

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

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

No. EIB 25-77 (R)

**New Mexico Environment Department,
*Petitioner.***

FINAL ORDER AND STATEMENT OF REASONS

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed on December 3, 2025, by the New Mexico Environment Department (“Department” or “Petitioner”) for a regulatory change to repeal and replace 20.2.71 NMAC, *Operating Permit Emissions Fees* (“Revised Part 71”), and 20.2.75 NMAC, *Construction Permit Fees* (“Revised Part 75”), to ensure fees are sufficient to cover the reasonable costs of the Air Quality Program, as required by the New Mexico Air Quality Control Act, Sections 74-2-1 to 17, and the federal Clean Air Act, 42 U.S.C. Sections 7401 *et seq.*, and in accordance with the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 to 18.

An evidentiary hybrid hearing was conducted by Board Hearing Officer Felicia Orth on March 23-25, 2026, in Santa Fe, New Mexico, and on a virtual platform, with a quorum of the Board members present throughout. All interested persons had an opportunity to submit data, views, and arguments and to examine witnesses.

Persons and organizations participating as a party in addition to Petitioner included the New Mexico Mining Association (NMMA), the New Mexico Oil and Gas Association (NMOGA), and the Independent Petroleum Association of New Mexico (IPANM), all represented by Dalva

L. Moellenberg, Anthony J. Trujillo, and Serafina I. Seluja; Citizens Caring for the Future, Earthworks, and New Mexico Interfaith Power and Light (Conservation Groups), all represented by Morgan O’Grady of Wester Environmental Law Center; and Bruce Wetherbee with The Candle. Petitioner was represented by Kelsea Sona and Marcus Rael of Robles Rael, and Kelly Villanueva of the Department’s Office of General Counsel. Eduardo Ugarte II of the New Mexico Department of Justice served as Board Counsel, and Pamela Jones and Luis Lopez of the Department’s Office of Public Facilitation provided administrative and technical support.

On April 13, 2026, the Board deliberated and voted to adopt the proposed replacement rules as adjusted, based on the substantial evidence in the record for the reasons set forth below. The new rules in their final form for submission to the State Records Center and Archives are attached as Exhibit A (Revised Part 71) and Exhibit B (Revised Part 75).

I. PROCEDURAL BACKGROUND

A. PETITION

1. Important terms used in the Petition and throughout the rulemaking process include:

- a. “Enforcement and Compliance Division” is a division within the Department whose mission includes protecting public health and the environment by assuring business, industry and federal facility compliance with federal and state rules, permits, and licenses. The Compliance and Enforcement Division develops compliance assurance strategies based on federal and state priorities, as well as other data that shapes more effective ways to improve public health and environmental outcomes for communities.

- b. “Environmental Protection Division” is a division within the Department whose mission includes protecting New Mexico’s inhabitants and our natural beauty through clean and clear air for all to breathe.
- c. “Air Quality Bureau” means the bureau within the Environmental Protection Division that protects the public health of New Mexicans and the natural beauty of the state by preventing the deterioration of air quality.
- d. “Environmental Protection Compliance and Enforcement Bureau” means the bureau within the Compliance and Enforcement Division that ensures federal and state air regulations and laws are followed by evaluating permittee record submissions, conducting inspections, responding to complaints and taking action when compliance lapses are found, which was launched on July 1, 2025.
- e. “Air Quality Program” means both the Air Quality Bureau and Environmental Protection Compliance and Enforcement Bureau.
- f. “Construction Fund” means the Special Revenue Fund in the State of New Mexico in which the Department deposits fee revenue obtained under Part 75.
- g. “Title V Fund” means the Special Revenue Fund in the State of New Mexico in which the Department deposits fee revenue obtained under Part 71.

2. On December 3, 2025, the Department filed its Petition for Regulatory Change to Repeal and Replace 20.2.71 NMAC, *Operating Permit Emissions Fees*, and 20.2.75 NMAC, *Construction Permit Fees* (“Petition”). The Petition also requested that the Board set a hearing on

the Rule, assign a Hearing Officer to oversee the hearing process, and set the filing deadline for notices of intent to present technical testimony and entries of appearance.

3. On December 19, 2025, the Board met during a duly called meeting with a quorum and granted a hearing on the Department’s Petition. See Order Scheduling Hearing, Appointing Hearing Officer and Setting Certain Filing Dates (entered Dec. 23, 2025).

4. The hearing was set to begin at 9 a.m. on March 23, 2026, and continue through March 25, 2026, or as necessary, and to be held in a hybrid format. Id., at ¶¶ 1 and 3.

5. The Board indicated it may make a decision on the proposed regulatory language at the conclusion of the hearing. Id., at ¶ 2.

6. The Board set the filing deadline for notices of intent to present technical testimony and entries of appearance as Friday, February 20, 2026. Id., at ¶ 5.

B. PUBLIC ENGAGEMENT

7. In 2024, the Board held a public hearing on a similar proposal by the Department to increase emissions and permit fees; that petition was denied. The regulated community and public were informed of this matter and participated in public engagement opportunities with the Department, as well as the hearing itself.

8. Following the Board’s prior deliberations on air quality fees last year, the Department decided to prioritize additional technical and financial work before presenting a revised proposal. The Department also focused its efforts on refining the rule language. Until that financial analysis was completed, the Department did not have new or reliable information to present, and any earlier formal public engagement would have been premature and speculative.

9. Informal public engagement is always occurring regardless. The Department works with industry – oil and gas companies, mining and other permittees – all the time and receives feedback during those engagements on applicant and permittee expectations. The Department also

regularly engages with members of the public and eNGOs who present their own feedback on expectations of the Department.

10. The Department hears from industry, asking for how the Department can get tasks done faster – and statements about how the Department needs more staff. Specifically on the fee rules, the Department received feedback directly after the hearing last year from NMOGA. In October 2025, the Department spoke to all NMOGA members at a meeting about how the Department was revising the rule to address concerns raised previously and planning to petition in December 2025 for a hearing.

11. Upon filing the petition, the Department directly reached out to the NMMA and the IPANM – parties to the prior rulemaking effort – with copies of the revised rules and offered to discuss the rules to solicit additional feedback, as they had opposed the Department’s previous rulemaking effort. The Department also provided a copy of the revised rules to NMOGA.

12. The NMMA requested a meeting, and the Department met with NMMA representatives on Tuesday, January 6, 2026, regarding the Department’s fee proposals. The Department provided information regarding the costs fee revenues are required to cover, the newly introduced cap on annual emissions for Title V fee calculations, the reasons related to timing that the Department charges Title V emissions fees based on permitted (*i.e.*, allowable) limits, and assured them that the Department uses Title V revenues only for the Air Quality Program as it relates to Title V facilities as required under law.

13. The Department met with NMOGA representatives on January 15, 2026, regarding the fee proposals. NMOGA representatives informed the Department of current member feedback, including that many members understood the need for a fee increase and that some members did not agree that emitting entities should be “bankrolling program growth.” Another concern voiced

was the removal of Board oversight at Revised Part 75, Section 13. They said they looked forward to the upcoming public virtual information session about the fee proposals and would be making a decision on the fee proposals at their next internal meeting.

14. The Department also heard from the public and eNGOs – from additional rulemakings, responding to complaints about non-compliant facilities and requests for community meetings to explain permit conditions and air quality monitoring results.

15. Since filing the Petition, the Department continued to meet one-on-one with individual stakeholders, upon request.

16. In formal public engagement, the Department held two virtual public engagement meetings on the proposed regulatory changes.

17. On December 8, 2025, the Department provided a link to the public for its fee proposals to allow for submission of public comments directly to the Department.

18. On December 23, 2025, the Department announced the meetings in a bilingual notice, and on January 8, 2026, provided instructions for how to join online or by phone, via the Department’s website, the Department’s public events calendar, and its various listservs. By December 24, 2024, the Department’s independent Office of Public Facilitation provided a link to the public for its fee proposals to allow for submissions of public comments directly to the Board.

19. On January 15, 2026 – before the start of the 30-day legislative session – the Department hosted a virtual public informational meeting from 4 to 6 p.m. to share details about the rules and answer questions. The session was attended by the regulated community, eNGOs concerned about New Mexico air quality; and NMED staff. At the meeting, Department staff provided an overview of the proposed changes to both rules at the meeting, and allowed time for questions from stakeholders and the general public. After the meeting, via email, the Department

received a request for clarification as to whether the 30 points for general construction permits (GCPs) for oil and gas facilities applied to all GCPs related to oil and gas (such as the GCP-6) or whether it was specific to just the GCP-Oil & Gas. The Department answered the question during the next public session.

20. The Department posted its presentation slides and a recording of the January 15, 2026, public informational meeting on the Department's website the next day.

21. On January 22, 2026, the Department hosted a two-hour period of office hours from 6 to 8 p.m. to answer any questions from members of the general public and the regulated community. This allowed an alternative of later hours to accommodate personal and work schedules of participants. Department staff answered the question it had received before the meeting, asking for clarification regarding GCPs. Department staff regularly checked in with persons on the meeting but no additional questions were asked. None of the attendees identified themselves as representing any organization.

22. In addition to accepting feedback on the proposed regulatory changes during the public engagement meetings above, the Department continued to ensure it was able to accept public comments in writing via its online public comment portal at <https://nmed.commentinput.com?id=dM4UeKV73>, and ensured that the public could comment directly to the Board.

23. No party provided the Department prior to the hearing an opportunity to review alternative rule language for Revised Parts 71 and 75, or any analysis of how alternative language would affect the Department's ability to recover the reasonable costs of administering the Air Quality Program – in both administrative feasibility and a manner that ensures recovery of the reasonable costs of program administration.

C. PUBLIC NOTICE

24. The Department and the Board provided all legally required notices for this rulemaking hearing. See NMSA 1978, § 9-7A-12 (“The environmental improvement board shall receive staff support from the department.”).

25. Upon the Board’s decision to grant a hearing, the Department published an advertisement or “notice of rulemaking hearing” in the New Mexico Register to provide public notice of (1) the proposed rules, (2) the dates and times of the hearing, and (3) the procedures for public comment on the proposed rules. The notice of rulemaking hearing was published by the SRCA, at Volume XXXVII, Issue 1, on January 13, 2026, pages 1-5. See NMED Exhibit 35. This notice satisfied the New Mexico Register public notice requirements in the State Rules Act, NMSA 1978, Section 14-4-5.2(A), and 20.1.1.301(A) NMAC.

26. The Department published the notice of rulemaking hearing in newspapers of general circulation throughout New Mexico on January 11, 12, and 13, 2026, specifically in the Albuquerque Journal, Tri-City Record and Carlsbad Current Argus. See NMED Exhibits 32-34. This notice complied with the newspaper public notice requirements in Section 74-1-9(D) of the EIA, Section 74-2-6(C) of the Air Quality Control Act, and 20.1.1.301(A) NMAC.

27. Furthermore, the Department distributed rulemaking information by:

a. Posting the notice of rulemaking hearing on the Department’s Public Notices website at <https://www.env.nm.gov/public-notices/> and its Proposed Air Quality Regulations and Plans website at <https://www.env.nm.gov/air-quality/proposed-regs/>. See NMED Exhibit 37. This notice complied with the public notice requirements in Section 14-4-2(E)(1) of the State Rules Act and 20.1.1.7(N)(1) NMAC.

b. Posting the notice of rulemaking hearing on the New Mexico Sunshine Portal at https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic. See

NMED Exhibit 38. This posting complied with the public notice requirements in Section 14-4-2(E)(2) of the State Rules Act and 20.1.1.7(N)(2) NMAC.

c. Making the notice of rulemaking hearing, petition, statement of reasons, and proposed rules available as paper copies in the agency's district, field, and regional offices. See NMED Exhibit 39. This notice complied with the public notice requirements in Section 14-4-2(E)(3) of the State Rules Act and 20.1.1.7(N)(3) NMAC.

d. Sending notice of rulemaking hearing by e-mail, via GovDelivery, to persons who have made a written request for notice from the Department of announcements addressing the subject of the rulemaking proceeding and who have provided an e-mail address to the Department. See NMED Exhibit 40. This notice complied with the public notice requirements in Section 14-4-2(E)(4) of the State Rules Act, Section 74-1-9(D) of the EIA, and 20.1.1.7(N)(4) NMAC.

e. Sending notice by e-mail to persons who have participated in the rulemaking and who have provided an e-mail address to the Department. See NMED Exhibit 41. This notice complied with the public notice requirements in Section 14-4-2(E)(5) of the State Rules Act and 20.1.1.7(N)(5) NMAC.

f. Providing it to the New Mexico Legislative Council Service for distribution to appropriate interim and standing legislative committees. See NMED Exhibit 43. This notice complied with the public notice requirements in Section 14-4-2(E)(7) of the State Rules Act and 20.1.1.7(N)(7) NMAC.

28. The Department developed and implemented a Public Involvement Plan for the rulemaking process as required by NMED Policy 07-13, Public Participation. See NMED Exhibit 44.

29. The Department distributed rulemaking information in forums maintained by the Board by:

a. Posting the notice of rulemaking hearing in the Board docket, maintained by NMED's independent Office of Public Facilitation, at <https://www.env.nm.gov/opf/docketedmatters/>. See NMED Exhibit 37.

b. Posting the notice of rulemaking hearing on the Board's website at <https://www.env.nm.gov/opf/environmental-improvement-board/>. See NMED Exhibit 37.

c. In collaboration with the Office of Public Facilitation, creating public calendar events related to the scheduled hearing dates and times on the Department's Events Calendar website at <https://www.env.nm.gov/events-calendar/>. See NMED Exhibit 37.

d. Sending written notice by postal mail to persons who have provided a postal address to the Department. See NMED Exhibit 42.

e. These notices complied with the public notice requirements in Section 14-4-2(E)(1) and (6) of the State Rules Act and 20.1.1.7(N)(1) and (6) NMAC.

30. In coordination with the Department's Air Quality Bureau, the Office of Public Facilitation also posted a comment form on the Department's online Public Comment Portal at <https://nmed.commentinput.com/comment/landingPage?lang=EN> for the submission of non-technical, written public comments to the Board in the rulemaking proceeding. The comment form was posted, and commenting opened, on or about December 24, 2026, prior to publication of the notice of rulemaking hearing in the New Mexico Register. Commenting remained open until the close of the record. The Office of Public Facilitation posted all written public comments in the Board docket at <https://www.env.nm.gov/opf/docketedmatters/>.

31. Pursuant to the State-Tribal Collaboration Act, NMSA 1978, Sections 11-18-1 to -5, and the NMED Tribal Communication and Collaboration Policy, available at <https://www.env.nm.gov/wp-content/uploads/2021/09/2020-01-27-NMED-Tribal-Policy-2020-final-signed.pdf>, the Department provided the notice of rulemaking hearing to Tribes, Nations, and Pueblos. See NMED Exhibit 47.

32. Pursuant to the Small Business Regulatory Relief Act, NMSA 1978, Sections 14-4A-5 to 6, the Department provided a copy of the proposed regulatory changes to the Small Business Regulatory Advisory Commission on January 13, 2026. See NMED Exhibit 36.

33. Notice of the hearing was also sent to the New Mexico Land Grant Council. See NMED Exhibit 45.

34. The Department and the Board provided all statutory and regulatory required notices of the hearing to the public.

D. HEARING LOGISTICS

35. The Parties, other than the Department (*i.e.*, the Petitioner), seeking to appear in the hearing filed their entries of appearance on or before February 20, 2026.

36. Parties seeking to present technical testimony, including the Department, filed notices of intent to present such testimony, with their written direct testimony and exhibits, on or before February 20, 2026.

37. Prior to the public rulemaking hearing, parties seeking to present demonstrative exhibits during their testimony, including the Department, filed demonstrative exhibits to support their case.

38. The Board ordered the hearing be conducted in a hybrid format, with both virtual and in-person participation options. See Order Scheduling Hearing, Appointing Hearing Officer and Setting Certain Filing Dates, ¶ 3 (entered Dec. 23, 2025). The hearing was held virtually via

WebEx and in person at the NM State Capitol, Room 309, 490 Old Santa Fe Trail, Santa Fe, NM 87505.

39. The Board held a public rulemaking hearing on March 23 to 25, 2026, to hear the parties' cases and oral public comment.

40. All interested persons were given a reasonable opportunity to submit data, views, or arguments orally, and in writing, and to examine witnesses testifying at the hearing. See NMSA 1978, § 74-2-6(D); see also 20.1.1 NMAC; Sw. Pub. Serv. Co. v. New Mexico Pub. Regul. Comm'n, 2025-NMSC-013, ¶ 48, 572 P.3d 878, 897; and Livingston v. Ewing, 1982-NMSC-110, ¶ 14, 98 N.M. 685, 652 P.2d 235.

41. During the hearing, the Hearing Officer made such orders as were reasonably necessary to preserve decorum and protect the orderly hearing process; took, admitted, or excluded evidence; and allow for the reasonable examination of witnesses. See 20.1.1.107(B) NMAC.

E. PUBLIC RECORD

42. The following exhibits filed into the docket were admitted into the record during the hearing:

- a. NMED Exhibits 1-8 and 10-78;
- b. New Mexico Mining Association's Exhibits 1-8; and
- c. Conservation Groups' Exhibits 1-2.

43. Demonstrative exhibits used by the parties' witnesses are not evidence admitted into the record that the Board relied upon for reasoning to support its decision.

44. Opening and closing statements by counsel are not evidence admitted into the record that the Board relies upon for reasoning to support its decision.

45. During the hearing, the Board heard a significant number of oral public comments in support of the Department's request to update and align air permit fees. The Board also received

robust written public comments in support, including from Kathleen M. Cates, a letter signed by 28 members of the New Mexico Legislature, a letter signed by 16 environmental advocacy organizations, and a letter signed by at least 135 members of the public. There was substantial overlap with the oral public comments provided under oath and the supportive written public comments.

46. During the hearing, the Board received one oral public comment from IPANM opposing the Department's request to update and align air permit fees. The Board also received a written public comment from NMOGA opposing the Department's request to update and align air permit fees.

47. The Board gave the weight it deemed appropriate to the written and oral public comment.

F. DELIBERATIONS

48. After the conclusion of the hearing and close of the record, the Board invited written closing argument from the Parties.

49. A quorum of the Board deliberated on the proposed rules on April 13, 2026.

50. The Board made one change to the Department's proposed Revised Part 71, to include an annual review provision similar to the provision in Part 75.

51. The Board considered all facts and circumstances and concluded Revised Part 71 and Revised Part 75 do not cause injury to or interfere with health, welfare, animal, and plant life, property, and the environment.

52. The Board found Revised Part 71 and Revised Part 75 technically practical, economically reasonable, and in the public interest. The Board concluded the factors specified by Section 74-2-5(F) of the Air Quality Control Act all weighed in favor of adopting Revised Part 71 and Revised Part 75 as proposed by the Department with one change.

II. LEGAL AUTHORITY

A. AUTHORITY OF THE DEPARTMENT AND THE SECRETARY

53. “The NMED is a state agency charged with the administration of environmental laws and the performance of governmental and regulatory functions associated with the environment.” Ram v. New Mexico Dep’t of Env’t, No. CIV 05-1083 JB/WPL, 2006 WL 4079623, at *1 (D.N.M. Dec. 15, 2006) (citing NMSA 1978, § 9-7A-3); NMSA 1978, § 9-7A-3 (“The purpose of the Department of Environment Act is to establish a single department to administer the laws and exercise the functions relating to the environment formerly administered and exercised by the health and environment department.”).

54. The Department and the Secretary serve the people of New Mexico.

55. The Legislature tasked the Department with developing the Rules. NMSA 1978, § 74-2-5.1(H); see NMSA 1978, § 9-7A-6(B)(6) (stating that the secretary of the NMED shall “conduct research and studies that will improve . . . the provision of services to the citizens of the state”).

56. The Department’s mission is to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations. See <https://www.env.nm.gov/>.

57. The Environment Department and its Secretary derive their statutory authority partially from the Department of Environment Act, codified at NMSA 1978, §§ 9-7A-1 through 9-7A-15. The Department of Environment Act establishes the Department as a cabinet-level agency within the executive branch and defines the Secretary’s comprehensive powers and duties over environmental management and consumer protection programs throughout the state.

58. “The NMED is statutorily responsible for environmental management, and is required to maintain, develop, and enforce rules and standards in a variety of areas, including air quality management, as provided in the Air Quality Control Act.” Copar Pumice Co. v. Morris, No. CIV 07-79 JB/ACT, 2007 WL 5685122, at 3 (D.N.M. Sept. 10, 2007); see NMSA 1978, § 74-1-7(A)(4); Espinosa v. Roswell Tower, Inc., 121 N.M. 306, ¶ 9, 910 P.2d 940, 944 (1995) (stating that the NMED is responsible for air quality management and is authorized to exercise all powers reasonable and necessary to accomplish statutory duties).

59. The EIA explicitly authorizes that “[t]he department shall have power to . . . enforce the rules, regulations and orders promulgated by the board and environmental management and consumer protection laws for which the department is responsible by appropriate action in courts of competent jurisdiction[.]” NMSA 1978, §§ 74-1-6(F); see Gonzalez v. Whitaker, 1982-NMCA-050, ¶ 8, 97 N.M. 710, 712, 643 P.2d 274, 276 (confirming authority in connection with an enforcement action); New Mexico v. Gen. Elec. Co., 322 F. Supp. 2d 1237, 1266 (D.N.M. 2004), aff’d in part, dismissed in part, New Mexico v. Gen. Elec. Co., 467 F.3d 1223 (10th Cir. 2006) (citing NMSA 1978, § 74-1-6(E), (F) (Repl.2000)) (“The Environmental Improvement Act specifically provides that NMED serves as the ‘agent of the State in matters of environmental management’ and has the duty to enforce the regulations relating to environmental management.”).

60. New Mexico Courts have long recognized the dual authority of the Department to administer and enforce environmental regulations identified in EIA, Section 74-1-7, pursuant to Sections 74-1-6(A), 74-1-6(F), and 74-1-7. See e.g., State ex rel. Norvell v. Arizona Pub. Serv. Co., 1973-NMSC-051, ¶ 16, 85 N.M. 165, 168, 510 P.2d 98, 101 (citing enforcement authority in prior version of EIA); Gonzalez v. Whitaker, 1982-NMCA-050, ¶ 10, 97 N.M. 710, 713, 643 P.2d 274, 277 (“The [Board] may promulgate regulations and standards in [specific] . . . areas . . . [and]

Section 74-1-7 A imposes on [the Department] the responsibility to ‘maintain, develop and enforce regulations and standards’ in the same areas.”); Env’t Imp. Div. of New Mexico Health & Env’t Dep’t v. Aguayo, 1983-NMSC-027, ¶ 11, 99 N.M. 497, 499, 660 P.2d 587, 589 (“Sections 74–1–6(A) and (E) [now (F)] specifically provide that EID shall have the power to ‘sue and be sued’, and shall have the power to ‘enforce the rules, regulations and orders . . .’ promulgated by the New Mexico Environmental Improvement Board.”); Sanders-Reed ex rel. Sanders-Reed v. Martinez, 2015-NMCA-063, ¶ 5, 350 P.3d 1221, 1223 (recognizing authority for the air quality program includes both administering and enforcing under NMSA 1978, Section 74-1-7(A)(4)).

61. The Secretary has a “duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.” See NMSA 1978, § 9-7A-6(A).

62. “To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary, the department or any division of the department[.]” See NMSA 1978, § 9-7A-6(B). Specific powers and duties are enumerated in the Department of Environment Act and elsewhere in the law.

63. Powers and duties set forth in the Department of Environment Act regarding personnel, include:

- (1) . . . exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations; . . .
- (4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties; . . .
- (7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration[.]

NMSA 1978, § 9-7A-6(B).

64. The Secretary is responsible for “prepar[ing] an annual budget of the department[.]” NMSA 1978, § 9-7A-6(B)(8).

65. Regarding enforcement, the Secretary shall “take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts[.]” NMSA 1978, § 9-7A-6(B)(5).

66. The Secretary “shall retain the final decision-making authority and responsibility for the administration of any laws[.]” NMSA 1978, § 9-7A-7.

67. The Secretary is responsible for establishing bureaus to carry out the work of the Department. NMSA 1978, § 9-7A-9; see NMSA 1978, § 9-7A-6(B)(2)-(3).

68. The Air Quality Bureau’s mission is to protect the public health of New Mexicans and the natural beauty of the state by preventing the deterioration of air quality. See www.env.gov/air-quality.

69. The Environmental Protection Compliance and Enforcement Bureau’s mission is to ensure federal and state air regulations and laws are followed by evaluating permittee record submissions, conducting inspections, responding to complaints and taking action when compliance lapses are found. See www.env.gov/air-quality.

70. The Air Quality Bureau resides within the Environmental Protection Division of the Department and Environmental Protection and Compliance Enforcement Bureau resides within the Compliance and Enforcement Division of the Department.

71. In addition to the Department’s authority, the Air Quality Control Act provides for parallel jurisdiction through the City of Albuquerque and Bernalillo County Joint Air Quality

Control Board Ordinances for the parallel bodies of the Albuquerque-Bernalillo Air Quality Control Board and the Albuquerque Environmental Health Department. The Department has jurisdiction over all of New Mexico except for the City of Albuquerque and Bernalillo County and Tribal lands.

72. The Legislature empowered the Department with the following authorities:

A. sue and be sued;

B. make contracts to carry out its delegated duties;

C. enter into agreements with environmental and consumer protection agencies of other states and the federal government pertaining to duties of the department;

...

E. serve as agent of the state in matters of environmental management and consumer protection not expressly delegated by law to another department, commission or political subdivision in which the United States is a party;

F. enforce the rules, regulations and orders promulgated by the board and environmental management and consumer protection laws for which the department is responsible by appropriate action in courts of competent jurisdiction;

* * *

J. have such other powers as may be necessary and appropriate for the exercise of the powers and duties delegated to the department.

NMSA 1978, § 74-1-6.

73. Under State law, the Department is charged specifically with the following duties for air quality:

A. develop facts and make investigations and studies consistent with the Air Quality Control Act and, as required for enforcement of that act, enter at all reasonable times in or upon any private or public property, except private residences, that the department or the local agency has reasonable cause to believe is or will become a source contributing to air pollution and require the production of information relating to emissions that cause or contribute to air pollution. The results of any such investigations shall be reduced to writing if any enforcement action is contemplated, and a copy shall be furnished to the owner or occupants of the

premises before the action is filed;

B. institute legal proceedings to compel compliance with the Air Quality Control Act or any regulation of the environmental improvement board or the local board;

C. encourage and make every reasonable effort to obtain voluntary cooperation by the owner or occupants to preserve, restore or improve air purity;

D. consult with any person proposing to construct, install or otherwise acquire an air contaminant source, device, system or control mechanism concerning the efficiency of the device, system or mechanism or the air pollution problem that may be related to the source, device, system or mechanism; provided that consultation shall not relieve any person from compliance with the Air Quality Control Act, regulations in force pursuant to that act or any other provision of law;

E. establish a small business stationary source technical and environmental compliance assistance program, consistent with the provisions of Section 507 of the federal act;

F. accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, or from any person;

G. classify and record air contaminant sources that, in its judgment, may cause or contribute to air pollution, according to levels and types of emissions and other characteristics that relate to air pollution; provided, classifications may be for application to the entire geographical area of the department's responsibility or the local authority's responsibility or to any designated portion of that area and shall be made with special reference to the effects on health, economic and social factors and physical effects on property[.]

NMSA 1978, § 74-2-5.1.

74. The Secretary's enforcement and inspection authorities are further detailed in Sections 74-2-12 and 74-2-13.

75. The considerations for permitting authorities are set forth in Section 74-2-7.

76. The Air Quality Control Act provides authority for the Department to assess civil penalties: "A person who violates a provision of the Air Quality Control Act or a regulation, permit condition or emergency order adopted or issued pursuant to that act may be assessed a civil penalty not to exceed fifteen thousand dollars (\$15,000) for each day during any portion of which a violation occurs." NMSA 1978, § 74-2-12.1(A); NMSA 1978, § 74-2-12(B); see also NMSA

1978, § 74-1-6(G) (“The department shall have power to . . . collect civil penalties pursuant to law, including reduction or elimination of penalties for violations from persons” in certain circumstances.”). Failing to pay permit fees is a violation for which the Department can assess a civil penalty.

77. Federal law requires that states must have specific remedies for violations of state air quality program requirements, including to restrain conduct by an administrative cease and desist order, and assess and collect civil penalties. 40 C.F.R. § 271.16.

78. Permit fees are not voluntary program participation costs; they are a condition of legally operating a regulated source and specifically conditions in permits. The Department can also assess a late fee for failing to pay permit fees. A late payment charge is a permit-program implementation cost because it compensates the permitting authority for administrative burdens caused by delayed payment (*e.g.*, invoicing, delinquency tracking, follow-up notices, revenue uncertainty, and program cash-flow impacts). See NMSA 1978, § 74-2-7(B)(6)-(7).

79. A late-payment charge assessed on delinquent permit fees constitutes an implementation cost of the permitting program and is distinguishable from a civil penalty or other costs associated with an enforcement action.

80. Lastly, only giving effect to explicit statutory language fails to give effect to the inherent authority the Department and the Secretary hold for administration of the Air Quality Program, which the Legislature has expressly recognized. See NMSA 1978, § 74-1-6(J) (Legislative declaration of inherent authority: “[t]he department shall have power to: . . . have such other powers as may be necessary and appropriate for the exercise of the powers and duties delegated to the department.”); NMSA 1978, § 9-7A-6(B)(5) (“the secretary shall: . . . take administrative action by issuing orders and instructions, not inconsistent with the law, to assure

implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts”); NMSA 1978, § 9-7A-6(A) (“It is [the secretary’s] duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.”).

B. STATUTORY CONSTRUCTION DETERMINES THE LEGISLATIVE REQUIREMENTS FOR THE RULES

81. Statutory construction guides the analysis for the Board’s consideration of the Department’s fee proposals:

When construing a statute, we begin with the plain language, and we assume that the ordinary meaning of the words expresses the legislative purpose. If, however, the plain language of a statute creates an absurd or unreasonable result, we will reject the literal language. Our main goal is to give effect to the legislature’s intent. We ascertain the intent of the legislature by reading all the provisions of a statute together, along with other statutes in *pari materia*. We also consider the history and background of the statute, as we harmonize the language in a manner that facilitates the operation of the statute and the achievement of its goals.

N.M. Mining Assn. v. N.M. Water Quality Control Comm., 2007-NMCA-010, ¶ 12, 141 N.M. 41, 46, 150 P.3d 991, 996 (internal citations and quotations omitted); see High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d 599 (“[W]here several sections of a statute are involved, they must be read together so that all parts are given effect.”).

82. “It is a fundamental rule of construction that when a power is conferred by statute everything necessary to carry out the power and make it effective and complete will be implied.” See Kennecott Copper Corp., Chino Mines Div. v. Emp. Sec. Comm’n, 1967-NMSC-182, ¶ 18, 78 N.M. 398, 402, 432 P.2d 109, 113 (citing Reese v. Dempsey, 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157; State ex rel. Clancy v. Hall, 1917-NMSC-070, 23 N.M. 422, 168 P. 715).

83. When courts in New Mexico analyze the meaning of a statute, they do so by seeking “to determine and give effect to the Legislature’s intent.” Badilla v. Wal-Mart Stores E. Inc., 2015-NMSC-029, ¶ 12, 357 P.3d 936, (cleaned up quotation) (quoting Moongate Water Co. v. City of Las Cruces, 2013-NMSC-018, ¶ 6); see also NMSA 1978, § 12-2-19 (“The text of a statute or rule is the primary, essential source of its meaning”). The Court looks “first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.” Badilla, 2015-NMSC- 029, ¶ 12. Where the language is “clear and unambiguous,” the court will end its inquiry and “refrain from further statutory interpretation.” Id. The court will reject, however, a “mechanical statutory construction when the results would be absurd, unreasonable, or contrary to the spirit of the statute.” State v. Almanzar, 2014-NMSC-001, ¶ 14-15, 316 P.3d 183, 186.

84. If the statutory language is “unclear, ambiguous, or reasonably subject to multiple interpretations,” the court will continue its inquiry. Id. In order to interpret the statute, the court will be “informed by the history, background, and overall structure of the statute, as well as its function within a comprehensive legislative scheme.” Badilla, 2015-NMSC- 029, ¶ 12. If possible, the statute should be “construed . . . to: (1) give effect to [the statute’s] objective and purpose; (2) give effect to its entire text; and (3) avoid an unconstitutional, absurd or unachievable result.” NMSA 1978 § 12-2A-18.

85. “It is the policy of New Mexico courts to determine legislative intent primarily from the legislation itself.” Regents of Univ. of N.M. v. N.M. Fed’n of Teachers, 1998-NMSC-020, ¶ 30, 125 N.M. 401, 962 P.2d 1236. “We do not attempt to divine what legislators read and heard and thought at the time they enacted a particular item of legislation.” Id.

86. The Supreme Court of New Mexico has “decline[d] to read the Legislature’s silence as embracing (implicitly or otherwise) any particular approach[.]” Gila Res. Info. Project v. New Mexico Water Quality Control Comm’n, 2018-NMSC-025, ¶ 66, 417 P.3d 369, 382-83 (citing State ex rel. Barela v. N.M. State Bd. of Educ., 1969-NMSC-038, ¶ 7, 80 N.M. 220, 453 P.2d 583 (“We are not permitted to read into a statute language which is not there. . . .”); Gonzales v. Oil, Chem. & Atomic Workers Int’l Union, 1966-NMSC-211, ¶ 28, 77 N.M. 61, 419 P.2d 257 (“The statute is to be read and given effect as written.”)). The Supreme Court of New Mexico went on to say “[r]ather, we construe that silence as a broad conferral of authority to the Commission allowing it to pursue the policies and regulatory approaches it deemed most wise. Gila Res. Info. Project v. New Mexico Water Quality Control Comm’n, 2018-NMSC-025, ¶ 66, 417 P.3d 369, 382-83.

C. AGENCY DEFERENCE

87. “It is a settled principle of administrative law that the Legislature, when ‘through express delegation or the introduction of an interpretive gap in the statutory structure, has delegated policy-making authority to an administrative agency, the extent of judicial review of the agency’s policy determinations is limited.’” Gila Res. Info. Project v. New Mexico Water Quality Control Comm’n, 2018-NMSC-025, ¶ 34, 417 P.3d 369, 377 (quoting Pauley v. BethEnergy Mines, Inc., 501 U.S. 680, 696 (1991)).

88. “When [the Legislature] drafts a statute that does not resolve a policy dispute that later arises under the statute, some institution must resolve that dispute. The institution called upon to perform this task is not engaged in statutory interpretation. It is engaged in statutory construction. It is not resolving an issue of ‘law.’ Rather, it is resolving an issue of policy.” Gila Res. Info. Project, 2018-NMSC-025, ¶ 34 (quoting I Richard J. Pierce, Jr., *Administrative Law Treatise* § 3.3, at 160-61 (5th ed. 2010)).

89. The New Mexico Supreme Court affirmed that its “case law acknowledges and embraces these principles[.]” Gila Res. Info. Project, 2018-NMSC-025, ¶ 34.

90. In New Mexico, “[t]he special knowledge and experience of state agencies should be accorded deference.” Stokes v. Morgan, 1984-NMSC-032, ¶ 24, 101 N.M. 195, 202, 680 P.2d 335, 342. “[I]n resolving ambiguities in the statute or regulations which an agency is charged with administering, the Court generally will defer to the agency’s interpretation if it implicates agency expertise.” Atlixco Coal. v. Maggiore, 1998-NMCA-134, ¶ 30, 125 N.M. 786, 965 P.2d 370; see Chavez v. Mountain States Constructors, 1996-NMSC-070, ¶ 21, 122 N.M. 579, 929 P.2d 971.

91. “We defer to an agency interpretation if the relevant statute is unclear or ambiguous, and will confer a heightened degree of deference to . . . special agency expertise or the determination of fundamental policies within the scope of the agency’s statutory function.” Gila Res. Info. Project, 2018-NMSC-025, ¶ 35 (internal quotation marks and citation omitted); see Doña Ana Mut. Domestic Water Consumers Ass’n v. N.M. Pub. Regulation Comm’n, 2006-NMSC-032, ¶ 10, 140 N.M. 6, 139 P.3d 166; Rio Grande Chapter of Sierra Club v. N.M. Mining Comm’n, 2003-NMSC-005, ¶ 25, 133 N.M. 97, 61 P.3d 806; Sw. Pub. Serv. Co. v. New Mexico Pub. Regul. Comm’n, 2025-NMSC-013, ¶ 19, 572 P.3d 878, 889; Morningstar Water Users Ass’n v. N.M. Pub. Util. Comm’n, 120 N.M. 579, 583, 904 P.2d 28, 32 (1995); Stokes v. Morgan, 101 N.M. 195, 202, 680 P.2d 335, 342 (1984).

92. “[T]he statute’s meaning is ambiguous and ‘reasonably subject to multiple interpretations.’” Sw. Pub. Serv. Co. v. New Mexico Pub. Regul. Comm’n, 2025-NMSC-013, ¶ 20, 572 P.3d 878, 889 (quoting State v. Almanzar, 2014-NMSC-001, ¶ 15, 316 P.3d 183). “Agencies and individuals with important responsibilities must have considerable discretion in order to fulfill their responsibilities effectively. Inadequate discretion probably is a larger problem

than excessive discretion.” Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm’n, 2003-NMSC-005, ¶ 25, 133 N.M. 97, 106, 61 P.3d 806, 815 (citing Old Abe Co. v. New Mexico Min. Comm’n, 1995-NMCA-134, ¶121 N.M. 83, 92-93, 908 P.2d 776, 786-87) (quoting Kenneth C. Davis & Richard J. Pierce, Jr., Administrative Law Treatise § 17.1, at 98 (3rd ed.1994))).

93. “[I]t is presumed, in the context of administrative matters that the Legislature has delegated to an agency, that the Legislature intended for the agency to interpret legislative language, in a reasonable manner consistent with legislative intent, in order to develop the necessary policy to respond to unaddressed or unforeseen issues.” City of Albuquerque v. N.M. Pub. Regulation Comm’n, 2003-NMSC-028, ¶ 16, 134 N.M. 472, 79 P.3d 297.

94. State agencies have considerable discretion in interpreting and implementing their enabling statutes, rules, and regulations. See New Mexico Mining Ass’n v. New Mexico Mining Comm’n, 1996-NMCA-098, ¶ 10, 122 N.M. 332, 924 P.2d 741.

95. State agencies may implement rules imposing fees associated with the defraying the costs of the implementation of an act, even without express authorization from the act, so long as the agency has not abused its discretion. See N.M. Mining Ass’n v. N.M. Mining Comm’n, 1996-NMCA-098, ¶ 10.

96. The court “will overturn the administrative construction ‘of statutes by appropriate agencies only if they are clearly incorrect.” Gila Res. Info. Project, 2018-NMSC-025, ¶ 35 (quoting Bokum Res. Corp. v. New Mexico Water Quality Control Comm’n, 1979-NMSC-090, ¶ 58, 93 N.M. 546, 603 P.2d 285); Sw. Pub. Serv. Co. v. New Mexico Pub. Regul. Comm’n, 2025-NMSC-013, ¶ 19, 572 P.3d 878, 889 (“The court ‘will defer to ‘the agency’s interpretation of a law [unless it] is unreasonable or unlawful.’”) (quoting Morningstar Water Users Ass’n v. N.M. Pub. Util. Comm’n, 1995-NMSC-062, ¶ 11, 120 N.M. 579, 583, 904 P.2d 28, 32 (1995)).

97. Here, the agency charged with administering the applicable statutory framework is the New Mexico Environment Department, and the governing statutes include the federal Clean Air Act, the Air Quality Control Act, and the Environmental Improvement Act. In carrying out its statutory mandate to implement and maintain the Air Quality Program, the Department develops proposed rules and provides for the Board's consideration technical analysis for factual support and legal analysis regarding their consistency with governing law. The Department's interpretation of the statutes it is charged with administering is entitled to due consideration and weight, particularly where that interpretation reflects its experience implementing the permitting, compliance and enforcement programs at issue.

III. STATE IMPLEMENTATION PLAN

98. The "[D]epartment is the state air pollution control agency for all purposes under federal legislation relating to air pollution[.]" NMSA 1978, § 74-2-5.2; see also NMSA 1978, § 9-7A-11(B) (designation of state agencies for administration of a federal environmental program).

99. Pursuant to the Air Quality Control Act the State of New Mexico administers the Air Quality Program.

100. With this role comes the responsibility to "take all action necessary to secure for the state and its political subdivisions the benefits of federal legislation[.]" NMSA 1978, § 74-2-5.2; NMSA 1978, § 9-7A-11(A) ("The department is authorized to cooperate with the federal government in the administration of environmental programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, regulations, rules or orders. The Secretary may enter into agreements with agencies of the federal government to implement environmental programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.").

101. Section 110 of the Clean Air Act (“Clean Air Act”), codified at 42 U.S.C. § 7410, establishes the framework for State Implementation Plans (“SIPs”) to achieve, maintain, and enforce National Ambient Air Quality Standards (“NAAQS”) for both primary (health-based) and secondary (welfare-based) pollutants. Section 110 requires states to develop and submit plans to the U.S. Environmental Protection Agency (“EPA”) Administrator, ensuring that air quality control measures are implemented across designated regions. It emphasizes cooperative federalism, where states take primary responsibility for air pollution control, subject to EPA oversight and approval.

102. Therefore, Section 110(a)(2)(E) of the Clean Air Act requires New Mexico to demonstrate adequate personnel, funding, and legal authority to implement SIP requirements, with delegation from EPA contingent on “resource adequacy.” The Department’s requested fee increases are directly tied to maintaining sufficient staffing and operational resources to fulfill SIP obligations and meet federal performance expectations.

IV. BUDGETING PROCESS AND SPECIAL REVENUE FUNDS

103. The New Mexico Constitution requires the State to maintain a balanced budget and prohibits deficit spending. See N.M. Const. art. IV, § 30; art. V, § 9.

104. The Department is a “state agency.” NMSA 1978, §§ 6-3-1 and 9; see Copar Pumice Co. v. Morris, No. CIV 07-79 JB/ACT, 2007 WL 5685122, at 3 (D.N.M. Sept. 10, 2007).

105. The Secretary is responsible for “prepar[ing] an annual budget of the department[.]” NMSA 1978, § 9-7A-6(B)(8)

106. The New Mexico budgeting process is multi-staged, involving agency requests, separate executive and legislative recommendations, legislative appropriations, and executive approval, with continuous oversight from both executive and legislative branches. See NMSA

1978, §§ 6-3-1 to 25.

107. Over 120 distinct sources, including 24 different Special Revenue Funds, support Department activities, leading to a restrictive budget with limited flexibility for fund usage across programs. The Department may not shift funds between programs or from other sources to cover deficits in specific programs due to legal requirements attached to each funding stream.

108. Air Quality Program fees are deposited in the Title V Special Revenue Fund (Part 71 fees) and the Construction Special Revenue Fund (Part 75 fees). The structure of the funds is akin to an enterprise fund. The special revenue funds are strictly regulated such that they cannot be diverted to other agency or state uses, ensuring compliance with the state budgeting and accountability process.

109. The Air Quality Program is almost exclusively funded by the two Special Revenue Funds, with their capacity strictly limited by fee schedules last increased 17-23 years ago.

110. Because the fee schedules have not been updated, the Special Revenue Funds have not kept pace with Air Quality Program needs, preventing programmatic growth and responsiveness.

111. The Department's repeated attempts to supplement funding for the Air Quality Program with General Fund appropriations have been rejected. The Legislature identified the Board as the correct authority to address fee inadequacy.

112. The state agency budget cycle typically begins one year before the fiscal period for which funding will be used. See NMSA 1978, §§ 6-3-18 to -19. As a result, the Department must develop budget requests before actual revenues for the upcoming fiscal year have been collected (relevant for the primarily fee revenue budget of the Air Quality Program).

113. In preparing a budget request, the Department typically begins with its prior year budget and adjusts that amount to account for anticipated revenue, personnel costs, programmatic needs, or changes in federal funding. The adjusted amount becomes the Department's requested budget, which must align with its strategic plan and performance measures. See NMSA 1978, § 6-3A-6. The Department publishes annual strategic plans and quarterly performance reports and tracks approximately 30 performance measures reported to the Legislative Finance Committee.

114. The Department submits budget requests to both the Department of Finance and Administration and the Legislative Finance Committee by September 1 before the next fiscal year. The Department of Finance and Administration and the Legislative Finance Committee independently review agency submissions and develop separate executive and legislative budget recommendations based on projected available revenue and factoring in economic conditions.

a. The Department of Finance and Administration is an executive agency charged with ensuring the effective, efficient, and accountable management of state government finances and operations so that public resources are used responsibly. See NMSA 1978, §§ 9-6-1 to -21 (2024). The Department of Finance and Administration separately reviews the agency budget submissions and provides a recommendation to the governor's office through an internal process, after which the governor releases the executive recommendation

b. The Legislative Finance Committee provides objective fiscal and program analysis to help the New Mexico Legislature responsibly allocate public resources and oversee state government. See NMSA 1978, §§ 2-5-1 to -7 (1999). The Legislative Finance Committee evaluates budget submissions and holds public committee hearings from September to December on the agency budgets before it releases the legislative recommendation.

115. During the legislative session, financial committees of the House and Senate hold public hearings where the Department appears and explain its budget and funding needs for the upcoming fiscal year.

116. The Legislature negotiates and ultimately establishes the Department's appropriations through the General Appropriation Act (House Bill 2), which is subject to the Governor's line-item veto authority prior to enactment. See N.M. Const. art. IV, §§ 16, 22.

117. After the signing of House Bill 2, the Department of Finance and Administration works with the Department to ensure the Department receives the allocated appropriations by program and budget categories, which allows the Department to have an approved operating budget. Throughout the fiscal year, the Department of Finance and Administration and Legislative Finance Committee monitor agency expenditures and budget compliance, as well as address budget adjustments if operational conditions or revenues materially change (subject to statutory procedures and the availability of funds). See NMSA 1978, §§ 6-3-23 to -25.

118. The testimony establishes that the Department's Special Revenue Funds are legally restricted, program-specific accounts that may be used only for the costs of the program that generates the revenue, and cannot be commingled or repurposed. The prior legislative sweep was an anomaly that was subsequently corrected. The governing restrictions on how Special Revenue Funds monies may be used, tied to statutory and federal program requirements, and oversight by DFA and the Legislative Finance Committee, prevent such sweeps from recurring, as those limitations constrain both the Department and the Legislature from diverting funds away from their dedicated program uses.

V. BASIS FOR REGULATORY CHANGE

119. The Air Quality Control Act requires that the Air Quality Program receive fee revenues from pollutant-emitting facilities within the Department's jurisdiction that seek a permit from the Department. The revenues must cover all direct and indirect costs of implementing the permitting program and enforcing the terms and conditions of those permits.

120. The permitting program, within the overall Air Quality Program, includes both major and minor sources of pollutants.

a. Major sources are the largest pollutant emitters; these sources (and a few other types of sources) are required to obtain from the Department an "operating" or "Title V" permit after receiving a permit or permits to construct.

b. Title V sources pay emissions fees under Part 71.

c. All other pollutant-emitting facilities, per the EPA, are considered minor sources. Certain minor sources are required to obtain a "construction" or "minor NSR" permit; some minor sources may submit a "registration" under a general construction permit of the Department. Some minor sources, because of a lower level of emissions, submit a "Notice of Intent." All of these minor sources require analysis from the Permitting staff prior to the Department's approval for construction of the facility. Most minor sources are also subject to state and federal regulations.

d. Minor sources pay construction fees (misnamed as permit fees) under the fee schedules set out in Part 75.

121. The fees obtained by the Department under Parts 71 and 75 support the Air Quality Program.

122. Since the reasonable costs of the Air Quality Program exceed the revenue allowed by the current Parts 71 and 75, revisions will align fees with the work involved with the Air Quality Program.

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

A. TITLE V FEES

124. Title V permits are permits that allow existing sources that emit over 100 tons per year of lead, carbon monoxide, sulfur dioxide, oxides of nitrogen, volatile organic compounds or two sizes of particulate matter or 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the federal Clean Air Act, 25 or more tons per year of any combination of such hazardous air pollutants to continue to operate after construction. Facilities of this size must apply for an operating permit within one year of beginning to operate at Title V thresholds. A Title V permit incorporates all requirements for the facility from all permits. Requirements for the Title V program are found at 20.2.70 NMAC, *Operating Permits*.

125. Regarding Title V fees, Section 74-2-7 of the Air Quality Control Act provides "Regulations adopted by the environmental improvement board or the local board shall include at least the following provisions: . . . a schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the federal act[.]" NMSA 1978, § 74-2-7(B)(7).

126. The federal Clean Air Act mandates the EPA shall have regulations requiring state law to provide for a permitted source to pay fees:

sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements . . . including the reasonable costs of

- (i) reviewing and acting upon any application for such a permit,
- (ii) if the owner or operator receives a permit for such source, whether before or after November 15, 1990, implementing and enforcing the terms and

conditions of any such permit (not including any court costs or other costs associated with any enforcement action),
(iii) emissions and ambient monitoring,
(iv) preparing generally applicable regulations, or guidance,
(v) modeling, analyses, and demonstrations, and
(vi) preparing inventories and tracking emissions.

42 U.S.C. § 7661a(b).

127. The federal Clean Air Act implementing regulations provide:

(1) The State program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:

(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(iv) Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(v) Emissions and ambient monitoring;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions; and

(viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act in determining and meeting their obligations under this part.

40 C.F.R. § 70.9(B).

128. The New Mexico Legislature, in Section 74-2-7(B)(7) of the Air Quality Control Act, directed the Board to establish a schedule of emissions fees that satisfy the federal requirements of federal Clean Air Act, Section 502(b)(3) and 40 C.F.R. Section 70.9, including supporting direct and indirect operating permit program costs.

129. This is separate from the agency budgeting processes the Department conducts annually per fiscal year.

130. The Clean Air Act implementing regulations provide: “The State program’s fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of paragraph (b)(1) or (b)(2) of this section. Nothing in the provisions of this section shall require a permitting authority to calculate fees on any particular basis or in the same manner for all part 70 sources, all classes or categories of part 70 sources, or all regulated air pollutants, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section.” 40 CFR § 70.9(b)(3) (emphasis added).

131. During the prior rulemaking, there was discussion regarding EPA’s presumptive minimum for Title V fees. Under the Clean Air Act, states may use the “Presumptive Minimum Fee” approach to determine if fees are adequate and to charge fees to sources. However, this is not required by the EPA and other fee approaches may be approved into the program. Since New Mexico’s Air Quality Program does not utilize this approach, it is not applicable here.

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

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

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

B. CONSTRUCTION FEES

135. Before a person can construct a new facility or modify an existing facility, a construction permit or registration is required. Thresholds for various sizes of facilities to get permits or registrations are covered in 20.20.72 NMAC, *Construction Permits*; 20.2.73 NMAC, *Notice of Intent and Emissions Inventory Requirements*; 20.2.74 NMAC, *Permits – Prevention of Significant Deterioration (PSD)*; 20.2.79 NMAC, *Permits – Nonattainment Areas*; and 20.2.84 NMAC, *Acid Rain Permits*. Construction permit requirements are as follows:

a. Facilities with potential emission rates over 10 tons per year of any regulated pollutant or 1 ton per year of lead require a Notice of Intent registration prior to construction.

b. Facilities with a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard require a permit under 20.2.72 NMAC or a registration for a GCP under the same regulation.

c. Any stationary source listed in 20.2.74.501 NMAC that emits, or has the potential to emit, emissions equal to or greater than one hundred (100) tons per year of any regulated new source review pollutant and any stationary source not listed in table 1 (20.2.74.501 NMAC) and that emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant is required to obtain a construction permit under 20.2.74 NMAC.

136. Regarding construction permit fees, Section 110 of the Federal Clean Air Act requires states to develop and submit to the EPA a SIP to ensure that state air quality meets the NAAQS. 42 USC § 7410. Each SIP must include a program to regulate “the modification and construction of any stationary source” as necessary to assure attainment and maintenance of the NAAQS. 42 U.S.C. § 7410(a)(2)(C); see also 40 CFR Part 51. SIPs must demonstrate that the state has adequate personnel, funding, and authority to carry out the permitting and enforcement functions to for permits issued to sources that fall below major-source thresholds. See 42 U.S.C. § 7410(a)(2)(E).

137. Accordingly, the same cost-recovery logic embedded in Title V (*i.e.*, requiring fees sufficient to cover the reasonable costs of reviewing applications and implementing and enforcing permit conditions) applies to SIP-approved minor source permitting programs as a matter of federal program adequacy.

138. Section 74-2-7 of the Air Quality Control Act provides:

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

(6) a schedule of construction permit fees sufficient to cover the reasonable costs of:

(a) reviewing and acting upon any application for such permit; and

(b) implementing and enforcing the terms and conditions of the permit, excluding any court costs or other costs associated with an enforcement action[.]

See NMSA 1978, § 74-2-7(B).

139. Section 74-2-15 of the Air Quality Control Act states:

Money in the state air quality permit fund is appropriated to the department for the purpose of paying the reasonable costs of:

(1) reviewing and acting upon any application for a permit;

(2) if the owner or operator receives a permit, implementing and enforcing the terms and conditions of such permit not including any court costs or other costs associated with any enforcement action;

- (3) emissions and ambient monitoring;
- (4) preparing generally applicable regulations or guidance;
- (5) modeling, analysis and demonstrations; and
- (6) preparing inventories and tracking emissions.

NMSA 1978, § 74-2-15(B).

140. Construction permits are designed to ensure that the construction of new or modified emission sources does not impede attainment or continued compliance with the NAAQS or undermine applicable control strategies in designated nonattainment areas. In practice, construction permits frequently include enforceable emission limits that keep a source below thresholds that would otherwise trigger Prevention of Significant Deterioration (PSD) or nonattainment construction permit requirements. For these reasons, each state's construction program is incorporated into, and implemented through, its SIP.

141. Although federal regulations establish baseline criteria for construction permit programs, states retain discretion to tailor program requirements to local conditions. See e.g., <https://www.epa.gov/nsr/minor-nsr-basic-information>.

142. The New Mexico Legislature, in Section 74-2-7(B)(6) of the Air Quality Control Act, directed the Board to establish a schedule of fees sufficient to cover the reasonable costs of the Department's Construction Program, including reviewing and acting upon construction permit applications and implementing and enforcing the terms and conditions of such permits. Like operating permit program costs, construction permit program costs include labor costs, program-related expenses, and indirect "general administration" costs. This is separate from the agency budgeting processes the Department conducts annually per fiscal year.

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

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

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

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

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

C. NOTICE OF INTENT

148. The process for Notices of Intent is set forth in 20.2.72 NMAC (“Part 73”) while the fees are set forth in Part 75 along with other minor sources fees.

149. Part 73 ultimately derives from AQCR 703. AQCR 703 was first adopted in 1972 and was originally titled *Registration of Air Contaminant Sources*. It required any source emitting more than 1 ton per year of any air contaminant to obtain a registration certificate from the Department:

By February 1, 1973, the owner or operator of any commercial or industrial stationary source which emits more than two thousand pounds of any air contaminant per year must obtain a registration certificate for the source from the department. The owner or operator of any commercial or industrial stationary source constructed after August 1, 1972, must obtain a registration certificate for the source from the department within one-hundred eighty days after the initial startup date of the source.

AQCR 703.

150. The original AQCR 703 was repealed in 1987. In a letter to EPA requesting its removal from New Mexico's SIP, the State explained that the regulation was adopted "as a mechanism to establish and maintain an emissions inventory for so-called criteria pollutants" and had proven to be less than useful in that regard. He further stated that the Department was not abandoning the concept of an emissions inventory for criteria pollutants and would revisit the issue as resources allowed. EPA responded that "the Clean Air Act and 40 CFR 51.211 require that SIPs provide for obtaining information from sources on the nature and amounts of their emissions, a function we believe was served in part by AQCR 703. In the absence of an explanation on how the [Department] will obtain the information necessary to keep New Mexico's emissions inventory current, it is doubtful EPA will be able to approve this revision request."

151. In response to EPA's concerns, the Department developed new AQCR 703.1 titled *Notice of Intent and Emissions Inventory Requirements*, which the Board adopted in 1990 and was later renumbered 20 NMAC 2.73, and then 20.2.73 NMAC (Part 73).

152. Preparing inventories and tracking emissions is a core component of the Air Quality Program expressly contemplated in the fee provisions. NMSA 1978, § 74-2-7(B)(6) ("implementing and enforcing the terms and conditions of the [construction] permit"); NMSA 1978, § 74-2-7(B)(7); 42 U.S.C. § 7661a(3)(A)(vi); NMSA 1978, § 74-2-15(B)(6). Additionally, the authority stems from Section 74-2-5(D)(5) of the Air Quality Control Act, which provides that

rules adopted by the Board “require notice to the department or the local agency of the intent to introduce or permit the introduction of an air contaminant into the air within the geographical area of the environmental improvement board’s jurisdiction or the local board’s jurisdiction.” The authority also comes from Section 74-2-5(D)(6) of the Air Quality Control Act, which authorizes rules requiring any person emitting any air contaminant to “establish and maintain records of the nature and amount of emissions” and to submit reports regarding the same.

153. Smaller minor sources emitting between 10 and 25 tons per year of any regulated pollutant must submit an application and documentation with calculations as part of the Notice of Intent requirements outlined in Part 73 for Department approval to construct a regulated pollutant-emitting facility. Similar to the GCP program, these smaller minor sources do not require an individualized permit to construct and operate in New Mexico but they do require the Department to conduct permitting analysis, database entry and maintenance, and ongoing planning, administrative and compliance efforts. Implementation and enforcement are ongoing activities. Each year the Department must conduct inspections, approve test protocols, observe tests, evaluate test results, and review reports required by the state regulations and New Source Performance Standards (NSPS). It is difficult to assess these costs on a permit-by-permit basis because the amount of work to implement and enforce terms and conditions can vary from application to application. By collecting an annual fee from each permitted source, the Department is able to smooth out revenue fluctuations resulting from changes in the number of applications received during a particular year. For instance, if the number of applications received in a particular year drops sharply, the annual fees collected would ensure that the Department continues to have sufficient revenues to implement and enforce already-issued Notices of Intent.

154. The Notice of Intent process is itself a component of the State’s federally required minor source permitting program, designed to ensure that construction or modification of sources that do not require a traditional permit are nevertheless reviewed for compliance with applicable air quality requirements prior to commencing operation. Because Notices of Intent are a required element of administering the minor source permitting program – not a discretionary or informal administrative step – the Department’s costs associated with Notices of Intent are costs properly recoverable through permit fee schedules.

155. In 2023, the last year minor sources were required to submit emissions data to the Department, “notice of intent” (NOI) emissions represented 30% of the total emissions for the entire state.

156. Therefore, minor sources of regulated pollutants obtaining Notices of Intent must pay fees. Part 71’s inclusion of an annual fee in addition to the application fee charged to sources who file a Notice of Intent is a fair and rational interpretation of the fee setting requirements.

D. AIR QUALITY BUREAU

157. The Air Quality Bureau is responsible for a broad set of activities, including permitting (major, minor, GCP, NOI), monitoring (20 network monitors), regulatory development (multiple rulemakings per year), emissions inventory, modeling, and extensive compliance and enforcement collaboration with the Environmental Protection and Compliance and Enforcement Bureau.

158. Regulatory and programmatic growth since the last fee increases includes new federal/state rules, expansion of ozone and greenhouse gas regulatory programs, increased permitting, and the need for modern data systems and outreach. The testimony of Conservation Groups’ witness Dr. Tammy Thomson supports that the technical complexity of air quality monitoring and modeling has increased substantially due to advances in atmospheric science,

expanded regulatory responsibilities, and the integration of new technologies such as satellite-based measurements.

159. Dr. Thomson explained how air quality models are essential tools used by the Department to evaluate permit applications, assess cumulative impacts, and design enforceable permit conditions. She explained how monitoring data is required to develop, evaluate, and validate air quality models, and that without such data, the Department cannot reliably assess compliance or ensure that permit conditions are protective of public health

160. The Department documented specific staffing shortages in all programmatic sections of the Air Quality Bureau. External contractors are currently required to meet core program needs in permitting, modeling, stack testing, and database maintenance. Planned and justified increases in staffing and technology will address identified backlogs, compliance gaps, and stakeholder service goals.

161. The Department's staffing projections are not uncertain or variable. See Transcript, Vol. II, at p. 665, ll. 8-18 and p. 666, ll. 5-12. The math is simple: 35 positions for AQB plus 46 positions for EPCEB equals 81 total for the Program. This is consistent with testimony: Bureau Chief Hollenberg testified that AQB needs 52 staff to fully meet obligations, but the Department planned for 35 in its five-year projections because it can hire about 8 or 9 per year and handle that change; Bureau Chief Bret Anderson testified that EPCEB requires approximately 46 full-time equivalents over the next five years to return to full Compliance Monitoring Strategy coverage and stabilize the program; and Planning Section Chief Brian Polgar testified that the Department developed a plan mapping out the creation of 81 new positions in the AQB and EPCEB over the five-year period. See generally, NMED Exhibits 71, 72, and 7 (covering the five-year cost and revenue projections, the Original Position Creation Plan, and the Modified Position Creation Plan).

E. COMPLIANCE AND ENFORCEMENT

162. The compliance and enforcement work of the Environmental Protection and Compliance and Enforcement Bureau is essential to effective implementation of Air Quality Program and federal performance expectations.

163. The Environmental Protection and Compliance and Enforcement Bureau scope has increased in the last five years due to more regulated facilities, greater complexity, and expanded monitoring/reporting requirements.

164. Dr. Thomson testified that air quality monitoring is a foundational component of the Program and is necessary to identify pollution sources, evaluate compliance with permits, and support enforcement actions.

165. Inspections have not kept pace with program growth: the Compliance Monitoring Strategy list of Title V and synthetic minor sources increased from 823 (2021) to 1,308 (2025), while actual inspections dropped from 53 (2021) to 28 (2025). Facilities overdue for inspection increased 280%, from 65 (2021) to 247 (2025). Each inspection requiring an average of 277 staff hours.

166. To meet Compliance Monitoring Strategy obligations and reduce backlogs, the Environmental Protection and Compliance and Enforcement Bureau plans to add 22 full-time employees (FTEs) for inspections over five years (16 inspectors, 2 drone specialists, 4 supervisors), moving from generalist inspections to function-specific roles.

167. In reporting, stack testing activity has increased tenfold (from 110 notifications in 2021 to 1,512 in 2025), with emission units subject to source testing requirements increasing from 474 (2021) to 6,706 (2025). Compliance reporting staffing increases are planned: 12 additional FTEs, including a dedicated source testing group and positions for managing increased reporting, analysis, and regulatory data.

168. Enforcement activity has doubled in case count from 37 (2021) to 74 (2025), with 138 active cases in 2026 (103 under tolling agreements due to workload backlogs). The Department has indicated seven new FTEs are necessary for enforcement.

169. Adopting Revised Parts 71 and 75 ensures the Department has the ability to add positions and upgrade technology to address and prevent extended backlogs, address current slow enforcement resolution, and allow New Mexico to meet federal expectations for delegated programs, while maintaining public health protection.

F. COSTS AND REVENUE – THE NUMBERS

170. The Department's fiscal analysis underpins the fee alignments in Revised Parts 71 and 75. The fiscal analysis concludes the current fee structure is insufficient to cover the reasonable direct and indirect costs of administration as required by state and federal law.

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

172. Iterative calculation tools/spreadsheets allowed the Department to test various hypothetical fee amounts and structures to ensure the selected structure would cover costs in the target years. The Department explicitly recognized uncertainties in both cost and revenue projections, including inflation, staffing realities, regulatory or market changes, and uncertain future emissions or permit counts. Fee amounts and methodology provide a prudent margin and will be reevaluated annually. The process and methodology for setting these fees were designed to be transparent, data-driven, and adaptable as new financial information becomes available.

a. Title V funds must cover the direct and indirect costs of all parts of the Program related to Title V facilities. Since Title V facilities represent 20% of the State's emissions, the projections used this amount to conservatively project Title V contributions to overall Program costs. Department witness Brian Polgar explained the projections split is based on emissions data from 2023 where Title V sources represent "19.7% of total reported emissions." NMED Exhibit 65, at pp. 14-15, ll. 19-20, 1 and n. 11 ("For purposes of the analysis, the Department projects \$8,000,000 per year for contract spending and the projected cost is split 20% to the Title V Fund and 80% to the Construction Fund as an assumption based on emissions data.") (emphasis added); *id.*, at p. 16, ll. 18-19 (position costs are generally based on the 80% and 20% split); *id.*, at p. 31, n. 14 ("The 2023 emissions inventory, submitted in early 2024, is the most recent year for which the Department has minor source emissions data. Major (*i.e.*, Title V) sources submit emissions inventory data yearly, but currently the Department only collects minor source emissions data (along with major source emissions data) every three years."); Transcript, Vol. II, 370:14 – 371:10 (Brian Polgar oral summary).

173. Revenues for the Title V Fund derive solely from emissions fees from major stationary sources, which are billed annually based on allowable emissions per permit. The Construction Fund receives revenue from application review fees and annual fees for construction permit holders who do not pay Title V emissions fees, with fee structures based on application complexity (points system) and annual assessments. FY25 saw the first significant decrease in both Title V Fund and Construction Fund balances in at least five years, with a \$922,604 reduction in the Title V Fund and a \$1,049,470 reduction (adjusted) in the Construction Fund.

174. In FY25, the Department collected \$3,997,332 in emissions fees for the Title V Fund and \$11,516,752 in 20.2.75 NMAC fees for the Construction Fund.

175. FY25 total expenditure from both funds was \$17,446,599, covering salary/benefits, other operating costs, and contracts, with 108 of 121 positions funded by air quality fees and an additional four financial staff and three attorneys also funded from these sources. Despite nominally large fund balances, the Department requires these reserves due to the timing of revenue receipt versus year-round expenditures and to satisfy DFA and LFC scrutiny of fund solvency.

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

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

a. The Title V Special Revenue Fund (holding Part 71 Title V permit fees) is projected to be exhausted in Fiscal Year 2028.

b. The Construction Fund (holding Part 75 construction permit fees) is projected to be exhausted sometime in Fiscal Year 2029.

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

179. The Department has engaged the New Mexico Department of Finance and Administration on the solvency of the Title V Special Revenue Fund and Construction Fund for the Department's Air Quality Program, and New Mexico Department of Finance and Administration concurred that the Funds could be at risk.

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

181. Given the projected fiscal cliff of the Title V Fund and Construction Fund, the Department will be unable to continue its work in mission critical program areas without the Board revising Part 71 and Part 75, as requested by the Department.

182. The Consumer Price Index-based adjustments already provided for in Part 71 and 75 have been insufficient to maintain fee alignment with modern demands.

183. Revised Parts 71 and 75 include the higher emissions and construction permit fees the Department has calculated are necessary to cover the reasonable costs of its Air Quality Program, and other changes intended to clarify and modernize the rules.

184. The fee alignment is not designed to bankroll speculative agency growth or fund hypothetical future programs. Rather, the fees are calculated to recover the Department's reasonable costs of administering the Air Quality Program - costs that the record demonstrates are already being incurred or are necessary to meet existing obligations under state and federal law.

185. Air Quality Program expansion does not mean visionary growth or idealistic initiatives; it means the continued administration of the air permitting program, compliance and enforcement, maintenance of baseline implementation capacity, sustained execution of statutory duties and federal requirements. The alignment ensures revenue remains commensurate with the Department's present administrative workload to preserve Air Quality Program functionality and integrity.

a. The Department's alignment needs are informed by both workload data and federal guidance, and the historical shortfalls of a static or under-resourced Air Quality Program.

b. The Department has experienced significant growth recently, including the move to a new facility, digitization of files, annual recruitment efforts, and efforts to align employee compensation with experience and education.

c. The Department's top program goal for fiscal year '26 and fiscal year '27 is to ensure robust staffing and resources. Over the past eighteen months, the Department hired more than 20 new employees and contracted out for critical modeling, permit analysis, stack testing, and database modernization, but these efforts were insufficient.

d. The Department has been successful at achieving its recent hiring goals. Further, the Air Quality Bureau stands at a possibly historic low vacancy rate of 7.8% due to innovative hiring strategies and the commitment of the staff. The Department presented evidence to support being able to create and fill the number of new positions in the projections.

e. The proposal for new staff took a measured approach, considering logistics for creating and filling new positions. The projections for the Air Quality Bureau used a lower number than what the Department foresees as needed to fulfill its obligations. Contract work is projected to continue to meet the needs that staff cannot, even at increased levels. In addition, some contract work is specialized and necessary.

186. Dr. Thomson testified that the costs associated with administering the Air Quality Program, including expanded monitoring infrastructure, advanced modeling capabilities, and the integration of emerging technologies, have increased due to growing technical complexity and expanded regulatory demands. Her testimony supports that monitoring and modeling are not optional or ancillary functions, but are essential to permitting, compliance, and enforcement.

Without adequate monitoring data, the Department cannot reliably evaluate compliance or enforce permit conditions, which would undermine the effectiveness of the Program.

187. Without the fee alignment, the Air Quality Program will not be able to sustain current operations, risking loss of federal approvals and face an inability to meet public, regulatory, or legislative demands. Underfunding will result in inability to address backlogs, delayed permitting, insufficient monitoring, public complaint resolution, technology upgrades, and stakeholder outreach - all jeopardizing public health protection.

G. REASONABLE COSTS

188. The matter of reasonable costs is not an issue of “[a]n agency may not create a regulation that exceeds its statutory authority.” Gonzales v. N.M. Educ. Ret. Bd., 1990-NMSC-024, ¶ 11, 109 N.M. 592, 788 P.2d 348 (1990) (citation omitted). This is a matter of statutory construction. “Rules adopted by an administrative agency will be upheld if they are in harmony with the agency’s express statutory authority or spring from those powers or may be fairly implied therefrom.” N.M. Mining Ass’n, 1996-NMCA-098, ¶ 15.

189. As evidenced by the prior rulemaking, there are several interpretations of the meaning of “reasonable” and the meaning of “costs” particularly as applied to the activities listed after the phrase. The phrase is not specifically defined by the Legislature, see Sw. Pub. Serv. Co. v. New Mexico Pub. Regul. Comm’n, 2025-NMSC-013, ¶ 21, 572 P.3d 878 (“the Act does not define costs or identify the types of costs that may be subject to the proviso”), but provisions listed after the phrase provide insight that has also been interpreted extensively by the EPA.

190. The Air Quality Control Act establishes a comprehensive regulatory framework in which the Legislature has delegated to the Department, acting through the Secretary, the responsibility to administer and enforce New Mexico’s air quality permitting programs, including the development of fee schedules necessary to support those programs. See NMSA 1978, § 74-2-

5.1; NMSA 1978, § 9-7A-6(B); NMSA 1978, § 74-1-7(A)(4). This delegation reflects the Legislature's recognition that the Department possesses the technical and administrative expertise required to evaluate the resources necessary to implement the Air Quality Program in a manner to maintain federal delegated authority. In proposing Revised Parts 71 and 75, the Department is exercising its statutory role in recommending to the Board fee structures designed to support the Air Quality Program.

191. Determinations regarding the appropriate structure and level of air quality permit fees necessarily implicate the Department's specialized expertise in program implementation, staffing requirements, workload projections, and the operational demands of administering permitting programs. The Secretary is statutorily charged with directing the operations of the Department and developing regulations necessary to carry out its duties, including those related to permitting and compliance programs. See NMSA 1978, § 9-7A-6(A), (B)(2), (5). As such, the Department's interpretation of statutory directives concerning fee authority, including how best to structure fees sufficient to cover the reasonable costs of reviewing permit applications and implementing permit programs, reflects the exercise of delegated policymaking and administrative judgment entrusted to the Department by the Legislature.

192. Accordingly, while the Board retains ultimate rulemaking authority, the Legislature's express delegation of implementation and enforcement responsibilities to the Department supports affording weight to the Department's proposed fee methodology as the entity charged with administering the permitting program on an ongoing basis. See Sw. Pub. Serv. Co. v. New Mexico Pub. Regul. Comm'n, 2025-NMSC-013, ¶ 22, 572 P.3d 878 (the PRC has specialized expertise in regulating public utilities and setting rates).

193. For Title V sources, the Air Quality Control Act provides: “Regulations adopted by the environmental improvement board or the local board shall include at least the following provisions: . . . a schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the federal act[.]” NMSA 1978, § 74-2-7(B)(7). This instruction requires the Board to turn to the Clean Air Act, its implementing regulations, and EPA guidance.

194. The federal Clean Air Act mandates the EPA shall have regulations requiring state law to provide for a permitted source to pay fees “sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements . . . including the reasonable costs of [listing activities].” 42 U.S.C. § 7661a(b)(3). Although the phrase “reasonable costs” is not specifically associated with consideration for Title V fees in the Air Quality Control Act, the phrase is contained in the federal Clean Air Act. See NMSA 1978, § 74-2-7(B)(7); compare 42 USC § 7661a(b)(3).

195. The Clean Air Act implementing regulations provide: “The State program’s fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of paragraph (b)(1) or (b)(2) of this section. Nothing in the provisions of this section shall require a permitting authority to calculate fees on any particular basis or in the same manner for all part 70 sources, all classes or categories of part 70 sources, or all regulated air pollutants, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section.” 40 CFR § 70.9(b)(3). This means the Department has broad latitude to identify what activities it charges a fee for and the amount of the fee.

196. The Clean Air Act implementing regulations provide insight on what is reasonable, as the fees assessed must provide “that the permitting authority collects a total amount of fees

sufficient to meet the program support requirements[.]” 40 CFR § 70.9(b)(3) (emphasis added).

197. EPA guidance on Title V operating permit fees explains that allowable program costs include both direct and indirect costs necessary to administer and enforce the permitting program, consistent with federal requirements. NMED Exhibit 18, *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, 2018 Memorandum. Although EPA’s guidance is specific to Title V, the categories of direct and indirect costs included in implementing the program relate directly to the Construction Program as well. It would be unreasonable to interpret direct and indirect costs related to the Construction Program differently than the Title V Program. It is important to connect the permit fees to the specific costs they are intended to cover, including, but not limited to: program administration; program implementation; program revisions; reviewing and acting on permit applications; enforcing permit conditions; performing activities related to the state’s State Implementation Plan or certain provisions of the Clean Air Act; reviewing, reopening or renewing permits; developing and implementing “general” or “model” permits; and fee program administration.

198. The Clean Air Act’s requirement to maintain a minor source permitting program independently obligates New Mexico to ensure the Department has adequate resources to administer and enforce permits issued to sources that fall below major-source thresholds. The same cost-recovery logic for Title V operating permits applies to construction permits.

199. For minor sources, the Air Quality Control Act provides: “Regulations adopted by the environmental improvement board or the local board shall include at least the following provisions: . . . a schedule of construction permit fees sufficient to cover the reasonable costs of: (a) reviewing and acting upon any application for such permit; and (b) implementing and enforcing the terms and conditions of the permit, excluding any court costs or other costs associated with an

enforcement action[.]” NMSA 1978, § 74-2-7(B), (6) (emphasis added).

200. The Air Quality Control Act also addresses “reasonable costs” in the appropriations section of the Air Quality Control Act: “Money in the state air quality permit fund is appropriated to the department for the purpose of paying the reasonable costs of [listing activities].” NMSA 1978, § 74-2-15(B); Clean Air Act; see NMSA 1978, § 74-2-16(B) (parallel authority for the local board).

201. In both the Air Quality Control Act and federal Clean Air Act, the language “implementing and enforcing the terms and conditions of the permit” refers to the Department’s day-to-day administrative oversight necessary to ensure that the permit is actually followed once issued. This includes regulatory compliance functions that exist whether or not a violation ever escalates. The statute socializes these costs through the permit fees. The statutory limitation in both the Air Quality Control Act and Clean Air Act against recovering “court costs or other costs associated with an enforcement action” through the permit fee reflects a legislative intent to ensure the Department does not socialize the costs of adversarial enforcement proceedings into generally applicable fees imposed on the regulated community at large. This is not a prohibition on the Department’s authority to otherwise recover court costs or other costs associated with an enforcement action.

202. In Southwestern Public Service Company v. New Mexico Public Regulation Commission, the New Mexico Supreme Court upheld agency rules and cost determinations where the governing statute was ambiguous and the agency acted within its delegated authority. 2025-NMSC-013, ¶ 19, 572 P.3d 878. The Court affirmed that an agency’s actions are presumed valid, reasonable, and lawful unless clearly shown otherwise. Id., ¶ 59. The Court also found that “reasonable” does not mean the least expensive or least burdensome option, but rather one that

reflects a rational connection between regulatory purpose and the costs imposed. Id., ¶ 30. The Court emphasized that reasonableness is evaluated in context, considering statutory objectives, technical complexity, and the agency's obligation to balance competing interests. Id., ¶ 28. Where a statute leaves gaps or undefined terms, such as how costs should be allocated or what costs are attributable, the agency may adopt flexible, case-by-case approaches so long as they are not arbitrary, capricious, or contrary to law. Id., ¶ 29. The courts will not substitute their judgment for that of the agency simply because a regulated entity proposes an alternative interpretation or regulatory approach. Id., ¶ 19.

203. In New Mexico Mining Association v. New Mexico Mining Commission, the New Mexico Court of Appeals held that regulatory fees are presumed valid if they are reasonably consistent with statutory purposes, and that agencies are afforded reasonable latitude in fixing charges to cover anticipated expenses associated with carrying out their statutory duties. 1996-NMCA-098, ¶¶ 15-16, 24, 122 N.M. 332, 924 P.2d 741, 745. The Court rejected the idea that reasonableness requires exact cost matching or mathematical precision. Id., ¶ 24. Instead, a regulatory fee is reasonable so long as it does not exceed the agency's reasonably anticipated costs of administering and enforcing the regulatory program. Id., ¶¶ 11, 24. Courts will not second guess the amount or structure of such fees absent a showing that they are arbitrary, capricious, or exceed what is reasonably necessary to perform the regulatory function.

a. The New Mexico Court of Appeals also distinguished regulatory fees from unlawful taxes, holding that a fee imposed to defray regulatory costs remains a fee, even if substantial, so long as it is tied to program administration and not imposed primarily to raise general revenue. Id., ¶ 23-24.

b. The burden of proving that a regulatory charge is an unlawful tax rests with the party challenging the fee. Id., ¶¶ 9-14, 24.

204. As in Southwestern Public Service Company, the decision in New Mexico Mining Association makes clear that reasonableness does not require precision or the lowest possible cost, but rather a good-faith estimate grounded in agency expertise. Id.

205. Therefore, “reasonable” costs are those grounded in a good-faith estimate of program needs, aligned with statutory objectives, and within the agency’s delegated authority.

206. New Mexico courts have rejected the notion that “reasonable costs” means only direct, or transaction specific expenses qualify, or that costs must reflect the least expensive means of regulation. Reasonableness does not turn on whether the Department (or Board) can identify a cheaper or less burdensome alternative, but on whether the agency’s interpretation is rational, lawful, and within its delegated policy-making authority. Southwestern Pub. Service Co., 2025-NMSC-013. Agencies are not required to show exact cost or adopt the lowest possible fee, and that reasonable fees may be based on anticipated program costs and administrative judgment. See N.M. Mining Ass’n v. N.M. Mining Comm’n, 1996-NMCA-098, ¶¶ 11, 24.

207. Disagreement with the Department’s cost methodology or a preference for a narrower approach of allowable costs does not render the costs unreasonable.

208. The state of Wisconsin faced problems with gaining EPA approval for its Title V program due to not collecting enough fees to cover the reasonable costs of its air program. Environmental organizations petitioned the EPA to find that:

Wisconsin’s fee schedule violates the Clean Air Act because it does not generate the necessary resources to cover “the reasonable costs of the permit program.” 42 U.S.C. § 7661a(b)(3)(B)(i). Congress required that states’ operating permits programs be self-sufficient, and included provisions in the Clean Air Act authorizing a state to assess and collect fees to fund its permitting program. Id. §

7661a(b)(3)(B); 40 C.F.R. §§ 70.4(b)(7), 70.9. Congress intentionally put the cost of administering the program on the pollution sources necessitating the need for a permit program in the first instance. It is essentially a polluter-pays program — under most circumstances the more air pollution, the greater the fees.

Sierra Club; Wisconsin’s Environmental Decade; Clean Water Action Council of Northeastern Wisconsin; Citizens For Safe Water Around Badger; Citizens For A Better Environment; Wisconsin Interfaith Climate Change Coalition; Wisconsin Public Interest Research Group v. Administrator Christine Todd Whitman and Regional Administrator Thomas V. Skinner, U.S. Environmental Protection Agency, Petition, 2002 WL 34594867 (Dec. 1, 2002).

209. The eNGOs claimed that Wisconsin had adopted a fee schedule that resulted in fee revenue generated stagnating while “overall program costs, such as salaries and other fixed costs” continued to increase. Id. They asserted that overwhelming evidence supported a finding that Wisconsin had chronic funding shortfalls tied to inadequate fee collections. Id. In Wisconsin, the Legislature is charged with setting fees (unlike here, where the Board is responsible) and it declined to increase to adequately cover costs to “fully implement” the air program. Id. These shortfalls resulted in hiring freezes, unfilled staff positions, and reduced program capacity, contributing directly to delays in permit issuance and impairing the State’s ability to implement and enforce the Title V program. Id. For enforcement, eNGOs claimed that the state “starved the DNR’s Title V enforcement program of the resources necessary to implement an effective enforcement program[.]” thus, “violating the requirement to adequately enforce its Title V program[.]” Id. Since Wisconsin had a budget shortfall, the eNGOs concluded it “lacks the funding to adequately administer and enforce Wisconsin’s Title V program.” Id.

210. The Department’s interpretation of Sections 74-2-7(B)(6) and (7) are reasonable, lawful, and within the scope of the policy-making authority delegated by the Legislature under the Environmental Improvement Act (EIA) and Air Quality Control Act.

211. The Department's fee schedules are adopted through rulemaking and establish generally applicable requirements designed to support the administration of the air quality permitting program as a whole. As the Court of Appeals has recognized, "[r]egulations, by their nature, are general requirements. They are designed to apply to all situations and can apply to any [source]." Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Comm'n, 2006-NMCA-115, ¶ 19, 140 N.M. 464, 143 P.3d 502. Consistent with this principle, air quality permit fees are not intended to reflect the Department's costs associated with processing any particular permit application, but rather to recover the reasonable programmatic costs of reviewing applications and implementing permitting requirements across the regulated community.

212. Interpretations that fees should only cover the cost of reviewing an application and issuing a permit are incorrect. As a delegated authority for the Air Quality Program, the Department has broad authority and broad responsibilities that include not only permitting, but also monitoring, data analysis and reporting, planning, modeling, emissions inventories and even all of the indirect costs associated with implementing and enforcing the Air Quality Program.

213. EPA's approval of the State's infrastructure SIP rests on having the capability and the resources to accomplish all tasks necessary to provide needed services to industry and those who breathe New Mexico's air.

214. The proper inquiry is whether the Department's underlying program costs are reasonable; not whether a given fee amount can be traced to the Department's cost of performing a single permitting action. Permitting fees are not limited to the marginal cost of processing a single permit application. Permitting fees are designed to support the broader air quality program that makes permitting meaningful and enforceable in the first instance. The law regulates the nature of the costs the Department may recover, not the mathematical precision of the dollar amount

assessed in any particular fee category. Once the Department identifies the reasonable costs of carrying out the Air Quality Program it has considerable flexibility to design the fee schedule.

215. The Air Quality Control Act mechanisms for civil penalties and field citation program serve different purposes and do not limit the Department's authority for recovering reasonable costs with fees.

a. Civil penalties are remedial and deterrent in nature; they are designed to sanction violations and incentivize future compliance. Penalty recoveries are tied to the severity, duration, or culpability associated with a violation, and may be negotiated, mitigated, or suspended based on settlement considerations. Civil penalties do not function as a predictable or direct cost-recovery mechanism for the programmatic expenditures that arise when a particular source's noncompliance requires additional Department resources.

b. Field citations are intended to facilitate efficient disposition of minor infractions without resorting to formal enforcement proceedings. This avoids large expenditures of resources, which would add to the costs of the enforcement component of the Air Quality Program. Field citations are a minimal penalty paid to the General Fund, not the Program.

c. Accordingly, civil penalties and field citations serve distinct enforcement and deterrent purposes and are not the appropriate statutory vehicles for recouping reasonable costs recovered with fees.

216. As a policy matter, the Department is not foreclosed from changing the manner in which it assesses fees. The New Mexico Supreme Court has said:

To the extent the Copper Rule is a departure from past Commission practice, the law makes clear that the Commission is not constrained by its prior practices. An agency is always free to change its policy, as long as it announces a policy that is within the range permitted by [the Legislature], uses a procedure [the Legislature] has authorized it to use to make binding policy decisions, and explains the reasons for its change in policy.

Gila Res. Info. Project v. New Mexico Water Quality Control Comm’n, 2018-NMSC-025, ¶ 67, 417 P.3d 369, 383.

217. Requiring the Department to obtain a legislative appropriation to cover reasonable costs of the Air Quality Program would invert the cost-allocation principles embedded in the federal Clean Air Act and Air Quality Control Act, as well as the implementing regulations and EPA guidance. Additionally, that approach would effectively transfer the financial obligation away from the entity who is statutorily responsible for the costs and onto the public fisc.

218. The replacement rules include the higher emissions and construction permit fees the Department has calculated are necessary to cover the reasonable costs of its Air Quality Program, and other changes intended to clarify and modernize the rules.

H. AIR POLLUTANTS CHARACTER AND DEGREE OF INJURY TO OR INTERFERENCE WITH HEALTH, WELFARE, VISIBILITY, AND PROPERTY

219. The core mission of the Department is to protect and restore the environment for the health and prosperity of New Mexico residents; and the Department’s duty to prevent the deterioration of air quality and its impact on health and welfare. Under the law, the Air Quality Control Act directs the Department to regulate air pollutants based on their character and degree of injury or interference with health, welfare, visibility, and property.

220. The six federally recognized criteria pollutants, ozone (O₃), particulate matter (PM_{2.5} and PM₁₀), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), carbon monoxide (CO), and lead (Pb) are regulated because decades of scientific evidence show that even at relatively low concentrations they cause real harm to human health and the environment. These pollutants are widespread, come from multiple industrial and mobile sources, and impose real costs when left uncontrolled.

221. Ozone and particulate matter pose the most immediate risks in New Mexico. Ground-level ozone, formed through reactions between nitrogen oxides and volatile organic compounds, aggravates asthma, reduces lung function, increases emergency room visits, and contributes to early death.

a. Fine particulate matter (PM_{2.5}) penetrates deep into the lungs and bloodstream, increasing the risk of heart attacks, strokes, respiratory disease, low birth weight, and premature death, while coarse particulates (PM₁₀) exacerbate respiratory conditions and impair visibility.

b. Ground-level ozone and particulate matter also damage crops, forests, and natural landscapes with clear impacts on public welfare, visibility, and property values.

c. The impacts are not abstract; they manifest in higher health care costs, missed work and school days, lower agricultural productivity, and declining property values in more polluted areas.

222. Nitrogen dioxide, sulfur dioxide, and carbon monoxide are regulated because of their toxicity and their role in forming additional air pollution.

a. Nitrogen dioxide inflames airways and worsens respiratory disease, especially in children and people with asthma.

b. Sulfur dioxide triggers asthma attacks, causes respiratory distress, and contributes to acid rain that damages soils, water bodies, vegetation, and infrastructure.

c. Carbon monoxide interferes with oxygen delivery in the body and poses serious risks for people with cardiovascular disease, as well as acute poisoning risks at higher concentrations.

d. When these pollutants are not adequately controlled, visibility declines, ecosystems are harmed, buildings deteriorate, and preventable medical emergencies increase.

223. Lead remains tightly regulated because no level of exposure is safe, particularly for children. Lead causes irreversible neurological damage, impairs learning and development, and contributes to cardiovascular and kidney disease in adults. Once released, lead persists in soil and dust long after emissions stop, creating long-term public health risks and costly cleanup challenges for communities and property owners.

224. Every year, criteria air pollutants send New Mexicans to emergency rooms with asthma attacks, contribute to premature deaths, and damage crops, landscapes, and visibility.

225. Regulating criteria pollutants requires permitting, monitoring, enforcement, and technical expertise to reduce the likelihood and duration of emissions that interfere with public health, welfare, and visibility. Resource shortfalls lead to extended violations, slow responses to complaints, and reduced capacity to monitor or reduce harmful emissions, all of which can lead to tangible risks to health, welfare, and the environment by failing to detect or act on violations in a timely manner. These functions are essential to ensuring that standards are meaningful and protective, rather than theoretical. Without adequate and sustained funding, New Mexico cannot fully carry out its statutory responsibility to protect public health, welfare, visibility, and property from these well-documented harms.

226. Dr. Thomson testified that air quality monitoring and modeling are essential to identifying pollutant exposure, detecting localized pollution hotspots, and informing mitigation strategies necessary to protect public health, welfare, and the environment.

227. Dr. Thomson described how monitoring is important for identifying exposure and health risk, particularly given local variability/hotspots. She explained that existing monitoring

coverage and modeling capacity are insufficient to meet current regulatory needs, including identifying localized pollution hotspots, validating emissions inventories, and supporting enforcement actions. Expanded monitoring infrastructure and modeling capabilities are necessary for the Department to fulfill its obligations.

228. The federal obligation to maintain an air quality program that is sufficiently funded to assure actual (not just paper) compliance directly relates to preventing injury and interference.

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

230. Under the Clean Air Act, nonattainment is a formal designation for a geographic area where the air quality is worse than the federal health-based standards. When the EPA sets or revises a NAAQS for any of the criteria pollutants (such as ozone, particulate matter, or sulfur dioxide) it must evaluate areas of the state. If an area fails to meet these standards, EPA formally designates the areas as a nonattainment area. For certain pollutants like ozone, EPA further classifies nonattainment areas based on the severity of the pollution (marginal, moderate, serious, severe, extreme). EPA's classification determines the deadline for reaching attainment and the level of additional regulation required.

231. A nonattainment designation leads to increased regulatory obligations, notably in permitting, planning, and enforcement, which have implications for needed resources and justification for increased fees. Should EPA designate an area in New Mexico as nonattainment, such as any portion of the Permian Basin, the Air Quality Bureau must spend several thousand hours following the requirements for addressing the nonattainment designation. A designation of

nonattainment means that certain permits would no longer be valid, additional controls will be required, and more permits will need to be denied.

232. The Department identified that 2 FTEs would be needed full-time for two years in the event of a nonattainment designation.

I. PUBLIC INTEREST: SOCIAL AND ECONOMIC VALUE OF SOURCES AND CONTROLLING AIR CONTAMINANTS

233. The Department's mission includes fostering both a healthy and prosperous New Mexico for current and future generations and supporting economic development opportunities that mitigate climate change and improve air quality.

234. Special revenue fund balances and recurring revenue from fees ensure Air Quality Program sustainability, an indirect measure of public confidence and economic continuity in environmental regulation.

235. Departmental efforts, such as digitization and rapid hiring, are intended to increase efficiency and thus serve both regulated entities and the public. Input from both industry (seeking efficient/regulatory certainty, timely permitting, and service) and residents/environmental organizations (demanding greater monitoring, compliance enforcement, and protective measures) is regularly considered. The Department must ensure it has the capacity for these activities.

236. Compliance and enforcement as mechanisms to ensure economic growth and public confidence. Predictable, timely, and consistent enforcement benefits both the public and the regulated sector by ensuring accountability, clarity, and a level playing field.

237. Department resources to support economic development in an environmentally responsible manner must be sufficient to keep up with industry growth in the state's sectors (such as oil and gas, power generation, and data centers), which themselves support jobs and economic output.

238. Input is received regularly from industry (requesting more service, expedited permitting, and clear requirements) and from residents/advocacy groups (seeking rulemakings, complaint response, and community engagement), reflecting the competing social and economic interests at play. The regulatory fee alignment is a balance between maintaining a healthy environment and supporting economic growth.

239. New Mexico is now the second highest oil producing state in the nation and the third largest natural gas producer in the nation, increasing demands on the Air Quality Program. The Department needs to add approximately 80 full-time positions over the next five years, and invest in compliance assistance and assurance efforts such as optical gas imaging and remote satellite sensing. The Department also needs to continue its technology upgrades to ensure integrated, transparent, and reliable services to both the regulated community and the public.

240. Dr. Thomson described how monitoring enables data-driven decision making, transparency and accountability. Accurate monitoring and modeling provide the scientific foundation for transparent, evidence-based decision-making and promote public accountability in permitting and enforcement.

241. Revised Parts 71 and 75 and the fees therein are shaped by analysis of stakeholder feedback, including concern for cost impacts to emitters, fee equity, and practicability of changes, such as the cap on fee calculations and differentiation for smaller operators.

J. TECHNICAL PRACTICABILITY AND ECONOMIC REASONABLENESS; PREVIOUS EXPERIENCE WITH EQUIPMENT/METHODS

242. The Department's recent modernization, such as hiring additional employees, new organizational structures, technical upgrades, new compliance tools like drones, and investments in data management, all demonstrate both experience with updated equipment/methods and a technical ability to improve if the funding structure allows. These are matters of necessity to meet

both federal requirements and the increased scale/complexity of regulated sources. The Department's approach is pragmatic and resource-based.

243. Dr. Thomson described how monitoring and modeling are standard regulatory tools and testified that costs associated with these activities are necessary components of administering the permitting program and ensuring compliance with applicable laws and regulations.

244. The Air Quality Program's technical and economic needs have outpaced available resources, as demonstrated in the fiscal analysis with a multi-year forecast of revenues, expenditures, and staffing needs. The fee schedules are supported by detailed analyses of program costs, technological and staffing requirements, workload trends, and contractor use, all derived from operational data and actual prior experience. The fiscal analysis relies on prior years' actual spending/operations (and shortfalls) as a baseline for projection.

245. The business-as-usual scenario in the fiscal analysis, in which fees are not brought into alignment, shows a resulting fund exhaustion requiring service contraction, demonstrating that the current fee structure is not economically sustainable and that the fee adjustment is necessary to continue basic Air Quality Program operations.

VI. RULE LANGUAGE

246. The Board adopts replacement rules 20.2.71 NMAC and 20.2.75 NMAC, Exhibits A and B, respectively, with a minor change proposed by the NMMA set forth below.

247. The final language in the rules is substantially the same as the Department's prior filing; all parties had the benefit of evaluating the fee proposals and the opportunity to respond in the rulemaking. Changes made to Revised Parts 71 and 75 by the Department post-petition responded directly to informally voiced concerns regarding the annual reviews and administrative compliance costs – the Department restored the annual review requirement in Revised Part 75 and removed the administrative compliance costs as a fee in both Revised Parts 71 and 75.

248. The structure of the permitting program is not affected by the revisions. The changes reflect an administrative update to more accurately reflect the work and resources needed for various permitting activities and the implementation and enforcement costs for pollutant-emitting facilities to construct.

a. Notice of Intent facilities have always submitted applications for permitting approval and the Department has always addressed ongoing data maintenance and reporting, and compliance and enforcement work for Notice of Intent facilities. The fee schedule aligns this reality with the fees these facilities must pay.

b. Late fees do not represent restructuring of the permitting program. The addition of late fees recognizes the significant work the Air Quality Bureau must undertake to collect delinquent fees. Revised Parts 71 and 75 fee schedules properly accounted for this cost.

249. Revised Parts 71 and 75 were drafted to comply with 1.24.10 NMAC, *New Mexico Administrative Code (NMAC)*, which establishes standards for uniform rule filings in an easily understood and common format, and include non-substantive changes made to meet the State Records Center and Archives' current style and formatting requirements for NMAC rules. These include using words for numbers zero to nine (except dates) and figures for numbers 10 and greater, spelling out numerical figures when using percentages (and spelling out "percent"), spelling out fractions, using figures and symbols to represent amounts of money (and not spelling out the number), and using proper indents for all subsections, paragraphs and subparagraphs, pursuant to 1.24.10.12 NMAC, *Style*. Internal and external cross-references were also updated for consistency, statute and rule citations reformatted where necessary, and typographical and punctuation errors corrected.

250. The substantive changes to Part 71 and Part 75 are described below.

PART 71 OPERATING PERMIT EMISSIONS FEES

20.2.71 NMAC, All Sections

On recommendation from the State Records Center and Archives, the method for changing Part 71 is a repeal and replacement. History notes facilitate the use of the NMAC and track the historical development of a rule provision. Each section's history appears in chronological sequence in brackets at the end of the section. See 1.24.10.20 NMAC. In the case of a repeal and replacement, for a section that is replaced, the history is noted with the letters "Rp" for replaced, followed by a comma, followed by the citation of the section it replaced, followed by a comma, a space and the effective date of replacement. For a section that is new, the history is noted with the letter "N" for new, followed by a comma, a space and the effective date of the new material. For a section that is deleted and not replaced, the history is noted with the word "Repealed", followed by a comma, a space and the effective date of the deletion. All sections of Revised Part 71 contain these history note changes.

20.2.71.1 NMAC, *Issuing Agency*

Section 1 of Revised Part 71 identifies the Board as the issuing agency for Revised Part 71 and is a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(1) NMAC (requiring the name of the issuing agency in Section 1, entitled "Issuing Agency," of each Part of the NMAC); see also 1.24.10.10(A) NMAC. No changes are made to Section 1 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.2 NMAC, *Scope*

The change in Section 2 of Revised Part 71 is grammatical for drafting conformance purposes and has no substantive effect. Section 2 is a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(2) NMAC (requiring the scope of the Part in

Section 2, entitled “Scope,” of each Part of the NMAC). No other changes are made to Section 2 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.3 NMAC, *Statutory Authority*

The changes in Section 3 of Revised Part 71 are for drafting conformance purposes and have no substantive effect. Section 3 cites the statutes that provide authority for Revised Part 71. Section 3 reflects a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(3) NMAC (requiring the statutory authority under which the Part is issued in Section 3, entitled “Statutory Authority,” of each Part of the NMAC). No other changes are made to Section 3 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.4 NMAC, *Duration*

No changes are made to Section 4 of Revised Part 71 except as indicated above regarding the history note. Section 4 continues to state that Revised Part 71 will be permanent, at least until the Board amends it. Section 4 reflects a mandatory section for all rules promulgated by New Mexico state agencies and provides the length of time Revised Part 71 is intended to be enforceable. See 1.24.10.8(F)(4) NMAC (requiring the intended duration of the Part in Section 4, entitled “Duration,” of each Part of the NMAC).

20.2.71.5 NMAC, *Effective Date*

Section 5 states the effective date of Revised Part 71 will be June 1, 2026. Section 5 reflects a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(5) NMAC (requiring the effective date of the Part in Section 5, entitled “Effective Date,” of each Part of the NMAC). No other changes are made to Section 5 of Revised Part 71 except as indicated above regarding the history note.

An effective date of June 1, 2026 ensures the changes would become effective with sufficient notice to the regulated community while allowing the Department to implement the new fee structure in time for the next invoice cycle. The Department expects regulated entities to want certainty of the fees they will be required to pay in time to effectively plan. For Title V facilities, this planning may involve voluntarily reducing their allowable emissions to lower their fees. They may also need to include these amounts in their budgets. The Department begins its budgeting process in July for the next fiscal year, as described in Secretary James Kenney’s testimony. Sometimes that planning begins even earlier. Part of that budgeting process includes estimating revenues. A June 1, 2026 effective date allows the Department to include updated revenue estimates for fees collected in the first half of calendar year 2027 so that the requested budget for fiscal year 28 reflects an accurate picture of revenues.

The effective date depends on when the final rule is filed with the Commission of Public Records–State Records Center and Archives (“State Records”) and published in the New Mexico Register. Section 74-2-6(F) of the Air Quality Control Act provides that “[n]o regulations or emission control requirement adopted by the environmental improvement board . . . shall become effective until thirty days after its *filing* under the State Rules Act.” (emphasis added). The State Rules Act has two steps, filing and publication, and the Air Quality Control Act specifically calculates the requirements based on the first step: filing. See NMSA 1978, § 74-1-9(G).

For filing, Section 14-4-5(D) of the State Rules Act provides “[w]ithin fifteen days after *adoption of a rule*, an agency shall file the adopted rule with the state records administrator or the administrator’s designee and shall provide to the public the adopted rule.” NMSA 1978, § 14-4-5(D) (emphasis added); see 20.1.1.407(B) NMAC (“The adopted rule shall not take effect unless within 15 days of adoption of the rule, the board delivers the final rule to the state records

administrator”). Adoption of the rule is the date the Board issues the final order, not the date of deliberation and a vote. 20.1.1.407(C) NMAC (“Adoption of the final rule occurs upon signature of the written decision.”). Along with the adopted rule, filing also includes attaching the billing information sheet and the NMAC transmittal form with the concise explanatory statement signed by the Board Chair. The Department works with the State Records Administrator to effectively pre-approve the filing documents, which ensures no corrections to the adopted rule are required at the time of filing, the transmittal sheet meets all the requirements, and the billing sheet is satisfactory. This ensures the date the rule is marked as filed can be more precisely coordinated.

The State Rules Act directs the State Records Administrator to “publish rules as soon as practicable after filing[.]” NMSA 1978, § 14-4-5(D). Publication occurs in the New Mexico Register, which is published on a bi-weekly basis with filing deadlines occurring roughly two weeks prior to the publication date. See New Mexico Register, available at <https://www.srca.nm.gov/nmac-home/new-mexico-register/> (last visited Feb. 20, 2026).

Lastly, for the effective date, Section 14-4-5(D) of the State Rules Act provides that “[u]nless a later date is otherwise provided by law or *in the rule*, the effective date of a rule shall be the date of publication in the New Mexico register.” NMSA 1978, § 14-4-5(D) (emphasis added); see NMSA 1978, § 14-4-5(E) (“A proposed rule shall not take effect unless it is adopted and filed within the time limits set by this section.”).

Dates are calculated based on the following specific requirements:

In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday, or legal state holiday.

20.1.1.110(A) NMAC.

Thus, for an effective date of June 1, 2026, the Department must file the rules with the State Records Administrator for publication in the New Mexico Register no later than May 1, 2026. In practical effect, this means filing by April 23, 2026, for publication in the May 5, 2026, New Mexico Register.

20.2.71.6 NMAC, *Objective*

The only change in Section 6 is a conforming grammatical correction that has no substantive effect. Section 6 reflects a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(6) NMAC (requiring the objective of the Part in Section 6, entitled “Objective,” of each Part of the NMAC). No other changes are made to Section 6 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.7 NMAC, *Definitions*

Section 7 of Revised Part 71 defines certain terms used in Revised Part 71. Section 7 reflects a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(7) NMAC (requiring the definitions that apply just to the Part in Section 7, entitled “Definitions,” of each Part of the NMAC).

Subsection C, “Fee Pollutant” is revised to remove mercury and total suspended particulate matter (“TSP”) from the definition and add particulate matter 10 microns or less in diameter (PM₁₀) and particulate matter 2.5 microns or less in diameter (PM_{2.5}) to the definition. These changes are necessary because the Department lost the authority to assess fees for mercury when the Board repealed 20.2.85 NMAC in 2014, and because TSP is no longer regulated given that the health risks posed by particulate matter are more accurately measured by analyzing smaller particles. Even though regulation has shifted from TSP to PM₁₀ and PM_{2.5} the Department has been unable to assess fees for particulate matter since 2018 because the existing definition only

addresses TSP. As Part 71 has not been revised since 2009, the definition of “fee pollutant” has not been updated to reflect current pollutant categories, which has precluded the Department from fully supporting Title V Permit Program costs through collection of fees for particulate matter.

The Board rejects the proposal by the New Mexico Mining Association to retain total suspended particulate matter and exclude PM₁₀ and PM_{2.5} from the definition of “fee pollutant.”

Subsection H, “Part” is deleted to conform with regulation drafting requirements.

Subsection I, “Stationary source” is re-lettered to subsection H to conform with the removal of the definition of “part.”

20.2.71.8 NMAC, *Amendment and Supersession of Prior Regulations*

No changes are made to Section 8 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.9 NMAC, *Documents*

The only change in Section 9 is to update the address of Air Quality Bureau offices. Section 9 informs the public where it can access documents incorporated and cited in Revised Part 71. This is a standard provision in all Title 20 regulations. See 20.1.1.200(E) (requiring all documents filed in a proceeding under 20.1.1 NMAC to be made publicly available). No other changes are made to Section 9 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.10 NMAC, *Severability*

Section 10 is a new provision in Revised Part 71. Section 10 specifies that if any provision of Revised Part 71 – or its application to any person or circumstance – is held invalid, the remainder of the rule shall not be affected. The purpose of this provision is to clarify that the entire rule is not voided should a court strike down one or more specific provisions of Revised Part 71. This provision is standard in and consistent with other Department rules.

20.2.71.11 to 20.2.71.108 [RESERVED]

Revised Part 71 reserves sections here for future potential use by rulemakers. Reserved sections enhance readability by creating breaks in rule sections that are organized by programmatic function to allow for future changes.

20.2.71.109 NMAC, *Applicability*

Section 109 identifies to whom Revised Part 71 applies and whom it affects. This Section is repealed in its entirety because it is duplicative of 20.2.71.2 NMAC, *Scope*.

20.2.71.110 NMAC, *Fee Requirement*

The only changes in Section 110 are conforming grammatical corrections to correctly identify the naming convention of the fee, which have no substantive effect. No other changes are made to Section 110 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.111 NMAC, *Fee Determination*

Section 111 describes the calculation of fees, the effect of source shutdowns on fees, and how fees for excess emissions are determined.

Subsection A and Paragraph (1) have conforming grammatical corrections to correctly identify the naming convention of the fee.

Subsection A, Paragraph (2) is changed to conform with regulation drafting requirements, which has no substantive effect; and to move the text in Subparagraph (b) to Subsection A, Paragraph (9), for implementation ease and clarity

Subsection A, Paragraph (3) is changed for grammatical purposes.

Subsection A, Paragraph (4) is changed to conform with regulation drafting requirements, which has no substantive effect.

Subsection A, Paragraph (5) is changed to conform with regulation drafting requirements, which has no substantive effect.

Subsection A, Paragraph (6) is changed to conform with regulation drafting requirements, which has no substantive effect.

Subsection A, Paragraph (7), is changed to conform with regulation drafting requirements, which has no substantive effect; and, as with Subsection C, Paragraph (4), reduces the maximum emission rate used in the fee calculation for any one fee pollutant from 6,000 to 3,000 tons. Reducing the maximum emission rate used in the fee calculation for any one fee pollutant will increase equity by ensuring that no single source pays more than five percent of the total fees collected. This consideration is in direct response to concerns raised by industry stakeholders regarding the potential impact of increased fees and other changes to Part 71 on certain sources.

Subsection A, Paragraph (8) specifies that fees will be assessed for either PM₁₀ or PM_{2.5}, not both, based on whichever has the higher allowable emission rate. The provisions will prevent double billing for the same pollutant since PM_{2.5} is a component of PM₁₀.

As the Board rejected the proposal by NMMA to retain total suspended particulate matter and exclude PM₁₀ and PM_{2.5} from the definition of “fee pollutant,” the Board also rejects the proposal by NMMA to delete this Subsection A, Paragraph 8.

Subsection A, Paragraph (9) contains the same text previously found in Subsection A, Paragraph (2), Subparagraph (b), which is moved for implementation ease and clarity.

During the hearing, NMMA witness Michael Sonenberg stated the NMMA retracted its request to delete this provision after learning that it was not new regulatory text but simply a change in the location it appears in the rule. Thus, the Board rejects this proposed change.

Subsection B, Paragraph (1) has a conforming grammatical correction to correctly identify the naming convention of the fee.

Subsection B, Paragraph (1), Subparagraph (c) is changed to conform with regulation drafting requirements, which has no substantive effect.

Subsection B, Paragraph (2) has conforming grammatical corrections to correctly identify the naming convention of the fee, and changes to correct spelling.

Subsection C and Paragraph (1) have conforming grammatical corrections to correctly identify the naming convention of the fee.

Subsection C, Paragraph (3) is changed to conform with regulation drafting requirements, which has no substantive effect.

Subsection C, Paragraph (4) is changed to conform with regulation drafting requirements, and, as with Subsection A, Paragraph (7), reduces the maximum emission rate used in the fee calculation for any one fee pollutant from 6,000 to 3,000 tons. Reducing the maximum emission rate used in the fee calculation for any one fee pollutant will increase equity by ensuring that no single source pays more than five percent of the total fees collected. This consideration is in direct response to concerns raised by industry stakeholders regarding the potential impact of increased fees and other changes to Part 71 on certain sources.

Subsection C, Paragraph (5) is added to specify that fees will be assessed for either PM₁₀ or PM_{2.5}, not both, based on whichever has higher emissions above annual allowable emission limits. The provisions will prevent double billing for the same pollutant since PM_{2.5} is a component of PM₁₀.

No other changes are made to Section 111 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.112 NMAC, *Emissions Fee*

Section 112 establishes the emissions fee for each fee pollutant and requires annual fee adjustments based on the CPI.

The **Heading** is changed to correctly identify the naming convention of the fee.

Subsection A establishes the baseline emissions fee for each fee pollutant other than hazardous air pollutants (“HAPs”) and mercury (has its own fee schedule), which was \$20 per ton at the time the current rule language was adopted in 2008, is currently \$40.59 per ton with CPI adjustments, and is now revised to \$85 per ton. This fee will increase yearly with the CPI beginning in 2028. An increase in baseline emission fees is necessary to ensure the Department’s fees are sufficient to cover the reasonable costs of its Title V Permit Program, as required by the federal Clean Air Act and Air Quality Control Act, and safeguard its Title V Special Revenue Fund against impending insolvency.

The per-ton fee for emissions was set to \$85 in FY27, as this was the amount calculated to generate sufficient revenue to cover the projected costs for that fund by multiplying the projected allowable emissions (109,916 tons) by this rate, less the cap adjustment. This was validated through spreadsheet simulations comparing revenues to projected costs for FY30.

The Board rejects the NMMA proposal to maintain the rule language as it was adopted in 2008, such that there would be no increase to the emissions fee. The Board also rejects the proposal in NMOGA’s written comment to set the emissions fee at \$60 per ton and impose a cap on the emissions fee to not exceed \$150,000 per permitted facility. The Board finds that the industry proposals lack supporting evidence, including any financial or programmatic analysis demonstrating that maintaining the status quo emissions fee, or only increasing the fee to \$60 per ton instead of \$85, would generate sufficient revenue to cover the reasonable direct and indirect

costs of the Department's Title V Program or to maintain the fiscal integrity of the Title V Special Revenue Fund.

Subsection B establishes the baseline emissions fee for HAPs, which was \$165 per ton at the time the current rule language was adopted in 2004 and is now reset to \$258 per ton (equal to the current, inflation-adjusted amount rounded to the nearest dollar). The Department did not increase the new baseline beyond the current, inflation-adjusted amount due to the fact that this fee applies to facilities that are only major sources for HAPs, not criteria pollutants. The Department has had no facilities that fit this description in more than a decade. Therefore, the Department opted to keep this fee at its current, inflation-adjusted amount. This fee will increase yearly with the CPI beginning in 2028.

Subsection C is deleted to remove the mercury fee schedule because mercury is removed from the definition of fee pollutant in 20.2.71.7(C) NMAC, owing to the fact that the Department lost the authority to assess fees for mercury when the Board repealed 20.2.85 NMAC in 2014.

Subsection D is re-lettered to subsection C.

Subsection E is re-lettered to subsection D; resets the year when CPI adjustments begin to 2028 as the Department's fiscal analysis utilized the new (unadjusted) baseline fee for 2027; is revised to conform with regulation drafting requirements; and adds language to the provision regarding annual fee adjustments clarifying that fees shall remain the same in the event there is a decrease or absence of change in the CPI. Regulatory certainty for facilities is important.

As the Board rejected NMMA's proposal to not increase the baseline emissions fee, the Board rejects NMMA's proposal that would similarly revert the rule language to that adopted in 2004 (stating CPI adjustments shall begin in 2009), such that the emissions fee would remain the current CPI adjusted rate.

As the Board rejected NMOGA's proposal to impose a cap on the emissions fee, the Board also rejects NMOGA's proposal to include language applying the CPI adjustment to such cap.

Lastly, the Board also rejects NMMA's proposal to only allow the annual CPI adjustment to occur after the Department files the annual review in 20.2.71.114 NMAC. The Clean Air Act states that CPI adjustments are to take place annually. This is part of an agency's duty to adopt fees sufficient to cover all reasonable costs. CPI adjustments are meant to align fees with increased costs. Tying these adjustments to reporting creates an obvious gap in fees keeping up with costs and does not serve the purposes for which the adjustments are intended.

No other changes are made to Section 112 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.113 NMAC, Notification, Payment, Late Fee and Enforcement

Section 113 states when the Department shall assess annual emissions fees and when payment is due, describes how fees shall be remitted, and stipulates that nonpayment of fees may result in penalties and possible enforcement action.

The **Heading** is changed to correctly identify the provisions in Section 113.

Subsection A, Paragraph (1), Subparagraphs (a) and (b) have conforming grammatical corrections to correctly identify the naming convention of the fee.

Subsection A, Paragraph (2) has a conforming grammatical correction to correctly identify the naming convention of the fee.

Subsection A, Paragraph (3) is changed to conform with regulation drafting requirements, which has no substantive effect; has a conforming grammatical correction to correctly identify the naming convention of the fee; and adds a provision imposing a late fee if emissions fees are not remitted by the due date. This change is necessary to incentivize the timely

payment of fees. The late fee is capped at \$5,000 if the late fee itself is timely paid or \$10,000 if the late fee is paid late. The caps are intended to protect sources subject to annual emissions fees in the tens or hundreds of thousands of dollars from potentially excessive late fees. Caps of \$5,000 and \$10,000 should provide enough incentive to pay fees on time and represent an estimate of resources that may be expended across the Department for collecting delinquent fees. Historically, delinquent fee collections have required up to 50 hours per delinquency of direct staff time for communications and documentation, conferring with attorneys, research and continued follow-up. Added to this are the indirect costs of legal and financial staff. These caps represent a reasonable cost the Department needs to recover, as other indirect costs also apply.

Subsection A, Paragraph (5) is deleted since the date for commencing assessment of fees for emissions above allowable limits has long passed.

Subsection B, Paragraph (1) has a conforming grammatical correction to correctly identify the naming convention of the fee; and expands payment options to allow for payment of fees electronically or by other methods allowed by the State. This change is necessary to allow for the use of modern payment methods.

Subsection B, Paragraph (2) is revised to reflect that fee payments may be in a form other than check or money order.

Subsection B, Paragraph (3) adds a provision that fees must be paid in U.S. dollars. This change is needed as some companies with facilities in New Mexico may be headquartered in other countries and the Department is not equipped to handle foreign currencies.

Subsection C has a conforming grammatical correction to correctly identify the naming convention of the fee; a change to reference late fees as a fee type that is subject to the nonpayment provisions; and adds a reference to conform with regulation drafting requirements.

Subsection C, Paragraph (1) adds the maximum dollar amount of civil penalties in Section 74-2-12.1(A) of the Air Quality Control Act for regulatory clarity – there is no substantive effect; and the wording is changed to conform with regulation drafting requirements.

Subsection C, Paragraph (2) is changed to conform with regulation drafting requirements, which has no substantive effect.

In a change from the Petition draft of Revised Part 71, the Department withdrew its proposal for administrative compliance costs (previously a new subsection D). No other changes are made to Section 113 of Revised Part 71 except as indicated above regarding the history note.

20.2.71.114 NMAC, Annual Review

NMMA and NMOGA proposed a new Section 114 based on language in 20.2.75.13 NMAC for Construction Permit Fees. The Department did not indicate opposition to this proposal but highlighted for the Board the significant amount of existing oversight of the emission fee and Title V revenue, including oversight and audits specifically by the EPA. The Board adopts the proposed annual review language.

PART 75 CONSTRUCTION PERMIT FEES

20.2.75 NMAC, All Sections

On recommendation from the State Records Center and Archives, the method for changing Part 75 is a repeal and replacement – the same as for Revised Part 71. History notes facilitate the use of the NMAC and track the historical development of a rule provision. Each section's history appears in chronological sequence in brackets at the end of the section. See 1.24.10.20 NMAC. In the case of a repeal and replacement, for a section that is replaced, the history is noted with the letters "Rp" for replaced, followed by a comma, followed by the citation of the section it replaced, followed by a comma, a space and the effective date of replacement. For a section that is new, the history is noted with the letter "N" for new, followed by a comma, a space and the effective date

of the new material. For a section that is deleted and not replaced, the history is noted with the word “Repealed”, followed by a comma, a space, and the effective date of the deletion. All sections of Revised Part 75 contain these history note changes.

20.2.75.1 NMAC, *Issuing Agency*

Section 1 of Revised Part 75 identifies the Board as the issuing agency for Revised Part 75 and is a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(1) NMAC (requiring the name of the issuing agency in Section 1, entitled “Issuing Agency,” of each Part of the NMAC); see also 1.24.10.10(A) NMAC. No changes are made to Section 1 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.2 NMAC, *Scope*

Section 2 identifies entities subject to Revised Part 75 and is a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(2) NMAC (requiring the scope of the Part in Section 2, entitled “Scope,” of each Part of the NMAC). Section 2 has changes for drafting conformance purposes to provide clarity, adding General Construction Permit Registrations and Notices of Intent to the types of applications the rule covers, and removing the reference to outdated annual fee requirements in Subsection B. No other changes are made to Section 2 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.3 NMAC, *Statutory Authority*

The changes in Section 3 of Revised Part 75 are for drafting conformance purposes and have no substantive effect. Section 3 cites the statutes that provide authority for Revised Part 75. Section 3 reflects a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(3) NMAC (requiring the statutory authority under which the Part is issued in Section 3, entitled “Statutory Authority,” of each Part of the NMAC). No other changes are made

to Section 3 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.4 NMAC, *Duration*

No changes are made to Section 4 of Revised Part 75 except as indicated above regarding the history note. Section 4 continues to state that Revised Part 75 will be permanent, at least until the Board amends it. Section 4 continues to state that Revised Part 75 will be permanent, at least until the Board amends it. Section 4 is a mandatory section for all rules promulgated by New Mexico state agencies and provides the length of time Revised Part 75 is intended to be enforceable. See 1.24.10.8(F)(4) NMAC (requiring the intended duration of the Part in Section 4, entitled “Duration,” of each Part of the NMAC).

20.2.75.5 NMAC, *Effective Date*

Section 5 states the effective date of Revised Part 75 will be June 1, 2026. Section 5 reflects a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(5) NMAC (requiring the effective date of the Part in Section 5, entitled “Effective Date,” of each Part of the NMAC). The effective date depends on when the final rule is filed with State Records and published in the New Mexico Register, as explained above for 20.2.71.5 NMAC. Changes to Section 5 also include wording changes for drafting conformance purposes that have no substantive effect; and adding language to conform with the revised naming convention of the fee. No other changes are made to Section 5 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.6 NMAC, *Objective*

The changes in Section 6 include adding “notices of intent” and “registrations under general construction permits” to the list of permit types for which Revised Part 75 establishes a schedule of fees. Section 6 reflects a mandatory section for all rules promulgated by New Mexico

state agencies. See 1.24.10.8(F)(6) NMAC (requiring the objective of the Part in Section 6, entitled “Objective,” of each Part of the NMAC). No other changes are made to Section 6 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.7 NMAC, *Definitions*

Section 7 of Revised Part 75 defines certain terms used in Revised Part 75. Section 7 reflects a mandatory section for all rules promulgated by New Mexico state agencies. See 1.24.10.8(F)(7) NMAC (requiring the definitions that apply just to the Part in Section 7, entitled “Definitions,” of each Part of the NMAC). The changes in Section 7 include revising language to conform with regulation drafting requirements and changing definitions as listed below:

Subsection A, “air toxics review” fixes the number format in the definition of “air toxics review” to conform with regulation drafting requirements.

Subsection B, “applicable regulations” changes “permit” fee to “application review” fee in two places to conform with the revised naming convention of the fee; removes the phrase “during malfunctions, startup, shutdown, or scheduled maintenance” to correct the actual title of 20.2.7 NMAC; adds the word “Permits” to correct the actual title of 20.2.74 NMAC; and removes the word “permit” when referring to the rule’s fee schedule to conform with the revised naming convention in Revised Part 75.

Subsection E, “revision” removes the phrase “but not limited to” as an unnecessary caveat to conform with regulation drafting requirements; and changes the word “regulation” to “Part” in the definition of “revision” to conform with regulation drafting requirements.

Subsection F, “small business” removes unnecessary language referring to the Part; fixes the number format in the definition of “small business” to conform with regulation drafting requirements; and, for new sources, removes the requirement for a responsible official to provide

certification that the company does not expect to employ more than 10 employees in its first year of operation, as this requirement has been moved to Section 11(D).

Subsection G, “technical review of an existing permit” adds clarifying language to improve readability and understanding. No substantive changes are made to this definition.

No other changes are made to Section 7 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.8 NMAC, *Amendment and Supersession of Prior Regulations*

No changes are made to Section 8 of Revised Part 75 except to correct a citation format to conform with regulation drafting requirements and as indicated above regarding the history note.

20.2.75.9 NMAC, *Documents*

The only change in Section 9 is to update the address where the Air Quality Bureau offices are located. Section 9 informs the public where it can access documents incorporated and cited in Revised Part 75. This is a standard provision in all Title 20 regulations. See 20.1.1.200(E) (requiring all documents filed in a proceeding under 20.1.1 NMAC to be made publicly available). No other changes are made to Section 9 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.10 NMAC, *Filing Fee*

Section 10 describes the requirements for submitting filing fees when filing certain permit applications and how filing fees shall be applied to application review fees.

Subsection A fixes the number format to conform with regulation drafting requirements; removes the reference to “notice of intent” as the filing fee for Notices of Intent is removed; adjusts the sentence construction for the first sentence for grammatical improvement; and replaces “total permit fee” with “application review fee” to conform with the revised naming convention.

Subsection B removes the heading reference of the section for 20.2.72.221 NMAC as unnecessary for understanding; and fixes the number format to conform with regulation drafting requirements.

Subsection B, Paragraph (1) adds the phrase “accelerated review” to clarify which filing fee is referenced; and replaces “total permit fee” with “application review fee” to conform with the revised naming convention.

Subsection B, Paragraph (2) removes the word “permit” from “accelerated permit review” to conform with language used in the main Subsection B; adds “the accelerated review” to clarify which filing fee is referenced; and replaces “total permit fee” with “application review fee” to conform with the revised naming convention.

No other changes are made to Section 10 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.11 NMAC, Application Review Fee and Annual Fee

Section 11 provides the point schedule for calculating application review fees (previously “permit fees”) for new permits, permit revisions, and technical reviews of existing permits; establishes the baseline cost per point used to calculate application review fees; provides that sources that have been issued a construction permit shall be assessed an annual fee; and provides that the cost per point and annual fee shall be adjusted annually using the CPI.

The **Heading** replaces “PERMIT” with “APPLICATION REVIEW” fee to conform with the revised naming convention; and adds “AND ANNUAL FEE” to more accurately define the contents of the section.

Subsection A replaces “permit fee” with “application review fee” to conform with the revised naming convention.

Subsection A, Points Schedule, Section 1 adds the word “Each” to “Modeling Review” to clarify that additional modeling reviews due to deficient submissions will incur additional points (and therefore fees); and changes the number of points for modeling review from 15 to 30 to account for the increased complexity of current modeling. An increase in the points assessed for modeling reviews is necessary because the average complexity and review time of modeling projects has increased significantly in recent years due to the issuance of various general construction permits, which have eliminated the requirement to perform modeling for simpler sources.

Subsection A, Points Schedule, Section 2 adds “Notices of Intent (20.2.73 NMAC)” to the schedule of points to align the application review fee for Notice of Intent applications with the resources the Department spends reviewing them; adds 10 points for Notice of Intent applications based on average permitting resources expended; replaces “Permits” with “Permit registrations other than GCP-Oil & Gas” to first appropriately identify that sources apply to *register* under the Department’s GCPs, and second to exclude the GCP-O&G as a separate class of GCP; adds “GCP-Oil & Gas Registrations (20.2.72.220 NMAC)” to the schedule of points related to the exclusion just noted; and adds 30 points to the schedule for review of GCP-O&G registration applications due to their complexity and amount of resources expended for that particular GCP.

The Board rejects NMOGA’s proposal to add 20 points to the schedule for review of GCP-O&G registration applications instead of the 30 points proposed by the Department. The Board finds that the proposal lacks supporting evidence, such as a projection that the reduced point value would generate sufficient revenue to cover the reasonable costs of the Department’s Construction Program or to maintain the fiscal integrity of the Construction Special Revenue Fund. Compare NMED Exhibits 71 and 76-77.

Assessing points for Notices of Intent is necessary because the current \$500 filing fee is insufficient to cover the cost of reviewing a Notice of Intent application to determine whether a construction permit is required before construction may commence.

An increase in the points assessed for GCP-O&G registration applications is necessary because applications to register under the GCP-O&G are more complex than applications to register under other general construction permits. The Department's evidence demonstrates that GCP-Oil & Gas registration applications are materially more complex and resource-intensive than other general construction permit registration applications. See e.g., NMED Exhibit 19 (Estimated Application Processing Times). Increasing the point value to 30 reasonably reflects the relative time, technical review, and staff resources required, as supported by the Department's testimony. The Board finds that adopting NMOGA's lower proposed point level would either result in a revenue shortfall that undermines the Department's ability to meet its statutory and delegated federal obligations, or would require shifting Program costs to other regulated sources in a manner inconsistent with the requirement that regulated sources fund the Program.

Subsection B adds the words "application review" to clarify that the subsection refers to application review fees; replaces "permitting action" with "application as determined by the department" to include NOI applications and GCP registration applications; changes the baseline (non-inflation adjusted) fee point multiplication factor from \$315 to \$585; and fixes the number format to conform to regulation drafting requirements. Both GCP registrations and Notice of Intent approvals require significant permitting analysis and as such, are a part of the overall permitting program. The updated language represents a recognition that the permitting program has evolved to better meet industry needs and aligns with the services provided by the Department. The fiscal analysis demonstrates the necessity of increasing the fee point multiplication factor.

The Board rejects NMMA’s proposal to maintain the rule language as it was adopted in 2001, such that there would be no increase to the application review fee multiplier dollar amount. The Board finds that the proposal lacks supporting evidence, such as a projection that the reduced point value would generate sufficient revenue to cover the reasonable costs of the Department’s Construction Program or to maintain the fiscal integrity of the Construction Special Revenue Fund. Compare NMED Exhibits 71 and 76-77.

Subsection C is added as a new subsection to clarify that additional fees may be assessed when the Department has to repeat actions due to application revisions. Although the Department has this authority already, it has rarely (if ever) exercised that authority. This additional subsection calls attention to potential additional costs that applicants have not previously been assessed in the hopes that the quality of applications will improve and fewer (or no) revisions will be necessary. All subsequent subsections have been re-lettered to account for this addition.

The Board rejects NMOGA’s proposal to impose conditions on the Department’s discretion. The Board finds that although the proposed language appears to only impose a limiting standard on the Department’s discretion, it is vague and administratively unworkable such that in practice the limitation it would introduce ambiguity, invite dispute over what constitutes “minimal” review, and risk preventing recovery of actual costs incurred by the Program. Industry may not be aware of how “minimal” changes to an application can impact analyses.

Subsection D replaces “permit” with “application review” to conform with the revised naming convention; adds language to clarify which fees under 20.2.75 NMAC are reduced for small businesses; replaces “divided by two” with “reduced by half” for precision of language purposes; and adds language setting forth the requirements for small businesses to qualify for the small business fee reduction. The certification requirement was added here and removed from the

definition of “small business” in 20.2.75.7(F).

Subsection E adds clarifying language that the subsection refers to applications processed “by an outside firm” for accelerated review; removes the unnecessary heading referencing 20.2.72.221 NMAC for better readability; replaces “20.2.75.11 NMAC” with “this Section” for easier tracking and comprehension and to conform with regulation drafting requirements; replaces “divided by two” with “reduced by half” for precision of language purposes; and removes the unnecessary reference to 20.2.72.221 NMAC.

Subsection F adds “or registered under a general construction permit” to clarify that GCP registrants incur the same annual fee as sources issued a construction permit; changes the baseline (non-inflation adjusted) annual fee for sources that have been issued a construction permit from \$1,500 to \$2,800 to balance projected revenues with projected costs in the Department’s fiscal analysis and at the same time fixes the number format to conform to regulation drafting requirements; adds a provision stipulating that sources that have filed a Notice of Intent and received an approval letter from the Department will be assessed a baseline annual fee of \$700 to account for ongoing costs of reporting, data maintenance and compliance and enforcement work; adds a provision to clarify that annual fees apply to all permits, registrations and Notices of Intent in active status on December 31 of the preceding calendar year regardless of the facility’s operational status to codify the Department’s historical practice; and adds clarifying language specifying that the “annual fee” referred to in “this subsection” does not apply to any source assessed an “emissions fee” under Part 71.

Adding an annual fee for sources that have filed a Notice of Intent is justified because these sources, like sources that have been issued a construction permit, impose ongoing compliance obligations on the Department, the costs of which are not covered by application review fees,

which are one-time fees intended only to cover the cost of reviewing an application and the administrative and other indirect costs associated with that activity. Adding an annual fee for sources that have filed a Notice of Intent is necessary to ensure the Department's fees are sufficient to cover the reasonable costs of its construction permit program, as required by the Air Quality Control Act, and safeguard its permit fee fund against impending insolvency. The new NOI annual fee was set at 25% of the construction permit annual fee, based on emissions share and relative workload.

The Board rejects NMMA's proposal to not include an annual fee for Notices of Intent and to maintain the rule language as it was adopted in 2003, such that there would be no increase to the annual fee for sources that have been issued a construction permit. Notice of Intent facilities represent over 30% of all New Mexico emissions, and are associated with ongoing costs, such as compliance determinations, emissions inventory requirements and data maintenance.

Subsection G resets the year when CPI adjustments begin to 2028 as the Department's fiscal analysis utilized the new (unadjusted) baseline fees for 2027; rewords for clarity the description of which fees are subject to the annual inflation adjustment based on increases (if any) in the CPI but does not substantively change applicability of the adjustment; and adds a sentence to provide certainty that should there be a decrease or absence of change in the CPI for any given year (a rare occurrence), the cost per point and annual fees will remain the same as the previous year, and adjustments will resume the next time there is an increase in the CPI.

As the Board rejected NMMA's proposal to not increase the application review fee multiplier dollar amount, the Board rejects NMMA's proposal that would similarly revert the rule language to that adopted in 2003, such that the application review fee multiplier dollar amount and annual fees would remain at their current CPI adjusted rate.

The Board also rejects the proposal by NMMA and NMOGA to only allow the annual CPI adjustment to occur after the Department files the annual review in 20.2.75.13 NMAC. CPI adjustments are to take place annually as part of an agency's duty to adopt fees sufficient to cover all reasonable costs. CPI adjustments are meant to align with increased costs. Tying these adjustments to reporting creates an obvious gap in fees keeping up with costs and does not serve the purposes for which the adjustments are intended. No other changes are made to Section 11 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.12 NMAC, Invoicing, Payment, Late Fee and Enforcement

Section 12 describes the process for invoicing and paying construction permit fees. The language allows for invoicing and payment of fees electronically or by other methods allowed by the State; adds a provision imposing a late fee if annual fees are not remitted by the due date; and adds a provision stipulating that nonpayment of construction permit fees may result in penalties and possible enforcement action. These changes are necessary to allow for the use of modern billing and payment methods, incentivize timely payment of fees, and confirm enforcement activity authority.

The **Heading** replaces the vague "PAYMENT OF FEES" with the more accurate and descriptive "INVOICING, PAYMENT, LATE FEE AND ENFORCEMENT."

Subsection A replaces "permit application" with "application for a permit to construct or modify a source or permit revision" to better describe the types of applications requiring a filing fee; replaces "received by" with "submitted to" so that the provision aligns with requirements for the applicant to submit both the application and the filing fee; and adds language to specify that application review fees for NOI and GCP registration applications are due at the time the application is submitted to the Department, since there is no filing fee for these applications.

Subsection B rewords to add language clarifying which types of applicants will be invoiced for the application review fee, minus the filing fee already paid, at the time their application is deemed administratively complete; adds language to allow electronic or other methods of invoice transmission to the applicant to update processes due to technology improvements; corrects a citation referring to the Department finding an application administratively complete; rewords to add language clarifying which types of applications shall be denied by the Department if application review fees have not been paid within 30 days of the invoice date, while also correcting the number format to conform with regulation drafting requirements; rewords to add clarifying language regarding additional fee invoicing upon completion of the application review and when those additional fees are due; replaces “the signed permit” with “its grant or denial of the permit or permit revision” to ensure that application review fees are not dependent on permit issuance but rather on the resources expended to review the application; and removal of the provision regarding excess fees as (1) application review fees are calculated and documented at the time of invoicing with ample time for applicants to request a review, (2) a much more involved process would be required for refunds as dictated by the Department of Finance, and (3) refunds of excess fees paid are covered under Subsection F.

Subsection C is added to define when invoices will be issued and payment due for applications for technical permit revisions, addressing their exclusion in Subsection B due to the different review timelines associated with applications for technical revisions and the lack of a completeness determination for such applications.

Subsection D is similarly added to define when invoices will be issued and payment due for NOI and GCP registration applications. All subsequent subsections have been re-lettered to account for the two added subsections.

Subsection E rewords for clarity but does not substantively alter the invoicing and payment due date for a request for technical review of an existing permit, and fixes the number format to conform to regulation drafting requirements.

Subsection F is re-lettered but otherwise unchanged.

Subsection G adds language to allow for transmission of fees other than by check or money order; and corrects the format of a citation of statute.

Subsection H replaces “Permittees” with “Owners or operators” in recognition that annual fees are required of NOI facilities in addition to permittees and GCP registrants; rewords current language for clarity and fixes number formatting to conform with regulation drafting requirements; adds a provision for assessment of a late fee equal to 50% of the annual fee and due date for its payment (together with the delinquent annual fee) for failure to pay annual fees on time; and adds a provision stating that if the invoice for the late fee (with the delinquent annual fee) is not paid by the due date, the late fee will increase to 100% of the annual fee and is due immediately without additional notification from the Department. The late fee provisions added to this subsection are in recognition of the significant resources expended to collect delinquent annual fees.

Subsection I is re-lettered and has no other changes.

Subsection J adds notification that failure to pay all fees in Revised Part 75 is a violation of the State rule and, as such, may subject the owner or operator to enforcement.

Subsection J, Paragraph 1 denotes the civil penalties that may legally be assessed pursuant to the Air Quality Control Act.

Subsection J, Paragraph 2 cites the applicable enforcement provisions of Air Quality Control Act, which allow the Department to suspend or revoke permits as an enforcement activity.

In a change from the Petition draft of Revised Part 75, the Department withdrew its proposal to include a provision regarding administrative compliance costs (previously a new subsection K). No other changes are made to Section 12 of Revised Part 75 except as indicated above regarding the history note.

20.2.75.13 NMAC, *Periodic Review*

Section 13 requires the Department to prepare a review of permit fees and program costs annually and present it to the Board within six months following the end of the fiscal year. The Department had proposed in its petition removing the provision requiring that the annual review be presented to the Board, believing that the purpose of the annual review is to help the Department determine whether it is necessary to initiate rulemaking proceedings to increase fees. When it does so, it must provide information regarding budgets and expenditures to the Board in the course of those proceedings. In years when the Department determines it is not necessary to seek an increase in permit fees, the Department initially saw no purpose in providing this information to the Board, and the Board historically has not received or reviewed this information. However, the Department agreed that transparency and oversight are important, and 20.2.75.13 NMAC remains unaltered from the current rule except as indicated above regarding the history note.

20.2.75.14 NMAC, *Severability*

Section 14 is a new provision in Revised Part 75. Section 14 specifies that if any provision of Revised Part 75 – or its application to any person or circumstance – is held invalid, the remainder of the rule shall not be affected. The purpose of this provision is to clarify that the entire rule is not voided should a court strike down one or more specific provisions of Revised Part 75. This provision is standard in and consistent with other Department rules.

VII. COMPLIANCE WITH STATUTORY AND REGULATORY RULEMAKING PROCEDURES

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

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

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

254. Replacement rules 20.2.71 NMAC and 20.2.75 NMAC comply with 1.24.10 NMAC, the uniform drafting rules for regulations in the New Mexico Administrative Code.

CONCLUSION

In making these rules, the Board has considered, and given the weight it deems appropriate to, all relevant facts and circumstances in the record, including: (1) character and degree of injury to or interference with health, welfare, visibility and property; (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and (3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

Based on the substantial evidence presented in the record, the Board finds that these factors support adoption of replacement rules 20.2.71 NMAC and 20.2.75 NMAC as proposed and adjusted during Board deliberations are reasonable, lawful, and consistent with the purposes of the Environmental Improvement Act, the Air Quality Control Act, and the federal Clean Air Act.

FINAL ORDER

By a majority of a quorum of the Board's members, replacement rules 20.2.71 NMAC and 20.2.75 NMAC, as shown in Exhibits A and B to this Order, were approved by the Board on April 13, 2026. The Rules shall be filed with the New Mexico State Records Center and Archives as expeditiously as possible by the Department.

4/17/2026

Signed this _____ day of April, 2026.

Signed by:

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Sandra Ely, Chair
New Mexico Environmental Improvement Board