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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:

(ALD Use) Recent filing date:

New ☒ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐

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?

Please list attachments or Internet sites if applicable.

Yes ☐ No ☒

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 (6) 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)(6), requires regulations adopted by the Environmental Improvement Board ("Board") to include a schedule of construction permit fees sufficient to cover the reasonable costs of reviewing and acting upon any application for such permit, and implementing and enforcing the terms and conditions of the permit, excluding any court costs or other costs associated with an enforcement action. In accordance with this statutory provision, 20.2.75 NMAC, Construction Permit Fees, establishes a schedule of fees for sources in New Mexico that apply for a construction permit (or apply to register under a general construction permit) under 20.2.72 NMAC, Construction Permits, or file a notice of intent under 20.2.73 NMAC, Notice of Intent and Emissions Inventory Requirements.

The current fee schedule established by 20.2.75 NMAC no longer generates sufficient revenue to cover the costs of fully implementing the New Mexico Environment Department's ("Department") Construction Permit Program. Since 20.2.75 NMAC was last amended in October 2003 (effective December 1, 2003), the scope of the Department's Air Quality Program, which includes the Construction 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 20.2.75 NMAC. The Board considered all facts and circumstances and concludes that adoption of revised 20.2.75 NMAC is justified given the character and degree of injury to or interference with health, welfare, visibility, and property; that adoption of revised 20.2.75 NMAC is in the public interest, including the social and economic value of the sources and subjects of air contaminants; and that revised 20.2.75 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 and Board oversight of fees. 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 to ensure the fee schedule in revised 20.2.75 NMAC generates sufficient revenue to cover the costs of fully implementing the Department's Construction 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 75 CONSTRUCTION PERMIT FEES

20.2.75.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.75.1 NMAC - Rp, 20.2.75.1 NMAC, 6/1/2026]

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

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

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

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

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

20.2.75.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (Definitions) or 20.2.72 NMAC (Construction Permits), as used in this Part, the following definitions apply.
A. "Air toxics review" means the required review of a permit application for the potential emission of an air toxic regulated by 20.2.72.400 NMAC - 20.2.72.499 NMAC. As used in this Part, a level I air toxics review consists of modeling to determine whether one one-hundredth of the occupational exposure limit, as defined in 20.2.72.401 NMAC, is met; a level II air toxics review consists of either a health assessment or best available control technology (BACT) determination, whichever is required by 20.2.72.400 NMAC - 20.2.72.499 NMAC.
B. "Applicable regulations" means, for the purpose of assessing application review fee points, those regulations that are applicable to the source and not the review to determine whether the regulation is applicable. Applicable regulations do not include 20.2.1 NMAC (General Provisions), 20.2.2 NMAC (Definitions), 20.2.3 NMAC (Ambient Air Quality Standards), 20.2.5 NMAC (Source Surveillance), 20.2.7 NMAC (Excess Emissions), 20.2.8 NMAC (Emissions Leaving New Mexico), 20.2.60 NMAC (Open Burning), 20.2.70 NMAC (Operating Permits), 20.2.71 NMAC (Operating Permit Emissions Fees), 20.2.72 NMAC (Construction Permits), 20.2.73 NMAC (Notice Of Intent And Emissions Inventory Requirements), 20.2.74 NMAC (Permits - Prevention Of Significant Deterioration (PSD)), 20.2.75 NMAC (Construction Permit Fees), 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards For Hazardous Air Pollutants), 20.2.79 NMAC (Permits - Nonattainment Areas), 20.2.80 NMAC (Stack Heights), and 20.2.82 NMAC (Maximum Achievable Control Technology Standards For Source Categories Of Hazardous Air Pollutants). All other Title 20, Chapter 2 NMAC parts and all new source performance standards (excluding Subpart A) and national emission standards for hazardous air pollutants/maximum achievable control technology (NESHAP/MACT) (excluding 40 CFR Part 61

Subparts A and M and 40 CFR Part 63 Subpart A) regulations that are applicable to the source shall be counted and shall result in additional points for application review fee purposes, in accordance with the fee schedule in this Part.

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

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

E. "Revision" means any change requested by an applicant to any term or condition of a permit including emission limitations, control technology, operating conditions and monitoring requirements. For the purposes of this Part, revision does not include administrative revision as used in 20.2.72 NMAC.

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

(1) any source which may emit more than 50 tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or 75 tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and

(2) any major source for hazardous air pollutants under 20.2.70 NMAC.

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

[20.2.75.7 NMAC - Rp, 20.2.75.7 NMAC, 6/1/2026]

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

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

B. The amendment and supersession of AQCR 700 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 700.

[20.2.75.8 NMAC - Rp, 20.2.75.8 NMAC, 6/1/2026]

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

[20.2.75.9 NMAC - Rp, 20.2.75.9 NMAC, 6/1/2026]

20.2.75.10 FILING FEE:

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

B. For applications submitted under 20.2.72.221 NMAC, an accelerated review filing fee of \$1,000 shall be submitted in lieu of any other filing fees under this Section. One-half of the accelerated review filing fee shall be applied to the cost of the accelerated review submitted by the qualified outside firm. In the event that:

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

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

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

(4) the applicant withdraws the application for any reason, the accelerated review filing fee shall be forfeited and retained by the department.
[20.2.75.10 NMAC - Rp, 20.2.75.10 NMAC, 6/1/2026]

20.2.75.11 APPLICATION REVIEW FEE AND ANNUAL FEE:

A. The application review fee shall be based on the following point-based fee schedule.

ACTION	# OF POINTS
1. CONSTRUCTION PERMIT/TECHNICAL REVIEW OF EXISTING PERMIT	
Technical Complexity	
1-5 Fee Units	5
6-15 Fee Units	1 point per fee unit
>15 Fee Units	15
Fugitive Emissions Fee Unit	5
Portable Source Relocation (Paragraph (3) of Subsection D of 20.2.72.202 NMAC)	1
Non-Attainment Area (20.2.79 NMAC)	75
Each Modeling Review	30
Air Toxics Review (20.2.72.400 NMAC – 20.2.72.499 NMAC)	
Level I	8
Level II	
Best Available Control Technology (BACT) Analysis	60
Health Assessment	100
Applicable Regulations	
20.2.X NMAC (per each)	3
NSPS (per each)	5
NESHAP/MACT (per each)	5
Case-by-Case MACT (20.2.83 NMAC)	100
PSD netting only (no additional PSD analysis is required)	20
PSD review (including netting) (20.2.74 NMAC)	75
2. OTHER PERMITTING ACTIONS	
Notices of Intent (20.2.73.200 NMAC)	10
General Permit Registrations other than GCP-Oil & Gas (20.2.72.220 NMAC)	10
GCP-Oil & Gas Registrations (20.2.72.220 NMAC)	30
Streamline (each site) (20.2.72.300 NMAC – 20.2.72.399 NMAC)	10

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

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

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

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

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

G. Beginning in 2028, the cost per point and annual fees in Subsections B and F of this Section shall be changed annually on January 1 by the percentage, if any, of any annual increase in the consumer price index (CPI). The adjusted cost per point and annual fees shall be determined by multiplying the current cost per point and annual fees by the increase in the CPI for the most recent calendar year and rounding the result to the nearest dollar. The CPI for any calendar year is the average of the CPI for all urban consumers published by the United States department of labor, as of the close of the 12-month period ending on August 31 of that year. In the event there is a decrease or absence of change in the CPI, the cost per point and annual fees shall not be changed and shall remain the same until the next increase in the CPI.

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

20.2.75.12 INVOICING, PAYMENT, LATE FEE AND ENFORCEMENT:

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

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

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

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

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

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

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

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

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

J. Failure to remit the full annual fee, including any late fees, required by the due date specified in Subsection H 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 per day 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 the suspension or revocation of any permit.

[20.2.75.12 NMAC - Rp, 20.2.75.12 NMAC, 6/1/2026]

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

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

20.2.75.14 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.

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

HISTORY OF 20.2.75 NMAC:

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

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

History of Repealed Material:

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

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