dioxathion.....  | 0.200 | 0.0133  |
| Diphenylamine.....   | 10.0  | 0.667   |
| Diphenylmethane diisocyanate, see Methylene bisphenyl isocyanate |       |         |

|                                       |       |         |
|---------------------------------------|-------|---------|
| Dipropylene glycol methyl ether.....  | 600   | 40.0    |
| Dipropyl ketone.....                  | 235   | 15.7    |
| Diquat.....                           | 0.500 | 0.0333  |
| Disulfiram.....                       | 2.00  | 0.133   |
| Disulfoton.....                       | 0.100 | 0.00667 |
| 2,6-Ditert. butyl-p-cresol.....       | 10.0  | 0.667   |
| Diuron.....                           | 10.0  | 0.667   |
| Divinyl benzene.....                  | 50.0  | 3.33    |
| Endosulfan.....                       | 0.100 | 0.00667 |
| Endrin.....                           | 0.100 | 0.00667 |
| Enzymes, see Subtilisins              |       |         |
| EPN.....                              | 0.500 | 0.0333  |
| 2,3-Epoxy-1-propanol, see Glycidol    |       |         |
| Ethanethiol, see Ethyl mercaptan      |       |         |
| Ethanolamine.....                     | 8.0   | 0.533   |
| Ethion.....                           | 0.400 | 0.0267  |
| Ethyl acetate.....                    | 1400  | 93.3    |
| Ethylamine.....                       | 18.0  | 1.20    |
| Ethyl amyl ketone.....                | 130   | 8.67    |
| Ethyl bromide.....                    | 890   | 59.3    |
| Ethyl butyl ketone.....               | 230   | 15.3    |
| Ethylene chlorohydrin.....            | 3.00  | 0.200   |
| Ethylenediamine.....                  | 25.0  | 1.67    |
| Ethyl ether.....                      | 1200  | 80.0    |
| Ethy formate.....                     | 300   | 20.0    |
| Ethylidene norbornene.....            | 25.0  | 1.67    |
| Ethyl mercaptan.....                  | 1.00  | 0.0667  |
| N-Ethylmorpholine.....                | 23.0  | 1.53    |
| Ethyl silicate.....                   | 85.0  | 5.67    |
| Fenamiphos.....                       | 0.100 | 0.00667 |
| Fensulfothion.....                    | 0.100 | 0.00667 |
| Fenthion.....                         | 0.200 | 0.0133  |
| Ferbam.....                           | 10.0  | 0.667   |
| Ferrovandium dust.....                | 1.00  | 0.0667  |
| Fluorides, as F.....                  | 2.50  | 0.167   |
| Fluorine.....                         | 2.00  | 0.133   |
| Fonofos.....                          | 0.100 | 0.00667 |
| Formamide.....                        | 30.0  | 2.00    |
| Formic acid.....                      | 9.00  | 0.600   |
| Furfural.....                         | 8.00  | 0.533   |
| Furfuryl alcohol.....                 | 40.0  | 2.67    |
| Gasoline.....                         | 900   | 60.0    |
| Germanium tetrahydride.....           | 0.600 | 0.0400  |
| Glutaraldehyde.....                   | 0.700 | 0.0467  |
| Glycidol.....                         | 75.0  | 5.00    |
| Hafnium.....                          | 0.500 | 0.033   |
| 2-Heptanone, see Methyl n-amyl ketone |       |         |
| 3-Heptanone, see Ethyl butyl ketone   |       |         |
| Hexachloronaphthalene.....            | 0.200 | 0.0133  |
| Hexfluoroacetone.....                 | 0.700 | 0.0467  |
| 2-Hexanone, see Methyl n-butyl ketone |       |         |
| sec-Hexyl acetate.....                | 300   | 20.0    |
| Hexylene glycol.....                  | 125   | 8.33    |
| Hydrogenated terphenyls.....          | 5.00  | 0.333   |
| Hydrogen bromide.....                 | 10.0  | 0.667   |
| Hydrogen peroxide.....                | 1.50  | 0.100   |

|  |        |         |
|--|--------|---------|
| 4-Hydroxy-4-Methyl-2-pentanone, see Diacetone alcohol        |        |         |
| 2-Hydroxypropyl acrylate.....                                | 3.00   | 0.200   |
| Indene.....  | 45.0   | 3.00    |
| Indium & compounds as In.....                                | 0.100  | 0.00667 |
| Iodine.....  | 1.00   | 0.0667  |
| Iodoform.....  | 10.0   | 0.667   |
| Iron oxide fume (Fe <sub>2</sub> O <sub>3</sub> ) as Fe..... | 5.00   | 0.333   |
| Iron pentacarbonyl as Fe.....                                | 0.800  | 0.0533  |
| Iron salts, soluble, as Fe.....                              | 1.00   | 0.0667  |
| Isoamyl acetate.....   | 525    | 35.0    |
| Isoamyl alcohol.....   | 360    | 24.0    |
| Isobutyl acetate.....  | 700    | 46.7    |
| Isobutyl alcohol.....  | 150    | 10.0    |
| Isooctyl alcohol.....  | 270    | 18.0    |
| Isophorone diisocyanate.....                                 | 0.0900 | 0.00600 |
| Isopropoxyethanol.....                                       | 105    | 7.00    |
| Isopropyl acetate.....                                       | 950    | 63.3    |
| Isopropyl alcohol.....                                       | 980    | 65.3    |
| Isopropylamine.....  | 12.0   | 0.800   |
| N-Isopropylaniline.....                                      | 10.0   | 0.667   |
| Isopropyl ether.....   | 1050   | 70.0    |
| Isopropyl glycidyl ether (IGE).....                          | 240    | 16.0    |
| Ketene.....  | 0.900  | 0.0600  |
| Lithium hydride.....   | 0.0250 | 0.0167  |
| Magnesium oxide fume.....                                    | 10.0   | 0.667   |
| Malathion.....   | 10.0   | 0.667   |
| Manganese as Mn  |        |         |
| dust.....  | 5.00   | 0.333   |
| fume.....  | 1.00   | 0.0667  |
| Mesityl oxide.....   | 60     | 4.00    |
| Methacrylic acid.....  | 70.0   | 4.67    |
| Methanethiol, see Methyl mercaptan                           |        |         |
| Methomyl.....  | 2.50   | 0.167   |
| 4-Methoxyphenol.....   | 5.00   | 0.333   |
| Methyl acetate.....  | 610    | 40.7    |
| Methyl acrylate.....   | 35.0   | 2.33    |
| Methylacrylonitrile.....                                     | 3.00   | 0.200   |
| Methylamine.....   | 12.0   | 0.800   |
| Methyl amyl alcohol, see Methyl isobutyl carbinol            |        |         |
| Methyl n-amyl ketone.....                                    | 235    | 15.7    |
| N-Methyl aniline.....  | 2.00   | 0.133   |
| Methyl n-butyl ketone.....                                   | 20.0   | 1.33    |
| Methyl 2-cyanoacrylate.....                                  | 8.00   | 0.533   |
| Methylcyclohexanol.....                                      | 235    | 15.7    |
| o-Methylcyclohexanone.....                                   | 230    | 15.3    |
| Methyl demeton.....  | 0.500  | 0.033   |
| Methylene bisphenyl isocyanate (MDI).....                    | 0.200  | 0.0133  |
| Methylene bis(4-cyclohexylisocyanate).....                   | 0.110  | 0.00733 |
| Methyl ethyl ketone peroxide.....                            | 1.50   | 0.100   |
| Methyl formate.....  | 250    | 16.7    |
| 5-Methyl-3-heptanone, see Ethyl amyl ketone.....             |        |         |
| Methyl isoamyl ketone.....                                   | 240    | 16.0    |
| Methyl isobutyl carbinol.....                                | 100    | 6.67    |
| Methyl isopropyl ketone.....                                 | 705    | 47.0    |
| Methyl mercaptan.....  | 1.00   | 0.0667  |
| Methyl parathion.....  | 0.200  | 0.0133  |

|   |         |          |
|---|---------|----------|
| Methyl propyl ketone.....                   | 700     | 46.7     |
| Methyl silicate.....                        | 6.00    | 0.400    |
| a-Methyl styrene.....                       | 240     | 16.0     |
| Metribuzin.....                             | 5.00    | 0.333    |
| Mevinphos.....                              | 0.100   | 0.00667  |
| Molybdenum as Mo                            |         |          |
| soluble compounds.....                      | 5.00    | 0.333    |
| insoluble compounds.....                    | 10.0    | 0.667    |
| Monocrotophos.....                          | 0.250   | 0.0167   |
| Morpholine.....                             | 70.0    | 4.67     |
| Naled.....                                  | 3.00    | 0.2      |
| Nickel Metal.....                           | 1.00    | 0.0667   |
| Nicotine.....                               | 0.500   | 0.0333   |
| Nitrapyrin.....                             | 10.0    | 0.667    |
| Nitric acid.....                            | 5.00    | 0.333    |
| p-Nitroaniline.....                         | 3.00    | 0.200    |
| p-Nitrochlorobenzene.....                   | 3.00    | 0.200    |
| Nitroethane.....                            | 310     | 20.7     |
| Nitrogen trifluoride.....                   | 300     | 2.00     |
| Nitroglycerin.....                          | 0.500   | 0.00333  |
| Nitromethane.....                           | 250     | 16.7     |
| 1-Nitropropane.....                         | 90.0    | 6.00     |
| Nitrotoluene.....                           | 11.0    | 0.733    |
| Nitrotrichloromethane, see Chloropicrin     |         |          |
| Nonane.....                                 | 1050    | 70.0     |
| Octachloronaphthalene.....                  | 0.100   | 0.0067   |
| Octane.....                                 | 1450    | 96.7     |
| Oil mist, mineral.....                      | 5.00    | 0.333    |
| Osmium tetroxide as Os.....                 | 0.00200 | 0.000133 |
| Oxalic acid.....                            | 1.00    | 0.0667   |
| Oxygen difluoride.....                      | 0.100   | 0.00667  |
| Paraffin wax fume.....                      | 2.00    | 0.133    |
| Paraquat respirable sizes.....              | 0.100   | 0.00667  |
| Pentaborane.....                            | 0.0100  | 0.000667 |
| Pentachloronaphthalene.....                 | 0.500   | 0.0333   |
| 2-Pentanone, see Methyl propyl ketone.....  |         |          |
| Perchloromethyl mercaptan.....              | 0.800   | 0.0533   |
| Perchloryl fluoride.....                    | 14.0    | 0.933    |
| Phenacyl chloride, see a-Chloroacetophenone |         |          |
| Phenothiazine.....                          | 5.00    | 0.333    |
| Phenyl ether, vapor.....                    | 7.00    | 0.467    |
| Phenyl glycidyl ether (PGE).....            | 6.00    | 0.400    |
| Phenyl mercaptan.....                       | 2.00    | 0.133    |
| Phenylphosphine.....                        | 0.250   | 0.0167   |
| Phorate.....                                | 0.0500  | 0.00333  |
| Phosdrin, see Mevinphos                     |         |          |
| Phosphoric acid.....                        | 1.00    | 0.0667   |
| Phosphorus oxychloride.....                 | 0.600   | 0.0400   |
| Phosphorus pentachloride.....               | 1.00    | 0.0667   |
| Phosphorus pentasulfide.....                | 1.00    | 0.0667   |
| Phosphorus trichloride.....                 | 1.50    | 0.100    |
| m-Phthalodinitrile.....                     | 5.00    | 0.333    |
| Picloram.....                               | 10.0    | 0.667    |
| Picric acid.....                            | 0.100   | 0.00667  |
| Pindone.....                                | 0.100   | 0.00667  |
| Piperazine dihydrochloride.....             | 5.00    | 0.333    |

|  |          |          |
|--|----------|----------|
| 2-Pivalyl-1,3-indandione, see Pindone                |          |          |
| Platinum   |          |          |
| metal.....   | 1.00     | 0.0667   |
| soluble salts, as Pt.....                            | 0.00200  | 0.000133 |
| Potassium hydroxide.....                             | 2.00     | 0.133    |
| Propargyl alcohol.....                               | 2.00     | 0.133    |
| Propionic acid.....                                  | 30.0     | 2.00     |
| n-Propyl acetate.....                                | 840      | 56.0     |
| Propyl alcohol.....                                  | 500      | 33.3     |
| Propylene glycol dinitrate.....                      | 0.300    | 0.200    |
| n-Propyl nitrate.....                                | 105      | 7.00     |
| Pyrethrum.....                                       | 5.00     | 0.333    |
| Pyridine.....  | 15.0     | 1.00     |
| RDX, see Cyclonite                                   |          |          |
| Resorcinol.....                                      | 45.0     | 3.00     |
| Rhodium  |          |          |
| metal.....   | 1.00     | 0.0667   |
| insoluble compounds, as Rh.....                      | 1.00     | 0.0667   |
| soluble compounds, as Rh.....                        | 0.0100   | 0.000667 |
| Ronnel.....  | 10.0     | 0.667    |
| Rotenone (commercial).....                           | 5.00     | 0.333    |
| Selenium as Se.....                                  | 0.200    | 0.0133   |
| Sesone.....  | 10.0     | 0.667    |
| Silane, see silicon tetrahydride                     |          |          |
| Silicon tetrahydride.....                            | 7.00     | 0.467    |
| Silver   |          |          |
| metal.....   | 0.100    | 0.00667  |
| soluble compounds, as Ag.....                        | 0.0100   | 0.000667 |
| Sodium azide.....                                    | 0.300    | 0.0200   |
| Sodium bisulfite.....                                | 5.00     | 0.333    |
| Sodium 2,4-dichloro-phenoxyethyl sulfate, see Sesone |          |          |
| Sodium fluoroacetate.....                            | 0.0500   | 0.00333  |
| Sodium hydroxide.....                                | 2.00     | 0.133    |
| Sodium metabisulfite.....                            | 5.00     | 0.333    |
| Stibine.....   | 0.500    | 0.0333   |
| Stoddard solvent.....                                | 525      | 35.0     |
| Strychnine.....                                      | 0.150    | 0.0100   |
| Subtilisins (Proteolytic enzymes as 100%             |          |          |
| pure crystalline enzyme).....                        | 6.00E-05 | 4.00E-06 |
| Sulfotep.....  | 0.200    | 0.0133   |
| Sulfuric acid.....                                   | 1.00     | 0.0667   |
| Sulfur monochloride.....                             | 6.00     | 0.400    |
| Sulfur pentafluoride.....                            | 0.100    | 0.00667  |
| Sulfur tetrafluoride.....                            | 0.400    | 0.0267   |
| Sulfuryl fluoride.....                               | 20.0     | 1.33     |
| Sulprofos.....                                       | 1.00     | 0.0667   |
| Systox, see Demeton                                  |          |          |
| 2,4,5-T.....   | 10.0     | 0.667    |
| Tantalum.....  | 5.00     | 0.333    |
| TEDP, see Sulfotep.....                              |          |          |
| Tellurium & Compounds as Te.....                     | 0.100    | 0.00667  |
| Tellurium hexafluoride as Te.....                    | 0.200    | 0.0133   |
| Temephos.....  | 10.0     | 0.667    |
| TEPP.....  | 0.0500   | 0.00333  |
| Terphenyls.....                                      | 5.00     | 0.333    |
| Tetrachloronaphthalene.....                          | 2.00     | 0.133    |

|  |        |         |
|--|--------|---------|
| Tetramethyl succinoitrile.....   | 3.00   | 0.200   |
| Tetranitromethane.....   | 8.00   | 0.533   |
| Tetrasodium pyrophosphate.....   | 5.00   | 0.333   |
| Tetryl.....  | 1.50   | 0.100   |
| Thallium, soluble compounds, as Tl.....                                | 0.100  | 0.00667 |
| 4,4-Thiobis (6 tert, butyl-m-cresol).....                              | 10.0   | 0.667   |
| Thioglycolic acid.....   | 4.00   | 0.267   |
| Thionyl chloride.....  | 5.00   | 0.333   |
| Thiram.....  | 5.00   | 0.333   |
| Tin  |        |         |
| metal.....   | 2.00   | 0.133   |
| oxide & inorganic compounds, except SnH <sub>4</sub> , as Sn.....      | 2.00   | 0.133   |
| organic compounds as Sn.....   | 0.100  | 0.00667 |
| m-Toluidine.....   | 9.00   | 0.600   |
| Tributyl phosphate.....  | 2.50   | 0.167   |
| Trichloroacetic acid.....  | 7.00   | 0.467   |
| Trichloronaphthalene.....  | 5.00   | 0.333   |
| Trichloronitromethane, See Chloropicrin                                |        |         |
| 1,2,3-Trichloropropane.....  | 300    | 20.0    |
| Tricyclohexyltin hydroxide, see Cyhexatin                              |        |         |
| Trimellitic anhydride.....   | 0.0400 | 0.00267 |
| Trimethylamine.....  | 24.0   | 1.60    |
| Trimethyl benzene.....   | 125    | 8.33    |
| Trimethyl phosphite.....   | 10.0   | 0.667   |
| 2,4,6-Trinitrophenol, see Picric acid                                  |        |         |
| 2,4,6-Trinitrophenylmethylnitramine, see Tetryl                        |        |         |
| 2,4,6-Trinitrotoluene (TNT).....                                       | 0.500  | 0.0333  |
| Triorthoresyl phosphate.....   | 0.100  | 0.00667 |
| Triphenyl amine.....   | 5.00   | 0.333   |
| Triphenyl phosphate.....   | 3.00   | 0.200   |
| Tungsten as W  |        |         |
| insoluble compounds.....   | 5.00   | 0.333   |
| soluble compounds.....   | 1.0    | 37.3    |
| Turpentine.....  | 560    | 37.3    |
| Uranium (natural) soluble & insoluble compounds as U.....              | 0.200  | 0.0133  |
| n-Valeraldehyde.....   | 175    | 11.7    |
| Vanadium, as V <sub>2</sub> O <sub>5</sub> respirable dust & fume..... | 0.0500 | 0.00333 |
| Vinyl toluene.....   | 240    | 16.0    |
| VM & P Naphtha.....  | 1350   | 90.0    |
| Warfarin.....  | 0.100  | 0.00667 |
| Wood dust (certain hard woods as beech & oak).....                     | 1.00   | 0.0667  |
| soft wood.....   | 5.00   | 0.333   |
| m-Xylene a,a-diamine.....  | 0.100  | 0.00667 |
| Xylidine.....  | 10.0   | 0.667   |
| Yttrium.....   | 1.00   | 0.0667  |
| Zinc chloride fume.....  | 1.00   | 0.0667  |
| Zinc oxide fume.....   | 5.00   | 0.333   |
| Zirconium compounds as Zr.....   | 5.00   | 0.333   |

Table B - Known or Suspected Carcinogens

| Substance                                    | OEL               | Emissions          |
|--|-------------------|--------------------|
| in pounds per hour                           | mg/m <sup>3</sup> | in pounds per hour |
| Coal tar volatiles, as benzene solubles..... | 0.200             | 0.0133             |
| B-Naphthylamine.....                         | 0.00300*          | 2.00E-04           |
| N-Phenyl-beta-naphthylamine.....             | 5.00**            | 0.333              |
| Phenylhydrazine.....                         | 20.0              | 1.33               |
| o-Tolidine.....                              | 11.0**            | 0.733              |
| p-Toluidine.....                             | 9.00              | 0.600              |
| Vinyl cyclohexene dioxide.....               | 60.0              | 4.00               |

FOOTNOTES

The emissions in pounds per hour in Section 502 were derived using the formula listed below:

$$\text{emission level (lbs/hr)} = \text{OEL (mg/m}^3\text{)} / 15$$

\* = Compound for which an OEL is not listed by the ACGIH. Value derived by using the minimum detectable level listed in the NIOSH "Manual of Analytical Methods", Third Edition.

\*\* = Compound for which an OEL is not listed by the ACGIH and for which there is no chemical specific analytical method listed in the NIOSH "Manual of Analytical Methods", Third Edition. A minimum detectable level (MDL) was derived by using the MDL of a similar compound listed in the NIOSH analytical methods or by assigning the average MDL for a class of compounds such as "halogenated hydrocarbons". In some cases the lowest MDL of the whole class was used.

Table C - Stack Height Release Correction Factor

Sources may choose to use a correction factor for the release height of emissions for the purpose of determining whether a permit is necessary for the emission of a toxic air pollutant. To apply the correction go to the table below and find the minimum height of release for the toxic air pollutant and select the correction factor (CF) which corresponds to that figure. If the height of release is between two values, the lower number shall be selected; or in the event of multiple releases of the same substance from different release heights, the source may choose to use a weighted average CF, weighted by the emission rate at each. The emissions in pounds per hour is then multiplied by the CF (see below). If the emissions from your source exceed the resulting number, you must apply for a permit from the department. Remember, this must be done for each toxic air pollutant.

CF x Emissions in Pounds per Hour

where: E - emission rate (pounds per hour)

OEL - occupational exposure limit (mg per cubic meter)

CF is a correction factor, shown in the table below, which accounts for release height.

| Release Height in Meters | Correction Factor (CF)* |
|--------------------------|-------------------------|
| Less than 3              | 1                       |
| 10                       | 5                       |
| 20                       | 19                      |
| 30                       | 41                      |
| 40                       | 71                      |
| 50                       | 108                     |
| 60                       | 152                     |
| 70                       | 202                     |
| 80                       | 255                     |
| 90                       | 317                     |
| 100                      | 378                     |
| 110                      | 451                     |
| 120                      | 533                     |
| 130                      | 617                     |
| 140                      | 690                     |
| 150                      | 781                     |
| 160                      | 837                     |
| 170                      | 902                     |
| 180                      | 1002                    |
| 190                      | 1066                    |
| 200                      | 1161                    |

[20.2.72.502 NMAC - Rn & A, 20 NMAC 2.72.V.502, 2/2/01]

**HISTORY OF 20.2.72 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.

AQCR 702, Permits, 07/31/72.

EIB/AQCR 702, Permits, 08/18/87.

EIB/AQCR 702, Permits, 10/19/88.

EIB/AQCR 702, Permits, 05/29/90.

EIB/AQCR 702, Permits, 04/12/94.

EIB/AQCR 702, Permits, 05/13/94.

**History of Repealed Material:** [RESERVED]

**Other History:**

EIB/AQCR 702, Permits, filed 05/13/94, was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.72, Construction Permits, effective 11/30/95.

20 NMAC 2.72, Construction Permits, filed 10/30/95, was **renumbered, reformatted and replaced** by 20.2.72 NMAC, Construction Permits, effective 02/02/01.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 75 CONSTRUCTION PERMIT FEES**

**20.2.75.1 ISSUING AGENCY:** Environmental Improvement Board.  
[20.2.75.1 NMAC - Rp 20 NMAC 2.75.100, 03/02/01]

**20.2.75.2 SCOPE:**

**A.** All persons who apply for a permit to construct or modify a source or revise a permit, or who request a technical review of an existing permit under 20.2.72 NMAC. Part 70 (20.2.70 NMAC) operating permit emission fees are covered under 20.2.71 NMAC.

**B.** The requirements concerning the payment of an annual fee shall apply to sources with an air quality construction permit for which the application to either revise, modify or for a new permit was received following the effective date of this regulation.

[20.2.75.2 NMAC - Rp 20 NMAC 2.75.101, 03/02/01]

**20.2.75.3 STATUTORY AUTHORITY:** Environmental Improvement Act, Paragraph 4 of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, including specifically, Paragraph 6 of Subsection B of Section 74-2-7 NMSA 1978.

[20.2.75.3 NMAC - Rp 20 NMAC 2.75.102, 03/02/01]

**20.2.75.4 DURATION:** Permanent.

[20.2.75.4 NMAC - Rp 20 NMAC 2.75.103, 03/02/01]

**20.2.75.5 EFFECTIVE DATE:** March 2, 2001 except where a later date is cited at the end of a section.

**A.** For applications received prior to the effective date of this regulation, the provisions in 20.2.75 NMAC, as effective as of the date of the receipt of the application, remain effective, and fees shall be so determined.

**B.** For applications received following the effective date of this regulation, fees shall be based on the current regulation.

[20.2.75.5 NMAC - Rp 20 NMAC 2.75.104, 03/02/01; A, 12/01/03]

[The latest effective date of any section in this Part is 12/01/03.]

**20.2.75.6 OBJECTIVE:** The objective of this Part is to establish a schedule of fees for the construction permit program, including construction permits, permit revisions, and technical reviews of existing permits.

[20.2.75.6 NMAC - Rp 20 NMAC 2.75.105, 03/02/01]

**20.2.75.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC (definitions) or 20.2.72 NMAC (construction permits), as used in this Part:

**A. "air toxics review"** means the required review of a permit application for the potential emission of an air toxic regulated by 20.2.72.400 NMAC - 20.2.72.499 NMAC. As used in this Part, a level I air toxics review consists of modeling to determine whether one one-hundredth (1/100) of the occupational exposure limit, as defined in 20.2.72.401 NMAC, is met; a level II air toxics review consists of either a health assessment or best available control technology (BACT) determination, whichever is required by 20.2.72.400 NMAC - 20.2.72.499 NMAC.

**B. "applicable regulations"**, for the purpose of assessing permit fee points, mean those regulations that are applicable to the source and not the review to determine whether the regulation is applicable. Applicable regulations do not include 20.2.1 NMAC (general provisions), 20.2.2 NMAC (definitions), 20.2.3 NMAC (ambient air quality standards), 20.2.5 NMAC (source surveillance), 20.2.7 NMAC (excess emissions during malfunctions, startup, shutdown, or scheduled maintenance), 20.2.8 NMAC (emissions leaving New Mexico), 20.2.60 NMAC (open burning), 20.2.70 NMAC (operating permits), 20.2.71 NMAC (operating permit emission fees), 20.2.72 NMAC (construction permits), 20.2.73 NMAC (notice of intent and emission inventory requirements), 20.2.74 NMAC (prevention of significant deterioration (PSD)), 20.2.75 NMAC (construction permit fees), 20.2.77 NMAC (new source performance standards), 20.2.78 NMAC (emission standards for hazardous air pollutants), 20.2.79 NMAC (permits - nonattainment areas), 20.2.80 NMAC (stack heights), and 20.2.82 NMAC (maximum achievable control technology standards for source categories of hazardous air pollutants). All other Title 20, Chapter 2 NMAC Parts and all new source performance standards (excluding Subpart A) and national emission standards for

hazardous air pollutants/maximum achievable control technology (NESHAP/MACT) (excluding 40 CFR Part 61 Subparts A and M and 40 CFR Part 63 Subpart A) regulations that are applicable to the source shall be counted and shall result in additional points for permit fees purposes, in accordance with the permit fee schedule in this Part.

**C. "fee unit"** means any equipment or process which generates, creates, or is the source of a regulated air contaminant, which is listed or identified in a construction permit application or application to revise a permit and which requires review and evaluation against state and federal regulations and standards. This definition does not include sources which are exempt under 20.2.72.202 NMAC or sources for which no applicable requirements are identified in the permit. In the case of a permit modification, revision or technical review of an existing permit, the requirements of Subsection A of 20.2.75.11 NMAC apply only to the equipment or process involved in such modification, revision or review.

**D. "fugitive emissions fee unit"** means sources of fugitive emissions for which applicable requirements are identified in the permit. A maximum of one fugitive emissions fee unit shall be applied to any given application.

**E. "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. For the purposes of this regulation, revision does not include administrative revision as used in 20.2.72 NMAC.

**F. "small business"** means, for the purposes of this Part, a company that employs no more than ten (10) employees at any time during the calendar year. Employees include part-time, temporary, or limited service workers. For new sources, the responsible company official shall certify that the source does not expect to employ any more than ten (10) employees in the first year of operations. In addition, "small business" does not include (1) any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and (2) any major source for hazardous air pollutants under 20.2.70 NMAC.

**G. "technical review of an existing permit"** means the department's technical review of new information submitted by a permittee as required by an existing permit condition and in conjunction with proposed changes at the source that do not involve any changes to the existing permit. The review must be necessary to demonstrate that all applicable state and federal regulations and standards will continue to be met and that the existing permit will continue to be valid. This does not include required periodic reports.  
[20.2.75.7 NMAC - Rp 20 NMAC 2.75.107, 03-02-01; A, 12/01/03]

**20.2.75.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:** This Part amends and supersedes Air Quality Control Regulation 700 - Filing and Permit Fees, filed November 20, 1989, as amended (AQCR 700).

**A.** All references to AQCR 700 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 700 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 700.

[20.2.75.8 NMAC - Rp 20 NMAC 2.75.106, 03/02/01]

**20.2.75.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Santa Fe, NM.

[20.2.75.9 NMAC - Rp 20 NMAC 2.75.108, 03/02/01]

**20.2.75.10 FILING FEE:**

**A.** A filing fee of five hundred dollars (\$500) shall be submitted with each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit. The filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC.

**B.** For applications submitted under 20.2.72.221 NMAC, accelerated review, an accelerated review filing fee of one thousand dollars (\$1,000) shall be submitted in lieu of any other filing fees under this section. One-half of the accelerated review filing fee shall be applied to the cost of the accelerated review submitted by the qualified outside firm. In the event that:

**(1)** There are no qualified outside firms on contract with the department, or if all of the qualified outside firms have a conflict of interest, the entire filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC;

(2) No qualified outside firm submits a proposal for the accelerated permit review, one-half of this filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC;

(3) One or more qualified outside firms submit a proposal but all such proposals are rejected by the applicant, the accelerated review filing fee shall be forfeited and retained by the department; or

(4) The applicant withdraws the application for any reason, the accelerated review filing fee shall be forfeited and retained by the department.

[20.2.75.10 NMAC - Rp 20 NMAC 2.75.109, 03/02/01; A, 12/01/03]

**20.2.75.11 PERMIT FEE:**

**A.** The permit fee shall be based on the following point-based fee schedule.

| <b>ACTION</b>   | <b># OF POINTS</b>   |
|---|----------------------|
| <b>1. CONSTRUCTION PERMIT/TECHNICAL REVIEW OF EXISTING PERMIT</b> |                      |
| Technical Complexity  |                      |
| 1-5 Fee Units   | 5                    |
| 6-15 Fee Units  | 1 point per fee unit |
| >15 Fee Units   | 15                   |
| Fugitive Emissions Fee Unit                                       | 5                    |
| Portable Source Relocation  | 1                    |
| (Paragraph 3 of Subsection D of 20.2.72.202 NMAC)                 |                      |
| Non-Attainment Area (20.2.79 NMAC)                                | 75                   |
| Modeling Review   | 15                   |
| Air Toxics Review (20.2.72.400 NMAC - 20.2.72.499 NMAC)           |                      |
| Level I   | 8                    |
| Level II  |                      |
| Best Available Control Technology (BACT) Analysis                 | 60                   |
| Health Assessment   | 100                  |
| Applicable Regulations  |                      |
| 20.2.X NMAC (per each)  | 3                    |
| NSPS (per each)   | 5                    |
| NESHAP/MACT (per each)  | 5                    |
| Case-by-Case MACT (20.2.83 NMAC)                                  | 100                  |
| PSD netting only (no additional PSD analysis is required)         | 20                   |
| PSD review (including netting) (20.2.74 NMAC)                     | 75                   |
| <b>2. OTHER PERMITTING ACTIONS</b>                                |                      |
| General Permits (20.2.72.220 NMAC)                                | 10                   |
| Streamline (each site) (20.2.72.300 NMAC- 20.2.72.399 NMAC)       | 10                   |

**B.** The fee shall be the sum of all of the points that are applicable to the permitting action, multiplied by three hundred fifteen dollars (\$315).

**C.** For sources that satisfy the definition of "small business" as defined in Subsection F of 20.2.75.7 NMAC, the permit fee determined by Subsections B and E of 20.2.75.11 NMAC shall be divided by two.

**D.** For applications processed under 20.2.72.221 NMAC, Accelerated Review, the permit fee determined by Subsection B of 20.2.75.11 NMAC shall be divided by two, and shall be in addition to the cost of the accelerated review bid, as described in 20.2.72.221 NMAC.

**E.** Sources that have been issued a construction permit under 20.2.72 NMAC shall be assessed an annual fee of one thousand five hundred dollars (\$1,500). This fee shall not apply to sources which are assessed an annual fee in accordance with 20.2.71 NMAC.

**F.** Beginning in 2005, 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. The amount of the change in the fee shall be determined by multiplying the existing fee by the change in the consumer price index and rounding the result to the nearest dollar. The consumer price index for any year is the average of the consumer price index for all-urban consumers published by the United States department of labor, as of the close of the twelve-month period ending on August 31 of that year.

[20.2.75.11 NMAC - Rp 20 NMAC 2.75.110, 03/02/01; A, 12/01/03]

#### **20.2.75.12 PAYMENT OF FEES:**

**A.** The Department shall refuse to accept any permit application without payment of the filing fee at the time the application is received by the Department. The filing fee and the accelerated review filing fee are non-refundable.

**B.** An invoice for permit fees shall be mailed to the applicant at the time the Department finds the application administratively complete pursuant to 20.2.72.203 NMAC. The Department shall deny any permit application or request for permit revision if the required permit fee has not been paid within thirty (30) days of invoicing, unless the Department has granted an extension. If, upon completion of the permit review, the Department determines additional fees are due, the Department shall mail an invoice to the applicant along with the signed permit. The permittee shall pay this invoice within thirty (30) days of invoicing, unless the Department has granted an extension. In the event excess fees were paid, the Department shall issue a refund for excess fees and mail the refund to the applicant.

**C.** An invoice for a request for technical review of an existing permit shall accompany the Department's response. The applicant or permittee shall pay for the review within thirty (30) days of invoicing.

**D.** Except for the refund of excess fees paid, all fees paid under this Part shall be non-refundable.

**E.** All fees paid pursuant to this Part shall be remitted in the form of a corporate or certified check or money order made payable to the Environment Department at the address specified in the notice. Upon receipt of the check, it shall be deposited in the "state air quality permit fund" established by NMSA 1978, 74-2-15 (1992).

**F.** Permittees shall pay annual fees within thirty (30) days of receipt of an invoice for annual fees for a permitted facility.

**G.** All fees shall be paid in U.S. dollars.

[20.2.75.12 NMAC - Rp 20 NMAC 2.75.111, 03/02/01]

**20.2.75.13 PERIODIC REVIEW:** The Department shall prepare a review of the construction permit fees and construction permit program costs annually. The review shall include information on the budgets, expenditures, fund balance, and related projections. The review shall be presented to the Board within six months following the end of the fiscal year.

[20.2.75.13 NMAC - N, 03/02/01]

#### **HISTORY OF 20.2.75 NMAC:**

##### **Pre-NMAC History:**

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

AQCR 700, Air Quality Control Regulation 700 - Filing and Permits Fees, filed 11/20/89.

##### **History of Repealed Material:**

20 NMAC 2.75, Air Quality Statewide - Construction Permit Fees, filed 10/30/95, repealed effective 03/02/01.

## ARTICLE 2

### Air Pollution

#### 74-2-1. Short title.

Chapter 74, Article 2 NMSA 1978 may be cited as the "Air Quality Control Act".

**History:** 1953 Comp., § 12-14-1, enacted by Laws 1967, ch. 277, § 1; 1972, ch. 51, § 1; 1989, ch. 278, § 1.

#### 74-2-2. Definitions.

As used in the Air Quality Control Act:

A. "air contaminant" means a substance, including any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof;

B. "air pollution" means the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property;

C. "department" means the department of environment;

D. "director" means the administrative head of a local agency;

E. "emission limitation" or "emission standard" means a requirement established by the environmental improvement board or the local board, the department, the local authority or the local agency or pursuant to the federal act that limits the quantity, rate or concentration, or combination thereof, of emissions of air contaminants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction;

F. "federal act" means the federal Clean Air Act, its subsequent amendments and successor provisions;

G. "federal standard of performance" means a standard of performance, emission limitation or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

H. "hazardous air pollutant" means an air contaminant that has been listed as a hazardous air pollutant pursuant to the federal act;

I. "local agency" means the administrative agency established by a local authority pursuant to Paragraph (2) of Subsection A of Section 74-2-4 NMSA 1978;

J. "local authority" means any of the following political subdivisions of the state that have, by following the procedure set forth in Subsection A of Section 74-2-4 NMSA 1978, assumed jurisdiction for local administration and enforcement of the Air Quality Control Act:

(1) a county that was a class A county as of January 1, 1980; or

(2) a municipality with a population greater than one hundred thousand located within a county that was a class A county as of January 1, 1980;

K. "local board" means a municipal, county or joint air quality control board created by a local authority;

L. "mandatory class I area" means any of the following areas in this state that were in existence on August 7, 1977:

(1) national wilderness areas that exceed five thousand acres in size; and

(2) national parks that exceed six thousand acres in size;

M. "modification" means a physical change in, or change in the method of operation of, a source that results in an increase in the potential emission rate of a regulated air contaminant emitted by the source or that results in the emission of a regulated air contaminant not previously emitted, but does not include:

(1) a change in ownership of the source;

(2) routine maintenance, repair or replacement;

(3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the environmental improvement board or the local board or pursuant to the federal act; or

(4) unless previously limited by enforceable permit conditions:

(a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) an increase in the hours of operation; or

(c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material or if use of an alternate

fuel or raw material is caused by a natural gas curtailment or emergency allocation or an other lack of supply of natural gas;

N. "nonattainment area" means for an air contaminant an area that is designated "nonattainment" with respect to that contaminant within the meaning of Section 107(d) of the federal act;

O. "person" includes an individual, partnership, corporation, association, the state or political subdivision of the state and any agency, department or instrumentality of the United States and any of their officers, agents or employees;

P. "potential emission rate" means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, 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 physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department or the local agency pursuant to the Air Quality Control Act or the federal act;

Q. "regulated air contaminant" means an air contaminant, the emission or ambient concentration of which is regulated pursuant to the Air Quality Control Act or the federal act;

R. "secretary" means the secretary of environment;

S. "significant deterioration" means an increase in the ambient concentrations of an air contaminant above the levels allowed by the federal act or federal regulations for that air contaminant in the area within which the increase occurs;

T. "source" means a structure, building, equipment, facility, installation or operation that emits or may emit an air contaminant;

U. "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction;

V. "state implementation plan" means a plan submitted by New Mexico to the federal environmental protection agency pursuant to 42 U.S.C. Section 7410; and

W. "toxic air pollutant" means an air contaminant, except a hazardous air pollutant, classified by the environmental improvement board or the local board as a toxic air pollutant.

**History:** 1953 Comp., § 12-14-2, enacted by Laws 1967, ch. 277, § 2; 1970, ch. 58, § 1; 1971, ch. 277, § 20; 1972, ch. 51, § 2; 1973, ch. 322, § 1; 1977, ch. 253, § 36; 1979, ch.

393, § 1; 1981, ch. 373, § 1; 1983, ch. 34, § 1; 1989, ch. 278, § 2; 1992, ch. 20, § 1; 2001, ch. 133, § 1.

### **74-2-3. Environmental improvement board.**

A. In taking any action under the Air Quality Control Act, a majority of the environmental improvement board constitutes a quorum, but any action, order or decision of the environmental improvement board requires the concurrence of three members present at a meeting.

B. Except as provided in the Air Quality Control Act, the jurisdiction of the environmental improvement board extends to all areas of the state except within the boundaries of a local authority.

**History:** 1953 Comp., § 12-14-3, enacted by Laws 1967, ch. 277, § 3; 1970, ch. 58, § 2; 1971, ch. 277, § 21; 1973, ch. 322, § 2; 1992, ch. 20, § 2.

### **74-2-4. Local authority.**

A. A county or municipality meeting the qualifications set forth in Paragraph (1) or (2) of Subsection J of Section 74-2-2 NMSA 1978 may assume jurisdiction as a local authority by adopting an ordinance providing for the local administration and enforcement of the Air Quality Control Act. The ordinance shall:

(1) create a local board to perform, within the boundaries of the local authority, those functions delegated to the environmental improvement board under the Air Quality Control Act, except any functions reserved exclusively for the environmental improvement board;

(2) create a local agency to administer and enforce the provisions of the Air Quality Control Act within the boundaries of the local authority that shall, within the boundaries of the local authority, perform all of the duties required of the department and exert all of the powers granted to the department, except for those duties and powers reserved exclusively for the department; and

(3) provide for the appointment of a director who shall perform for the local authority the same duties as required of the secretary under the Air Quality Control Act, except the duties and powers reserved exclusively for the secretary.

B. At least a majority of the members of a local board shall be individuals who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the local board on issues related to the federal act or the Air Quality Control Act.

C. Prior to adopting any ordinance regulating air pollution, public hearings and consultations shall be held as directed by the local authority adopting the

ordinance. The provisions of any ordinance shall be consistent with the substantive provisions of the Air Quality Control Act and shall provide for standards and regulations not lower than those required by regulations adopted by the environmental improvement board.

D. Notwithstanding the provisions of Subsection A of this section, the environmental improvement board and the secretary shall retain jurisdiction and control for the administration and enforcement of the Air Quality Control Act as determined in that act with respect to any act or failure to act, governmental or proprietary, of any local authority that causes or contributes to air pollution, including proceeding against a local authority as provided in Section [74-2-12](#) NMSA 1978. "Failure to act", as used in this section, includes failure to act against any person violating the applicable ordinance or regulation adopted pursuant thereto.

E. Any local authority that is located within a transportation-related pollutant nonattainment area or maintenance area may provide for a vehicle emission inspection and maintenance program for vehicles registered at an address within the jurisdiction of the local authority and under twenty-six thousand pounds gross vehicle weight rating powered by an internal combustion engine, which program shall be at least as stringent as that required under the federal act or under federal air quality standards. Any two or more local authorities may adopt identical rules and regulations necessary to implement the vehicle emission inspection and maintenance program, including examining the alternatives of public or private operation of the program.

F. Any local authority that has implemented a vehicle emission inspection and maintenance program may extend the enforcement of that program by entering into joint powers agreements with any municipality or county within the designated airshed or with the department.

G. No tax shall be imposed to fund any vehicle emission inspection and maintenance program until the local authority has submitted the question of imposition of a tax to the registered voters of the local authority and those registered voters have approved the imposition of the tax.

H. A local authority having a vehicle emission inspection and maintenance program shall conduct the vehicle emission inspection and maintenance program through a decentralized privately owned and operated system unless air quality emissions result in automatic implementation of another type of program under the terms of a contingency plan required and approved by the United States environmental protection agency. The local authority shall set the emission inspection fee by ordinance.

I. A local authority having a vehicle emission inspection and maintenance program is authorized to adopt rules, regulations and guidelines governing the establishment of private vehicle emission inspection and maintenance stations. No private vehicle emission inspection and maintenance station shall test vehicles unless the station possesses a valid permit issued by the local agency. Permit fees shall be determined

by ordinance of the local authority and shall not exceed two hundred dollars (\$200) per year per station. Additionally, a local authority may charge a permit fee of up to thirty-five dollars (\$35.00) per year for each vehicle emissions mechanic and for each vehicle emissions inspector. The imposition of permit fees does not require a vote of the registered voters of the local authority.

J. Before a local authority adopts an ordinance that is more stringent than the federal act or applicable federal regulations, or that applies to sources not subject to regulation pursuant to the federal act or regulations, the local authority shall make a determination, based on substantial evidence and after notice and public hearing, that the proposed ordinance will be more protective of public health and the environment.

**History:** 1953 Comp., § 12-14-4, enacted by Laws 1967, ch. 277, § 4; 1970, ch. 58, § 3; 1971, ch. 277, § 22; 1973, ch. 322, § 3; 1981, ch. 373, § 2; 1985, ch. 95, § 1; 1988, ch. 128, § 1; 1989, ch. 278, § 3; 1990, ch. 31, § 2; 1992, ch. 20, § 3; 1994, ch. 131, § 1; 1995, ch. 128, § 1; 2021, ch. 133, § 1.

#### **74-2-5. Duties and powers; environmental improvement board; local board.**

A. The environmental improvement board or the local board shall prevent or abate air pollution.

B. The environmental improvement board or the local board shall:

(1) adopt, promulgate, publish, amend and repeal rules and standards consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution, including:

(a) rules prescribing air standards within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction or any part thereof; and

(b) standards of performance that limit carbon dioxide emissions to no more than one thousand one hundred pounds per megawatt-hour on and after January 1, 2023 for a new or existing source that is an electric generating facility with an original installed capacity exceeding three hundred megawatts and that uses coal as a fuel source; and

(2) adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction or any part thereof.

C. If the environmental improvement board or the local board determines that emissions from sources within the environmental improvement board's jurisdiction or the

local board's jurisdiction cause or contribute to ozone concentrations in excess of ninety-five percent of the primary national ambient air quality standard for ozone promulgated pursuant to the federal act, the environmental improvement board or the local board shall adopt a plan, including rules, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the standard. Rules adopted pursuant to this subsection shall be limited to sources of emissions within the area of the state where the ozone concentrations exceed ninety-five percent of the primary national ambient air quality standard.

D. Rules adopted by the environmental improvement board or the local board may:

(1) include rules to protect visibility in mandatory class I areas to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas; provided that the rules shall be at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas;

(2) prescribe standards of performance for sources and emission standards for hazardous air pollutants that shall be at least as stringent as required by federal standards of performance;

(3) include rules governing emissions from solid waste incinerators that shall be at least as stringent as any applicable federal emission limitations;

(4) include rules requiring the installation of control technology for mercury emissions that removes the greater of what is achievable with best available control technology or ninety percent of the mercury from the input fuel for all coal-fired power plants, except for coal-fired power plants constructed and generating electric power and energy before July 1, 2007;

(5) require notice to the department or the local agency of the intent to introduce or permit the introduction of an air contaminant into the air within the geographical area of the environmental improvement board's jurisdiction or the local board's jurisdiction; and

(6) require any person emitting any air contaminant to:

(a) install, use and maintain emission monitoring devices;

(b) sample emissions in accordance with methods and at locations and intervals as may be prescribed by the environmental improvement board or the local board;

(c) establish and maintain records of the nature and amount of emissions;

(d) submit reports regarding the nature and amounts of emissions and the performance of emission control devices; and

(e) provide any other reasonable information relating to the emission of air contaminants.

E. Any rule adopted pursuant to this section shall be at least as stringent as federal law, if any, relating to control of motor vehicle emissions.

F. In making its rules, the environmental improvement board or the local board shall give weight it deems appropriate to all facts and circumstances, including:

(1) character and degree of injury to or interference with health, welfare, visibility and property;

(2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and

(3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

G. Before the environmental improvement board or local board adopts a rule that is more stringent than the federal act or federal regulations, or that applies to sources not subject to regulation pursuant to the federal act or regulations, the environmental improvement board or local board shall make a determination, based on substantial evidence and after notice and public hearing, that the proposed rule will be more protective of public health and the environment.

**History:** 1953 Comp., § 12-14-5, enacted by Laws 1967, ch. 277, § 5; 1970, ch. 58, § 4; 1972, ch. 51, § 3; 1979, ch. 393, § 2; 1981, ch. 373, § 3; 1983, ch. 34, § 2; 1987, ch. 293, § 1; 1990, ch. 99, § 66; 1992, ch. 20, § 4; 2007, ch. 143, § 1; 2019, ch. 65, § 36; 2021, ch. 133, § 2.

## **74-2-8. Variances.**

A. The environmental improvement board or the local board may grant an individual variance from the limitations prescribed under the Air Quality Control Act, any regulation of the environmental improvement board or the local board or any permit condition

imposed by the department or the local agency whenever it is found, upon presentation of adequate proof:

(1) that compliance with any part of that act, any regulation of the environmental improvement board or the local board or any permit condition will:

(a) result in an arbitrary and unreasonable taking of property; or

(b) impose an undue economic burden upon any lawful business, occupation or activity; and

(2) that the granting of the variance will not:

(a) result in a condition injurious to health or safety; or

(b) cause or contribute to an air contaminant level in excess of any primary national ambient air quality standards.

B. No variance shall be granted pursuant to this section until the environmental improvement board or the local board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges and the general public.

C. Any variance or renewal thereof shall be granted within the requirements of Subsection A of this section and for time periods and under conditions consistent with the reasons therefor and within the following limitations:

(1) if the variance is granted on the ground that there are no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available;

(2) if the variance is granted on the ground that compliance with the particular requirement from which variance is sought will necessitate the taking of measures that because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the environmental improvement board or the local board, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this paragraph shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the timetable; or

(3) if the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Paragraphs (1) and (2) of this subsection, it shall be for not more than one year.

D. Any person seeking a variance shall do so by filing a petition for variance with the secretary or the director charged with implementation of the Air Quality Control Act at the site where the variance will apply. The secretary or the director shall promptly investigate the petition and make recommendation to his respective board as to the disposition of the petition.

E. Upon receiving the recommendation of the secretary or the director on the variance, the environmental improvement board or the local board shall:

(1) if the secretary or the director favors a variance, hold a public hearing prior to the granting of any variance; and

(2) if the secretary or the director is opposed to the granting of the variance, hold a hearing only upon the request of the petitioner.

F. In the hearing, the burden of proof shall be upon the petitioner.

**History:** 1953 Comp., § 12-14-8, enacted by Laws 1967, ch. 277, § 8; 1970, ch. 58, § 6; 1973, ch. 322, § 5; 1979, ch. 393, § 4; 1992, ch. 20, § 9.

## **74-2-9. Judicial review; administrative actions.**

A. Any person adversely affected by an administrative action taken by the environmental improvement board, the local board, the secretary or the director may appeal to the court of appeals. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days following the date of the action.

B. For appeals of regulations, the date of the action shall be the date of the filing of the regulation by the environmental improvement board or the local board pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978].

C. Upon appeal, the court of appeals shall set aside the action only if found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

D. After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted:

(1) by the environmental improvement board, the local board, the department or the local agency, whichever took the action being appealed; or

(2) by the court of appeals if the environmental improvement board, the local board, the department or the local agency denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

**History:** 1953 Comp., § 12-14-8.1, enacted by Laws 1971, ch. 57, § 1; 1979, ch. 393, § 5; 1992, ch. 20, § 10.

## **74-2-10. Emergency powers of the secretary and the director.**

A. Notwithstanding any other provision of the Air Quality Control Act, if the secretary or the director determines that a source or combination of sources presents an imminent and substantial endangerment to the public health or welfare or to the environment, he may bring suit in the district court for the county in which the source is located to restrain immediately any person causing or contributing to the alleged air pollution to stop the emission of air contaminants causing or contributing to such air pollution or to take such other action as may be necessary.

B. If it is not practicable to assure prompt protection of the public health or welfare or the environment by commencement of a civil action, the secretary or the director may issue orders necessary to protect the public health or welfare or the environment. An order shall be effective for a period of not more than twenty-four hours, unless the secretary or the director brings a civil action before the expiration of twenty-four hours. If the secretary or the director brings an action within that time, the order shall be effective thereafter for forty-eight hours or for such longer period as may be authorized by the court pending litigation.

**History:** 1978 Comp., § 74-2-10, enacted by Laws 1992, ch. 20, § 11.

## **74-2-11. Confidential information.**

A. Any records, reports or information obtained under the Air Quality Control Act by the department, the environmental improvement board, the local board or the local agency shall be available to the public, except that upon a satisfactory showing to the secretary, the director, the environmental improvement board, the local board or the local agency, as applicable, by any person that records, reports or information, or particular parts thereof, except emission data, to which the department, the local agency, the environmental improvement board or the local board has access under the Air Quality Control Act, if made public, would divulge confidential business records or methods or processes entitled to protection as trade secrets of that person, the secretary, the director, the environmental improvement board or the local board, as applicable, shall consider such record, report or information, or particular portion thereof, confidential in accordance with the provisions of Section 14-2-1 NMSA 1978 and 18 U.S.C. Section 1905, except that such record, report or other information may be disclosed:

(1) to other officers, employees or authorized representatives of the department, the local agency, the environmental improvement board or the local board concerned with carrying out the Air Quality Control Act;

(2) to officers, employees or authorized representatives of the United States environmental protection agency concerned with carrying out the federal act; or

(3) when relevant, in any proceeding under the Air Quality Control Act or the federal act.

B. The environmental improvement board or the local board shall adopt regulations to implement this section, including regulations specifying those business records entitled to treatment as confidential records.

**History:** 1978 Comp., § 74-2-11, enacted by Laws 1992, ch. 20, § 12.

### **74-2-11.1. Limitations on regulations.**

The Air Quality Control Act does not:

A. authorize the environmental improvement board or the local board to make any regulation with respect to any condition or quality of the outdoor atmosphere if the condition or air quality level and its effect are confined entirely within the boundaries of the industrial or manufacturing property within which the air contaminants are or may be emitted and public access is restricted within such boundaries;

B. grant to the environmental improvement board or the local board any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of air quality; or

C. supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

**History:** 1978 Comp., § 74-2-11.1, enacted by Laws 1979, ch. 393, § 7; 1992, ch. 20, § 13.

### **74-2-12. Enforcement; compliance orders; field citations.**

A. When, on the basis of any information, the secretary or the director determines that a person has violated or is violating a requirement or prohibition of the Air Quality Control Act, a regulation promulgated pursuant to that act or a condition of a permit issued under that act, the secretary or the director may:

(1) issue a compliance order within one year after the violation becomes known by the department or the local agency stating with reasonable specificity the

nature of the violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for a past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. An order issued pursuant to Subsection A of this section may include a suspension or revocation of the permit or portion thereof issued by the secretary or the director that is alleged to have been violated. Any penalty assessed in the order shall not exceed fifteen thousand dollars (\$15,000) per day of noncompliance for each violation.

C. An order issued pursuant to Subsection A of this section shall become final unless, no later than thirty days after the order is served, the person named therein submits a written request to the secretary or the director for a public hearing. Upon such request, the secretary or the director shall promptly conduct a public hearing. The secretary or the director shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward the hearing officer's recommendation based thereon to the secretary or the director, who shall make the final decision.

D. The environmental improvement board or the local board may implement a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed one thousand dollars (\$1,000) per day of violation may be issued by officers or employees of the department or the local agency as designated by the secretary or the director.

E. A person to whom a field citation is issued pursuant to Subsection D of this section may, within a reasonable time as prescribed by regulation by the environmental improvement board or the local board, elect to pay the penalty assessment or to request a hearing by the issuing agency on the field citation. If a request for hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final.

F. Payment of a civil penalty required by a field citation issued pursuant to Subsection D of this section shall not be a defense to further enforcement by the department or the local agency to correct a violation or to assess the maximum statutory penalty pursuant to other authorities in the Air Quality Control Act if the violation continues.

G. In determining the amount of a penalty to be assessed pursuant to this section, the secretary, the director or the person issuing a field citation shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and other relevant factors.

H. In connection with a proceeding under this section, the secretary or the director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

I. If a person fails to comply with an administrative order, the secretary or director may initiate an action to suspend or revoke the permit, or portion thereof, alleged to have been violated or to commence a civil action in district court to enforce the order, or to suspend or revoke the permit, or both.

J. If a person fails to pay an assessment of a civil penalty, the secretary or director may commence a civil action in district court to collect the civil penalties assessed in the order.

K. Penalties collected pursuant to this section shall be deposited in the:

(1) municipal or county general fund, as applicable, if the administrative order or field citation was directed to a source located within a local authority; or

(2) state general fund if the administrative order or field citation was directed to any other source.

**History:** 1978 Comp., § 74-2-12, enacted by Laws 1992, ch. 20, § 14; 2001, ch. 133, § 3; 2006, ch. 61, § 1.

#### **74-2-12.1. Civil penalty; representation of department or local authority; limitation of actions.**

A. A person who violates a provision of the Air Quality Control Act or a regulation, permit condition or emergency order adopted or issued pursuant to that act may be assessed a civil penalty not to exceed fifteen thousand dollars (\$15,000) for each day during any portion of which a violation occurs.

B. A person who fails to comply with an administrative order issued pursuant to Section 74-2-12 NMSA 1978 may be assessed, pursuant to a court order, a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of noncompliance with the order.

C. In an action to enforce the provisions of the Air Quality Control Act or an ordinance, regulation, permit condition or order, adopted, imposed or issued pursuant to that act:

(1) the department shall be represented by the attorney general;

(2) a local authority that is a municipality shall be represented by the attorney of the municipality; and

(3) a local authority that is a county shall be represented by the district attorney within whose judicial district the county lies.

D. No action for civil penalty shall be commenced more than five years from the date the violation was known by the department or the local agency.

**History:** 1978 Comp., § 74-2-12.1, enacted by Laws 1992, ch. 20, § 15; 2001, ch. 133, § 4; 2006, ch. 61, § 2.

### **74-2-13. Inspection.**

The secretary or the director or an authorized representative of either, upon presentation of his credentials:

A. shall have a right of entry to, upon or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the environmental improvement board, the local board or by any permit condition are located; and

B. may at reasonable times:

(1) have access to and copy any records required to be established and maintained by regulations of the environmental improvement board or the local board or any permit condition;

(2) inspect any monitoring equipment and method required by regulations of the environmental improvement board, the local board or by any permit condition; and

(3) sample any emissions that are required to be sampled pursuant to regulation of the environmental improvement board, the local board or any permit condition.

**History:** 1953 Comp., § 12-14-11.1, enacted by Laws 1972, ch. 51, § 8; 1992, ch. 20, § 16.

### **74-2-14. Criminal penalties.**

A. Notwithstanding any other provision of the Air Quality Control Act, a local authority may prescribe penalties for violations of an ordinance:

(1) regulating open-fire burning or residential incineration; or

(2) prohibiting the removal of motor vehicle emission control devices installed as required by law and requiring the maintenance of such devices in operating condition.

B. Notwithstanding any other provision of the Air Quality Control Act, it is a petty misdemeanor to violate any regulations of the environmental improvement board:

- (1) regulating open-fire burning or residential incineration; or
- (2) prohibiting the removal of motor vehicle emission control devices installed as required by law or requiring the maintenance of such devices in operating condition.

C. Except as provided in Subsection D of this section, any person who knowingly commits any of the following acts is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978:

- (1) violation of any regulation relating to commercial or industrial incineration;
- (2) violation of any regulation adopting any federal standard of performance;
- (3) violation of any regulation relating to control of hazardous air pollutants; or
- (4) violation of any regulation relating to control of toxic air pollutants.

D. At any source required to have an operating permit pursuant to Section 502 of the federal act, any person who knowingly commits any violation of any applicable standard, regulation or requirement under the Air Quality Control Act or the federal act, any term or condition of an operating permit or any emission fee or filing requirement in any operating permit regulation of the environmental improvement board or the local board is guilty of a fourth degree felony and shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per day per violation or by imprisonment of not more than eighteen months, or both.

E. Any person who knowingly commits any violation of a regulation of the environmental improvement board or the local board not listed in Subsection B, C or D of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

F. Any person who knowingly:

- (1) makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under the Air Quality Control Act, any permit issued pursuant to the Air Quality Control Act or any regulation adopted pursuant to that Act; or
- (2) falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under the Air Quality Control Act, any permit issued pursuant to the Air Quality Control Act or any ordinance or regulation adopted pursuant to that act is guilty of a misdemeanor and shall, upon conviction, be

punished by a fine of not more than ten thousand dollars (\$10,000) per day per violation or by imprisonment for not more than twelve months, or by both.

G. Any person who knowingly releases into the ambient air any hazardous air pollutant or extremely hazardous substance listed pursuant to Section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 1102(a)(2) that is not listed in Section 112 of the federal act and who knows at the time of the release that he creates a substantial danger of death or serious bodily injury to another person is guilty of a second degree felony and, upon conviction, shall be sentenced to a term of imprisonment not to exceed nine years or a fine not to exceed one hundred thousand dollars (\$100,000), or both. Any person, other than an individual or a governmental entity, who commits such violation is guilty of a second degree felony and shall be fined in an amount not to exceed two hundred fifty thousand dollars (\$250,000). If a conviction of any person under this subsection is for a second or subsequent violation, the maximum punishment shall be doubled with respect to both the fine and the imprisonment.

**History:** 1953 Comp., § 12-14-12, enacted by Laws 1967, ch. 277, § 11; 1970, ch. 58, § 9; 1971, ch. 277, § 25; 1973, ch. 322, § 7; 1990, ch. 99, § 69; 1992, ch. 20, § 17; 1995, ch. 162, § 1.

## **74-2-15. State air quality permit fund.**

A. There is created in the state treasury the "state air quality permit fund" to be administered by the department. All fees collected by the department pursuant to Section 74-2-7 NMSA 1978 shall be deposited in the state air quality permit fund.

B. Money in the state air quality permit fund is appropriated to the department 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.

**History:** 1978 Comp., § 74-2-15, enacted by Laws 1992, ch. 20, § 18.

## **74-2-15.1. Repealed.**

## **74-2-16. Municipal or county air quality permit fund.**

A. A local authority shall create within the municipal or county treasury a fund to be known as the "\_\_\_\_\_ (name of municipality or county) air quality permit fund". All fees collected by a municipality or county pursuant to Section **74-2-7** NMSA 1978 shall be deposited in the fund created pursuant to this section.

B. Money in the fund created pursuant to this section shall be used by the municipality or county only for the purpose of paying the reasonable costs of:

- (1) appealing, 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.

**History:** 1978 Comp., § 74-2-16, enacted by Laws 1992, ch. 20, § 19.

## **74-2-17. Continuing effect of existing laws, rules and regulations.**

A. The Air Quality Control Act is supplementary to other legislation and does not repeal any laws but takes precedence over any law that conflicts with the provisions of that act.

B. All county and municipal ordinances and all state, county and municipal regulations relating to air quality and air pollution are continued in effect until revised or repealed by the governmental body or administrative agency having jurisdiction; provided that copies of each ordinance and regulation:

- (1) were filed under the State Rules Act [Chapter **14**, Article **4** NMSA 1978] on or before May 3, 1967; or
- (2) if adopted after May 3, 1967:

(a) were adopted by a governmental body or administrative agency having jurisdiction to do so under the Air Quality Control Act as in effect at the time of such adoption; and

(b) if required by the Air Quality Control Act as in effect at the time of such adoption, have been filed under the State Rules Act.

**History:** 1953 Comp., § 12-14-13, enacted by Laws 1967, ch. 277, § 13; 1970, ch. 58, § 12; 1992, ch. 20, § 20.

**74-2-18 to 74-2-22. Repealed.**

## **ARTICLE 2A**

### **Wood Burning Stoves and Fireplaces**

#### **74-2A-1. Wood burning stoves and fireplaces; findings; county and municipal wood burning laws; exemption for indigents.**

A. The legislature finds that many persons have acquired wood burning stoves to heat their homes. The legislature further finds that wood burning stoves have been encouraged as a means of reducing our country's dependence on foreign oil and are therefore in the public interest. The legislature further finds that many of the poorer citizens of our state have acquired wood burning stoves or residences with fireplaces as a means of providing cost efficient heating for their families.

B. The legislature further finds that counties and municipalities have adopted and may continue to adopt wood burning laws to prevent or reduce serious pollution problems associated with wood burning. The legislature further finds that while these laws are in the public interest, it is also in the public interest to protect the poor in our society who have wood burning stoves or fireplaces to provide cost efficient heating for their families.

C. Any county or municipality which adopts a wood burning law to prohibit burning from occurring at certain times or in certain locations shall provide an exemption procedure for indigent families who need wood burning as an essential form of cost-efficient heating for their families. The exemption procedure shall include a standard for determining when a family is considered indigent for purposes of the exemption.

**History:** Laws 1989, ch. 150, § 1.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 50 OIL AND GAS SECTOR – OZONE PRECURSOR POLLUTANTS**

**20.2.50.1 ISSUING AGENCY:** Environmental Improvement Board.  
[20.2.50.1 NMAC – N, 08/05/2022]

**20.2.50.2 SCOPE:** This Part applies to sources located within areas of the state under the board's jurisdiction that, as of the effective date of this Part or anytime thereafter, are causing or contributing to ambient ozone concentrations that exceed ninety-five percent of the national ambient air quality standard for ozone, as measured by a design value calculated and based on data from one or more department monitors. As of the effective date, sources located in the following counties of the state are subject to this Part: Chaves, Dona Ana, Eddy, Lea, Rio Arriba, Sandoval, San Juan, and Valencia.

**A.** If, at any time after the effective date of this Part, sources in any other area(s) of the state not previously specified are determined to be causing or contributing to ambient ozone concentrations that exceed ninety-five percent of the national ambient air quality standard for ozone, as measured by a design value calculated by the U.S. Environmental Protection Agency based on data from one or more department monitors, the department shall petition the Board to amend this Part to incorporate the sources in those areas.

**(1)** The notice of proposed rulemaking shall be published no less than 180 days before sources in the affected areas will become subject to this Part, and shall include, in addition to the requirements of the board's rulemaking procedures at 20.1.1.301 NMAC:

**(a)** a list of the areas that the department proposed to incorporate into this Part, and the date upon which the sources in those areas will become subject to this Part; and

**(b)** proposed implementation dates, consistent with the time provided in the phased implementation schedules provided for throughout this Part, for sources within the areas subject to the proposed rulemaking to come into compliance with the provisions of this Part.

**(2)** In any rulemaking pursuant to this section, the board shall be limited to consideration of only those proposed changes necessary to incorporate other areas of the state into this Part.

**B.** Once a source becomes subject to this Part based upon its potential to emit, all requirements of this Part that apply to the source are irrevocably effective unless the source obtains a federally enforceable limit on the potential to emit that is below the applicability thresholds established in this Part, or the relevant section contains a threshold below which the requirements no longer apply.

[20.2.50.2 NMAC – N, 08/05/2022]

**20.2.50.3 STATUTORY AUTHORITY:** Environmental Improvement Act, Section 74-1-1 to 74-1-16 NMSA 1978, including specifically Paragraph (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to 74-2-22 NMSA 1978, including specifically Subsections A, B, C, D, F, and G of Section 74-2-5 NMSA 1978 (as amended through 2021).

[20.2.50.3 NMAC - N, 08/05/2022]

**20.2.50.4 DURATION:** Permanent.

[20.2.50.4 NMAC - N, 08/05/2022]

**20.2.50.5 EFFECTIVE DATE:** August 05, 2022, except where a later date is specified in another section.

[20.2.50.5 NMAC - N, 08/05/2022]

**20.2.50.6 OBJECTIVE:** The objective of this Part is to establish emission standards for volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) for oil and gas production, processing, compression, and transmission sources.

[20.2.50.6 NMAC - N, 08/05/2022]

**20.2.50.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC - Definitions, as used in this Part, the following definitions apply.

**A. Definitions beginning with the letter "A":** "Auto-igniter" means a device that automatically attempts to relight the pilot flame of a control device in order to combust VOC emissions, or a device that will automatically attempt to combust the VOC emission stream.

**B. Definitions beginning with the letter “B”:** **“Bleed rate”** means the rate in standard cubic feet per hour at which gas is continuously vented from a pneumatic controller.

**C. Definitions beginning with the letter “C”:**

(1) **“Calendar year”** means a year beginning January 1 and ending December 31.

(2) **“Centrifugal compressor”** means a machine used for raising the pressure of natural gas by drawing in low-pressure natural gas and discharging significantly higher-pressure natural gas by means of a mechanical rotating vane or impeller. A screw, sliding vane, and liquid ring compressor is not a centrifugal compressor.

(3) **“Closed vent system”** means a system that is designed, operated, and maintained to route the VOC emissions from a source or process to a process stream or control device with no loss of VOC emissions to the atmosphere during operation.

(4) **“Commencement of operation”** means for an oil and natural gas well site, the date any permanent production equipment is in use and product is consistently flowing to a sales line, gathering line or storage vessel from the first producing well at the stationary source, but no later than the end of well completion operation.

(5) **“Component”** means a pump seal, flange, pressure relief device (including thief hatch or other opening on a storage vessel), connector or valve that contains or contacts a process stream with hydrocarbons, except for components where process streams consist solely of glycol, amine, produced water, or methanol.

(6) **“Connector”** means flanged, screwed, or other joined fittings used to connect pipeline segments, tubing, pipe components (such as elbows, reducers, “T’s” or valves) to each other; or a pipeline to a piece of equipment; or an instrument to a pipe, tube, or piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this Part.

(7) **“Construction”** means fabrication, erection, or installation of a stationary source, including but not limited to temporary installations and portable stationary sources, but does not include relocations or like-kind replacements of existing equipment.

(8) **“Control device”** means air pollution control equipment or emission reduction technologies that thermally combust, chemically convert, or otherwise destroy or recover air contaminants. Examples of control devices may include but are not limited to open flares, enclosed combustion devices (ECDs), thermal oxidizers (TOs), vapor recovery units (VRUs), fuel cells, condensers, catalytic converters (oxidative, selective, and non-selective), or other emission reduction equipment. A control device may also include any other air pollution control equipment or emission reduction technologies approved by the department to comply with emission standards in this Part. A VRU or other equipment used primarily as process equipment is not considered a control device.

**D. Definitions beginning with the letter “D”:**

(1) **“Department”** means the New Mexico environment department.

(2) **“Design value”** means the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration.

(3) **“Downtime”** means the period of time when equipment is not in operation.

(4) **“Drilling” or “drilled”** means the process to bore a hole to create a well for oil and/or natural gas production.

(5) **“Drill-out”** means the process of removing the plugs placed during hydraulic fracturing or refracturing. Drill-out ends after the removal of all stage plugs and the initial wellbore cleanup.

**E. Definitions beginning with the letter “E”:**

(1) **“Enclosed combustion device”** means a combustion device where waste gas is combusted in an enclosed chamber solely for the purpose of destruction. This may include, but is not limited to, an enclosed flare or combustor.

(2) **“Existing”** means constructed or reconstructed before the effective date of this Part.

**F. Definitions beginning with the letter “F”:**

(1) **“Flowback”** means the process of allowing fluids and entrained solids to flow from a well following stimulation, either in preparation for a subsequent phase of treatment or in preparation for cleanup and placing the well into production. The term flowback also means the fluids and entrained solids flowing from a well after drilling or hydraulic fracturing or refracturing. Flowback ends when all temporary flowback equipment is removed from service. Flowback does not include drill-out.

(2) **“Flowback vessel”** means a vessel that contains flowback.

**G. Definitions beginning with the letter “G”. [RESERVED]**

(1) **“Gathering and boosting station”** means a facility, including all equipment and compressors, located downstream of a well site that collects or moves natural gas prior to the inlet of a natural gas processing plant; or prior to a natural gas transmission pipeline or transmission compressor station if no gas processing is performed; or collects, moves, or stabilizes crude oil or condensate prior to an oil transmission pipeline or other form of transportation. Gathering and boosting stations may include equipment for liquids separation, natural gas dehydration, and tanks for the storage of water and hydrocarbon liquids.

(2) **“Glycol dehydrator”** means a device in which a liquid glycol absorbent, including ethylene glycol, diethylene glycol, or triethylene glycol, directly contacts a natural gas stream and absorbs water.

**H. Definitions beginning with the letter “H”:**

(1) **“High-bleed pneumatic controller”** means a continuous bleed pneumatic controller that is designed to have a continuous bleed rate that emits in excess of 6 standard cubic feet per hour (scfh) of natural gas to the atmosphere.

(2) **“Hydraulic fracturing”** means the process of directing pressurized fluids containing any combination of water, proppant, and any added chemicals to penetrate tight formations, such as shale, coal, and tight sand formations, that subsequently requires flowback to expel fracture fluids and solids.

(3) **“Hydraulic refracturing”** means conducting a subsequent hydraulic fracturing operation at a well that has previously undergone a hydraulic fracturing operation.

(4) **“Hydrocarbon liquid”** means any naturally occurring, unrefined petroleum liquid and can include oil, condensate, and intermediate hydrocarbons. Hydrocarbon liquid does not include produced water.

**I. Definitions beginning with the letter “I”:**

(1) **“Inactive well site”** means a well site where the well is not being used for beneficial purposes, such as production or monitoring, and is not being drilled, completed, repaired or worked over.

(2) **“Injection well site”** means a well site where the well is used for the injection of air, gas, water or other fluids into an underground stratum.

(3) **“Intermittent pneumatic controller”** means a pneumatic controller that is not designed to have a continuous bleed rate but is designed to only release natural gas above de minimis amounts to the atmosphere as part of the actuation cycle.

**J. Definitions beginning with the letter “J”. [RESERVED]**

**K. Definitions beginning with the letter “K”. [RESERVED]**

**L. Definitions beginning with the letter “L”:**

(1) **“Liquid unloading”** means the removal of accumulated liquid from the wellbore that reduces or stops natural gas production.

(2) **“Liquid transfer”** means the unloading of a hydrocarbon liquid from a storage vessel to a tanker truck or tanker rail car for transport.

(3) **“Local distribution company custody transfer station”** means a metering station where the local distribution company receives a natural gas supply from an upstream supplier, which may be an interstate transmission pipeline or a local natural gas producer, for delivery to customers through the local distribution company's intrastate transmission or distribution lines.

(4) **“Low-bleed pneumatic controller”** means a continuous bleed pneumatic controller that is designed to have a continuous bleed rate that emits less than or equal to 6 scfh of natural gas to the atmosphere.

**M. Definitions beginning with the letter “M”. [RESERVED]**

**N. Definitions beginning with the letter “N”. “non-porous”** means multi-use items such as metal, glass and plastic;

(1) **“Natural gas-fired heater”** means an enclosed device using a controlled flame and with a primary purpose to transfer heat directly to a process material or to a heat transfer material for use in a process.

(2) **“Natural gas processing plant”** means the processing equipment engaged in the extraction of natural gas liquid from natural gas or fractionation of mixed natural gas liquid to a natural gas product, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

(3) **“New”** means constructed or reconstructed on or after the effective date of this Part.

(4) **“Non-emitting controller”** means a device that monitors a process parameter such as liquid level, pressure, or temperature and sends a signal to a control valve in order to control the process parameter and does not emit natural gas to the atmosphere. Examples of non-emitting controllers include but are not limited to instrument air or inert gas pneumatic controllers, electric controllers, mechanical controllers and Routed Pneumatic Controllers.

**O. Definitions beginning with the letter “O”:**

- (1) **“Occupied area”** means the following:
- (a) a building or structure used as a place of residence by a person, family, or families, and includes manufactured, mobile, and modular homes, except to the extent that such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes;
  - (b) indoor or outdoor spaces associated with a school that students use commonly as part of their curriculum or extracurricular activities;
  - (c) five-thousand (5,000) or more square feet of building floor area in commercial facilities that are operating and normally occupied during working hours; and
  - (d) an outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or similar place of outdoor public assembly.
- (2) **“Operator”** means the person or persons responsible for the overall operation of a stationary source.
- (3) **“Optical gas imaging (OGI)”** means an imaging technology that utilizes a high-sensitivity infrared camera designed for and capable of detecting hydrocarbons.
- (4) **“Owner”** means the person or persons who own a stationary source or part of a stationary source.

**P. Definitions beginning with the letter “P”:**

- (1) **“Permanent pit or pond”** means a pit or pond used for collection, retention, or storage of produced water or brine and is installed for longer than one year.
- (2) **“Pneumatic controller”** means a device that monitors a process parameter such as liquid level, pressure, or temperature and uses pressurized gas (which may be released to the atmosphere during normal operation) and sends a signal to a control valve in order to control the process parameter. Controllers that do not utilize pressurized gas are not pneumatic controllers.
- (3) **“Pneumatic diaphragm pump”** means a positive displacement pump powered by pressurized gas that uses the reciprocating action of flexible diaphragms in conjunction with check valves to pump a fluid. A pump in which a fluid is displaced by a piston driven by a diaphragm is not considered a diaphragm pump. A lean glycol circulation pump that relies on energy exchange with the rich glycol from the contactor is not considered a diaphragm pump.
- (4) **“Potential to emit (PTE)”** 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 the 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 PTE for nitrogen dioxide shall be based on total oxides of nitrogen.
- (5) **“Pre-production operations”** means the drilling through the hydrocarbon bearing zones, hydraulic fracturing or refracturing, drill-out, and flowback of an oil and/or natural gas well.
- (6) **“Produced water”** means a liquid that is an incidental byproduct from well completion and the production of oil and gas.
- (7) **“Produced water management unit”** means a recycling facility or a permanent pit or pond that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to accumulate produced water and has a design storage capacity equal to or greater than 50,000 barrels.

**Q. Definitions beginning with the letter “Q”.** **“Qualified Professional Engineer”** means an individual who is licensed by a state as a professional engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge, and experience to make the specific technical certifications required under this Part.

**R. Definitions beginning with the letter “R”:**

- (1) **“Reciprocating compressor”** means a piece of equipment that increases the pressure of process gas by positive displacement, employing linear movement of a piston rod.
- (2) **“Reconstruction”** means a modification that results in the replacement of the components or addition of integrally related equipment to an existing source, to such an extent that the fixed capital cost of the new components or equipment exceeds fifty percent of the fixed capital cost that would be required to construct a comparable entirely new facility.
- (3) **“Recycling facility”** means a stationary or portable facility used exclusively for the treatment, re-use, or recycling of produced water and does not include oilfield equipment such as separators, heater treaters, and scrubbers in which produced water may be used.
- (4) **“Responsible official”** means one of the following:

(a) for a corporation: 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.

(b) for a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(5) **“Routed pneumatic controller”** means a pneumatic controller of any type that releases natural gas to a process, sales line, or to a combustion device instead of directly to the atmosphere.

**S. Definitions beginning with the letter “S”:**

(1) **“Small business facility”** means, for the purposes of this Part, a source that is independently owned or operated by a company that is not a subsidiary or a division of another business, that employs no more than 10 employees at any time during the calendar year, and that has a gross annual revenue of less than \$250,000. Employees include part-time, temporary, or limited-service workers.

(2) **“Stabilized”** means, when used to refer to stored condensate, that the condensate has reached substantial equilibrium with the atmosphere and that any emissions that occur are those commonly referred to within the industry as “working and breathing losses.”

(3) **“Standalone tank battery”** means a tank battery that is not designated as associated with a well site, gathering and boosting station, natural gas processing plant, or transmission compressor station.

(4) **“Startup”** means the setting into operation of air pollution control equipment or process equipment.

(5) **“Stationary source” or “source”** means any building, structure, equipment, facility, installation (including temporary installations), operation, process, or portable stationary source that emits or may emit any air contaminant. Portable stationary source means a source that can be relocated to another operating site with limited dismantling and reassembly.

(6) **“Storage vessel”** means a single tank or other vessel that is designed to contain an accumulation of hydrocarbon liquid or produced water and is constructed primarily of non-earthen material including wood, concrete, steel, fiberglass, or plastic, which provide structural support. A well completion vessel that receives recovered liquid from a well after commencement of operation for a period that exceeds 60 days is considered a storage vessel. A storage vessel does not include a vessel that is skid-mounted or permanently attached to a mobile source and located at the site for less than 180 consecutive days, such as a truck or railcar; a process vessel such as a surge control vessel, bottom receiver, or knockout vessel; a pressure vessel designed to operate in excess of 204.9 kilopascals (29.72 psi) without emissions to the atmosphere; or a floating roof tank complying with 40 CFR Part 60, Subpart Kb.

**T. Definitions beginning with the letter “T”:**

(1) **“Tank battery”** means a storage vessel or group of storage vessels that receive or store crude oil, condensate, or produced water from a well or wells for storage. The owner or operator shall designate whether a tank battery is a standalone tank battery or is associated with a well site, gathering and boosting station, natural gas processing plant, or transmission compressor station. The owner or operator shall maintain records of this designation and make them available to the department upon request. A tank battery associated with a well site, gathering or boosting station, natural gas processing plant, or transmission compressor station is subject to the requirements in this Part for those facilities, as applicable. Tank battery does not include storage vessels at saltwater disposal facilities or produced water management units.

(2) **“Temporarily abandoned well site”** means an inactive well site where the well’s completion interval has been isolated. The completion interval is the reservoir interval that is open to the borehole and is isolated when tubing and artificial equipment has been removed and a bottom plug has been set.

(3) **“Transmission compressor station”** means a facility, including all equipment and compressors, that moves pipeline quality natural gas at increased pressure from a well site or natural gas processing plant through a transmission pipeline for ultimate delivery to the local distribution company custody transfer station, underground storage, or to other industrial end users. Transmission compressor stations may include equipment for liquids separation, natural gas dehydration, and tanks for the storage of water and hydrocarbon liquids.

**U. Definitions beginning with the letter “U”. [RESERVED]**

**V. Definitions beginning with the letter “V”:** **“Vessel measurement system”** means equipment and methods used to determine the quantity of the liquids inside a vessel (including a flowback vessel) without requiring direct access through the vessel thief hatch or other opening.

**W. Definitions beginning with the letter “W”:**

(1) **“Wellhead only facility”** means a well site that does not contain any production or processing equipment other than artificial lift natural gas driven pneumatic controllers and emergency shutdown

device natural gas driven pneumatic controllers.

(2) **“Well workover”** means the repair or stimulation of an existing production well for the purpose of restoring, prolonging, or enhancing the production of hydrocarbons.

(3) **“Well site”** means the equipment under the operator’s control directly associated with one or more oil wells or natural gas wells upstream of the natural gas processing plant or gathering and boosting station, if any. A well site may include equipment used for extraction, collection, routing, storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and product piping. A well site does not include an injection well site.

[20.2.50.7 NMAC - N, 08/05/2022]

**20.2.50.8 SEVERABILITY:** If any provision of this Part, or the application of this provision to any person or circumstance is held invalid, the remainder of this Part, or the application of this provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby.

[20.2.50.8 NMAC - N, 08/05/2022]

**20.2.50.9 CONSTRUCTION:** This Part shall be liberally construed to carry out its purpose.

[20.2.50.9 NMAC - N, 08/05/2022]

**20.2.50.10 SAVINGS CLAUSE:** Repeal or supersession of prior versions of this Part shall not affect administrative or judicial action initiated under those prior versions.

[20.2.50.10 NMAC - N, 08/05/2022]

**20.2.50.11 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with this Part does not relieve a person from the responsibility to comply with other applicable federal, state, or local laws, rules or regulations, including more stringent controls.

[20.2.50.11 NMAC - N, 08/05/2022]

**20.2.50.12 DOCUMENTS:** Documents incorporated and cited in this Part may be viewed at the New Mexico environment department, air quality bureau.

[20.2.50.12 NMAC - N, 08/05/2022]

[The Air Quality Bureau is located at 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico 87505.]

**20.2.23.13-20.2.23.110 [RESERVED]**

**20.2.50.111 APPLICABILITY:**

**A.** This Part applies to certain crude oil and natural gas production and processing equipment associated with operations that extract, collect, separate, dehydrate, store, process, transport, transmit, or handle hydrocarbon liquids or produced water in the areas specified in 20.2.50.2 NMAC and are located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations, up to the point of the local distribution company custody transfer station.

**B.** In determining if any source is subject to this Part, including a small business facility as defined in this Part, the owner or operator shall calculate the Potential to Emit (PTE) of such source and shall have the PTE calculation certified by a qualified professional engineer or an inhouse engineer with expertise in the operation of oil and gas equipment, vapor control systems, and pressurized liquid samples. The emission standards and requirements of this Part may not be considered in the PTE calculation required in this Section or in determining if any source is subject to this Part. The calculation shall be kept on file for a minimum of five years and shall be provided to the department upon request. This certified calculation shall be completed before startup for new sources, and within two years of the effective date of this Part for existing sources.

**C.** An owner or operator of a small business facility as defined in this Part shall comply with the requirements of this Part as specified in 20.2.50.125 NMAC.

**D.** Oil transmission pipelines, oil refineries, natural gas transmission pipelines (except transmission compressor stations), and saltwater disposal facilities are not subject to this Part.

[20.2.50.111 NMAC - N, 08/05/2022]

**20.2.50.112 GENERAL PROVISIONS:**

**A. General requirements:**

(1) Sources subject to emissions standards and requirements under this Part shall be operated and maintained consistent with manufacturer specifications, or good engineering and maintenance practices. When used in this Part, the term manufacturer specifications means either the original equipment manufacturer (or successor) emissions-related design specifications, maintenance practices and schedules, or an alternative set of specifications, maintenance practices and schedules sufficient to operate and maintain such sources in good working order, which have been approved by qualified maintenance personnel based on engineering principles and field experience. The owner or operator shall keep manufacturer specifications on file when available, as well as any alternative specifications that are being followed, and make them available upon request by the department. The terms of Paragraph (1) of Subsection A of 20.2.50.112 NMAC apply any time reference to manufacturer specifications occurs in this Part.

(2) Sources, including associated air pollution control equipment and monitoring equipment, subject to emission standards or requirements under this Part shall at all times, including periods of startup, shutdown, and malfunction, be operated and maintained in a manner consistent with safety and good air pollution control practices for minimizing emissions of VOC and NO<sub>x</sub>. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent consistent with safety and good air pollution control practices. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions beyond levels required by the applicable standard under this Part. The terms of Paragraph (2) of Subsection A of 20.2.50.112 NMAC apply any time reference to minimizing emissions occurs in this Part.

(3) Within two years of the effective date of this Part, owners and operators of a source requiring equipment monitoring, testing, or inspection shall develop and implement a data system(s) capable of storing information for each source in a manner consistent with this Section. The owner or operator shall maintain information regarding each source requiring equipment monitoring, testing, or inspection in a data system(s), including the following information in addition to the required information specified in an applicable section of this Part:

- (a) unique identification number;
- (b) location (latitude and longitude) of the source;
- (c) type of source (e.g., tank, VRU, dehydrator, pneumatic controller, etc.);
- (d) for each source, the controlled VOC (and NO<sub>x</sub>, if applicable) emissions in lbs./hr. and tpy;
- (e) make, model, and serial number; and
- (f) a link to the manufacturer maintenance schedule or repair recommendations, or company-specific operational and maintenance practices.

(4) The data system(s) shall be maintained by the owner or operator of the facility.

(5) The owner or operator shall manage the source's record of data in the data system(s). The owner or operator shall generate a Compliance Database Report (CDR) from the information in the data system. The CDR is an electronic report maintained by the owner or operator and that can be submitted to the department upon request.

(6) The CDR is a report distinct from the owner or operator's data system(s). The department does not require access to the owner or operator's data system(s), only the CDR.

(7) The owner or operator's authorized representative must be able to access and input data in the data system(s) record for that source. That access is not required to be at any time from any location.

(8) The owner or operator shall contemporaneously track each monitoring event, and shall comply with the following:

(a) data gathered during each monitoring or testing event shall be uploaded into the data system as soon as practicable, but no later than three business days of each compliance event, and when the final reports are received;

(b) certain sections of this Part require a date and time stamp, including a GPS display of the location, for certain monitoring events. No later than one year from the effective date of this Part, the department shall finalize a list of approved technologies to comply with date and time stamp requirements, and shall post the approved list on its website. Owners and operators shall comply with this requirement using an approved technology no later than two years from the effective date of this Part. Prior to such time, owners and operators may comply with this requirement by making a written or electronic record of the date and time of any affected monitoring event; and

(c) data required by this Part shall be maintained in the data system(s) for at least five years.

(9) The department for good cause may request that an owner or operator retain a third party at their own expense to verify any data or information collected, reported, or recorded pursuant to this Part, and make recommendations to correct or improve the collection of data or information. Such requests may be made no more than once per year. The owner or operator shall submit a report of the verification and any recommendations made by the third party to the department by a date specified and implement the recommendations in the manner approved by the department. The owner or operator may request a hearing on whether good cause was demonstrated or whether the recommendations approved by the department must be implemented.

(10) Where Part 50 refers to applicable federal standards or requirements, the references are to the applicable federal standards or requirements that were in effect at the time of the effective date of this Part, unless the applicable federal standards or requirements have been superseded by more stringent federal standards or requirements.

(11) Prior to modifying an existing source, including but not limited to increasing a source's throughput or emissions, the owner or operator shall determine the applicability of this Part in accordance with 20.2.50.111.B NMAC.

**B. Monitoring requirements:** In addition to any monitoring requirements specified in the applicable sections of this Part, owners and operators shall comply with the following:

(1) Unless otherwise specified, the term monitoring as used in this Part includes, but is not limited to, monitoring, testing, or inspection requirements.

(2) If equipment is shut down at the time of periodic testing, monitoring, or inspection required under this Part, the owner or operator shall not be required to restart the unit for the sole purpose of performing the testing, monitoring, or inspection, but shall note the shut down in the records kept for that equipment for that monitoring event.

**C. Recordkeeping requirements:** In addition to any recordkeeping requirements specified in the applicable sections of this Part, owners and operators shall comply with the following:

(1) Within three business days of a monitoring event and when final reports are received, an electronic record shall be made of the monitoring event and shall include the information required by the applicable sections of this Part.

(2) The owner or operator shall keep an electronic record required by this Part for five years.

(3) By July 1 of each calendar year starting in 2024, the owner or operator shall generate a Compliance Database Report (CDR) on all assets under its control that are subject to the CDR requirements of this Part at the time the CDR is prepared and keep this report on file for five years.

**D. Reporting requirements:** In addition to any reporting requirements specified in the applicable sections in this Part, the owner or operator shall respond within three business days to a request for information by the department under this Part. The response shall provide the requested information for each source subject to the request by electronically submitting a CDR to the department's Secure Extranet Portal (SEP), or by other means and formats specified by the department in its request. If the department requests a CDR from multiple facilities, additional time will be given as appropriate.

[20.2.50.112 NMAC - N, 08/05/2022]

## **20.2.50.113 ENGINES AND TURBINES:**

**A. Applicability:** Portable and stationary natural gas-fired spark ignition engines, compression ignition engines, and natural gas-fired combustion turbines located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations, with a rated horsepower greater than the horsepower ratings of table 1, 2, and 3 of 20.2.50.113 NMAC are subject to the requirements of 20.2.50.113 NMAC. Non-road engines as defined in 40 C.F.R. §§ 1068.30 are not subject to 20.2.50.113 NMAC.

### **B. Emission standards:**

(1) The owner or operator of a portable or stationary natural gas-fired spark ignition engine, compression ignition engine, or natural gas-fired combustion turbine shall ensure compliance with the emission standards by the dates specified in Subsection B of 20.2.50.113 NMAC, except as otherwise specified under an Alternative Compliance Plan approved pursuant to Paragraph (10) of Subsection B of 20.2.50.113 NMAC or alternative emissions standards approved pursuant to Paragraph (11) of Subsection B of 20.2.50.113 NMAC.

(2) The owner or operator of an existing natural gas-fired spark ignition engine shall complete an inventory of all existing engines subject to this Part by January 1, 2023, and shall prepare a schedule to ensure that each existing engine does not exceed the emission standards in table 1 of Paragraph (2) of Subsection B of 20.2.50.113 NMAC as follows, except as otherwise specified under an Alternative Compliance Plan (ACP) approved pursuant to Paragraph (10) of Subsection B of 20.2.50.113 NMAC or alternative emissions standards

approved pursuant to Paragraph (11) of Subsection B of 20.2.50.113 NMAC:

(a) by January 1, 2025, the owner or operator shall ensure at least thirty percent of the company's existing engines meet the emission standards.

(b) by January 1, 2027, the owner or operator shall ensure at least an additional thirty-five percent of the company's existing engines meet the emission standards.

(c) by January 1, 2029, the owner or operator shall ensure that the remaining thirty-five percent of the company's existing engines meet the emission standards.

(d) in lieu of meeting the emission standards for an existing natural gas-fired spark ignition engine, an owner or operator may reduce the annual hours of operation of an engine such that the annual PTE of NO<sub>x</sub> and VOC emissions are reduced to achieve an equivalent allowable ton per year emission reduction as set forth in table 1 of Paragraph (2) of Subsection B of 20.2.50.113 NMAC, or by at least ninety-five percent per year.

Table 1 - EMISSION STANDARDS FOR EXISTING NATURAL GAS-FIRED SPARK IGNITION ENGINES

| Engine Type        | Rated bhp                 | NO <sub>x</sub> | CO            | NMNEHC (as propane) |
|--------------------|---------------------------|-----------------|---------------|---------------------|
| 2 Stroke Lean Burn | >1,000                    | 3.0 g/bhp-hr    | 0.60 g/bhp-hr | 0.70 g/bhp-hr       |
| 4-Stroke Lean Burn | >1,000 bhp and <1,775 bhp | 2.0 g/bhp-hr    | 0.60 g/bhp-hr | 0.70 g/bhp-hr       |
| 4-Stroke Lean Burn | ≥1,775 bhp                | 0.5 g/bhp-hr    | 0.60 g/bhp-hr | 0.70 g/bhp-hr       |
| Rich Burn          | >1,000 bhp                | 0.5 g/bhp-hr    | 0.60 g/bhp-hr | 0.70 g/bhp-hr       |

(3) The owner or operator of a new natural gas-fired spark ignition engine shall ensure the engine does not exceed the emission standards in table 2 of Paragraph (3) of Subsection B of 20.2.50.113 NMAC upon startup.

Table 2 - EMISSION STANDARDS FOR NEW NATURAL GAS-FIRED SPARK IGNITION ENGINES

| Engine Type | Rated bhp        | NO <sub>x</sub> | CO            | NMNEHC (as propane) |
|-------------|------------------|-----------------|---------------|---------------------|
| Lean-burn   | > 500 and < 1875 | 0.50 g/bhp-hr   | 0.60 g/bhp-hr | 0.70 g/bhp-hr       |
| Lean-burn   | ≥ 1875           | 0.30 g/bhp-hr   | 0.60 g/bhp-hr | 0.70 g/bhp-hr       |
| Rich-burn   | >500             | 0.50 g/bhp-hr   | 0.60 g/bhp-hr | 0.70 g/bhp-hr       |

(4) The owner or operator of a natural gas-fired spark ignition engine with NO<sub>x</sub> emission control technology that uses ammonia or urea as a reagent shall ensure that the exhaust ammonia slip is limited to 10 ppmvd or less, corrected to fifteen percent oxygen.

(5) The owner or operator of a compression ignition engine shall ensure compliance with the following emission standards:

(a) a new portable or stationary compression ignition engine with a maximum design power output equal to or greater than 500 horsepower that is not subject to the emission standards under Subparagraph (b) of Paragraph (5) of Subsection B of 20.2.50.113 NMAC shall limit NO<sub>x</sub> emissions to not more than nine g/bhp-hr upon startup.

(b) a stationary compression ignition engine that is subject to and complying with Subpart III of 40 CFR Part 60, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, is not subject to the requirements of Subparagraph (a) of Paragraph (5) of Subsection B of 20.2.50.113 NMAC.

(6) The owner or operator of a portable or stationary compression ignition engine with NO<sub>x</sub> emission control technology that uses ammonia or urea as a reagent shall ensure that the exhaust ammonia slip is limited to 10 ppmvd or less, corrected to fifteen percent oxygen.

(7) The owner or operator of a stationary natural gas-fired combustion turbine with a maximum design rating equal to or greater than 1,000 bhp shall comply with the applicable emission standards for an existing, new, or reconstructed turbine listed in table 3 of Paragraph (7) of Subsection B of 20.2.50.113 NMAC: The owner or operator of an existing stationary natural gas-fired combustion turbine shall complete an inventory of all existing turbines subject to Part 50 by July 1, 2023, and shall prepare a schedule to ensure that each subject

existing turbine does not exceed the emission standards in table 3 of Paragraph (7) of Subsection B of 20.2.50.113 NMAC as follows, except as otherwise specified under an Alternative Compliance Plan approved pursuant to Paragraph (10) of Subsection B of 20.2.50.113 NMAC or alternative emissions standards approved pursuant to Paragraph (11) of Subsection B of 20.2.50.113 NMAC:

(a) by January 1, 2024, the owner or operator shall ensure at least thirty percent of the company's existing turbines meet the emission standards.

(b) by January 1, 2026, the owner or operator shall ensure at least an additional thirty-five percent of the company's existing turbines meet the emission standards.

(c) by January 1, 2028, the owner or operator shall ensure that the remaining thirty-five percent of the company's existing turbines meet the emission standards.

(d) in lieu of meeting the emission standards for an existing stationary natural gas-fired combustion turbine, an owner or operator may reduce the annual hours of operation of a turbine such that the annual PTE of NO<sub>x</sub> and VOC emissions are reduced to achieve an equivalent allowable ton per year emission reduction as set forth in table 3 of Paragraph (7) of Subsection B of 20.2.50.113 NMAC, or by at least ninety-five percent per year.

Table 3 - EMISSION STANDARDS FOR STATIONARY COMBUSTION TURBINES

| <b>For each applicable existing natural gas-fired combustion turbine, the owner or operator shall ensure the turbine does not exceed the following emission standards no later than the schedule set forth in Paragraph (7)(a) of Subsection B of 20.2.50.113 NMAC:</b> |   |  |  |
|---|---|--|--|
| Turbine Rating (bhp)  | NO <sub>x</sub> (ppmvd @ 15% O <sub>2</sub> ) | CO (ppmvd @ 15% O <sub>2</sub> )       | NMNEHC (as propane, ppmvd @ 15% O <sub>2</sub> ) |
| ≥1,000 and <4,100   | 150   | 50                                     | 9  |
| ≥4,100 and <15,000  | 50  | 50                                     | 9  |
| ≥15,000   | 50  | 50 or 93% reduction                    | 5 or 50% reduction                               |
| <b>For each applicable new natural gas-fired combustion turbine, the owner or operator shall ensure the turbine does not exceed the following emission standards upon startup:</b>  |   |  |  |
| Turbine Rating (bhp)  | NO <sub>x</sub> (ppmvd @ 15% O <sub>2</sub> ) | CO (ppmvd @ 15% O <sub>2</sub> )       | NMNEHC (as propane, ppmvd @ 15% O <sub>2</sub> ) |
| ≥1,000 and <4,000   | 100   | 25                                     | 9  |
| ≥4,000 and <15,900  | 15  | 10                                     | 9  |
| ≥15,900   | 9.0 Uncontrolled or<br>2.0 with Control       | 10 Uncontrolled or<br>1.8 with Control | 5  |

(8) The owner or operator of a stationary natural gas-fired combustion turbine with NO<sub>x</sub> emission control technology that uses ammonia or urea as a reagent shall ensure that the exhaust ammonia slip is limited to 10 ppmvd or less, corrected to fifteen percent oxygen.

(9) The owner or operator of an emergency use engine as defined by 40 C.F.R. §§ 60.4211, 60.4243, or 63.6675 is not subject to the emissions standards in this Part but shall be equipped with a non-resettable hour meter to monitor and record any hours of operation.

(10) In lieu of complying with the emission standards for individual engines and turbines established in Subsection B of 20.2.50.113 NMAC, an owner or operator may elect to comply with the emission standards through an Alternative Compliance Plan (ACP) approved by the department. An ACP must include the list of engines or turbines subject to the ACP, and a demonstration that the total allowable emissions for the engines or turbines subject to the ACP will not exceed the total allowable emissions under the emission standards of this Part. Prior to submitting a proposed ACP to the Department, the owner or operator shall comply with the following requirements in the order listed:

(a) The owner or operator shall contract with an independent third-party engineering or consulting firm to conduct a technical and regulatory review of the ACP proposal. The selected firm

shall review the proposal to determine if it meets the requirements of this Part, and shall prepare and certify an evaluation of the proposed ACP indicating whether the ACP proposal adheres to the requirements of this Part.

(b) Following the independent third-party review, the owner or operator shall provide the ACP, along with the third-party evaluation and findings, to the department for posting on the department's website. The department shall post the ACP and the third-party review within 15 days of receipt.

(c) Following posting by the department, the owner or operator shall publish a notice in a newspaper of general circulation announcing the ACP proposal, the dates it will be available for review and comment by the public, and information on how and where to submit comments. The dates specified in the public notice must provide for a thirty-day comment period.

(d) Following the close of the thirty-day notice and comment period, the department shall send the comments submitted on the ACP proposal and findings to the owner or operator. The owner or operator shall provide written responses to all comments to the department.

(e) Following receipt of the owner or operator's responses to comments received during the thirty-day comment period, the department shall make a determination whether to approve or deny the ACP proposal within 90 days. The department shall approve an ACP that meets the requirements of this Part, unless the department determines that the total allowable emissions under the ACP exceed the total allowable emissions under the emission standards of 20.2.50.113 NMAC. If approved by the department, the emission reductions and associated emission limits for the affected engines or turbines shall become enforceable terms under this Part.

(11) The owner or operator may submit a request for alternative emission standards for a specific engine or turbine based on technical impracticability or economic infeasibility. The owner or operator is not required to submit an ACP proposal under Paragraph (10) of Subsection B of 20.2.50.113 NMAC prior to submission of a request for alternative emissions standards under this Paragraph (11), provided that the owner or operator satisfies Subparagraph (b) of Paragraph (11) of Subsection B of 20.2.50.113 NMAC, below. To qualify for an alternative emission standard, an owner or operator must comply with the following requirements:

(a) Prepare a reasonable demonstration detailing why it is not technically practicable or economically feasible for the individual engine or turbine to achieve the emissions standards in table 1 of Paragraph (2) of Subsection B of 20.2.50.113 NMAC or table 3 of Paragraph (7) of Subsection B of 20.2.50.113 NMAC, as applicable;

(b) Prepare a demonstration detailing why emissions from the individual engine or turbine cannot be addressed through an ACP in a technically practicable or economically feasible manner;

(c) Prepare a technical analysis for the affected engine or turbine specifying the emission reductions that can be achieved through other means, such as combustion modifications or capacity limitations. The technical analysis shall include an analysis of any previous modifications of the source and a determination whether such modifications meet the definition of a reconstructed source, such that the source should be considered a new source under federal regulations. The analysis shall include a certification that the modifications to the source are not in violation of any state or federal air quality regulation; and

(d) Fulfill the requirements of Subparagraphs (a) through (c) of Paragraph (10) of Subsection B of 20.2.50.113 NMAC.

(e) Following the close of the thirty-day notice and comment period, the department shall send the comments submitted on the alternative emission standards and findings to the owner or operator. The owner or operator shall provide written responses to all comments to the department.

(f) Following receipt of the owner or operator's responses to comments received during the thirty-day comment period, the department shall make a determination whether to approve or deny the alternative emission standards within 90 days. If approved by the department, the emission reductions and alternative emission standards for the affected engine or turbine shall become enforceable terms under this Part.

(g) If approved by the department, the emissions reductions and alternative standards for the affected engine or turbine shall become enforceable terms under this Part.

(12) A short-term replacement engine may be substituted for any engine subject to Section 20.2.50.113 NMAC consistent with any applicable air quality permit containing allowances for short term replacement engines, including but not limited to New Source Review and General Construction Permits issued under 20.2.72 NMAC. A short-term replacement engine is not considered a "new" engine for purposes of this Part unless the engine it replaces is a "new" engine within the meaning of this Part. The reinstallation of the existing engine following removal of the short-term replacement engine is not considered a "new" engine under this Part unless the engine was "new" prior to the temporary replacement.

**C. Monitoring requirements:**

(1) Maintenance and repair for a spark ignition engine, compression ignition engine, and

stationary combustion turbine shall meet the manufacturer recommended maintenance schedule as defined in 20.2.50.112 NMAC.

(2) Maintenance conducted consistent with an applicable NSPS or NESHAP requirement shall be deemed to be in compliance with Paragraph (1) of Subsection (C) of 20.2.50.113 NMAC.

(3) Catalytic converters (oxidative, selective, and non-selective) and AFR controllers shall be inspected and maintained according to manufacturer specifications as defined in 20.2.50.112 NMAC, and shall include replacement of oxygen sensors as necessary for oxygen-based controllers. During periods of catalytic converter or AFR controller maintenance, the owner or operator shall shut down the engine or turbine until the catalytic converter or AFR controller can be replaced with a functionally equivalent spare to allow the engine or turbine to return to operation.

(4) For equipment operated for 500 hours per year or more, compliance with the emission standards in Subsection B of 20.2.50.113 NMAC shall be demonstrated within 180 days of the effective date applicable to the source as defined by Paragraphs (2) and (7) of Subsection B of this Section or, if installed more than 180 days after the effective date, within 60 days after achieving the maximum production rate at which the source will be operated, but not later than 180 days after initial startup of such source. Compliance with the applicable emission standards shall be demonstrated by performing an initial emission test for NO<sub>x</sub> and VOC, as defined in 40 CFR 51.100(s) using U.S. EPA reference methods or ASTM D6348. Periodic monitoring shall be conducted annually to demonstrate compliance with the allowable emission standards and may be demonstrated utilizing a portable analyzer or EPA reference methods. For units with g/hp-hr emission standards, the engine load shall be calculated using the following equations:

$$\text{Load (Hp)} = \frac{\text{Fuel consumption (scf/hr)} \times \text{Measured fuel heating value (LHV btu/scf)}}{\text{Manufacturer's rated BSFC (btu/bhp-hr) at 100\% load or best efficiency}}$$

$$\text{Load (Hp)} = \frac{\text{Fuel consumption (gal/hr)} \times \text{Measured fuel heating value (LHV btu/gal)}}{\text{Manufacturer's rated BSFC (btu/bhp-hr) at 100\% load or best efficiency}}$$

Where: LVH = lower heating value, btu/scf, or btu/gal, as appropriate; and  
BSFC = brake specific fuel consumption

If the manufacturer's rated BSFC is not available, an operator may use an alternative load calculation methodology based on available data.

(a) emissions testing shall be conducted within 10 percent of 100 percent peak (or the highest achievable) load. The load and the parameters used to calculate it shall be recorded to document operating conditions at the time of testing and shall be included with the test report.

(b) emissions testing utilizing a portable analyzer shall be conducted in accordance with the requirements of the current version of ASTM D6522. If a portable analyzer has met a previously approved department criterion, the analyzer may be operated in accordance with that criterion until it is replaced.

(c) the default time period for a test run shall be at least 20 minutes.

(d) an emissions test shall consist of three separate runs, with the arithmetic mean of the results from the three runs used to determine compliance with the applicable emission standard.

(e) during emissions tests, pollutant and diluent concentration shall be monitored and recorded. Fuel flow rate shall be monitored and recorded if stack gas flow rate is determined utilizing U.S. EPA reference method 19. This information shall be included with the periodic test report.

(f) stack gas flow rate shall be calculated in accordance with U.S. EPA reference method 19 utilizing fuel flow rate (scf) determined by a dedicated fuel flow meter and fuel heating value (Btu/scf). The owner or operator shall provide a contemporaneous fuel gas analysis (preferably on the day of the test, but no earlier than three months before the test date) and a recent fuel flow meter calibration certificate (within the most recent quarter) with the final test report. Alternatively, stack gas flow rate may be determined by using U.S. EPA reference methods 1 through 4 or through the use of manufacturer provided fuel consumption rates.

(g) upon request by the department, an owner or operator shall submit a notification and protocol for an initial or annual emissions test.

(h) emissions testing shall be conducted at least once per calendar year. Emission testing required by Subparts GG, IIII, JJJJ, or KKKK of 40 CFR 60, or Subpart ZZZZ of 40 CFR 63, may be used to satisfy the emissions testing requirements if it meets the requirements of 20.2.50.113 NMAC and is completed at least once per calendar year.

(i) The results of emissions testing demonstrating compliance with the emission standard for CO may be used as a surrogate to demonstrate compliance with the emission standard for NMNEHC.

(5) The owner or operator of equipment operated less than 500 hours per year shall monitor the hours of operation using a non-resettable hour meter and shall test the unit at least once per 8760 hours of operation in accordance with the emissions testing requirements in Paragraph (4) of Subsection C of 20.2.50.113 NMAC.

(6) An owner or operator of an emergency use engine as defined by 40 C.F.R. §§ 60.4211, 60.4243, or 63.6675 shall monitor the hours of operation by a non-resettable hour meter.

(7) An owner or operator limiting the annual operating hours of an engine or turbine to meet the requirements of Paragraph (2) or (7) of Subsection B of 20.2.50.113 NMAC shall monitor the hours of operation by a non-resettable hour meter.

(8) Prior to any monitoring, testing, inspection, or maintenance of an engine or turbine, the owner or operator shall date and time stamp the event, and the monitoring data entry shall be made in accordance with the requirements of 20.2.50.112 and 113 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator of a spark ignition engine, compression ignition engine, or stationary combustion turbine shall maintain a record in accordance with 20.2.50.112 NMAC for the engine or turbine. The record shall include:

(a) the make, model, serial number, and unique identification number for the engine or turbine;

(b) location of the source (latitude and longitude);

(c) a copy of the engine, turbine, or control device manufacturer recommended maintenance and repair schedule as defined in 20.2.50.112 NMAC; and

(d) all inspection, maintenance, or repair activity on the engine, turbine, and control device, including:

(i) the date and time stamp(s), including GPS of the location, of an inspection, maintenance, or repair;

(ii) the date a subsequent analysis was performed (if applicable);

(iii) the name of the person(s) conducting the inspection, maintenance or repair;

(iv) a description of the physical condition of the equipment as found during the inspection;

(v) a description of maintenance or repair conducted; and

(vi) the results of the inspection and any required corrective actions.

(2) The owner or operator of a spark ignition engine, compression ignition engine, or stationary combustion turbine shall maintain records of initial and annual emissions testing for the engine or turbine for a period of five years. The records shall include:

(a) make, model, and serial number for the tested engine or turbine;

(b) the date and time stamp(s), including GPS of the location, of any monitoring event, including sampling or measurements;

(c) date analyses were performed;

(d) name of the person(s) and the qualified entity that performed the analyses;

(e) analytical or test methods used;

(f) results of analyses or tests;

(g) calculated emissions of NO<sub>x</sub> and VOC in lb/hr and tpy; and

(h) operating conditions at the time of sampling or measurement.

(3) The owner or operator of an emergency use engine as defined by 40 C.F.R. §§ 60.4211, 60.4243, or 63.6675 shall record the total annual hours of operation as recorded by the non-resettable hour meter.

(4) The owner or operator limiting the annual operating hours of an engine or turbine to meet the requirements of Paragraph (2) or (7) of Subsection B of 20.2.50.113 NMAC shall record the hours of operation by a non-resettable hour meter. The owner or operator shall calculate and record the annual NO<sub>x</sub> and VOC emission calculation, based on the engine or turbine's actual hours of operation, to demonstrate that an equivalent allowable ton per year emission reduction as set forth in table 1 or table 3 of Paragraph (2) or (7) of Subsection B of 20.2.50.113 NMAC, or the ninety-five percent emission reduction requirement is met.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

**20.2.50.114 COMPRESSOR SEALS:**

**A. Applicability:**

(1) Centrifugal compressors using wet seals and located at tank batteries, gathering and boosting stations, and natural gas processing plants are subject to the requirements of 20.2.50.114 NMAC. Centrifugal compressors located at well sites and transmission compressor stations are not subject to the requirements of 20.2.50.114 NMAC.

(2) Reciprocating compressors located at tank batteries, gathering and boosting stations, and natural gas processing plants are subject to the requirements of 20.2.50.114 NMAC. Reciprocating compressors located at well sites and transmission compressor stations are not subject to the requirements of 20.2.50.114 NMAC.

**B. Emission standards:**

(1) The owner or operator of an existing centrifugal compressor with wet seals shall control VOC emissions from a centrifugal compressor wet seal fluid degassing system by at least ninety-five percent within two years of the effective date of this Part. Emissions shall be captured and routed via a closed vent system to a control device, recovery system, fuel cell, or a process stream.

(2) The owner or operator of an existing reciprocating compressor shall, either:  
(a) replace the reciprocating compressor rod packing after every 26,000 hours of compressor operation or every 36 months, whichever is reached later. The owner or operator shall begin counting the hours of compressor operation toward the first replacement of the rod packing upon the effective date of this Part; or

(b) beginning no later than two years from the effective date of this Part, collect emissions from the rod packing, and route them via a closed vent system to a control device, recovery system, fuel cell, or a process stream.

(3) The owner or operator of a new centrifugal compressor with wet seals shall control VOC emissions from the centrifugal compressor wet seal fluid degassing system by at least ninety-five percent upon startup. Emissions shall be captured and routed via a closed vent system to a control device, recovery system, fuel cell, or process stream.

(4) The owner or operator of a new reciprocating compressor shall, upon startup, either:  
(a) replace the reciprocating compressor rod packing after every 26,000 hours of compressor operation, or every 36 months, whichever is reached later; or  
(b) collect emissions from the rod packing and route them via a closed vent system to a control device, a recovery system, fuel cell, or a process stream.

(5) The owner or operator complying with the emission standards in Subsection B of 20.2.50.114 NMAC through use of a control device shall comply with the control device requirements in 20.2.50.115 NMAC.

**C. Monitoring requirements:**

(1) The owner or operator of a reciprocating compressor complying with Subparagraph (a) of Paragraph (2) or Subparagraph (a) of Paragraph (4) of Subsection B of 20.2.50.114 NMAC shall continuously monitor the hours of operation with a non-resettable hour meter and track the number of hours since initial startup or since the previous reciprocating compressor rod packing replacement.

(2) The owner or operator of a reciprocating compressor complying with Subparagraph (b) of Paragraph (2) or Subparagraph (b) of Paragraph (4) of Subsection B of 20.2.50.114 NMAC shall monitor the rod packing emissions collection system semiannually to ensure that it operates as designed and routes emissions through a closed vent system to a control device, recovery system, fuel cell, or process stream.

(3) The owner or operator of a centrifugal or reciprocating compressor complying with the requirements in Subsection B of 20.2.50.114 NMAC through use of a closed vent system or control device shall comply with the monitoring requirements in 20.2.50.115 NMAC.

(4) The owner or operator of a centrifugal or reciprocating compressor shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator of a centrifugal compressor using a wet seal fluid degassing system shall maintain a record of the following:

- (a) the location (latitude and longitude) of the centrifugal compressor;
- (b) the date of construction or reconstruction of the centrifugal compressor;
- (c) the monitoring required in Subsection C of 20.2.50.114 NMAC, including the

time and date of the monitoring, the person(s) conducting the monitoring, a description of any problem observed during the monitoring, and a description of any corrective action taken; and

(d) the type, make, model, and unique identification number or equivalent identifier of a control device used to comply with the control requirements in Subsection B of 20.2.50.114 NMAC.

(2) The owner or operator of a reciprocating compressor shall maintain a record of the following:

(a) the location (latitude and longitude) of the reciprocating compressor;  
(b) the date of construction or reconstruction of the reciprocating compressor; and  
(c) the monitoring required in Subsection C of 20.2.50.114 NMAC, including:  
(i) the number of hours of operation since the effective date, initial startup after the effective date, or the last rod packing replacement, as applicable;  
(ii) data showing the effectiveness of the rod packing emissions collection system, as applicable; and  
(iii) the time and date of the inspection, the person(s) conducting the inspection, a description of any problems observed during the inspection, and a description of corrective actions taken.

(3) The owner or operator of a centrifugal or reciprocating compressor complying with the requirements in Subsection B of 20.2.50.114 NMAC through use of a control device or closed vent system shall comply with the recordkeeping requirements in 20.2.50.115 NMAC.

(4) The owner or operator of a centrifugal or reciprocating compressor shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator of a centrifugal or reciprocating compressor shall comply with the reporting requirements in 20.2.50.112 NMAC.  
[20.2.50.114 NMAC - N, 08/05/2022]

#### **20.2.50.115 CONTROL DEVICES AND CLOSED VENT SYSTEMS:**

**A. Applicability:** These requirements apply to control devices and closed vent systems as defined in 20.2.50.7 NMAC and used to comply with the emission standards and emission reduction requirements in this Part.

**B. General requirements:**

(1) Control devices used to demonstrate compliance with this Part shall be installed, operated, and maintained consistent with manufacturer specifications, and good engineering and maintenance practices.

(2) Control devices shall be adequately designed and sized to achieve the control efficiency rates required by this Part and to handle the reasonably expected range of inlet VOC or NO<sub>x</sub> concentrations or volumes.

(3) The owner or operator shall inspect control devices visually or consistent with applicable federally approved inspection methods at least monthly to identify defects, leaks, and releases, and to ensure proper operation. Prior to an inspection or monitoring event, the owner or operator shall date and time stamp the event, and the required monitoring data entry shall be made in accordance with this Part.

(4) The owner or operator shall ensure that a control device used to comply with emission standards in this Part operates as a closed vent system that captures and routes VOC emissions to the control device, in order to minimize venting of unburnt gas to the atmosphere.

(5) The owner or operator of a permanent closed vent system for a centrifugal compressor wet seal fluid degassing system, reciprocating compressor, natural gas driven pneumatic pump, or storage vessel using a control device or routing emissions to a process shall:

(a) ensure the control device or process is of sufficient design and capacity to accommodate the expected range of emissions from the affected sources;  
(b) conduct an assessment to confirm that the closed vent system is of sufficient design and capacity to ensure that emissions from the affected equipment are routed to the control device or process; and

(c) have the assessment certified by a qualified professional engineer or an in-house engineer with expertise regarding the design and operation of closed vent system(s) in accordance with Items (i) and (ii) of Subparagraph (c) of this section.

(i) The assessment of the closed vent system shall be prepared under the direction or supervision of a qualified professional engineer or an in-house engineer who signs the certification in Item (ii) of Subparagraph (c) of this section.

(ii) The owner or operator shall provide the following certification, signed and dated by a qualified professional engineer or an in-house engineer: "I certify that the closed vent system assessment was prepared under my direction or supervision. I further certify that the closed vent system assessment was conducted, and this report was prepared, pursuant to the requirements of this Part. Based on my professional knowledge and experience, and inquiry of personnel involved in the assessment, the certification submitted herein is true, accurate, and complete."

(d) An owner or operator of an existing closed vent system shall comply with the requirements of Paragraph (5) of Subsection B of 20.2.50.115 NMAC within three years of the effective date of this Part and within 90 days of startup for a new closed vent system.

(6) The owner or operator shall keep manufacturer specifications for all control devices on file. The information shall include the unique identification number, type of unit, manufacturer name, make, model, capacity, and destruction or reduction efficiency data.

**C. Requirements for open flares:**

(1) Emission standards:

(a) the flare shall be properly sized and designed to ensure proper combustion efficiency to combust the gas sent to the flare, and combustion shall be maintained for the duration of time that gas is sent to the flare. The owner or operator shall not send gas to the flare in excess of the manufacturer maximum rated capacity.

(b) The owner or operator shall equip each new and existing flare (except those flares required to meet the requirements of Subparagraph (c) of this Subsection) with a continuous pilot flame, an operational auto-igniter, or require manual ignition, and shall comply with the following no later than one year after the effective date of this part, unless otherwise specified:

(i) a flare with a continuous pilot flame or an auto-igniter shall be equipped with a system to ensure the flare is operated with a flame present at all times when gas is being sent to the flare.

(ii) The owner or operator of a flare with manual ignition shall inspect and ensure a flame is present upon initiating a flaring event.

(iii) A new flare controlling a continuous gas stream shall be equipped with a continuous pilot flame upon startup.

(iv) An existing flare controlling a continuous gas stream shall be equipped with a continuous pilot.

(c) An existing flare located at a site with an annual average daily production of equal to or less than 10 barrels of oil per day or an average daily production of 60,000 standard cubic feet of natural gas shall be equipped with an auto-igniter, continuous pilot, or technology (e.g. alarm) that alerts the owner or operator of a flare malfunction, if replaced or reconstructed after the effective date of this Part.

(d) The owner or operator shall operate a flare with no visible emissions, except for periods not to exceed a total of 30 seconds during any 15 consecutive minutes. The flare shall be designed so that an observer can, by means of visual observation from the outside of the flare or by other means such as a continuous monitoring device, determine whether it is operating properly. The observation may be terminated if visible emissions are observed and recorded and action is taken to address the visible emissions.

(e) The owner or operator shall repair the flare within three business days of any thermocouple or other flame detection device alarm activation.

(2) Monitoring requirements:

(a) the owner or operator of a flare with a continuous pilot or auto-igniter shall continuously monitor the presence of a pilot flame, or presence of flame during flaring if using an auto-igniter, using a thermocouple equipped with a continuous recorder and alarm to detect the presence of a flame. An alternative equivalent technology alerting the owner or operator of failure of ignition of the gas stream may be used in lieu of a continuous recorder and alarm, if approved by the department;

(b) the owner or operator of a manually ignited flare shall monitor the presence of a flame using continuous visual observation during a flaring event;

(c) the owner or operator shall, at least quarterly, and upon observing visible emissions, perform a U.S. EPA method 22 observation while the flare pilot or auto-igniter flame is present to certify compliance with visible emission requirements. The observation period shall be a minimum of 15 consecutive minutes. The observation may be terminated if visible emissions are observed and recorded and action is taken to address the visible emissions;

(d) prior to an inspection or monitoring event, the owner or operator shall date and

time stamp the event, and the required monitoring data entry shall be made in accordance with this Part; and

(e) the owner or operator shall monitor the technology that alerts the owner or operator of a flare malfunction and any instances of technology or alarm activation.

(3) Recordkeeping requirements: The owner or operator of an open flare shall keep a record of the following:

(a) any instance of thermocouple, other approved technology, or flame detection device alarm activation, including the date and cause of alarm activation, action taken to bring the flare into a normal operating condition, the name of the person(s) conducting the inspection, and any maintenance activity performed;

(b) the results of the U.S. EPA method 22 observations;

(c) the monitoring of the presence of a flame on a manual flare during a flaring event as required under Subparagraph (b) of Paragraph (2) of Subsection C of 20.2.50.115 NMAC;

(d) the results of the most recent gas analysis for the gas being flared, including VOC content and heating value; and

(e) the date and time stamp(s), including GPS of the location, of any monitoring event.

(4) Reporting requirements: The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

**D. Requirements for enclosed combustion devices (ECD) and thermal oxidizers (TO):**

(1) Emission standards:

(a) the ECD/TO shall be properly sized and designed to ensure proper combustion efficiency to combust the gas sent to the ECD/TO. The owner or operator shall not send gas to the ECD/TO in excess of the manufacturer maximum rated capacity.

(b) The owner or operator shall equip each new ECD/TO with a continuous pilot flame or an auto-igniter upon startup. Existing ECD/TO shall be equipped with a continuous pilot flame or an auto-igniter no later than two years after the effective date of this Part.

(c) ECD/TO with a continuous pilot flame or an auto-igniter shall be equipped with a system to ensure that the ECD/TO is operated with a flame present at all times when gas is sent to the ECD/TO. Combustion shall be maintained for the duration of time that gas is sent to the ECD/TO. New ECD/TOs shall comply with this requirement upon startup, and existing ECD/TOs shall comply with this requirement within 2 years of the effective date of this Part.

(d) The owner or operator shall operate an ECD/TO with no visible emissions, except for periods not to exceed a total of 30 seconds during any 15 consecutive minutes. The ECD/TO shall be designed so that an observer can, by means of visual observation from the outside of the ECD/TO or by other means such as a continuous monitoring device, determine whether it is operating properly. The observation may be terminated if visible emissions are observed and recorded and action is taken to address the visible emissions.

(2) Monitoring requirements:

(a) the owner or operator of an ECD/TO with a continuous pilot or an auto-igniter shall continuously monitor the presence of a pilot flame, or of a flame during combustion if using an auto-igniter, using a thermocouple equipped with a continuous recorder and alarm to detect the presence of a flame. An alternative equivalent technology alerting the owner or operator of failure of ignition of the gas stream may be used in lieu of a continuous recorder and alarm, if approved by the department.

(b) The owner or operator shall, at least quarterly, and upon observing visible emissions, perform a U.S. EPA method 22 observation while the ECD/TO pilot flame or auto-igniter flame is present to certify compliance with the visible emission requirements. The period of observation shall be a minimum of 15 consecutive minutes. The observation may be terminated if visible emissions are observed and recorded and action is taken to address the visible emissions.

(c) Prior to an inspection or monitoring event, the owner or operator shall date and time stamp the event, and the required monitoring data entry shall be made in accordance with the monitoring requirements of this Part.

(3) Recordkeeping requirements: The owner or operator of an ECD/TO shall keep records of the following:

(a) any instance of thermocouple, other approved technology, or flame detection device alarm activation, including the date and cause of the activation, any action taken to bring the ECD/TO into normal operating condition, the name of the person(s) conducting the inspection, and any maintenance activities performed;

(b) the results of the U.S. EPA method 22 observations;  
(c) the date and time stamp(s), including GPS of the location, of any monitoring event; and  
(d) the results of the most recent gas analysis for the gas being combusted, including VOC content and heating value.

(4) Reporting requirements: The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

**E. Requirements for vapor recovery units (VRU):**

(1) Emission standards:

(a) the owner or operator shall operate the VRU as a closed vent system that captures and routes all VOC emissions directly back to the process or to a sales pipeline and does not vent to the atmosphere.

(b) The owner or operator shall control VOC emissions during startup, shutdown, maintenance, or other VRU downtime with a backup control device (e.g. flare, ECD, TO) or redundant VRU during the period of VRU downtime, unless otherwise approved in an air permit issued prior to the effective date of this Part. Alternatively, the owner or operator may shut down and isolate the source being controlled by the VRU. For sites that already have a VRU installed as of the effective date of this Part, the owner or operator shall install backup control devices or redundant VRUs within three years of the effective date of this Part.

(2) Monitoring Requirements:

(a) the owner or operator shall comply with the standards for equipment leaks in 20.2.50.116 NMAC, or alternatively, shall implement a program that meets the requirements of Subpart OOOOa of 40 CFR 60.

(b) Prior to a VRU inspection or monitoring event, the owner or operator shall date and time stamp the event, and the required monitoring data entry shall be made in accordance with the requirements of this Part.

(3) Recordkeeping requirements: For a VRU inspection or monitoring event, the owner or operator shall record the result of the event, including the name of the person(s) conducting the inspection, any maintenance or repair activities required, and the date and time stamp(s), including GPS of the location, of any monitoring event. The owner or operator shall record the type of redundant control device used during VRU downtime, or keep records of the source shut down and isolated and the time period during which it was shut down, or records of compliance with an air permit issued prior to the effective date of this Part.

(4) Reporting requirements: The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

**F. Recordkeeping requirements:** In addition to the general recordkeeping requirements of 20.2.50.112 NMAC, the owner or operator of a control device or closed vent system shall maintain a record of the following:

(1) the certification of the closed vent system assessment, where applicable, and as required by this Part; and

(2) the information required in Paragraph (6) of Subsection B of 20.2.50.115 NMAC.

**G. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.115 NMAC - N, 08/05/2022]

**20.2.50.116 EQUIPMENT LEAKS AND FUGITIVE EMISSIONS:**

**A. Applicability:** Well sites, tank batteries, gathering and boosting stations, natural gas processing plants, transmission compressor stations, and associated piping and components are subject to the requirements of 20.2.50.116 NMAC. Components in water or air service are not subject to the requirements of 20.2.50.116 NMAC. The requirements of this Part may be considered in the facility-wide PTE and in determining the monitoring frequency requirements of this section.

**B. Emission standards:** The owner or operator of oil and gas production and processing equipment located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, or transmission compressor stations shall demonstrate compliance with this Part by performing the monitoring, recordkeeping, and reporting requirements specified in 20.2.50.116 NMAC. Tank batteries supporting multiple facilities are subject to the requirements for the most stringently regulated facility of which they are a part.

**C. Default monitoring requirements:** Owners and operators shall comply with the following monitoring requirements:

(1) The owner or operator of a facility with an annual average daily production or average daily throughput of greater than 10 barrels of oil per day or an average daily production of greater than 60,000 standard cubic feet per day of natural gas shall, at least weekly, conduct an external audio, visual, and olfactory (AVO) inspection of thief hatches, closed vent systems, pumps, compressors, pressure relief devices, open-ended valves or lines, valves, flanges, connectors, piping, and associated equipment to identify defects and leaking components as follows:

(a) conduct an external visual inspection for defects, which may include cracks, holes, or gaps in piping or covers; loose connections; liquid leaks; broken or missing caps; broken, cracked or otherwise damaged seals or gaskets; broken or missing hatches; or broken or open access covers or other closure or bypass devices;

(b) conduct an audio inspection for pressure leaks and liquid leaks;

(c) conduct an olfactory inspection for unusual or strong odors; and

(d) any positive detection during the AVO inspection shall be repaired in accordance with Subsection E if not repaired at the time of discovery.

(2) The owner or operator of a facility with an annual average daily production or average daily throughput of equal to or less than 10 barrels of oil per day or an average daily production of equal to or less than 60,000 standard cubic feet per day of natural gas shall, at least monthly, conduct an external audio, visual, and olfactory (AVO) inspection of thief hatches, closed vent systems, pumps, compressors, pressure relief devices, open-ended valves or lines, valves, flanges, connectors, piping, and associated equipment to identify defects and leaking components as specified in Subparagraphs (a) through (d) of Paragraph (1) of Subsection C of 20.2.50.116 NMAC; except that an owner or operator of a well site within 1,000 feet (as measured from the center of the well site to the applicable structure or area of public assembly) of an occupied area shall conduct the AVO inspection at least weekly.

(3) The owner or operator of the following facilities shall conduct an inspection using U.S. EPA method 21 or optical gas imaging (OGI) of thief hatches, closed vent systems, pumps, compressors, pressure relief devices, open-ended valves or lines, valves, flanges, connectors, piping, and associated equipment to identify leaking components at a frequency determined according to the following schedules, and upon request by the department for good cause shown:

(a) for existing well sites and standalone tank batteries, the owner or operator shall comply with these requirements no later than two years from the effective date of this Part.

(b) for well sites and standalone tank batteries:

(i) annually at facilities with a PTE less than two tpy VOC;

(ii) semi-annually at facilities with a PTE equal to or greater than two tpy and less than five tpy VOC; and

(iii) quarterly at facilities with a PTE equal to or greater than five tpy VOC.

(c) for gathering and boosting stations and natural gas processing plants:

(i) quarterly at facilities with a PTE less than 25 tpy VOC; and

(ii) monthly at facilities with a PTE equal to or greater than 25 tpy VOC.

(d) For transmission compressor stations, quarterly or in compliance with the federal equipment leak and fugitive emissions monitoring requirements of New Source Performance Standards, 40 C.F.R. Part 60, as may be revised, so long as the federal equipment leak and fugitive emissions monitoring requirements are at least as stringent as the New Source Performance Standards OOOOa, 40 CFR Part 60, in existence as of the effective date of this Part.

(e) Quarterly at well sites within 1,000 feet of an occupied area.

(f) For existing wellhead only facilities, annual inspections shall be completed on the following schedule: thirty percent by January 1, 2024; sixty-five percent by January 1, 2025; and one-hundred percent by January 1, 2026.

(g) for inactive well sites:

(i) for well sites that are inactive on or before the effective date of this Part, annually beginning within six months of the effective date of this Part;

(ii) for well sites that become inactive after the effective date of this Part, annually beginning 30 days after the site becomes an inactive well site.

(4) Inspections using U.S. EPA method 21 shall meet the following requirements:

(a) the instrument shall be calibrated before each day of use by the procedures specified in U.S. EPA method 21 and the instrument manufacturer; and

(b) a leak is detected if the instrument records a measurement of 500 ppm or greater

of hydrocarbons, and the measurement is not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

(5) Inspections using OGI shall meet the following requirements:

(a) the instrument shall comply with the specifications, daily instrument checks, and leak survey requirements set forth in Subparagraphs (1) through (3) of Paragraph (i) of 40 CFR 60.18; and

(b) a leak is detected if the emission images recorded by the OGI instrument are not associated with normal equipment operation, such as pneumatic device actuation or crank case ventilation.

(6) Components that are difficult, unsafe, or inaccessible to monitor, as determined by the following conditions, are not required to be inspected until it becomes feasible to do so:

(a) difficult to monitor components are those that require elevating the monitoring personnel more than two meters above a supported surface;

(b) unsafe to monitor components are those that cannot be monitored without exposing monitoring personnel to an immediate danger as a consequence of completing the monitoring; and

(c) inaccessible to monitor components are those that are buried, insulated, or obstructed by equipment or piping that prevents access to the components by monitoring personnel.

(7) Owners and operators of well sites must conduct an evaluation to determine applicability of Subparagraph (e) of Paragraph (3) of Subsection C of Section 20.2.50.116 NMAC within 30 days of constructing a new well site, and within 90 days of the effective date of this Part for existing well sites.

(8) An owner or operator conducting an evaluation pursuant to Paragraph (7) of Subsection C of Section 20.2.50.116 NMAC shall measure the distance from the latitude and longitude of each well at a well site to the following points for each type of occupied area:

(a) the property line for indoor or outdoor spaces associated with a school that students use commonly as part of their curriculum or extracurricular activities and outdoor venues or recreation areas;

(b) the property line for outdoor venues or recreation areas, such as a playground, permanent sports field, amphitheater, or other similar place of outdoor public assembly;

(c) the location of a building or structure used as a place of residency by a person, a family, or families; and

(d) the location of a commercial facility with five-thousand (5,000) or more square feet of building floor area that is operating and normally occupied during working hours.

(9) Injection well sites and temporarily abandoned well sites are not subject to the leak survey requirements of Paragraphs (3) through (6) of Subsection C of 20.2.50.116 NMAC.

(10) Prior to any monitoring event, the owner or operator shall date and time stamp the monitoring event.

**D. Alternative equipment leak monitoring plans:** An owner or operator may comply with the equipment leak requirements of Subsection C of 20.2.50.116 NMAC through an equally effective and enforceable alternative monitoring plan, which may include the use of alternative monitoring methods and technologies, as follows:

(1) An owner or operator may comply with an individual alternative monitoring plan, subject to the following requirements:

(a) the proposed alternative monitoring plan shall be submitted to the department on an application form provided by the department. Within 90 days of receipt, the department shall issue a letter approving or denying the requested alternative monitoring plan. An owner or operator shall comply with the default monitoring requirements of Section 20.2.50.116 NMAC and may not operate under an alternative monitoring plan until it has been approved by the department.

(b) the department may terminate an approved alternative monitoring plan if the department finds that the owner or operator failed to comply with a provision of the plan and failed to correct and disclose the violation to the department within 15 calendar days of identifying the violation.

(c) upon department denial or termination of an approved alternative monitoring plan, the owner or operator shall comply with the default monitoring requirements of Subsection C of 20.2.50.116 NMAC within 15 days.

(2) An owner or operator may comply with a pre-approved alternative monitoring plan maintained by the department, subject to the following requirements:

(a) the owner or operator shall notify the department in writing of the intent to conduct monitoring under a pre-approved alternative monitoring plan, and identify which pre-approved plan will be used, at least 15 days prior to conducting the first monitoring under that plan.

(b) the department may terminate the use of a pre-approved alternative monitoring plan by the owner or operator if the department finds that the owner or operator failed to comply with a provision of the plan and failed to correct and disclose the violation to the department within 15 calendar days of identifying the violation.

(c) upon department denial or termination of a pre-approved alternative monitoring plan, the owner or operator shall comply with the default monitoring requirements of Subsection C of 20.2.50.116 NMAC within 15 days.

**E. Repair requirements:** For a leak detected pursuant to monitoring conducted under 20.2.50.116 NMAC:

- (1) the owner or operator shall place a visible tag on the leaking component not otherwise repaired at the time of discovery until the component has been repaired;
- (2) leaks shall be repaired as soon as practicable but no later than 30 days from discovery;
- (3) the equipment must be re-monitored no later than 15 days after the repair of the leak to demonstrate that it has been repaired;
- (4) if the leak cannot be repaired within 30 days of discovery without a process unit shutdown, the leak may be designated "Repair delayed," the date of the next scheduled process unit shutdown must be identified, and the leak must be repaired before the end of the scheduled process unit shutdown or within 2 years, whichever is earlier; and
- (5) if the leak cannot be repaired within 30 days of discovery due to shortage of parts, the leak may be designated "Repair delayed," and must be repaired within 15 days of resolution of such shortage.

**F. Recordkeeping requirements:**

(1) The owner or operator shall keep a record of the following for all AVO, RM 21, OGI, or alternative equipment leak monitoring inspections conducted as required under 20.2.50.116 NMAC, and shall provide the record to the department upon request:

- (a) facility location (latitude and longitude);
- (b) time and date stamp, including GPS of the location, of any monitoring;
- (c) monitoring method (e.g. AVO, RM 21, OGI, approved alternative method);
- (d) name of the person(s) performing the inspection;
- (e) a description of any leak requiring repair or a note that no leak was found; and
- (f) whether a visible tag was placed on the leak.

(2) The owner or operator shall keep the following record for any leak that is detected:

- (a) the date the leak is detected;
- (b) the date of attempt to repair;
- (c) for a leak with a designation of "repair delayed" the following shall be recorded:

(i) reason for delay if a leak is not repaired within the required number of days after discovery. If a delay is due to a parts shortage, a record documenting the attempt to order the parts and the unavailability due to a shortage is required;

(ii) the date of next scheduled process unit shutdown by which the repair will be completed; and

(iii) name of the person(s) who determined that the repair could not be implemented without a process unit shutdown.

- (d) date of successful leak repair;
- (e) date the leak was monitored after repair and the results of the monitoring; and
- (f) a description of the component that is designated as difficult, unsafe, or

inaccessible to monitor, an explanation stating why the component was so designated, and the schedule for repairing and monitoring the component.

(3) For a leak detected using OGI, the owner or operator shall keep records of the specifications, the daily instrument check, and the leak survey requirements specified at 40 CFR 60.18(i)(1)-(3).

(4) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**G. Reporting requirements:**

(1) The owner or operator shall certify the use of an alternative equipment leak monitoring plan under Subsection D of 20.2.50.116 NMAC to the department annually, if used.

(2) The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.116 NMAC - N, 08/05/2022]

#### **20.2.50.117 NATURAL GAS WELL LIQUID UNLOADING:**

**A. Applicability:** Liquid unloading operations resulting in the venting of natural gas at natural gas wells are subject to the requirements of 20.2.50.117 NMAC. Liquid unloading operations that do not result in the venting of any natural gas are not subject to this Part. Owners and operators of a natural gas well subject to this Part must comply with the standards set forth in Paragraph (1) of Subsection B of 20.2.50.117 NMAC within two years of the effective date of this Part.

##### **B. Emission standards:**

(1) The owner or operator of a natural gas well shall implement at least one of the following best management practices during the life of the well to avoid the need for venting of natural gas associated with liquid unloading:

- (a) use of a plunger lift;
- (b) use of artificial lift;
- (c) use of a control device;
- (d) use of an automated control system; or
- (e) other practices if approved by the department.

(2) The owner or operator of a natural gas well shall implement the following best management practices during venting associated with liquid unloading to minimize emissions, consistent with well site conditions and good engineering practices:

- (a) reduce wellhead pressure before blowdown or venting to atmosphere;
- (b) monitor manual venting associated with liquid unloading in close proximity to the well or via remote telemetry; and
- (c) close vents to the atmosphere and return the well to normal production operation as soon as practicable.

##### **C. Monitoring requirements:**

(1) The owner or operator shall monitor the following parameters during venting associated with liquid unloading:

- (a) wellhead pressure;
- (b) flow rate of the vented natural gas (to the extent feasible); and
- (c) duration of venting to the storage vessel, tank battery, or atmosphere.

(2) The owner or operator shall calculate the volume and mass of VOC emitted during a venting event associated with a liquid unloading event.

(3) The owner or operator shall comply with the monitoring requirements of 20.2.50.112 NMAC.

##### **D. Recordkeeping requirements:**

(1) The owner or operator shall keep the following records for liquid unloading:

- (a) unique identification number and location (latitude and longitude) of the well;
- (b) date of the unloading event;
- (c) wellhead pressure;
- (d) flow rate of the vented natural gas (to the extent feasible. If not feasible, the owner or operator shall use the estimated flow rate in the emission calculation);
- (e) duration of venting to the storage vessel, tank battery, or atmosphere;
- (f) a description of the best management practices used to minimize venting of VOC emissions during the life of the well and before and during the liquid unloading; and
- (g) a calculation of the VOC emissions vented during a liquid unloading event based on the duration, calculated volume, and composition of the produced gas.

(2) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.117 NMAC - N, 08/05/2022]

#### **20.2.50.118 GLYCOL DEHYDRATORS:**

**A. Applicability:** Glycol dehydrators with a PTE equal to or greater than two tpy of VOC and located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations are subject to the requirements of 20.2.50.118 NMAC.

**B. Emission standards:**

(1) Existing glycol dehydrators with a PTE equal to or greater than two tpy of VOC shall achieve a minimum combined capture and control efficiency of ninety-five percent of VOC emissions from the still vent and flash tank (if present) no later than two years after the effective date of this Part. If a combustion control device is used, the combustion control device shall have a minimum design combustion efficiency of ninety-eight percent.

(2) New glycol dehydrators with a PTE equal to or greater than two tpy of VOC shall achieve a minimum combined capture and control efficiency of ninety-five percent of VOC emissions from the still vent and flash tank (if present) upon startup. If a combustion control device is used, the combustion control device shall have a minimum design combustion efficiency of ninety-eight percent.

(3) The owner or operator of a glycol dehydrator shall comply with the following requirements:

(a) the still vent and flash tank emissions shall be routed at all times to the reboiler firebox, condenser, combustion control device, fuel cell, to a process point that either recycles or recompresses the VOC emissions or uses the emissions as fuel, or to a VRU that reinjects the VOC emissions back into the process stream or natural gas pipeline;

(b) if a VRU is used, it shall consist of a closed loop system of seals, ducts, and a compressor that reinjects the vapor into the process or the natural gas pipeline. The VRU shall be operational at least ninety-five percent of the time the facility is in operation, resulting in a minimum combined capture and control efficiency of ninety-five percent, which shall supersede any inconsistent requirements in 20.2.50.115 NMAC. The VRU shall be installed, operated, and maintained according to the manufacturer's specifications; and

(c) the still vent and flash tank emissions shall not be vented directly to the atmosphere during normal operation.

(4) An owner or operator complying with the requirements in Subsection B of 20.2.50.118 NMAC through use of a control device shall comply with the requirements in 20.2.50.115 NMAC.

(5) The requirements of Subsection B of 20.2.50.118 NMAC cease to apply when the actual annual VOC emissions from a new or existing glycol dehydrator are less than two tpy of VOC.

**C. Monitoring requirements:**

(1) The owner or operator of a glycol dehydrator shall conduct an annual extended gas analysis on the dehydrator inlet gas and calculate the uncontrolled and controlled VOC emissions in tpy.

(2) The owner or operator of a glycol dehydrator shall inspect the glycol dehydrator, including the reboiler and regenerator, and the control device or process the emissions are being routed, semi-annually to ensure it is operating as initially designed and in accordance with the manufacturer recommended operation and maintenance schedule.

(3) Prior to any monitoring event, the owner or operator shall date and time stamp the event, and the monitoring data entry shall be made in accordance with the requirements of this Part.

(4) An owner or operator complying with the requirements in Subsection B of 20.2.50.118 NMAC through the use of a control device shall comply with the monitoring requirements in 20.2.50.115 NMAC.

(5) Owners and operators shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator of a glycol dehydrator shall maintain a record of the following:

(a) unique identification number and dehydrator location (latitude and longitude);

(b) glycol circulation rate, monthly natural gas throughput, and the date of the most recent throughput measurement;

(c) data and methodology used to estimate the PTE of VOC (must be a department approved calculation methodology);

(d) controlled and uncontrolled VOC emissions in tpy;

(e) type, make, model, and unique identification number of the control device or process the emissions are being routed;

(f) time and date stamp, including GPS of the location, of any monitoring;

(g) results of any equipment inspection, including maintenance or repair activities required to bring the glycol dehydrator into compliance; and

(h) a copy of the glycol dehydrator manufacturer specifications.

(2) An owner or operator complying with the requirements in Paragraph (1) or (2) of Subsection B of 20.2.50.118 NMAC through use of a control device as defined in this Part shall comply with the

recordkeeping requirements in 20.2.50.115 NMAC.

(3) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.  
[20.2.50.118 NMAC - N, 08/05/2022]

**20.2.50.119 HEATERS:**

**A. Applicability:** Natural gas-fired heaters with a rated heat input equal to or greater than 20 MMBtu/hour including heater treaters, heated flash separators, evaporator units, fractionation column heaters, and glycol dehydrator reboilers in use at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations are subject to the requirements of 20.2.50.119 NMAC.

**B. Emission standards:**

(1) Natural gas-fired heaters shall comply with the emission limits in table 1 of 20.2.50.119 NMAC.

Table 1 - EMISSION STANDARDS FOR NO<sub>x</sub> AND CO

| Date of Construction:   | NO <sub>x</sub><br>(ppmvd @ 3% O <sub>2</sub> ) | CO<br>(ppmvd @ 3% O <sub>2</sub> ) |
|---|---|------------------------------------|
| Constructed or reconstructed before the effective date of 20.2.50 NMAC      | 30  | 400                                |
| Constructed or reconstructed on or after the effective date of 20.2.50 NMAC | 30  | 400                                |

(2) Existing natural gas-fired heaters shall comply with the requirements of 20.2.50.119 NMAC no later than three years after the effective date of this Part.

(3) New natural gas-fired heaters shall comply with the requirements of 20.2.50.119 NMAC upon startup.

**C. Monitoring requirements:**

(1) The owner or operator shall:

(a) conduct emission testing for NO<sub>x</sub> and CO within 180 days of the compliance date specified in Paragraph (2) or (3) of Subsection B of 20.2.50.119 NMAC and at least every two years thereafter.

(b) inspect, maintain, and repair the heater in accordance with the manufacturer specifications at least once every two years following the applicable compliance date specified in 20.2.50.119 NMAC. The inspection, maintenance, and repair shall include the following:

(i) inspecting the burner and cleaning or replacing components of the burner as necessary;

(ii) inspecting the flame pattern and adjusting the burner as necessary to optimize the flame pattern consistent with the manufacturer specifications;

(iii) inspecting the AFR controller and ensuring it is calibrated and functioning properly, if present;

(iv) optimizing total emissions of CO consistent with the NO<sub>x</sub> requirement and manufacturer specifications, and good combustion practices; and

(v) measuring the concentrations in the effluent stream of CO in ppmvd and O<sub>2</sub> in volume percent before and after adjustments are made in accordance with Subparagraph (c) of Paragraph (2) of Subsection C of 20.2.50.119 NMAC.

(2) The owner or operator shall comply with the following periodic testing requirements:

(a) conduct three test runs of at least 20-minutes duration within ten percent of one-hundred percent peak, or the highest achievable, load;

(b) determine NO<sub>x</sub> and CO emissions and O<sub>2</sub> concentrations in the exhaust with a portable analyzer used and maintained in accordance with the manufacturer specifications and following the procedures specified in the current version of ASTM D6522;

(c) if the measured NO<sub>x</sub> or CO emissions concentrations are exceeding the emissions limits of table 1 of 20.2.50.119 NMAC, the owner or operator shall repeat the inspection and tune-up in Subparagraph (b) of Paragraph (1) of Subsection C of 20.2.50.119 NMAC within 30 days of the periodic testing; and

(d) if at any time the heater is operated in excess of the highest achievable load in a prior test plus ten percent, the owner or operator shall perform the testing specified in Subparagraph (a) of Paragraph (2) of Subsection C of 20.2.50.119 NMAC within 60 days from the anomalous operation.

(3) When conducting periodic testing of a heater, the owner or operator shall follow the procedures in Paragraph (2) of Subsection C of 20.2.50.119 NMAC. An owner or operator may deviate from those procedures by submitting a written request to use an alternative procedure to the department at least 60 days before performing the periodic testing. In the alternative procedure request, the owner or operator must demonstrate the alternative procedure's equivalence to the standard procedure. The owner or operator must receive written approval from the department prior to conducting the periodic testing using an alternative procedure.

(4) Prior to a monitoring event, the owner or operator shall date and time stamp the event, and the required monitoring data entry shall be made in accordance with this Part.

(5) The owner or operator shall comply with the monitoring requirements of 20.2.50.112 NMAC.

**D. Recordkeeping requirements:** The owner or operator shall maintain a record of the following:

- (1) unique identification number and location (latitude and longitude) of the heater;
  - (2) summary of the complete test report and the results of periodic testing;
  - (3) inspections, testing, maintenance, and repairs, which shall include at a minimum:
    - (a) the date and time stamp, including GPS of the location, of the inspection, testing, maintenance, or repair conducted;
    - (b) name of the person(s) conducting the inspection, testing, maintenance, or repair;
    - (c) concentrations in the effluent stream of CO in ppmv and O<sub>2</sub> in volume percent;
- and
- (d) the results of the inspections and any the corrective action taken.

(4) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.119 NMAC - N, 08/05/2022]

**20.2.50.120 HYDROCARBON LIQUID TRANSFERS:**

**A. Applicability:** Hydrocarbon liquid transfers located at existing well sites, standalone tank batteries, gathering and boosting stations with one or more controlled storage vessels, natural gas processing plants, or transmission compressor stations are subject to the requirements of 20.2.50.120 NMAC within two years of the effective date of this Part. Hydrocarbon liquid transfers at existing gathering and boosting stations (including associated tank batteries) without any controlled storage vessels are subject to the requirements of 20.2.50.120 NMAC on the schedule specified in Paragraph 1 of Subsection B of 20.2.50.123 NMAC. Hydrocarbon liquid transfers located at new well sites, standalone tank batteries, gathering and boosting stations, natural gas processing plants, or transmission compressor stations are subject to the requirements of 20.2.50.120 NMAC upon startup. The following facilities and operations are not subject to the requirements of this Section:

- (1) Any facility connected to an oil sales pipeline that is routinely used for hydrocarbon liquid transfers;
- (2) Well sites, standalone tank batteries, gathering and boosting stations, natural gas processing plants, or transmission compressor stations not connected to an oil sales pipeline that load out hydrocarbon liquids to trucks fewer than thirteen (13) times in a calendar year; and
- (3) Transfers of hydrocarbon liquid from a transfer vessel to a storage vessel subject to the emission standards in 20.2.50.123 NMAC.

**B. Emission standards:**

(1) The owner or operator of a hydrocarbon liquid transfer operation shall use vapor balance, vapor recovery, or a control device to control VOC emissions by at least ninety-five percent, when transferring hydrocarbon liquid from a storage vessel to a tanker truck or tanker railcar for transport. If a combustion control device is used, the combustion device shall have a minimum design combustion efficiency of ninety-eight percent.

(2) An owner, operator, or personnel conducting the hydrocarbon liquid transfer using vapor balance shall:

- (a) transfer the vapor displaced from the transfer truck or railcar being loaded back to the storage vessel being emptied via a pipe or hose connected before the start of the transfer operation. If multiple storage vessels are manifolded together in a tank battery, the vapor may be routed back to any storage vessel in the

tank battery;

- (b) ensure that the transfer does not begin until the vapor collection and return system is properly connected;
- (c) inspect connector pipes, hoses, couplers, valves, and pressure relief devices for leaks;
- (d) check the hydrocarbon liquid and vapor line connections for proper connections before commencing the transfer operation; and
- (e) operate transfer equipment at a pressure that is less than the pressure relief valve setting of the receiving transport vehicle or storage vessel.

(3) Connector pipes and couplers shall be inspected and maintained to ensure there are no liquid leaks.

(4) Connections of hoses and pipes used during hydrocarbon liquid transfers shall be supported on drip trays that collect any leaks, and the materials collected shall be returned to the process or disposed of in a manner compliant with state law.

(5) Liquid leaks that occur shall be cleaned and disposed of in a manner that minimizes emissions to the atmosphere, and the material collected shall be returned to the process or disposed of in a manner compliant with state law.

(6) An owner or operator complying with Paragraph (1) of Subsection B of 20.2.50.120 NMAC through use of a control device shall comply with the control device requirements in 20.2.50.115 NMAC.

**C. Monitoring requirements:**

(1) The owner, operator, or their designated representative shall visually inspect the hydrocarbon liquid transfer equipment monthly at staffed locations and semi-annually at unstaffed locations to ensure that hydrocarbon liquid transfer lines, hoses, couplings, valves, and pipes are not dripping or leaking. At least once per calendar year, the inspection shall occur during a transfer operation. Leaking components shall be repaired to prevent dripping or leaking before the next transfer operation, or measures must be implemented to mitigate leaks until the necessary repairs are completed.

(2) The owner or operator of a hydrocarbon liquid transfer operation controlled by a control device must follow manufacturer specifications for the device.

(3) Owners and operators complying with Paragraph (1) of Subsection B of 20.2.50.120 NMAC through use of a control device shall comply with the monitoring requirements in 20.2.50.115 NMAC.

(4) Prior to any monitoring event, the owner or operator shall date and time stamp the event, and the monitoring data entry shall be made in accordance with the requirements of this Part.

(5) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator shall maintain a record of the following:

- (a) the location of the facility;
- (b) if using a control device, the type, make, and model of the control device;
- (c) the date and time stamp, including GPS of the location, of any inspection;
- (d) the name of the person(s) conducting the inspection;
- (e) a description of any problem observed during the inspection; and
- (f) the results of the inspection and a description of any repair or corrective action

taken.

(2) The owner or operator shall maintain a record for each site of the annual total hydrocarbon liquid transferred and annual total VOC emissions. Each calendar year, the owner or operator shall create a company-wide record summarizing the annual total hydrocarbon liquid transferred and the annual total calculated VOC emissions.

(3) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.120 NMAC - N, 08/05/2022]

**20.2.50.121 PIG LAUNCHING AND RECEIVING:**

**A. Applicability:** Individual pipeline pig launcher and receiver operations with a PTE equal to or greater than one tpy VOC located within the property boundary of, and under common ownership or control with,

well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations are subject to the requirements of 20.2.50.121 NMAC.

**B. Emission standards:**

(1) Owners and operators of affected pipeline pig launcher and receiver operations shall capture and reduce VOC emissions from pigging operations by at least ninety-five percent within two years of the effective date of this Part. If a combustion control device is used, the combustion device shall have a minimum design combustion efficiency of ninety-eight percent.

(2) The owner or operator conducting an affected pig launching and receiving operation shall:

(a) employ best management practices to minimize the liquid present in the pig receiver chamber and to minimize emissions from the pig receiver chamber to the atmosphere after receiving the pig in the receiving chamber and before opening the receiving chamber to the atmosphere;

(b) employ a method to minimize emissions, such as installing a liquid ramp or drain, routing a high-pressure chamber to a low-pressure line or vessel, using a ball valve type chamber, or using multiple pig chambers;

(c) recover and dispose of receiver liquid in a manner that minimizes emissions to the atmosphere to the extent practicable; and

(d) ensure that the material collected is returned to the process or disposed of in a manner compliant with state law.

(3) The emission standards in Paragraphs (1) and (2) of Subsection B of 20.2.50.121 NMAC cease to apply to an individual pipeline pig launching and receiving operation if the actual annual VOC emissions of the launcher or receiver operation are less than one tpy of VOC.

(4) An owner or operator complying with Paragraphs (1) or (2) of Subsection B of 20.2.50.121 NMAC through use of a control device shall comply with the control device requirements in 20.2.50.115 NMAC.

**C. Monitoring requirements:**

(1) The owner or operator of an affected pig launching and receiving site shall inspect the equipment for leaks using AVO, RM 21, or OGI on either:

(a) a monthly basis if pigging operations at a site occur on a monthly basis or more frequently; or

(b) prior to the commencement and after the conclusion of the pig launching or receiving operation, if less frequent.

(2) The monitoring shall be performed using the methodologies outlined in Subsection C of 20.2.50.116 NMAC as applicable and at the frequency required in Paragraph (1) of Subsection C of 20.2.50.121 NMAC. The monitoring shall be performed when the pig trap is under pressure.

(3) An owner or operator complying with Paragraphs (1) or (2) of Subsection B of 20.2.50.121 NMAC through use of a control device shall comply with the monitoring requirements in 20.2.50.115 NMAC.

(4) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:** In addition to complying with the recordkeeping requirements in 20.2.50.112 NMAC, the owner or operator of an affected pig launching and receiving site shall maintain a record of the following:

(1) the pigging operation, including the location, date, and time of the pigging operation;

(2) the data and methodology used to estimate the actual emissions to the atmosphere and used to estimate the PTE;

(3) date and time of any monitoring and the results of the monitoring; and

(4) the type of control device and its make and model.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.121 NMAC - N, 08/05/2022]

**20.2.50.122 PNEUMATIC CONTROLLERS AND PUMPS:**

**A. Applicability:** Natural gas-driven pneumatic controllers and pumps located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations are subject to the requirements of 20.2.50.122 NMAC.

**B. Emission standards:**

- (1) A new natural gas-driven pneumatic controller or pump shall comply with the requirements of 20.2.50.122 NMAC upon startup.
- (2) An existing natural gas-driven pneumatic pump shall comply with the requirements of 20.2.50.122 NMAC within three years of the effective date of this Part.
- (3) An owner or operator shall ensure that its existing natural gas-driven pneumatic controllers comply with the requirements of 20.2.50.122 NMAC according to the following schedule:

**Table 1 – WELL SITES, STANDALONE TANK BATTERIES, GATHERING AND BOOSTING STATIONS**

| Total Historic Percentage of Non-Emitting Controllers | Total Required Percentage of Non-Emitting Controllers by January 1, 2024 | Total Required Percentage of Non-Emitting Controllers by January 1, 2027 | Total Required Percentage of Non-Emitting Controllers by January 1, 2030 |
|---|--|--|--|
| > 75%   | 80%  | 85%  | 90%  |
| > 60-75%  | 80%  | 85%  | 90%  |
| > 40-60%  | 65%  | 70%  | 80%  |
| > 20-40%  | 45%  | 70%  | 80%  |
| 0-20%   | 25%  | 65%  | 80%  |

**Table 2 – TRANSMISSION COMPRESSOR STATIONS AND GAS PROCESSING PLANTS**

| Total Historic Percentage of Non-Emitting Controllers | Total Required Percentage of Non-Emitting Controllers by January 1, 2024 | Total Required Percentage of Non-Emitting Controllers by January 1, 2027 | Total Required Percentage of Non-Emitting Controllers by January 1, 2030 |
|---|--|--|--|
| > 75%   | 80%  | 95%  | 98%  |
| > 60-75%  | 80%  | 95%  | 98%  |
| > 40-60%  | 65%  | 95%  | 98%  |
| > 20-40%  | 50%  | 95%  | 98%  |
| 0-20%   | 35%  | 95%  | 98%  |

**(4) Standards for natural gas-driven pneumatic controllers:**

(a) new pneumatic controllers shall have an emission rate of zero. A natural gas driven pneumatic controller replacing an existing natural gas driven pneumatic controller at an existing facility is an existing pneumatic controller for purposes of Section 20.2.50.122 NMAC.

(b) owners and operators of existing pneumatic controllers shall meet the required percentage of non-emitting controllers within the deadlines in tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC, and shall comply with the following:

(i) by July 1, 2023, the owner or operator shall determine the total controller count for all controllers subject to each table separately at all of the owner or operator's affected facilities that commenced construction before the effective date of this Part. The total controller count for each table must include all emitting pneumatic controllers and all non-emitting pneumatic controllers, except that pneumatic controllers necessary for a safety or process purpose that cannot otherwise be met without emitting natural gas shall not be included in the total controller count. This final number is the total historic controller count. Controllers identified as required for a safety or process purpose after July 1, 2023, shall not affect the total historic controller count.

(ii) determine which controllers in the total controller count for each table are non-emitting and sum the total number of non-emitting controllers and designate those as total historic non-emitting controllers.

(iii) determine the total historic non-emitting percent of controllers for each table by dividing the total historic non-emitting controller count by the total historic controller count and multiplying by 100.

(iv) based on the percent calculated in (iii) above for each table, the owner or operator shall determine which provisions of tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC apply and the replacement schedule the owner or operator must meet.

(v) if an owner or operator meets at least seventy-five percent total non-

emitting controllers using the calculation methodology in Subparagraph (b) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC by January 1, 2025, for either or both table 1 or table 2, the owner or operator is not thereafter subject to the requirements of tables 1 and/or 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC.

(vi) if after January 1, 2027, an owner or operator's remaining pneumatic controllers are not cost-effective to retrofit, the owner or operator may submit a cost analysis of retrofitting those remaining units to the department. The department shall review the cost analysis and determine whether those units qualify for a waiver from meeting additional retrofit requirements.

(c) owners and operators of existing natural gas driven pneumatic controllers shall demonstrate compliance with tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC, on January 1, 2024, January 1, 2027, and January 1, 2030, as follows:

(i) determine which controllers are emitting (excluding pneumatic controllers necessary for safety or process reasons pursuant to Subparagraph (d) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC) and sum the total number of emitting controllers for table 1 and table 2 facilities separately.

(ii) determine the percentage of non-emitting controllers by using the following equation for table 1 and table 2 facilities separately:

$$\text{Total Percentage of Non-Emitting Controllers} = 100 - ((\text{total emitting controllers} / \text{total historic controller count}) \times 100)$$

(iii) compliance is demonstrated if the Total Percentage of Non-Emitting Controllers calculated pursuant to Subparagraph (c) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC is less than or equal to the value for that year in the Total Historic Percentage of Non-Emitting Controllers row (as calculated pursuant to Subparagraph (b)(i)-(iv) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC) in table 1 or table 2, as applicable, of Paragraph (3) of Subsection B of 20.2.50.122 NMAC.

(d) No later than January 1, 2024, a pneumatic controller with a bleed rate greater than six standard cubic feet per hour is permitted when the owner or operator has demonstrated that a higher bleed rate is required based on functional needs, including response time, safety, and positive actuation. An owner or operator that seeks to maintain operation of an emitting pneumatic controller as excepted for process or safety reasons under Subparagraph (a)(i) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC must prepare and document the justification for the safety or process purpose prior to the installation of a new emitting controller or the retrofit of an existing controller. The justification shall be certified by a qualified professional or inhouse engineer.

(e) Temporary pneumatic controllers that emit natural gas and are used for well abandonment activities or used prior to or through the end of flowback, and pneumatic controllers used as emergency shutdown devices located at a well site, are not subject to the requirements of Subsection B of 20.2.50.122 NMAC.

(f) Temporary or portable pneumatic controllers that emit natural gas and are on-site for less than 90 days are not subject to the requirements of Subsection B of 20.2.50.122 NMAC.

(5) Standards for natural gas-driven pneumatic diaphragm pumps:

(a) new pneumatic diaphragm pumps located at natural gas processing plants shall have an emission rate of zero.

(b) new pneumatic diaphragm pumps located at well sites, tank batteries, gathering and boosting stations, or transmission compressor stations with access to commercial line electrical power shall have an emission rate of zero.

(c) existing pneumatic diaphragm pumps located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, or transmission compressor stations with access to commercial line electrical power shall have an emission rate of zero within two years of the effective date of this Part.

(d) owners and operators of pneumatic diaphragm pumps located at well sites, tank batteries, gathering and boosting stations, or transmission compressor stations without access to commercial line electrical power shall reduce VOC emissions from the pneumatic diaphragm pumps by ninety-five percent if it is technically feasible to route emissions to a control device, fuel cell, or process. If there is a control device available onsite but it is unable to achieve a ninety-five percent emission reduction, and it is not technically feasible to route the pneumatic diaphragm pump emissions to a fuel cell or process, the owner or operator shall route the pneumatic diaphragm pump emissions to the control device within two years of the effective date of this Part.

**C. Monitoring requirements:**

- (1) Pneumatic controllers or diaphragm pumps not using natural gas or other hydrocarbon gas as a motive force are not subject to the monitoring requirements in Subsection C of 20.2.50.122 NMAC.
- (2) No later than January 1, 2023, the owner or operator of a facility with one or more natural gas-driven pneumatic controllers subject to the deadlines set forth in tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC shall monitor the compliance status of each subject pneumatic controller at each facility.
- (3) The owner or operator of a natural gas-driven pneumatic controller shall, on a monthly basis, conduct an AVO or OGI inspection, and shall also inspect the pneumatic controller, perform necessary maintenance (such as cleaning, tuning, and repairing a leaking gasket, tubing fitting and seal; tuning to operate over a broader range of proportional band; eliminating an unnecessary valve positioner), and maintain the pneumatic controller according to manufacturer specifications to ensure that the VOC emissions are minimized.
- (4) Within two years of the effective date of this Part, the owner or operator's data systems shall contain the following for each in-service natural gas-driven pneumatic controller:
  - (a) natural gas-driven pneumatic controller unique identification number;
  - (b) type of controller (continuous or intermittent);
  - (c) if continuous, design continuous bleed rate in standard cubic feet per hour;
  - (d) if intermittent, bleed volume per intermittent bleed in standard cubic feet; and
  - (e) if continuous, design annual bleed rate in standard cubic feet per year.
- (5) Upon the effective date specified for the facility in 20.2.50.116 NMAC, the owner or operator of a natural gas-driven pneumatic diaphragm pump shall, on a monthly basis, conduct an AVO or OGI inspection and shall also inspect the pneumatic pump and perform necessary maintenance, and maintain the pneumatic pump according to manufacturer specifications to ensure that the VOC emissions are minimized.
- (6) The owner or operator of a natural gas-driven pneumatic controller shall comply with the requirements in Paragraph (3) of Subsection C or Subsection D of 20.2.50.116 NMAC applicable to the facility type at which the pneumatic controller is installed on the effective date specified in 20.2.50.116 NMAC. During instrument inspections, operators shall use RM 21, OGI, or alternative instruments used under Subsection D of 20.2.50.116 NMAC to verify that intermittent controllers are not emitting when not actuating. Any intermittent controller emitting when not actuating shall be repaired consistent with Subsection E of 20.2.50.116 NMAC.
- (7) Prior to any monitoring event, the owner or operator shall date and time stamp the event, and the monitoring data entry shall be made in accordance with the requirements of this Part.
- (8) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

- (1) Non-emitting pneumatic controllers and diaphragm pumps are not subject to the recordkeeping requirements in Subsection D of 20.2.50.122 NMAC.
- (2) The owner or operator shall maintain a record of the total controller count for all controllers at all of the owner or operator's affected facilities that commenced operation before the effective date of this Part. The total controller count must include all emitting and non-emitting pneumatic controllers.
- (3) The owner or operator shall maintain a record of the total count of natural gas-driven pneumatic controllers necessary for a safety or process purpose that cannot otherwise be met without emitting VOC.
- (4) The owner or operator of a natural gas-driven pneumatic controller subject to the requirements in tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC shall generate a schedule for meeting the compliance deadlines for each pneumatic controller. The owner or operator shall keep a record of the compliance status of each subject controller. On or before January 1, 2024, January 1, 2027 and January 1, 2030, the owner or operator shall make and retain the compliance demonstration set forth in Subparagraph (c) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC.
- (5) The owner or operator shall maintain an electronic record for each natural gas-driven pneumatic controller. The record shall include the following:
  - (a) pneumatic controller unique identification number;
  - (b) time and date stamp, including GPS of the location, of any monitoring;
  - (c) name of the person(s) conducting the inspection;
  - (d) AVO or OGI inspection result;
  - (e) AVO or OGI level discrepancy in continuous or intermittent bleed rate;
  - (f) record of the controller type, bleed rate, or bleed volume required in Subparagraphs (b), (c), (d), and (e) of Paragraph (4) of Subsection C of 20.2.50.122 NMAC.
  - (g) maintenance date and maintenance activity; and
  - (h) a record of the justification and certification required in Subparagraph (c) of

Paragraph (4) of Subsection B of 20.2.50.122 NMAC.

(6) The owner or operator of a natural gas-driven pneumatic controller with a bleed rate greater than six standard cubic feet per hour shall maintain a record documenting why a bleed rate greater than six scf/hr is necessary, as required in Subsection B of 20.2.50.122 NMAC. This demonstration shall be completed by July 1, 2023 for controllers with a bleed rate greater than six scf/hr and as necessary for controllers with a bleed rate less than or equal to six scf/hr.

(7) The owner or operator shall maintain a record for a natural gas-driven pneumatic pump with an emission rate greater than zero and the associated pump number at the facility. The record shall include:

(a) for a natural gas-driven pneumatic diaphragm pump in operation less than 90 days per calendar year, a record for each day of operation during the calendar year.

(b) a record of any control device designed to achieve at least ninety-five percent emission reduction, including an evaluation or manufacturer specifications indicating the percentage reduction the control device is designed to achieve.

(c) records of the engineering assessment and certification by a qualified professional or inhouse engineer that routing pneumatic pump emissions to a control device, fuel cell, or process is technically infeasible.

(8) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.122 NMAC - N, 08/05/2022]

#### **20.2.50.123 STORAGE VESSELS**

**A. Applicability:** New storage vessels with a PTE equal to or greater than two tpy of VOC, existing storage vessels with a PTE equal to or greater than three tpy of VOC in multi-tank batteries, and existing storage vessels with a PTE equal to or greater than four tpy of VOC in single tank batteries are subject to the requirements of 20.2.50.123 NMAC. Storage vessels in multi-tank batteries manifolded together such that all vapors are shared between the headspace of the storage vessels and are routed to a common outlet or endpoint may determine an individual storage vessel PTE by averaging the emissions across the total number of storage vessels. Storage vessels associated with produced water management units are required to comply with this Section to the extent specified in Subsection B of Section 20.2.50.126 NMAC.

##### **B. Emission standards:**

(1) An existing storage vessel subject to this Section shall have a combined capture and control of VOC emissions of at least ninety-five percent according to the following schedule. If a combustion control device is used, the combustion device shall have a minimum design combustion efficiency of ninety-eight percent.

(a) By January 1, 2025, an owner or operator shall ensure at least 30% of the company's existing storage vessels are controlled;

(b) By January 1, 2027, an owner or operator shall ensure at least an additional 35% of the company's existing storage vessels are controlled; and

(c) By January 1, 2029, an owner or operator shall ensure the company's remaining existing storage vessels are controlled.

(2) A new storage vessel subject to this Section shall have a combined capture and control of VOC emissions of at least ninety-five percent upon startup. If a combustion control device is used, the combustion device shall have a minimum design combustion efficiency of ninety-eight percent.

(3) The emission standards in Subsection B of 20.2.50.123 NMAC cease to apply to a storage vessel if the actual annual VOC emissions decrease to less than two tpy.

(4) If a control device is not installed by the date specified in Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC, an owner or operator may comply with Subsection B of 20.2.50.123 NMAC by shutting in the well supplying the storage vessel by the applicable date, and not resuming production from the well until the control device is installed and operational.

(5) The owner or operator of a new or existing storage vessel with a thief hatch shall ensure that the thief hatch is capable of opening sufficiently to relieve overpressure in the vessel and to automatically close once the vessel overpressure is relieved. Any pressure relief device installed must automatically close once the vessel overpressure is relieved.

(6) An owner or operator complying with Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC through use of a control device shall comply with the control device operational requirements in

20.2.50.115 NMAC.

**C. Storage vessel measurement requirements:** Owners and operators of new storage vessels required to be controlled pursuant to this Part at well sites, tank batteries, gathering and boosting stations, or natural gas processing plants shall use a storage vessel measurement system to determine the quantity of liquids in the storage vessel(s). New tank batteries receiving an annual average of 200 bbls oil/day or more with available grid power shall be outfitted with a lease automated custody transfer (LACT) unit(s).

(1) The owner or operator shall keep thief hatches (or other access points to the vessel) and pressure relief devices on storage vessels closed and latched during activities to determine the quantity of liquids in the storage vessel(s), except as necessary for custody transfer. Tank batteries equipped with LACT units shall use the LACT unit measurements in lieu of field testing of quantity and quality except in case of malfunction. Nothing in this paragraph shall be construed to prohibit the opening of thief hatches, pressure relief devices, or any other openings or access points to perform maintenance or similar activities designed to ensure the safety or proper operation of the storage vessel(s) or related equipment or processes. Where opening a thief hatch is necessary, owners and operators of new and existing storage vessels shall minimize the time the thief hatch is open.

(2) The owner or operator may inspect, test, and calibrate the storage vessel measurement system either semiannually, or as directed by the Bureau of Land Management (see 43 C.F.R. Section 374.6(b)(5)(ii)(B) (November 17, 2016)) or system manufacturer. Opening a thief hatch if required to inspect, test, or calibrate the vessel measurement system is not a violation of Paragraph (1) of this Subsection.

(3) The owner or operator shall install signage at or near the storage vessel that indicates which equipment and method(s) are used and the appropriate and necessary operating procedures for that system.

(4) The owner or operator shall develop and implement an annual training program for employees and third parties conducting activities subject to this Subsection that includes, at a minimum, operating procedures for each type of system.

(5) The owner or operator must make and retain the following records for at least two years and make such records available to the department upon request:

- (a) date of construction of the storage vessel or facility;
- (b) description of the storage vessel measurement system used to comply with this Subsection;
- (c) date(s) of storage vessel measurement system inspections, testing, and calibrations that require opening the thief hatch pursuant to Paragraph (1) of this Subsection;
- (d) manufacturer specifications regarding storage vessel measurement system inspections and/or calibrations, if followed pursuant to Paragraph (2) of this Subsection; and
- (e) records of the annual training program, including the date and names of persons trained.

**D. Monitoring requirements:** No later than January 1, 2023, the owner or operator of a storage vessel shall:

(1) on a monthly basis, monitor, calculate, or estimate, the total monthly liquid throughput (in barrels) and the upstream separator pressure (in psig) if the storage vessel is directly downstream of a separator. When a storage vessel is unloaded less frequently than monthly, the throughput and separator pressure monitoring shall be conducted before the storage vessel is unloaded;

(2) conduct an AVO inspection on a weekly basis. If the storage vessel is unloaded less frequently than weekly, the AVO inspection shall be conducted before the storage vessel is unloaded;

(3) inspect the storage vessel monthly to ensure compliance with the requirements of 20.2.50.123 NMAC. The inspection shall include a check to ensure the vessel does not have a leak;

(4) prior to any monitoring event, date and time stamp the event and enter the monitoring data in accordance with the requirements of this Part;

(5) comply with the monitoring requirements in 20.2.50.115 NMAC if using a control device to comply with the requirements in Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC; and

(6) comply with the monitoring requirements of 20.2.50.112 NMAC.

**E. Recordkeeping requirements:** No later than January 1, 2023, the owner or operator of a storage vessel shall comply with the following requirements:

(1) Monthly, maintain a record for each storage vessel of the following:

- (a) unique identification number and location (latitude and longitude);
- (b) monitored, calculated, or estimated monthly liquid throughput;
- (c) the upstream separator pressure, if a separator is present;
- (d) the data and methodology used to calculate the actual emissions of VOC (tpy);

(e) the controlled and uncontrolled VOC emissions (tpy); and  
(f) the type, make, model, and identification number of any control device.  
(2) Verify each record of liquid throughput by dated liquid level measurements, a dated delivery receipt from the purchaser of the hydrocarbon liquid, the metered volume of hydrocarbon liquid sent downstream, or other proof of transfer.

(3) Make a record of the inspections required in Subsections C and D of 20.2.50.123 NMAC, including:

(a) the date and time stamp, including GPS of the location, of the inspection;  
(b) the person(s) conducting the inspection;  
(c) a description of any problem observed during the inspection; and  
(d) a description and date of any corrective action taken.  
(4) Comply with the recordkeeping requirements in 20.2.50.115 NMAC if complying with the requirements in Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC through use of a control device.  
(5) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**F. Reporting requirements:**

(1) An owner or operator complying with the requirements in Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC through use of a control device shall comply with the reporting requirements in 20.2.50.115 NMAC.

(2) The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.123 NMAC - N, 08/05/2022]

**20.2.50.124 WELL WORKOVERS**

**A. Applicability:** Workovers performed at oil and natural gas wells are subject to the requirements of 20.2.50.124 NMAC as of the effective date of this Part.

**B. Emission standards:** The owner or operator of an oil or natural gas well shall use the following best management practices during a workover to minimize emissions, consistent with the well site condition and good engineering or operational practices:

(1) reduce wellhead pressure before blowdown to minimize the volume of natural gas vented;

(2) monitor manual venting at the well until the venting is complete; and

(3) route natural gas to the sales line, if possible.

**C. Monitoring requirements:**

(1) The owner or operator shall monitor the following parameters during a workover:

(a) wellhead pressure;

(b) flow rate of the vented natural gas (to the extent feasible); and

(c) duration of venting to the atmosphere.

(2) The owner or operator shall calculate the estimated volume and mass of VOC vented during a workover.

(3) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator shall keep the following record for a workover:

(a) unique identification number and location (latitude and longitude) of the well;

(b) date the workover was performed;

(c) wellhead pressure;

(d) flow rate of the vented natural gas to the extent feasible, and if measurement of the flow rate is not feasible, the owner or operator shall use the maximum potential flow rate in the emission calculation;

(e) duration of venting to the atmosphere;

(f) description of the best management practices used to minimize release of VOC emissions before and during the workover;

(g) calculation of the estimated VOC emissions vented during the workover based on the duration, volume, and gas composition; and

(h) the method of notification to the public and proof that notification was made to

the affected public.

(2) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:**

(1) The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

(2) If it is not feasible to prevent VOC emissions from being emitted to the atmosphere from a workover event, the owner or operator shall notify by certified mail, or by other effective means of notice so long as the notification can be documented, all residents located within one-quarter mile of the well of the planned workover at least three calendar days before the workover event.

(3) If the workover is needed for routine or emergency downhole maintenance to restore production lost due to upsets or equipment malfunction, the owner or operator shall notify all residents located within one-quarter mile of the well of the planned workover at least 24 hours before the workover event.  
[20.2.50.124 NMAC - N, 08/05/2022]

**20.2.50.125 SMALL BUSINESS FACILITIES**

**A. Applicability:** Small business facilities as defined in this Part are subject to Sections 20.2.50.125 NMAC and 20.2.50.127 NMAC of this Part. Small business facilities are not subject to any other requirements of this Part unless specifically identified in 20.2.50.125 NMAC.

**B. General requirements:**

(1) The owner or operator shall ensure that all equipment is operated and maintained consistent with manufacturer specifications, and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications and maintenance practices on file and make them available to the department upon request.

(2) The owner or operator shall calculate the VOC and NO<sub>x</sub> emissions from the facility on an annual basis. The calculation shall be based on the actual production or processing rates of the facility.

(3) The owner or operator shall maintain a database of company-wide VOC and NO<sub>x</sub> emission calculations for all subject facilities and associated equipment and shall update the database annually.

(4) The owner or operator shall comply with Paragraph (9) of Subsection A of 20.2.50.112 NMAC if requested by the department.

**C. Monitoring requirements:** The owner or operator shall comply with the requirements in Subsections C or D of 20.2.50.116 NMAC. The owner or operator shall comply with Subsection B of 20.2.50.111 NMAC in determining applicability of the requirements in 20.2.50.116 NMAC.

**D. Repair requirements:** The owner or operator shall comply with the requirements of Subsection E of 20.2.50.116 NMAC.

**E. Recordkeeping requirements:** The owner or operator shall maintain the following electronic records for each facility:

- (1) annual certification that the small business facility meets the definition in this Part;
- (2) calculated annual VOC and NO<sub>x</sub> emissions from each facility and the company-wide annual VOC and NO<sub>x</sub> emissions for all subject facilities; and
- (3) records as required under Subsection F of 20.2.50.116 NMAC.

**F. Reporting requirements:** The owner or operator shall submit to the department an initial small business certification within sixty days of the effective date of this Part, and by March 1 of each calendar year thereafter. The certification shall be made on a form provided by the department. The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

**G. Failure to comply with 20.2.50.125 NMAC:** Notwithstanding the provisions of Section 20.2.50.125 NMAC, a source that meets the definition of a small business facility can be required to comply with the other Sections of 20.2.50 NMAC if the Secretary finds based on credible evidence that the source (1) presents an imminent and substantial endangerment to the public health or welfare or to the environment; (2) is not being operated or maintained in a manner that minimizes emissions of air contaminants; or (3) has violated any other requirement of 20.2.50.125 NMAC.  
[20.2.50.125 NMAC - N, 08/05/2022]

**20.2.50.126 PRODUCED WATER MANAGEMENT UNITS**

**A. Applicability:** Produced water management units as defined in this Part and their associated storage vessels are subject to 20.2.50.126 NMAC and shall comply with these requirements no later than 180 days

after the effective date of this Part.

**B. Emission standards:**

(1) The owner or operator shall use good operational or engineering practices to minimize emissions of VOC from produced water management units (PWMU) and their associated storage vessels.

(2) The owner or operator shall not allow any transfer of untreated produced water to a PWMU without first processing and treating the produced water in a separator and/or storage vessel to minimize entrained hydrocarbons.

(3) Within two years of the effective date of this Part for storage vessels associated with existing PWMUs, or upon startup for storage vessels associated with new PWMUs, the owner or operator shall either:

(a) control such storage vessels in accordance with the requirements of Section 20.2.50.123 NMAC that are applicable to tank batteries; or

(b) submit a VOC minimization plan to the department demonstrating that controlling VOC emissions from storage vessels associated with the PWMU in accordance with the requirements of Section 20.2.50.123 NMAC is technically infeasible without supplemental fuel. The plan shall state the good operational or engineering practices used to minimize VOC emissions. The plan shall be enforceable by the department upon submission. The department may require revisions to the plan, and must approve any proposed revisions to the plan.

**C. Monitoring requirements:** The owner or operator shall:

(1) develop a protocol to calculate the VOC emissions from each PWMU. The protocol shall include at a minimum: produced water throughput monitoring, semi-annual sampling and analysis of the liquid composition, hydrocarbon measurement method(s), representative sample size, and sample chain of custody requirements.

(2) calculate the monthly total VOC emissions in tons from each unit with the first month of emission calculations beginning within 180 days of the effective date of this Part;

(3) monthly, monitor the best management and good operational or engineering practices implemented to reduce emissions at each unit to ensure and demonstrate their effectiveness;

(4) upon written request by the department, sample the PWMU to determine the VOC content of the liquid; and

(5) comply with the monitoring requirements of 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator shall maintain the following electronic records for each PWMU:

(a) unique identification number and UTM coordinates of the PWMU;

(b) the good operational or engineering practices used to minimize emissions of VOC from the PWMU;

(c) the VOC emissions calculation protocol required in Subsection C of 20.2.50.126 NMAC, including the results of the sampling conducted in accordance with the protocol; and

(d) the annual total VOC emissions from each PWMU.

(2) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.126 NMAC - N, 08/05/2022]

**20.2.50.127 FLOWBACK VESSELS AND PREPRODUCTION OPERATIONS**

**A. Applicability:** Wells undergoing recompletions and new wells being completed at an existing wellhead site are subject to the requirements of 20.2.50.127 NMAC one year after the effective date of this Part. New wells constructed at a new wellhead site that commence completion or recompletion on or after the effective date of this Part are subject to the requirements of 20.2.50.127 NMAC.

**B. Emissions standards:**

(1) The owner or operator of a well that begins flowback on or after the effective date of this Part must collect and control emissions from each flowback vessel on and after the date flowback is routed to the flowback vessel by routing emissions to an operating control device that achieves a hydrocarbon control efficiency of at least ninety-five percent. If a TO or ECD is used, it must have a design destruction efficiency of at least ninety-eight percent for hydrocarbons.

(2) The owner or operator shall ensure that a control device used to comply with the

emission standards in 20.2.50.127 NMAC operates as a closed vent system that captures and routes VOC emissions to the control device, and that unburnt gas is not directly vented to the atmosphere.

(3) Flowback vessels shall be inspected, tested, and refurbished where necessary to ensure the flowback vessel is in compliance with Paragraph (2) of Subsection B of 20.2.50.127 NMAC prior to receiving flowback.

(4) The owner or operator shall use a vessel measurement system to determine the quantity of liquids in the flowback vessel(s).

(5) Thief hatches or other access points to the flowback vessel(s) must remain closed and latched during activities to determine the quantity of liquids in the flowback.

(6) Opening the thief hatch or other access point if required to inspect, test, or calibrate the vessel measurement system, or to add biocides or chemicals, is not a violation of Paragraph 2 of Subsection B of 20.2.50.127 NMAC.

**C. Monitoring requirements:** The owner or operator of a well with flowback that begins on or after the effective date of this Part shall conduct daily visual inspections of the flowback vessel and any associated equipment. Such inspections shall include:

(1) visual inspection of any thief hatch, pressure relief valve, or other access point to ensure that they are closed and properly seated;

(2) visual inspection or monitoring of the control device to ensure that it is operating; and

(3) visual inspection of the control device to ensure that the valves for the piping from the flowback vessel to the control device are open.

**D. Recordkeeping requirements:**

(1) The owner or operator of each flowback vessel subject to the emissions standards in Subsection B of 20.2.50.127 NMAC shall maintain the following records:

(a) the API number of the well and the associated facility location, including latitude and longitude coordinates;

(b) the date and time of the onset of flowback;

(c) the date and time that the flowback vessels were permanently disconnected, if applicable;

(d) the date and duration of any period where the control device was not operating; and

(e) records of the inspections required in Subsection C of 20.2.50.127 NMAC, including the following:

(i) time and date of each inspection;

(ii) a description of any problems observed;

(iii) a description of any corrective action(s) taken; and

(iv) the name and position of the person performing the corrective action(s).

(2) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.127 NMAC - N, 08/05/2022]

**20.2.50.128 PROHIBITED ACTIVITY AND CREDIBLE EVIDENCE**

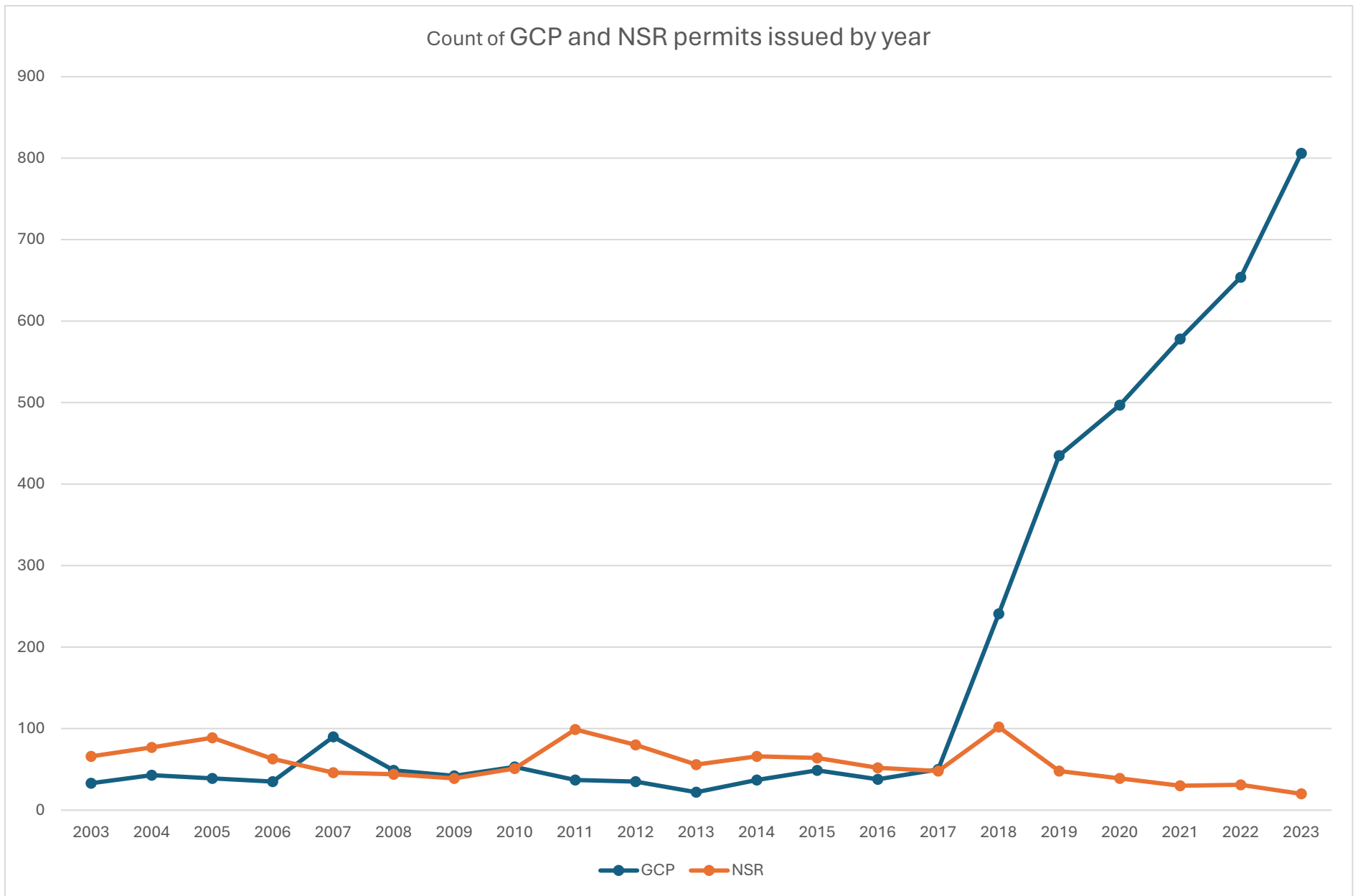
**A.** Failure to comply with the emissions standards, monitoring, recordkeeping, reporting or other requirements of this Part within the timeframes specified shall constitute a violation of this Part subject to enforcement action under Section 74-2-12 NMSA 1978.

**B.** If credible evidence or information obtained by the department or provided to the department by a third party indicates that a source is not in compliance with the provisions of this Part that evidence or information may be used by the department for purposes of establishing whether a person has violated or is in violation of this Part.

[20.2.50.128 NMAC - N, 08/05/2022]

**HISTORY OF 20.2.50 NMAC: [RESERVED]**

# NMED/AQB Count of GCP and NSR Permits Issued by Year



## NMED/AQB Count of GCP and NSR Permits Issued by Year

Table: New Mexico Environment Department Air Quality Bureau Count of GCP and NSR Permits Issued by Year

| Action Year | GCP Registrations | NSR Permits Issued |
|-------------|-------------------|--------------------|
| 2003        | 33                | 66                 |
| 2004        | 43                | 77                 |
| 2005        | 39                | 89                 |
| 2006        | 35                | 63                 |
| 2007        | 90                | 46                 |
| 2008        | 49                | 44                 |
| 2009        | 42                | 39                 |
| 2010        | 53                | 51                 |
| 2011        | 37                | 99                 |
| 2012        | 35                | 80                 |
| 2013        | 22                | 56                 |
| 2014        | 37                | 66                 |
| 2015        | 49                | 64                 |
| 2016        | 38                | 52                 |
| 2017        | 50                | 48                 |
| 2018        | 241               | 102                |
| 2019        | 435               | 48                 |
| 2020        | 497               | 39                 |
| 2021        | 578               | 30                 |
| 2022        | 654               | 31                 |
| 2023        | 806               | 20                 |

### Notes:

GCP includes all types of GCPs and GCP revisions.

NSR includes NSR regular permits and modifications including new PSD source permits and PSD source modifications.



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

COGNIZANT AGENCY  
NEGOTIATION AGREEMENT

Page 1 of 2

State of New Mexico  
 Environment Department  
 Santa Fe, New Mexico

Date: February 15, 2024

Filing Ref: March 22, 2023

The indirect cost rates contained herein are for use on grants and contracts with the Federal Government, subject to the limitations contained in the guidance and in Section II, A below.

|                  |
|------------------|
| SECTION I: RATES |
|------------------|

| <u>Type</u> | <u>Effective Period</u> |           | <u>Rate</u> | <u>Base</u> |
|-------------|-------------------------|-----------|-------------|-------------|
|             | <u>From</u>             | <u>To</u> |             |             |
| Fixed       | 7/1/2024                | 6/30/2025 | 35.20%      | (a)         |

Basis for Application

(a) Direct Salaries and fringe benefits.

Treatment of Fringe Benefits: Fringe benefits applicable to direct salaries and wages are treated as direct costs.

|                     |
|---------------------|
| SECTION II: GENERAL |
|---------------------|

A. LIMITATIONS: The rates in this Agreement are subject to any statutory and administrative limitations and apply to a given grant, contract or other agreement only to the extent that funds are available. Acceptance of the rates is subject to the following conditions: (1) Only costs incurred by the department/agency or allocated to the department/agency by an approved cost allocation plan were included in the indirect cost pool as finally accepted; such costs are legal obligations of the department/agency and are allowable under governing cost principles; (2) The same costs that have been treated as indirect costs have not been claimed as direct costs; (3) Similar types of costs have been accorded consistent accounting treatment; and (4) The information provided by the department/agency which was used to establish the rates is not later found to be materially incomplete or inaccurate by the Federal Government. In such situations the rate(s) would be subject to renegotiation at the discretion of the Federal Government.

B. CHANGES. The fixed rate contained in this agreement is based on the organizational structure and the accounting system in effect at the time the proposal was submitted. Changes in the organizational structure or changes in the method of accounting for costs which affect the amount of

State of New Mexico  
Environment Department  
Santa Fe, New Mexico

Page 2 of 2

reimbursement resulting from use of the rate in this agreement, require the prior approval of the authorized representative of the responsible negotiation agency. Failure to obtain such approval may result in subsequent audit disallowances.

C. THE FIXED RATE contained in this agreement is based on an estimate of the cost which will be incurred during the period for which the rate applies. When the actual costs for such a period have been determined, an adjustment will be made in the negotiation following such determination to compensate for the difference between the cost used to establish the fixed rate and that which would have been used were the actual costs known at the time.

D. NOTIFICATION TO FEDERAL AGENCIES: Copies of this document may be provided to other Federal agencies as a means of notifying them of the agreement contained herein.

E. SPECIAL REMARKS: Please confirm your acceptance of the terms of the indirect cost rate agreement by signing and returning this letter to me. Please retain a copy for your records.

#### ACCEPTANCE

The undersigned official warrants that he/she has the proper authority to execute this agreement on the behalf of the State Agency:

By the Federal Agency:

DocuSigned by:

*Miranda Ntoko*

2BCC0BD02B86414...

(Signature)

**Miranda Ntoko**

(Name)

**Chief Financial Officer**

(Title)

**NM Environment Dept.**

(Agency)

**09 February 2024**

(Date)

JACQUELINE SMITH

Digitally signed by JACQUELINE SMITH  
Date: 2024.02.09 16:05:38 -05'00'

(Signature)

Jacqueline Smith, Rate Negotiator  
National Policy, Training and  
Compliance Division  
U.S. Environmental Protection  
Agency

Negotiated by: Jenny Bae  
Telephone: (202) 564-0422

|         | NSR Annual<br>Fee Records | NSR Annual Fee<br>Revenue<br>(TEMPO) | TV/EE<br>Annual Fee<br>Records | TV/EE<br>Revenue<br>(TEMPO) | NSR Permit<br>Review Fee<br>Records (per<br>action) | NSR Permit<br>Review Fee<br>Revenue<br>(Filing + Review<br>Fees) | Subtotal<br>Revenue | NSR NOI<br>Records | NSR NOI Fee<br>Revenue<br>(based on<br>\$500) | NSR GCP<br>Fee<br>Records | NSR GCP<br>Revenue | Total Revenue<br>(TEMPO) | NSR Revenue<br>(SHARE)<br>SRF63100 | TV/EE Revenue<br>(SHARE)<br>SRF09200 | Total Revenue<br>(SHARE) SRF63100 +<br>SRF09200 | Total<br>Expenditures<br>(SHARE)<br>SRF63100 | Total<br>Expenditures<br>(SHARE)<br>SRF09200 | Total<br>Expenditures | AQB Operating<br>Budget |
|---------|---------------------------|--------------------------------------|--------------------------------|-----------------------------|---|--|---------------------|--------------------|---|---------------------------|--------------------|--------------------------|------------------------------------|--------------------------------------|---|--|--|-----------------------|-------------------------|
| CY Year |                           |                                      |                                |                             |   |  |                     |                    |   |                           |                    |                          |                                    |                                      |   |  |  |                       |                         |
| 2012    | 797                       | \$ 1,429,527                         | 141                            | \$ 5,275,729                | 263   | \$ 867,825   | \$ 7,573,081        | 360                | \$ 180,000                                    | 47                        | \$ 168,760         | \$ 7,921,841             | \$ 2,308,534                       | \$ 5,066,902                         | \$ 7,375,436                                    | \$ 2,275,003                                 | \$ 3,545,949                                 | \$ 5,820,952          |                         |
| 2013    | 815                       | \$ 1,485,445                         | 132                            | \$ 5,092,198                | 161   | \$ 752,665   | \$ 7,330,308        | 476                | \$ 238,000                                    | 73                        | \$ 222,860         | \$ 7,791,168             | \$ 2,886,189                       | \$ 5,326,952                         | \$ 8,213,141                                    | \$ 2,576,220                                 | \$ 3,659,905                                 | \$ 6,236,125          |                         |
| 2014    | 815                       | \$ 1,448,317                         | 157                            | \$ 5,125,985                | 177   | \$ 776,722   | \$ 7,351,024        | 755                | \$ 377,500                                    | 107                       | \$ 330,298         | \$ 8,058,822             | \$ 2,885,058                       | \$ 5,119,200                         | \$ 8,004,258                                    | \$ 3,004,682                                 | \$ 4,451,298                                 | \$ 7,455,980          |                         |
| 2015    | 859                       | \$ 1,576,013                         | 151                            | \$ 5,017,985                | 162   | \$ 982,449   | \$ 7,576,447        | 749                | \$ 374,500                                    | 112                       | \$ 378,145         | \$ 8,329,092             | \$ 3,130,766                       | \$ 4,995,802                         | \$ 8,126,568                                    | \$ 2,905,177                                 | \$ 5,003,347                                 | \$ 7,908,524          | \$ 9,329,400            |
| 2016    | 878                       | \$ 1,610,068                         | 162                            | \$ 5,082,454                | 144   | \$ 601,351   | \$ 7,293,873        | 570                | \$ 285,000                                    | 92                        | \$ 288,574         | \$ 7,867,447             | \$ 3,263,681                       | \$ 5,083,095                         | \$ 8,346,776                                    | \$ 2,518,171                                 | \$ 5,608,233                                 | \$ 8,126,404          | \$ 9,545,615            |
| 2017    | 883                       | \$ 1,636,200                         | 165                            | \$ 5,044,503                | 215   | \$ 1,443,164   | \$ 8,123,867        | 403                | \$ 201,500                                    | 155                       | \$ 513,420         | \$ 8,838,787             | \$ 2,898,990                       | \$ 5,045,802                         | \$ 7,944,792                                    | \$ 5,074,737                                 | \$ 8,392,777                                 | \$ 13,467,514         | \$ 10,616,053           |
| 2018    | 982                       | \$ 1,826,441                         | 157                            | \$ 5,129,808                | 175   | \$ 1,098,546   | \$ 8,054,795        | 558                | \$ 279,000                                    | 274                       | \$ 1,040,570       | \$ 9,374,365             | \$ 4,535,948                       | \$ 5,147,562                         | \$ 9,683,509                                    | \$ 1,881,927                                 | \$ 5,625,514                                 | \$ 7,507,441          | \$ 9,565,839            |
| 2019    | 1172                      | \$ 2,292,406                         | 160                            | \$ 4,456,264                | 121   | \$ 880,636   | \$ 7,629,306        | 410                | \$ 205,000                                    | 396                       | \$ 1,651,595       | \$ 9,485,901             | \$ 4,755,344                       | \$ 4,415,401                         | \$ 9,170,745                                    | \$ 2,908,032                                 | \$ 4,885,435                                 | \$ 7,793,467          | \$ 9,348,900            |
| 2020    | 1396                      | \$ 2,787,236                         | 136                            | \$ 4,627,946                | 123   | \$ 588,218   | \$ 8,003,400        | 448                | \$ 224,000                                    | 477                       | \$ 2,021,750       | \$ 10,249,150            | \$ 5,739,923                       | \$ 4,627,947                         | \$ 10,367,870                                   | \$ 2,945,709                                 | \$ 5,657,663                                 | \$ 8,603,372          | \$ 10,473,300           |
| 2021    | 1638                      | \$ 3,320,020                         | 150                            | \$ 4,299,514                | 119   | \$ 510,903   | \$ 8,130,437        | 322                | \$ 161,000                                    | 566                       | \$ 2,418,040       | \$ 10,709,477            | \$ 6,177,772                       | \$ 7,295,725                         | \$ 13,473,497                                   | \$ 5,881,167                                 | \$ 2,912,083                                 | \$ 8,793,250          | \$ 10,614,400           |
| 2022    | 1882                      | \$ 4,050,393                         | 128                            | \$ 4,330,991                | 83  | \$ 398,240   | \$ 8,779,624        | 338                | \$ 169,000                                    | 636                       | \$ 2,857,580       | \$ 11,806,204            | \$ 7,436,525                       | \$ 4,330,991                         | \$ 11,767,516                                   | \$ 4,420,966                                 | \$ 3,975,636                                 | \$ 8,396,602          | \$ 12,803,230           |
| 2023    | 1851                      | \$ 4,876,692                         | 124                            | \$ 3,965,430                | 116   | \$ 482,364   | \$ 9,324,486        | 365                | \$ 182,500                                    | 812                       | \$ 3,897,360       | \$ 13,404,346            | \$ 8,798,448                       | \$ 4,216,145                         | \$ 13,014,593                                   | \$ 5,071,375                                 | \$ 3,246,592                                 | \$ 8,317,967          | \$ 13,694,100           |
| 2024*   | 2325                      | \$ 5,599,935                         | 136                            | \$ 4,110,767                | 116   | \$ 482,364   | \$ 10,193,066       | 365                | \$ 182,500                                    | 812                       | \$ 4,141,200       | \$ 14,516,766            |                                    |                                      | \$ -  |  |  | \$ -                  |                         |

All revenues and expenditures are from final Audits for each FY

|            | CY2017 |                  | CY2018 |                  | CY2019 |                  | CY2020 |                  | CY2021 |                  | CY2022 |                  | CY2023 |                  | CY2024 |                  |
|------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|
|            | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total |
| Cells N&O  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |
| GCP0&G     | 0      | \$0              | 118    | \$471,830        | 259    | \$1,081,560      | 287    | \$1,212,890      | 316    | \$1,347,160      | 278    | \$1,252,120      | 298    | \$1,435,530      | 19     | \$91,080         |
| GCP0&Grev  | 0      | \$0              | 19     | \$75,020         | 87     | \$364,030        | 162    | \$689,580        | 238    | \$1,019,160      | 343    | \$1,546,310      | 491    | \$2,360,970      | 38     | \$191,460        |
| GCP1CMajor | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| GCP1CMinor | 0      | \$0              | 1      | \$4,080          | 13     | \$54,570         | 6      | \$25,560         | 0      | \$0              | 0      | \$0              | 0      | \$0              | 1      | \$4,920          |
| GCP1-new   | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| GCP1-rev   | 1      | \$1,500          | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| GCP2-new   | 6      | \$23,500         | 4      | \$12,240         | 6      | \$24,640         | 8      | \$34,080         | 5      | \$21,600         | 10     | \$36,400         | 13     | \$54,120         | 1      | \$5,100          |
| GCP3-new   | 1      | \$4,000          | 1      | \$4,080          | 3      | \$12,570         | 2      | \$8,520          | 2      | \$8,520          | 1      | \$4,550          | 2      | \$9,840          | 0      | \$0              |
| GCP4-all   | 105    | \$317,420        | 51     | \$155,200        | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| GCP5       | 4      | \$16,000         | 9      | \$34,680         | 4      | \$14,665         | 8      | \$34,080         | 4      | \$17,280         | 2      | \$9,100          | 3      | \$12,300         | 2      | \$9,840          |
| GCP6-new   | 37     | \$147,000        | 70     | \$279,360        | 20     | \$82,800         | 4      | \$17,040         | 1      | \$4,320          | 2      | \$9,100          | 5      | \$24,600         | 0      | \$0              |
| GCP6-rev   | 1      | \$4,000          | 1      | \$4,080          | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 1      | \$5,100          |
| Subtotal   | 155    | \$513,420        | 274    | \$1,040,570      | 396    | \$1,651,595      | 477    | \$2,021,750      | 566    | \$2,418,040      | 636    | \$2,857,580      | 812    | \$3,897,360      | 62     | \$307,500        |

|              | CY2012 |                  | CY2013 |                  | CY2014 |                  | CY2015 |                  | CY2016 |                  |
|--------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|
|              | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total |
| Cells N&O    |        |                  |        |                  |        |                  |        |                  |        |                  |
| Admins       |        |                  |        |                  |        |                  |        |                  |        |                  |
| GCP0&G       | 0      | \$0              | 0      | \$0              | 0      | \$0              | 2      | 1000             | 0      | 0                |
| GCP0&Grev    | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| GCP1CMajor   | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| GCP1CMinor   | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| GCP1-new     | 12     | \$45,120         | 7      | \$36,740         | 9      | \$35,320         | 7      | \$27,650         | 7      | \$27,720         |
| GCP1-Sig rev | 6      | \$16,920         | 6      | \$17,235         | 13     | \$23,840         | 4      | \$9,055          | 0      | \$0              |
| GCP2-new     | 8      | \$28,140         | 4      | \$15,320         | 8      | \$29,175         | 13     | \$35,980         | 10     | \$33,660         |
| GCP3-new     | 3      | \$11,140         | 2      | \$7,660          | 2      | \$7,780          | 0      | \$0              | 0      | \$0              |
| GCP4-all     | 16     | \$60,040         | 51     | \$144,485        | 65     | \$195,273        | 64     | \$217,670        | 51     | \$140,079        |
| GCP5         | 2      | \$7,400          | 3      | \$11,420         | 1      | \$3,890          | 5      | \$19,750         | 5      | \$15,835         |
| GCP6-new     | 0      | \$0              | 0      | \$0              | 9      | \$35,010         | 17     | \$67,030         | 17     | \$67,320         |
| GCP6-rev     | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 2      | \$3,960          |
| Subtotal     | 47     | \$168,760        | 73     | \$222,860        | 107    | \$330,298        | 112    | \$378,145        | 92     | \$288,574        |

Top row in Tempo, Fiscal-Assessment Type and set parameters as Permitting, Air Quality, NSR, and then select each "Activity Type" as shown above individually.

|               | CY2012 |                  | CY2013 |                  | CY2014 |                  | CY2015 |                  | CY2016 |                  | CY2017 |                  | CY2018 |                  | CY2019 |                  | CY2020 |                  | CY2021 |                  | CY2022 |                  | CY2023 |                  | CY2024 |                  |
|---------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|--------|------------------|
|               | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total | count  | Assessment total |
| Cells GRH     |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |        |                  |
| PSD Admin     | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| PSD Tech      | 1      | \$1,880          | 6      | \$11,490         | 2      | \$3,890          | 3      | \$7,900          | 11     | \$23,760         | 3      | \$8,000          | 5      | \$10,200         | 7      | \$13,015         | 4      | \$6,890          | 18     | \$38,880         | 4      | \$9,100          | 12     | \$29,610         | 0      | \$0              |
| PSD Major M   | 1      | \$35,720         | 0      | \$0              | 1      | \$15,560         | 0      | \$0              | 0      | \$0              | 0      | \$0              | 1      | \$38,760         | 0      | \$0              | 0      | \$0              | 1      | \$500            | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| PSD Minor M   | 10     | \$48,252         | 6      | \$42,013         | 18     | \$99,028         | 17     | \$121,022        | 11     | \$65,148         | 13     | \$82,872         | 8      | \$39,168         | 13     | \$88,514         | 10     | \$70,203         | 4      | \$34,992         | 0      | \$0              | 3      | \$31,488         | 2      | \$1,000          |
| PSD-New       | 0      | \$0              | 2      | \$97,282         | 0      | \$0              | 1      | \$43,450         | 0      | \$0              | 0      | \$0              | 0      | \$0              | 1      | \$63,269         | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| Regular-New   | 11     | \$163,074        | 9      | \$144,508        | 8      | \$169,493        | 27     | \$333,585        | 14     | \$164,260        | 53     | \$862,152        | 35     | \$497,767        | 15     | \$257,766        | 9      | \$162,732        | 9      | \$121,028        | 6      | \$131,495        | 9      | \$177,620        | 2      | \$1,000          |
| Regular-Sig-R | 62     | \$332,030        | 36     | \$286,495        | 41     | \$322,796        | 29     | \$235,171        | 23     | \$244,244        | 30     | \$237,944        | 36     | \$393,019        | 20     | \$268,998        | 23     | \$297,684        | 18     | \$238,607        | 18     | \$199,405        | 11     | \$111,200        | 4      | \$88,960         |
| Relocation    | 112    | \$41,700         | 60     | \$22,562         | 62     | \$23,530         | 41     | \$15,586         | 59     | \$23,363         | 59     | \$23,396         | 61     | \$24,872         | 53     | \$21,789         | 67     | \$27,909         | 53     | \$22,896         | 45     | \$20,475         | 53     | \$25,758         | 7      | \$1,297          |
| Respending    | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| Streamline L1 | 10     | \$48,760         | 4      | \$30,640         | 17     | \$69,960         | 21     | \$134,300        | 7      | \$27,700         | 38     | \$178,900        | 18     | \$73,440         | 5      | \$143,240        | 0      | \$0              | 2      | \$8,640          | 1      | \$13,650         | 5      | \$24,600         | 1      | \$5,100          |
| Streamline L1 | 31     | \$145,020        | 7      | \$45,820         | 7      | \$27,230         | 3      | \$47,400         | 5      | \$19,800         | 4      | \$16,000         | 1      | \$4,000          | 1      | \$500            | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| Streamline L2 | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| Streamline L2 | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| Streamline L3 | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| Streamline L3 | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| Substitutions | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              | 0      | \$0              |
| Technical Rev | 25     | \$51,389         | 31     | \$71,855         | 21     | \$45,235         | 20     | \$54,035         | 14     | \$33,076         | 15     | \$33,900         | 10     | \$17,320         | 6      | \$23,545         | 10     | \$22,800         | 14     | \$45,360         | 9      | \$24,115         | 23     | \$82,088         | 1      | \$500            |
| Subtotal      | 263    | \$867,825        | 161    | \$752,665        | 177    | \$776,722        | 162    | \$982,449        | 144    | \$601,351        | 215    | \$1,443,164      | 175    | \$1,096,546      | 121    | \$880,636        | 123    | \$588,218        | 119    | \$510,903        | 83     | \$398,240        | 116    | \$482,364        | 17     | \$99,857         |

Sort selection by Assessment Type and subtract all TV, NSR, EE annual fees. Count is per action-filing plus general review fee.

as of 2/8/24

| Classification Title          | Position Number    | Working Title                         |
|-------------------------------|--------------------|---------------------------------------|
| EXEC SEC & ADM ASST - A       | 12041              | Admin                                 |
| GEN I - ENV SCIENCE           | 12056              | Bureau Chief                          |
| ExEC SEC & ADM ASST - Supv    | 12059              | Admin                                 |
| ENVIRO SCI & SPEC-A           | 12065              | Permit Specialist                     |
| MGT ANALYST - A               | 12077              | Admin                                 |
| A/O II - ENV SCIENCE          | 12078              | Permitting SC                         |
| ENVIRO SCI & SPEC-O           | 12090              | Compliance Reporter                   |
| ENVIRO SCI & SPEC-A           | 12092              | Compliance Inspector                  |
| A/O I - ENV SCIENCE           | 12250              | Permitting Mgr                        |
| ENVIRO SCI & SPEC-A           | 12257              | Control Strategies Planner            |
| Enforcement ESS-A             | 10113888           | Enforcement Specialist                |
| ENVIRO SCI & SPEC-A           | 23644              | Control Strategies Planner            |
| ENVIRO SCI & SPEC-A           | 24330              | Permit Specialist                     |
| ENVIRO SCI & SPEC-A           | 24974              | Permit Specialist                     |
| ENVIRO SCI & SPEC-A           | 26043              | Compliance Reporter                   |
| ENVIRO SCI & SPEC-SUPV        | 10112372           | Compliance Inspections Supv           |
| Acctnt & Auditor - O          | 32191              | Finance                               |
| ENVIRO SCI & SPEC-O           | 32192              | Control Strategies Planner            |
| Budget Analyst -A             | 32194              | Finance                               |
| ENVIRO SCI & SPEC-A           | 32200              | Permit Specialist                     |
| ENVIRO SCI & SPEC-O           | 34652              | Compliance Reporter                   |
| ENVIRO SCI & SPEC-A           | 34655              | Compliance Reporter                   |
| STAFF-ENV SCIENCE             | 34651              | Permitting Technical Services Manager |
| ENVIRO SCI & SPEC-A           | 34657              | Compliance Inspector                  |
| ENVIRO SCI & SPEC-A           | 64606              | Environmental Analyst                 |
| STAFF-ENV SCIENCE             | 33868              | Permitting Mgr                        |
| ENVIRO SCI & SPEC-A           | 73676              | Control Strategies Planner            |
| ENVIRO SCI & SPEC-SUPV        | 80033              | Permitting Supv                       |
| ENVIRO SCI & SPEC-A           | 12081              | Compliance Inspector                  |
| Human Resource Generalist III | 10115960           | Human Resources                       |
| ENVIRO SCI & SPEC -O          | 34658              | Permit Specialist                     |
| ENVIRO SCI & SPEC-A           | 10101717           | Emissions Inventory Specialist        |
| ATTORNEY IV                   | 10111618           | Compliance Inspector                  |
| EXEC SEC & ADM ASST - A       | 10112371           | Admin                                 |
| STAFF-ENV SCIENCE             | 64607              | Enforcement Mgr                       |
| ENVIRO SCI & SPEC-SUPV        | 10112373           | Permit Specialist                     |
| ENVIRO SCI & SPEC-A           | 10112374           | Permit Specialist                     |
| ENVIRO SCI & SPEC-A           | 10112375           | Control Strategies Planner            |
| ENVIRO SCI & SPEC-A           | 10112445           | Enforcement Specialist                |
| ENVIRO SCI & SPEC-O           | 12061              | Environmental Analyst                 |
| Compliance Reports ESS-A      | 10113894           | Compliance Reporter                   |
| A/O I                         | 12238              | New                                   |
| LINE II - ENV SCIENCE         | 10103617           | New                                   |
| ENVIRO SCI & SPEC-A           | TBD                | New                                   |
| MANAGEMENT ANALYST -          | TBD                | New                                   |
| Bureau Chief A/O1             | TBD                | New                                   |
| ENVIRO SCI & SPEC SUPERVISOR  | TBD                | New                                   |
| ENVIRO SCI & SPEC-A           | TBD                | New                                   |
| ENVIRO SCI & SPEC-O           | TBD                | New                                   |
| ENVIRO SCI & SPEC-O           | TBD                | New                                   |
| ENVIRO SCI & SPEC-O           | TBD                | New                                   |
| LEGAL INTERNSHIP              | Intern 12202000000 | New                                   |
| ENVIRO SCI & SPEC-A           | TBD                | New                                   |

September 19, 2023

MEMORANDUM

SUBJECT: Calculation of the Part 70 Presumptive Minimum Fee Effective September 1, 2023 through August 31, 2024

FROM: Corey Sugerik  
Operating Permits Group, AQPD, OAQPS

TO: Operating Permits Contacts  
Regions I-X

The part 70 presumptive minimum fee rate (\$/ton) effective for the 12-month period of September 1, 2023 through August 31, 2024 is \$61.73. This fee rate represents an increase of 5.43149% (or \$3.18) from the fee rate in effect for the prior 12-month period (\$58.55). This increase is based on a calculation of the average monthly change in the Consumer Price Index (All Urban Consumers) for the 12-month period of September 2022 through August 2023 as reported by the U.S. Bureau of Labor Statistics.

This fee rate is used to calculate emissions-based fees for part 70 permit programs that use the presumptive minimum fee for that purpose.<sup>1</sup> Note that many part 70 programs do not use the presumptive fee rate, so check with your permitting authority for the proper fee rates for your location. Also, the fee rate in effect for a given time period is the one normally used in fee calculations performed during that time period, regardless of the time period of the emissions data used in the calculation. For example, when annual fees are calculated in October of 2023 and they are based on the presumptive minimum fee rate, you would use \$61.73 as the fee rate, even though the emissions data would typically be from calendar year 2022.

For any questions regarding this memorandum, please contact Corey Sugerik at (919) 541-3223 or [sugerik.corey@epa.gov](mailto:sugerik.corey@epa.gov).

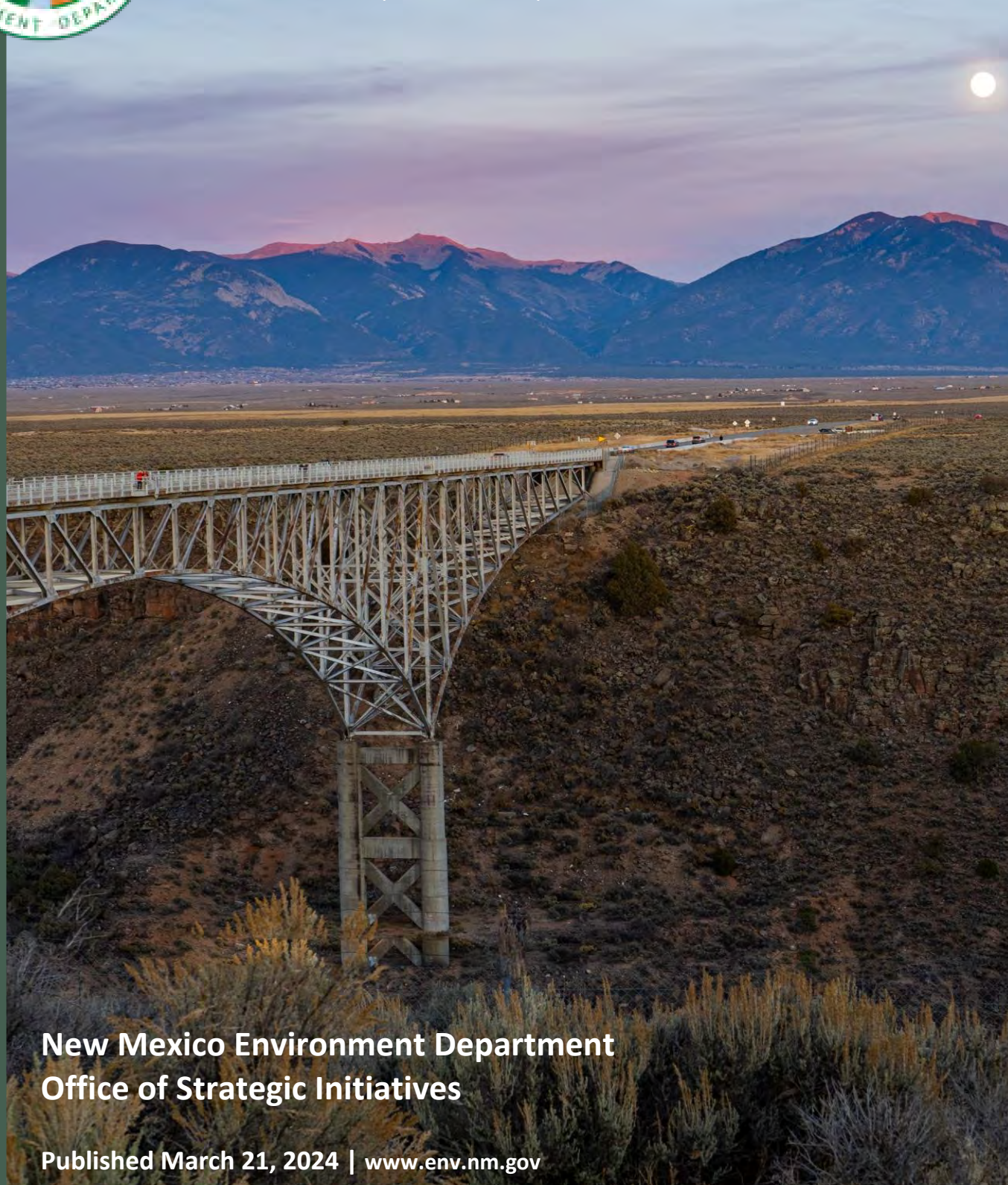
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<sup>1</sup> For application of the GHG adjustment factor when determining the presumptive minimum fee, please refer to 40 C.F.R. § 70.9(b)(2)(v).



# Performance Assessment

Fiscal Year 2024 | 2<sup>nd</sup> Quarter | October 1 – December 31, 2023



**New Mexico Environment Department  
Office of Strategic Initiatives**

Published March 21, 2024 | [www.env.nm.gov](http://www.env.nm.gov)

## Investing for tomorrow, delivering today.

Our mission is to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations. We implement our mission guided by four core values: science, innovation, collaboration, and compliance. We use the best available science to inform our decision-making in protecting public health and the environment. We employ creative engineering and technical solutions to address environmental challenges. We engage communities and stakeholders in environmental decision-making. Finally, we ensure compliance with state regulations and permits, leveling the playing field by holding violators accountable. We embrace our mission and core values at every level of the organization.

In FY24, we are strategically deploying our limited funding and personnel to advance public health, protect our natural resources, hold responsible parties accountable, and work to ensure access to clean land, air, and water for New Mexicans. For more information on NMED's program workloads, see Appendix A, beginning on page 12 of this report.

For FY24, NMED received appropriations totaling \$147.7 million to protect public health and the environment. This included \$25.5 million in general fund, \$62.7 million in special revenue funds (e.g., permit fees), \$59.5 million in federal funds, and \$45.5 million in non-recurring special appropriations for earmarked projects/purposes.

Our approximate recurring budget breakdown is:

- 17.3% state general fund;
- 42.4% special revenue funds; and
- 40.3% federal funds.

Beginning on page 6, this report covers 46 performance measures across these five categories:

- 6 Public Health Measures;
- 9 Environmental Protection Measures;
- 24 Compliance Measures;
- 4 Economic Investment Measures; and
- 3 Operational Measures.

In the first half of FY24, leading up to the 2024 legislative session, NMED provided updates on the State's investment in the Department and testified on issues of concern to the interim Water and Natural Resources Committee, Radioactive and Hazardous Materials Committee, Military and Veterans Affairs Committee, and Legislative Finance Committee. In total, NMED provided 27 presentations to these committees, including 15 in the second quarter. Presentations covered: the 2023 Water Data Initiative, corrective action at White Sands Test Facility, water reuse regulation, PFAS rulemaking and litigation, interim storage of nuclear materials, the Kirtland Air Force Base jet fuel cleanup, uranium site reclamation, the environmental status of the San Juan Generating Station, an inventory of abandoned contamination sites, and NMED budget needs. The presentations are available [here](#).

### About this Report

The New Mexico Environment Department (NMED) began publishing quarterly assessments in Fiscal Year 2022 (FY22). This is the second quarterly performance assessment for FY24 and provides a retrospective look at the quarter while providing insights for the rest of the fiscal year.

NEW for Q2: Watch a video explaining this report on NMED's YouTube Channel at <https://youtu.be/Wlc-WtcV9Vk>

For more information, please visit our website, [www.env.nm.gov](http://www.env.nm.gov) > [About](#) > [Performance](#), to see past reports and other metrics. You can also contact:

Michael G. Bowers  
Collaboration Coordinator  
(505) 629-6302  
[Michael.Bowers2@state.nm.us](mailto:Michael.Bowers2@state.nm.us)

# Enforcement Watch Update

NMED’s [Enforcement Watch](#) provides a transparent, publicly accessible listing of all active and resolved enforcement cases with online reporting tools. Compliance is a core value at NMED. Assuring compliance with state licenses, permits, and rules, and enforcing against violations when they occur is critical to protecting the public and the environment.

**Enforcement Watch Alerts for the Second Quarter:**  
*(click on the month to read the corresponding press release)*

| Month                          | Enforcement Actions |           |
|--------------------------------|---------------------|-----------|
|                                | Initiated           | Resolved  |
| <a href="#">October, 2023</a>  | 115                 | 11        |
| <a href="#">November, 2023</a> | 162                 | 14        |
| <a href="#">December, 2023</a> | 99                  | 7         |
| <b>Total</b>                   | <b>376</b>          | <b>32</b> |

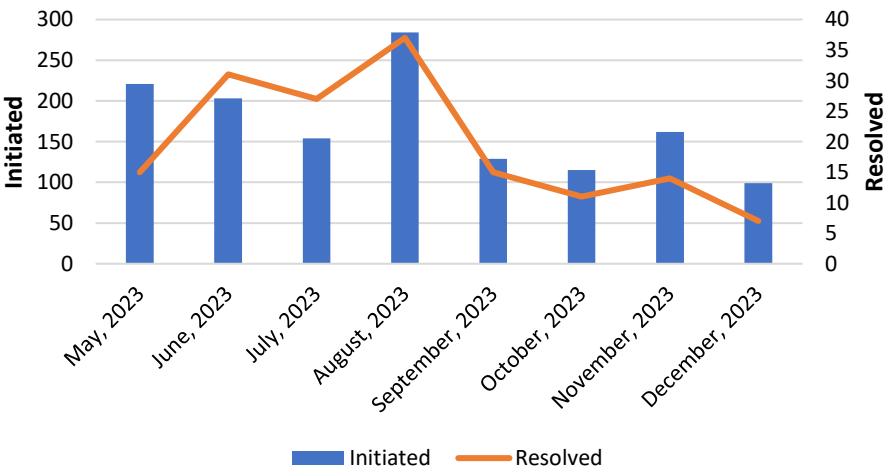
Major enforcement actions taken in the second quarter include:

- The Air Quality Bureau resolved a Settlement Agreement and Stipulated Final Compliance Order with Robert Medina and Sons Concrete and Sand, Inc., after the company paid a civil penalty of \$110,000.
- The Hazardous Waste Bureau resolved a Notice of Violation with Freeland NM Holdings, LLC in Brazos for alleged violations of the hazardous waste management regulations. Freeland NM cleaned up used oil releases and corrected container labeling and storage issues observed during the initial inspection.
- The Hazardous Waste Bureau reached a \$214,000 settlement with Los Alamos National Laboratory for alleged statutory and regulatory violations, including failure to dispose of hazardous waste within ninety days or obtain a permit.



*Taos Gravel settled with state regulators at the end of October, agreeing to pay fines totaling \$25,000. It was required to apply for a concrete batch permit before February 28, 2024*

## NMED Enforcement Actions

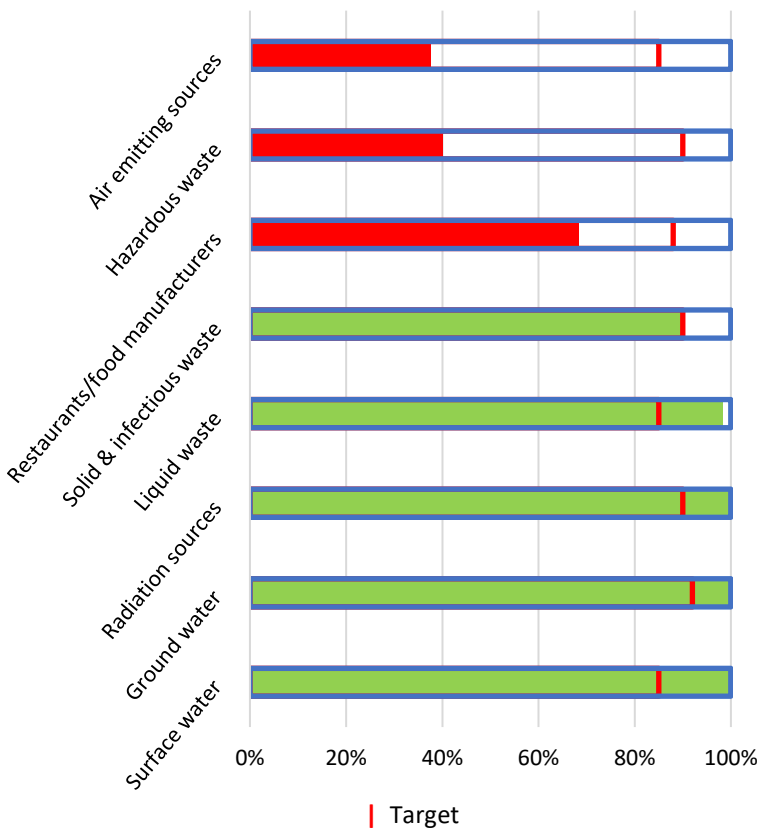


# Compliance and Enforcement

In the first two quarters of FY24, NMED staff conducted 5,021 compliance inspections.

The figure below shows compliance levels in programs across the Department compared to the performance target. Regulated entities in three program areas fell below the target (depicted in red) and regulated industry in five program areas exceeded the target (depicted in green).

**Percent of Inspections Showing Compliance, by Program**



## NMED Enforces Regulations on Liquid Waste Dumping

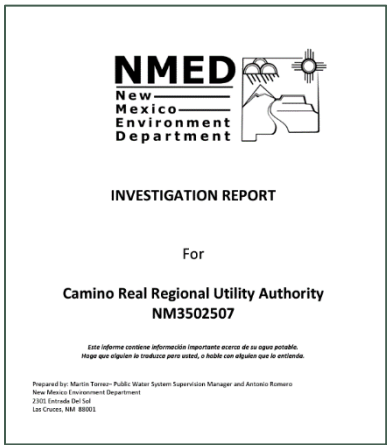
After receiving calls from irate members of the public about an alleged illegal dumper in the Las Cruces area, NMED enlisted a retired police officer who began following the truck and taking photos, along with a small group of community members. The field office used innovative measures to prove the case, such as researching legal and illegal dump sites and even Facebook to track down the dumper.

The Dona Ana County Sheriff's Department delivered a subpoena to the suspect. The defendant confessed and agreed to comply with all requirements for businesses and septage pumpers in the future.

The case is a milestone for NMED. The assistance of community members made it possible to gather the needed evidence. If the owner complies, NMED will not seek a permanent injunction against the business. Repeat violations can result in monetary penalties and/or criminal prosecution.

Illegal dumping is not only an eye- and nose-sore, it can result in the spread of contagious diseases such as Shigella, e-coli, typhoid, and cholera. NMED, along with community members, are watching.

## NMED confirms “Do Not Drink” order for Camino Real Regional Utility Authority



The Camino Real Regional Utility Authority (CRRUA) in Doña Ana County detected elevated pH levels in its water distribution system after resident reports of “slimy” tap water. NMED staff were onsite throughout that week, investigating the cause of the elevated pH issues and conducting a routine, previously scheduled inspection. NMED’s [investigation report](#) determined operational failures by CRRUA led to caustic soda being overfed into the treatment process, elevating pH levels. CRRUA failed to fully investigate complaints about “slimy water” as early as November 28. The investigation also found arsenic treatment facilities were offline periodically over the past year and CRRUA failed to notify customers and NMED. The Department anticipates taking additional enforcement action following this investigation.

# Advanced Clean Cars and Advanced Clean Trucks Rule

## NMED and City of Albuquerque Hold Public Meetings

In September, NMED and the City of Albuquerque announced the dates of public meetings on the proposed Advanced Clean Cars and Advanced Clean Trucks Rules. NMED staff facilitated these meetings and answered questions from attendees. The New Mexico Department of Transportation also participated in the meetings to provide a comprehensive perspective on how the proposed rules impact transportation.

The public meetings took place at the Community Room in the Santa Fe Public Library - Southside Branch on September 19, and on October 16 in the Community Meeting Room at the International District Library in Albuquerque. A total of 185 people attended the meetings in-person and members of the public also submitted written public comments online.

In November, the Environmental Improvement Board (EIB) and the Albuquerque-Bernalillo County Air Quality Control Board (AQCB) adopted advanced clean vehicles rules after a joint public hearing. Their independent approval of these rules ensure New Mexicans and New Mexico businesses will have access to a wide variety of electric, hybrid, and hydrogen passenger and commercial vehicles in the coming years. These types of vehicles are known as zero-emission vehicles, or ZEVs. The coordinated package of rules will significantly increase consumer choice for New Mexicans by assuring new and used zero-emission vehicles are available for lease or purchase.

The rules require national auto manufacturers to ship an increasing percentage of ZEVs to New Mexico auto dealerships. Starting in calendar year 2026, 43% of all new passenger cars and light-duty trucks and 15% of all new commercial heavy-duty trucks shipped to New Mexico auto dealerships by national auto manufacturers must be ZEVs. These percentages increase slightly each year through 2032.

The rules align with Governor Michelle Lujan Grisham's commitment to a cleaner, greener future while ensuring consumer access to zero-emission vehicles.

New Mexico has invested over \$11.5 million in electric vehicle charging stations from State and federal funding sources and received an additional \$38 million in U.S. Department of Transportation federal grants. Starting in January 2024, qualifying new or used electric vehicle will enjoy immediate savings of up to \$7,500 at the point of sale through a "cash on the hood" discount. This federal change eliminates the need to wait until tax return season to receive the federal tax credit.



## More electric, hydrogen, and hybrid vehicles coming to New Mexico starting in 2026



Advanced clean vehicle rules were adopted by the state EIB and city/county air board on November 16th, 2023, after a joint public hearing. Proposed by the Climate Change Bureau, the rule will reduce CO<sub>2</sub>, NO<sub>x</sub>, & PM emissions from the transportation sector by 62%, 43%, and 24%, respectively, by 2050.

To learn more, visit:

<https://tinyurl.com/NM-clean-cars-trucks>

or

<https://www.env.nm.gov/transportation/>



# Public Health Measures



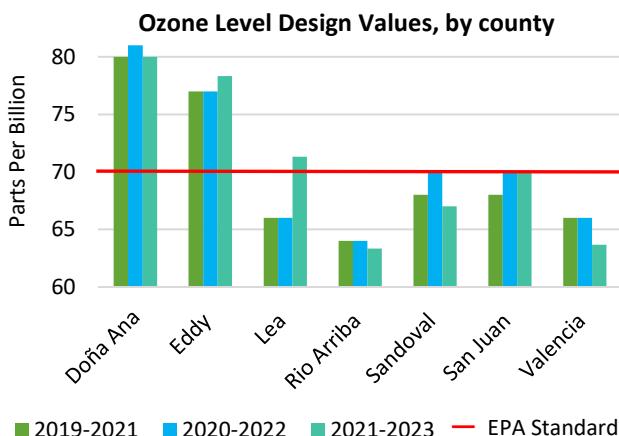
Clean air and land, safe drinking water and food, and healthy communities are critical public health measures for developing and maintaining a prosperous New Mexico. The table below provides an at-a-glance view of our progress toward our FY23 targets.

|  | FY24 Target     | Q1              | Q2              | Q3 | Q4 | FY24 Actual |
|--|-----------------|-----------------|-----------------|----|----|-------------|
| Percent of the population (in NMED jurisdiction) breathing air meeting federal health standards.   | 95.0% or more   | 98.3%           | 100.0%          |    |    |             |
| Percent of the population served safe and healthy drinking water.  | 95.0% or more   | 90.1%           | 90.5%           |    |    |             |
| Number of drinking water systems serving drinking water that did not meet at least one standard compared to the total number of drinking water systems.                      | 260/563 (46.2%) | 232/563 (43.8%) | 205/563 (36.4%) |    |    |             |
| Number of community water system violations returned to compliance as a result of NMED assistance.   | 500             | 16              | 16              |    |    |             |
| Number of superfund sites cleaned up as compared to the number of superfund sites remaining.   | 0/15            |                 |                 |    |    |             |
| Number of employers that did not meet Occupational Safety and Health Administration (OSHA) requirements for at least one standard compared to the total number of employers. | 55.0%           | 73.2%           | 52.3%           |    |    |             |

Note: Grey boxes in tables represent fields with no data reported because the respective measure is reported on a semi-annual or annual basis, rather than quarterly.

Our public health performance measures are described in detail in Appendix B. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

## Measuring Ozone Pollution



NMED's ozone air monitor data for the last quarter did not exceed the federal limit of 70 parts per billion (ppb). However, ozone levels in some counties are close to or exceed federal standards based on the EPA required three-year average, which is a statistic known as a "design value." These design values inform EPA air quality compliance designations (i.e., attainment or non-attainment). Apart from the federal health limit, NMED evaluates and must act when design values are within 95% of the federal health limit (66 ppb). NMED does not have jurisdiction in Bernalillo County and does not have monitors in all counties.

# Environmental Protection Measures



Environmental protection is a set of mitigation techniques aimed to help protect and manage different environmental issues. Environmental protection can be accomplished by reducing pollutants and other factors that contribute to the degradation of the environment. The table below provides an at-a-glance view of our progress toward our FY24 targets.

|   | FY24 Target      | Q1               | Q2              | Q3 | Q4 | FY24 Actual |
|---|------------------|------------------|-----------------|----|----|-------------|
| Amount of volatile organic compounds emitted statewide, in tons per year (TPY).   | 101,095          |                  |                 |    |    |             |
| Amount of volatile organic compounds emitted illegally, TPY.  | 5,000            |                  |                 |    |    |             |
| Amount of nitrogen oxides emitted statewide, TPY.   | 136,906          |                  |                 |    |    |             |
| Amount of nitrogen oxides emitted illegally, in TPY.  | 7,000            |                  |                 |    |    |             |
| Quantity of nutrient-based pollutants reduced due to implementation of watershed restoration and on-the-ground improvement projects, in pounds.   | 1,300            |                  | 2,588           |    |    |             |
| Reduction in nonpoint source sediment loading attributed to the implementation of watershed restoration and on-the-ground improvement projects, in tons.  | 900              |                  | 2,165           |    |    |             |
| Number of nonpoint source impaired waterbodies restored by the Department relative to the number of impaired water bodies.  | 1/377<br>(0.3%)  |                  |                 |    |    |             |
| Number of underground storage tank sites cleaned up compared to the total number of leaking underground petroleum storage tank sites remaining. (Denominator fluctuates as sites reach no further action status after completed cleanup.) | 20/944<br>(2.1%) | 10/842<br>(1.2%) | 2/849<br>(0.2%) |    |    |             |
| Number of completed cleanups of petroleum storage tank release sites that require no further action. (Cumulative over all time.)  | 1,976            | 2,018            | 2,020           |    |    |             |

Our environmental protection performance measures are described in detail in Appendix B. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

## Independent study shows New Mexico's emissions from oil and gas are HALF those of Texas' industry

New Mexico's nationally leading oil and gas regulations are having significant and positive impacts on greenhouse gas emissions from the industry. A study released in November by the environmental measurement and analysis firm Kayrros found that New Mexico's oil and gas operations emit half those of Texas, per unit. Texas' industry is far less regulated and often results in emissions traveling across state lines into New Mexico. Noting that both Texas and New Mexico have experienced exponential growth in oil and gas production over the time period its study covers, Kayrros said the difference in emissions between the states can only be attributed to New Mexico's stronger regulations on methane waste and emissions.



*A burning flare and other oilfield activity in the Permian Basin in southern New Mexico. Photo by Blake Thornberry.*

The research also tracked the number of "super emitter" events in the Permian Basin since 2019. Their results showed that Texas recorded 106 super emitter events since that time compared with 28 in New Mexico.

# Compliance Measures

Environmental regulatory compliance is essential to protect the environment and prevent harm to human health. Inspections are a valuable tool for NMED to determine whether regulated entities are in compliance with applicable laws, rules or permits. The table below provides an at-a-glance view of our progress toward our FY24 targets. The “compliance” measures reflect the results of inspections conducted within the reporting period. The “violation” measures reflect all active violations among all permittees. This difference in denominators can cause large differences between the “compliance” and “violations” rates.

|  | FY24 Target (%) | Q1 (%) | Q2 (%) | Q3 (%) | Q4 (%) | FY24 Actual (%) |
|--|-----------------|--------|--------|--------|--------|-----------------|
| <b>Air</b>   |                 |        |        |        |        |                 |
| Percent of air emitting sources inspected.                                 | 25.0            | 7.8    | 6.6    |        |        |                 |
| Percent of air emitting sources in compliance.                             | 85.0            | 50.0   | 37.5   |        |        |                 |
| Percent of air emitting sources in violation.                              | 15.0            | 50.0   | 62.5   |        |        |                 |
| <b>Groundwater</b>   |                 |        |        |        |        |                 |
| Percent of groundwater permittees inspected.                               | 65.0            | 5.8    | 10.3   |        |        |                 |
| Percent of groundwater permittees in compliance.                           | 92.0            | 97.5   | 100.0  |        |        |                 |
| Percent of groundwater permittees in violation.                            | 8.0             | 0.7    | 0.7    |        |        |                 |
| <b>Hazardous Waste</b>   |                 |        |        |        |        |                 |
| Percent of hazardous waste facilities inspected.                           | 15.0            | 0.8    | 0.8    |        |        |                 |
| Percent of hazardous waste facilities in compliance.                       | 90.0            | 60.0   | 40.0   |        |        |                 |
| Percent of hazardous waste facilities in violation.                        | 8.0             | 0.7    | 0.6    |        |        |                 |
| <b>Radiation Sources in Medical Equipment</b>                              |                 |        |        |        |        |                 |
| Percent of ionizing/non-ionizing radiation sources inspected.              | 85.0            | 5.6    | 4.4    |        |        |                 |
| Percent of ionizing/non-ionizing radiation sources in compliance.          | 90.0            | 94.8   | 100.0  |        |        |                 |
| Percent of ionizing/non-ionizing radiation sources in violation.           | 10.0            | 0.3    | 0.0    |        |        |                 |
| <b>Restaurants and Food Manufacturers</b>                                  |                 |        |        |        |        |                 |
| Percent of restaurants/food manufacturers inspected.                       | 90.0            | 20.8   | 20.2   |        |        |                 |
| Percent of restaurants/food manufacturers in compliance.                   | 88.0            | 73.4   | 68.3   |        |        |                 |
| Percent of restaurants/food manufacturers in violation.                    | 15.0            | 5.5    | 6.4    |        |        |                 |
| <b>Septic Systems</b>  |                 |        |        |        |        |                 |
| Percent of new or modified liquid waste systems inspected.                 | 85.0            | 91.8   | 90.6   |        |        |                 |
| Percent of new or modified liquid waste systems in compliance.             | 85.0            | 95.8   | 98.2   |        |        |                 |
| Percent of new or modified liquid waste systems in violation.              | 13.0            | 4.2    | 1.8    |        |        |                 |
| <b>Solid/Infectious Waste</b>  |                 |        |        |        |        |                 |
| Percent of solid and infectious waste management facilities inspected.     | 85.0            | 24.4   | 22.2   |        |        |                 |
| Percent of solid and infectious waste management facilities in compliance. | 90.0            | 90.9   | 90.0   |        |        |                 |
| Percent of solid and infectious waste management facilities in violation.  | N/A             | 31.1   | 15.6   |        |        |                 |
| <b>Surface Water</b>   |                 |        |        |        |        |                 |
| Percent of surface water permittees inspected.                             | 100.0           | 5.0    | 10.0   |        |        |                 |
| Percent of surface water permittees in compliance.                         | 85.0            | 100.0  | 100.0  |        |        |                 |
| Percent of surface water permittees in violation.                          | 15.0            | 6.0    | 4.0    |        |        |                 |

Our compliance performance measures are described in detail in Appendix B. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

# Economic Investment Measures



NMED is dedicated to making economic investments that promote public health, improve environmental protection, and foster compliance. Economic investment is critical to New Mexico's ability to continue to build resilient environments. The table below provides an at-a-glance view of our progress toward our FY24 targets.

|   | FY24 Target  | Q1           | Q2           | Q3 | Q4 | FY24 Actual |
|---|--------------|--------------|--------------|----|----|-------------|
| Total grant dollars awarded to communities.*  | \$65,000,000 |              |              |    |    |             |
| Number of brownfield acres of contaminated land cleaned up and available for reuse. | 20           |              |              |    |    |             |
| Investments in water, in dollars.   | \$30,000,000 | \$16,700,000 | \$31,500,000 |    |    |             |
| Number of new water infrastructure projects.  | 115          | 65           | 98           |    |    |             |

Our economic investment performance measures are described in detail in Appendix B. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

## NMED awards over \$750,000 to communities for trash, illegal dumping, and recycling



*Pictured left to right: A tire cutting machine, a sign at Isleta, and a wheel crusher machine purchased by Isleta Pueblo with RAID Grant funds awarded in FY23.*

NMED announced the latest recipients of Recycling and Illegal Dumping (RAID) grants for FY24. Communities, counties, solid waste authorities and pueblos around the state – many in rural areas – will share in the \$751,489 in grant funding. The funds will help clean up illegal dumpsites, establish illegal dump prevention education, offset the cost of scrap tire collection and recycling, provide educational outreach on recycling, reuse scrap tires, turn used oil into a heating source, and implement or expand recycling programs. [Click here](#) for the full story and the list of award recipients.

# Operational Measures

NMED is committed to modernizing and improving operational efficiency while reducing operational costs with no loss in customer service. Increasing operational efficiency enables NMED to provide greater services to the public, industry, and our employees. The table below provides an at-a-glance view of our progress toward our FY24 targets.

|   | FY24 Target | FY24 Actual |
|---|-------------|-------------|
| Percent of NMED financial transactions completed online by the public or regulated community.   | 50%         |             |
| Total dollars collected by NMED and transferred to the general fund resulting from successful prosecutions and/or settlements stemming from non-compliance with laws, rules, or permits administered by the Department. | \$750,000   |             |

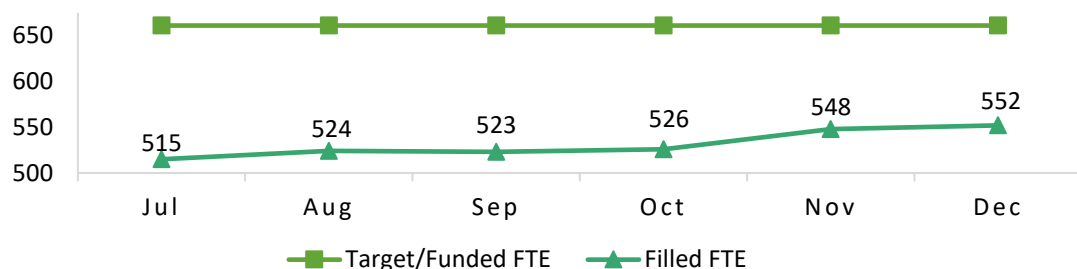
| Vacancy rate by month |        |        |        |        |       |        |     |     |     |     |     |     |             |
|-----------------------|--------|--------|--------|--------|-------|--------|-----|-----|-----|-----|-----|-----|-------------|
| FY24 Target           | Jul    | Aug    | Sep    | Oct    | Nov   | Dec    | Jan | Feb | Mar | Apr | May | Jun | FY24 Actual |
| 6.0%                  | 22.09% | 20.73% | 20.88% | 20.42% | 17.1% | 16.49% |     |     |     |     |     |     |             |

Our operational performance measures are described in detail in Appendix A. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

At the end of Q2, NMED had employees filling 552 full-time equivalent positions (FTE). While the Department has 714 authorized FTEs, the FY24 staffing budget funded 661 of those based on the average FTE cost because the Legislature did not fully fund that expense. For FY24, NMED was the only state agency to receive a separate appropriation to help cover the cost of the 6 percent raise for state employees. The Department's FY25 budget request included a \$6.2 million general fund increase to appropriately compensate employees based on their education and experience in accordance with state regulations.

NMED's vacancy rate declined slightly by the end of the second quarter of FY24, but the Department still faces headwinds to retaining and recruiting staff. In FY24, NMED will continue to work to reduce vacancy rates for the Department overall and especially in those programs where employees are still stretched too thin. Our NMED Staff Workload Snapshot, on page 11, highlights some of those areas.

**Fiscal Year 2024  
Full-Time Equivalent (FTE) by Month**



# NMED Staff Workload Snapshot

Based on existing staffing levels and assuming 235 workdays per year, it would take most NMED programs multiple years to assure compliance with all permitted or licensed facilities.<sup>1</sup> This means that businesses subject to laws passed by the Legislature, regulations adopted by state boards and commissions, and permits and licenses issued by the Department go largely unchecked by NMED staff for years. New Mexicans likely perceive greater oversight by NMED than what is achievable under existing budget and staffing levels. NMED cannot offer technical assistance to the regulated community or assure compliance with legislation, rules, permits, and licenses that protect public health and the environment beyond what NMED's budget allows.



10 OSHA inspectors oversee 68,041 employers, or 6,804 employers per inspector



At current staffing levels, Air Quality Bureau staff can visit all permittees once every 9.6 years



OSHA has 5 staff to consult 68,041 employers, limiting their ability to ensure worker safety



The Surface Water Quality Bureau has 8 positions filled to cover almost 200,000 stream miles and 173 bodies of water



The Drinking Water Bureau's 3 Utility Operator Certification employees support and provide services to 2,173 operators, or 724 operators for each NMED staff



3 staff oversee protection of over 1,000,000 acres of wetlands



Each of Construction Programs Bureau 5 technical staff manages 115 infrastructure projects

<sup>1</sup> Assuming an employee works five days per week, receives the 11 state holidays, and exercises their right to two weeks of annual leave but does not take any sick leave.

# Appendix A

## NMED Program Workload Data

### Regulatory Permitting and Enforcement Programs

| Division | Bureau | Program  | Known Regulated Universe / Number of Permits | Authorized Permitting & Enforcement FTE | Filled Permitting & Enforcement FTE | % Time Permitting | % Time Enforcement | Regulated Entities/Permits per Filled Permitting & Enforcement FTE | As of Date |
|----------|--------|--|--|---|-------------------------------------|-------------------|--------------------|--|------------|
| EHD      | EHB    | Liquid Waste, Food Safety, & Pool and Spa Programs | 15,294                                       | 58.0                                    | 47.0                                | 25%               | 75%                | 325  | 2/26/2024  |
| EHD      | OHSB   | Compliance Program                                 | 68,041                                       | 17.0                                    | 10.0                                | 0%                | 100%               | 6,804  | 2/26/2024  |
| EPD      | AQB    | Permitting and Enforcement                         | 3,628  | 27.0                                    | 16.0                                | 90%               | 10%                | 227  | 2/28/2024  |
| EPD      | RCB    | Radiation Protection Program                       | 1,734  | 11.0                                    | 8.0                                 | 90%               | 10%                | 217  | 1/12/2024  |
| RPD      | HWB    | Compliance and Tech. Assistance Program            | 2,474  | 7.7                                     | 4.7                                 | 0%                | 100%               | 526  | 1/23/2024  |
| RPD      | HWB    | Permitting Program                                 | 19   | 23.0                                    | 18.0                                | 100%              | 0%                 | 1  | 1/23/2024  |
| RPD      | PSTB   | Prevention/Inspection - Delivery Prohibition       | 1,711  | 16.0                                    | 12.0                                | 0%                | 100%               | 143  | 1/22/2024  |
| RPD      | PSTB   | Remedial Action Program                            | 938  | 16.0                                    | 5.0                                 | 0%                | 100%               | 188  | 1/22/2024  |
| RPD      | SWB    | Solid Waste Bureau                                 | 1,297  | 14.0                                    | 8.0                                 | 25%               | 75%                | 162  | 1/1/2024   |
| WPD      | DWB    | Public Water System Supervision                    | 1,068  | 12.0                                    | 10.0                                | 90%               | 10%                | 97   | 1/24/2024  |
| WPD      | GWQB   | Agriculture Compliance Section                     | 208  | 5.0                                     | 4.0                                 | 90%               | 10%                | 52   | 12/31/2023 |
| WPD      | GWQB   | Mining Environmental Compliance Section            | 46   | 12.0                                    | 10.0                                | 90%               | 10%                | 5  | 12/31/2023 |
| WPD      | GWQB   | Pollution Prevention Section                       | 453  | 11.0                                    | 10.0                                | 90%               | 10%                | 45   | 12/31/2023 |
| WPD      | SWQB   | Dredge/Fill Permits                                | 76   | 4.0                                     | 4.0                                 | 15%               | 5%                 | 19   | 1/24/2024  |
| WPD      | SWQB   | NPDES permit compliance                            | 4,641  | 7.0                                     | 7.0                                 | 50%               | 50%                | 663  | 1/24/2024  |

**Non-Regulatory Programs**

| Division | Bureau | Program                              | Permittees / Facilities | Known Universe Category        | Authorized FTE | Filled FTE | Workload per filled FTE | Descriptor  | As of Date |
|----------|--------|--------------------------------------|-------------------------|--------------------------------|----------------|------------|-------------------------|---|------------|
| EHD      | OHSB   | Consultation Program                 | 68,041                  | Employers                      | 6.0            | 5.0        | 13,608                  | Employers per Consultation Program FTE                                | 2/26/2024  |
| RPD      | HWB    | Incident Coordination                | 365                     | Emergency calls                | 1.3            | 1.3        | 280.8                   | Emergency calls per Incident Coordination FTE                         | 1/23/2024  |
| RPD      | SWB    | Recycling and Illegal Dumping Grants | 19                      | FY24 grants                    | 1.1            | 0.7        | 27                      | FY24 grants per Recycling and Illegal Dumping Grants FTE              | 1/1/2024   |
| WPD      | CPB    | Technical Section                    | 575                     | Infrastructure Projects        | 7.0            | 5.0        | 115                     | Infrastructure Projects per Technical Section FTE                     | 1/17/2024  |
| WPD      | DWB    | Engineering                          | 1,068                   | Public Water Systems           | 2.0            | 2.0        | 534                     | Public Water Systems per Engineering FTE                              | 1/24/2024  |
| WPD      | DWB    | Infrastructure Funding Support       | 1,068                   | Infrastructure Funding Support | 2.0            | 0.0        | 1,068                   | Infrastructure Funding Support per Infrastructure Funding Support FTE | 1/24/2024  |
| WPD      | DWB    | Sustainable Water Infrastructure     | 1,068                   | Public Water Systems           | 14.0           | 8.0        | 134                     | Public Water Systems per Sustainable Water Infrastructure FTE         | 1/24/2024  |
| WPD      | DWB    | Utility Operator Certification       | 2,173                   | Utility operators              | 3.0            | 3.0        | 724.3                   | Utility operators per Utility Operator Certification FTE              | 1/24/2024  |
| WPD      | GWQB   | Remediation Oversight Section        | 192                     | Sites                          | 8.0            | 7.0        | 27.4                    | Sites per Remediation Oversight Section FTE                           | 12/31/2023 |
| WPD      | GWQB   | Superfund Oversight Section          | 29                      | Sites                          | 10.0           | 8.0        | 3.6                     | Sites per Superfund Oversight Section FTE                             | 12/31/2023 |
| WPD      | SWQB   | Water Quality Standards              | 6,698                   | Perennial stream miles in NM   | 4.0            | 3.0        | 2,233                   | Perennial stream miles in NM per Water Quality Standards FTE          | 1/18/2024  |

| Division | Bureau | Program  | Permittees / Facilities | Known Universe Category                    | Authorized FTE | Filled FTE | Workload per filled FTE | Descriptor  | As of Date |
|----------|--------|--|-------------------------|--|----------------|------------|-------------------------|---|------------|
| WPD      | SWQB   | Water Quality Standards Program                    | 190,225                 | Non-perennial stream miles in NM           | 4.0            | 3.0        | 63,408                  | Non-perennial stream miles in NM per Water Quality Standards Program FTE            | 1/18/2024  |
| WPD      | SWQB   | Monitoring Program                                 | 6,698                   | Perennial stream miles in NM               | 6.0            | 2.0        | 3,349                   | Perennial stream miles in NM per Monitoring Program FTE                             | 1/18/2024  |
| WPD      | SWQB   | Monitoring Program                                 | 190,225                 | Non-perennial stream miles in NM           | 6.0            | 2.0        | 95,113                  | Non-perennial stream miles in NM per Monitoring Program FTE                         | 1/18/2024  |
| WPD      | SWQB   | Monitoring Program                                 | 173                     | Number of Significant Lakes and Reservoirs | 6.0            | 2.0        | 87                      | Number of Significant Lakes and Reservoirs per Monitoring Program FTE               | 1/18/2024  |
| WPD      | SWQB   | TMDL & Assessment                                  | 622                     | Number of assessed river/stream reaches    | 5.0            | 4.0        | 156                     | Number of assessed river/stream reaches per TMDL & Assessment FTE                   | 1/18/2024  |
| WPD      | SWQB   | Wetlands Protection                                | 1,053,809               | Acres of freshwater wetlands in NM         | 4.0            | 3.0        | 351,270                 | Acres of freshwater wetlands in NM per Wetlands Protection FTE                      | 1/18/2024  |
| WPD      | SWQB   | Nonpoint Source Pollution - Planning & Restoration | 3,223                   | Number of sub-watersheds                   | 9.0            | 7.0        | 460                     | Number of sub-watersheds per Nonpoint Source Pollution - Planning & Restoration FTE | 1/18/2024  |
| WPD      | SWQB   | Effectiveness Monitoring                           | 138                     | Number of impaired river/stream reaches    | 1.0            | 1.0        | 138                     | Number of impaired river/stream reaches per Effectiveness Monitoring FTE            | 1/18/2024  |

## Appendix B

| Public Health Measures   | Definitions and Assumptions  |
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| Percent of the population breathing air meeting federal health standards.  | "Meeting federal health standards" means meeting the National Ambient Air Quality Standards (NAAQS) for air pollutants. "Population" means 32 percent of the total population of New Mexico since 35 percent of the total population live in 20 counties without air monitors and 33 percent of the total population live in Bernalillo County and the City of Albuquerque which operate their own air monitoring sites and monitors and do not contribute to the NMED data set. Therefore, 32 percent of the population will be used as the denominator when calculating the percent of the population in the 10 monitored counties breathing air meeting federal health standards.   |
| Percent of the population served safe and healthy drinking water.  | "Community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. "Safe and healthy drinking water" is defined as drinking water served by a community water system that meets primary health-based drinking water standards. Health-Based Standards are standards that fall into one of three categories: 1) maximum contaminant levels (MCLs) that specify the highest allowable contaminant concentrations in drinking water; 2) maximum residual disinfectant levels (MRDLs) that specify the highest concentrations of disinfectants allowed in drinking water; and 3) treatment technique requirements that specify certain processes intended to reduce the level of a contaminant. The numerator will exclude the population served by systems with unresolved violations from prior quarters and will be based on the compliance status of each community water system at any time during the quarter. The denominator is the total number of people served by community water systems. |
| Number of drinking water systems serving drinking water that did not meet at least one standard compared to the total number of drinking water systems | "Drinking water system serving drinking water that did not meet at least one standard" is a community water system with one or more violations of primary health-based drinking water standards. See above for "community water system" definition. The numerator will exclude population served by systems with unresolved violations from prior quarters; also, the numerator will be based on compliance status of each community water system at any time during the quarter. The denominator is the total number of people served by community water systems.   |
| Number of community water system violations returned to compliance as a result of NMED assistance.   | See above for "community water system" definition. "Violations" means all violations, including monitoring, reporting, public notice, and exceedances. "Returned to compliance" means that a violation has gone from non-compliant status to compliant status in the data system of record (i.e., Safe Drinking Water Information System). Note that there can be a lag between when the system addresses the violation and when NMED documents that the system returned to compliance.  |
| Number of superfund sites cleaned up as compared to the number of superfund sites remaining.   | "Superfund site" means an entire Superfund Site on the National Priorities List, including all operational units. As of September 30, 2021, there are 15 Superfund Sites in New Mexico. Superfund Site clean-ups take many years, and it is common for Sites to remain on the National Priorities List for decades. As a result, most years the number of Superfund Sites cleaned-up will be zero. If, in a given year, a Superfund Site is partially delisted (e.g., one operational unit is delisted and one or more remains) we will note this in the narrative, but a partial delisting will not count toward this measure.  |
| Number of restaurants/food manufacturers that did not meet at least one standard compared to the total number of restaurants/food manufacturers.       | "One standard" means having at least one priority violation during an annual inspection. "Priority violations" are the highest risk violations that indicate the greatest risk of consumers possibly becoming ill as a result of eating food from the restaurant/food manufacturer. The denominator is the number of facilities for which NMED made a compliance determination during the quarter, following an inspection of the facility. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).  |

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| Number of employers that did not meet Occupational Safety and Health Administration (OSHA) requirements for at least one standard compared to the total number of employers. | "Number of employers that did not meet OSHA requirements" includes all employers issued at least one citation for violation(s) of OSHA standards (numerator). "Total number of workplaces" includes all employers found in compliance (case closed with no citations) and employers issued citation(s) during the fiscal year (denominator).  |
| <b>Environmental Protection Measures</b>   | <b>Definitions and Assumptions</b>  |
| Amount of volatile organic compounds emitted statewide, in tons.   | This measure will use the annual calendar year volatile organic compounds (VOCs) emissions inventory which includes actual emissions (i.e., routine, start up, shut down, maintenance, malfunction (SSM/M)) and all illegal VOC emissions. The tons per year reported at the end of the fiscal year will constitute emissions for the previous calendar year. Qualified sources are defined in 20.2.73.300.B(1) as "Any source which emits, or has the potential to emit, 5 tons per year or more of lead or lead compounds, or 100 tons per year or more of PM10, PM2.5, sulfur oxides, nitrogen oxides, carbon monoxide, or volatile organic compounds shall submit an emissions report annually". NMED will assume for this performance measure that legal emissions are from sources in NMED's jurisdiction, which excludes Bernalillo County and Tribal areas. |
| Amount of volatile organic compounds emitted illegally, in tons.   | "Illegal emissions" are those that exceed permitted (allowable) limits. This is a reporting of the illegal total tons of VOC emissions for comparison to total tons of emissions. The tons per year reported at the end of the fiscal year will constitute emissions for the previous calendar year. NMED will assume for this performance measure that illegal emissions are from sources in NMED's jurisdiction, which excludes Bernalillo County. This measure assumes all excess emissions reported to NMED by regulated facilities are in violation of state and federal law. Note: nonpermitted sources are not required to report excess emissions because they do not have an "allowable" limit.  |
| Amount of nitrogen oxides emitted statewide, in tons.  | This measure will use the annual calendar year nitrogen oxides (NOx) emissions inventory which includes actual emissions (i.e., routine, start up, shut down, maintenance, malfunction (SSM/M)) and all the illegal NOx emissions. The tons per year reported at the end of the fiscal year will constitute emissions for the previous calendar year. See above for "qualified sources" definition. NMED will assume for this performance measure that legal emissions are from sources in NMED's jurisdiction, which excludes Bernalillo County and Tribal areas. The data is collected from permitted and registered industrial facilities (point sources).   |
| Amount of nitrogen oxides emitted illegally, in tons.  | See above for "illegal emissions" definition. This is a reporting of the illegal total tons of NOx emissions for comparison to the total tons of emissions. The tons per year reported at the end of the fiscal year will constitute emissions for the previous calendar year. NMED will assume for this performance measure that illegal emissions are from sources in NMED's jurisdiction, which excludes Bernalillo County. This measure assumes all excess emissions reported to NMED by regulated facilities are in violation of state and federal law. Note: nonpermitted sources are not required to report excess emissions because they do not have an "allowable" limit.  |
| Quantity of nutrient-based pollutants reduced due to implementation of watershed restoration and on-the-ground improvement projects, in pounds.                              | "Nutrient-based pollutants" are nitrogen and phosphorus. "Pounds of nitrogen" are measured as Total Nitrogen. "Pounds of phosphorus" are measured as Total Phosphorus. NMED will count load reductions toward this measure when NMED confirms individual project completion. The data do not include pollutant load reductions resulting from programs and projects not represented in the U.S. Environmental Protection Agency's (EPA) Grants Reporting and Tracking System (GRTS). Due to the requirement for NMED to report to EPA once annually, along with the cycle for implementation of water quality restoration projects that generate pollutant reductions, numbers reported for this measure mid-year may not demonstrate progress toward annual targets.   |

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| Reduction in nonpoint source sediment loading attributed to implementation of watershed restoration and on-the-ground improvement projects.     | “Nonpoint source sediment loading” means the amount of sediment (in pounds) that is carried by rain and snowmelt and deposited in aquatic environments from many diffuse (i.e., nonpoint) sources over a specific period (e.g., day, year, etc.). “Nonpoint source pollutant” means a pollutant released into the aquatic environment from a wide area and many diffuse sources. NMED will count load reductions toward this measure when NMED confirms individual project completion. The data do not include pollutant load reductions resulting from programs and projects not represented in EPA GRTS. Due to the requirement for NMED to report to EPA once annually, along with the cycle for implementation of water quality restoration projects that generate pollutant reductions, numbers reported for this measure mid-year may not demonstrate progress toward annual targets.   |
| Number of nonpoint source impaired waterbodies restored by the Department relative to the number of impaired water bodies.                      | See above for “nonpoint source pollutant” definition. “Impaired waterbody” means a surface water of the state (i.e., stream, river, lake, wetland) is not meeting the applicable surface water quality standards for one or more pollutants. In other words, the concentration of the pollutant(s) is higher than the levels established to protect fish, recreation, irrigation, and other uses. Full restoration of a waterbody takes years and typically many combined projects to address the causes of the impairment. Despite successful efforts to restore certain waterbodies and remove them from the impaired waters list, the total number of impaired waterbodies will increase over time due to: (1) monitoring and assessment of more waterbodies; and (2) the general trend for changing land uses over time, combined with impacts of climate change.   |
| Number of underground storage tank sites cleaned up compared to the total number of leaking underground petroleum storage tank sites remaining. | “Cleaned up” means that soil and groundwater contaminants of concern have met the applicable state’s standards. “Underground storage tank” means a single tank or combination of tanks, including pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. “Petroleum storage tank” means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. “Leak” means any spilling, emitting, discharging, escaping, or disposing of a regulated substance due to the failure of components of a storage tank system to contain a regulated substance as designed. A leak may or may not result in a release to the environment. “Petroleum” means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels. This measure does not reflect ongoing work to clean up sites to achieve No Further Action (NFA) status. Also, this measure does not report NFA releases from above ground storage tanks. |
| Number of completed cleanups of petroleum storage tank release sites that require no further action.  | “No Further Action” is a technical determination issued by NMED that documents that the owner or operator of a site has met all applicable WQCC and EIB remediation standards and that no contaminant will present a significant risk of harm to public health, safety, welfare, and the environment. “Completed cleanups” is another term for “No Further Action.” See above for “petroleum storage tank” definition. “Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from a storage tank system into the groundwater, surface water or soil. See above for “petroleum” definition. This measure does not reflect ongoing work to clean up sites to achieve NFA status.  |

| Compliance Measures                              | Definitions and Assumptions   |
|--|---|
| <b>Air</b>                                       |   |
| Percent of air emitting sources inspected.       | "Inspected" means a full compliance evaluation, either on-site or off-site (with photographic verification of equipment and other physical verifications required) that is conducted to inform a compliance determination and support enforcement actions, if appropriate. Inspections include evaluation of all appropriate regulatory requirements and permit conditions. "Air emitting source" means a source of air pollutants, usually an industrial facility, that is included in the Air Quality Bureau (AQB) list of sites to inspect in the universe of sources that may be included in a given annual Compliance Monitoring Strategy (CMS) Plan.  |
| Percent of air emitting sources in compliance.   | "Air emitting source" means an industrial facility that is included in the annual CMS Plan that is subject to approval by the EPA. "In compliance" means, upon completion of an on-site or off-site evaluation by NMED, the air emitting source meets all the requirements of permit(s), state regulations and federal regulations that apply to the facility and its operations. The denominator is the number of facilities for which NMED made a compliance determination during the quarter, following an inspection of the facility. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).   |
| Percent of air emitting sources in violation.    | See above for "air emitting source" definition. "In violation" means that one or more potential violations were discovered through analysis of state or federal regulatory requirements or permit conditions. Numerator is all permittees with one or more potential violations that remain unresolved (i.e., permittees with an ongoing violation). Denominator is the total number of regulated entities (permittees/facilities).   |
| <b>Groundwater</b>                               |   |
| Percent of groundwater permittees inspected.     | "Inspected" means an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, if appropriate. "Groundwater permittees" means a person or facility with an active discharge permit issued by the NMED Ground Water Quality Bureau (GWQB) under the authority of Water Quality Control Commission (WQCC) regulations found at 20.6.2 NMAC, 20.6.6 NMAC, and 20.6.7 NMAC; this term does not include sites under abatement pursuant to WQCC regulations unless the facility is abating groundwater contamination under discharge permit. The numerator is the number of permittees inspected during the reporting period; the denominator is total regulated permittees. The denominator will be set on July 1 each year and quarterly inspection activity will vary. This measure will be tracked and reported cumulatively across quarters. |
| Percent of groundwater permittees in compliance. | See above for "groundwater permittees" definition. "In compliance" means that GWQB inspected the facility and determined that no violations of the permit conditions or regulations were found at the time of inspection. See above for which permits are included in this measure. This measure will provide a compliance rate as a snapshot in time (one quarter only). The numerator is the number of permittees inspected in past quarter that are in compliance with applicable requirements and permit conditions. The denominator is the number of permittees for which a compliance determination was made during the quarter following an inspection of the permittee. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).   |
| Percent of groundwater permittees in violation.  | See above for "groundwater permittees" definition. "In violation" means a permittee with a violation that has not yet been resolved. This will include permittees that are working on ongoing corrective actions but have not completed them. See above for which permits are included in this measure. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities.  |

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| <b>Hazardous Waste</b>  |  |
| Percent of hazardous waste facilities inspected.                  | "Inspected" means an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, if appropriate. "Facilities" tracked under this measure include hazardous waste generators, transporters, and treatment, storage and disposal facilities.   |
| Percent of hazardous waste facilities in compliance.              | See above for "facilities" definition. "In compliance" means that there were no violations of the New Mexico Hazardous Waste Management Regulations (HWMR) 20.4.1 New Mexico Administrative Code (NMAC) found at the time of inspection. This percentage will be calculated based on the number of compliant facilities out of the total number of facilities inspected.   |
| Percent of hazardous waste facilities in violation.               | See above for "hazardous waste facilities" definition. "In violation" means the facility was found to be out of compliance with the New Mexico HWMR 20.4.1 NMAC at the time of inspection. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities.  |
| <b>Radiation Sources in Medical Equipment</b>                     |  |
| Percent of ionizing/non-ionizing radiation sources inspected.     | "Inspection" means an official examination or observation including, but not limited to, tests, surveys and monitoring to determine compliance with rules, regulations, orders, requirements and license or registration conditions of the department. In other words, an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, if appropriate. "Ionizing radiation" means a form of energy that acts by removing electrons from atoms and molecules of materials that include air, water, and living tissue. "Non-ionizing radiation" means a form of radiation with less energy than ionizing radiation. Unlike ionizing radiation, non-ionizing radiation does not remove electrons from atoms or molecules of materials that include air, water, and living tissue. The denominator is the total regulated entities. |
| Percent of ionizing/non-ionizing radiation sources in compliance. | See above for "ionizing radiation" and "non-ionizing radiation" definitions. "In compliance" means no violations of state regulations were found during onsite or virtual inspections. The denominator is the number of facilities for which NMED made a compliance determination during the quarter, following an inspection of the facility. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).   |
| Percent of ionizing/non-ionizing radiation sources in violation.  | See above for "ionizing radiation" and "non-ionizing radiation" definitions. "In violation" means a violation of at least one state regulation was found during and on-site or virtual inspection. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities.  |
| <b>Restaurants and Food Manufacturing</b>                         |  |
| Percent of restaurants/food manufactures inspected.               | "Inspected" means an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, if appropriate. The denominator is the total regulated entities with scheduled inspections within the quarter being reported.   |
| Percent of restaurants/food manufactures in compliance.           | "Compliance" means an inspected facility did not have priority violations during an annual inspection. "Priority violations" are the highest risk violations that indicate the greatest risk of consumers possibly becoming ill as a result of eating food from the restaurant/food manufacturer. The denominator is the number of facilities for which NMED made a compliance determination during the quarter, following an inspection of the facility. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).  |
| Percent of restaurants/food manufactures in violation.            | "Violation" means having at least one priority violation during an annual inspection. See above for "priority violations" definition. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities.   |

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| <b>Septic Systems</b>  |  |
| Percent of new or modified liquid waste systems inspected.     | "Inspected" means an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, not including photo or virtual inspections. A liquid waste system inspection includes, for the purpose of this measure, an inspection of a new or modified system that has been installed, complete and not ready for a compliance inspection. This measure does not include compliance-based inspections. The denominator is total number of systems inspected as a result of the installation of a new or modified system.  |
| Percent of new or modified liquid waste systems in compliance. | "Compliance" of a new or modified liquid waste systems means the system has been inspected on-site and found to meet regulatory requirements during the initial inspection and may be issued a final approval. The denominator is the total number of systems inspected as a result of the installation of a new or modified system by department personnel, not including photo and unpermitted system inspections.   |
| Percent of new or modified liquid waste systems in violation.  | "Violation" of new or modified liquid waste systems are those that have been inspected and have been found to not meet regulatory requirements and could not be issued a final approval. The system installation requires a re-inspection before final approval. The denominator is the total number of systems inspected as a result of the installation of a new or modified system by department personnel, not including photo and unpermitted system inspections.   |
| <b>Surface Water</b>   |  |
| Percent of surface water permittees inspected.                 | "Inspected" means an off-site or on-site compliance inspection that is conducted to evaluate compliance with the EPA permit and support EPA enforcement actions, if appropriate. "Surface water permittees" refers to NPDES surface water discharge permittees. The numerator is the number of permittees subject to NMED-led inspections completed that quarter; the denominator is the number of NMED-led inspections planned for the fiscal year through SWQB's commitment to EPA Region 6. This measure represents surface water discharge inspections NMED conducts on behalf of EPA Region 6, which is currently the permitting authority for these regulated entities in New Mexico.  |
| Percent of surface water permittees in compliance.             | See above for "surface water permittees" definition. "In compliance" means the permittee scored a 3 or higher on their facility evaluation rating on a scale of 1 (very unreliable programs) to 5 (very reliable programs). The denominator is the number of permittees for which NMED issued a final Facility Evaluation Rating during the quarter, following an NMED-led inspection of the permittee. The numerator is the number of permittees for which final inspection reports were issued with a Facility Evaluation Rating of 3 or higher during the quarter.  |
| Percent of surface water permittees in violation.              | See above for "surface water permittees" definition. "In violation" means that EPA issued an enforcement action against an inspected facility. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities. "Enforcement action" is an EPA-issued administrative order or administrative penalty order. If SWQB completes an inspection report during the 1 <sup>st</sup> quarter, that facility may not be in the numerator for percent in violation for the 1 <sup>st</sup> quarter because the noncompliance determination may not be made until another quarter. This facility would end up in the numerator for the percent in violation measure in the quarter when the EPA issues the enforcement action. |

| Economic Investment Measures  | Definitions and Assumptions   |
|---|---|
| Total investment of grants dollars awarded to communities, year to date.  | "Investment" means the action of investing money to a particular undertaking with the expectation of a worthwhile result. "Grant dollars" means money from state or federal funds. "Communities" means a physical location of census tracts or a neighborhood bounded by certain streets and geophysical features. "Awarded" means funds given to communities. This performance measure will include data from many sources, including but not limited to: Solid Waste Bureau's Recycling and Illegal Dumping (RAID) grants, the Construction Program Bureau (CPB)'s Clean Water State Revolving Loan Fund (CWSRF) and Rural Infrastructure Program (RIP). These data do not include tracking funds as they are reimbursed or capital outlay funds. Also, these data do not include funds awarded to contractors or areas without populations.  |
| Number of brownfield acres of contaminated land cleaned up and available for reuse.   | "Brownfield acres" means brownfields sites that utilize the Brownfield Revolving Loan Fund (BRLF) program or a national brownfield grant to fund assessment or clean-up. "Cleaned up and available for reuse" means the acres are remediated and "Ready for Anticipated Use (RAU)," a technical determination that environmental conditions at the site are protective of human health and the environment based on current use(s) or planned future use(s). This measure will not report on sites being regulated through the State Cleanup Program.   |
| Investments in water infrastructure, in dollars.  | "Investments" means actual disbursements from CWSRF, RIP and Capital Outlay to communities for water infrastructure projects. "Water infrastructure" includes drinking water, wastewater, stormwater and any other projects eligible for CWSRF or RIP, and any Capital Outlay projects appropriated to NMED and managed by the CPB. These data are reported by quarter, not as a rolling total of dollars from quarter to quarter. It is important to note that the number of new Capital Outlay projects in a given year is dependent on legislative appropriation. Disbursements from programs not managed directly by CPB are not included in this measure, so a total amount of financial impact to the state from water programs CPB only participates in as a contractor are not included.  |
| Number of new water infrastructure projects.  | "New water infrastructure project" means Clean Water State Revolving Loan Fund (CWSRF), Rural Infrastructure Program (RIP) and capital outlay projects with a funding agreement executed during the reporting period (i.e., quarter). Capital outlay funding agreements are a consequence of appropriations made to the NMED by the Legislature. Because this measure does not capture disbursements from programs not managed directly by NMED CPB, reporting of this measure does not reflect the total amount of financial impact to the State of New Mexico from all water infrastructure financing programs.   |
| Operational Measures  | Definitions and Assumptions   |
| Total dollars collected by NMED and transferred to the general fund resulting from successful prosecutions and/or settlements stemming from non-compliance with laws, rules, or permits administered by the Department. | Enforcement actions are administrative or judicial actions initiated by NMED in response to some information that a regulated entity is violating a statute and/or rule (regulation) for which NMED has legal enforcement authority, or a permit administered by NMED. NMED administers permits pertaining to the following: air quality, water quality, drinking water quality, solid waste, hazardous waste, liquid waste, food safety, ionizing radiation, hemp (warehousing, extraction processing, manufacturing), and public recreation water safety. NMED has enforcement authority for all these matters, in addition to occupational health and safety. The intent of this measure is to display the success of enforcement actions and litigation, as well as the benefit to the entire state via general fund revenue generation. Ideally, the target is zero since compliance with state rules and permits is always required. Realistically, and as the compliance and violation performance measures indicate, NMED is likely to see violations that merit civil penalties in all regulatory programs. Note that NMED may transfer penalties to the general fund from actions initiated by NMED, the Attorney General, a federal agency, etc. |
| Vacancy rate by month.  | The intent of this measure is to track NMED's effort to achieve our budgeted vacancy rate. A negative trend will convey greater staff retention and increased hiring to reduce our vacancy rate. "Vacancy rate" is calculated by subtracting the number of filled full-time equivalent (FTE) positions from the number of budgeted FTE positions (i.e., 662 for FY23) and dividing by the number of authorized FTE positions. Note that as FTE goes down, vacancy rate increases.   |

|   |  |
|---|--|
| Percent of NMED financial transactions completed online by the public or regulated community. | A “financial transaction” facilitates the utilization of ACH and credit card payments for NMED license permitting, loan payments, corrective action fees, certification renewal fees, and other compliance, primacy, and regulatory fees which NMED bills to the constituent and regulated community via email, paper mail, or at the Wells Fargo portal, who pay directly to Wells Fargo, who processes the payment, and the money is deposited into individual program’s Wells Fargo account. The intent of this measure is to drive NMED's modernization, cost-saving efforts, and improved customer service (e.g., online transactions require different resources than in-person or by mail). A positive trend will convey that a greater share of financial transactions is being completed online, directly resulting from modernization, human capital, and cost-saving efforts to improve efficiency and provide enhanced customer service. The following transactions are not being measured here: legal settlements, compliance agreements, State of New Mexico budgets, federal and state grants, inter/intra agency transfers, and special revenue funds. |
|---|--|



# Performance Assessment

Fiscal Year 2024 | 3<sup>rd</sup> Quarter | January 1 – March 31, 2024

**New Mexico Environment Department  
Office of Strategic Initiatives**

Published May 22, 2024 | [www.env.nm.gov](http://www.env.nm.gov)

## Investing for tomorrow, delivering today.

Our mission is to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations. We implement our mission guided by four core values: science, innovation, collaboration, and compliance. We use the best available science to inform our decision-making in protecting public health and the environment. We employ creative engineering and technical solutions to address environmental challenges. We engage communities and stakeholders in environmental decision-making. Finally, we ensure compliance with state regulations and permits, leveling the playing field by holding violators accountable. We embrace our mission and core values at every level of the organization.

In FY24, we are strategically deploying our limited funding and personnel to advance public health, protect our natural resources, hold responsible parties accountable, and work to ensure access to clean land, air, and water for New Mexicans. For more information on NMED's program workloads, see Appendix A, beginning on page 13 of this report.

For FY24, NMED received appropriations totaling \$147.7 million to protect public health and the environment. This included \$25.5 million in general fund, \$62.7 million in special revenue funds (e.g., permit fees), \$59.5 million in federal funds, and \$45.5 million in non-recurring special appropriations for earmarked projects/purposes.

Our approximate recurring budget breakdown is:

- 17.3% state general fund;
- 42.4% special revenue funds; and
- 40.3% federal funds.

Beginning on page 7, this report covers 46 performance measures across these five categories:

- 6 Public Health Measures;
- 9 Environmental Protection Measures;
- 24 Compliance Measures;
- 4 Economic Investment Measures; and
- 3 Operational Measures.

### About this Report

The New Mexico Environment Department (NMED) began publishing quarterly assessments in Fiscal Year 2022 (FY22). This is the third quarterly performance assessment for FY24 and provides a retrospective look at the quarter while providing insights for the rest of the fiscal year.

Watch a video explaining this report on NMED's YouTube Channel at <https://www.youtube.com/watch?v=Kc6la7mq11M>

For more information, please visit our website, [www.env.nm.gov](http://www.env.nm.gov) > [About > Performance](#), to see past reports and other metrics. You can also contact:

Michael G. Bowers  
Collaboration Coordinator  
(505) 629-6302  
[Michael.Bowers2@state.nm.us](mailto:Michael.Bowers2@state.nm.us)

# Enforcement Watch Update

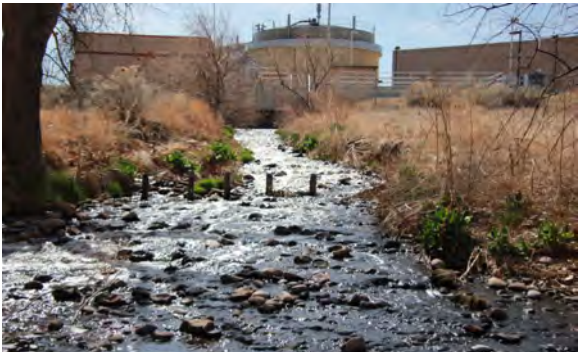
NMED’s [Enforcement Watch](#) provides a transparent, publicly accesible listing of all active and resolved enforcement cases with online reporting tools. Compliance is a core value at NMED. Assuring compliance with state licenses, permits, and rules, and enforcing against violations when they occur is critical to protecting the public and the environment.

**Enforcement Watch Alerts for the Third Quarter:**  
*(click on the month to read the corresponding press release)*

| Month          | Enforcement Actions |            |
|----------------|---------------------|------------|
|                | Initiated           | Resolved   |
| January, 2024  | 158                 | 12         |
| February, 2024 | 333                 | 13         |
| March, 2024    | 298                 | 112        |
| <b>Total</b>   | <b>789</b>          | <b>137</b> |

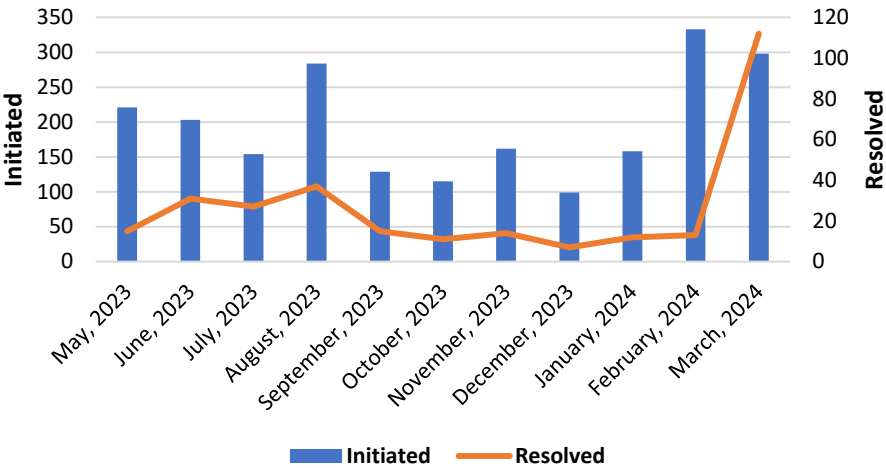
Major enforcement actions taken in the third quarter include:

- The Air Quality Bureau resolved a Settlement Agreement and Stipulated Final Compliance Order with Oxy USA, Inc. after the entity paid a civil penalty of \$1,200,000 for producing excess emissions in violation of the Clean Air Act.
- The Surface Water Quality Bureau issued a Notice of Noncompliance with the New Mexico Water Quality Act to the City of Santa Fe’s Paseo Real Wastewater Treatment Plant due to discharges of water contaminants, disposal of refuse into the Santa Fe River, and failure to comply with New Mexico water quality standards.
- The Hazardous Waste Bureau issued an Administrative Compliance Order to Ortega’s Shell Plaza, Inc., regarding a property in Tucumcari, that required it to comply with the Hazardous Waste Act and assessed \$333,891 for costs incurred by NMED in cleanup of the hazardous substance incident.



*The Santa Fe River passes by the City of Santa Fe’s wastewater treatment plant. Photo by Alan Best*

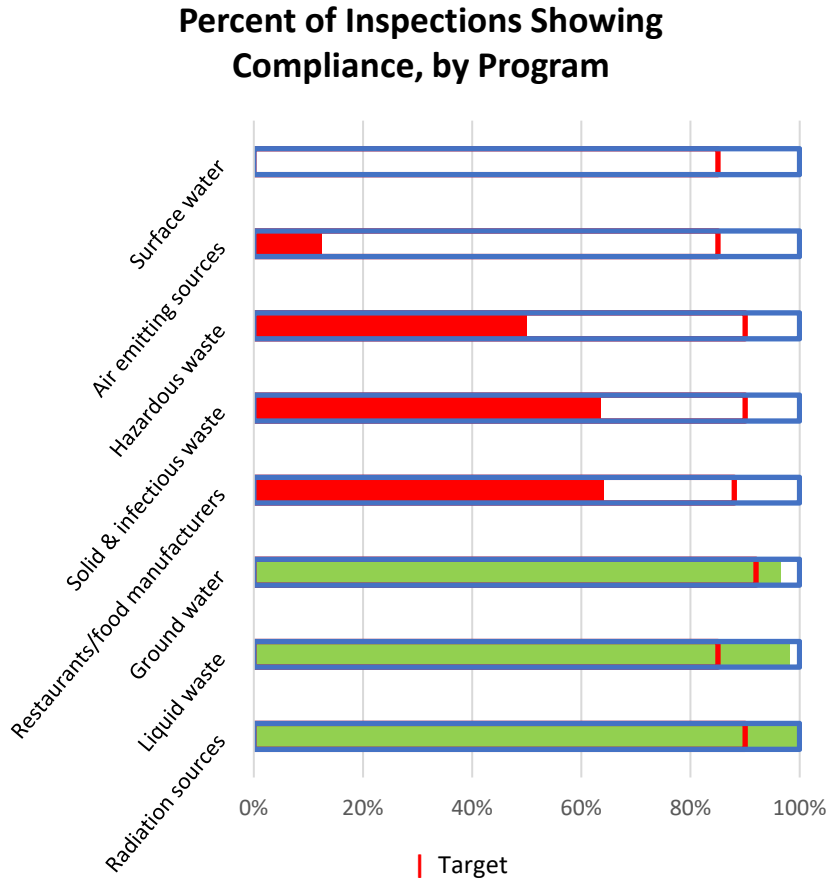
## NMED Enforcement Actions



# Compliance and Enforcement

In the first three quarters of FY24, NMED staff conducted 7,722 compliance inspections. In the third quarter alone, NMED conducted about 2,700 inspections, initiated almost 800 enforcement actions, and resolved 137 violations.

The figure below shows compliance levels in programs across the Department compared to the performance target. Regulated entities in five program areas fell below the target (depicted in red) and regulated industry in three program areas exceeded the target (depicted in green).



STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT  
WATER PROTECTION DIVISION  
DRINKING WATER BUREAU

No. 2024-ACOP-01

Complainant,

v.

CAMINO REAL REGIONAL UTILITY AUTHORITY,

Respondent.

**AMENDED ADMINISTRATIVE COMPLIANCE ORDER AND  
ASSESSMENT OF CIVIL PENALTY**

Pursuant to NMSA 1978, Section 74-1-10 of the Environmental Improvement Act ("EIA"), NMSA 1978, §§ 74-1-1 to -15, and Section 20.7.10.300 NMCA of the Drinking Water Regulations ("DW Regulations"), 20.7.10 NMCA, the Secretary of the New Mexico Environment Department ("NMED"), acting through the Bureau Chief of the Drinking Water Bureau with concurrence from the Water Protection Division Director of the NMED, issues this Amended Administrative Compliance Order with Penalties ("Order") to Camino Real Regional Utility Authority ("Respondent") to enforce the EIA and DW Regulations<sup>1</sup>.

**I. FINDINGS**

1. The NMED is an executive agency within the government of the State of New Mexico which administers and enforces the requirements of the EIA and DW Regulations through its Drinking Water Bureau ("Bureau").

<sup>1</sup> This Amended Administrative Compliance Order is issued solely to correct typographical errors found at paragraphs 19(a), 19(b) and 19(c) of the Administrative Compliance Order issued on February 2, 2024.

## Camino Real Regional Utility Authority exceeds Arsenic Drinking Water Standard

On March 1, 2024, NMED issued an [administrative order](#) to Camino Real Regional Utility Authority (CRRUA) that included \$251,580 in penalties for continued violations of federal and state drinking water regulations. Within two weeks, [NMED alerted](#) the New Mexico Department of Justice and the New Mexico Office of the State Auditor to the ongoing compliance issues at CRRUA.

NMED is also taking independent action to assure the health and safety of residents. On March 15, 2024, NMED conducted unannounced arsenic sampling throughout CRRUA's system. Laboratory results indicated that one of the ten drinking water samples collected and analyzed was above the federal drinking water standard for arsenic, further evidence of violations at CRRUA. [Click here](#) to submit a public comment no later than June 5. A public hearing is scheduled for June 5-6.

# 2024 Legislative Session Update

## Seven Key Bills Signed Into Law

**HB41, CLEAN TRANSPORTATION FUEL STANDARDS:** Directs the Environmental Improvement Board (EIB) to adopt rules by July 1, 2026, to implement a clean transportation fuel standards program. If you are interested in serving on the advisory committee for the EIB rules, [click here](#) to learn more.

**HB91, GEOTHERMAL RESOURCES PROJECT FUNDS:** Creates the Geothermal Projects Development Fund to provide grants for proposed geothermal projects and the Geothermal Projects Revolving Loan Fund for financing state-approved projects.

**HB148, WATER PROJECT FUND PROJECTS:** Makes loans or grants from the Water Project Fund to 55 listed projects.

**HB177, NM MATCH FUND:** Makes grants to eligible entities for state matching funds for federal grants and offsets higher project costs incurred to comply with federal requirements. The new law appropriates \$100 million to the fund for use in FY25 and beyond to provide grants.

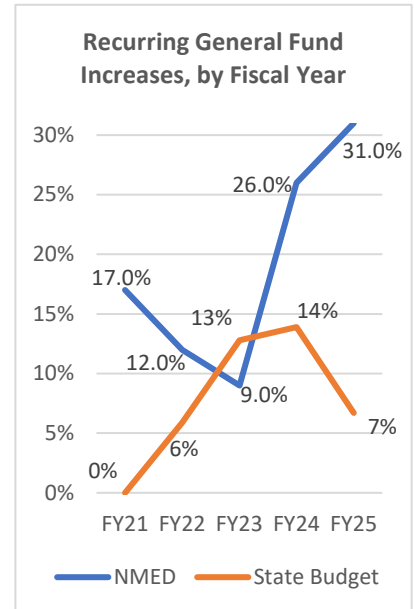
**HB252, TAX PACKAGE:** A range of tax code changes, including personal income tax credits for clean cars and electric vehicle charging infrastructure. These credits transfer the refund to a dealer at the time of the transaction.

**SB37, MEAT INSPECTION ACT:** Resurrects a state meat inspection program and charges the New Mexico Livestock Board with conducting meat inspections.

**SB275, CAPITAL OUTLAY PROJECTS:** Contains appropriations for numerous projects statewide across all state agencies, including water infrastructure (and other) local projects through NMED's Construction Programs Bureau.

### NMED Budget for FY25

By the end of the 2024 legislative session, legislators voted to appropriate the full Executive Budget Recommendation for NMED. This includes a general fund increase of 31%, or \$6.9 million, with \$6.1 million for appropriate placement for all NMED staff. This funding ensures NMED employees will be compensated appropriately based on their education and experience and will improve the Department's ability to retain and recruit high value staff.



### Governor Signs Clean Transportation Fuel Standards Bill into Law

On March 5, Governor Michelle Lujan Grisham signed into law House Bill 41 (HB41), New Mexico's clean transportation fuel standards legislation, after three attempts in previous years. Now, NMED will propose rules to implement the new law to the Environmental Improvement Board.



*HB41 Bill sponsors Rep. Kristina Ortiz (Taos) and Rep. Raymundo Lara (Las Cruces) are seated with the Governor for the bill-signing.*

This landmark event will have significant positive impacts on public health, the economy, and greenhouse gas emissions in New Mexico for the coming decades. For more information, please visit [NMED's dedicated webpage](#) on this policy.

### Environment Day at the Roundhouse

For the big event on February 2, NMED set up a table to highlight its initiatives to address climate change and to support HB41. Several electric vehicles were parked outside the Capitol, including the Climate Change Bureau's new all electric Chevy Bolt and New Mexico's first electric semi-truck, a Freightliner eCascadia, purchased by Goodwill through NMED's Diesel Emissions Reduction Act program.



# NMED Applies for Climate Pollution Reduction Grant

Funding from the U.S. Environmental Protection Agency (EPA) is available for states through the Climate Pollution Reduction Grant (CPRG) Program. NMED partnered with neighbors in Arizona and Oklahoma to submit two CPRG applications, totaling \$577 million, to further New Mexico's ambitious efforts to address climate change and air quality while expanding the economy and growing quality jobs. The applications focus on decarbonizing medium and heavy-duty vehicles, like semi-trucks and buses, traveling on Interstate 40 and providing financial incentives to defray the costs of those vehicles.

With the proposed "Zero40" corridor, NMED is leading an effort to establish eight clean transportation fueling centers along Interstate 40. Each of the clean transportation centers will include heavy-duty charging and mobile hydrogen re-fueling stations for long haul freight.

New Mexico's portion of the [Zero40 grant application](#) is estimated at about \$250 million and will fund the clean transportation fueling component of planned

manufacturing and logistics centers at sites in Bernalillo/Sandoval County, Gallup, and Tucumcari. Zero40 adds to transportation decarbonization projects already underway from the Port of Los Angeles in California and assists with installing infrastructure to connect to additional points east. Zero40 is projected to reduce cumulative greenhouse gas emissions by over 1.3 million metric tons of carbon dioxide equivalent through 2050, with a focus on low-income and underserved communities.

Under a [separate grant application](#), NMED requested funding for two state programs. First, the Clean Truck Incentive Program aims to complement New Mexico's Advanced Clean Trucks Rules, as well as new EPA rules for heavy-duty vehicles, by providing point-of-sale vouchers to fleet owners and funding for charging or fueling infrastructure stations. Second, the ECO Schools Program aims to provide funding for electric school buses and charging plugs for schools that serve low-income students and households. The ECO Schools program will also provide funding for project assistance so that the awardees of projects are able to stack the benefits from ECO Schools with existing renewable energy and efficiency cost saving opportunities. NMED estimates these two programs will create 800 new direct and indirect jobs and reduce cumulative greenhouse gas emissions by 500,000 metric tons of carbon dioxide equivalent through 2050, saving New Mexicans over \$8 million in healthcare costs from air pollution.

More information about NMED's Climate Pollution Reduction Grant work is available [here](#).



# Public Health Measures



Clean air and land, safe drinking water and food, and healthy communities are critical public health measures for developing and maintaining a prosperous New Mexico. The table below provides an at-a-glance view of our progress toward our FY23 targets.

|  | FY24 Target     | Q1              | Q2              | Q3              | Q4 | FY24 Actual |
|--|-----------------|-----------------|-----------------|-----------------|----|-------------|
| Percent of the population (in NMED jurisdiction) breathing air meeting federal health standards.   | 95.0% or more   | 98.3%           | 100.0%          | 99.0%           |    |             |
| Percent of the population served safe and healthy drinking water.  | 95.0% or more   | 90.1%           | 90.5%           | 89.0%           |    |             |
| Number of drinking water systems serving drinking water that did not meet at least one standard compared to the total number of drinking water systems.                      | 260/563 (46.2%) | 232/563 (43.8%) | 205/563 (36.4%) | 210/563 (37.3%) |    |             |
| Number of community water system violations returned to compliance as a result of NMED assistance.   | 500             | 16              | 16              | 11              |    |             |
| Number of superfund sites cleaned up as compared to the number of superfund sites remaining.   | 0/15            |                 |                 |                 |    |             |
| Number of employers that did not meet Occupational Safety and Health Administration (OSHA) requirements for at least one standard compared to the total number of employers. | 55.0%           | 73.2%           | 52.3%           | 60.7%           |    |             |

Note: Grey boxes in tables represent fields with no data reported because the respective measure is reported on a semi-annual or annual basis, rather than quarterly.

Our public health performance measures are described in detail in Appendix B. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

## NMED plans to offer voluntary PFAS testing for Clovis residents, Cannon Air Force Base personnel

Later this spring, the Department will offer residents and personnel living near Cannon Air Force Base the opportunity to have their blood tested for specified per- and polyfluoroalkyl substances (PFAS) free of charge.

NMED issued a Request for Proposals (RFP) for a contractor to administer the PFAS blood testing program and host two events where up to 500 adult volunteers residing within four miles of Cannon Air Force Base will have a small amount of blood drawn and tested for PFAS. In addition, the participants will complete a survey to determine any potential exposure to PFAS. This program is funded and led by NMED, with assistance from the New Mexico Department of Health and the Department of Veteran Services. For those who elect to participate, individual results will be sent directly to volunteer participants and not shared with state agencies or other organizations. Participants will be provided information on how to limit PFAS exposure and what they can do should their results show elevated levels of PFAS. To view the full news story, [click here](#).

# Environmental Protection Measures



Environmental protection is a set of mitigation techniques aimed to help protect and manage different environmental issues. Environmental protection can be accomplished by reducing pollutants and other factors that contribute to the degradation of the environment. The table below provides an at-a-glance view of our progress toward our FY24 targets.

|   | FY24 Target   | Q1            | Q2           | Q3           | Q4 | FY24 Actual |
|---|---------------|---------------|--------------|--------------|----|-------------|
| Amount of volatile organic compounds emitted statewide, in tons per year (TPY).   | 101,095       |               |              |              |    |             |
| Amount of volatile organic compounds emitted illegally, TPY.  | 5,000         |               |              |              |    |             |
| Amount of nitrogen oxides emitted statewide, TPY.   | 136,906       |               |              |              |    |             |
| Amount of nitrogen oxides emitted illegally, in TPY.  | 7,000         |               |              |              |    |             |
| Quantity of nutrient-based pollutants reduced due to implementation of watershed restoration and on-the-ground improvement projects, in pounds.   | 1,300         |               | 2,588        |              |    |             |
| Reduction in nonpoint source sediment loading attributed to the implementation of watershed restoration and on-the-ground improvement projects, in tons.  | 900           |               | 2,165        |              |    |             |
| Number of nonpoint source impaired waterbodies restored by the Department relative to the number of impaired water bodies.  | 1/377 (0.3%)  |               |              |              |    |             |
| Number of underground storage tank sites cleaned up compared to the total number of leaking underground petroleum storage tank sites remaining. (Denominator fluctuates as sites reach no further action status after completed cleanup.) | 20/944 (2.1%) | 10/842 (1.2%) | 2/849 (0.2%) | 3/859 (0.3%) |    |             |
| Number of completed cleanups of petroleum storage tank release sites that require no further action. (Cumulative over all time.)  | 1,976         | 2,018         | 2,020        | 2,023        |    |             |

Our environmental protection performance measures are described in detail in Appendix B. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

## Apache Corporation to Pay \$4 Million and Reduce Unlawful Air Pollution

In February, NMED reported that Apache Corporation (Apache) agreed to pay \$4 million in civil penalties and undertake projects expected to cost at least \$5.5 million to ensure 422 of its oil and gas well pads in New Mexico and Texas comply with state and federal clean air regulations and offset past illegal emissions.

Apache's agreement settles a civil suit – filed jointly by the United States, on behalf of the EPA, and NMED – alleging that Apache failed to comply with federal and state requirements to capture and control air emissions from 23 of its oil and gas production operations in New Mexico and Texas. This settlement to address improper will result in annual reductions of more than 9,650 tons of volatile organic compounds (VOCs) and 900 tons of methane.



Photo credit: Carlsbad Current-Argus.

# Compliance Measures

Environmental regulatory compliance is essential to protect the environment and prevent harm to human health. Inspections are a valuable tool for NMED to determine whether regulated entities are in compliance with applicable laws, rules or permits. The table below provides an at-a-glance view of our progress toward our FY24 targets. The “compliance” measures reflect the results of inspections conducted within the reporting period. The “violation” measures reflect all active violations among all permittees. This difference in denominators can cause large differences between the “compliance” and “violations” rates.

|  | FY24 Target (%) | Q1 (%) | Q2 (%) | Q3 (%) | Q4 (%) | FY24 Actual (%) |
|--|-----------------|--------|--------|--------|--------|-----------------|
| <b>Air</b>   |                 |        |        |        |        |                 |
| Percent of air emitting sources inspected.                                 | 25.0            | 7.8    | 6.6    | 6.5    |        |                 |
| Percent of air emitting sources in compliance.                             | 85.0            | 50.0   | 37.5   | 12.5   |        |                 |
| Percent of air emitting sources in violation.                              | 15.0            | 50.0   | 62.5   | 87.5   |        |                 |
| <b>Groundwater</b>   |                 |        |        |        |        |                 |
| Percent of groundwater permittees inspected.                               | 65.0            | 5.8    | 10.3   | 8.2    |        |                 |
| Percent of groundwater permittees in compliance.                           | 92.0            | 97.5   | 100.0  | 96.6   |        |                 |
| Percent of groundwater permittees in violation.                            | 8.0             | 0.7    | 0.7    | 1.3    |        |                 |
| <b>Hazardous Waste</b>   |                 |        |        |        |        |                 |
| Percent of hazardous waste facilities inspected.                           | 15.0            | 0.8    | 0.8    | 1.1    |        |                 |
| Percent of hazardous waste facilities in compliance.                       | 90.0            | 60.0   | 40.0   | 50.0   |        |                 |
| Percent of hazardous waste facilities in violation.                        | 8.0             | 0.7    | 0.6    | 0.7    |        |                 |
| <b>Radiation Sources in Medical Equipment</b>                              |                 |        |        |        |        |                 |
| Percent of ionizing/non-ionizing radiation sources inspected.              | 85.0            | 5.6    | 4.4    | 4.6    |        |                 |
| Percent of ionizing/non-ionizing radiation sources in compliance.          | 90.0            | 94.8   | 100.0  | 100.0  |        |                 |
| Percent of ionizing/non-ionizing radiation sources in violation.           | 10.0            | 0.3    | 0.0    | 0.0    |        |                 |
| <b>Restaurants and Food Manufacturers</b>                                  |                 |        |        |        |        |                 |
| Percent of restaurants/food manufacturers inspected.                       | 90.0            | 20.8   | 20.2   | 21.5   |        |                 |
| Percent of restaurants/food manufacturers in compliance.                   | 88.0            | 73.4   | 68.3   | 64.0   |        |                 |
| Percent of restaurants/food manufacturers in violation.                    | 15.0            | 5.5    | 6.4    | 7.8    |        |                 |
| <b>Septic Systems</b>  |                 |        |        |        |        |                 |
| Percent of new or modified liquid waste systems inspected.                 | 85.0            | 91.8   | 90.6   | 89.5   |        |                 |
| Percent of new or modified liquid waste systems in compliance.             | 85.0            | 95.8   | 98.2   | 97.7   |        |                 |
| Percent of new or modified liquid waste systems in violation.              | 13.0            | 4.2    | 1.8    | 2.3    |        |                 |
| <b>Solid/Infectious Waste</b>  |                 |        |        |        |        |                 |
| Percent of solid and infectious waste management facilities inspected.     | 85.0            | 24.4   | 22.2   | 23.9   |        |                 |
| Percent of solid and infectious waste management facilities in compliance. | 90.0            | 90.9   | 90.0   | 63.6   |        |                 |
| Percent of solid and infectious waste management facilities in violation.  | N/A             | 31.1   | 15.6   | 17.4   |        |                 |
| <b>Surface Water</b>   |                 |        |        |        |        |                 |
| Percent of surface water permittees inspected.                             | 100.0           | 5.0    | 10.0   | 5.0    |        |                 |
| Percent of surface water permittees in compliance.                         | 85.0            | 100.0  | 100.0  | 0.0    |        |                 |
| Percent of surface water permittees in violation.                          | 15.0            | 6.0    | 4.0    | 4.0    |        |                 |

Our compliance performance measures are described in detail in Appendix B. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

# Economic Investment Measures



NMED is dedicated to making economic investments that promote public health, improve environmental protection, and foster compliance. Economic investment is critical to New Mexico's ability to continue to build resilient environments. The table below provides an at-a-glance view of our progress toward our FY24 targets.

|   | FY24 Target  | Q1           | Q2           | Q3           | Q4 | FY24 Actual |
|---|--------------|--------------|--------------|--------------|----|-------------|
| Total grant dollars awarded to communities.*  | \$65,000,000 |              |              |              |    |             |
| Number of brownfield acres of contaminated land cleaned up and available for reuse. | 20           |              |              |              |    |             |
| Investments in water, in dollars.   | \$30,000,000 | \$16,700,000 | \$31,500,000 | \$11,250,000 |    |             |
| Number of new water infrastructure projects.  | 115          | 65           | 98           | 40           |    |             |

Our economic investment performance measures are described in detail in Appendix B. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

## NMED petitions Environmental Improvement Board to update air quality permitting fees

In March, NMED petitioned the Environmental Improvement Board (EIB) to update the fees and fee structure for air quality permits for the first time in nearly 20 years.

According to the U.S. Bureau of Economic Analysis, New Mexico's economy is the 13<sup>th</sup> fastest growing in the nation with agriculture, construction, and mining among its fastest growing sectors. With such growth, NMED has experienced an unprecedented increase in the number and complexity of air quality permit applications. At the same time, assuring compliance with state and federal air quality standards has also expanded significantly in the past 20 years. For example, the number of permitted oil and gas industry facilities has grown by over 2,235%, from 34 permits in 2012 to 794 permits in 2023. NMED's proposed fee adjustments will improve permitting timelines, technical assistance, and compliance assurance efforts.

[Click here](#) to read the entire news release, or [here](#) to submit a comment.

*The petition proposes the following changes:*

- Increase annual criteria pollutant emission fees from \$38.47 per ton to \$81 per ton.
- Increase filing fees for newly constructed facilities from \$500 to \$2,000.
- Anchoring permit fees to the Consumer Price Index.
- Authority to include electronic billing and electronic payment methods.

*The proposal will continue to provide exemptions for small businesses to allow reduced fees based on total emissions and average number of employees.*

# Operational Measures

NMED is committed to modernizing and improving operational efficiency while reducing operational costs with no loss in customer service. Increasing operational efficiency enables NMED to provide greater services to the public, industry, and our employees. The table below provides an at-a-glance view of our progress toward our FY24 targets.

|   | FY24 Target | FY24 Actual |
|---|-------------|-------------|
| Percent of NMED financial transactions completed online by the public or regulated community.   | 50%         |             |
| Total dollars collected by NMED and transferred to the general fund resulting from successful prosecutions and/or settlements stemming from non-compliance with laws, rules, or permits administered by the Department. | \$750,000   |             |

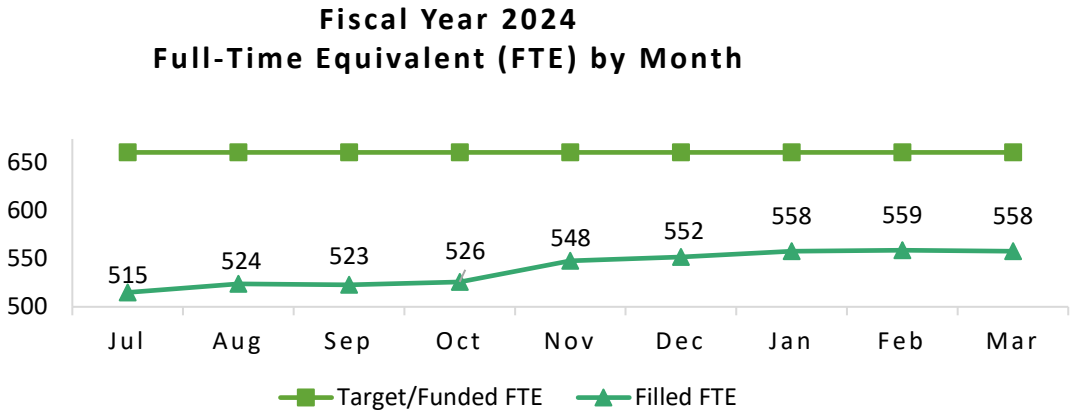
| Vacancy rate by month |       |       |       |       |       |       |       |       |       |     |     |     |             |
|-----------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-----|-----|-----|-------------|
| FY24 Target           | Jul   | Aug   | Sep   | Oct   | Nov   | Dec   | Jan   | Feb   | Mar   | Apr | May | Jun | FY24 Actual |
| 6.0%                  | 22.1% | 20.7% | 20.9% | 20.4% | 17.1% | 16.5% | 15.6% | 15.4% | 15.6% |     |     |     |             |

Our operational performance measures are described in detail in Appendix A. These explanations include additional definitions and assumptions to provide further insight into the significance of these measures.

NMED’s vacancy rate declined slightly by the end of the third quarter of FY24, but the Department still faces headwinds to retaining and recruiting staff. NMED’s work to reduce vacancy rates overall have led to a net gain of 43 filled positions since the start of FY24. Still, employees in many of our programs are dealing with unreasonable workloads. Our NMED Staff Workload Snapshot, on page 12, highlights some of those areas.

At the end of Q3, NMED had 558 filled full-time equivalent positions (FTE). While the Department has 714 authorized FTEs, the FY24 staffing budget funded 661 of those (based on the average FTE cost) because the Legislature did not fully fund that expense. For FY24, NMED was the only state agency to receive a separate appropriation to help cover the cost of a 6 percent raise for state employees.

With the budget passed during the 2024 legislative session, the Department’s FY25 budget includes funding to increase salaries to appropriately compensate employees based on their education and experience in accordance with state regulations. NMED expects this will support a further reduction in the vacancy rate.



# NMED Staff Workload Snapshot

Based on existing staffing levels and assuming 235 workdays per year, it would take most NMED programs multiple years to assure compliance with all permitted or licensed facilities.<sup>1</sup> Each year NMED carefully assesses, based on available resources, how to best regulate and assure compliance of businesses that are subject to laws passed by the Legislature, regulations adopted by state boards and commissions, and permits and licenses issued by the Department. While NMED cannot offer technical assistance to the regulated community, NMED through its compliance initiatives and practices strives to protect public health and the environment.



9 OSHA inspectors oversee 67,945 employers, or 7,549 employers per inspector



At current staffing levels, Air Quality Bureau staff can visit all permittees once every 9.6 years



The Drinking Water Bureau's 4 Utility Operator Certification employees support and provide services to 2,173 operators, or 543 operators for each NMED staff



The Surface Water Quality Bureau has 3 staff to cover almost 200,000 stream miles, 173 bodies of water, and over 1,000,000 acres of wetlands



Construction Programs Bureau's 4 technical staff each manages 136 infrastructure projects

<sup>1</sup> Assuming an employee works five days per week, receives the 11 state holidays, and exercises their right to two weeks of annual leave but does not take any sick leave.

# Appendix A

## NMED Program Workload Data

### Regulatory Permitting and Enforcement Programs

| Division | Bureau | Program  | Known Regulated Universe / Number of Permits | Authorized Permitting & Enforcement FTE | Filled Permitting & Enforcement FTE | % Time Permitting | % Time Enforcement | Regulated Entities/Permits per Filled Permitting & Enforcement FTE | As of Date |
|----------|--------|--|--|---|-------------------------------------|-------------------|--------------------|--|------------|
| EHD      | EHB    | Liquid Waste, Food Safety, & Pool and Spa Programs | 15,309                                       | 58.0                                    | 48.0                                | 25%               | 75%                | 319  | 4/19/2024  |
| EHD      | OHSB   | Compliance Program                                 | 67,945                                       | 17.0                                    | 9.0                                 | 0%                | 100%               | 7,549  | 4/18/2024  |
| EPD      | AQB    | Permitting and Enforcement                         | 3,628  | 26.0                                    | 19.0                                | 90%               | 10%                | 191  | 4/30/2024  |
| EPD      | RCB    | Radiation Protection Program                       | 1,729  | 11.0                                    | 7.0                                 | 95%               | 5%                 | 247  | 4/15/2024  |
| RPD      | HWB    | Compliance and Tech. Assistance Program            | 2,488  | 7.7                                     | 5.7                                 | 0%                | 100%               | 436  | 4/9/2024   |
| RPD      | HWB    | Permitting Program                                 | 19   | 23.0                                    | 18.0                                | 100%              | 0%                 | 1  | 5/3/2024   |
| RPD      | PSTB   | Prevention/Inspection - Delivery Prohibition       | 1,708  | 17.0                                    | 13.0                                | 0%                | 100%               | 131  | 4/19/2024  |
| RPD      | PSTB   | Remedial Action Program                            | 952  | 17.0                                    | 7.0                                 | 0%                | 100%               | 136  | 4/19/2024  |
| RPD      | SWB    | Enforcement Program                                | 933  | 10.0                                    | 5.0                                 | 0%                | 100%               | 187  | 4/1/2024   |
| RPD      | SWB    | Permitting Program                                 | 933  | 6.0                                     | 3.0                                 | 100%              | 0%                 | 311  | 4/1/2024   |
| WPD      | DWB    | Public Water System Supervision                    | 1,057  | 15.0                                    | 13.0                                | 90%               | 10%                | 81   | 4/10/2024  |
| WPD      | GWQB   | Agriculture Compliance Section                     | 208  | 5.0                                     | 4.0                                 | 90%               | 10%                | 52   | 4/20/2024  |
| WPD      | GWQB   | Mining Environmental Compliance Section            | 46   | 13.0                                    | 11.0                                | 90%               | 10%                | 4  | 4/20/2024  |
| WPD      | GWQB   | Pollution Prevention Section                       | 453  | 16.0                                    | 9.0                                 | 90%               | 10%                | 50   | 4/20/2024  |
| WPD      | SWQB   | Dredge/Fill Permits                                | 76   | 4.0                                     | 4.0                                 | 15%               | 5%                 | 19   | 4/19/2024  |
| WPD      | SWQB   | NPDES permit compliance                            | 4,641  | 7.0                                     | 5.0                                 | 50%               | 50%                | 928  | 4/19/2024  |

**Non-Regulatory Programs**

| Division | Bureau | Program                              | Permittees / Facilities | Known Universe Category        | Authorized FTE | Filled FTE | Workload per filled FTE | Descriptor  | As of Date |
|----------|--------|--------------------------------------|-------------------------|--------------------------------|----------------|------------|-------------------------|---|------------|
| EHD      | OHSB   | Consultation Program                 | 67,945                  | Employers                      | 7.0            | 5.0        | 13,589                  | Employers per Consultation Program FTE                                | 4/18/2024  |
| RPD      | HWB    | Incident Coordination                | 365                     | Emergency calls                | 1.3            | 1.3        | 280.8                   | Emergency calls per Incident Coordination FTE                         | 4/9/2024   |
| RPD      | SWB    | Recycling and Illegal Dumping Grants | 19                      | FY24 grants                    | 1.1            | 0.7        | 27                      | FY24 grants per Recycling and Illegal Dumping Grants FTE              | 4/19/2024  |
| WPD      | CPB    | Technical Section                    | 545                     | Infrastructure Projects        | 7.0            | 5.0        | 136                     | Infrastructure Projects per Technical Section FTE                     | 4/11/2024  |
| WPD      | DWB    | Engineering                          | 1,068                   | Public Water Systems           | 2.0            | 2.0        | 534                     | Public Water Systems per Engineering FTE                              | 4/10/2024  |
| WPD      | DWB    | Infrastructure Funding Support       | 1,068                   | Infrastructure Funding Support | 2.0            | 0.0        | 1,068                   | Infrastructure Funding Support per Infrastructure Funding Support FTE | 4/10/2024  |
| WPD      | DWB    | Sustainable Water Infrastructure     | 1,068                   | Public Water Systems           | 14.0           | 10.0       | 107                     | Public Water Systems per Sustainable Water Infrastructure FTE         | 4/10/2024  |
| WPD      | DWB    | Utility Operator Certification       | 2,173                   | Utility operators              | 4.0            | 4.0        | 543.3                   | Utility operators per Utility Operator Certification FTE              | 4/10/2024  |
| WPD      | GWQB   | Remediation Oversight Section        | 192                     | Sites                          | 10.0           | 7.0        | 27.4                    | Sites per Remediation Oversight Section FTE                           | 4/20/2024  |
| WPD      | GWQB   | Superfund Oversight Section          | 29                      | Sites                          | 11.0           | 7.0        | 4.1                     | Sites per Superfund Oversight Section FTE                             | 4/20/2024  |
| WPD      | SWQB   | Water Quality Standards              | 6,698                   | Perennial stream miles in NM   | 4.0            | 2.0        | 3,349                   | Perennial stream miles in NM per Water Quality Standards FTE          | 4/19/2024  |

| Division | Bureau | Program  | Permittees / Facilities | Known Universe Category                    | Authorized FTE | Filled FTE | Workload per filled FTE | Descriptor  | As of Date |
|----------|--------|--|-------------------------|--|----------------|------------|-------------------------|---|------------|
| WPD      | SWQB   | Water Quality Standards Program                    | 190,225                 | Non-perennial stream miles in NM           | 4.0            | 2.0        | 95,113                  | Non-perennial stream miles in NM per Water Quality Standards Program FTE            | 4/19/2024  |
| WPD      | SWQB   | Monitoring Program                                 | 6,698                   | Perennial stream miles in NM               | 6.0            | 3.0        | 2,233                   | Perennial stream miles in NM per Monitoring Program FTE                             | 4/19/2024  |
|          |        |  | 190,225                 | Non-perennial stream miles in NM           |                |            | 63,408                  | Non-perennial stream miles in NM per Monitoring Program FTE                         | 4/19/2024  |
|          |        |  | 173                     | Number of Significant Lakes and Reservoirs |                |            | 58                      | Number of Significant Lakes and Reservoirs per Monitoring Program FTE               | 4/19/2024  |
| WPD      | SWQB   | TMDL & Assessment                                  | 622                     | Number of assessed river/stream reaches    | 5.0            | 4.0        | 156                     | Number of assessed river/stream reaches per TMDL & Assessment FTE                   | 4/19/2024  |
| WPD      | SWQB   | Wetlands Protection                                | 1,053,809               | Acres of freshwater wetlands in NM         | 4.0            | 3.0        | 351,270                 | Acres of freshwater wetlands in NM per Wetlands Protection FTE                      | 4/19/2024  |
| WPD      | SWQB   | Nonpoint Source Pollution - Planning & Restoration | 3,223                   | Number of sub-watersheds                   | 9.0            | 7.0        | 460                     | Number of sub-watersheds per Nonpoint Source Pollution - Planning & Restoration FTE | 4/19/2024  |
| WPD      | SWQB   | Effectiveness Monitoring                           | 138                     | Number of impaired river/stream reaches    | 1.0            | 1.0        | 138                     | Number of impaired river/stream reaches per Effectiveness Monitoring FTE            | 4/19/2024  |

## Appendix B

| Public Health Measures   | Definitions and Assumptions  |
|--|--|
| Percent of the population breathing air meeting federal health standards.  | "Meeting federal health standards" means meeting the National Ambient Air Quality Standards (NAAQS) for air pollutants. "Population" means 32 percent of the total population of New Mexico since 35 percent of the total population live in 20 counties without air monitors and 33 percent of the total population live in Bernalillo County and the City of Albuquerque which operate their own air monitoring sites and monitors and do not contribute to the NMED data set. Therefore, 32 percent of the population will be used as the denominator when calculating the percent of the population in the 10 monitored counties breathing air meeting federal health standards.   |
| Percent of the population served safe and healthy drinking water.  | "Community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. "Safe and healthy drinking water" is defined as drinking water served by a community water system that meets primary health-based drinking water standards. Health-Based Standards are standards that fall into one of three categories: 1) maximum contaminant levels (MCLs) that specify the highest allowable contaminant concentrations in drinking water; 2) maximum residual disinfectant levels (MRDLs) that specify the highest concentrations of disinfectants allowed in drinking water; and 3) treatment technique requirements that specify certain processes intended to reduce the level of a contaminant. The numerator will exclude the population served by systems with unresolved violations from prior quarters and will be based on the compliance status of each community water system at any time during the quarter. The denominator is the total number of people served by community water systems. |
| Number of drinking water systems serving drinking water that did not meet at least one standard compared to the total number of drinking water systems | "Drinking water system serving drinking water that did not meet at least one standard" is a community water system with one or more violations of primary health-based drinking water standards. See above for "community water system" definition. The numerator will exclude population served by systems with unresolved violations from prior quarters; also, the numerator will be based on compliance status of each community water system at any time during the quarter. The denominator is the total number of people served by community water systems.   |
| Number of community water system violations returned to compliance as a result of NMED assistance.   | See above for "community water system" definition. "Violations" means all violations, including monitoring, reporting, public notice, and exceedances. "Returned to compliance" means that a violation has gone from non-compliant status to compliant status in the data system of record (i.e., Safe Drinking Water Information System). Note that there can be a lag between when the system addresses the violation and when NMED documents that the system returned to compliance.  |
| Number of superfund sites cleaned up as compared to the number of superfund sites remaining.   | "Superfund site" means an entire Superfund Site on the National Priorities List, including all operational units. As of September 30, 2021, there are 15 Superfund Sites in New Mexico. Superfund Site clean-ups take many years, and it is common for Sites to remain on the National Priorities List for decades. As a result, most years the number of Superfund Sites cleaned-up will be zero. If, in a given year, a Superfund Site is partially delisted (e.g., one operational unit is delisted and one or more remains) we will note this in the narrative, but a partial delisting will not count toward this measure.  |
| Number of restaurants/food manufacturers that did not meet at least one standard compared to the total number of restaurants/food manufacturers.       | "One standard" means having at least one priority violation during an annual inspection. "Priority violations" are the highest risk violations that indicate the greatest risk of consumers possibly becoming ill as a result of eating food from the restaurant/food manufacturer. The denominator is the number of facilities for which NMED made a compliance determination during the quarter, following an inspection of the facility. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).  |

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| Number of employers that did not meet Occupational Safety and Health Administration (OSHA) requirements for at least one standard compared to the total number of employers. | "Number of employers that did not meet OSHA requirements" includes all employers issued at least one citation for violation(s) of OSHA standards (numerator). "Total number of workplaces" includes all employers found in compliance (case closed with no citations) and employers issued citation(s) during the fiscal year (denominator).  |
| <b>Environmental Protection Measures</b>   | <b>Definitions and Assumptions</b>  |
| Amount of volatile organic compounds emitted statewide, in tons.   | This measure will use the annual calendar year volatile organic compounds (VOCs) emissions inventory which includes actual emissions (i.e., routine, start up, shut down, maintenance, malfunction (SSM/M)) and all illegal VOC emissions. The tons per year reported at the end of the fiscal year will constitute emissions for the previous calendar year. Qualified sources are defined in 20.2.73.300.B(1) as "Any source which emits, or has the potential to emit, 5 tons per year or more of lead or lead compounds, or 100 tons per year or more of PM10, PM2.5, sulfur oxides, nitrogen oxides, carbon monoxide, or volatile organic compounds shall submit an emissions report annually". NMED will assume for this performance measure that legal emissions are from sources in NMED's jurisdiction, which excludes Bernalillo County and Tribal areas. |
| Amount of volatile organic compounds emitted illegally, in tons.   | "Illegal emissions" are those that exceed permitted (allowable) limits. This is a reporting of the illegal total tons of VOC emissions for comparison to total tons of emissions. The tons per year reported at the end of the fiscal year will constitute emissions for the previous calendar year. NMED will assume for this performance measure that illegal emissions are from sources in NMED's jurisdiction, which excludes Bernalillo County. This measure assumes all excess emissions reported to NMED by regulated facilities are in violation of state and federal law. Note: nonpermitted sources are not required to report excess emissions because they do not have an "allowable" limit.  |
| Amount of nitrogen oxides emitted statewide, in tons.  | This measure will use the annual calendar year nitrogen oxides (NOx) emissions inventory which includes actual emissions (i.e., routine, start up, shut down, maintenance, malfunction (SSM/M)) and all the illegal NOx emissions. The tons per year reported at the end of the fiscal year will constitute emissions for the previous calendar year. See above for "qualified sources" definition. NMED will assume for this performance measure that legal emissions are from sources in NMED's jurisdiction, which excludes Bernalillo County and Tribal areas. The data is collected from permitted and registered industrial facilities (point sources).   |
| Amount of nitrogen oxides emitted illegally, in tons.  | See above for "illegal emissions" definition. This is a reporting of the illegal total tons of NOx emissions for comparison to the total tons of emissions. The tons per year reported at the end of the fiscal year will constitute emissions for the previous calendar year. NMED will assume for this performance measure that illegal emissions are from sources in NMED's jurisdiction, which excludes Bernalillo County. This measure assumes all excess emissions reported to NMED by regulated facilities are in violation of state and federal law. Note: nonpermitted sources are not required to report excess emissions because they do not have an "allowable" limit.  |
| Quantity of nutrient-based pollutants reduced due to implementation of watershed restoration and on-the-ground improvement projects, in pounds.                              | "Nutrient-based pollutants" are nitrogen and phosphorus. "Pounds of nitrogen" are measured as Total Nitrogen. "Pounds of phosphorus" are measured as Total Phosphorus. NMED will count load reductions toward this measure when NMED confirms individual project completion. The data do not include pollutant load reductions resulting from programs and projects not represented in the U.S. Environmental Protection Agency's (EPA) Grants Reporting and Tracking System (GRTS). Due to the requirement for NMED to report to EPA once annually, along with the cycle for implementation of water quality restoration projects that generate pollutant reductions, numbers reported for this measure mid-year may not demonstrate progress toward annual targets.   |

|   |   |
|---|---|
| Reduction in nonpoint source sediment loading attributed to implementation of watershed restoration and on-the-ground improvement projects.     | “Nonpoint source sediment loading” means the amount of sediment (in pounds) that is carried by rain and snowmelt and deposited in aquatic environments from many diffuse (i.e., nonpoint) sources over a specific period (e.g., day, year, etc.). “Nonpoint source pollutant” means a pollutant released into the aquatic environment from a wide area and many diffuse sources. NMED will count load reductions toward this measure when NMED confirms individual project completion. The data do not include pollutant load reductions resulting from programs and projects not represented in EPA GRTS. Due to the requirement for NMED to report to EPA once annually, along with the cycle for implementation of water quality restoration projects that generate pollutant reductions, numbers reported for this measure mid-year may not demonstrate progress toward annual targets.   |
| Number of nonpoint source impaired waterbodies restored by the Department relative to the number of impaired water bodies.                      | See above for “nonpoint source pollutant” definition. “Impaired waterbody” means a surface water of the state (i.e., stream, river, lake, wetland) is not meeting the applicable surface water quality standards for one or more pollutants. In other words, the concentration of the pollutant(s) is higher than the levels established to protect fish, recreation, irrigation, and other uses. Full restoration of a waterbody takes years and typically many combined projects to address the causes of the impairment. Despite successful efforts to restore certain waterbodies and remove them from the impaired waters list, the total number of impaired waterbodies will increase over time due to: (1) monitoring and assessment of more waterbodies; and (2) the general trend for changing land uses over time, combined with impacts of climate change.   |
| Number of underground storage tank sites cleaned up compared to the total number of leaking underground petroleum storage tank sites remaining. | “Cleaned up” means that soil and groundwater contaminants of concern have met the applicable state’s standards. “Underground storage tank” means a single tank or combination of tanks, including pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. “Petroleum storage tank” means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. “Leak” means any spilling, emitting, discharging, escaping, or disposing of a regulated substance due to the failure of components of a storage tank system to contain a regulated substance as designed. A leak may or may not result in a release to the environment. “Petroleum” means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels. This measure does not reflect ongoing work to clean up sites to achieve No Further Action (NFA) status. Also, this measure does not report NFA releases from above ground storage tanks. |
| Number of completed cleanups of petroleum storage tank release sites that require no further action.  | “No Further Action” is a technical determination issued by NMED that documents that the owner or operator of a site has met all applicable WQCC and EIB remediation standards and that no contaminant will present a significant risk of harm to public health, safety, welfare, and the environment. “Completed cleanups” is another term for “No Further Action.” See above for “petroleum storage tank” definition. “Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from a storage tank system into the groundwater, surface water or soil. See above for “petroleum” definition. This measure does not reflect ongoing work to clean up sites to achieve NFA status.  |

| Compliance Measures                              | Definitions and Assumptions   |
|--|---|
| <b>Air</b>                                       |   |
| Percent of air emitting sources inspected.       | "Inspected" means a full compliance evaluation, either on-site or off-site (with photographic verification of equipment and other physical verifications required) that is conducted to inform a compliance determination and support enforcement actions, if appropriate. Inspections include evaluation of all appropriate regulatory requirements and permit conditions. "Air emitting source" means a source of air pollutants, usually an industrial facility, that is included in the Air Quality Bureau (AQB) list of sites to inspect in the universe of sources that may be included in a given annual Compliance Monitoring Strategy (CMS) Plan.  |
| Percent of air emitting sources in compliance.   | "Air emitting source" means an industrial facility that is included in the annual CMS Plan that is subject to approval by the EPA. "In compliance" means, upon completion of an on-site or off-site evaluation by NMED, the air emitting source meets all the requirements of permit(s), state regulations and federal regulations that apply to the facility and its operations. The denominator is the number of facilities for which NMED made a compliance determination during the quarter, following an inspection of the facility. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).   |
| Percent of air emitting sources in violation.    | See above for "air emitting source" definition. "In violation" means that one or more potential violations were discovered through analysis of state or federal regulatory requirements or permit conditions. Numerator is all permittees with one or more potential violations that remain unresolved (i.e., permittees with an ongoing violation). Denominator is the total number of regulated entities (permittees/facilities).   |
| <b>Groundwater</b>                               |   |
| Percent of groundwater permittees inspected.     | "Inspected" means an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, if appropriate. "Groundwater permittees" means a person or facility with an active discharge permit issued by the NMED Ground Water Quality Bureau (GWQB) under the authority of Water Quality Control Commission (WQCC) regulations found at 20.6.2 NMAC, 20.6.6 NMAC, and 20.6.7 NMAC; this term does not include sites under abatement pursuant to WQCC regulations unless the facility is abating groundwater contamination under discharge permit. The numerator is the number of permittees inspected during the reporting period; the denominator is total regulated permittees. The denominator will be set on July 1 each year and quarterly inspection activity will vary. This measure will be tracked and reported cumulatively across quarters. |
| Percent of groundwater permittees in compliance. | See above for "groundwater permittees" definition. "In compliance" means that GWQB inspected the facility and determined that no violations of the permit conditions or regulations were found at the time of inspection. See above for which permits are included in this measure. This measure will provide a compliance rate as a snapshot in time (one quarter only). The numerator is the number of permittees inspected in past quarter that are in compliance with applicable requirements and permit conditions. The denominator is the number of permittees for which a compliance determination was made during the quarter following an inspection of the permittee. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).   |
| Percent of groundwater permittees in violation.  | See above for "groundwater permittees" definition. "In violation" means a permittee with a violation that has not yet been resolved. This will include permittees that are working on ongoing corrective actions but have not completed them. See above for which permits are included in this measure. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities.  |

| <b>Hazardous Waste</b>  |  |
|---|--|
| Percent of hazardous waste facilities inspected.                  | "Inspected" means an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, if appropriate. "Facilities" tracked under this measure include hazardous waste generators, transporters, and treatment, storage and disposal facilities.   |
| Percent of hazardous waste facilities in compliance.              | See above for "facilities" definition. "In compliance" means that there were no violations of the New Mexico Hazardous Waste Management Regulations (HWMR) 20.4.1 New Mexico Administrative Code (NMAC) found at the time of inspection. This percentage will be calculated based on the number of compliant facilities out of the total number of facilities inspected.   |
| Percent of hazardous waste facilities in violation.               | See above for "hazardous waste facilities" definition. "In violation" means the facility was found to be out of compliance with the New Mexico HWMR 20.4.1 NMAC at the time of inspection. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities.  |
| <b>Radiation Sources in Medical Equipment</b>                     |  |
| Percent of ionizing/non-ionizing radiation sources inspected.     | "Inspection" means an official examination or observation including, but not limited to, tests, surveys and monitoring to determine compliance with rules, regulations, orders, requirements and license or registration conditions of the department. In other words, an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, if appropriate. "Ionizing radiation" means a form of energy that acts by removing electrons from atoms and molecules of materials that include air, water, and living tissue. "Non-ionizing radiation" means a form of radiation with less energy than ionizing radiation. Unlike ionizing radiation, non-ionizing radiation does not remove electrons from atoms or molecules of materials that include air, water, and living tissue. The denominator is the total regulated entities. |
| Percent of ionizing/non-ionizing radiation sources in compliance. | See above for "ionizing radiation" and "non-ionizing radiation" definitions. "In compliance" means no violations of state regulations were found during onsite or virtual inspections. The denominator is the number of facilities for which NMED made a compliance determination during the quarter, following an inspection of the facility. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).   |
| Percent of ionizing/non-ionizing radiation sources in violation.  | See above for "ionizing radiation" and "non-ionizing radiation" definitions. "In violation" means a violation of at least one state regulation was found during and on-site or virtual inspection. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities.  |
| <b>Restaurants and Food Manufacturing</b>                         |  |
| Percent of restaurants/food manufactures inspected.               | "Inspected" means an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, if appropriate. The denominator is the total regulated entities with scheduled inspections within the quarter being reported.   |
| Percent of restaurants/food manufactures in compliance.           | "Compliance" means an inspected facility did not have priority violations during an annual inspection. "Priority violations" are the highest risk violations that indicate the greatest risk of consumers possibly becoming ill as a result of eating food from the restaurant/food manufacturer. The denominator is the number of facilities for which NMED made a compliance determination during the quarter, following an inspection of the facility. The denominator does not include facilities for which the program made a compliance determination without conducting an inspection (e.g., based on records review).  |
| Percent of restaurants/food manufactures in violation.            | "Violation" means having at least one priority violation during an annual inspection. See above for "priority violations" definition. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities.   |

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| <b>Septic Systems</b>  |  |
| Percent of new or modified liquid waste systems inspected.     | "Inspected" means an on-the-ground compliance inspection that is conducted to inform a compliance determination and support enforcement actions, not including photo or virtual inspections. A liquid waste system inspection includes, for the purpose of this measure, an inspection of a new or modified system that has been installed, complete and not ready for a compliance inspection. This measure does not include compliance-based inspections. The denominator is total number of systems inspected as a result of the installation of a new or modified system.  |
| Percent of new or modified liquid waste systems in compliance. | "Compliance" of a new or modified liquid waste systems means the system has been inspected on-site and found to meet regulatory requirements during the initial inspection and may be issued a final approval. The denominator is the total number of systems inspected as a result of the installation of a new or modified system by department personnel, not including photo and unpermitted system inspections.   |
| Percent of new or modified liquid waste systems in violation.  | "Violation" of new or modified liquid waste systems are those that have been inspected and have been found to not meet regulatory requirements and could not be issued a final approval. The system installation requires a re-inspection before final approval. The denominator is the total number of systems inspected as a result of the installation of a new or modified system by department personnel, not including photo and unpermitted system inspections.   |
| <b>Surface Water</b>   |  |
| Percent of surface water permittees inspected.                 | "Inspected" means an off-site or on-site compliance inspection that is conducted to evaluate compliance with the EPA permit and support EPA enforcement actions, if appropriate. "Surface water permittees" refers to NPDES surface water discharge permittees. The numerator is the number of permittees subject to NMED-led inspections completed that quarter; the denominator is the number of NMED-led inspections planned for the fiscal year through SWQB's commitment to EPA Region 6. This measure represents surface water discharge inspections NMED conducts on behalf of EPA Region 6, which is currently the permitting authority for these regulated entities in New Mexico.  |
| Percent of surface water permittees in compliance.             | See above for "surface water permittees" definition. "In compliance" means the permittee scored a 3 or higher on their facility evaluation rating on a scale of 1 (very unreliable programs) to 5 (very reliable programs). The denominator is the number of permittees for which NMED issued a final Facility Evaluation Rating during the quarter, following an NMED-led inspection of the permittee. The numerator is the number of permittees for which final inspection reports were issued with a Facility Evaluation Rating of 3 or higher during the quarter.  |
| Percent of surface water permittees in violation.              | See above for "surface water permittees" definition. "In violation" means that EPA issued an enforcement action against an inspected facility. Numerator is the number of facilities with an unresolved violation, regardless of whether the violation was identified during the reporting quarter. Denominator is the total number of regulated facilities/entities. "Enforcement action" is an EPA-issued administrative order or administrative penalty order. If SWQB completes an inspection report during the 1 <sup>st</sup> quarter, that facility may not be in the numerator for percent in violation for the 1 <sup>st</sup> quarter because the noncompliance determination may not be made until another quarter. This facility would end up in the numerator for the percent in violation measure in the quarter when the EPA issues the enforcement action. |

| Economic Investment Measures  | Definitions and Assumptions   |
|---|---|
| Total investment of grants dollars awarded to communities, year to date.  | "Investment" means the action of investing money to a particular undertaking with the expectation of a worthwhile result. "Grant dollars" means money from state or federal funds. "Communities" means a physical location of census tracts or a neighborhood bounded by certain streets and geophysical features. "Awarded" means funds given to communities. This performance measure will include data from many sources, including but not limited to: Solid Waste Bureau's Recycling and Illegal Dumping (RAID) grants, the Construction Program Bureau (CPB)'s Clean Water State Revolving Loan Fund (CWSRF) and Rural Infrastructure Program (RIP). These data do not include tracking funds as they are reimbursed or capital outlay funds. Also, these data do not include funds awarded to contractors or areas without populations.  |
| Number of brownfield acres of contaminated land cleaned up and available for reuse.   | "Brownfield acres" means brownfields sites that utilize the Brownfield Revolving Loan Fund (BRLF) program or a national brownfield grant to fund assessment or clean-up. "Cleaned up and available for reuse" means the acres are remediated and "Ready for Anticipated Use (RAU)," a technical determination that environmental conditions at the site are protective of human health and the environment based on current use(s) or planned future use(s). This measure will not report on sites being regulated through the State Cleanup Program.   |
| Investments in water infrastructure, in dollars.  | "Investments" means actual disbursements from CWSRF, RIP and Capital Outlay to communities for water infrastructure projects. "Water infrastructure" includes drinking water, wastewater, stormwater and any other projects eligible for CWSRF or RIP, and any Capital Outlay projects appropriated to NMED and managed by the CPB. These data are reported by quarter, not as a rolling total of dollars from quarter to quarter. It is important to note that the number of new Capital Outlay projects in a given year is dependent on legislative appropriation. Disbursements from programs not managed directly by CPB are not included in this measure, so a total amount of financial impact to the state from water programs CPB only participates in as a contractor are not included.  |
| Number of new water infrastructure projects.  | "New water infrastructure project" means Clean Water State Revolving Loan Fund (CWSRF), Rural Infrastructure Program (RIP) and capital outlay projects with a funding agreement executed during the reporting period (i.e., quarter). Capital outlay funding agreements are a consequence of appropriations made to the NMED by the Legislature. Because this measure does not capture disbursements from programs not managed directly by NMED CPB, reporting of this measure does not reflect the total amount of financial impact to the State of New Mexico from all water infrastructure financing programs.   |
| Operational Measures  | Definitions and Assumptions   |
| Total dollars collected by NMED and transferred to the general fund resulting from successful prosecutions and/or settlements stemming from non-compliance with laws, rules, or permits administered by the Department. | Enforcement actions are administrative or judicial actions initiated by NMED in response to some information that a regulated entity is violating a statute and/or rule (regulation) for which NMED has legal enforcement authority, or a permit administered by NMED. NMED administers permits pertaining to the following: air quality, water quality, drinking water quality, solid waste, hazardous waste, liquid waste, food safety, ionizing radiation, hemp (warehousing, extraction processing, manufacturing), and public recreation water safety. NMED has enforcement authority for all these matters, in addition to occupational health and safety. The intent of this measure is to display the success of enforcement actions and litigation, as well as the benefit to the entire state via general fund revenue generation. Ideally, the target is zero since compliance with state rules and permits is always required. Realistically, and as the compliance and violation performance measures indicate, NMED is likely to see violations that merit civil penalties in all regulatory programs. Note that NMED may transfer penalties to the general fund from actions initiated by NMED, the Attorney General, a federal agency, etc. |
| Vacancy rate by month.  | The intent of this measure is to track NMED's effort to achieve our budgeted vacancy rate. A negative trend will convey greater staff retention and increased hiring to reduce our vacancy rate. "Vacancy rate" is calculated by subtracting the number of filled full-time equivalent (FTE) positions from the number of budgeted FTE positions (i.e., 662 for FY23) and dividing by the number of authorized FTE positions. Note that as FTE goes down, vacancy rate increases.   |

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| Percent of NMED financial transactions completed online by the public or regulated community. | A “financial transaction” facilitates the utilization of ACH and credit card payments for NMED license permitting, loan payments, corrective action fees, certification renewal fees, and other compliance, primacy, and regulatory fees which NMED bills to the constituent and regulated community via email, paper mail, or at the Wells Fargo portal, who pay directly to Wells Fargo, who processes the payment, and the money is deposited into individual program’s Wells Fargo account. The intent of this measure is to drive NMED's modernization, cost-saving efforts, and improved customer service (e.g., online transactions require different resources than in-person or by mail). A positive trend will convey that a greater share of financial transactions is being completed online, directly resulting from modernization, human capital, and cost-saving efforts to improve efficiency and provide enhanced customer service. The following transactions are not being measured here: legal settlements, compliance agreements, State of New Mexico budgets, federal and state grants, inter/intra agency transfers, and special revenue funds. |
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