

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 86 BEST AVAILABLE CONTROL TECHNOLOGY FOR MERCURY AT NEW POWER PLANTS

20.2.86.1 ISSUING AGENCY. Environmental Improvement Board.
[20.2.86.1 NMAC - N, 02/10/08]

20.2.86.2 SCOPE. All persons who operate or intend to construct a coal-fired power plant within the jurisdiction of the environmental improvement board, except those coal-fired power plants constructed and generating electric power and energy before July 1, 2007.
[20.2.86.2 NMAC - N, 02/10/08]

20.2.86.3 STATUTORY AUTHORITY. Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-5(C)(4).
[20.2.86.3 NMAC - N, 02/10/08]

20.2.86.4 DURATION. Permanent.
[20.2.86.4 NMAC - N, 02/10/08]

20.2.86.5 EFFECTIVE DATE. 02/10/08 except where a later date is cited at the end of a section.
[20.2.86.5 NMAC - N, 02/10/08]

20.2.86.6 OBJECTIVE. The objective of this part is to require implementation of mercury emission control strategies for coal-fired power plants subject to this part.
[20.2.86.6 NMAC - N, 02/10/08]

20.2.86.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC (Definitions) and 20.2.74 NMAC (Permits - Prevention of Significant Deterioration (PSD)), as used in this part, the following definitions apply.

A. “Best available control technology (BACT)” means an emissions limitation as defined in 20.2.74 NMAC (Permits - Prevention of Significant Deterioration (PSD)).

B. “Coal” means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American society of testing and materials (ASTM) standard specification for classification of coals by rank D388-77, 90, 91, 95, 98a or 99 (Reapproved 2004).

C. “Coal-fired” means combusting any of coal or coal-derived fuel, alone or in combination with any amount of any other fuel.

D. “Control strategy” means equipment, processes or actions used to reduce air pollution.

E. “Control strategy selection report” means a report completed as a component of a 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC permit application that shall be submitted by the applicant to the department pursuant to 20.2.86.104 NMAC.

F. “Input fuel” means fuel used in a stationary coal-fired boiler or stationary coal-fired combustion turbine to generate electricity.

G. “Operator” means any person who operates, controls, or supervises a power plant or a facility that includes a power plant and shall include, but not be limited to, any holding company, utility system, or plant manager of such power plant.

H. “Owner” means any of the following persons:

(1) any holder of any portion of the legal or equitable title in a power plant;

(2) any holder of a leasehold interest in a power plant; or

(3) any purchaser of power from a power plant under a life-of-the-unit firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such power plant.

I. “Power plant” means one or more stationary coal-fired boiler or stationary coal-fired combustion turbine that is subject to this part pursuant to 20.2.86.100 NMAC.

J. “State” means:
 (1) for purposes of referring to a governing entity, the state of New Mexico; or
 (2) for purposes of referring to a geographic area, all geographic areas within the jurisdiction of the environmental improvement board.

K. “Submit” means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation in person, by United States postal service, or by other means of dispatch or transmission and delivery. Compliance with any “submission” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.
[20.2.86.7 NMAC - N, 02/10/08]

20.2.86.8 DOCUMENTS. Documents incorporated and cited in this part may be viewed at the New Mexico environment department air quality bureau offices in Santa Fe.

[20.2.86.8 NMAC - N, 02/10/08]

[The current address for the New Mexico environment department air quality bureau is 1301 Siler Road, Building B, Santa Fe, NM 87507]

20.2.86.9 SEVERABILITY. If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.86.9 NMAC - N, 02/10/08]

20.2.86.10 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.

[20.2.86.10 NMAC - N, 02/10/08]

20.2.86.11 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.86.11 NMAC - N, 02/10/08]

20.2.86.12 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.86.12 NMAC - N, 02/10/08]

20.2.86.13 LIMITATION OF DEFENSE. The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.

[20.2.86.13 NMAC - N, 02/10/08]

20.2.86.14 to 20.2.86.99 [Reserved]

20.2.86.100 APPLICABILITY. The part applies to all coal-fired power plants within the jurisdiction of the environmental improvement board, except for coal-fired power plants constructed and generating electric power and energy before July 1, 2007.

[20.2.86.100 NMAC - N, 02/10/08]

20.2.86.101 MERCURY CONTROL STRATEGIES. Prior to and at all times when generating electric power, each coal-fired power plant shall implement a control strategy for mercury emissions that removes the greater of what is achievable with best available control technology or ninety percent removal of the mercury from the input fuel.

[20.2.86.101 NMAC - N, 02/10/08]

20.2.86.102 EXEMPTIONS. Coal-fired power plants constructed and generating electric power before July 1, 2007 are not subject to this part.

[20.2.86.102 NMAC - N, 02/10/08]

20.2.86.103 LIABILITY. Any provision of this part that applies to a coal-fired power plant shall also apply to the owners and operators of such coal-fired power plant.

[20.2.86.103 NMAC - N, 02/10/08]

20.2.86.104 PERMIT REQUIREMENTS.

A. As a component of a 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC permit application, the owner or operator of any power plant subject to this part shall submit to the department a control strategy selection report that analyzes control of mercury emissions. The control strategy selection report shall:

(1) analyze and indicate whether BACT or ninety percent removal of mercury from the input fuel results in greater mercury emission reductions;

(2) indicate, based on control efficiency, whether BACT or ninety percent removal of mercury from the input fuel is to be implemented at the power plant to reduce mercury emissions; and

(3) provide sufficient documentation (i.e., manufacturers guarantees, emissions calculations, etc.) to support the control strategy chosen under Paragraph (2) of this subsection.

B. The department shall make a final determination, based on control efficiency, whether BACT or ninety percent removal of mercury from the input fuel shall be implemented at the power plant to reduce mercury emissions. The control strategy that results in greater control efficiency shall be used by the department to determine an allowable mercury emission limit. The department shall include the allowable mercury emission limit in the resulting air quality permit as an enforceable permit condition. The department shall establish monitoring and recordkeeping requirements that ensure compliance with the permit condition.

[20.2.86.104 NMAC - N, 02/10/08]

20.2.86.105 GENERAL REQUIREMENTS FOR MONITORING AND REPORTING.

A. Any power plant subject to this part with a nameplate capacity of greater than 25 megawatts electric producing electricity for sale shall comply with all applicable requirements for monitoring and reporting pursuant to 20.2.85.111 NMAC and 40 CFR 75 subpart I.

B. Any power plant subject to this part with a nameplate capacity of less than or equal to 25 megawatts electric producing electricity for sale shall provide the department with an annual report. The annual report shall:

(1) include adequate information to demonstrate compliance with the mercury control limit set by the air quality permit issued by the department; and

(2) be submitted to the department annually within 30 calendar days of the anniversary of the date that the air quality permit was issued.

[20.2.86.105 NMAC - N, 02/10/08]

20.2.86.106 INSPECTIONS AND INFORMATION REQUESTS.

A. For the purpose of determining compliance with this part the department may inspect any power plant and may inspect and copy related records, including records documenting the effectiveness of the mercury control strategy.

B. For the purpose of determining compliance with this part, the department may require the owner or operator of a power plant to submit any documentation related to a power plant subject or potentially subject to this part, except that this subsection shall not be construed to require the creation of a new record.

[20.2.86.106 NMAC - N, 02/10/08]

HISTORY OF 20.2.86 NMAC: [RESERVED]