

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 75 CONSTRUCTION PERMIT FEES**

**20.2.75.1 ISSUING AGENCY:** Environmental Improvement Board.  
[20.2.75.1 NMAC - Rp 20 NMAC 2.75.100, 03/02/01]

**20.2.75.2 SCOPE:**

**A.** All persons who apply for a permit to construct or modify a source or revise a permit, or who request a technical review of an existing permit under 20.2.72 NMAC. Part 70 (20.2.70 NMAC) operating permit emission fees are covered under 20.2.71 NMAC.

**B.** The requirements concerning the payment of an annual fee shall apply to sources with an air quality construction permit for which the application to either revise, modify or for a new permit was received following the effective date of this regulation.

[20.2.75.2 NMAC - Rp 20 NMAC 2.75.101, 03/02/01]

**20.2.75.3 STATUTORY AUTHORITY:** Environmental Improvement Act, Paragraph 4 of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, including specifically, Paragraph 6 of Subsection B of Section 74-2-7 NMSA 1978.

[20.2.75.3 NMAC - Rp 20 NMAC 2.75.102, 03/02/01]

**20.2.75.4 DURATION:** Permanent.

[20.2.75.4 NMAC - Rp 20 NMAC 2.75.103, 03/02/01]

**20.2.75.5 EFFECTIVE DATE:** March 2, 2001 except where a later date is cited at the end of a section.

**A.** For applications received prior to the effective date of this regulation, the provisions in 20.2.75 NMAC, as effective as of the date of the receipt of the application, remain effective, and fees shall be so determined.

**B.** For applications received following the effective date of this regulation, fees shall be based on the current regulation.

[20.2.75.5 NMAC - Rp 20 NMAC 2.75.104, 03/02/01; A, 12/01/03]

[The latest effective date of any section in this Part is 12/01/03.]

**20.2.75.6 OBJECTIVE:** The objective of this Part is to establish a schedule of fees for the construction permit program, including construction permits, permit revisions, and technical reviews of existing permits.

[20.2.75.6 NMAC - Rp 20 NMAC 2.75.105, 03/02/01]

**20.2.75.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC (definitions) or 20.2.72 NMAC (construction permits), as used in this Part:

**A. "air toxics review"** means the required review of a permit application for the potential emission of an air toxic regulated by 20.2.72.400 NMAC - 20.2.72.499 NMAC. As used in this Part, a level I air toxics review consists of modeling to determine whether one one-hundredth (1/100) of the occupational exposure limit, as defined in 20.2.72.401 NMAC, is met; a level II air toxics review consists of either a health assessment or best available control technology (BACT) determination, whichever is required by 20.2.72.400 NMAC - 20.2.72.499 NMAC.

**B. "applicable regulations"**, for the purpose of assessing permit fee points, mean those regulations that are applicable to the source and not the review to determine whether the regulation is applicable. Applicable regulations do not include 20.2.1 NMAC (general provisions), 20.2.2 NMAC (definitions), 20.2.3 NMAC (ambient air quality standards), 20.2.5 NMAC (source surveillance), 20.2.7 NMAC (excess emissions during malfunctions, startup, shutdown, or scheduled maintenance), 20.2.8 NMAC (emissions leaving New Mexico), 20.2.60 NMAC (open burning), 20.2.70 NMAC (operating permits), 20.2.71 NMAC (operating permit emission fees), 20.2.72 NMAC (construction permits), 20.2.73 NMAC (notice of intent and emission inventory requirements), 20.2.74 NMAC (prevention of significant deterioration (PSD)), 20.2.75 NMAC (construction permit fees), 20.2.77 NMAC (new source performance standards), 20.2.78 NMAC (emission standards for hazardous air pollutants), 20.2.79 NMAC (permits - nonattainment areas), 20.2.80 NMAC (stack heights), and 20.2.82 NMAC (maximum achievable control technology standards for source categories of hazardous air pollutants). All other Title 20, Chapter 2 NMAC Parts and all new source performance standards (excluding Subpart A) and national emission standards for

hazardous air pollutants/maximum achievable control technology (NESHAP/MACT) (excluding 40 CFR Part 61 Subparts A and M and 40 CFR Part 63 Subpart A) regulations that are applicable to the source shall be counted and shall result in additional points for permit fees purposes, in accordance with the permit fee schedule in this Part.

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

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

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

**F. "small business"** means, for the purposes of this Part, a company that employs no more than ten (10) employees at any time during the calendar year. Employees include part-time, temporary, or limited service workers. For new sources, the responsible company official shall certify that the source does not expect to employ any more than ten (10) employees in the first year of operations. In addition, "small business" does not include (1) any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and (2) any major source for hazardous air pollutants under 20.2.70 NMAC.

**G. "technical review of an existing permit"** means the department's technical review of new information submitted by a permittee as required by an existing permit condition and in conjunction with proposed changes at the source that do not involve any changes to the existing permit. The review must be necessary to demonstrate that all applicable state and federal regulations and standards will continue to be met and that the existing permit will continue to be valid. This does not include required periodic reports.  
[20.2.75.7 NMAC - Rp 20 NMAC 2.75.107, 03-02-01; A, 12/01/03]

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

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

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

[20.2.75.8 NMAC - Rp 20 NMAC 2.75.106, 03/02/01]

**20.2.75.9 DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Santa Fe, NM.

[20.2.75.9 NMAC - Rp 20 NMAC 2.75.108, 03/02/01]

**20.2.75.10 FILING FEE:**

**A.** A filing fee of five hundred dollars (\$500) shall be submitted with each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit. The filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC.

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

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

- (2) No qualified outside firm submits a proposal for the accelerated permit review, one-half of this filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC;
- (3) One or more qualified outside firms submit a proposal but all such proposals are rejected by the applicant, the accelerated review filing fee shall be forfeited and retained by the department; or
- (4) The applicant withdraws the application for any reason, the accelerated review filing fee shall be forfeited and retained by the department.
- [20.2.75.10 NMAC - Rp 20 NMAC 2.75.109, 03/02/01; A, 12/01/03]

**20.2.75.11 PERMIT FEE:**

- A.** The permit fee shall be based on the following point-based fee schedule.

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

**B.** The fee shall be the sum of all of the points that are applicable to the permitting action, multiplied by three hundred fifteen dollars (\$315).

**C.** For sources that satisfy the definition of "small business" as defined in Subsection F of 20.2.75.7 NMAC, the permit fee determined by Subsections B and E of 20.2.75.11 NMAC shall be divided by two.

**D.** For applications processed under 20.2.72.221 NMAC, Accelerated Review, the permit fee determined by Subsection B of 20.2.75.11 NMAC shall be divided by two, and shall be in addition to the cost of the accelerated review bid, as described in 20.2.72.221 NMAC.

**E.** Sources that have been issued a construction permit under 20.2.72 NMAC shall be assessed an annual fee of one thousand five hundred dollars (\$1,500). This fee shall not apply to sources which are assessed an annual fee in accordance with 20.2.71 NMAC.

**F.** Beginning in 2005, the cost per point in Subsection B of this section and the annual fee in Subsection E of this section shall be adjusted each year on January 1 to reflect the increase, if any, by which the consumer price index for the most recent year exceeds the consumer price index for the year 2004. The amount of the change in the fee shall be determined by multiplying the existing fee by the change in the consumer price index and rounding the result to the nearest dollar. The consumer price index for any year is the average of the consumer price index for all-urban consumers published by the United States department of labor, as of the close of the twelve-month period ending on August 31 of that year.

[20.2.75.11 NMAC - Rp 20 NMAC 2.75.110, 03/02/01; A, 12/01/03]

#### **20.2.75.12 PAYMENT OF FEES:**

**A.** The Department shall refuse to accept any permit application without payment of the filing fee at the time the application is received by the Department. The filing fee and the accelerated review filing fee are non-refundable.

**B.** An invoice for permit fees shall be mailed to the applicant at the time the Department finds the application administratively complete pursuant to 20.2.72.203 NMAC. The Department shall deny any permit application or request for permit revision if the required permit fee has not been paid within thirty (30) days of invoicing, unless the Department has granted an extension. If, upon completion of the permit review, the Department determines additional fees are due, the Department shall mail an invoice to the applicant along with the signed permit. The permittee shall pay this invoice within thirty (30) days of invoicing, unless the Department has granted an extension. In the event excess fees were paid, the Department shall issue a refund for excess fees and mail the refund to the applicant.

**C.** An invoice for a request for technical review of an existing permit shall accompany the Department's response. The applicant or permittee shall pay for the review within thirty (30) days of invoicing.

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

**E.** All fees paid pursuant to this Part shall be remitted in the form of a corporate or certified check or money order made payable to the Environment Department at the address specified in the notice. Upon receipt of the check, it shall be deposited in the "state air quality permit fund" established by NMSA 1978, 74-2-15 (1992).

**F.** Permittees shall pay annual fees within thirty (30) days of receipt of an invoice for annual fees for a permitted facility.

**G.** All fees shall be paid in U.S. dollars.

[20.2.75.12 NMAC - Rp 20 NMAC 2.75.111, 03/02/01]

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

[20.2.75.13 NMAC - N, 03/02/01]

#### **HISTORY OF 20.2.75 NMAC:**

##### **Pre-NMAC History:**

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

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

##### **History of Repealed Material:**

20 NMAC 2.75, Air Quality Statewide - Construction Permit Fees, filed 10/30/95, repealed effective 03/02/01.