

NMAC

Transmittal Form



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Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New ☒ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐ (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes ☐ No ☒ Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes ☐ No ☐ Public domain ☐

Specific statutory or other authority authorizing rulemaking:

The Environmental Improvement Act, Sections 74-1-1 to -18 NMSA 1978, including specifically Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to -17 NMSA 1978, including specifically Paragraph (7) of Subsection B of Section 74-2-7 NMSA 1978.

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

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The New Mexico Air Quality Control Act, NMSA 1978 Section 74-2-7(B)(7), requires regulations adopted by the Environmental Improvement Board ("Board") to include a schedule of emissions fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to federal Clean Air Act, which require the owners or operators of sources that are required to obtain Title V operating permits to pay annual fees that are sufficient to cover all reasonable (direct and indirect) costs of state operating permit programs. In accordance with this statutory provision, 20.2.71 NMAC, Operating Permit Emissions Fees, establishes a schedule of emissions fees for sources in New Mexico that are required to obtain an operating permit under 20.2.70 NMAC, Operating Permits.

The current fee schedule established by 20.2.71 NMAC no longer generates sufficient revenue to cover the costs of fully implementing the New Mexico Environment Department's ("Department") Title V Operating Permit Program. Since 20.2.71 NMAC was last amended in December 2008 (effective January 9, 2009), the scope of the Department's Air Quality Program, which includes the Title V Operating Permit Program, has increased significantly due to increased permitting activity, more and increasingly complex regulated facilities, and new federal and state rules, which have resulted in expanded regulatory responsibilities and increased monitoring/reporting requirements. As a result, the Air Quality Bureau and the Air Quality Compliance and Enforcement Section of the Environmental Protection Compliance and Enforcement Bureau, which together implement the Air Quality Program, require increases in staffing and technology to ensure continued administration of the program in accordance with federal requirements for delegated programs, and, more importantly, ongoing maintenance of public health protection.

Therefore, the Board held a public hearing commencing on March 23, 2026, to repeal and replace 20.2.71 NMAC. The Board considered all facts and circumstances and concludes that adoption of revised 20.2.71 NMAC is justified given the character and degree of injury to or interference with health, welfare, visibility, and property; that adoption of revised 20.2.71 NMAC is in the public interest, including the social and economic value of the sources and subjects of air contaminants; and that revised 20.2.71 NMAC is technically practicable and economically reasonable in the methods the rule employs to reduce or eliminate air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

Changes between the published proposed rule and the final rule adopted by the Board were made in response to concerns informally voiced to the Department regarding administrative compliance costs. The Board also heard arguments from parties and members of the public. The Board assigned the weight it deemed appropriate to all testimony and public comments, rejecting all suggested changes to the Department's proposal, except the New Mexico Mining Association's suggestion to add a periodic review requirement similar to the one in 20.2.75.13 NMAC, to ensure the fee schedule in revised 20.2.71 NMAC generates sufficient revenue to cover the costs of fully implementing the Department's Title V Operating Permit Program.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Sandra Ely

Check if authority has been delegated

☐

Title:

Chair, Environmental Improvement Board

Signature: (BLACK ink only OR Digital Signature)

Date signed:

Signed by:
Sandra Ely
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TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 71 OPERATING PERMIT EMISSIONS FEES

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

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

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

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

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

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

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

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

- (1) any New Mexico air quality control regulation;
- (2) any federal standard of performance, emission limitation, or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412; or
- (3) any condition within a construction or operating permit issued by the department.

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

C. "Fee pollutant" means:

- (1) sulfur dioxide, nitrogen dioxide, carbon monoxide, PM10, PM2.5, and volatile organic compounds; and
- (2) any hazardous air pollutant that is subject to any standard promulgated pursuant to Section 112 of the federal act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20.2.71.11 to 20.2.71.108 [RESERVED]

20.2.71.109 [RESERVED]

[20.2.71.109 NMAC - Rp, 20.2.71.109 NMAC, 6/1/2026]

20.2.71.110 FEE REQUIREMENT:

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

B. The annual emissions fee shall be assessed:

- (1) for a major source as defined in 20.2.70 NMAC (Operating Permits), for all emissions units;
- (2) for all other stationary sources, for emissions units which cause the source to be subject to 20.2.70 NMAC; and
- (3) for emissions above annual allowable emission limits for the source categories in Paragraphs (1) and (2) of this Subsection.

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

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

20.2.71.111 FEE DETERMINATION:

A. Annual emissions fee calculation.

- (1) The annual emissions fee shall be calculated by taking the product of the allowable emission rate for each fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC.
- (2) The allowable emission rate which shall be used in the fee calculation for this Subsection is the allowable emission rate which exists on December 31 for each year.
- (3) Allowable emission rates shall be calculated to the tenth of a ton for each emissions unit and then summed to determine the tons per year for the facility. Total facility tons per year quantities shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.
- (4) Emissions from those operations determined to be insignificant activities by the department under 20.2.70 NMAC shall not be included in the fee calculation for this Subsection.
- (5) Fugitive emissions which have an allowable emission rate shall be included in the fee calculation for this Subsection.
- (6) Any quantity of a pollutant which is assessed a fee pursuant to this Subsection because it is a hazardous air pollutant shall not be assessed additional fees.
- (7) A maximum of 3,000 tons per year of any one fee pollutant shall be used in the fee calculation for this Subsection.
- (8) For facilities with allowable emission rates for both PM10 and PM2.5, a fee shall only be assessed pursuant to this Subsection for one of these fee pollutants, and shall be based on whichever has the higher allowable emission rate.

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

B. Source shutdown.

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

- (a) the discontinued operation is accounted for in an allowable emission rate contained within a construction or operating permit issued by the department;
- (b) a construction or operating permit issued by the department has been discontinued or terminated and the source ceased operation; or
- (c) the emissions unit is located at a stationary source which meets the criteria of Paragraph (2) of this Subsection.

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

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

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

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

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

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

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

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

20.2.71.112 EMISSIONS FEE:

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

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

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

D. Beginning in 2028, the fees referenced in this Section shall be changed annually on January 1 by the percentage, if any, of any annual increase in the consumer price index (CPI) in accordance with Section 502(b)(3)(B)(v) of the federal act. In the event there is a decrease or absence of change in the CPI, fees shall remain the same until the next increase in the CPI.

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

20.2.71.113 NOTIFICATION, PAYMENT, LATE FEE AND ENFORCEMENT:

A. Schedule.

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

- (a) the annual emissions fee based on the requirements of this Part which is currently due; and
- (b) a summary of the basis for the required annual emissions fee.

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

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

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

B. Payment.

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

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

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

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

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

(2) the enforcement provisions of the Air Quality Control Act, Section 74-2-12 NMSA 1978, which includes suspension or revocation of any permit.
[20.2.71.113 NMAC - Rp, 20.2.71.113 NMAC, 6/1/2026]

20.2.71.114 ANNUAL REVIEW: The Department shall prepare a review of the operating permit fees and operating permit program costs annually. The review shall include information on the budgets, expenditures, fund balance, and related projections. The review shall be presented to the Board within six months following the end of the fiscal year.

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

HISTORY OF 20.2.71 NMAC:

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

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

History of Repealed Material:

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

Other History:

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

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