

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

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

No. EIB 25-77 (R)

New Mexico Environment Department,

Petitioner.

**NEW MEXICO ENVIRONMENT DEPARTMENT’S
PETITION FOR REGULATORY CHANGE TO REPEAL AND REPLACE 20.2.71
NMAC, *OPERATING PERMIT EMISSIONS FEES*, AND 20.2.75 NMAC,
*CONSTRUCTION PERMIT FEES***

The New Mexico Environment Department (“Department”), pursuant to 20.1.1.300 NMAC, *Rulemaking Procedures*, respectfully petitions the Environmental Improvement Board (“Board”) to repeal and replace 20.2.71 NMAC, *Operating Permit Emissions Fees*, and 20.2.75 NMAC, *Construction Permit Fees*. As required by 20.1.1.300(B) NMAC, the Department’s Statement of Reasons in Support of this Petition is attached as **Exhibit A** and the text of replacement rules 20.2.71 NMAC and 20.2.75 NMAC are attached as **Exhibits B and C**, respectively. For ease of review, the current rules 20.2.71 NMAC and 20.2.75 NMAC with the proposed changes shown in redline fashion are attached as **Exhibits D and E**, respectively. Additionally, the Department petitions the Board to authorize the Department to submit replacement rule 20.2.71 NMAC to the U.S. Environmental Protection Agency (“EPA”) for approval as a proposed revision to the State of New Mexico’s Title V Permit Program, and to submit replacement rule 20.2.75 NMAC to EPA for incorporation into the State of New Mexico’s

State Implementation Plan (excluding 20.2.75.10(B) NMAC and 20.2.75.11(E) NMAC, which are state-only provisions).

HEARING DETAILS

The Department respectfully requests the Board consider this Petition at its regular meeting on December 19, 2025. See NMSA 1978, § 74-1-9(A) (“The board shall determine whether or not to hold a hearing within sixty days of submission of a proposed regulation”); see also 20.1.1.300(C) NMAC (“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.”).¹ The Department respectfully requests approximately 20 minutes for the Department to present this Petition at the meeting, in addition to any time necessary for Board members to ask questions and deliberate.

The Department anticipates the hearing to adopt replacement rules 20.2.71 NMAC and 20.2.75 NMAC will take approximately three business days. The Department respectfully requests the Board schedule the hearing to begin on March 23, 2026,² and continue through March 25, 2026, or as long as required to hear all testimony, evidence, and public comment. The Department also requests the Board plan to immediately deliberate and make a decision on the proposed regulatory change on the final day of the hearing.

Due to the complexity of the issues that are likely to arise in this rulemaking, the Department requests the Board appoint an administrative hearing officer to conduct the rulemaking proceeding, which will allow all Board members to devote their full attention to the substantive

¹ Fifteen days after the filing date of this petition is December 18, 2025.

² Due to public notice requirements, the hearing can occur no earlier than March 16, 2026.

testimony and comment, and will help prevent potential procedural challenges to any final regulation adopted by the Board. See NMSA 1978, § 74-1-9(F); see also 20.1.1.107(B) NMAC.

The Department requests the Board decide certain pre-hearing logistics when issuing an order setting a hearing prior to appointing a hearing officer to ensure sufficient notice to the public. See e.g., 20.1.1.301(B)(5) NMAC (information in notice of hearing). Specifically, the Department requests the Board set the filing deadline for notices of intent to present technical testimony and entries of appearance as Friday, February 20, 2026, which is 31 days prior to the hearing instead of the 20 days provided for in 20.1.1.302 NMAC and 20.1.1.303 NMAC.

The Department respectfully requests the Board issue orders pursuant to 20.1.1.300(D) NMAC for a hearing on adoption of replacement rules 20.2.71 NMAC and 20.2.75 NMAC, as discussed at the meeting, by December 26, 2026, to ensure timely publication of the public notice in the New Mexico Register.³

JURISDICTION

The Board has the authority to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC pursuant to the Air Quality Control Act, including Sections 74-2-5 and 74-2-6; and the Environmental Improvement Act, Sections 74-1-8(A)(4).

WHEREFORE, the Department requests the Board:

A. Include this Petition on the agenda for the Board's next meeting, such as proposed by the Department, and consider this Petition at the meeting, such as on the dates requested by the

³ Pursuant to 20.1.1.301(A) NMAC, the Board is required to provide notice to the public at least 60 days prior to a hearing. Notice must be published in the New Mexico Register, which is published by the Commission of Public Records – State Records Center and Archives twice a month. The last publication date that is at least 60 days prior to the proffered March 23, 2026 hearing date is January 13, 2026. The submittal deadline for publication in that edition of the New Mexico Register is January 2, 2026.

Department;

B. Authorize a hearing to consider the merits of this Petition, such as in the manner requested by the Department;

C. Timely issue the necessary and appropriate orders for the hearing on this Petition, such as in the timeframe requested by the Department;

D. Schedule the hearing to begin on a date certain and continue as long as required to hear all testimony, evidence, and public comment, such as in the manner requested by the Department;

E. Set the notice of intent to present technical testimony and entries of appearance filing deadline at least 30 days before the hearing; and

F. Appoint a hearing officer.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

/s/ Kelsea Sona

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NEW MEXICO ENVIRONMENT DEPARTMENT

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CERTIFICATION

I hereby certify that on December 3, 2025, an electronic copy of this Petition for Regulatory Change to Repeal and Replace 20.2.71 NMAC, *Operating Permit Emissions Fees*, and 20.2.75 NMAC, *Construction Permit Fees*, and the Petition's exhibits, were filed with the Environmental Improvement Board via email at:

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Administrator for the Environmental Improvement Board

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By: /s/ Kelsea Sona
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**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

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

No. EIB 25-____ (R)

New Mexico Environment Department,

Petitioner.

**STATEMENT OF REASONS IN SUPPORT OF NEW MEXICO ENVIRONMENT
DEPARTMENT’S PETITION FOR REGULATORY CHANGE TO REPEAL AND
REPLACE 20.2.71 NMAC, *OPERATING PERMIT EMISSIONS FEES*, AND 20.2.75
NMAC, *CONSTRUCTION PERMIT FEES***

The New Mexico Environment Department (“Department”) respectfully submits to the Environmental Improvement Board (“Board”) this Statement of Reasons as **Exhibit A** to the Department’s Petition for Regulatory Change to Repeal and Replace 20.2.71 NMAC, *Operating Permit Emissions Fees*, and 20.2.75 NMAC, *Construction Permit Fees* (“Petition”), in support of the regulatory changes proposed in the Petition for adoption of proposed replacement of rules 20.2.71 NMAC and 20.2.75 NMAC. See Petition, **Exhibits B and C**. The Department proposes to repeal and replace 20.2.71 NMAC, *Operating Permit Emissions Fees* (“Part 71”) and 20.2.75 NMAC, *Construction Permit Fees* (“Part 75”) to ensure the fees are sufficient to cover the reasonable costs of the Department’s Title V Permit Program and Construction Permit Program (collectively the “Air Programs”), as required by the New Mexico Air Quality Control Act (“AQCA”), Sections 74-2-1 through 74-2-17, and the federal Clean Air Act (“CAA”), 42 U.S.C. § 7401 *et seq.*

AUTHORITY AND BACKGROUND

1. The current fee schedules previously established by the Board at Part 71 and Part 75 no longer generate sufficient revenue to cover the costs of fully implementing the Department's Air Programs.

2. The fees obtained by the Department support the required Title V and Construction Permit Programs under state and federal law, including the Department's Air Quality Bureau (Environmental Protection Division); and the Department's Environmental Protection Compliance and Enforcement Bureau (Compliance and Enforcement Division).

3. The New Mexico Legislature, in Section 74-2-7(B)(7) of the Air Quality Control Act ("AQCA"), directed the Board to establish a schedule of emissions fees that satisfy the federal requirements of CAA, Section 502(b)(3) and 40 C.F.R. Section 70.9, including supporting direct and indirect operating permit program costs.¹ This is separate from the agency budgeting processes the Department conducts annually per fiscal year.

4. Part 71 establishes the schedule of emissions fees for sources required to obtain a Title V permit under 20.2.70 NMAC, *Operating Permits*, to meet the aforementioned state and federal requirements.

¹ Direct operating permit program costs include labor costs (*i.e.*, salary and benefits) and program-related expenses such as materials, equipment, professional services, travel, public notices, public hearings, and contracted services. Indirect operating permit program costs are "general administration" costs not directly attributed to the program but needed to operate it and include, but are not limited to, costs for utilities, rent, general administrative support, training, budget and accounting support, supplies, and postage. ENV'T'L PROTECTION AGENCY, *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V* (March 27, 2018), at 4, available at https://www.epa.gov/sites/default/files/2018-03/documents/fee_schedule_2018.pdf.

5. The Part 71 Title V permit fee schedule specifies the annual emissions fee for each fee pollutant expressed in dollars per ton of allowable emissions. Annual emissions fees increase each year by the percentage increase, if any, in the Consumer Price Index (“CPI”).

6. The Board last amended the Part 71 Title V permit fee schedule in 2009.

7. The lack of amendment to Part 71 since 2009 has precluded the Department from updating the definition of “fee pollutant” to reflect current pollutant categories and precluded the Department from fully supporting costs of the Title V Permit Program.

8. The New Mexico Legislature, in Section 74-2-7(B)(6) of the AQCA, directed the Board to establish a schedule of fees sufficient to cover the reasonable costs of the Department’s Construction Permit Program, including reviewing and acting upon construction permit applications and implementing and enforcing the terms and conditions of such permits.² This is separate from the agency budgeting processes the Department conducts annually per fiscal year.

9. Part 75 establishes a schedule of fees for notices of intent, permits to construct or modify a source, permit revisions, and technical reviews of existing permits to meet the aforementioned state requirements.

10. The Part 75 construction permit fee schedule includes a complexity-based points schedule for various actions and a cost per point, which is multiplied by the sum of all the points applicable to a given permitting action to determine the required permit fee. It also includes an annual fee for sources that have already been issued a construction permit.

11. The Board last amended the Part 75 construction permit fee schedule in 2003.

² Like operating permit program costs, construction permit program costs include labor costs, program-related expenses, and indirect “general administration” costs.

12. The lack of amendment to Part 75 since 2003 has precluded the Department from fully supporting costs of the Construction Permit Program.

13. The volume of Construction Permit Program operations has increased over the last 10-15 years. By way of specific example, permitting actions associated with general construction permits for oil and gas operations have increased around 2100% over the last 13 years, while the overall number of permitted facilities has increased at least 160%. In addition, the number of facilities holding a notice of intent has increased, the Department has increased regulatory responsibilities under 20.2.50 NMAC (Ozone Precursor Rule), and federal air quality rules have increased in complexity and scope. These factors have caused significant increases in air quality permit modeling review complexity, as well as corresponding increases to inspection, planning, and monitoring needs.

14. In 2024, the Board declined to increase the Part 71 Title V permit fee schedule and the Part 75 construction permit fee schedule after the Board determined the Department did not provide sufficient evidence; however, the Department has now compiled the additional financial evidence needed to present the Board with details regarding the expanded needs of the Department's Air Programs.

15. In the Department's current fiscal year, Fiscal Year 2026, the Title V Permit Program costs are projected to exceed revenue from emissions fees by at least \$3 million, while Construction Permit Program costs are projected to exceed revenue from permit fees by at least \$4 million.

16. Absent any changes to the current fee schedules and without considering increased costs associated with needed expansion to the Air Programs, both the Title V and Construction Permit Programs are projected to run comparable deficits in each of the next four fiscal years. The

Title V Special Revenue Fund (holding Part 71 Title V permit fees) is projected to be exhausted in Fiscal Year 2028, while the New Source Review Special Revenue Fund (holding Part 75 construction permit fees) is projected to be exhausted sometime in Fiscal Year 2030.

17. The resulting fiscal cliff will have significant consequences for the Department's Air Programs, and in addition to the Air Programs' employees and projects, will negatively impact the public and the regulated community.

18. The Department has engaged the New Mexico Department of Finance and Administration ("DFA") on the solvency of the Title V Special Revenue Fund and New Source Review Special Revenue Fund for the Department's Air Programs, and DFA concurred that the Funds could be at risk.

19. Since the 2024 petition, the Department's Air Quality Bureau, using available funds, has created and filled 20 new positions, began a gap analysis for its technology database upgrades, initiated a photochemical ground-level ozone modeling analysis to better understand how to decrease this pollutant in impacted areas at risk for non-attainment, and deployed additional air monitors in response to requests from the public.

20. At the same time, counties in New Mexico remain above the National Ambient Air Quality Standard for ground-level ozone; the Department is unable to respond to local community pollution detection concerns; and the Department has been forced to delay permit responses to the regulated community based on its inability to absorb the application volume, amongst other issues.

21. New Mexico is now the second highest oil producing state in the nation and the third largest natural gas producer in the nation, increasing demands on the Air Programs. As such, the Department needs to add approximately 80 full-time positions over the next five years, and invest in compliance assistance and assurance efforts such as optical gas imaging and remote

satellite sensing. The Department also needs to continue its technology upgrades to ensure integrated, transparent, and reliable services to both the regulated community and the public.

22. Given the projected fiscal cliff of the Title V Special Revenue Fund and New Source Review Special Revenue Fund, the Department will be unable to continue its work in these and other mission critical program areas without the Board revising Part 71 and Part 75, as requested by the Department.

SUMMARY OF THE REPLACEMENT RULES

23. The Department requests the Board repeal and replace Part 71 and Part 75 to adopt the Department's proposed changes. The proposed replacement rules include the higher emissions and construction permit fees the Department has calculated are necessary to cover the reasonable costs of its Air Programs, and other changes intended to clarify and modernize the rules.

24. The proposed replacement rules also adopt the State Records Center and Archives' current style and formatting requirements, as required by 1.24.11.9(C) NMAC.

25. The full text of replacement rules 20.2.71 NMAC and 20.2.75 NMAC are attached to the Petition as **Exhibits B and C**, respectively. For ease of review, the current rules 20.2.71 NMAC and 20.2.75 NMAC with the proposed changes shown in redline fashion are attached to the Petition as **Exhibits D and E**, respectively.

26. The substantive changes the Department is proposing to Part 71 and Part 75 are briefly described below:

PART 71 OPERATING PERMIT EMISSIONS FEES

20.2.71.7 NMAC, *Definitions*, defines certain terms used in the rule. The Department proposes removing mercury and total suspended particulate matter ("TSP") from the definition of "fee pollutant" provided in 20.2.71.7(C)(1) NMAC, and adding particulate matter 10 microns or

less in diameter (PM₁₀) and particulate matter 2.5 microns or less in diameter (PM_{2.5}) to the definition. These changes are necessary because there are no longer any major sources with mercury emissions in New Mexico following the closure of the San Juan Generating Station in 2022, and because TSP is no longer regulated given that the health risks posed by particulate matter are more accurately measured by analyzing smaller particles. Even though regulation has shifted from TSP to PM₁₀ and PM_{2.5} the Department has been unable to assess fees for particulate matter since 2018 because the existing definition only addresses TSP.

20.2.71.10 NMAC, *Severability*, specifies that if any provision of the rule – or its application to any person or circumstance – is held invalid, the remainder of the rule shall not be affected. The Department proposes adding this new section to the rule to prevent the entire rule from being voided should a court strike down one or more specific provisions of the rule. This provision is standard in and consistent with other Department rules.

20.2.71.109 NMAC, *Applicability*, identifies to whom the rule applies and whom it affects. The Department proposes repealing this section in its entirety because it is duplicative of 20.2.71.2 NMAC, *Scope*.

20.2.71.111 NMAC, *Fee Determination*, describes the calculation of fees, the effect of source shutdowns on fees, and how fees for excess emissions are determined. The Department proposes reducing the maximum tons used in the fee calculation for any one fee pollutant from 6,000 to 3,000 tons and adding provisions specifying that fees will be assessed for either PM₁₀ or PM_{2.5}, not both, based on whichever has the higher allowable emission rate, or, in the case of fees for excess emissions, whichever has higher emissions above annual allowable emission limits. Reducing the maximum tons used in the fee calculation for any one fee pollutant will increase equity by ensuring that no single source pays more than five percent of the total fees collected, and

the provisions regarding fees for PM₁₀ or PM_{2.5} will prevent double billing for the same pollutant since PM_{2.5} is a component of PM₁₀.

20.2.71.112 NMAC, *Emissions Fee*, establishes the baseline emissions fee for each fee pollutant, currently \$165 per ton for hazardous air pollutants (“HAPs”) and \$20 per ton for all other fee pollutants except mercury, which has its own fee schedule, and provides that these fees shall be adjusted annually using the CPI beginning in 2009. The Department proposes resetting the baseline fee for HAPs to \$258 per ton (equal to the current, inflation-adjusted amount after the next adjustment on January 1, 2026) and increasing the baseline fee for all other fee pollutants to \$85 per ton; deleting the fee schedule for mercury, which the Department proposes removing from the definition of fee pollutant; and adding language to the provision regarding annual fee adjustments clarifying that fees shall remain the same in the event there is a decrease or absence of change in the CPI. An increase in baseline emission fees is necessary to ensure the Department’s fees are sufficient to cover the reasonable costs of its Title V Permit Program, as required by the CAA and AQCA, and safeguard its Title V Special Revenue Fund against impending insolvency.

20.2.71.113 NMAC, *Notification, Payment, Late Fee and Enforcement*, states when the Department shall assess annual emissions fees and when payment is due, describes how fees shall be remitted, and stipulates that nonpayment of fees may result in penalties and possible enforcement action. The Department proposes expanding payment options to allow for payment of fees electronically or by other methods allowed by the State, adding a provision imposing a late fee if emissions fees are not remitted by the due date, and adding a provision regarding administrative compliance costs for enforcement of the State’s air quality regulations. These changes are necessary to allow for the use of modern payment methods, incentivize the timely payment of fees, and confirm administrative compliance costs.

PART 75 CONSTRUCTION PERMIT FEES

20.2.75.11 NMAC, *Application Review Fee and Annual Fee*, provides the point schedule for calculating application review fees (previously “permit fees”) for new permits, permit revisions, and technical reviews of existing permits; establishes the baseline cost per point used to calculate application review fees; provides that sources that have been issued a construction permit shall be assessed an annual fee; and provides that the cost per point and annual fee shall be adjusted annually using the CPI. The Department proposes increasing the points for modeling reviews from 15 to 30; increasing the points for oil and gas General Construction Permit registrations from 10 to 30; adding 10 points for notices of intent; increasing the cost per point from \$539 (the current, inflation-adjusted amount after the next adjustment on January 1, 2026) to \$585; increasing the annual fee for sources that have been issued a construction permit from \$2,564 (the current, inflation-adjusted amount after the next adjustment on January 1, 2026) to \$2,800; adding an annual fee of \$700 for sources that have filed a notice of intent; and adding language to the provision regarding annual fee adjustments clarifying that fees shall remain the same in the event there is a decrease or absence of change in the CPI. An increase in the points assessed for modeling reviews is necessary because the average complexity and review time of modeling projects has increased significantly in recent years due to the issuance of various general construction permits, which have eliminated the requirement to perform modeling for simpler sources. An increase in the points assessed for oil and gas general construction permits is necessary because applications for oil and gas general construction permits are more complex than for other general construction permits. Assessing points for notices of intent is necessary because the current \$500 filing fee is insufficient to cover the cost of reviewing a notice of intent to determine whether a construction permit is required before construction may commence. Finally, increasing the cost per point and

annual fee for sources that have been issued a construction permit and adding an annual fee for sources that have filed a notice of intent are necessary to ensure the Department's fees are sufficient to cover the reasonable costs of its construction permit program, as required by the AQCA, and safeguard its permit fee fund against impending insolvency. Adding an annual fee for sources that have filed a notice of intent is also justified because these sources, like sources that have been issued a construction permit, impose ongoing compliance obligations on the Department, the costs of which are not covered by application review fees, which are one-time fees intended only to cover the cost of reviewing an application.

20.2.75.12 NMAC, *Invoicing, Payment, Late Fee and Enforcement*, describes the process for invoicing and paying construction permit fees. The Department proposes adding language allowing for invoicing and payment of fees electronically or by other methods allowed by the State; adding a provision imposing a late fee if annual fees are not remitted by the due date; adding a provision stipulating that nonpayment of construction permit fees may result in penalties and possible enforcement action; and adding a provision regarding administrative compliance costs for enforcement of the State's air quality regulations. These changes are necessary to allow for the use of modern billing and payment methods, incentivize timely payment of fees, and confirm administrative compliance costs.

20.2.75.13 NMAC, *Periodic Review*, as currently written in law, requires the Department to prepare a review of permit fees and program costs annually and present it to the Board within six months following the end of the fiscal year. However, the Department proposes removing the provision requiring that the annual review be presented to the Board. The purpose of the annual review is to help the Department determine whether it is necessary to initiate rulemaking proceedings to increase fees. When it does so, it must provide information regarding budgets and

expenditures to the Board in the course of those proceedings. In years when the Department determines it is not necessary to seek an increase in permit fees, there is no purpose in providing this information to the Board, and the Board historically has not received or reviewed this information.

20.2.75.14 NMAC, *Severability*, specifies that if any provision of the rule – or its application to any person or circumstance – is held invalid, the remainder of the rule shall not be affected thereby. The Department proposes adding this new section to the rule to prevent the entire rule from being voided should a court strike down one or more specific provisions of the rule. This provision standard in and consistent with other Department rules.

PUBLIC ENGAGEMENT

27. The Department plans to hold at least one virtual public engagement meeting on the proposed regulatory changes in January 2026. The Department will formally announce this meeting after filing the Petition and provide more information, including instructions for how to join online or by phone, via the Department's website at <https://www.env.nm.gov/air-quality/proposed-regs/>, the Department's public events calendar at <https://www.env.nm.gov/events-calendar/>, and its various listservs. The Department will also continue to meet one-on-one with individual stakeholders, upon request.

28. In addition to accepting feedback on the proposed regulatory changes during the aforementioned public engagement meetings, the Department will accept comments in writing via its online public comment portal at <https://nmed.commentinput.com?id=dM4UeKV73>. The Department will make the public comment form available after filing the Petition.

29. Interested individuals can sign up to receive email updates from the Department on the rulemaking at <https://public.govdelivery.com/accounts/NMED/subscriber/new>. After

subscribing, users should check the “Air Quality” box to receive updates about all air quality topics, or the “Air Quality Bureau Regulatory and SIP Announcements” box to only receive updates about the Department’s rulemaking activities.

COMPLIANCE WITH STATUTORY RULEMAKING REQUIREMENTS

30. Adoption of replacement rules 20.2.71 NMAC and 20.2.75 NMAC is justified given the character and degree of injury to or interference with health, welfare, visibility, and property. See NMSA 1978, § 74-2-5(F)(1).

31. Adoption of replacement rules 20.2.71 NMAC and 20.2.75 NMAC is in the public interest, including the social and economic value of the sources and subjects of air contaminants. See NMSA 1978, § 74-2-5(F)(2).

32. Replacement rules 20.2.71 NMAC and 20.2.75 NMAC are technically practicable and economically reasonable in the methods the rule employs to reduce or eliminate air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved. See NMSA 1978, § 74-2-5(F)(3).

33. Replacement rules 20.2.71 NMAC and 20.2.75 NMAC are drafted to comply with 1.24.0010 NMAC, the uniform drafting rules for regulations in the New Mexico Administrative Code.

34. Therefore, replacement rules 20.2.71 NMAC and 20.2.75 NMAC comply with the statutory rulemaking requirements.

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

20.2.71.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.71.1 NMAC - Rp, 20.2.71.1 NMAC, 6/1/2026]

20.2.71.2 SCOPE: This Part applies to all persons required to obtain a permit under 20.2.70 NMAC (Operating Permits).
[20.2.71.2 NMAC - Rp, 20.2.71.2 NMAC, 6/1/2026]

20.2.71.3 STATUTORY AUTHORITY: Environmental Improvement Act, Sections 74-1-1 to -18 NMSA 1978, including specifically Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to -17 NMSA 1978, including specifically Paragraph (7) of Subsection B of Section 74-2-7 NMSA 1978.
[20.2.71.3 NMAC - Rp, 20.2.71.3 NMAC, 6/1/2026]

20.2.71.4 DURATION: Permanent.
[20.2.71.4 NMAC - Rp, 20.2.71.4 NMAC, 6/1/2026]

20.2.71.5 EFFECTIVE DATE: June 1, 2026, unless a later date is cited at the end of a section.
[20.2.71.5 NMAC - Rp, 20.2.71.5 NMAC, 6/1/2026]

20.2.71.6 OBJECTIVE: The objective of this Part is to establish a schedule of operating permit emissions fees.
[20.2.71.6 NMAC - Rp, 20.2.71.6 NMAC, 6/1/2026]

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, PM10, PM2.5, and volatile organic compounds; 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.

H. "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

[20.2.71.7 NMAC - Rp, 20.2.71.7 NMAC, 6/1/2026]

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

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

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

4 [20.2.71.8 NMAC - Rp, 20.2.71.8 NMAC, 6/1/2026]
5

6 **20.2.71.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico environment
7 department, air quality bureau. [As of April 2013, the air quality bureau is located at 525 Camino de los Marquez,
8 Santa Fe, New Mexico 87505].

9 [20.2.71.9 NMAC - Rp, 20.2.71.9 NMAC, 6/1/2026]
10

11 **20.2.71.10 SEVERABILITY:** If any provision of this Part, or the application of this provision to any person
12 or circumstance is held invalid, the remainder of this Part, or the application of this provision to any person or
13 circumstance other than those as to which it is held invalid, shall not be affected thereby.

14 [20.2.71.10 NMAC - N, 6/1/2026]
15

16 **20.2.71.11 to 20.2.71.108 [RESERVED]**
17

18 **20.2.71.109 [RESERVED]**

19 [20.2.71.109 NMAC – Rp, 20.2.71.109 NMAC, 6/1/2026]
20

21 **20.2.71.110 FEE REQUIREMENT:**

22 **A.** An annual emissions fee shall be paid to the department by each owner or operator subject to this
23 Part.

24 **B.** The annual emissions fee shall be assessed:

25 **(1)** for a major source as defined in 20.2.70 NMAC (Operating Permits), for all emissions
26 units;

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

29 **(3)** for emissions above annual allowable emission limits for the source categories in
30 Paragraphs (1) and (2) of this Subsection.

31 **C.** The annual emissions fee shall be calculated in conformance with 20.2.71.111 NMAC.

32 [20.2.71.110 NMAC - Rp, 20.2.71.110 NMAC, 6/1/2026]
33

34 **20.2.71.111 FEE DETERMINATION:**

35 **A.** Annual emissions fee calculation.

36 **(1)** The annual emissions fee shall be calculated by taking the product of the allowable
37 emission rate for each fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in
38 20.2.71.112 NMAC.

39 **(2)** The allowable emission rate which shall be used in the fee calculation for this Subsection
40 is the allowable emission rate which exists on December 31 for each year.

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

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

47 **(5)** Fugitive emissions which have an allowable emission rate shall be included in the fee
48 calculation for this Subsection.

49 **(6)** Any quantity of a pollutant which is assessed a fee pursuant to this Subsection because it
50 is a hazardous air pollutant shall not be assessed additional fees.

51 **(7)** A maximum of 3,000 tons per year of any one fee pollutant shall be used in the fee
52 calculation for this Subsection.

53 **(8)** For facilities with allowable emission rates for both PM10 and PM2.5, a fee shall only be
54 assessed pursuant to this Subsection for one of these fee pollutants, and shall be based on whichever has the higher
55 allowable emission rate.

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

B. Source shutdown.

(1) The annual emissions 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 this Subsection.

(2) The annual emissions 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 annual emissions fee calculation shall be adjusted by reducing the annualized allowable emission rate for each day the stationary source was shut down.

C. Annual emissions fee for emissions above annual allowable emission limits.

(1) The annual emissions 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 emission 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 Subsection because it is a hazardous air pollutant shall not be assessed additional fees.

(4) A maximum of 3,000 tons per year of any one fee pollutant shall be used in the fee calculation for this Subsection.

(5) For facilities with allowable emission rates for both PM10 and PM2.5, a fee shall only be assessed pursuant to this Subsection for one of these fee pollutants, and shall be based on whichever has higher emissions above annual allowable emission limits.

[20.2.71.111 NMAC - Rp, 20.2.71.111 NMAC, 6/1/2026]

20.2.71.112 EMISSIONS FEE:

A. The fee for each fee pollutant shall be \$85 per ton on an annual basis, except as provided for in Subsection B of this Section.

B. The fee for each hazardous air pollutant shall be \$258 per ton on an annual basis for any stationary source which is only a major source, as defined in 20.2.70 NMAC, for any hazardous air pollutant.

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

D. Beginning in 2028, the fees referenced in this Section shall be changed annually on January 1 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 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 the CPI.

[20.2.71.112 NMAC - Rp, 20.2.71.112 NMAC, 6/1/2026]

20.2.71.113 NOTIFICATION, PAYMENT, LATE FEE AND ENFORCEMENT:

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 annual emissions fee based on the requirements of this Part which is currently due; and

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

(2) Upon discovery of an error in any past notification of annual 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 annual emissions fee contained in the department's notification required under Paragraph (1) of this Subsection. Failure to remit the full annual emissions fee by this date shall subject the owner or operator to a late fee equal to fifty percent of the annual emissions fee or \$5,000, whichever is less. The department shall provide to each owner or operator assessed a late fee pursuant to this Subsection notification, which shall state the late fee and unpaid annual emissions fee balance currently due. The owner or operator shall pay the amount stated in the department's notification within 30 days of the date of the notification. If the amount stated in the notification is not timely paid, the late fee shall increase to one hundred percent of the annual emissions fee or \$10,000, whichever is less, and shall be due immediately without further notification from the department, along with the unpaid annual emissions fee balance.

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

B. Payment.

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

(2) Upon receipt of the annual emissions fee payment, it shall be deposited in the state air quality permit fund.

(3) Annual emissions fees shall be paid in U.S. dollars.

C. Nonpayment. Failure to remit the full annual emissions fee, including any late fees, required by the due date specified in Subsection A of this Section is a violation of this Part and may subject the owner or operator to:

(1) civil penalties of up to \$15,000 for each day of noncompliance as provided for in the Air Quality Control Act, Section 74-2-12.1 NMSA 1978; and

(2) the enforcement provisions of the 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. [20.2.71.113 NMAC - Rp, 20.2.71.113 NMAC, 6/1/2026]

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:

20.2.71 NMAC, Operating Permit Emissions Fees, effective 10/31/02, repealed, effective 6/1/26.

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.

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, 20.2.75.1 NMAC, 6/1/2026]

20.2.75.2 SCOPE: This Part applies to all persons who apply for a permit to construct or modify a source, apply to register under a general construction permit, apply for a permit revision, or request a technical review of an existing permit under 20.2.72 NMAC, and all persons who file a notice of intent under 20.2.73 NMAC. Annual emissions fees for sources required to obtain a permit under 20.2.70 NMAC (Operating Permits) are covered under 20.2.71 NMAC.
[20.2.75.1 NMAC - Rp, 20.2.75.2 NMAC, 6/1/2026]

20.2.75.3 STATUTORY AUTHORITY: Environmental Improvement Act, Sections 74-1-1 to -18 NMSA 1978, including specifically Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to -17 NMSA 1978, including specifically Paragraph (6) of Subsection B of Section 74-2-7 NMSA 1978.
[20.2.75.1 NMAC - Rp, 20.2.75.3 NMAC, 6/1/2026]

20.2.75.4 DURATION: Permanent.
[20.2.75.4 NMAC - Rp, 20.2.75.4 NMAC, 6/1/2026]

20.2.75.5 EFFECTIVE DATE: June 1, 2026, except where a later date is cited at the end of a section.
A. For applications received prior to the effective date of this Part, the provisions in 20.2.75 NMAC, as effective as of the date of the receipt of the application, remain effective, and application review fees (formerly permit fees) shall be so determined.
B. For applications received following the effective date of this Part, application review fees shall be based on the current regulation.
[20.2.75.5 NMAC - Rp, 20.2.75.5 NMAC, 6/1/2026]

20.2.75.6 OBJECTIVE: The objective of this Part is to establish a schedule of fees for the construction permit program, including notices of intent, construction permits, registrations under general construction permits, permit revisions, and technical reviews of existing permits.
[20.2.75.6 NMAC - Rp, 20.2.75.6 NMAC, 6/1/2026]

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, the following definitions apply.

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 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” means, for the purpose of assessing application review fee points, 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), 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 Emissions Fees), 20.2.72 NMAC (Construction Permits), 20.2.73 NMAC (Notice Of Intent And Emissions Inventory Requirements), 20.2.74 NMAC (Permits - 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 application review fee purposes, in accordance with the 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 emission limitations, control technology, operating conditions and monitoring requirements. For the purposes of this Part, revision does not include administrative revision as used in 20.2.72 NMAC.

F. “Small business” means a company that employs no more than 10 employees at any time during the calendar year. Employees include part-time, temporary, or limited service workers. For the purposes of this Part, small business does not include:

(1) any source which may emit more than 50 tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or 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. For the purposes of this Part, technical review of an existing permit does not include the department’s review of required periodic reports.
[20.2.75.7 NMAC - Rp, 20.2.75.7 NMAC, 6/1/2026]

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

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, 20.2.75.8 NMAC, 6/1/2026]

20.2.75.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico environment department, air quality bureau. [As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Santa Fe, New Mexico 87505.]
[20.2.75.9 NMAC - Rp, 20.2.75.9 NMAC, 6/1/2026]

20.2.75.10 FILING FEE:

A. A filing fee of \$500 shall be submitted with each filing of an application for a permit to construct or modify a source or permit revision. The filing fee shall be applied to the application review fee determined from the fee schedule in 20.2.75.11 NMAC.

B. For applications submitted under 20.2.72.221 NMAC, an accelerated review filing fee of \$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 accelerated review filing fee shall be applied to the application review fee determined from the fee schedule in 20.2.75.11 NMAC;

(2) no qualified outside firm submits a proposal for the accelerated review, one-half of the accelerated review filing fee shall be applied to the application review 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, 20.2.75.10 NMAC, 6/1/2026]

20.2.75.11 APPLICATION REVIEW FEE AND ANNUAL FEE:

A. The application review 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	
6-15 Fee Units	1	point per fee unit
>15 Fee Units	15	
Fugitive Emissions Fee Unit	5	
Portable Source Relocation (Paragraph (3) of Subsection D of 20.2.72.202 NMAC)	1	
Non-Attainment Area (20.2.79 NMAC)	75	
Each Modeling Review	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		
Notices of Intent (20.2.73.200 NMAC)	10	
General Permits (20.2.72.220 NMAC) for non-Oil and Gas Facilities	10	
General Permits (20.2.72.220 NMAC) for Oil and Gas Facilities	30	
Streamline (each site) (20.2.72.300 NMAC – 20.2.72.399 NMAC)	10	

B. The application review fee shall be the sum of all of the points that are applicable to the application as determined by the department, multiplied by \$585.

C. The department may, at its discretion, assess additional points and fees each time the department is required to repeat an action listed in Subsection A of this Section because the applicant updated the application after submission.

1 **D.** For sources that satisfy the definition of “small business” as defined in Subsection F of 20.2.75.7
2 NMAC, the application review fee determined by Subsection B of this Section, additional fees (if any) assessed
3 pursuant to Subsection C of this Section, and annual fee assessed pursuant to Subsection F of this Section shall be
4 reduced by half. To qualify for the small business fee reduction, sources must submit a small business certification
5 form to the department certifying that the company employs no more than 10 employees at any time during the
6 calendar year, or for new sources, that the company does not expect to employ any more than 10 employees in the
7 first year of operations.

8 **E.** For applications processed by an outside firm under 20.2.72.221 NMAC, the application review
9 fee determined by Subsection B of this Section shall be reduced by half and shall be in addition to the cost of the
10 accelerated review bid.

11 **F.** Sources that have been issued a construction permit or registered under a general construction
12 permit under 20.2.72 NMAC shall be assessed an annual fee of \$2,800. Sources that have filed a notice of intent
13 under 20.2.73 NMAC and received a written determination by the department that a permit is not required shall be
14 assessed an annual fee of \$700. The applicable annual fee shall be assessed if the construction permit, general
15 construction permit registration or notice of intent was in active status as of December 31 of the preceding year,
16 regardless of the source’s operational status. The annual fee required by this Subsection shall not apply to sources
17 which are assessed an annual emissions fee in accordance with 20.2.71 NMAC.

18 **G.** Beginning in 2028, the cost per point and annual fees in Subsections B and F of this Section shall
19 be changed annually on January 1 by the percentage, if any, of any annual increase in the consumer price index
20 (CPI). The adjusted cost per point and annual fees shall be determined by multiplying the current cost per point and
21 annual fees by the increase in the CPI for the most recent calendar year and rounding the result to the nearest dollar.
22 The CPI for any calendar year is the average of the CPI for all urban consumers published by the United States
23 department of labor, as of the close of the twelve-month period ending on August 31 of that year. In the event there
24 is a decrease or absence of change in the CPI, the cost per point and annual fees shall not be changed and shall
25 remain the same until the next increase in the CPI.

26 [20.2.75.11 NMAC - Rp, 20.2.75.11 NMAC, 6/1/2026]

27
28 **20.2.75.12 INVOICING, PAYMENT, LATE FEE AND ENFORCEMENT:**

29 **A.** The department shall refuse to accept any application for a permit to construct or modify a source
30 or permit revision without payment of the filing fee at the time the application is submitted to the department. The
31 filing fee and the accelerated review filing fee are non-refundable. The department shall refuse to accept any notice
32 of intent or application to register under a general construction permit without payment of the application review fee
33 at the time the notice or application is submitted to the department.

34 **B.** For an application for a permit to construct or modify a source or permit revision other than a
35 technical permit revision, an invoice for the application review fee, minus the filing fee, shall be mailed, or
36 transmitted electronically or as otherwise allowed by the state, to the applicant at the time the department finds the
37 application administratively complete pursuant to 20.2.72.207 NMAC. The department shall deny any application
38 for a permit to construct or modify a source or permit revision other than a technical permit revision if the
39 application review fee has not been paid within 30 days of the date of the invoice, unless the department has granted
40 an extension. If, upon completion of the application review, the department determines additional fees are due
41 pursuant to Subsection C of 20.2.75.11 NMAC, the department shall mail another invoice to the applicant along
42 with its grant or denial of the permit or permit revision. The applicant shall pay this invoice within 30 days of the
43 date of the invoice, unless the department has granted an extension.

44 **C.** For an application for a technical permit revision, an invoice for the application review fee, minus
45 the filing fee, and any additional fees the department determines are due pursuant to Subsection C of 20.2.75.11
46 NMAC upon completion of the application review, shall accompany the department’s grant or denial of the
47 technical permit revision. The applicant shall pay this invoice within 30 days of the date of the invoice, unless the
48 department has granted an extension.

49 **D.** For a notice of intent or application to register under a general construction permit, the application
50 review fee shall be paid at the time of filing. If, upon completion of the application review, the department
51 determines additional fees are due pursuant to Subsection C of 20.2.75.11 NMAC, an invoice shall accompany the
52 department’s notification of its determination that an air quality permit is not required or its grant or denial of the
53 registration. The applicant shall pay this invoice within 30 days of the date of the invoice, unless the department has
54 granted an extension.

1 **E.** An invoice for a request for technical review of an existing permit shall accompany the
2 department's response if any fees are due. The applicant or permittee shall pay this invoice within 30 days of the
3 date of the invoice, unless the department has granted an extension.

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

5 **G.** All fees paid pursuant to this Part shall be remitted in the form of a corporate or certified check or
6 money order made payable to the environment department at the address specified in the notice, electronic payment,
7 or other method as allowed by the state. Upon receipt of the fee payment, it shall be deposited in the state air quality
8 permit fund established by Section 74-2-15 NMSA 1978.

9 **H.** Owners or operators shall pay annual fees assessed pursuant to Subsection F of 20.2.75.11 NMAC
10 within 30 days of the date of the invoice. Failure to remit the full annual fee by this date shall subject the owner or
11 operator to a late fee equal to fifty percent of the annual fee. The department shall provide to each owner or operator
12 assessed a late fee pursuant to this Subsection notification, accompanied by an invoice for the late fee and unpaid
13 annual fee balance. The owner or operator shall pay this invoice within 30 days of the date of the invoice. If the
14 invoice is not timely paid, the late fee shall increase to one hundred percent of the annual fee and shall be due
15 immediately without further notification from the department, along with the unpaid annual fee balance.

16 **I.** All fees shall be paid in U.S. dollars.

17 **J.** Failure to remit the full annual fee, including any late fees, required by the due date specified in
18 Subsection H of this Section is a violation of this Part and may subject the owner or operator to:

19 **(1)** civil penalties of up to \$15,000 per day for each day of noncompliance as provided for in
20 the Air Quality Control Act, Section 74-2-12.1 NMSA 1978; and

21 **(2)** the enforcement provisions of the Air Quality Control Act, Section 74-2-12 NMSA 1978,
22 which includes the suspension or revocation of any permit.

23 **K.** Non-compliance with Chapter 2, Title 20 NMAC or the Air Quality Control Act subjects each
24 owner or operator to administrative compliance costs for enforcement of Chapter 2, Title 20 NMAC.
25 [20.2.75.12 NMAC - Rp, 20.2.75.12 NMAC, 6/1/2026]

26
27 **20.2.75.13 PERIODIC REVIEW:** The department shall review construction permit fees and construction
28 permit program costs annually. The review shall include information on the budgets, expenditures, fund balance,
29 and related projections.

30 [20.2.75.13 NMAC - Rp, 20.2.75.13 NMAC, 6/1/2026]

31
32 **20.2.75.14 SEVERABILITY:** If any provision of this Part, or the application of this provision to any person
33 or circumstance is held invalid, the remainder of this Part, or the application of this provision to any person or
34 circumstance other than those as to which it is held invalid, shall not be affected thereby.

35 [20.2.75.14 NMAC - N, 6/1/2026]

36 37 **HISTORY OF 20.2.75 NMAC:**

38 **Pre-NMAC History:** The material in this Part was derived from that previously filed with the commission of
39 public records - state records center and archives:

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

41 42 **History of Repealed Material:**

43 20 NMAC 2.75, Construction Permit Fees, filed 10/30/95, repealed, effective 03/02/01;

44 20.2.75 NMAC, Construction Permit Fees, effective 03/02/01, repealed, effective 6/1/26.

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]~~ Rp, 20.2.71.1 NMAC, 6/1/2026]

20.2.71.2 SCOPE: This Part applies to all persons required to obtain a permit under 20.2.70 NMAC (Operating Permits).

~~[[11/30/95;]]~~ 20.2.71.2 NMAC - ~~[Rn, 20 NMAC 2.71.101-10/31/02]~~ Rp, 20.2.71.2 NMAC, 6/1/2026]

20.2.71.3 STATUTORY AUTHORITY: Environmental Improvement Act, Sections 74-1-1 to -18 NMSA 1978, including specifically [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.] Sections 74-2-1 to -17 NMSA 1978, including specifically [section 74-2-7(B)(5)] Paragraph (7) of Subsection B of Section 74-2-7 NMSA 1978.

~~[[11/30/95;]]~~ 20.2.71.3 NMAC - ~~[Rn, 20 NMAC 2.71.102-10/31/02]~~ Rp, 20.2.71.3 NMAC, 6/1/2026]

20.2.71.4 DURATION: Permanent.

~~[[11/30/95;]]~~ 20.2.71.4 NMAC - ~~[Rn, 20 NMAC 2.71.103-10/31/02]~~ Rp, 20.2.71.4 NMAC, 6/1/2026]

20.2.71.5 EFFECTIVE DATE: ~~[November 30, 1995]~~ June 1, 2026, 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]~~ Rp, 20.2.71.5 NMAC, 6/1/2026]

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

20.2.71.6 OBJECTIVE: The objective of this Part is to establish a schedule of operating permit ~~[emission]~~ emissions fees.

~~[[11/30/95;]]~~ 20.2.71.6 NMAC - ~~[Rn, 20 NMAC 2.71.105-10/31/02]~~ Rp, 20.2.71.6 NMAC, 6/1/2026]

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]~~ PM10, PM2.5, 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.

~~[H. — “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.]~~

[H] H. “Stationary source” means any building, structure, facility, or installation that emits or may emit any air pollutant.

~~[[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]~~ Rp, 20.2.71.7 NMAC, 6/1/2026]

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

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

B. The amendment and supersession of AQCR 771 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 771.

~~[[11/30/95;]]~~ 20.2.71.8 NMAC - ~~[Rn, 20 NMAC 2.71.106-10/31/02]~~ Rp, 20.2.71.8 NMAC, 6/1/2026]

20.2.71.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau ~~[, Runnells Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505]]. [As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Santa Fe, New Mexico 87505].~~

~~[[11/30/95;]]~~ 20.2.71.9 NMAC - ~~[Rn, 20 NMAC 2.71.108-10/31/02]~~ Rp, 20.2.71.9 NMAC, 6/1/2026]

20.2.71.10 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.

[20.2.71.10 NMAC - N, 6/1/2026]

~~[20.2.71.10]~~ **20.2.71.11 to 20.2.71.108 [RESERVED]**

20.2.71.109 [APPLICABILITY: ~~Each owner or operator required to obtain an operating permit under 20.2.70 NMAC (Operating Permits) shall be subject to the requirements of this Part.] [RESERVED]~~

~~[[11/30/95;]]~~ 20.2.71.109 NMAC - ~~[Rn, 20 NMAC 2.71.109-10/31/02]~~ Rp, 20.2.71.109 NMAC, 6/1/2026]

20.2.71.110 FEE REQUIREMENT

A. An annual ~~[operating permit emission]~~ emissions fee shall be paid to the department by each owner or operator subject to this part.

B. The annual emissions fee shall be assessed:

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

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

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

C. The annual emissions fee shall be calculated in conformance with 20.2.71.111 NMAC.

~~[[11/30/95;]]~~ 20.2.71.110 NMAC - ~~[Rn, 20 NMAC 2.71.110-10/31/02; A, 12/15/04]~~ Rp, 20.2.71.110 NMAC, 6/1/2026]

20.2.71.111 FEE DETERMINATION

A. Annual emissions fee calculation.

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

(2) The allowable emission rate which shall be used in the fee calculation for this Subsection is

~~[_____ (a) _____] the allowable emission rate which exists on December 31 for each year. [; and _____ (b) _____ the failure of an owner or operator to include the correct information in a permit application, resulting in incorrect allowable emissions in a permit issued under 20.2.70 NMAC, 20.2.72 NMAC, or 20.2.74 NMAC, shall not preclude the department from requiring payment for the correct emissions from the time payment would have been first due.]~~

(3) Allowable emission rates shall be calculated to the tenth of a ton for each [emission] emissions 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 for this Subsection.

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

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

(7) A maximum of ~~[six thousand]~~ 3,000 tons per year of any one fee pollutant shall be used in the fee calculation for this Subsection.

(8) For facilities with allowable emission rates for both PM10 and PM2.5, a fee shall only be assessed pursuant to this Subsection for one of these fee pollutants, and shall be based on whichever has the higher allowable emission rate.

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

B. Source shutdown.

(1) The annual emissions 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 this Subsection ~~[B of 20.2.71.111 NMAC]~~.

(2) The annual emissions fee shall be reduced when all operations at a stationary source have been ~~[shutdown]~~ shut down for a period greater than 60 consecutive days within a calendar year. In this case, the annual emissions 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]~~ shut down.

C. Annual emissions fee for emissions above annual allowable emission limits.

(1) The annual emissions 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 emission 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]~~ Subsection because it is a hazardous air pollutant shall not be assessed additional fees ~~[pursuant to this section]~~.

(4) A maximum of ~~[six thousand]~~ 3,000 tons per year of any one fee pollutant shall be used in the fee calculation for this ~~[section]~~ Subsection.

(5) For facilities with allowable emission rates for both PM10 and PM2.5, a fee shall only be assessed pursuant to this Subsection for one of these fee pollutants, and shall be based on whichever has higher emissions above annual allowable emission limits.

~~[[11/30/95;] 20.2.71.111 NMAC - [Rn, 20 NMAC 2.71.111 10/31/02; A, 12/15/04] Rp, 20.2.71.111 NMAC, 6/1/2026]~~

20.2.71.112 ~~[EMISSION]~~ EMISSIONS FEE

A. The fee for each fee pollutant shall be ~~[\$20.00]~~ \$85 per ton on an annual basis, except as provided for in Subsection B of ~~[20.2.70.112 NMAC]~~ this Section. ~~[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]~~ \$258 per ton on an annual basis for any stationary source which is only a major source, as defined in 20.2.70 NMAC, for any hazardous air pollutant.

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

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

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

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

8 ~~[E] D.~~ Beginning ~~[on January 1, 2009]~~ in 2028, the fees referenced in this section shall be changed
9 annually on January 1 by the percentage, if any, of any annual increase in the consumer price index (CPI) in
10 accordance with Section 502(b)(3)(B)(v) of the federal ~~[Clean Air]~~ Act. In the event there is a decrease or absence
11 of change in the CPI, fees shall remain the same until the next increase in the CPI.

12 ~~[[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] Rp,~~
13 ~~20.2.71.112 NMAC, 6/1/2026]~~

14
15 **20.2.71.113 NOTIFICATION, [FEE] PAYMENT, LATE FEE AND ENFORCEMENT**

16 **A.** Schedule.

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

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

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

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

25 (3) Each owner or operator shall pay by June 1 the annual emissions fee contained in the
26 department's notification required under Paragraph (1) of this Subsection ~~[A of Section 20.2.71.113 NMAC]~~.
27 Failure to remit the full annual emissions fee by this date shall subject the owner or operator to a late fee equal to
28 fifty percent of the annual emissions fee or \$5,000, whichever is less. The department shall provide to each owner
29 or operator assessed a late fee pursuant to this Subsection notification, which shall state the late fee and unpaid
30 annual emissions fee balance currently due. The owner or operator shall pay the amount stated in the department's
31 notification within 30 days of the date of the notification. If the amount stated in the notification is not timely paid,
32 the late fee shall increase to one hundred percent of the annual emissions fee or \$10,000, whichever is less, and shall
33 be due immediately without further notification from the department, along with the unpaid annual emissions fee
34 balance.

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

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

39 **B.** Payment.

40 (1) Annual emissions fees shall be remitted in the form of a certified check or money order
41 made payable to the environment department ~~[and]~~ , electronic payment, or other method as allowed by the state.
42 Annual emissions fees remitted in the form of a certified check or money order shall be submitted to the air quality
43 bureau at the address specified in the notice.

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

46 ~~(3) Annual emissions fees shall be paid in U.S. dollars.~~

47 **C.** Nonpayment. Failure to remit the full annual emissions fee, including any late fees, required by
48 the due date specified in Subsection A of this section is a violation of this part and may subject the owner or
49 operator to:

50 (1) civil penalties of up to \$15,000 for each day of noncompliance as provided for in the
51 ~~[New Mexico]~~ Air Quality Control Act, section 74-2-12.1 NMSA 1978; and

52 (2) the enforcement provisions of the ~~[New Mexico]~~ Air Quality Control Act, section 74-2-
53 12 NMSA 1978, which includes suspension or revocation of any permit.

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

1 ~~[[11/30/95;]~~ 20.2.71.113 NMAC - ~~[Rn, 20 NMAC 2.71.113 10/31/02; A, 12/15/04]~~ Rp, 20.2.71.113 NMAC,
2 6/1/2026]
3

4 **HISTORY OF 20.2.71 NMAC:**

5 **Pre NMAC History:** The material in this part was derived from that previously filed with the commission of public
6 records - state records center and archives.

7 EIB/AQCR 771, Air Quality Control Regulation 771 - Operating Permit Emission Fees, filed 11/15/93.
8

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

10 20.2.71 NMAC, Operating Permit Emissions Fees, effective 10/31/02, repealed, effective 6/1/26.
11

12 **Other History:**

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

16 20 NMAC 2.71, Operating Permit Emission Fees, filed 10/30/95 was **renumbered, reformatted and replaced** by
17 20.2.71 NMAC, Operating Permit Emission Fees, effective 10/31/02.

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]~~ 20.2.75.1 NMAC, 6/1/2026]

20.2.75.2 SCOPE:
[~~—A.—~~] This Part applies to all persons who apply for a permit to construct or modify a source, apply to register under a general construction permit, [or revise a permit] apply for a permit revision, or ~~[who]~~ request a technical review of an existing permit under 20.2.72 NMAC, and all persons who file a notice of intent under 20.2.73 NMAC. [Part 70 (20.2.70 NMAC) operating permit emission] Annual emissions fees for sources required to obtain a permit under 20.2.70 NMAC (Operating Permits) 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.
[20.2.75.1 NMAC - Rp, ~~[20 NMAC 2.75.101, 03/02/01]~~ 20.2.75.2 NMAC, 6/1/2026]

20.2.75.3 STATUTORY AUTHORITY: Environmental Improvement Act, Sections 74-1-1 to -18 NMSA 1978, including specifically Paragraph 4 of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, [Chapter 74, Article 2] Sections 74-2-1 to -17 NMSA 1978, including specifically Paragraph 6 of Subsection B of Section 74-2-7 NMSA 1978.
[20.2.75.1 NMAC - Rp, ~~[20 NMAC 2.75.102, 03/02/01]~~ 20.2.75.3 NMAC, 6/1/2026]

20.2.75.4 DURATION: Permanent.
[20.2.75.4 NMAC - Rp, ~~[20 NMAC 2.75.103, 03/02/01]~~ 20.2.75.4 NMAC, 6/1/2026]

20.2.75.5 EFFECTIVE DATE: ~~[March 2, 2001]~~ June 1, 2026, 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]~~ Part, the provisions in 20.2.75 NMAC, as effective as of the date of the receipt of the application, remain effective, and application review fees (formerly permit fees) shall be so determined.

B. For applications received following the effective date of this ~~[regulation]~~ Part, application review 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]~~ 20.2.75.5 NMAC, 6/1/2026]
~~[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 notices of intent, construction permits, registrations under general construction permits, permit revisions, and technical reviews of existing permits.
[20.2.75.6 NMAC - Rp, ~~[20 NMAC 2.75.105, 03/02/01]~~ 20.2.75.6 NMAC, 6/1/2026]

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, the following definitions apply.

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” means, for the purpose of assessing ~~[permit]~~ application review 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 emissions fees), 20.2.72 NMAC (construction permits), 20.2.73 NMAC (notice of intent and emissions inventory requirements), 20.2.74 NMAC (Permits - 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] application review fee 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] Part, 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)] 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”] For the purposes of this Part, small business does not include

(1) any source which may emit more than [fifty (50)] 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)] 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] For the purposes of this Part, technical review of an existing permit does not include the department’s review of 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, 6/1/2026]

20.2.75.8 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS: This Part amends and supersedes Air Quality Control Regulation (AQCR) 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, 6/1/2026]

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]. [As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Santa Fe, New Mexico 87505.]

[20.2.75.9 NMAC - Rp, [20 NMAC 2.75.108, 03/02/01] 20.2.75.9 NMAC, 6/1/2026]

20.2.75.10 FILING FEE:

A. A filing fee of ~~[five hundred dollars (\$500)]~~ \$500 shall be submitted with each filing of ~~[a notice of intent,]~~ an application for a permit to construct or modify a source or permit revision ~~[of a permit]~~. The filing fee shall be applied to the ~~[total permit fee]~~ application review 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)]~~ \$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 accelerated review filing fee shall be applied to the ~~[total permit fee]~~ application review 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]~~ the accelerated review filing fee shall be applied to the ~~[total permit fee]~~ application review 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]~~ 20.2.75.10 NMAC, 6/1/2026]

20.2.75.11 [PERMIT] APPLICATION REVIEW FEE AND ANNUAL FEE:

A. The ~~[permit fee]~~ application review 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
6-15 Fee Units	1
>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
<u>Each</u> Modeling Review	[15] <u>30</u>
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

Notices of Intent (20.2.73.200 NMAC)	10
General Permits (20.2.72.220 NMAC) <u>for non-Oil and Gas Facilities</u>	10
<u>General Permits (20.2.72.220 NMAC) for Oil and Gas Facilities</u>	30
Streamline (each site) (20.2.72.300 NMAC – 20.2.72.399 NMAC)	10

B. The application review fee shall be the sum of all of the points that are applicable to the ~~[permitting action]~~ application as determined by the department, multiplied by ~~[three hundred fifteen dollars (\$315)]~~ \$585.

C. The department may, at its discretion, assess additional points and fees each time the department is required to repeat an action listed in Subsection A of this Section because the applicant updated the application after submission.

~~[C]~~ D. For sources that satisfy the definition of “small business” as defined in Subsection F of 20.2.75.7 NMAC, the ~~[permit]~~ application review fee determined by ~~[Subsections]~~ Subsection B ~~[and E]~~ of ~~[20.2.75.11 NMAC]~~ this Section, additional fees (if any) assessed pursuant to Subsection C of this Section, and annual fee assessed pursuant to Subsection F of this Section shall be ~~[divided by two]~~ reduced by half. To qualify for the small business fee reduction, sources must submit a small business certification form to the department certifying that the company employs no more than 10 employees at any time during the calendar year, or for new sources, that the company does not expect to employ any more than 10 employees in the first year of operations.

~~[D]~~ E. For applications processed by an outside firm under 20.2.72.221 NMAC~~[-Accelerated Review]~~, the ~~[permit]~~ application review fee determined by Subsection B of ~~[20.2.75.11 NMAC]~~ this Section shall be ~~[divided by two]~~ reduced by half and shall be in addition to the cost of the accelerated review bid~~[-as described in 20.2.72.221 NMAC]~~.

~~[E]~~ F. Sources that have been issued a construction permit or registered under a general construction permit under 20.2.72 NMAC shall be assessed an annual fee of ~~[one thousand five hundred dollars (\$1,500)]~~ \$2,800. Sources that have filed a notice of intent under 20.2.73 NMAC and received a written determination by the department that a permit is not required shall be assessed an annual fee of \$700. The applicable annual fee shall be assessed if the construction permit, general construction permit registration or notice of intent was in active status as of December 31 of the preceding year, regardless of the source’s operational status. ~~[This fee]~~ The annual fee required by this subsection shall not apply to sources which are assessed an annual emissions fee in accordance with 20.2.71 NMAC.

~~[F]~~ G. Beginning in ~~[2005]~~ 2028, the cost per point ~~[in Subsection B of this section]~~ and ~~[the]~~ annual ~~[fee]~~ fees in ~~[Subsection E]~~ Subsections B and F of this section shall be adjusted each year on January 1 to reflect the increase ~~changed annually on January 1 by the percentage, if any, [by which the consumer price index for the most recent year exceeds the consumer price index for the year 2004] of any annual increase in the consumer price index (CPI). The [amount of the change in the fee] adjusted cost per point and annual fees shall be determined by multiplying the [existing fee] current cost per point and annual fees by the [change] increase in the [consumer price index] CPI for the most recent calendar year and rounding the result to the nearest dollar. The [consumer price index] CPI for any calendar 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, the cost per point and annual fees shall not be changed and shall remain the same until the next increase in the CPI.~~ [20.2.75.11 NMAC - Rp, [20 NMAC 2.75.110, 03/02/01; A, 12/01/03] 20.2.75.11 NMAC, 6/1/2026]

20.2.75.12 [PAYMENT OF FEES] INVOICING, PAYMENT, LATE FEE AND ENFORCEMENT:

A. The Department shall refuse to accept any ~~[permit]~~ application for a permit to construct or modify a source or permit revision without payment of the filing fee at the time the application is ~~[received by]~~ submitted to the Department. The filing fee and the accelerated review filing fee are non-refundable. The department shall refuse to accept any notice of intent or application to register under a general construction permit without payment of the application review fee at the time the notice or application is submitted to the department.

B. For an application for a permit to construct or modify a source or permit revision other than a technical permit revision, an invoice for [permit fees] the application review fee, minus the filing fee, shall be mailed, or transmitted electronically or as otherwise allowed by the state, to the applicant at the time the Department finds the application administratively complete pursuant to [20.2.72.203 NMAC] 20.2.72.207 NMAC. The Department shall deny any [permit] application [or request for permit revision] for a permit to construct or modify a

1 source or permit revision other than a technical permit revision if the [required permit] application review fee has
2 not been paid within [thirty (30)] 30 days of [invoicing] the date of the invoice, unless the Department has granted
3 an extension. If, upon completion of the [permit] application review, the Department determines additional fees are
4 due pursuant to Subsection C of 20.2.75.11 NMAC, the Department shall mail [an] another invoice to the applicant
5 along with [the signed permit] its grant or denial of the permit or permit revision. The [permittee] applicant shall
6 pay this invoice within [thirty (30)] 30 days of [invoicing] the date of the invoice, unless the Department has granted
7 an extension. [In the event excess fees were paid, the department shall issue a refund for excess fees and mail the
8 refund to the applicant.]

9 C. For an application for a technical permit revision, an invoice for the application review fee, minus
10 the filing fee, and any additional fees the department determines are due pursuant to Subsection C of 20.2.75.11
11 NMAC upon completion of the application review, shall accompany the department's grant or denial of the
12 technical permit revision. The applicant shall pay this invoice within 30 days of the date of the invoice, unless the
13 department has granted an extension.

14 D. For a notice of intent or application to register under a general construction permit, the application
15 review fee shall be paid at the time of filing. If, upon completion of the application review, the department
16 determines additional fees are due pursuant to Subsection C of 20.2.75.11 NMAC, an invoice shall accompany the
17 department's notification of its determination that an air quality permit is not required or its grant or denial of the
18 registration. The applicant shall pay this invoice within 30 days of the date of the invoice, unless the department has
19 granted an extension.

20 [C] E. An invoice for a request for technical review of an existing permit shall accompany the
21 Department's response if any fees are due. The applicant or permittee shall pay [for the review] this invoice within
22 [thirty (30)] 30 days of [invoicing] the date of the invoice, unless the department has granted an extension.

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

24 [E] G. All fees paid pursuant to this Part shall be remitted in the form of a corporate or certified check or
25 money order made payable to the Environment Department at the address specified in the notice, electronic
26 payment, or other method as allowed by the state. Upon receipt of the [check] fee payment, it shall be deposited in
27 the state air quality permit fund established by [NMSA 1978, 74-2-15 (1992)] Section 74-2-15 NMSA 1978.

28 [F] H. [Permittees] Owners or operators shall pay annual fees assessed pursuant to Subsection F of
29 20.2.75.11 NMAC within [thirty (30)] 30 days of [receipt of an invoice] the date of the invoice [for annual fees for a
30 permitted facility]. Failure to remit the full annual fee by this date shall subject the owner or operator to a late fee
31 equal to fifty percent of the annual fee. The department shall provide to each owner or operator assessed a late fee
32 pursuant to this Subsection notification, accompanied by an invoice for the late fee and unpaid annual fee balance.
33 The owner or operator shall pay this invoice within 30 days of the date of the invoice. If the invoice is not timely
34 paid, the late fee shall increase to one hundred percent of the annual fee and shall be due immediately without
35 further notification from the department, along with the unpaid annual fee balance.

36 [G] I. All fees shall be paid in U.S. dollars.

37 J. Failure to remit the full annual fee, including any late fees, required by the due date specified in
38 Subsection H of this Section is a violation of this Part and may subject the owner or operator to:

39 (1) civil penalties of up to \$15,000 per day for each day of noncompliance as provided for in
40 the Air Quality Control Act, Section 74-2-12.1 NMSA 1978; and

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

43 K. Non-compliance with Chapter 2, Title 20 NMAC or the Air Quality Control Act subjects each
44 owner or operator to administrative compliance costs for enforcement of Chapter 2, Title 20 NMAC.
45 [20.2.75.12 NMAC - Rp, [20 NMAC 2.75.111, 03/02/01] 20.2.75.12 NMAC, 6/1/2026]

46
47 **20.2.75.13 PERIODIC REVIEW:** The Department shall [prepare a review of the] review construction
48 permit fees and construction permit program costs annually. The review shall include information on the budgets,
49 expenditures, fund balance, and related projections. [The review shall be presented to the Board within six months
50 following the end of the fiscal year.]

51 [20.2.75.13 NMAC - [N, 03/02/01] Rp, 20.2.75.13 NMAC, 6/1/2026]

52
53 **20.2.75.14 SEVERABILITY:** If any provision of this Part, or the application of this provision to any person
54 or circumstance is held invalid, the remainder of this Part, or the application of this provision to any person or
55 circumstance other than those as to which it is held invalid, shall not be affected thereby.

56 [20.2.75.14 NMAC - N, 6/1/2026]

1
2 **HISTORY OF 20.2.75 NMAC:**

3 **Pre-NMAC History:** The material in ~~[the]~~ this part was derived from that previously filed with the commission of
4 public records - state records center and archives:
5 AQCR 700, Air Quality Control Regulation 700 - Filing and Permit Fees, filed 11/20/89.

6
7 **History of Repealed Material:**

8 20 NMAC 2.75, ~~[Air Quality Statewide—]~~ Construction Permit Fees, filed 10/30/95, repealed effective 03/02/01~~[-]~~ ;
9 20.2.75 NMAC, Construction Permit Fees, effective 03/02/01, repealed, effective 6/1/26.