

STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REPEAL AND REPLACEMENT OF  
20.2.70 NMAC – *OPERATING PERMITS* AND TITLE V PROGRAM REVISION

Air Quality Bureau  
Environmental Protection Division  
New Mexico Environment Department

No. EIB 25-10 (R)

*Petitioner*

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NEW MEXICO ENVIRONMENT DEPARTMENT’S PETITION FOR RULEMAKING

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Pursuant to the New Mexico *Air Quality Control Act* (“AQCA”), Sections 74-2-1 et seq., NMSA 1978 (1967 as amended through 2021), including specifically, Sections 74-2-5 and 74-2-6 NMSA 1978 and the New Mexico Environmental Improvement Board’s (“Board”) regulation at 20.1.1 NMAC, *Rulemaking Procedures - Environmental Improvement Board*, the New Mexico Environment Department (“Department” or “NMED”) hereby petitions the Board to repeal and replace 20.2.70 NMAC, *Operating Permits*. Pursuant to Subsection B of 20.1.1.300 NMAC, *Prehearing Procedures - Petition for Regulatory Change*, the Statement of Reasons for the regulatory change, and the entire rule with proposed changes shown in redline/strikeout format, including line numbers, are attached hereto as Attachments 1 and 2, respectively. The Department also petitions the Board to authorize NMED to submit the regulatory changes to the Environmental Protection Agency (“EPA”) for approval as a proposed revision to the New Mexico Title V Permit Program.

## JURISDICTION

The Board has the authority to repeal and replace 20.2.70 NMAC pursuant to the *Air Quality Control Act*, Sections 74-2-5 and 74-2-6, NMSA 1978 (1967 as amended through 2021) and the *Environmental Improvement Act*, Section 74-1-8, NMSA 1978 (2000).

**WHEREFORE**, The Department requests that the Board consider this Petition at its regularly scheduled meeting on March 28, 2025, and schedule a hearing and appoint a Hearing Officer in this matter for June 27, 2025. The Department estimates that the hearing will take two hours.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT  
OFFICE OF GENERAL COUNSEL

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**STATEMENT OF REASONS**

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The Air Quality Bureau (“Bureau”) in the Environmental Protection Division of the New Mexico Environment Department proposes to repeal and replace 20.2.70 NMAC, *Operating Permits*, to address a mandate by the U.S. Environmental Protection Agency (“EPA”) directing the removal of certain affirmative defense provisions in the New Mexico Title V Permit Program at 20.2.70.304 NMAC, *Emergency Provision*. In addition, EPA provided a comment to the Department, indicating that one of the “Applicable Requirements” cited at 40 CFR 70.2.(7) is missing from the definition of “Applicable Requirement,” at Subsection E of 20.2.70.7 NMAC. To address this deficiency, new text is proposed at Paragraph (7) of Subsection E of 20.2.70.7 NMAC. The Department has also identified an incongruity between the federal rule at 40 CFR 70.2 *Applicable Requirement*, and the current NM Title V permit regulation at Paragraphs (11) and (12) of Subsection E of 20.2.70.7 NMAC. There is also an outdated reference to “total suspended particulate matter” at Paragraph (1) of Subsection AC of 20.2.70.7 NMAC. Specifically, the limits for maximum allowable concentrations of total suspended particulate (“TSP”) in the ambient air previously stipulated by 20.2.3 NMAC, *Ambient Air Quality Standards*,

at 20.2.3.109 NMAC, *Total Suspended Particulates*, were repealed, effective November 30, 2018. In addition, the Department must update the regulation to meet current New Mexico Administrative Code requirements at Subsection C of 1.24.11.9 NMAC, which requires that “When an agency amends a part that was not filed in the current style and format, it shall reformat the entire part (or use the reformatting done by the Records Center) and officially adopt the current style and formatting requirements in conjunction with the amendment”. The Department will need to address these changes at the same time as the affirmative defense provisions are removed.

The Bureau hereby provides to the Board this Statement of Reasons as background for the proposed regulatory changes contained within this Petition and in support of the proposed regulatory changes pursuant to EPA’s mandate:

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

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

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

4. The July 21, 2023, EPA Rule requires state, local, and tribal permitting authorities to submit program revisions to the EPA to remove similar Title V affirmative defense provisions from their EPA-approved Title V programs (i.e. 20.2.70.304 NMAC, *Emergency Provision*), no later than August 21, 2024. On August 21, 2024, the Bureau submitted a letter to EPA requesting an extension of this deadline until August 21, 2025. On September 17, 2024, this request was granted.

5. In order to implement the program revisions, Title V affirmative defense provisions included within individual operating permits will also need to be removed. As explained in their 2016 proposed rule (81 FR 38652), EPA expects these permit changes will occur in the ordinary course of business as permits are periodically renewed, revised, or reopened for other reasons. At the latest, states would be expected to remove affirmative defense provisions from individual permits by the next periodic permit renewal that occurs following either (1) the effective date of the federal rule change (August 21, 2023) (for permit terms based on 40 CFR 70.6(g) or 71.6(g)); or (2) the EPA's approval of state program revisions (for permit terms based on a state affirmative defense provision).

6. To comply with the requirements of the EPA mandate, the Department petitions the Board to remove the affirmative defense provision of its operating permit standards at 20.2.70.304 NMAC, *Emergency Provision*.

The sections of Part 70 affected by the proposed changes are shown below. The entirety of Part 70 with the proposed changes are included and attached here as Attachment 2.

## **PART 70 OPERATING PERMITS**

**20.2.70.3 NMAC, *Statutory Authority***, cites the statutes that provide authority for the regulation. The proposed amendments include changing the citation from Subsections “(C)” and “(D)” of 74-2-5 NMSA 1978, to Subsections “D” and “E” respectively.

Environmental Improvement Act, [~~NMSA 1978, section 74-1-8 (A)(4) and (7)~~] Paragraphs (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, [~~NMSA 1978,~~] Sections 74-2-1 et seq., NMSA 1978, including specifically, [~~section 74-2-5 (A), (B), and (C) and (D)~~] Subsections A, B, D and E of Section 74-2-5.

This change is necessary due to amendments made in 2021 to 74-2-5 NMSA by the legislature, when they modified their stringency requirements. The amendment, effective July 1, 2021, provided in part, that if there is a determination by the Board

“that emissions from sources within the Environmental Improvement Board's or local board's jurisdiction cause or contribute to ozone concentrations in excess of ninety-five percent of the primary National Ambient Air Quality Standard for ozone promulgated pursuant to the federal Act, the Environmental Improvement Board or the local board shall adopt a plan, including rules, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the standard. Rules adopted pursuant to this Subsection shall be limited to sources of emissions within the area of the State where the ozone concentrations exceed ninety-five percent of the primary National Ambient Air Quality Standard.”

The legislature also removed provisions prohibiting the Environmental Improvement Board and the local board from adopting certain types of state air quality regulations and standards more stringent than federal regulations and standards.

But the aforementioned edits made by the legislature, added a new Subsection C and redesignated former Subsections C through E as Subsection D through F, respectively, necessitating a re-lettering of the statute and concomitant change to the statutory citation found in Part 70.

In addition, the State Records Center and Archives now requires that citations to statutory language follow the same formatting protocol as that for citations to NMAC rules.

**20.2.70.5 NMAC, *Effective Date***, states that: “The latest effective date of any section in this Part is 01/01/2011”, but it should read “02/06/13”. This date will change again when the proposed amended rule is filed.

**20.2.70.7 NMAC, *Definitions***. EPA provided a comment to the Department, indicating that one of the “Applicable Requirements” cited at 40 CFR 70.2.(7) is missing. To address this deficiency, new text is proposed at Paragraph (7) of Subsection E of 20.2.70.7 NMAC.

(7) Any standard or other requirement under Section 126(a)(1) and (c) of the federal act.

Section 126 of the CAA gives a state the authority to ask EPA to set emissions limits for specific sources of air pollution in other states that significantly contribute to nonattainment or interfere with maintenance of one or more NAAQS in the petitioning state. The CAA requires the EPA to respond to these types of petitions within 60 days of receipt. “Section 126(a)(1) and (c)” in particular, refer to 42 U.S. Code §7426, *Interstate pollution abatement*, specifically “(a) *Written notice to all nearby States*” and “(c) *Violations; allowable continued operation.*”

The proposed amendments also include the combining of Paragraphs (11) and (12) of Subsection E, “Applicable Requirements” to align with original language at 40 CFR 70.2.(13), to rectify a mistake made when rule was first adopted.

~~[(11)](12)~~ Any national ambient air quality standard or [-  
(12) —Any] increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act. This means that general permits for temporary sources must consider these requirements, but they are not applicable for other operating permits under this Part.

The definition of “Applicable Requirement” has been in existence since 1993 when Operating Permits was first adopted as Air Quality Control Regulation (AQCR) 770, effective

12/19/94. When AQCR 770 (aka 20.2.70 NMAC) was originally drafted in 1993, the text incorporated from Paragraph (13) of 40 CFR 70.2 *Definitions, Applicable Requirement*, was mistakenly split into two paragraphs at Paragraph (11) and (12) of Subsection E of 20.2.70.7 NMAC. This compromised the meaning intended by EPA. The text of 40 CFR 70.2.(13) is as follows:

“Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.”

Additional language is proposed to be added to the end of the newly combined paragraph to clarify what this sentence actually means: “This means that general permits for temporary sources must consider these requirements, but they are not applicable for other operating permits under this Part.”

In addition, proposed Paragraph (12) (previously (13)), must be reformatted because the State Records Center and Archives now requires that references to statutory language follow the same formatting protocol as that for NMAC rule language.

~~[(13)](13)~~ Any ~~[regulation]~~ rule adopted by the board pursuant to the New Mexico Air Quality Control Act, ~~[Section 74-2-5(B) NMSA 1978]~~ Subsection B of Section 74-2-5, NMSA 1978.

Paragraph (1) of Subsection AC of 20.2.70.7 NMAC, “*Regulated Air Pollutant*”, is proposed to be amended to remove “total suspended particulate matter” as part of the definition of a “regulated air pollutant”.

(1) nitrogen oxides~~[-total suspended particulate matter,]~~ or any volatile organic compounds;

The limits for maximum allowable concentrations of TSP in the ambient air previously stipulated by 20.2.3 NMAC, *Ambient Air Quality Standards*, at 20.2.3.109 NMAC, *Total*



*Suspended Particulates*, were repealed, effective November 30, 2018. The current federal air quality standards using PM<sub>10</sub> (particulate matter 10 microns or less in diameter) and PM<sub>2.5</sub> (particulate matter 2.5 microns or less in diameter) as indicators, are better suited to address health concerns than standards based on TSP, such as 20.2.3.109 NMAC. In 1987, the EPA published revisions to the NAAQS for particulate matter (PM) and replaced TSP as the indicator for PM with a new indicator, PM<sub>10</sub>. EPA further revised the PM standards in 1997 to include an additional indicator, PM<sub>2.5</sub>, to provide the most effective protection from potential adverse health effects. The Department determined that the repeal of the New Mexico TSP standards would not negatively impact the attainment status of the State's PM attainment areas, the Anthony PM<sub>10</sub> nonattainment area, or any other Clean Air Act requirement. The Bureau ceased ambient monitoring for TSP in 1998.

**20.2.70.303 NMAC, *General Permits*.** Paragraph (4) of Subsection B of 20.2.70.303 NMAC, must be reformatted because the State Records Center and Archives now requires that references to statutory language follow the same formatting protocol as that for NMAC rule language.

(4) The department may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under 20.2.70.401 NMAC. Such an authorization shall not be a permitting action for purposes of administrative review under New Mexico Air Quality Control Act [~~section 74-2-7.H NMSA 1978~~] Subsection H of Section 74-2-7, NMSA 1978. Permitting action for the purposes of Section 74-2-7 NMSA 1978 shall be the issuance of the general permit.

**20.2.70.304 NMAC, *Emergency Provision*.** This section is proposed to be repealed in its entirety as elucidated by this Statement of Reasons.

**20.2.70.304 [EMERGENCY PROVISION:]**

~~A. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes~~

~~the source to exceed a technology based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.~~

~~**B.** An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:~~

~~(1) an emergency occurred and that the permittee can identify the cause(s) of the emergency;~~

~~(2) the permitted facility was at the time being properly operated;~~

~~(3) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and~~

~~(4) the permittee submitted notice of the emergency to the department within 2 working days of the time when emission limitations were exceeded due to the emergency; this notice fulfills the requirement of Paragraph (2) of Subsection E of 20.2.70.302 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.~~

~~**C.** In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.~~

~~**D.** This provision is in addition to any emergency or upset provision contained in any applicable requirement.] [RESERVED]~~

**20.2.70.401 NMAC, *Public Participation*.** Subsection A is proposed to be amended by inserting the following new text:

“Proceedings for all permit issuances (except administrative and minor permit modifications, pursuant to Paragraph (2) of Subsection A of 20.2.70.400 NMAC) ~~[including renewals]~~, significant permit modifications, reopenings, revocations and terminations, and all modifications to the department's list of insignificant activities, shall include public notice and provide an opportunity for public comment. . .”

This proposed language would mirror language in Paragraph (2) of Subsection A of 20.2.70.400 NMAC, *Action on Permit Applications*, in order to emphasize that minor modifications do not need public notice. This additional wording would identify in two places within the rule (not just one) that, administrative and minor permit modifications do not need public notice. The Bureau infrequently receives TV minor permit modifications, so it would be helpful to emphasize the

point. Also, the parenthesis would be removed from around “including renewals”, to make the wording stronger and not just parenthetical; especially when “renewals” are by far the majority of TV actions the Bureau deals with. Parentheses around “renewals” diminishes the importance of public notice and the need to provide an opportunity for public comment, when renewals most especially need public notice and comment.

1 **TITLE 20 ENVIRONMENTAL PROTECTION**  
2 **CHAPTER 2 AIR QUALITY (STATEWIDE)**  
3 **PART 70 OPERATING PERMITS**  
4

5 **20.2.70.1 ISSUING AGENCY:** Environmental Improvement Board.  
6 [11/30/95; 20.2.70.1 NMAC - Rn, 20 NMAC 20.2.70.100, 06/14/02]  
7

8 **20.2.70.2 SCOPE:** All persons who own or operate a major source or any other source required to obtain a  
9 permit under this Part.  
10 [11/30/95; 20.2.70.2 NMAC - Rn, 20 NMAC 20.2.70.101, 06/14/02]  
11

12 **20.2.70.3 STATUTORY AUTHORITY:** Environmental Improvement Act, ~~[NMSA 1978, section 74-1-8~~  
13 ~~(A)(4) and (7)] Paragraphs (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978,~~ and Air Quality Control Act,  
14 ~~[NMSA 1978,] Sections 74-2-1 et seq., NMSA 1978,~~ including specifically, ~~[section 74-2-5 (A), (B), and (C) and~~  
15 ~~(D)] Subsections A, B, D and E of Section 74-2-5 NMSA 1978.~~  
16 [11/30/95; 20.2.70.3 NMAC - Rn, 20 NMAC 20.2.70.102, 06/14/02]  
17

18 **20.2.70.4 DURATION:** Permanent.  
19 [11/30/95; 20.2.70.4 NMAC - Rn, 20 NMAC 20.2.70.103, 06/14/02]  
20

21 **20.2.70.5 EFFECTIVE DATE:** ~~[11/30/95]~~ November 30, 1995, except where a later date is cited at the  
22 end of a section.  
23 [11/30/95; 20.2.70.5 NMAC - Rn, 20 NMAC 20.2.70.104, 06/14/02; A, 9/6/06]  
24 [The latest effective date of any section in this Part is ~~[01/01/2011]~~ 02/06/13.]  
25

26 **20.2.70.6 OBJECTIVE:** The objective of this Part is to establish the requirements for obtaining an  
27 operating permit.  
28 [11/30/95; 20.2.70.6 NMAC - Rn, 20 NMAC 20.2.70.105, 06/14/02]  
29

30 **20.2.70.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this  
31 Part the following definitions shall apply.

32 **A. "Acid rain source"** has the meaning given to "affected source" in the regulations promulgated  
33 under Title IV of the federal act, and includes all sources subject to Title IV of the federal act.

34 **B. "Affected programs"** means all states, local air pollution control programs, and Indian tribes and  
35 pueblos, that are within 50 miles of the source.

36 **C. "Air pollutant"** means an air pollution agent or combination of such agents, including any  
37 physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct  
38 material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any  
39 precursors to the formation of any air pollutant, to the extent the administrator has identified such precursor or  
40 precursors for the particular purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen  
41 (N<sub>2</sub>), oxygen (O<sub>2</sub>), and ethane.

42 **D. "Air pollution control equipment"** means any device, equipment, process or combination  
43 thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or  
44 convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical  
45 state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers,  
46 cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

47 **E. "Applicable requirement"** means all of the following, as they apply to a Part 70 source or to an  
48 emissions unit at a Part 70 source (including requirements that have been promulgated or approved by the board or  
49 US EPA through rulemaking at the time of permit issuance but have future-effective compliance dates).

50 **(1)** Any standard or other requirement provided for in the New Mexico state implementation  
51 plan approved by US EPA, or promulgated by US EPA through rulemaking, under Title I of the federal act to  
52 implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR,  
53 Part 52.

54 **(2)** Any term or condition of any preconstruction permit issued pursuant to regulations  
55 approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that  
56 term or condition is determined by the department to be no longer pertinent.

**Attachment 2**

- 1                   (3)       Any standard or other requirement under Section 111 of the federal act, including Section  
2 111(d).
- 3                   (4)       Any standard or other requirement under Section 112 of the federal act, including any  
4 requirement concerning accident prevention under Section 112(r)(7) of the federal act.
- 5                   (5)       Any standard or other requirement of the acid rain program under Title IV of the federal  
6 act or the regulations promulgated thereunder.
- 7                   (6)       Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the  
8 federal act.
- 9                   ~~(7)~~       Any standard or other requirement under Section 126(a)(1) and (c) of the federal act.
- 10                  ~~(7)~~~~(8)~~      Any standard or other requirement governing solid waste incineration under Section 129  
11 of the federal act.
- 12                  ~~(8)~~~~(9)~~      Any standard or other requirement for consumer and commercial products under Section  
13 183(e) of the federal act.
- 14                  ~~(9)~~~~(10)~~     Any standard or other requirement for tank vessels under Section 183(f) of the federal  
15 act.
- 16                  ~~(10)~~~~(11)~~     Any standard or other requirement of the regulations promulgated to protect  
17 stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements  
18 need not be contained in a Title V permit.
- 19                  ~~(11)~~~~(12)~~     Any national ambient air quality standard or [-  
20 ~~(12)~~ ~~Any~~] increment or visibility requirement under Part C of Title I of the federal act, but  
21 only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act. This means that  
22 general permits for temporary sources must consider these requirements, but they are not applicable for other  
23 operating permits under this Part.
- 24                  ~~(13)~~~~(13)~~     Any ~~[regulation]~~ rule adopted by the board pursuant to the New Mexico Air  
25 Quality Control Act, ~~[Section 74-2-5(B) NMSA 1978]~~ Subsection B of Section 74-2-5, NMSA 1978.
- 26                  **F.**       “CFR” means the Code of Federal Regulations.
- 27                  **G.**       “Draft permit” means a version of a permit which the department offers for public participation  
28 or affected program review.
- 29                  **H.**       “Emission limitation” means a requirement established by US EPA, the board, or the department,  
30 that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a  
31 continuous basis, including any requirements relating to the operation or maintenance of a source to assure  
32 continuous reduction.
- 33                  **I.**       “Emissions allowable under the permit” means:  
34                  (1)       any state or federally enforceable permit term or condition that establishes an emission  
35 limit (including a work practice standard) requested by the applicant and approved by the department or determined  
36 at issuance or renewal to be required by an applicable requirement; or  
37                  (2)       any federally enforceable emissions cap that the permittee has assumed to avoid an  
38 applicable requirement to which the source would otherwise be subject.
- 39                  **J.**       “Emissions unit” means any part or activity of a stationary source that emits or has the potential  
40 to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term  
41 is not meant to alter or affect the definition of the term “unit” for purposes of Title IV of the federal act.
- 42                  **K.**       “Federally enforceable” means all limitations and conditions which are enforceable by the  
43 administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the  
44 New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under  
45 regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.
- 46                  **L.**       “Final permit” means the version of an operating permit issued by the department that has met all  
47 review requirements of 20.2.70.400 NMAC - 20.2.70.499 NMAC.
- 48                  **M.**       “Fugitive emissions” are those emissions which could not reasonably pass through a stack,  
49 chimney, vent, or other functionally-equivalent opening.
- 50                  **N.**       “General permit” means an operating permit that meets the requirements of 20.2.70.303 NMAC.
- 51                  **O.**       “Greenhouse gas” for the purpose of this Part is defined as the aggregate group of the following  
52 six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.
- 53                  **P.**       “Hazardous air pollutant” means an air contaminant that has been classified as a hazardous air  
54 pollutant pursuant to the federal act.
- 55                  **Q.**       “Insignificant activities” means those activities which have been listed by the department and  
56 approved by the administrator as insignificant on the basis of size, emissions or production rate.

## Attachment 2

1           **R. “Major source”** means any stationary source (or any group of stationary sources that are located  
2 on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all  
3 of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit  
4 code), as described in the standard industrial classification manual, 1987, and that is described in Paragraphs (1), (2)  
5 or (3) [below] of Subsection R of 20.2.70.7 NMAC.

6           **(1)** A major source under Section 112 of the federal act, which is defined as the following.

7           **(a)** For pollutants other than radionuclides, any stationary source or group of  
8 stationary sources located within a contiguous area and under common control that emits or has the potential to emit,  
9 in the aggregate, 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section  
10 112 (b) of the federal act, 25 or more tons per year of any combination of such hazardous air pollutants (including  
11 any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator), or such  
12 lesser quantity as the administrator may establish by rule. Notwithstanding the preceding sentence, hazardous  
13 emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous  
14 emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from  
15 other similar units, whether or not such units are in a contiguous area or under common control, to determine  
16 whether such units or stations are major sources.

17           **(b)** For radionuclides, “major source” shall have the meaning specified by the  
18 administrator by rule.

19           **(2)** A major stationary source of air pollutants that directly emits or has the potential to emit,  
20 100 or more tons per year of any air pollutant subject to regulation (including any major source of fugitive emissions  
21 of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source  
22 shall not be considered in determining whether it is a major stationary source for the purposes of [this] Paragraph (2)  
23 of Subsection R of 20.2.70.7 NMAC, unless the source belongs to one of the following categories of stationary  
24 sources:

- 25           **(a)** coal cleaning plants (with thermal dryers);
- 26           **(b)** kraft pulp mills;
- 27           **(c)** portland cement plants;
- 28           **(d)** primary zinc smelters;
- 29           **(e)** iron and steel mills;
- 30           **(f)** primary aluminum ore reduction plants;
- 31           **(g)** primary copper smelters;
- 32           **(h)** municipal incinerators capable of charging more than 250 tons of refuse per day;
- 33           **(i)** hydrofluoric, sulfuric, or nitric acid plants;
- 34           **(j)** petroleum refineries;
- 35           **(k)** lime plants;
- 36           **(l)** phosphate rock processing plants;
- 37           **(m)** coke oven batteries;
- 38           **(n)** sulfur recovery plants;
- 39           **(o)** carbon black plants (furnace process);
- 40           **(p)** primary lead smelters;
- 41           **(q)** fuel conversion plant;
- 42           **(r)** sintering plants;
- 43           **(s)** secondary metal production plants;
- 44           **(t)** chemical process plants;
- 45           **(u)** fossil-fuel boilers (or combination thereof) totaling more than 250 million  
46 British thermal units per hour heat input;
- 47           **(v)** petroleum storage and transfer units with a total storage capacity exceeding  
48 300,000 barrels;
- 49           **(w)** taconite ore processing plants;
- 50           **(x)** glass fiber processing plants;
- 51           **(y)** charcoal production plants;
- 52           **(z)** fossil fuel-fired steam electric plants of more than 250 million British thermal  
53 units per hour heat input;
- 54           **(aa)** any other stationary source category, which as of August 7, 1980, is being  
55 regulated under Section 111 or 112 of the federal act.
- 56           **(3)** A major stationary source as defined in Part D of Title I of the federal act, including:

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1 (a) for ozone non-attainment areas, sources with the potential to emit 100 tons or  
2 more per year of volatile organic compounds or nitrogen oxides in areas classified as “marginal” or “moderate,” 50  
3 tons or more per year in areas classified as “serious,” 25 tons or more per year in areas classified as “severe,” and 10  
4 tons or more per year in areas classified as “extreme”; except that the references in [this Paragraph] Subparagraph  
5 (a) of Paragraph (3) of Subsection R of 20.2.70.7 NMAC to 100, 50, 25, and 10 tons per year of nitrogen oxides  
6 shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or  
7 (2) of the federal act, that requirements under Section 182(f) of the federal act do not apply;

8 (b) for ozone transport regions established pursuant to Section 184 of the federal  
9 act, sources with the potential to emit 50 tons or more per year of volatile organic compounds;

10 (c) for carbon monoxide non-attainment areas (1) that are classified as “serious,”  
11 and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules  
12 issued by the administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide; and

13 (d) for particulate matter (PM10) non-attainment areas classified as “serious,”  
14 sources with the potential to emit 70 tons or more per year of PM10.

15 S. “Operating permit” or “permit” (unless the context suggests otherwise) means any permit or  
16 group of permits covering a source that is issued, renewed, modified or revised pursuant to this Part.

17 T. “Operator” means the person or persons responsible for the overall operation of a facility.

18 U. “Owner” means the person or persons who own a facility or part of a facility.

19 V. “Part” means an air quality control regulation under Title 20, Chapter 2 of the New Mexico  
20 Administrative Code, unless otherwise noted; as adopted or amended by the board.

21 W. “Part 70 source” means any source subject to the permitting requirements of this Part, as  
22 provided in 20.2.70.200 NMAC - 20.2.70.299 NMAC.

23 X. “Permit modification” means a revision to an operating permit that meets the requirements of  
24 significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in  
25 20.2.70.404 NMAC.

26 Y. “Permittee” means the owner, operator or responsible official at a permitted Part 70 source, as  
27 identified in any permit application or modification.

28 Z. “Portable source” means any plant that is mounted on any chassis or skids and which can be  
29 moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or  
30 other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor,  
31 slab, or structure, including bedrock, that must be removed prior to the application of a lifting or pulling force for the  
32 purpose of transporting the unit. Portable sources may include sand and gravel plants, rock crushers, asphalt plants  
33 and concrete batch plants which meet this criteria.

34 AA. “Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant  
35 under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit  
36 an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or  
37 amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally  
38 enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

39 AB. “Proposed permit” means the version of a permit that the department proposes to issue and  
40 forwards to the administrator for review in compliance with 20.2.70.402 NMAC.

41 AC. “Regulated air pollutant” means the following:

42 (1) nitrogen oxides~~[, total suspended particulate matter,]~~ or any volatile organic compounds;

43 (2) any pollutant for which a national ambient air quality standard has been promulgated;

44 (3) any pollutant that is subject to any standard promulgated under Section 111 of the federal  
45 act;

46 (4) any class I or II substance subject to any standard promulgated under or established by  
47 Title VI of the federal act;

48 (5) any pollutant subject to a standard promulgated under Section 112 or any other  
49 requirements established under Section 112 of the federal act, including Sections 112(g), (j), and (r), including the  
50 following;

51 (a) any pollutant subject to requirements under Section 112(j) of the federal act; if  
52 the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act,  
53 any pollutant for which a subject source would be a major shall be considered to be regulated on the date 18 months  
54 after the applicable date established pursuant to Section 112(e) of the federal act; and

55 (b) any pollutant for which the requirements of Section 112(g)(2) of the federal act  
56 have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement; or

1 (6) any other pollutant subject to regulation as defined in Subsection AL of ~~[this section]~~  
2 20.2.70.7 NMAC.

3 **AD. “Renewal”** means the process by which a permit is reissued at the end of its term.

4 **AE. “Responsible official”** means one of the following:

5 (1) for a corporation: a president, secretary, treasurer, or vice-president of the corporation in  
6 charge of a principal business function, or any other person who performs similar policy or decision-making  
7 functions for the corporation, or a duly authorized representative of such person if the representative is responsible  
8 for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to  
9 a permit and either:

10 \_\_\_\_\_ (a) \_\_\_\_\_ the facilities employ more than 250 persons or have gross annual sales or  
11 expenditures exceeding \$25 million (in second quarter 1980 dollars); or

12 \_\_\_\_\_ (b) \_\_\_\_\_ the delegation of authority to such representative is approved in advance by the  
13 department;

14 (2) for a partnership or sole proprietorship: a general partner or the proprietor, respectively;

15 (3) for a municipality, state, federal or other public agency: either a principal executive  
16 officer or ranking elected official; for the purposes of this Part, a principal executive officer of a federal agency  
17 includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of  
18 the agency (e.g., a regional administrator of US EPA); or

19 (4) for an acid rain source: the designated representative (as defined in Section 402(26) of the  
20 federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the  
21 regulations promulgated thereunder are concerned; and for any other purposes under 40 CFR, Part 70.

22 **AF. “Section 502(b)(10) changes”** are changes that contravene an express permit term. Such changes  
23 do not include changes that would violate applicable requirements or contravene permit terms and conditions that  
24 are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

25 **AG. “Shutdown”** means the cessation of operation of any air pollution control equipment, process  
26 equipment or process for any purpose.

27 **AH. “Solid waste incineration unit”** means a distinct operating unit of any facility which combusts  
28 any solid waste material from commercial or industrial establishments or the general public (including single and  
29 multiple residences, hotels, and motels). The term “solid waste incineration unit” does not include:

30 (1) incinerators or other units required to have a permit under Section 3005 of the federal  
31 Solid Waste Disposal Act;

32 (2) materials recovery facilities (including primary or secondary smelters) which combust  
33 waste for the primary purpose of recovering metals;

34 (3) qualifying small power production facilities, as defined in Section 3(17)(C) of the Federal  
35 Power Act (16 U.S.C. 796(17)(C)), or qualifying cogeneration facilities, as defined in Section 3(18)(B) of the  
36 Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used  
37 oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying  
38 cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of  
39 useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

40 (4) air curtain incinerators, provided that such incinerators only burn wood wastes, yard  
41 wastes and clean lumber and that such air curtain incinerators comply with opacity limitations established by the  
42 administrator by rule.

43 **AI. “Startup”** means the setting into operation of any air pollution control equipment, process  
44 equipment or process for any purpose.

45 **AJ. “Stationary source”** or **“source”** means any building, structure, facility, or installation, or any  
46 combination thereof that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b)  
47 of the federal act.

48 **AK. “Subsidiary”** means a business concern which is owned or controlled by, or is a partner of, the  
49 applicant or permittee.

50 **AL. “Subject to regulation”** means, for any air pollutant, that the pollutant is subject to either a  
51 provision in the act, or a nationally-applicable regulation codified by the administrator in Subchapter C of 40 CFR  
52 Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control  
53 requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant  
54 released from the regulated activity. Except that:



1 (1) “greenhouse gases” (GHGs) shall not be subject to regulation, unless, as of July 1, 2011,  
2 the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year CO<sub>2</sub>e  
3 equivalent emissions;

4 (2) the term “tons per year CO<sub>2</sub>e equivalent emissions” (CO<sub>2</sub>e) shall represent the  
5 aggregate amount of GHGs emitted by the regulated activity, and shall be computed by multiplying the mass  
6 amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas’s  
7 associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98 - Global Warming  
8 Potentials, and summing the resultant value for each gas; for purposes of ~~[this]~~ Paragraph (2) of Subsection AL of  
9 20.2.70.7 NMAC, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon  
10 dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic  
11 material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste  
12 from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of  
13 industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and  
14 biodegradable organic material);

15 (3) if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in  
16 whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514,  
17 June 3, 2010), the definition “subject to regulation” shall be enforceable by the department only to the extent that it  
18 is enforceable by US EPA.

19 **AM. “Temporary source”** means any plant that is situated in one location for a period of less than one  
20 year, after which it will be dismantled and removed from its current site or relocated to a new site. A temporary  
21 source may be semi-permanent, which means that it does not have to meet the requirements of a portable source.  
22 Temporary sources may include well head compressors which meet this criteria.

23 **AN. “Title I modification”** means any modification under Sections 111 or 112 of the federal act and  
24 any physical change or change in method of operations that is subject to the preconstruction regulations promulgated  
25 under Parts C and D of the federal act.

26 [11/30/95; 20.2.70.7 NMAC - Rn, 20 NMAC 2.70.I.107, 06/14/02; A, 11/07/02; A, 09/06/06; A, 01/01/11; A,  
27 02/06/13]

28  
29 **20.2.70.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:** This Part amends and  
30 supersedes Air Quality Control Regulation (“AQCR”) 770, - Operating Permits, filed November 15, 1993, as  
31 amended (“AQCR 770”). The original effective date of AQCR 770 was December 19, 1994, which was the  
32 effective date of approval, by the administrator, of the New Mexico operating permit program. (See 59 FR 59656,  
33 November 18, 1994).

34 **A.** All references to AQCR 770 in any other rule shall be construed as a reference to this Part.

35 **B.** The amendment and supersession of AQCR 770 shall not affect any administrative or judicial  
36 enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant  
37 to AQCR 770.

38 [11/30/95; 20.2.70.8 NMAC - Rn, 20 NMAC 2.70.106, 06/14/02]

39  
40 **20.2.70.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment  
41 Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [1301 Siler Rd.,  
42 Bldg. B, Santa Fe, NM 87507].

43 [11/30/95; 20.2.70.9 NMAC - Rn, 20 NMAC 2.70.108, 06/14/02; A, 01/01/11]

44  
45 **20.2.70.10 to 20.2.70.199 [RESERVED]**

46  
47 **20.2.70.200 PART 70 SOURCES:** Operating permits must be obtained from the department for the following  
48 sources:

49 **A.** any major source;

50 **B.** any source, including an area source, subject to a standard or other requirement promulgated under  
51 Section 111 -- Standards of Performance for New Stationary Sources, or Section 112 -- Hazardous Air Pollutants, of  
52 the federal act, but not including any source which:

53 (1) is exempted under Subsection B of 20.2.70.202 NMAC; or

54 (2) would be required to obtain a permit solely because it is subject to regulations or  
55 requirements under Section 112(r) of the federal act;

56 **C.** any acid rain source; and

1           **D.** any source in a source category so designated by the administrator, in whole or in part, by  
2 regulation, after notice and comment.  
3 [11/30/95; 20.2.70.200 NMAC - Rn, 20 NMAC 2.70.200, 06/14/02]

4  
5 **20.2.70.201 REQUIREMENT FOR A PERMIT:**

6           **A.** A Part 70 source may operate after the time that it is required to submit a timely and complete  
7 application under this Part only if:

8                   (1) the source is in compliance with an operating permit issued by the department or EPA; or  
9                   (2) a timely permit (including permit renewal) application has been submitted consistent with  
10 20.2.70.300 NMAC; the ability to operate under these circumstances shall cease if the applicant fails to submit by  
11 the deadline specified in writing by the department any additional information identified as being needed to process  
12 the application.

13           **B.** Revocation or termination of a permit by the department terminates the permittee's right to  
14 operate.

15           **C.** The submittal of a complete operating permit application shall not protect any source from any  
16 applicable requirement, including any requirement that the source have a preconstruction permit under Title I of the  
17 federal act or state regulations.

18           **D.** Requirement for permit under 20.2.72 NMAC.

19                   (1) Part 70 sources that have an operating permit and do not have a permit issued under  
20 20.2.72 NMAC or 20.2.74 NMAC shall submit a complete application for a permit under 20.2.72 NMAC within  
21 180 days of September 6, 2006. The department shall consider and may grant reasonable requests for extension of  
22 this deadline on a case-by-case basis.

23                   (2) Part 70 sources that do not have an operating permit or a permit under 20.2.72 NMAC  
24 upon the effective date of ~~[this subsection]~~ 20.2.70.201 NMAC shall submit an application for a permit under  
25 20.2.72 NMAC within 60 days after submittal of an application for an operating permit.

26                   (3) Paragraphs (1) and (2) of ~~[this]~~ Subsection ~~D of 20.2.70.201 NMAC~~ shall not apply to  
27 sources that have demonstrated compliance with both the national and state ambient air quality standards through  
28 dispersion modeling or other method approved by the department and that have requested incorporation of  
29 conditions in their operating permit to ensure compliance with these standards.  
30 [11/30/95; 20.2.70.201 NMAC - Rn, 20 NMAC 2.70.II.201, 06/14/02; A, 9/6/06]

31  
32 **20.2.70.202 SOURCE CATEGORY EXEMPTIONS:**

33           **A.** The following source categories are exempted from the obligation to obtain an operating permit:

34                   (1) all sources and source categories that would be required to obtain a permit solely because  
35 they are subject to 40 CFR Part 60, Subpart AAA -- Standards of Performance for New Residential Wood Heaters;

36                   (2) all sources and source categories that would be required to obtain a permit solely because  
37 they are subject to 40 CFR Part 61, Subpart M -- National Emission Standard for Hazardous Air Pollutants for  
38 Asbestos, Section 61.145, Standard for Demolition and Renovation;

39                   (3) except as required under Sections 20.2.70.500 NMAC - 20.2.70.599 NMAC, any source  
40 that would be required to obtain a permit solely because of emissions of radionuclides; and

41                   (4) any source in a source category exempted by the administrator, by regulation, after notice  
42 and comment.

43           **B.** Non-major sources, including those subject to Sections 111 or 112 of the federal act, are exempt  
44 from the obligation to obtain a Part 70 (20.2.70 NMAC) permit until such time that the administrator completes a  
45 rulemaking that requires such sources to obtain operating permits.

46           **C.** Any source exempted from the requirement to obtain an operating permit may opt to apply for a  
47 permit under this Part.

48           **D.** No permit for a solid waste incineration unit shall be issued by the department if a New Mexico  
49 state agency is responsible, in whole or in part, for the design and construction or operation of the unit. In such  
50 cases, applications shall be made to the administrator. Department review or approval of solid waste incineration  
51 units shall not constitute responsibility for the design, construction, or operation of the unit.  
52 [11/30/95; 20.2.70.202 NMAC - Rn, 20 NMAC 2.70.202, 06/14/02]

53  
54 **20.2.70.203 EXISTING MAJOR SOURCES WHICH ARE NOT REQUIRED TO HAVE A PERMIT**  
55 **UNDER 20.2.72 NMAC (CONSTRUCTION PERMITS):**

1           **A.**       The owner or operator of any major source may reverse or avoid designation as a major source  
2 under this Part by obtaining a permit under 20.2.72 NMAC (Construction Permits) which includes federally  
3 enforceable conditions which restrict the potential to emit of the source to non-major emission rates. Such  
4 conditions may include emissions limitations, process restrictions ~~[and/or]~~ or limitations or both, restrictions on  
5 annual hours of operation, or other conditions which reduce the facility's potential to emit.

6           **B.       [REPEALED]**  
7 [11/30/95; A, 11/19/97; 20.2.70.203 NMAC - Rn, 20 NMAC 2.70.203, 06/14/02]

8  
9 **20.2.70.204       BERNALILLO COUNTY:** For the operation of sources within Bernalillo County, the applicant  
10 shall make such applications to the air pollution control division of the Albuquerque environmental health  
11 department or its successor agency or authority.  
12 [11/30/95; 20.2.70.204 NMAC - Rn, 20 NMAC 2.70.204, 06/14/02]

13  
14 **20.2.70.205       INDIAN TRIBAL JURISDICTION:** The requirements of this Part do not apply to sources  
15 within Indian Tribal jurisdiction. For the operation of sources in that jurisdiction, the applicant should make such  
16 applications to the Tribal Authority or to the administrator, as appropriate.  
17 [11/30/95; 20.2.70.205 NMAC - Rn, 20 NMAC 2.70.205, 06/14/02]

18  
19 **20.2.70.206 to 20.2.70.299 [RESERVED]**

20  
21 **20.2.70.300       PERMIT APPLICATIONS:**

22           **A.**       Duty to apply. For each Part 70 source, the owner or operator shall submit a timely and complete  
23 permit application in accordance with this Part.

24           **B.**       Timely application. A timely application for a source applying for a permit under this Part is:  
25           (1)       for first time applications, one that is submitted within ~~[twelve-]~~ 12[3] months after the  
26 source commences operation as a Part 70 source;  
27           (2)       for purposes of permit renewal, one that is submitted at least ~~[twelve-]~~ 12[3] months prior  
28 to the date of permit expiration;  
29           (3)       for the acid rain portion of permit applications for initial phase II acid rain sources under  
30 Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

31           **C.**       Completeness of application.  
32           (1)       To be deemed complete, an application must provide all information required pursuant to  
33 Subsection D of 20.2.70.300 NMAC, except that applications for permit modifications need supply such information  
34 only if it is related to the proposed change.

35           (2)       If, while processing an application, regardless of whether it has been determined or  
36 deemed to be complete, the department determines that additional information is necessary to evaluate or take final  
37 action on that application, it may request such information in writing and set a reasonable deadline for a response.

38           (3)       Any applicant who fails to submit any relevant facts or who has submitted incorrect  
39 information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or  
40 incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant  
41 shall provide further information as necessary to address any requirements that become applicable to the source after  
42 the date it filed a complete application but prior to release of a draft permit.

43           (4)       The applicant's ability to operate without a permit, as set forth in Paragraph (2) of  
44 Subsection A of 20.2.70.201 NMAC, shall be in effect from the date a timely application is submitted until the final  
45 permit is issued or disapproved, provided that the applicant adequately submits any requested additional information  
46 by the deadline specified by the department.

47           **D.**       Content of application. Any person seeking a permit under this Part shall do so by filing a written  
48 application with the department. The applicant shall submit three ~~[3]~~ copies of the permit application, or more, as  
49 requested by the department. An applicant may not omit information needed to determine the applicability of, or to  
50 impose, any applicable requirement, or to evaluate the fee amount required under 20.2.71 NMAC (operating permit  
51 emission fees). Fugitive emissions shall be included in the permit application in the same manner as stack  
52 emissions, regardless of whether the source category in question is included in the list of sources contained in the  
53 definition of major source. All applications shall meet the following requirements.

54           (1)       Be made on forms furnished by the department, which for the acid rain portions of permit  
55 applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations  
56 promulgated under Title IV of the federal act.

1                   (2) State the company’s name and address (and, if different, plant name and address),  
2 together with the names and addresses of the owner(s), responsible official and the operator of the source, any  
3 subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and  
4 corporate or partnership relationship to other permittees subject to this Part, and the telephone numbers and names  
5 of the owners’ agent(s) and the site contact(s) familiar with plant operations.

6                   (3) State the date of the application.

7                   (4) Include a description of the source’s processes and products (by standard industrial  
8 classification code) including any associated with alternative scenarios identified by the applicant, and a map, such  
9 as the 7.5-minute topographic quadrangle map published by the United States geological survey or the most detailed  
10 map available showing the exact location of the source. The location shall be identified by latitude and longitude or  
11 by Universal Transverse Mercator (UTM) coordinates.

12                   (5) For all emissions of all air pollutants for which the source is major and all emissions of  
13 regulated air pollutants, provide all emissions information, calculations and computations for the source and for each  
14 emissions unit, except for insignificant activities (as defined in 20.2.70.7 NMAC). This shall include:

15                   (a) a process flow sheet of all components of the facility which would be involved  
16 in routine operations and emissions;

17                   (b) identification and description of all emissions points in sufficient detail to  
18 establish the basis for fees and applicability of requirements of the state and federal acts;

19                   (c) emissions rates in tons per year, pounds per hour and in such terms as are  
20 necessary to establish compliance consistent with the applicable standard reference test method;

21                   (d) specific information such as that regarding fuels, fuel use, raw materials, or  
22 production rates, to the extent it is needed to determine or regulate emissions;

23                   (e) identification and full description, including all calculations and the basis for all  
24 control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

25                   (f) the maximum and standard operating schedules of the source, as well as any  
26 work practice standards or limitations on source operation which affect emissions of regulated pollutants;

27                   (g) if requested by the department, an operational plan defining the measures to be  
28 taken to mitigate source emissions during startups, shutdowns and emergencies;

29                   (h) other relevant information as the department may reasonably require or which  
30 are required by any applicable requirements (including information related to stack height limitations developed  
31 pursuant to Section 123 of the federal act); and

32                   (i) for each alternative operating scenario identified by the applicant, all of the  
33 information required in Subparagraphs (a) through (h) [above] of Paragraph (5) of Subsection D of 20.2.70.300  
34 NMAC, as well as additional information determined to be necessary by the department to define such alternative  
35 operating scenarios.

36                   (6) Provide a list of insignificant activities (as defined in 20.2.70.7 NMAC) at the source,  
37 their emissions, to the extent required by the department, and any information necessary to determine applicable  
38 requirements.

39                   (7) Provide a citation and description of all applicable air pollution control requirements,  
40 including:

41                   (a) sufficient information related to the emissions of regulated air pollutants to  
42 verify the requirements that are applicable to the source; and

43                   (b) a description of or reference to any applicable test method for determining  
44 compliance with each applicable requirement.

45                   (8) Provide an explanation of any proposed exemptions from otherwise applicable  
46 requirements.

47                   (9) Provide other specific information that may be necessary to implement and enforce other  
48 requirements of the state or federal acts or to determine the applicability of such requirements, including information  
49 necessary to collect any permit fees owed under 20.2.71 NMAC (operating permit emission fees).

50                   (10) Provide certification of compliance, including all of the following.

51                   (a) A certification, by a responsible official consistent with Subsection E of  
52 20.2.70.300 NMAC, of the source’s compliance status for each applicable requirement. For national ambient air  
53 quality standards, certifications shall be based on the following.

54                   (i) For first time applications, this certification shall be based on modeling  
55 submitted with the application for a permit under 20.2.72 NMAC.

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1 (ii) For permit renewal applications, this certification shall be based on  
2 compliance with the relevant terms and conditions of the current operating permit.

3 (b) A statement of methods used for determining compliance, including a  
4 description of monitoring, recordkeeping, and reporting requirements and test methods.

5 (c) A statement that the source will continue to be in compliance with applicable  
6 requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by  
7 the applicable requirement, meet additional applicable requirements that become effective during the permit term.

8 (d) A schedule for submission of compliance certifications during the permit term,  
9 to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable  
10 requirement or by the department.

11 (e) A statement indicating the source's compliance status with any enhanced  
12 monitoring and compliance certification requirements of the federal act.

13 (11) For sources that are not in compliance with all applicable requirements at the time of  
14 permit application, provide a compliance plan that contains all of the following.

15 (a) A description of the compliance status of the source with respect to all  
16 applicable requirements.

17 (b) A narrative description of how the source will achieve compliance with such  
18 requirements for which it is not in compliance.

19 (c) A schedule of remedial measures, including an enforceable sequence of actions  
20 with milestones, leading to compliance with such applicable requirements. The schedule of compliance shall be at  
21 least as stringent as that contained in any consent decree or administrative order to which the source is subject, and  
22 the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of  
23 compliance. Any such schedule of compliance shall be supplemental to, and shall not prohibit the department from  
24 taking any enforcement action for noncompliance with, the applicable requirements on which it is based.

25 (d) A schedule for submission of certified progress reports no less frequently than  
26 every six ~~(6)~~ months.

27 (e) For the portion of each acid rain source subject to the acid rain provisions of  
28 Title IV of the federal act, the compliance plan content requirements specified in ~~[this]~~ Paragraph (11) of Subsection  
29 D of 20.2.70.300 NMAC, except as specifically superseded by regulations promulgated under Title IV of the  
30 federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain  
31 emissions limitations.

32 E. Certification. Any document, including any application form, report, or compliance certification,  
33 submitted pursuant to this Part shall contain certification by a responsible official of truth, accuracy, and  
34 completeness. This certification and any other certification required under this Part shall state that, based on  
35 information and belief formed after reasonable inquiry, the statements and information in the document are true,  
36 accurate, and complete.

37 [11/30/95; A, 11/14/98; 20.2.70.300 NMAC - Rn, 20 NMAC 2.70.III.300, 06/14/02; A, 9/6/06; A, 01/01/11]

### 38 20.2.70.301 CONFIDENTIAL INFORMATION PROTECTION:

39 A. All confidentiality claims made regarding material submitted to the department under this Part  
40 shall be reviewed under the provisions of the New Mexico Air Quality Control Act Section 74-2-11 NMSA 1978  
41 and the New Mexico Inspection of Public Records Act, Sections 14-2-1 et seq. NMSA 1978.

42 B. In the case where an applicant or permittee has submitted information to the department under a  
43 claim of confidentiality, the department may also require the applicant or permittee to submit a copy of such  
44 information directly to the administrator.

45 C. An operating permit is a public record, and not entitled to protection under Section 114(c) of the  
46 federal act.

47 [11/30/95; 20.2.70.301 NMAC - Rn, 20 NMAC 2.70.301, 06/14/02]

### 48 20.2.70.302 PERMIT CONTENT:

49 A. Permit conditions.

50 (1) The department shall specify conditions upon a permit, including emission limitations  
51 and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the  
52 time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

53 (a) for major sources, include all applicable requirements for all relevant emissions  
54 units in the major source;

1                           **(b)**     for any non-major source subject to 20.2.70.200 NMAC - 20.2.70.299 NMAC,  
2 include all applicable requirements which apply to emissions units that cause the source to be subject to this Part;  
3                           **(c)**     specify and reference the origin of and authority for each term or condition, and  
4 identify any difference in form as compared to the applicable requirement upon which the term or condition is  
5 based;  
6                           **(d)**     include a severability clause to ensure the continued validity of the various  
7 permit requirements in the event of a challenge to any portions of the permit;  
8                           **(e)**     include a provision to ensure that the permittee pays fees to the department  
9 consistent with the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees); and  
10                          **(f)**     for purposes of the permit shield, identify any requirement specifically identified  
11 in the permit application or significant permit modification that the department has determined is not applicable to  
12 the source, and state the basis for any such determination.  
13                          **(2)**     Each permit issued shall, additionally, include provisions stating the following.  
14                           **(a)**     The permittee shall comply with all terms and conditions of the permit. Any  
15 permit noncompliance is grounds for enforcement action. In addition, noncompliance with federally enforceable  
16 permit conditions constitutes a violation of the federal act.  
17                           **(b)**     It shall not be a defense for a permittee in an enforcement action that it would  
18 have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of  
19 the permit.  
20                           **(c)**     The permit may be modified, reopened and revised, revoked and reissued, or  
21 terminated for cause in accordance with 20.2.70.405 NMAC.  
22                           **(d)**     The filing of a request by the permittee for a permit modification, revocation and  
23 reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any  
24 permit condition.  
25                           **(e)**     The permit does not convey any property rights of any sort, or any exclusive  
26 privilege.  
27                           **(f)**     Within the period specified by the department, the permittee shall furnish any  
28 information that the department may request in writing to determine whether cause exists for reopening and revising,  
29 revoking and reissuing, or termination of the permit or to determine compliance with the permit. Upon request, the  
30 permittee shall also furnish to the department copies of records required by the permit to be maintained.  
31                          **(3)**     The terms and conditions for all alternative operating scenarios identified in the  
32 application and approved by the department:  
33                           **(a)**     shall require that the permittee maintain a log at the permitted facility which  
34 documents, contemporaneously with any change from one operating scenario to another, the scenario under which  
35 the facility is operating; and  
36                           **(b)**     shall, for each such alternative scenario, meet all applicable requirements and  
37 the requirements of this Part.  
38                          **(4)**     The department may impose conditions regulating emissions during startup and  
39 shutdown.  
40                          **(5)**     All permit terms and conditions which are required under the federal act or under any of  
41 its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable  
42 by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally  
43 enforceable under the federal act any terms or conditions included in the permit that are not required under the  
44 federal act or under any of its applicable requirements.  
45                          **(6)**     The issuance of a permit, or the filing or approval of a compliance plan, does not relieve  
46 any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act,  
47 the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law  
48 or regulation.  
49                          **(7)**     The department may include part or all of the contents of the application as terms and  
50 conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon  
51 emissions of regulated pollutants for which there are no applicable requirements, unless the source is major for that  
52 pollutant.  
53                          **(8)**     Fugitive emissions from a source shall be included in the operating permit in the same  
54 manner as stack emissions, regardless of whether the source category in question is included in the list of sources  
55 contained in the definition of major source.  
56                          **(9)**     The acid rain portion of operating permits for acid rain sources shall additionally:

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1 (a) state that, where an applicable requirement of the federal act is more stringent  
2 than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be  
3 incorporated into the permit and shall be enforceable by the administrator; and

4 (b) contain a permit condition prohibiting emissions exceeding any allowances that  
5 the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no  
6 permit modification under this Part shall be required for increases in emissions that are authorized by allowances  
7 acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under  
8 any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source;  
9 the permittee may not use allowances as a defense to noncompliance with any other applicable requirement; any  
10 such allowance shall be accounted for according to the procedures established in regulations promulgated under  
11 Title IV of the federal act.

12 B. Permit duration. The department shall issue operating permits for a fixed term of five [~~5~~] years.

13 C. Monitoring.

14 (1) Each permit shall contain all emissions monitoring requirements, and analysis procedures  
15 or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable  
16 requirements, including any procedures and methods promulgated by the administrator.

17 (2) Where the applicable requirement does not require periodic testing or instrumental or  
18 noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall  
19 require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of  
20 the source's compliance with the permit, as reported pursuant to Subsection E of 20.2.70.302 NMAC. Such  
21 monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical  
22 conventions consistent with the applicable requirement.

23 (3) The permit shall also contain specific requirements concerning the use, maintenance, and,  
24 when appropriate, installation of monitoring equipment or methods.

25 D. Recordkeeping.

26 (1) The permit shall require recordkeeping sufficient to assure and verify compliance with  
27 the terms and conditions of the permit, including recordkeeping of:

- 28 (a) the date, place as defined in the permit, and time of sampling or measurements;
- 29 (b) the date(s) analyses were performed;
- 30 (c) the company or entity that performed the analyses;
- 31 (d) the analytical techniques or methods used;
- 32 (e) the results of such analyses; and
- 33 (f) the operating conditions existing at the time of sampling or measurement.

34 (2) Records of all monitoring data and support information shall be retained for a period of at  
35 least five [~~5~~] years from the date of the monitoring sample, measurement, report, or application. Supporting  
36 information includes all calibration and maintenance records and all original strip-chart recordings for continuous  
37 monitoring instrumentation, and copies of all reports required by the permit.

38 E. Reporting. The permit shall require reporting sufficient to assure and verify compliance with the  
39 terms and conditions of the permit and all applicable requirements, including all of the following.

40 (1) Submittal of reports of any required monitoring at least every six [~~6~~] months. The  
41 reports shall be due to the department within [~~forty-five~~] 45] days of the end of the permittee's reporting period.  
42 All instances of deviations from permit requirements, including emergencies, must be clearly identified in such  
43 reports. All required reports must be certified by a responsible official consistent with Subsection E of 20.2.70.300  
44 NMAC.

45 (2) Prompt reporting of all deviations from permit requirements, including those attributable  
46 to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or  
47 preventive measures taken. The report shall be contained in the report submitted in accordance with the timeframe  
48 given in Paragraph (1) of [~~this section~~] Subsection E of 20.2.70.302 NMAC.

49 (3) Submittal of compliance certification reports at least every [~~twelve~~] 12] months (or  
50 more frequently if so specified by an applicable requirement) certifying the source's compliance status with terms  
51 and conditions contained in the permit, including emission limitations, standards, or work practices. The reports  
52 shall be due to the department within [~~thirty~~] 30] days of the end of the permittee's reporting period. Such  
53 compliance certifications shall be submitted to the administrator as well as to the department and shall include:

54 (a) the identification of each term or condition of the permit that is the basis of the  
55 certification;

56 (b) the compliance status of the source;

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1 (c) whether compliance was continuous or intermittent;  
2 (d) the method(s) used for determining the compliance status of the source,  
3 currently and during the reporting period identified in the permit; and  
4 (e) such other facts as the department may require to determine the compliance  
5 status of the source.

6 (4) Such additional provisions as may be specified by the administrator to determine the  
7 compliance status of the source.

8 **F.** Portable and temporary sources. The department may issue permits for portable and temporary  
9 sources which allow such sources to relocate without undergoing a permit modification. Such permits shall not  
10 apply to acid rain sources and shall include conditions to assure that:

11 (1) the source is installed at all locations in a manner conforming with the permit;

12 (2) the source shall comply with all applicable requirements and all other provisions of this  
13 Part at all authorized locations;

14 (3) the owner or operator shall notify the department in writing at least ~~fifteen~~ 15 [3]  
15 calendar days in advance of each change in location;

16 (4) notification shall include a legal description of where the source is to be relocated and  
17 how long it will be located there; and

18 (5) emissions from the source shall not, at any location, result in or contribute to an  
19 exceedance of a national ambient air quality standard or increment or visibility requirement under Part C of Title I of  
20 the federal act; the department may require dispersion modeling to assure compliance at any location.

21 **G.** Compliance. To assure and verify compliance with the terms and conditions of the permit and  
22 with this Part, permits shall also include all the following.

23 (1) Require that, upon presentation of credentials and other documents as may be required by  
24 law, the permittee shall allow authorized representatives of the department to perform the following:

25 (a) enter upon the permittee's premises where a source is located or emission  
26 related activity is conducted, or where records must be kept under the conditions of the permit;

27 (b) have access to and copy any records that must be kept under the conditions of  
28 the permit;

29 (c) inspect any facilities, equipment (including monitoring and air pollution control  
30 equipment), practices, or operations regulated or required under the permit; and

31 (d) sample or monitor any substances or parameters for the purpose of assuring  
32 compliance with the permit or applicable requirements or as otherwise authorized by the federal act.

33 (2) Require that sources required under Paragraph (11) of Subsection D of 20.2.70.300  
34 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more  
35 frequently if specified in the applicable requirement or by the department. Such progress reports shall be consistent  
36 with the schedule of compliance and requirements of Paragraph (11) of Subsection D of 20.2.70.300 NMAC and  
37 shall contain:

38 (a) dates for achieving the activities, milestones, or compliance required in the  
39 schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

40 (b) an explanation of why any dates in the schedule of compliance were not or will  
41 not be met, and any preventive or corrective measures adopted.

42 (3) Include such other provisions as the department may require.

43 **H.** Operational flexibility.

44 (1) Section 502(b)(10) changes.

45 (a) The permittee may make Section 502(b)(10) changes, as defined in 20.2.70.7  
46 NMAC, without applying for a permit modification, if those changes are not Title I modifications and the changes  
47 do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of  
48 emissions or in terms of total emissions).

49 (b) For each such change, the permittee shall provide written notification to the  
50 department and the administrator at least seven ~~(7)~~ days in advance of the proposed changes. Such notification  
51 shall include a brief description of the change within the permitted facility, the date on which the change will occur,  
52 any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

53 (c) The permittee and department shall attach each such notice to their copy of the  
54 relevant permit.

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1 (d) If the written notification and the change qualify under this provision, the  
2 permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If  
3 the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

4 (2) Emissions trading within a facility.

5 (a) The department shall, if an applicant requests it, issue permits that contain terms  
6 and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the  
7 purpose of complying with a federally enforceable emissions cap that is established in the permit in addition to any  
8 applicable requirements. Such terms and conditions shall include all terms and conditions required under  
9 20.2.70.302 NMAC to determine compliance. If applicable requirements apply to the requested emissions trading,  
10 permit conditions shall be issued only to the extent that the applicable requirements provide for trading such  
11 increases and decreases without a case-by-case approval.

12 (b) The applicant shall include in the application proposed replicable procedures  
13 and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include  
14 in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there  
15 are no replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable  
16 requirements.

17 (c) For each such change, the permittee shall provide written notification to the  
18 department and the administrator at least seven ~~(7)~~ days in advance of the proposed changes. Such notification  
19 shall state when the change will occur and shall describe the changes in emissions that will result and how these  
20 increases and decreases in emissions will comply with the terms and conditions of the permit.

21 (d) The permittee and department shall attach each such notice to their copy of the  
22 relevant permit.

23 **I.** Off-permit changes.

24 (1) Permittees are allowed to make, without a permit modification, changes that are not  
25 addressed or prohibited by the operating permit, if:

26 (a) each such change meets all applicable requirements and shall not violate any  
27 existing permit term or condition;

28 (b) such changes are not subject to any requirements under Title IV of the federal  
29 act and are not Title I modifications;

30 (c) such changes are not subject to permit modification procedures under  
31 20.2.70.404 NMAC; and

32 (d) the permittee provides contemporaneous written notice to the department and  
33 US EPA of each such change, except for changes that qualify as insignificant activities. Such written notice shall  
34 describe each such change, including the date, any change in emissions, pollutants emitted and any applicable  
35 requirement that would apply as a result of the change.

36 (2) The permittee shall keep a record describing changes made at the source that result in  
37 emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the  
38 permit, and the emissions resulting from those changes.

39 **J.** Permit shield.

40 (1) Except as provided in this Part, the department shall expressly include in a Part 70  
41 (20.2.70 NMAC) permit a provision stating that compliance with the conditions of the permit shall be deemed  
42 compliance with any applicable requirements as of the date of permit issuance, provided that:

43 (a) such applicable requirements are included and are specifically identified in the  
44 permit; or

45 (b) the department, in acting on the permit application or significant permit  
46 modification, determines in writing that other requirements specifically identified are not applicable to the source,  
47 and the permit includes the determination or a concise summary thereof.

48 (2) A Part 70 (20.2.70 NMAC) permit that does not expressly state that a permit shield exists  
49 for a specific provision shall be presumed not to provide such a shield for that provision.

50 (3) Nothing in this Section or in any Part 70 (20.2.70 NMAC) permit shall alter or affect the  
51 following:

52 (a) the provisions of Section 303 of the federal act - Emergency Powers, including  
53 the authority of the administrator under that Section, or the provisions of the New Mexico Air Quality Control Act,  
54 Section 74-2-10 NMSA 1978;

55 (b) the liability of an owner or operator of a source for any violation of applicable  
56 requirements prior to or at the time of permit issuance;

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1 (c) the applicable requirements of the acid rain program, consistent with Section  
2 408(a) of the federal act; or

3 (d) the ability of US EPA to obtain information from a source pursuant to Section  
4 114 of the federal act, or the department to obtain information subject to the New Mexico Air Quality Control Act,  
5 Section 74-2-13 NMSA 1978.

6 (4) The permit shield shall remain in effect if the permit terms and conditions are extended  
7 past the expiration date of the permit pursuant to Subsection D of 20.2.70.400 NMAC.

8 (5) The permit shield shall extend to terms and conditions that allow emission increases and  
9 decreases as part of emissions trading within a facility pursuant to Paragraph (2) of Subsection H of 20.2.70.302  
10 NMAC, and to all terms and conditions under each operating scenario included pursuant to Paragraph (3) of  
11 Subsection A of 20.2.70.302 NMAC.

12 (6) The permit shield shall not extend to administrative amendments under Subsection A of  
13 20.2.70.404 NMAC, to minor permit modifications under Subsection B of 20.2.70.404 NMAC, to Section  
14 502(b)(10) changes under Paragraph (1) of Subsection H of 20.2.70.302 NMAC, or to permit terms or conditions for  
15 which notice has been given to reopen or revoke all or part under 20.2.70.405 NMAC.

16 [11/30/95; A, 11/14/98; 20.2.70.302 NMAC - Rn, 20 NMAC 2.70.III.302, 06/14/02; A, 9/6/06; A, 08/01/08]

17  
18 **20.2.70.303 GENERAL PERMITS:**

19 **A. Issuance of general permits.**

20 (1) The department may, after notice and opportunity for public participation and US EPA  
21 and affected program review, issue a general permit covering numerous similar sources. Such sources shall be  
22 generally homogenous in terms of operations, processes and emissions, subject to the same or substantially similar  
23 requirements, and not subject to case-by-case standards or requirements.

24 (2) Any general permit shall comply with all requirements applicable to other operating  
25 permits and shall identify criteria by which sources may qualify for the general permit.

26 **B. Authorization to operate under a general permit.**

27 (1) The owner or operator of a Part 70 source which qualifies for a general permit must:

28 (a) apply to the department for coverage under the terms of the general permit; or

29 (b) apply for an operating permit consistent with 20.2.70.300 NMAC.

30 (2) The department may, in the general permit, provide for applications which deviate from  
31 the requirements of Subsection D of 20.2.70.300 NMAC, provided that such applications meet the requirements of  
32 the federal act and include all information necessary to determine qualification for, and to assure compliance with,  
33 the general permit. The department shall review the application for authorization to operate under a general permit  
34 for completeness within ~~[thirty-(30)]~~ days after its receipt of the application.

35 (3) The department shall authorize qualifying sources which apply for coverage under the  
36 general permit to operate under the terms and conditions of the general permit. The department shall take final  
37 action on a general permit authorization request within ~~[ninety-(90)]~~ days of deeming the application complete.

38 (4) The department may grant a request for authorization to operate under a general permit  
39 without repeating the public participation procedures required under 20.2.70.401 NMAC. Such an authorization  
40 shall not be a permitting action for purposes of administrative review under New Mexico Air Quality Control Act  
41 ~~[section 74-2-7.H.NMSA-1978]~~ Subsection H of Section 74-2-7, NMSA 1978. Permitting action for the purposes of  
42 Section 74-2-7 NMSA 1978 shall be the issuance of the general permit.

43 (5) Authorization to operate under a general permit shall not be granted for acid rain sources  
44 unless otherwise provided in regulations promulgated under Title IV of the federal act.

45 (6) The permittee shall be subject to enforcement action for operation without an operating  
46 permit if the source is later determined not to qualify for the conditions and terms of the general permit.

47 [11/30/95; 20.2.70.303 NMAC - Rn, 20 NMAC 2.70.303, 06/14/02]

48  
49 **20.2.70.304 ~~[EMERGENCY PROVISION:~~**

50 ~~————— A. ——— An “emergency” means any situation arising from sudden and reasonably unforeseeable events~~  
51 ~~beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to~~  
52 ~~restore normal operation, and that causes the source to exceed a technology based emission limitation under the~~  
53 ~~permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include~~  
54 ~~noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless~~  
55 ~~or improper operation.~~

~~**B.** An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:~~

- ~~(1) an emergency occurred and that the permittee can identify the cause(s) of the emergency;~~
- ~~(2) the permitted facility was at the time being properly operated;~~
- ~~(3) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and~~
- ~~(4) the permittee submitted notice of the emergency to the department within 2 working days of the time when emission limitations were exceeded due to the emergency; this notice fulfills the requirement of Paragraph (2) of Subsection E of 20.2.70.302 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.~~

~~**C.** In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.~~

~~**D.** This provision is in addition to any emergency or upset provision contained in any applicable requirement.] [RESERVED]~~

[11/30/95; 20.2.70.304 NMAC - Rn, 20 NMAC 2.70.III.304, 06/14/02; A, 9/6/06; A, 08/01/08]

**20.2.70.305 to 20.2.70.399 [RESERVED]**

**20.2.70.400 ACTION ON PERMIT APPLICATIONS:**

**A.** A permit (including permit renewal) or permit modification shall only be issued if all of the following conditions have been met:

- (1) the department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 20.2.70.303 NMAC;
- (2) except for administrative and minor permit modifications, the department has complied with the requirements for public participation procedures under 20.2.70.401 NMAC;
- (3) except for administrative amendments, the department has complied with the requirements for notifying and responding to affected programs under 20.2.70.402 NMAC;
- (4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this Part; and
- (5) the administrator has received a copy of the proposed permit and any notices required under 20.2.70.402 NMAC, and has not objected to issuance of the permit within the time period specified within ~~[that Section]~~ 20.2.70.402 NMAC.

**B.** The department shall, within ~~[sixty-](60)]~~ days after its receipt of an application for a permit or significant permit modification, review such application for completeness. Unless the department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within ~~[sixty-](60)]~~ days of receipt of an application, the application shall be deemed complete. When additional information is requested by the department prior to ruling an application complete, receipt of such information shall be processed as a new application for purposes of ~~[this Section]~~ 20.2.70.400 NMAC. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

**C.** The department shall take final action on each permit application (including a request for permit renewal) within ~~[eighteen-](18)]~~ months after an application is ruled complete by the department, except that:

- (1) for sources in operation on or before December 19, 1994 and which submit to the department timely and complete applications in accordance with 20.2.70.300 NMAC, the department shall take final action on one-third of such applications annually over a period not to exceed three ~~[(3)]~~ years after such effective date;
- (2) any complete permit application containing an early reduction demonstration under Section 112(i)(5) of the federal act shall be acted on within nine ~~[(9)]~~ months of deeming the application complete; and
- (3) the acid rain portion of permits for acid rain sources shall be acted upon in accordance with the deadlines in Title IV of the federal act and the regulations promulgated thereunder.

**D.** If a timely and complete application for a permit renewal is submitted, consistent with 20.2.70.300 NMAC, but the department has failed to issue or disapprove the renewal permit before the end of the term of the

1 previous permit, then the permit shall not expire and all the terms and conditions of the permit shall remain in effect  
2 until the renewal permit has been issued or disapproved.

3 **E.** Permits being renewed are subject to the same procedural requirements, including those for public  
4 participation, affected program and US EPA review, that apply to initial permit issuance.

5 **F.** The department shall state within the draft permit the legal and factual basis for the draft permit  
6 conditions (including references to the applicable statutory or regulatory provisions).

7 **G.** The department shall grant or disapprove the permit based on information contained in the  
8 department's administrative record. The administrative record shall consist of the application, any additional  
9 information submitted by the applicant, any evidence or written comments submitted by interested persons, any  
10 other evidence considered by the department, and, if a public hearing is held, the evidence submitted at the hearing.

11 **H.** If the department grants or disapproves a permit or permit modification, the department shall  
12 notify the applicant by certified mail of the action taken and the reasons therefor. If the department grants a permit  
13 or modification, the department shall mail the permit or modification, including all terms and conditions, to the  
14 applicant by certified mail.

15 **I.** Voluntary discontinuation. Upon request by the permittee, the department shall permanently  
16 discontinue a Part 70 (20.2.70 NMAC) permit. Permit discontinuance terminates the permittee's right to operate the  
17 source under the permit. The department shall confirm the permit discontinuance by certified letter to the permittee.

18 **J.** No permit shall be issued by failure of the department to act on an application or renewal.  
19 [11/30/95; 20.2.70.400 NMAC - Rn, 20 NMAC 2.70.400, 06/14/02]  
20

## 21 **20.2.70.401 PUBLIC PARTICIPATION:**

22 **A.** Proceedings for all permit issuances (except administrative and minor permit modifications,  
23 pursuant to Paragraph (2) of Subsection A of 20.2.70.400 NMAC) [~~(i)~~including renewals~~(j)~~], significant permit  
24 modifications, reopenings, revocations and terminations, and all modifications to the department's list of  
25 insignificant activities, shall include public notice and provide an opportunity for public comment. The department  
26 shall provide [~~thirty-(30)(j)~~] days for public and affected program comment. The department may hold a public  
27 hearing on the draft permit, a proposal to suspend, reopen, revoke or terminate a permit, or for any reason it deems  
28 appropriate, and shall hold such a hearing in the event of significant public interest. The department shall give  
29 notice of any public hearing at least [~~thirty-(30)(j)~~] days in advance of the hearing.

30 **B.** Public notice and notice of public hearing shall be given by publication in a newspaper of general  
31 circulation in the area where the source is located or in a state publication designed to give general public notice, to  
32 persons on a mailing list developed by the department, including those who request in writing to be on the list, and  
33 by other means if necessary to assure adequate notice to the affected public.

34 **C.** The public notice shall identify:

- 35 (1) the affected facility;
- 36 (2) the names and addresses of the applicant or permittee and its owners;
- 37 (3) the name and address of the department;
- 38 (4) the activity or activities involved in the permit action;
- 39 (5) the emissions change(s) involved in any permit modification;
- 40 (6) the name, address and telephone number of a person from whom interested persons may  
41 obtain additional information, including copies of the permit draft, the application, and relevant supporting  
42 materials;
- 43 (7) a brief description of the comment procedures required by the department; and
- 44 (8) as appropriate, a statement of procedures to request a hearing, or the time and place of  
45 any scheduled hearing.

46 **D.** Notice of public hearing shall identify:

- 47 (1) the affected facility;
- 48 (2) the names and addresses of the applicant or permittee and its owners;
- 49 (3) the name and address of the department;
- 50 (4) the activity or activities involved in the permit action;
- 51 (5) the name, address and telephone number of a person from whom interested persons may  
52 obtain additional information;
- 53 (6) a brief description of hearing procedures; and
- 54 (7) the time and place of the scheduled hearing.

55 **E.** Public hearings shall be held in the geographic area likely to be impacted by the source. The time,  
56 date, and place of the hearing shall be determined by the department. The department shall appoint a hearing

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1 officer. A transcript of the hearing shall be made at the request of either the department or the applicant and at the  
2 expense of the person requesting the transcript. At the hearing, all interested persons shall be given a reasonable  
3 chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

4 **F.** The department shall keep a record of the commenters and also of the issues raised during the  
5 public participation process so that the administrator may fulfill his or her obligation under Section 505(b)(2) of the  
6 federal act to determine whether a citizen petition may be granted. Such records shall be available to the public  
7 upon request.

8 **G.** The department shall provide such notice and opportunity for participation by affected programs  
9 as is provided for by 20.2.70.402 NMAC.

10 [11/30/95; 20.2.70.401 NMAC - Rn, 20 NMAC 2.70.401, 06/14/02]

11  
12 **20.2.70.402 REVIEW BY THE ADMINISTRATOR AND AFFECTED PROGRAMS:**

13 **A.** Notification: The department shall not issue an operating permit (including permit renewal or  
14 reissuance), minor permit modification or significant permit modification, until affected programs and the  
15 administrator have had an opportunity to review the proposed permit as required under ~~[this Section]~~ 20.2.70.402  
16 NMAC. Permits for source categories waived by the administrator from this requirement and any permit terms or  
17 conditions which are not required under the federal act or under any of its requirements are not subject to  
18 administrator review or approval.

19 (1) Within ~~[(5)]~~ five days of notification by the department that the application has been  
20 determined complete, the applicant shall provide a copy of the complete permit application (including the  
21 compliance plan and all additional materials submitted to the department) directly to the administrator. The permit  
22 or permit modification shall not be issued without certification to the department of such notification. The  
23 department shall provide to the administrator a copy of each draft permit, each proposed permit, each final operating  
24 permit, and any other relevant information requested by the administrator.

25 (2) The department shall provide notice of each draft permit to any affected program on or  
26 before the time that the department provides this notice to the public under 20.2.70.401 NMAC, except to the extent  
27 that minor permit modification procedures require the timing of the notice to be different.

28 (3) The department shall keep for five ~~[(5)]~~ years such records and submit to the  
29 administrator such information as the administrator may reasonably require to ascertain whether the state program  
30 complies with the requirements of the federal act or related applicable requirements.

31 **B.** Responses to objections:

32 (1) No permit for which an application must be transmitted to the administrator under this  
33 Part shall be issued by the department if the administrator, after determining that issuance of the proposed permit  
34 would not be in compliance with applicable requirements, objects to such issuance in writing within ~~[forty-five~~  
35 ~~[(45)]~~ days of receipt of the proposed permit and all necessary supporting information.

36 (2) If the administrator does not object in writing under Paragraph (1) of Subsection B of  
37 20.2.70.402 NMAC, any person may, within ~~[sixty-(60)]~~ days after the expiration of the administrator's 45-day  
38 review period, petition the administrator to make such objection. Any such petition shall be based only on  
39 objections to the permit that were raised with reasonable specificity during the public comment period provided for  
40 in 20.2.70.401 NMAC, unless the petitioner demonstrates that it was impracticable to raise such objections within  
41 such period, or unless the grounds for such objection arose after such period. If the administrator objects to the  
42 permit as a result of a petition filed under ~~[this]~~ Paragraph (2) of Subsection B of 20.2.70.402 NMAC, the  
43 department shall not issue the permit until the administrator's objection has been resolved, except that a petition for  
44 review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-  
45 day review period and prior to the administrator's objection.

46 (3) The department, as part of the submittal of the proposed permit to the administrator (or as  
47 soon as possible after the submittal for minor permit modification procedures allowed under Subsection B of  
48 20.2.70.404 NMAC), shall notify the administrator and any affected program in writing of any refusal by the  
49 department to accept all recommendations for the proposed permit that the affected program submitted during the  
50 public or affected program review period. The notice shall include the department's reasons for not accepting any  
51 such recommendation. The department is not required to accept recommendations that are not based on federally  
52 enforceable applicable requirements.

53 [11/30/95; 20.2.70.402 NMAC - Rn, 20 NMAC 2.70.402, 06/14/02]

54  
55 **20.2.70.403 PETITIONS FOR REVIEW OF FINAL ACTION:**

56 **A.** Hearing before the board:

1 (1) Any person who participated in a permitting action before the department and who is  
2 adversely affected by such permitting action may file a petition for hearing before the board. For the purposes of  
3 ~~[this Section]~~ 20.2.70.403 NMAC, permitting action shall include the failure of the department to take final action  
4 on an application for a permit (including renewal) or permit modification within the time specified in this Part.

5 (2) The petition shall be made in writing to the board within ~~[thirty-]~~30 days from the date  
6 notice is given of the department's action and shall specify the portions of the permitting action to which the  
7 petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by ~~[this]~~  
8 Paragraph (2) of Subsection A of 20.2.70.403 NMAC, and attach a copy of the permitting action for which review is  
9 sought. Unless a timely request for hearing is made, the decision of the department shall be final. The petition shall  
10 be copied simultaneously to the department upon receipt of the appeal notice. If the petitioner is not the applicant or  
11 permittee, the petitioner shall mail or hand-deliver a copy of the petition to the applicant or permittee. The  
12 department shall certify the administrative record to the board.

13 (3) If a timely request for hearing is made, the board shall hold a hearing within ~~[sixty-]~~60  
14 days of receipt of the petition in accordance with New Mexico Air Quality Control Act Section 74-2-7 NMSA 1978.

15 **B. Judicial review:**

16 (1) Any person who is adversely affected by an administrative action taken by the board  
17 pursuant to Subsection A of 20.2.70.403 NMAC may appeal to the court of appeals in accordance with New Mexico  
18 Air Quality Control Act, Section 74-2-9 NMSA 1978. Petitions for judicial review must be filed no later than ~~[thirty]~~  
19 ~~]~~30 days after the administrative action.

20 (2) The judicial review provided for by 20.2.70.403 NMAC shall be the exclusive means for  
21 obtaining judicial review of the terms and conditions of the permit.

22 [11/30/95; 20.2.70.403 NMAC - Rn, 20 NMAC 2.70.403, 06/14/02; A, 08/01/08]

23  
24 **20.2.70.404 PERMIT MODIFICATIONS:**

25 **A. Administrative permit amendments:**

26 (1) An administrative permit amendment is one that:  
27 (a) corrects typographical errors;  
28 (b) provides for a minor administrative change at the source, such as a change in the  
29 address or phone number of any person identified in the permit;  
30 (c) incorporates a change in the permit solely involving the retiring of an emissions  
31 unit;  
32 (d) requires more frequent monitoring or reporting by the permittee; or  
33 (e) any other type of change which has been determined by the department and the  
34 administrator to be similar to those in ~~[this]~~ Paragraph (1) of Subsection A of 20.2.70.404 NMAC.

35 (2) Changes in ownership or operational control of a source may be made as administrative  
36 amendments provided that:

37 (a) a written agreement, containing a specific date for transfer of permit  
38 responsibility, coverage, and liability between the current and new permittee, has been submitted to the department,  
39 and either the department has determined that no other change in the permit is necessary, or changes deemed  
40 necessary by the department have been made;

41 (b) the new owners have submitted the application information required in  
42 Paragraph (2) of Subsection D of 20.2.70.300 NMAC;

43 (c) no grounds exist for permit termination, as set out in Subparagraphs (b) and (c)  
44 of Paragraph (3) of Subsection A of 20.2.70.405 NMAC; and

45 (d) the permittee has published a public notice of the change in ownership of the  
46 source in a newspaper of general circulation in the area where the source is located.

47 (3) The department may incorporate administrative permit amendments without providing  
48 notice to the public or affected programs, provided that it designates any such permit modifications as administrative  
49 permit amendments and submits a copy of the revised permit to the administrator.

50 (4) The department shall take no more than ~~[sixty-]~~60 days from receipt of a request for  
51 an administrative permit amendment to take final action on such request. The permittee may implement the changes  
52 outlined in Subparagraphs (a) through (d) of Paragraph (1) of Subsection A of 20.2.70.404 NMAC immediately  
53 upon submittal of the request for the administrative amendment. The permittee may implement the changes outlined  
54 in Subparagraph (e) of Paragraph (1) of Subsection A of 20.2.70.404 NMAC or Paragraph (2) of Subsection A of  
55 20.2.70.404 NMAC upon approval of the administrative amendment by the department.

56 **B. Minor permit modifications:**

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1                   **(1)**     Minor permit modification procedures may be used only for those permit modifications  
2 that:  
3                   **(a)**     do not violate any applicable requirement;  
4                   **(b)**     do not involve relaxation of existing monitoring, reporting, or recordkeeping  
5 requirements in the permit;  
6                   **(c)**     do not require or change a case-by-case determination of an emission limitation  
7 or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or  
8 increment analysis;  
9                   **(d)**     do not seek to establish or change a permit term or condition for which there is  
10 no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable  
11 requirement to which the source would otherwise be subject. Such terms and conditions include any federally  
12 enforceable emissions cap assumed to avoid classification as a Title I modification and any alternative emissions  
13 limit approved pursuant to regulations promulgated under Section 112(i)(5) of the federal act;  
14                   **(e)**     are not Title I modifications; and  
15                   **(f)**     are not required by the department to be processed as a significant modification  
16 pursuant to Subsection C of 20.2.70.404 NMAC.  
17                   **(2)**     A permittee shall not submit multiple minor permit modification applications that may  
18 conceal a larger modification that would not be eligible for minor permit modification procedures. The department  
19 may, at its discretion, require that multiple related minor permit modification applications be submitted as a  
20 significant permit modification.  
21                   **(3)**     An application requesting the use of minor permit modification procedures shall meet the  
22 requirements of Subsections C and D of 20.2.70.300 NMAC and shall include:  
23                   **(a)**     a description of the change, the emissions resulting from the change, and any  
24 new applicable requirements that will apply if the change occurs;  
25                   **(b)**     the applicant's suggested draft permit;  
26                   **(c)**     certification by a responsible official, consistent with Subsection E of  
27 20.2.70.300 NMAC, that the proposed modification meets the criteria for use of minor permit modification  
28 procedures and a request that such procedures be used; and  
29                   **(d)**     if the requested permit modification would affect existing compliance plans or  
30 schedules, related progress reports, or certification of compliance requirements, an outline of such effects.  
31                   **(4)**     The department shall, within ~~[thirty-]30[ ]~~ days after its receipt of an application for a  
32 minor permit modification, review such application for completeness. Unless the department determines that an  
33 application is not complete, requests additional information or otherwise notifies the applicant of incompleteness  
34 within ~~[thirty-]30[ ]~~ days of receipt of an application, the application shall be deemed complete. If the application  
35 is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged  
36 incomplete a certified letter shall be sent to the applicant stating what additional information or points of  
37 clarification are necessary to judge the application complete.  
38                   **(5)**     Within five ~~[5]~~ working days of notification by the department that the minor permit  
39 modification application has been determined complete, the applicant shall meet its obligation under Subsection A  
40 of 20.2.70.402 NMAC to notify the administrator of the requested permit modification. The department promptly  
41 shall send any notice required under Paragraph (2) of Subsection A of 20.2.70.402 NMAC and Subsection B of  
42 20.2.70.402 NMAC to the administrator and affected programs.  
43                   **(6)**     The permittee may make the change proposed in its minor permit modification  
44 application immediately after such application is deemed complete. After the permittee makes the change allowed  
45 by the preceding sentence, and until the department takes any of the actions specified in Paragraph (7) of Subsection  
46 B of 20.2.70.404 NMAC below, the permittee must comply with both the applicable requirements governing the  
47 change and the proposed permit terms and conditions. During this time period, the permittee need not comply with  
48 the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit  
49 terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be  
50 enforced against it.  
51                   **(7)**     The department may not issue a final minor permit modification until after the  
52 administrator's 45-day review period of the proposed permit modification or until US EPA has notified the  
53 department that the administrator will not object to issuance of the permit modification, although the department  
54 may approve the permit modification prior to that time. Within ~~[ninety-]90[ ]~~ days of ruling the application  
55 complete under minor permit modification procedures or within ~~[fifteen-]15[ ]~~ days after the end of the  
56 administrator's 45-day review period, whichever is later, the department shall:

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1 (a) issue the permit modification as it was proposed;  
2 (b) disapprove the permit modification application;  
3 (c) determine that the requested modification does not meet the minor permit  
4 modification criteria and should be reviewed under the significant modification procedures; or  
5 (d) revise the draft permit modification and transmit to the administrator the new  
6 proposed permit modification as required by Subsection A of 20.2.70.402 NMAC.

7 C. Significant permit modifications:

8 (1) A significant permit modification is:

9 (a) any revision to an operating permit that does not meet the criteria under the  
10 provisions for administrative permit amendments under Subsection A of 20.2.70.404 NMAC or for minor permit  
11 modifications under Subsection B of 20.2.70.404 NMAC above;

12 (b) any modification that would result in any relaxation in existing monitoring,  
13 reporting or recordkeeping permit terms or conditions;

14 (c) any modification for which action on the application would, in the judgment of  
15 the department, require decisions to be made on significant or complex issues; and

16 (d) changes in ownership which do not meet the criteria of Paragraph (2) of  
17 Subsection A of 20.2.70.404 NMAC.

18 (2) For significant modifications which are not required to undergo preconstruction permit  
19 review and approval, changes to the source which qualify as significant permit modifications shall not be made until  
20 the department has issued the operating permit modification.

21 (3) For significant modifications which have undergone preconstruction permit review and  
22 approval, the permittee shall:

23 (a) before commencing operation, notify the department in writing of any  
24 applicable requirements and operating permit terms and conditions contravened by the modification, emissions units  
25 affected by the change, and allowable emissions increases resulting from the modification; and

26 (b) within ~~twelve (12)~~ months after commencing operation, file a complete  
27 operating permit modification application.

28 (4) Where an existing operating permit would specifically prohibit such change, the  
29 permittee must obtain an operating permit modification before commencing operation or implementing the change.

30 (5) Significant permit modifications shall meet all requirements of this Part for permit  
31 issuance, including those for applications, public participation, review by affected programs and review by the  
32 administrator.

33 (6) The department shall complete review on the majority of significant permit modification  
34 applications within nine ~~(9)~~ months after the department rules the applications complete.

35 D. Modifications to acid rain sources: Administrative permit amendments and permit modifications  
36 for purposes of the acid rain portion of the permit shall be governed by regulations promulgated by the administrator  
37 under Title IV of the federal act.

38 [11/30/95; 20.2.70.404 NMAC - Rn, 20 NMAC 2.70.404, 06/14/02]

39  
40 **20.2.70.405 PERMIT REOPENING, REVOCATION OR TERMINATION:**

41 A. Action by the department:

42 (1) Each permit shall include provisions specifying the conditions under which the permit  
43 will be reopened prior to the expiration of the permit. A permit shall be reopened and revised for any of the  
44 following, and may be revoked and reissued for Subparagraphs (c) or (d) of ~~the following~~ Paragraph (1) of  
45 Subsection A of 20.2.70.405 NMAC:

46 (a) additional applicable requirements under the federal act become applicable to a  
47 major source with a remaining permit term of three ~~(3)~~ or more years. Such a reopening shall be completed not  
48 later than ~~eighteen (18)~~ months after promulgation of the applicable requirement. No such reopening is required  
49 if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original  
50 permit or any of its terms or conditions have been extended past the expiration date of the permit pursuant to  
51 Subsection D of 20.2.70.400 NMAC;

52 (b) additional requirements (including excess emissions requirements) become  
53 applicable to a source under the acid rain program promulgated under Title IV of the federal act. Upon approval by  
54 the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

55 (c) the department or the administrator determines that the permit contains a  
56 material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or



1 (d) the department or the administrator determines that the permit must be revised  
2 or revoked and reissued to assure compliance with the applicable requirements.

3 (2) Proceedings to reopen and revise, or revoke and reissue, a permit shall affect only those  
4 parts of the permit for which cause to reopen or revoke exists. Units for which permit conditions have been revoked  
5 shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.

6 (3) A permit, or an authorization to operate under a general permit, may be terminated when:

7 (a) the permittee fails to meet the requirements of an approved compliance plan;

8 (b) the permittee has been in significant or repetitious non-compliance with the  
9 operating permit terms or conditions;

10 (c) the applicant or permittee has exhibited a history of willful disregard for  
11 environmental laws of any state or Tribal authority, or of the United States;

12 (d) the applicant or permittee has knowingly misrepresented a material fact in any  
13 application, record, report, plan, or other document filed or required to be maintained under the permit;

14 (e) the permittee falsifies, tampers with or renders inaccurate any monitoring device  
15 or method required to be maintained under the permit;

16 (f) the permittee fails to pay fees required under the fee schedule in 20.2.71 NMAC  
17 (Operating Permit Emission Fees); or

18 (g) the administrator has found that cause exists to terminate the permit.

19 (4) The department shall, by certified mail, provide a notice of intent to the permittee at least  
20 ~~thirty-(30)~~ days in advance of the date on which a permit is to be reopened or revoked, or terminated, except that  
21 the department may provide a shorter time period in the case of an emergency. The notice shall state that the  
22 permittee may, within 30 ~~(thirty)~~ days of receipt, submit comments or request a hearing on the proposed permit  
23 action.

24 B. Action by the administrator: Within ~~ninety-(90)~~ days, or longer if the administrator extends  
25 this period, after receipt of written notification that the administrator has found that cause exists to terminate, modify  
26 or revoke and reissue a permit, the department shall forward to the administrator a proposed determination of  
27 termination, modification, or revocation and reissuance, as appropriate. Within ~~ninety-(90)~~ days from receipt of  
28 an administrator objection to a proposed determination, the department shall address and act upon the  
29 administrator's objection.

30 C. Compliance orders: Notwithstanding any action which may be taken by the department or the  
31 administrator under Subsections A and B of 20.2.70.405 NMAC, a compliance order issued pursuant to New  
32 Mexico Air Quality Control Act Section 74-2-12 NMSA 1978 may include a suspension or revocation of any permit  
33 or portion thereof.

34 [11/30/95; 20.2.70.405 NMAC - Rn, 20 NMAC 2.70.405, 06/14/02]

35  
36 **20.2.70.406 CITIZEN SUITS:** Pursuant to Section 304 of the federal act, 42 USC 7604, any person may  
37 commence certain civil actions under the federal act.

38 [11/30/95; 20.2.70.406 NMAC - Rn, 20 NMAC 2.70.406, 06/14/02]

39  
40 **20.2.70.407 VARIANCES:** Pursuant to New Mexico Air Quality Control Act Section 74-2-8 NMSA 1978,  
41 applicants and permittees may seek a variance from the non-federally enforceable provisions of this Part.

42 [11/30/95; 20.2.70.407 NMAC - Rn, 20 NMAC 2.70.407, 06/14/02]

43  
44 **20.2.70.408 ENFORCEMENT:** Notwithstanding any other provision in the New Mexico state  
45 implementation plan approved by the administrator, any credible evidence may be used for the purpose of  
46 establishing whether a person has violated or is in violation of the terms or conditions of a permit issued pursuant to  
47 this Part.

48 A. Information from the use of the following methods is presumptively credible evidence of whether  
49 a violation has occurred at the source:

50 (1) a monitoring or information gathering method approved for the source pursuant to this  
51 Part and incorporated in an operating permit; or

52 (2) compliance methods specified in the New Mexico state implementation plan.

53 B. The following testing, monitoring or information gathering methods are presumptively credible  
54 testing, monitoring or information gathering methods:

55 (1) any federally enforceable monitoring or testing methods, including those in 40 CFR Parts  
56 51, 60, 61 and 75; and

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1                   (2)       other testing, monitoring or information gathering methods that produce information  
2 comparable to that produced by any method under Subsection A of 20.2.70.408 NMAC or Paragraph (1) of  
3 Subsection B of 20.2.70.408 NMAC.  
4 [11/30/95; 20.2.70.408 NMAC - Rn, 20 NMAC 2.70.408, 06/14/02]

5  
6 **20.2.70.409 NMAC to 20.2.70.499 NMAC [RESERVED]**

7  
8 **20.2.70.500 NMAC to 20.2.70.599 NMAC [RESERVED]**

9  
10 **HISTORY OF 20.2.70 NMAC:**

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

13 EIB/AQCR 770, Air Quality Control Regulation 770 - Operating Permits, filed 11/15/93.

14  
15 **History of Repealed Material: [RESERVED]**

16  
17 **Other History:**

18 EIB/AQCR 770, Air Quality Control Regulation 770 - Operating Permits, filed 11/15/93 was **renumbered** into first  
19 version of the New Mexico Administrative Code as 20 NMAC 2.70, Operating Permits, filed 10/30/95;

20 20 NMAC 2.70, Operating Permits, filed 10/30/95 was **renumbered, reformatted and replaced** by 20.2.70  
21 NMAC, Operating Permits, effective 06/14/02.