



# New Mexico Environment Department

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April 30, 2020

## COVID-19: Air Quality Regulatory Notice For the Oil and Natural Gas Industry

**My organization is negatively affected by COVID-19. What do I do now?**

*We're in this together, and we are here to help.* The New Mexico Environment Department (NMED) is ready to assist the oil and natural gas industry in understanding how to navigate regulatory questions during this Public Health Emergency (Executive Order 2020-004, issued March 11, 2020). Please do not hesitate to contact us!

Though our physical offices across the state are closed, NMED remains open and dedicated to its mission to protect public health and the environment. NMED staff throughout our regulatory programs continue to interact with and assist stakeholders with applications for permits and licenses, compliance with applicable regulatory requirements, and rule development and implementation.

COVID-19 is a highly infectious and fast-spreading virus. Symptoms and their effects can range from mild to severe and in certain cases result in extreme health complications and death. Positive cases have been identified in communities across New Mexico. State health officials continue to test, process, monitor and track instances of the virus — and the state of New Mexico has taken proactive, aggressive public health actions to mitigate the spread of the disease.

### We're continuing to protect public health and the environment

NMED has been delegated authority by the U.S. Environmental Protection Agency (EPA) to implement programs under the federal Clean Air Act that are essential for the protection of public health and the environment. Such programs include the primary national ambient air quality standards, which are the public's first line of defense against exposure to harmful levels of air pollution. These standards are health-based and are designed to protect the most vulnerable populations. The secondary ambient air quality standards protect against decreased visibility and damage to animals, crops, vegetation, and buildings. NMED also regulates sources that emit toxic and hazardous air pollutants, sources that contribute to haze and smog at national parks, and greenhouse gases that cause climate change.

Air pollution above protective limits may lead to serious health effects, including respiratory problems, aggravation of existing heart and lung conditions, and premature death. Ensuring that sources emit below these limits and that the public and the environment are protected from the negative effects of air pollution are among NMED's highest priorities. NMED's oversight of compliance with air permits and regulations is therefore critically important to its mission.

*Disclaimer: This notice should not be construed to create any enforceable rights in the regulated community or the public, or any binding obligations on the Department. This document is not a policy or regulation and may be updated without public notice.*



**Air Quality questions?  
We are here to help!**

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For a list of our air quality experts, please click [here](#).

To Subscribe to e-mail alerts, please click [here](#).

Leave a message for our Air Quality Bureau at:  
(800) 224-7009

[NMED COVID-19  
Factsheets](#)

**NM Department of Health**  
COVID-19 Hotline:  
(855) 600-3453



## Can I submit permit applications and documents electronically?

Yes, NMED can now accept electronic pre-submittals of permitting and related documents (i.e., Notices of Intent, GCP registrations, and permit applications).

Here's a step-by-step process on how to submit your permit application and documents electronically:

Applications may always be submitted by mail, but you may also submit applications electronically! (See Step 4)

Questions about submitting your application?

Please contact:

Ted Schooley

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(800) 224-7009

- Step 1 Prepare and [remotely notarize](#) your permitting documents:** Use the normal forms (including the required attachments) and have the documents remotely notarized. You must use a certified notary in a state that allows remote notarization. Sorry, an 'electronic signature' is not sufficient; it must be notarized per the legal remote notary process.
- Step 2 Pre-submit:** Fill out our [online form](#) to notify the Department you would like to submit a remotely notarized permitting document. The information requested in this form is what we need to get your permitting documents into the system and assigned to a permit writer.
- Step 3 Pay the fee:** Mail your paper check. We will match your check to your pre-submittal information. This step could delay assignment of your project if we are unable to match your check to the pre-submittal information. The form requires the check number and the payor, and you must include the facility name on the memo line of the check.
- Step 4 Submit electronically:** Electronically submit your (remotely notarized) permitting documents via email or file transfer when requested by your assigned permit writer. We cannot accept zipped files via email. If your attachments are over 20 MB, you'll need to use our file transfer service (Accellion). Your permit writer will initiate the file transfer process if files are too large to email. If we have already received your check, this is the step that will start the regulatory deadline, so please respond to the permit writer's email quickly.

**Pro tip:** Don't forget to mail us a hard copy of a Title V action or a New Source Review action!

**Pro tip:** No hard copies needed for Registrations for GCPs!

## Can I still submit permit applications and documents via U.S. Mail?

Of course! You are welcome to submit permitting actions as explained in our forms. If you have a traditional (wet ink) notary, the quickest way to get your permitting action to a permit writer is to follow the hard copy process. You will be requested to e-mail, or file transfer the permitting documents to your assigned permit writer. Your electronic documents must have a copy of your notarized certification page. Watch for the permit writer's email, and please respond promptly.

## When will I be able to pay permitting fees online?

Soon! NMED began migrating to online payments for a number of programs in 2019, the air permitting program

We understand that the current economic situation may be impacting small operators. If you're having trouble, please give us a call.

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cannot yet accept electronic payments, but we are working on it. Please continue to submit paper checks for permitting fees.

### How do I request an extension to a permit or other regulatory requirement?

Start with contacting us so we can discuss the details. In general, NMED will evaluate requests for extensions for performance testing and reporting requirements on a case-by-case basis. Typically, specific performance tests and reporting requirements for the oil and natural gas industry are based on federal requirements. While NMED can make many of these decisions, we may need to involve the U.S. EPA in some instances.

#### Questions about Air Quality extensions?

Please contact:  
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For example, the New Source Performance Standards (NSPS) codified at 40 CFR Part 60.8(a)(1) and the Maximum Achievable Control Standards (MACT) codified at 40 CFR Part 63(a)(4) address performance test extensions due to force majeure, which would include unforeseeable circumstances like COVID-19. In both instances, NMED is delegated authority to act in lieu of the U.S. EPA, and the New Mexico Environmental Improvement Board has codified these provisions in the state's administrative code at 20.2.77 NMAC (NSPS) and 20.2.82 NMAC (MACT).

Rules and permit provisions often require the regulated community to demonstrate compliance with emission limits via monitoring, recordkeeping and reporting requirements. Such provisions place an obligation on the regulated entity to demonstrate continuous compliance by monitoring operating parameters. In many instances, the use of remote sensing and real-time monitoring technology allows operators to record compliance data. In other instances, an operator may rely on a staff person or contractor to perform these functions on a periodic basis. Regardless of how the data is collected, the advent of cloud-based storage allows an operator to manage and maintain vast amounts of process and compliance data. Finally, certain permit or rule provisions require the submission of periodic reports. The most common periodic reports are listed below, though not all reports are required for the oil and natural gas industry.

1. Annual Title V Reports – Federally-required compliance certification reports are required of all Title V facilities and are due each year. Provides a summary of all regulatory requirements and permit terms and conditions and demonstrates how the facility has met or not met those requirements.
2. Semi-annual Title V Reports – Same as above but certifies that all monitoring requirements have been met and is due every six months.
3. Excess Emission Reports – State-required reports required for violations of permit requirements, regulations, and emission limits. Initial reports are due one day after discovery of the event. Final reports are due ten days after filing the initial report.
4. Stack Test Notifications – Stack test notifications are required by state permit conditions and federal regulations. Test notifications allow NMED inspectors to observe stack testing and directly verify facility compliance with emissions limits.
5. Stack Test Report – Stack test reports are due to NMED 30 to 180 days after completion of source stack testing per state and federal law. Stack test

#### Are you a small business? The Small Business Environmental Assistance Program helps companies understand air permits and regulations!

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(800) 224-7009

reports allow NMED to review the data directly related to the emission tests and are used to determine compliance with emission limits in permits and regulations.

6. New Source Performance Standard (NSPS) – Reports are submitted to NMED in response to source-specific emissions management requirements in federal air quality regulations. NSPS reports are typically submitted to provide documentation of compliance with operational, monitoring, and recordkeeping requirements.
7. National Emission Standards for Hazardous Air Pollutants (NESHAP) – Reports are required for sources that emit toxic air contaminants. There are several federal oil and natural gas regulations that require these reports to be submitted to the agency.
8. Maximum Achievable Control Technology (MACT) – Reports are required for sources that emit toxic air contaminants. These reports include initial notifications, progress reports, startup, shutdown and malfunction reports, excess emissions and continuous monitoring system performance reports, and summary reports.
9. New Mexico Administrative Code (NMAC) Reports – Various reports required by state air quality regulations.
10. Affirmative Defense – Affirmative Defense reports are submitted with excess emission reports for events that were caused by a sudden, infrequent and unavoidable failure in pollution control equipment or process equipment. These reports are required to be submitted within 30 days after submittal of a final excess emission report.
11. Corrective Action Verification – Corrective Action Verification reports are required to be submitted in response to Notices of Violation (NOV) issued to companies. These reports must be submitted within 30 days of the issuance of an NOV.
12. Permit Specific Requirements – These reports are permit specific and typically include submittal of a production rates, emissions data, or additional information that is only available after plant operations begin.
13. Emissions Inventory Requirements – These reports are required to be submitted annually for Title V sources and are required for smaller sources in 2021.

**The bottom line:** While NMED cannot provide blanket, industry-wide extensions or waivers to existing permits or rules, we will evaluate requests for extensions for performance testing and reporting requirements on a case-by-case basis and grant relief where warranted, consistent with our statutory and regulatory authority.

#### **Is NMED conducting compliance inspections during the Public Health Emergency?**

Currently, NMED is not routinely performing air quality field inspections. Inspections often require NMED staff to meet in person with facility staff, tour operations, conduct sampling, etc. Maintaining social distancing is challenging and poses occupational safety issues. Further, we do not want to risk an emergency while in the field that would place additional burdens on already-overextended first responders and healthcare professionals, and potentially compromise the health and safety of our staff.

#### **Questions about Air Quality inspections?**

Please contact:  
Cindy Hollenberg  
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However, when in receipt of actionable intelligence, NMED may elect to conduct targeted, field-based investigations. Operators are reminded that they are responsible for monitoring the compliance status of their facilities and should disclose possible violations at the earliest opportunity. NMED's [voluntary environmental disclosure policy](#) is available to regulated entities.

### **What is EPA's position on COVID-19 and enforcement?**

On March 26, 2020, the U.S. EPA issued a policy memo titled [COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program](#), followed by a [frequently asked questions](#) document to clarify various aspects of the policy. The policy requires regulated entities to make every effort to comply with all applicable requirements. The policy states that the U.S. EPA will not seek penalties for noncompliance with routine monitoring and reporting requirements if, on a case-by-case basis, the EPA agrees that such noncompliance was caused by the COVID-19 public health emergency. Regulated parties must document the basis for any claim that the COVID-19 public health emergency prevented them from conducting their routine monitoring and reporting and present it to the EPA upon request.

Further, the EPA policy states that facilities should contact the appropriate EPA region, authorized state, tribe, or territory if:

1. Facility operations impacted by the COVID-19 public health emergency may create an acute risk or an imminent threat to human health or the environment, or
2. A facility suffers from failure of air emission control or wastewater or waste treatment systems or other facility equipment that may result in exceedances of enforceable limitations on emissions to air or discharges to water, or land disposal, or other unauthorized releases.

If a facility fails to contact a regulator in these circumstances, the offer in the policy to consider COVID-19 circumstances when determining an appropriate enforcement response does not apply.

### **How will NMED respond to violations of permits and rules related to COVID-19?**

EPA's policy acknowledges the important role played by states, tribes and territorial partners, and specifically notes that states and tribes may take a different approach under their own authorities.

Accordingly, NMED will take the following approach to compliance and enforcement for the oil and natural gas industry during the COVID-19 public health emergency. For violations of air quality permits or regulations issued under the laws of New Mexico, owners or operators claiming that the COVID-19 public health emergency directly or indirectly caused or contributed to the violation must demonstrate to NMED: (1) that compliance with a Public Health Emergency order rendered compliance with the air quality permit/rule effectively impossible, and (2) that proactive and timely steps were taken to minimize risk or harm to public health and the environment resulting from the violation. NMED will evaluate such claims on a case-by-case basis under NMED's existing regulations and policies to determine what enforcement relief, if any, is warranted.

#### **Questions about Air Quality enforcement?**

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Further, similar to EPA's directive, facilities in New Mexico should promptly notify NMED under the following circumstances: (1) impacts of the COVID-19 public health emergency on facility operations may create a significant risk or an imminent threat to human health or the environment; or (2) the facility suffers a failure of air emission

controls or other facility equipment that may result in exceedances of enforceable limitations on air emissions, or other unauthorized emissions. If a facility fails to notify NMED under these circumstances, NMED will not consider relief based on COVID-19 circumstances when determining an appropriate enforcement response.

**How will NMED inform the public of any decisions it makes related to COVID-19 enforcement?**

We are committed to public transparency. Last year, we launched an interactive oil and natural gas [methane map](#) to provide the public and other stakeholders a better understanding of oil and natural gas impacts on public health and the environment. As of today, the methane map provides information on:

1. Oil and natural gas well location and ownership throughout the state;
2. Estimated or actual emissions of methane, volatile organic compound emissions, and hazardous air pollutants on a well-by-well basis (including excess emission reports);
3. Compliance assurance activities conducted by NMED, including field inspections and flyover inspections;
4. Constituent complaints and NMED’s response to alleged violations of rules and permits;
5. Notices of violation and settled enforcement actions; and
6. Information on air quality throughout the state.

Consistent with past practice, NMED will utilize its methane map to provide the public and other stakeholders with our enforcement response to substantiated claims that the COVID-19 public health emergency directly or indirectly caused or contributed to a violation.

