

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING
TO CONSIDER PROPOSED REPEAL AND REPLACEMENT OF 20.2.71 NMAC AND 20.2.75 NMAC**

The New Mexico Environmental Improvement Board (“Board”) will hold a public hearing on June 27, 2024 at 9:00 a.m., and continuing at the direction of the Board, in the NM State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87505.

The purpose of the hearing is to consider the matter of EIB 24-12(R), proposed repeal and replacement of the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.71 NMAC (Operating Permit Emissions Fees) and 20.2.75 NMAC (Construction Permit Fees). The proponent of these regulatory repeals and replacements is the New Mexico Environment Department (“NMED”). The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC that would allow the NMED to recoup the reasonable costs of operating the NMED’s Air Quality Bureau programs as required by the federal Clean Air Act and New Mexico Air Quality Control Act, respectively. The Environmental Improvement Act, Section 74-1-8(A)(4) NMSA 1978 and the Air Quality Control Act, Section 74-2-5 NMSA 1978 specifically authorize the Environmental Improvement Board to adopt rules that are necessary for air quality management as provided in the Air Quality Control Act.

The proposed repeal and replacements are required by the State Records Center and Archives under 1.24.11.9(C) NMAC to meet current style and formatting requirements. The proposed repeal and replacement for 20.2.71 NMAC (Operating Permit Emissions Fees) will update the fee pollutant definition to add “particulate matter 10 microns or less (PM₁₀)” and “particulate matter 2.5 microns or less (PM_{2.5})” and remove “total suspended particulate matter” and “mercury”; increase annual emissions fees to \$81.00 per ton for each fee pollutant and \$250.00 per ton of hazardous air pollutants; remove the cap of six thousand tons that can be assessed a charge; allow charging the fee for the higher of the two PM₁₀ or PM_{2.5} emission rates to prevent double charging; remove the outdated mercury emission fee schedule; update annual Consumer Price Index (CPI) adjustments to prevent a decrease in revenues for years with no increase; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions.

Additionally, the proposed repeal and replacement will include updates to Section 3 of 20.2.71 NMAC to incorporate the New Mexico Legislature’s statutory amendment to Paragraph (7) of Subsection B of 74-2-5 NMSA 1978. These increases will enable the NMED to comply with federal requirements to collect operating permit emissions fees sufficient to cover the reasonable costs of the Title V permitting program.

The proposed repeal and replacement for 20.2.75 NMAC (Construction Permit Fees) will increase the filing fee to \$2000 for each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit; increase the accelerated review filing fee to \$5,000; update annual CPI adjustments to prevent a decrease in revenues for years with no increase; increase the point-based fee schedule value to 30 points for modeling review fees; increase the point-based value to 50 points separately for oil and gas general permits; increase the cost to the point-based value to \$510 per point; increase the annual fee to \$2,430; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions of up to \$15,000 per day. These increases will enable the NMED to comply with the Air Quality Control Act to collect sufficient fees to cover the reasonable costs of the construction permitting program and is considered a revision to the State Implementation Plan.

The proposed fee increases will enable the NMED to comply with the federal Clean Air Act and New Mexico Air Quality Control Act requirements to collect sufficient fees to cover the reasonable costs of the air program and is considered a revision to the State Implementation Plan and Title V program.

The proposed regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Santa Fe, New Mexico, on NMED’s website at <https://www.env.nm.gov/opf/docketed-matters/>, or by contacting Armando Paz at 505-629-3242 or armando.paz@env.nm.gov.

The hearing will be conducted in accordance with 20.1.1 NMAC Rulemaking Procedures Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality control Act Section 74-2-6 NMSA 1978, and other applicable procedures. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally and in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall: (1) Identify the person for whom the witness(es) will testify; (2) Identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background; (3) Include a copy of the direct testimony of each technical witness in narrative form; (4) List and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (5) Include the text of any recommended modifications to the proposed regulatory change.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on June 6, 2024, and should reference the docket number, EIB 24-12(R) and the date of the hearing. Notices of intent to present technical testimony shall be submitted to: Pamela Jones, Board Administrator Environmental Improvement Board P.O. Box 5469 Santa Fe, NM 87502; Phone (505) 660-4305; Fax (505) 827-2836; email: pamela.jones@env.nm.gov.

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with that testimony as long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing.

From now until the conclusion of the hearing, public comments will be received via electronic mail to or via physical mail to Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Comments received after the conclusion of the hearing will not be viewed.

Persons having a disability who need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing should contact Pamela Jones no later than June 6, 2024 at (505) 660-4305 or pamela.jones@env.nm.gov.

The Board may make a decision on the proposed regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855 nd.coordinator@env.nm.gov.

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.