

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 90 FIELD CITATIONS

20.2.90.1 ISSUING AGENCY. Environmental Improvement Board.
[20.2.90.1 NMAC - N, 12/12/08]

20.2.90.2 SCOPE. This part applies to the field citation program for minor violations of the Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-17, the air quality regulations, 20.2 NMAC, and any permit issued under the act or regulations.
[20.2.90.2 NMAC - N, 12/12/08]

20.2.90.3 STATUTORY AUTHORITY. Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-17, including specifically NMSA 1978, Section 74-2-12.
[20.2.90.3 NMAC - N, 12/12/08]

20.2.90.4 DURATION. Permanent.
[20.2.90.4 NMAC - N, 12/12/08]

20.2.90.5 EFFECTIVE DATE. 12/12/2008, except where a later date is cited at the end of a section.
[20.2.90.5 NMAC - N, 12/12/08]

20.2.90.6 OBJECTIVE. The objective of this part is to implement the provisions of NMSA 1978, Section 74-2-12 of the Air Quality Control Act establishing a field citation program for minor violations of the act, air quality regulations and permits issued under the act and regulations.
[20.2.90.6 NMAC - N, 12/12/08]

20.2.90.7 DEFINITIONS. As used in this part, the following definitions apply. Terms defined in the act or regulations and not defined in this part are used consistent with the meanings provided in the act or regulations.

- A.** "Act" means the Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-17.
- B.** "Air quality regulations" or "regulations" mean the air quality (statewide) regulations compiled at 20.2 NMAC.
- C.** "Department" means the New Mexico environment department.
- D.** "Division" means the environmental protection division of the department.
- E.** "Field citation" means a written document issued by the division alleging a minor violation that sets forth the nature of the alleged minor violation and, if applicable, an assessment of a penalty.
- F.** "Hearing officer" means the individual appointed by the secretary to conduct a proceeding under this part.
- G.** "Minor violation" means an failure of a person to comply with any requirement or condition of any applicable provision of the Air Quality Control Act, air quality regulations, or a permit issued under the act or regulations that, with the exception of minor violations of 20.2.60 NMAC, Open Burning, and 20.2.65 NMAC, Smoke Management, meets all of the following criteria:
 - (1) does not result in or contribute to, an increase in emissions of any air contaminant;
 - (2) does not cause an increase in emissions of any toxic air contaminant in excess of any emission standard or limitation or other state or federal requirement that is applicable to that toxic air contaminant;
 - (3) does not cause or contribute to the violation of any state or federal ambient air quality standard;and
 - (4) does not hinder the ability of the department to determine compliance with any other applicable air quality state or federal law, rule, regulation, information request, order, variance, permit, or other requirement.
- H.** "Party" means the appellant and the division.
- I.** "Person" means an individual, entity, source, facility, business or company.
- J.** "Secretary" means the secretary of the department, or any person who assumes the role of secretary for purposes of this part in the event of the secretary's disqualification, recusal or delegation of authority to another person.

[20.2.90.7 NMAC - N, 12/12/08]

20.2.90.8 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.
[20.2.90.8 NMAC - N, 12/12/08]

20.2.90.9 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.
[20.2.90.9 NMAC - N, 12/12/08]

20.2.90.10 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 laws.
[20.2.90.10 NMAC - N, 12/12/08]

20.2.90.11 to 20.2.90.107 [RESERVED]

20.2.90.108 GENERAL PROVISIONS - COMPUTATION OF TIME. 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. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the Air Quality Control Act.
[20.2.90.108 NMAC - N, 12/12/08]

20.2.90.109 REQUIREMENTS. For the purposes of this part, the following requirements shall apply to the issuance of, and response to, a field citation.

A. A person who is issued a field citation pursuant to this part shall have the period specified from the date of service of the field citation in which to achieve compliance. Within five (5) working days of achieving compliance, the person who received the field citation shall sign the citation, stating that the person has complied with the citation and return it to the department address provided in the citation. A false statement that compliance has been achieved shall constitute a violation of this part.

B. The department may require a person subject to a field citation to submit reasonable and necessary information to support a claim of compliance.

C. Nothing in this part shall be construed as preventing the re-inspection of a source or facility to ensure that the minor violation(s) cited in the field citation has been corrected.

D. Notwithstanding any other provision of this part, if a person fails to comply with a field citation within the prescribed period, or if the department determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to any person(s) or to the environment, the department may take any enforcement action authorized by law.

E. If a person wishes to request a hearing on the alleged minor violation(s) cited or penalty assessed in the field citation, the person may file a hearing request as prescribed in 20.2.90.110 NMAC.

F. If a person does not file a hearing request, that person shall pay the penalty assessed in the field citation within thirty (30) calendar days of service of the field citation.

G. Payment of a penalty assessed in a field citation issued pursuant to this part shall not be a defense to further enforcement by the department to correct a violation cited in the field citation or to assess the maximum statutory penalty pursuant to the Air Quality Control Act if the violation continues.

H. Any person who fails to comply with the compliance requirements of a field citation by the date specified or who fails to pay a penalty assessed within thirty (30) calendar days of service of the field citation may be subject to further enforcement action pursuant to the Air Quality Control Act.

I. The department may issue a warning, without penalty, as a field citation for the first offense.
[20.2.90.109 NMAC - N, 12/12/08]

20.2.90.110 FIELD CITATIONS: HEARING REQUESTS.

A. Any person who receives a field citation from the department may request a hearing before the department. The request must be made in writing to the secretary within fifteen (15) working days after the field citation has been issued, with completed assessment of penalty, if any, and shall include a copy of the field citation.

Unless a hearing request is received by the secretary within fifteen (15) working days after the field citation is issued, the decision of the department shall be final.

B. If a hearing request is received within the fifteen (15) working days time limit, the secretary shall hold a hearing within fifteen (15) working days after receipt of the request. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

C. The department shall present the field citation and supporting evidence first, followed by the appellant who has the burden of proving no violation had occurred and shall present any evidence to support the request for hearing.

D. Hearings shall be held at a place designated by the secretary unless other mutually agreed upon arrangements are made. The secretary may designate a hearing officer to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

E. Motions. All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, state the relief sought, and state whether it is opposed or unopposed. Each motion may be accompanied by an affidavit, certificate, or other evidence relied upon and shall be served upon the secretary or hearing officer and the other parties. An unopposed motion shall state that concurrence of all other parties was obtained. Any party upon whom an opposed motion is served shall have an opportunity to file a response. To expedite the proceedings, no replies shall be allowed except upon leave from the hearing officer.

F. Discovery. No discovery shall be allowed, including requests for admission, interrogatories, and depositions.

G. Upon request, the hearing shall be recorded. The person who requests the recording shall pay recording costs.

H. In field citation hearings, the rules governing civil procedure and evidence in district court do not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open and for how long and for what reason it will be left open.

I. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within fifteen (15) working days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice. Appeals from the secretary's final decision are by NMSA 1978, Section 74-2-9.

J. Pursuant to 20.1.5.2 NMAC, these hearing procedures supersede the procedures provided in 20.1.5 NMAC.

[20.2.90.110 NMAC - N, 12/12/08]

20.2.90.111 PENALTIES. First time violators of the field citation rule who demonstrate cooperation in compliance may be fined up to one hundred dollars (\$100.00) per violation. First time violators of the field citation rule who fail to demonstrate cooperation in compliance may be fined up to two hundred dollars (\$200.00) per violation. Multiple time violators of the field citation rule who demonstrate cooperation in compliance may be fined up to five hundred dollars (\$500.00) per violation. Multiple time violators of the field citation rule who fail to demonstrate cooperation in compliance may be fined up to one thousand dollars (\$1,000.00) per violation. Provided, however, that penalties assessed in a field citation shall not exceed one thousand dollars (\$1,000.00) per day per violation or a maximum of fifteen thousand dollars (\$15,000.00). In determining the amount of a penalty to be assessed pursuant to this section, the person issuing the field citation shall take into account the seriousness of the violation, any good-faith effort to comply with the applicable requirements and other relevant factors.

[20.2.90.111 NMAC - N, 12/12/08]

20.2.90.112 SERVICE OF FIELD CITATION. Service of a field citation shall be accomplished by any of the following methods:

A. personal service by a department representative who shall obtain the signature of a person who is an owner, operator, employee, or representative of the source, facility or property being inspected at the time the field citation is issued, with a copy of the signed citation sent by certified first class mail to the facility's operations headquarters when appropriate; if such person refuses or fails to sign the field citation, the failure or refusal to sign shall not affect the validity of service nor of the citation or subsequent proceedings; or

B. service by certified first class mail.
[20.2.90.112 NMAC - N, 12/12/08]

HISTORY OF 20.2.90 NMAC: [RESERVED]