

This is an amendment to 20.2.72.7 NMAC:

20.2.72.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (Definitions) as used in this Part:

A. "Accelerated review" means an optional process of permit application review that allows the Department to utilize a qualified outside firm to assist in review of a construction permit application.

B. "Affiliate," for the purposes of accelerated review, means a person that directly or indirectly, through one or more intermediaries, controls or is under common control with another person. Control includes the possession of the power to direct or cause the direction of management and policies of a person, whether directly or indirectly through the ownership, control or holding with the power to vote ten percent or more of the person's voting securities.

C. "Air pollution control equipment" means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

D. "Ambient air" means the outdoor atmosphere, but does not include the area entirely within the boundaries of the industrial or manufacturing property within which the air contaminants are or may be emitted and public access is restricted within such boundaries.

E. "Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur. This definition does not include coal preparation plants.

F. "Coal preparation plant" means any facility which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

G. "Commencement" means that an owner or operator has undertaken a continuous program of construction or modification.

H. "Conflict of interest," for the purposes of accelerated review, means any direct or indirect relationship between the qualified outside firm and the applicant or other interested person that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the qualified outside firm in review of the application. A conflict of interest does not include any gifts, gratuities, financial or contractual relationship of less than one hundred dollars (\$100) in value for the twelve month period preceding Department receipt of the application. A conflict of interest includes but is not limited to the following examples:

(1) Gifts or gratuities of value have been exchanged between the qualified outside firm and the applicant.

(2) The qualified outside firm has provided goods or services to the applicant within one year prior to the start, or during the term, of the accelerated review process.

(3) An express or implied contractual relationship exists between the qualified outside firm and the applicant and the qualified outside firm has provided goods or services to the applicant through that relationship within five years prior to the start of the accelerated review process.

(4) There is a current financial relationship between the qualified outside firm and the applicant. Current financial relationships include, but are not limited to:

(a) The qualified outside firm owes anything of value to, or is owed anything of value by the applicant.

(b) The qualified outside firm has provided goods or services to the applicant and has issued a warranty or guarantee for the work that is still in effect during the time the contracted work for accelerated review is being performed.

(5) A director, officer, or employee of the qualified outside firm, who will perform services under a contract pursuant to this section (20.2.72.221 NMAC), has one or more personal, business, or financial interests or relationships with the applicant or any director, officer or employee of the applicant which would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a contract.

(6) A director, officer or employee of the qualified outside firm was a director, officer or employee of the applicant within one year prior to the start of the accelerated review process.

(7) Except where allowed by the Department, communication has been made between the qualified outside firm and the applicant regarding the substance of the application before a qualified outside firm has been selected to perform accelerated review of an application. Direct communication between the qualified outside firm and the applicant may take place once the qualified outside firm has been selected by the Department.

(8) Any affiliate of the applicant has any of the above identified relationships with the qualified outside firm.

(9) Any affiliate of the qualified outside firm has any of the above identified relationships with the applicant.

(10) Any affiliate of the applicant has any of the above identified relationships with any affiliate of the qualified outside firm.

I. "Construction" means fabrication, erection, installation or relocation of a stationary source, including but not limited to temporary installations and portable stationary sources.

J. "Emergency" means unforeseen circumstances resulting in an imminent and substantial endangerment to health, safety, or welfare which requires immediate action.

K. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the US EPA, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

L. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

M. "Hazardous air pollutant" means an air contaminant which has been classified as a "hazardous air pollutant" by the administrator of the US EPA and is subject to a NESHAP.

N. "Interested person," as used in the definition of conflict of interest, means any person, other than the Department, that is reasonably expected to provide or has provided substantive comment or technical evidence on the permit application.

O. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment, or process to operate in an expected manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered a malfunction.

P. "Modification" means any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted, but does not include:

(1) a change in ownership of the source;

(2) routine maintenance, repair or replacement;

(3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the Federal Act; or

(4) unless previously limited by enforceable permit conditions:

(a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) an increase in the hours of operation; or

(c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

Q. "National Ambient Air Quality Standard" means, unless otherwise modified, the primary (health-related) and secondary (welfare-based) federal ambient air quality standards promulgated by the US EPA pursuant to Section 109 of the Federal Act.

R. "National Emission Standards for Hazardous Air Pollutants" or "NESHAP" mean the regulatory requirements, guidelines and emission limitations promulgated by the US EPA pursuant to Section 112 of the Federal Act.

S. "New Source Performance Standard" or "NSPS" means the regulatory requirements, guidelines and emission limitations promulgated by the US EPA pursuant to Section 111 of the Federal Act.

T. "Nonattainment area" means for any air contaminant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national or New Mexico ambient air quality standard for such contaminant. Such term includes any areas identified under Sub-paragraphs (A) through (C) of Section 107 (d)(1) of the Federal Act.

U. "Operator" means the person or persons responsible for the overall operation of a facility.

V. **"Owner"** means the person or persons who own a facility or part of a facility.

W. **"Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

X. **"Portable stationary source"** means a source which can be relocated to another operating site with limited dismantling and reassembly, including for example but not limited to moveable sand and gravel processing operations and asphalt plants.

Y. **"Potential emission rate"** means the emission rate of a source at its maximum capacity ~~[in the absence of air pollution control equipment which is not vital to production of the normal product of the source or to its normal operation. The determination of maximum capacity includes any federally enforceable physical or operational limitation on the capacity of the source.]~~ to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department pursuant to the Air Quality Control Act or the federal Act.

Z. **"Qualified outside firm"** means any person who has entered into a contract with the Department to provide assistance in the accelerated review of construction permit applications.

AA. **"Regulated air contaminant"** means, any air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the Federal Act.

BB. **"Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

CC. **"Standard Industrial Classification"** or **"SIC"** means the code from the classification manual created by the Executive Office of the President-Office of Management and Budget, which categorizes industrial, manufacturing and commercial facilities, as listed in the Standard Industrial Code Manual published by the U.S. Government Printing Office, Washington D.C. 1972.

DD. **"Startup"** means the setting into operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing in of batch process units.

EE. **"Stationary source"** or **"source"** means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant. Any research facility may group its sources for the purpose of this Part at the discretion of the Secretary.

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